

Clerk's Table
1878

N. J. Court of Errors and Appeals.

Between

DANIEL M. LYON,

Appellant,

and

FREEMAN BOWER,

Appellee.

*On Appeal
from Chancery.*

COULT & HOWELL,

Solicitors for Appellant.

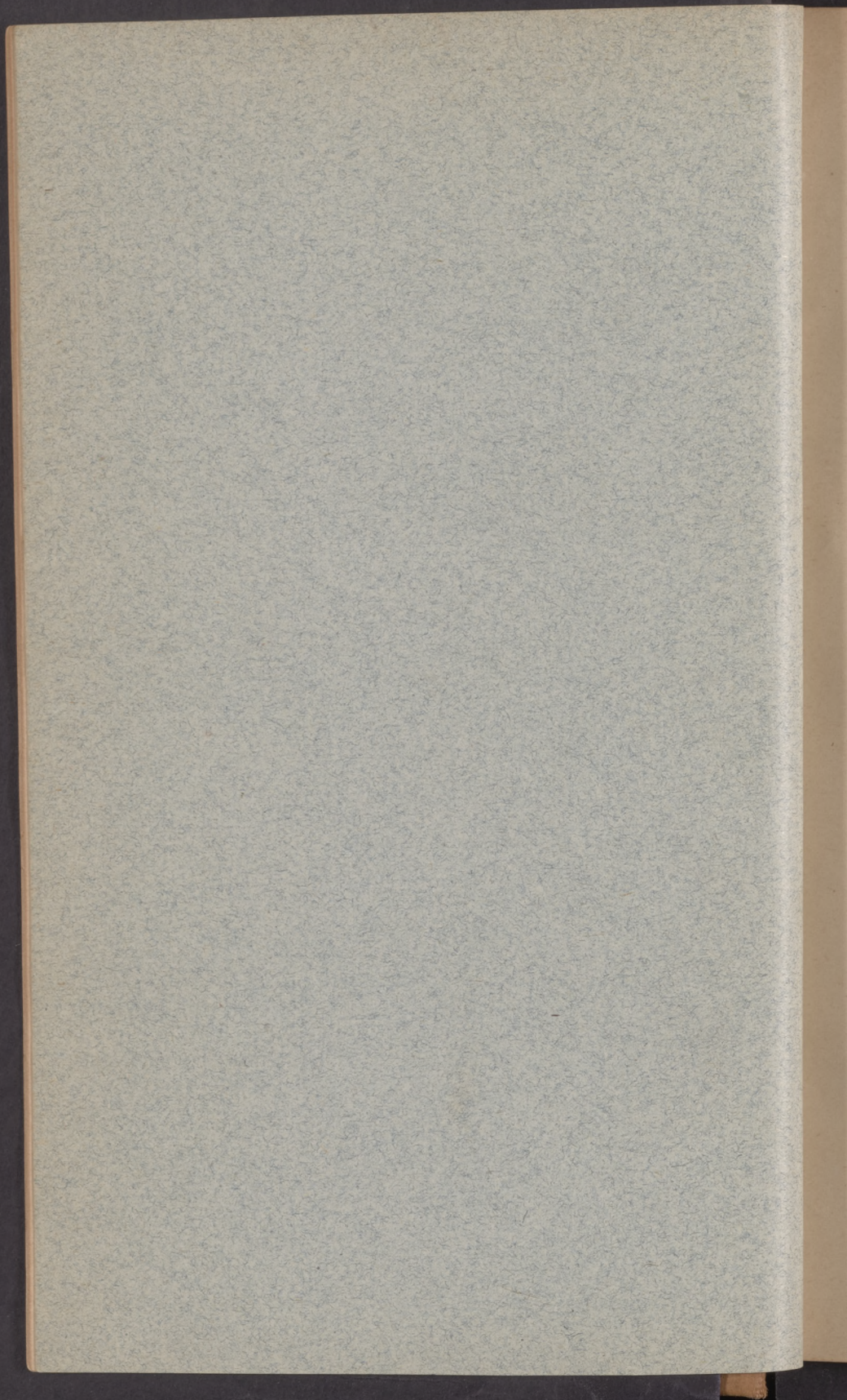
LUDLOW McCARTER,

Solicitor for Appellee.

NEWARK, N. J.:

WARD & TICHENOR, LAW CASE PRINTERS, 832 & 834 BROAD ST.

1878.



N. J. Court of Errors and Appeals.

<p style="text-align: center;"><i>Between</i> DANIEL M. LYON, <i>Appellant,</i> <i>and</i> FREEMAN BOWER, <i>Appellee.</i></p>	}	<i>On Appeal from the Court of Chancery.</i>	10
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POINTS OF APPELLANT.

I. 20

The Court erred in its construction of the agreement made by Mr. Lyon as treasurer of the Hadden Blue Stone Company, dated Dec. 17, 1873.

Exhibit No. 7, page 121, printed case.

The construction given by the Court to the agreement was, that it was an assignment of the whole judgment to secure the repayment of the sum realized by the Company on the sale of the bond, and that if only \$900, the sum so realized, was made on the said judgment, it must be paid over to said Bower. 30

The proper construction is, that by the terms of the contract, the company was bound to give to Bower only the security afforded by the judgment *to the amount paid* by him for Smith on account of said judgment, saving to the company, however, the lien of the said judgment, and the levy made thereon for the collection of the amount remaining unpaid, after the application of the \$900. 40

In other words, it was an arrangement by which Bower was to have the benefit of said judgment and levy, subject to the right of the company to make the balance due, and thus do away with the necessity and expense of his obtaining a judgment against Smith, and giving him security against the claims of Smith's other creditors.

II.

- 10 To properly understand and construe *this agreement*, and arrive at the intention of the parties in making it, all the facts and circumstances connected with and immediately surrounding its execution, with the situation of the parties, should be considered.

Havens vs. Thompson, 11 C. E. G., 383.

III.

- 20 If a contract is susceptible of two constructions, one consistent with facts and circumstances connected with its execution and with the situation of the parties executing it, and the other inconsistent therewith, the former should be adopted.

IV.

- 30 Both the company and Mr. Lyon did all they were bound to do under this contract, by offering to assign to Mr. Bower the judgment, by notifying him of the time and place of the sale, and by tendering to him the property purchased at the price paid by the company therefor.

V.

The amount realized by the company and by Mr. Lyon on the judgment, from all sources, did not exceed the amount due to the company thereon, including costs, interest and expenses.

VI.

If the construction I have contended for can not be given without doing violence to the language used, and if such interpretation can not legally be made in the light of surrounding facts and circumstances as I have contended, then I say that the testimony in this case plainly shows that the writing is not what the parties intended it to be, and that both parties, *certainly Mr. Lyon*, executed it under the mistaken idea that it was totally different from what it was held to be by the Vice Chancellor; and that inasmuch as this suit is practically a suit for specific performance, and seeks to charge Mr. Lyon with notice of the complainant's equity under this agreement, a Court of Equity ought not and will not as against him or against the company, enforce a contract which does not express the intention of the parties to it, and which was executed under a mistaken idea as to its contents. 10

Woolham vs. Hearn, 4 Am. Ed., White and Tuder, L. C. in Eq., Vol. 2, pt. 1, page 920 and notes; and *Fry on Specific Performance*, Chapt. XIV., title Mistake, and cases cited. 20

JOSEPH COULT,
For Appellant.

If the construction I have contended for can not be given without doing violence to the language used, and if such interpretation can not readily be made in the light of surrounding facts and circumstances as I have contended then I say that the testimony in this case plainly shows that the writing is not what the parties intended it to be, and that both parties, certainly Mr. Lyon, executed it under the mistaken idea that it was totally different from what it was held to be by the Vice Chancellor; and that inasmuch as this will is practically a ratification of the complainant's equity under this agreement, a Court of Equity ought not and will not so against him or against the company, enforce a contract which does not express the intention of the parties to it, and which was executed under a mistaken idea as to its contents.

Wheeler vs. Lewis, 2 Am. Bl. White and Tabor, L. C. in the Vol. 2, p. 1, par. 929 and notes; and Vol. 20 on Specific Performance, Chap. XIV, this Mistake, and cases cited.

JOSEPH COLETT
For Plaintiff

N. J. Court of Errors and Appeals.

Between
FREEMAN BOWER,
Appellee,
and
DANIEL M. LYON,
Appellant.

On Appeal
from Chancery. 10

POINTS BY LUDLOW McCARTER, COUNSEL FOR APPELLEE.

The proposition for which the appellee contends, and in support of which an oral argument will be made, are the following, (being substantially the same views expressed by the Vice Chancellor, before whom the cause was tried): 20

1st. As to the contract—

That it was between Bower and the corporation, the Hadden Blue Stone Company, and the rights of the parties are controlled by it.

2d. As to jurisdiction—

That Bower's title being equitable merely, his remedy is in equity; the contract is an agreement to assign, not an assignment. Equity will treat it as an actual assignment, for it looks upon all things as done which ought to be done, but Bower can have no remedy in a Court of law unless he shows a legal title. 30

3d. That the thing agreed to be assigned is such an interest in the judgment as will secure repayment of the sum realized upon the sale of the bond.

4th. That if only enough was collected on the judgment to pay Bower, he was entitled to the whole; or if less than the amount he advanced was collected, he was entitled to what was collected, for he took such an in- 40

terest in the judgment as would secure repayment, even if that absorbed the whole sum raised on the judgment.

5th. That the same idea would have been expressed, if the language of the contract had been that the whole, or so much of the judgment should be assigned as would repay Bower, because no particular or specified interest is agreed to be assigned, but Bower is to have whatever will secure him.

10 6th. That this gives him the whole, if the whole is necessary to secure repayment.

7th. *That payment by Lyon to the corporation was not payment to Bower, their interests were not joint, so that payment to one would be in law payment to both, but their interests were several. The relation of principal and agent did not exist either in fact or in legal theory.*

20 8th. *That Lyon purchased at the Sheriff's sale and not of the corporation; but suppose we admit that he purchased of the corporation, the admission is fatal to him, because he is there in this position. He knew the corporation had not paid the purchase money to the Sheriff; he also knew that Bower was entitled to \$900 of it, or that he claimed it. He paid it to the corporation without Bower's knowledge, authority or consent, and in defiance of this claim.*

30 9th. *That Lyon not only had a right, but it was his duty to ask protection; he had a right to ask that the corporation and Bower interplead, but he chose to take the risk of a payment, and he must now bear the risk he voluntarily incurred.*

So much for the legal propositions involved in this case.

As to the facts:

Lyon's conduct throughout was fraudulent. It is clear, from the testimony, that he intended from the start to cheat Bower, because he concealed from him the date of the sale; he knew that the company and Smith were both
40 insolvent; he knew that the sale exhausted all of Smith's

property; he also knew that the amount due on the judgment was not correctly stated by nearly \$500; he took title to the property in his own name; the company received \$900 from Bower, \$443 from Lee, (being a payment by Smith, defendant in execution, on account of the judgment,) and \$1,700 realized by the sale of the property, making in all \$3,043, being just \$403.65 more than the amount due on the judgment, including costs on the execution.

Q Question. Who got this \$403.65? There is no proof that it was ever paid to the corporation by Lyon. Remember, Lyon refused to produce the books of the corporation, although he was notified to do so. The result was this, the judgment was satisfied, the corporation was paid, and a balance of over \$400 left. Lyon got the property, and Bower got nothing.

Clearly this was a fraud on Bower, and a Court of Equity cannot endure such a transaction.

But it is claimed that Lyon offered to assign, but *when?* 20 It was after the sale, and it is important just here to remember the situation of the parties at that time. The judgment had been extinguished by Smith, defendant, to the extent of \$2,143, so that if Smith had at that time property sufficient to satisfy the judgment, Bower could not have realized enough to have paid him, because there was only a balance of \$500 due on the judgment after the sale.

R Remember that the \$443.56 and the \$1,700 must be treated as a payment on the judgment by Smith, 30 defendant in execution.

Suppose, then, that we admit that Lyon did offer to assign to Bower, after the sale, how does that help his case? It is really a point against him, because he knew that Smith was insolvent, and that not a cent could be made out of him.

As to the arrangement in respect to the personal property, the testimony shows that it was made between Lyon, Smith and the Sheriff, but Bower had nothing to do with it. The averment in the answer that the levy on the per- 40

sonal property was released is false, and the documentary evidence in the cause conclusively proves the contrary. (See written authority from A. Manners, attorney of the corporation, also Lyon's private attorney, on page 118, at top.)

By this written order Smith was only authorized to use the personal property, and it was expressly stipulated that the levy should remain.

Again, the assignment of a half interest by Wildman to Bower, in a certain chattel mortgage, was only an additional security taken by Bower to secure him, and it formed no part of the consideration of the contract between Bower and the corporation, upon which the bill in this cause is founded. Lyon expected that Smith would make enough out of the street contract to pay the balance due on the judgment, and that is the reason he did not sell the personal property. He chose to take the risk. He allowed the property to be wasted and spirited away.

20 Bower never realized a dollar out of the chattel mortgage. The proof is clear on this point. How could he?

Remember Lyon claimed that his judgment was *ahead* of the chattel mortgage, and he never released his lien.

As to the answer.

I submit it is outside of the case. Both parties must stand on this agreement, and yet defendant Lyon seeks to make a case outside of the written contract. The averment in the answer (see p. 20, l. 30) that complainant has two inconsistent allegations in his bill; that he seeks to hold Lyon because he personally made the contract, and that we have improperly joined two distinct causes of action, is best answered by saying that the assumption is a false one. There is no averment in the bill that Lyon is personally liable on the face of the contract. There is a statement that Bower supposed he was dealing with Lyon personally; that he never heard of the Blue Stone Co.; that when the agreement was reduced to writing, and after it was delivered to and accepted by 40 Bower, it turned out to be a corporation agreement and not Lyon's personal obligation.

FREEMAN BOWER
vs.
THE HADDON BLUE STONE COM-
PANY AND DANIEL M. LYON.

Opinion.

[Filed July 16, 1878.]

1. Any writing which clearly appropriates a fund or property to a person, will, in equity, be esteemed an assignment. Equity disregards mere form.
2. A suitor whose title is purely equitable, has no remedy at law, but must resort to equity.
3. When the parties to a contract have expressed their meaning by plain words, there is nothing to construe, and, in such a case, all a court can do is to enforce the contract.
4. A purchaser who co-operates with the vendor in the misappropriation of 10 purchase money, which he knows was raised for the benefit of a third person, renders himself liable to the person defrauded, to the extent of the fund misapplied with his connivance.

On bill, answer and proofs.

Mr. LUDLOW McCARTER and Mr. JOHN R. EMERY,
for complainant.

Mr. JOSEPH COULT, for defendant Lyon.

Mr. JOHN A. MILLER, JR., for corporation.

THE VICE CHANCELLOR:

The instrument which gives rise to this suit is in these words:

"This is to certify, that in consideration of a \$1,000 bond on the town of Harrison, to me in hand paid by Freeman Bower, of the town of Harrison, Hudson county, New Jersey, I, Daniel M. Lyon, treasurer of the Haddon Blue Stone Company, do hereby agree to assign, transfer, and set over unto the said Freeman Bower such an interest in the judgment obtained by the Haddon Blue Stone Company, against James B. Smith, of the town of Harrison, in the Supreme Court of the State of New Jersey, for the sum of \$2,501.59, besides costs of suit, on the 24th day of November, 1873, as will secure to said Bower the repayment of the sum realized by me on said bond, paid by him as aforesaid, on account of the aforesaid judgment against said James B. Smith. Witness my hand, this seventeenth day of December, 1873. Daniel M. Lyon, Treasurer."

It is admitted that \$900 was realized on the bond. It also appears that in April or May, 1874, a debtor of James B. Smith (the judgment debtor) paid to the defendant, Lyon, on account of the judgment, the sum of \$443.56, and that on the eighteenth of June, 1874, Smith's real estate was sold under the judgment for \$1,700, making the sum total realized \$3,043.56. With costs added the total amount of the judgment at the date of its recovery (November 24, 1873,) was \$2,539.35. The real estate was struck off to Mr. Lyon. He says he purchased for the plaintiff. His signature to the memorandum of purchase has the word "Treasurer" written under it. The Sheriff conveyed the property to him, but he says this was done pursuant to an agreement subsequently made by the corporation and himself, by which it agreed to sell him the land for \$100 less than the amount of his bid. He also says he has paid to the corporation all the money he received on the judgment. He was its treasurer, also a director and the owner of two-fifths of its stock. At the time he paid the purchase money of the land, he admits the corporation was badly crippled. He says it was indebted to him in the sum of \$17,000 or \$18,000, and had sunk more than three-fourths of its

capital. With a paid up capital of \$100,000, its franchise and all its other property were sold on the fifth day of March, 1875, for \$13,000. According to his statement, its losses mainly occurred in 1871 and 1872. His account of the payment of the \$1,600 is both confused and contradictory. It is impossible to resist the belief that either he has a very treacherous memory, or is unwilling to disclose all he remembers.

Three questions were discussed on the hearing. First, is the complaint in the proper form; second, does the con-10 tract give the complainant the right to be first paid out of the moneys realized on the judgment; and third, is the defendant, Lyon, liable to the complainant for any part of the purchase money of the land purchased by him.

On the argument it was admitted that the defendant, Lyon, had authority to bind the corporation by the contract of December 17, 1873. Without such concession or proof showing that he was specially empowered, I think it is quite clear the contract could not be regarded as the act of the corporation. It was in effect a borrowing of money by 20 pledging the property of the corporation, and this, in my view, the treasurer of such a corporation would have no power to do in virtue of his office or employment. To make it the act of the corporation, special authority would have to be shown.

I think it is entirely clear the complainant has a right to a remedy in equity. His contract is not an assignment, but merely gives him a right to an assignment. His title, therefore, is purely equitable. Without an actual assign-ment, or legal title, a court of law is powerless to give him 30 any aid, but equity disregards mere form. If the right exists, even if it is not formally manifested, it will afford both remedy and relief. In equity no particular form is necessary, any writing, or even an act, which plainly makes an appropriation of the fund or property, will be esteemed an assignment.

2 Story's Eq. Juris., § 1,047; Galway v. Fullerton, 2 C. E. Green, 389.

Nor do I think there can be the slightest doubt about what the contract means. It was drawn by the counsel of 40

the corporation, most probably under the direction of the officer who negotiated it. The defendants selected the language in which their obligation should be expressed, and are not, therefore, in a position to ask that its words shall not be read according to their natural force, nor that full effect shall not be given to their plain sense. The contract plainly says that such an interest in the judgment shall be assigned to the complainant as will secure to him the sum realized on the sale of his bond. This language is
 10 so clear as to leave no room for construction. The parties have said by very plain words what they meant, and where that is the case the Court has no duty to perform but to carry their meaning into effect. The complainant is to have such an interest as will give him his money back, even if it takes all. No particular or specified part or interest is carved out or separated, but he is to have so much, or whatever will repay him. The same idea would have been expressed if the language had been that he was to
 20 should be sufficient to repay him. He was to be repaid in any event; his right is made paramount over every other right, and he would therefore have been entitled to his money even if only a sum just sufficient to repay him had been collected.

Can the complainant hold the defendant, Lyon, for any part of the purchase money of the land?

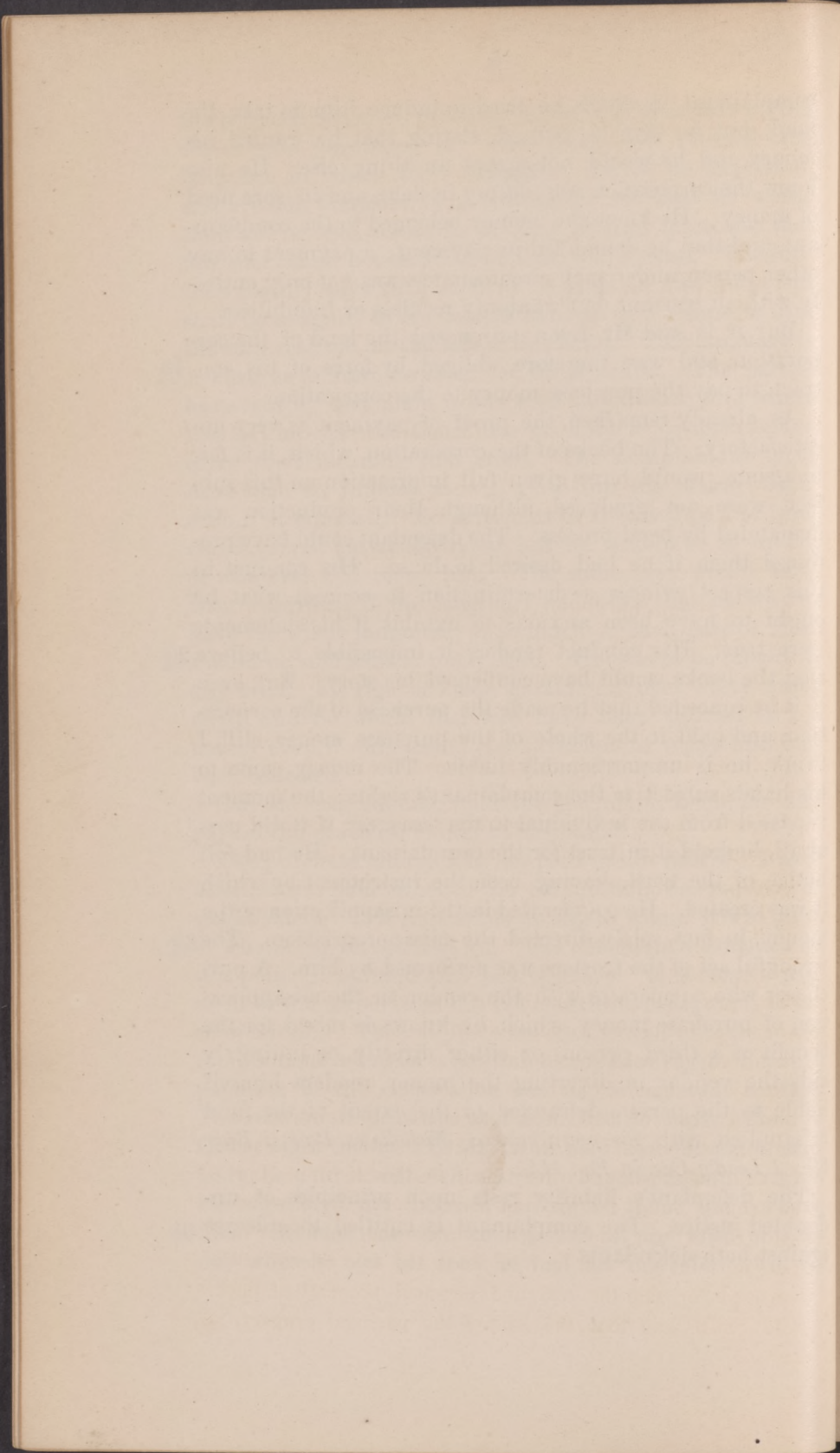
The purchase money was not paid to the sheriff; if paid at all, it was paid either to the corporation, its creditors, or stockholders. It is impossible to say to whom it was paid,
 30 or whether it was paid at all. The defendant's evidence on this point is confused and contradictory. It is clear a payment to the corporation did not constitute a payment to the complainant. Their rights were several and not joint—the complainant occupied a position of superior right—hence, a payment to the corporation was not a payment to him. The relation of principal and agent did not exist, either in fact or legal theory. If Mr. Lyon paid the money to anybody, he paid it with full notice of the complainant's rights. He negotiated the contract and signed it for the corpora-
 40 tion. Between the day when he bid off the land and the day when he got his deed he had an interview with the

complainant, in which he tried to induce him to take the land, but he says he refused, stating that he wanted his money and he would not accept anything else. He also knew the corporation was deeply in debt, and in sore need of money. He knew the money belonged to the complainant, and that he demanded its payment; a payment to any other person under such circumstances was not only entirely without warrant, but wantonly reckless or fraudulent.

But it is said Mr. Lyon purchased the land of the corporation, and was, therefore, obliged, by force of his contract, to pay the purchase money to the corporation. 10

As already remarked, the proof of payment is very unsatisfactory. The books of the corporation, which, it is fair to assume, would have given full information on this subject, were not produced, although their production was demanded by legal process. The defendant could have produced them if he had desired to do so. His conduct in this respect evinces a determination to conceal what he ought to have been anxious to exhibit if his statements were true. His conduct renders it impossible to believe 20 that the books would have confirmed his story. But, even if it be conceded that he made the purchase of the corporation, and paid it the whole of the purchase money, still, I think, he is unquestionably liable. The money came to his hands subject to the complainant's rights; the moment it passed from the individual to the treasurer, if it did pass at all, he held it in trust for the complainant. He had full notice of the trust, having been the instrument by which it was created. He co-operated in the misapplication of the money, in fact, solely directed the misappropriation. The 30 wrongful act of the trustee was performed by him. A purchaser who co-operates with the vendor in the misapplication of purchase money, which he knows is raised for the benefit of a third person, or either directly or indirectly aids the vendor in diverting the money, renders himself liable to the person defrauded to the extent of the fund misapplied with his connivance. *Nicholls vs. Peak, 1 Beas. 69; 1 Lead'g Cas. in Eq., 114.*

The defendant's liability rests upon principles of undoubted justice. The complainant is entitled to a decree 40 against both defendants.



IN CHANCERY OF NEW JERSEY.

Between

FREEMAN BOWER,

Complainant,

and

THE HADDEN BLUE STONE COM-
PANY, AND DANIEL M. LYON,

Defendants.

On Bill 10
for Relief.

To the Honorable THEODORE RUNYON, Chancellor of the
State of New Jersey :

In Chancery complaining, your orator, Freeman Bower,
of the town of Harrison, in the county of Hudson and
State of New Jersey, showeth, that he is a boat builder 20
by trade, and carries on his business at his dock in the
said town of Harrison; that he is acquainted with one
James B. Smith, who is a contractor, and who also resides
in said town of Harrison; that on or about the twenty-
fourth day of November, in the year eighteen hundred
and seventy-three, "The Hadden Blue Stone Company,"
a corporation chartered under the laws of this State, (of
which company one Daniel M. Lyon, of the city of New-
ark, was then, as your orator has since learned, the
treasurer,) obtained a judgment in the Supreme Court of 30
this State against the said James B. Smith, for the sum of
twenty-five hundred and one dollars and fifty-nine cents,
besides costs of suit, which amounted to thirty-seven
dollars and seventy-six cents; that execution was issued
on said judgment, and a levy made by the Sheriff of Hud-
son county on all the real and personal property of which
said Smith was then seized or possessed, and that in
pursuance of the said levy so made, the said Sheriff ad-
vertised for sale the real and personal property of the
said Smith, and that the sale of the personal property 40

was to take place on or about the seventeenth day of December, eighteen hundred and seventy-three; that on the day said sale was to take place, the said James B. Smith called upon your orator at his place in Harrison, and informed him that his property was to be sold, and requested your orator to aid him in some way by going security for him, or having said sale postponed; that thereupon your orator informed said Smith that he was already indebted to him, and that it was asking too much
 10 of your orator to assist him further; and so your orator declined to aid him respect of the said sale.

Your orator further shows that the said Smith entreated and requested him to attend the said sale, and then left; that on the day the said sale was to take place, he went to the place where said sale was to be held, namely, at Ballantine's dock, in said town, at about the hour of ten o'clock in the forenoon, and that there he found present the said Daniel M. Lyon, James B. Smith, and Abraham
 20 Manners, who was then acting as the attorney of said Lyon, and one of the deputy Sheriffs who was to make the said sale, and several other persons.

And he further says, that soon after he arrived at the place where said sale was to take place, the said James B. Smith informed the said Lyon that he could get no one to aid him, that he had applied to your orator and that your orator had declined, and that thereupon the said Lyon threatened that unless some arrangements should be made the sale would proceed; that your orator supposed and believed that all the property, real as well as
 30 personal, of the said Smith, was to be sold at the said sale, and that he informed the said Lyon that if time was granted to said Smith that he (said Smith) could pay the amount of his claim, and that he, your orator, had in his possession a bond of the town of Harrison for one thousand dollars, which he would transfer to the said Lyon as a payment on account of the said judgment against Smith if he, the said Lyon, would give him security that the amount of said bond would be repaid to him; that thereupon the said Lyon stated to your orator that he
 40 would give him satisfactory security for all the money

that he might advance on the account of the said judgment; that your orator stated to said Lyon that he would not take Smith's security because he knew that he was insolvent, and that he was already largely indebted to him, to which said Lyon replied that he would give your orator his own personal security for the amount of the said bond, and inquired of your orator where it was, and wanted to know where they should make out the papers.

And he further shows that the said Lyon agreed thereupon to the terms above stated, and proposed to adjourn 10 the said sale; and thereupon said Lyon, Manners and your orator went to the boat house of your orator for the purpose of executing the said agreement, which was to be reduced to writing by the said Manners.

And your orator further shows that during the making of the said arrangement, which resulted in the postponement of said sale as aforesaid, and during the conversation preliminary to the writing of the contract hereinafter set forth, the said Lyon stated to your orator that the said contract should be made by him personally and in 20 his behalf, and not as agent; and your orator understood from the representations then made by the said Lyon, and believed he was dealing with the said Lyon personally, and with no other persons whatever, and he did not know at that time that said judgment against said Smith was in favor of any one except said Lyon, nor that the said Lyon was the treasurer of the Hadden Blue Stone Company, all of which he has since learned.

And he further shows that after they arrived at said boat house, the said Manners drew and the said Lyon 30 signed and delivered to your orator an agreement in writing, of which the following is a true copy, to wit:

" This is to certify that in consideration of a one thousand and dollar bond on the town of Harrison, to me in hand
 " paid by Freeman Bower, of the town of Harrison, Hudson county, New Jersey, I, Daniel M. Lyon, treasurer
 " of the Hadden Blue Stone Company, do hereby agree to
 " assign, transfer and set over unto the said Freeman
 " Bower such an interest in the judgment obtained by the
 " Hadden Blue Stone Company against James B. Smith, 40

“of the said town of Harrison, in the Supreme Court of
 “the State of New Jersey, for the sum of two thousand
 “five hundred and one dollars and fifty-nine cents, besides
 “costs of suit, on the twenty-fourth day of November
 “1873, as will secure to said Bower the repayment of the
 “sum realized by me on said bond, paid by him as afore-
 “said, on account of the aforesaid judgment against the
 “said James B. Smith.

“Witness my hand the 17th day of December, 1873.

10

“DANIEL M. LYON,

(Witness)

“*Treasurer.*”

Above erasure and interlineation
 made before execution,

A. MANNERS.

And he further shows, that after the execution and de-
 livery of the said paper to him by the said Lyon, that
 thereupon your orator delivered to the said Lyon the said
 one thousand dollar bond, on the said town of Harrison,
 the same described in said agreement, and thereupon the
 20 said Lyon stated that the sale would be adjourned, and
 said deputy Sheriff thereupon declared the said sale ad-
 journed.

And he further shows, that after the execution of the
 said agreement, some arrangement was made between the
 said Lyon and the said Smith by which the said Smith
 was to be allowed to use and retain possession of the per-
 sonal property upon which the said Sheriff had a levy,
 but the said levy was to remain.

And he further shows, that after the delivery to him
 30 of the said agreement above stated, he gave the matter
 of said sale no further attention, dismissed it from his
 mind, and relied entirely on the said agreement with said
 Lyon to secure him the repayment of the amount due
 upon his said bond; that some time subsequent to the
 execution of the said agreement, but the precise date he
 cannot recollect, (it may have been six months thereafter,)
 he was informed by the said James B. Smith, whom he
 happened to meet casually, that his, Smith's real estate,
 had been sold by said Lyon under the aforesaid judgment
 40 against him, and that the said Lyon had purchased the

same; and shortly afterwards, in a day or two after this interview with said Smith, the said Lyon drove over to your orator's place, accompanied by his attorney, the said Manners, the same who drew the said agreement above set forth, and informed your orator that the said Smith's real estate had been sold under said judgment and that he had bought it, whereupon your orator stated to said Lyon, during the course of their interview, that if he had purchased the said property he would like to have the amount due on his bond paid, to which said Lyon replied 10
 in substance that your orator would have to look to said James B. Smith for that; that he did not intend to pay him a cent on said bond, or words to that effect, to which your orator replied, that by the terms of said agreement, as he understood it, he, the said Lyon, was bound to pay him the amount he should realize on said bond, or assign him such an interest in the said judgment as would secure the same, or procure such assignment to be made, and thereupon the said Lyon refused to give to your orator 20
 any satisfaction whatever, and their interview terminated. 20

And your orator further shows, that the property so sold as aforesaid was worth at the time of said sale about four thousand four hundred and fifty dollars, and is particularly described as follows: Beginning in the northerly line of Reynolds avenue at a point therein distant one hundred feet westerly from the northwest corner of Reynolds and Grant avenues; thence northerly at right angles to Reynolds one hundred and nineteen feet seven and one-half inches; thence easterly at right angles to Grant avenue one hundred feet to Grant avenue; thence 30
 southerly along the same twenty-five feet; thence westerly at right angles to Grant avenue twenty-five feet; thence southerly at right angles to Reynolds avenue ninety-four feet seven and one-half inches to Reynolds avenue; thence westerly along the same seventy-five feet to the place of beginning; being known and designated as lots numbers twenty, twenty-one, twenty-two and twenty-four on a map of property belonging to James G. Freeman, situated in the townships of Kearny and Har- 40

rison, Hudson county, N. J., surveyed May, 1870, by J. R. D. Dunn & Co., surveyors, Newark, N. J.

Also all that tract or parcel of land and premises hereinafter particularly described, situated, lying and being in the town of Harrison, county of Hudson and State of New Jersey, beginning at the intersection of the south side of Harrison avenue and the west side of Sixth street; thence (1) along Sixth street in a southerly direction one hundred and twenty-five feet; thence (2) westerly in a
 10 line nearly parallel with Harrison avenue and at right angles with ——— one hundred feet; thence (3) north in a course parallel with the first described course twenty-six feet and five inches; thence (4) in an easterly direction parallel with Harrison avenue seventy-three feet and seven inches; thence (5) northerly in a line nearly parallel with Sixth street and at right angles with Harrison avenue one hundred feet to Harrison avenue; thence (6) in an easterly direction along Harrison avenue twenty-five feet to the place of beginning; being lots
 20 numbers four and five on a map of property of John J. Korb, situated in the town of Harrison, sold at public vendue May 12th, 1873.

And that said property so sold was subject to a mortgage of six hundred and twenty-five dollars and to an enchoate right of dower in favor of Mrs. Smith worth about one hundred and fifty dollars; that there was due on said mortgage for interest about the sum of one hundred dollars, making the total amount of the encumbrances on said property, besides said judgment, the sum
 30 of nine hundred dollars, which sum being deducted from the value of said property, leaves the sum of three thousand six hundred and fifty dollars as the value of the said property, after deducting the amount of the encumbrances thereon by reason of the said mortgage and dower.

And he further shows and charges, that the said property so purchased by the said Lyon and valued as aforesaid, was all the property owned by the said James B. Smith, except the personal property aforesaid, which was encumbered by a chattel mortgage for its full value, and
 40 that the said sale exhausted all the property of the said

James B. Smith, and that the said James B. Smith was at that time and is now insolvent, and that the said Lyon knew it, so that an assignment of any interest in said judgment after said sale would have been of no use to your orator.

And he further shows and charges, that he has since learned that the amount due on said judgment of the Hadden Blue Stone Company against said Smith was not correctly stated in the said agreement; that there was a much less sum due thereon; that there had been paid to said Lyon on the date of said agreement, or prior to the sale of said property, on account of said judgment, by the said Smith, or one Lee for him, about the sum of five hundred dollars, so that there was due on said judgment at the date of said sale about the sum of twenty-one hundred dollars instead of over twenty-five hundred dollars, as stated in said agreement. 10

And he further shows and charges the truth to be, that neither the said Lyon nor the Hadden Blue Stone Company, from the delivery of the said agreement until the interview as above set forth, ever spoke to or conferred with your orator in respect to the said sale, and never informed your orator when said sale was to take place, or that he, the said Lyon, had purchased the said property, and never offered to assign or transfer to your orator any interest in said judgment according to the agreement above set forth; and your orator did not know when said sale was to take place, or that said sale had taken place, or that said Lyon had purchased the said property until he was informed of the same by the said James B. Smith at the interview which occurred between them shortly after said sale as above stated and set forth; and so your orator charges that the said Lyon secretly and fraudulently took advantage of your orator, and brought about the sale of said property in the absence of your orator for his own personal benefit and unbeknown to your orator. 20 30

And your orator further shows and charges the truth to be, that the said Lyon purchased the said property and took the deed therefor in his own name, and still 40

holds the title thereto ; that he has ceased to be the treasurer of the said company, has sold out his interest therein, and has no connection therewith ; that, although said company was chartered by the laws of this State, all its officers, at the date of said agreement, except the said Lyon, were non-residents ; that the principal and only office of the said company was located in the city of New York, where all its books were then kept, and where they now are ; that the said company was then, and is
 10 now, insolvent, and unable to pay its debts, and that the said Lyon, as its treasurer, knew the financial condition of the said company ; and that the agreement made and delivered to your orator was a mere trick, and a fraud on the part of the said Lyon, by which he obtained the bond of your orator as a payment on said judgment.

And your orator further shows and charges that he has applied to John A. Miller, who has been, since said Lyon ceased to have any interest in said company, the president of the same, and requested him to repay to your
 20 orator the amount realized by said company on said bond, or to convey or cause to be conveyed to him such an interest in the lands purchased by said Lyon under said judgment as would secure to him the sum alleged by said Lyon to have been realized by the said company on said bond, and that said Miller informed your orator that he knew nothing about said agreement—that the said company had no title to any such land, and declined to comply with your orator's request ; and your orator has been informed and charges the truth to be, that the said Lyon
 30 had no authority from the said company to make and deliver the aforesaid contract, but he has since been informed that the said Lyon now alleges that he has accounted to the said company for the full value of the said bond, and that the said Lyon admits that he has never settled and accounted with the said company for the value of the lands purchased by him under the said judgment.

And your orator further shows that he has frequently applied to the said Lyon, since the sale of the said property, and requested him either to deliver to him the said
 40 bond or to pay him the amount realized on the sale of

the same, or to convey to him a sufficient interest in the said land so purchased by him as aforesaid as would repay the value of the said bond, and that the said Lyon refused to comply with such reasonable request.

And your orator further shows and charges that the value of the property so purchased by the said Lyon, after deducting all incumbrances thereon, exceeds the amount due on said judgment, so that the said Lyon could repay to your orator the amount realized on the sale of said bond, and said judgment would still remain satisfied. 10

And your orator further shows and respectfully submits to this Court, that he is advised by his counsel that if the said agreement shall be held to be the personal obligation of the said Lyon, that then the said Lyon became the trustee of your orator for the said bond to the amount that he should realize upon the sale of the same, and that he having neglected prior to the said sale to assign or procure to be assigned, an interest in the said judgment to your orator, and having brought about the said sale and purchased said property without the knowledge of 20 your orator, and having sold and disposed of said bond, he is bound to account in this Court to your orator for the value of said bond with interest thereon.

And your orator further shows, that he is advised by his counsel and respectfully submits to this Court that if said agreement shall be held to be the obligation of the said company, then the said Lyon purchased and took the title of said land and holds the same in trust for the said company; and that by the terms of the said agreement there was to be assigned to your orator such an 30 interest in the said judgment as would recover to him the repayment of the amount which should be realized by said Lyon on said bond, and that the said property having been bid in by the said Lyon for the sum, to wit, of seventeen hundred dollars, and he having taken the title to the same in his own name, has put it out of the power of the said company to convey any interest in the same to your orator, and that the said Lyon is therefore personally bound to account to your orator in this Court for the value of said bond with interest thereon. 40

And he further shows, that he is advised by his counsel and submits respectfully to this Court, that inasmuch as the said Lyon refused to assign to your orator, or procure to be assigned to him, such an interest in said judgment as would secure to him the repayment of the amount due on said bond, and has taken the title of said premises in his own name, that your orator is entitled to a lien on the said land and premises so purchased by him as aforesaid, which is the proceeds of the said judgment, to satisfy
 10 the amount due on said bond, and also that the said Lyon should be decreed by the order and decree of this Court to hold said land as trustee for your orator for the repayment to him of the amount of said bond, with interest thereon; that the said Lyon is bound to convey such an interest in said land as will secure to your orator the value of said bond, with interest thereon.

To the end therefore that the said Daniel M. Lyon may be decreed to pay to your orator, in money, the value of said bond, with interest thereon, or to convey such an
 20 interest in said land as will secure to your orator the repayment of the same or otherwise; that the said Lyon may be decreed by the order and decree of this Court to hold said land as trustee for said orator for the repayment to him of the amount of said bond, with interest thereon; second, and that if the said agreement shall be held to be the contract of the said company, and if it shall appear that the said company realize the value of said bond on account of said judgment, that then the said
 30 Lyon holds the title of said land in trust for said company, and that the said Lyon and said company may be decreed to convey such an interest in the same as will secure to your orator the value of the said bond, with interest thereon; third, that the said David M. Lyon and the said company may, without oath, full, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were herein again repeated, and he and it thereunto distinctly interrogated not only as to the best of his and its knowledge and remembrance, but also as to the
 40 best of his and its information and belief, and more

Especially that the said Lyon may answer and set forth, whether he had at the date or prior to the making of the said agreement, any authority from the said company to make the same, and if so what was his authority, whether he does not hold the title to the said land in his own name, and whether he has ever accounted to the company for the said bond received by him as aforesaid, and whether he has ever accounted to the said company for the value of the said land so purchased by him as aforesaid; and that your orator may have such further and 10 other relief in the premises as the nature of his case shall require and to your Honor shall seem meet.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena issuing out and under the seal of this Honorable Court, to be directed to the said Daniel M. Lyon and the said The Hadden Blue Stone Company, therein and thereby commanding him and it, at a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to 20 answer the premises and to stand to, abide and perform such decrees as to your Honor shall seem meet, &c.

And your orator, as in duty bound, will ever pray, &c.

LUDLOW McCARTER,

Sol'r and of Counsel with Complainant.

In Chancery of New Jersey.

	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">FREEMAN BOWER,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">THE HADDEN BLUE STONE COM- PANY, AND DANIEL M. LYON,</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p><i>On Bill.</i></p> <p><i>Answer.</i></p>
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The Answer of Daniel M. Lyon, one of the defendants in the foregoing suit, to the bill of complaint of the said complainant.

20 This defendant now and at all times saving and reserving to himself the benefit of all and all manner of exception to the many untruths, uncertainties, errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as he is advised it is material for him to make answer unto, answers and says:

30 1. That the Hadden Blue Stone Company, one of the defendants in this suit, is a corporation chartered under the laws of this State, as in the said bill alleged, and that it formerly conducted and carried on a large business at Newark, in this State; that this defendant was at one time a stockholder in, and an officer of the said company, but that he is not now, and has not been for some time past connected with the said company in any way, either as a stockholder or officer.

40 2. That it is true, as stated in the said bill of complaint, that about the twenty-fourth day of November, eighteen hundred and seventy-three, the Hadden Blue Stone Company recovered a judgment in the Supreme Court of this State against one James B. Smith, who re-

sided in the town of Harrison in the county of Hudson, for about the sum of two thousand five hundred dollars, as in the said bill set forth; that execution was issued on the said judgment, and a levy made upon the real and personal property of the said James B. Smith in the county of Hudson, where he resided.

3. That this defendant was at that time the treasurer of the said company, and was authorized by the company to look after the collection of the said claim; that Abraham Manners, Esq., one of the attorneys of the said Court, acting for the Hadden Blue Stone Company, recovered the said judgment, and under the direction of this defendant attempted to collect the moneys due from the said James B. Smith to the Hadden Blue Stone Company, by due process of law. 10

4. And this defendant, further answering, says that it is true, as stated in the said bill, that under the execution issued on the said judgment, the personal property of the said James B. Smith, consisting principally of horses, carts and implements used in the opening and grading of streets, were levied upon by the Sheriff of the county of Hudson, and advertised for sale; and that this defendant attended at the time and place where the chattels advertised were to be sold, together with the said Abraham Manners, for the purpose of looking after the interests of the Hadden Blue Stone Company, and collecting the money due upon the said judgment by the sale of the property by the said defendant; that the sale was advertised to take place at the time and place stated in the said bill of complaint, and that at the said time and place, and before the sale took place, he was applied to by the said James B. Smith, and by the complainant in this cause, who requested an adjournment of the said sale. But this defendant denies that he attended the said sale in any other capacity than as the representative of the said Hadden Blue Stone Company, and he denies that the said Manners, as his attorney in any sense, or any other capacity except as the attorney of the said company, having charge of the said judgment and execution, attended the said sale. 20 30 40

5. And this defendant, further answering, says that prior to the said sale the goods and chattels of the said Smith, levied upon by the said Sheriff, had been taken into the possession of the said Sheriff, and that the said Smith was deprived of the use of the same, and he was informed on the day of the said sale that if the said Smith could make an arrangement by which he could continue to have the possession of the said property, he would be enabled to complete certain contracts which he had there-
10 tofore made, and would be enabled to save a great deal of money which he would lose if the property was sold by virtue of the said execution.

6. That the said complainant, professing to be a friend of the said Smith, and wishing to save his property from sale, did desire this defendant to make some arrangement by which he, the said Smith, could have possession of the said property, and by which the same need not be sold by virtue of the said execution, and that he proposed to this defendant to secure a part of the money due on the
20 said judgment by transferring to the said company a certain bond which he held against the town of Harrison, or to which he was entitled from the town of Harrison, for the sum of one thousand dollars, as a payment on the said judgment, provided he could be secured for the money which he thus advanced, by the said judgment; in other words, as this defendant understood him, the said Bower was willing, if the property levied upon should be given up to the said Smith, to reduce the amount due on the judgment by the sum which should be
30 realized on the sale of the said bond, and be subrogated to the rights of the company to the extent of the amount so received in the said judgment which the company held against the said Smith.

7. And this defendant, further answering, says that the personal property of the said Smith, on which the said company had a levy at that time, was sufficient or nearly so to have paid the whole judgment of the said company if the same had been sold under and by virtue of the said execution; that this defendant had no per-
40 sonal interest in the said judgment whatever, and that he

'was acting merely as the agent of the said company and as its officer for the purpose of securing the money due on the said judgment, and that this defendant by the importunities of the said Smith and of the complainant made in his behalf, finally consented to make the arrangements which they desired and give up the said property so levied on, and about to be sold, to the said Smith, and that the said complainant and this defendant then entered into the agreement set forth in the complainant's bill of complaint.

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8. And this defendant, further answering, denies that it was understood or agreed that he personally was to be liable to the said complainant in any way, but on the contrary expressly states that it was understood and agreed, both verbally and in writing, that he was acting as the agent of the Hadden Blue Stone Company and for them, and that the judgment was the judgment of the company against the said Smith, the money due thereon belonging to the company, and that he had no personal interest at that time in it, and that the whole arrangement made by him was made by him as the officer and agent of the company; that the object and purpose of the arrangement was to accommodate and benefit the said Smith to save his property from being sold and sacrificed, and to enable him to use the said property in carrying on the work which he had been engaged in prior to the levy, and that there was no reason why this defendant should bind himself personally to repay to the said Bower, or to the said Smith, the money which the said Bower agreed to pay on account of said judgment, or any reason why the said company should be bound to pay back the said money to the said Bower, but that this defendant was willing, inasmuch as the said Bower paid the said money for the benefit of the said Smith, or gave the said bond for that purpose, that he should have the benefit of the said judgment to the extent of the payment so made for the purpose of securing the same from the said Smith, and that this was the whole object, purpose and extent of the said arrangement, and was so understood by all the parties to it.

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9. And this defendant further says, that he understood at the same time, that the said Smith further secured the said Bower for the payment so made by the said Bower on account of the judgment against him, by giving or causing to be transferred to him, the said Bower, the complainant herein, a chattel mortgage on the goods and chattels levied upon, under the execution issued upon the said judgment, which were released by this defendant or by his order, from the lien of the said judgment and re-
10 stored to the said Smith; and this defendant charges and insists that the said Bower was at that time so further secured by the said Smith.

10. And this defendant, further answering, says that the fact that the judgment under which the sale was to take place was the judgment of the Hadden Blue Stone Company, and not the judgment of this defendant, was well known and well understood by all the parties; that the agreement which they entered into was read over before it was executed; that the advertisements made
20 under the said judgment were posted in the said town of Harrison, and that the said complainant was informed of the fact at the time.

11. And this defendant, further answering, says that as the agent and treasurer of the Hadden Blue Stone Company, he sold and disposed of the said bond, and accounted to the Hadden Blue Stone Company for the proceeds and avails thereof, the said company realizing thereon, as this defendant now recollects, about the sum of nine hundred dollars.

30 12. And this defendant, further answering, says that the said company proceeded without delay to sell the real estate, levied upon under the said judgment, for the purpose of realizing the balance of their said claim; that this defendant, as the treasurer of the said company, together with Manners, the attorney of the said company, looked after and attended to the said sale; that prior to the said sale which took place sometime subsequent to the day on which the personal property was advertised to be sold as aforesaid, but the exact time this defendant
40 does not remember, this defendant saw the said com-

plainant, at the town of Harrison aforesaid, and told him that the sale of the real estate was soon to take place, and stated to him when the sale would take place, and advised him to be present in order that he might protect his interest which he had in said judgment, by bidding upon the said property if he saw fit so to do; that the said Bower did not attend on the day on which the sale was to take place, and that this defendant, as the agent of the said company and for the said company, bid in the property advertised to be sold as aforesaid, for the sum 10
of seventeen hundred dollars, as this defendant now recollects, and that he signed the conditions of the sale as the agent of the said company, expecting and intending to take the deed therefor in the name of the company.

13. That some time elapsed before the deed for the said property was made out or delivered to any person, and that in the meantime this defendant again saw the said Bower and told him that he had attended the said sale and bid off the said property for the sum of seventeen hundred dollars; that all the company wanted was 20
the balance due on their said judgment, and that they did not want the said property; that they would convey the same to him upon the payment of the balance due upon the said judgment, or assign the said judgment to him and keep the property themselves, as he preferred; that the said Bower refused to take the said property and pay the balance due on the said judgment, and declared that he would not take an assignment of the said judgment, but that he wanted the amount realized on the sale of the said bond paid to him, and that he would take nothing 30
else; that he refused to take an assignment of any interest in the said judgment, and refused to take the property bid in by this defendant for the benefit of the said company, and that subsequently and on several interviews had between this defendant and the said Bower, the same thing in substance was again repeated, and the said Bower again refused either to take the said judgment or the said property, but insisted that he should be paid back the money which had been received on the sale of the said bond. 40

14. And this defendant, further answering, says that the Hadden Blue Stone Company was greatly in need of money and did not want to take a deed for the said property, and that the said company requested this defendant to take a deed for the property in his own name and account to the company for the amount which he had paid for the company for the same, and that this defendant finally concluded to do so for the benefit of the said company, and did take a deed from the Sheriff of the said
 10 county in his own name for the said lands and premises, and accounted fully to the company for the amount of money bid by him on the said sale.

15. And this defendant, further answering, says that after he took a deed for the said property in his own name, and on several occasions he has offered the said complainant the said lands for just the amount paid by him at the said sale, and that on one or two occasions he has offered to take something off and lose the amount he thus threw off himself, at least the sum of one hundred
 20 dollars, if he would take the said land from him; and he now says that he is ready and willing to convey the said property to the said complainant for the amount paid by him at the Sheriff's sale, and paid by him to the said company, with the interest thereon, to the time his offer may be accepted, together with the amount which this defendant has advanced to pay off a mortgage on the said lands, with interest on that amount and costs, and if the property is worth the amount which he, the complainant, insists it is, he is willing that the complainant shall have
 30 the benefit of the bargain, because he did not at that time want to take the said property, and only did so to accommodate the said company, and does not now want the same, and is willing if the complainant desires it, to make a conveyance thereof to him; that the property is in the same situation that it was at the time when the said sale was made, except the mortgage paid off by him as aforesaid, and is subject to no other or greater encumbrance than it was at that time, so far as this defendant knows, but on the contrary has been relieved of a right
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of dower therein by the foreclosure of the mortgage above mentioned.

16. And this defendant, further answering, says that instead of intending or attempting in any way to defraud the complainant in the transfer referred to, this defendant supposed and believed that he was accommodating the complainant by acceding to his earnest request, this defendant believing at the time that the said complainant was interested pecuniarily in the prosperity of the said James B. Smith, and anxious to save him from pecuniary 10 disaster, and that his interest in the procuring of the judgment and the release of the said property, arose in part from that cause, and that all the arrangements were made according to the wish and desire of the complainant.

17. And this defendant, further answering, says in relation to the charge made by the complainant in his bill of complaint, that this defendant attempted secretly to defraud the complainant and take an advantage of him, by buying the property levied on under the said judgment in his own name, in the absence of the said com- 20 plainant, for much less than it was really worth, knowing that the said complainant was interested therein, this defendant says that he is now willing and hereby tenders himself ready to convey the said property to the said complainant, as above stated, for just the amount bid by him at the said sale, with interest thereon to the time when his offer may be accepted, including the amount advanced to satisfy the above mentioned mortgage, with interest thereon and costs of foreclosure, and that if the property is of the value stated by the complainant in his bill, the 30 complainant will be able to realize a very handsome profit on the amount invested by him in the said judgment, for the benefit of his friend James B. Smith, in addition to any amount which he may have received from the said James B. Smith, if any, on the other securities taken by him for the amount so advanced.

18. And this defendant, further answering, says that the said complainant, by his counsel, the solicitor in this suit, some time since, the precise day this defendant cannot remember, brought a suit against him in the Supreme 40

Court of this State, on the agreement mentioned and set forth in the complainant's bill of complaint, alleging that this defendant was liable to him for the amount realized on the sale of the said bond; that this defendant, by his counsel, appeared and defended the said suit, and claimed that he was not personally liable on account of the said contract; that it was a contract made with the Hadden Blue Stone Company, and not with this defendant personally; and that the said cause came on for trial at a recent term of the Essex County Circuit Court, before the Honorable David A. Depue, one of the Justices of the said Court, and a jury, and that the said Court, after hearing the evidence in the said cause and the argument of counsel therein, kindly allowed the said complainant to withdraw the Circuit Court record; that the said suit is still pending and undetermined, the same never having been discontinued or the costs of the defendant paid.

19. And this defendant respectfully insists and submits to this Court, that inasmuch as the complainant's whole case made by himself is made with the view to charge this defendant personally and hold him liable as the principal party in this transaction, that he is not entitled to relief in this Court, because he has a perfect and complete remedy at law which he has been trying to enforce, and that because he has failed in a Court of law, he would come into this Court and seek to enforce a legal right, and that the defendant prays the same benefit of this defence as if he had sought it by demurrer for want of equity.

20 And this defendant further respectfully submits that, inasmuch as complainant has made one case in his said bill against this defendant, charging directly that the contract was made with him personally and not with the defendant, the Hadden Blue Stone Company, that he cannot in the same bill charge him as the trustee of the company; that the two allegations are inconsistent, and that relief cannot be sought in this suit against this defendant on allegations in the bill charging him with being the principal and at the same time seeking to hold him as trustee of the company; that the complainant has im-

properly joined two distinct and separate causes of action, and he prays that he may have the same benefit of this defence as if he had taken it by way of demurrer.

21. And this defendant, further answering, says that he has no knowledge of the present condition of the defendant, the Hadden Blue Stone Company, nor who its officers are; that he is not connected with said company, but he denies that while he was connected with it as its treasurer that the company was insolvent and unable to pay its debts; on the contrary he charges that while he was connected with it, it always paid its just and legal obligations; and he further says that he fully accounted to the said company and paid not only the proceeds and avails of the said bond, and for the amount bid by him on the purchase of the said land, but for all the moneys and property that came to his hands as treasurer of the said company, and that he is not indebted to the said company and has not been in any sum whatever. 10

22. And this defendant, further answering, says that as treasurer of the said company, he had full authority to attend the said sale and make the said contract for the said company, and that he had special authority from the said company so to do, and that his acts in the matter, both in the postponment of the said sale and the release of the said personal property and the purchase of the said land, were fully ratified by the said company, and that the company received the benefit of his acts in the premises as hereinbefore stated. 20

And this defendant avers, that he has answered every matter or thing in the said bill of complaint contained, material or necessary for this defendant to make answer unto, and that he is ready and willing to aver, maintain and prove his said answer, as this Honorable Court may direct, and he prays to be hence dismissed with his reasonable costs and charges in this behalf sustained. 30

COULT & HOWELL,

Solr's of Daniel M. Lyon, the Defendant.

In Chancery of New Jersey.

	<i>Between</i>	FREEMAN BOWER, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> DANIEL M. LYON, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Bill, &c.,</i>
10				<i>Replication.</i>

The replication of Freeman Bower, complainant, to
 the answer of Daniel M. Lyon, defendant. 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 says, that he
 20 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; with-
 out this, 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 de-
 nied, is true; all which matters and things this repliant is
 and will be ready to aver and prove, as this Honorable
 Court shall direct; and humbly prays, as in and by his
 30 said bill he has already prayed.

LUDLOW McCARTER,
Solicitor for and of Counsel with Complainant.

THE ANSWER OF THE HADDEN BLUE STONE COMPANY of Newark, New Jersey, one of the defendants to the bill of complaint of Freeman Bower, complainant.

These defendants now, and at all times hereafter, saving and reserving to themselves 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 thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say, that on the eighth day of March, eighteen hundred and seventy-five, at a meeting of the stockholders of said company, new directors and officers were elected, and the company reorganized, as it were, under entirely new and different management from that which had before controlled it, none of the old directors or officers being re-elected, the stock before issued being transferred, and none of the old stockholders or officers retaining any interest whatever in said company; that at that the time the said change in management in said company occurred, no real or personal property, other than the rights and privileges under the franchises of said company, passed; that no bond or real estate has ever been received by the present directors of said company, and if any such ever belonged to said company, these defendants did not know it, and have never received any accounting therefor; that at the time of the change of the management of said company the minutes of the proceedings of said company, up to that time, were not delivered to the new directors, and that as to any business transactions entered into by said company, prior to said date, of any nature whatsoever, these defendants are ignorant.

And these defendants, further answering, say that they admit that they are a body corporate, chartered under the laws of this State; they also admit that it may be possible that the said company, before the change in management aforesaid, recovered a judgment against one

James B. Smith, in the Supreme Court of this State, for the sum of twenty-five hundred and one dollars and forty-nine cents, besides costs, as in said bill mentioned, but these defendants expressly deny any personal knowledge or information in regard to said judgment having been recovered by them, as in said bill mentioned.

And these defendants also admit that it may be that the said Daniel M. Lyon signed the said agreement in said bill mentioned as the treasurer of said company, but
 10 that these defendants know nothing whatever about said agreement, nor whether said Daniel M. Lyon signed said agreement as the treasurer of said company or as a private individual; and also that it may be that said Daniel M. Lyon purchased said property at said sale in said bill mentioned, in his own name, but these defendants deny any personal or authentic knowledge or information of said purchase.

And these defendants, further answering, say that as to
 20 whether the said Daniel M. Lyon had authority from the said company to sign the said agreement as treasurer as in said bill mentioned, these defendants are not informed, and have no means of ascertaining from any books or papers in their possession; and as to whether the said Daniel M. Lyon has ever accounted to the said company for the full value of the said bond, as claimed in said bill, these defendants are also uninformed, except that they deny that such accounting has ever taken place since the date before mentioned, when the management of said company was changed; and these defendants also deny that
 30 the said Daniel M. Lyon ever accounted to said company, subsequent to the change in said company, for the value of said land purchased by the said Lyon under said agreement, but these defendants admit that the said Lyon may have done so prior to the change in said company mentioned.

All of which matters and things these defendants are ready to aver, maintain, and prove, as this Honorable Court shall direct.

J. A. MILLER, JR.,
Sol. of Hadden Blue Stone Co.

In Chancery of New Jersey.

Between

FREEMAN BOWER,
Complainant,

AND

DANIEL M. LYON AND THE
HADDEN BLUE STONE COMPANY,
Defendants.

On Bill, &c

10

Before his Honor Vice Chancellor VAN FLEET.

LUDLOW McCARTER, Esq., for complainant.

JOSEPH COULT, Esq., for defendant Lyon.

JOHN A. MILLER, JR., Esq., for defendant, Hadden
Blue Stone Company.

20

Transcript of shorthand report of testimony given in
the above cause, on Thursday, the 21st day of June, 1877,
at the chambers of the Vice Chancellor, Newark, N. J.

Complainant read bill.

Defendant read answer.

Complainant's counsel stated that one of his witnesses
was a public officer and desired to leave as soon as pos- 30
sible, and he would like to have him sworn and examined
before the adjournment, which was near at hand; and it
appearing that the said witness had prepared a statement
from his books showing what complainant's counsel
wanted to prove, it was agreed by and between the
counsel in the case, that the statement should go in evi-
dence as the testimony of said witness, subject to the
defendants' right to be heard as to whether it was rele-
vant or not, with leave to the defendants' counsel to call
said witness, if necessary, for explanation.

40

Complainant's counsel then called—

DANIEL M. LYON, sworn; direct-examination by Mr. McCarter:

Q At the time this contract was made, you were the treasurer of the Hadden Blue Stone Company?

A Yes, sir.

Q You have been subpoenaed to produce the books of that company which relate to its business and affairs, while you were its treasurer, have you not?

10 *A* That's what the subpoena called for, I believe.

Q Have you produced those books?

A No, sir.

Q Will you produce them?

A I don't know that I can; I don't know where they are; they may be in Virginia, or they may be in New York.

Q That's all.

Cross-examined, by Mr. Coult:

20 *Q* When did you see the books?

A I don't think I have seen them since the 8th day March, 1875.

Q When did you cease to be a member of the company?

A On the 5th, I think.

Q The 5th of March, 1875?

A Yes, sir.

Q Have you had any control over them or any possession of them since that time?

30 *A* No, sir.

By the Vice Chancellor:

Q You ceased to be treasurer May the 5th?

A Yes, sir; oh, no, sir; not May—March.

Q Yes, March; well, and you have not seen them since?

A No, sir.

Further cross:

Q And you don't know where they are?

40 *A* No, sir.

Re-direct :

Q The books that related to the affairs of the company and its business, while you were its treasurer, were they transferred to the new officers ?

A No, sir.

Q They remained in the possession of the company, did not they ?

A I think the former superintendent, if I remember right, has them, Thomas J. Ray ; and if that should be the case, probably they are in Virginia. 10

Q Those books show the transactions which you had with the company in respect to this bond ?

A Yes, sir.

Q And the property ?

A Yes, sir.

Q That's all.

Re cross :

Q As treasurer of the company, what books did you have while you were in their employ ? 20

A The principal part was the check book ; our payments were all made by check, and receipts were put upon the margin of the check book.

Q What officers had the company ; do you recollect ?

A President, secretary, treasurer and superintendent.

Q And you were only the treasurer ?

A I was the treasurer ; yes, sir.

Q And you only had charge of the check book ?

A I had charge of the check book ; yes, sir.

Q During the time you were its officer ? 30

A Yes, sir.

Q That's all.

Re-direct :

Q Where did the rest of the officers reside, while you continued to be the treasurer of the company ?

A New York.

Q From the commencement and down to the time you ceased to have connection with it ?

A I think the superintendent resided the biggest part 40

of the time in Pennsylvania, and the president and secretary resided in New York.

Q Then you were the only resident member in, this State ?

A Yes, sir.

Q And you owned some of the stock of the company ?

A I did.

Q What portion of it ?

A Two-fifths.

10 Q And the balance was divided up between the non-residents ?

A Yes, sir.

Q This property for which you took the deed, do you now own it ?

A No, sir.

Q Not any of it ?

A No, sir.

Q Have you sold it ?

A I have sold it.

20 Q That's all.

Complainant's counsel then called—

FREEMAN BOWER, sworn; direct-examination by Mr. McCarter:

Q Where were the lots; these lots which this judgment was a lien upon, and which were afterwards sold by the Hadden Blue Stone Company; where were they situated ?

30 A Over in East Newark, at the corner of Grant avenue and Reynolds avenue.

By the Vice Chancellor: These are the lots that were sold under the judgment of the corporation ?

By Mr. McCarter: Yes, sir; the land in controversy here.

Q How many lots were there ?

A I think there was five.

40 Q Well, are there any improvements on the lots ?

A There was a large stable on one of the lots; one large stable and a well; that is about all the improvements.

Q Now as to their value; were you acquainted with the value of those lots at the time?

A About that time they were worth \$800 apiece, I should think; I know my brother paid more than that for one on the same street.

Q You said there was a barn on the lots; do you know anything about the cost of the barn? 10

A Yes, sir.

Q Well, give us the amount?

A My brother got \$750, I think, for building it.

Q Now, what portion of this property was afterwards purchased by Mr. Lyon? I presume there is no dispute about that, and I will put in the deed now, Mr. Coult, if you have no objection to it; do you know what lots he purchased?

A No, sir; I could not tell you.

Q Was there any difference as to the value of these lots? 20

A I suppose there was a little trifle, but not much; their faces was on Reynolds avenue, but he has twisted them round since.

Q Well, never mind about that; did you deliver to Mr. Lyon a bond?

A Yes, sir.

Q Please state to the Court the circumstances which led to the making of the agreement here spoken of; you have seen it, have you not, before? 30

A Yes, sir.

Q Well, now state how you came to make it?

A Well, about the arrangement of making that, as near as I can get at it, is that one morning—I guess it was this day—Mr. James B. Smith came to me and said, "Freeman, I am going to be sold out to-day." I said, "Is that so?" He said, "Yes." I said, "What's that for?" "Well," he said, "Daniel Lyon has got a judgment against me, and the sheriff is going to sell me out." I said, "Well, you are going along nice," or something 40

in that way, and he said, "Can't you go security for me, so that I won't be sold out?" I said, "Jim, I have been doing a good deal for you lately; you owe me enough now, and I would rather not bother with anything more of that kind."

(Objected to.)

Q Was it true that he did owe you?

A Certainly.

Q Well, come down to the time that you made this
10 agreement?

A Well, so then we went down to the corner, and he asked me in there to go security for him, but I would not do it; so I went around when the sale was coming on—
(interrupted.)

Q Just before the sale, when you made the agreement, come to that; at Ballantine's dock?

A Well, I went around there to see the sale, and there was fifty men round there, I suppose, and Mr. Smith was talking to Mr. Lyon; and he wanted to know if Mr.
20 Smith could not raise somebody to go security or do something for him; he said, "the only man I know of is Bower, and I have asked him, and he refused." Then Mr. Lyon came over and asked me what I could do about it; I said, "I hate to see the man sold out, and he has asked me to go his security, but he owes me enough now, and I don't want to go his security." Then Smith said, "Well;" he was making a street at that time, and if he could get a month's adjournment of the sale, he would be
30 able to finish the street and pay the judgment off; so then Lyon said, "You need not be afraid, Bower; whatever money you advance we will secure in our judgment." I said, "I did not know anything about that, but that I did not want to put any money in this and lose it." Then Mr. Lyon said, "As far as that, I will give you my own security." I was talking to Mr. Lyon alone then; then he said, "Where shall we make out the papers?" and I said, "Come to the boat house." So we went up, and that is the piece of paper we had (pointing to the agreement).

Q Did you have an attorney there ?

A No, sir ; I did not think it was necessary.

Q Did Mr. Lyon ?

A He had Mr. Manners there with him, but I did not think it was necessary to have an attorney.

Q Who drew that agreement ?

A Mr. Manners.

Q Well, what did you do after the agreement was drawn ?

A After the agreement was drawn, I had a bond in 10 the house, and I sent for Charlie Smith, the treasurer, to come over, and he signed the bond, and then I handed it over to Mr. Lyon.

Q What then took place ?

A That is about all there was then.

Q Did you get the agreement ?

A Yes, sir ; I got the agreement.

Q Well, what next took place in the order of events ?

A Well, everything was all settled up there for that 20 day, and a long while afterwards Mr. Smith came down there one day and said to me, "Freeman, they have sold my place out." I said, "They did, hey !" He said, "Yes." I said, "Who bought it ?" He said, "Mr. Lyon." I said, "Well, I suppose I'll be getting my stamps again," just like that ; then a day or two afterwards I saw a carriage drive up to the front gate, and I looked up and I see that it was Mr. Lyon and Mr. Manners ; I bid them good morning, and he says to me, "That property has been sold, and"—(interrupted.)

30

By the Vice Chancellor :

Q What date was that ?

A I can't tell when it was.

Q Well, how long after you passed the bond over to Mr. Lyon ?

A Well, I don't know ; it might have been six weeks for all I know ; I could not tell ; I did not keep any account of it.

Further direct :

Q Well ?

A So when they got out of the carriage, they stood there a talking, and I says to them, "I suppose I am going to get my money now." He says, "What money?" I says, "Did not you agree to repay me that money again after the sale?" "Well," he said, "you must look to Jim Smith for that." I says, "He did not give me any security; he had none with him to give." "Well," said he, "you must not look to me, for you will never get a cent out of me." "Well," said I, "you made an agreement to that effect, did not you?" He says, "I guess not." "Well," I said, "I can read as well as you can." "Well," he says, "what do you read?" "Well," I said, "that you agreed to pay me that money back." "Well," he says, "if it reads so, I did not mean it to." "Well," I said, "then you meant to cheat me, and you had to use a lawyer to do it."

Q That is the substance of the interview ?

20 A Yes, sir; then he went off, and I said I would have to see about it; then I called on him at the Republic Trust Company; I think it is over here in Market street, and he refused to pay me again; and then I met him again at A. M. Reynolds' office, and—(interrupted.)

Q Well, tell us what he said ?

A He said he would not pay me.

Q What did you ask him ?

A Why, about that money of mine, and I asked him when I was going to get it, or something in that way; 30 "Well," he said, "you can't get it out of me; I ain't going to pay it alone;" then I did not say any more, but I walked off.

Q Well, but what did you request him to do ?

A I went to his office, down in Canal street, and I thought I had better take some of the property or something, so I said to him, "If you don't want to give me my money, give me the property and I will give you the balance of the judgment, provided you give me credit for the money received from Mr. Lee on the stone, and the 40 money I have already paid you, the \$900." He said he

would not do any such thing; I told him I was short of money, and had no money to spare; then he said he would take a mortgage on the boat house, but not on the property, and I said I would not give it.

Q What boat house?

A On Passaic avenue.

Q You own that?

A Yes, sir.

Q It is not connected with this property?

A No, sir; not at all; I told him I would give him 10 the difference between the money he received and the money due on the judgment, and take the property.

Q You did have some talk with him, then, in respect to buying the property?

A Yes, sir; he said he wanted to give me the property, and I told him that I understood that Mrs. Smith had a dowry into it; "well," he said, "she won't sign it away to me, but I will give you \$100 or \$200 and you can go and try and get her to sign it off." He said, "She will do it for you, but not for me." I said, "All right," 20 and that is all there was about it, and I never went to see him any more.

Q You have just stated that James Smith told you Mr. Lyon had sold his property; was that the first time you had heard of the sale?

A Yes, sir; the first time I heard about it was after the sale; I don't know how long after; may be a week or two.

Q Mr. Lyon states in his answer that he, a few days before the sale, went over to your place and asked you if 30 you intended to buy the property?

A I never seen Mr. Lyon from the time I left him, after the agreement was drawn up, until he came over with Mr. Manners in his carriage; neither in Newark or anywhere else.

Q At the time this agreement was made, were there any other judgments against Smith?

A Well, I could not say that positively, only I heard that some company up there in Market street had a note protested, or got some judgment in that way, but I don't 40

know anything about that, but I know that everybody round there he owed something to.

Q After this sale, when the property had been sold by the Hadden Blue Stone Company, what other property, if any, did Smith have ?

A I guess he did not have any.

Q Well, *did* he have any other real estate that you know of ?

A He had a few horses and carts.

10 Q Yes; but did he have any other real estate ?

A No, sir; not that I know of; I could not say.

Q It is said in the answer that there was a chattel mortgage, or some portion of a chattel mortgage, assigned to you by Smith; did you ever realize anything from that ?

A No, sir.

By the Vice Chancellor : A chattel mortgage was assigned to him ?

20 *By Mr. McCarter :* I believe an interest in the chattel mortgage was.

Q Who was that chattel mortgage held by ?

A A man named Henry Wildman; he held a chattel mortgage for the full amount, and he got Henry Wildman to assign me an interest in that chattel mortgage, as what he called, giving me double security, because I was doing him a favor by saving his horses and carts until he could finish that job and get his bill paid; I did not like to see the man sold out.

30 Q Did the levy of the Hadden Blue Stone Company also cover the personal property mentioned in that chattel mortgage ?

A Yes, sir; it covered everything; Mr. Lyon told me the judgment covered the whole thing; that question came up about my taking an interest with Henry Wildman, and he said, "Why, boy, our judgment covers all that, long ahead of that note."

Q Did he make any claim as to priority of his judgment over the chattel mortgage ?

40 A He said their mortgage covered the chattel mortgage.

Q You mean their judgment ?

A Yes, sir; he said their judgment covered the whole of it; carts and everything that he had there; picks and shovels and all.

Q Well, after this sale did he make any offer, and if he did make any offer, when was it, to assign you any interest in this judgment ?

A He never offered me in his life to assign me anything at all; he said to me, "we will help you get your money," and I said to him, "where am I going to get the 10 money?"

Q Where was that conversation ?

A Over in the wagon when he first came there, and one time by A. M. Reynolds' stoop; he said he would help me get my money, and I said to him, "you can't get me no money, it is all gone."

Q You did have some conversation with him in respect to his conveying you some interest in the property, or some exchange, or some purchase; just state that over again ?

20

A I went to his office in Canal street, to the brewery office, and there talked over this thing, and I was up to see you that same day, and then I went down there, because I thought I had better take the property or something, but at the same time I did not have much money to spare, but I thought I would not lose that money if I could help it; he said all the company wanted was their money; then I said, "You assign me the property and I will give you the difference in money, lacking what you owe me; you give me credit for my \$900 that I have given you already in the shape of a bond, and the money you received of Barney Lee;" he said he would not do no such thing; and then I was done; I could not do any more, so I walked out.

30

Q He refused to give you credit for the \$900 ?

A Yes, sir.

Q Then you did offer to treat with him on the basis of his giving you credit for the \$900; the amount you had already paid ?

A Yes, sir; I was ready to take anything at that 40

time, because I wanted to be secured; that was before any suit was brought at all; then I came back to you.

By the Vice Chancellor :

Q Mr. Lyon, I understand you, Mr. Bower, to say, said that all the company wanted was their money?

A Yes, sir.

Q And you said to him, if he would give you credit for the \$900 you had furnished, you would pay the balance of their claim and take the property?

A Yes, sir.

Q Now what balance did you refer to?

A Well, their judgment called for \$2,700, and they had got \$900 off of me; the first judgment was for \$2,500, and then there was something or other, I don't know what it was, that Mr. Lyon told me, making it up to \$2,700; and I gave them \$900, and Mr. Lee had taken some stone from Jim Smith and paid the money over to Mr. Lyon, so that he realized, I think, about \$500; that would be nine and five is fourteen hundred dollars, and that would make \$1,300 I had to pay, as I was satisfied to do, if he would deed the property to me, and he would not do it.

Further direct :

Q Did that arrangement include your request for him to give you credit for the \$900 you had paid?

A Yes, sir; I wanted that as part payment.

Q And he refused to consent to that?

A Yes, sir.

Q How did you know the value of this property at that time?

A Well—(a pause.)

Q You said there were five lots; you are evidently mistaken about that; there are but four lots?

A Well, I don't know exactly how many lots there is; I think there was five lots; that is, Mr. Smith had bought this fifth lot from some widow woman, and there was a very heavy mortgage on it, and they did—(interrupted.)

Q Well, never mind that about the widow woman ; there were three lots on Reynolds avenue ?

A Yes, sir.

Q And one lot on Grant avenue ?

A Yes, sir ; and one on the corner between, and that one had a heavy mortgage on it, which the Hadden Blue Stone Company did not want to take, because it was a little bigger load than they wanted to take ; they kind of skinned that.

Q You never realized anything on the chattel mortgage ?

A Not a cent.

Q And never realized anything on account of the bond ?

A No, sir.

Q And you are out a thousand dollars anyway ?

A Yes, sir.

Counsel : That's all ; I will put in the deed and levy, and you can cross-examine.

20

Cross-examined, by Mr. Coult :

Q How long had you known Mr. Smith prior to the time when this transaction took place with reference to the bond ?

A I suppose four or five years.

Q Had you been engaged with him in work in the town of Harrison ?

A No, sir.

Q I understood you to say that this bond, which you transferred to Mr. Lyon or to the Hadden Blue Stone Company, was a bond of the town of Harrison ?

A Yes, sir.

Q And that you got Mr. Smith to sign it that day ?

A Yes, sir ; Mr. Charles Smith, the treasurer.

Q What was the bond given for ?

A For \$825.

Q And you got it signed that day ?

A Yes, sir ; because I took the bond of him ; I bought the bond of Mr. James Smith for \$825.

40

Q. Then it was a bond that belonged to Mr. James Smith?

A Yes, sir; some time before; it was given him for work he done before that.

Q On a contract which he had with the town of Harrison?

A Yes, sir; for Fifth street.

Q And he was working on that contract with his horses and teams?

10 *A* Not on that part; that was a long while before that; that was another job altogether.

Q Well, he was a contractor, working on the public work of the town of Harrison?

A Yes, sir; anybody had a right to buy that bond.

Q I did not ask you that question; I am just trying to find out the facts; when did you know that his personal property had been levied upon?

A I did not know anything about the personal property being levied on until he came to me that morning
20 and said it was going to be sold.

Q Then you knew it that day?

A I knew it that morning.

Q Did not you know that the Sheriff had his property in his charge and keeping?

A No, sir; not until he told me that morning.

Q You found it out that day?

A Yes, sir.

Q That the Sheriff of Hudson county had his personal property?

30 *A* Yes, sir.

Q And that he had no teams or carts with which to go on and proceed to do his work?

A Yes, sir.

Q You knew what personal property he had, did not you?

A No, sir, I did not; I knowed he owned a lot of horses and carts; I supposed he owned them, I saw him using them, and they were in his possession.

Q When the sale came off you were there?

40 *A* Yes, sir; I went down with the rest of them.

Q What took you to the sale?

A I don't know; oh, to see what was going on.

Q Hey?

A To see what was going on.

Q You are not in the habit of attending sales of personal property, are you?

A When I feel like it, I am.

Q Did not you go there for some especial purpose?

A No, sir.

Q Then you just happened to go, did you? 10

A I just happened to go; yes, sir.

Q It was a mere accident?

A I went to a sale the other day, where I just happened to go,

Q Well, it was by mere accident that you attended this sale?

A Yes, sir; I would not have knowed there was going to be a sale take place, only he happened to meet me by the house and told me he was going to be sold out that day. 20

Q That was in the morning?

A Yes, sir; before nine o'clock.

Q Did not you attend that sale with the express purpose of preventing it?

A No, sir; I would say that if I was to die inside of a minute.

Q Now, Mr. Bower, did you speak to Mr. Lyon, or did he speak to you in reference to some arrangement to prevent the sale that day?

A Well, we were around there talking together; the whole body of men. 30

Q Answer this question, did you speak to Mr. Lyon, or did he speak to you with reference to some arrangement for preventing the sale of Mr. Smith's personal property that day?

A I could not exactly tell you the words, because we were all talking there together.

Q Were not you anxious to make some arrangement by which the sale might be avoided?

A No, sir; I was not anxious at all. 40

Q Did not you speak to Mr. Lyon, and ask him to make some arrangement by which that property could be kept by Smith, in order that Smith might go on and finish up his contract with the city?

A No, sir; I did not ask him that.

Q Was it not understood as part of these arrangements that this property was to be released by the Sheriff and given to Smith?

A That was after that.

10 *Q* Was not that understood as part of that arrangement?

A That was afterwards that agreement was made.

Q When the agreement was made?

A Well, there was not any agreement for that.

Q It was understood as a consequence of the agreement that the property was to be given back by the Sheriff into Smith's hands?

20 *A* Well, the general talk was between Lyon and Smith, that if he had one month's time he would be able to complete that street, and could make enough money out of it to pay the judgment, but Mr. Lyon said that the Hadden Blue Stone Company was hard up, and wanted the money, and would have to go on and press the sale, and then I said I hated to see him sold out because if he had time he would fix it up.

Q Then the property was to be released from the levy and given back to him; the personal property, was it not?

30 *A* The personal property was to be released so as to let him finish that street, which he said would take him about a month, and then if he did not pay the money after that street was finished then he was to sell him out and get the money.

Q Somebody claimed to have a chattel mortgage on his personal property, did they not?

A Yes, sir; Mr. Wildman.

Q Who was he?

A An old man who used to work for him; I did not know anything about that until the drawing out of the papers, and then he said he would give me double security.

40 *Q* That was a man working for Smith?

A Yes, sir.

Q He had a chattel mortgage on all of this personal property?

A So I found out afterwards.

Q Well, you found it out that day, did not you?

A Yes, sir.

Q And was not that chattel mortgage then and there transferred to you?

A No, sir; only an interest into it, so as to satisfy me that I would be sure and get my money. 10

Q To secure the payment of the proceeds of this \$1,000 bond?

A Yes, sir; he done that because I was trying to get him time to finish that street.

Q Who executed the transfer of that chattel mortgage?

A I guess Mr. Manners; I don't know; there was fifty men in the bar-room.

Q I did not ask you anything about that?

A Well, I could not tell, there was so many there.

Q You took a chattel mortgage or an interest in it, to secure the payment of money which might be realized from the sale of that bond? 20

A I took that along with the other, yes, sir.

Q Now this agreement which we have here; this was drawn up right there in the boat house?

A Yes, sir; the agreement was drawn up, and then they gave me that, and then gave me the chattel mortgage, or this interest, or whatever you call it.

Q What became of your chattel mortgage?

A Nothing became of it. Mr. Lyon told me their judgment covered the whole thing. 30

Q What did you do with your chattel mortgage?

A I don't know what was done with it; I don't know what became of it; there was no mortgage about it; it was just a little bit of a slip of paper—just a little bit of an agreement.

Q What became of the property covered by that chattel mortgage?

A Well, some of the horses died, some were sold out 40

by the constable for feed, and I don't know what; and some of the carts were sold to pay blacksmith's bills.

Q Did you attempt to collect the chattel mortgage, or enforce it at all?

A No, sir.

Q Not in any way?

A No, sir; because there was not enough in it to collect any amount; you see that was right in the dead of winter at that time, and it was no good way collecting anything at that time off of that.

Q How long was it from the time that this agreement before they sold the real estate?

A I could not tell you.

Q Well, about how long?

A About six weeks, I suppose, but I don't know; I could not say.

Q Your memory is that it was about six weeks; now between the execution of this agreement and the time that sale took place, did not you see Mr. Lyon?

20 *A* No, sir.

Q Nor Mr. Manners?

A No, sir.

Q Neither one?

A No, sir; neither here in Newark, or anywhere else.

30 At this point Mr. McCarter stated to the Court that he had a witness in attendance from Philadelphia, who was desirous of testifying and getting away from Newark that day, and as it wanted but about twenty minutes to the hour of adjournment, counsel asked permission to have the present witness to stand aside in order that he might examine Mr. Lee, the witness from Philadelphia; and there being no objection made thereto by the defendants' counsel, the Court gave the required permission; and thereupon the present witness stood aside, and complainant's counsel called—

PHILIP LEE, sworn; direct examination by Mr. McCarter:

Q You now reside in Philadelphia?

40 *A* Yes, sir.

Q You formerly lived in Newark?

A Yes, sir.

Q And you are by occupation a contractor?

A Yes, sir.

Q Do you know James Smith?

A Yes, sir.

Q And Freeman Bower?

A I have never seen Mr. Bower before to-day, to my knowledge.

Q You know Mr. Lyon? 10

A Oh yes, sir; I know Mr. Lyon.

Q Well, did you pay to Mr. Lyon, on account of Mr. Smith, any money?

A Yes, sir?

Q About what time?

A About what time, did you say?

Q Yes.

A I would not be positive whether it was in April or May, 1874.

Q Well, on what account was it paid? 20

A On account of James Smith.

Q Did Mr. Lyon have a claim against him?

A Well, we were buying stone of the Hadden Blue Stone Company, and Mr. Lyon was its treasurer; and there was a certain description of stone we wanted that was not at his yard, and he told me that Mr. Smith had that kind of stone, and if there was any stone in Mr. Smith's yard of the kind I wanted, I should go there and take them, and pay him the money for them, as he had a claim against Mr. Smith. 30

Q In pursuance of that, what did you do?

A In pursuance of that, I went and got a bill of stone amounting to \$524.56 of Mr. Smith, and Mr. Smith, I believe, gave Mr. Lyon an order on us for that amount, and we—that is me and my uncle B. B. Lee, who was my partner then—we returned Mr. Smith \$81 worth of flag, of which we had more than we could use, and then we paid Mr. Lyon the balance.

Q On Mr. Smith's order?

A Yes, sir. 40

Q You paid then \$443.56 on Mr. Smith's order to Mr. Lyon?

A Yes, sir.

Q You said that was in the spring of 1874?

A Yes, sir; April or May of 1874; the dates of the account are all in December.

Q Did you pay that in cash?

A I paid it in bonds and cash; we had a contract with Smith, and he was to take bonds for a certain
10 amount, and to take cash for the balance.

Q Did he receipt for it?

A He receipted in full for the whole account.

Counsel: That's all.

Cross-examined, by Mr. Coult:

Q The dates are what I want to get at, sir?

A Which dates?

Q When did you take the stone from Mr. Smith?

A This (referring to a paper) is dated December 20th,
20 1873; that is the way it is on this bill.

Q Then you returned, you say, \$81 worth of stone; is that the way I understand it?

A Yes, sir; we exchanged a little; we did not return any.

Q And you accounted for the balance?

A Yes, sir.

Q Who did you account to?

A Mr. Daniel Lyon.

Q Did you account to him individually, or the Hadden
30 Blue Stone Company?

A Well, he was the treasurer of the Hadden Blue Stone Company.

Q Well, did you account to him as treasurer?

A Well, I would not be positive whether he signed the receipt as treasurer or individually; it was his clerk down at the brewery signed the receipt, and I would not be positive about that part of it, but his bills were all headed "The Hadden Blue Stone Company," but he was the party we done business with.

Q You know nothing personally about the state of the account between these parties?

A No, sir; not a thing.

Q Or about whether Mr. Lyon furnished Mr. Smith with other goods or not?

A No, sir.

Q Or the Blue Stone Company; either one?

A No, sir.

Q That's all.

10

Re-direct:

Q Did you understand from Mr. Lyon, or from any person, on what account that balance was paid—that \$443.56?

A Well, I understood when I went there—(interrupted.)

By Mr. Coult: Don't say what you understood; tell us what was said.

By the Vice Chancellor:

20

Q Tell us what Mr. Lyon said to you?

A Well, Mr. Lyon said that he had an execution against James Smith, and if there was any of that kind of stone in his yard we could go and take it; of course Mr. Smith's man was always there, and he had no objection, and he kept tally of the stone, and we were all parties satisfied.

Further direct:

Q Then the stone that you took and paid Mr. Lyon 30 for, was paid on account of the judgment that he had against Mr. Smith?

A Well, I suppose so.

By Mr. Coult:

Q You don't know?

A I only know about the understanding; I did not talk with Mr. Lyon about it myself; it was my uncle told me about that part of it.

Q Did Mr. Lyon tell you that they had applied the 40

payment of this bill to the judgment obtained by the Hadden Blue Stone Company?

A Did he tell me that?

Q Yes.

A I don't think he did.

Q Then of course you don't know of your own knowledge anything about that?

A No, sir; all I know is that Mr. Lyon brought an order from James Smith—(interrupted.)

10 Q That you stated heretofore?

A Yes, sir.

Q Have you got the original order?

A It may be amongst some of the papers belonging to B. B. Lee & Co.

Q Have you looked for it?

A No, sir, I never looked for it; I was told by my uncle, some two years ago, to look up this bill, and I did so, and compared it with some figures in the settlement about the different bills of Lyon & Co., and it tallied with
20 this bill of \$443.56; that was the only bill I was told to find.

By Mr. McCarter :

Q You settled with Mr. Lyon in accordance with that bill?

A Yes, sir.

Further cross :

Q You said you settled with Mr. Lyon according to
30 the balance of this bill?

A Yes, sir.

Q And paid Lyon \$443.56?

A Yes, sir.

Q Have you any evidence of that, or any recollection of it?

A Yes, sir.

Q You recollect that?

A I recollect from looking over that bill and comparing it with the settlement, which was a piece of paper
40 rolled up with the rest of Mr. Lyon's bills.

A Aside from the fact that you saw it in that bill, and in that other paper, have you any recollection of it?

A No, sir; not aside from that.

Q You dealt yourself personally with the Hadden Blue Stone Company, to a large extent, did not you?

A Yes, sir.

Q You and your partner?

A Yes, sir.

Q And bought a great deal of stone?

A Yes, sir. 10

Q From time to time of this company?

A Yes, sir.

Q And of course had numerous settlements with them?

A Two or three settlements.

Q Yes.

A Two, I think.

Counsel: That's all.

Re-direct:

Q At the time that you made this settlement, there was no other money paid by you on account of your personal matters except this money here, was there? 20

A Oh, yes, sir; that went into it; I paid them three or four thousand dollars, and that was included in it.

Q The three or four thousand dollars you paid was independent of this?

A That was included in it.

Q But the other three or four thousand was a personal matter?

A Yes, sir. 30

Q And this was the Smith matter?

A Yes, sir.

By the Vice Chancellor:

Q The other money that you paid to Mr. Lyon at the time that you paid this four hundred and odd dollars, was money due to Mr. Lyon individually, or due to the Hadden Blue Stone Company?

Q Due to the Hadden Blue Stone Company. 40

Re-cross :

Q You had no personal account with him, your account was with the Hadden Blue Stone Company ?

A The stone was the only account we had with the Hadden Blue Stone Company.

Counsel : That's all ?

Adjourned.

Thursday, June 28, 1877.

10 FREEMAN BOWER, re-called for further cross-examination by Mr. Coult :

Q Mr. Bower, at the time you gave this bond to the Blue Stone Company, you knew the property—you knew what personal property had been levied on ; did you not ?

A I understood it was his horses and carts and those things.

Q Well, you saw, did not you, the advertisement of that sale ?

20 *A* No, sir.

Q Was not an advertisement of the sale posted up at the place where the sale took place ?

A I did not see it.

Q Did Mr. Smith tell you what property had been levied on ?

A He told me they were going to sell him out, that's all I know about it.

Q What have you done with the paper which you said was a bit of paper which was transferred to you that
30 day ?

A I don't know where it is ; maybe it is home, for all I know.

Q Well, I ask you where it is ?

A I can't tell you.

Q When did you last see it ?

A I had it round about the time we had the suit up in the Court House.

Q Did you give it to your counsel ?

A I don't remember whether I did or not ; maybe I
40 did.

By Mr. McCarter : Do you want it?

By Mr. Coult : Yes, sir.

By Mr. McCarter : With great pleasure; in the handwriting of Mr. Manners.

Q This is the paper that was signed by Mr. Henry Wildman?

A I don't know; let me see whether it is or not.

Q Here it is; (handing same to the witness)?

A Yes, sir; that is the paper. 10

Q Hey?

A That is the paper; I did not know what I done with it; I don't remember giving it to the lawyer, but I suppose I did, though.

By Mr. Coult : I want to put this in evidence, may it please the Court; it is a paper signed by Henry Wildman.

Q Who was Henry Wildman?

A He was an old man working for Mr. Smith; he was supposed to be his foreman, so he called him; he was a 20 stone cutter, &c.

By Mr. Emery : In what view is that paper competent?

By Mr. Coult : I take it, it is competent to show the character of the transaction, if for no other purpose; at the same time as Bower transferred the bond to the company, he also took security on the very property levied on; he took an assignment from Mr. Wildman, of one-half interest in a chattel mortgage on the very thing 30 levied on at the time, and I propose to show that it was for the purpose of securing the money which he in point of fact paid that day for Mr. Smith; and that this assignment was made by Mr. Wildman, at Mr. Smith's instance and request.

(Mr. Emery objected.)

(The Vice Chancellor admitted the paper.)

(Marked "Exhibit No. 1." Mr. Coult then read the same.) 40

Q Mr. Bower, did not you see Mr. Lyon at East Newark, between the time when this agreement was drawn and the day of the sale?

A No, sir; I never seen him until he came in the carriage; him and Mr. Manners together after the sale.

Q Did not he come to inform you at one time of the sale of the real estate, and request you to attend.

A No, sir.

Q Then you say you did not see him until after the
10 sale of the real estate?

A That is the time I saw him, when he and Manners drove up there with the carriage.

Q Then you did not know when the real estate was to be sold?

A No, sir; I did not.

Q Did you feel any interest in that matter at all?

A I did not take any interest in it; I suppose if I had been notified to look out for the sale, I would have done so.

Q Did you yourself take any notice of the fact?

20 A Did I look after the papers to see it? No, sir; I did not.

Q You did not?

A No, sir.

Q You saw Mr. Lyon subsequently; when did you first see Mr. Lyon after the sale?

A I suppose it was a few weeks; I cannot tell exactly how many; three or four days after Mr. James Smith told me he had been sold out, and a few days after that he and Manners drove up to my boat house there in the
30 carriage.

Q After the sale?

A Yes, sir.

Q Who drove up?

A Mr. Lyon and Mr. Manners together.

Q Well?

A I went out to meet them, and Mr. Lyon said that he had bought the property; that it had been sold, and he had bought it; I said, "I guess you can give me my money back then." He said, "What money?" I said,
40 "Why, that money that I gave you." He said, "Why,

you will never get nothing out of me ; you will have to look to Jim Smith for that." I said, "I could not look to him for it; that I had got nothing to look after him for." Then I told him, says I, "You gave me an agreement to repay that money, did not you?" He says, "I guess not." I said, "I guess you did"—(interrupted.)

Q One moment ; did he, at that time, offer on the part of the company, to assign you the judgment ?

A He said that he would ; that I would have to look to Jim Smith for that, and that they would help me all 10 they could.

Q The question was whether he offered to assign you the judgment at that time ?

A He spoke something about assigning me a paper, and I said to him, "What is the use of that; he is all sold out; what am I going to get now?"

Q The personal property had not been sold at that time, had it ?

A I don't know whether it had or not.

Q Don't you know ? 20

A No, sir; I do not; he said that James Smith's property had been sold out, and that he had bought it.

Q Don't you know that the personal property at that time had not been sold ?

A No, sir; not until some time after that.

Q Well, you afterwards discovered that the personal property had not been sold ?

A Yes, sir; he told me.

Q Did not he tell you *then* that all the personal prop- 30 erty remained unsold ?

A No, sir.

Q Did not he say at that time, that all the personal property was unsold ?

A No, sir; I told him there was nothing in the personal property for me to get my money out of.

Q I asked you whether he did not tell you that all the personal property remained unsold ?

A I don't know whether he told me it was all there or not; I know it was not all there.

Q But I asked you whether he did not tell you that it remained unsold?

A He told me that he would assign me an interest in that judgment, but I said there was nothing there for me to get any money out of now.

Q He told you he would assign to you the balance of the judgment?

A I said I did not have nothing to get out of it, and—(interrupted.)

10 *Q* Did not you refuse to take it?

A Certainly I did then; he ought to have given me an interest in it before.

Q Subsequently you saw him again in Newark?

A I see him several times afterwards; three or four times.

Q Did not he continue to offer, on the part of the company, to let you have the judgment?

A Yes, sir; he said he would let me have the judgment.

20 *Q* Did not he offer, in addition to that, to let you have the property which he had taken?

A Yes, sir.

Q For just the amount that he had bid on it?

A Yes, sir.

Q Did not you refuse to take it?

A Yes, sir; because he would not give me credit for the \$900 that I gave him; I told him I would give him the difference between the amount he had received and the amount of the judgment, if he would give me the
30 property, and he would not.

Q Did not he offer further than that to throw off one or two hundred dollars?

A Yes, sir; but that would not make up for my \$900 yet; I would not give him any \$900 for \$200; that would not make it satisfactory to me, not if he gave me \$200 and kept \$700.

A Well, did not he offer to let you have the property for just what it had been bought at?

A I don't exactly understand what you mean by that.

40 *Q* Did not he offer, on the part of the company, to let

you have the property for just what it had been bought at; for just what they bid it off at?

A I don't know exactly how to get at that.

By the Vice Chancellor :

Q It was bid off at \$1,700; did not he offer to let you have the property upon your paying him \$1,700, the amount he paid for it?

A Not that I know of; I told him, says I, "The judgment you have got against him is for \$2,500; now you got money from Barney Lee, and you got money from me, and I will give you the difference between that and the judgment, in money, and you give me the property," and he would not do that. 10

Q Did you ever offer to pay him the amount of the judgment, deducting credits on account of payments?

A Yes, sir.

Q Where?

A Down in his office, in Canal street.

Q Did not he offer to deduct from the amount of it, some portion of it, if you would take an assignment of the judgment; did not he offer to give you an assignment of the judgment, and to deduct something from the face of the claim, if you would take it, allowing you all credits? 20

A No, sir; not that I know of; he never told me that; he told me he would allow me one or two hundred dollars off.

Q What was that for?

A To take the property; but that would not pay for my \$900, I told him; I told him that he had taken a bond for \$900. 30

Q Did you want him to pay you back the \$900, and give you the property besides?

A No, sir.

Q Then what do I understand you to mean?

A If I could not get my money back, I would give him the difference, which was \$1,300; he had got \$900 from me, and \$500 from Barney Lee, that made \$1,400, and the judgment was for \$2,500, so I said I would give him the difference. 40

Q Did not he explain to you that there were costs and expenses connected with the judgment and sale of the property, amounting to \$200?

A Yes, sir; he explained that.

Q You knew that?

A Yes, sir.

Q Did not he tell you that if you would take the property he would throw off at least \$200 on the part of the company?

10 *A* I don't know as he did; but he would not allow me my \$900; that is all I was after.

Q What did you understand him to mean; he would allow you one or two hundred dollars off?

A That it was instead of allowing me \$900.

Q Did not you tell him that the real estate levied on was subject to a right of dower, and had been sold and taken by the company subject to that right of dower?

A I told him if he would give me a clear deed, I would give him the difference in money.

20 *Q* You told him that the property which they had bought was subject to a right of dower?

A Yes, sir.

Q Whose right of dower?

A Mrs. Smith's.

Q How did you find that out?

A By Mr. Riker, Mrs. Mulock's agent; he told me that.

Q When?

30 *A* I don't know when that was, it was sometime after the sale; I was talking with Mr. Riker, and he said "you had better keep your fingers off that."

Q Did not you find it out before the sale?

A No, sir; I did not, because there was no question about it before the sale, and I did not think nothing about it.

Q Did not Mr. Lyon say to you that you could get Mr. Smith's wife to release that for a less sum than he could, and he would pay whatever it cost?

A Yes, sir.

40 *Q* If you would take it?

A He wanted to give me money to go over there ; he met me at the other side of the bridge, but I could not get him to go up there with me, because he was afraid to go near her himself.

Counsel : That's all.

Re-direct :

Q Mr. Bower, in this conversation which you had with Mr. Lyon after the sale of the property, when talking about buying the property, did he at any time offer to allow you the amount he realized on that bond, namely, \$900 ? 10

A No, sir.

Q What did he say about that ?

A Well, he said that had nothing to do with it, that that was paid in.

Q What ?

A The \$900.

Q Then I understand you to say that you understood him, that he wanted to retain \$900. 20

A Yes, sir.

Q And refused to give you credit for it ?

A Yes, sir ; I offered to pay him the difference, and he said he would allow me one or two hundred dollars.

Q You did offer, if he would allow you the \$900, and the amount paid by Lee on account of the judgment, that you would take the property and pay him the difference ?

A Yes, sir.

Q And he refused to consent to that ?

A Yes, sir ; I told him I had not the money, but that I would borrow it. 30

Q In respect to this assignment of this interest in the chattel mortgage, did Mr. Wildman make that assignment to you ?

A Yes, sir.

Q Well, how was that brought about ?

A Well, we were talking in the bar-room about it, Mr. Smith, Mr. Wildman and me, and he said " Now, Freeman, I am glad you done that for me, and to make 40

you safe, so that you won't lose anything, I will get Wildman to assign you a chattel mortgage."

Q Did Mr. Lyon have anything to do with that?

A No, sir; but Mr. Manners wrote it because the rest of us did not know much about writing.

Q Did you realize anything out of the property covered by the chattel mortgage?

A No, sir.

Q What became of that property?

10 A Some was seized for debt, and feed, and bills of wagon makers, and I don't know what; Bird had a lot of horses up there carting, and some got drowned and fell over-board, and got carted all over the country, and the boys carried the wagons away.

Q There was no other paper between you and Lyon, except this? (alluding to agreement.)

A No, sir.

Counsel: That's all.

20 *Re-cross:*

Q I understood you to say, in answer to Mr. McCarter's question, that Mr. Lyon proposed to keep the \$900, and wanted you to pay the entire amount of the judgment over and above the \$900; is that what you mean to say?

A Yes, sir; he would not give me credit; I told him if he would allow me the \$900, and the money Lee paid him—(interrupted.)

Q Well, now will you state again what took place down in the office?

30 A I told him I would give him the difference between the money I had paid him, and that Lee had paid him, which was \$1,300, and take the property.

By the Vice Chancellor:

Q The difference between the money you had paid him, and what Mr. Lee had paid him, and what other sum?

A Yes, sir.

40 Q Well—you said you would give him the difference

between what you and Lee had paid him, and what other sum, now?

A \$1,300, I reckoned it up, to make the amount of the judgment.

Q You said you would give him the difference between what you had paid him, and what Lee had paid him, and some other sum, but you don't state what other sum; now I want to know what other sum you mean; the difference between those two amounts and what other amount?

A \$2,500 was the judgment, and then he said there was costs. 10

Further cross :

Q You mean \$2,500, or the amount of the judgment, assuming it was \$2,500?

A That's what I mean, I suppose.

Q Then you mean the amount of the judgment?

A Yes, sir; I mean that.

Q Now, what did he say to that?

A Well, he said he would not allow me the \$900; 20 that he would not take that into consideration, but that I would have to pay all that, and I could not do it.

Q In other words, he wanted you to leave the \$900, and pay him the amount of the judgment besides?

A Yes, sir; he said it was bid in for \$1,700, and that I should pay him; I forgot now what it was; I told him I did not understand anything about that; I said, "You got \$900 off of me, and \$500 off of Barney Lee, and I will give you the difference in money;" I told him I had no money, but I said I would borrow it, and he said he would lend it to me, but I did not want any more off of him. 30

Q How much money then did you understand that you would have to pay?

A About \$1,300, I think.

Q How much did you understand that Mr. Lyon claimed you would have to pay, in addition to what had been paid?

A He talked something about \$1,700.

By the Vice Chancellor :

Q You say he talked something about \$1,700 for a conveyance of this property ; how much did Mr. Lyon say he would require you to pay to him ?

A About \$1,700, if I remember right.

Q About \$1,700 ?

A Yes, sir.

Further cross :

10 Q And you wanted to pay him about \$1,300 ?

A Yes, sir.

Q Now, where was the disagreement between what you wanted to pay him and what he wanted you to pay him ?

A Well, I don't know ; he would not allow me my money ; that is all.

Q The difference between the \$1,300 and \$1,700, was it not ?

A No, sir.

20 Q Why was there a difference between the two sums ; was not there some difference stated at the time ; was it not the costs on the judgment ?

A I don't know ; he said there was some costs ; there was \$80 costs for the Sheriff's sale, but I had nothing to do with that.

Q Ain't you mistaken then, Mr. Bower, when you say Mr. Lyon wanted to keep the whole \$900 ?

A I don't know ; I don't know how I could be mistaken ; all I wanted was that he should credit me with the

30 Q Don't you think now you are mistaken, when you make that statement ; think it over ; don't you think you are mistaken ?

A I don't see how I could be mistaken ; it was such a plain affair about that money ; I don't see how I could be mistaken about it.

Q Do you mean to insist now that Mr. Lyon demanded that you should pay him the amount of the judgment, provided the company would convey you the property, and should keep your \$900 ?

40

A That's what he wanted to do ; to keep my \$900 ; I asked him to allow me my \$900 as part payment, and he would not do it.

Counsel : That's all.

Complainant's counsel also called—

CHARLES SMITH, sworn ; direct-examination by Mr. McCarter :

Q You are familiar with this property ? 10

A Yes, sir.

Q Did you once own it ?

A I did.

Q How many lots are there ?

A Four on Reynolds avenue and one on Grant avenue.

Q In 1873, what was the value of those lots ?

A The lots on Reynolds avenue at that time were worth—(interrupted.)

By the Vice Chancellor : 20

Q There are four lots where ?

A Reynolds avenue.

Q And how many on Grant avenue ?

A One, sir.

Further direct :

Q Well ?

A At that time they were worth about \$900 apiece on Reynolds avenue.

30

By Mr. Coult :

Q What say ?

A On Reynolds avenue, at that time, they were worth about \$900 apiece ; I have sold lots for that price.

Q There were three lots there ?

A Four on Reynolds avenue.

By the Vice Chancellor :

Q They were worth that, when ?

A In 1873.

40

Q What amount ?

A I don't know the amount of it.

Q Was it not \$1,000 ?

A No, sir, I don't think it was.

Q Well, do you know whether it was or not ?

A No, sir, I do not know ; but I don't think it was so much as that ; I made the papers out, but I have forgotten.

Q Held by whom ?

10 A Held by Rose Shore, a widow lady of New York.

Q Do you know whether Mr. Smith paid interest on that ?

A I think he did ; she was out there every six weeks after it.

Q Do you know ?

A I know he gave some to me, and I gave some to her, but it is likely there was some interest unpaid.

Q Mr. Smith, do you know how many of these lots were sold under the judgment of the Hadden Blue Stone
20 Company ?

A I think there were four, sir, omitting the corner lot that the Shore mortgage was on.

Q You think, then, there were four of those lots ?

A Yes, sir ; three lots on Reynolds avenue, and the butt lot on Grant avenue.

Q Do you know when they were sold in 1873 ?

A No, sir, I do not. Do you mean at the Sheriff's sale ?

Q Yes.

30 A No, sir, I don't.

Q It was after the panic, was it not ; when was that ?

A I remember that distinctly ; it was in September, 1873.

Q Now was not real estate injured by the panic ?

A Yes, sir ; but real estate did not feel the effects of it before the next Spring, much ; everybody thought things would be better in the next Spring.

Q They held it for a while ?

A Yes ; I don't think it affected sales ; I sold a good
40 deal of property in October.

Q Do you mean to say that it was not immediately affected by the panic?

A Not so much as it was afterwards.

Q Was it not immediately affected—did not fancy prices begin to fall?

A Yes, sir; but it did not get down to hard pan prices so soon.

Q But property that had been valued at \$1,000, and \$1,500 a lot, would not sell for that after the panic?

A I don't think that the panic that Fall, affected the 10 price of property.

Q Do you think it remained just the same then as it was before?

A It would not have found so ready a sale.

Q Was it not affected in price?

A It was somewhat.

Q Then you mean to say now you were mistaken when you said you did not think so?

A I say yet that it was not affected to any considerable extent immediately after September, but along in 20 the Spring it was affected a great deal more.

Q Then when you say you think it was affected more in the Spring than it was immediately after the panic, you mean that it was affected somewhat immediately after the panic?

A Some, yes, sir.

Q Were you present at the time of this sale; it is not cross-examination, but I would like to ask the question with counsel's permission, as it will save me re-calling the witness? 30

A Of the real estate?

Q No; the personal property, when it was proposed to be sold?

A I was at Mr. Bower's boat house; I went there by the request of Mr. Bower, to sign a bond, but there was no sale; the sale did not take place.

Q A bond of the town of Harrison?

A Yes, sir.

Q How did you come to go to his place to sign a town bond? 40

A The way was this: Mr. Bower bought a bond, and he had no place to keep the bond, and thought that it might be stolen and he would lose it, so he said to me that he would rather I did not sign it at that time, but would sign it at any day when he wanted to use it; we done that frequently with parties—contractors; we would not sign the bond until such a time as they wanted to use it.

Q Was not that bond due as one to Mr. Smith?

A Yes, sir; I believe it was.

10 Q On a contract made between Smith and the town of Harrison?

A Yes, sir.

Q Then he did not buy it of you?

A Yes, sir; he bought it of me; Mr. Smith had a little trouble about paying his men, and when he had bonds coming, I would sell the bonds for him, and some of his men were paid in my office by me at the request of the town, but I don't know that it was in this case, but
20 I sold the bond for Mr. Smith; it was issued on account of James B. Smith.

Q On a contract that he had with the town of Harrison?

A Yes, sir.

Q And it had not yet in point of fact been signed at that time?

A The body of the bond had not, but the coupons had, and the seal was on it, and it had been signed by the president of the Common Council, and the town clerk.

30 Q You held them in their unfinished state?

A Yes, sir.

Q Bonds to be issued on account of the contract done by Smith?

A This bond had been issued to him, and I got a receipt for this bond from James Smith, and gave the bond to Bower some time before that, I can't remember exactly how long before, but it must have been a month or so before.

Q Did you get any money from Bower?

40 A Yes, sir; I got money from him for the bond.

Q When?

A On the day I sold it to him; some time before that; I got the cash for the bond; that is what I sold it for, of course.

Q What did you want with the cash?

A To give it to Smith; I sold bonds for nearly all the contractors there; I was acquainted with persons in Newark and New York, and parties who had money would come to me and ask me whether any bonds were going to be issued, and at what rate they could be bought, and I would act as broker for these men; Bower came to me one day and asked me if there was any bonds to be sold, and said he would like to buy one whenever we had one to sell.

Q What did he get it at?

A I forget now, but whatever the market price was at that time.

Counsel: That's all.

Re-direct:

20

Q Was this bond issued to Smith or Bower?

A To James Smith, and I sold it to Mr. Bower for James Smith.

Q And you delivered the bond to Mr. Bower?

A I did; Yes, sir.

Counsel: That's all.

Complainant's counsel also called—

30

JAMES B. SMITH, sworn; direct-examination by Mr. McCarter:

Q You are the defendant in this judgment; Mr. Lyon had a judgment against you, the Blue Stone Company?

A Yes, sir.

Q And you are the defendant in that judgment?

A Yes, sir.

Q Do you recollect the drawing of this agreement spoken of here?

A Yes, sir.

40

Q Speak up so that we can hear you ?

A Yes, sir ; I remember it.

Q Well, did you see Mr. Lyon at that time, or just prior to it ?

A I saw him that morning.

Q Well, prior to that did you see him ?

A Yes, sir.

Q Did you have any conversation with him in respect to your affairs ?

10 A Yes, sir.

Q Well, what took place ; what was said between you ?

A I met him at the corner of Passaic avenue, and Mr. Manners was in the wagon too, and he asked me if any of my friends would help me out so that the sale would not go on ; I told him I did not know of any one except Mr. Bower, and I said he has refused to ; I said, I have seen him and he has refused ; he says he has done enough for me.

Q You paid something to Mr. Lyon on account of this
20 judgment, did you not ?

A. \$500.

By Mr. McCarter : I propose to show, if the Court please, that in addition to the \$443 paid by Mr. Lee, there were other payments made ?

Q You say you paid him \$500 ; how was that paid ?

A I sold stone to Barney M. Lee, and gave Barney M. Lee the power to pay Mr. Lyon in part of this note that went to protest.

30 Q "Note that went to protest," what do you mean by that ?

A The judgment against the note.

Q There was a judgment on the note ?

A There was a judgment on the note ; yes, sir.

Q The Hadden Blue Stone Company had a judgment ?

A Yes, sir.

Q Against you ?

A Yes, sir.

40 Q And this money paid by Lee, was paid on account of that judgment ?

A Yes, sir.

Q How much was paid by them ?

A \$500, about.

Q Mr. Lee says he paid cash, \$443 and some cents ;
was there anything more paid ?

A Not that I know of.

Q Was there anything paid by way of delivering to
Lee, stone that you had ?

A This was in that way ; I sold stone to Barney M.
Lee, and he was to pay me the money ; then I gave him 10
the power to pay it to Mr. Lyon in the place of paying
it to me.

Q Lee says that he paid \$443, and that there was a
deduction of \$81 ?

A Yes, sir ; I bought flag of Lee, and that was de-
ducted.

Q Who got that \$81 ?

A I got it.

Q What was done with it ?

A I put it on the street. 20

Q What street ?

A First street.

Q Well, I want to know whether there was anything
additional to the \$443 paid to Mr. Lyon on account of
this judgment ?

A No, sir.

Q I understood you to say to me that Mr. Lyon got
\$81 worth of stone ?

A Mr. Lee got the stone and paid the money for it to
Mr. Lyon instead of to me. 30

Counsel: That's all.

Cross-examination, by Mr. Coult:

Q This judgment was recovered against you, and a
levy was made on your personal property ?

A A levy ?

Q Yes ; the levy was made on your personal property,
was not there ?

A Yes, sir.

Q Did you have some stone at that time ? 40

A Yes, sir.

Q What amount?

A Well, I could not tell you how much.

Q Well, you can give us a pretty good estimate, I should judge; what amount was levied on?

A I could not say.

Q Well, what is your judgment about it?

A Well, I don't know; it might be \$500 or \$600 worth, or may be \$1,000, for anything I know.

10 Q Well, you are so indefinite that I will call other testimony in regard to that?

A I have no idea; it was all piled up in a heap, and you can't tell by the size.

Counsel: Well, that's all.

Mr. McCarter then asked Mr. Coult if he would admit certain things, and upon Mr. Coult's refusal, Mr. McCarter stated he would have to go upon the stand himself; and thereupon,

20

LUDLOW McCARTER, complainant's counsel, sworn:

Prior to the filing of the bill in this case, I called on Mr. John A. Miller, or John Miller, whom, as I ascertained, was the president at that time of the Hadden Blue Stone Company, and stated to him that I represented Mr. Bower, and I made a formal demand upon him, as president of the company, to pay to me, as Mr. Bower's solicitor, the amount realized by that company on the sale of a certain bond, stating to him and showing him the con-
 30 tract which has been introduced in evidence here to-day; and I stated that if he did not, as president of the company, pay the amount realized by the sale of the bond, then I requested him to convey or assign to Mr. Bower such an interest in the land as would secure to him the repayment of the amount realized by the company on the sale of the bond; he stated to me that he knew nothing about it; that the company never had any such bond; that they never had any such deed for such land, and he supposed that it was a transaction which took place prior
 40 to his connection with the company, and as he knew

nothing about it, he of course had to refuse to comply with my request.

Cross-examined, by Mr. Coult:

Q You say he said the company never had any such land?

A As far as he knew anything about it; he said there was no evidence in his possession of it, and he denied it; he said to me that the company did not now have the title, nor ever had it, as far as he knew. 10

Q Did you give him a written demand?

A Oral.

Counsel: That's all.

(Mr. McCarter offers the statement as to the amount of judgment due.)

(It is admitted that after the bill was filed in this case, Mr. Lyon sold the property.)

Complainant rests.

20

Defendant's counsel then called—

DANIEL M. LYON, sworn; direct-examination by Mr. Coult:

Q You were at one time connected with the Hadden Blue Stone Company?

A Yes, sir.

Q In what capacity?

A As treasurer. 30

Q The company had a judgment against James Smith?

A Yes, sir.

Q Do you know whether the property of James Smith, or any part of it, was sold under that judgment?

A Yes, sir; it was sold and I bought it in for the company at the time.

Q Was that the bid that you made and signed at that time; (handing witness conditions of sale)?

A Yes, sir. 40

Q (Reading,) "first tract \$1,700, second tract \$500 ; I have bid off the first tract for \$1,700, Daniel M. Lyon, treasurer;" you purchased then the first tract, being the first four lots described in the judgment?

A Yes, sir.

Q For the company?

A Yes, sir.

Q For \$1,700?

A Yes, sir.

10 Q Were you at that time acting as the agent and officer of that company?

A I was at that time the treasurer of the company.

Q And were so acting at this time?

A Yes, sir.

Q Under the direction of the company?

A Yes, sir.

Q The deed for the property was afterwards made to you; do you recollect the day of the sale?

20 A No, I do not; I think it was adjourned once or twice, I am not positive; I don't recollect the date, though; the bid will show, I presume.

Q Who bid on the second tract, do you know?

A I think it was Mr. Albert Condit, that is my impression.

Q Do you know who he appeared for?

A The State Trust Company, I think.

Q He was the counsel for the State Trust Company, was he not?

A Yes, sir.

30

By Mr. Coult: The deed offered in evidence seems to have been offered for record on the 17th day.

By the Vice Chancellor: When was the sale?

By Mr. Coult: The 25th day of June, I think it is, 1874, according to the conditions of the sale.

Q Will you explain how you afterwards came to take the deed for this property?

40 A The company did not want to hold the property,

and they did not want to take the deed, and they preferred to have me take it at a certain price, and I took it and paid them the price agreed upon.

Q How long was that after the sale?

A I think the following week, either the same week or the following week, if I remember right; the deed was delivered in ten days, I think, from the date of the sale.

Q Mr. Lyon, before this sale did you have any conference, or any interview with Mr. Bower, the complainant, in reference to the sale? 10

A I saw him once, I think, probably it might have been a week or ten days previous to the sale.

Q I mean the sale of the real estate?

A That's what I mean; there was no other sale.

Q Where did you see him?

A Well, I can't positively say whether I met him this side of the bridge or not, but it was not far from the bridge, either one end or the other, I am not positive which; I mean the Passaic bridge.

Q He has his boat house near the bridge? 20

A Yes, sir.

Q At the other end of the bridge?

A Yes, sir.

Q On the Hudson county side?

A Yes, sir; I started to go up and see him and Smith also; I went to see Smith afterwards, to propose to him that he should buy the property in and put it in his wife's name, and—(interrupted.)

(Objected to.) 30

Q Did you see Mr. Bower?

A I did.

Q What conversation took place between you?

A I asked him if he was going to let Mr. Smith's property be sold; I told him that the sale would be at a certain time, and asked him whether he was going to make some arrangement, that is, for the sale of the property; and he made me no definite reply.

Q That was eight or ten ten days previous, was it not? 40

A Yes, sir; it was between the adjournment; when the first day came up I did not see him, but it was adjourned I think one month, and it was between the adjournment I saw him.

Q Before the sale?

A Yes, sir.

Q He did not attend then, on the first day?

A No, sir.

Q And you saw him between the adjourned day and
10 the sale?

A Yes, sir.

Q And you told him when the sale would be?

A Yes, sir.

Q And asked him, as I understand you, whether he intended to let the property be sold, or would protect it?

A Yes, sir.

Q What amount in value of the property was levied on under the execution—under this judgment?

20 (Objected to.)

(Question overruled.)

Q Between the time when the property was sold, and when you took the deed for it, did you see Mr. Bower at any time?

A Yes.

Q When?

A It was, I think, in the same week as the sale; I was anxious to have the matter settled up, and to have the deed made, and a proper one, and Mr. Manners as
30 counsel for the company and myself went over, as Mr. Bower has said, on that morning; I can't tell you the exact day, but it was after the sale.

Q And before you had taken any conveyance?

A Yes, sir; from the Stone Company at all; I wanted Mr. Bower to take the real estate, he said it was worth so much money, so I told him he would be making money by it; and I proffered to lose one or two hundred in it for the purpose of getting the right of dower.

Q Let us be specific and clear about that; you say
40

you proffered to lose one or two hundred dollars; what do you mean by that?

A Why, less than our claim after we got the matter settled.

Q And then have the property conveyed to him?

A And have the property conveyed to Mr. Bower.

Q What did he say to that?

A He said no, he wanted his money; he did not want anything else; he was going to have his money; he did not make any proposition, except the money; I asked 10 him then why he did not, out of the portion that was assigned to him, make his money out of that? He said he was not going to break up Jim Smith.

Q What do you mean by the portion assigned to him?

A The chattel mortgage; the stone that was released for him; there was some \$2,500 or \$3,000 worth of stone lying on the dock, out of which we could have made our money.

Q What did you offer, if anything, on the part of the company, in regard to the judgment? 20

A I offered to deed him the property, and assign him the judgment also, and take two hundred dollars less than our claim was.

By Mr. McCarter :

Q On his paying you more money?

A Yes, sir.

Q You wanted him to pay you more money?

A I wanted him to pay the amount of the judgment, less the \$900 which he claimed the bond was, and I would 30 also lose \$200 on it.

Further direct :

Q Then you proposed, on the part of the company, to take \$200 less than the amount of their claim, if he would take the property and give you the balance?

A Yes, sir.

Q And to assign the judgment?

A Yes, sir?

Q And he refused to do it?

A Yes, sir; he said he had no money, and then I offered to lend him the money for to do it; I told him I would loan him \$1,500, but that I would not take the \$1,500 on those lots, because there were taxes and assessments and mortgages on them which would not be considered very good security, but I said I would take it on other property, and he said no, he would not put it on his boat house.

10

By Mr. McCarter :

Q That is, a mortgage to you?

A Yes, sir; I proposed to lend him money individually; not on behalf of the company at all.

Further direct :

Q Was Mr. Manners with you at that time?

A Yes, sir.

Q And that was all that you saw of him until after
20 you had taken the deed for this property?

A Yes, sir.

Q After that you saw him?

A Yes, sir.

Counsel: That's all.

Cross-examined, by Mr. McCarter :

Q You said that you made an agreement to take this
30 property from the company; with whom did you make
that agreement?

A With the president and the other directors.

Q Well, how did it come that the company did not
take the deed?

A They did not want it.

Q Why not?

A They wanted the money.

Q Well, could not they furnish the money for the deed?

A Well, it did not require of them to furnish much
40 money for the deed, but it would be the laying out of so
much money.

Q Did they want the money to use ?

A Yes, sir.

Q Just then ?

A Well, it was very convenient to them.

Q I am not speaking about *now* but *then* ?

A I say it was very convenient to have it then, at that time.

Q The company was in need of the money ?

A Yes, sir.

Q Now, you have got for this judgment—you realized 10 out of the property \$1,700 ?

A That's what I bid.

Q You got \$900 from Bower—that is, you got a bond on which you realized \$900 ?

A Either I sold it at $87\frac{1}{2}$ or 90 ; it was in the neighborhood of \$900.

Q Well, that makes \$2,600. Now, you got \$443 paid on account by Mr. Lee ?

A No, sir ; I beg to be excused.

Q Oh, you beg to be excused, do you ? Well, how 20 much did you get on account of the Lees ?

A I think it was \$185, or \$235 ; I think I can produce that receipt, with a little time.

Q Was it \$300 ?

A I think not ; it was a little less than \$300.

Q Well, that makes \$2,900, don't it ?

A In that neighborhood.

Q Now, you paid \$100 ?

A I paid one hundred and odd dollars costs, and \$98 for feed, and so forth, whilst the Sheriff was in there. 30

Q Well, you paid on account of costs on that property, \$100 ?

A Yes, sir.

Q On this real estate, I mean ?

A The execution, I thought you had reference to.

Q You paid execution fees \$100 ?

A Something in that neighborhood.

Q Now, you spoke about costs for feed ?

A Yes, sir ; the Sheriff had the horses and things in charge, I think, for two weeks. 40

Q But you did not sell any of the personal property that you had to feed?

A No, sir.

Q The costs you actually paid on account of the sale of this real estate was \$100?

A That I could not be positive about.

Q Well, in that neighborhood?

A In that neighborhood.

Q Then you realized by the sale of this property, and
10 the bond from Mr. Bower, and the amount paid by Lee, more than your judgment, did not you?

A I think not; I think that is just what the figures were made up for me to bid; I was to run it up to \$1,700, in order to get my money.

Q The question was whether you did or not?

A Not that I know of.

Q How did you pay the company for this deed?

A How did I pay them?

Q Yes?

20 A I gave them the money.

Q Cash?

A Yes, sir.

Q When?

A They owed me some money.

Q When?

A At the time of the agreement.

Q How much did they owe you?

A They owed me some \$17,000 or \$18,000.

Q At that time?

30 A Yes, sir.

Q Was this taken on credit?

A No, sir; I paid them cash for it.

Q And the company owed you seventeen or eighteen thousand dollars at that time?

A Yes, sir.

Q And you paid the company cash?

A Yes, sir.

Q I understood you to say they gave you credit for it?

A Yes, sir.

Q Do the books show that ?

A I presume they will.

Q Why did not you bring the books here ?

A Because I cannot get them ; I don't know where they are ; I have not had the custody of the books since the 5th day of March, 1875, I think.

Q You were sworn as a witness in this case before, up at the Court House, were not you ?

A Yes, sir.

Q You testified there that you did not inform Bower 10 when this sale was to take place ; is that correct ?

A I think not ; I have thought the matter over afterwards ; I went to see Smith at the time—(interrupted.)

Q You testified so ?

A Well, it was not correct ; I looked over it afterwards and found it was not correct.

Q This question was asked you by the Court, " Was anything said about the time or fact ? " to which you made this answer, " I don't know that there was anything more said than that the property was to be sold." *Question.* " Who said that ? " *Answer.* " I said that to Mr. Bower." *Question.* " Did you say when ? " *Answer.* " I think I did ; I would naturally mention it, but I would not swear to it." Now were you correct then ?

A That is my impression.

Q That was correct, was it ?

A I believe it was to the best of my knowledge, it is as correct as I could be ; I don't swear positively that it is correct, but I swear about that answer.

Q What did the property bring when you sold it, 30 since the bill was filed in this case ?

A I don't know that I can tell ; it was like trading cats and dogs, it was all trade ; there was no sale or money.

Q You can approximate to it, can't you ?

A I think I got about in the neighborhood of \$600 a lot.

Q \$600 a lot ?

A Yes, sir ; in that neighborhood, according to the valuation of the property that I took.

Q You testified before on the trial, did not you, that the amount that you received from the Lees on account of this judgment was only \$180; did not you testify to that?

A No, sir; I did not.

Q Does it not appear so?

A Yes, sir; but that is incorrect, from the fact that I said \$285 or \$300, and I went that day to try and see the stenographer at the Court House, when I was told that I had said I only got \$185.

10 *Q* You have changed your testimony in that respect, have you?

A I went that day to try and see him.

Q But you did not do it?

A I did not see him, but it was a mistake in the understanding of the stenographer.

Q And did not you also say \$185?

A No, sir; I said in the neighborhood of \$285 to \$300.

20 *Q* This question was to you, "Mr. Lee paid something of this claim?" *Ans.* "Mr. Lee paid \$185; I am not positive, but less than \$200 on this judgment." Did you say that?

A I could not be positive as to that, sir, but if I did, I said it from the fact of not being positive at the time.

By Mr. Emery: I think the witness said \$185 in his testimony to-day; will you please look and see what he said, Mr. Stenographer?

30 The stenographer read as follows: "*Ques.* Well, how much did you get on account of the Lees? *Ans.* I think it was \$185 or \$285; I think I can produce that receipt, with a little time."

Q Now I want to get at what you admit he paid?

A \$285 and some cents, to the best of my knowledge; I have had the promise of getting the receipt from Mr. Thomas F. Ray, who is now in Western Virginia; he has promised to send me the receipt a number of times.

Q You had to indemnify the Sheriff, I understood you to say the other day, for the purpose of selling this personal property?

40 *A* I went there for that purpose.

Q That is the personal property of James Smith, covered by this chattel mortgage?

A Yes, sir.

Q The Sheriff had taken the personal property in his possession?

A Yes, sir.

Q And that is what you mean when you say the costs amounted to \$180?

A I could not tell positively; it was in that neighborhood; yes, sir. 10

Q How much did you pay the Sheriff for keeping the personal property for you?

A I think it made our judgment—I can only tell you in gross, Mr. McCarter.

Q I don't want it in gross; I want to know how much you paid the Sheriff for keeping that personal property?

A I can't tell you, sir.

Q Mr. Lyon, in speaking of that case, I want to get as near as I can the actual amount of costs you paid on account of the sale under this judgment? 20

A I could not tell you.

Q Could you tell me within \$1,000?

A Yes.

Q Try and do it, then?

A Between one and two hundred dollars.

Q Don't you know it was not \$200?

A I do not know; no, sir.

Q Have you not testified before it was about \$100?

A I don't know that I have; you ask me positively, I say I cannot tell you—(interrupted.) 30

Q Is it not within \$100?

A I think it is over \$100.

Q Allowing all costs that you paid on account of keeping the horses—you said you paid something for that?

A The watchman in charge.

Q Just the cost. That forms no part of the cost for the sale of this property?

A No, sir, I suppose not.

Q Yes, that is all of that; you did not sell any of the horses?

A Didn't sell; no, sir.

Re-direct examination :

Q Mr. Lyon, you stated that you had sold these lots since the filing of the bill in this case for \$600, about?

A That would be allowing a fair valuation for the property I took; it would realize, I think, about \$600
10 apiece.

Q Will you tell how many you sold?

A I sold five.

Q Five lots?

A Yes, sir; the corner lot I bought from the second mortgagee; I am not positive whether I bought it for—
(interrupted.)

Q Well, won't you just explain the whole thing so that we will understand what you got?

A After the foreclosure sale, the second mortgagee
20 bought in on the first mortgage; she then came to me and wanted to sell me the corner lot.

Q That was the lot you did not buy?

A That was the lot I did not buy; no, sir.

Q Yes?

A And offered to take \$600 for it, I think; my impression is I gave \$500 for it.

Q \$500 for it?

A Yes, sir; free and clear from all incumbrances.

Q Then you had paid \$1,700 for the other four?

30 A The company had paid that; I didn't pay for it so much; I didn't allow the company that amount for it, from the fact that the costs were out of it; I disremember now how much it was, as I said to Mr. McCarter, I could not state exactly, I did not pay the company quite as much for the lots as I paid for them.

Q Do you know about how near?

A I think in the neighborhood of \$1,600.

Q Well, \$1,600 we will say; then you sold these lots at \$600 a piece?

40 A They were foreclosed; I paid incumbrances on them

the following year, the taxes, assessments and such like was seven or eight hundred dollars; on the four lots, the taxes, interest and foreclosure costs, which the Mulock estate had, was a little upward of \$700.

Q In other words you paid \$1,400 in order to clear off the incumbrances?

A Over \$1,400; to clear it on the four lots, I paid over \$1,900, because I bought the other lot for \$500 afterwards.

Q Then how much did you realize on the sale; as 10 much as you paid the company?

A I realized between seven and eight hundred dollars short.

Q In other words, you lost?

A Yes, sir.

Q Seven or eight hundred dollars on the transaction?

A Yes, sir.

Q You did not get back your money?

A No, sir; the assessments and taxes were beyond all anticipation. 20

Q Now, Mr. Lyon, I don't know if you stated it, but if you did, won't you state it again, because I don't recollect it distinctly; did you at any time after you had purchased this property from the company, offer Mr. Bower to let him have the property for what you had paid?

A Yes, sir; I offered that at the Court above.

Q Well, you did offer it?

A Oh, several times; two or three different times I have.

Q As an individual? 30

A Yes, sir.

Q And he refused to take it?

A Yes, sir.

Counsel: That's all.

Re-cross-examination:

Q Two or three hundred dollars less than you say you paid for it; you mean by that, two or three hundred dollars less than you paid, don't you?

A Yes, sir. 40

Q Were you willing to give him credit for the \$900 he paid ?

A I was not willing to take—(interrupted.)

Q One minute ; were you willing, in that conversation you had with him, to give him credit for the \$900 ?

A Of course I did ; I wanted to give him credit and assign the judgment.

Q Were you willing in this proposed sale of the property—

10 *By Mr. Coult :* As an individual, Mr. McCarter ?

By Mr. McCarter : I am talking to Mr. Lyon.

Q Were you willing, or the company—you say you offered it to him at \$200 less ; you mean less than the bid ?

A Less than it cost me.

Q Well, it cost you \$1,700 ?

A No, not quite ; I think that it did not cost me quite \$1,700.

20 Q Were you, acting for the company, willing to give him credit for the \$900 ?

A I do not understand Mr. McCarter's question.

Q You received \$900 on a bond of \$1,000 ?

A The company received the bond.

Q It was sold for \$900 ?

A Yes, sir.

Q Well, that reduced the judgment so much ?

A No, sir.

Q Didn't it ?

30 A No, sir ; I do not consider it reduced the judgment.

Q Well, it is assumed for the sake of the argument, that it reduced the judgment ?

A Well, I don't know what you assume ; that paper did not say it bore on the judgment at all.

Q Let us presume it did, and that the amount that Lee paid reduced the judgment ; that was \$400 ?

A Not all of it ; Mr. Smith—(interrupted.)

Q Well, assuming it did ; that made it \$1,300, didn't it ?

A No, sir ; take Mr. Smith ; he said he had it stolen
40 after the judgment was gotten.

Q I am talking to you; you did not consider Mr. Bower paid anything on account of that judgment?

A No, sir.

Q You didn't treat the \$900 as a payment on the judgment?

A Not from Mr. Smith.

Q Or from anybody?

A Of course—(interrupted.)

Q One moment; you did not consider that a payment on the judgment? 10

A I could not under that writing, as attorney of the company.

Q Did the company consider it as a payment on the judgment?

A I presume so, they took it as such.

Q You, their agent, treating for the company, did not consider it a payment on the judgment?

A Not at that time; no, sir.

By Mr. Coult:

20

Q Now, Mr. Lyon, in order to get a clear understanding of it; I understood you to say that the company were willing to let Mr. Bower have the balance of the judgment, and the lot, before it had been conveyed to you, for just the amount of their claim?

A Yes, sir.

Q And so tendered it to him?

A So tendered it to him.

Q And then after you had purchased the property individually, you offered to let him have the property you had purchased for just what it cost you, and less? 30

A Yes, sir.

By Mr. McCarter:

Q But in that transaction, you would not consider he paid anything on the judgment?

A I do not understand Mr. McCarter's question.

Q It seems to me a very plain question; you say that after the sale took place, you went to Mr. Bower and you 40

offered to convey him this property, and to convey it to him for something less than you paid for it; am I correct?

A Yes, sir.

Q And he said he would not take, and the reason was that in offering to make that proposed bargain you would not treat with him on the basis of his having paid anything on the judgment; am I right about that?

A I offered to take—(interrupted.)

Q No, am I right?

10 *A* Let me ask a question.

By the Vice Chancellor :

Q Don't you understand the question?

A I do not.

By the Vice Chancellor, to Mr. McCarter : He does not understand your question.

Witness : Will the the Chancellor allow me to ask Mr. McCarter?

20 *By Mr. McCarter :* I don't care about asking Mr.—(stopped.)

By the Vice Chancellor : Put your question in another form.

By Mr. McCarter :

Q You had some conversation with Mr. Bower in respect to this property after the sale?

A Yes, sir.

30 *Q* So far so good; you understand that?

A Yes, sir.

Q Now, you made an offer which he did not accept, and I understand that offer to be this, that you were willing to convey to him the property at one or two hundred dollars less than you had paid for it; am I correct about that?

A Yes, sir.

Q So far so good; but the difficulty which arose between you and what caused the failure of the acceptance
40 on his part, was that he says you would not treat with

him—would not consider that he had paid \$900 on account of the judgment; am I right about that?

A You may be very right—(interrupted.)

Q Well, am I; it is a very simple thing to answer that question?

A The judgment was \$2,500; it was not fifteen or sixteen, and taking the nine off, as Mr. Bower proposed to do; he proposed to take it at \$1,500 and take the \$900 for which he was to have all the property, and I would be minus the \$900.

10

Q Your judgment was \$2,500?

A Yes, sir.

Q I suppose he said to you, or did he say to you, "Mr. Lyon, I will give you the amount of your judgment, but credit me with \$900?"

A He didn't say anything of the sort; that is all I ever asked him.

Q He says he did?

A Well, he was mistaken, the same as I might have been if I had answered your question.

20

Q You seem to have misunderstood each other?

A It was a mistake.

Q Did I understand you to say you were willing to consider the \$900 was a payment?

A Of course, by him.

Q All you wanted was the difference between the \$900 and the balance due on the judgment?

A That is all I wanted, all I ever asked him for; I offered to take \$200 less than that and give up the property.

30

Q \$200 less than what?

A \$1,700.

Q Well, you got \$1,700 by the property?

A The company got it, less the cost; yes, sir.

Q You got \$900 from Bower, that is \$2,600, and you got about \$300 on account of the stone?

A Very close to that.

Q Your judgment was \$2,536, and you paid \$100 costs, didn't you?

A That I cannot say, in the neighborhood of that.

40

Q Well, that would make twenty-six hundred and some odd dollars, so that you actually got more, according to your statement, on the judgment—you realized more on the judgment?

A I don't think I did; the judgment and costs were figured at the time.

10 Defendant's counsel also called—

ABRAHAM MANNERS, sworn; by Mr. Coult:

Q Mr. Manners, you were the attorney of the Hadden Blue Stone Company, were you not, in the recovery of this judgment?

A I was.

Q You knew about the levy being made?

A I did.

Q The levy was made on personal property?

A Yes, sir.

20 Q And afterwards, or at the same time, on the real estate, do you know?

A Well, I don't know exactly as to that; the execution was placed in the hands of the Sheriff with orders to execute at once; I suppose it was all done at once.

Q Do you recollect attending on the day the sale took place?

A Sale of what?

Q Sale of the personal property?

A Was to take place, you mean?

30 Q Yes?

A I was there then.

Q Did you see Mr. Bower between the time when that sale was to take place and the time when the real estate was to be sold?

A Oh, yes; I saw him once or twice.

Q Between the time; get my question, please?

A I understand you, between the time the personal property was to be sold and the real estate was really sold.

By Mr. McCarter :

Q You mean after the making of the agreement?

A The agreement was made on the day the personal property was to be sold, if I recollect distinctly.

Further direct-examination :

Q Do you know whether he knew of the time and the place of the sale?

A I think he did, for I was over in East Newark one time with Mr. Lyon, and we saw Mr. Bower and told him 10 the real estate was going to be sold.

Q Do you know whether the time of the sale was mentioned or not?

A I am not positive as to that, but my opinion is that it was, from the fact that I think it was already advertised, and we had the hand bills, or had had notice of it from the Sheriff; I think it was within four or five weeks of the sale, or six; something of that kind; my impression is we did know the day.

Q Did you see him subsequent to the sale of the real 20 estate?

A Yes, sir; I saw him subsequent to the sale.

Q What took place at that interview?

A I went over to Harrison with Mr. Lyon, and at his request, to see Mr. Bower in relation to these affairs; Mr. Lyon told me Mr. Bower had been to see him several times; we saw Mr. Bower, I think, at his boat house; he came out to the carriage and we began to talk about the matter; what exact words were used I cannot say now, all of them, it was so long ago, but Mr. Bower, I recol- 30 lect, asked Mr. Lyon what he was going to do about this; he said he wanted his money; Mr. Lyon said, "I have not got the money; all I have got is the property, and I am willing to deed you the property at any time; the company will deed you the property; we don't want the property, we want the money; by giving us the balance of the money or security." Mr. Bower said, "That is not what I want; I want my money; I don't want the property."

Q Yes?

40

A That is about the gist of the conversation ; I think Mr. Bower said to Mr. Lyon he had agreed to pay ; Mr. Lyon said he had not, but that is another matter ; they had some words between themselves ; I do not remember what it was.

Q Was not that before Mr. Lyon had taken a deed personally ?

A Before the deed was delivered : my recollection is, it was not delivered until some little time after the sale ;
10 that is my recollection now ; I have most forgotten.

Q Did Mr. Lyon offer, on behalf of the company or not, to transfer the judgment as well as the property ?

A I don't recollect as to that time.

Q You say " as to that time ;" did he at any time ?

(Question objected to as leading.)

The Vice Chancellor : Your course is a little leading ; the better way, as the witness is an intelligent person, would be to have him tell what occurred.

20

Q Very well ; what ?

A At one time—whether that was before or after the sale I cannot say—Mr. Bower came to my office ; I think he said he came at the suggestion of Mr. McCarter, to see—that was before this suit was brought—he said he came down to see what we wanted to do in relation to the matter of that judgment ; I told him we were willing to assign him the judgment, just as we had agreed to do ; he said, " I don't want that ; I want my money." He said,
30 " Mr. Lyon agreed to give me my money." I said, " That is a matter between you and Mr. Lyon ; Mr. Lyon never gave me any such order ; if he agreed to do it, no doubt he will do so."

By Mr. McCarter :

Q. That was after the sale ?

A I say I do not recollect about that, when he came to my office—oh, it must have been after the sale ; when he came there he said it was at your suggestion.

40

Further direct-examination :

Q You do not recollect whether Mr. Lyon made an offer of that kind in your presence or not ?

A I do not, in my presence ; the only offer I heard him make to Bower was, as I said before, was when he told him in Harrison they would deed the property for the balance of the judgment, and would even throw off \$200, and if he had not the money, if he would secure him, Mr. Bower said he didn't want the property, but wanted the money.

10

By Mr. Emery :

Q He wanted some off ?

A Yes, sir.

Q Neither wanted to buy the other out ?

A No, sir ; neither wanted to chuck the other out.

Further direct-examination :

Q Do you know what was due at that time on the judgment ?

20

A My impression is it was figured up to be in the neighborhood of \$1,700.

Q Have you any data to know what the items were ?

A The amount of the judgment there is no dispute about ; I don't know whether you have that or not.

Mr. McCarter : No ; there is no dispute about that ; you have it there.

Witness : Judgment recovered November

24th, 1873, for - - - - - \$2,501 59

Costs, - - - - - 37 76

30

Making, \$2,539 35

Upon the day the personal property was advertised, after this conclusion was arrived at between Mr. Bower and Mr. Lyon as treasurer of the Hadden Blue Stone Company, the deputy Sheriff, I think Cronin, said he wanted his execution fees and advertisement fees ; not exactly execution fees, but fees for keeping the horses, he had horses kept ; I told Mr. Lyon I guessed he would have to pay them ; Mr. Lyon said to me " You give him 40

your check for the amount, and when I get to the office I will give you my check back, as I have no checks of the Hadden Blue Stone Company here; the checks are kept in a book."

By Mr. McCarter :

Q That was for keeping the horses ?

A For keeping the horses, and advertising and levy ; all the costs that were made up to that time.

10 Q What is the amount ?

A \$89.03, dated December 17th, 1873, made to John Reinhart ; I think that was the day the personal property was advertised.

Q That was for advertising the personal property ?

A Yes, and keeping the horses and all then ; I gave on my memorandum book on the 29th of June, my check for Sheriff's execution fees, advertising real estate, &c., \$108.75.

Q That was the amount of the costs on that judgment ?

20 A Yes, sir ; that is exclusive of costs of recovering judgment, you understand.

Further direct :

Q Well ?

A These two together made \$192.75.

Cross-examination, by Mr. McCarter :

Q Mr. Manners, you now say that after the execution of this agreement, and before the sale of the property,
30 you saw Mr. Bower at East Newark in company with Mr. Lyon, and had a conversation about the sale ; do I understand it ?

A Yes, sir.

Q Where did you see him ?

A My impression is, it was there on Harrison avenue ; that is, before the sale ; the conversation we had after the sale—(interrupted.)

Q No ; I am only talking to you about what you said then ?

40 A Yes, sir ; that was at the boat house.

Q You were sworn as a witness in this case before, were you not?

A I believe I was.

Q Did you not testify that the next time you saw Mr. Bower after the execution of this agreement, was in Harrison, when you went in company with Mr. Lyon, after the sale of real estate?

A I don't believe I did.

Q Well, did you?

A I don't know whether I did or did not; I don't 10
pretend to say now; I know I saw him at my office; he said he was sent there by you.

Q Did you not testify on a trial at the Circuit Court, that the only time you saw Mr. Bower, after the execution of this agreement, was in company with Mr. Lyon after the sale of this property, in the town of Harrison?

A I may have; if I did I don't recollect it; I say, I don't know.

Q This question was put to you: "Did you subsequently see Mr. Bower after that day?" and you answered, "Yes, sir; with Mr. Lyon, over in East Newark." 20
"For what purpose did you go there?" answered, "I think Mr. Lyon asked me to go with him and see whether Mr. Bower wanted to take this property; he said he wanted to see Mr. Smith." That was after the sale?

A Yes, sir.

Q Well, in that testimony that you gave at the Circuit Court, did you state there that you saw Mr. Bower prior to the sale?

A I say I don't recollect whether I did or not; I 30
don't recollect anything about it.

Q Don't you recollect you didn't?

A No, I don't recollect that; I remember going over once, not to see Mr. Bower, but to see Mr. Smith, only to get the dower signed off after we got the property; he said Mr. Smith was a little overcome, and would make no arrangement, and that the property foreclosed was held by the Mullocks, so I told him to wait.

Q This \$89 costs was advertisement, Sheriff's fees and 40

for keeping the horse s; that was on account of the levy made on the personal property ?

A Yes, sir.

Q That property never was sold by Mr. Lyon ?

A No, sir ; never sold.

Q He never realized anything on that ?

A No, sir.

Q And the other costs was all the cost made by the sale of the real estate, and paid by Mr. Lyon ?

10 *A* Yes, sir ; so far as I know, that was all ever paid.

Vice Chancellor : Anything further ?

Mr. Coult : No, sir ; I confine myself simply to one question.

Mr. McCarter : I think the testimony of Mr. James B. Smith, that I offered this morning, is important now in this aspect of the case, as to whether Mr. Lyon should be held personally for the amount of that claim ; I offered to prove by Mr. Smith, and I renew that offer now, that
20 at the time this agreement was made, there was a conversation had—about that time—between Mr. James B. Smith and Mr. Lyon ; he was notified by Mr. Smith of the condition as to his solvency, and that Mr. Lyon knew that when he sold that property that he exhausted all the property on which those judgments could hold. I make that offer to prove that by Mr. Smith.

Vice Chancellor : I don't yet see the importance of that evidence ; I don't see how proof of that can make
30 Mr. Lyon liable.

Mr. McCarter : Suppose the Court should come to the conclusion in this case, from the facts in this case, that Mr. Bower's story is true, because it is a question of fact that he didn't know when this sale was to take place, and that Mr. Lyon brought about this sale unbeknown to him and sold the property, and instead of taking title in the name of the company took it in his own name ; now we shall insist that we have a right to follow that property, because it is the proceeds of this judgment of the com-
40 pany, and Mr. Lyon so dealt with this property as to put

it beyond the reach of Mr. Bower; why it becomes material for the Court to know what was the conduct of Mr. Lyon in dealing with this property in respect to the sale; if he so conducted and managed the sale as to have it take place secretly and unbeknown to Mr. Bower, so that he could not appear there and protect his interests, is not his conduct fraudulent?

Vice Chancellor : Is there anything in the evidence in this case which would warrant any such finding?

Mr. McCarter : I think there is. 10

Vice Chancellor : Well, I will hear you further on that point before the case is concluded; I cannot see the importance of the evidence you offer.

Mr. Coult : Will your Honor allow me to ask one single question which I omitted to ask Mr. Manners, touching on that point.

Vice Chancellor : I have just refused to let the other side put in evidence on that point; I cannot therefore allow you to do so.

Mr. McCarter : Well, we want it to appear on the record that we offered to show by Mr. Smith that at the time this agreement was executed, Mr. Smith communicated to Mr. Lyon his condition as to solvency, and stated to him substantially that was all the property he had, that he had no other property, that this property and the personal property was all he had. 20

Vice Chancellor : The property which had been purchased under execution was all the property he had?

Mr. McCarter : Yes, sir; and Mr. Lyon knew that fact. 30

Vice Chancellor : I overrule the offer because the evidence seems to be irrelevant to any issue in the record; any further testimony, Mr. McCarter?

Mr. McCarter : Yes, I would like to offer myself as a witness.

LUDLOW McCARTER, sworn:

I was attorney for Mr. Bower in the suit in the Circuit Court against Mr. Lyon, and I recollect distinctly that Mr. Manners was a witness on the trial of that case, and 40

I recollect his testimony very well ; and my memory has been refreshed by looking at the notes of the testimony ; I recollect distinctly that he did not testify on the former trial that he had any interview with Mr. Bower, in regard to this property, before the sale of it, until after the sale. I recollect distinctly the question was put to him as to when he next saw Mr. Bower after the execution of this agreement, and he then and there testified that the next interview that he had with Mr. Bower was when he
 10 went over to the town of Harrison in company with Mr. Lyon in the wagon, and that he notified him—or rather Mr. Lyon notified him about the sale, so I think that Mr. Manners has evidently confused the two conversations.

Mr. Coult—I think you had better not testify as to your idea of that.

Vice Chancellor—What is your objection ?

Mr. Coult—He testifies now as to what he thinks—that Mr. Manners was confused.

20 *Vice Chancellor*—Yes, that is not right.

Cross-examination, by Joseph Coult, Esq. :

Q Mr. McCarter, have you any recollection different from that contained in the notes of the reporter, which you had in your hand at the time of giving your testimony ?

A My recollection is precisely as it is there, generally.

30 Q Then your recollection is that the testimony of Mr. Manners was as reported by the reporter in his notes ?

A My recollection is you put the question to him, when he had next seen Mr. Bower after the execution of the agreement, or substantially like that, and he answered that the next time was when he met him in the town of Harrison with Mr. Lyon, after the sale.

Q Did you have any recollection of the question different from what was put down in the reporter's notes ?

40 A I say my recollection of the question is that you asked him this question, when he next, or subsequently

saw Mr. Bower, and that the word subsequently referred to the time when the agreement was made.

Q Is your recollection, then, that the question asked Mr. Manners by myself, is different from what the reporter has it down in his notes?

A Not substantially.

Q The question is, "Did you subsequently see Mr. Bower after that day?" and his answer is, "Yes, with Mr. Lyon, over in East Newark." Did you have any recollection of the question different from that, or was his answer different from that? 10

A My recollection is, that you inquired of Mr. Manners when he subsequently saw Mr. Bower, and I assumed of course that he would say—(interrupted.)

Q I don't ask for your assumption, I merely ask for your recollection of the form of the question?

A I cannot recollect distinctly the form of the question, but I recollect distinctly you put that question when he subsequently saw Mr. Bower; I understood you referred to the time the agreement was made. 20

Q I ask you if you recollect the form of the question was different from the form the reporter has it in; the form in which it is put here is, "Did you subsequently see Mr. Bower after that time?" He said, "Yes, with Mr. Lyon, over in East Newark."

A I recollect that was the substance of the question you put.

Q Well, any different from that?

A That was the substance of it.

Q Have you any recollection it was at all different from that? 30

A My recollection is that was the substance of it.

Defendant's counsel re-called—

DANIEL M. LYON; examined by Mr. Coult:

Q Mr. Lyon, your connection with the company ceased, when, did you say?

A Fifth day of March, 1875. 40

Q What was the financial condition of the company at the time you were connected with it?

A I don't think, in fact I know that we did not owe a dollar, outside of the directors, of debt at the time they sold out.

Q For how much did they sell out?

A I think it was for thirteen or fifteen thousand dollars.

10 *By Mr. Emery :*

Q Outside of the directors, at the time you sold it?

A At the time the old directors sold out to Mr. John A. Miller.

Further direct :

Q Were there any claims against them at all outstanding unpaid?

A Not that I know of at this time.

20 *By Mr. McCarter :*

Q What did you say you sold out to Mr. Miller for?

A For thirteen or fifteen thousand dollars; there might have been some odd dollars.

Further direct :

Q Did any of the company's paper go to protest?

A Not of our company.

30 Q If Mr. Bower had any claim against your company up to the time of your ceasing connection with it, would it have been good?

A I should say so, all others were.

Q And collectible?

A Yes, sir.

Q His suggestion is that you told Mr. Bower the company was good for nothing, and he could not get anything out of it?

A I may have told him so, but this matter didn't come up at all.

40 Q Since then, as you understand, it became insolvent?

A I understand since then it has not been able to pay its debts.

Q Mr. John A. Miller was one of the principal owners?

A Yes, and is now, so far as we know.

Q And he personally failed, did he not?

A I believe that he made an assignment.

Q That carried the company down?

A I don't know.

Q You understood, during the time you were with it, it paid everything? 10

A Yes, sir; and could get any amount it wanted, go right to the bank with its own note, to the Essex County Bank; why we could get five or ten thousand dollars at any time.

Q You said it owed something to stockholders, was not that for assessment stock?

A Yes, sir; considered as assessment; whenever there was \$5,000 to raise there was an assessment.

Q And it was put in the company?

A Yes, sir; that is what I mean by saying the company owed me so much; that is over and above original stock. 20

Q But it was put in as capital stock?

A Yes, sir.

Cross-examination:

Q What do you mean by saying the company sold out for thirteen or fifteen thousand dollars?

A They had a large quarry in Pennsylvania, of about one hundred acres of ground; they had a good lease also 30 in Pennsylvania of other quarries; they had a stock of stone on hand to the amount of \$4,100 in the yard here, and they sold that to Mr. Miller, if I remember right, for, I think it was, in the neighborhood of thirteen thousand dollars.

Q The company sold all the property to him?

A Yes, sir.

Q And the sale of that property gave Mr. Miller control of the stock of the company?

A It gave him all. 40

- Q It gave him all the stock and all that property?
 A Yes, sir.
- Q What was the capital stock?
 A \$50,000.
- Q All you directors sold out then, and transferred the whole stock of \$50,000?
 A Destroyed the stock entirely.
- Q You did not destroy it, you sold it to him?
 A We destroyed it.
- 10 Q You destroyed it?
 A Yes, sir.
- Q Then you took this \$14,000 and divided it among the directors as they owned stock?
 A A portion of it, yes, sir.
- Q What did you do with the rest?
 A The whole was divided after paying debts.
- Q After taking out the debts, you directors took all the rest on account of the stock?
 A Yes, sir.
- 20 Q Did this leave the company possessed of any property at all?
 A They formed a new company.
- Q Did it leave this company possessed of any property at all after you directors had taken the money paid in and divided it among you for the stock?
 A I should think so, there was the value of the real estate and stone, which went into the hands of the new company.
- Q Then was not the stock considered anything?
 30 A That was what the stock covered.
- Q That, and anything else?
 A Nothing else.
- Q Was that what represented the whole property of the company; how much had been paid in on the capital stock?
 A There had been \$50,000 paid in originally.
- Q In cash?
 A Yes, sir.
- Q The whole stock paid in?
 40 A Yes, sir.

Q When was the company started ?

A I think the company was running about three years.

Q When was the company started, about ?

A I think in the neighborhood of '70 or '71.

Q How much money in cash did you put in ?

A Two-fifths of the whole.

Q Did you put \$20,000 into the treasury of that company ?

A Yes, sir.

Q In what form ?

10

A In cash.

Q And that was for the payment of your stock, at once ?

A I didn't put it all at once ; of course not ; it was probably a year and a half ; paid in installments, just as it was wanted.

Q How much was paid first ?

A \$30,000 ; that was the first installment.

Q What property was bought ?

A There was the farm, up in what they call Le— 20

Penn.

Q How much was paid for that ?

A \$10,000.

Q That left \$20,000 ?

A Yes, sir.

Q What else was bought ?

A Well, there was capital used for carrying on business.

Q What other property did you have ?

A We had no other property in title. 30

Q What other property did you have in lease ?

A A lease at Car's Rock ; we had a lease there and a lease at Miahouse.

Q What did you have to pay for those ?

A They were all on a royalty on the amount of stone taken out.

Q So that none of the money went to pay for the lease ?

A It went to pay for the labor, getting out the stone, royalty, &c. ; it took considerable to carry that business. 40

Q Was the whole \$20,000 used for your working capital?

A Yes, sir.

Q When was there any other payment?

A I could not give you the date; it was all paid in when wanted.

Q Did you draw out?

A No, sir.

Q Just hear my question; hear the whole of it; did
10 you draw out anything from the company for the amount which had been contributed as capital?

A No, sir.

Q Then \$50,000 was put in as cash; was not an assessment ever made on the stock?

A Yes, sir.

Q How much?

A Nearly about an equal amount.

Q Making \$100,000?

A Very near.

20 *Q* When was that put in?

A At different times; as they wanted five or ten thousand dollars, while I was treasurer.

Q How much did you put in before '74?

A I think the whole was put in before '74.

Q Nearly \$100,000?

A Yes, sir.

Q Now, sir, did any of the directors, beyond the amount of this additional assessment—or, one question: what was given to show for this additional assessment
30 paid in; did you have anything from the company; did you take their note?

A No, sir; took stock.

Q Took additional stock; did you increase the stock?

A Capital granted the privilege of half a million.

Q Did you increase it?

A Increased the certificates; yes, sir.

Q You increased the capital stock up to what amount?

A I think the capital stock had got up to \$100,000.

Q So as they paid any assessment they took new stock?

40 *A* Yes, sir.

Q You say nothing was ever drawn out by directors or stockholders from the capital of the company for what was put in ?

A Not a dollar until we sold out.

Q In 1875 all the property of the company was sold out for \$13,000 ?

A I think about \$13,000.

Q Then within that time the amount of \$100,000 had been put in and had descended down to \$13,000 ?

A Yes, sir. 10

Q Was the company insolvent ?

A They did not owe anything but themselves.

Q They owed the directors this amount they put in ?

A Yes, sir.

Q Suppose creditors attempted to claim anything from the company ?

A They were being paid.

Q Were not the directors in a position where they could have withdrawn what they put in themselves ?

A No, sir ; they could have taken out stock, but they 20 could not have withdrawn it.

Q Was the company flourishing ?

A I should think it was flourishing the wrong way.

Q Answer the question properly ; if it was not flourishing, say so ?

A We had a superintendent who wronged the company very much.

Q Your superintendent did what ?

A The superintendent, Mr. Ray, that had full charge of the company's management, as well as paying the men and such like—we had a great many men working, and he sold a great deal of stone ; he sold as high as \$60,000 in a month ; you may think it took some of the capital, and we lost a great deal paid out. 30

Q The company was not in a flourishing condition ; they were going down ?

A Not in a flourishing condition.

Q Did it continue to grow worse until the transfer was made ?

A It had not for the last year ; we discharged the 40

superintendent, and the company made a little over expenses—the year previous to selling out.

Q How much did it make during the last year?

A A trifle.

Q What do you mean by a trifle, \$20,000?

A No, sir.

Q \$15,000?

A No, sir; or \$1,500 either.

Q It hadn't made much?

10 *A* We considered if it made a dollar it would have made.

Q Is that what you mean?

A Yes, sir.

Q It made a dollar?

A I cannot tell you the number of dollars.

Q Do you mean there was nothing substantially made?

A There was probably \$1,000 or \$1,500 made that year.

Q A \$1,000 better in '75 than in '74?

20 *A* Yes, sir.

Q When did the loss mainly occur; in what year?

A In '71 and '72.

Q How was it about 1873?

A Well, we had begun to realize our losses, so that we felt them severely.

Q You mean the losses of '71 and '72?

A Yes, sir.

Q What do you say caused this loss?

A Directors failed to pay; we had some directors
30 owed us thirty and forty thousand dollars.

Q Was that during the time of the "panic," or at all due to that?

A Oh, no.

Q Previous to that, was it?

A Previous to that date—before the "panic" was coming on.

Q That is what I mean; getting on to the "panic;" many directors failed to meet their obligations, and the company began to feel losses?

40 *A* Yes, sir.

- Q* It was then the company began to flourish ?
- A* Then they were flourishing.
- Q* Mr. Lyon, did the company have an account with you for your personal advances ?
- A* I never had any salary whatever.
- Q* I asked you whether there was any account for your advances of money to the company ?
- A* No more than others ; I only advanced in proportion with others.
- Q* I ask you whether an account was kept by the 10 company for the money you advanced for the company ?
- A* I told you I advanced it, and took stock for it.
- Q* Was that entered on the books to your credit ?
- A* I presume it was, sir.
- Q* And no other account kept than that ?
- A* No, sir.
- Q* Did you have notes of the company ?
- A* No, sir ; I took stock, and I have had notes of the company discounted for the accommodation of the company. 20
- Q* And you endorsed them for the company ?
- A* Yes, sir.
- Q* Were you not endorsing at that time ?
- A* Yes, sir ; if they required it.
- Q* How much of the company's paper were you on at this time as endorser ?
- A* That I could not say ; I don't suppose I was on any at all at that time.
- Q* Did you ever offer to take up any of the company's paper on which you were endorser and hold it against 30 them ?
- A* No, sir.
- Q* Have you had a settlement with the company ?
- A* I have.
- Q* With whom did you have it ?
- A* With the rest of the stockholders.
- Q* When ?
- A* About the 8th of March, 1875.
- Q* Will you give the names ?
- A* Isaac Van Fleet, Frederick Van Fleet. 40

Q Give their residence if you recollect them?

A New York; DeWitt C. Ward, Thomas F. Ray.

Q Were they officers, any of them?

A They were directors; Mr. Fred. Van Fleet was president, DeWitt C. Ward was secretary, Thomas F. Ray was superintendent.

Q How much of the \$13,000 did you get, two-fifths?

A Two-fifths?

Q Well, I don't want you to refresh your memory, I
10 want you to tell us?

A That is what I got.

Q You got two-fifths?

A Yes, sir.

Q When you took this amount which Mr. Miller had paid, it left the company without property, did it not; that took it all?

A It left these directors without property, but he had a new company formed.

Q Did this old company have any property after
20 that?

A No, sir.

Q You sold everything to Mr. Miller, and the old company had no property?

A No, sir.

Q Had it nothing after that to satisfy obligations?

A It had not.

Q Suppose this attempt on the part of Bower is a success, the company has now got no property to satisfy that?

30 *A* No, sir.

Q Did the old company, after you took the \$13,000, have any property whatever?

A Not that company, of course.

Q And you directors have got all there was?

A Not as a company; I have not.

Q I want to call your attention here—didn't you say in the Circuit Court, in answer to the question, "Did you ever have a settlement?" "We have never had a settle-
40 ment"?

A Well, there is different ways of terming that settlement ; yes, sir, it may be.

Q What did you mean in the other trial when you said you never had a settlement?

A I might say we have never had a settlement, we have never been paid by the company, that is what I mean to say.

Q That is what you mean to say, then?

A Yes, sir.

Q What do you mean to say *now*?

10

A I mean to say that now.

Q You mean to say you did have a settlement?

A We had a settlement; the assets of the company were divided, what we had; there are a great number of claims now that might turn something to the old company, probably three or four thousand dollars; there were some matters in New York—claims which belong to the old company, and we could not have the settlement because not one man was willing to take them, because not one man knew whether there was anything to be got from them. 20

Q When you speak of your settlement of your accounts of the company you refer to the settlement in the account of the payment of the balance fund due on one side or the other—that is what you mean by a settlement?

A Yes, sir.

Q When you say you have not had a settlement what do you mean?

A I mean we never had a full settlement, and have not yet. 30

Q Then I ask if you ever had a settlement of your accounts with the company?

A Not since the 8th; it is in the books.

Q Did you have one for yourself?

A No, sir.

Q Well, now, Mr. Lyon, you say here are some old claims which may come to the old company; will they come to the new one?

A No, sir.

Q There were matters which none of the directors 40

would take, because they did not know whether they were good or not?

A Yes, sir.

Q Where are the evidences of these claims?

A Well, Hill, the lawyer, has some.

Q They are in the books of the company?

A Yes, sir.

Q Then there are books of the company at Mr. Hill's, are there?

10 *A* No, sir, he simply got notes.

Q Who gave them those notes?

A We gave them to him long before we sold out; some in '72-3 and 4.

Q Are you treasurer for the old company?

A No, sir, I am not; I was treasurer, but I ain't now.

Q Do you recollect stating on the other trial, "I will remain treasurer for the balance of the funds left on hand"?

A I do still remain.

20 *Q* Do you still now remain treasurer for the balance of the fund left on hand for the old company?

A I presume if they collected any money they would pay me in preference to any other man.

Q You do consider yourself treasurer for the old company, then?

A As far as that is concerned I do, yes, sir.

Re-direct examination:

30 *Q* Mr. Lyon, you speak of a new company and an old company—will you state to the Court what you mean by that?

A We didn't sell any of our bills receivable to Mr. Miller at all.

Q Was not the stock of the new company transferred to the parties who went into the company—the Hadden Blue Stone Co.—was it not transferred?

A The whole thing was transferred, and in all cases the old certificates were destroyed.

Q And new certificates issued?

40 *A* Yes, sir.

Q And the new stockholders succeeded to the property of the old stockholders, paying to the old stockholders whatever they agreed upon; I don't remember what it is; that is, they agreed to do so, and took property which was valued between \$13,000 and \$15,000?

A I think it was \$13,000, in that neighborhood.

Q There were no outstanding obligations, so far as you knew?

A I am not aware of any; the company did not consider this an obligation. 10

Re-cross-examination :

Q They did not consider this any obligation?

A No, sir; because that transfer was of personal property; at the time it was the understanding that Mr. Bower was to get his money out of the personal property.

Q That was the reason of it?

A We never knew—(interrupted.)

Q You didn't intend then to hold to this agreement you signed? 20

A We supposed he would get his money.

Q I ask whether you intended to hold to the agreement you signed?

Mr. Coult : One minute.

Plaintiff's counsel : I thought you were through.

Mr. Coult : Well, go on.

Plaintiff's counsel : I have nothing further.

Q I understand they divided that money in proportion to the amount of stock—\$15,000? 30

A I don't think it was \$15,000; I think it was \$13,000.

Q Whatever it was, it was divided according to your interest in the stock as stockholders?

A Yes, sir.

Q Were you a director yourself?

A I was.

Q Who else were directors?

A All the rest were directors. 40

Q All officers?

A All officers.

Adjourned.

Defendant's counsel re-called—

DANIEL M. LYON, sworn:

By Mr. Coult:

10 Only one question I want to ask this witness. I don't know but what it is outside of the scope of this re-examination of Mr. Lyon, and therefore I want to mention it to the Court now. I understand that the examination is restricted pretty much by the Court to the question of *bona fides* on his part, and the testimony, when the question came up, as to whether the company was insolvent or not; but that probably might raise a new question in the case, and I would like to show what I don't think appears at present in the testimony, according to my
20 recollection—having made no notes I have to rely upon my memory—I want to show by Mr. Lyon what the value of the personal property levied on was.

(Overruled.)

Counsel: Well, that's all.

Cross-examined, by Mr. Emery:

Q When did you pay the \$1,700 in cash to the company for this property?

30 A I did not say that I paid \$1,700 in cash to the company; I said I bought it for something less.

Q Well, whatever did you pay them?

A I think it was before the suit was commenced that the deed was made out.

Q Did you pay it when the deed was made out, or was it on the settlement?

A No, sir; it was when the deed was made out.

Q How did you pay it?

A My check on the bank, if I remember right.

40 Q On what bank?

A My impression is it was on the Essex County Bank; I am not apt to give checks anywhere else.

Q To whose order was it?

A Well, they were to different ones.

Q No; *this* check I speak of?

A Well, they were to different ones; there was a division.

Q 'I here was a division?

A Yes, sir.

Q Well, how many checks did you make for it? 10

A Well, I can't tell you; there was checks given to parties that the company owed, and it was paid to different parties; I can't tell you now who it was paid to.

Q The checks were given to parties the company owed?

A Yes, sir.

Q Were those checks to parties that the company owed, for the amount of debts that the company owed them?

A Yes, sir. 20

Q Did you charge the company with the amount of those checks?

A I did, sir.

Q Which you gave, in your account with the company?

A I did, sir.

Q When were those amounts paid?

A I can't tell you about the time, but it was in the neighborhood of the time when the deed was made out.

Q Before and after? 30

A No, sir; I think none before.

Q Were they all after?

A Yes, sir.

Q Now, sir, will you give us the name of any persons to whom you paid a check?

A I cannot here, except one.

Q Well, give him?

A That was T. D. West.

Q How much did you pay him?

A That I can't remember. 40

Q Well, about the amount—what was the debt for?

A In the neighborhood of \$1,000.

Q The neighborhood of \$1,000; well, what was it for?

A It was for stone.

By Mr. Coult: I would suggest to the Court that this is not in the line of the examination which the Court agreed to admit.

By the Vice Chancellor: Would not evidence of this
10 character bear upon the question of insolvency of the company?

By Mr. Coult: I did not see its bearing, but if there is any, of course it is competent.

By the Vice Chancellor: I think it does bear on the question. Proceed, Mr. Emery.

Q Now, how long was this after the deed was delivered?

A I can't say; it was not a great while; I could not
20 say as to the date, sir.

Q Have you that check?

A I don't think I have.

Q You don't think you have?

A No, sir.

Q Was it not your check?

A No, sir.

Q Whose check was it?

A It was the company's check; the money was deposited to the credit of the company.

Q Was just the amount of his bill deposited to the
30 credit of the company?

A No, sir.

Q What money was deposited to the credit of the company?

A The amount I agreed to pay the company for the property.

Q Then you did pay them by check, did you not?

A That I can't swear to.

Q How did you give them credit for this amount?

A Well, there is various ways of doing that.
40

Q Well, tell us some of them?

A I may have taken bills and deposited them to the credit of the Hadden Blue Stone Company.

Q Which bills?

A Why, bills—greenbacks, you might call them, which I do deposit, more or less, every day; in place of depositing them to my credit, I may have deposited bills to the company's credit; I can't say; I think probably I did pay it in that way, because I deposit money every day, probably, except Sunday and holidays. 10.

Q Well, tell it just as you want to, now?

A Well, I cannot tell you whether I gave a check or not.

Q What you mean by saying the money was paid by division is, that the \$1,600 went in checks to different parties?

A Well, it was checks to different parties; divided up to the different ones I wanted to pay; it was not a division to the stockholders.

Q You divided it round to the different creditors; 20
now you have also said that you did not divide it at all, but paid it into the credit of the company at the bank—the whole amount?

A Well—(a pause.)

Q Which was it?

A It was just as I have stated.

Q Yes, but your statements are inconsistent?

A If they are, I am not conversant with business.

Q What?

A I say, then, I am not conversant with business; if 30
Mr. Emery has \$2,000 paid him, and has half a dozen bills to pay—(interrupted.)

Q If I paid the Trust Company \$1,000, and gave them a check for \$1,000, that is a payment to them, isn't it?

A Certainly.

Q And if the Trust Company give checks to their creditors, that is not a payment by me, is it?

A It would be if you were the treasurer of the Trust Company. 40

Q It would not be a payment by me individually ?

A It is a payment by you, if you deposit it to the credit of the Trust Company.

Q Yes ; but are not the after-payments payments by the Trust Company ?

A I guess it is.

By Mr. Coult : It is simply a misunderstanding between counsel and the witness as to the term, that is all.

10 Q Can you tell us when you deposited this \$1,600 to the credit of this company ?

A I could not now ; no, sir.

Q Have you anything that will show it ?

A I have not.

Q Would not the bank book of the company show it ?

A It might, if I had it.

Q Would not your own account book show it ?

A My own ? no, sir.

Q Would not show how it was ?

20 A No, sir.

Q What was there then by which you retained any evidence, as against the company, of this payment ?

A I did not, after the dissolution of the company.

Q No ; I don't mean that ; the \$1,600 paid was your money ; what evidence had you to show you had paid it ?

A Well, I had evidence at the time.

Q What was it ?

A Why the evidence of my standing credit on their account, as having paid so much for the property.

30 Q Where was that account ?

A On the books of the company.

Q Who made that entry ?

A The secretary.

Q Of the company ?

A Yes, sir.

Q Do you often deposit as large an amount as \$1,600 ?

A I should think that would be very small.

Q Oh, that was very small ?

A Yes, sir.

Q I don't mean in checks, but \$1,600 in bills ?

A Yes, sir ; very often.

Counsel : That's all.

Re-direct :

Q I understand you to say then, that soon after, or about the time you got the deed, you did deposit to the credit of the company, either in bills or by check, the amount which you agreed to pay them for the property

A Yes, sir. 10

Q And that you afterwards paid it out ?

A And afterwards I paid it out, by giving checks of the company to different parties.

Q As treasurer of the company ?

A Yes, sir ; I understood that Mr. Emery wanted to know how I made the division ; he understood that I divided it amongst the directors, I presume.

By Mr. Emery : No, I didn't ; I did not think anything of the kind. 20

Q Counsel asked you whether you ever deposited as large amounts as \$1,600 ; you are carrying on a large business of your own ?

A Moderately large.

Q And are receiving and depositing constantly large amounts of money ?

A Yes, sir.

Q In bills and checks ?

A Yes, sir. 30

Counsel : That's all.

Defendant rests.

Complainant's counsel re-called—

FREEMAN BOWER, sworn ; by Ludlow McCarter, Esq. :

Q You testified, Mr. Bower, to a conversation you had with Mr. Lyon, when he said the company had gone up ; 40

I want to fix the date when that conversation occurred, in reference to the—(interrupted.)

(Objected to.)

(The Vice Chancellor directed the question to be put, and instructed the witness not to reply until the Vice Chancellor had ruled upon it.)

Q Mr. Bower, you testified that you had a conversation with Mr. Lyon after the sale of this property, in which some proposition was made about exchanging property, or buying it by you, and he told you the company had gone up; what did he say in respect to his having taken, or the company having taken, the deed at that time?

(Objected to as to form.)

By the Vice Chancellor :

Q Mr. Bower, did Mr. Lyon say anything to you about the condition of this company; about the pecuniary condition of the Hadden Blue Stone Company?

A I called to see him—(interrupted.)

Q No; did he say anything to you about that?

A Yes, sir.

Q Now when?

A I don't know the date, sir; I think it was the second or third time I see him.

Q Well, about how long after the sale, or about how long after the visit of Mr. Lyon and Mr. Manners to you?

A Perhaps it might have been six weeks or two months; I could not say.

Q Now, what was said on that occasion?

A Well, I called on him, and I met him up on Broad street, this side of Reynolds' banking office, and I asked him there again about the money, and he said, "We will assign you the balance of our judgment, and you can get it out of James B. Smith." I said, James B. Smith ain't got nothing, and I said, I can't get it out of him; he said, "the company ain't got nothing either, and you can't get it out of me." "Well," I said, "I will have to see where I can get it."

Further direct :

Q What was said by Mr. Lyon to you, if anything, about your taking a deed at that time?

A He did not say anything about the property at that time, much, except he said that they did not want it; that they wanted money.

Q Well, about his taking the deed?

A I don't know that there was much of anything said then; all the talk about the deed was there in his office.

Q What did he say there? 10

(Objected to.)

Q One more question I want to put to you, which is, whether Mr. Lyon said anything to you as to who had the title of the property then—at this conversation; I want to know whether you knew, from anything Lyon said, who held the title of the property?

A No, sir; I don't know that he said anything about the deed at that time; I don't remember it if he did.

Q Well, I will put this question to you; at any interview prior or subsequent to this—and by the word “subsequent” I mean “after”—you understand that? 20

A Yes, sir.

Q Well, did he say anything about who had the title to that property?

A I think he told me he had no deed yet, and the deed had not been made out, and that he would make it over to me to save the expense.

Q He had no deed yet?

A He said the deed had not been made out yet; that it had not been made out to the company yet, and he would make it over to me and save the expenses. 30

Q And that was afterwards?

A Yes, sir; that was the last time I asked him for money.

Counsel: That's all.

Cross-examined, by Mr. Coult :

Q Now, Mr. Bower, you say you had a conversation with Mr. Lyon in Broad street?

A Yes, sir. 40

Q After he and Mr. Manners had seen you?

A Yes, sir.

Q How long after?

A Well, I guess the first time I met him was, maybe, two or three weeks after that; I could not say, but I waited some time.

Q The first time you saw him was two or three weeks after Mr. Manners called on you at East Newark with him?

10 A Yes, sir.

Q Then the second time you saw him, was how long after?

A May be a month, or a little more; I don't know exactly.

Q Where did you see him then?

A Up near Reynolds' banking house.

Q Then, this time that you spoke of, and when he said the company could not pay, was on the third?

A On the second time.

20 Q Second time?

A The second time, I think.

Q Well, you say you think so; was it, or not?

A I am pretty sure; I had went to see him a number of times; I went down to his office a couple of times, and he was not in.

Q How long was this conversation before you brought your suit; I mean the conversation in which you say he said that he would not pay you, and you could not get it out of him?

30 A Well, I could not exactly say that; I suppose it was a couple of months; I don't know; I spoke to Mr. McCarter about it shortly afterwards.

Q Then you went at once to your counsel?

A No, sir; not quite so fast as that.

Q Well, shortly afterwards?

A Well, I went to see him to get him to try and get me my money; I did not want to go into the law business, because I had no money to spare.

40 Q I asked you how shortly after that you went to your counsel and had suit brought?

A I could not say that; I could not tell; may be a couple of months.

Q Then it was shortly before you brought your suit, as you recollect?

A I suppose it was somewhere about there.

Q Was it or not about that time?

A It was somewhere about there; I don't know; a couple of months, we will say, but I don't know.

Counsel: Well, that's all.

10

Re-direct:

Q You left a paper at my office to have the suit brought?

A Yes, sir.

Q Well, you don't know when the suit was brought?

A I don't know anything about it; I asked you to look at the paper; I said, here is a paper I got from Mr. Lyon, that I thought I could get my money out of, and he refused to give it to me.

Counsel: Well, that's all.

20

Re-cross:

Q Do you know how soon the suit was brought after that?

A No, sir; I don't know anything about that.

LUDLOW McCARTER, complainant's counsel, sworn; direct examination by Mr. Emery:

30

Q You were the attorney in the suit for Mr. Bower?

A Yes, sir.

Q In the what Court was it?

A In the Circuit Court; no, in the Supreme Court; tried at Circuit; Mr. Bower is evidently mistaken as to the time elapsing after he had this conversation, and the time when this suit was brought, because this paper was brought into my office, to my clear recollection, and was in there some six or eight months before I brought suit, because I was trying to get Mr. Manners to settle the

40

matter, and I was negotiating with him, and had several conversations with him in respect to it; the writ in the case was not returnable until August 15th, 1875.

Cross examined, by Mr. Coult :

Q Do you say that the matter was in your hands six or eight months before suit was commenced ?

A I say that paper was in my office six or eight months, from the time it was brought there before suit
10 was brought, and it is my clear recollection that it was there longer ; *there* is the declaration in the case—August 1, 1875 ; I had several conversations with Mr. Manners in respect to negotiation for a settlement of the case somehow, but they did not amount to anything.

Complainant rests.

Defendant's counsel re-called—

DANIEL M. LYON, sworn ; by Mr. Coult :

20 *Q* Mr. Bower says he had a conversation with you in Broad street, sometime after this sale, in which you said to him, that he could not collect of you, and that the company was not good for anything ?

A Well, I am inclined to think that he had one conversation with me in Broad street, but as far as my saying the company was not good for anything, I don't remember ; I told him I did not consider it was mine to pay, and that whatever the law decided, probably the company
30 would pay it, but as for me, he could not get it from me.

Q Did you ever tell him the company was not good for anything, while you had anything to do with it ?

A Not to my knowledge ; no, sir.

Q In point of fact did you ?

A In point of fact I did not ; I told him to get it out of the company if he could ; he was down to my office, I heard, twice ; I think I saw him at my office once.

Counsel : That's all.

Rest all.

40 Adjourned.

EXHIBITS ON PART OF COMPLAINANT.

No. 1.

EXECUTION.

10

 THE HADDEN BLUE STONE COMPANY

vs.

 JAMES B. SMITH.

In Case. *Fi. fa.*} *de bo. etter.*

Teste, Nov. 24, 1873.

Returnable, Feb. Term, 1873 (4?).}

A. MANNERS, *Att'y.*

20

Endorsed,

Levy,	.	.	.	\$2,501.59
Costs,	.	.	.	37.76
				<hr/>
				\$2,539.35

Int. from Nov. 24, 1873.

Received by John Reinhardt, Sheriff of Hudson Co.,
Nov. 25, 1873.

Levy annexed.

30

1. On real estate. Date of levy, Nov. 25, 1873.
Same as described in deed, Exhibit No. 4, from the Sheriff of Hudson Co. to Daniel M. Lyon.
2. On personal property. Date of levy, Dec. 9, 1873, as follows:
 - 10 dirt carts, 2 sand wagon, 1 stone wagon, 2 lumber wagons, 12 horses, 12 picks, 20 shovels, 1 crow bar, 16 sets harness, 2 lamps, 3 water pails, $\frac{1}{2}$ bbl. axle grease, 1 set sleigh bells, 1 pitch fork, 2 buggies with tops, lot of flagging, lot of curb stones, lot of white sand, bricks, &c.

No. 2.COPY OF AGREEMENT ATTACHED TO EXECUTION.
NEW JERSEY SUPREME COURT.

THE HADDEN BLUE STONE COMPANY

vs.

JAMES B. SMITH.

} *In Case. Fi. ja.*

10 I do hereby authorize and empower John Reinhardt, Sheriff of Hudson county, New Jersey, his deputies or agents, to release the personal property of the above named defendant, taken in execution by him in the above stated case, so far as to permit the said defendant to use, and make use of the same, and do hereby release him from all liability in so doing; levy to remain.

Dated December 17th, 1873.

A. MANNERS,

Att'y of P'ff.

20

No. 3.

CONDITIONS OF SALE.

(Copy of advertisement of real estate same as described in Exhibit No. 4, deed from Sheriff to D. M. Lyon.)

1. The property will be sold to the highest bidder.
2. Ten per cent. of the purchase money shall be paid when the property offered is struck off, in default whereof it may be put up again and sold immediately.
- 30 3. The balance of the purchase money shall be paid on the twenty-fifth day of June, A.D. 1874, at 10 o'clock in the forenoon, at the Sheriff's office at the Court House of said county.
4. The deed will be delivered at the above time upon compliance by the purchaser with these conditions.
5. The purchaser will be held bound by the purchase, whether he attends to receive the deed and comply with the conditions of sale or not. If he does not so comply with them, the property may be again advertised and sold, or the purchaser may be held liable for his bid at
- 40 the option of the Sheriff. In case of re-sale at a less

price than the former bid, with interest and expenses, the former purchaser will be held liable for the deficiency, to meet which the money paid by him shall be retained and applied by the Sheriff.

[Memorandum.]

1st tract, \$1,700 00
 2d tract, 5 00

I have bid off the first tract for \$1,700 00

DANIEL M. LYON, 10

Treasurer.

DANIEL M. LYON,
Newark, N. J.

I have bid off the property, second described above, for the sum of five dollars, and agree to comply with the above conditions of sale.

Dated June 18, 1874.

ALBERT P. CONDIT

20

No. 4.

DEED.

JOHN REINHARDT, SHERIFF OF THE
 COUNTY OF HUDSON,
to
 DANIEL M. LYON.

} *Sheriff's Deed.*

Deed dated June 18, 1874, made in pursuance of sale under execution, Exhibit No. 1.

Consideration, \$1,700. 30

Conveys lands as follows: All that tract or parcel of land and premises situate, lying and being in the town of Harrison, in the county of Hudson, and State of New Jersey. Beginning in the northerly line of Reynolds avenue at a point therein distant one hundred feet west-erly from the northwest corner of Reynolds and Grant avenues; thence northerly at right angles to Reynolds avenue one hundred and nineteen feet seven and one-half inches; thence easterly at right angles to Grant avenue one hundred feet to Grant avenue; thence southerly along 40

the same twenty-five feet; thence westerly at right angles to Grant avenue twenty-five feet; thence southerly at right angles to Reynolds avenue ninety-four feet seven and one-half inches to Reynolds avenue; thence westerly along the same seventy-five feet to the place of beginning.

Being known and designated as lots numbers 20, 21, 22 and 24 on a map of property belonging to James C. Freeman, situated in the townships of Kearney and Harrison, Hudson county, N. J., surveyed May 11, 1870, by
10 R. J. D. Dunn, & Co., surveyors, Newark, N. J.

No. 5.

BERNARD R. LEE & Co.,

To JAMES B. SMITH, Dr.

Dec'r, 1873.

20th,	To 746 lineal ft. of 16 in. curb, 29c.	\$216 34
"	To 2 corners, four fifty each, 4.50,	9 00
"	To 143 ft of gutter stone, at 14c per lin ft	19 02
20	" To 934 ft of curb, hauled by Smith, 30c	280 20
		<hr/>
		\$524 56

JAMES B. SMITH,

To B. R. LEE & Co., Dr.

Dec'r

20th,	To 648 sq ft of flags delivered, 12½c per ft	81 00
	Balance due,	<hr/>
		\$443 56

30

No. 6.

For a valuable consideration, to me in hand paid by Freeman Bower, I do hereby agree to assign to said Bower the one-half interest of, in, and to a certain chattel mortgage held by me upon ten dirt carts, eight horses, forty picks, forty shovels, ten crowsaws, one skid wagon, one spring wagon, two buggies, one sorrel buggy horse, one plow, and nine sets of harness, complete, property
40 belonging to James B. Smith, of the town of Harrison,

dated the eighth day of October, 1873, and filed the fifth day of November, 1873, in the clerk's office of Hudson county.

Given under my hand and seal, }
 this 17th day of December, } HENRY WILDMAN.
 1873.

Witness present:

C. J. CRONAN.

No. 7.

10

This is to certify, that in consideration of a one thousand-dollar bond on the town of Harrison, to me in hand paid by Freeman Bower, of the town of Harrison, Hudson county, New Jersey, I, Daniel M. Lyon, treasurer of the Hadden Blue Stone Company, do hereby agree to assign, transfer and set over unto the said Freeman Bower, such an interest in the judgment obtained by the Hadden Blue Stone Company, against James B. Smith, of the said town of Harrison, in the Supreme Court of the State of New Jersey, for the sum of two thousand five hundred and one dollars and fifty-nine cents, besides costs of suit, on the twenty-fourth day of November, 1873, as will secure to said Bower the repayment of the sum realized by me on said bond paid by him as aforesaid, on account of the aforesaid judgment against said James B. Smith. 20

Witness my hand this seventeenth day of December, 1873.

DANIEL M. LYON,

Treasurer 30

WITNESS,

Above creasure and interlineation
 made before execution.

A. MANNERS.

In Chancery of New Jersey.

	<hr/> <i>Between</i> FREEMAN BOWER, <i>Complainant,</i>	} <i>Final Decree.</i>
10	<i>and</i> DANIEL M. LYON AND THE HAD- DEN BLUE STONE COMPANY,	
	<hr/> <i>Defendants.</i>	

20 This cause coming on to be heard in the presence of Ludlow McCarter and John R. Emery, of counsel with the complainant, and Joseph Coult, counsel of the defendant Lyon, and John A. Miller, Jr., of counsel with the other defendant, the Hadden Blue Stone Company, on the 21st day of June, 1877, before the Court, and the bill, answer, replication and exhibits being read, and testimony taken, and the arguments of the respective counsel having been heard, and the Court having taken time to consider the same ;

30 And it appearing to the satisfaction of the Court, that on the 24th day of November, 1873, the said the Hadden Blue Stone Company obtained a judgment in the Supreme Court of the State of New Jersey, against one James B. Smith, for the sum of two thousand five hundred and thirty-nine dollars and thirty cents (\$2,539.30), [including costs]; that execution was issued out of said Court on said judgment, and the property, real and personal of said Smith, being seized by virtue thereof, was advertised for sale by the Sheriff of the county of Hudson, under and by virtue of said execution, and that said sale was adjourned, from time to time, until the 18th day of June, 1874, when it took place, and that the amount due on said judgment on the 18th day of June, 1874, was two

40 thousand and ninety-five dollars and seventy-four cents;

(\$2,095.74) [excluding interest], the same having been reduced by payments to that amount.

And it further appearing to the satisfaction of the Court, on the 17th day of December, 1873, the Hadden Blue Stone Company did, by its then treasurer, Daniel M. Lyon, execute and deliver to Freeman Bower, the complainant in this cause, an agreement in writing, by which the said corporation agreed, in consideration of a one thousand dollar (\$1,000) bond, to it advanced by said Bower, (which bond was a municipal bond, issued by the town of Harrison, for the payment of money to the bearer thereof,) to assign, transfer and set over to the said Bower such an interest in the aforesaid judgment as would secure the said Bower the repayment of the sum realized by the said corporation on said bond. 10

And it further appearing to the satisfaction of the Court, that the real estate of the said defendant Smith was sold by the said Sheriff of Hudson county, on the 18th day of June, 1874; under and by virtue of the said execution, for the sum of one thousand seven hundred dollars, which sum was bid therefor by said Lyon, and that said Lyon after said sale, with full notice of the rights of the complainant Bower, under said agreement and without the authority or consent of said Bower, paid to the other defendant, the Hadden Blue Stone Company, the said sum of one thousand seven hundred dollars (\$1,700), [that sum being the proceeds of said judgment,] and took from the said Sheriff of Hudson county a deed for said property in his own name, and that the said Lyon has sold and conveyed said property since the filing of the bill in this cause. 20 30

And it further appearing to the satisfaction of the Court, that the Hadden Blue Stone Company realized by the sale of said bond the sum of nine hundred dollars (\$900); that the said corporation is now insolvent, and was at the time of filing the bill in this cause, and prior thereto, and that the said Smith is now, and was at the date of the filing of the bill in this cause, and for a long time prior thereto, insolvent.

And it further appearing, to the satisfaction of the 40

Court, by the terms of the said agreement that the said Bower was entitled to be first paid out of the proceeds of the said judgment to the extent of the amount realized by the said defendant corporation on the sale of the said bond ;

It is, therefore, on this 8th day of May, 1878, by THEODORE RUNYON, Chancellor of the State of New Jersey, ordered, adjudged, and decreed, that the said complainant do recover of the said defendants the sum of ten hundred and forty-four dollars and three cents, (\$1,044.03) (that sum being the amount realized by said defendant corporation on the sale of said bond, with interest from January 25th, 1876, to May 8th, 1878,) and that the said defendants do pay unto the said Freeman Bower, or his solicitor, Ludlow McCarter, the sum of ten hundred and forty-four dollars and three cents, (\$1,044.03) with interest from the date of this decree.

It is further ordered, adjudged, and decreed, that the said defendants do pay unto the said complainant, or his solicitor, his costs in this case to be taxed.

And it is further ordered that a copy of this decree, together with a copy of the complainant's bill of costs in this case, be served on the said defendants, and that upon defendants' default in payment of the amount of said decree and interest thereon, together with said costs, in ten days after service of a copy of the same as aforesaid, that said complainant may issue execution therefor.

THEODORE RUNYON, C.

30 Respectfully advised,

A. V. VAN FLEET, V. C.

A true copy :

H. S. LITTLE, *Clerk.*

In Chancery of New Jersey.

<p style="text-align: center;"><i>Between</i> FREEMAN BOWER, <i>Complainant,</i> and DANIEL M. LYON, <i>and al.,</i> <i>Defendants.</i></p>	}	<p><i>On Bill, &c</i></p> <p><i>Appeal.</i> 10</p>
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The defendant hereby appeals from so much of the final decree in this cause as declares that he is liable to pay to the complainant any sum of money under the contract set forth in the bill in this cause, to the Court of Errors and Appeals in the last resort in all causes of law.

Dated May 20th, 1878.

COULT & HOWELL, 20
Solicitors of Defendant.

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

JOSEPH COULT,
Of Counsel.

N. J. Court of Errors and Appeals.

10	<p style="text-align: center;"><i>Between</i> DANIEL M. LYON, <i>Appellant,</i> <i>and</i> FREEMAN BOWER, <i>Appellee.</i></p>	<p style="text-align: center;"><i>On Bill, &c.</i> <i>Petition of Appeal.</i></p>
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*To the Honorable the Court of Errors and Appeals in the
 last resort in all causes of law :*

The humble petition of Daniel M. Lyon, the appellant
 20 in the above stated cause, respectfully shows that he finds
 himself aggrieved by a final decree made in the Court of
 Chancery, by his Honor, THEODORE RUNYON, Chancellor
 of the State of New Jersey, bearing date the eighth day
 of May, eighteen hundred and seventy-eight, in a cause
 wherein Freeman Bower is complainant, and your peti-
 tioner is a defendant, in this respect, to wit, that the said
 decree adjudges that your petitioner shall pay to the
 said Freeman Bower the sum of one thousand and forty-
 four dollars and three cents, for so much money heretofore
 30 received by your petitioner to the use of the said Free-
 man Bower, on the contract set out in the bill in said
 cause.

And your petitioner humbly appeals from the whole of
 said decree of the Chancellor, which decrees as aforesaid,
 upon the ground that the same is erroneous, for that your
 petitioner is in no way indebted to said Freeman Bower
 on the said contract, nor ever received any money to his
 use thereon, nor is he liable either in law or in equity to
 the complainant in the above, or any other sum of money.
 40

Your petitioner therefore prays that the said decree and every part thereof may be set aside, reversed and for nothing holden.

And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

COULT & HOWELL,
Solicitors of Appellant.

JOSEPH COULT,
Of Counsel with Appellant.

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