

In Chancery of New Jersey.

Between

PETER MELICK,

Complainant,

and

PETER E. VOORHEES,

Defendant.

On Bill for

Account.

BILL OF COMPLAINT.

[Filed April 13, 1872.]

To the Chancellor of the State of New Jersey :

Humbly complaining, showeth unto your Honor, your orator, Peter Melick, of the county of Morris, in the state of New Jersey.

1st. That on or about the 4th day of September, A. D. 1861, your orator being seized and possessed of a large and valuable real estate in the county of Hunterdon, in this state, consisting of about one hundred and three acres of land, 10 with a valuable grist mill and other improvements thereon, hereinafter more particularly mentioned, and being temporarily somewhat embarrassed in his finances, was persuaded by Peter E. Voorhees, of said county of Hunterdon, to convey said real estate to him, and your orator did make such conveyance by deed, executed by himself and wife to said Peter E. Voorhees, and the said Peter E. Voorhees did,

at the same time, enter into a certain agreement in writing, made between the said Peter E. Voorhees, of the first part, and John Rinehart, John Lane, and your orator, of the second part, which agreement is in the words and figures following, that is to say—

“ This indenture, made this fourth day of September, in the year of our Lord one thousand eight hundred and sixty-one, between Peter E. Voorhees, of the county of Hunterdon, and state of New Jersey, of the first part, and John
10 Rinehart, John Lane, and Peter Melick, all of the county of Hunterdon, and state of New Jersey, of the second part; witnesseth that whereas the said Peter Melick, for and in consideration of the sum of fourteen thousand and eight hundred and sixty-six dollars and fifty cents, which purchase money is made up of three several mortgages on the said premises, given to John Capner, Aaron Van Syckle, and Peter E. Voorhees, together with the interest which will be due on said mortgages on the first day of April next, which mortgages and interest makes the aforesaid purchase
20 money; and whereas, the said Peter Melick, for and in consideration aforesaid, has this day deeded to the said Peter E. Voorhees a certain property now owned by him in the county of Hunterdon, being the same property purchased by the said Melick of John C. Rafferty and wife, by deed bearing date the 26th day of February, one thousand eight hundred and sixty-one, which deed is recorded in Hunterdon county clerk’s office, on the 4th day of March, 1861, in Book of Deeds 124, page 143, &c., as by reference to the same will fully appear; and whereas, the said Peter Melick
30 is indebted to the said Peter E. Voorhees in the sum of eight hundred dollars, and the said John Rinehart in the sum of eight hundred and eighty dollars, and the said John Lane is shurity for the said Peter Melick on a note for two thousand dollars, dated on or about the second day of March, now held by Jacob R. Fisher, which note and interest now amounts to the sum of two thousand and sixty dollars, and the said Peter E. Voorhees and John Lane is shurity for the said Melick on a certain other note, now held by the aforesaid Jacob R. Fisher, for the sum of seven
40 hundred dollars, and the interest due thereon; and whereas,

the said Peter E. Voorhees in taking the aforesaid deed hereby agrees, by and with the said John Rinehart, John Lane, and Peter Melick, that he will sell the same as soon as possible, and after deducting therefrom the amount of purchase money aforesaid, being the mortgages, and the interest due thereon; that all and every of such sums as he may receive over and above the aforesaid purchase money, he will divide and pay *per ratio* between himself, John Rinehart, John Lane, and himself, and John Lane, according to the amount of indebtedness and *shurity* that each may hold 10 or be *shurity* for the said Melick; and he further binds himself, that should he sell the property for more than enough to pay the aforesaid indebtedness and *shurity*, then, and in that case, he, the said Voorhees, is to pay the amount so over to the said Melick.

“And it is hereby further agreed, that in case any offer shall be made for the aforesaid farm, that then, and in such case, the acceptance of said offer shall be decided by Peter L. Voorhees, John Rinehart, John Lane, and Peter Melick, or any two of them, and should the said Voorhees, 20 after such decision to sell said property, think it not advisable, then, and in that case, he binds himself to pay, as aforesaid, the amount so offered, and keep the said property for his own use, free and clear from all complaints or demands by Lane, Rinehart, and Melick, the true intent and meaning being that the property should be sold to the *best* advantage, as soon as possible, for the benefit of the parties aforesaid; and it is hereby further agreed and understood that the aforesaid claims, or any of them, are not to be barred or effected by any change that may be made by the 30 parties or any judgment that may be held on them by the present holders or any other person.”

2d. The conveyance so as aforesaid made by your orator to said Peter E. Voorhees was given and executed for the purposes mentioned in said agreement of said Voorhees, and was made and delivered at the same time with the execution of said agreement by said Voorhees, and upon the express promise and undertaking of said Voorhees, that he would faithfully carry out said agreement, and the making and delivery of said deed, and the execution of said agree- 40 ment were parts of one and the same transaction.

3d. The said Peter E. Voorhees made, executed, and delivered said agreement at the same time of the execution and delivery of the said deed by your orator, and your orator is ready to produce and prove said agreement, according to the rules and practice of this court, and he prays leave to refer to the same if it becomes necessary so to do.

4th. After the execution and delivery of said deed and said agreement, your orator continued in the possession and enjoyment of said premises until the 1st day of April, A. D. 10 1862, at which time the said Peter E. Voorhees took full possession of said premises and received and enjoyed the rents, issues, incomes, and profits thereof, and has ever since continued to receive and enjoy the same, until the said property was disposed of by said Voorhees as hereinafter mentioned, when he received the proceeds of the sale thereof, and has used and disposed of the same for his own use and benefit.

5th. Since the execution and delivery of said deed and agreement, the said Peter E. Voorhees has not paid or 20 satisfied any part of the indebtedness by your orator mentioned in said agreement, and which he therein and thereby assumed and agreed to pay out of the proceeds of the sale of said property, but on the contrary your orator has paid and satisfied in full the said two notes held by said Jacob R. Fisher, and he has also paid a part of said note held by said John Rinehart, also by a sale of some of his personal property by the sheriff of the county of Hunterdon, a part of said claim of \$800 of said Peter E. Voorhees, mentioned in said agreement.

30 6th. The said real estate so as aforesaid conveyed by your orator to said Peter E. Voorhees, was at the time of said conveyance reasonably worth the sum of \$20,000, and would at a fair sale and on reasonable terms, have brought that amount, and should have been sold by said Voorhees, if it has not been, for at least that sum.

And the said Peter E. Voorhees ought, as your orator humbly insists, to account to him for at least the sum of \$20,000, besides the rent and income of said property received by him, and interest thereon since the conveyance 40 of said property to him.

7th. The said Peter E. Voorhees never consulted your orator in any way whatever in reference to the sale or other disposition of said property, nor did he, as your orator is informed and believes, ever consult or in any way advise with the said John Rinehart and John Lane or either of them in reference to the sale or other disposition of said property.

8th. The said Peter E. Voorhees has, since the conveyance of said property to him, in some way or manner, sold or disposed of the same, so that one Whitfield Melick is now in possession of the same, and claims to be the owner thereof; and your orator is informed and believes, and so charges the truth to be, that the said Peter E. Voorhees has received on account of the sale of said property, at least the sum of \$20,000, besides all the rent and income he has received from the same while in his possession or under his control.

9th. Your orator has, by himself or his counsel, frequently applied in a friendly manner to said Peter E. Voorhees and requested him to come to an accounting and settlement with your orator of and concerning the said property so as aforesaid conveyed to him, and of his receipts from the same, and his disbursements made on account of your orator, and that he would pay over to your orator what, upon such accounting and settlement, might be found to be justly due and payable to him.

10th. The said Peter E. Voorhees, combining and confederating with other persons at present unknown to your orator, but whose names, when discovered, he prays may be inserted in this his bill of complaint, with proper and apt words to charge them as parties defendants thereto, absolutely refuses in any manner to comply with such requests of your orator, and denies the right of your orator to call him to an account in the premises, and denies that he has ever received any money on account of said property, which in equity and good conscience he should pay over unto your orator, or that he has disposed of said property, in any manner other than that mentioned in said agreement, the contrary whereof your orator charges to be true.

11th. Your orator is without relief in the premises without the aid of this honorable court and he therefore prays as follows :

First. That said defendant may answer under oath the premises, and that he may particularly and fully answer under oath, separately, each and every of the following interrogatories :

- 1st. Did not the said Peter Melick, on or about the 4th day of September, A. D. 1861, convey to you the farm and premises hereinbefore mentioned, situate in the county of Hunterdon, being the same conveyed to him by John C. Rafferty ?
- 10 2d. Was not said conveyance made at your suggestion or by your procurement and request ?
- 3d. Did you not, at or about the same time and as part of the same transaction, make and execute the agreement hereinbefore set forth ?
- 4th. When did you take possession of said property ?
- 5th. Of what did said property consist, and what use did you make of the same ?
- 6th. Did you use and carry on business on said property yourself, or did you rent the same ?
- 20 7th. How long did you keep the said property before you sold the same ?
- 8th. What did you receive for the rent, produce, and income of the said property while you held the title to the same ?
- 9th. Have you received anything on account of the rent, produce, or income of said property since you deeded the same away—and if so, what, from whom, and what amount ?
- 10th. Have you ever kept any book account of your receipts for rent and income of said property—and if so, have you that account still ?
- 30 11th. When did you convey said property away, and to whom, and for what consideration ?
- 12th. How and in what way and manner did you receive pay for said property when you conveyed the same away, and what did you receive ? State the same fully.
- 13th. When you conveyed said property to Charles Dayton, was that an absolute and *bona fide* conveyance to him for the consideration expressed in the deed ?
- 14th. When you conveyed that property to Dayton, did you still retain any interest in it or the future sale or proceeds of it, directly or indirectly ?
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15th. Who made the bargain with Dayton for your conveyance of said property to him ?

16th. Was there any agreement or understanding before or at the time of the conveyance of said property to said Dayton, or at any other time, that upon said conveyance being made to said Dayton, either yourself or any other person than said Dayton, should directly or indirectly have any interest in said property or the proceeds thereof, or in any future sale or disposition thereof ?

17th. Before you conveyed said property to Charles Dayton, did you inform John Rinehart, John Lane, and Peter Melick, or either of them, what offer had been made for the property, and advise with them or either of them in regard to said sale ? Did they or either of them *advise* you to sell to said Dayton ?

18th. Before or at the time you conveyed said property to said Dayton, was you personally acquainted with the character and value of the property which you received in exchange from said Dayton for that conveyed to him by you ? What knowledge had you of that property ?

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19th. Since you conveyed said property to said Dayton, have you or your son had any interest in said property, directly or indirectly, with said Dayton or otherwise ?

20th. While you held the title to said property, did you ever advertise it in the newspapers or by handbills, for sale ?

21st. Where did said Charles Dayton live when he purchased said property, what was his business, what use did he make of said property, and who managed and took care of the same for him ?

Second. That said defendant may be decreed to come to 30 an accounting and settlement with your orator of and concerning the said property so as aforesaid conveyed to him by your orator, and of the income, produce, and proceeds thereof, and of all moneys or other things received by him, or which he should have received on account of the sale of said property, with the interest thereon, and that upon such accounting he be decreed to pay to your orator whatever may be found to be justly and honestly due and owing unto him.

Third. That if it shall appear that the said Peter E. Voor- 40

hees has sold or disposed of said property for a less sum than it was reasonably worth, contrary to the spirit or true intent and meaning of said agreement hereinbefore recited, that then he be decreed to allow and account to your orator for the full and fair value of said property, and for such price as might have been reasonably obtained for the same.

Fourth. That your orator may have such other and further relief in the premises as the nature and circumstances of this case may require, and as to your Honor shall seem
10 meet.

Fifth. That the state's writ of subpoena, issuing out of and under the seal of this honorable court, may be directed to the said Peter E. Voorhees and his confederates, when discovered, commanding them and each of them, at a certain time and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises contained in this, your orator's bill of complaint, and stand to to and abide by such order and decree in the
20 premises as shall seem meet and agreeable to equity and good conscience. And your orator will ever pray, &c.

POTTS & LINN,

Solicitors and counsel of complainant.

ANSWER.

[Filed June 21, 1872.]

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer there-
30 unto or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, answers and says—that he admits that complainant did convey to him by deed, dated Septembr 4th, 1861, a certain farm, with grist mill thereon, situate in the township of Tewksbury, county of Hunterdon, and state of New Jersey,

containing about 103 acres of land, and that this defendant did about the same time enter into an agreement with the said Peter Melick and one John Rinehart, and one John Lane, in reference to the said conveyance of the nature and purport set out in complainant's bill, which agreement this defendant desires that complainant may produce and prove, as this defendant has no copy of the same and cannot now accurately state its entire contents, but so far as this defendant now recollects, the spirit and purport of the same is as stated in complainant's bill, but this defendant avers that, 10 although the aforesaid deed executed by complainant bears date in the month of September, 1861, this defendant did not go into possession of any of said premises by virtue thereof until April 1st, 1862, that date being the time agreed upon by said complainant and this defendant as the time when defendant should take possession of the same; and this defendant avers that complainant retained the possession of said premises up to said April 1st, 1862, and had the entire use, proceeds, and benefits thereof up to said time, that at that time the encumbrance on said premises, with the 20 interest thereon, amounted to the sum of \$14,866.50, made up as follows, viz.: One mortgage in favor of John Capner, for \$6194; one mortgage in favor of Aaron Vansyckle for \$2000, and a mortgage in favor of this defendant for \$5525; that these several mortgages, with the arrears of interest due thereon, constituted the consideration of the aforesaid deeds to defendant; that the aforesaid mortgage of defendant's was subsequent in priority to both the Capner and Vansyckle mortgages, being dated December 23d, 1859; that it was because defendant held this encumbrance, with the in- 30 terest thereon wholly unpaid, that he consented to accept the aforesaid deed of complainant, hoping that by so doing he would secure his said mortgage; that no interest had been paid thereon, and that all the interest thereon from December 23d, 1859, to April 1st, 1862, was in arrears and unpaid; that in addition thereto complainant was further indebted to this defendant in the sum of \$800, as set out in the agreement referred to in complainant's said bill of complaint, and this defendant was also security with one John Lane for complainant on a promissory note held by one Jacob R. Fisse 40

for \$700, besides the interest thereon, which last mentioned note is also referred to in the agreement recited in complainant's bill.

And this defendant further answering says, that after September 4th, 1861, and previous to April 1st, 1862, we saw John Lane and John Rinehart, the persons named in said agreement, and requested them or either of them to take the title for said premises; that both of them were men of more means than this defendant and resided nearer the said premises, and as an inducement for their so doing, this defendant, with the consent of said Melick, made them and each of them, the offer to convey to them or either of them the said premises at \$1000 less than the aforesaid mortgage encumbrance; that both of them declined to accept such offer; that this defendant made other and various exertions to dispose of the same to different parties, that he put the premises in charge of one Seymore, a real estate agent in Broadway, New York city, who advertised the same in the "New York Herald," in the city of New York; that said agent was a very extensive dealer in real estate and sent two different parties to view the premises, as purchasers; that the price this defendant offered one of said purchasers to accept for said premises was \$15,000, but that defendant was unable to make sale to said purchaser, or to any other parties, although he made continued and persistent efforts to do so; that shortly previous to April 1st, 1862, not having been able to dispose of the premises, this defendant entered into a written contract with John E. Voorhees (the brother of this defendant,) who was a practical miller, the substance of which was that said John E. Voorhees should take the property for one year, paying as rental therefor the taxes and the interest on the aforesaid Capner and Vansyckel mortgages, and pay for all ordinary repairs, and at the expiration of said year said John E. Voorhees to have the option to purchase the property at the mortgage encumbrance; that under such agreement said John E. Voorhees went into possession of said premises about April 1st, 1862, and remained in possession thereof one year then next ensuing; that during said year the water-wheel of the mill entirely gave way, being decayed, old, and worn out, and it became neces-

sary to put in a new wheel, and a new wheel was put in at a very considerable expense, and that during said year the mill-dam was partly taken away and was repaired at considerable expense, so that the total expense of these repairs which this defendant put on the premises that year, and which were paid by said John E. Voorhees in the first instance, and allowed by defendant to said John E. Voorhees in his settlement with him at the expiration of his year, amounted to within \$160 of the whole rental, that said John E. Voorhees paid this defendant the said sum of \$160 in cash, and 10 this defendant paid the interest on the Capner and Vansyckle mortgages, which interest amounted to \$491.64, leaving a deficiency of \$331.64, which this defendant paid as interest on the aforesaid mortgages.

And this defendant further answering says, that at the expiration of said year said John E. Voorhees declined to take the property on the terms stipulated in said agreement, according to his option, and the best offer this defendant could obtain from him was, that said John E. Voorhees would assume the payment of the Capner and Vansyckle mortga- 20 ges, and pay this defendant \$2000 additional, which offer this defendant declined to accept; that this defendant made other and frequent efforts to dispose of said premises, but that the best offer he could get, other than before stated, was \$10,000 for the whole property; that this defendant then saw Peter Melick, the complainant, and informed him that he was unable to dispose of it, and requested said Melick to make some arrangement to take back the premises, and secure this defendant for his mortgage encumbrance, by giving him a mortgage on a farm in Morris county, state of 30 New Jersey, then occupied by said complainant, the title to which farm, as this defendant had been informed, being in the wife of complainant, but that defendant did not succeed in making any such arrangement; that said complainant first consented, then refused, telling this defendant that he must make out of the property all he could, that he was unwilling to take it back on any terms.

And this defendant further answering says, that April 1st, 1863, he rented the mill and appurtenances to one Bennet for one-half of the earnings, up to the date, of the 40

conveyance aforesaid, by this defendant to Harvey Dayton, to wit, October 17th, 1863, at which time said Dayton took possession of the same; that the farm was rented from April 1st, 1863, to said John E. Voorhees, at a rental of \$200 per year, said John E. Voorhees to pay all taxes; that the entire amount realized by this defendant from April 1st, 1863, to the time of the conveyance to said Dayton for the mill and farm, did not exceed the sum of \$250; that about the 17th of October, 1863, this defendant, through his son, John N. 10 Voorhees, negotiated an exchange of said premises with one Charles H. Dayton, the person named in complainant's bill, to whom this defendant, with Rebecca, his wife, executed a deed of conveyance therefor, dated at said time last above mentioned; that this defendant conveyed said premises to said Charles H. Dayton, subject to the aforesaid Capner mortgage of \$6194, and the Aaron Vansyckle mortgage of \$2000, with the interest which had accrued on both of said mortgages from April 1st, 1863, to the date of said conveyance; this defendant having paid one year's interest on 20 said mortgages himself, to wit, the interest that had accrued from April 1st, 1862, to April 1st, 1863; that this defendant received from said Dayton, as the consideration for said conveyance, \$1800 in cash, a deed for a property at Morristown, executed by said Charles H. Dayton and wife to this defendant, dated October 14th, 1863, subject to a mortgage of \$1500, with interest from April 1st, 1863, thereon, which deed is recorded in clerk's office of said Morris county, in Book H 6 of Deeds for said county, pages 273, &c., and reference thereunto is made for the description thereof; 30 this defendant also received, in further consideration of his said conveyance, a deed from one Charles H. Dayton and wife, to this defendant, for a mill property at Millbrook, Somerset county, New Jersey, subject to a mortgage of \$1700 with accrued interest thereon from April 1st, 1863, which deed is recorded in clerk's office of Somerset county in Book M, No. 3 of Deeds for said county, page 777, &c., and reference to said record is herein made for the description of the same, if the same shall be necessary. And this defendant avers that the value at the time of the aforesaid 40 exchange of the Morristown property aforesaid, over and

above the encumbrance thereon, was about the sum of \$1000 ; that by subsequent sale of the same this defendant realized about that sum as is hereafter particularly set out ; that the value of the aforesaid mill property over and above the aforesaid encumbrance on it at the time of the aforesaid exchange, was about the sum of \$1200 ; that by a subsequent sale of the same, this defendant realized about that sum as is hereinafter particularly set out, so that the whole amount realized by said exchange did not exceed the sum of \$4000 ; over the Capner and Vansyckle encumbrances, to apply in 10 satisfaction or liquidation of the aforesaid mortgage of this defendant, on which there was due, October 17th, 1863, for arrears of interest, \$1263.83, which, with the principal added, made the whole amount due defendant on his mortgage, at the date of the exchange, \$6788.83.

This defendant further answering says, that said Morristown property was subsequently sold by this defendant in two parcels, viz. : one lot June 23d, 1866, to Esther B. Parsons for \$1300, and the other lot February 25th, 1867, to Eunice M. Briant for \$1200, so that the amount realized 20 from the Morristown property by this defendant, over and above the \$1500 mortgage thereon, (which mortgage this defendant paid before selling said property) was \$1000, as hereinbefore stated ; that said defendant subsequently sold said Greenbrook mill property to one John Goth for the sum of \$2900, so that deducting the mortgage thereon of \$1700, the amount realized on the sale of the same was \$1200, as before stated.

And this defendant further answering says, that the amount received from the rental of the Morristown premises 30 during the time said premises were owned by this defendant, was about \$200, in excess of the taxes, insurance, and interest on the \$1500 mortgage ; that the rental on the Greenbrook property received by this defendant during his ownership of the same, did not exceed the sum of \$50, exclusive of taxes, interest on the \$1700 mortgage, insurance, and repairs. And this defendant says, that by allowing complainant the equity in the Morristown premises, and also in the Greenbrook premises, as cash, and crediting him therewith at the time of its conveyance to defendant, that complainant would 40

have still been indebted to defendant over \$2700 on account of defendant's said mortgage, besides the expenses incident upon such exchange and such reasonable charges as would be equitable and just to allow this defendant for such services rendered by him therein. And this defendant avers that he was not able to obtain from the proceeds of sale of the premises described in complainant's bill of complaint enough money to satisfy and pay the said mortgages recited in said agreement; that this defendant obtained for such property the highest price that it was possible for him to procure; that he advertised the same himself in the "New York Herald," and employed his best skill and judgment in the disposition of the same; that said complainant knew or could have known all about the exchange; that this defendant has always been ready to make such a statement of his connection with the premises as complainant might desire; that defendant has never, directly or indirectly, applied for any such statement, and that he well knew that this defendant was very considerably the loser by taking the conveyance for the consideration stated in his deed.

And this defendant further answering, in reply to the interrogatories in said bill of complaint contained, and not hereinbefore particularly answered as to the tenth interrogatory says, he did keep a book account of his receipts for rent and income of said premises, and that he has that account still; in answer to the thirteenth interrogatory says, that when he conveyed this property to Charles Dayton, the conveyance was absolute and *bona fide*, but that the consideration expressed in the deed was not the true consideration, but was named as \$18,000, at the special request of said Dayton, but that the true consideration was as hereinbefore stated; in answer to the fourteenth interrogatory, this defendant answers and says, that when he conveyed this property to Dayton, this defendant did not retain any interest in it, or in the future sale or proceeds of it, directly or indirectly, that the bargain with said Dayton, for the conveyance of the property, was made by John N. Voorhees, the son of this defendant; that there was no agreement or understanding, before or at the time of the conveyance of said property to said Dayton, or at any other time; that upon said

conveyance being made to said Dayton, either this defendant or any other person that said Dayton should, directly or indirectly, have any interest in said property, or the proceeds thereof, or in any future sale or disposition thereof; in answer to the seventeenth interrogatory this defendant says, that he cannot now state whether he informed John Rinehart, John Lane, and Peter Melick, of his intention to dispose of the property to said Dayton, but believes he did inform Rinehart and Lane; that it was then conceded by all of them that it would be impossible to sell the property so 10 as to realize the amount then due on all three of said mortgages, and that this defendant, believing that such exchange was the most advantageous disposition that could possibly be made by him, executed the aforesaid conveyance in good faith.

In answer to the eighteenth interrogatory this defendant says, that he was not personally acquainted with the value of the Morristown property, received by him in the said exchange; that its information as to its value was derived from his son, John N. Voorhees, who negotiated the exchange; 20 that this defendant was personally acquainted with the Greenbrook mill property, and that he estimated its value at the time at \$1500 above the encumbrances; the Morristown property was valued at \$1000 over and above encumbrance.

In answer to the nineteenth interrogatory this defendant answering says, that since he conveyed said property to said Dayton, he has not had any interest in the same, directly or indirectly; that his son has had no interest therein, so far as he knows, or has ever heard, and that he is informed by his son, and verily believes that his son never had any interest 30 in the same, directly or indirectly, with said Dayton or otherwise.

In answer to the twenty-first interrogatory this defendant says, that at the time Charles Dayton purchased this property he lived at New Germantown, Hunterdon county, New Jersey; that his business was dentistry; that he moved on the premises soon after his purchase; that he used them for farming and milling purposes; that the mill was part of the time in charge of one Elias Naylor, after Dayton purchased it; as to the farm, this defendant believes Dayton managed it 40

himself; that this defendant has no other knowledge respecting it than above stated; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

VOORHEES & VANSYCKLE,
Solicitor and of counsel with defendant.

New Jersey, ss.—Peter E. Voorhees, the above named defendant, being duly sworn, on his oath 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 they relate to the acts of others, he believes them to be true.

PETER E. VOORHEES.

Sworn and subscribed this 20th day of June, A. D. 1872, before me.

JOHN C. RAFFERTY, *M. C.*

REPLICATION.

[Filed June 25, 1872.]

20 This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant without that, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue; all
30 which matters and things this repliant, is and will be ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

POTTS & LINN,
Sol. for complainant.

ORDER.

[Filed December 26, 1872.]

It appearing to the court that Peter E. Voorhees, the defendant above named, departed this life on the 17th day of October last past, leaving Rebecca Voorhees executrix of his last will and testament, who has duly proven the same. It is ordered, on motion of Voorhees and Vansyckel, solicitors of defendant herein, that the said Rebecca Voorhees, as executrix as aforesaid, be substituted as defendant in said cause.

A. O. ZABRISKIE, C.

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DEPOSITIONS.

[Filed August 27, 1872.]

Examination of witnesses, &c., taken before the subscriber, one of the masters and examiners of the Court of Chancery of New Jersey, in a cause pending in said court, between Peter Melick, complainant, and Peter E. Voorhees, defendant, taken at my office in Somerville, on the 13th day of August, A. D. 1872, in the presence of John Linn, of counsel with complainant, and Alvah A. Clark, Esq., in behalf of Voorhees & Vansyckel, solicitors of the defendant, on due notice admitted by defendant.

I. N. DILTS, M. C.

At the request of complainant, David W. Dellicker, Esq., produces a paper writing, purporting to be an agreement between the defendant, Peter E. Voorhees, of the one part, and John Rinehart, John Lane, and Peter Melick, of the other part, the due execution of which is admitted by the parties, and it is admitted to be the original agreement between said parties, which is set forth in the bill of complaint in this cause, and which is marked by me *Exhibit No. 1*, on part of complainant.

Elias V. Naylor, of White House, Hunterdon county, New Jersey, a witness on behalf of the complainant, being duly sworn, on his oath saith—

I lived two years on and am acquainted with the property formerly owned by Peter Melick, and known as the Rafferty property; I and my brother rented the mill one year, and I alone the next year; I think the two years were 1864 and 1865; the year we had it together I think we paid \$550 rent, and the next year \$475; we had some little privilege:
 10 a small house, with the mill and cow pasture; there were four houses on the premises, besides the main house, as near as I can tell about it; I should think about \$50 a piece would be a fair rent for the houses about the mill, and about \$75 for the one up towards town; I can hardly tell what would have been a fair rent for the main house and farm; I don't suppose a farmer could hardly afford to pay more than about \$400 for the farm, and as much for one of the small houses for farming purposes, as for the large one; we could afford to pay the rent, for the mill, we gave; we made a
 20 little money there the first year; we were to put on the premises small repairs, to \$5.00 and under, and he was to do others; I thought the mill worth \$5000; I offered that for it.

And being cross-examined, he says—

I am a miller; if I live till October I will have been in the business twenty-two years; I own the property where I live; that is the first I have owned, and I have owned it six years first of last April; I don't recollect of ever being engaged in any other business than milling; I think I offered \$5000 for the mill, including one house, and a patch of
 30 ground including one or two acres, with the water privileges; I don't think the mill is over one hundred feet from the mansion; my brother, Samuel Naylor, was with me the first year I was there; I think there was a lease between us for the property, though I can't say positively; we paid \$550 rent for the mill the first year, with a deduction for the time it stood still; it stood still for a time, by reason of a counter wheel not being repaired, which Mr. Dayton was to repair, but failed to do; we had one house less the second year, and one cow less, was the reason the rent was reduced; I think

there were four dwellings the time Dayton had the property, besides the big house; that would be three besides the miller's house; the first year I occupied the house below the barn, on the Lawington road; my brother occupied the one by the mill; Jacob Bulmer occupied the house towards Vleit's mill; I think a blacksmith named Wood occupied the other house.

Bulmer was Dayton's farmer that year, and I don't suppose he paid rent, as he had the farm on shares; the second year Bulmer lived in the house I occupied first year, 10 and I moved by the mill; I forget who lived in the house towards Vliet's mill; I think some one occupied it; I think there was some of the farm, I don't know how much, that paid better for pasturage—wouldn't pay well to plow.

ELIAS V. NAYLOR.

Sworn and subscribed, before me, August 13th, 1872.

I. N. DILTS, M. C.

John Rinehart, of Hunterdon county, a witness on behalf of the complainant, being duly sworn, on his oath saith—

I am one of the parties to the agreement which has been 20 read here between Mr. Voorhees, Lane, Melick, and myself; I was acquainted with the property mentioned in that agreement, known as the Rafferty property; it consisted of a mill, farm, and small dwelling-houses; I understood there was a hundred acres in the farm; I think there were four dwellings on the property, besides the mansion; at that time there was some timber up above the mill that was thought to be valuable; at that time I thought the whole property was worth seventeen thousand dollars, (\$17,000); Peter E. Voorhees and I talked about the value a little once, 30 in front of the big house, and I told him I rather thought they squeezed Melick out of \$1000 in the sale of that property; he told me he didn't think so, he thought it was worth every dollar Melick was to give for it; I understood Judge Voorhees had been instrumental in making that sale; he and Mr. Rafferty together made it; I could hardly tell what would be a fair rent for the mill and one house; I never rented any mill property; about \$50 apiece I think would

be a fair rent for the other houses, except the one up toward town, which would be worth a little more; a little better house, I believe; I think between \$300 and \$400 would be a fair rent for the mansion-house and farm; likely the rent I mentioned would be low, it might rent for more and it might for less, I can't tell; I live about a mile from this place, across, and two and a half by the road; I am a farmer and have lived there thirty years; I have a farm of about 200 acres; some of it about of the same character as
10 this; I live on a part of about 130 acres a little separate from the rest, and a little different in character; on the 130 acres, when grain was a good price, I have cleared \$1000 per year clear of expenses; we sell grain at the mills around there; sometimes to this mill, and again at White House and Mountainville; I cleared \$1000 in addition to my living; Judge Voorhees has never paid me any part of the indebtedness mentioned in this agreement as due to me; after agreement was made, Judge Voorhees never consulted
20 me as to the sale of the farm; he never came to me and wanted me to take it off his hands; I did not know he had any offer for or was about to sell until after he had traded it to Mr. Dayton; after I learned he had disposed of it, I went down to see him and told him I heard he had sold the Rafferty property; he told me he had; I asked him how much he had got for it, and he told me he had lost some money on it—it hadn't paid; so I came home; I never got any other satisfaction from him as to the amount he got for it; I don't know as I asked him at any other time.

30 And being cross-examined, witness says—

I think it was a couple of months after Judge Voorhees sold the Rafferty property before I knew it; I had not a conversation with Judge Voorhees at his place concerning this property a short time before he made the sale—nor at any other time; it was two or three years that Judge Voorhees had the property; I don't remember of having any conversation with Judge Voorhees about this property during those two or three years.

All the talk I remember, we had about the time of the sale;

I don't remember whether he told me he had exchanged it or not, when we had the talk with him, at his house, after I had learned he had disposed of it; my impression is that he did say something about an exchange; I don't remember that he described the property he had received in exchange; I do not remember having a conversation with Judge Voorhees in the presence of his son, in front of his residence, about the Rafferty property, during the time the judge owned it; I don't recollect that Judge Voorhees ever asked me to take the property off his hands, nor made me any such offer; when 10 the deed was made, I was there for one and several others; I think John Lane, Judge Dellicker if I remember aright, Joseph Bartles; this was at the residence of Mr. Melick, on the Rafferty property; at that time Judge Voorhees offered me that I should take the property; he didn't say that if I would take it he would deduct \$1000 from his mortgage; not a dollar deduction was spoken of; I was to take it for the same as he; I think there was then a calculation made, as to the amount of indebtedness on the property; I have no recollection as to the amount of that indebtedness, on the property 20 from that calculation; I don't remember that the judge ever offered me a dollar deduction from the indebtedness; I was at Mr. Melick's during the negotiation before the execution of the deed, some two, three, or four hours; I don't know as there was any one else there besides Judge Voorhees, who was willing to take the property; he offered it to me, and I said judge it will suit you better than me, you are a business man, and can make a better disposition of it than I can; those are the words that passed, as nearly as I can recollect; I never heard while the judge held the property that he, from 30 time to time had been trying to dispose of it; it was not understood during the time Judge Voorhees held it, that it could not be sold for any more than the amount of the encumbrances; I think I would, during the time that Judge Voorhees held the property, have been willing to have given him fifteen thousand dollars, (\$15,000) for it; if it was sold I would have had my money I suppose; that is if sold for more than the mortgages; I never made a proposition to Judge Voorhees to purchase that property; I knew he had it for sale; it was not according to the contract we made, for me 40

to accept the property, when I could have had it for the \$14,-
866.50; I understood at the time that Judge Voorhees took
the property at the amount of the encumbrances; I don't
know that Judge Voorhees was to pay more than the
amount of the encumbrances, in case he was unable to re-
alize more than that amount for it; I think the proposition
was for me to take it upon the same terms; I told him it
didn't suit me; I never tried to assist in making sale of this
10 property; pretty much all my 130 acre farm is all tillable
land, all except 4 or 5 acres; it is just about in a fair state of
cultivation; fifty bushels of corn to the acre is a good yield
for it; I realized \$1000 a year, above expenses, 3 or 4 years
during the war times, when prices were high, corn \$1.50 per
bushel, wheat \$3.00, oats 90 cts. to \$1.00 per bushel, I hired
a couple of boys, two hired hands, steady; I had during that
time a small income outside of my farm; over half the Raf-
ferty farm was tillable at the time Melick conveyed it to
Voorhees; as near as I could judge, two thirds were tillable;
20 the lowland was a little wet, and some few under brush,
not many, some of it leaked from the race I suppose, as
some of the land lays lower than the race; there was no pond,
the mill was fed by the race; the race ran through the whole
property until it came to the mill; that land that was tillable
at that time, I think was as good land as ours, may be a little
better; I don't know, I think the house towards Vleit's mill
would rent for \$50 a year; I don't know, whether Mr. Melick
ceived personal property alone with the realty when he
bought of Rafferty; I couldn't tell how many acres of tim-
ber land there was attached to the Rafferty farm, when con-
30 veyed to Judge Voorhees; can form no estimate of its value,
though I have been through it perhaps fifty times.

JOHN RINEHART.

Sworn and subscribed, before me, August 13th, 1872.

I. N. DILTS, *M. C.*

Jacob R. Fisher, of New Germantown, in the county of
Hunterdon, a witness produced on behalf of the complain-
ant, having duly sworn, on his oath saith—

I reside at New Germantown, a short half mile from the

Rafferty property, I am a merchant, have lived on a farm, but never farmed myself; I have bought and sold a little real estate, not very much; I contracted with John C. Rafferty in the winter of 1861, I believe, for the purchase of this Rafferty property, just before Mr. Melick bought it; I think I was to pay \$15,500 for it; I wouldn't have given a great deal more, I might have given a little more rather than not to have had it; if I could have had the property at one time I would have given \$16,000 for it, I remember I had that fixed in my mind, but that was the extent, I thought I was getting it at a fair valuation, I thought it was about what it was worth, I thought I need not lose on it at that price; if I had bought it, I should have moved on it, though I would have sold it if I had got a margin on it; the mansion house could not be built for less than \$5000 certainly, may be not for that, I should think \$5000 was an outside valuation for the house as it stands, that it is not worth any more. 10

And being cross-examined, says—

I should have moved on the property undoubtedly if I had got it; that was my design to move on the property; the contract with Rafferty was not completed; that is to say I didn't get the deed for the property; I think I afterwards expressed myself as gratified at not having got the property at the \$15,500; I lived at New Germantown a part of the time that John E. Voorhees, a brother of defendant, lived on the property; am not certain as to the whole time; I don't remember that John E. Voorhees, while he lived there offered me the property for sale; I don't think he did; I have an indistinct recollection of something like Judge Voorhees offering me the property while he held it, and that I told him I didn't want it; I think there was something of that kind; I had then suited myself otherwise with property; I think in the meantime I had bought the Christie farm; the fact is I had given it up, and didn't want it; one time I wanted it badly, but then I didn't; the great amount of money required to put the property in good condition may have had something to do with the change in my opinion, although I don't know that it was more out of kelter than when I offered \$15,500; had I got it I should have been 20 30

satisfied, but inasmuch as I didn't get it, I am satisfied with that; I don't remember whether Judge Voorhees offered me this property at the amount of the encumbrances—he might have done so.

JACOB R. FISHER.

Sworn and subscribed before me, August 15th, 1872.

I. N. DILTS, M. C.

John Lane, of the county of Hunterdon, a witness produced on behalf of the complainant, being duly sworn, on his oath
10 saith—I was one of the parties to the agreement between Peter E. Voorhees, Rinehart, Melick, and myself; I live adjoining the Rafferty property, and am a farmer; at the time Mr. Melick deeded that property to Mr. Voorhees, it was worth about \$17,000, that is the whole property as it was then; Peter gave a little too much for it; I was not at any time consulted by Judge Voorhees after the title was in him; he never offered it to me or wanted me to take it off his hands, after it was deeded to him; I didn't know he had any offers for it, or was about to sell it till quite some time after it was sold,
20 there were rumors that he sold it to his brother John, and afterwards to Mr. Dayton, and Mr. Rinehart went down to see about it; I never talked to Judge Voorhees as I recollect about it, after he sold it to Dayton; Judge Voorhees never paid me any part of my claim mentioned in the agreement between us; there was woods on the property at the time Melick deeded it to Judge Voorhees, and some pretty heavy timber; I think some part of the timber was taken away while Judge Voorhees held the property; I saw them cutting and hauling out saw logs; some hickory also was taken,
30 though I can't say positively that it was while the judge held it; Peter W. Melick owns the farm at present; considerable timber has been taken off at one time and another, but I can't designate who did it; before Peter W. Melick got the farm, between \$300 and \$400 would, I should think, be a fair rent for the mansion house and farm, \$400; I couldn't tell as to the small dwelling houses, know very little about them.

And being cross-examined, says—

I couldn't tell whether the timber while John E. Voor-

hees was there, was used for repairs ; a wheel, I believe, was built during that time, and I should think such timber would be used in its construction ; I don't know whether any timber was taken from the property, except what was used for repairs ; I saw them cutting timber, but don't know what it was used for ; I couldn't hardly tell how many acres of timber land was on the property, there was considerable and some of it very valuable, but how much I couldn't tell you ; it is very deceiving ; I was interested in the property in the same manner as Mr. Rinehart was ; I never solicited 10 any one to purchase it, or offered to purchase it myself of Judge Voorhees during the time he held it ; the rumors he had sold it to his brother John, was about the time John moved there ; I couldn't say whether just before he moved or after ; John Voorhees moved there immediately after Peter Melick left ; I never saw Judge Voorhees to ascertain the truth of the rumors referred to, nor had any one to see him for me ; at the time this property was deeded to Judge Voorhees I was present ; we were quite a spell talking it over trying to ascertain what would be the best way to sell 20 it ; Judge Voorhees asked me to take the deed the same as he took it, that I should take it and sell it ; we thought he was more of a business man and could get more for it than I could ; I remember no such thing, as that Judge Voorhees offered as an inducement for me to take it, that he would deduct \$1000 from his mortgage ; I think I would have remembered that though ; I do not think that property at the time was one of the kind that it was very difficult to find a purchaser for—I think it was a very desirable property ; I don't know as it was a property a man coul'd take hold of at 30 \$17,000, and make money from, considering the condition of the mill ; I never had any idea of purchasing it myself, I wasn't able ; that is why we wanted Mr. Voorhees to take it ; he had most of the mortgages—more claims on it than I had, I mean.

JOHN LANE.

Sworn and subscribed, before me, August 13th A. D. 1872.

I. N. DILTS, M. C.

Peter W. Melick, of the county of Hunterdon, a witness produced on behalf of the complainant being duly sworn, on his oath saith—I own this Rafferty property—not the whole of it—all that Peter Melick owned except the town lot, about two acres; I occupy and use the premises myself or through under tenants; I purchased the property in 1868; when I bought it I considered it worth about \$17,000; I knew it before; lived near it all my life; in 1862-3 or 4 some would have thought it dear at \$16,000, and some cheap at 10 \$18,000; if a man thought the mansion house desirable, and was willing to pay what it was worth, he would think it cheap at \$18,000; that town lot at that time was considered worth about \$1800—\$1600 to \$1800; I don't know what it brought since; Dayton disposed of it at a high valuation; nothing more than ordinary has occurred to increase the value of property—it has advanced some little; between the time Peter Melick sold the property, and I got it, considerable timber was taken off; considerable by Dayton and by the occupants that lived there before Dayton; that 20 timber was valuable; the principal that was taken off was white oak hickory, and poplar, some ash; it was in value from \$40 to \$80 per thousand in the market; my judgment is, the mansion house along ten years ago cost \$5000, half of this house was new, the other half was remodeled; I have been offered \$500 rent for the mill for ten years; the farm with one of the small tenant houses would be worth \$400; mansion house was never rented with the farm; the the small dwellings are worth from \$40 to \$50 rent; the house and lot in the village from \$70 to \$80; may-be a 30 little higher; Peter Melick is my cousin.

And being cross-examined, says—

I think a tenant could afford to pay \$400 cash rent for that land; as things are it is not a fair compensation; I think while Dayton was there, there was other timber taken off besides what was used in repairs; I saw them hauling it to Whitehouse to use for spiling or docking—that is what I understood at the time; I do not of my own knowledge, know that any timber was taken except for repairs while Judge Voorhees owned it; Dayton told me himself he got

so much money, \$1500.00, and so much traps for the town lot; I bought that property for a home.

I paid \$17,000 for the property; he threw in the winter crop and some little personal.

PETER W. MELICK.

Sworn and subscribed before me, August 13th, 1872.

I. N. DILTS, M. C.

Ernest E. Melick, of the county of Hunterdon, a witness¹⁰ produced on behalf of the complainant, being duly sworn, on his oath saith—

I reside at New Germantown; I am acquainted with this Rafferty property; I am a brother of the complainant; I have known this property as long as I have known any; in my judgment, this property owned by Peter W. Melick, is worth \$18,000, and it might be worth a great deal more, as there are many things there that can't be got in a few years; since Peter W. Melick owned the property, I have made him a²⁰ *bona fide* offer for it in the way of trade; my offer was a place that we have in New Germantown, and \$12,000; the New Germantown property was valued at \$8000, at that time, I have sold some of it since; that offer was made two years ago, somewhere near this time; I can hardly say what the house and lot in New Germantown, that belonged to the Rafferty property is worth, about \$3000; a number of good lots could have been sold off it, and land is very high there, \$1000 per acre.

And being cross-examined, says—

These lots are wanted for building purposes—houses; I don't know whether more than two dwellings have been built in New Germantown in the last six years; there would have been more if there would have been places to put them; I don't know how many properties have changed hands in New Germantown in the last eight years; I haven't kept a diary of it; I don't know whether more than three; in saying the Rafferty property might be worth more than \$18,000, I meant according to the peoples estimation of what was then; it is worth \$200 an acre for farming purposes; I wouldn't consider it worth that without any thing on it; I take in consid-³⁰
⁴⁰

eration the improvements; I mean exclusive of the mill property, but I take in every thing else; farm property has sold at New Germantown for \$200, and more than that; Busenberg I think paid \$200 an acre; it is by the academy; he bought it of Isaac Rowe, I think; I think he told me he paid \$200 an acre, I don't know that there are more than 5 acres; it is outside of town, a small field on the road leading to White House; that is the same road running through New Germantown; there are now residences of people beyond it, doing business in town; there were not though for long after he bought it; I do not know of any farm near New Germantown that has ever been sold for \$150 per acre, but there is one that was offered for; I think the mill with the water rights &c., as described by Naylor, was then worth \$5000, I offered that for it; it is worth more now.
In chief.

I don't know the number of cows kept on that property now, I should think 15, a pretty good drove; it yields fine crops of hay; I don't know how many tons; I think Mr. Melick has no corn on the farm this year.

ERNEST E. MELICK.

Sworn and subscribed, before me, August 13th, 1872.

I. N. DILTS, *M. C.*

Wm. S. Sharp, Printer, 23 E. State Street, Trenton, N. J.

In Chancery of New Jersey.

Between

PETER MELICK,

Complainant,

and

PETER E. VOORHEES,

Defendant.

On Bill, &c.

Depositions.

[Filed May 22, 1873.]

Examination of witnesses, &c., in the above stated cause, taken this 23d day of April, in the year of our Lord 1873, before Edward R. Bullock, one of the masters and examiners of the said Court of Chancery, at his office in the village of Flemington, in the county of Hunterdon, in the presence of the John N. Voorhees, esquire, of counsel with the defendant, and R. O. Babbitt, esquire, who appears for Potts & Linn, solicitors of complainant, upon notice given in behalf of defendant. Service 10 of notice admitted by counsel of complainant.

John E. Voorhees, of the city of Elizabeth, in the county of Union, a witness produced on the part of the defendant, being duly sworn according to law, on his oath says—I am the brother of Peter E. Voorhees, the defendant; subsequent to the time Peter E.

Voorhees purchased of the complainant the Rafferty farm, I lived on said farm; I moved on said farm on the 1st of April, 1862, and remained on the premises two years; the terms upon which I entered on said farm were these: I had the privilege of purchasing said farm for a stated price, being the amount of the encumbrances thereon—I think \$14,866 was about the amount; there was a deed made out to me for the property, which it was at my option to record or not; it was in place of an article of agreement; at the end of the first year I was satisfied the farm was not worth to me the amount for which it was encumbered; I made a settlement with Peter E. Voorhees for the first year, by paying him the interest on the mortgages; the greater part of the interest was paid in repairs I put upon the property; Peter E. Voorhees paid the taxes, I think; after deducting the repairs there was due him about \$200, which I paid him; this closed the first year's transaction; the deed was returned to him; during the first year I tried to sell the property, but never succeeded in obtaining a customer for it; the repairs were upon the mill, and consisted in building one new water wheel, which was the heaviest item, laying up foundation walls under the west and south sides of the mill, which were fallen down, putting in spur wheels for a corn cracker, and many other repairs necessary in order to make the mill run properly; the mill was greatly out of repair when I went there; I also built a new dam, and repaired many breaks in the race; the race was about a mile long; I got the timber with which to construct the water wheel off of the farm; I cut the trees and took them to the saw mill to be cut; the wheel was about twenty-four feet in diameter; one of the persons who assisted in cutting the trees of which the water wheel was constructed was Brown Van Dycke—I suppose Abraham was his first name; the second year I only rented the farm; I surrendered the mill, which he let out to another party on shares; I paid him \$200 rent for the farm the second year; he paid the taxes; I think I paid the taxes and took it out of the rent; the most of the timber of which the water wheel was constructed was sawed at Vliet's mill—some of it, I think, was sawed at Hall's mill.

Quest. State fully what timber, if any, was taken from the premises during the two years you resided thereon, other than that used in repairs on the premises?

Ans. There was one poplar tree cut, which was sawed into half inch siding ; there was also some logs taken from the tops of large timbers which was cut for the water wheel, which were sawed into fence boards ; they were an inch thick and six inches wide—rough fence boards ; this poplar tree, standing, was worth between \$10 and \$15—\$15 would be an outside price ; as near as my memory serves, I think there was about a thousand feet of fence boards, worth, when manufactured, \$20 a thousand ; the cost of cutting, hauling, and sawing would be worth \$12 a thousand ; there were about twenty-five or thirty fence posts 10 also taken from the timber on said premises ; there were between forty and fifty chestnut fence rails taken from the premises ; during the time I was on said farm, I had a lot of posts and rails manufactured from the timber ; I also set quite a large amount of post and rail fence on the premises, which was set out of material which I manufactured and some which was on the premises when I went there ; whether the posts and rails I have mentioned as taken from the premises were those I had manufactured, or those that were there when I went there, I do not remember ; if those posts and rails taken from the premi- 20 ses were what I had manufactured, the posts would be worth fifteen cents apiece and the rails ten cents ; the person of whom I have heretofore spoken as being named Brown Van Dycke, is a colored man, correctly named Abraham Condit ; no other timber of any nature or description was taken from the premises while I was there, of which I have any knowledge ; the rental of \$200, which I paid for the farm the last year, was all it was worth ; it did not pay me to stay there and farm it at that price ; a man by the name of Bennet rented the mill the second year, and run it on shares. 30

\$ 200.00
for farm

Quest. State what was the condition of the farm, as to fencing and repairs, when you went upon the premises in the spring of 1862 ?

Ans. A portion of the fence was in good repair, and a portion was in ordinary repair, still another portion had no fence at all ; that is where I set the fence ; it was the division line between the farm and Sharp Miller.

Quest. State what, in your judgment, would have been a fair price for these premises at the time they were disposed of to Charles H. Dayton by Peter E. Voorhees, in October, 1863 ; 40

in your answer I want you to estimate separately the farm, with the small buildings thereon, and the mansion house, then the mill and tenant house belonging to it, and then the town lot, as it is called?

Ans. I consider the farm and mill in such a condition that they could not be separated to any advantage; I don't think it was possible to separate them, for the reason the farm lies in a long strip of land; the race enters the farm at the most westerly part and continues to run in different directions with the slope of the ground, dividing the property into two parts, leaving a narrow strip on each side; the land lying north of the race being low ground, and all breaks in the race are liable to overflow those lowlands; a party owning the mill and not owning the lands would be a constant trespasser upon the property in making repairs to the race; the length of the race, as it runs, is between a half mile and a mile—probably three-quarters of a mile; besides, the constant leakage from the race is a damage to the lands lying below; it is only fit for pasturage—cannot be cultivated; therefore, in making my estimate of the value of the premises, I will estimate the farm and mill together; I would consider the farm and mill property at that time, as sold at an extreme price at \$12,000; I, myself, would not have given over \$10,000 for it; the town lot was worth \$1,800, at an outside price.

The farm was supposed to contain ninety-seven acres; from fifteen to twenty acres lie north of the race and are liable to overflow by breakage in the race; this only includes the land lying between the race and the stream; the land lying north of the stream is about thirty or thirty-five acres; I know John Lane, one of the witnesses sworn in this cause; I lived near him two years; his farm adjoins this farm; I had a conversation with him one day on the farm, on the lowland, adjoining his farm, relative to the value of the land adjoining his land; he came to me one day and asked me whether I owned that land or whether Peter E. owned it; I told him it belonged to my brother; he said he would like to buy that field that laid adjoining him, as it would make him good pasture land; this field lay north of the stream; he stated that the ground was not valuable for farming, but as the most of his farm was high land, he wanted some for pasture land; I asked him what he con-

000
1800
3800

Lane
to buy
the race

sidered the land worth; he said he considered the land worth \$50 an acre, but as it laid in his land, he didn't know but he would give a little more; I told him I would speak to my brother about it; I did so, and he said he didn't propose to sell a portion of the land off in that way; while I lived on the premises I recollect of persons coming to look at the property, with a view of purchasing; they were a gentleman, lady and daughter, from Brooklyn; they staid with me two days on the premises; I showed them over the premises; the man's name was Longly; he did not make me an offer for the property; he said 10 he would think the matter over, and if he thought favorable, he would come out again; I offered him the property for \$15,000; I also tried to sell the property to Jacob R. Fisher; he was a person of wealth, living in the vicinity of the property; he was offered the property, by me, for the amount of the mortgage encumbrances; I made this offer at the request of my brother, Peter E. Voorhees; Jacob R. Fisher was a personal friend of mine, and my brother wanted me to sell him the property if I could.

And being cross-examined.

20

Probably in the neighborhood of sixty acres of this farm could be plowed; the race does not divide the entire farm, it divides it from the extreme west to near the main road, and from the main road the stream divides the farm; I should judge there must be about twenty acres of land east of the main road; when I spoke in my examination in chief about the posts and rails manufactured by me, I estimated the value of the timber standing.

JOHN E. VOORHEES.

Sworn and subscribed this 23d day of April, A. D. 1873, 30 before me.

E. R. BULLOCK, M. C.

John N. Voorhees, of Flemington, in the county of Hunterdon, a witness produced on the part of the defendant, being duly sworn according to law, on his oath says—I am one of the solicitors of the defendant, and am the son of the defendant, and the person referred to in the defendant's answer as

John N. Voorhees; Peter E. Voorhees died October 16th last; he was taken to his bed within a week from the time the testimony on the part of the complainant was closed, and from the time that he was taken to his bed, was never thereafter able to get out of his room; I drew the answer filed by him in this cause, under his direction, from a statement then furnished me by him, in part, and in part from facts within my own knowledge; I never heard of the paper marked *Exhibit 1 ex parte* complainant, until after the complainant had filed his bill
10 of complaint in this cause; it was through my negotiations that the defendant exchanged the property conveyed to him by the complainant to Charles H. Dayton; previous to the conveyance by the defendant to Dayton, I, in behalf of my father, made repeated efforts to dispose of the property for \$15,000; I, for my father, placed the property on the books of a New York city real estate agent, named Seymour, George P., I think, whose office was in Broadway, near Courtlandt street, and I think that it was through this agent that the attention of Mr. Dayton
20 had the property advertised in the New York *Herald*, and sent me a copy of the advertisement, cut from the paper; he sent one purchaser by the name of Condit, to examine the property, with a view of buying it; I met Mr. Condit at the railroad station, about four and a half miles from the property, with a conveyance, and took him up to examine the property; he did examine it, paid a second visit, and refused it at \$15,000; I have personal knowledge of the visit of the gentleman referred to in the testimony of John E. Voorhees to the property, and after he had seen it, I went with my father to New York city, went
30 to the house of this purchaser, and tried to sell it to him for \$15,000; I subsequently met Mr. Dayton, and negotiated the exchange with him that was made, which exchange consisted of the premises described in a certain deed executed by Harvey Dayton and wife to Peter E. Voorhees, dated October 16th, 1863, and recorded in the Clerk's Office of Somerset county, in Book M No. 3 of Deeds, page 777, &c., and also a property mentioned and described in a deed from Charles H. Dayton and wife to Peter E. Voorhees, dated October 14th, 1863, and recorded in the Clerk's Office of Morris county, in Book H 6 of Deeds, for
40 said county, pages 273, &c.; these properties, the first one sub-

ject to a mortgage of \$1,700, the second one subject to a mortgage of \$1,500, and \$1,800 in cash, constituted the consideration of the conveyance by Peter E. Voorhees to Charles H. Dayton for the premises described in complainant's bill; the conveyance by Voorhees to Dayton was subject to the Capner mortgage and the Van Syckel mortgage; the exchange to Dayton was a *bona fide* exchange, I having no interest in any of the property, except the interest that I had in making the best exchange possible for my father; the consideration expressed in the deed to Dayton for these premises was not the 10 true consideration, but the amount was placed there at the request of Charles H. Dayton, and was understood at the time to be largely in excess of the real value of the premises, Mr. Dayton stating that he wanted the consideration expressed in this way, so that if he desired to dispose of the property, it might possibly be of service to him; Dayton paid for the stamps on the deed; I subsequently disposed of the Morristown property, and also of the Green Brook property for Peter E. Voorhees; the Morristown property as follows: one lot, June 23d, 1866, to Esther B. Parsons, for \$1,300, and one lot, 20 February 15th, 1867, to Eunice M. Bryant, for \$1,200; the incumbrance that was on the properties, when deeded by Dayton to the defendant, was paid, in the meantime, by the defendant, so that the amount realized by him over and above the encumbrance, from this Morristown property, was \$1,000; of course this amount makes no allowance for rents received by him during the time he owned it; neither does it include the interest that would accrue on the mortgage; on the 8th day of January, 1866, I paid off the mortgage on this Morristown property, amounting at that time to \$1,569.50; I get this 30 amount and date from a statement of a settlement between my father and myself, which I find among my papers; and I find in the same statement of settlement a charge against my father for tax on the Morristown property of twenty-seven dollars and eighty-six cents; I find on the same statement of settlement, two credits of cash received from the Morristown property, amounting together to sixty-seven dollars and fourteen cents; my present recollection with reference to the rental of the property during the time my father owned it, is that the whole premises rented for about three hundred dollars a year; 40

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I think that is, perhaps, in excess of what it rented for; there were some repairs done to the property at Morristown, a portion of which was paid for by the defendant, and the balance by the insurance company; I also negotiated for my father the sale of the Green Brook property to John Goth; I cannot give the date of that conveyance, but think it was, perhaps, in the fall of 1863; in the statement of settlement to which I referred, I received for father of Goth, on account of this sale, \$670, as follows: \$150, \$220, \$300; the amount realized over
 10 and above encumbrance on that property, over and above what I received, was, I think, \$1,170; I am not certain as to this amount, but think that a \$500 note, and the amount stated as having been received by me of Goth, constituted the amount received over and above encumbrance on this property; in negotiating the sale of both the Morristown and Green Brook properties, I obtained of them, for my father, all that I could possibly get, and think that the prices obtained were fair prices for the same.

JOHN N. VOORHEES.

20 Sworn and subscribed, this 23d day of April, A. D. 1873, before me.

E. R. BULLOCK, *M. C.*

This examination adjourned by mutual consent of the parties to Thursday, the first day of May next, at ten o'clock in the forenoon.

Thursday, May 1st, 1873, ten o'clock A. M., this examination further adjourned to Wednesday, the 14th day of May, 1873, at ten o'clock in the forenoon.

30 Wednesday, May 14th, 1873, ten o'clock A. M., this examination resumed in the presence of John N. Voorhees, Esq., of counsel with defendant, and R. O. Babbitt, Esq., on behalf of the solicitors of complainant.

Horace A. Vanderbeek, of the township of Bedminster, in the county of Somerset, and State of New Jersey, a witness produced on the part of the defendant, being duly sworn ac-

ording to law, on his oath says—I am forty-four years old; my business is farming, principally; I reside a mile and a quarter from the property in controversy, and have lived there eight years; I have always lived in that neighborhood; my business has always been that of a farmer; I have been familiar with the property in controversy for thirty years; have been to the mill upon it off and on every year during that time; was acquainted with the property in 1863, 1864, and 1865.

Quest. What, in your estimation, would have been a fair 10 valuation for that property, including mill, houses, farm, and town lot, in the fall of the year 1864, or about that time?

Ans. My judgment would be from \$12,000 to \$15,000.

There was a property in that neighborhood, similar to this in kind and quality, sold about that time; I refer to the Trimmer Mills' property, about two miles from this property; the Trimmer property is nearer the railroad than the property in controversy; I think the Trimmer property is equally valuable with the Rafferty property, as regards income; that property sold for \$12,000 a year ago last spring.

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And being cross-examined.

I have bought three farms and sold one; that is the extent of my real estate transactions; the value of the Trimmer property consists in the lands, mill, houses, &c.; the Trimmer property contained, I think, 112 acres; I surveyed the property six or eight years ago; I at one time had an idea of purchasing the Rafferty property while Mr. Rafferty owned it.

HORACE A. VANDERBEEK.

Sworn and subscribed, this 14th day of May, A. D. 1873, before me.

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E. R. BULLOCK, *M. C.*

John P. S. Miller, of the township of Tewksbury, in the county of Hunterdon, a witness produced on the part of the defendant, being duly sworn according to law, on his oath says—I am sixty years old, and am a farmer; I have been a farmer about thirty years; I own the lands adjoining the property on each side; I have lived there fifty-seven years consecu-

tively, with the exception of three years ; have known the property for fifty years ; ten or twelve years ago I purchased seventy-five acres of the Rafferty property ; I suppose it was about in eighteen hundred and fifty-eight or sixty ; I knew the property at the time it was sold to Mr. Dayton by Peter E. Voorhees.

Quest. What, at that time, in your judgment, would have been a fair price for that property, including farm, mill, houses, and town lots ?

Ans. I would think that from \$12,000 to \$15,000 would be a
 10 fair price ; if I should fix on a certain sum, I would say \$14,000 ; at the time Peter E. Voorhees had this property for sale, it was my understanding that he was trying to dispose of it ; I thought the longer he kept it, the more he would lose on it ; I understood that it was heavily encumbered.

[The last six lines of this testimony is objected to by counsel of complainant as hearsay and irrelevant.]

And being cross-examined.

There were no buildings on the seventy-five acres I purchased ; I paid \$100 per acre ; I wouldn't take that for it now
 20 by considerable ; it is a great deal better than it was then ; taking the whole seventy-five acres, it is twice as good as when I bought it.

And being re-examined.

Of the seventy-five acres I purchased, some was poor land and some good ; some poor land was left and some good ; there was just as good plow land left as I got, but then there was not near so much of it ; I would suppose the land I purchased was worth more per acre than what was left ; the land I bought was worth the most for farming.

30 *Quest.* Was any of the land you bought, waste land ?

Ans. A little of it ; there were some gutters through the fields where the water ran ; I don't know whether some people would consider that waste land ; one field is cut up into four parts on account of the water-courses through it ; then I paid for the public road ; I don't know whether you would call that waste land or not ; a good deal of it was waste land until I ditched it ; of that left after I purchased the seventy-five acres, some twenty-six to twenty-eight acres of the upland

was good plow land ; you can plow some of the low land when it gets dry ; when Dayton bought the property, some three to five acres was waste land.

JOHN P. S. MILLER.

Sworn and subscribed, this 14th day of May, A. D. 1873, before me.

E. R. BULLOCK, *M. C.*

John B. Vanderbeek, of the township of Tewksbury, in the county of Hunterdon, a witness produced on the part of the defendant, being duly sworn according to law, on his oath 10 says—I am in my seventy-fifth year ; I live about a mile from the Rafferty farm ; I have lived there since the year 1800 ; I have always been a farmer ; I have owned the farm where I live for forty years ; I have known the Rafferty property always since I went by it to school.

Quest. What, in your judgment, would have been a fair price for that property, including farm, mill, houses, and town lot, at the time Peter E. Voorhees sold it to Dayton ?

Ans. If I had wanted to have bought it, I would not have been willing to give over \$14,000 for it ; I suppose it would 20 have fetched from \$12,000 to \$14,000.

JOHN B. VANDERBEEK.

Sworn and subscribed, this 14th day of May, A. D. 1873, before me.

E. R. BULLOCK, *M. C.*

William Iliff, of the township of Tewksbury, in the county of Hunterdon, a witness produced on the part of the defendant, being duly affirmed according to law, on his affirmation says—I am seventy years old ; I have lived at New Germantown since the year 1827 ; I reside about a half mile from the 30 Rafferty property ; ever since I have resided there I have been familiar with the Rafferty property.

Quest. What, in your judgment, was a fair price for that property at the time Peter E. Voorhees traded it to Mr. Dayton, including town lot, farm, mill, and houses ?

Ans. I should say about \$13,500.

* 14000 -

* 13500

And being cross-examined.

I do not own a farm ; I own a house and lot in New Germantown ; I never owned a farm in that neighborhood.

And being re-examined.

I have been a conveyancer in that locality for the last twenty years ; I am acquainted with the value of the real estate in that locality to some extent.

WILLIAM ILIFF.

Affirmed and subscribed, this 14th day of May, A. D. 1873,
10 before me.

E. R. BULLOCK, M. C.

Jacob R. Fisher, of the township of Tewksbury, in the county of Hunterdon, a witness produced on the part of the defendant, being duly sworn according to law, on his oath says—I am forty-nine years old ; I am acquainted with the Rafferty property ; I am the person named as Jacob R. Fisher in *Exhibit 1* on the part of complainant, given in evidence before J. N. Dilts, master ; I have always known the Rafferty property ; I was acquainted with the portion of it which Mr.
20 Miller purchased ; I thought Mr. Miller got the cream of the farm.

Quest. State what, in your judgment, would have been a fair price for this property in the fall of 1864, or about that time, including the town lot, farm, mill, and houses ?

Ans. I bargained for the property at one time, and agreed to pay \$15,500 for it, about two years before.

Question repeated.

Ans. Well, in 1864, I didn't want the property, and don't think I would have been willing to have paid it.

30 *Quest.* At the time you state that you offered \$15,500 for the property, did you not consider the price extreme, and did you not make the offer under inducements from your friends or wife's friends, and was not a portion of that offer a debt which John C. Rafferty, the then owner, owed you ?

Ans. I thought the price extreme ; my friends wished me to purchase, but I don't know that I was influenced by them, and Rafferty owed me money, which was to be considered as so

14000

much of the purchase money; the amount Rafferty owed me was \$3,000; \$2,000 of it was in the last mortgage on the property, and the balance notes and book account.

Quest. I want your judgment, under oath, as to the value of these premises at the time Voorhees sold them to Dayton; my question is not what you would have given, but what would have been a fair market price?

Ans. Well, I think, for a man to go on that property, and run the mill and farm, he ought not to pay over \$14,000 for it.

JACOB R. FISHER. 10

Sworn and subscribed, this 14th day of May, A. D. 1873, before me.

E. R. BULLOCK, *M. C.*

This examination adjourned by mutual consent of the parties to Saturday, the 17th day of May, 1873, at ten o'clock in the forenoon.

Saturday, May 17th, 1873, ten o'clock A. M., this examination resumed in the presence of John N. Voorhees, Esq., of counsel with defendant, and R. O. Babbitt, Esq., on behalf of the solicitors of complainant.

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John Van Nest, of the township of Bedminster, in the county of Somerset, a witness produced on the part of the defendant, being duly sworn according to law, on his oath says— I am forty-seven years old; I reside about a mile and a half from the Rafferty farm, by road; I can go across in about half the distance; I have resided where I now live thirteen years last spring; I live upon and own the property known as the Longstreet property, and have lived upon and owned it for the last thirteen years; I have during that time been acquainted with the Rafferty property; I was acquainted with the property in 30 the years 1863, 1864, and 1865; Colonel Rafferty occupied the property when I first became acquainted with it; I have bought stock off of the property very frequently since that time, and knew every occupant since that time; I have been over the property frequently during the thirteen years, but not more than once or twice a year.

Quest. What, in your judgment, was the value of these premises, including the mill, farm, and town lot, and houses in the fall of the year 1864; what were they reasonably and fairly worth?

Ans. I should say, in my judgment, about \$12,000.

2000.
 During the last thirteen years I have been engaged in selling real estate in this neighborhood, as auctioneer, and am still so engaged; during the last ten years my sales of farms in that locality have averaged from two to three a winter; the Long-
 10 street property, of which I speak, contains one hundred and thirty-eight acres; in the years 1864 and 1865, owing to brooks, mill races, and the damage to the land by water oozing out of the long race, I should say one-fourth of the land was not plowable; I do not mean to say it was all waste land, because it could be used for pasturage; this land of which I speak was literally covered with briars, bushes, and bogs; I mean in 1863 and 1864; it is now partially cleared up; the house was good; the house on the town lot was fair; all the
 20 rest of the buildings, including the mill and out-buildings, were very much dilapidated and out of repair; I think Dayton built the new wagon-house.

JOHN VAN NEST.

Sworn and subscribed, this 17th day of May, A. D. 1873, before me.

E. R. BULLOCK, *M. C.*

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Horace A. Vanderbeek, of the township of Bedminster, in the county of Somerset, a witness produced on the part of the defendant, being re-called, says—Yesterday I made a survey and draft of the premises in controversy; the whole amount of
 30 acres of land in the premises conveyed by Melick to Voorhees, and by Voorhees to Dayton, is eighty-six acres and eighty-hundredths, by actual survey; map marked *Exhibit 1* before E. K. Bullock, master, for defendant, is an accurate map of the premises made by myself, and the distances and places, marked on said map, and the quantity of acres of land contained, together with the course of the mill race and stream, all sketched by myself, from actual measurement.

[The above testimony in regard to the number of acres, and

IN CHANCERY OF NEW JERSEY.

154

the admission of the map, objected to by counsel of complainant as being irrelevant and impertinent to the issue.]

[Map offered in evidence and marked *Exhibit 1 ex parte* defendant.]

HORACE A. VANDERBEEK.

Sworn and subscribed, this 17th day of May, A. D. 1873,
before me.

E. R. BULLOCK, M. C.

*1/4 Part 12 = - finishes Reading Case -
V. G. - says close at 1/4 -*

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Sharps' Book and Job Printing House, 23 East State St., Trenton, N. J.

IN CHANCERY OF NEW JERSEY.

BETWEEN

PETER MELICK,

Compl't,

and

REBECCA VOORHEES,

Executrix of Peter Voorhees, deceased,

Def't.

} On Bill, &c.

OPINION.

THE VICE CHANCELLOR. The complainant, Peter Melick, being the owner in September, 1861, of one hundred and three acres of land or thereabouts, on which was a mill, situate in the county of Hunterdon, on which land were three mortgages, the third in priority being held by Peter E. Voorhees, and being embarrassed by debt, made conveyance of the lands to said Voorhees for the purpose of paying, first, what was due on the mortgages; second, certain other specified debts; and third, the balance (if any should be realized by Voorhees in disposing of the property,) to the complainant.

The terms and conditions on which Melick conveyed, were embodied in a writing signed by Voorhees, of September 4th, 1861, being also, the date of the conveyance. On the 1st of April, 1862, Melick gave possession of the premises to Voorhees, who leased them from that date till he sold and conveyed them to Charles Dayton, on the 17th of October, 1863.

In April, 1872, Melick filed the bill in this suit against Voorhees for an accounting and settlement of the income and proceeds of the property, and if it should appear to have been sold or disposed of by Voorhees for a less sum than it was reasonably worth, contrary to the spirit or true intent of the agreement, that he be decreed to pay for the full and fair value of the property such price as might have been reasonably obtained.

Voorhees filed an answer but died on the 17th of October, 1872, very soon after the testimony on behalf of the complainant was closed and before any had been taken for defendant. The suit being duly continued, has been argued upon the pleadings and proofs.

The amount of principal and interest on the mortgages was computed in advance to April 1st, 1862, when Melick was to give up possession. This amount was \$14,866.50, and was the consideration expressed in the deed of conveyance of September 4th, 1861. But the parties contemplated a sale of the premises by Voorhees, and the provisions of the writing were in substance and effect, that he should sell as soon as possible and after deducting the mortgage indebtedness, apply the surplus, if any, to the *pro rata* payment of three specified debts, one to John Rinehart, one to John Lane and one to Voorhees himself, and the remainder, if any, to Melick. In case any offer of purchase should be made for the premises, the acceptance of the offer was to be decided by said Voorhees, Melick, Rinehart and Lane or any two of them, and should Voorhees, after such decision to sell, not think it advisable, then he himself was to pay the amount offered, and keep the property as his own; the true intent and meaning being declared to be that the property should be sold as soon as possible to the best advantage of the parties aforesaid,

Voorhees sold to Dayton without consulting either Rinehart, Lane or Melick. He sets out in his answer the particulars of the sale and his defense is, that he never realized from the property by rental and sale, an amount sufficient to pay the mortgage encumbrances; that he made every effort to sell to the best possible advantage, and that after selling

to Dayton, a large deficit was left, the loss of which fell upon himself as the third mortgagee.

It is not denied that the express trust created by the agreement was violated by his neglect to submit the offer of Dayton to the decision of the other parties interested in the sale. The insistent is, that the property was sold for its highest attainable price, and to the question of its value, the evidence in the cause is chiefly directed. I shall not now review it at length.

The consideration expressed in the conveyance from Voorhees to Dayton, was \$18,000. But the answer avers that this sum was merely nominal, inserted at Dayton's request, and was not the true price; that the true and only consideration was \$1800 in cash, and two tracts of land, one at Morristown and one at Mill Brook, each of which was subject to a mortgage, and each of which was shortly afterwards sold. The details of the transaction are sworn to in the answer and are also sworn to by John E. Voorhees, who had charge of and conducted the sale and exchange for his father.

There is no evidence in contradiction of the details as thus stated. It is nevertheless patent how a sale of trust property so conducted in the absence and without the knowledge of the parties interested, and whose covenanted right it was to be notified and advised with, must necessarily and properly be suggestive of unfairness or fraud. All reasonable presumptions are against a sale so conducted and only plenary proof will avail to rebut such presumptions. But notwithstanding the unfavorable suggestions of the facts, unaccompanied by explanatory proof, I am of opinion, that such proof must be admitted to exist and that the amount realized by Voorhees from the sale or exchange was in fact, less than the amount due on the mortgages. I am constrained to believe, that his disregard of the provisions of the agreement may be referred to his impression, that neither Rinehart or Melick or Lane considered the value of the property as at all beyond, if equal to the last mentioned sum, and that neither of them cared to be consulted or could aid him in effecting a sale. The evidence I think, warrants the

belief that this impression was honestly entertained, and this being so, the imputation of bad faith may be avoided.

But the absence of bad faith is not a sufficient defence to the suit. A trustee, who sells at an improper time or without conforming to the conditions of his powers, will be liable for a deficiency of the proceeds of sale, though his intentions were good. He will be held responsible for the highest value the property can be shown to have had, and be decreed to account for the difference. At the time of the sale or exchange, the Mill Brook and Morristown lots were taken at an estimated value. Voorhees may have expected to get more for them than he afterwards did, and the net proceeds obtained, cannot settle or go far to settle the actual value of the premises that he conveyed in exchange.

The valuations as made by the witnesses, is mainly between the limits of \$12,000 and \$20,000. These limits are extreme and from the best judgment I am able to form from the evidence, the truth lies between them. Rinehart says that the property was worth about \$17,000 at the time Melick deeded to Voorhees, and that afterwards, during the time Voorhees held it, he would have been willing to give \$15,000 for it. Fisher says, that in the winter of 1861, he had a contract with the owner, before Melick bought, by which he was to have it for \$15,500. If he could have had it at one time he says, he would have given for it \$16,000, but that that was the extent. On his cross-examination he says, that he did afterwards express himself gratified at not having got it for \$15,500. Lane also says about \$17,000, but manifestly thinks that sum a high price. The true inquiry is, what was the highest price that could have been obtained at a sale? Taking all the facts and the evidence in the cause, my opinion is that \$16,000 is the maximum amount that can fairly be arrived at. I do not doubt that a sale for that sum would have been advised by Rinehart and Lane and also by Melick, and would in fact have been an advantageous sale.

From April 1st, 1862, to October 17th, 1863, the interest, taxes and repairs paid by Voorhees, are to be considered from the evidence as equalled by the proceeds and rents. At the last mentioned date, the defendant is to be charged with

\$16,000 and credited with \$14,866.50. The complainant is entitled to a decree for the difference with the lawful interest from the same date. The amount so obtained is to applied first, to the *pro rata* payment of whatever shall be ascertained to be due, as specified in the agreement from Melick to Lane, Rinehart and Voorhees respectively, and the balance, if any, to complainant. It should be referred to a master, to ascertain these amounts.

FINAL DECREE.

[Filed December 10th, 1873.]

This cause coming on to be heard before the Vice Chancellor in the presence of John Linn, of counsel with the complainant, and George A. Allen and Alvah A. Clark, of counsel with the defendant, and the pleadings and proofs in said cause having been duly read and considered, and the argument of counsel heard thereon—

It is on this 10th day of December, 1873, by Theodore Runyon, Esquire, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, order adjudge and decree, that the said complainant is entitled to the relief prayed in his said bill. And it is further ordered, adjudged and decreed, that it be referred to Isaac Romaine, Esquire, one of the masters of this court, to take and state an account of the amount due from the said defendant as executrix as aforesaid, for, and on account of the proceeds of said farm and premises conveyed to said Peter E. Voorhees by said complainant, as set forth in said bill of complaint; and that in taking and stating said account, the said defendant be charged with the sum of \$16,000—the value of said farm—and credited with the sum of \$14,866.50, the amount of the mortgage encumbrances thereon, and that the defendant be charged with the interest upon the difference from the 17th day of October, A. D. 1863, to the date of said master's report.

And it is further ordered, adjudged and decreed, that the said master ascertain and report the amount due at the date of his report to said John Lane, John Rinehart and said defendant as executrix of said Peter E. Voorhees, deceased, respectively, according to the terms of said agreement made between said complainant and said John Lane, John Rinehart and Peter E. Voorhees, bearing date the 4th day of September, A. D. 1861, and particularly mentioned in said bill of complaint. And it is further ordered, adjudged and decreed that said defendant, out of the amount which may be reported to be due from her as executrix as aforesaid, if there shall be sufficient for that purpose, retain the amount which may be reported to be due to her, and pay to said John Lane and John Rinehart or their assigns, the several amounts which may be reported to be due to them respectively, according to the terms of said agreement between said Melick, Lane, Rinehart and Voorhees above referred to, and that she pay the residue of said amount which may be found to be due from her as aforesaid, if any there be, to said complainant, but if the amount found to be due from her as aforesaid, be not sufficient to pay said claims of John Lane, John Rinehart and said defendant respectively, in full, then, that she pay and retain out of the said amount on account of said claims, in equal proportion according to their respective amounts, so far as the sum found to be due from her as aforesaid, may extend. And it is ordered, adjudged and decreed that said defendant, executrix as aforesaid, pay the complainant's costs of this suit to be taxed; and upon the coming in of said master's report, either party may have liberty to apply to this court for further direction.

THEODORE RUNYON, C.

I respectfully advise the Chancellor to sign the above decree.

December 10th, 1873.

AMZI DODD, V. C.

PETITION OF APPEAL.

[Filed January 30th, 1874.]

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

The humble petition of Rebecca Voorhees, executrix of the last will and testament of Peter E. Voorhees, deceased, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of the State of New Jersey, by the advice of his honor, Amzi Dodd, Vice Chancellor, who heard the cause, bearing date the 10th day of December, in the year of our Lord, 1873, wherein the said Peter Melick was complainant and the said Peter E. Voorhees was defendant in this respect, to wit: That your petitioner was substituted as defendant in said cause after the death of the defendant, Peter E. Voorhees; no proofs having been made or submitted to the court of the death of said Peter E. Voorhees, or that your petitioner was his executrix by an order without date, in the words following, to wit: "It appearing to the court that Peter E. Voorhees, the defendant above named, departed this life on the 17th day of October, last past, leaving Rebecca Voorhees executrix of his last will and testament, who has duly proven the same. It is ordered, on motion of Voorhees and Van Syckel, solicitors of defendant herein, that the said Rebecca Voorhees, as executrix as aforesaid, be substituted as defendant in said cause." No order substituting her has been served upon her, nor has she in any way been brought into court, nor has she had opportunity to answer, setting up want of assets or any other defence to which she may be entitled, peculiar to her position as executrix.

And also, in this respect, to wit: That in and by said decree, it is adjudged and decreed that the master do ascertain and report the amount due at the date of his report to John Lane and John Rinehart, and the said defendant, out of the amount which may be reported as due from her as

executrix as aforesaid, pay to said John Lane and John Rinehart or their assigns, the several amounts which may be reported to be due to them respectively. But if the amount found to be due from her as aforesaid, be not sufficient to pay said claims of John Lane, John Rinehart and said defendant respectively, in full, then, that she pay and retain out of the said amount on account of said claims, in equal proportion according to their respective amounts, so far as the sum found to be due from her as aforesaid, may extend. When neither the said John Lane nor the said John Rinehart nor their assigns, are parties to the said cause, either as complainants or defendants therein, nor is it known or set forth in any of the proceedings in said cause, who are their assigns or whether they or either of them have made any assignment of their claims, if any they have; this defendant denying that there can be any valid decree against her in favor of a person or persons unknown or in favor of any person or persons who are not parties in the cause, and especially not in favor of John Lane, when by the bill of complaint and evidence in the cause, it is shown that he has been paid in full and cannot, by any possibility, be entitled to any decree for any amount in his favor, even if he were a party to the cause. And also, in this respect, to wit: By the agreement set out in the bill of complaint, which is the foundation of the action or suit, the parties to it were Peter Melick, John Lane and John Rinehart, of the one part, and Peter E. Voorhees of the other part, the interest of John Lane being as set out therein, that he was surety on two notes of hand, held by Jacob R. Fisher, given by Peter Melick, which two notes, the bill of complaint in this cause alleged, were paid to Jacob R. Fisher by Peter Melick, the drawer of said notes, the complainant in the cause before the Chancellor, notwithstanding which the said Lane not being made a party, and all the evidence in the cause substantiating the allegation of the bill, that John Lane has no interest, the decree of the court adjudges that this defendant pay to the said John Lane, who has paid nothing, the amount which may be reported as due from this appellant as executrix as aforesaid.

And also, in this respect, to wit: That thereby, it is or-

dered, adjudged and decreed that the said complainant is entitled to the relief prayed in his said bill.

And also, in this respect, to wit: That it is therein further ordered, adjudged and decreed, that it be referred to Isaac Romaine, Esquire, one of the masters of said Court of Chancery, to take and state an account of the amount due from the said defendant, as executrix as aforesaid, for and on account of the proceeds of said farm and premises conveyed to said Peter E. Voorhees by said complainant, as set forth in said bill of complaint, and that in taking and stating said account, the said defendant be charged with the sum of \$16,000—the value of the said farm—and credited with the sum of \$14,866.50, the amount of the mortgage encumbrances thereon, and that the defendant be charged with the interest upon the difference from the 17th day of October, A. D. 1863, to the date of said master's report, when by the clear weight of testimony in the cause, the value of said farm and premises was not \$16,000, but far less, and the amount of the mortgage encumbrances, including the interest on them unsatisfied, far exceed the sum of \$14,866.50 at the said date.

And your petitioner humbly appeals from those parts of the said decree of the Chancellor, which decrees as aforesaid, as well as from all other parts thereof, upon the ground that the same is erroneous in the various particulars, and for the several reasons herein before specified and set out, as well as in divers and all other respects.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

Dated, January 29th, 1874.

GEORGE A. ALLEN,

Solicitor of, and of counsel with appellant.

ANSWER.

[Filed March 19th, 1874.]

This respondent not confessing or acknowledging all or any of the matters or things in the said petition of appeal contained and set forth to be true, for answer thereunto says, that he believes it to be true that such decree as is complained of by the appellant, was made by the Court of Chancery as in the said petition of appeal is set forth; but as to the date, substance and contents thereof, this respondent humbly craves leave to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity and justice, excepting that part thereof which directs that in the taking and stating of the account by the master, the said defendant should be charged only with the sum of \$16,000 as the value of said farm, whereas said defendant should be, as this respondent humbly insists, charged therefor with a much larger sum than \$16,000. And this respondent humbly prays that the same may be affirmed, and that the said petition of appeal may be dismissed by this Honorable Court, with costs to be adjudged to this respondent.

POTTS & LINN,*Solicitors, and counsel of respondent.*