

## New-Jersey Court of Errors and Appeals.

Between

THE MORRIS CANAL AND BANKING COM-  
PANY, appellants,

and

GEORGE T. LEWIS et al., respondents,

} *On appeal.*

~~~~~

### BILL FOR RELIEF.

IN CHANCERY OF NEW JERSEY.

*To the Honorable Benjamin Williamson, Chancellor of the State  
of New Jersey.*

Humbly complaining, showeth unto your Honor your orator, George T. Lewis, of the city of Philadelphia, and state of Pennsylvania, that the Morris Canal and Banking Company, a corporation under and by virtue of a law of the state of New Jersey, for the purpose of raising money to pay off their debts incurred in improving, enlarging, and repairing their canal, and for raising money to be expended in further improving and perfecting the same, did, under the corporate seal of said company, attested by A. Whitney, president, and John J. Bryant, cashier thereof, duly make, execute, and issue certain bonds, for sums which in the whole amounted to \$700,000, or some other large sum of money, of which said bonds your orator is informed and believes 350 were for \$1000, each, marked and numbered, respectively, from number "one" to number "350," inclusive; 500 of which were for \$500, each, numbered, respectively, from "351" to number "850," inclusive; 250 of which were for \$250, each, numbered, respectively, from number "851" to number "1100," inclusive; 375 of which were for \$100, each, numbered, respectively, from number "1101" to number "1475," 10 20

inclusive; which said several bonds, or the part thereof herein after more particularly mentioned, were dated the 1st of September, 1847, and payable at the Bank of the State of New York, in the city of New York, to John J. Palmer, or to bearer, on the first of April, 1856, with interest thereon at the rate of six per cent. per annum, payable at the said Bank of the State of New York semi-annually, on the first days of October and April in each and every year, until the said principal money be paid, on delivery of the dividend  
 10 warrants thereunto annexed: and it was further certified on the face of said bonds, that the holders were entitled to the security of a first mortgage (being the same herein after referred to), and that each bond would be identified by the signatures of the trustees, herein after named, and that the whole amount to be issued would not exceed in value the sum of \$700,000, by reference to said bonds will more distinctly appear, and to which, for greater certainty, your orator refers himself.

And your orator further showeth unto your Honor, that  
 20 for the better securing of said bonds issued as aforesaid, and the interest annually due thereon, and for the further consideration of one dollar to them paid, the said the Morris Canal and Banking Company, by their board of directors, resolved to mortgage, pledge, and hypothecate their said canal (of which they alleged themselves seized and possessed), with its appendages, appurtenances, and the annual revenues, chartered rights, and properties of the said company, herein after mentioned and described, and did thereupon, on the 28th of March, 1846, for the consideration  
 30 aforesaid, by their certain deed or indenture of mortgage, duly made and executed under the corporate seal of said company, and by order of the board of directors, signed by Benjamin Williamson, the then president, and attested by John J. Bryant, the then cashier thereof, and in pursuance of the powers and authority vested in said company by the laws of the state of New Jersey, grant, bargain, sell, assign, transfer, and set over unto John J. Palmer, Zebedee Cook, and Theodore Dehon, their heirs, executors, administrators, and assigns, as joint tenants, and not as tenants in common,  
 40 for the benefit of said bondholders, all and singular the Mor-

ris canal, so called, being the canal authorized by the law of the state of New Jersey, as the said canal has been laid out through the several counties of Warren, Sussex, Essex, Morris, Passaic, and Hudson, in the said state, and as the same then was or might thereafter be laid out or completed from the Delaware to the Hudson river—together with all and singular the dams, aqueducts, locks, planes, culverts, bridges, towing paths, embankments, boxing, wharves, docks, waters, watercourses, machinery, privileges, appendages, and appurtenances thereto belonging or appertaining; and also all the 10 chartered rights of said company, and all the tolls, incomes, revenues, and profits accruing, or which at any time thereafter should or might accrue or arise from the said canal, and also all the lands, tenements, and other properties of them, the said the Morris Canal and Banking Company, whatsoever and wheresoever, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and of every part and parcel thereof; and all the estate, right, title, interest, property, claim, and demand, as well at law as in equity, of them, the Morris Canal and Banking 20 Company, of, in, and to the same, and every part and parcel thereof—to have and to hold all and singular the above granted and assigned premises unto the said John J. Palmer, Zebedee Cook, and Theodore Dehon, their heirs, executors, administrators, and assigns, in joint tenancy, and not as tenants in common, to their proper use and benefit, as fully and effectually, to all intents and purposes, as they, the Morris Canal and Banking Company, are seized, possessed of, entitled unto, or can in any manner grant, convey, assign, and transfer the same, upon trust, nevertheless, for the bene- 30 fit and behoof of the said several bondholders, their respective executors, administrators, and assigns, in proportion to the sums ascertained, the said several bonds by them respectively held; provided always nevertheless, the said indenture of mortgage was therein ordered to be upon the express condition, that if the said party of the first part, their successors and assigns, should and did well and truly pay, or cause to be paid, unto the person or persons, bodies corporate or politic, who should become the holders of the said bonds to be issued as aforesaid, the several and respective sums for 40

the payment whereof the said bonds should be issued on the first day of April, 1856, together with lawful interest for the same, according to the tenor of the said respective bonds, without any deduction, defalcation, or abatement to be made for anything for or in respect of any taxes, charges, or assessments whatsoever, then and from thenceforth, as well the said indenture and the estate thereby granted, the said bonds should become void and of no effect, anything therein contained to the contrary in anywise notwithstanding: and it

10 was thereby expressly further declared and agreed by and between said parties, that if default should at anytime be made in the payment of the said bonds, or any or either of them, or of any interest thereon, according to the tenor and effect thereof, then and in such case, and as often as such default should be made, it should be lawful for the said parties of the second part, their heirs, executors, administrators, or assigns, to enter upon, and to have, hold, use, and enjoy the said canal, with its appendages and appurtenances, and the chartered rights and privileges of the said company and every

20 the premises hereby granted and assigned, and to take and receive the revenues, tolls, rents, issues, and profits thereof, in as full and ample a manner, to all intents and purposes, as they, the Morris Canal and Banking Company, or the stockholders thereof, could or might have, hold, use, take, enjoy, and receive the same; and it was therein and thereby further agreed and ordered, that in case the said John J. Palmer, Zebedee Cook, and Theodore Dehon, or either of them, died or become incapable of acting during the continuance of said trust, or should be legally discharged therefrom,

30 then and in that case it should be lawful for the said party of the first part to nominate and appoint a person or persons to supply the place of said trustee or trustees so dying or becoming incapable, or so discharged from the said trust, and thereupon such conveyance should be executed by all necessary parties as would vest the premises in the said new trustees, or in the said remaining trustee or trustees, together with said new trustee or trustees, their heirs, executors, administrators, and assigns, as joint tenants, and not as tenants in common, upon the same trusts, and with the same powers,

40 and subject to all the stipulations and conditions of said

indenture, in as full a manner, and to the same extent in all respects, as were therein contained and imposed in regard to the said parties of the second part, and the nomination and appointments, subject to the same provisions, should and might be made and carried into effect in like manner, as often, from time to time, as there might be occasion therefor, as by the said mortgage, a copy of which, duly certified, is now in possession of your orator, and to which, for greater certainty he refers himself, will more fully and at large appear. 10

And your orator further showeth unto your Honor, that after the execution of said mortgage, the same was, on the said 28th of March, 1846, duly proved before Joseph C. Hornblower, esquire, then Chief Justice of the Supreme Court of New Jersey, by John J. Bryant, the attesting witness, and recorded, on the seventh day of April, 1846, in the clerk's office of the county of Hudson, in and by a certificate thereof duly certified will appear: and your orator avers that the same, according to his information and belief, on or about the same time, was duly recorded in the several clerk's 20 offices of the other counties through which the line of said canal passes, though the precise date of such several recordings is at present unknown to your orator.

And your orator further showeth unto your Honor, that the said the Morris Canal and Banking Company, having for the purpose aforesaid, duly executed and issued the said several bonds herein before mentioned, and the same being in public market, your orator, on the 19th day of December, A. D. 1848, for a valuable consideration, in public market as aforesaid, purchased six of said bonds for the payment of 30 \$500, each, of the date and contents aforesaid, marked and numbered, respectively, 679, 680, 737, 740, 738, and 739, and likewise twenty-four other bonds for \$100, each, of the date and contents before mentioned, numbered from 1403 to 1426, inclusive, which said several bonds, with their respective dividend warrants, were duly delivered to your orator, and now are in his possession ready to be produced as this honorable court shall direct, and to which your orator, when produced, for greater certainty refers himself.

And your orator further showeth unto your Honor, that 40

the interest moneys semi-annually due on said several bonds from the said the Morris Canal and Banking Company to your orator, from the first day of September, 1847, up to the filing of this bill, were duly demanded in his behalf, according to the tenor and effect of said several bonds, but that neither the said the Bank of the State of New York, nor any other person or persons in their behalf or in behalf of the said the Morris Canal and Banking Company, did or would pay the same, but on the contrary, the said the Morris Canal  
 10 and Banking Company have wholly refused to pay anything now due or to become due on said bonds to your orator or to any other person or persons holding the same; and on express request made by the holder of said bonds to the said last named company for the payment of the interest moneys due on said bonds, said application was denied, and Ephriam Marsh, president of said company, and in behalf of said company, disclaimed and denied all liability upon the part of said company for the payment of said bonds, or any part thereof.

20 And your orator further showeth, that on the margin of the face of each of the said bonds, so held by your orator, there is a certificate that the said bond is included in a mortgage on the Morris canal, executed to John J. Palmer, Zebedee Cook, and Theodore Dehon, as trustees, for the benefit of said bondholders, and which said certificate is duly signed by said trustees, said mortgage being the same herein before mentioned and set forth.

And your orator further showeth unto your Honor, that the interest moneys on said several bonds, from the first day  
 30 of September, 1847, is due and unpaid to your orator, and that the said trustees were by him duly notified of the default of the company in paying said interest moneys on said bonds held by your orator, and they were requested to file a bill in this court upon said mortgage for the benefit of your orator, one of their said bondholders, or to permit the use of their names for that purpose to your orator, he offering to indemnify them against all costs and charges; with which said request, or one of them, they, as trustees, were bound, as your orator charges, to comply, yet said trustees have  
 40 wholly neglected and refused to file such bill, or to permit

your orator, at his own expense, to file the same in their names, and thus have failed and neglected their duties in this behalf.

And your orator, by such neglect and refusal upon the part of said trustees to discharge their duties in this behalf, is compelled to make them defendants to this his bill of complaint.

And your orator further showeth, that the said the Morris Canal and Banking Company, since the execution and delivery of said mortgage to the said trustees for the benefit of 10 said bondholders, have continued in the possession and enjoyment of said mortgage premises and the appurtenances, and every part thereof, and have at all times received, and still so receive, the tolls, rents, issues, and profits thereof, &c.

And your orator further showeth, that he has frequently and in a friendly manner applied to said company, and requested payment of the moneys due to him as aforesaid, or that they would suffer your orator, or his said trustees, to enter upon said premises, and take and receive the tolls, rents, issues, and profits thereof, &c. 20

And your orator well hoped that the said defendants would have complied with such reasonable requests. as in justice and equity they ought to have done ; but now so it is, may it please your Honor, that the said defendants, combining and confederating together, and to and all other persons unknown to your orator, but whose names, when discovered, your orator prays may be inserted herein, and they made parties hereto, with proper and apt words to charge them, how to injure and aggrieve your orator, not only refuse to comply with such requests, or any of them, but sometimes 30 pretend and give out that no such bonds were ever executed and issued, or if issued, that your orator does not legally hold the same, the contrary of which your orator expressly charges to be true, &c., all which actings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

In tender consideration whereof, and forasmuch as your orator is remediless by the strict rules of the common law, and can have relief only in this court, where matters of this nature are properly cognizable, to the end, therefore, that 40

the said defendants and their confederates, when discovered, may, upon their several oaths or affirmations, full, true, and perfect answers make to all and every the matters aforesaid, and as fully as if the same were herein again repeated, and they thereto particularly interrogated, paragraph by paragraph, and particularly whether the said company have not wholly denied your orator's right to said bonds, and refused to pay said bonds, or any interest thereon to the holders thereof; and that they may be decreed to pay to your orator  
 10 the amount of said interest and all other moneys due and to grow due to him as aforesaid, together with costs and expenses and charges in this behalf expended; and that, on failure thereof, they and all persons claiming by, from, or under them, or any of them, may be barred and foreclosed for ever of and from all right, title, and equity of redemption, of, in, and to said mortgage premises, and every part thereof, and may deliver up possession thereof to your orator, or, if the court will so decree, to the trustees before  
 20 named for the benefit of your orator, together with all deeds, papers, and other muniments of title in reference thereto; or, if your honor will think it more equitable and just, then that the said canal, with its appendages and appurtenances, be sold to pay to your orator the sums due to him as aforesaid, with his costs and charges in this behalf expended, or so much and such parts thereof as the court shall deem just and proper, or that the revenues, tolls, issues, and profits of said canal, with its appendages and appurtenances, may be sequestered in such form and for such time as to the court shall seem meet, and that your orator's debt, expenses,  
 30 costs, and charges be duly paid therefrom.

And that your orator may have such further and other relief in the premises as may be agreeable to equity and good conscience—

May it please your Honor, the premises being considered, to grant unto your orator a writ of subpoena of the state of New Jersey, to be directed to the said the Morris Canal and Banking Company and John J. Palmer, Zebedee Cook, and Theodore Dehon, trustees as aforesaid, therein and thereby commanding them, and each of them, that at a certain day  
 40 and under a certain penalty, therein to be expressed, that

they be and appear before your Honor, in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor should seem meet, &c. And your orator, as in duty bound, will ever pray, &c.

WILLIAM L. DAYTON,  
*Solicitor and counsel for complainants.*

A N S W E R .

I N C H A N C E R Y O F N E W J E R S E Y .

*The answer of the Morris Canal and Banking Company, John 10  
J. Palmer, Theodore Dehon, and Zebedee Cook, defendants,  
to the bill of complaint of George T. Lewis, complainant.*

These defendants, now and at all times hereafter saving and reserving to themselves all and all manner of exceptions to the many uncertainties and errors in the said bill of complaint contained, for answer thereto, or to so much thereof as they are advised it is material or advisable to make answer unto, answering say—

That they admit it to be true, as stated in said bill, that the said the Morris Canal and Banking Company did, on or 20 about the thirty-first day of March, one thousand eight hundred and forty-six, cause to be executed, under their corporate seal, certain bonds for the payment of money, but deny that the amount of such bonds so at that time executed exceeded the sum of four hundred and fifty thousand dollars, or thereabouts, which said bonds bore date the day and year aforesaid, and were payable at the Bank of the State of New York, in the city of New York, to John J. Palmer or bearer, on the first day of April, one thousand eight hundred and fifty-six, with interest; and that it was expressed and certi- 30 fied on the face of said bonds that the holders were entitled to the security of a first mortgage, and that each bond would be identified by the signature of said trustees in said bill of

complaint named, and that the whole amount to be issued would not exceed the sum of seven hundred thousand dollars; but the defendants deny that the said bonds were attested by the signature of A. Whitney, president, or that all the said bonds were payable with interest at six per cent. per annum, or that the said bonds were then issued by said defendants to the amount stated in said bill, or any such amount.

And these defendants further answering admit it to be  
 10 true, that the said defendants did, as stated in said bill, under their corporate seal, and by order of the board of directors, in and by virtue of the power and authority vested in them by the law of the state of New Jersey, bargain, sell, assign, transfer, and set over unto John J. Palmer, Zebedee Cook, and Theodore Dehon, their heirs, executors, administrators, and assigns, as joint tenants, and not as tenants in common, for the benefit of said bondholders, all and singular the chartered rights and property set forth in said bill of complaint, to have and to hold the same unto said John J.  
 20 Palmer, Zebedee Cook, and Theodore Dehon, their heirs, administrators, and assigns, in joint tenancy, and not as tenants in common, as fully and effectually, to all intents and purposes, as the said defendants are seized or possessed of, or could in any manner grant the same, upon trust nevertheless, for the benefit and behoof of the said several bondholders, in proportion to the sums contained in their respective bonds, and with the provisoes and covenants in the said bill of complaint recited.

And the said defendants further admit, that the said mortgage  
 30 gage was proved and recorded as in the said bill of complaint is stated.

And these defendants further answering say, that they believe, from the statement of the complainant in his said bill and otherwise, that he is the holder of the bonds in said bill mentioned, but whether he purchased the same, or any of them, in public market, or in what manner or for what consideration he became possessed of the same, these defendants do not know, therefore neither admit nor deny the allegations contained in the said bill of complaint in that behalf,  
 40 and leave the complainant to prove the mode and con-

sideration whereby he obtained the same, in such manner as he may be advised is necessary and proper.

And these defendants further answering show, that the said company, on or about the twenty-second day of February, one thousand eight hundred and forty-eight, being temporarily in want of money to pay a debt due I. P. Morris & Co., the president of said company for the time then being, in order to meet the said claim, did make and deliver to the said I. P. Morris & Co. two notes of the company, for thirteen hundred and fifty-seven dollars and twenty-eight cents, each, the one note falling due the eighteenth day of June, one thousand eight hundred and forty-eight, and the other the eighteenth day of July, eighteen hundred and forty-eight, and did deposit with the said I. P. Morris & Co. bonds bearing numbers identical with those stated in the bill of complaint to be held by complainant, amounting to the sum of fifty-four hundred dollars, as security for the payment of said notes.

And these defendants, in further answering say, that the said notes were not paid at maturity, and the said I. P. Morris & Co. commenced a suit in the Supreme Court of Judicature of the state of New Jersey against these defendants for the collection of the same, the summons in which suit was returned, served on the twelfth day of October, one thousand eight hundred and forty-eight; and these defendants, on or about the fifth day of July, one thousand eight hundred and forty-nine, by their attorney, gave the said I. P. Morris & Co. a *relicta*, relinquishing the pleas by said defendants theretofore filed; and on giving the said *relicta*, the said defendants took from the attorney of the said I. P. Morris & Co. the following instrument of writing:

NEW JERSEY SUPREME COURT.

The Morris Canal and Banking Company }  
*ads.* } *In case.*  
 Isaac P. Morris & Co., }

The above stated suit is founded in part on the defendants' notes, one dated February 22d, 1848, due 15th June, 1848, for \$1357.28, the other note dated February 22d, 1848,

due July 15th, 1848, for \$1357.28. The plaintiff has given a credit on said notes of \$1626.39, on the 15th August, 1848, by sale of the bonds of the defendants, left by them with the plaintiffs as collateral security for the said notes; and the defendants having this day given the plaintiffs a *relicta* for the balance of their claim on said notes, after deducting the said credit, it is hereby agreed that the fact of the defendants having given a *relicta* shall in no manner affect any claim which the said defendants may now or hereafter have for the redelivery of the said bonds, without presuming to admit hereby, directly or indirectly, that any such claim does or hereafter may exist.

July 5, 1849.

WM. L. DAYTON, *Att'y of plaintiffs.*

Which instrument of writing is now in the defendants' possession, ready to be produced as this honorable court may direct, and to which these defendants, when produced, pray leave to refer.

And these defendants further in answering say, that the said I. P. Morris & Co. did thereupon obtain a judgment in the said Supreme Court against these defendants for one thousand three hundred and thirty-five dollars and ninety-one cents, or thereabouts, which judgment, together with interest and costs, these defendants paid on the first day of January, one thousand eight hundred and fifty.

And these defendants respectfully insist, that the said bonds are not commercial paper, and that the said bonds and notes, being both nothing more than the chose in action or contract of the said the Morris Canal and Banking Company, cannot be legally considered to create a liability on the part of the said defendants to pay more than the sum so due as aforesaid to the said I. P. Morris & Co., and legal interest thereon; and if it was the intention of the parties then acting for and on behalf of the Morris Canal and Banking Company to create, under any circumstances, any liability for any greater sum, that the said contract was and is entirely void, in consequence of the sum being usurious, and that the said I. P. Morris & Co. had no right to sell the said bonds for any less than the full amount of the same,

and that any person purchasing the same holds them as any other mere choses in action, in the same manner that the said I. P. Morris & Co. held them, and subject to all equities which might exist against them in their hands.

And these defendants further answering say, that the said complainant had full knowledge of the fact, that the said bonds were only issued to be used as collateral security for the said notes, before he became in any manner possessed of the same, and has as full and perfect knowledge of the whole transaction in reference to said notes, and the giving of said 10 bonds, as either the said I. P. Morris & Co. or these defendants had, and became possessed of said bonds subject to and with notice of all equities and defences which existed against them in the hands of the said I. P. Morris & Co.

And these defendants further answering say, that they are informed and believe it to be true, and charge that the said I. P. Morris & Co. did, without the consent, and against and contrary to the express will and desire of these defendants, expose the said bonds to him delivered as aforesaid to sale at vendue, in the Exchange, in the city of Philadelphia, but 20 these defendants, having no knowledge on the subject, excepting as derived from the allegations of complainant, do not admit that the said complainant at any time purchased the said bonds in public market, nor do they admit that he paid a valuable consideration therefor, but leave the said complainant to make such proof in relation to such matters as he may be advised; and to the contrary thereof, these defendants say, that they are informed and believe it to be true, and charge, that no consideration whatever was paid for said bonds, or either of them, by said complainant, and that they 30 were not purchased in public market or otherwise by him, and that he is not the real holder of the same, or that if he is the holder thereof, that he holds the same not for his own benefit but for the benefit of the said I. P. Morris & Co., either alone or jointly with some other person or persons, and that he had full knowledge, at the time of the sale of the said bonds and since, that said I. P. Morris & Co. had no right to hold the same, or use them, except as security for the said money borrowed of them for the purpose aforesaid.

And these defendants further answering say, that ever 40

since the alleged sale of said bonds, they have tendered, and do hereby tender themselves ready and willing to pay to said I. P. Morris & Co. the amount due from said defendants to him, on his surrendering to them the said bonds, which were as aforesaid deposited in his hands as security for said debt, and that they have so tendered, and do tender themselves ready to pay said debts, if the complainant will surrender said bonds to them, but that the said I. P. Morris & Co. have refused, and still do so refuse to do.

- 10 And these defendants further show, that said I. P. Morris & Co. did not endeavor to collect said debts due them previous to selling said bonds, but that since such pretended sale thereof, the said I. P. Morris & Co. have obtained judgment in the Supreme Court of New Jersey against these defendants for the balance due upon said notes, after deducting therefrom the amount for which said bonds were pretended to be sold, so that the said defendants will, if the claim of the complainants be allowed by this court, be obliged to pay three thousand dollars over and above the two thousand
- 20 seven hundred and fourteen dollars and fifty-six cents, being the amount of said notes, by reason and through the fraud and device of said I. P. Morris & Co. and said complainant.

And these defendants submit to this court, that said I. P. Morris & Co. had no right to sell the bonds at public market or otherwise, nor to hold the same, except for the discharge of the debt for which they were lodged in his hands as collateral security, and that he is not entitled to recover thereon, except as security for the amount of said notes.

- 30 And these defendants, John J. Palmer, Theodore Dehon, and Zebedee Cook, answering say, that they admit it to be true, as stated in said bill of complaint, that an application was made to these defendants, on behalf of said complainant, previous to filing the said bill of complaint, to permit the suit for the foreclosure of said mortgage on account of the alleged nonpayment of interest on said bonds alleged to be held by said complainant, to be instituted in the name of said defendants, as complainants therein, and that the said defendants declined giving said permission.

40 And the said defendants further submit to this court whether the said complainant can rightfully, and according

to the rules of this court, file a bill for the foreclosure of said mortgage in his own name, without the order of this court first obtained therefor.

And these defendants further submit to this court, that the said I. P. Morris & Co. had no right to resort to the bonds deposited with them as collateral security, until they had first brought action upon the said promissory note, so as aforesaid given to them; and that no sale of said bonds, or either of them, could give any title thereto to the purchaser of said bonds, unless action had been first, as aforesaid, 10 brought on said promissory note, and proved ineffectual for the recovery of the money due thereon.

And these defendants deny all and all manner of unlawful combination and confederacy charged in the said bill, without that, that there is anything therein contained material or effectual in the same for these defendants to make answer, and not herein and hereby well and sufficiently confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and 20 prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf wrongfully and unjustly sustained.

FREDK. T. FRELINGHUYSEN,  
*Solicitor for and of counsel with defendant.*

State of New Jersey, Essex county, ss.—Personally appeared before me, Newell F. Higgins, a master in chancery in and for said state, Ephraim Marsh, president of the Morris Canal and Banking Company, who being duly sworn, deposeseth and saith, that the matters and things set forth and described in the foregoing answer, either as president or in 30 his individual capacity, so far as they respect his own acts and deeds, are true, and so far as they respect the acts of any other person or persons, he believes them to be true.

EPHRAIM MARSH.

Sworn and subscribed, this 9th day of November, A. D. 1855.

N. F. HIGGINS, M. C.

## REPLICATION.

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

WM. L. DAYTON,  
*Solicitor and of counsel with complainant.*

## EVIDENCE.

20 *Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein George T. Lewis is complainant, and the Morris Canal and Banking Company, John T. Palmer, Zebedee Cook, and Theodore Dehon are defendants; taken at the office of James B. Dayton, in the city of Camden, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-six, before James B. Dayton, one of the masters and examiners of the said court, in the presence of William L. Dayton, esquire, solicitor and of counsel for the said complainant, no one appearing for the defendants.*

30 The complainant produced before me six bonds of the Morris Canal and Banking Company, of five hundred dollars each, numbered 679, 680, 737, 738, 739, and 740, which said bonds I have marked as exhibits, A, B, C, D, E, F, on the

part of the complainant. The said complainant further produced before me *twenty-four* bonds of the Morris Canal and Banking Company, of one hundred dollars each, numbered 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, which said bonds I have marked as exhibits G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, A1, B1, C1, D1, on the part of the complainant.

The said complainant further produced before me forty protests, with the coupons or warrants, for the payment of 10 the interest on the above bonds, attached to the same, which said protests, with the coupons attached thereto, I have marked exhibits No's 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, on the part of the complainant.

JAMES B. DAYTON, M. C.

---

*Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein George T. Lewis is complainant, and the Mor- 20  
ris Canal and Banking Company and others defend-  
ants; taken at the office of James B. Dayton, in the city  
of Camden, on the third day of July, in the year of our  
Lord one thousand eight hundred and fifty-six, before  
James B. Dayton, one of the masters and examiners of  
the said court, in the presence of William L. Dayton,  
esquire, solicitor and of counsel for the said complain-  
ant, and of Frederick T. Frelinghuysen, esquire, soli-  
citor and of counsel for the said defendants.*

*Ephraim Marsh*, of Morris county, a witness produced on 30 the part of the defendants, being duly sworn, deposeth and saith—I am the president of the Morris Canal and Banking Company. I think I received notice of the sale of the bonds lodged as collateral with I. P. Morris & Co. by letter, which I have. Witness being shown paper marked *Exhibit A*, says, I have known M. Thomas and Sons, auctioneers, of

Philadelphia, for a number of years; don't know all the individual members; but one of the members intimately. I have seen their book of sales this day. *Exhibit A* is a true copy of their book of sales, with the exception of the words "copy from sales book," at the top of said paper, and "M. Thomas and Sons, Philad., July 3, 1856," at the bottom of said paper, which were placed there by one of said firm. I am acquainted with Mr. George Lewis, the complainant; think I have had conversation with him as to these bonds, 10 and from that conversation I understood that George Lewis knew, at the time he became holder of these bonds, that they had been deposited with I. P. Morris and Co. as collaterals. We talked this matter all over; Mr. Lewis said he knew what the note was given for, and that the bonds were left as collateral security for the payment of two notes, which notes I stated to him were for a just debt. I had one talk with I. P. Morris and Co. in relation to these bonds; can't recollect the precise time it was after the sales had taken place; it was an accidental conversation; I was in his place 20 to see about getting some machinery, and he introduced the conversation relative to these bonds; he was reproaching the company for not paying these bonds. I said to him, on that occasion, that I did not think he had any ground to find fault; that we were willing and able to pay the debt, and that we ought not to be asked to pay more than the debt and interest; in that conversation, I understood from him that he still owned the bonds. The defendants offer in evidence the letter, marked in the suit in the Court of Errors, wherein the Morris Canal and Banking Company were 30 appellants, and Samuel F. Fisher appellee, *Exhibit F, No. 2*, dated December 14th, 1848, from Ephraim Marsh, president, to the complainant, and also letter marked *Exhibit F, No. 3*, in said suit, from Ephraim Marsh, president, to George Bird, dated 13th November, 1848, [both letters objected to by counsel of complainant as irrelevant]; also *Exhibit F, No. 4, F, No. 5*, down to the end of the forty-second page, inclusive, in said book. [All conversation with I. P. Morris and Company objected to, as illegal, by the counsel of complainant.]

And being cross-examined by Mr. Dayton, says—The letter of which I have spoken, I cannot tell the precise time I received it; I have no recollection of the time, except by the date of the letter; I did not attend the sale, and do not know when the sale took place.

*Question.* What was attached to that letter? [Objected to by the counsel of defendant, as no letter has been given in evidence.]

*Answer.* Do not know what was attached to the letter, except what appears from its face, or where it was torn off. 10

The complainant offers in evidence a letter, marked *Exhibit B*, on the part of complainant. The conversation with Mr. Lewis, I cannot tell precisely the time. I had two conversations as to these bonds and as to the bonds that Mr. Lewis held as collateral. I had the conversation two different times after these bonds of I. P. Morris and Co. were sold, and think both lots of bonds were mentioned. I am satisfied the conversation related to the bonds in suit, because Mr. Lewis said he had a right to those bonds on account of the statement in letters of Judge Marsh to I. P. Morris and 20 Co., and my impression is, he said he would not have bought them, except for those letters. The conversations since I had with him in his own country house, at another time at the house, or on the steps, of Emlen and Fisher; do not recollect of anybody else being present.

Complainant offers, in the printed case before referred to, *Exhibits I, J, K, L, M, N, O, P*, being from page 25 to 29, inclusive.

And being again cross-examined by the counsel of defendants, witness being shown *Exhibit N*, by the counsel of 30 defendant, says—he wrote the letter marked said exhibit in the referred printed case, and says that he did not mean to admit there the right of the holders of said bonds to sell them; that he could not object to their doing as they pleased at their peril. [Objected to by counsel of complainant.] I think there is another letter to I. P. Morris and Co. not in the book. My impression is, that I wrote to I. P. Morris and Co. that he had no right to sell these bonds. We keep letter books; have not been able to find any such letter in

our letter books, although I have looked for the letters. Some letters were written at Schooleys mountain—*Exhibit D*, in the printed case, offered on the part of the defendant, to the word “cashier.”

EPHRAIM MARSH.

Sworn, examined, and subscribed to before me, at Camden, this 3d day of July, A. D. 1856.

JAMES B. DAYTON, M. C.

The further examination of witnesses and taking of testimony in this case is adjourned until Friday, July 11th, 1856, at 12 o'clock.

*July 11, 1856, at 12 o'clock, the examination of witnesses and taking of testimony in this case resumed and proceeded in, pursuant to adjournment, Saunders Lewis, esq., appearing for complainant.*

*Thomas S. Ellis*, a witness produced on the part of the defendants, being duly sworn, deposeth and saith—I reside in the city of Philadelphia; I am a member of the firm of M. Thomas and Sons, auctioneers of the city of Philadelphia; I have been in the establishment for thirty years, nearly. I was conversant with the business of that firm in the year 1848. On the 15th of August, A. D. 1848, that firm sold bonds of the Morris Canal Company to the amount of fifty-four hundred dollars at par value, 24 one hundred dollar bonds, and six of five hundred each; the bonds sold for \$1644; the bonds were bid off by Robert Adams. The bid of Robert Adams was afterwards transferred to I. P. Morris and Co.; Robert Adams directed it to be so transferred; he did so, I think, on the morning after the sale. These bonds were sold by M. Thomas and Sons “on account of whom they may concern;” they were so advertised. I have our books of sale and original entries with me. Paper marked *Exhibit A* is a true copy of the book, with the exception of the words “Copy from sales book” and “M. Thomas and Sons, Philadelphia, July 3, 1856.”

[It is agreed that the paper marked *Exhibit A* shall be read in evidence, instead of the book.] The words, “trans-

ferred by order of R. Adams to I. P. Morris and Co." are in my handwriting. That is the transfer, and it was made at the time he directed the transfer as stated. My impression is, that Mr. Saunders Lewis was the attorney in the case, and had something to do with the sale of the bonds; but it has been so long, I cannot distinctly recollect. [The last answer objected to by Saunders Lewis.] Saunders Lewis is a brother of George T. Lewis, the complainant. I do not know whether George T. Lewis and I. P. Morris are brothers in law. [Answer objected to by Saunders Lewis.] In 1848, 10 Robert Adams was in the liquor business; never knew him in any other business. I frequently see Robert Adams in Philadelphia; that is his permanent place of residence. Can't say as to I. P. Morris' place of residence.

And being cross-examined by Saunders Lewis, esq., says—My occupation in the firm of M. Thomas and Sons led me to a knowledge of how they transacted public sales of stocks and securities in that firm. The sale of these bonds was conducted in the usual manner by them. [The last answer objected to by counsel of defendant.] The sale was 20 public, at the Philadelphia Exchange, by public outcry, on the 15th of August, 1848. We had a large sale, with our usual company at the August sales attending. The entry of sales to R. Adams is in my handwriting. That is our usual mode of marking a sale. I was present at the sale; Mr. Adams was there; I knew Mr. Adams. Of my business knowledge of Mr. Adams, he is a man to whom we would make a sale of \$5000. The mark of the transfer was made the next morning after sale; it was not at the same time as the entry of the sales of the bonds; it was done with a dif- 30 ferent pen and different ink. The sale was a fair open *bona fide* sale—we make no other. These bonds sold at 31 and 30 per cent. Do not know what these bonds were worth; it was the highest price we could get for them at that time.

And being re-examined by Mr. Frelinghuysen, says—Our company at the August sales depend on what we have to sell, and on that night we happened to have a very attractive sale. After the transfer of the bid, I. P. Morris & Co. would, on payment, be entitled to a delivery of the bonds.

Stocks are always sold first on the list at our sales. As a general rule, our company is best at the commencement of the sale.

And being re-examined by Saunders Lewis, esq., says—On the night of the sale, these bonds were deliverable to Robert Adams, on payment of the money in the morning, and after the transfer to I. P. Morris & Co., on payment of the money. We would not have transferred the bid, if the bonds had been delivered and paid for.

10

THOS. S. ELLIS.

Sworn, examined, and subscribed to this 11th day of July, A. D. 1856.

JAMES B. DAYTON, M. C.

*Henry B. Rianhard*, of the city of Philadelphia, a witness produced on the part of the complainant, being duly affirmed, first having alleged himself conscientiously scrupulous of taking an oath, deposes and saith—In the year 1848, I was book-keeper for I. P. Morris & Co., and attended to the general duties of the counting-house; my duties led me  
20 to have something to do with their letters; I attended to the copying and mailing their letters.

Witness being shown *Exhibit B*, says, it is in the handwriting of I. P. Morris; it purports to have been written on the 9th month, the 11th, 1848; that date was an error on the part of Mr. Morris; it was written in the 8th month, the 11th, 1848, it was mailed the same day, 8th month, the 11th, is so post-marked.

And being cross-examined by Mr. Frelinghuysen, says— I know I. P. Morris; he resides in the city of Philadelphia;  
30 he is not a brother in law of George T. Lewis; George T. Lewis married Miss Fisher; I. P. Morris married Miss Thompson.

*Question.* Is there a relationship between George T. Lewis and I. P. Morris?

*Answer.* I don't know. [Question and answer objected to by Saunders Lewis.]

*Question.* Are they reputed to be related?

*Answer.* I never heard of any relationship between them. Mr. Saunders Lewis and I. P. Morris are not related, to my knowledge. [All above objected to by Saunders Lewis, as irrelevant.]

Being shown the bonds marked exhibits in this case, says—I saw some bonds of the Morris Canal Company, but cannot say whether these shown me are the same or not; I saw them as late as 1850.

In my testimony as to *Exhibit B*, in the suit between Fisher and the Morris Canal and Banking Company, in 10 1852, I said nothing about that letter being misdated, to the best of my recollection.

H. B. RIANHARD.

Affirmed, examined, and subscribed to before me, this 11th day of July, A. D. 1856.

JAMES B. DAYTON, *M. C.*

---

EXHIBITS.

EXHIBIT M.

Morris Canal Office, Jersey City, 9th June, 1848.

I. P. Morris & Co.

20

Sirs,—Our note, held by you for \$1357.25, falls due 15th June, inst. We find that it will not be convenient for us to pay it then, and hope it may suit your convenience to extend the time of payment for 60 or 90 days, upon the securities now held by you. We hope to be able to pay it then, and do assure you that our purpose is to pay it at the earliest possible period. A like extension of the note falling due on the 15th July will probably be desired by us.

Respectfully, &c.,

E. MARSH, *Pres't M. Canal & B. Co.* 30

## EXHIBIT I.

Philadelphia, 6 month 21, 1848.

The note of the Morris Canal Company for \$1357.28, received by us for machinery furnished on the line of canal, fell due on the 18th inst., and not being paid, has returned to us under protest.

A collateral security for the payment of this note, the bonds of the company to double the amount of note, were deposited in our hands.

10 We propose to place these bonds in the hands of a broker, with directions to sell a sufficient amount to cover the amount of note and expenses, of which course we presume the company can have no reasonable objection to offer. We shall, however, await a return mail before we take any action upon it.

We are, very respectfully,

I. P. MORRIS & Co.

To E. Marsh, Pres't Morris Canal and B. Company.

I have compared the above with the "press copy" of  
20 original, and found it a correct transcript.

F. B. RIANHARD,  
December 3, 1852.

## EXHIBIT N.

Morris Canal Office, Jersey City, 22d June, 1848.

I. P. Morris & Co.

Sirs,—Your favor of yesterday is just received. We cannot, I believe, offer a reasonable objection to the course you propose to pursue in reference to the bonds left with you as security for the payment of your note against this company;  
30 and yet I could hope that some other method might be devised to meet it than that. I have just directed notices to be sent for a meeting of the board of directors on Wednesday next, and have some hopes that measures will be adopted

then to meet your demand more satisfactory to all parties. I would therefore make the request, that you defer any further proceedings in reference to the bonds until after that meeting, the result of which I will apprise you of as soon as practicable.

Very respectfully, &c.,

E. MARSH, *Pres't M. Canal & B. Co.*

---

EXHIBIT J.

Philadelphia, 6 mo. 24, 1848.

Your favor of 22 inst. reach us last evening, but not until 10 we had passed the bonds from our hands, having waited the arrival of two mails without hearing from you.

Our broker has just informed us that he offered the bonds in question at the board yesterday, and that the highest bid he received was \$35. We limited him at \$50. We have requested him not to take any further action upon it until Thursday morning after the meeting of your board, which you write us will occur on Wednesday.

We are respectfully,

I. P. MORRIS & Co. 20

To E. Marsh, Pres't M. C. & B. Company.

I have compared the above with "press copy" of original, and found it a correct transcript.

H. B. RIANHARD,  
December 3, 1852.

---

EXHIBIT O.

Morris Canal Office, Jersey City, 28th June, 1848.

Messrs. I. P. Morris & Co.

Sirs,—Your favor of the 24th inst. was duly received, and I answer now at the close of the meeting of the board of 30 directors.

The board have fully considered the position of the business between your firm and this company, and I regret the necessity of saying, that we are not provided at present with the means to pay your claim, but are greatly encouraged with the prospect of effecting a loan of \$250,000, in which case your note, and some others similarly situated, will be promptly paid. Under these circumstances, I trust you will be willing to defer any further action upon the bonds until the result of the present effort to effect the loan is known, 10 which must be decided within 30 days. You cannot be worse off by such delay, and you may be very considerably better. You may rely, sirs, upon an honest effort to raise the money and upon the disposition of the company to pay you at the earliest possible period.

Mr. Whitney will return to Philadelphia soon, and will confer with you upon this subject.

Very respectfully, &c.,

E. MARSH, *Pres't M. C. & B. Co.*

---

EXHIBIT K.

20 Philadelphia, 7 month 19, 1848.

We are this morning advised that the second note of the Morris Canal Company has been noted for protest.

We entertained some hopes that you would have been able to meet this note, which would have encouraged us to extend the time on the other note, if required. We now infer that all prospect of your liquidating our debt is at an end, and we are strengthened in this belief by having communicated with some persons who you supposed would be subscribers to the proposed loan, but who gave us no reason to 30 expect were at all prepared to enter into such an arrangement.

We propose to await your answer by return mail, if any you have; and if we do not hear from you, we then propose to advertise them, and expose them to public sale to the

highest bidder, or if you have any other mode to suggest, we shall be pleased to have your views.

We are, respectfully,

I. P. MORRIS & Co.

To E. Marsh, President of the Morris Canal and Banking Co.

I have compared the above with "press copy" of original, and found it a correct transcript.

H. B. RIANHARD,

December 3, 1852. 10

---

EXHIBIT P.

Schooleys Mountain, 22d July, 1848.

I. P. Morris & Co.

Sirs,—Your favor of the 19th inst. is received, and I greatly regret the inability of our company to meet your claim at the present time; but, notwithstanding the discouragement in the matter of the loan, mentioned in your letter, we have confident expectations of success, in which case all your demands would be promptly paid. I have only to suggest, that a further delay of the resort to a sale of bonds might be 20 much more agreeable, and I trust more advantageous to your company. You will, however, decide upon your own course, while I have only to repeat, that no effort shall be wanting upon our part to meet yours and all other claims upon us.

Very respectfully, &c.,

E. MARSH, *Pres't M. C. & B. Co.*

---

EXHIBIT L.

Philadelphia, 9 mo. 11, 1848.

Fearing that you may not be apprized that we have felt 30 called upon to dispose of the bonds of the Morris Canal and

Banking Company, which we hold as collateral security for the claim we have on the company, we have therefore to inform you that they will be sold on the 15th inst., by public sale at the Exchange in this city, to the highest bidder, and if we do not realize from them sufficient to pay our claim, we shall then look to the company for any deficiency that may arise from the transaction. Please to receive annexed a copy of M. Thomas & Son's advertisement in the United States Gazette of this city.

10

We are, very respectfully,

I. P. Morris & Co.

To E. Marsh, Pres't of the Morris Canal & B. Co., Jersey City.

I have compared the above with "press copy" of original, and found it a correct transcript.

H. B. RIANHARD,

December 3, 1852.

---

EXHIBIT F, No. 3.

Morris Canal Office, Jersey City, 13th Nov., 1848.

20 George Bird, esq.

Dear sir,—Your communication to me of the 4th instant, in reference to the note past due of the Morris Canal and Banking Co., given to the Ames Manufacturing Co., was duly received, from which I learn, as well as from an interview had with you to-day, that your instructions are to sell the mortgage bonds of this company hypothecated as collateral security at public auction, as soon as practicable. You will allow me to say, that the bonds referred to were not left to be used in that way, being deposited as collateral, they can only be used upon our inability to pay the note; that inability is not established by the note not being paid at maturity. We regret the necessity of delaying payment so long, but hope to be able to pay it ere long; and when we do pay the note, we shall expect to have returned to us the bonds,

or the full amount of them in money. With this view of the case, I feel called upon to protest against the proposed sale of the bonds, and request that you will receive this as notice that you, or those you represent, will be held responsible to this company for their full amount, in case such sale should be made.

I am, sir, very respectfully, &c.,

E. MARSH, *Pres't M. C. & B. Co.*

---

EXHIBIT F, No. 2.

Morris Canal Office, Jersey City, 14th Dec., 1848. 10

George F. Lewis.

Dear sir,—Your favor of the 12th inst. is received, in which you give notice “that the six bonds, No’s 785 to 790, inclusive, for \$500, each, held as collateral security for the payment of a note drawn by Asa Whitney, president, for \$1560.75, will be sold at public sale on the 19th inst., Tuesday, at 7 o’clock P. M., at the Philadelphia Exchange, by M. Thomas & Sons, auctioneers, and that you will be held accountable for any deficiency, should there be any, between the net proceeds of said sale and the amount of said note, with interest.”

20

In answer to this communication, I would most respectfully say, that the bonds referred to were not left to be used in the way mentioned in your letter; being deposited as collateral, they can only be used upon our inability to pay the note. That inability is not established by the note not being paid at maturity. We confidently expect to pay the note within ninety days, and when we do pay the note we shall expect to have returned to us the bonds left as collateral security, or the full amount of them in money.

With this view of the case, I feel called upon to protest 30 against the proposed sale of the bonds, and request that you will receive this as notice that you will be held responsible to this company for their full amount, in case such sale should be made.

I greatly regret the course you have thought proper to

pursue in this matter, for we have regarded you as one of the best friends of this institution, and had supposed that your investigation of its affairs had brought you to this conclusion, that it was not able to pay all its liabilities, but would ultimately be among the most prosperous works in the country. The business of this year has been more than a third larger than last, and its revenues about \$80,000, and we are now employing our best efforts to procure the means to construct ten more new planes, to give the canal the capacity of carrying 500,000 tons, and producing an annual revenue of at least \$250,000. To do this, we only require the sum of \$300,000, and this, I trust, we shall get very soon, either in the way of a loan or by the issue of a preferred stock. With such prospects before us, we could hope that you would defer any proceedings to collect your note, until we have had a reasonable opportunity to accomplish this desirable object.

I am, sir, very respectfully,

E. MARSH, *Pres't M. C. & B. Co.*

20

*Notes given I. P. Morris & Co.*

Office of the Morris Canal & Bk'g Co.,  
Jersey City, February 22d, 1848.

\$1357.28.

On the fifteenth day of June next for value received, The Morris Canal and Banking Company promise to pay to their own order Thirteen hundred and fifty-seven 28-100 Dollars without defalcation or discount

A. WHITNEY  
*President*

30

Office of the Morris Canal & Bank'g Co  
Jersey City February 22d 1848

\$1357.28.

On the fifteenth day of July next for value received, The Morris Canal and Banking Company promise to pay to their

own order Thirteen hundred and fifty seven 28-100 Dollars, without defalcation or discount

A WHITNEY

President

The notes are endorsed "The Morris Canal and Banking Company;" and there was left, as collateral to these notes given I. P. Morris & Co., six bonds, No's 679, 680, 737, 738, 739, and 740, for \$500, each, and 24 bonds, No's 1403 to 1426, for \$100, each.

---

FINAL DECREE.

This cause coming on to be heard in the presence of Wil- 10  
liam L. Dayton, solicitor and of counsel with the complain-  
ant, and Frederick T. Frelinghuysen, solicitor and of counsel  
with the defendants, and the pleadings, proofs, and exhibits  
having been duly read, and the arguments of the counsel  
thereupon heard and considered, and the court having taken  
time to advise thereon, and it now appearing to the satisfac-  
tion of the court that a reference to a matter to compute the  
amount due upon the several bonds and mortgages in the  
complainant's bill set forth is received, and that the amount  
thus due and unpaid thereupon, from April 1st, 1848, to No- 20  
vember 1st, 1857, as agreed upon between the counsel of  
the respective parties, together with certain fees of protest,  
&c., is eight thousand five hundred and thirty-five dollars  
(*pro ut* agreement on file).

And it further appearing to the satisfaction of the court  
that the complainant is entitled to have and receive of the  
said the Morris Canal and Banking Company the amount  
of moneys so due and owing upon the several bonds in the  
complainant's bill mentioned and set forth, together with in-  
terest thereupon from the date of this decree, and that he is 30  
further entitled to have, receive, and enjoy all the benefit  
and security which may arise from the mortgage in the said  
bill mentioned and set forth, and that he is entitled to full  
relief in the premises; and it further appearing that, under

the circumstances, it will be for the interest of the said the Morris Canal and Banking Company not to sell and dispose absolutely of the said mortgaged premises, or any part thereof, but to sequester the reversions, tolls, issues, profits, and dividends of the said company, issuing out of said mortgaged premises, to raise, satisfy, and pay off the amount of money due upon said bonds and mortgage, with interest and costs—It is now, on this second day of November, A. D. eighteen hundred and fifty-seven, by Benjamin Williamson, 10 esquire, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said Chancellor, by virtue of the power and authority vested in said court, doth hereby order, adjudge, and decree, that the said the Morris Canal and Banking Company pay to the said complainant the said sum of eight thousand five hundred and thirty-five dollars (\$8535), with interest thereupon from the date of this decree, with costs, upon the part of the complainant, to be taxed immediately upon service of a copy of this decree, and that in default thereof, process do forthwith issue from and out 20 of this court, directed to the sheriff of the county of Hudson, for the immediate sequestration of all the revenues, tolls, issues, profits, and dividends of the said the Morris Canal and Banking Company accruing from or issuing out of their said canal extending from the Delaware to the Hudson river, through the counties of Warren, Sussex, Morris, Essex, Passaic, and Hudson, with all the privileges, appendages, and appurtenances thereunto belonging or appertaining; and that the said sheriff keep the same under sequestration in his hands until the said sum of eight thousand five hundred 30 and thirty-five dollars, with interest thereon and costs as aforesaid, be duly paid and satisfied to the complainant or to his solicitor.

B. WILLIAMSON, C.

---

|                                                        |        |
|--------------------------------------------------------|--------|
| Bonds No's 679, 680, 737, 738, 739, and 740, of \$500, |        |
| each, due April 1, 1856,                               | \$3000 |
| 40 Interest thereon from April 1, 1848, to November 1, |        |
| 1857, 9 years 7 months,                                | 1725   |

|                                                                               |        |
|-------------------------------------------------------------------------------|--------|
| Bonds No's 1403 to 1426, inclusive, of \$100, each,<br>payable April 1, 1856, | \$2400 |
| Interest from April 1, 1848, to November 1, 1857,<br>9 years 7 months,        | 1380   |
|                                                                               | <hr/>  |
|                                                                               | \$8505 |
| Protest fees paid on coupons,                                                 | 30     |
|                                                                               | <hr/>  |
|                                                                               | \$8535 |

Reference to a master in the above case is hereby waived, and the amount of said bonds, interest, &c., it is agreed is, as above stated, eight thousand five hundred and thirty-five 10 dollars.—Dated November 1, 1857.

WM. L. DAYTON,  
*Solicitor of complainant.*

FRED. T. FRELINGHUYSEN,  
*Solicitor of defendants.*

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

THE MORRIS CANAL AND BANKING COM-  
PANY, appellants,

*and*

GEORGE T. LEWIS et al., appellees,

20

} *On bill, &c.*

*To the Honorable the Court of Errors and Appeals.*

The humble petition of the Morris Canal and Banking Company, the appellant in the above stated cause, respectfully shows, that your petitioners find themselves aggrieved by a final decree, made in the Court of Chancery, by his Honor Benjamin Williamson, esquire, Chancellor of New Jersey, bearing date the                    day of                    30 in the year of our Lord one thousand eight hundred and

fifty-seven, wherein the said George T. Lewis was complainant, and the said the Morris Canal and Banking Company, John J. Palmer, Theodore Dehon, and Zebedee Cook were defendants, in this respect, to wit, that the said decree adjudges that the bonds of the defendants, the Morris Canal and Banking Company, in the pleadings in the cause mentioned, were and are existing debts.

And your petitioners humbly appeal from that part of the said decree of the Chancellor which decrees as aforesaid, 10 upon the ground that the same is erroneous, for that the said bonds of the defendants, the Morris Canal and Banking Company, in the pleadings in the cause mentioned, are not existing debts.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden.

And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated November 13, 1857.

20

FRED'K T. FRELINGHUYSEN,  
*Solicitor for and of counsel with appellant.*

---

PETITION OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between

GEORGE T. LEWIS, complainant,

*and*

THE MORRIS CANAL AND BANKING COM-  
PANY, J. J. PALMER, THEODORE DEHON,  
and ZEBEDEE COOK, defendants,

30

} *On bill, &c.*

The complainant hereby appeals from so much of the final decree made in this court, in the above stated cause, as declares the bonds of the defendants, the Morris Canal

and Banking Company, in the pleadings in the cause mentioned, to be an existing debt.

To the Court of Errors and Appeals.

FRED'K T. FRELINGHUYSEN,  
*Solicitor for and of counsel with the Morris Canal and  
Banking Company.*

Dated November 13, 1857.

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

FRED'K T. PRELINGHUYSEN, 10  
*Of counsel with complainant.*

---

CHANCELLOR'S OPINION.

By their charter, the Morris Canal and Banking Company are authorized to borrow money; and in order to secure its payment, with interest, to mortgage the chartered rights of the company, its canal, appendages, &c. The company executed a mortgage to trustees to secure such bonds as they might issue for the purposes of a loan. On the 22d of February, 1848, they were indebted to I. P. Morris and Co. on two promissory notes, amounting together to the sum of \$2714.56. One of the notes fell due on the 18th of June, 1848, and the other on the 18th day of July, of the same year. On the 22d of February, the company deposited with the said I. P. Morris & Co. six bonds, of \$500 each, and twenty bonds, of \$100 each, secured by the mortgage aforesaid, as collateral security for the payment of the said two promissory notes.

The notes not having been paid at maturity, on the 15th of August, 1848, the said I. P. Morris and Co. advertised and sold the bonds at public auction, and realized on said sale the sum of \$1626. They afterwards recovered of the company \$1335.91, the balance due on the promissory notes. The complainant is the holder of the bonds. He claims the

whole amount of principal and interest due upon the face of the bonds, and has brought this suit to obtain the benefit of the mortgage security.

By a reference to the case of *the Morris Canal and Banking Company v. Fisher*, as reported in 1 *Stockton's Ch. Rep.* 667, it will be seen that there is no difference in the general features of that case and the one we are considering. There, a debt was due from the company to Lewis, and bonds, in amount double of the debt, were deposited  
10 as collateral. Fisher became the purchaser of the bonds at a public sale. He filed his bill against the company, claiming the full amount of the bonds and the benefit of the mortgage security. That case was referred to a master, not, however, for the reason stated in the case, that the Chancellor had been of counsel in reference to the matters in controversy, but for other reasons, which were removed when the present case was argued. The master advised a decree in favor of the complainant. The case was carried to the Court of Appeals, and affirmed there. In deciding the present case,  
20 I shall observe the same caution which characterizes the opinion of the Court of Appeals, as delivered by Mr. Justice Elmer, and shall express no opinion upon any principle introduced into the arguments of the cause, except upon such only as are necessary to be decided in order to terminate the present controversy.

In the case referred to, Samuel F. Fisher was shown to be a *bona fide* holder of the bonds of the company, and, as stated by Mr. Justice Elmer, the question upon which the case turned was, whether the honest acquisition of the  
30 bonds, without notice of any defects in the title of the seller, if a defect there was, conferred on him a title similar to that acquired by a *bona fide* holder of money, bills of exchange, and promissory notes, payable to bearer. He declared it, as the opinion of the court, that the bonds in question were "transferable by delivery, so as to confer a complete title in the possessor, not as instruments negotiable under the law of merchants, as bills and notes are, but as instruments of a peculiar character, expressly designed to be passed from hand to hand, and by a common usage known  
40 to all, actually so transferred."

The very important question which was elaborately argued in the case of *Fisher*, as well as in the argument of this case, whether, *as between the company and the individual with whom the bonds were deposited*, the latter had a right to sell the bonds, unless there was a special contract to that effect, the Court of Appeals did not decide. The bonds having been made for the purpose of being transferable by delivery, and expressly designed to be passed from hand to hand, if the holder made an improper disposition of them, the company could not avail themselves of such a defence 10 against a recovery on the bonds in the hands of a *bona fide* purchaser, any more than they could against a recovery upon a bill of exchange or promissory note put in circulation under like circumstances. I am bound by the decision. It was therefore unnecessary to determine, in that case, whether Lewis had a right to sell the bonds. As *Fisher* was a *bona fide* purchaser, in the opinion of the courts, he was entitled to recover upon the bonds, whether Lewis, as between himself and the company, had the right to sell them, or had not that right. I shall, in deciding the present case, 20 adhere to the case of *Fisher*, as it was decided in the Court of Appeals.

I should be very unwilling to have this court to be the first in New Jersey to make the decision, that where bonds, mortgages, promissory notes, and like choses in action, are placed in the hands of a debtor, to secure the payment of a promissory note, that the creditor, if the note should not be paid at maturity, may sell the collaterals in open market to pay the note. I can see no legal objection to a debtor and creditor making an agreement to that effect ; but unless such 30 special agreement is made, I do not believe that it is the law of New Jersey that the creditor can claim any such right. I think I may safely affirm that such has never been the understanding in the business community, where it is very common to make deposits of collaterals. In our banks, nothing is more common than for an individual to deposit additional security for notes which he offers for discount. But I should doubt whether it has ever been understood that such collaterals could be disposed of by sale. It has not been the usage. Such has never been declared to 40

be the law in New Jersey, and I can see no reason why it should be so declared, since it is so easy for parties to make a special agreement to that effect, if they see proper to depart from the common usage.

I cannot see that the present case differs, in any respect, from that of *the Morris Canal and Banking Company v. Fisher*. It was attempted to show that Lewis was not a *bona fide* holder, that is, that he purchased these bonds with a full knowledge of the transaction as it existed between  
 10 the company and I. P. Morris & Co. Had the defendants been successful in establishing this fact, then it would have been necessary to decide as to the respective rights and duties existing between the original parties. After a careful examination of the evidence, I do not think the defendants have been successful in establishing the fact, that when Lewis made the purchase, he knew of the transaction. There is some evidence, and the suspicion is very strong, that he did. But there is no proof upon which the court can with any propriety rely. The bonds were struck off at the sale to  
 20 Robert Adams, and he afterwards transferred his bid to I. P. Morris and Co. There is no evidence from whom the complainant purchased them. All the testimony on this point is from Ephraim Marsh, the president of the company. I will give what he says upon this point in his own language: "I am acquainted with Mr. George Lewis, the complainant; think I have had conversation with him as to these bonds, and from that conversation I understood that George Lewis knew at the time he became holder of these bonds that they had been deposited with I. P. Morris and  
 30 Co. as collateral. We talked this matter all over. Mr. Lewis said he knew what the note was given for, and that the bonds were left as collateral security for the payment of two notes, which notes, I stated to him, were for a past debt."

Laying out of view the consideration of the position which the witness occupies as to the transaction, and that he speaks of a conversation which he only *thinks* he had with the complainants, the extent of the evidence is, that Lewis knew at the time he purchased the bonds, that they  
 40 had been originally left as collateral. It is not enough that

he had knowledge *at the time he purchased the bonds*. The bonds had been previously sold to Robert Adams, and there is no evidence that he was not a *bona fide* purchaser. If Lewis purchased them from a *bona fide* purchaser, it matters not whether he knew at the time of his purchase of the original transaction or not. When they came into the hands of a *bona fide* purchaser, they were relieved from all equities existing between the original parties. In case of a mortgage security, if one, who is a *bona fide* purchaser without notice of a prior unregistered mortgage, sells to another who had notice, the latter will be protected in his purchase; for otherwise such *bona fide* purchaser would not enjoy the full benefit of his own exceptionable title. This is a familiar principle, and so well settled that there is no need of citing authorities to support it. I think the complainant brings himself within the principles of the case of *Fisher*, as decided in the Court of Appeals, and that he is entitled to a decree. 10

