

New Jersey Court of Errors and Appeals.

Between

JOHN C. FARR, JR.,

Respondents,

and

LOUIS HAUENSTEIN and

THERESA HAUENSTEIN,

Appellants.

APPELLANTS' BRIEF.

FACTS.

The bill filed in this case sought to hold liable the real estate of Mrs. Theresa Hauenstein for the payment of an old judgment against her husband Louis, amounting to \$1,291.22 recovered by Niver & Co. on August 7th, 1890 for goods supplied in 1885. Niver and Company assigned their judgment to the complainant who filed his bill in this case in November, 1903. The prayer of the bill seeks to set aside a conveyance of the real estate purchased at Sheriff's sale by Mrs. Hauenstein on August 11, 1887, under a decree of the Court of Chancery for the foreclosure of a certain mortgage thereon, and having the said judgment decreed to be a lien thereon and that the lands may be sold to satisfy the same (see bill p. 9 of case, pp. 12 and 13).

The answer denies the material averments of the bill; sets up laches in the complainant in that for seventeen years Mrs. Hauenstein had possessed and owned the premises, viz: from August

11, 1887, and that Niver & Co. did not begin their action against Louis Hauenstein until May 28th, 1890, and that Mrs. Hauenstein had since mortgaged the property to the Hudson Trust Co. for \$2,000, and that these facts establish an estoppel which defeated complainant's claim.

Vice-Chancellor Garrison after the hearing filed an opinion (p. 26) which after narrating the facts supported the averments of the answer, dismissed the bill as against Mrs. Hauenstein stating (p. 27), "Under the circumstances I do not think that the title of the wife can be successfully attacked by this complainant."

But the learned Vice Chancellor concludes his opinion with this statement: "But with respect to the expenditures made by the husband of *his own money* in the payment of taxes, interest on the mortgage and other encumbrances on this property, I do think the assignee of the complainant, as a creditor has a right to have a charge against the property for such sums." Citing

Walsh vs. Rosso, 41 Atl. Rep. 669; 59 N. J. Eq. 123.

A decree was entered in conformity with this ruling (p. 17) referring it to a Master "to take an account of and ascertain the moneys paid by the said defendant, Louis Hauenstein, for taxes, assessments, interest on mortgage and for other encumbrances" &c., &c., and to report.

The Master took testimony and reported (p. 19) a list of all taxes, interest and assessments paid on the property by Mr. Hauenstein since August 28th, 1890, (p. 20) amounting to \$2,172.29.

But he also reported, "And I do also report that the said amounts *appear* to have been paid by the said defendant Louis Hauenstein *although it is testified to by him that the said moneys were given to him to make such payments and that he then made the same.*"

The defendant filed exceptions to this report (p. 33):

1st. Because the testimony and the checks given in payment for these encumbrances show that the money paid was that of Louis C. Hauenstein & Co.

2nd. That in making the payments Louis Hauenstein was a mere intermediary or agent for the son and Mrs. Hauenstein's mother who really advanced the money.

This report was unsatisfactory to the Vice Chancellor and he sent it back directing the Master to report "upon the testimony taken before him *whether the moneys paid by said Louis Hauenstein for taxes, &c., were paid by him out of his own moneys and earnings*" (p. 39).

In response to this the Master reported (p. 41): "I can only report that the moneys set forth in my former report, were actually paid by said defendant Louis Hauenstein *but I am unable to state from the testimony before me whether the moneys so paid were the moneys and earnings of the said Louis Hauenstein or not.*"

This put it up to the learned Vice Chancellor again and he (p. 43) after reading the Master's inability to report finds "that the moneys paid upon the property were his (Louis Hauenstein's) moneys, and that to the extent of the aggregate of such payments the complainant has a lien against the property standing in the name of Louis Hauenstein; and that unless within thirty days after service of a copy of the decree they pay to the complainant the amount specified in said decree the property in question may be sold to raise and pay said sum." (p. 45).

The decree was accordingly entered (p. 46) and the defendant Mrs. Hauenstein was adjudged to pay \$2,172.29 with the taxed costs and \$25 additional counsel fee.

From this decree the defendants appealed (p. 51) and filed their petition of appeal (p. 52).

The questions in the case therefore for decision by this Court are :

1st. Did Louis Hauenstein pay the taxes, interest, &c., upon his wife's property with his own funds?

2nd. If he did so, are such payments under such circumstances the basis of an equitable lien upon the wife's property which in this case was the home of the family?

3rd. If he paid the moneys of his son which were handed or loaned to him for that purpose, with the firm check, is such payment the basis for such a lien upon the family home

4th. Is not the complainant barred by his laches from asserting any such claim?

LAW.

The testimony in the case shows that the money paid by Louis Hauenstein upon his wife's property, the family home, were advanced by their son and the mother of Mrs. Hauenstein for that purpose and that Mr. Hauenstein was simply a trustee or intermediary for that purpose and this testimony is uncontradicted.

Before the Master Louis Hauenstein testified (p. 57): "I have paid nothing for the taxes. My mother-in-law paid the taxes until she died, I think in '96. My son gave me the money every year after that to pay the taxes. I never paid anything for interest, taxes and assessments out of my salary as Recorder which is only \$600 a year and at one time was only \$400." (p. 58) "The interest was paid by son John who would give the money to my wife and she would give it to me to pay the interest. He earned this money as book-keeper for the Union Brewery Company" (p. 58).

The real estate business was carried on in the

name of Hauenstein & Co. His son Louis and himself composed the firm (p. 58).

John died leaving his mother \$700 (p. 58).

George another son paid \$4.00 a week for board (p. 58).

His mother-in-law paid the interest and taxes as long as she lived. He attended to it for her (p. 58).

After the mother-in-law died Mrs. Hauenstein paid the taxes from her mother's money and money left by John to her (p. 59).

His son Lewis gave him money to pay taxes since 1895 or 1896 (p. 59).

The property was sold for taxes for a couple of years and they bought back (p. 59).

"Since the property became my wife's I have had charge of it, looking after it and paying the bills. I am 63 years old. My wife is 52. We have had eleven children; of these six are living; there are three under age. The place is the home where I reside with my wife and children" (p. 61).

"The money paid to me by my wife for payment on the property and the moneys given me by my son for that purpose were deposited by me as the funds of Louis C. Hauenstein & Co. mixed up with the other funds put in the bank" (p. 65).

Mrs. Hauenstem (who is a nervous old German lady and who understands English imperfectly) (p. 72), when asked if she paid taxes on her property said "My husband attended to that" (p. 78). She says she paid the interest through her husband, and that she got it from her mother (pp. 79, 80, 81) and gave it to her husband when necessary in cash to pay taxes and interest (p. 81).

Louis Hauenstein, defendant, before the Vice Chancellor testified (p. 85):

"We had no money, we were poor, we had no work," but eventually he paid the taxes "through the aid of my son."

His wife sometimes gave him the money to pay the interest (p. 85).

"If I haven't got it I make a loan or borrow the money from my son Louis. It belongs to the firm. My son is in partnership with me in the business. We gave our check for it" (p. 86).

The whole transaction involving the sale of the property, the purchase by Mrs. Hauenstein, through her attorney, the raising of the mortgages by Mrs. Hauenstein and every step relative to the ownership of this property by Mrs. Hauenstein is detailed by Mr. Hauenstein at pp. 92, 93 and 94 of the case; but as the Vice Chancellor found for Mrs. Hauenstein on that branch of the case it is unimportant upon his appeal excepting to show the bona fides of the whole transaction.

Mr. Rabe's testimony is to the same effect, he, as the attorney for the Hauensteins, *having* had charge of the transaction (p. 97 &c).

Also Mr. Bernheimer, the builder, who built the house and paid for it upon contract with Mrs. Schoening, the mother of Mrs. Hauenstein (p. 103).

George Vix, the mortgagee, (p. 104) testifies that Mrs. Hauenstein paid off the principal and interest of his mortgage; that he never received a payment from Mr. Hauenstein (p. 107).

Louis Hauenstein, Jr., (p. 112) testified: "Yes I helped him (his father) a number of times. I can't remember. I have given him money thirty or forty times. Sometimes a hundred, sometimes two hundred—not quite eight hundred, pretty near eight hundred."

Never paid taxes or interest himself but gave the money to his father for that purpose. In the last five years he loaned his father in round figures \$1,600 or \$1,700 (p. 113). "*I think he needed it in his business and to help the family along*" (p. 114).

That completes the testimony on the subject as to the character of these loans and how the learned Vice Chancellor could spell a constructive trust out of that situation is not clear.

The conclusion seems inevitable from this testimony:

1st. That the moneys that went to pay the taxes, interest, &c., on the house were moneys advanced for that purpose by members of the family who had a family interest in maintaining the home.

2nd. That the moneys were not advanced as loans but as contributions, filial contributions by members of the family.

3rd. Public policy protects such advances, and safeguards them against creditors with stale claims.

4th. The moneys paid were deposited in a firm account and paid by firm check, so that the firm and not Louis Hauenstein made the payments.

Equity does not lend a willing ear to the prosecution of stale claims and laches is always in equity except in cases of express trust, a complete defence to such claims.

The cases sustaining this doctrine of equitable estoppel are so numerous and uniform that the citation of a few only will be necessary:

Le Gendre v. Byrnes, 44 N. J. Eq. 372.

Wilkinson v. Sherman, 45 N. J. Eq. 413.

Tynan v. Warren, 53 N. J. Eq. 313.

McCartin v. Traphagen, 43 N.J.Eq.323.

Norfolk & N. B. Co. v. Arnold, 49 N. J. Eq. 397.

De Graw v. Mechan, 48 N. J. Eq. 219.

Lutjen v. Lutjen, 64 N. J. Eq. 773.

But the learned Vice Chancellor overcomes these authorities by citing *Walsh v. Rosso*, 59 N. J. Eq. 123, where the facts are entirely different and in no way analogous to this case. There the

husband owned a saloon and paid \$40 a month on his wife's mortgage *out of his saloon earnings*, which the Court held the creditor could reach in equity as gifts from husband to wife.

Here the moneys advanced were not the husband's and can only be held to be by a forced and unreasonable construction of the facts.

Walsh v. Rosso has no authority to support it and it is submitted that the public policy which encourages the stability and maintenance of the home against adversity must draw some limitation upon a doctrine which would lead to harsh, inequitable and inexpedient consequences.

Aside from that contention the doctrines of equity expressed in the maxim, *Vigilantibus non dormientibus equitas subvenit*, and supported by innumerable cases here and wherever English equity prevails cannot be overcome by such a recent counter doctrine as that contained in Walsh v. Rosso.

Laches while never a defense to the enforcement of an express or active trust has always been held to be a complete bar to the creation by equity of a constructive trust such as this is sought to be made. In other words equity will not give its assistance to the construction of a trust which public policy opposes upon the principle that should be an end to litigation.

The following authorities support this doctrine: "Long acquiescence or laches in cases of fraud or mistake is a bar to relief in equity; for it is one of the first principles of a court of equity that a party who seeks to establish a constructive trust in his favor even on the ground of fraud must use due activity and diligence in the prosecution of his claim; accordingly it was laid down by Sir William Grant, M. R., in the case of *Beckford v. Wade* that though no time bars a direct trust as between cestui que trust and trustee yet a constructive trust will be bound by long acquiescence

although the power of relief originally was clear and even arose in fraud."

Tiffany Trust and Trustees, p. 152, 3 Ponn. Eq. §1030, §1044.

In Beckford v. Wade, 17 Ves. 96, Sir William Grant, M. R., says:

"It is certainly true that no time bars a direct trust as between cestui que trust and trustee, but if it is meant to be asserted that a court of equity allows a man to make out a case of constructive trust at any distance of time after the facts and circumstances happened and of which it arises, I am not aware that there is any ground for a doctrine so fatal to the security of property as that would be so far from it that not only in circumstances where the length of time would render it extremely difficult to ascertain the true state of the fact, *but where the true state of the fact is easily ascertained and where it is perfectly clear that relief would originally have been given upon the ground of constructive trust, it is refused to the party who after long acquiescence comes into a court of equity to seek that relief;*" citing Bonney v. Ridjard, 4 Bro. C. C., 138; 1 Cox's Cases in Equity.

"In Townsend v. Townsend, 1 Bro. C. C., 550, Lord Commissioner Ashhurst lays down the distinction between actual trusts and trusts by implication. He says as to trusts being an exception to the statute of limitation the rule holds only as between trustee and cestui que trust: It is true that the trustee cannot set it up against his cestui que trust, but this case being merely that of a trustee by implication and as such affected by an equity, that equity must be pursued within a reasonable time."

Portlock v. Gardner, 1 Hare, 524.

Sir James Wigram, V. C., says: "A court of equity will not after a great lapse of time and where no actual fraud is proven enter into inqui-

ries for *the purpose of raising an implied trust against a defendant although the same lapse of time would be no part to a claim founded upon an express trust.*"

It must be recalled in this connection that the conveyance by the Sheriff to Mrs. Hauenstein was made in Aug., 1887 (See p. 27).

The complainant's assignor, Niver & Co., did not begin suit against Louis Hauenstein until May 28, 1890, and obtained judgment Aug. 7th, 1890 (see bill, p. 6), and complainant did not file bill in this case until Nov. 11, 1893, a period of sixteen years from the date of purchase.

These cases have received the approval of the Court of Chancery by Chancellor Runyon in 14 Stew., 151, and by Mr. Justice Dixon in *Hendrickson v. Hendrickson*, 15 Stew., 660.

The last cited case in this court is most instructive upon this question, and the learned Justice concludes an elaborate opinion with this statement of equitable doctrine: "In cases of this nature relief is refused to a party who comes into a Court of Equity after long acquiescence and that *not only in circumstances where length of time would render it extremely difficult to ascertain the true state of the fact, but also where the true state of the fact is easily ascertained, and where it is perfectly clear that relief would originally have been given upon the ground of constructive trust*, citing *Beckford v. Wade*. What that reasonable time is within which a constructive trust can be enforced depends on the circumstances of the case."

It is respectfully submitted that in any view we may take of this case, whether on the facts or the law, the decree of the learned Vice Chancellor should be reversed.

JAMES F. MINTURN,
Of Counsel with Appellants.

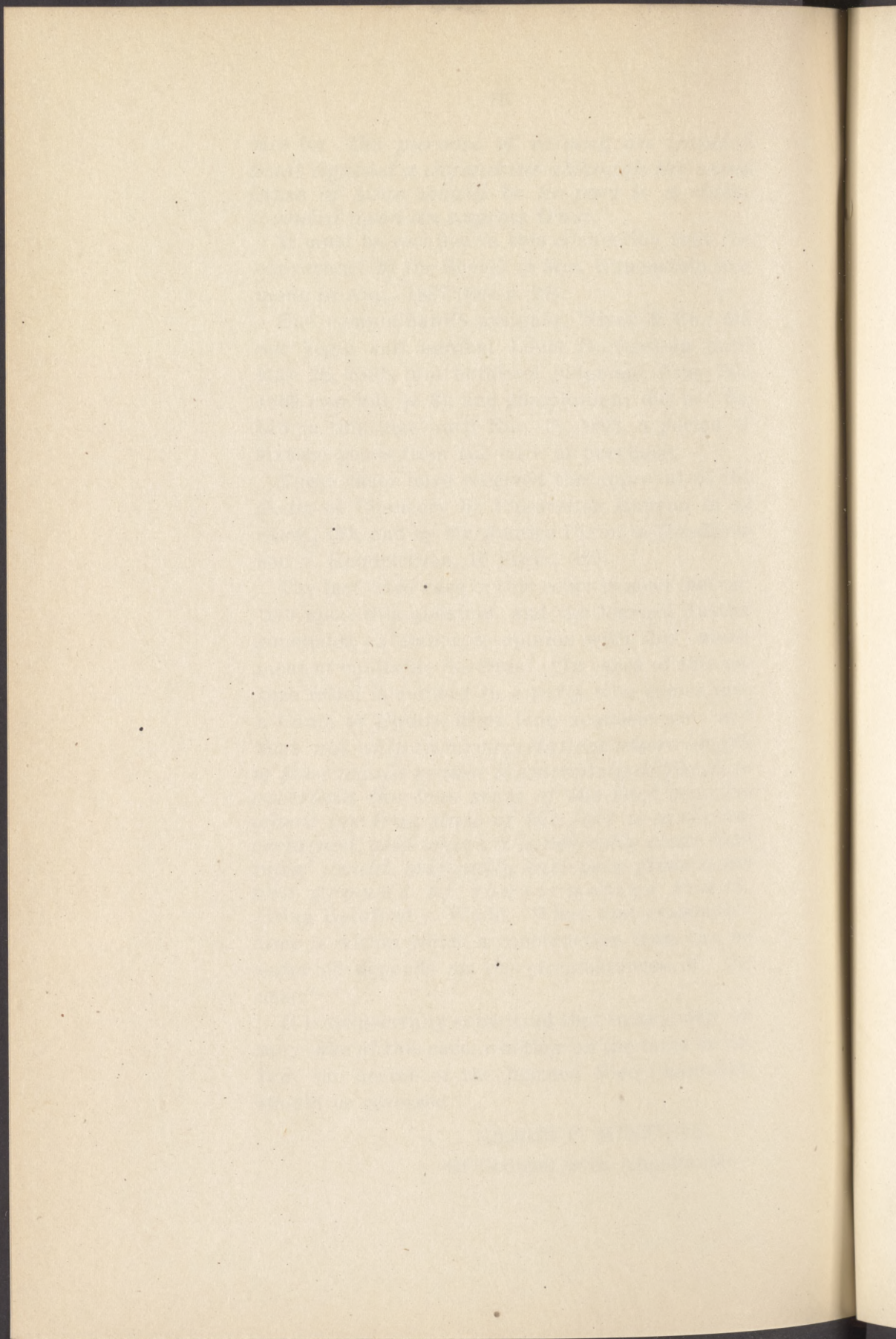
Supreme Court of Errors and Appeals

IN SENATE, JANUARY 18, 1884.

REPORT OF THE

CLERK OF THE COURT.

ALBANY: PUBLISHED BY THE STATE OF NEW YORK, 1884.



New Jersey Court of Errors and Appeals

Between

John C. Farr, Jr.,

Respondent,

and

Louis Hauenstein and
Theresa Hauenstein,

Appellants.

On Bill &c.

On Appeal

BRIEF FOR RESPONDENT.

STATEMENT

The complainant is the assignee of Niver & Co., of a judgment obtained by Niver & Co., against the defendant Louis Hauenstein, and one, Weiss, in the Hudson County Circuit Court, in eighteen hundred and ninety, for over Twelve hundred dollars. The bill of complaint filed herein is in the nature of a creditor's bill, and prays to have the amount due upon said judgment made out of the lands and premises described in said bill

Hauenstein & Weiss were brewers and purchased certain goods from Niver & Co., which they did not pay for, and it was to recover the amount due for said goods that Niver & Co. brought their action in the Hudson Circuit against Hauenstein & Weiss. These goods were purchased between December 2, 1884, and October 1, 1885, as appears by the bill of particulars attached to the declaration in that action (See "Suppl. to Case on Appeal," p. 25). The obliga-

tion to pay was created and credit extended between above mentioned dates, during all of which time Louis Hauenstein was the record owner of the lands described in the bill of complaint; on July 15, 1884, he executed a deed of said lands to one F. W. Keller, who on the same day also executed a deed of said lands to Mrs. Heuenstein: both deeds were acknowledged July 15, 1884: neither was recorded until December 3, 1885. (Exhibits D 1 and D 2, pp. 28 and 31 Suppl. to Case on App.). Mr. Hauenstein's firm practically failed in the winter of 1885-1886—sold out their business for no consideration (See Rabe testy. p. 102, Case on App.).

Judgment was obtained by Niver & Co. against Hauenstein & Weiss on August 7, 1890, for \$1,291.22; and on the eleventh day of the same month, a writ of execution was issued, which was subsequently returned wholly unsatisfied. (See Exhibit 1 of Compl.—Suppl. to Case on Appeal, p. 8).

On August 1, 1903, the said judgment was duly assigned to the complainant herein. (See Exhibit 2 of Compl.—Suppl. to Case on Appeal, p. 9).

On October 23, 1903, an alias execution was issued, and that was also returned wholly unsatisfied (See Exhibit 3 of Compl.—Suppl. to Case on Appeal, p. 12).

The bill of complaint herein was filed November 10, 1903.

The cause was heard before His Honor Vice-Chancellor Garrison on June 6th, 1905, and he decided that "to the extent of the amount due the complainant, John C. Farr, Jr., from the defendant Louis Hauenstein, upon the said judgment, the moneys paid by Louis Hauenstein, since the entry of the said judgment, for taxes, assessments, interest on mortgages and other encumbrances upon the lands and premises de-

scribed in the bill of complaint filed herein, are a charge against said lands and premises in *favor* of the complainant herein." And it was referred to Joseph S. Parry, a Special Master, to "ascertain the moneys paid by the said defendant, Louis Hauenstein, for taxes, assessments, interest on mortgages and for other encumbrances on the said lands," &c (See Interlocutory Decree, pp. 17-18).

The said Master took testimony and proofs (pp. 57-66), and reported that said Louis Hauenstein paid for taxes, &c. on said lands the sum of \$2,172.29 (being interest \$1,475.; taxes, &c. \$374.29; redemption of sale for taxes, &c. \$323) (See Master's Report, pp. 19-24). The Master's report was dated July 28, 1905.

On August 8th, 1905, a rule nisi to confirm said report was entered, and a certified copy was duly served on the solicitor of the defendants on August 11, 1905. No exceptions to said Report having been filed, a Final Decree was advised on September 5th, 1905.

On September 13th, 1905, the solicitor of the defendants presented a petition to Vice-Chancellor Garrison, praying for the opening of said Final Decree, and praying that he might be heard on certain exceptions to said Master's Report which he said, in his verified petition, had been mailed to the Clerk in Chancery on August 24th, 1905, (which as a matter of fact he never filed until September 5th, although his time to file same expired August 19). On that day (September 13, 1905), Vice-Chancellor Garrison advised an order to show cause why said decree should not be opened, &c. On September 25th, 1905, said decree was opened, and a hearing was had before the Vice-Chancellor on the said Exceptions, and on October 10th, 1905, an order was made to return the Master's Report to said Master, and he was directed to "make further

report, upon the testimony already taken before him whether the moneys paid by said Louis Hauenstein for taxes * * as aforesaid, were paid by him out of his own moneys and earnings," &c. (See Order, p. 39).

~~paid by said Louis Hauenstein for taxes as aforesaid, were paid by him out of his own moneys and earnings," &c. (See Order, p. 39).~~

The said Master made his further report to the effect that the moneys paid, to wit, \$2,172.29, "were actually paid by said defendant Louis Hauenstein, but I am unable to state from the testimony before me whether the moneys so paid were the moneys and earnings of the said Louis Hauenstein or not," (See Report, pp. 41-42).

The matter was then brought on before the Vice-Chancellor to settle the decree upon the the pleadings and proofs, including the proof taken before the Master. The Conclusions reached by the Vice-Chancellor, (which were in favor of the Respondent) will be found at page 43 of the Case.

On November 20th, 1905, the Vice-Chancellor advised another Final Decree in favor of the complainant, adjudging that said complainant have a lien upon said lands and premises to the extent of \$2,172.29, the amount expended by the defendant and judgment debtor, Louis Hauenstein, upon said lands, &c. (See Decree, p. 46).

Notice of Appeal was served herein (but not until the 20th day of December, 1905) and the Petition of Appeal was filed on the opening day of the March Term, 1906, of this Court.

The Appellants set forth, in their petition, in substance, that they are aggrieved, in the following respects:

(1) That the decree adjudges that the sum of \$2,172.29 "paid by the defendant Louis Hauen-

stein for taxes," &c., are a charge and lien upon said lands of Theresa Hauenstein

(2) That the decree directs the appellants to pay costs.

(3) That the decree directs that unless said sum of \$2,172.29 and costs be paid within thirty days, &c., that said lands be sold, &c.

(4) That the decree directed that an additional counsel fee of \$25. be included in respondent's taxed costs.

(5) That the decree adjudges that the said lands of Theresa Hauenstein be charged with the amount due on the judgment against the defendant Louis Hauenstein.

FIRST POINT.

The Final Decree very properly adjudges that the sum of Two thousand one hundred and seventy-two dollars and twenty-nine cents "paid by the defendant Louis Hauenstein for taxes" &c. are a charge ~~and~~ lien upon the lands described in the bill of complaint, and that the complainant recover that amount out of said lands.

The proofs in the case show that the defendant-appellant, Louis Hauenstein was a judgment debtor of the complainant (by assignment of judgment from Niver & Co.), and that said Louis Hauenstein paid certain amounts out of his own moneys and earnings, on and for the benefit of lands the title to which was in the name of his wife, and that said payments were made with her knowledge and consent.

The Vice-Chancellor having found that said judgment debtor paid certain taxes, assessments, &c. on the lands in question out of his own moneys and earnings, the complainant below was certainly entitled to a lien upon said lands to the extent of such payments.

A judgment creditor is entitled to follow up moneys or property of the judgment debtor, and if he locates said money or property, he is entitled to have his judgment paid out of the same; or if the said moneys have been put into bonds, real estate or other securities, he is entitled to have the same sold to pay his judgment.

This principle is so well settled that I will not cite a long list of authorities, but will only call the Court's attention to one of the cases referred to by the Vice-Chancellor in his opinion, which is very similar to the case here on appeal.

I refer to the case of *Walsh vs. Rosso*, 41 Atl. Rep. 669—also in 59 N. J. Eq. 123, on final hearing. In that case the wife bought a piece of property, with her own money—the property being subject to a building and loan mortgage; the earnings of the husband were used to pay the installments (interests &c.) due the building and loan association: Vice-Chancellor Pitney held that the judgment creditor was entitled to a lien to the extent of and to an amount equal to, the amount paid by the husband (judgment debtor) to the association. The Vice-Chancellor also held that such payments cannot be held as a gift to the wife as against a judgment creditor.

As to the proofs sustaining the finding of fact by the Vice-Chancellor, that the payments made by Louis Hauenstein were made out of his own moneys and earnings, I will refer to the same under my "Fifth Point."

SECOND POINT.

The Final Decree entered herein very properly directed that the defendants below (Appellants here) pay the complainant's costs.

The appellants herein complain in their peti-

tion of appeal and state that they are aggrieved because the final decree herein, directs that the defendants—appellants should pay complainant-respondent's costs.

Section 84 of the Chancery Act (Laws of 1902, page 538) provides "Except where it is otherwise directed by this act or some other law, it shall be in the discretion of the Court of Chancery to award costs or not; and the payment of costs when award, may be compelled by writ of fieri facias or capias ad satisfaciendum issuing out of the said court, or by subpoena and attachment."

There is no question but that the Court of Chancery had power to award costs to the complainant below, and also had power to compel their payment. The awarding of costs being a matter of discretion, it will not, as I understand, be considered on appeal. There is no possible reason why the defendants below should not pay the costs.

THIRD POINT.

It was certainly proper that the Final Decree should direct that unless the amount found due to the complainant was paid within a limited number of days, that the lands described in the bill of complaint should be sold to realize said amount.

The appellants also set forth in their petition of appeal that they are aggrieved because the final decree made by the Chancellor directed that unless the sum of money which was found to be due to the complainant, and the complainant's costs, were paid within thirty days, that the lands and premises in question should be sold, &c.

Section 46 of the Chancery Act (Laws of 1902, page 525) provides "That the complainant hav-

ing obtained a decree it shall be lawful for the said court to issue process for the immediate sequestration of the real and personal estate of the defendant, or so much thereof as may be sufficient to satisfy the demand of the complainant in the decree specified, *with costs*, or to issue *a writ of fieri facias* against the goods and chattels, lands and tenements, hereditaments and real estate, of the defendant, upon which sufficient property shall be taken *and sold* to satisfy the said demand, *with costs*, or to issue a *capias ad satisfaciendum* against the defendant, upon which writs of *fieri facias* and *capias ad satisfaciendum* there shall be the same proceedings as at law."

I do not see on what ground, or for what reason, the appellants have made the contention above mentioned, that the Court of Chancery had no right to order the lands and premises in question sold. If the Court of Chancery had no such power, it could make Decrees and Orders in suits of this nature, but could not see that the same were made effective.

FOURTH POINT.

It was certainly proper that, as provided in the Final Decree, an additional counsel fee should be included in the taxed costs of the complainant below (respondent here).

The defendants-appellants state in their petition of appeal that they are aggrieved because the final decree directed an additional counsel fee of Twenty-five dollars to be included in the taxed costs of complainant-respondent.

I do not know how the appellants can bring the question of that award of a counsel fee of Tweney-five dollars here to be reviewed.

Section 91 of the Chancery Act (Laws of 1902, page 540) provides "In all causes it shall be law-

ful to include in the complaint's taxable costs, to be collected as a part thereof, a counsel fee to be fixed by the chancellor on final decree."

The award of this additional counsel fee of Twenty-five dollars was fixed in the final decree, and the Chancellor certainly had power to fix the same.

One peculiarity of this case is that there are two final decrees, one made in June 1905, which was, upon application of the appellants, opened; and then another final decree (in effect the same decree) made in November 1905. The only objection that I can see to this matter of an award of the counsel fee of Twenty-five dollars is that the amount awarded was too small.

FIFTH POINT.

It was certainly proper that the Final Decree should adjudge that the lands described in the bill of complaint, being lands to which Theresa Hauenstein now holds the legal title, be charged with the amount which the defendant and judgment debtor, Louis Hauenstein, had expended on and for the benefit of the same.

The legal title to the lands in question was in the name of Theresa Hauenstein at the time Niver & Co., (complainant's assignors) obtained their judgment—August 7th, 1890.

After that date, and up to the time of the final decree, Louis Hauenstein paid out of his own moneys and earnings, for the improvement and preservation of that property, and for the benefit of the same, the sum of \$2,172.29. (See Master's Report, p. 19-24). The Master was unable, *upon the testimony taken before him* to decide whether the payments were made by Hauenstein out of his own moneys and earnings, or not; but when the testimony

taken before the Vice-Chancellor is considered in connection with the testimony taken before the Master (as was done by the Vice-Chancellor in his final consideration of the case), there cannot be any question as to the fact that the said moneys were *the moneys and earnings of Hauenstein*, the judgment debtor.

The testimony of Louis Hauenstein before the Master and his testimony before the Vice-Chancellor appear to be somewhat at variance. I think he assumed, when before the Master in his office, that he did not have to keep as close to the truth as he did when in the Court Room before the Vice-Chancellor. The testimony before the Vice-Chancellor was taken June 6th, 1905, and the testimony before the Master was taken July 17th and 26th, although in the printed case the depositions taken before the Master appear ahead the testimony taken before the Vice-Chancellor.

I will not here refer to the peculiar circumstances of Mrs. Hauenstein acquiring the legal title to the lands in question, because the Vice-Chancellor proceeded on the theory that the title of the wife could not be successfully attacked by this complainant. (See Conclusions, p. 27, L. 17-19).

Mrs. Theresa Hauenstein, one of the defendants, was called as a witness (p. 71), and she did not appear to want to tell the truth in regard to the matters about which she was questioned. (See pp. 73, 74, &c.) She did testify, however, that her husband, Louis Hauenstein, attended to the payment of taxes on the property (p. 72, l. 24-25). She could not remember if she ever paid any interest on any mortgage (p. 72, l. 26-28). She did not really know, as a matter of fact, what mortgages (if any) were on the property at different times; she did not know what mortgage, (or for what amount) is on same

now. She said her husband attended to the payment of the interest on the Hudson Trust Company mortgage. (p. 78, l. 17-18). She does not know how often the interest is payable (p. 78, l. 21-23), and she does not know how her husband attends to it (p. 78, l. 25). Her following testimony is so wavering that it cannot be of any value; she testified that she gave her husband money to pay interest, but she does not know when or how much—that she had this money from her mother, some fifteen or twenty thousand dollars, but she does not know the name of the friend who is supposed to have charge of her mother's estate. She does not know whether or not her mother *lost all her money* in the failure of Hauenstein & Weiss. Her mother did not leave a will, and no one was ever appointed administrator of her estate, &c. &c. (p. 78, l. 26, &c.).

Louis Hauenstein, one of the defendants, was the next witness called (p. 83); he testified that he was in the fire insurance and real estate business, and he was also Recorder of the Town of Union (p. 83, l. 34-38). That at the present time there is a mortgage for \$2,000. on the property, held by the Hudson Trust Co. (p. 85, l. 17-21). The interest is paid every three months. *I pay it.* (p. 85, l. 24). "Q. Where do you get the money to pay it with? A. Well, sometimes MY MONEY, sometimes my wife often gave me a few dollars; and if I haven't got it, my son Louis he has it; *he gives me* sometimes money." (p. 85, l. 25-29). My wife has given me money "perhaps two or three times, four times," &c. (p. 85, l. 33-35). "Q. Who pays the taxes on that property? A. *I do.* Q. Out of your own funds? A. Certainly out of my own funds; if I haven't got it I make a loan or borrow the money from my son Louis." (p. 85, l. 39 to p. 86, l. 3). The last interest was paid in April (1905).

I had that money: I paid it out of my own funds, &c. (p. 86, l. 9-12).

In regard to the *alleged firm* of Hauenstein & Co. he testified that he and his son "don't have no shares;" it is "just merely a family matter, that's all. * * He started me in business * * and he fixed me up." (p. 86, l. 15-23).

I paid Mr. Vix his interest from *what I earned*. I paid it out of my own earnings, sometimes my son would help me. Sometimes I would pay *it out of my salary as recorded*. (p. 87, l.29-38).

On page 88, lines 20 to 33, he admitted having testified before Sup. Ct. Comr. Parry, (being an examination under a Circuit Court order) that his wife did not inherit any money at any time. All the money of his wife's mother was lost in the brewery. This is undoubtedly the fact. Mr. Rabe testified practically the same, later on; so his wife could not have had any money to give him at any time.

At page 92, lines 24 and 25, Mr. Hauenstein testified that his mother-in-law "had all her money interested in the brewery."

Mr. Rudolph F. Rabe was called as a witness for the defendants. (p. 97). He had acted, years ago, as the legal adviser of Mr. and Mrs. Hauenstein and also of Mrs. Hauenstein's mother, Mrs. Schoening. He testified that Mrs. Schoening had ventured "her all" in the brewery, and "subsequently lost all." (p. 99, l. 19-24).

Mr. George Vix, who held a mortgage on this property at one time was called by the defendants. (p. 104). He endeavors to help the defendants by trying to show that he dealt with Mrs. Hauenstein, as to interest on mortgage, &c. He testified that he *never saw* Mr. Hauenstein about the loan or the interest, *but* he "asked Mr. Hauenstein several times to tell his wife" that he would like to have the money. (p.

107, l. 21-26). He went to Mr. Hauenstein's office or his house to tell him that, he could not remember which. He did not seem to know who he saw or who he told about it. (p. 107, l. 27-36).

Mr. Hauenstein, Jr., was called by the defendants. (p. 111). He testified that he had helped his father out a number of times: "I have *given* him money maybe thirty or forty times." I never paid any interest on the mortgage on the property. I advanced the money to my father. "He told me some of that money was for that purpose." (p. 111, l. 38 to p. 112, l. 18). In regard to the taxes "*I suppose* he may have used some of this money to pay taxes with. He has always been in, you might say, financial straits."

On cross examination Mr. Hauenstein, Jr., testified, in regard to the *supposed firm* of Hauenstein & Co., that the understanding was that he was not to draw any salary from the firm. He did not take an active part in it: his father did the active work (p. 113, l. 1-23). On the question of the *alleged firm* of Hauenstein & Co., Mr. Hauenstein, Sr., testified before the Master "The name on the place of business is Louis C. Hauenstein, but inside the office the safe is marked, "L. C. H. & Co." (p. 66, l. 21-23).

Mr. Hauenstein, Jr., also testified, on cross examination that within the last five years he had *loaned* his father sixteen or seventeen hundred dollars; I think he paid back two hundred and fifty. (p. 113, l. 26-40). The money I loaned him I think *he needed in his business* and to help the family along. I do not know what amounts he paid here and there. (p. 114, l. 1-8).

When the matter was referred to the Master to ascertain the moneys paid by the defendant Louis Hauenstein for taxes, &c. on the property, and for interest on the mortgages, Mr. Hauen-

stein, Sr. was called. He then knew that the Vice-Chancellor had decided against him on the issues, and he evidently thought that he could nullify that decision by varying his testimony. He testified, at page 57, lines 31 to 34, that his wife's money paid the interest on mortgages, although he had testified before the Vice-Chancellor that he paid it out of his own earnings, out of his ~~salary~~^{salary} as recorder, or out of money he borrowed: and it also appeared by the evidence before the Vice-Chancellor that his wife had no money.

He also testified before the Master (p. 57, l. 34-39), that since the entry of the judgment he paid nothing for taxes—that his mother-in-law paid them until she died, and after that they were paid by his son.

Before the Vice-Chancellor he testified (p. 85, l. 39 to p. 86, l. 3), that he paid the taxes out of his own funds. It also clearly appeared, as I before stated, that his mother-in-law had no money; she had lost "her all" in the brewery failure. His further testimony before the Master shows clearly that it was his moneys that paid taxes, assessments, interest on mortgages, &c. Some years he even had the tax bills made out in his own name. (See Exhibits C. 2 and C. 3). On the tax bill Exhibit C. 2, a deduction of \$12.25 was made for "Exemption on account of service in Fire Department as per law:" this certainly was not for services of Mrs. Hauenstein.

By Exhibit C. 4, it appears that he had the tax bills for a number of years made out in his own name—I say HE did so, because by his own testimony he *attended* to the payment of the taxes.

When the property was sold for taxes, &c., under the Martin Act, it was redeemed by Louis C. Hauenstein, the defendant and judgment debtor (Bautz deposition, p. 63, l. 9-10, also see

Exhibit C. 4, Suppl. to Case, p. 6, line 9 and Stipulation, Suppl. to Case, p. 7, l. 30). The defendant Mr. Hauenstein drew a check to Neuscheller, Collector of Taxes, for \$323. to redeem the property (L. C. Hauenstein's deposition, p. 64, l. 34 &c.).

From all the proofs, it clearly appears that it was the money of Louis C. Hauenstein the defendant and judgment debtor which went to pay the taxes, assessments, &c., on the property in question, and the interest on the mortgages on this property.

SIXTHPOINT.

The lands described in the bill of complaint, being lands to which Theresa Hauenstein now holds the legal title, should certainly be charged with the amount ~~which~~^{which} the defendant and judgment debtor Louis Hauenstein expended and for the benefit of the same; and in fact it should have been decreed that the complainant was entitled to a lien for the full amount due upon his judgment because the defendant-appellant Theresa Hauenstein allowed the said defendant and judgment debtor Louis Hauenstein to hold himself out as the owner of said lands at the time he obtained credit from Niver & Co., respondent's assignors.

The appellant Louis Hauenstein, was, before his old brewery firm of Hauenstein & Weiss became financially embarrassed, the owner of the property described in the bill of complaint.

On July 15, 1884, he—his wife joining—executed a deed of his property to a Mr. Keller, and on the same day Mr. Keller executed a deed of the same property to Mrs. Hauenstein, one of the defendants. (See Exhibits 1 and 2 of Defendant, pp. 28-35 of Suppl. to Case).

For some reason these deeds were kept from the record until December 3, 1885—nearly a year and a half. It was during this very time, between the execution of these deeds and the making of the same public, by having them recorded, that Hauentein & Weiss, bought goods of and obtained credit from Niver & Co. (See Suppl. to Case, pp. 25 and 26). The defendants attempted to give an explanation of the delay in recording these deeds, but I insist that from the facts and the testimony together, only one conclusion can be arrived at, to wit: that said deeds were contemplated and executed, and the recording of the same delayed, with fraudulent intent. (See testy. of Hauenstein, pp. 94 and 95).

I contend that the appellant Theresa Hauenstein, having allowed Louis Hauenstein to hold himself out to the world as the owner of these lands, she is estopped from denying, as to any one who extended credit while he was the record owner thereof, that he was the real owner and held the beneficial title: and that she is also estopped from denying the claim of such persons or their representatives to a lien on such lands to the extent of the amount due them.

SEVENTH POINT.

The question of laches raised by the defendants is no defense to this suit.

The Vice-Chancellor who heard this cause allowed counsel for the defendants to submit a brief on this question, as he seemed to lay stress upon that point in his oral argument, and after carefully considering the briefs submitted, the learned Vice-Chancellor decided that said defense would not avail the defendants-appellants herein.

The complainant was entitled to bring this

suit, not only under the general equity jurisdiction, but also under legislative authority; and under the proofs, I respectfully contend, we were entitled to the decree made herein by the Vice-Chancellor.

In his brief submitted to the Vice-Chancellor, counsel for the defendants-appellants cited a number of cases, and embodied in his brief incomplete and unconnected extracts from the opinions in the case of Van Houten vs. Van Winkle, 46 N. J. E. 384, and the case of De Grauw vs. Mechan, 48 N. J. E. 219.

There is no question but that the principles laid down in those opinions are correct, but they have no application to the case at bar. Counsel only quoted *portions of the opinions* in these two cases; he did not set forth what the cases were about, or how the principle was applied to the particular facts in the cases mentioned.

The case of Van Houten vs. Van Winkle, 46 N. J. E. 380, was brought to reform one deed and to set aside another and the third paragraph of the syllabus shows clearly that the opinion in that case has no application to the case under consideration. The said third paragraph is as follows:

“Where a complainant who holds documentary evidence by which a prima facie case may be made, fails to bring suit in equity for many years *and until the death of witnesses* whose testimony might have rebutted the case thus made, she must, in her bill, explain and sufficiently excuse her laches.”

In the case under consideration all the witnesses who could possibly have been of any benefit to the defendants-appellants were produced; none of them are dead, and all the evidence on their part was produced before the

Court as fully and completely at the hearing as it could have been at any time. As a matter of fact all the oral evidence that the complainant below could produce had to be from the mouths of the defendants-appellants themselves. If any witness had died, or the delay had caused any trouble in producing evidence, the complaint below would have suffered in the present instance, and not the defendants-appellants.

The case of *De Grauw vs. Mechan*, 48 N. J. E. 219, was a suit in the nature of a creditor's bill, but in that case the conditions had been so changed that they would not be re-instated; parties and witnesses had died and it was on that account that the bill was dismissed. The second paragraph of the syllabus explains the reason for the dismissal of the bill, in regard to the question of laches, and is as follows:

"Delay by complainant in the enforcement of remedies, involving a lapse of time during which conditions had been changed, which cannot be re-instated, money had been expended in improvement of property attacked, *parties and witnesses had died*, and indemnity imperiled or lost, is ground for a court of equity to withhold relief."

None of the cases which counsel cited in his brief submitted to the Vice-Chancellor were in any way parallel to the case at bar. He stated that complainant-respondent did nothing after obtaining his judgment until the filing of his bill in this cause. The facts are that execution was issued upon the judgment as soon as the judgment was obtained, by the original judgment creditor, and the same was not returned by the Sheriff for a long period of time, but was finally returned wholly unsatisfied. After the judgment was assigned to the complainant-respondent, another execution was issued and that was

returned unsatisfied, and the judgment debtors were then examined under an order of the Hudson County Circuit Court, and upon the information then obtained this suit was brought.

Counsel for the defendants below also called the Vice-Chancellor's attention to the case or *Smith vs. Duncan*, 16 N. J. E. 240. In that suit a bill was filed by defendant in an execution at law, to set aside a sheriff's sale of real estate made under the execution. There was no fraud at the sale, the complainant had personal notice, besides the advertisement; he was not present at the date fixed for the sale in the advertisement, and the sale was adjourned, and he was again notified of the adjourned day. He asked in his bill of complaint for relief against a bona fide alienee of the purchaser at the sheriff's sale. The bill of complaint was dismissed.

The case of *Le Gendre vs. Byrnes*, 44 N. J. E. 372, also cited by him, was a suit brought to question the validity of a deed given to a daughter by her aged and feeble mother (eighty-six years old) with whom the mother lived, and who had charge of the mother's property, &c. The deed was given two years before the mother died and was not recorded until after her death. A motion was made to dismiss the bill. In speaking of laches, Vice-Chancellor Van Fleet, who heard the cause, said (page 378) that a bill would not be dismissed *unless* it was clear "that the complainant has delayed suing for *so long* a time after his cause of action arose, as to deprive the Court of the power of ascertaining, with reasonable certainty, what the truth is respecting the matter on which he rests his right to a decree, or that he has by his delay placed himself in a position where he has gained an unfair advantage over his adversary."

It is clear that the Le Gendre case is in no way parallel with the case at bar. In the case now under consideration, I contend that the Court was not deprived of the power of ascertaining what the truth was in respect to the matters under consideration, and whatever delay there may have been did not place the complainant below in a position where he gained any unfair advantage over the defendants-appellants.

Counsel for appellants also cited the case of *Wilkinson vs. Sherman*, 45 N. J. E. 413, which was a suit in regard to contingent and executory interests, under a will. On the question of laches the Vice-Chancellor said, (page 425):

“After deliberate and intentional delay until the death of that witness and the possibility of explanation is thereby extinguished, it is most inequitable that one who so purposely delays should now be permitted to say that such explanation is necessary to ensure title under the deed.”

This case has no application to the one under consideration.

Counsel also cited the case of *Tynan vs. Warren*, 53 N. J. E. 313, which was a suit in regard to a trust, &c., and in his opinion the late Vice-Chancellor Green said: (p. 321).

“I do not understand that mere delay in bringing a suit will deprive a party of his remedy, unless such neglect has so prejudiced the other party by loss of testimony or means of proof, or changed relations, that it would be unjust to now permit him to exercise his right.”

What ever delay there might have been in the case at bar, it did not prejudice the defendants-appellants, and they did not lose any testimony or any means of proof, and the relations were in no way changed.

Defendants' counsel also cited the case of *Lance vs. Bonnell*, 43 Atl. Rep. 288. The facts in that case were that a policy of insurance on L's. life was issued to B. on his application as a creditor of L.; another policy on L's. life was assigned to B.; suit was brought by L's. executors against B's. administratrix to determine the ownership of the policies. B. had always treated the policies as his own, and had paid the premiums thereon for seventeen years. Vice-Chancellor Gray in his opinion said: (p. 294).

"Such neglect to take any steps to recover the policies, or even to claim them, extending from 1878 to 1895, while those in possession of them holding by a title absolute on its face were, to the knowledge of the claimants, openly and irretrievably acting as absolute owners, was laches of such a character that it would be inequitable presently to enforce the claimant's rights." * * *

"The laches consisted in the acquiescence in Bonnell's claim and action as absolute owner of the policies for a long period after, it is now claimed by the complainants, William L. Lance was entitled to have the policies delivered to him."

It will be seen clearly that this case, and the opinion thereon, has no application to the case now being considered.

Counsel also referred to and quoted to some extent from the case of *MacCartin vs. Trap-hagen*, 43 N. J. E. 323. That suit was to procure a settlement of the McCartin Estate and to compel the surviving executrix and executor, and the legal representatives of a deceased executor, to make good certain losses to the estate caused by misconduct, &c. In regard to the question of laches in that suit the late Vice-Chancellor Van Fleet said: (page 337).

“Here the claim sought to be enforced is an extremely stale one; no attempt was made to enforce it until the person against whom it is mainly aimed was deprived of all power to resist it, by death; nor until much, if not the entire body, of the evidence which may have existed, tending to show that it was groundless, had, by the lapse of time, been either entirely destroyed, or become so obscure as to leave scarcely a trace of the truth.” (pp. 338 & 339). “He who delays asserting his rights, until the proofs respecting the transaction, out of which he claims his rights arose, are so indeterminate and obscure that it is impossible for the court to see, whether what seems to be justice to him is not injustice to his adversary, should be denied all relief, for, by his laches, he has deprived the court of the power of ascertaining, with reasonable certainty, what the truth is, and thus of doing justice.

“Tested by this rule, it is plain, I think, that the claim made in this case should be rejected. The persons making it did not assert it until their delay had put them in the best possible position and their adversary in the very worst. They seek to turn their fault into an advantage. The evidence which they produce in support of their claim, consists largely of written matter, which endures notwithstanding the flight of time, while living witnesses both forget and die. From the character of the claim, it is manifest that the only defences which could have existed against it were such as rested entirely in the knowledge and judgment of living witnesses.”

Defendants' counsel also referred to the case of Norfolk and New Brunswick Hosiery Company, vs. Arnold, 49 N. J. E. 390. The object of that suit was to procure a decree declaring that a contract made by a female defendant with the complainant was obtained by fraud, and also to adjudge the said contract void, and to have it surrendered for cancellation. It concerns a machine and a contract for improvement, &c. In the course of his opinion the late Vice-Chancellor Van Fleet said: (page 397).

“By the contract the complainant acquired an exclusive right to the sewing machine of the defendants, and also of any improvement that might be made in it by the defendants. So long, therefore, as the complainant stood by the contract, the defendants could derive no benefit from the machine except such as they took under the contract. In this situation of affairs nothing can be plainer, as a matter of simple justice and fair dealing, than that the complainant was required, if it believed it had been defrauded, to exercise its right to rescind with the utmost promptness, so that the defendants might be put in a position where they would have the right to make some other disposition of their machine. If the complainant had rescinded within a short time after the contract was made, it may be that the defendants could then have made an arrangement with another person for the use of the machine, which would have resulted in their getting a larger royalty than that which they are entitled to under the complainant's contract. The complainant's great delay may have inflicted injuries upon the female de-

pendant which can be neither seen, appreciated nor measured now. Equity can only help the diligent."

Counsel in his brief submitted to the Vice-Chancellor, started his quotation with the last sentence I have quoted, to wit: "Equity can help only the diligent," and then went on to state a principle laid down by Lord Camden, but he failed to call the Court's attention to the facts in the case, and the application of the principle.

I respectfully ~~contend~~^{contend} that none of the above mentioned cases are in any way parallel to the case under consideration.

I respectfully insist that the findings and conclusions of the learned Vice-Chancellor, both as to facts and law, were correct and just, and that the Final Decree entered herein should not be disturbed. The appeal should be dismissed with costs to the respondent.

Most respectfully submitted,

LEON ABBETT,

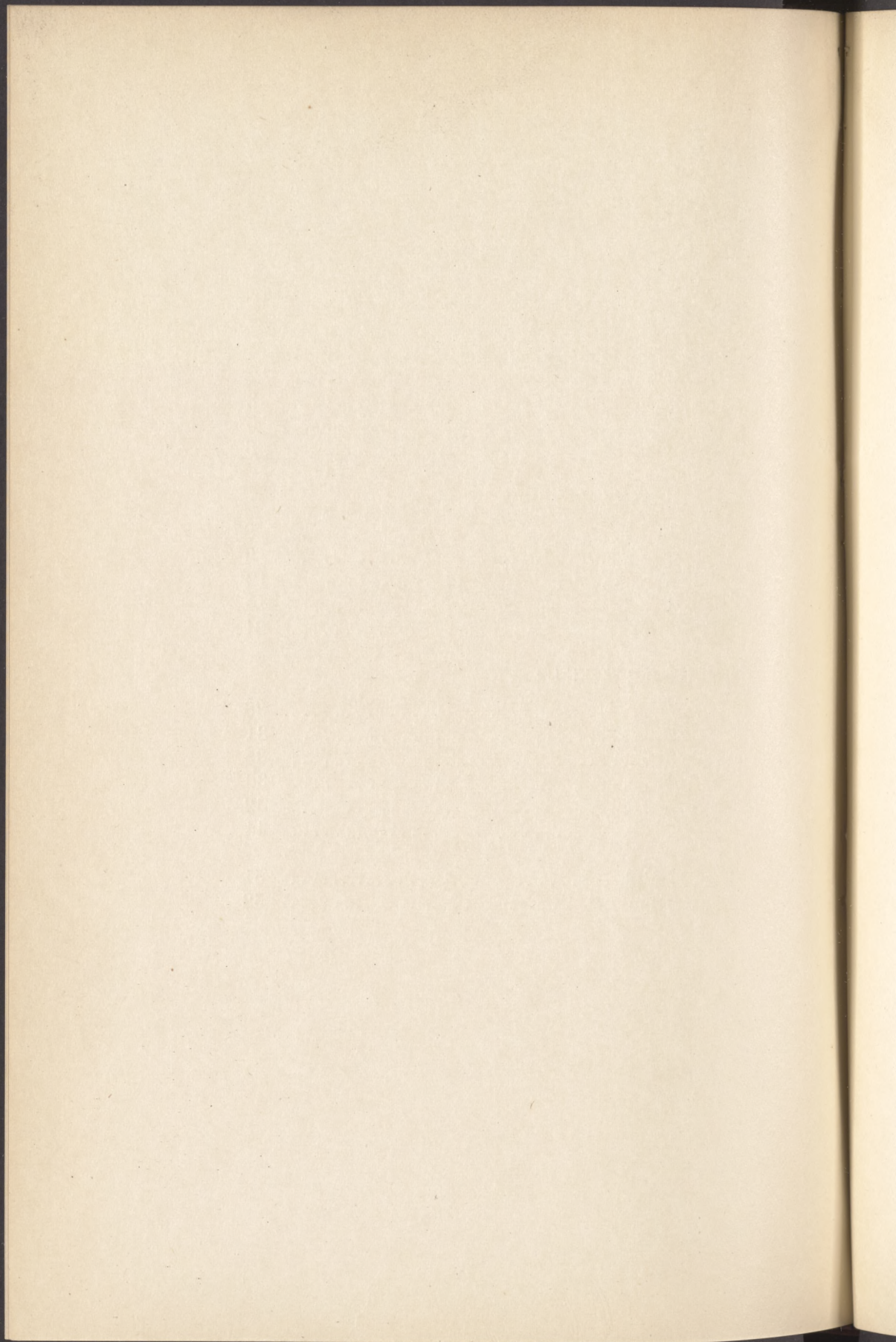
Of Counsel for Respondent.

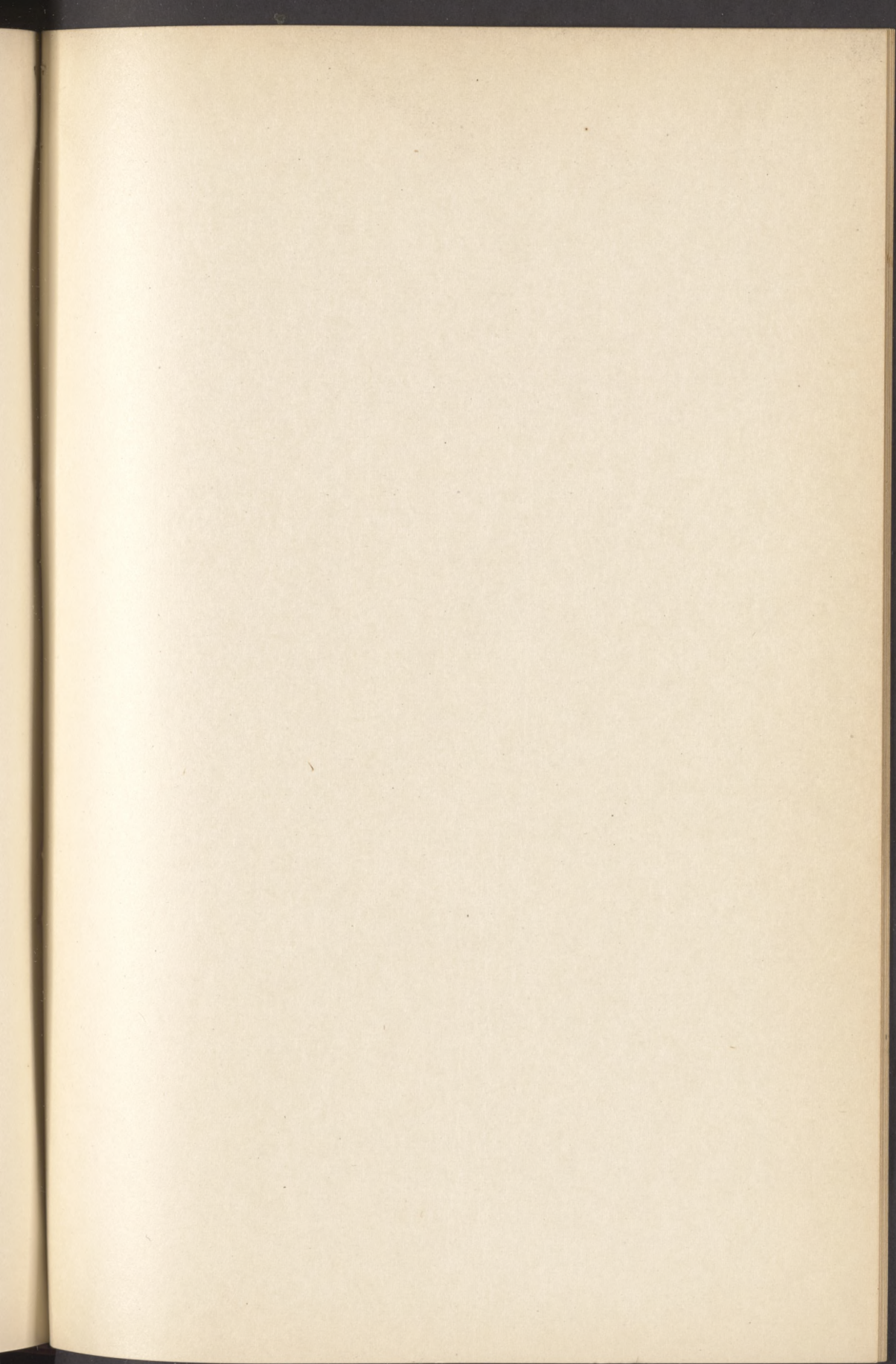
~~November Term, 1906.~~

March Term 1907.

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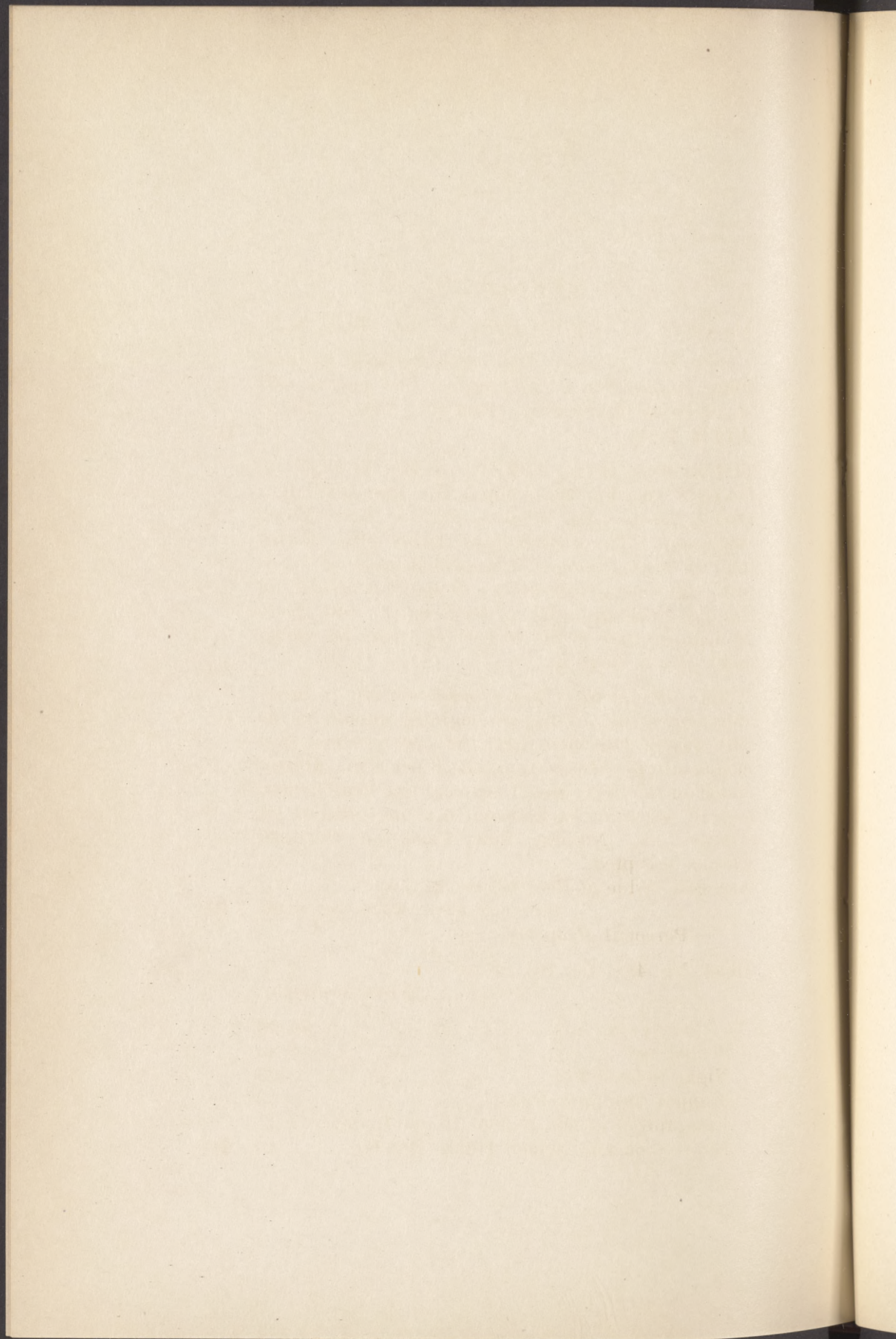


EXHIBIT C 1.

No. 1232.Street Page No. 40. Book No..

Collector of Taxes, Office 270 Palisade Avenue.
Office Hours: 8 a. m. to 4 p. m. (No monies will
be received thereafter). BRING THIS BILL
WITH YOU. 10

THERESSA HAUENSTEIN to the TOWN OF
UNION, Dr., For the Annual Tax Due December,
1894. Assessed for County, School and Town
Purposes. The Collector of Taxes gives notice
that the Commissioner of Appeal in cases of Taxa-
tion, will meet at the Clerk's Office, Town Hall, on
Tuesday, the 25th day of September, 1894, from
10 a. m. until 8 p. m., to correct errors of assess-
ment, if any there be. 20

Note—Payment of Taxes must be made in bank-
able money, and all Taxes remaining unpaid on the
20th day of December next, will be returned to a
magistrate for prosecution, and 8 per cent. interest
added to this bill; also 3 per cent. on Real Estate,
and 10 per cent. on personal tax for Collector of
Arrears' fee. Nothing but Cash or Certified
Checks Accepted.

Assessed Value of Real Estate, \$1150.
Rate per Cent. \$2.56 per \$100. 30
Personal Property,.....

Block No. 41. Lot No. 28-29.

JOHN A. ROSS, Collector.

To County tax.....	\$6 90	
School tax	9 43	
Night School Tax	23	
Manual Training Tax	23	
Redemption of Old School House Bonds.	1 15	
Interest on Old School House Bonds....	46	40

Interest on New School House Bonds...	92
Street and Sewer tax.....	1 61
Poor tax	46
Fire Department and Hydrant Tax.....	69
Police Tax	4 14
Street Light Tax	3 22

Total,\$29.44

Received Payment, December 20th, 1894.

10

JOHN A. ROSS, Collector.

EXHIBIT C 2.

COLLECTOR OF TAXES, 188 Palisade Avenue, Between Gardner and Morgan Streets. Office hours: 9 a. m. to 6 p. m. daily. From December 15th to December 20th, incl. Collector will be at his office from 9 a. m. to 10 p. m. Bring this bill when payment is made and see that you are paying on the right property.

20

1903.

1903.

Note—In all cases where exemption by law is claimed, the exemption certificate or discharge, with the deed of the property must be produced to the Commissioners of Appeals.

Street 123 Morgan St. Page No. 41. Bill No. 1559.

30

Mr. Louis C. Hauenstein to The Town of Union, Dr., for the annual Tax due December 20, 1903. Assessed for County, School and Town purposes.

The Collector of Taxes gives notice that the Commissioners of Appeal, in cases of taxation will meet at the Clerk's Office, Town Hall, on the following days: Tuesday, September 22nd, Tuesday, September 29th, Tuesday, October 6th, and Tuesday, October 13th, 1903, from 10 a. m. to 8 p. m., on each day, to correct errors of assessment if any there be.

40

Note.—Payment of Taxes must be made in bank-

able money, and all Taxes remaining unpaid on the 20th day of December next will be returned to a magistrate for prosecution, and 8 per cent. interest added to this bill; also 3 per cent. on Real Estate and 10 per cent. on Personal Tax for Collector of Arrears' Fee.

Nothing but Cash of Certified Checks accepted.

Assessed value for Real Estate, \$1400.

Total Valuation, \$1400.

Rate per cent. \$2.45 per \$100. 10

Block No. 41. Lot No. 28-29.

LOUIS C. NEUSCHELER, Collector.

To State School Tax.....	2 66	
County Tax	9 80	
Town Purposes	7 28	
Local School Tax	8 68	
Redemption of Bonds	1 54	
Interese on Bonds	4 34	
		20
Total.....	\$34 30	
Exemption on account of Services in Fire		
Department as per law.....	12 25	
		22 05

Received Payment by check Dec. 17, 1903, Town of Union, N. J.

Per. LOUIS C. NEUSCHELER Collector.

30

EXHIBIT C 3.

The Collector of Taxes gives notice that the Commissioners of Appeal in cases of Taxation will meet at the Clerk's Office, Town Hall, on Tuesday, October 25th, and Tuesday, November 1st, 1904, from 9 a. m. to 12 a. m., 2 p. m. to 5 p. m., 7 p. m. to 9 p. m. to correct errors of assessment if any there be.

40

EXHIBIT C 4.

Town of Union, Hudson County, N. J., July, 1905.

I hereby certify that the following list of taxes and assessments have been paid on property fronting on the southerly side of Morgan Street, Town of Union, Hudson County, New Jersey, on lots 733 and 734, but designated on Town Map as Lots 28 and 29, in Block 41, since the 28th day of May, 1890:—

Bill in Name of		
Taxes for 1890, Paid Theresa Hauenstein	\$22 60	
Taxes for 1891, Paid Louis Hauenstein...	21 40	
Taxes for 1892, Paid Theresa Hauenstein	25 76	
Taxes for 1893, Paid Theresa Hauenstein	24 61	
Taxes for 1894, Paid Theresa Hauenstein	29 44	
Taxes for 1895, Paid Theresa Hauenstein	35 84	
Taxes for 1896, Paid Theresa Hauenstein	34 70	
Taxes for 1897, Paid	See other side	20
Taxes for 1898, Paid	See other side.	
Taxes for 1899, Paid L. C. Hauenstein...	19 60	
Taxes for 1900, Paid L. C. Hauenstein...	21 78	
Taxes for 1901, Paid L. C. Hauenstein...	21 87	
Taxes for 1902, Paid L. C. Hauenstein...	23 73	
Taxes for 1903, Paid L. C. Hauenstein...	34 30	
Taxes for 1904, Paid L. C. Hauenstein...	38 40	
Assessment for the Morgan St. Asphalt Pavement.		
Principal, Lot 28.....	\$101 32	30
Principal, Lot 29	101 32	
Paid first installment Dec. 1, 1904.....	20 26	
Lot 28, Block 41.		
Taxes, 1897. Principal,.....	\$11 02	
Taxes, 1898. Principal	9 84	
Morgan St. and Palisade Ave. Sewer.....	67 04	
Joint Outlet Sewer.....	37 45	
Total on Lot 28.....	\$150 35	40

Lot 29, Block 41.
 Taxes, 1897. Principal,.....\$11 02
 Taxes, 1898. Principal 9 84
 Morgan St. and Palisade Ave. Sewer..... 67 04
 Joint Outlet Sewer..... 37 45

Total on Lot 29.....\$150 35

Sold by the Commissioners of Adjustment and redeemed by Louis C. Hauenstein.

10

IN CHANCERY OF NEW JERSEY.

20	Between JOHN C. FARR, JR., and THERESA HAUENSTEIN, et al., Defendants.	}	Complainnt, On Bill, &c. Stipulation.
----	--	---	---

30 It is hereby stipulated and agreed that the following statement of taxes and assessments paid upon the premises set forth and described in the bill of complaint herein, be taken and considered the same as if testified to by the proper official of the Town of Union; and it is admitted that the same are true:

	Bill in name of	
	Taxes for 1890, Paid Theresa Hauenstein	\$22 60
	Taxes for 1891, Paid Louis Hauenstein..	21 40
	Taxes for 1892, Paid Theresa Hauenstein	25 76
	Taxes for 1893, Paid Theresa Hauenstein	24 61
	Taxes for 1894, Paid Theresa Hauenstein	29 44
	Taxes for 1895, Paid Theresa Hauenstein	35 84
	Taxes for 1896, Paid Theresa Hauenstein	34 70
40	Taxes for 1897, Paid	See other side.

Taxes for 1898, Paid	See other side.	
Taxes for 1899, Paid L. C. Hauenstein...	19 60	
Taxes for 1900, Paid, L. C. Hauenstein...	21 78	
Taxes for 1901, Paid L. C. Hauenstein...	21 87	
Taxes for 1902, Paid L. C. Hauenstein...	23 73	
Taxes for 1903, Paid L. C. Hauenstein...	34 30	
Taxes for 1904, Paid L. C. Hauenstein...	38 40	
Assessment for the Morgan St. Asphalt Pavement.		10
Principal, Lot 28.....	\$101 32	
Principal, Lot 29	101 32	
Paid first installment Dec. 1, 1904.....	20 26	
Lot 28, Block 41.		
Taxes, 1897. Principal.....	\$11 02	11 02
Taxes, 1898. Principal	9 84	9 84
Morgan St. and Palisade Ave. Sewer.....	67 04	
Joint Outlet Sewer.....	37 45	
Total on Lot 28.....	\$150 35	20
Lot 29. Block 41.		
Taxes, 1897. Principal.....	\$11 02	11 02
Taxes, 1898. Principal	9 84	9 84
Morgan St. and Palisade Ave. Sewer.....	67 04	
Joint Outlet Sewer.....	37 45	
Total on Lot 29.....	\$150 35	
Sold by the Commissioners of Adjustment and redeemed by Louis C. Hauenstein.		30
Dated, July 21, 1905.		

LEON ABBETT,
Solicitor of Complainant.
James F. Minturn
Solicitor of Defendant.

EXHIBIT 1 OF COMPLAINANT.

(Seal) The State of New Jersey, to the
 Sheriff of the County of Hudson
 GREETING:

10 We command you, That of the goods and chat-
 tels of Louis Hauenstein and Thomas Weiss, late
 partners trading under the firm name of Hauen-
 stein & Weiss, defendants in your County, you
 cause to be made the sum of Twelve hundred and
 ninety-one dollars and twenty-one cents which John
 M. Niver and Norman H. Niver, partners, &c.,
 trading under the firm name and style of John M.
 Niver & Co., plaintiffs, lately in our Circuit Court
 in Jersey City, in and for our said County of Hud-
 son recovered against the said defendants as well
 for their damages which they had sustained on oc-
 20 casions for the non performance of certain promises
 and undertakings by the said defendant then late-
 ly made to the said plaintiffs, as for their costs
 and charges by them about their suit in that be-
 half expended whereof the said defendants are con-
 victed, as appears to us of record; and if sufficient
 goods and chattels of said defendants in your
 county you cannot find whereof to make the dam-
 ages aforesaid, then and in that case we command
 you that you cause the whole, or the residue, as the
 case may require, of the damages aforesaid, to be
 30 made of the lands, tenements, hereditaments and
 real estate of the said defendants in your county
 whereof they were seized on the Seventh day of
 August in the year of our Lord one thousand eight
 hundred and ninety or at any time afterwards, in
 whose hands soever the same may be; and have
 you those moneys before our Circuit Court afore-
 said, in Jersey City aforesaid, the second Tuesday
 of September next, to render unto the said plain-
 tiffs for their damages aforesaid; and have you
 then there this writ.

40 Witness Manning M. Knapp, Esq., a Judge of

our Court, in Jersey City aforesaid, the Eleventh day of August, in the year of our Lord one thousand eight hundred and ninety.

DENNIS McLAUGHLIN,
Clerk.

J. C. & S. Besson,
Attorneys.

(Endorsed)—Hudson County Circuit Court— 10
John M. Niver, et al., Partners, &c, as John M. Niver & Co., Pltff. vs. Louis Hauenstein and Thomas W. Weiss, late partners, &c., as Hauenstein & Weiss, Defts—On Contract. Fi fa de bonis et terris—Returnable 2nd Tuesday Sept. Term A. D. 1890 J. C. & S. A. Besson, Atty's—Levy, Damages, \$1,259.48; Costs, \$31.74; \$1,291.22 Interest on from Aug. 7, 1890. Besides Sheriff's execution fees, 12. Delivered to me August 11, 1890, at 3:15 o'clock P. 20
M. Robert Davis, Sheriff—October 14, 1903, Returned to Court wholly unsatisfied. Robert Davis, Late Sheriff, Rob—Recorded in Hudson County Clerk's Office in Liber 15 of Executions in Case on Page 363 the 11th day of August A. D. 1890. Dennis McLaughlin, Clerk.

EXHIBIT 2 OF COMPLAINANT. 30

This Indenture made the first day of August, 1903, between John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Company, parties of the first part and John C. Farr, Jr., of the City of Hoboken, County of Hudson and State of New Jersey, party of the second part. WITNESSETH: Whereas the said parties of the first part on the seventh day of August, 1890, recovered a judgment in the Circuit 40

Court of the County of Hudson against Louis Hauenstein and Thomas W. Weiss, late partners trading and doing business as Hauenstein & Weiss for the sum of One thousand two hundred and fifty-nine dollars and forty-eight cents (\$1,259.48) damages and Thirty-one dollars and seventy-four cents (\$31.74) costs; now this indenture witnesseth, that the said parties of the first part in consideration of the sum of One dollar (\$1.00) and other good and valuable considerations to them duly paid by the said party of the second part, have sold and by these presents do assign, transfer and set over unto the said party of the second part and his executors, administrators and assigns the said judgment, and all sums of money that may be had or obtained by means thereof, or from any proceedings to be had thereupon. And the said parties of the first part do hereby constitute and appoint said party of the second part and his executors, administrators or assigns, their true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand and receive and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on said judgment, and on payment to acknowledge satisfaction or discharge the same. And attorneys, one or more under him, for the purpose aforesaid, to make and substitute and at pleasure to revoke; hereby ratify and confirming all that his said attorney or substitute shall lawfully do in the premises. And the said parties of the first part do covenant that there is now due on the said judgment the sum of One thousand two hundred and fifty-nine dollars and forty-eight cents (\$1,259.48) damages and Thirty-one dollars and seventy-four cents (\$31.74) costs, besides interest thereon from the seventh day of August, 1890, the date of the entry of said judgment; and that they will not collect or receive

the same or any part thereof nor release or discharge the said judgment, but will own and allow all lawful proceedings thereon to said party of the second part, saving the said parties of the first part harmless of and from any costs in the premises.

In witness whereof the parties of the first part have hereunto set their hands and seals, the day and year first above written.

JOHN M. NIVER & CO. (Seal). 10
By NORMAN H. NIVER. (Seal)

Signed, sealed and delivered in the presence of
H. W. Lauge.

State of New Jersey, { ss.:
County of Hudson, }

Be it remembered that on this twenty-ninth day of September, 1903, before me the subscriber, a Master in Chancery of the State of New Jersey, personally appeared Norman H. Niver, one of the members of the firm of John M. Niver & Company, who I am satisfied is one of the partners composing said firm; and who executed the foregoing assignment of judgment; and I having first made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as the voluntary act and deed of said John M. Niver & Company for the uses and purposes therein expressed. 20 30

HARRY W. LAUGE, -
Master in Chancery of New Jersey.

(Endorsed)—Dated August 1, 1903—John M. Niver and Norman H. Niver, partners, &c., to John C. Farr, Jr.—Assignment of Judgment.—Leon Abbett, Counsellor at Law, Hudson—Orig. sent to Co. Clk, Sept, 29, '03. Trust Co. Building, Hoboken, N. J. 40 39

EXHIBIT 3 OF COMPLAINANT.

New Jersey, Hudson County, ss.:

(Seal) The State of New Jersey, to our
 Sheriff of our county of Hudson
 GREETING:

10 We command you, as before me have commanded
 you, that the goods and chattels of Louis Hauen-
 stein and Thomas W. Weiss, defendants, in your
 County, you cause to be made the sum of Twelve
 hundred and ninety-one dollars and twenty-two
 cents (\$1,291.22), which John M. Niver and Nor-
 man H. Niver, partners trading and doing business
 as John M. Niver & Co., lately in our Circuit
 Court, in Jersey City, in and for our said County
 of Hudson, recovered against the said defendant,
 as well for their damages which they had sustained
 on occasion of the non-performance of certain
 20 promises and undertakings by the said defendants,
 Louis Hauenstein and Thomas W. Weiss, then
 lately made to the said plaintiffs, as for their costs
 and charges, by them about their suit in that be-
 half expended, whereof the said defendants con-
 victed as appears of record; and if sufficient goods
 and chattels of the said defendants in your County
 you cannot find whereof to make the damages
 aforesaid, then and in that case, we command you
 that you cause the whole, or the residue, as the case
 30 may require, of the damages aforesaid, to be made
 of the lands, tenements, hereditaments and real
 estate of the said defendants in your County,
 whereof the said defendants, Louis Hauenstein
 and Thomas W. Weiss, were seized on the seventh
 day of August, eighteen hundred and ninety, or at
 any time afterwards, in whose hands soever the
 same may be; and have you those moneys before
 our Circuit Court aforesaid in Jersey City afore-
 40 said, on the Fourth day of December next, to ren-
 der unto John C. Farr, Jr., to whom the said

Judgment was, on the first day of August, 1903, duly assigned, by a deed of assignment dated on that day and duly recorded in the office of the Clerk of the County of Hudson, who is Clerk of this Court; for his damages aforesaid, and have you then and there this writ.

Witness Jonathan Dixon, Esquire, Judge of our said Circuit Court, at Jersey City aforesaid, the 23d day of October, nineteen hundred and three.

MAURICE J. STACK,
Clerk.

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Leon Abbett,
Attorney.

(Endorsed)—Hudson County Circuit Court—
John M. Niver, and ano. &c. vs. Louis Hauen-
stin and ano. &c—On Contract. Fi. fa de
bonis et terris—Returnable December
4th, 1903—Leon Abbett, Att'y of John C.
Farr., Jr., Assignee of Judgment—Levy, dam-
ages, \$1,259.48; Costs, 31.74; Interest thereon
from Aug. 7, 1898, besides Sheriff's execution
fees—Original delivered to Sheriff, Oct. 23,
1903, at 2.50 o'clock p. m. John Zeller—Oct.
28, 1903. Returned to Court unsatisfied.
John Zeller, Sheriff, by J. J. Heavey, Under
Sheriff—Received in Hudson County Clerk's
office this October 23, A. D. 1903, at m.
and recorded in liber 20 of Executions on Con-
tract. Page 71. Maurice J. Stack, Clerk.

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EXHIBIT 4 OF COMPLAINANT.

10	LOUIS C. HAUENSTEIN, et al., Defendants by Sheriff, To THERESA HAUENSTEIN.	}	Deed Dated Sept. 29. 1887.
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Blk. No. 2102.

This indenture made this Twenty-ninth day of September, in the year eighteen hundred and eighty-seven between Ferdinand Heintze, Sheriff of the County of Hudson, in the State of New Jersey, of the first part and Theresa Hauenstein of of in the county of and state of party of the second part.

WITNESSETH:

Whereas, on the Fifteenth day of February in the year of our Lord one thousand eight hundred and eighty-seven a certain writ of fieri facias was issued out of the Court of Chancery of the State of New Jersey, directed and delivered to me the said Ferdinand Heintze then and still being Sheriff of the said County of Hudson and which said writ is in the words or to the effect following, that is to say:

New Jersey, to wit: The State of New Jersey to the Sheriff of the County of Hudson, Greeting:

Whereas, on the Third day of February in the year of our Lord one thousand eight hundred and eighty-seven by a certain decree made in our court of Chancery before our Chancellor at Trenton in a certain cause therein depending wherein John Fick is complainant and Louis C. Hauenstein, Theresa Hauenstein, The First National Bank of Hoboken, David B. Day, Louis Budenbender and

August Moller are defendants.

it was ordered, adjudged and decreed that certain mortgaged premises with the appurtenances in the bill of complaint in the said cause particularly set forth and described that is to say:

All the following described two certain tracts or parcels of land and premises situate, lying and being in the Town of Union in the County of Hudson and State of New Jersey. Being part of a tract of land known by the name of North Hoboken, and which on a map of said tract made by Charles Herring and duly filed in the clerk's office of the County of Hudson on the Fourth day of June A. D. 1852, are designated and laid down as lots number Seven Hundred and thirty-three (733) and Seven Hundred and thirty-four (734), but known and designated on Town Map as lots Twenty-eight (28) and Twenty-nine (29) in Block No. forty-one (41) fronting and facing on the Southernly side or line of Morgan Street, and said lots being each Twenty-five (25) feet in front and rear and one hundred (100) feet deep throughout, being the same lots which were conveyed to Louis C. Hauenstein from Barbria Bies by deed bearing date Nov. 15, 1869, and by John Frederick Heinrich Weiss and Wife by deed bearing date June 24th, A. D. 1870.

Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions and remainders rents, issues and profits thereof and also all the estate right, title, interest, use, property claim demand of the said defendants of in to and out of the same be sold to pay and satisfy in the first place unto the said complainant the sum of One Thousand Two Hundred and Seventy-two dollars and seventy cents for principal and interest due on a certain mortgage made by Louis C. Hauenstein and Theresa Hauenstein, his wife, to Martin Bentz dated the

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10 first day of July A. D. eighteen hundred and seventy-three and recorded in Liber one hundred and four of Mortgages, page one hundred and seventy, &c., and by said Martin Bentz assigned to David Kephart and by David Kephart assigned to Margaret Bentz, wife of Martin Bentz and by Margaret Bentz and Martin, her husband, assigned to the complainant together with lawful interest thereon from the Twenty-fourth day of November A. D. eighteen hundred eighty-six until the same be paid and satisfied and also the costs of the said complainant.

20 And that for that purpose a writ of fieri facias should issue directed to the Sheriff of the County of Hudson commanding him to make sale as aforesaid and that the surplus money arising from such sale if any there be should be brought into the said subject to the future order of the said court as by the said decree remaining as as of record in our said Court of Chancery at Trenton doth and may more fully appear.

And whereas the costs of the said complainant have been duly taxed at one hundred and twenty-five dollars and sixty-six cents.

30 Wherefore you are hereby commanded that you cause to be made of the premises aforesaid by selling the same for the purpose and out of the proceeds thereof you do pay unto the said complainant the sum of one thousand two hundred and seventy-two dollars and seventy cents.

Together with lawful interest thereon as aforesaid, and also the sum aforesaid of costs. And that you have those moneys before our said Chancellor in our Court of Chancery aforesaid at Trenton on the Third Tuesday of May, next, to render to the said complainant and also the surplus money, if any there be, to abide the further order of our said court according to the decree aforesaid.

40 And you are to make return at the time and

place aforesaid by certificate under your hand of the manner in which you shall have executed this our writ together with this writ.

Witness Theodore Runyon, Esquire, our Chancellor at Trenton aforesaid, the Fifteenth day of February in the year of our Lord One Thousand eight hundred and eighty-seven.

ALLAN McDERMOTT, Clerk.

Hudspeth & Benny,
Solicitors.

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As by the record of the said writ of fieri facias in the office of the clerk of said Court of Chancery in Book K 6 of Executions, page 250, &c., may more fully appear.

And whereas, I, the said Ferdinand Heintze, as such Sheriff as aforesaid did in due form of law by public advertisements signed by myself and put in five or more public places in the said County of Hudson, one of which was in the Town where said real estate is situated of the time and place appointed for such sale for at least two months preceding the time appointed for said sale and published in the said County where the lands above described are situated the same being designated for the publication of the laws of the State and circulating in the neighborhood of said real estate for at least four weeks successively once in each week next preceeding the time so appointed for selling the same, one of which said newspapers is printed published at Jersey City, the county seat of said county, advertised the said above described lots of land and premises to be sold, under and by virtue of the said writ of fieri facias at public vendue to be held at Real Estate Exchange No. 47 Montgomery Street, Jersey City, on Thursday the Fifth day of May, in the year One Thousand eight hundred and eighty seven, at the hour of two o'clock in the afternoon, at which said time and place I

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did in due form of law adjourn said sale to Thursday, the Second day of June, in the year last aforesaid at the same hour and place which said adjournment was duly advertised in said two newspapers according to law at which said time and place I did in due form of law adjourn said sale to Thursday, the seventh day of July in the year aforesaid at the same hour and place at which said time and place I did in due form of law adjourn said sale to Thursday, the Fourth day of August in the year aforesaid at the same hour and place which adjournment was duly advertised in said two newspapers according to law at which said time and place I did in due form of law publicly adjourn said sale to Thursday, the Eleventh day of August, in the year aforesaid at the same hour and place at which said last mentioned time and place I did accordingly offer and expose the said above described lots of land and premises for sale at public vendue under and by virtue of the said writ of fieri facias. Whereupon the said party of the second part bidding therefore the sum of Fifteen hundred dollars and no other person bidding as much I did then and there openly and publicly in due form of law between the hours of twelve and five in the afternoon strike off and sell the said above described lots of land and premises for the sum of Fifteen hundred dollars to the said party of the second part she being then and there the highest bidder for the same.

And on the Eleventh day of August in the year last aforesaid I did duly report the said sale to the Chancellor who by his order dated on the Twenty-ninth day of September in the year last aforesaid did confirm the same and direct me the said Sheriff to execute a good and sufficient conveyance in the law to the said party of the second part for the said premises.

Now, Therefore, this Indenture witnesseth that I, the said Ferdinand Heintze, as such Sheriff as

aforesaid under and by virtue of the said writ of fieri facias and in execution of the power and trust in me reposed and also for and in consideration of the said sum of Fifteen hundred dollars to me in hand paid the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate and forever discharge the said party of the second part, her heirs, executors and administrators, have granted, bargained, sold, assigned, transferred and conveyed and by these presents do grant, bargain, sell, assign, transfer and convey unto the said party of the second part, her heirs and assigns, all and singular the said above described lots of land and premises with the appurtenances, privileges and hereditaments thereunto belonging or in any way appertaining to have and to hold the same unto the said party of the second part, her heirs and assigns to her and their only proper use, benefit and behoof forever in as full, ample and beneficial a manner as by virtue of the said writ of fieri facias, I may, can, or ought to convey the same.

And I, the said Ferdinand Heintze, do hereby covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that I have not as such Sheriff as aforesaid done or caused, suffered or procured to be done any act matter or thing whereby the said premises or any part thereof with the appurtenances are or may be charged or encumbered in estate, title or otherwise.

In witness whereof I, the said Ferdinand Heintze, as such Sheriff as aforesaid, have hereunto set my hand and seal this Twenty-ninth day of September in the year of our Lord one thousand eight hundred and eighty-seven.

FERDINAND HEINTZE, (Seal)
Sheriff.

Signed, sealed and delivered in
the presence of
Mervyn Armstrong, Jr.

State of New Jersey, }
 Hudson County, } ss.:

10 Ferdinand Heintze, Sheriff of the County of Hudson, do solemnly swear that the land and real estate described in the within deed made by me to Theresa Hauenstein was by me sold by virtue of a good and subsisting execution as is therein recited that the moneys ordered to be made have not been to my knowledge or belief paid or satisfied that the time and place of the sale of said land and real estate was by me duly advertised as required by law and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

FERDINAND HEINTZE, Sheriff.

20 Sworn to before me one of the Masters of Chancery of the State of New Jersey, on this Fifth day of October A. D., 1887, and I having examined the deed above mentioned do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

MERVYN ARMSTRONG, JR.,
 Master in Chancery of New Jersey.

30 State of New Jersey, }
 Hudson County, } ss.:

40 On this Fifth day of October in the year of our Lord one thousand eight hundred and eighty-seven before me the subscriber, a Master in Chancery of the said State, personally appeared Ferdinand Heintze, Sheriff of the County of Hudson aforesaid, who I am satisfied the Grantor of the within Indenture named and I having first made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered

Insert in P. 23 - Supplement.

First- That the defendant Louis Hauenstein was prior to December 1, 1884, the owner of the premises described in the bill of complaint.

Second That he continued as such legal owner until the premises were sold by the Sheriff Hudson County, August 11, 1887, under a writ of fieri facias issued out of the Court of Chancery, this state, wherein Jack Fick was complainant.

Third

ed the same as his voluntary act and deed for the uses and purposes therein expressed.

MARVYN ARMSTRONG, JR.,
Master in Chancery of New Jersey.

Received in the office and recorded May 29, 1895,
at 10 a. m. No. 2202.

(Endorsed)—Deed—Louis C. Hauenstein, by
Sheriff, to Theresa Hauenstein—Sep. 29, 1887. 10

IN CHANCERY OF NEW JERSEY.

Between JOHN C. FARR, JR., <p style="text-align: right;">Complainant,</p> <p style="text-align: center;">and</p> THERESA HAUENSTEIN, et al., <p style="text-align: right;">Defendants.</p>	}	On Bill, &c. Stipulation.	20
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It is hereby stipulated and agreed between the solicitors of the complainant and the defendants, that the following facts are admitted to be facts and that this stipulation be taken as such admission at the hearing of this cause:

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First: That on August 7, 1890, John M. Niver and Norman H. Niver, partners trading under the firm name of John M. Niver & Co., recovered a judgment against Louis Hauenstein and Thomas W. Weiss, late partners trading under the firm name of Hauenstein & Weiss, for \$1,291.22, damages and costs; and that annexed hereto is a true copy of the declaration and the bill of particulars attached thereto, in said action, upon which judgment was obtained.

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Second: That execution was issued on said judgment August 11, 1890, and was duly recorded and delivered to the Sheriff of the County of Hudson, and was returned by said Sheriff unsatisfied.

10 Third: That on August 1, 1903, the said Judgment was sold and assigned by said John M. Niver et al to John C. Farr, Jr., the complainant herein, which said assignment was filed with the Clerk of Hudson County, September 29, 1903.

Fourth: That an alius execution was issued on said judgment October 23, 1903, by said John C. Farr, Jr., and was duly recorded and delivered to the Sheriff of the County of Hudson, and was returned by said Sheriff unsatisfied.

Fifth: That there is still due to the complainant on said judgment \$1,292.22 with interest thereon from August 7, 1890, besides execution fees.

20 And it is further stipulated and agreed that true copies of the following papers, may be offered in evidence in this cause, the same as if certified, and that no objection to the same shall be made on the ground that they are not certified:

30 (1) Summons and declaration, bill of particulars, and endorsements thereon, in case of John M. Niver, et al., vs. Louis Hauenstein, et al., in the Hudson County Circuit Court.

(2) Execution issued in Niver vs. Hauenstein, August 11, 1890, and return, &c., endorsed thereon.

(3) Assignment of judgment by John M. Niver, et al., to John C. Farr, Jr., filed September 29, 1903.

40 (4) Alius execution issued in Niver vs. Hauenstein, October 23, 1903, and return, &c., endorsed thereon.

(5) Deed, Louis C. Hauenstein, by Sheriff, to Theresa Hauenstein, dated September 29, 1887.

Dated, January 19, 1905.

LEON ABBETT,
Solicitor of Complainant.

Hudson County, ss.:

J. F. Niver for Def.

The State of New Jersey, To the Sheriff of the County of Hudson,
(L. S.)
GREETING:

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We command you to Summon Louis Hauenstein and Thomas W. Weiss, late partners trading under the firm name of Hauenstein and Weiss, to be and appear before the Circuit Court to be held at Jersey City, in and for the County of Hudson, on the seventh day of June next to answer unto John M. Niver and Norman H. Niver, partners trading under the firm name of ~~John M. Niver and Norman H. Niver, partners trading under the firm name~~ of John M. Niver & Co. in an action upon contract wherein the Plaintiffs demand Two thousand dollars damages, And have you then and there this writ:

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WITNESS, Manning M. Knapp, Esquire, Judge of said Court at Jersey City aforesaid, the twenty-eighth day of May, A. D. One thousand eight hundred and ninety.

DENNIS McLAUGHLIN, Clerk.
J. C. & S. Besson,
Attorneys.

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Hudson County Circuit Court of the seventh day of June, in the year of our Lord eighteen hundred ninety.

Hudson County, ss.:

Louis Hauenstein and Thomas W. Weiss, late

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10 partners trading under the firm name of Huenstein & Weiss, the defendants in this suit were summoned to answer unto John M. Niver and Norman H. Niver, partners trading under the firm name of John M. Niver & Co., the plaintiffs therein in an action upon contract; and thereupon the plaintiffs by J. C. & S. A. Besson, their attorneys, compalin; For that Whereas, the said defendants on the first day of May, in the year of Our Lord one thousand eight hundred and ninety, at Hoboken, to wit, at Jersey City in the County of Hudson aforesaid, were indebted to the plaintiffs in the sum of two thousand dollars, for the price and value of goods sold and delivered, &c., (Common Counts), and therefore they bring their suit, etc,

J. C. & S. A. BESSON,
Attorneys for Plaintiffs.

20 To the within named defendant:

In case the within summons and declaration are served upon you personally, then take notice, that if you intend to make a defense to this action, you must file an affidavit of merits within ten days from the date of service hereof upon you, and must file your plea or demurrer within thirty days from the date of such service; and in default of the filing of such affidavit, plea or demurrer, judgment will be entered against you.

30 In case the within summons and declaration are served upon you by the leaving of a copy at your dwelling house or place of abode, then take notice that unless you appear and file a plea or demurrer within thirty days after the date of service hereof upon you, judgment will be entered against you.

Judgment will be claimed for \$980.15, with interest thereon from November 7th, 1885, besides costs.

J. C. & S. A. BESSON,
Plaintiff's Attorneys.

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The following is a bill of particulars of the demand and copy of the account whereon the annexed declaration is founded.

Hoboken, N. J., May 19, 1890.

Louis Hauenstein and Thomas W. Weiss, late partners trading under the firm name of Hauenstein & Weiss, Dr. to John M. Niver & Co.

1884.					
Dec. 2	10	Bags Oats.....	1.05	\$10.50	10
2	4	Bales Hay, 1,065.....	1.05	11.18	
6	1	" " 210.....	1.10	2.31	
	10	Bags Oats.....	1.05	10.50	
10	15	Bags Oats.....	1.00	15.00	
	5	Bales Hay, 887.....	1.00	8.87	
12		To interest on note....		3.00	
15	10	Bags Oats	1.00	10.00	
	6	Bales Hay, 1,039.....	1.00	10.39	
19	6	Bales Hay, 1,145.....	1.00	11.45	20
	20	Bags Oats.....	1.10	22.00	
24	15	Bags Oats	1.00	15.00	
	4	Bales Hay, 880.....	1.00	8.80	
29	10	Bags Oats	1.05	10.50	
31	2	Bales Hay, 476.....	1.00	4.76	
1885.					
Jan. 3	6	Bales Hay, 767.....	1.00	7.76	
	25	Bags Oats	1.10	27.50	
10	5	Bales Hay, 1,190.....	1.00	11.90	
12	20	Bags Oats	1.10	22.00	30
	1	Bag Salt		1.50	
16	10	Bags Oats	1.15	11.50	
	5	Bales Hay, 1,150.....	1.10	12.65	
22	3	Bales Hay, 498	1.00	4.98	
	20	Bags Oats	1.10	22.00	
28	15	Bags Oats	1.15	17.25	
	3	Bales Hay, 614	1.05	6.45	
Feb. 2	4	Bales Hay, 934.....	1.00	9.34	
	15	Bags Oats	1.10	16.50	
6	5	Bags Oats	1.15	5.75	40

	2 Bales Hay, 395.....	1.05	4.15
9	2 Bales Hay, 380.....	1.05	3.90
	5 Bags Oats	1.15	5.75
	2 Bags Bran,40	.80
28	42 Empty bags15	6.30
Mch.17	To note and Protest.....		601.34
Sep. 24	15 Bags Oats	1.00	15.00
	4 Bags Bran.....	.40	1.60
	1 Bag Meal		1.15
10	6 Bales Hay, 1,280.....	1.10	14.08
Oct. 1	15 Bags Oats	1.05	15.75
	1 Bag Meal		1.10
	4 Bags Bran40	1.60
	5 Bales Hay, 1,075.....	1.05	11.29
			<hr/>
			\$1,015.15
	Brought forward.....		\$1,015.15

Credit.

20	1885.		
	Apl. 1	By Cash on %.....	\$25.00
	Nov. 7	By Cash on %.....	10.00
			<hr/>
			35.00
			<hr/>
			\$980.15

Judgment will be claimed for the sum of nine hundred and eighty dollars and fifteen cents with interest thereon to be computed at the rate of six per cent per annum from the 7th day of November A. D. 1885, until the entry of Judgment final.

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J. C. & S. A. BESSON,
Plaintiff's Attorneys.

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(Endorsed)—Hudson County Circuit Court—
John M. Niver, et al, Partners, &c., as John M.
Niver & Co., Plaintiffs, vs. Louis Hauenstein,
et al, partners, &c., as Hauenstein & Weis,
Defendants—Action Upon Contract—Sum-
mons and Declaration—Summons Returnable
June 7, 1890—Served within Summons and

Declaration, May 31st, 1890, on both of the within named defendants. Robert Davis, Sheriff—By Michael Kohl, D. S.—Filed June 3d, 1890. J. S. Fisher, Deputy Clerk—I hereby deputize Michael Kohl to serve the within Writ. Witness my hand and seal this 31st day of May, 1890. Robert Davis, Sheriff, (L. S.)—Sheriff's Fee, \$3.84.

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EXHIBIT 1 OF DEFENDANT.

THIS INDENTURE, made the Fifteenth day of July in the year of our Lord one thousand eight hundred and eighty-four Between Louis C. Hauenstein of the Town of Union, County of Hudson, and State of New Jersey, and Theresa, his wife, parties of the first part, and Ferdinand W. Keller of the City of Brooklyn, County of Kings, and State of New York, party of the second part, WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One Dollar, and other good and valuable considerations), lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns, forever, all that certain lot, tract or parcel of land and premises situate, lying and being in the Town of Union, County of Hudson, State of New Jersey, being part of a tract of land known by the name of North Hoboken, and which on a Map of said tract made by Charles Herring and duly filed in the clerk's (now Register's) office of the County of Hudson on the fourth day of June, 1852, formerly known, marked and distinguished as Lot number Seven hundred and thirty-four (734), but now known and distinguished as Lot Number twenty-nine (29) in Block number forty-one (41) in Town of Union, the said property fronting and facing on Morgan Street, and being twenty-five feet wide front and rear and one hundred feet deep throughout. Being the same premises which were conveyed to the said Louis C. Hauenstein of the first part hereto by Barbara Ries by Deed dated November 15th, 1869, and recorded on November 24th, 1869, in the

Clerk's (now Register's) office of the County of Hudson, in Book 203 of Deeds, page 575. &c.

ALSO, all that certain other lot, tract or parcel of land and premises, situate, lying and being in the Town of Union, formerly Township of North Bergen, in the County of Hudson and State of New Jersey, being part of a tract of land known by the name of North Hoboken, and which on a Map of said North Hoboken, made by Charles Herring, and filed in the Clerk's (now Register's) office of said County of Hudson, on the fourth day of June, 1852, is designated and laid down as lot number seven hundred and thirty-three (733) in Block number (3) three, fronting on the southerly line of Morgan Street, and said lot being twenty-five feet wide in front and rear by one hundred feet deep throughout. Being the same premises which were conveyed to the said Louis C. Hauenstein of the first part hereto by John Friedrich Heinrich Weiss and wife by Deed bearing date June 24th, 1870, and recorded in the office of the Clerk, (now Register) of said County of Hudson on July 25th, 1870, in Book 211 of Deeds, page 472 etc. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim and demand whatsoever, as well is law as in equity, of the said parties of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. Subject, nevertheless, to a mortgage for the sum of One Thousand Dollars and interest, now a lien upon said premises. And the said Louis C. Hauen-

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stein, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the second part, his heirs and assigns, that he has not made, done, committed, executed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or encumbered, in any manner or way whatsoever, except as aforesaid.

In Witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

LOUIS C. HAUENSTEIN. (Seal.)
THERESA HAUENSTEIN. (Seal)

20 Signed, sealed and delivered
in the presence of
GUSTAV STAHL.

State of New Jersey, { ss.:
County of Hudson, }

30 Be it remembered, That on this fifteenth day of July in the year of our Lord one thousand eight hundred and eighty-four before me, a Commissioner of Deeds, personally appeared Louis C. Hauenstein and Theresa, his wife, who, I am satisfied, are the grantors in the within Indenture named; and I, having first made known to them the contents thereof, they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Theresa Hauenstein, upon a private examination apart from her
40 said husband did further acknowledge that she signed, sealed and delivered the same as her volun-

tary act and deed, Freely, and without any fear, threats or compulsion of her said husband.

GUSTAV STAHL,
Commissioner of Deeds.

(Endorsed)—Dated July 15th, 1884—Louis C. Hauenstein and wife to Ferdinand W. Keller—Receipt—Deed—Received in the office of the Register of the County of Hudson, N. J., on the Third day of December A. D. 1885 at 2.55 o'clock, P. M., and recorded in Book 410 of Deeds for said County, page 615 &c.—George B. Fielder, Register—Stamped: Register's Office, Hudson County, Dec. 3, 1885, (2395) 2.55 o'clock P. M.

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EXHIBIT 2 OF DEFENDANT.

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THIS INDENTURE, made the Fifteenth day of July in the year of our Lord ane thousand eight hundred and eighty-four Between Ferdinand W. Keller of the City of Brooklyn, County of Kings, and State of New York, party of the first part, and Theresa Hauenstein, of the Town of Union, County of Hudson, and State of New Jersey, party of the second part, WITNESSETH, That the said party of the first part for and in consideration of the sum of One Dollar (and other good and valuable considerations), lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, and to her heirs and assigns, forever, All that certain lot, tract or parcel of land and premises situate, lying and being

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10 in the Town of Union, County of Hudson, State of New Jersey, being part of a tract of land known by the name of North Hoboken, and which on a Map of said tract made by Charles Herring and duly filed in the Clerk's (now Register's) office of the County of Hudson on the fourth day of June, 1852, formerly known, marked and distinguished as Lot number seven hundred and thirty-four (734) but now known and distinguished as Lot number twenty-nine (29) in Block number forty-one (41) in Town of Union, the said property fronting and facing on Morgan Street, and being twenty-five feet wide in front and rear and one hundred feet deep throughout.

20 Also, all that certain other lot, tract or parcel of land and premises, situate, lying and being in the Town of Union, formerly Township of North Bergen, in the County of Hudson and State of New Jersey, being part of a tract of land known by the name of North Hoboken, and which on a Map of said North Hoboken, made by Charles Herring and filed in the Clerk's (now Register's) office of said County of Hudson on the fourth day of June, 1852, is designated and laid down as lot number seven hundred and thirty-three (733) in Block number (3) Three, fronting on the southerly line of Morgan Street, and said lot being twenty-five feet wide in front and rear by one hundred feet deep throughout.

30 Being the same premises which were conveyed to the party of the first part hereto by Louis C. Hauenstein and Wife by Deed bearing even date herewith.

40 Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in

equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns for ever. Subject, nevertheless, to a mortgage for the sum of One Thousand Dollars and interest, now a lien upon said premises. And the said party of the first part, for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that he hath not made, done, committed, executed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or encumbered, in any manner or way whatsoever.

In Witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

FERDINAND W. KELLER. (Seal.)

Signed, sealed and delivered in the presence of

GEO. SEEMAN.

State of New York, { ss.:
City, and County of New York, {

Be it Remembered, That on this fifteenth day of July in the year of our Lord one thousand eight hundred and eighty-four before me, a Commissioner of Deeds of the City and County of New York, personally appeared Ferdinand W. Keller, who, I am satisfied, is the grantor in the within Indenture named; and I, having first made known to him the contents thereof, he did thereupon acknowledge

that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

GEO. SEEMAN,
Com. of Deeds,
N. Y. City.

10 State of New York, }
City, and County of New York, } ss.:

20 I, Patrick Keenan, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, the same being a Court of Record, Do Hereby Certify, That Geo. Seeman whose name is subscribed to the Certificate of the proof or acknowledgement of the annexed instrument and thereon written was, at the time of taking such proof and acknowledgement, a notary public in and for said County, duly commissioned and sworn and authorized by the laws of said State to take the acknowledgements and proofs of deeds or conveyances for lands, tenements or hereditaments in said State. And further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to said certificate of proof or acknowledgement is genuine.

30 In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 3d day of December, 1885.

PATRICK KEENAN,
Clerk.

(Seal.)

40 (Endorsed)—Dated July 15th, 1884—Ferdinand W. Keller to Theresa Hauenstein—Receipt—DEED—Received in the office of the Register of the County of Hudson, N. J., on the Third day of December A. D. 1885, at 3.00 o'clock, P.

M., and recorded in Book 410 of Deeds for said County, page 618, &c—Geo. B. Fielder, Register—Stamped: Register's Office, Hudson County. Dec. 3, 1885. 2396—3.00 o'clock P. M.—Pd.

EXHIBIT 3 OF DEFENDANTS.

KNOW ALL MEN BY THESE PRESENTS, 10
That I, Theresa Hauenstein of the Town of Union in the County of Hudson and State of New Jersey, am held and firmly bound unto George Vix, of the same place in the sum of Two Thousand Dollars, lawful money of the United States of America, to be paid to the said George Vix, his heirs, executors, administrators or assigns: For which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally 20
firmly by these presents.

Sealed with my seal. Dated the Twenty-ninth day of August one thousand eight hundred and eighty-seven.

THE CONDITION of the above obligation is such, that if the above bounden Theresa Hauenstein, her heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named George Vix, his heirs, executors, administrators or assigns, the just and full sum of 30
One Thousand Dollars, on the Twenty-ninth day of August which will be in the year one thousand eight hundred and ninety and the interest thereon, to be computed from date hereof and thereof at and after the rate of six per cent., per annum, and to be paid semi-annually, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

AND it is hereby expressly agreed, that should any default be made in the payment of the said 40

interest or any part thereof, on any day whereon the same is made payable as above expressed; or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest tax or assessment remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of One Thousand Dollars with all arrearage of interest thereon, shall, at the option of the said George Vix or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding

THERESA HAUENSTEIN. (Seal.)

Sealed and delivered in the
presence of
HERMAN WALKER.

(Endorsed)—Dated August 9th, 1887—Theresa Hauenstein to George Vix—Bond—\$1,000.

EXHIBIT 4 OF DEFENDANTS.

THIS INDENTURE, made the Twenty-ninth day of August in the year one thousand eight hundred and Eighty-seven Between Theresa Hauenstein and Louis C. Hauenstein, her husband, of the

Town of Union in the County of Hudson and State of New Jersey, parties of the first part and George Vix, of the same place party of the second part, WHEREAS, the said Theresa Hauenstein, is justly indebted to the said party of the second part, in the sum of One Thousand Dollars, lawful money of the United States of America, secured to be paid by her certain bond or obligation, bearing even date with these presents, in the penal sum of Two Thousand Dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of One Thousand Dollars, lawful money as aforesaid, to the said party of the second part, his heirs, executors, administrators, or assigns, on the Twenty-ninth day of August which will be in the year one thousand eight hundred and ninety, and interest thereon, to be computed from date hereof and thereof at and after the rate of six per cent. per annum, to be paid semi-annually.

And it is thereby expressly agreed, that should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest tax or assessment remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent, or municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of One Thousand Dollars with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately

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thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in any wise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear. NOW, this Indenture Witnesseth, That the

10 in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant,

20 bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, ALL those two certain lots, tracts or parcels of land and premises, situate, lying and being in the Town of Union in the County of Hudson and State of New Jersey, Being part of a tract of land known by the name of North Hoboken and which on a map of said tract made by Charles Heering, which was duly filed in the office of the Clerk (now Register) of said County of Hudson on June 4th A. D. 1852, are designated and laid down as lots number seven hundred and thirty-three (733) and seven hundred and thirty-four (734) on Block number three (3) facing and fronting on the southerly side or line of Morgan Street and being each twenty-five (25) feet wide in front and rear and one hundred (100) feet deep throughout as by reference to said map will more fully appear. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise ap-

30 pertaining, and the reversion and reversions, re-

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mainder and remainders, rents, issues, and profits thereof; And also all the estate, right, title, interest, curtesy and right of curtesy, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof, forever. Provided always, and these presents are upon this express condition, that if the said party of the first part, her heirs, executors, administrators or assigns, shall well and truly pay unto the said party of the second part, his heirs, executors administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. And the said party of first part for herself, her heirs, executors and administrators doth covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond. And it is also agreed, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his heirs, executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second

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part; and in default thereof, it shall be lawful for for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

- 10 And the said party of the first part the owner of the lands above described for herself, her heirs and assigns doth further covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that she or they will not hereafter apply for any deduction by reason of any mortgage from the taxable value of the lands embraced in this mortgage. And it is
- 20 further agreed, that in case the said party of the first part, her heirs or assigns shall claim any deduction from the taxable value of said lands in violation of this agreement, then and in that case this mortgage shall become and be immediately due and payable, and the amount of tax paid by the mortgagee shall be added to the principal of the debt secured hereby and recoverable therewith with interest thereon from the time of payment.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

- 30 THERESA HAUENSTEIN.
LOUIS C. HAUENSTEIN.

Sealed and delivered

In the presence of

HERMAN WALKER.

State of New Jersey, }
Hudson County, } ss.:

- 40 Be it Remembered, That on this Twenty-ninth

day of August in the year one thousand eight hundred and eighty-seven before me Herman Walker, a Commissioner of Deeds in and for the County of Hudson, personally appeared Louis C. Hauenstein, husband of Theresa Hauenstein and on this thirtieth day of August A. D. 1887, before me personally appeared Theresa Hauenstein, wife of Louis C. Hauenstein, who, I am satisfied, are the grantors in the within Indenture named; and I having first made known to them the contents thereof, they did to me acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. 10

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

HERMAN WALKER,
Commissioner of Deeds.

Town of Union, March 22d, 1894.

Having received the principal and interest of this within mortgage I do hereby authorize the Register of the County of Hudson to cancel the same of record. 30

GEO. VIX.

Cancelled of Record Apr. 13, 1894. Geo. B. Fielder, Register.

(Endorsed)—August 29th, 1887—Theresa Hauenstein, and husb. to George Vix.—Mortgage—Cancelled of Record April. 13, 1904. Geo. B. Fielder, Register—Received in the Office of Register of the County of Hudson, N. J., on 40

the 30th day of August A. D. 1887, at 3.30 o'clock P. M., and Recorded in Book 199 of Mortgages for said County, page 459 Geo. B. Fielder Register—Herman Walker, Guttenberg, N. J.—Register's Office, Hudson County, Aug. 30, 1887—1699—3.30 o'clock P. M.—Pd.

10 EXHIBIT 5 OF DEFENDANTS.

THIS INDENTURE, made the Second day of April in the year of Our Lord One Thousand Eight Hundred and Ninety Between Charles F. Ruh, widower, of the Town of Union, in the County of Hudson and State of New Jersey of the first part: And Theresa Hauenstein, wife of Louis C. Hauenstein, of the Town of Union, in the County of Hudson and State of New Jersey of the second part:

- 20 WITNESSETH, That the said party of the first part, in consideration of the sum of One Hundred and Eighteen and 84/100 Dollars to me duly paid before the delivery hereof, have remised, released and forever quit-claimed, and by these presents doth remise, release and forever quit-claim to the said party of the second part and to her heirs and assigns, all those two certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Town of
- 30 Union, in the County of Hudson and State of New Jersey, laid down and designated on a map of the Town of Union, Hudson County, New Jersey, dated August A. D. 1866, made by William Hexamer, Town Surveyor, as lots numbered Twenty-eight (28) and Twenty-nine (29) on block numbered Forty-one (41), said lots fronting on the southerly side of Morgan Street. Being the same lots sold to the said party of the first part by the Board of Council of the Town of Union by Declaration of
- 40 Sale dated January 12th, 1885, and recorded in

the Register's Office of Hudson County, N. J., on March 25, 1887, in book 434 of deeds on page 297, &c., with the appurtenances and all the estate, right, title and interest of the said party of the first part therein, To have and to hold, the above mentioned and described premises, with the appurtenances, unto the said party of the second part, her heirs and assigns forever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written. 10

CHAS. F. RUH. (Seal.)

Signed, sealed and delivered
in the presence of

FRED'K C. HANSEN.

State of New Jersey, }
County of Hudson, } ss. :

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Be it Remembered, That on this Second day of April in the year of Our Lord One Thousand Eight Hundred and Ninety before me Fred'k C. Hansen, a Commissioner of Deeds in and for the State and County aforesaid, personally appeared Charles F. Ruh, who, I am satisfied is the grantor in the within Deed of Conveyance named; and I having first made known to him the contents thereof, he did to me acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 30

FRED'K C. HANSEN,
Commissioner of Deeds.

(Endorsed)—Quit-Claim Deed—Charles F. Ruh, to Theresa Hauenstein—2102—Dated April 2nd, 1890—Received in the Register's Office of the County of Hudson, N. J., on the 7th day of Apl. A. D. 1890, at 11.10 o'clock, in the fore- 40

noon and Recorded in Book 501 of Deeds for said County, on pages 472.—Geo. B. Fielder, Register, and included under County Block No. 2102—F. C. Hansen—Stamped: Register's Office Hudson County, Apr. 7, 1890, 1428, 11.10 o'clock A. M.—Pd.

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EXHIBIT 7 OF DEFENDANTS.

This indenture made this Twenty-ninth day of September, in the year eighteen hundred and eighty-seven between Ferdinand Heintze, Sheriff of the County of Hudson, in the State of New Jersey, of the first part and Theresa Hauenstein of of in the county of and state of party of the second part.

WITNESSETH:

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Whereas, on the Fifteenth day of February in the year of our Lord one thousand eight hundred and eighty-seven a certain writ of fieri facias was issued out of the Court of Chancery of the State of New Jersey, directed and delivered to me the said Ferdinand Heintze then and still being Sheriff of the said County of Hudson and which said writ is in the words or to the effect following, that is to say:

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New Jersey, to wit: The State of New Jersey to the Sheriff of the County of Hudson, Greeting:

Whereas, on the Third day of February in the year of our Lord one thousand eight hundred and eighty-seven by a certain decree made in our court of Chancery before our Chancellor at Trenton in a certain cause therein depending wherein John Fick is complainant and Louis C. Hauenstein, Theresa Hauenstein, The First National Bank of Hoboken, David B. Day, Louis Budenbender and August Moller are defendants.

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it was ordered, adjudged and decreed that cer-

tain mortgaged premises with the appurtenances in the bill of complaint in the said cause particularly set forth and described that is to say:

All the following described two certain tracts or parcels of land and premises situate, lying and being in the Town of Union in the County of Hudson and State of New Jersey. Being part of a tract of land known by the name of North Hoboken, and which on a map of said tract made by Charles Herring and duly filed in the clerk's office of the County of Hudson on the Fourth day of June A. D. 1852, are designated and laid down as lots number Seven Hundred and thirty-three (733) and Seven Hundred and thirty-four (734), but known and designated on Town Map as lots Twenty-eight (28) and Twenty-nine (29) in Block No. forty-one (41) fronting and facing on the South-erly side or line of Morgan Street, and said lots being each Twenty-five (25) feet in front and rear and one hundred (100) feet deep throughout, being the same lots which were conveyed to Louis C. Hauenstein from Barbria Ries by deed bearing date Nov. 15, 1869, and by John Frederick Heinrich Weiss and Wife by deed bearing date June 24th, A. D. 1870.

Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversions and remainders rents, issues and profits thereof and also all the estate right, title, interest, use, property claim and demand of the said defendants of in to and out of the same be sold to pay and satisfy in the first place unto the said complainant the sum of One Thousand Two Hundred and Seventy-two dollars and seventy cents for principal and interest due on a certain mortgage made by Louis C. Hauenstein and Theresa Hauenstein, his wife, to Martin Bentz dated the first day of July A. D. eighteen hundred and seventy-three and recorded in Liber one hundred and

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four of Mortgages, page one hundred and seventy, &c., and by said Martin Bentz assigned to David Kephart and by David Kephart assigned to Margaret Bentz, wife of Martin Bentz and by Margaret Bentz and Martin, her husband, assigned to the complainant together with lawful interest thereon from the Twenty-fourth day of November A. D. eighteen hundred eighty-six until the same be paid and satisfied and also the costs of the said complainant.

10

And that for that purpose a writ of fieri facias should issue directed to the Sheriff of the County of Hudson commanding him to make sale as aforesaid and that the surplus money arising from such sale if any there be should be brought into the said Court subject to the future order of the said court as by the said decree remaining as of record in our said Court of Chancery at Trenton doth and may more fully appear.

20

And whereas the costs of the said complainant have been duly taxed at one hundred and twenty-five dollars and sixty-six cents.

Wherefore you are hereby commanded that you cause to be made of the premises aforesaid by selling the same for the purpose and out of the proceeds thereof you do pay unto the said complainant the sum of one thousand two hundred and seventy-two dollars and seventy cents.

30

Together with lawful interest thereon as aforesaid, and also the sum aforesaid of costs. And that you have those moneys before our said Chancellor in our Court of Chancery aforesaid at Trenton on the Third Tuesday of May, next, to render to the said complainant and also the surplus money, if any there be, to abide the further order of our said court according to the decree aforesaid.

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And you are to make return at the time and place aforesaid by certificate under your hand of the manner in which you shall have executed this

our writ together with this writ.

Witness Theodore Runyon, Esquire, our Chancellor at Trenton aforesaid, the Fifteenth day of February in the year of our Lord One Thousand eight hundred and eighty-seven.

ALLAN McDERMOTT, Clerk.

Hudspeth & Benny,
Solicitors.

As by the record of the said writ of fieri facias in the office of the clerk of said Court of Chancery in Book K 6 of Executions, page 250, &c., may more fully appear. 10

And whereas, I, the said Ferdinand Heintze, as such Sheriff as aforesaid did in due form of law by public advertisements signed by myself and put in five or more public places in the said County of Hudson, one of which was in the Town where said real estate is situated of the time and place appointed for such sale for at least two months preceding the time appointed for said sale and publishing the same in the two of the newspapers printed and published in the said County where the lands above described are situated the same being designated for the publication of the laws of the State and circulating in the neighborhood of said real estate for at least four weeks successively once in each week next preceeding the time so appointed for selling the same, one of which said newspapers is printed published at Jersey City, the county seat of said county, advertised the said above described lots of land and premises to be sold, under and by virtue of the said writ of fieri facias at public vendue to be held at Real Estate Exchange No. 47 Montgomery Street, Jersey City, on Thursday the Fifth day of May, in the year One Thousand eight hundred and eighty seven, at the hour of two o'clock in the afternoon, at which said time and place I 20 30 40

did in due form of law adjourn said sale to Thursday, the Second day of June, in the year last aforesaid at the same hour and place which said adjournment was duly advertised in said two newspapers according to law at which said time and place I did in due form of law adjourn said sale to Thursday, the seventh day of July in the year aforesaid at the same hour and place at which said time and place I did in due form of law adjourn said sale to Thursday, the Fourth day of August in the year aforesaid at the same hour and place which adjournment was duly advertised in said two newspapers according to law at which said time and place I did in due form of law publicly adjourn said sale to Thursday, the Eleventh day of August, in the year aforesaid at the same hour and place at which said last mentioned time and place I did accordingly offer and expose the said above described lots of land and premises for sale at public vendue under and by virtue of the said writ of fieri facias. Whereupon the said party of the second part bidding therefore the sum of Fifteen hundred dollars and no other person bidding as much I did then and there openly and publicly in due form of law between the hours of twelve and five in the afternoon strike off and sell the said above described lots of land and premises for the sum of Fifteen hundred dollars to the said party of the second part she being then and there the highest bidder for the same.

And on the Eleventh day of August in the year last aforesaid I did duly report the said sale to the Chancellor who by his order dated on the Twentyninth day of September in the year last aforesaid did confirm the same and direct me the said Sheriff to execute a good and sufficient conveyance in the law to the said party of the second part for the said premises.

Now, Therefore, this Indenture witnesseth that I, the said Ferdinand Heintze, as such Sheriff as

aforesaid under and by virtue of the said writ of fieri facias and in execution of the power and trust in me reposed and also for and in consideration of the said sum of Fifteen hundred dollars to me in hand paid the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate and forever discharge the said party of the second part, her heirs, executors and administrators, have granted, bargained, sold, assigned, transferred and conveyed and by these presents do grant, bargain, sell, assign, transfer and convey unto the said party of the second part, her heirs and assigns, all and singular the said above described lots of land and premises with the appurtenances, privileges and hereditaments thereunto belonging or in any way appertaining to have and to hold the same unto the said party of the second part, her heirs and assigns to her and their only proper use, benefit and behoof forever in as full, ample and beneficial a manner as by virtue of the said writ of fieri facias, I may, can, or ought to convey the same. 10

And I, the said Ferdinand Heintze, do hereby covenant, promise and agree to and with the said party of the second part, her heirs and assigns, that I have not as such Sheriff as aforesaid done or caused, suffered or procured to be done any act matter or thing whereby the said premises or any part thereof with the appurtenances are or may be charged or encumbered in estate, title or otherwise. 20

In witness whereof I, the said Ferdinand Heintze, as such Sheriff as aforesaid, have hereunto set my hand and seal this Twenty-ninth day of September in the year of our Lord one thousand eight hundred and eighty-seven. 30

FERDINAND HEINTZE, (Seal)
Sheriff.

Signed, sealed and delivered in
the presence of
Mervyn Armstrong, Jr.

40

State of New Jersey, }
 Hudson County, } ss.:

10 Ferdinand Heintze, Sheriff of the County of Hudson, do solemnly swear that the land and real estate described in the within deed made by me to Theresa Hauenstein was by me sold by virtue of a good and subsisting execution as is therein recited; that the moneys ordered to be made have not been to my knowledge or belief paid or satisfied; that the time and place of the sale of said land and real estate was by me duly advertised as required by law and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

FERDINAND HEINTZE, Sheriff.

20 Sworn to before me one of the Masters of Chancery of the State of New Jersey, on this Fifth day of October A. D., 1887, and I having examined the deed above mentioned do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

MERVYN ARMSTRONG, JR.,
 Master in Chancery of New Jersey.

30 State of New Jersey, }
 Hudson County, } ss.:

40 On this Fifth day of October in the year of our Lord one thousand eight hundred and eighty-seven before me the subscriber, a Master in Chancery of the said State, personally appeared Ferdinand Heintze, Sheriff of the County of Hudson aforesaid, who is I am satisfied the Grantor of the within Indenture named and I having first made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and deliver-

ed the same as his voluntary act and deed for the uses and purposes therein expressed.

MARVYN ARMSTRONG, JR.,
Master in Chancery of New Jersey.

(Endorsed)—Deed.—Ferdinand Heintze, Sheriff of Hudson County, N. J., to Theresa Hauenstein—2102—Dated Sept. 29, 1887—Received in the Register's Office of the County of Hudson, N. J., on the 29th day of May A. D., 1895, at 10.10 o'clock A. M., and recorded the same day in Liber 622 of Deeds, on Page 136 &c. Geo. B. Fielder, Register—And indexed under County Block No. 2102.—Warne Smyth—Stamped: Register's Office, Hudson County, May 29, 1895, 2202, 10.10 o'clock a. m.

10

Town of Union, Hudson Co., N. J. Oct. 21st, 1885.
No. 1222

20

Office of the Collector of Arrears and Taxes.

Received from Mr. Chas. F. Ruh, Taxes for the Year 1884, for Lot No. 28-29, Block No. 41.

Amount of tax	\$28.44
Interest, 11 months, 7%	1.82
Advertisement50
Cost85

30

31.61

JOHN J. SPENCER
Collector of Arrears and Taxes.

"N. B.—All persons are requested to sign the stub in Receipt Book."

40

Spencer

The Board of Council of the Town of Union.

DECLARATION OF SALE.

Dated the Twelfth day of January one thousand eight hundred and eighty-five for unpaid Taxes for the year Eighteen hundred and eighty-three.

10 Whereas, In the year Eighteen hundred and eighty-three within the time directed by the laws of the State of New Jersey, for assessing Town, County, and State Taxes, the Assessor of the Town of Union, in the County of Hudson in said State, did in the manner directed by law, assess the Town, County and State Taxes for that year, upon the persons and property in said Town liable thereto, and did so assess for said Taxes upon lots of land in said Town, laid down and designated on a Map of the Town of Union, Hudson County, New Jersey, dated August, A. D. 1866, made by William Hexamer, Town Surveyor, as lots numbered Twenty-eight (28) and Twenty-nine (29) on block numbered Forty-one (41); said lots of land fronting on the southerly side of Morgan Street, the sum of 20 Twenty-nine dollars and eight cents, which was the proportion of said Taxes by law required to be assessed on said Two lots of land, in which assessment Louis C. Hauenstein was designated as the owner of said lots:

30 And Whereas, The Board of Council of said Town have caused the said lots of land, and the amount of the said Taxes due thereon to be advertised for at least sixty days, to wit: from the First day of October, Eighteen hundred and eighty-four to the Eighth day of December Eighteen hundred and eighty-four in the "Hudson County Journal" and "Jersey City Herald," official newspapers printed and published in Hudson County, N. J., and circulated in the Town of Union, and by advertisements describing said lots of land, and specifying the amount of said Taxes, put up in at least 40

five public places in said Town, to wit Theobald Muehr's Hotel, Louis Mitchell, Jr's. Hotel, Jacob Hoffmeister's Hotel, the Post Office, and the Town Hall, in said Town, notifying the owner thereof, or the persons interested therein to pay to James G. Morgan, Collector of Arrears, without delay, the amount of the said Taxes thereon, and the interest thereon, and the costs of the said notice and advertisement; or in default thereof, or if the said Taxes, with interest and costs, should not be paid on or before the time of sale, then next ensuing, the said lots of land would be sold at public auction on the Eighth day of December, Eighteen hundred and eighty-four between the hours of twelve o'clock, noon, and five o'clock in the afternoon, at the Town Hall, in the Town of Union, for the shortest term for which any person would agree to take the same, and pay such Taxes, or the balance thereof, with interest thereon, and all costs, charges, and expenses.

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And whereas, The said Taxes on the said lots of land, and the interest, costs, charges and expenses thereon, were not paid in pursuance of the said notices and advertisements, at any of the times in said notices specified, or at any other time;

And Whereas, The said Taxes, interest, costs, charges, and expenses on the same in the whole amounted to Thirty-three dollars and fourteen cents; and it became and was necessary to sell the said lots of land, pursuant to the said notices and advertisements, for the purpose of enforcing the payment of said Taxes, interest, costs, charges, and expenses;

30

And Whereas, At said time at which said lands were so ordered to be sold, there remained unsold a part thereof, to wit: among others, the two lots of land above described for the want of purchasers; whereupon the said sale was adjourned, not less than thirty days nor more than sixty days, to

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10 wit: to the Twelfth day of January in the year Eighteen hundred and eighty-five between the hours of Twelve o'clock noon, and five o'clock in the afternoon of that day, at the said Town Hall, of which adjourned sale twenty days' notice, at least, was given, as aforesaid, by advertisement in the "Hudson County Journal" and "Jersey City Herald," the newspapers above-mentioned and also by advertisements put up in the places above described.

20 And Thereupon, at said Town Hall, on said Twelfth day of January, Eighteen hundred and eighty-five at said hour of Twelve o'clock, noon, being the time of said adjourned sale, said lands were put up for sale at public auction, to the person who would agree to take the same for the shortest term, and pay the sum of Thirty-four dollars and eighty-six cents, being the amount of said Taxes, with the interest thereon, and the costs, charges, and expenses as aforesaid;

30 Now, Therefore, Be it Known, that on the said Twelfth day of January, Eighteen hundred and eighty-five the said lots of land were set up at public auction, at the Town Hall, aforesaid, at Twelve o'clock, noon of that day and sold to Charles F. Ruh, he being the person who then and there agreed to take the same, and pay the said Taxes, interest, costs, charges and expenses, for the shortest term of time, to wit: for the term of Ten Thousand years, from and after the expiration of the time allowed for the redemption of the said lots of land as provided in the Charter of said Town of Union, and the supplements thereto; And the said Charles F. Ruh did at the sale become the purchaser of the said lots of land, as aforesaid, and hath paid to the Treasurer of said Town, the amount of said Taxes, interest charges, costs, and expenses, to wit: Thirty-four dollars and eighty-six cents, and he the
40 said Charles F. Ruh by virtue of such sale, and the

payment of the said money, his heirs, executors,
 administrators, or assigns are lawfully entitled to
 hold and enjoy the said lots of land for his and
 their own proper use, against the owner or owners
 thereof, and all persons claiming the same, until
 the said term of Ten Thousand years shall be com-
 pleted and ended: Provided, however, that the said
 term of time for which the said lots of land were so
 sold aforesaid, shall not commence, nor shall the
 purchaser or those claiming under him have any
 right of possession to the said lots of land, until
 two years limited for redemption of the same, as
 provided in the Charter of said Town, shall have
 expired, and the said purchaser or those claiming
 under him shall at the expiration of the time men-
 tioned in this Declaration of Sale, quit and surren-
 der the lands, tenements, and real estate herein de-
 scribed, in as good state and condition as when he
 entered thereon, natural wear and accidents ex-
 cepted; and provided, further, this Declaration of
 Sale, is issued and received upon the conditions
 contained in the Charter of said Town, that the
 lands, tenements and real estate herein described,
 may be redeemed by the owner, mortgagee, occu-
 pant or person interested therein, or by any other
 person for and on behalf of the owner, mortgagee,
 or claimant of such lands, tenements or real estate,
 at any time within two years after the date of the
 sale hereinbefore stated, by paying to the Treas-
 urer of the Town, for the use of said purchaser, his
 executors, administrators or assigns, the said pur-
 chase money, together with any other sum paid for
 taxes or assessments, which the said purchaser, his
 executors, administrators or assigns may have
 paid, chargeable on the property herein described,
 and which by the Charter the said purchaser is au-
 thorized to pay, with interest thereon at the rate
 of fifteen per cent. per annum, in addition thereto,
 and subject also to any other provisions in the said
 Charter contained.

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In Witness Whereof, The common seal of said Town is hereunto affixed, pursuant to the order of the Board of Council of said Town, and these presents are signed by the Chairman of Council and Clerk of said Town, this Twelfth day of January in the year of our Lord One thousand eight hundred and eighty five.

CHAS. F. RUH,

Chairman.

CHRISTIAN WURSTER,

Town Clerk.

(Seal.)

State of New Jersey, { ss:
Hudson County, }

20 Be it Remembered, That on this Sixteenth day of February A. D. Eighteen hundred and eighty-five, personally appeared before me, Christian Wurster who being by me duly sworn, on his oath deposeth and saith that this deponent Christian Wurster is the Clerk of the Board of Council of the Town of Union, that this deponent saw Charles F. Ruh known by this deponent to be the Chairman of the Council of the Town of Union, sign and deliver the within deed or declaration of sale, as the act and deed of the said, the Chairman of the Board of Common Council and the Common Council of the Town of Union; That the seal thereto affixed is the corporate seal of the Board of Council of the Town of Union, and that the said seal was affixed to said deed or declaration of sale, and the said declaration executed under resolution and direction of the said Board of Council of the Town of Union, as and for the voluntary act and deed of the said Common Council, and that this deponent, 30
40 by virtue of the authority and under the direction

before mentioned, attested the same as subscribing witness thereto at the execution thereof.

CHRISTIAN WURSTER.

Subscribed and sworn to before me
this Sixteenth day of February
A. D., 1884, at the Town of Union.

JAMES G. MORGAN,
Commissioner of Deeds.

The word "December" first page interlined
before execution.

JAMES G. MORGAN,
Commissioner of Deeds.

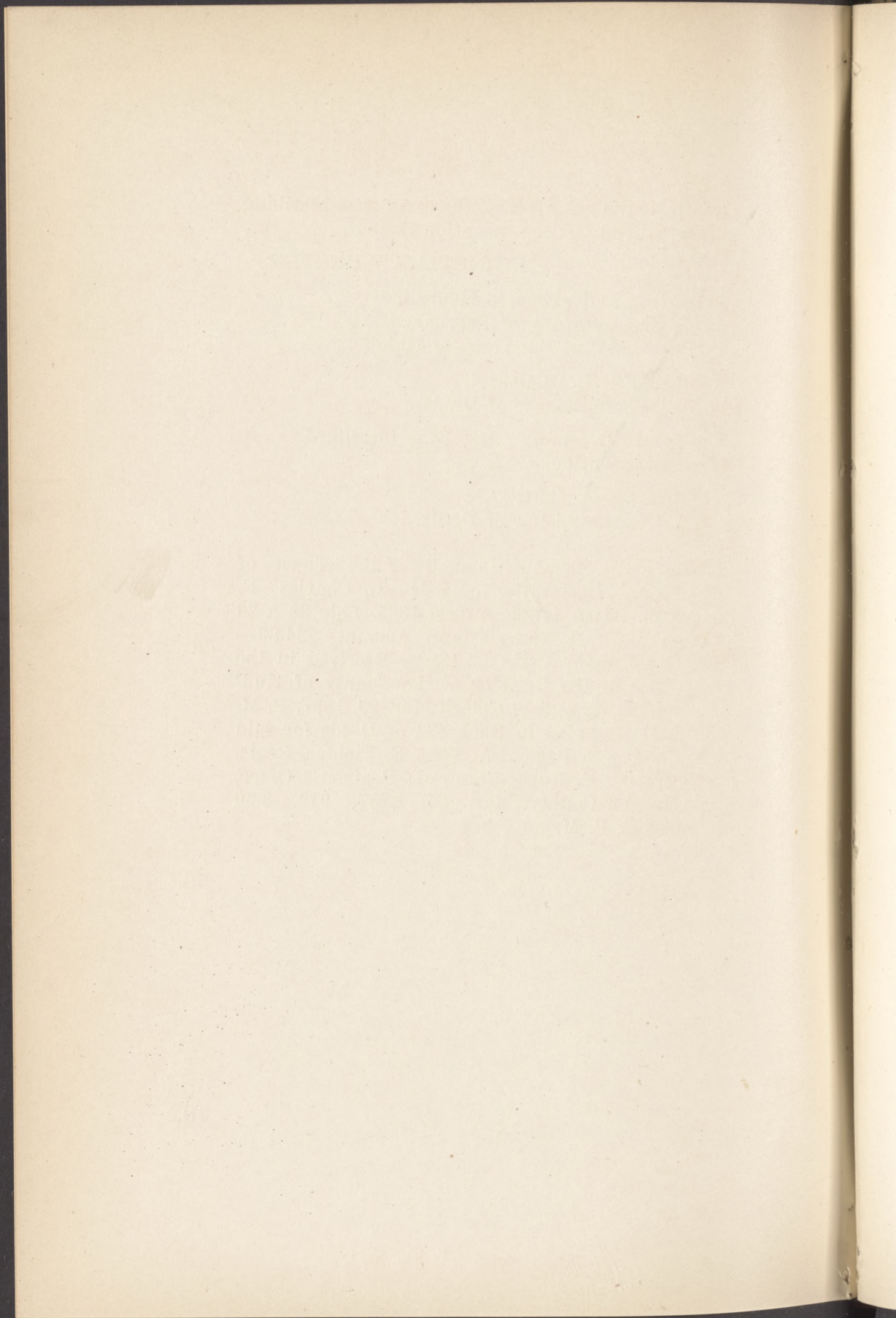
(Endorsed)—Board of Council of the Town of
Union—Declaration of Sale—To Charles F.
Ruh, Dated January 12th, 1885. Lots 28 & 29
on Block 41, Town Map. Amount \$34.86—
For Unpaid Taxes of 1883.—Received in the
Office of the Register of the County of Hud-
son, N. J., at 3.50 o'clock Mar. 25, 1887, P. M.
And Recorded in Book 434 of Deeds for said
County on Page 297. Geo. B. Fielder, Regis-
ter.—C. F. Ruh.—Stamped: Register's Office,
Hudson County, Mar. 25, 1887, 913, 3.50
o'clock P. M.

10

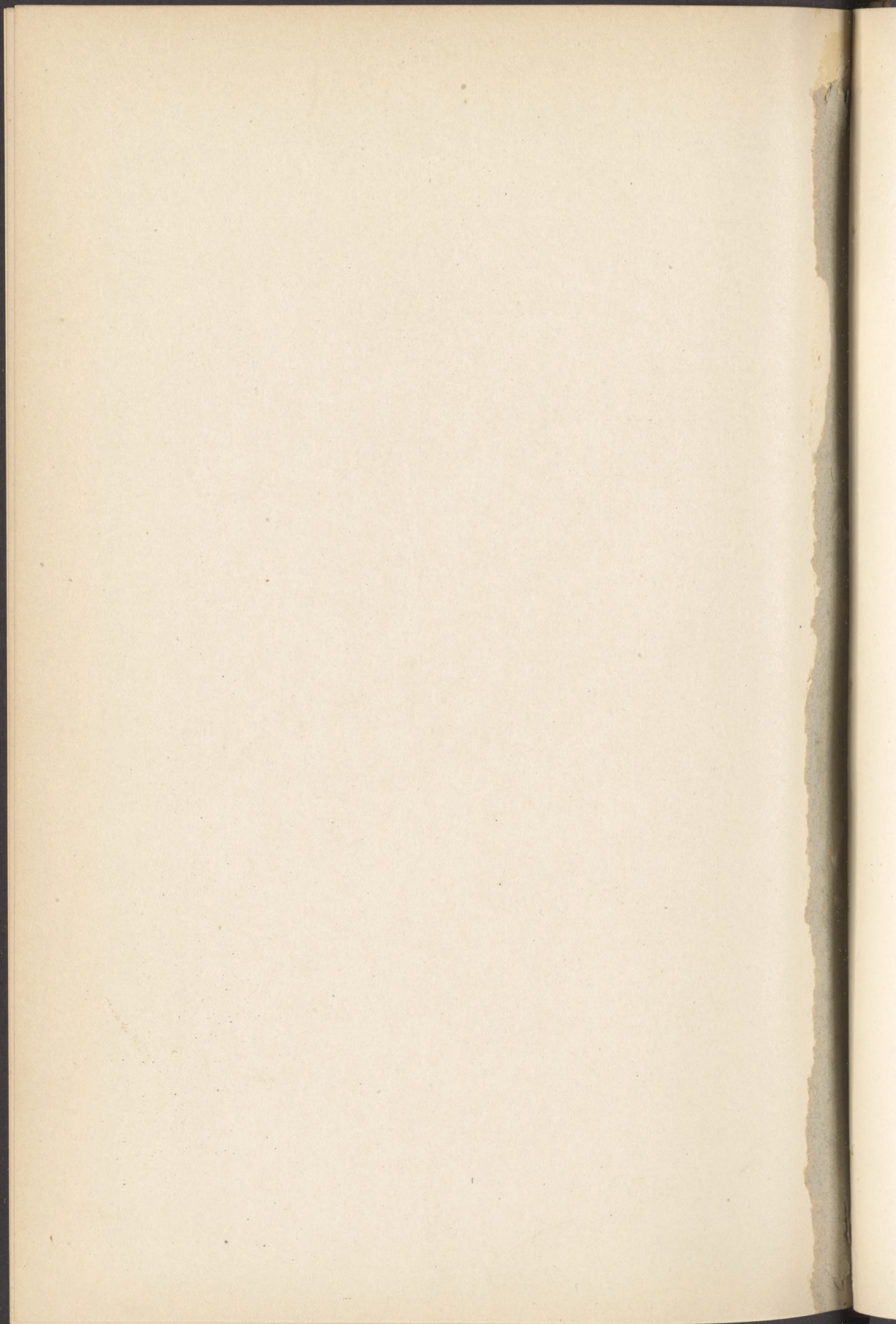
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NEW JERSEY, to wit:—THE STATE
OF NEW JERSEY, to Theresa Hauenstein
and Louis Hauenstein.

GREETING: WE COMMAND YOU,
that you appear in manner and form re-
quired by law in our Court of Chan- 10
cery, on the thirtieth day of November,
Nineteen hundred and three, at Tren-
ton, to answer to a Bill of Complaint
[l. s.] exhibited against you in our said Court
by John C. Farr, Jr., and to do further
and receive what our said Court shall
have considered in that behalf; and
this you are not to omit, under the pen-
alty that may fall thereon.

WITNESS His Honor, William J. Magie, Chan- 20
cellor of our said State, at Trenton, the eleventh
day of November, in the year of our Lord one thou-
sand nine hundred and three.

LEON ABBETT, Solicitor.

E. C. STOKES, Clerk.

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IN CHANCERY OF NEW JERSEY.

To His Honor William J. Magie, Chancellor of the State of New Jersey:

10 Complaining, shows unto your Honor your orator, John C. Farr, Jr., of the City of Hoboken, in the County of Hudson and State of New Jersey, that on and before the first day of December, eighteen hundred and eighty-four, Louis Hauenstein, of the Town of Union, in the County of Hudson and State of New Jersey, was seized and possessed in fee simple of all those two certain tracts or parcels of land and premises, situate, lying and being in the Town of Union, in the County of Hudson and State of New Jersey; being part of a tract of land known by the name of North Hoboken, and which on a map of said tract made by Charles Herring and duly filed in the Clerk's office of the County of Hudson on the fourth day of June, A. D. 1852, are designated and laid down as lots number seven hundred and thirty-three (733) and seven hundred and thirty-four (734), but known and designated on Town Map as lots twenty-eight (28) and twenty-nine (29), in Block number forty-one (41), fronting and facing on the southerly side or line of Morgan Street; and said lots being each twenty-five (25) feet wide in front and rear, and one hundred (100) feet deep throughout, being the same lots which were conveyed to Theresa Hauenstein by Ferdinand Heintze, Sheriff of the County of Hudson, by deed dated on the twenty-ninth day of September, eighteen hundred and eighty-seven, and received in the office of the Register of the County of Hudson on the twenty-ninth day of May, 1895, and recorded in Book 622 of Deeds of said county, at page 136, &c.

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And your orator further shows, that on or about the twenty-eighth day of May, in the year eighteen hundred and ninety, the said Louis Hauenstein and one Thomas W. Weiss, being justly indebted

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to John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., in the sum of nine hundred and eighty 15-100 dollars and upwards, the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., then commenced an action upon contract against the said Louis Hauenstein and Thomas W. Weiss for the recovery of the said debt and interest thereon, in the Circuit Court in and for the County of Hudson; and such proceedings were thereupon had in the said suit that afterwards, to wit, on the seventh day of August, eighteen hundred and ninety, the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., recovered a judgment against the said Louis Hauenstein and Thomas W. Weiss in the said Hudson County Circuit Court, for the sum of twelve hundred and ninety-one dollars and twenty-two cents, damages, including costs, as by the record of the said judgment now remaining in the office of the Clerk of the said Hudson County Circuit Court, at Jersey City, reference being thereunto had, will more fully and at large appear. 10

And your orator further shows that for the purpose of obtaining satisfaction of said judgment, the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., caused to be issued thereon out of said Hudson County Circuit Court a writ of fieri facias de bonis et terris, tested on the eleventh day of August, eighteen hundred and ninety, and returnable on the second Tuesday of September, eighteen hundred and ninety, which writ, having been first duly recorded, was delivered to the Sheriff of the said County of Hudson, to whom it was directed and thereby he was commanded that of the goods and chattels of the said Louis Hauenstein and Thomas W. Weiss, in his county, he should cause to be made the said sum of twelve hun- 20 30 40

dred and ninety-one dollars and twenty-two cents, so as aforesaid adjudged to the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., and that if sufficient goods and chattels of said Louis Hauenstein and Thomas W. Weiss, in his county, he could not find whereof to make said moneys, he should cause the whole or the residue, as the case might require, of the said moneys to be made of the lands, tenements, hereditaments and real estate whereof the said Louis Hauenstein and Thomas W. Weiss were seized on the seventh day of August, in the year eighteen hundred and ninety, or at any time afterwards, in whose hands soever the same might be; and that the said Sheriff should have those moneys before said Circuit Court, on the return day of said writ, to render to the said plaintiffs in said action. John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., in satisfaction of their said judgment, and that he should have then and there the said writ.

And your orator further shows that Robert David, the then Sheriff of said County of Hudson, to whom the said writ of execution was directed and delivered, being unable to find any goods and chattels, and also being unable to find any lands, tenements, hereditaments and real estate of the said Louis Hauenstein and Thomas W. Weiss, whereon to levy and make the said judgment, returned the said writ with a return thereon as follows: "Returned to Court wholly unsatisfied;" as by the said writ of execution or the record thereof, and the return to said writ thereon endorsed, in the office of the Clerk of the said Hudson County Circuit Court, at Jersey City, aforesaid, reference being thereunto had, will more fully and at large appear.

And your orator further shows that on the first day of August, nineteen hundred and three, the said John M. Niver and Norman H. Niver, part-

ners trading and doing business as John M. Niver & Co., duly sold and assigned said judgment so obtained by them against the said Louis Hauenstein and Thomas W. Weiss, as aforesaid, to your orator, by deed of assignment for good and valuable considerations, in said deed of assignment set forth; which said deed of assignment, having been duly acknowledged, was subsequently and on the 29th day of September, 1903, filed in the office of the Clerk of said Hudson County Circuit Court; to which deed of assignment your orator begs leave to refer. That by said deed of assignment the said judgment and all sums of money that may be had or obtained by means thereof, or from any proceedings to be had thereupon and all rights under the same, both legal and equitable, became and are now, vested in your orator. 10

And your orator further shows that for the purpose of obtaining satisfaction of said judgment, he caused to be issued thereon out of said Hudson County Circuit Court an alius writ of fieri facias de bonis et terris, tested on the twenty-third day of October, nineteen hundred and three, and returnable on the fourth day of December, nineteen hundred and three, which writ, having been first duly recorded, was delivered to the Sheriff of the County of Hudson, to whom it was directed, and thereby he was commanded that of the goods and chattels of the said Louis Hauenstein and Thomas W. Weiss, in his county, he should cause to be made the said sum of twelve hundred and ninety-one dollars and twenty-two cents, so as aforesaid adjudged to the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., and that if sufficient goods and chattels of said Louis Hauenstein and Thomas W. Weiss, in his county, he could not find whereof to make said moneys he should cause the whole of the residue as the case might require, of the said moneys to be made of the land, tenements, heredit- 20 30 40

aments and real estate whereof the said Louis Hauenstein and Thomas W. Weiss were seized on the seventh day of August, in the year eighteen hundred and ninety, or at any time afterwards, in whose hands soever the same might be, and that the said Sheriff should have those moneys before said Circuit Court on the return day of said alius writ, to render to your orator in satisfaction of his said judgment, and that he should have then and there the said writ.

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And your orator further shows that John Zeller, Sheriff of the said County of Hudson, to whom the said alius writ of execution was directed and delivered, being unable to find any goods and chattels, and also being unable to find any lands, tenements, hereditaments and real estate of the said Louis Hauenstein and Thomas W. Weiss, whereon to levy and make the said judgment returned the said writ, with a return thereon as follows: "Returned to Court unsatisfied," as by said alius writ of execution or the record thereof, and the return to said writ thereon endorsed, in the office of the Clerk of the said Hudson County Circuit Court, at Jersey City, aforesaid, reference being thereunto had, will more fully and at large appear.

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And your orator further shows that there is now due upon the said judgment hereinbefore mentioned the sum of twelve hundred and ninety-one dollars and twenty-two cents, with interest thereon from the seventh day of August, one thousand eight hundred and ninety, besides execution fees.

30

And your orator further shows that the said Louis Hauenstein being so seized and possessed of said tracts or parcels of land and premises as aforesaid, which are of the value of four thousand five hundred dollars and upwards, afterwards, and on or about the eleventh day of August, one thousand eight hundred and eighty-seven, procured and allowed the land and premises to be sold by the then Sheriff of the County of Hudson under a writ

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of fieri facias, issuing out of the Count of Chancery of the State of New Jersey, and repurchased the said property at the said sale, such purchase being made by him in the name of Theresa Hauenstein, his wife, one of the defendants herein, that the amount paid upon the said purchase at the said Sheriff's sale was paid by the said Louis Hauenstein, or procured to be paid by him.

And your orator further shows that the defendant Theresa Hauenstein, did not advance any money towards the purchase of said property at said Sheriff's sale and has never advanced or paid any money towards the said purchase or on account thereof, and has no interest in the said property whatsoever, except that she now holds the same as trustee of, and for the benefit of the said defendant, Louis Hauenstein, and that said Sheriff's sale, and the purchase at said Sheriff's sale was all conducted and made after the said debt due to the said John M. Niver and Norman M. Niver, partners trading and doing business as John M. Niver & Co., became due and payable; judgment upon which said debt was subsequently obtained in the Hudson County Circuit Court, as hereinafter set forth, and which said judgment was duly assigned to your orator as hereinbefore set forth; and said Sheriff's sale was instituted, conducted and made by and through the said Louis Hauenstein in order to secure the said property for his own use and benefit and to protect it from the said claim and to defraud the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., as hereinbefore set forth, and to prevent the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., from collecting their said debt and in order to defraud the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co.

And your orator further shows that he has been

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informed and verily believes it to be true and therefore expressly charges, that no consideration whatsoever was paid by the said Theresa Hauenstein for the said property and for the said conveyance to her by the said Sheriff of the County of Hudson, as hereinbefore set forth, and that the said Louis Hauenstein has always held, occupied and possessed and enjoyed, and received the rents, issues and profits of said lands and premises, as fully
 10 to all intents and purposes as before the said sale by the said Sheriff of the County of Hudson, and as before the delivery of the said deed by the said Sheriff of the County of Hudson to the said Theresa Hauenstein, and is now in full possession and enjoyment of the same.

And your orator further shows that John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., and your orator have frequently and in a friendly manner
 20 applied to the said Louis Hauenstein and Theresa Hauenstein to pay the said judgment obtained by the said John M. Niver and Norman H. Niver, partners trading and doing business as John M. Niver & Co., against Louis Hauenstein and Thomas W. Weiss, as hereinbefore set forth, and which said judgment was duly assigned to your orator as hereinbefore set forth, or to reconvey or cause to be conveyed the said premises to the said Louis Hauenstein, so that they might be sold under execution for the satisfaction of the said judgment,
 30 and a good and clear title given therefor to the purchaser thereof, as in equity and good conscience they ought to have done, and as your orator well hopes they would have done, but which they wholly refuse to do.

In consideration whereof and inasmuch as your orator is remediless in the premises at the common law and cannot have adequate relief except by the aid of this honorable court:

40 To the end therefore that the said Louis Hauen-

stein and Theresa Hauenstein, his wife, defendants herein, may without oath, full, true and perfect answers make to all and singular the premises, according to the best of their knowledge, information, remembrance and belief, and that they may set forth and discover the real estate belonging to the said Louis Hauenstein and sold and conveyed as hereinbefore mentioned, and what disposition has been made of, or encumbrance put upon, the same, fully and particularly, and in whose possession said real estate has been since the twenty-ninth day of September, one thousand eight hundred and eighty-seven, and whether the same is encumbered, and if so, in what manner, and in whose favor, by whom and to what amount, and whether the sale and conveyance as before mentioned was made of the said real estate, and if so, for or upon what consideration, and to whom, when and by whom the same was paid, and who has possessed and occupied said premises and received the rents, issues and profits thereof since the said alleged or pretended sale or conveyance thereof, and also by whom and in what manner the taxes and assessments upon the said property have been paid, and if any mortgage or other encumbrance has been placed thereon by whom, and in what manner, the interest upon the said encumbrance or mortgage, or the principal of said encumbrance or mortgage, has been paid, and that the said defendants, or one of them, may be decreed to pay to your orator the full amount due and owing to him on the said judgment, with the interest, costs and execution fees, accruing thereon; and that the said fraudulent conveyance or sale, and all other fraudulent sales or encumbrances made, created, or suffered by or between the said defendants and affecting the said lands, may be set aside and declared null and void; and that the said judgment set forth may be decreed to be a lien upon the said lands and premises hereinbefore described; and that the said lands

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10 may be sold free, clear and discharged of and from the said fraudulent conveyances and all other fraudulent conveyances and encumbrances, under the said writ of execution or otherwise, in order to satisfy the said judgment hereinbefore set forth, under a writ of execution issued or to be issued thereon, or otherwise, and the proceeds thereof or such part of the same as may be necessary, may be applied to the payment of your orator's said judgment; and that your orator may have such other or further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

20 May it please your Honor, the premises considered, to grant to your orator, the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, directed to the said Louis Hauenstein and Theresa Hauenstein therein and thereby commianding them and each of them at a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to, abide by and perform such order and decree herein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

LEON ABBETT,

Solicitor and of Counsel with Complainant.

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State of New Jersey, } ss. :
County of Hudson,

40 JOHN C. FARR, JR., the complainant named in the foregoing bill of complaint, being duly sworn on his oath according to law, deposes and says that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated to be on his information

and belief, and as to those matters he believes it to be true.

JOHN C. FARR, JR.

Subscribed and sworn to before
me, at Hoboken, N. J., this
10th day of November, 1903.

John P. Duffy,
Master in Chancery,
of New Jersey.

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defendant Theresa Hauenstein with her own funds and separate estate and not with the funds of said defendant Louis Hauenstein, and the said premises since the sale aforesaid have been and now are her own property, and in no way liable for the debts or obligations of the said Louis Hauenstein.

And the defendant Theresa Hauenstein further answering says that she purchased the said premises at a Sheriff's sale on the 11th day of August, 1887, as a result of proceedings had in this court to foreclose a mortgage of \$1,000, with large arrears of interest, taxes and assessments then upon the said premises, and that the said defendant Theresa Hauenstein has held, owned, used and occupied the said premises and collected the rents, issues and profits thereof to her own use ever since that time, being a period of nearly seventeen years. And the said plaintiff assignors John M. Niver & Co, did not begin their action against the said Louis Hauenstein until May 28th, 1890, a period of nearly three years after the said defendant Theresa Hauenstein had made the said purchase, and that since the purchase of said premises this defendant Theresa Hauenstein secured a mortgage on the said premises for the sum of \$2,000.00 from the Hudson Trust Company, a banking institution of this state, and has regularly paid the interest thereon and thereto against the said property, and that the said mortgage is still a lien against said premises. And the said Theresa Hauenstein by reason of the said facts says the said plaintiff is chargeable with laches in this suit and is thereby estopped from prosecuting the suit further against the said defendant Theresa Hauenstein. And the said defendant Theresa Hauenstein prays that she may be allowed the same benefit of this defence in this her answer as though the same had pleaded by her by way of demurrer to the said bill of complaint.

And these defendants further answering say

that the defendant Theresa Hauenstein purchased said premises on the 11th day of August, 1887, and that she was seized of the said premises in her own right in fee simple for nearly three years before suit was commenced by the plaintiffs assignor against the said defendant Louis Hauenstein, and that the complainants assignor John M. Niver & Co. have no legal or equitable right or claim on or against the said premises at that time, nor could they have such right as the said defendant Louis Hauenstein had been foreclosed of all right, title and interest in and to the said premises nearly three years prior to the commencement of the complainants assignors suit, and the said premises had therefore for nearly three years prior to the commencement of said suit ceased to be an asset of the said defendant Louis Hauenstein upon which the complainants assignors could legally or equitably rely as a basis for the payment of their said claim and judgment. And these defendants pray that they may be allowed the benefit of this defence in this answer as though the same had been interposed to said bill of complaint by way of demurrer.

And these defendants for further answer to the bill of complaint herein say that they deny each and every other matter and thing in the said bill of complaint contained, and humbly pray that the said bill of complaint may be hence dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

JAMES F. MINTURN,
Solicitor for Defendants.

10 CREED, and the said Chancellor, by virtue of the power and authority of this Court, does hereby ORDER, ADJUDGE AND DECREE that to the extent of the amount due the complainant, John C. Farr, Jr., from the defendant, Louis Hauenstein, upon the said judgment, the monies paid by Louis Hauenstein since the entry of the said judgment, for taxes, assessments, interest on mortgages and other encumbrances upon the lands and premises described in the bill of complaint filed herein, are a charge against said lands and premises in favor of the complainant herein.

20 AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that it be referred to Joseph S. Parry, one of the Special Masters of this Court, to take an account of and ascertain the moneys paid by the said defendant, Louis Hauenstein, for taxes, assessments, interest on mortgages and for other encumbrances on the said lands and real estate set forth and described in the bill of complaint filed herein, since the entry of said judgment, and to ascertain the amount due the complainant herein from the said defendant, Louis Hauenstein, upon said judgment; and that the said Master shall have power to examine witnesses, and require the production of books, vouchers and other proofs before him in the taking of said account.

30 AND IT IS FURTHER ORDERED that the said Master make his report touching the matters hereby referred to him with all convenient speed; and that all further equities be reserved until the coming in of said report.

Respectfully advised,

LINDLY M. GARRISON,
V. C.

IN CHANCERY OF NEW JERSEY.

Between

JOHN C. FARR, JR.,

Complainant,

and

THERESA HAUENSTEIN AND

LOUIS HAUENSTEIN,

Defendants.

On Bill, &c.
Master's
Report.

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In pursuance of the interlocutory decree and order of reference made in the above stated cause, bearing date on the sixth day of July, one thousand nine hundred and five, whereby it was ordered that it be referred to the subscriber, Joseph S. Parry, as one of the special masters of this Court, to take an account of and ascertain the moneys paid by the defendant, Louis Hauenstein, for taxes, assessments, interest on mortgages and for other encumbrances on the said lands and real estate, set forth and described in the bill of complaint filed herein, since the entry of the judgment against him, said Louis Hauenstein, as set forth in the said bill of complaint, and to ascertain the amount due the complainant herein from the said defendant, Louis Hauenstein, upon said judgment, and whereas, the subscriber is not one of the Special Masters of this Court, and wherefore the said counsel of the respective parties consented that the said matter proceed before the subscriber as a master of this Court, as will appear by the consent hereto attached.

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I, Joseph S. Parry, a Master of Chancery of this Court, do hereby report to his Honor, the Chancellor, that I have been attended by Leon Abbett, Esquire, solicitor and of counsel with the complainant herein, and also by James F. Minturn, Esquire, solicitor and of counsel with the defendants herein, and in their presence have examined into the mat-

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ters referred to me by said order, and I do hereby report that I have taken an account of and ascertained the amounts paid by Louis Hauenstein, one of the defendants herein, for taxes, assessments, interest on mortgages and for other encumbrances on a certain tract of land, situate in the Town of Union, in the County of Hudson and State of New Jersey, known and designated on the Town map as Lots twenty-eight (28) and twenty-nine (29), in Block forty-one (41), fronting on the southerly side or line of Morgan Street, in said town, since the seventh day of August, eighteen hundred and ninety, and find that the moneys so paid by said defendant, Louis Hauenstein, are as follows:

	Interest on mortgage paid August 29th	
	1890	\$30 00
	Interest on mortgage paid March 1st 1891	30 00
10	Interest on mortgage paid August 29th	
	1891	30 00
20	Interest on mortgage paid March 1st 1892	30 00
	Interest on mortgage paid August 29th	
	1892	30 00
	Interest on mortgage paid March 1st,	
	1893	30 00
	Interest on mortgage paid August 29th,	
	1893	30 00
	Interest on mortgage paid March 1st, 1894	30 00
	Interest on Mortgage paid July 1st, 1895	30 00
30	Interest on mortgage paid October 1st,	
	1895	30 00
	Interest on mortgage paid January 1st,	
	1896	30 00
	Interest on mortgage paid April 1st, 1896	30 00
	Interest on mortgage paid July 1st, 1896	30 00
	Interest on mortgage paid October 1st,	
	1896	30 00
	Interest on mortgage paid January 1st,	
	1897	30 00
	Interest on mortgage paid April 1st, 1897	30 00
40	Interest on mortgage paid July 1st, 1897	30 00

Interest on mortgage paid October 1st, 1897	30 00	
Interest on mortgage paid January 1st, 1898	30 00	
Interest on mortgage paid April 1st, 1898	30 00	
Interest on mortgage paid July 1st, 1898	30 00	
Interest on mortgage paid October 1st, 1898	30 00	
Interest on mortgage paid January 1st, 1899	30 00	10
Interest on mortgage paid April 1st, 1899	30 00	
Interest on mortgage paid July 1st, 1899	30 00	
Interest on mortgage paid October 1st, 1899	30 00	
Interest on mortgage paid January 1st, 1900	30 00	
Interest on mortgage paid April 1st, 1900	30 00	
Interest on mortgage paid July 1st, 1900	30 00	
Interest on mortgage paid October 1st, 1900	30 00	20
Interest on mortgage paid January 1st, 1901	30 00	
Interest on mortgage paid April 1st, 1901	30 00	
Interest on mortgage paid July 1st, 1901	30 00	
Interest on mortgage paid October 1st, 1901	30 00	
Interest on mortgage paid January 1st, 1902	30 00	
Interest on mortgage paid April 1st, 1902	30 00	
Interest on mortgage paid July 1st, 1902	30 00	30
Interest on mortgage paid October 1st, 1902	30 00	
Interest on mortgage paid January 1st, 1903	30 00	
Interest on mortgage paid April 1st, 1903	30 00	
Interest on mortgage paid July 1st, 1903	30 00	
Interest on mortgage paid October 1st, 1903	30 00	
Interest on mortgage paid January 1st, 1904	30 00	40

	Interest on mortgage paid April 1st, 1904	30 00
	Interest on mortgage paid July 1st, 1904	30 00
	Interest on mortgage paid October 1st, 1904,	30 00
	Interest on mortgage paid January 1st, 1905	30 00
	Interest on mortgage paid April 1st, 1905	30 00
	Interest on mortgage paid July 1st, 1905	30 00
		<hr/>
10	Total interest paid.....	\$1,475 00
	Taxes for 1890, paid in December, 1890, the bill being made out in the name of of Theresa Hauenstein.....	\$22 60
	Taxes for 1891, paid in December, 1891, the bill being made out in the name of Louis Hauenstein	21 40
	Taxes for 1892, paid in December, 1892, the bill being made out in the name of Theresa Hauenstein	25 76
20	Taxes for 1893, paid in December, 1893, the bill being made out in the name of Theresa Hauenstein	24 61
	Taxes for 1894, paid in December, 1894, the bill being made out in the name of Theresa Hauenstein	29 44
	Taxes for 1895, paid in December, 1895, the bill being made out in the name of Theresa Hauenstein	35 64
30	Taxes for 1896, paid in December, 1896, the bill being made out in the name of Theresa Hauenstein	34 70
	Taxes for 1899, paid in December, 1899, the bill being made out in the name of L. C. Hauenstein	19 60
	Taxes for 1900, paid in December, 1900, the bill being made out in the name of L. C. Hauenstein	21 78
40	Taxes for 1901, paid in December, 1901, the bill being made out in the name of L. C. Hauenstein	21 87

Taxes for 1902, paid in December, 1902, the bill being made out in the name of L. C. Hauenstein	23 73	
Taxes for 1903, paid in December, 1903, the bill being made out in the name of L. C. Hauenstein	34 30	
Taxes for 1904, paid in December, 1904, the bill being made out in the name of L. C. Hauenstein	38 40	
Assessment for Morgan St. Asphalt Pavement:		10
Principal, Lot 28.....\$101 32		
Principal, Lot 29..... 101 32		

Paid first installment, Dec. 1st 1904..... \$20 26

Total taxes and assessments paid.....\$374 29
Lot 28, Block 41,

Taxes 1897, Principal.....\$11 02	
Taxes 1898, Principal..... 9 84	
Morgan St. and Palisade Ave.	20
Sewer	67 04
Joint Outlet Sewer..... 37 45	

Total on Lot 28.....\$150 35
Lot 29, Block 41.

Taxes 1897, Principal.....\$11 02	
Taxes 1898, Principal..... 9 84	
Morgan St. and Palisade Ave.	
Sewer	67 04
Joint Outlet Sewer..... 37 45	30

Total on Lot 29.....\$150 35
Sold by the Commissioners of Adjustment and redeemed—the amount paid being: by check of L. C. Hauenstein to Louis C. Neuscheled, Collector of Taxes, dated August 7, 1901, 323.00.

And I do also report that said amounts appear to have been paid by the said defendant, Louis Hauenstein, although it is testified to by him that the said moneys were given to him to make such 40

payments, and that he then made the same. All of which appear by the depositions hereto annexed.

10 I also report that the amount due the complainant herein from the said defendant Louis Hauenstein upon the judgment set forth in the bill of complaint filed herein is One Thousand two hundred and ninety-two dollars and twenty-two cents (1,292.22) with interest thereon from the seventh day of August, eighteen hundred and ninety, besides execution fees, as appears by the stipulation in this cause, signed by the solicitors of the complainant and the defendants, respectively, and which was introduced in evidence and marked as an exhibit, at the hearing before his Honor Lindley M. Garrison, the Vice-Chancellor who heard said cause.

20 All of which is respectfully submitted this twenty-eighth day of July one thousand nine hundred and five.

JOS. S. PARRY,
Master in Chancery.

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IN CHANCERY OF NEW JERSEY.

Between

JOHN C. FARR, JR.,

Complainant,

and

THERESA HAUENSTEIN, *et als.*,

Defendants.

} Rule Nisi to
Confirm
Report.

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Upon reading filing a report made in this cause by Joseph S. Parry, Esquire, one of the Special Masters of this Court, bearing date on the Twenty-eighth day of July, nineteen hundred and five, it is ordered that the said report and all the matters and things therein contained do stand in all things confirmed, according to the tenor and true meaning thereof, unless the parties interested therein shall, within eight days after service upon them of a copy of this rule, show good cause to the contrary.

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Entered on motion on behalf of Leon Abbett, Solicitor of the Complainant.

Dated, Aug. 8, 1905.

By the Court,

VIVIAN M. LEWIS,

Clerk. 30

A true Copy,

Vivian M. Lewis, Clerk.

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to
made by Mr. Keller.

and the conveyance to the wife being made
by Mr. Keller

For some reason which is not disclosed these papers were not recorded until 1885, more than sixteen months after their execution.

In August, 1887, a sale in foreclosure took place under the Fick mortgage, and the property was purchased in the name of the wife, Mrs. Theresa Hauenstein. They borrowed on mortgage, from one Vix, the sum of \$1,000 with which they paid off the principal of the Fick mortgage, settling the interest and costs with other moneys.

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Subsequently money was borrowed from one Simon, on mortgage, and the Vix mortgage was paid off; and after that \$2,000 was borrowed from the Hudson Trust Company on mortgage, and the Simon mortgage was paid off.

Under the circumstances of this case I do not think that the title of the wife can be successfully attacked by this complainant. While it is true that the husband bought the lots and subsequently conveyed them to the wife without any consideration passing from her to him, in the first place, it should be noted that at that time it is not shown that her husband was indebted to the assignor of the complainant, or that there was any reason why he might not make this conveyance as a gift to the wife.

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It should also be taken into account that the mother of the wife had, at an expense of \$3,500, built the house upon this land, and that she, at the time that the conveyance was made to the wife by the husband, procured it to be so made as a consideration for her aiding the husband in his business.

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But with respect to the expenditures made by the husband of his own money in the payment of taxes, interest on the mortgage and other encumbrances on this property, I do think the assignor of the complainant, as a creditor, has a right to have a charge against the property for such sums.

Walsh vs. Rosso, 41 Atl. Rep. 669 (Pitney 40)

V. C, 1898). Same case on final hearing, 59 N. J. Eq. 123 (Stevens V. C. 1899).

This is so, unless the laches of the complainant disentitles him to enforce this right.

10 The defendants insist that the laches of the complainant bars him, and cite a number of cases in which complainants were barred on account of their conduct with respect to bringing suit. I do not think it necessary to make an extended review of these cases, because I think that in each one it will be found that the laches was of such a character as made it inequitable on account thereof to enforce the complainants' rights.

20 Mere delay does not, however, necessarily result in any such result. Vice Chancellor Green said, in *Tynan v. Warren*, 53 N. J. Eq. 313, at p. 321, "I do not understand that mere delay in bringing a suit will deprive a party of 'his remedy' unless such neglect has so prejudiced the other party by loss of testimony or means of proof, or changed relations, that it would be unjust to now permit him to exercise his right."

Lundy v. Seymour, 55 N. J. Eq., 1, at p. 9 (McGill Chan. 1896).

30 The defendants failed to show that they are prejudiced in any way by reason of the delay of the complainant in bringing his suit, and there is no aspect of the case in which the lapse of time has affected or could affect the defendant's opportunity to procure or produce testimony; hence the case is not within the ruling in *Lutjen v. Lutjen*, 64 N. J. Eq., 773, (Ct. of Er. 1902).

40 I will advise a decree that a master ascertain the moneys of the husband expended to pay taxes, interest on mortgage, &c., on this property, and that the total thereof, or so much as will satisfy the amount due the complainant, is a charge against this property which unless paid by the wife within a reasonable time to be fixed, may be made out of the property by a sale thereof.

10 filed herein on the eighth day of August, nineteen hundred and five, ordering that the said report and all the matters and things therein contained do stand in in all things confirmed, according to the tenor and true meaning thereof, unless the parties interested therein should, within eight days after service upon them of a copy of said rule, show good cause to the contrary; and it appearing that a certified copy of said rule nisi was duly served on the solicitor of the defendants on the eleventh day of August, nineteen hundred and five; and no exceptions to said Master's Report having been filed within the time set forth in said rule nisi, and no cause having been shown why said Master's Report should not stand confirmed;

20 And it appearing to the Chancellor by the said Master's Report that the amount due to John C. Farr, Jr., the complainant herein, from the defendant Louis Hauenstein, upon said judgment, is the sum of Twelve hundred and ninety-two dollars and twenty-two cents with interest thereon from the seventh day of August, eighteen hundred and ninety, to wit: the total sum of Twenty-four hundred and sixty dollars and fifty-five cents (\$2,460,55).

30 And it also appearing that the moneys paid by the defendant Louis Hauenstein, since the entry of said judgment, for taxes, assessments, interest on mortgages and for other encumbrances upon the said lands and premises, amount to Two thousand one hundred and seventy-two dollars and twenty-nine cents (\$2,172,29).

40 It is thereupon, on this fifth day of September, nineteen hundred and five, by Milliam J. Magie, Chancellor of the State of New Jersey, on motion of Leon Abbett, of counsel with the complainant,
 ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue of the power and authority of this Court, does hereby ^{again} ADJUDGE and DECREE that the amount Twenty-one hundred

and seventy-two dollars and twenty-nine cents (\$2,172.29) expended by the defendant Louis Hauenstein, as aforesaid, upon the said premises since the entry of the judgment aforesaid, besides the costs of the complainant in this suit, are a charge upon the following described lands and premises, being the lands and premises set forth and described in the bill of complaint herein, to wit:—All those two certain tracts or parcels of lands and premises, situate, lying and being in the Town of Union, in the County of Hudson and State of New Jersey, being part of a tract of land known by the name of North Hoboken, and which on a map of said tract made by Charles Herring and duly filed in the Clerk's Office of the County of Hudson on the fourth day of June, A. D. 1852, are designated and laid down as lots number seven hundred and thirty-three (733) and seven hundred and thirty-four (734), but known and designated on Town map as lots twenty-eight (28) and twenty-nine (29) in Block number forty-one (41), fronting and facing on the southerly side or line of Morgan Street; and said lots being each twenty-five (25) feet wide in front and rear, and one hundred (100) feet deep throughout; being the same lots which were conveyed to Theresa Hauenstein by Ferdinand Heintze, Sheriff of the County of Hudson, by deed dated on the twenty-ninth day of September, eighteen hundred and eighty-seven, and received in the office of the Register of the County of Hudson on the twenty-ninth day of May, eighteen hundred and ninety-five, and recorded in Book 622 of Deeds of said County, at page 136, &c.

And it is further ordered that the defendants do pay the costs of the complainant in this cause, to be taxed, and that the complainant have execution therefor according to the course and practice of this Court.

And it is further ordered that unless the defendants shall, within ten days after service upon them

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IN CHANCERY OF NEW JERSEY.

Between

JOHN C. FARR, JR.,
Complainant,

and

THERESA HAUENSTEIN AND
LOUIS HAUENSTEIN,

Defendants.

On Bill, &c.
Exceptions to
Master's
Report.

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The exceptions taken by the defendants to the report of Joseph S. Parry, one of the Masters of this Court, to whom it was referred, to report and to take an account of and ascertain moneys paid by the defendant Louis Hauenstein, for taxes, assessments and interest on mortgages and for other encumbrances on the lands and real estate described and set forth in the bill of complaint herein, since the entry of judgment against him as set forth in the said bill of complaint, and to ascertain the amount due to the complainant from the said Louis Hauenstein upon the said judgment.

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First:—That the said Master has in and by the said report certified that the lands in the bill of complaint described were sold by the Commissioners of Adjustment and redeemed by the check of Louis C. Hauenstein, dated August 7th, 1901, for Three Hundred and Twenty-three (\$323.00) Dollars; whereas the testimony shows that the check was the check of Louis C. Hauenstein & Co., of which firm the said Louis C. Hauenstein was a partner.

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Second:—Because the said Master has certified that the amount appears to have been paid by said defendant Louis C. Hauenstein; whereas the testimony shows that they were paid by the check of Louis C. Hauenstein & Co.

Third:—Because the testimony shows that the

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money paid by the said Louis C. Hauenstein & Company's check were moneys paid to the defendant Theresa Hauenstein and handed to the said defendant Louis Hauenstein as her agent, with which to pay the charges and encumbrances against the said property and the said amounts are in no way chargeable as gifts or loans to Louis C. Hauenstein, but to Theresa Hauenstein, the said Louis Louis C. Hauenstein acting as her agent for the purpose of making the said payments.

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In all which particulars the report of the said Master is, as the said Louis C. Hauenstein is advised, erroneous, and the said Louis C. Hauenstein appeals therefrom to the judgment of this Honorable Court.

JAMES F. MINTURN,
Solicitor and Counsel of
Louis Hauenstein.

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IN CHANCERY OF NEW JERSEY.

Between

JOHN C. FARR,

Complainant,

and

THERESA HAUENSTEIN, *et als.*,

Defendants.

} Petition.

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To the Honorable William J. Magie, Chancellor :

The petition of James F. Minturn respectfully shows to your Honor that he is the Solicitor of the Defendants herein ; That on the 3rd day of August last in response to a notice from Leon Abbett, Esq., Solicitor for the Complainants herein, he attended before Vice Chancellor Garrison at his home at Navesink Highlands for the purpose of opposing the entry of a final decree in this cause as then drawn and presented by Mr. Abbett. That at the suggestion of the Vice Chancellor the application was postponed until September 18th, 1905, at Jersey City when the Vice Chancellor stated he would be in Jersey City and petitioner was then and there directed by the Vice Chancellor to file exceptions to the Master's Report before that time so that the matter would come before the Court regularly. Your petitioner thereupon entered the said engagement in his diary for that date and considered that he might under said directions file his exceptions at any time before that date pro forma.

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Shortly afterwards petitioner left town for a few days vacation but before leaving town drew up exceptions to the Master's Report and left the same with his young lady clerk requesting her to file them at once but to get Mr. Abbett to consent to filing them. That upon your petitioners return to town his said clerk informed your petitioner that

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10 she had talked with Mr. Abbett over the 'phone and that he had refused to consent to filing the exceptions. That your petitioner thereupon on the 24th day of August, 1905, mailed the exceptions to the clerk's office of this Court at once upon that day and that they are now on file. That subsequently and on the 5th day of Septemebr and without any notice to your petitioner Mr. Abbett applied to his Honor Vice Chancellor Garrison and obtained his signature to the decree Mr. Abbett originally proposed on August 8th.

Your petitioner further shows that he is anxious to be heard upon said exceptions and asks respectfully to have an order made allowing his said exceptions to stand as filed in time and that the said final decree be opened for that purpose; that a day be fixed for the hearing upon said exceptions and a stay in the meantime.

20 And your petitioner will ever pray, etc.

State of New Jersey, } ss. :
County of Hudson, }

James F Minturn being duly sworn says that he is the petitioner above named, that the matters and things in the foregoing petition are true to the best of deponent's knowledge, information and belief.

JAMES F. MINTURN.

30 Sworn to before me this 12th
day of September, 1905.

T. J. Dooley,
Notary Public N. J.

IN CHANCERY OF NEW JERSEY.

Between

JOHN C. FARR, JR.,

Complainant,

and

THERESA HAUENSTEIN, *et als.*,

Defendants.

} Order.

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20 A rule to show cause having been granted by me on the 13th day of September, 1905, why the decree made herein on the 5th day of September, 1905, should not be opened and the exceptions filed by the defendant Louis Hauenstein to the report of the Master filed herein, as though said exceptions had been filed in time, and the matter coming on to be heard before me, it is on this Twenty-fifth day of September, A. D. Nineteen hundred and five, on motion of James F. Minturn, Counsel for the said defendants ordered that the said final decree entered herein on the Fifth day of September, A. D. Nineteen hundred and five, be and the same is hereby opened, and the exceptions filed by the said defendants to the Master's Report and now on file herein be and the same are allowed to stand and remain on file as if filed in time, and that the said defendants, be heard upon the said exceptions before me

30 on the 27th day of September, 1905, at the Chancery Chambers in Jersey City at ten o'clock in the forenoon.

Respectfully advised,

LINDLEY M. GARRISON,

V C.

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IN CHANCERY OF NEW JERSEY.

Between JOHN C. FARR, <div style="text-align: right;">Complainant,</div> and THERESA HAUENSTEIN AND LOUIS HAUENSTEIN, <div style="text-align: right;">Defendants. </div>	}	On Bill, &c. Order.
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An interlocutory decree and order of reference having been made and entered herein, dated on the sixth day of July, nineteen hundred and five, whereby it was referred to Joseph S. Parry, one of the Masters of this Court, to take an account of and ascertain the moneys paid by the defendant Louis Hauenstein, for taxes, assessments, interest on mortgages and for other encumbrances on the lands and real estate set forth and described in the bill of complaint filed herein, since the entry of the judgment referred to in the said bill of complaint; and said Master having made his report, dated on the twenty-eighth day of July, nineteen hundred and five; and exceptions to said report having been filed herein by the defendants; and it appearing that said report does not state specifically whether the moneys paid by said Louis Hauenstein for taxes, assessments, interest on mortgages and for other encumbrances, as set out in said report, were paid by the said Louis Hauenstein out of his own moneys and earnings;

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It is therefore, on this tenth day of October, nineteen hundred and five, Ordered that said report be returned to said Master, and that said Master make further report, upon the testimony already taken before him, whether the moneys paid by said Louis Hauenstein for taxes, assessments, interest on mortgages and for other encumbrances, as afore-

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said, were paid by him out of his own moneys and earnings; and that said Master, after hearing counsel for the respective parties, make said further report with all convenient speed.

Respectfully advised,

LINDLEY M. GARRISON,
V. C.

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state from the testimony before me whether the moneys so paid were the moneys and earnings of the said Louis Hauenstein or not.

Respectfully submitted this day of October,
nine hundred and five.

Master in Chancery of New Jersey.

Report confirmed Nov. 20, 1905.

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IN CHANCERY OF NEW JERSEY.

Between

JOHN C. FARR, JR.,
Complainant,
andTHERESA HAUENSTEIN AND
LOUIS HAUENSTEIN,
Defendants.

} Conclusions

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(Decided November 16, 1905.)

For the Complainant, Leon Abbett, Esq.

For the Defendants, James F. Minturn, Esq.

Garrison, V. C.:

The issues made by the pleadings in this suit were determined on the twenty-ninth of June, 1905, and the views of the Court concerning the same will be found reported in 61 Atl. Rep., p. 147. It was decided that "with respect to the expenditures made by the husband of his own money in the payment of taxes, interest on the mortgage, and other encumbrances on this property * * * * the complainant, as a creditor, has a right to have a charge against the property for such sums."

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The case was referred to a Master to ascertain the moneys of the husband expended to pay taxes, interest on mortgage, &c., on this property. The Master took the testimony and has returned the same.

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The Master did not definitely report with respect to the ownership of the moneys found by him to have been paid by Louis C. Hauenstein, the husband, on account of the interest, taxes, &c., due upon the property.

A further order was then made referring the cause back to the Master for a definite finding upon this point. The Master was unable to make such definite finding because the testimony before him

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was mainly with respect to the fact of payment, while the testimony which had been previously taken before the court concerned the source of the moneys. The Master, properly, did not consider the testimony which had been taken before the Court, and was not able, from the testimony taken before him, to definitely report upon the ownership of the moneys.

10 The matter was then brought before the Court for final determination upon an application to settle the decree upon the pleadings and proofs, including the proofs taken before the Master.

From such proofs I find the facts to be that since the date of the judgment Louis C. Hauenstein, Sr., has paid interest on the mortgage upon the property in question aggregating \$1,475, and taxes and assessments upon the same property within the same period aggregating \$697.29.

20 The amount due upon the judgment held by the complainant is \$1,292.22, with interest thereon from the 7th day of August, 1890.

In the testimony of the defendant Louis C. Hauenstein it clearly appears that he obtained the money to make these payments either from his own funds—that is to say, money earned by himself—or from moneys borrowed by him from his son Louis. This is corroborated by the testimony of his son Louis, who testifies that he helped his father out by loaning him money, and that he advanced
30 money to his father.

The moneys which Louis C. Hauenstein, Sr., the husband, paid on account of his wife's property for taxes and interest were either his own moneys, earned by himself, or were moneys borrowed by him. He seeks to create the impression that these moneys were either moneys of a partnership composed of himself and his son Louis, or were moneys of his son Louis, Jr., directly contributed by his son through him as a mere agent for the purpose of pay-
40 ing these liens or encumbrances against the prop-

erty the title to which was in the name of Theresa Hauenstein.

With respect to the alleged partnership between the father and son, the proofs show that while the father carried on business under the name of Louis C. Hauenstein & Co., that it was, as he termed it, a mere family arrangement, there being no shares, and was, I think it clearly appears, a mere guise under which the father did business. The son's testimony is that his father wanted to start in the business, and he set him up in it. He clearly states that he was not to get any salary or draw anything from the business; and while, as between him and his father, he may have some rights as a partner, it nowhere appears that the moneys which were used to pay the taxes and the interest were moneys of this alleged partnership. In fact, the son directly testifies that he has advanced his father, by way of loan, money in the neighborhood of \$1,700, and negatives any idea that he was himself paying any taxes or other items through his father as an agent. 10 20

I therefore reach the conclusion that the moneys which Louis C. Hauenstein, Sr., paid for interest on the mortgage and for taxes and assessments upon the property were his moneys, and that, to the extent of the aggregate of such payments, the complainant has a lien against the property standing in the name of Theresa Hauenstein; and that unless, within thirty days after the service upon the defendants of a copy of the decree made in this suit, they pay to the complainant the amount specified in said decree, the property in question may be sold to raise and pay the said sum. 30

dred and five; and a rule nisi having been made and filed herein on the eighth day of August, nineteen hundred and five, ordering that the said report and all the matters and things therein contained do stand in all things confirmed, according to the tenor and true meaning thereof, unless the parties interested therein should, within eight days after service upon them of a copy of said rule, show good cause to the contrary; and it appearing that a certified copy of said rule nisi was duly served on the solicitor of the defendants on the eleventh day of August, nineteen hundred and five; and no exceptions to said Master's Report having been filed within the time set forth in said rule nisi, and no cause having been shown why said Master's Report should not stand confirmed; and it having appeared to the Chancellor by the said Master's Report that the amount due to John C. Farr, Jr., the complainant herein, from the defendant Louis Hauenstein, upon said judgment, was the sum of Twelve hundred and ninety-two dollars and twenty-two cents with interest thereon from the seventh day of August, eighteen hundred and ninety, to wit: the total sum of Twenty-four hundred and sixty dollars and fifty-five cents (\$2,460.55); and it also having appeared that the moneys paid by the defendant Louis Hauenstein, since the entry of said judgment, for taxes, assessments, interest on mortgages and for other encumbrances upon the said lands and premises, amount to Two thousand one hundred and seventy-two dollars and twenty-nine cents (\$2,172.29); and a final decree having been made herein on the fifth day of September, nineteen hundred and five, by which it was ordered, adjudged and decreed that the amount of Two thousand one hundred and seventy-two dollars and twenty-nine cents (\$2,172.29) expended by the defendant Louis Hauenstein, as aforesaid, besides the costs of the complainant, were a charge upon the lands and premises described in the bill of com-

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plaint herein, and particularly described in said decree; and also that the defendants pay the costs of the complainant, to be taxed, and that the complainant have execution therefor; and also that the sum of Fifty dollars be included in the complainant's taxed bill of costs, as a counsel fee; and it appearing that the complainant's costs were taxed herein at the sum of One hundred and seventy-three dollars and six cents (\$173.06);

10 And the defendants herein having made application to open said decree, and for leave to file exceptions to said Master's Report; and said application having been granted; and it having appeared that said Master did not definitely report with respect to the ownership of the moneys found by said Master to have been paid by the defendant, Louis Hauenstein, for the benefit of said property; and the matter haveing been referred back to said Master for a definite finding upon said point.

20 And it appearing from the Further Report of said Master, filed herein, that the said Master was unable to make such definite finding because the testimony before him was mainly with respect to the fact of payment;

And the whole matter having been, by consent of the parties, brought before this Court for final determination upon an application on behalf of the complainant, to settle the final decree herein, under a notice duly served, upon the pleadings and proofs, including the proofs taken before the said Master;

30 And it appearing that, since the date of the entry of said judgment, the defendant, Louis Hauenstein, has paid interest on the mortgage upon the said real estate aggregating One thousand four hundred and seventy-five dollars, and taxes and assessments upon the same property aggregating Six hundred and ninety-seven dollars and twenty-nine cents, making a total of Two thousand one hundred and seventy-two dollars and twenty-nine

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cents; and it also appearing that said moneys so paid by said defendant, Louis Hauenstein, were his moneys;

It is thereupon, on this twentieth day of November, one thousand nine hundred and five, by William J. Magie, Chancellor of the State of New Jersey, on motion of Leon Abbett, of counsel with the complainant, ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue of the power and authority of this Court, does hereby
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 ORDER, ADJUDGE and DECREE that the amount of Two thousand one hundred and seventy-two dollars and twenty-nine cents (\$2,172.29), expended by the defendant Louis Hauenstein, as aforesaid, upon the said premises since the entry of the judgment aforesaid, besides the costs of the complainant in this suit, are a charge upon the following described lands and premises, being the lands and premises set forth and described in the bill of complaint herein, to wit:—All those two
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 certain tracts or parcels of lands and premises, situate, lying and being in the Town of Union, in the County of Hudson and State of New Jersey, being part of a tract of land known by the name of North Hoboken, and which on a map of said tract made by Charles Herring and duly filed in the Clerk's Office of the County of Hudson on the fourth day of June, A. D. 1852, are designated and laid down as lots number seven hundred and thirty-three
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 (733) and seven hundred and thirty-four (734) but known and designated on Town Map as lots twenty-eight (28) and twenty-nine (29) in Block number forty-one (41), fronting and facing on the southerly side or line of Morgan Street; and said lots being each twenty-five (25) feet wide in front and rear, and one hundred (100) feet deep throughout; being the same lots which were conveyed to Theresa Hauenstein by Ferdinand Heintze, Sheriff of the County of Hudson, by deed dated on the
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 twenty-ninth day of September, eighteen hundred

and eighty seven, and received in the Office of the Register of the County of Hudson on the twenty-ninth day of May, eighteen hundred and ninety-five, and recorded in Book 622 of Deeds of said County, at page 136, &c.

10 And it is further ordered that the defendants do pay the costs of the complainant in this cause, already taxed, and to be taxed, and that the complainant have execution therefor according to the course and practice of this Court.

20 And it is further ordered that unless the defendants shall, within thirty days after service upon them of a copy of this Decree, and the taxed bill of costs, pay to the complainant, or to his solicitor, the said amount of Twenty-one hundred and seventy-two dollars and twenty-nine cents (\$2,172.29) on account of the amount due to him upon his said judgment, to wit, the sum of Two thousand four hundred and sixty dollars and fifty-five cents (\$2,460.55), together with the taxed costs of this suit, an execution shall issue for the sale of the lands and premises hereinbefore described, according to the practice of this Court—the proceeds of sale to be paid into this Court.

30 And it is further ordered, adjudged and decreed that the additional sum of twenty-five dollars be included in the complainant's further taxed bill of costs, to be collected as a part thereof, which said sum is hereby fixed as an additional counsel fee herein.

Respectfully advised
LINDLEY M. GARRISON,
V. C.

W. J. MAGIE
V. C.

A true copy.
Vivian M. Lewis,
Clerk.

40 Correct as to form.
James F. Minturn,
Solicitor for Defendants.

IN CHANCERY OF NEW JERSEY.

Between

JOHN C. FARR, JR.,

Complainant,

and

THERESA HAUENSTEIN AND

LOUIS HAUENSTEIN,

Defendants.

} Appeal.

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The above named defendants hereby appeal from the final decree made in this Court in the above stated cause, and from all and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, December 5th, 1905.

JAMES F. MINTURN,
Solicitor of Appellant.

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

JAMES F. MINTURN,
Counsel with Appellant.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

	<p style="text-align: center;">THERESA HAUENSTEIN AND LOUIS HAUENSTEIN, Appellants.</p> <p style="text-align: center;">and</p> <p style="text-align: center;">JOHN C. FARR, JR., Respondent,</p>	<p style="font-size: 3em;">}</p> <p>On Appeal. Petition.</p>
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To the Honorable the Court of Errors and Appeals
in the Last Resort in all Causes:

The petition of Theresa Haunstein and Louis Hauenstein, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by the final decree made in the

20 Court of Chancery by his Honor William J. Magie, Chancellor of the State of New Jersey, bearing date the 20th day of November, in the year One thousand nine hundred and five, wherein John C. Farr, Jr., was complainant and the said Theresa Hauenstein and Louis Hauenstein were defend-

ants, in this respect, to wit: That the said decree adjudges that the sum of Two thousand one hundred and seventy-two dollars and twenty-nine (\$2,-

30 172.29) cents paid by the defendant Louis Hauenstein for taxes, assessments, interest on mortgages and other encumbrances upon the lands and premises of the defendant Theresa Hauenstein, in the said final decree are a charge upon the said lands and premises and are a lien thereon, for the purpose of satisfying the judgment entered against the said Louis Hauenstein by the said complainant John C. Farr, Jr. And also from that part of the decree that orders that the defendants do pay the costs of the said complainant in this cause; And

40 also from that part of the decree that orders that

unless these appellants shall within thirty days
 after service upon them of a copy of the said de-
 cree and the taxed bill of costs in this cause pay to
 the said complainant or to his Solicitor the sum of
 Two thousand one hundred and seventy-two dollars
 and twenty-nine (\$2,172.29) cents on account of
 the said judgment of the said complainant, togeth-
 er with the taxed costs of the said suit, an execu-
 tion shall issue for the sale of the lands and prem-
 ises of the said appellant, Theresa Hauenstein, de-
 scribed in said decree; And also from that part of
 the said final decree wherein it is ordered adjudg-
 ed and decreed that an additional sum of Twenty-
 five (\$25.00) dollars Counsel fee be included in the
 complainant's costs to be credited as part thereof;
 And also from every part and portion of the said
 final decree wherein it is ordered, adjudged and de-
 creed that the lands of the said appellant, Theresa
 Hauenstein should be charged with the amount of
 the judgment of the said complainant John C. Farr,
 Jr., against the said defendant Louis Hauenstein,
 upon the ground that the said decree is in its en-
 tirety erroneous for that the said lands and
 premises described in the said decree were decreed
 in the said suit by the Vice Chancellor to be the
 property of the said appellant Theresa Hauenstein
 and not the property of the said defndant Louis
 Hauenstein; And that it appears by the testimony
 of the said defendant Louis Hauenstein and other
 witnesses in the said cause that the said sum of
 Two thousand one hundred and seventy-two dollars
 and twenty-nine (\$2,172.29) cents paid by the said
 Louis Hauenstein for taxes, interest, &c., upon the
 said premises, was paid by him not with his own
 money, but with the moneys of others which were
 given to him for the purpose of paying the said
 charges against the said property; and that the
 moneys so paid out by the said Louis Hauenstein
 were not at any time the moneys of the said Louis
 Hauenstein; and that the said lands and premises

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could not therefore be legally or equitably charged and subjected to a lien at the suit of a creditor of said Louis Hauenstein for the said amount of moneys paid by the said defendant Louis Hauenstein as aforesaid.

10 Your petitioners therefore pray that the final decree of the said Court may be reversed, set aside and for nothing holden, and that your petitioners may have such other and further relief in the premises as to this Honorable Court shall seem meet.

JAMES F. MINTURN,
Solicitor for and of Counsel with
Appellants.

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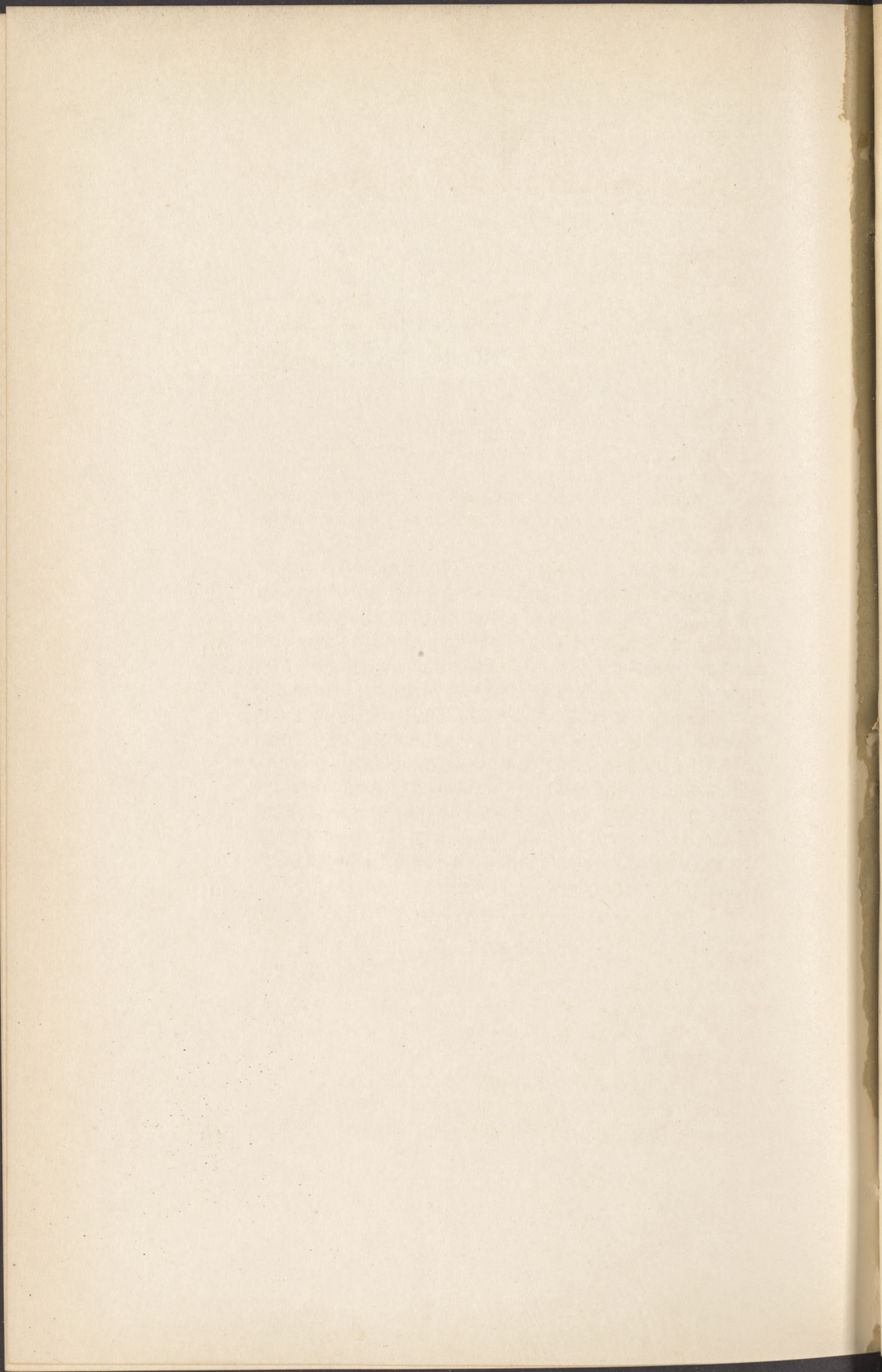
NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between THERESA HAUENSTEIN AND LOUIS HAUENSTEIN, <p style="text-align: right;">Appellants.</p> and JOHN C. FARR, JR., <p style="text-align: right;">Respondent,</p>	}	On Appeal. Answer to Petition of Appeal.	10
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The answer of the above named respondent to the petition of appeal of the above named appellants.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says, and admits that a final decree was on the twentieth day of November last, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto, when the same shall be produced. And this respondent is advised and believes that the said final decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

LEON ABBETT,
Solicitor and of Counsel with
Respondent.



IN CHANCERY OF NEW JERSEY.

Between JOHN C. FARR, JR., and THERESA HAUENSTEIN and LOUIS HAUENSTEIN, Defendants.	Complainant, On Bill, &c. Depositions.
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Depositions and examination of witnesses taken before Joseph S. Parry, one of the Masters in Chancery of New Jersey, at his office in the Hoboken Savings Bank Building at Newark and Washington Streets in the City of Hoboken, on Monday, the seventeenth day of July A. D, 1905, and the days to which adjournments were successively taken in the presence of Leon Abbett, Esq., of Counsel for complainant, and James F. Minturn, Esq., of Counsel for defendants, pursuant to order of reference in the above entitled cause, wherein said matter is referred to Joseph S. Parry, one of the Special Masters of this Court, whereas it should have been one of the Masters of this Court and counsel have agreed by stipulation hereto annexed to proceed before said Joseph S. Parry as one of the Masters of this court.

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The defendant, Louis Hauenstein, being duly sworn according to law, deposes and says: I am one of the defendants in this suit. I have paid for interest on mortgages on house on Morgan Street nothing at all of my own money. My wife's money paid it. Since the entry of the judgment of complainant since 1890 I have paid nothing for the taxes. My mother-in-law paid the taxes until she died—I think in '96.

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My son gave me the money every year after that to pay the taxes—except two years, when he gave it to me after the holidays. I paid them those two

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years and then he gave them to me when he came back. I think it was nineteen dollars and some cents one year and twenty-one or twenty-two dollars the other year. I refer to my son Louis. I think the years were nineteen hundred and nineteen hundred and one—but am not sure. Since eighteen hundred and ninety there have been no assessments paid, but there is one due—was due last year. Sewer assessment was paid by my son Louis. Do not recollect the amount or when it was paid. Since eighteen hundred and ninety I know of no encumbrances paid by me out of my money against said property. I never paid anything for interest on mortgage, taxes and assessments against said property out of my salary as Recorder, which is only six hundred dollars a year and at one time was only four hundred dollars.

The interest on mortgages on this property was paid by my son John who would give the money to my wife and she gave it to me to pay the interest. He gave this money to my wife for board, and she would give it to me to pay the interest. He used to pay, I think, five dollars a week for board and washing. He earned this money at the Union Brewing Company as bookkeeper. He was employed there six or seven years. He died three years ago. He never worked anywhere else but there. I have a son George. He works for me in the real estate business. The real estate business is carried on under the name of Hauenstein & Co. My son Louis and myself compose the firm. Since John died—he left his mamma seven hundred dollars. I do not know if that was used to pay the interest or not. My son George has been paying board about a year at the rate of four dollars a week.

In the fall of 1890, my mother-in-law paid the interest on the mortgage and the taxes, too, as long as she lived. I attended to it for her. I only paid the interest after the Hudson Trust Company had the mortgage. I think I attended to the interest in

1895, if the Hudson Trust Company had the mortgage then. I paid them every three months. It amounted to thirty dollars. The first interest that was paid to the Hudson Trust Company was from money from my mother-in-law, if she was alive; if she was not, my wife gave it to me. The second instalment of interest was given by my wife.

After my mother-in-law was dead my wife had some money and then she got the money from John. She had all that my mother-in-law left. I do not know how much my mother-in-law left. I did not attend to payment of taxes until my mother-in-law was dead—against that property. Since she died I have attended to payment of taxes on that property. I got the money to pay taxes from my son Louis. That was since 1895 or 1896. It was sold once for taxes for a couple of years and we had to buy it back. My son Louis paid the money to buy it back. I think Mr. Hausen had the papers, and the money I think was paid to him. (Witness produces taxes receipt for 1904 on Morgan Street property, which bill is made out in the name of Louis C. Hauenstein, Jr., and amounts to \$37.20 and is stamped "paid" Dec. 19, 1904—being receipt for Block 44, lots 13 and 14). That is not the property mentioned in bill of complaint. That is my son's property. (Witness produces receipt for taxes of 1904 on property mentioned as lots 28 and 29 in Block 41, made out in name of Louis C. Hauenstein amounting to \$38.40 and stamped "Paid" Dec. 19, 1904). This is the property mentioned in the bill of complaint. The money came from my son Louis to pay that tax bill. He gave it to me and I paid the tax bill. (Witness also produces receipted tax bill for taxes of 1903 on lots 28 and 29 in Block 41, made out in name of Louis C. Hauenstein—amount \$34.30 and showing deduction of \$12.25 for "exemption on account of services in Fire Department as per law" leaving a balance of \$22.05 marked "Paid" Dec. 17, 1903). The

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money to pay this tax bill came from my son Louis. He gave the money to me and I paid the bill. (Witness also produces bill for taxes due Dec. 1894 on lots 28 and 29 in Block 41, made out in name of Theresa Hauenstein for \$29.44—marked paid Dec. 20, 1894). The money to pay this tax bill was given me by my mother-in-law, Mrs. Schoening. The last interest was paid the Hudson Trust Company last July. I got the money to pay that from my wife. I have no other receipted tax bills except these three. (The receipted tax bills for 1894, and 1903 and 1904 offered in evidence by Mr. Abbett). (Witness also produces a Declaration of Sale to Chas. F. Ruh, dated Jan. 12, 1885, being tax sale of lots 28 and 29 in Block 41—the amount \$34.86). This declaration of sale was bought back from Mr. Ruh April 2, 1890, for \$118.84. That amount was paid by Mrs. Schoening, my mother-in-law; Mr. Ruh gave my wife a quit-claim deed then on April 2, 1890. I have no other vouchers.

Q. Did you not on Nov. 6, 1903, before Joseph S. Parry, a Supreme Court Commissioner, in the case of Niver against yourself and Mr. Weiss, testify as follows:

“My wife’s mother died about six or seven years ago. My wife did not inherit any money at any time. It was all in the brewery. All her money and all mine. Nothing was ever realized out of it?”

A. I did, but I meant that my mother-in-law did not leave any property (I mean real estate) or money in banks; what money she had privately, I don’t know. I know she always had a little, little money. I couldn’t tell how much that amounted to at the time of her death. When this property was foreclosed my wife paid the expenses. She bought it in and she got a thousand dollars from from Mr. Vix and Five hundred dollars from Mr. Aloise Kraemer to cover the purchase and expenses. She did not get any money for those purchases from

her mother. The interest to the Hudson Trust Company I have paid by check as long as I got an account and before that I think I would pay in cash. I do not recollect how long I have had an account with the Hudson Trust Company—but eight or ten years—and still have an account there. It is not in my own name, but in the name of L. C. Hauenstein & Company. The account has been that way since we started the insurance business. My son George is now twenty-one years old. His birthday was about a month ago when he became twenty-one. Before the Hudson Trust Company's mortgage there was a mortgage for one thousand dollars at six per cent and that was on there before 1890 and remained on there until the mortgage was made to The Hudson Trust Company for two thousand dollars, March 15, 1895, and The Hudson Trust Company's mortgage remains there at the present time. The interest on these various mortgages have all been paid up to the present time.

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On cross-examination by Mr. Minturn the witness further deposes and says:

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Whenever in any testimony I stated I paid any taxes or interest or assessments I meant that I paid them, but not out of my own money. I have paid them in the way in which I have testified to-day. Since this property became my wife's I have had charge of it—looking after it and paying the bills. I am sixty-three years old. My wife is fifty-two years old. We have had eleven children; of those six are living; there is one girl—there are three under age. This place about which I have been testifying is the home where I reside with my wife and children.

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My salary as recorder was increased from four to six hundred dollars about four years ago. This property was put on the books in my name by the assessor but without my instructions. It used to be in my wife's name.

On re-direct examination the witness further de-

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poses and says: My son John died on July 1st, 1902. I have been Recorder since the eighties except four years when I was out. My son Louis does not live home with us since he was married about nine years ago.

LOUIS C. HAUENSTEIN.

Sworn and subscribed to before
me the 17th day of July A. D.
1905.

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Jos. S. Parry,
Master in Chancery of New Jersey.

The taking of further depositions in the above entitled cause is adjourned to Wednesday, the 26th day of July, A. D. 1905, at two o'clock in the afternoon at the same place.

JOS. S. PARRY,
Master in Chancery of New Jersey.

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On Wednesday, July 26th, 1905, the taking of further testimony is resumed in the presence of same counsel for respective parties as aforesaid.

EMIL BAUTZ, JR., a witness produced on the part of the complainant, being duly sworn according to law, says:

I live in Union Hill; am Town Clerk of the Town of Union. I have taken from the books of the Town of Union an abstract of taxes and assessments which have been paid on property fronting on the southerly side of Morgan Street in the Town of Union and which lots are designated on the town map as lots 28 and 29 in Block 41, being the taxes and assessments paid on said lots since November, 1890. I produce a list of said taxes and assessments so paid on said property showing for which year the taxes were levied, the name of the party
in whose name the bill was made out, the amount

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of the taxes. In regard to the assessments this paper shows the improvement for which the assessment was levied and the amount of the assessment and the amount paid thereon. In regard to the taxes for 1897 and 1898 I would say that these taxes and also two assessments for improvements were re-adjusted by the Martin Act Commissioners and the property sold to pay said taxes and assessments and the property was subsequently redeemed by Louis C. Hauenstein. This statement as to sale also appears on the books. This statement is made out from the records of the Town of Union. (Complainant offers in evidence the statement produced.) 10

Being cross-examined by Mr. Minturn witness further says: I have been Clerk since May 5, 1902—as Clerk I have charge of all records—Martin Act sales, tax books, assessment books and sales books. The Martin Act sale I spoke of was made May 7, 1901. This was about a year before I came into office as Clerk. The entry on the record is not in my handwriting of the sale by the commissioners. I know nothing of the correctness of this entry. It is as I find it on the books. The same is true as to all the entries prior to 1902. The writing on the transcript is all my handwriting. (Defendant objects to the offer of transcript as incompetent and irrelevant. Same is marked Exhibit "C 4," on part of complainant). 20

On re-direct examination witness says: 30

The entries in regard to the Martin Act Sales and the redemption are in the handwriting of Chas. Singer who was my predecessor as clerk.

Being further cross-examined witness says:

The assessor originally makes up the assessment roll and the Collector makes out the bill in the name of the party to whom they are assessed. I copy what the collector returns.

Sworn and subscribed to before me
this 26th day of July A. D. 1905.

Jos. S. Parry,
Master in Chancery of New Jersey.

LOUIS C. HAUENSTEIN, being recalled further deposes and says:

(In pursuance of subpoena duces tecum witness
10 produces ^{five} check books of Hauenstein & Co., being five books covering a period from Aug. 27, 1900, down to Nov. 29, 1904.)

There is no check for interest for the quarter due
October, 1900, to the Hudson Trust Company—on
Jan. 14th, 1901, is one to the Hudson Trust Com-
pany for interest on mortgage. It is for thirty
dollars. That check is signed Louis C. Hauen-
stein & Co. It was charged to no one's account in
the books, because we keep no books. My wife
20 gives me the money and I put it in the bank and
then give a check for it. I deposited Two hundred
and thirty-five dollars on January 14, 1901. That
was made up from rents I collected, insurance pre-
miums and moneys I got from my wife to pay the
interest. I might have got the money from my
wife sooner to pay the interest and it
may not have been in that deposit. I have
no books at all that will show the days the
wife gave me the money to pay the interest and the
30 days I deposited it. That is true as to the various
amounts the wife gave me to pay for interest and
on the property: I cannot tell any certain date
when my wife gave me money to pay on the prop-
erty, when I got the money and when I paid it. On
Aug. 7, 1901, a check was given for Three hundred
and twenty-three dollars to Louis C. Neuscheler,
collector of taxes for the sale of my wife's two lots
and house, and there was other property sold by the
Martin Act Commissioners belonging to my brother
40 and my son bought it in and my son gave me a

her mother. The interest to the Hudson Trust Company I have paid by check as long as I got an account and before that I think I would pay in cash. I do not recollect how long I have had an account with the Hudson Trust Company—but eight or ten years—and still have an account there. It is not in my own name, but in the name of L. C. Hauenstein & Company. The account has been that way since we started the insurance business. My son George is now twenty-one years old. His birthday was about a month ago when he became twenty-one. Before the Hudson Trust Company's mortgage there was a mortgage for one thousand dollars at six per cent and that was on there before 1890 and remained on there until the mortgage was made to The Hudson Trust Company for two thousand dollars, March 15, 1895, and The Hudson Trust Company's mortgage remains there at the present time. The interest on these various mortgages have all been paid up to the present time.

On cross-examination by Mr. Minturn the witness further deposes and says:

Whenever in any testimony I stated I paid any taxes or interest or assessments I meant that I paid them, but not out of my own money. I have paid them in the way in which I have testified to-day. Since this property became my wife's I have had charge of it—looking after it and paying the bills. I am sixty-three years old. My wife is fifty-two years old. We have had eleven children; of those six are living; there is one girl—there are three under age. This place about which I have been testifying is the home where I reside with my wife and children.

My salary as recorder was increased from four to six hundred dollars about four years ago. This property was put on the books in my name by the assessor but without my instructions. It used to be in my wife's name.

On re-direct examination the witness further de-

poses and says: My son John died on July 1st, 1902. I have been Recorder since the eighties except four years when I was out. My son Louis does not live home with us since he was married about nine years ago.

LOUIS C. HAUENSTEIN.

Sworn and subscribed to before
me the 17th day of July A. D.
1905.

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Jos. S. Parry,
Master in Chancery of New Jersey.

The taking of further depositions in the above entitled cause is adjourned to Wednesday, the 26th day of July, A. D. 1905, at two o'clock in the afternoon at the same place.

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JOS. S. PARRY,
Master in Chancery of New Jersey.

On Wednesday, July 26th, 1905, the taking of further testimony is resumed in the presence of same counsel for respective parties as aforesaid.

EMIL BAUTZ, JR., a witness produced on the part of the complainant, being duly sworn according to law, says:

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I live in Union Hill; am Town Clerk of the Town of Union. I have taken from the books of the Town of Union an abstract of taxes and assessments which have been paid on property fronting on the southerly side of Morgan Street in the Town of Union and which lots are designated on the town map as lots 28 and 29 in Block 41, being the taxes and assessments paid on said lots since November, 1890. I produce a list of said taxes and assessments so paid on said property showing for which year the taxes were levied, the name of the party

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in whose name the bill was made out, the amount

of the taxes. In regard to the assessments this paper shows the improvement for which the assessment was levied and the amount of the assessment and the amount paid thereon. In regard to the taxes for 1897 and 1898 I would say that these taxes and also two assessments for improvements were re-adjusted by the Martin Act Commissioners and the property sold to pay said taxes and assessments and the property was subsequently redeemed by Louis C. Hauenstein. This statement as to sale also appears on the books. This statement is made out from the records of the Town of Union. (Complainant offers in evidence the statement produced.) 10

Being cross-examined by Mr. Minturn witness further says: I have been Clerk since May 5, 1902—as Clerk I have charge of all records—Martin Act sales, tax books, assessment books and sales books. The Martin Act sale I spoke of was made May 7, 1901. This was about a year before I came into office as Clerk. The entry on the record is not in my handwriting of the sale by the commissioners. I know nothing of the correctness of this entry. It is as I find it on the books. The same is true as to all the entries prior to 1902. The writing on the transcript is all my handwriting. (Defendant objects to the offer of transcript as incompetent and irrelevant. Same is marked Exhibit "C 4," on part of complainant). 20

On re-direct examination witness says: 30

The entries in regard to the Martin Act Sales and the redemption are in the handwriting of Chas. Singer who was my predecessor as clerk.

Being further cross-examined witness says:

The assessor originally makes up the assessment roll and the Collector makes out the bill in the name of the party to whom they are assessed. I copy what the collector returns.

Sworn and subscribed to before me
this 26th day of July A. D. 1905.

Jos. S. Parry,
Master in Chancery of New Jersey.

LOUIS C. HAUENSTEIN, being recalled further deposes and says:

10 (In pursuance of subpoena duces tecum witness produces check books of Hauenstein & Co., being five books covering a period from Aug. 27, 1900, down to Nov. 29, 1904.)

20 There is no check for interest for the quarter due October, 1900, to the Hudson Trust Company—on Jan. 14th, 1901, is one to the Hudson Trust Company for interest on mortgage. It is for thirty dollars. That check is signed Louis C. Hauenstein & Co. It was charged to no one's account in the books, because we keep no books. My wife gives me the money and I put it in the bank and then give a check for it. I deposited Two hundred and thirty-five dollars on January 14, 1901. That was made up from rents I collected, insurance premiums and moneys I got from my wife to pay the interest. I might have got the money from my wife sooner to pay the interest and it may not have been in that deposit. I have no books at all that will show the days the wife gave me the money to pay the interest and

30 days I deposited it. That is true as to the various amounts the wife gave me to pay for interest and on the property. I cannot tell any certain date when my wife gave me money to pay on the property, when I got the money and when I paid it. On Aug. 7, 1901, a check was given for Three hundred and twenty-three dollars to Louis C. Neuscheler, collector of taxes for the sale of my wife's two lots and house, and there was other property sold by the Martin Act Commissioners belonging to my brother

40 and my son bought it in and my son gave me a

check for all of this and I paid the collector. My son gave me the check some time before that. I cannot give the date when I received the check or the amount of the check. I cannot pick out the deposit which included that sum from my son. I have no record showing how my deposits are made up, from whom received or what for. Do not recollect when I opened the account in the Hudson Trust Co. There must be other books before these that I have not got any more.

10

My own personal receipts are deposited with these too. By my personal receipts I mean my salary as recorder, insurance premiums, rents, commissions on these—whatever money comes in goes in the bank; any loans going through my hands I deposit and then pay out the amount of the loan. The insurance premiums on the property on Morgan Street, I think George paid the last, before that I cannot recollect. I do not recollect who paid the one before the last. I know my son John paid it one time, too, but I do not recollect when it was. All the interest payments since I had an account were made through the bank. The money was always put in the bank. I cannot pick out any deposit which includes money to pay this interest. The interest on the Hudson Trust Co. mortgage was payable quarterly on Jan. 1st, April 1st, July 1st and Oct. 1st of each year and was thirty dollars every quarter. From Aug. 29th, 1890, to March 1st, 1894, there was only a \$1,000 mortgage on the property and on that the interest was payable Aug. 29th and March 1st each year, and it was thirty dollars every six months.

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On cross-examination by Mr. Minturn witness further says: I have no individual books of account—never kept any. The moneys paid me by my wife for payment on the property and the moneys gave me by my son for that purpose were deposited by me as the funds of Louis C. Hauenstein & Co. mixed up with other funds put in the

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bank. So that it is impossible for me to single out any deposit and say which contains the payment of interest advanced by my wife or son.

The Martin Act Sale referred to by Mr. Bautz, the property was bought in by Warne Smythe; he represented my wife. He bought the property in the name of Theresa Hauenstein, and the payment was made in the way in which I stated.

On re-direct examination witness says:

10 The tax and assessment payments that were made made through the bank account the same as payments of interest. I find a check made to the collector of taxes in December, 1901, and another in December, 1902, and there was also a check I gave the Collector in 1904, which checks included the tax on this property and other properties. I have no certificate or receipt for the Martin Act sale or redemption. I think I gave that to my son
 20 Louis. He paid for it. The checks on this present account are signed in the same way L. C. Hauenstein & Co. The name on the place of business is Louis C. Hauenstein, but inside the office the safe is marked "L. C. H. & Co."

LOUIS C. HAUENSTEIN.

Sworn and subscribed to before me
 this 26th day of July, A. D. 1905.

Jos. S. Parry,
 30 Master in Chancery of New Jersey.

The counsel of the respective parties declare that the taking of depositions in the above entitled cause by them is closed.

JOS. S. PARRY,
 Master in Chancery of New Jersey.

A true copy.

40 Vivian M. Lewis,
 Clerk.

made on the 15th of July, 1884, about six months before the bill was contracted; and I think the stipulation ought to be correct in that respect, so as to show the facts. I intended, when I signed it, to facilitate the hearing by agreeing to the record facts, but I find that the record facts are not as I understood them to be. I ask to amend the stipulation by inserting the proper record facts.

10

Mr. Abbett: (Referring to deeds produced by Mr. Minturn) These seem to be deeds, and seem to have been recorded.

The Vice Chancellor: Are you willing to have the stipulation amended? Of course the Court can take no action in the matter.

20

Mr. Abbett: I would necessarily want to amend the pleadings to correspond with this state of facts. I suppose counsel has no objection to that?

Mr. Minturn: I have no objection to that. We ought to get the record right, that is all. The first and second items of the stipulation I think ought to be amended.

Mr. Abbett: We can stipulate now on the record, a sort of supplementary stipulation.

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The Vice Chancellor: Just dictate to the stenographer your supplemental stipulation.

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Mr. Abbett: It is stipulated and agreed, as a supplement to the stipulation on the facts filed herein, that there now appears upon the records of the Register's Office of the County of Hudson, first, a deed from Louis C. Hauenstein and wife to Ferdinand W. Keller, of Brooklyn, for the premises described in the bill of complaint, which deed is dated July 15, 1884, acknowledged July

15, 1884, and recorded December 3, 1885, in Book 410 of Deeds, page 615, the consideration recited in said deed being "One dollar and other good and valuable consideration;" that there also appears another deed covering the same property, from Ferdinand W. Keller, of Brooklyn, to Theresa Hauenstein, dated July 15, 1884, acknowledged July 15, 1884, and recorded December 3, 1885, in Book 410 of Deeds, page 618, and that the consideration recited in said deed is "One dollar and other good and valuable consideration." It is also stipulated that the fact of the existence of these two deeds has just been made known to the complainant, and that the pleadings herein may be amended as of date to cover this state of facts. 10

The Vice Chancellor: In what respect do you want to amend your pleadings? What do you want to say about those deeds? 20

Mr. Abbett: That those deeds were fraudulent.

The Vice Chancellor: You want to charge that those deeds were a voluntary conveyance by the husband, through a conduit, to the wife, without consideration, and were made in fraud of your existing rights?

Mr. Abbett: Of the creditors, including ourselves. 30

The Vice Chancellor: I suppose the defendants want to set them up in the answer?

Mr. Minturn: In the answer; yes, sir.

Mr. Abbett: The answer will be amended in the same way.

Mr. Minturn: Do I understand that you want to set up these deeds in the bill of com- 40

plaint, Mr. Abbett, as part of your case, and then I deny the fraud; or that I appear as setting up these deeds, and you reply to it?

Mr. Abbett: I suppose it would be a better way to set them up in the answer, and have us reply to that.

10 The Vice Chancellor: Let the Senator state how he wants leave to amend his pleadings. You need not describe the deeds all over again. You want to file a supplemental answer, I presume, setting up the deeds that have just been recited, and claiming that that was a bona fide transfer for a valuable consideration?

Mr. Minturn: Yes, sir.

20 The Vice Chancellor: Well, I will give the defendants leave to set up the facts in a supplemental answer, and I will give the complainant leave, in replication, to set up what has already been set forth, that these deeds were voluntary and in fraud of creditors.

30 Mr. Abbett: I will introduce, in pursuance of the stipulation, a copy of the summons and complaint in the suit of John M. Niver et al vs. Louis Hauenstein et al., in the Hudson County Circuit Court, and the bill of particulars attached to the declaration, and the endorsements thereon, which copy is attached to the stipulation filed herein.

40 It is stipulated that the various papers which, in the written stipulation are agreed may be offered in evidence, are now offered in evidence, and are admitted, and that the copies thereof attached to the original stipulation filed in this suit may be treated as or-

iginals; and, with respect to those papers of which copies are not attached, they are now offered and admitted as follows:

Execution issued in the suit of John M. Niver et al. vs. Louis Hauenstein et al., which is the second item of the stipulation. (Marked Exhibit 1 of complainant).

Assignment of judgment from John M. Niver et al to J. C. Farr, Jr., which is the third item of the written stipulation. (Marked Exhibit 2 of complainant). 10

Alias execution issued in Niver vs. Hauenstein, being the fourth paper mentioned in the stipulation. (Marked Exhibit 3 of complainant).

Deed, Louis C. Hauenstein, by the Sheriff, to Theresa Hauenstein, being the fifth paper mentioned in the stipulation. (Marked Exhibit 4 of complainant). 20

THERESA HAUENSTEIN, sworn:

BY MR. ABBETT:

Q. You are one of the defendants in this suit. Mrs. Hauenstein? A. Yes, sir. 30

Q. And you live with your husband in Union Hill? A. Yes, sir.

Q. And is the place where you live the property described in the papers in this suit, do you know? A. What is that?

BY THE VICE CANCELLOR:

Q. He wants to know whether the house you live in is the property that is being fought over in this suit? A. Yes, sir. 40

BY MR. ABBETT:

Q. Did you ever receive a deed of that property?

Mr. Minturn: I object. The record shows that.

The Vice Chancellor: The record does not show whether she received it.

10 Mr. Minturn: I object to the question on the ground that it is immaterial whether she received it or not. The record shows that it was executed and delivered.

The Vice Chancellor: I will admit the question. (To the witness) He wants to know whether you ever had handed to you by anyone a deed for that property? That is what the word "received" means in that question.

20 A. I can't remember that.

Q. Did you ever pay anybody any money, thinking that for that payment you would get that property? A. I can't remember.

Q. Did you ever pay any taxes on that property?

A. My husband attended to that.

Q. Did you ever pay any interest on any mortgage that might be on that property? A. I can't remember that.

30 Q. Do you remember that property ever being sold by the Sheriff? A. Yes, sir.

Q. Were you present at the sale? A. Yes, sir.

Q. And what did you do, if anything, at that sale?

The Vice Chancellor: Do you mean herself?

Mr. Abbett: Yes.

BY THE VICE CHANCELLOR:

40 Q. Did you do anything at the sale yourself; did

you make any bid, or do anything? A. I can't remember that no more.

BY MR. ABBETT:

Q. Well, do you remember what was done at that sale by anybody?

The Vice Chancellor: (To the witness)
Answer that question. Do you remember anything that happened at that sale, and, if so, what happened? 10

Q. Do you remember it, Mrs. Hauenstein—anything that happened at that sale?

The Vice Chancellor: (To the witness)
You must answer, Madam; if you don't remember, say so; if so; if you do remember, tell what happened. You must answer the question, Madam. Why do you hesitate? Can't you remember? Does your mind carry anything about the sale at all, Madam? Do you remember anything about it at all? You must answer the question. The Court cannot permit this to continue any longer. You must tell the truth with respect to what happened at the sale, unless you don't remember; and if you don't remember, you must say so. What is your answer, now? You must make an answer. Do you understand, Madam? The Court is trying to be lenient with you, but my patience cannot stand this much longer. 20

Mr. Minturn: Will the Court allow me to make an explanation to her?

The Vice Chancellor: I will explain it to her. 30

BY THE VICE CHANCELLOR:

Q. Were you present at the time the Sheriff sold this property? Were you personally present? A. 40

Yes, sir.

Q. Now, what do you remember about that sale? Just begin at the beginning. What do you remember happened at the sale? That is what counsel wants to know and that is what counsel has a right to know, and that you must answer. Just tell what happened as you remember it?

10 Mr. Minturn: Will your Honor kindly suggest that it was the Sheriff's sale?

Q. I am talking about the Sheriff's sale. You understand that, do you? A. Yes, sir.

Q. Now, tell just what happened at that time? A. Well, I bought it in, and I loaned the money of Mr. Vix.

Q. Do you mean you borrowed the money of Mr. Vix? A. Borrowed the money of Mr. Vix.

20 Q. Now, what happened at the sale? Did you make a bid yourself? A. Oh, I can't remember that any more.

BY MR. ABBETT:

Q. Where was the sale, Mrs. Hauenstein? A. I don't know that.

BY THE VICE CHANCELLOR:

30 Q. Where did the sale take place? You said said you were present. Where did it take place—what part of the city or county, or where was it that the property was sold by the Sheriff? A. I don't know; I think it was up in Guttenberg.

BY MR. ABBETT:

Q. Well, as you remember it, it was up on the Heights somewhere? A. Yes, sir.

Q. You don't think it was in Jersey City? A. I can't remember that.

40 Q. Well, were you ever at any sale of that property that took place in Jersey City? A. Any Sheriff's sale?

BY THE VICE CHANCELLOR:

Q. Yes, or any sale of that property? A. I can't remember that.

BY MR. ABBETT:

Q. The only sale you were at, which you attended, was one held up either in Union Hill or Guttenberg, is that right? A. Yes, sir.

Q. Now, who did you buy from at that sale in Guttenberg? A. I can't remember that. 10

Q. Was it somebody by the name of Weiss? A. I can't remember that.

Q. How much money do you say you borrowed from Mr. Vix? A. I can't just say that no more, either; two thousand dollars, or something; I don't know.

Q. One thousand dollars? A. No, I don't know how much.

Q. Well, was it in the neighborhood of one thousand dollars? 20

The Vice Chancellor: I think she said Two thousand dollars.

Q. Oh, about thousand dollars? A. Yes.

Q. What did you give Mr. Vix,—did you give him a promissory note, or a mortgage, or what did you give him for that, do you remember? A. I can't remember that.

Q. Did you ever pay this back to Mr. Vix? A. Yes, sir. 30

Q. When did you pay it back? A. Well, I couldn't just say when that was, either.

Q. Did you pay it back to him all in one lump, or in instalments? A. Yes, sir; I paid it all back.

BY THE VICE CHANCELLOR:

Q. He wants to know whether you paid it all back at once? A. All at once. 40

BY MR. ABBETT:

Q. Where was that payment made, in your house, or in Mr. Vix's house, or where? A. I guess it was in our house.

Q. And where did you get this money from to make this payment to Mr. Vix? A. It was my mother's.

Q. And how long has your mother been dead?
10 A. Ten years, it will be.

Q. Ten years now? A. Ten years it will be in February.

Q. February, 1885, she died? A. Ten years, yes, yes, sir.

Q. Can you say now, after remembering the repayment to Mr. Vix, how much it was, just what amount? A. I couldn't just say that no more.

Q. What? A. I couldn't just say that.

Q. Well, this money you borrowed from Mr. Vix
20 in the first place, what was it used for? A. For the sale.

BY THE VICE CHANCELLOR:

Q. You mean to purchase, don't you; you mean to buy at the sale? A. Yes, sir.

BY MR. ABBETT:

Q. And when did you borrow it from Mr. Vix,
30 the day of the sale? A. Oh, I guess a week ahead.

Q. And how much was the property sold for at the sale? A. I can't remember that.

Q. Were there any taxes due on it at the time of the sale? A. No, sir.

Q. And why was it sold? A. I don't know that.

Q. Who owned the property before this sale? A. My mother.*

Q. When did she buy it? A. My mother didn't buy it, she builded it.

Q. She built the house, you mean, on the lots?
40 A. Yes, sir.

Q. Well, who owned the lots at the time, or just previous to this sale you are speaking of? A. My mother.

BY THE VICE CHANCELLOR:

Q. She owned the lots as well as the house?
A. Yes, sir.

BY MR. ABBETT:

Q. Now, when did she buy the lots? A. I 10
couldn't tell you that; I was small; I don't know that.

Q. And did she own them from the time that you were small up to the time that they were sold, when you went to buy them? A. Yes, sir.

Q. You never heard of anybody else having owned them in the meantime? A. No, sir.

Q. Did you ever borrow any money from anybody else except Mr. Vix, in connection with that property? A. Well, after we paid back Mr. Vix I got it of Mr. Simon. 20

Q. Well did you borrow the money from Mr. Simon to pay Mr. Vix? A. Yes, sir.

Q. And who is Mr. Simon, and where is he? A. He is dead.

Q. Well, did you repay him? A. Yes, sir.

Q. Before he died? A. Yes, sir.

Q. How much was borrowed from him? A. Well, the same amount I had of Mr. Vix.

Q. And how long was it between the time you received this money from Mr. Simon when you paid it back to Mr. Simon? A. Why, I couldn't say that no more. 30

BY THE VICE CHANCELLOR:

Q. How long did you owe Mr. Simon the money, in other words? A. I couldn't say that no more.

BY MR. ABBETT:

Q. Did you ever borrow any money from any- 40

body else in connection with that property? A. No, sir.

Q. Did you ever borrow any money from the Hudson Trust Company in connection with that property? A. The Hudson Trust Company?

Q. Did you ever borrow any money from them and give them a mortgage on that property? A. No.

10 Q. Did you ever hear of any such thing having been done? A. The Hudson Trust Company—is that the Bank?

Q. The Hudson Trust Company up there? A. Yes, I had money from them.

Q. And how much did you borrow from them?

A. I don't know; I guess two thousand, or a thousand; I don't know; I couldn't say that.

Q. Well, have you ever paid any interest on that?

A. Yes, sir; my husband attended to that.

20 Q. How much interest is paid, do you know? A. It is all paid.

Q. I mean is it paid every month, or every six months, do you know? A. That is what I don't know.

Q. You don't know anything about that? A. No, I don't know how he attends to it.

Q. Did you ever give your husband any money to pay that interest with? A. Yes sir.

Q. How much did you give him? A. Oh, what the interest is.

30 Q. Well, how much is it? A. I don't know; I guess sixty dollars.

Q. And how often is that paid, the sixty dollars? A. I don't know.

Q. When did you give him the last sixty dollars to pay that interest with? A. Well, that is what I couldn't just tell you; I am short memoried; I can't keep that.

40 Q. How often within the last two years have you given him this sixty dollars to pay this interest with? A. Well, I guess it must be every six

months.

Q. I want to find out just when it is, Mrs. Hausten-
enstein? A. Well, I couldn't tell you that.

Q. And cannot you recollect the last time you
gave him sixty dollars to pay that interest with?

A. No, I can't remember that.

Q. Now, where do you get this money which you
say you give your husband to pay this interest to
this bank? A. Where did I get it?

BY THE VICE CHANCELLOR:

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Q. Where did you get the money. How do you
come to have the money? A. I have the money
from my mother.

BY MR. ABBETT:

Q. How much estate did your mother leave? A.
I don't know; about twenty thousand dollars, fif-
teen thousand.

Q. Who has charge of that? A. A friend of
mine. 20

Q. By what name?

The Vice Chancellor: Give the name of
the executor, or administrator, or whoever
it is that has charge of your mother's estate.

A. I can't tell; I don't know the name.

Q. Did not, as a matter of fact, your mother lose
all her estate in the firm of Hausten & Weiss,
in which your husband was interested? A. Most
of it. 30

Q. Did she not lose all of it?

The Vice Chancellor: Answer the ques-
tion, madam.

A. I don't know.

Q. Did your mother leave any will? A. No, sir.

Q. Was anybody ever appointed administrator
of her estate, to look after her estate after she died?

A. No, sir. 40

Q. Well, what was the property, if any, that your mother left?

10 The Vice Chancellor: What did your mother own at the time she died? Did she own any money, securities, land, buildings, or anything? What, to your knowledge, did your mother have in the way of property at the time of her death, if you have any knowledge of it? Do you know of any property that your mother had at the time of her death—any money in bank, or any money in houses, or in bonds or mortgages, or in real estate?

A. Not but the money she had in the house, that is all.

Q. Well, how much money did she have in the house? A. I don't know that now; I couldn't tell you.

20 Q. Well, who took that at the time of her death? A. I did.

Q. And what did you do with it? A. I have got it.

Q. Well, how much was it? A. About seven or eight hundred dollars; that is all.

Q. Now, who is this friend that has charge of your mother's estate? A. There is no more, that is all.

30 Q. No, but you spoke of some friend.

The Vice Chancellor: She says that is all the estate there is, Mr. Abbett.

Q. But you spoke of getting the money from some friend who had charge of your mother's estate, and of that being the money that you gave your husband to pay this interest on this mortgage—now, who is this friend, do you recollect now?

A. Well, that was Mr. Simon.

40 Q. The man you borrowed the thousand or two thousand dollars from? A. Yes.

BY THE VICE CHANCELLOR:

Q. But he hadn't any money of your mother's, had he? A. No, it is what I borrowed of him.

Q. All the money that your mother had you took? A. Yes, sir.

Q. And there was no other person that had any estate of your mother's? A. No, sir; I had it.

BY MR. ABBETT:

Q. What did you do with this \$700 or so that your mother left at the time of her death? A. I have it.

10

BY THE VICE CHANCELLOR:

Q. He means what did you do with it—did you put it in bank? A. Nothing. I have got it home.

BY MR. ABBETT:

Q. And you still have it? A. Yes, sir.

20

Q. And you haven't used any of it? A. Yes, sir; I have.

Q. How much of it have you left? A. Well, that is what I couldn't tell you.

Q. You haven't any idea? A. No, sir.

Q. Have you used any of that to pay taxes on this property where you now live? A. Yes, sir.

Q. How much of it did you pay for taxes last year? A. Well, I couldn't tell you that.

Q. Did you pay the taxes yourself, or did you give it to somebody else? A. My husband attends to that.

30

Q. And this money that you give him to pay these taxes and entered, do you give that to him in cash, or in the shape of a check, or how? A. I give it to him cash.

Q. Did you give him any money either last Fall or last Winter to pay the taxes on this property? A. Yes, sir.

Q. How much? A. Oh, I don't know how much; 40

about sixty dollars; something like that.

Q. And did you give him the same amount the year before to pay the taxes? A. Yes, sir.

Q. And did that come out of this fund that your mother left? A. Yes, sir.

Q. And does the interest on this mortgage come out of this fund that your mother left? A. Yes, sir.

10 Q. And from where did you get the funds with which to repay Mr. Simon the money you borrowed from him? A. My mother's.

Q. And all these payments have been made, then, out of the money that your mother left? A. Yes, sir.

Q. Now, is there any other place or any other person from which you received any money? A. No, sir.

20 Q. Did you ever borrow any money from anybody else except Mr. Vix and Mr. Simon? A. No, sir.

Q. And the bank? A. Yes, sir.

Q. Anybody else? A. No, sir.

Q. Did you ever hear of that property being sold for taxes. A. No, sir.

Q. Did you ever attend any tax sale of that property? A. No, sir.

Q. Did you ever see any attorney and give him directions to attend a tax sale of that property? A. No, sir.

30 CROSS EXAMINATION BY MR. MINTURN:

Q. Who looked after this property for you? Who took charge of your property and looked after the taxes and interest? A. My husband did.

Q. Who looked after the Sheriff's sale? A. I don't remember that.

Q. You don't remember that? A. No, sir.

Q. And everything in regard to looking after the property was attended to by your husband, was it?

40 A. Yes.

Q. How old are you, Mrs. Hauenstein? A. 51.

Q. And how many children have you? A. Seven.

Q. Some of them grown up and married? A. One.

Q. And some of them younger and at home with you? A. Yes.

Q. And you keep house, do you, for your husband and children? A. Yes, sir.

Q. Look after all the household affairs? A. Yes, sir. 10

Q. And your husband looks after all the outside business, does he? A. Yes, sir.

LOUIS C. HAUENSTEIN, a witness produced on the part of the complainant, being duly sworn, upon examination saith:

BY MR. ABBETT: 20

Q. Mr. Hauenstein, you are one of the defendants in this suit? A. Yes, sir.

Q. And you are familiar with the property described in the bill of complaint in this suit, are you not? A. Yes, sir.

Q. Do you remember executing a deed of this property to Mr. Keller? A. I recollect about it. All the transaction was done in Mr. Rabe's office, who, at that time, was my counsel. It has been so long ago that I can hardly recollect what was done. I presume Mr. Rabe will know all about it. He can explain the whole matter. 30

Q. What is your business at the present time, Mr. Hauenstein? A. Fire Insurance; and I am Recorder of the Town of Union.

Q. And also in the real estate business? A. Yes, sir.

Q. What real estate, if any, did you own in former years? A. All I owned was these two lots 40

where the house stands on—the property in question. I never owned any other property.

Q. Now, did you not, at an examination before Mr. Parry, a Supreme Court Commissioner, testify that it was at a foreclosure sale by the Sheriff on a mortgage that your wife bought this property? A. Well, at the time the foreclosure—

10 The Vice Chancellor: The proper way is to read the question and the answer, because otherwise the witness will give his recollection of the testimony.

Q. Did you not testify as follows, before Mr. Joseph S. Parry, a Supreme Court Commissioner, in Hoboken, on Friday, the 6th day of November, 1903: "It was at the sale by the Sheriff on the foreclosure of that mortgage that my wife bought said property. I do not remember the date of the mortggage. It was during the unlucky time of the
20 brewery business"—did you not so testify? A. I believe I did.

Q. And who owned this property prior to that foreclosure? A. My wife.

Q. And why was the property sold at foreclosure? A. Because I couldn't manage; I had no money; I couldn't make no money, and I couldn't pay the interest.

Q. Well, who bought at the foreclosure? A. Mr. Hansen bought it in for my wife,—Frederick C.
30 Hansen.

Q. And who paid the money that was paid at that sale? A. Mr. Vix gave the money to my wife, one thousand dollars, and Mr. Kraemer loaned her five hundred dollars; and with this money we paid the Sheriff and Mr. Fick; it was the mortgage and the costs, and the back taxes, what there was.

Q. Then there were back taxes? A. Oh, yes, certainly, at that time.

Q. Well, what liens, other than this mortgage,
40 were there on that property at the time of this

foreclosure? A. Well, that is more than I can recollect; I couldn't tell that, what other liens there was on it.

Q. Well, all these things that were paid, outside of the Sheriff's fees, would have had to have been paid even if there had been no foreclosure sale, would they not? A. Well, if we had had the money to, I think yes. We had no money, we were poor, we had no work.

Q. But you did pay them? A. Eventually, yes, through the aid of my son. 10

Q. Do you know what was paid for this property at the Sheriff's foreclosure sale? A. I don't recollect that.

Q. Were you present? A. I was, yes.

Q. Where was that sale? A. At Jersey City.

Q. Is there any mortgage on that property at the present time? A. Yes.

Q. How much? A. Two thousand dollars.

Q. Held by what institution? A. Hudson Trust Company. 20

Q. And how much interest is there paid on that mortgage, and how often? A. Every three months.

Q. Who pays that? A. I do.

Q. Where do you get the money to pay it with? A. Well, sometimes my money; sometimes my wife often gave me a few dollars; and, if I haven't got it, my son Louis he has it; he gives me sometimes money.

Q. Does your wife, as matter of fact, give you the money to pay that interest? A. Sometimes, not always. 30

Q. When has she ever done it? A. Oh, she done it perhaps two or three times, four times, when she gave me thirty, forty or fifty dollars.

Q. That is two or three or four times within the last ten years? A. Yes; well, perhaps oftener; I couldn't recollect that.

Q. Who pays the taxes on that property? A. I do. 40

Q. Out of your own funds? A. Certainly out of my own funds; if I haven't got it I make a loan or borrow the money from my son Louis.

Q. And then repay him afterwards, if you can?

A. Well, I never made money enough to repay him.

Q. When was the last interest paid to the Hudson Trust Company on this mortgage? A. April.

Q. How much was paid? A. Thirty dollars.

Q. Where did you get the money to pay it? A.

10 Well, I had that money.

Q. Paid it out of your own funds, did you not?

A. I did. It belongs to the firm. My son is in partnership with me in the business. We gave our check for it.

Q. Who compose that partnership? A. Me and my son Louis. He started the business.

Q. And what is the share of you in the firm, and what is the share of your son Louis in the firm?

A. Oh, we don't have no shares.

20 Q. It is just a family matter, is it? A. Just merely a family matter, that's all. He started me in business, as I had nothing at all no more, and he fixed me up.

Q. How much money did you borrow, as you say, from Mr. Vix? A. A thousand dollars.

Q. And what was he given for that thousand dollars? A. Why, we gave him a mortgage.

Q. On this same property? A. Yes, sir.

Q. And that was repaid, was it? A. Yes, sir.

30 Q. Who repaid that? A. Well, me and my wife, we got the money from Mr. Robert Simon; Mr. Vix he needed the money, and we didn't have it, so Mr. Simon was around at the house, and we asked him if he would loan us the money, and he did.

Q. Now, when was that repaid? A. That was repaid about a year or so afterwards, when we made a mortgage to the Bank, and we repaid Mr. Simon.

40 Q. Well, you mean a year or so after it was borrowed? A. A year or so after Mr. Vix was paid.

Q. Well, when did you borrow this money from Mr. Vix? A. I don't recollect the year.

Q. Well, about? A. About 1886 or 1887.

Q. Was it about the time of the Sheriff's sale on the foreclosure? A. Yes, when the Sheriff's sale took place.

Q. And how long after that did you repay Mr. Vix? A. That I don't recollect.

Q. Can you give us any idea? A. No.

Q. One, two, three years? A. I don't recollect; I didn't look; I have got the mortgage here; you can see it, when it was paid. 10

Q. And this money you paid Mr. Vix you borrowed from Mr. Simon? A. Yes, sir.

Q. Did you repay Mr. Simon? A. Yes, sir.

Q. Who repaid him? A. Why we did, in the house.

Q. Where did the funds come from? A. Why, Mr. Simon gave us a thousand dollars—

Q. No, I mean the funds to repay Mr. Simon? A. Oh, we made a mortgage in the Hudson Trust Company for two thousand dollars, and we paid Mr. Simon and the other little debts that we had, back taxes and so on. 20

Q. And was there interest paid to Mr. Vix or to Mr. Simon during the time their money was in your hands? A. Mr. Vix got his interest, and Mr. Simon didn't charge me no interest.

Q. And where did the money come from to pay Mr. Vix the interest? A. Well, I paid him what I earned. 30

Q. You paid it out of your own earnings? A. Yes. Sometimes my son would help me.

Q. It would come out, practically, from the real estate and insurance business? A. Well, not always; no, sir.

Q. Sometimes from your salary as Recorder? A. Yes.

Q. Now you spoke of having borrowed some money from Mr. Kraemer? A. Yes. 40

Q. Mr. Aloys Kraemer? A. Yes, sir.

Q. Where does he live? A. I couldn't tell you where he lives now; in New York, I presume.

Q. Was he repaid? A. No, sir.

Q. How much did you borrow from him? A. \$500.

Q. Did you ever borrow any money from Mr. Vix outside of this money that you say you gave him a mortgage for? A. No.

10 Q. Do you remember when your wife's mother died? A. Yes, sir.

Q. How long ago, or in what year, if you recollect? A. I think it is about ten years ago. I am positive it was about ten years ago.

Q. Did she leave any money? A. Well, what money she had my wife took it. I never looked after that.

Q. Did your wife ever inherit any money from anybody? A. No, not that I know of.

20 Q. Did you not testify as follows, before Mr. Joseph S. Parry, Supreme Court Commissioner, in Hoboken, on Friday, November 6, 1903: "My wife's mother died about six or seven years ago. My wife did not inherit any money at any time. It was all in the brewery, all her money and all mine. Nothing was ever realized out of it. That failure was in 1886, I guess"? A. I think I did, sir.

30 Q. And did you not also testify as follows, at the same time: "My wife's mother lost all she had in the Brewery business. Her name was Schoening. Since that failure my wife has not inherited any money. Since that failure we have had to work for a living"? A. Yes, sir.

Q. What is the name of your son in the real estate business with you? A. Louis.

Q. Did you not testify before Mr. Parry at the same hearing as follows: "My son's name that is in partnership with me is George"? A. No, sir—"Louis."

40 Q. If you so testified, that is a mistake, is it?

A. That must be a mistake.

Q. Have you a son George? A. Yes, sir; but he is not of age; he is a young man, a boy.

Q. Is George in your real estate and insurance office? A. Yes, he works there.

Q. How long has your son Louis been in with you in the real estate business? A. Ever since I started after the failure of the Brewery.

Q. Now, this property described in the bill of complaint here, Mr. Hauenstein, consists of what? 10

A. Two lots and a house.

Q. And the house is occupied, as I understand it, by you and your family exclusively—nobody else occupies any part of it? A. No, sir.

Q. And the house is practically on the centre of these two lots? A. Yes, sir.

CROSS EXAMINATION BY MR. MINTURN:

Q. Mr. Hauenstein, who looks after your wife's affairs? A. I do. 20

Q. Outside of the domestic affairs of the house? A. I do.

Q. Do you know how much money your wife received from your mother? A. You mean after she died?

Q. Yes. A. Oh, she wouldn't tell me that; whatever money she had around the house I don't know; I never asked her.

Q. Do you know whether she received anything? A. Well, there was some money what the old lady had saved and what she kept in the house, and my wife got that; how much that was I don't know. 30

Q. You were in business in the Brewery known as the Hauenstein & Weiss Berwery? A. Yes, sir.

Q. When did that fail, what year? A. I think it was in 1886, I ain't sure, though.

Q. Was your mother-in-law interested in the Brewery also? A. Well, she was indirectly; she loaned us money, gave us money.

Q. Loaned money to the Brewery? A. Yes. 40

Q. How much? A. I don't recollect that any more; Mr. Rabe, I presume, could explain about that.

Q. These two lots of land that are spoken of by Mr. Abbett, who bought them originally? A. I did.

Q. How much did you pay for them? A. I don't recollect; between five and six hundred dollars.

Q. Apiece? A. No, sir; for both of them.

Q. Altogether? A. Yes, sir.

10 Q. You paid five or six hundred dollars for the two? A. Yes.

Q. How long ago? A. That was in the Seventies. I don't recollect.

Q. Who built the house on those lots? A. My mother-in-law, Mrs. Schoening.

Q. The same lady that was in the Brewery business with you? A. Yes.

Q. What kind of a house is it? A. Two-story house.

20 Q. Frame? A. Yes, sir.

Q. She paid for it? A. Yes, sir.

Q. Who made the contract for it? A. There was no contract.

Q. Well, who made the arrangements for the building of it? A. Why, Mr. Bernheimer.

Mr. Abbett: I object. It is immaterial.

30 The Vice Chancellor: The question has been answered; do you want to move to strike it out?

Mr. Abbett: Oh, no.

Q. Do you know how much that house cost your mother-in-law to build?

Mr. Abbett: I object to it as immaterial and irrelevant.

The Vice Chancellor: What is the object of it?

40 Mr. Minturn: The object is to show that

the money that went into the building of that house was put in there by Mrs. Hauenstein's mother.

The Vice Chancellor: That has been testified to. The only question in my mind is as to whether it is cross-examination. My impression is that Mr. Abbett opened this matter on direct examination. I will let you proceed, Senator.

Q. Do you remember how much it cost your mother-in-law to put up this house on these two lots? A. I don't exactly remember how much; about thirty-five hundred dollars; something like that.

10

Q. Were you present in Mr. Rabe's office when the deed spoken of by Mr. Abbett, from Louis C. Hauenstein and wife to Ferdinand W. Keller was made? A. Yes, sir.

Q. Were you also present when the deed from Ferdinand W. Keller to Theresa Hauenstein was made? A. Yes, sir.

20

Q. When were they made? A. In 1884, I think.

Q. Well, were they made on different dates, or on the same day? A. That I don't recollect no more. They might have been made on the same day, or they might have been one made to-day and one to-morrow; that I don't recollect.

Q. You were there, weren't you? A. Yes, sir.

Q. Now, what did you do with the deeds? Did Mr. Rabe give you these deeds after they were executed? A. I think he did; I don't recollect that. I know there was something afterwards; we wanted to get deeds recorded, and there was something missing in regards to one of the deeds, and I had to go back to Mr. Rabe to get a certificate on it from New York.

30

Q. The County Clerk's certificate? A. Yes.

Q. When you received these deeds what did you do with them? A. After I got them back then I

40

put them on record.

BY THE VICE CHANCELLOR:

Q. No, at first—when you first got them what did you do with them? A. When I first got them I took them home.

BY MR. MINTURN:

10 Q. Did you say anything to your wife about them? A. I showed them to the wife, certainly.

Q. What did you do with them then? A. Well, then I wanted to put them on record, as I told you before, and I found that I couldn't; one of them I had to take back to New York.

Q. One of them did not have the County Clerk's certificate on? A. Yes.

Q. And you took that back to Mr. Rabe's office? A. Yes sir.

20 Q. And had him attend to that part of it, did you? A. Mr. Rabe, or Mr. Keller, I don't know which.

Q. Why were these deeds made, Mr. Hauenstein? A. Those deeds were made because my mother-in-law advanced all the money; she had all her money interested in the Brewery; she paid for the building of the house, and she was to sign some papers; Mr. Rabe. I presume, can explain that; I don't recollect it no more; and she wouldn't do it unless I assigned the property to the wife to save the homestead for the children.

30 Q. Your mother-in-law insisted on these deeds being executed over to your wife before she would sign what you wanted her to sign in connection with the Brewery matter? A. Yes, sir.

Q. So as to protect your family? A. That is it.

Q. And then these deeds were executed, were they? A. Yes, sir.

Q. And then did your mother-in-law sign this paper that Mr. Rabe wanted her to sign? A. Yes, sir.

40 Q. For the Brewery? A. Yes, sir.

The Vice Chancellor: These deeds have been frequently referred to but they have not been marked. They should be marked for identification, because as yet there is nothing to show what deeds you are talking about on the record.

Q. I show you a deed dated July 15, 1884, "Louis C. Hauenstein and wife to Ferdinand W. Keller"—is that one of the deeds you refer to? A. Yes, sir. 10

Q. And I show you another deed, dated July 15, 1884, "Ferdinand W. Keller to Theresa Hauenstein"—is that a deed that you refer to also? A. Yes, sir.

The Vice Chancellor: Let them be marked "G. W. B. 1," and "G. W. B. 2" for identification.

(The deeds are so marked).

Q. Was your wife present at this Sheriff's sale in Jersey City when the property was bought in her name? A. No. Mr. F. C. Hansen went there to buy the property in for my wife. 20

Q. For your wife? A. Yes, sir.

Q. And he bought it in for her? A. Yes, sir.

Q. In her name? A. Yes, sir.

Q. That was the sale on the Fick mortgage? A. Yes, on the Fick mortgage—not "Vix." That was the old mortgage—John C. Fick's.

Q. There was a mortgage on the property held by John C. Fick, for how much? A. One thousand dollars. 30

Q. And that was being foreclosed? A. That was foreclosed.

Q. And to get the money to pay that off you applied to a man by the name of Vix? A. Yes, sir.

Q. And you paid that off? A. Yes, sir.

Q. And then you went to a man named Simon, and he gave you the money to pay off the Vix mortgage? A. Yes, sir. 40

Q. Then you went to the Hudson Trust Company in Union Hill and made a mortgage for two thousand dollars to pay off Simon his claim and interest and arrears of taxes? A. Yes, sir.

Q. That was the transaction, was it? A. Yes, sir.

BY MR. ABBETT:

10 Q. Mr. Hauenstein, is it not a matter of fact that these two deeds, G. W. B. 1 and G. W. B. 2, were made in contemplation of trouble in the firm of Hauenstein & Weiss, the brewers?

Mr. Minturn: I object. That seems to bring up a new line of examination, and should have been brought out by him on his direct examination.

20 The Vice Chancellor: When this witness was first asked about these deeds his answer was, or the idea conveyed by his answer was, "I don't know much or anything about that; Mr. Rabe will explain that, because it was all done in his office and by him." In your cross-examination you went quite fully into the matter. You may proceed, Mr. Abbett.

A. Well, there was no trouble exactly at that time.

30 Q. Well, wasn't the Brewery, at that time, or just about that time, in your own mind and idea, getting into financial difficulty? A. No, not at that time.

Q. Well, how shortly after this time? A. Well, it might have been two years after that.

Q. Well, it was less than two years after that that your failure was, was it not? A. We never failed; we assigned the Brewery to—well, Mr. Rabe will explain that.

40 Q. When was that? A. That was, I think, in 1886.

Q. The early part of 1886? A. I don't know whether it was the early part or the latter part; I don't recollect.

Q. Well, now, when you received these deeds did you, at that time, have any idea of recording them unless subsequent events showed it was necessary to record them? A. No.

Q. So you simply held them as being ready to record in case of necessity? A. No.

Q. Then why did you hold them a year and a half before recording them? A. That I cannot recollect no more; I don't know; we had so much trouble perhaps I didn't think of it. 10

Q. You were having trouble at the time they were executed, were you not? A. Well, no, not exactly; I had business troubles all the time; I never had much money to spare.

Q. And wasn't it these business troubles acting on your mind one of the reasons why you had these two deeds executed? A. Mr. Rabe can explain that. 20

Q. No, I mean yourself—why you had them executed? A. Well, we had them executed, as I stated before, at the request of my mother-in-law, that she wanted the property assigned to my wife to save the home for the children.

Q. Well, wasn't that because there was trouble, financial trouble and difficulty, in the Brewery? A. That might have been, yes.

Q. Well, now, did Mr. Ferdinand W. Keller pay you anything for this deed that you executed to him? A. He never paid me anything, no. 30

Q. And do you know whether your wife ever paid Mr. Keller anything for this deed? A. No.

Q. She never did? A. We paid Mr. Keller lots of money.

Q. I don't mean for other services, I mean for this deed? A. No.

Q. Now, why did you hold this deed from July, 1884, until December, 1885, before getting the 40

County Clerk's certificate? A. I don't recollect that, Mr. Abbett.

Q. Is Mr. Hansen still living, the man who went to the Sheriff's sale? A. Yes, sir.

Q. Is he here? A. No, sir.

Q. Who saw him about going to this Sheriff's Sale of this property—who went to see him to get him to go to the Sheriff's Sale? A. I did, and my wife.

10 Q. Well, now, who—you or your wife? A. Well, I guess I went there to see him in his office.

Q. And didn't you give him the ten per cent., or whatever it was, that he had to pay to the Sheriff? A. No, Mr. Hansen paid that himself.

Q. Who repaid him? A. Why, we had the money from Mr. Vix already—a thousand dollars.

Q. Your mother-in-law lived with you, did she not? A. Yes, sir.

20 Q. For how long a period? A. Well, ever since we were married.

Q. Up to the time of her death? A. Yes, sir.

Q. And that was how many years? A. In 1871, when we were married.

Q. And you never charged her any board, did you? A. No.

COMPLAINANT RESTS.

30 Mr. Minturn: I ask that the bill of complaint in this case be dismissed, on the ground that there has been no substantiation of the averments and allegations in the bill to sustain the complainant's cause of action. They bring this action predicated upon the theory of fraud, either actual or constructive. They have proved no actual fraud. That I think must be conceded. To maintain the bill, therefore, they must base this claim entirely upon the ground of constructive fraud, and by their own case they present this state of facts—

40

The Vice Chancellor: Are you willing to stand on their case, and not introduce any evidence?

Mr. Minturn: No, sir.

The Vice Chancellor: Then the Court of Chancery cannot grant any motion to nonsuit. If you are willing to rest your case where it is now, I will deal with it.

Mr. Minturn: I would like to have the entire case presented to the Court, but there seems to me an utter failure of proof here. 10

The Vice Chancellor: Unless you are willing to stand upon that failure the Court cannot consider the matter, unless the case is all in.

20

THE CASE FOR THE DEFENDANTS.

RUDOLPH F. RABE, Esq., sworn:

BY MR. MINTURN:

Q. You are a practicing attorney of this state and a solicitor of this court? A. Well, I am, but not practicing very much in this state; I am in the adjoining state of New York.

Q. You have been a practicing attorney of the State of New York for how long? A. Since May, 1869. 30

Q. And you have resided in the City of Hoboken how long? A. I have resided in the City of Hoboken since 1871 or '72.

Q. Were you acquainted with Louis Hauenstein and his wife? A. I was.

Q. How long have you known them? A. Over twenty-five years.

Q. Were you acquainted with Hauenstein & 40

Weiss? A. I was.

Q. When they were conducting a brewery up at Guttenberg? A. Yes.

Q. Did you have charge of their affairs? A. I had charge of their New York matters, and, incidentally, of their New Jersey matters, whatever they were, excepting litigated matters.

Q. Were you also attorney for Mr. and Mrs. Hauenstein? A. I was.

10 Q. I show you two deeds which are marked for identification G. W. B. 1 and G. W. B. 2; will you look at those deeds and state whether they were drawn in your office? A. They were drawn in my office.

Q. Under your advice? A. Yes, sir.

Q. Now, explain to the Court, if you will, how those deeds came to be drawn, under what circumstances? A. They came to be drawn under the following circumstances: Hauenstein & Weiss wanted malt from a man named S. K. Nestor of Geneva, New York; Mr. Nestor would not sell them unless he had endorsements or security. Mrs. Schoening, who was the mother of Mrs. Hauenstein, agreed to endorse the notes and secure them in some way to Nestor, or secure him for his malt, but wanted Mr. Hauenstein to place the homestead property in the name of her daughter.

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Q. That is the property in question in this suit? A. The property in question, conveyed by these two deeds. I had several interviews with them at their home in Union Hill, and, on one or two occasions, at the office. The substantial items about these transactions, and which have recalled them all to my recollection, are contained in our registry, and I have examined that very recently and found the facts relative to it to which I am now testifying. The indebtedness to Samuel K. Nestor amounted to as much, I think, as ten or fifteen thousand dollars. Mrs. Nestor mortgaged her real estate to Nestor. Those papers were drawn in our

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office, and she endorsed notes, or gave notes of her own to Nestor, and these deeds were drawn there in the handwriting of my present partner and then partner Mr. Ferdinand W. Keller, who at that time was not married, and it was a mere conveyance to him so as to vest title in the wife. There was no consideration paid to Mr. Hauenstein, or passing between Mr. Keller and Mrs. Hauenstein.

Q. Now, will you explain what Mrs. Schoening was expected to do? A. Why, she had to endorse notes, or make notes. 10

Q. For this malt? A. For this malt, to S. K. Nestor, amounting to, I think, as much, finally, as fifteen thousand dollars, if I am not mistaken. And before endorsing the notes she made this insistent—she insisted upon him doing this. I visited them at their home in Union Hill, and she was also at my office on various occasions.

Q. Mrs. Schoening? A. Mrs. Schoening; and said that before going into this thing, as she was venturing her all, she desired the homestead property to be kept for her daughter, Mrs. Hauenstein. I may say that Mrs. Schoening subsequently lost all; she was substantially impoverished, I think. 20

Q. As a result of the endorsements? A. As a result of giving this credit to Hauenstein & Weiss.

Q. Can you explain why these deeds were not recorded until December of 1885? A. My recollection is dim as to that, but I think that was some of Mr. Hauenstein's proverbial negligence. He brought those back for the certificate of the County Clerk and did not call for them for a long time, and thus the matter was forgotten at our office. I recollect they were there for a year before he called for them to have the County Clerk's certificate attached. That is about how it was. He took them away when they were drawn. 30

CROSS-EXAMINATION BY MR. ABBETT:

Q. Were you acting for Mrs. Schoening in this 40

matter? A. For all the parties.

Q. How was it you did not yourself record these two deeds? A. Mr. Hauenstein resided in New Jersey. I gave them to him to deliver to his wife and have him see to their being recorded and one of them to be executed that had not been executed at our office, it had to be executed in New Jersey; he took them away on the 14th of July, I think, or the 15th, and this one from Louis C. Hauenstein and wife to Mr. Keller was taken away by him to be executed by him and his wife in New Jersey.

Q. Well, the one from Mr. Keller to Mrs. Hauenstein was executed, then, before the other one, was it not? A. No, not necessarily.

Q. You don't recollect about that? A. I don't recollect about that. They were drawn perhaps a day or two before. I cannot tell as to that.

Q. They were executed, I suppose, on the day of their acknowledgement? A. Oh, there is no doubt about that. Let me see. There is no dispute about that. They were acknowledged before Mr. Seaman; he was our notary at that time, and is now dead.

Q. Were they ever put into the hands of Mr. Hauenstein before the day that he took them from your office and took them away in July? A. The one deed from himself and wife to Mr. Keller was given to him to take to New Jersey and have it acknowledged.

Q. When was that, do you remember? A. That may have been the day before.

Q. You are not sure about that? A. I am not sure about that. If you will allow me to look at my memorandum, an extract from our registry, it may refresh my recollection.

Q. I have no objection to that at all. A. (After examining a memorandum now produced) It does not appear. It shows that on the 14th of July, 1884, Mrs. Schoening was in, and that a chattel mortgage was prepared to Mrs. Schoening from

Hauenstein & Weiss to secure her for endorsement or guarantees to various people; it may have been on that day.

Q. That is a chattel mortgage on the brewery to Mrs. Schoening to secure her for certain endorsements? A. To secure her for endorsements, or for guarantees which she had given.

Q. Including this Nestor matter, too? A. Yes, I think so.

Q. Now, you saw the original answer in this suit before it was filed, didn't you, Mr. Rabe? A. Well, I may have seen it, but I don't think that I perused it very thoroughly. 10

Q. And you saw the stipulation that was signed, that has been introduced in evidence, before it was signed, did you not? A. The stipulation?

Q. About admitting certain facts, and admitting certain copies of papers?

The Vice Chancellor: I now hand the witness the paper referred to. 20

A. I think Mr. Minturn spoke to me generally about a stipulation to relieve the solicitor of the complainant from the necessity of producing certain documents, and I have told Mr. Minturn to facilitate them as much as possible; but I do not think that I examined the stipulation.

Q. And did you not know anything about these deeds that have been referred to here and marked for identification at that time? A. No, I hadn't examined my registry. That matter was not known until I think a month or six weeks ago when this case was to be tried before, when Mr. Minturn said he would want me as a witness; I then examined our registry and found these facts, and then the recollection came back. 30

Q. Now when, do you recall, did the firm of Hauenstein & Weiss fail, or make an assignment? A. As near as I can recollect, in 1886, early. They 40

made no assignment.

Q. Well, they practically failed, or stopped business? A. No, they sold the brewery to Louis Kraemer for nothing, no consideration, excepting the assumption by Kraemer of the Nestor mortgage and these various things that had been put upon the brewery to enable them to buy hops and malt.

10 Q. And those were the securities or endorsements given by Mrs. Schoening? A. By Mrs. Schoening, for malt or hops, I forget what it was now—either one or the other.

Q. For material needed in the brewery? A. Yes, sir; for material needed in the brewery.

Q. Do you remember in what part of the year 1886 that happened? A. Well, it must have been early; or late in 1885.

20 Q. Does your memoranum from your docket show that? A. Yes, I see a memorandum, October 2d, 1885, that Mr. Manning and Mr. Kraemer were in,—John B. Manning of Buffalo. He thought then that he would take a chance at this brewery; he is a maltster, and his man is Louis Kraemer, and he gave further credit to Kraemer. Kraemer took the brewery subsequently. Negotiations, I see, were going on in the Fall of 1885. "Mr. John B. Manning and his agent in"—I am now reading from my extract—

30 Q. Well, just look at it, and see if that refreshes your recollection? A. Yes, that refreshes my recollection very well.

Q. Well, that was in the Fall then of 1885? A. Fall of 1885.

Mr. Minturn: I offer the deeds heretofore marked for identification G. W. B. 1 and G. W. B. 2, in evidence.

40 (The two deeds are admitted without objection and are now marked respectively Exhibit 1 and Exhibit 2 of Defendants).

CHARLES BERNHEIMER, sworn :

BY MR. MINTURN :

Q. Mr. Bernheimer, what is your business? A. Builder.

Q. Where do you do business? A. West Hoboken, Union Hill.

Q. How long have you been in business? A. Oh, about thirty-five or forty years.

Q. Did you know Mrs. Schoening? A. Yes, sir. 10

Q. Where did she live? A. She lived in Union Hill.

Q. She was the mother-in-law of Mr. Hauenstein? A. Yes, sir.

Q. Did you ever make any arrangement with her about building a house? A. Yes, sir.

Q. Where?

Mr. Abbett: I object. That is not material. I don't know that there is any dispute about that fact. 20

Mr. Minturn: If it is admitted that this building was erected by Mrs. Schoening at the expense of \$3,500 I will not press this question. That is all I want to prove.

Mr. Abbett: I have no doubt this witness will testify to that, but I think it is immaterial and irrelevant.

The Vice Chancellor: What is the purpose of this? 30

Mr. Minturn: Mr. Abbett opened it. I supposed he would lay stress on that, and I want to lay all the facts in connection with this transaction fairly and squarely before the court, that is all. I propose, by this witness, to prove that he constructed this house at the request of Mrs. Schoening, that Mrs. Schoening paid for it, and that it cost \$3,500. 40

The Vice Chancellor: All right, I will permit you to do that.

(Question repeated). A. Union Hill.

Q. Where did you build the house? A. Union Hill, Morgan Street.

Q. Is that the same house in which Mr. Hauenstein lives? A. Same house.

10 Q. How much did that house cost to build? A. I think it cost about \$3,500 or \$3,600.

Q. Who did you make the arrangement with for building the house? A. Mrs. Schoening.

Q. Who paid you? A. She did.

Q. Mrs. Schoening? A. Yes, sir.

Q. Did she pay you by cash or by check? A. By checks.

CROSS-EXAMINATION BY MR. ABBETT:

20 Q. Which side of the street is that house on that you built? A. South side of Morgan Street.

Q. Who went over the plans and arrangements of that house? A. There was no plans. I lived in a house in Union Hill at that time, and she looked at that and said she wanted a house like that.

Q. Wanted it duplicated? A. Yes, that's it.

GEORGE VIX, sworn:

80 BY MR. MINTURN:

Q. Where do you reside, Mr. Vix? A. 112 Lewis Street, Town of Union.

Q. How long have you resided there? A. At 112?

Q. No, in Union Hill? A. About twenty years, twenty or twenty-five years.

Q. What is your business? A. Essential oils, at the present time.

40 Q. Are you acquainted with Mr. and Mrs. Hauenstein? A. Yes, sir.

Q. Did you ever have any transaction in regard to a loan of a thousand dollars on the Hauenstein property? A. Yes, sir.

Q. With whom? A. With Mrs. Hauenstein.

Q. With Mrs. Hauenstein? A. Mrs. Hauenstein.

Q. Where? A. At my house.

Q. She went to your house? A. She came to my house, with her mother.

Q. Alone? A. No, her mother, I believe, was with her. 10

Q. Her mother? A. Yes.

BY THE VICE CHANCELLOR:

Q. When was this? A. Well, I don't know exactly; that must have been in 1886 or 1887; I can't remember that.

BY MR. MINTURN:

Q. Did she tell you what she wanted the thousand dollars for? A. To save her home, yes. 20

Q. Was it then under foreclosure, do you know, or did she say so? A. I so understood.

Q. Did she say so? A. Well, that I don't know; that I can't remember.

Q. But you made her a loan of one thousand dollars? A. Of a thousand dollars, yes.

Q. Who drew the papers, the bond and mortgage? A. That I can't remember any more.

Q. That mortgage was paid back to you, was it? 30
A. Yes.

Q. How long afterwards? A. I guess it must have been about two years; about two years afterwards.

Q. Who paid it back to you? A. Mrs. Hauenstein.

Q. Do you remember whether Herman Walker drew the bond and mortgage? A. That I can't remember.

Q. You know Herman Walker, do you? Yes, 40

sir.

Q. What is his business? A. Real estate.

Q. Real estate dealer? A. Yes.

Q. Draws bonds and mortgages up there in Union Hill? A. No, in Guttenberg.

Q. Well, that is where Hauenstein lives, is it? A. No, Hauenstein lived in the Town of Union.

10 Q. (Showing witness paper) Is this the bond and mortgage that you had in your possession, executed by Mrs. Hauenstein (said bond and mortgage being dated August 29, 1887, made by Theresa Hauenstein and husband to George Vix)? A. That is right.

Q. Is that the bond and mortgage? A. Yes.

Q. And these were paid off? A. Oh, yes, they were paid off.

Q. It is marked on the bottom "Herman Walker, Guttenberg, N. J."? A. Yes.

20 Mr. Minturn: I offer the bond and mortgage in evidence.

(The bond and mortgage are admitted without objection, and are marked respectively Exhibit 3 and Exhibit 4 of defendants).

CROSS-EXAMINATION BY MR. ABBETT:

30 Q. When did you get this bond and mortgage, do you remember, Mr. Vix? A. When I gave her the money.

Q. When was that, do you remember? A. I cannot remember that; in 1886 or 1887, or about that; it might have been before; I don't know; I can't remember that.

40 Q. And how long after you loaned the money mentioned in this bond and mortgage was this money repaid to you? A. Well, probably about two years, I guess; I ain't quite sure on that, that is too long ago, I can't remember that. About two years, I guess, after that.

Q. And who paid it back to you? A. Mrs. Hauenstein.

Q. Where? A. Well, that I don't know; I don't know whether it was in her house or in my house; it might have been in her house; I wanted my money; I needed it at that time.

Q. And what interest did you get on this bond and mortgage, on this money? A. I think it was six per cent.

Q. And who paid that? A. Mrs. Hauenstein. 10

Q. How often? A. Every six months.

Q. Did she bring it to you in cash or check? A. Well, that I can't remember,—cash or check.

Q. Did you ever receive any of these payments from Mr. Hauenstein? A. No.

Q. Did you ever see him about this transaction at all? A. About that transaction?

Q. Yes, this loan, or payment of interest, or the repayment to you? A. Well, I might, but I can't remember that. 20

Q. Did he ever see you or did you ever see him in regard to the loan originally, or the payment of interest, or the repayment of the principal to you? A. No; I have asked Mr. Hauenstein several times to tell his wife I would like to have the money, that I needed it.

Q. Where did you go to tell him that? A. At his office, I believe, or at his house.

Q. Well, didn't you go to Mrs. Hauenstein? A. Well, I believe I went to the house. 30

Q. What? A. Either to the house, or the office; that I can't remember.

Q. Who did you go to see about it? A. Well, I seen Mrs. Hauenstein.

Q. Didn't you see Mr. Hauenstein? A. And I also told Mr. Hauenstein that I needed the money.

Q. Who drew up the receipt on the back of this mortgage that you signed? A. That I couldn't tell any more.

Q. Where were you when the money on this 40

mortgage was repaid to you? A. That I can't remember; I don't know whether it was paid at my house, or at Mr. Hauenstein's house; that I can't remember; I know I received the money for it.

Q. Do you know how it was paid, in check or cash? A. That I can't tell; I can't remember that.

Q. You said something about knowing that the property was being foreclosed, but you weren't sure whether Mrs. Hauenstein told you or not; how did
10 you know it? A. I didn't know it until they asked me for the money, that it was to save the house; that I understood at that time.

Q. Well, you did not know anything about it before that time? A. No, no.

Q. How soon after they asked you for the money did you loan them the money? A. I think it was the same day.

Q. Have you ever loaned them any other money?
A. No, sir.

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LOUIS C. HAUENSTEIN, recalled (for the Defendants):

BY MR. MINTURN:

Q. I show you a deed dated April 2d, 1890, Charles F. Ruh to Theresa Hauenstein—how did
30 that come to be executed, if you know? A. That is a quit-claim deed; that was a tax sale, where the taxes wasn't paid on the property, and Mr. Ruh had bought in the property for taxes, and Mr. Hansen redeemed it for my wife.

Q. Mr. Hansen? A. Yes.

Q. Mr. F. C. Hansen's name is on the bottom of this Quit-Claim Deed; is he the same man you refer to? A. That is the same man; yes, sir.

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Mr. Minturn: I offer that deed in evidence.

(Admitted without objection, and marked Exhibit 5 of Defendants).

Q. Mr. Hauenstein, do you remember, or can you say what you did with the deeds that you received from Mr. Rabe in his office, the office of Rabe & Keller, after they were executed? A. I brought them home and gave them to my wife.

Q. How long did she have them, do you know? A. Oh, that I don't recollect. I had to get a Commissioner in Union Hill. One of the deeds was acknowledged in Union Hill, and I got a Commissioner to come to the house to acknowledge one of the deeds, and I left them with the wife, and later on I suppose I wanted to have them recorded, and I had to bring them back to New York; the certificate was missing on one of the deeds.

Q. You don't know how long your wife had it in her possession, do you, before you brought it back to New York? A. No, I don't recollect that.

Q. Were you acting for your wife in this matter? A. Yes, sir.

CROSS-EXAMINATION BY MR. ABBETT:

Q. When you took these deeds from Mr. Rabe's office, Mr. Hauenstein, did you have any idea of recording them at all? A. Oh, yes.

Q. When did you intend to record them? A. Well, I intended—my intention was to have them recorded right away, but then I suppose I didn't; I forgot about it.

Q. Well, why didn't you do it? A. Well, Mr. Abbett, we had so much trouble, and I had so much on my mind, that very likely I forgot it; I don't recollect.

Q. Well, you had trouble on your mind at the time, did you not? A. Yes, sir.

Q. And why did you decide, in December, 1885, to have them recorded? A. Well, I don't know whether Mr. Rabe called my attention to it; I know

I had to go back to New York to get a certificate.

Q. Well, where were they between the time that you received them from Mr. Rabe up to the time you took them over and got the certificate and had them recorded? A. Well, I couldn't swear to that. I presume they were in the hands of my wife, or I brought them back to New York and left them in New York; I don't recollect that, Mr. Abbett.

10 Q. You don't know where they were? A. No, they may have been in Mr. Rabe's office and mislaid there; I don't recollect; all I know is I brought them home and gave them to my wife and had them acknowledged; whether I took them right back to New York or not I don't recollect any more.

Q. Were they left in your wife's possession at all? A. Certainly; she had them.

Q. She signed them and acknowledged them? A. Yes.

20 Q. Well, I mean after that? A. She might have had them in the house.

Q. Well, did she? A. ~~Well~~, I don't recollect; it is so long ago.

Q. You don't know where they were? A. Oh, they were either home, or were in Mr. Rabe's office.

Q. I mean during that year and five or six months you don't know where they were? A. They were either at my house with my wife, or were at the office of Messrs. Rabe & Keller.

30 Q. Or might they not have been at the Brewery? A. No, they were never in the Brewery?

Q. When do you recollect that this property was ever sold to Mr. Ruh for taxes? A. Well, I don't recollect. Mr. Hansen, I believe, told me about it. that Charles F. Ruh had a tax title.

Q. How long ago was that? A. Well, that must be about five years ago, maybe six; I don't recollect; five years I think it was; about five years.

40 Q. Did you not, in November, 1903, before Mr. Parry, testify as follows: "I don't recollect if the property was at one time sold to Charles F. Ruh

for taxes. I did not purchase from Mr. Ruh a declaration of tax purchase"? A. And I didn't, no.

Q. Did you not testify that way? A. I testified to that.

Q. Who paid Mr. Ruh for this deed? A. Mr. Hansen.

Q. Where did Mr. Hansen get the money? A. Well, he got it at the house; I don't know, perhaps my son gave it to him; that I don't recollect any more; it is about five years ago, six years ago. 10

Q. Well, did the money not come from you? A. I don't think so; I don't think I had money at that time; I think my son Louis advanced it.

Q. Did it come out of the real estate and insurance business in which you were interested? A. No, he never drew a cent out of there.

LOUIS C. HAUENSTEIN, JR., a witness produced on the part of the defendants, being duly sworn, upon examination saith: 20

BY MR. MINTURN:

Q. Mr. Hauenstein, where do you reside? A. Weehawken.

Q. Are you a son of Louis Hauenstein, the defendant here and Mrs. Theresa Hauenstein? A. Yes, sir.

Q. Are you a married man? A. Yes, sir. 30

Q. Are you in business with your father? A. Yes, sir.

Q. How long have you been in business with your father? A. Since somewheres in the beginning of 1890, I believe.

Q. What is the nature of the business? A. Real estate and insurance.

Q. Did you ever advance any moneys, during the time you have been in business with your father, for the purpose of paying taxes, water rent and in- 40

terest? A. Yes, sir; I have helped him out a number of times:

Q. On the Morgan Street property where he resides? A. Yes, sir.

Q. How often? A. Well, a number of times; I couldn't remember; I have given him money maybe thirty or forty times.

Q. Thirty or forty times? A. Yes, sir.

10 Q. In what amounts? A. Sometimes a hundred dollars, sometimes two hundred; I have given him as high as eight hundred—not quite eight hundred, pretty near eight hundred.

Q. Did you ever pay any interest on the mortgage on the property? A. I, myself?

Q. Yes? A. No, sir; I did not.

Q. You gave it to him to pay it? A. I advanced the money to him. He told me some of that money was for that purpose.

20 Q. How about the taxes—have you paid money for the taxes? A. Not directly; no, sir.

Q. Well, through him? A. Oh, well, I suppose he may have used some of this money to pay taxes with. He has always been in, you might say, financial straits.

Q. Who is F. C. Hansen? A. He is a man in the real estate business in Union Hill.

Q. How long has he been in the real estate business? A. As long as I can remember.

30 Q. One of the oldest up there, is he not, in that business? A. I believe he is.

Q. He was formerly Town Clerk of the Town of Union? A. Yes.

Q. He draws bonds and mortgages and papers of that kind? A. I believe he does, yes, sir.

Q. And Herman Walker in Guttenberg is also in the real estate business, is he? A. Yes, sir.

Q. How long has he been in the business? A. Well, ever since I have known him.

40 Q. He also draws legal papers of that character? A. Yes, sir.

CROSS-EXAMINATION BY MR. ABBETT:

Q. Who compose this real estate-insurance firm?

A. Well, I will explain, if the Court will allow, just how the transaction was started. My father had quite some trouble in business, and he came to me one day and told me that he would like to start in the real estate business, and he wanted me to go in with him. He knew I had a little money, and he asked me if I would go in with him and form a partnership, and I agreed to do it; and the understanding also was that I was not to draw any salary from the firm. I at that time advanced I think it was nearly eight hundred dollars, if my recollection serves me right—I think it was nearly eight hundred dollars—and bought all the outfit that is in the office at the present time, that is, in the way of safes, desks, chairs, and well, the office furniture. 10

Q. Well, you don't attend to that business at all yourself, do you? A. Well, I don't take an active part in it; no sir. 20

Q. Who does the active work of that business?

A. My father.

Q. And your brother George? A. He is employed there; yes, sir.

Q. Well, do you know how much, within the last five years, you have loaned your father, from time to time? A. Well, I have loaned him one hundred, two hundred, three hundred and fifty—

The Vice Chancellor: He asks you the aggregate. 30

A. Well, it may be, in round figures, sixteen or seventeen hundred dollars.

Q. And it has all been in the shape of loans to your father? A. Moneys advanced, yes, sir.

Q. Has he repaid any of it? A. I think I got two hundred and fifty dollars back that I loaned him one day for two or three days; I think it was two hundred and fifty dollars. 40

Q. And what he has done with money you loaned him you don't know, do you? A. Well, I think I do. I think he needed it in his business, and to help the family along. I suppose that is what he needed it for.

Q. Well, I mean as to just what amounts he paid here and there you don't know? A. No, I couldn't say.

10 Q. Your active business is connected with the Consumers' Brewing Company, is it not? A. Yes, sir.

Mr. Minturn: I offer in evidence the Sheriff's Deed, dated September 29, 1887, from Ferdinand Heintze, Sheriff of Hudson County, to Theresa Hauenstein, conveying the premises in question under foreclosure of the mortgage of John C. Fick.

20 The Vice Chancellor: It may be admitted.

(Said Sheriff's Deed is marked Exhibit 7 of Defendant).

Defendants rest.

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