

## New-Jersey Court of Errors and Appeals.

BETWEEN

RUSSELL W. ADAMS and JOHN McGRAW, ap-  
pellants,

and

THE HUDSON COUNTY BANK, GEORGE M.  
COFFIN, WILLIAM L. HANFORD, and JACOB  
YOST, respondents,

} On appeal from the  
} Chancellor.

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### BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

Humbly complaining, show unto your Honor your orators Russell W. Adams and John McGraw, that George M. Coffin and William L. Hanford, prior to the nineteenth day of November, eighteen hundred and fifty-three, were engaged in the business of lumber dressing, and were general dealers in lumber, at Jersey City, in this state, and had a mill for the planing of lumber at Jersey City.

And your orators have recently been informed that one Jacob Yost had some connection with and interest in the said business with the said Coffin and Hanford, but had no interest in the real 10  
estate, fixtures, machinery, and chattels used in said business, as your orators believe, and what the nature and extent of the interest of the said Yost was your orators are not informed, and cannot state.

And your orators further show unto your Honor, that the said Coffin and Hanford were the owners of certain real estate at Jersey City, on which the said mill was situated, and which is herein afterwards described, and were also the owners of machinery, fixtures, and other chattels connected with the said lumber business, in none of which property either the said Yost or any other person 20  
than the said Coffin and Hanford had any interest as owners.

And your orators further show, that it is alleged by the said Coffin and Hanford, and by the Hudson County Bank, an institution incorporated under the laws of the state of New Jersey, and doing business at Jersey City, that the said Coffin and Hanford were indebted to the said the Hudson County Bank prior to the seventh day of November, eighteen hundred and fifty-three, to the amount of six thousand dollars, or some other large amount. And your orators show unto your Honor, that having no means of correctly ascertaining the amount of such indebtedness they cannot state  
 10 the same, but leave the defendants, who have the requisite information, to give an accurate statement of said indebtedness, as it then existed.

And your orators further show, that the said the Hudson County Bank held the commercial and business paper of the said Coffin and Hanford as collateral security for their said debt and out of which to make the amount of their claim if possible; and that, on or about the seventh day of November, eighteen hundred and fifty-three, the said the Hudson County Bank solicited the said Coffin and Hanford to confess to them a judgment, which should be a  
 20 lien upon the fixtures and machinery in the said mill, and not upon any stock or other property of the said Coffin and Hanford; and to induce the said Coffin and Hanford to confess said judgment, the said bank agreed with them that the said property upon which the said judgment was to be a lien should remain in the possession of the said Coffin and Hanford, and that the same should not be pressed by a sale, under the execution to be issued thereon, for one year, unless it became necessary for the bank so to do, in order to save the property from the effect of other claims; and that all moneys that should be paid to the said bank by any person liable  
 30 upon the said commercial and business paper so held by the said bank as aforesaid and all moneys paid by the said Coffin and Hanford should be credited upon the said judgment; and that the said bank would credit all moneys which by them might be collected on the said commercial paper upon the said judgment, and to no other purpose whatsoever, until the said judgment was paid. And the said Coffin and Hanford did, under the said promise and understanding, on or about the seventh day of November, eighteen hundred and fifty-three, in the Supreme Court of Judicature of the state of New Jersey, confess a judgment on a bond, for that purpose  
 40 by them executed, in the penal sum of twelve thousand dollars, and which was conditioned for the payment of the sum of six thousand dollars. And the said the Hudson County Bank did, according to

said arrangement, make and deliver to the said Coffin and Hanford an instrument setting forth the agreement by the said bank, so as aforesaid made in relation to the said judgment, which instrument is in the words and figures following, that is to say :

NEW JERSEY SUPREME COURT.

THE HUDSON COUNTY BANK

v.

GEORGE M. COFFIN and WILLIAM L. HAN-  
FORD,

}  
} *In debt.*

Whereas the said Coffin and Hanford are about to confess judgment to the said the Hudson County Bank in the said Supreme Court in the penal sum of twelve thousand dollars, on a bond conditioned for the payment of six thousand dollars : now it is agreed between the plaintiff and the said defendants that the execution to be issued upon such judgment shall be levied only upon the machinery and fixtures in the mill of the said Coffin and Hanford at Jersey City, and not upon any stock or other property of the said Coffin and Hanford. That under the said execution the said machinery and fixtures shall not be sold, or advertised to be sold, for the space of one year from the date hereof, unless a judgment or judgments and execution thereupon shall be obtained and issued against the said Coffin and Hanford, or Yost, Coffin and Hanford, and a levy thereunder made upon the said machinery and fixtures, and a sale thereof advertised under the said judgment or judgments so to be obtained, and execution issued by some third person, and thereby the said the Hudson County Bank be compelled to advertise and sell before the expiration of said period of one year. 20

And it is further agreed, that said Coffin and Hanford, in the mean time, shall pay interest upon the said sum of six thousand dollars, from the date hereof, at and after the rate of six per cent. per annum, payable semi-annually, until the principal sum is paid ; and that in case the said Coffin and Hanford do not pay the said interest at the time it becomes due, and the same remains unpaid for thirty days thereafter, the plaintiff shall be at liberty to proceed upon the said execution. 30

And it is further agreed, that all moneys that shall be paid to the said plaintiff, by any person liable upon the securities, checks, and

notes now held by said plaintiff, (which forms the basis of indebtedness for which judgment is now confessed, and for which a mortgage is this day given,) and amounting to about twenty-three thousand dollars, and all moneys paid to the said plaintiff by Coffin and Hanford, shall be credited upon the said judgment, and not upon said mortgage, until said judgment is paid.

And further, that the said the Hudson County Bank shall be at liberty to collect any moneys due upon checks, notes, or other securities for which said judgment is confessed and mortgage given  
 10 from any other person than Coffin and Hanford, or Yost, Coffin and Hanford, but shall apply all such moneys to the payment of the judgment so to be confessed, and to no other purpose whatever, until judgment is paid; and that direction shall be given to the officer who shall receive the execution, in conformity with the above agreement, to stay the advertisement and sale of said machinery and fixtures, and with the agreement to levy upon nothing but said machinery and fixtures. And it is further agreed, that the property levied upon shall be left in the hands of the defendants, as storekeepers for the sheriff, for the benefit of the plaintiff, and  
 20 that in case of any proceedings by or in behalf of third persons, or by or in behalf of the defendants, contrary to the true object and intent of this stipulation, or whereby the interest of the

in this matter may be prejudiced, then the said execution to be enforced, the object of this agreement being to secure to the plaintiffs the priority of their lien under said execution.

In case of any error in favor of the defendants in the calculation of the amount due from them, whereby it should appear that less than twenty-three thousand dollars (the amount of said judgment and said mortgage) is now due to the plaintiff from the defendants,  
 30 such balance in favor of the defendants shall be deducted from and be considered as a payment on account of said judgment.

November 7, 1853.

Signed,

A. T. SMITH,

*Cashier Hudson County Bank.*

J. D. MILLER, *Att'y.*

And your orators further show unto your Honor, that the said mill property of said Coffin and Hanford was subject to mortgages to about the sum of thirty-one thousand dollars, and the fixtures  
 40 and machinery were subject to the lien of the said judgment of six

thousand dollars, provided nothing was realized on the said commercial paper so as aforesaid held by the said bank, and which were pledged, first, for the satisfaction of the said judgment, and provided said judgment was not otherwise reduced, and if only part of the amount of the said judgment was realized on the said commercial paper, or otherwise, then the said fixtures and machinery were subject to pay the balance of the said judgment, so that the said fixtures and machinery were conditionally subject to the said judgment of six thousand dollars.

And your orators further show, that the said Coffin and Hanford 10 were indebted to your orator, Russell W. Adams, nearly ten thousand dollars; and inasmuch as the said mill property was encumbered to nearly its value, the said Coffin and Hanford were willing to convey the said mill property subject, as aforesaid, to the said encumbrances to your orator, Russell W. Adams, and also to give to your orator a bill of sale for certain machinery and other property herein after stated, and also agreed that your orator aforesaid should have the benefit of all the securities so as aforesaid placed as collateral with the said bank.

And your orators further show, that the said George M. Coffin 20 and Sarah A. H. his wife, and William L. Hanford and Mary his wife, on the said nineteenth day of November, eighteen hundred and fifty-three, made, executed, and delivered to your orator, Russell W. Adams, their warranty deed in fee simple for the said mill property and its appurtenances, subject nevertheless to several mortgages, amounting to thirty-one thousand dollars, and contingently subject to the judgment of six thousand dollars, held as aforesaid by the Hudson County Bank. And the said premises so conveyed, and the encumbrances to which the same is subject, are in the said deed described and stated as follows, to wit: All that 30 certain parcel of land, being sixteen lots of ground, situate, lying, and being in Jersey City, in the state of New Jersey, bounded and described as follows, to wit: beginning at a point on the westerly line of Hudson street, as the same is laid out on the authenticated maps of said Jersey City, distant one hundred feet southerly from the northeasterly course of Hudson and Bay streets, running thence westerly, in a straight line through the centre of the block to the easterly line of Greene street, four hundred feet; thence northerly, along the said easterly line of Greene street, to the corner formed by its intersection with the southerly line of Bay street, 40 one hundred feet; thence easterly, along the said southerly line of Bay street, four hundred feet, to the westerly line of Hudson



cular saws, two planing machines, turning lathe, and an iron plane, and all other machinery and its appurtenances and tools now owned or belonging to the parties of the first part, and in their possession at their planing and saw mill in Jersey City, (no machinery for the grinding or manufacturing of paint included in this sale); the schedule hereto appended more fully describes and mentions the property sold and intended to be sold, to have and to hold the said two steam engines and boilers, and all other property above mentioned or set forth in said schedule, unto the said party of the second part, his executors, administrators, and assigns, for his and 10 their own use and benefit for ever. And we, the said parties of the first part, for ourselves, our heirs, executors, and administrators, do covenant and agree, to and with the said party of the second part, his executors, administrators, and assigns, to warrant and defend the sale of the said property, and the whole thereof, against all and every person and persons whomsoever, subject nevertheless to such just and lawful encumbrances as are now a charge upon the same. In witness whereof, we have hereunto set our hands and seals this eighteenth day of November, in the year of our Lord one thousand eight hundred and fifty-three. 20

Signed, sealed, and delivered in the presence of

GEORGE M. COFFIN, [L. s.]

WM. L. HANFORD, [L. s.]

Schedule referred to in the annexed bill of sale :

Two steam engines and boilers ; shaftings, beltings and drums ; one upright saw ; three circular saws ; one gig saw ; two planing machines ; one iron plane ; one do. lathe ; two matchers and all other machinery and tools and their appurtenances ; ten piles lumber on Bay street ; forty thousand feet, lying in stocks, on Bay street ; sixty thousand feet on Greene street, along side the mill 30 and on the opposite side of the street.

And your orators further show, that your orators are informed and believe that the said bank has received a large sum of money upon the notes, checks, and commercial paper so left, as aforesaid, with the said bank by the said Coffin and Hanford ; and your orators do not know what the whole amount so by them received is, but are satisfied and aver that the said bank has not received less than five thousand and fifty-four dollars ; and your orators respectfully insist, that whatever the amount is that the said bank has received on the said notes, checks, and commercial paper so left with

said bank your orators are entitled, as well by virtue of the stipulation given to Coffin and Hanford by the said bank, at the time the said judgment was confessed, as by the fact, that the said Coffin and Hanford, as part consideration for the extinguishment of the debt of the said Russell W. Adams, did agree that the said Adams should have the benefit of the said collaterals in the hands of the said bank, to have the amount so by the said bank received credited upon the said judgment.

10 And your orators further show, that now the said bank refuses to allow your orators any credit whatever upon the said judgment, but say they intend to apply the same to the extinguishment of other claims they have, or pretend to have, upon the said Coffin and Hanford, and are about to cause the said judgment to be enforced against the property of your orators, so as aforesaid purchased of the said Coffin and Hanford, although your orators are ready and willing and desirous to pay any amount which, under the said stipulation, may be due after the moneys received by the said bank have been credited according to said stipulation.

20 And your orators further show, that the said Coffin and Hanford are also now desirous of depriving and endeavoring to deprive your orators of the benefit of the stipulation made in relation to the said judgment, and of the benefit of the agreement made at the time your orator, the said Adams, so as aforesaid extinguished his said claim against the said Coffin and Hanford, and are desirous of casting the payment of the entire judgment upon your orators. And your orators respectfully submit to your Honor, that the said bank can have no greater claim or demand against the property upon which the said judgment was a lien, and which was purchased by your orators by virtue of the said judgment, than they  
30 could have had upon the same property in the hands of those who sold the same to your orator, the said Adams; but your orators insist that they hold the said property subject to the same encumbrances that it would have been subject to by virtue of the said judgment, qualified by the said stipulation in the hands of the said Coffin and Hanford, and more especially is this so inasmuch as the said Coffin and Hanford agreed that your orator, the said Adams, should have the benefit of the said collaterals in the hands of the said bank; wherefore your orators insist that the actings and doings of the said the Hudson County Bank and of the said George M.  
40 Coffin and William L. Hanford in the premises are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orators.

In tender consideration whereof, and forasmuch as your orators have no complete or safe remedy at and by the strict rules of the common law—to the end, therefore, that the said the Hudson County Bank, George M. Coffin, William L. Hanford and Jacob Yost, and their confederates, when discovered, may true, full, and perfect answer make to all and singular the premises aforesaid; and that the said the Hudson County Bank may be decreed to account to and with your orators for such amount as they have received on the notes, checks, and paper, so as aforesaid left with them by the said Coffin and Hanford; and that the said defendants 10 may be decreed to make a credit upon the said judgment of such amount as, under the said stipulation, the said bank would have been bound to make if the said Coffin and Hanford had not sold the said property to your orator, the said Russell W. Adams; and that the said judgment may, on your orators paying any balance that may remain due thereon, if any, after such credit be satisfied of record; and that the said bank and the said Coffin, Hanford and Yost may surrender over to your orator, the said Russell W. Adams, the checks, notes, and commercial paper left with the said bank as collateral, and afterwards so as aforesaid bargained and 20 sold by the said Coffin and Hanford to the said Adams; and that the said defendants, the Hudson County Bank, George M. Coffin, and William L. Hanford and Jacob Yost, their and each of their servants, attorneys, agents, employees, whether sheriff, constable, or other officer, may be enjoined and restrained by the order and decree of this honorable court from proceeding in any manner to enforce the judgment so as aforesaid confessed to the said Hudson County Bank, and from enforcing any execution issued thereon against the property of the complainants; and that your orators may have such other relief as to your Honor shall seem meet or 30 shall be agreeable to equity and good conscience—

May it please your Honor, the premises considered, to grant unto your orators not only a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said the Hudson County Bank, George M. Coffin, William L. Hanford, their servants, attorneys, employees, whether sheriffs, constables, or other officer, restraining them and every of them, under the penalty that may fall thereon, from proceeding to enforce the said judgment, or enforcing any execution to be issued thereon, but also a writ of subpœna, issuing out of and under the seal of the 40 same court, to be directed to the said the Hudson County Bank, George M. Coffin, William L. Hanford, and Jacob Yost, therein

and thereby commanding them, on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree thereon as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, shall ever pray, &c.

FREDK. T. FRELINGHUYSEN, SEN.,  
*Solicitor for and of counsel with the complainants.*

- 10 State of New Jersey, Hudson county, *ss.*—Russell W. Adams and John McGraw, the complainants in the foregoing bill of complaint named, make oath and say, that the allegations contained in the said bill of complaint, so far as they relate to their acts and deeds, are true, and so far as they relate to the acts and deeds of other persons, they believe them to be true.

R. W. ADAMS,  
JOHN MCGRAW.

Taken, sworn and subscribed before me, at Jersey City, on this 21st day of November, A. D. 1854.

- 20 THEO. FRELINGHUYSEN, JUN., *M. C.*

- State of New Jersey, Essex county, *ss.*—Thomas McGraw, of full age, being duly sworn according to law, on his oath depose and saith, that he was present at the office of A. J. Perry, Number 9 Nassau street, in the city of New York, some time in the month of November, A. D. 1853, when Russell W. Adams, George M. Coffin, and William L. Hanford were present. The said Adams and the said Coffin and Hanford were negotiating together in relation to the satisfaction of a claim of about ten thousand dollars, which it was understood and admitted, by said Coffin and Hanford and Adams, that the said Adams had against them, and which it was proposed by the parties present to satisfy by the sale and transfer to said Adams of the mill property at Jersey City, and machinery, fixtures, tools, and other property there.

Deponent saith, that it was agreed between the said Adams, on the one part, and Coffin and Hanford, on the other, that the debt of the said Adams should be paid and discharged by the conveyance to Adams of the said mill property at Jersey City, and the fixtures, machinery, tools, and other property, subject to the encum-

brances on the said property; and it was then stated, by the said Coffin and Hanford, that the Hudson County Bank had a judgment against them for about six thousand dollars, entered up on a bond conditioned for that sum; and that the said bank held paper as collateral, and that the bank had agreed to credit moneys received on such collateral paper as received upon the said judgment; and it was agreed between the parties that the said Adams should have the benefit of such credits upon the said judgment as they might be afterwards made. The said Coffin and Hanford, or one of them, stated the amount of the collaterals, or about the amount, but de- 10  
 ponent don't recollect the sum by them named. I remember that they stated that the Hudson County Bank held the paper of J. H. Shepard among such collaterals, and think they named the paper of Green and Babcock and of other persons as held among such collaterals. And deponent further saith, that in the month of May last, he called at the office of the Hudson County Bank, and saw the president of the said bank, and asked him what was owing on the said judgment. The said president replied, that it would give him some little trouble to ascertain the amount received from the collaterals, but that it was about four thousand dollars. Then I re- 20  
 marked in this way, I suppose that the four thousand dollars, or whatever it is, has been applied on the judgment, leaving two thousand dollars, or whatever the balance is, still owing, and the said president replied in the affirmative.

Deponent further saith, that while he is a partner with the complainants in the commission lumber business, he has not in any manner assumed the payment of the said judgment, or any part thereof, and has no interest in this suit whatever.

THOMAS MCGRAW.

Taken, sworn and subscribed, November 24th, 1854, at Newark, 30  
 N. J., before me.

THEO. FRELINGHUYSEN, JUN., M. C.

To all to whom these presents shall come or may concern, greeting: Know ye, that we, Yost, Coffin & Hanford, copartners lately in business at Jersey City, New Jersey, for and in consideration of the sum of five hundred and sixty dollars, lawful money of the United States of America, to us in hand paid by Russell W. Adams, have remised, released, and for ever discharged, and by these presents do, for ourselves, heirs, executors, and administrators, remise, release, and for ever discharge the said Russell W. Adams, his 40

heirs, executors, and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law or in equity, which against him we ever had, now have, or which our heirs, executors, or administrators hereafter can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the  
 10 world to the day of the date of these presents.—In witness whereof, we have hereunto set our hands and seals, the seventh day of January, in the year of our Lord one thousand eight hundred and fifty-four.

Sealed and delivered in the presence of

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|-------------------------|---------|
| YOST, COFFIN & HANFORD, | [L. S.] |
| JACOB S. YOST,          | [L. S.] |
| GEO. M. COFFIN,         | [L. S.] |
| By WM. L. HANFORD,      | [L. S.] |

City, county, and state of New York.—Thomas McGraw, of the  
 20 city of New York, of full age, being duly sworn, on his oath saith, that he is acquainted with the handwriting of William L. Hanford, and that the signatures to the annexed release, dated January the seventh, eighteen hundred and fifty-four, being “Yost, Coffin & Hanford,” “Jacob S. Yost,” “Geo. M. Coffin,” “By Wm. L. Hanford,” are all in the handwriting of Wm. L. Hanford, and that the said Wm. L. Hanford attended to the settlement of the affairs of Coffin & Hanford and of “Yost, Coffin & Hanford” with Russell W. Adams, and generally with their other creditors.

THOMAS MCGRAW.

30 Sworn and subscribed, before me, this 18th day of June, 1855, at New York.

MOSES B. MACLAY, *N. J. Com'r.*

State of New York, city and county of New York, ss.—Andrew J. Perry, of full age, being duly sworn, says, that he resides in the city of New York, and has so resided for eight years and upwards; that he is an attorney and counsellor at law, and is now, and has for a number of years last past, been practising as such in said city; that deponent is well acquainted with the complainants in

this action, and has several times seen George M. Coffin, William L. Hanford, and the president of the Hudson County Bank, and that such interviews were in respect to the subject matter of this suit, as set forth in the bill of complaint, which bill deponent has read, and knows the contents thereof.

And deponent further says, that the first interview he had with said Coffin and Hanford was at a hotel in Warren street, New York, and on or about the 19th day of November, 1853, to which place deponent was requested to go, by said Adams, to draught and engross certain conveyances from said Coffin and Hanford to him; that this was in the evening; that when said parties came together, deponent found the terms of the transfer had not been settled, and deponent suggested that all parties should go to deponent's office, which was then at No. 9 Nassau street, in said city, and there, if they should agree upon terms, deponent could conveniently make out the necessary papers; that such suggestion was directly acted upon, and accordingly said Adams, Coffin, Hanford, a man by the name of Follet, and deponent, were together in said office in a short time after such suggestion was made; that Thomas McGraw, whose affidavit is annexed to said bill of complaint, came into said office within a very few minutes after the other parties, and was present during the whole of the remainder of the time; that such interview continued for three or four hours from its commencement, and most of such time was consumed in arranging the terms of transfer and sale of the property in said McGraw's affidavit mentioned and the extinguishment of the demand of said Adams against said Coffin and Hanford; that the terms of the said bargain are truly set forth in said affidavit of said Thomas McGraw, as deponent understood the same at the time such bargain was made, and as he now recollects them to have been; that deponent does not recollect anything about any paper of J. H. Shepard as having been mentioned among said collaterals, but does recollect that it was stated that some of Green and Babcock's paper was held by said bank, as collateral to said judgment.

Deponent further says, that afterwards, and in the summer of 1854, the particular month deponent cannot state, but thinks it was July, deponent had an interview with the president of said Hudson County Bank, at the banking house in Jersey City, New Jersey; that the object of deponent's visit was to get for said Adams and McGraw, complainants, the paper of said Green and Babcock, so held by said bank, deponent then believing that the same might be

collected, and said complainants declining that it should be made available to reduce the amount of said judgment; that at such interview, as well as in one or two subsequent ones in reference to the same subject, said president admitted that a large sum applicable to and credited upon said judgment had been collected from other collaterals deposited by said Coffin and Hanford, or Yost, Coffin and Hanford, for that purpose; that there was no pretence on the part of said president that the whole of the amount of said judgment was still owing; that said president referred deponent  
 10 to Mr. Van Winkle, the counsel of said bank, to talk further about the transfer of such paper to said Adams and McGraw, and deponent saw said Van Winkle about the same, and talked with him; that neither said Van Winkle or the said president ever pretended such paper was held in any way than as collateral to said judgment, and that if any thing should be realized thereon the same would apply upon said judgment.

A. J. PERRY.

Sworn before me, this 19th day of June, 1855.

MOSES B. MACLAY, *N. J. Com'r.*

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June 2d, 1854.

A. J. PERRY, *esq.*

Dear sir,—Will you send me an offer from your client of the money he will pay down, and the shortest time he can make his notes for, and what security he can give. I have thought over the matter, and can see no objections to the arrangement at present, and am disposed to give your client any facility in clearing off the liens on his property.

Yours, &c.,

J. VAN WINKLE.

30 State of New York, city and county of New York, *ss.*—Andrew J. Perry, of said city, being duly sworn, says, that since making his affidavit, on the 19th day of June, 1855, in this action, his attention has been called to the annexed note of J. Van Winkle, the same person in said former affidavit mentioned as the counsel of said bank; that said note had been put into the hands of complainant's solicitor at or about the time of the commencement of this action, and had escaped deponent's recollection until his attention was called to it as aforesaid; that the same was written to and de-

livered to deponent during the time of said negotiations for the said paper of Green and Babcock, held by the said bank as collateral to said judgment, and relates to such negotiations entirely; that complainants offered to replace said Green and Babcock's paper by their own notes, due when the said judgment should become due—the said last mentioned notes, however, not to exceed in amount the sum which was then owing upon such judgment; but the said Hudson County Bank desired some money to be paid, and the notes of complainants and other securities, before it would consent to allow complainants to take such Green and Babcock securities; that the prospect of collecting said last mentioned securities was not sufficiently good to induce complainants to accept said offer, and the negotiations were, after a little time, entirely dropped. 10

A. J. PERRY.

Sworn before me, this 23d day of June, 1855, in the city of New York.

MOSES B. MACLAY, *N. J. Com'r.*

Upon reading the bill of complaint in this cause, and the affidavits thereunto annexed, and on motion of Frederick T. Frelinghuysen, of counsel with the complainants—

It is ordered that, upon filing the said bill and affidavits, an injunction do issue, according to the prayer of said bill.

Dated November 24th, 1854.

B. WILLIAMSON, *C.*

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New Jersey, *ss.*—The state of New Jersey to the Hudson County Bank, George M. Coffin, and William L. Hanford, their servants, attorneys, agents, and employees, whether sheriff, constable, or other officer.

Whereas it has been represented to us, in our Court of Chancery, that Russell W. Adams and John McGraw have filed their bill of complaint against you, the said the Hudson County Bank, George M. Coffin, William L. Hanford, and Jacob Yost, praying relief touching the matters therein contained, and alleging therein, among other things, that you, the said the Hudson County Bank, 30

threaten and intend to enforce a certain judgment, for about six thousand dollars, by you obtained against the said George M. Coffin and William L. Hanford in the Supreme Court of Judicature of the state of New Jersey, on or about the month of November, eighteen hundred and fifty-three, by levying on and selling certain property purchased by the said complainants of the said George M. Coffin and William L. Hanford; and that the said judgment is entitled to be reduced by a credit thereon of not less than five thousand and fifty-four dollars, which you, the said the Hudson County Bank  
 10 refuse to make or allow; and that you, the said George M. Coffin, William L. Hanford, and Jacob Yost are confederating with and aiding the said the Hudson County Bank in that behalf; and that the actings and doings of you, the said the Hudson County Bank, George M. Coffin, and William L. Hanford and Jacob Yost are contrary to equity and good conscience.

Now, therefore, we do strictly command and enjoin you, the said the Hudson County Bank, George M. Coffin, and William L. Hanford, under the penalty that may fall thereon, that you and each of you, your and each of your servants, attorneys, agents,  
 20 and employees, whether sheriff, constable, or other officer, do absolutely desist and refrain from proceeding in any manner to enforce the said judgment, and from enforcing any execution issued thereon against any of the property of the complainants, or either of them, until our said court shall have made other order to the contrary.

Witness the Honorable Benjamin Williamson, our Chancellor, at Trenton, the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

DAN'L B. BODINE, *Clk.*

30 FRED'K T. FRELINGHUYSEN, *Solicitor.*

State of New Jersey, Essex county, *ss.*—Alfred D. Benners, of full age, being duly sworn according to law, on his oath saith, that on the twenty-ninth day of November, A. D. 1854, he served the foregoing injunction on Mr. Cassedy, the president of the Hudson County Bank, and on William L. Hanford, by leaving a copy thereof with each of said persons, and showing them the foregoing original injunction, and informing them of the contents thereof.

ALFRED D. BENNERS.

Sworn and subscribed, December 11th, 1854, at Newark, N. J.,  
 40 before me.

THEO. FRELINGHUYSEN, JUN., *M. C.*

*The joint and several answer of George M. Coffin, of the city of Troy, in the state of New York, and of William L. Hanford, of Jersey City, in the county of Hudson, in the state of New Jersey, two of the defendants to the bill of complaint of Russell W. Adams and John McGraw, complainants.*

These defendants, now and at all times saving to themselves all benefit of exception to the bill of complaint of said complainants, for answer thereto say—

That these defendants admit that, prior to the nineteenth day of November, eighteen hundred and fifty-three, they were engaged 10 in the business of lumber dressing, and were general dealers in lumber at Jersey City, in this state, and had a mill for the planing of lumber at Jersey City; and they admit that the said Jacob Yost had some connection with and interest in the said business with these defendants, but had no interest in the real estate, fixtures, machinery, and chattels used in said business; but what is or was the legal relation or connection of said Jacob Yost to or with these defendants they are unable to state, but say that said Yost had an interest in the profits of said business, and was to be a special partner of these defendants; and these defendants are 20 not enabled to state, from their recollection, whether he did or did not take the proper measures to make himself a special partner.

And these defendants admit, that they were the owners of the real estate on which their mill was erected, and were also the owners of machinery, fixtures, and other chattels connected with the said lumber business, in which said property neither the said Yost or any other person had any interest as owners, except encumbrances might be considered such.

And these defendants, in further answering state, that true it is that these defendants were indebted to the said the Hudson County 30 Bank prior to the seventh day of November, in the year eighteen hundred and fifty-three, to the amount of the said six thousand dollars, and to a much larger amount, and as these defendants believe to about the amount of twenty-three, or twenty-four, or twenty-five thousand dollars; but these defendants do not know the exact amount thereof, and therefore leave the same to be stated by the said the Hudson County Bank, and proved, if they are able to do so.

And these defendants further answering say, that true it is that the said the Hudson County Bank held the commercial and busi- 40

ness paper of these defendants as collateral security for the said indebtedness, and out of which the said the Hudson County Bank, as against these defendants, were entitled to make the amount of their debt.

And these defendants further answering admit, that the said the Hudson County Bank solicited these defendants to confess to them a judgment for their said debt, which should be a lien upon the fixtures and machinery in the said mill; but these defendants state that the said Hudson County Bank solicited a lien upon all the  
10 property of these defendants, and did not desire to except any property from the lien of the judgment they desired to be confessed by these defendants, and that the exception from the lien of said judgment of certain property, herein after stated, was insisted upon by these defendants as a condition of confessing any judgment.

And these defendants admit, that the said Hudson County Bank did agree with these defendants that the said property which it was (after said request to confess a judgment to be a lien on all the property of these defendants had been refused by these defendants) agreed should be subject to said judgment should remain  
20 in the possession of these defendants, but as to other the terms of said agreement, these defendants say, that the said agreement was reduced to writing, and a copy of the same is hereto annexed, and marked A, which is, with one or two verbal exceptions, the same as is set forth in said bill of complaint. And these defendants state that there was no other agreement between these defendants and the said the Hudson County Bank of the terms or character set forth in said bill of complaint, except said agreement, a copy of which is hereto annexed as aforesaid, and marked A.

And these defendants further answering admit, that these de-  
30 fendants did, under the promise and undertaking contained in said agreement, a copy of which is hereto annexed, and marked A, as aforesaid, and under no other promise or undertaking, on or about the said seventh day of November, in the year eighteen hundred and fifty-three, in the Supreme Court of this state, confess a judgment on a bond, for that purpose by them executed, in the penal sum of twelve thousand dollars, and which was conditioned for the payment of six thousand dollars; and these defendants further answering say, that the said agreement, a copy of which is hereto annexed, and said bond and warrant of attorney to confess judg-  
40 ment were executed and delivered simultaneously, and the said judgment would not have been confessed, nor the said bond and warrant of attorney been delivered, had it not been for the execu-

tion by said bank of said agreement, marked A, as aforesaid, and thereto annexed.

And these defendants further answering admit, that the said mill property of these defendants was subject (after the giving of said mortgage in said agreement recited) to mortgages to about the sum of thirty-one thousand dollars, but whether the said mortgages covered the machinery and fixtures aforesaid these defendants do not remember, but for greater certainty pray leave to refer to said mortgages; and these defendants admit that the fixtures and machinery aforesaid, or so much thereof as were or was levied upon 10 under the execution issued upon said judgment, were subject to said judgment of six thousand dollars; and these defendants deny that there was any such condition that said judgment should be a lien on said fixtures and machinery, provided nothing was realized on said commercial paper so as aforesaid held by the said bank, but the whole agreement between the said bank and these defendants is set forth, as aforesaid, in said agreement, a copy of which is hereto annexed, and marked A, as aforesaid; and these defendants submit to the judgment of this honorable court whether, by and under said agreement, the said commercial paper was pledged 20 first for the satisfaction of the said judgment; and these defendants deny that the said judgment was to be a lien on said fixtures and machinery, only on condition that the same was not otherwise reduced.

And these defendants further answering admit, that if any part of the money due on said judgment was realized to said bank, on the said commercial paper or otherwise, then the said judgment was to be a lien for the balance not realized; but these defendants deny that the said fixtures and machinery were conditionally subject to the balance of the said judgment, and these defendants are 30 advised by counsel, and humbly insist that the same were absolutely subject to the said judgment, but the amount of such lien, as between these defendants and said bank, was to be reduced by as much as was realized on said commercial paper or paid to said bank by these defendants.

And these defendants further answering admit, that they were indebted to the said Russell W. Adams in a large amount, but that, at or about the said nineteenth day of November, in the year eighteen hundred and fifty-three, neither these defendants nor said Adams knew exactly the amount thereof, but it was supposed to 40 be near ten thousand dollars by said Adams, but the same was denied by these defendants.

And these defendants deny that the said mill property was encumbered nearly to its value, but the same was encumbered, as aforesaid, to the amount of fourteen thousand dollars by old mortgages, and to the amount of seventeen thousand dollars by the mortgage of the Hudson County Bank, and to the amount of six thousand dollars by said judgment of said bank, making the encumbrances, in all, the sum of thirty-seven thousand dollars; that no part of the stocks, which was large, and amounted to the sum of seventeen thousand dollars, was at all encumbered; that these  
 10 defendants were not willing to convey the said mill property subject as in said bill is mentioned, but were willing to convey the same and said property mentioned in said bill of sale subject to said encumbrances by mortgage and judgment to the amount of thirty-seven thousand dollars and in liquidation of the said debt of said Adams, provided it amounted to ten thousand dollars.

And these defendants further answering utterly deny, in every particular, that these defendants ever agreed that the said Russell W. Adams should have the benefit of all or any of the securities, or of any part or portion thereof, so as aforesaid in the hands of  
 20 or placed as collateral security with the said bank, or that there ever was any understanding to that effect, and that no allusion whatever was ever made to such agreement by the said Adams or these defendants at the time of giving said deed or bill of sale, or the negotiations prior thereto, and that the same was never suggested by the said Adams or assented to by these defendants, and that no such agreement has ever been made since the execution of said deed and bill of sale in said bill mentioned.

And these defendants further answering admit, that they did, with their wives, on or about the said nineteenth day of Novem-  
 30 ber, in the year eighteen hundred and fifty-three, sign, seal, make, execute, and deliver to said Russell W. Adams, and acknowledge a warranty deed, a copy of which is hereto annexed, and marked *Schedule B*; but these defendants deny that they ever executed any other deed to the said Russell W. Adams than the deed, a copy of which is hereto annexed, and marked *B*; and these defendants utterly deny that the said conveyance of said mill property by said deed was contingently subject to said judgment, but these defendants charge and state the fact to be, that the said mill property and premises described in said deed were thereby made subject, and  
 40 said conveyance was subject, absolutely to the payment of the whole of said judgment, without deduction or allowance; and these defendants admit that the property conveyed by said deed is

accurately described in said bill, and is the property conveyed by said deed, but for greater certainty these defendants beg leave to refer to the said deed, or the record thereof, and the copy thereof hereto annexed, and marked *Schedule B*.

And these defendants further answering say, that they do not know, and have no information, except from the said bill of complaint, that the said Russell W. Adams conveyed the undivided one half part of said mill property to said John McGraw, but believe the same to have been made, yet leave the complainant to make such proof thereof as he may be able to do. 10

And these defendants further answering admit, they executed and delivered to the said Russell W. Adams a bill of sale, which these defendants suppose to be the bill of sale set out at large in said bill of complaint, but these defendants, for greater certainty, beg leave to refer to the original, and to such proof thereof as said complainants may be able to make; but said property so conveyed by said bill of sale was thereby expressly made subject to all encumbrances, among which the said Russell W. Adams knew and understood to be subsisting was the said judgment to the amount of six thousand dollars. 20

And these defendants further answering admit, that the said bank has received a large sum of money upon the notes, checks, and commercial paper so left as aforesaid with the said bank by these defendants, but these defendants cannot accurately state the same, but believe, from the statements received from the officers of said bank, that the said bank has received about the sum of five thousand and fifty-four dollars; but these defendants deny that they agreed with said Adams that he should have the benefit of said collaterals in the hands of said bank, and they also deny that there was any understanding or agreement whatever for the consideration of the extinguishment of the debt due to said Adams, or for any other purpose or in any other manner, between these defendants and said Adams, that the said Russell W. Adams should have the amount so by the said bank received credited upon the said judgment; and these defendants admit that the said bank refuses, and as your orators are advised by counsel and humbly insist, justly refuses, to give the said complainant any credit whatever upon said judgment; and these defendants believe it to be true that the said bank intend to apply the same to the extinguishment of the claims they have against these defendants, as to which these defendants 30 are willing to submit to the judgment of this honorable court; and these defendants believe that the said bank are about to cause the

said judgment to be enforced against so much of the said property so as aforesaid purchased by the said Russell W. Adams from these defendants, but purchased expressly subject to said judgment, as was levied upon by virtue of the execution issued upon said judgment; and these defendants deny that the said bank intend to enforce said judgment against any property of said complainants which was not levied upon as aforesaid or against the stock of lumber on hand at the time of the sale to said Adams.

And these defendants further answering deny, as set forth in the  
 10 affidavit of said Thomas McGraw, that at any time before the consummation, or at the time of the settlement between these defendants and said Russell W. Adams, or before the time or at the time of giving said deed and bill of sale, these defendants ever stated that said bank held paper as collateral to said judgment, or ever stated that the said bank had agreed to credit moneys recovered on said collaterals as received on said judgment; and these defendants utterly deny that they ever agreed that the said Adams should have the benefit of such credits upon the said judgment, or that either of these defendants stated, at the time set forth in said  
 20 affidavit of said Thomas McGraw, the amount of such collaterals.

And these defendants further answering say, that the said Thomas McGraw is mistaken, but that these defendants, or one of them, may have since stated the amount of such collaterals, and stated the names of persons whose paper was held as collateral by said bank, but these defendants believe they have not done so.

And these defendants further answering say, that these defendants became and were indebted to many persons, on or about the first day of November, in the year eighteen hundred and fifty-three, and among the rest were indebted to the said the Hudson County  
 30 Bank for money lent and advanced by them to these defendants, and upon notes and securities held by said bank against these defendants; that on or before the seventh day of November, in the year eighteen hundred and fifty-three, the said bank desired these defendants to confess a judgment to them for the amount of the said indebtedness, which, as near as could then be ascertained, was about twenty-three thousand dollars; that these defendants were doing a very large business, and then owned the said mill property so conveyed to the said Russell W. Adams, and the said fixtures, engines, tools, and other things on the premises, besides a large  
 40 stock of lumber, and desired to obtain time for the payment of said indebtedness to said bank, that they might pursue their business of sawing, planing, and preparing timber, and the buying and selling

of timber generally, and declined to confess a judgment to said bank, but offered to give a mortgage upon the said mill property for seventeen thousand dollars, payable in eighteen months, and a judgment for six thousand dollars, which was not to be enforced for one year, except as is set forth in said agreement between these defendants and said bank, provided said judgment should not be a lien upon their stock of lumber, which they desired to work up and sell, and to continue with their available means to buy and sell lumber, and pursue their business, and such proposition was accepted and reduced to writing, and is contained in said agreement annexed, marked *A*; that accordingly these defendants and their wives did execute to the said bank the said mortgage for seventeen thousand dollars, payable in eighteen months, upon said mill property, to which mortgage, for greater certainty, these defendants beg leave to refer; that the same was executed on or about the day of the date thereof, and about the same time was duly recorded. 10

And these defendants did also give a bond and warrant of attorney to confess judgment, under their hands and seals, bearing date the seventh day of November, eighteen hundred and fifty-three, said bond was in the penal sum of twelve thousand dollars, conditioned for the payment of six thousand dollars; that judgment was duly entered on said bond, by virtue of the warrant of attorney aforesaid, in the Supreme Court, on the eighth day of November, eighteen hundred and fifty-three, and execution was thereupon issued, and, being first recorded, was received by the sheriff of the county of Hudson on the ninth day of November, eighteen hundred and fifty-three, and levied upon all the property, except the timber mentioned in the schedule to the bill of sale afterwards made to the said Russell W. Adams, which bill of sale is set forth at large in said bill of complaint, and also levied upon the land in said deed contained, as these defendants believe, but for greater certainty refer to said judgment and execution, levy, and return; that after the said lien upon all of the said property so afterwards sold by these defendants to said Adams, except the stock, had become complete, and after the said Russell W. Adams knew that the said judgment had been entered, and the amount thereof, and that execution had been levied upon the mill, machinery, fixtures, and other property on the premises, except the stock, and on or about the nineteenth day of November, eighteen hundred and fifty-three, the said Russell W. Adams pressed these defendants for payment of the debt due to him; that neither the said Adams nor these defendants at that time knew the exact amount of the in- 30 40

debtedness of these defendants to said Adams, but it was supposed, by said Adams, it was about ten thousand dollars, but these defendants supposed it was about six or seven thousand dollars, and after negotiations had been had with said Adams, for the purpose of securing or paying his said claim, the said Adams agreed with these defendants, that if these defendants would take the said debt (supposed to be) of ten thousand dollars in part payment therefor, the said Adams would purchase the said mill, property, fixtures, and machinery (all of which are mentioned and described in said deed and bill of sale) from these defendants, at the named price of  
 10 forty-seven thousand dollars; and if, upon the examination of the accounts between these defendants and said Adams, it should appear that these defendants were not indebted to said Adams in so large an amount as ten thousand dollars, that he (the said Adams) would pay to these defendants so much money as would make the said purchase amount, with the debt due to said Adams, to the said sum or price of forty-seven thousand dollars; that the mortgages on the property to be conveyed, and afterwards actually conveyed by deed and bill of sale, were stated at thirty-one thousand dollars,  
 20 the said judgment at six thousand dollars, and the said debt due to said Adams at ten thousand dollars, making the said sum of forty-seven thousand dollars.

And in order to induce these defendants to make the sale of said property at that price, the said Russell W. Adams agreed to allow these defendants to purchase said property at the said price of forty-seven thousand dollars at any time within six years, or that these defendants might sell said property for any sum above forty-seven thousand dollars, and that these defendants might retain the overplus; and also, that said Adams would purchase and pay for  
 30 the lumber and stock on hand, to put these defendants in funds to carry on the business, and would further advance to these defendants from twenty to thirty thousand dollars, to enable them to prosecute their business, and that the profits should be divided between said Adams and these defendants, which agreement said Adams never performed.

And said Adams agreed with these defendants to assume the said mortgages to the amount of thirty-one thousand dollars, and said judgment to the amount of six thousand dollars, and agreed to discharge said mortgages and judgment, and save these defend-  
 40 ants harmless therefrom; that the assumption of said mortgages and of said judgment to their full amount was a part of the consideration of said conveyance of said real estate and of the pro-

erty mentioned in said bill of sale, and the payment thereof by said Adams, was computed and considered as a part of said forty-seven thousand dollars, the price agreed upon for said property; that these defendants and said Adams caused clauses to be inserted in both said deed and said bill of sale, that said property should be subject to said mortgages, and also to said judgments; that in pursuance of the agreement on the part of said Adams to give these defendants forty-seven thousand dollars for said property, and to make up that amount to these defendants by the assumption of said mortgages and judgment and the cancellation of his debt, and 10 to pay to these defendants whatever amount it would take added to said mortgages, judgment, and the real amount of debt due to said Adams, the said Adams, on or about the first day of December, eighteen hundred and fifty-three, upon a statement made by said Adams of the amount really due by these defendants, gave to these defendants, or one of them, his note for five hundred and sixty dollars, for the purpose of making up to these defendants the said sum of forty-seven thousand dollars, it having been ascertained, as said Adams informed these defendants, at the time of said deed and bill of sale said Adams had not been entitled to 20 make his claim to the amount of ten thousand dollars allowed him as a credit on said purchase money; that the said note is now in the hands of third parties, and, as these defendants believe, will be paid at maturity, according to the original understanding between these defendants and said Adams.

And these defendants further answering say, that no part of the money received by the Hudson County Bank upon said collaterals was received until after the defendants had conveyed said mill property, machinery, and fixtures by said deed and bill of sale, the first money being received about the twelfth day of December, 30 eighteen hundred and fifty-three, and that the said Hudson County Bank have never credited the same upon said judgment.

And these defendants further say, that on or about the twenty-seventh day of October, eighteen hundred and fifty-four, they caused to be served upon the said Hudson County Bank a notice, of which the following is a copy:

To the Hudson County Bank.—Please take notice that the undersigned, shortly after the entry of the judgment by confession against them in your favor, for the penal sum of twelve thousand dollars, conditioned for the payment of six thousand dollars, sold 40 to Russell W. Adams the land and property levied upon under the execution issued upon said judgment; and that a part of the

consideration of such sale was the assumption, by said Russell W. Adams, of said sum of six thousand dollars, whereby the undersigned, as to so much money as has been or shall be received by you from the undersigned, or from their assets, or out of their collaterals, which were deposited with you, are subrogated to your rights and entitled to enforce from said Adams and his assignees the payment of so much of the moneys mentioned in said judgment as you have received, or shall receive, in manner aforesaid; and when you shall sell you are required to make the whole \$6000, and return all moneys before recorded; and you are further notified not to cancel said judgment, on payment thereof, and that as to so much money so received, as above stated, or to be received, the undersigned are owners of said judgment, and entitled to an assignment thereof to the extent of such moneys; and you are forbidden to release the property levied upon from the lien of such judgment, but are to preserve the lien of said judgment intact for the benefit of the undersigned, to the amount so received by you from them, or out of their assets, or from their collaterals.

Your obedient servant,

COFFIN & HANFORD.

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October 27th, 1854.

That the said judgment is unpaid, unsatisfied, unreversed, and still in force. And these defendants are advised by counsel, and humbly insist, that the payment by the said Russell W. Adams of the said sum of six thousand dollars, secured by said judgment given to said bank, being a part of the consideration of the conveyance by these defendants of the real and personal property mentioned in the deed and bill of sale given by them to said Russell W. Adams, and the said real and personal property in said deed and bill of sale mentioned being by said deed and bill of sale expressly conveyed subject to said judgment, and the said Russell W. Adams having expressly agreed to pay the said judgment and other encumbrances, and the said Russell W. Adams never having paid any part or portion thereof, the said judgment is still a lien for the full amount thereof.

And these defendants are also advised by counsel, and humbly insist, which being defendants in said payment, and personally liable thereon, became the sureties to said Hudson County Bank for the payment (out of said property so sold to said Adams) of said six thousand dollars, and are entitled to all the rights of sureties and to be subrogated to the rights of the creditor, who has been paid out of the assets of these defendants as such sureties as

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aforesaid, and that these defendants are entitled to an assignment of said judgment, or to be secured thereby to such an amount thereof as the said bank has received out of the assets of these defendants; that the said Hudson County Bank is the trustee for these defendants, and bound to enforce said judgment in favor of these defendants; and that such judgment will in this honorable court be kept alive for the indemnity of these defendants, who have been compelled to apply their assets in respect thereof, and that the said Hudson County Bank ought to be allowed to raise said sum of six thousand dollars out of said property levied upon 10 under said execution; that the only object of the said stipulation made by the said the Hudson County Bank with these defendants, in relation to the stay of execution and application of collateral on the said judgment, was to enable these defendants, as soon as possible, to discharge the lien of the judgment, and pursue their business; that the reason for making the payment and moneys received apply to the judgment was that the stay of execution was only for a year, whereas the time for the payment of the mortgage was one year and a half; that if the said mortgage had been payable sooner than the said judgment all the payments would have been required 20 by these defendants to have been credited thereon; that the said right to the application of said moneys was personal to these defendants, and the said Russell W. Adams, after assuming said judgment, has no right to claim credit for moneys of these defendants accidentally in the hands of the holders of said judgment; that these defendants, prior to the giving of the notice in writing to the said Hudson County Bank, on the 27th day of October last, had given verbal notice to the same effect to said bank; that the pretence of the said Adams, that he was entitled to the benefit of said collaterals, is fraudulent and corrupt, and is made with the 30 view of reducing the amount he solemnly agreed to pay to these defendants, or for and on their account, for the purchase of said property; that although in the copy of the schedule set forth in said bill, as annexed to said bill of sale, lumber is mentioned, the said lumber was not a subject matter of the contract, and the said lumber must have been inserted therein after the execution of said bill of sale, or if at the time of the execution of the bill of sale it was not noticed by these defendants, as it was expressly understood that said Adams would purchase the said lumber for the purpose of putting these defendants in possession of funds to carry on their 40 business; that these defendants have a right to require, and have required, said bank to raise said sum of six thousand dollars on

said judgment out of the property levied on under the execution issued thereon, and that these defendants should not be restrained from so doing.

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

I. W. SCUDDER,

*Solicitor and of counsel with said defendants.*

New Jersey, Hudson county, ss.—George M. Coffin and William L. Hanford, being duly sworn, on their oath depose and say, that the facts, matters, and things in the above answer set forth, so far as they relate to the acts and deeds of these deponents, are true of their own knowledge, and so far as they relate to the acts and deeds of other persons, these deponents believe the same to be true; these deponents further say, that the said collaterals in said bill and answer mentioned were never pledged for the benefit of said Adams, and were never intended for his benefit, and these deponents never agreed that they should be applied for the benefit of said Adams; that the said Adams agreed to assume the full amount of said judgment unconditionally without deduction.

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GEORGE M. COFFIN,

WM. L. HANFORD.

Sworn and subscribed before me, severally, at Jersey City, this 2d day of December, A. D. 1854.

JACOB WEART, *M. C.*

New Jersey, Hudson county, ss.—Randall F. Follet, being duly sworn according to law, on his oath deposeth and saith, that deponent has read the affidavit of Thomas McGraw, annexed to the bill of complaint of Russell W. Adams and John McGraw against the Hudson County Bank, William L. Hanford, George M. Coffin, and Jacob Yost, filed in the Court of Chancery of the state

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of New Jersey, that deponent, in behalf of Coffin and Hanford and of said Russell W. Adams, made the negotiations between all of the parties, in the month of November of the year eighteen hundred and fifty-three, for the settlement of said account of said Adams and the sale of the mill property; that deponent was the friend of both parties, and carried the several propositions from one to the other during the negotiations; that the said Russell W. Adams was very anxious to purchase the mill property and machinery of the said Coffin and Hanford, situate in Jersey City, provided, as part of the purchase money, the debt due to said Adams from 10 said Coffin and Hanford would be allowed and deducted; that the said Adams agreed to pay a check for thirty-five hundred dollars, which deponent, had held given by said Adams for the accommodation of Coffin and Hanford provided said purchase could be made at the price of forty-seven thousand dollars; that the said price was to be made up to the said Coffin and Hanford by the unconditional assumption of the mortgages on the property and also the assumption and payment by said Adams to the Hudson County Bank of a judgment for six thousand dollars against said Coffin and Hanford; that lumber formed no part of the subject matter of the sale, but 20 the real estate and machinery were the only things to be sold to said Adams; that said Adams was to pay for all lumber on the premises outside of said price for said mill property and fixtures and machinery; that the collaterals in the hands of the Hudson County Bank were not named throughout the negotiations, and that it is not true that the said Coffin and Hanford agreed to give the said Adams the benefit of said collaterals; that said Thomas McGraw was not present until after the negotiations had closed and the papers had been partially or wholly prepared by which the sale was to be carried out, and when he was present was in a different room 30 from the parties to the negotiation; that it was with great difficulty that said Coffin could be prevailed upon to assent to said sale; that said Coffin did not believe the indebtedness was so great as alleged by said Adams, and that it was understood if there was any discrepancy it should be made right on either side; that throughout the whole negotiations (with which said Thomas McGraw had nothing to do) nothing was said about the collaterals in the hands of the Hudson County Bank; that there were several persons besides said Adams who desired to purchase said mill property at that time, and that, in order to induce said Coffin and Hanford to 40 make the sale, said Adams offered, besides paying said check of \$3500, to allow said Coffin and Hanford to make a resale of the

same, and retain the overplus above the price agreed upon, and further promised to allow said Hanford and Coffin, or one of them to go on with the business and to advance large sums of money for the purpose of stocking said mill with lumber, and give them one half of the profits; that the amount of such advances to be made by said Adams were to be from twenty to thirty thousand dollars; that deponent made a memorandum in his own handwriting at the time of the negotiations, and has consulted the same and refreshed his memory therefrom; that the whole negotiation  
 10 and the terms of the sale were settled upon (as finally carried out) at the room of George M. Coffin in the Mercantile, Warren street, New York, and that Thomas McGraw was not there at any time during the negotiations; that all that was done at the office of Mr. Perry was to prevail upon Mr. Coffin to execute the papers.

R. F. FOLLET.

Sworn and subscribed before me, at Jersey city, this 1st day of December, A. D. 1854.

R. C. GILCHRIST, M. C.

New Jersey, Hudson county, ss.—Peter Gordon, being duly  
 20 sworn according to law, on his oath deposeth and saith, that he was the clerk of Coffin and Hanford from about the month of April, A. D. 1853, until after the nineteenth day of November, A. D. 1853; that deponent is well acquainted with the mill property then owned by said Coffin and Hanford at Jersey City, and with the machinery, engines, and fixtures; that about the time of the sale of said mill property, and said machinery, engines, and fixtures to said Russell W. Adams, there were other parties endeavoring to negotiate therefor, and one Davies desired to purchase the same for about the sum of fifty thousand dollars, but the terms  
 30 offered by said Adams, besides giving forty-seven thousand dollars for the said property, were considered better than said offer of said Davies; that Randall F. Follet conducted all the negotiations between said Coffin and Hanford and said Adams; that Jacob Yost knew nothing about the sale or negotiation, and had no interest in the mill property or machinery and fixtures; that said Yost resides in Pennsylvania, and could not, from his own knowledge, admit or deny the facts alleged by the complainants.

PETER GORDON.

Sworn and subscribed, before me, at Jersey City, this 2d day of  
 40 December, A. D. 1854.

JACOB WEART, M. C.

New Jersey, Hudson county, *ss.*—Albert T. Smith, being duly sworn according to law, on his oath deposeth and saith, that he is now and has been from the organization of the Hudson County Bank, cashier thereof; that the indebtedness of Yost, Coffin and Hanford to said bank, for which they confessed a judgment and gave a bond and mortgage to said bank, together amounting to about twenty-three thousand dollars, arose by money advanced by said bank upon checks drawn by said Yost, Coffin and Hanford and by the payment of their notes left in said bank for collection; that all the notes and checks which were held by said bank at the time 10 of giving said bond and mortgage and confessing said judgment, and which are now held by said bank, had been deposited by the said Yost, Coffin and Hanford as cash and for collection, and had been credited upon the bank book of said Yost, Coffin and Hanford, and upon the deposit of said notes and checks then held and still held by said bank, the said Yost, Coffin and Hanford drew against the same, and the said bank paid such drafts (or checks) upon the faith and credit of said checks and notes so deposited, and until the moneys advanced thereon by said bank were included in said bond, mortgage, and judgment, the same were the pro- 20 perty of the said bank absolutely, and not as collaterals, and still remain the property of said bank, or to be held by them as collateral security for the payment of all moneys due said bank, and the same were understood to be so held both by said bank and said Yost, Coffin and Hanford before and since and at the time of giving said mortgage and confirming said judgment.

A. T. SMITH.

Sworn and subscribed, before me, at Jersey City, this 5th day of January, A. D. 1855.

JACOB WEART, M. C. 30

#### SCHEDULE A.

Whereas the said Coffin and Hanford are about to confess judgment to the said the Hudson County Bank in the said Supreme Court, in the penal sum of twelve thousand dollars, on a bond conditioned for the payment of six thousand dollars: now it is agreed between the plaintiff and the said defendants that the execution to be issued upon such judgment shall be levied only upon the machinery and fixtures in the mill of the said Coffin and Hanford, at Jersey City, and not upon any stock or other property of the said Coffin and Hanford; that under the said execution the said ma- 40 chinery and fixtures shall not be sold, or advertised to be sold, for

the space of one year from the date hereof, unless a judgment or judgments and execution thereupon shall be obtained and issued against the said Coffin and Hanford, or Yost, Coffin and Hanford, and a levy thereunder made upon the said machinery and fixtures, and a sale thereof advertised under the said judgment or judgments so to be obtained and execution issued by some third person, and thereby the said Hudson County Bank be compelled to advertise and sell before the expiration of said period of one year.

And it is further agreed, that said Coffin and Hanford, in the  
10 mean time, shall pay interest upon the said sum of six thousand dollars from the date hereof, at and after the rate of six per cent. per annum, payable semi-annually, until the principal sum is paid; and that in case the said Coffin and Hanford do not pay the said interest at the time it becomes due, and the same remains unpaid for thirty days thereafter, the plaintiff shall be at liberty to proceed upon the said execution.

And it is further agreed, that all moneys that shall be paid to the said plaintiff by any person liable upon the securities, checks, and notes now held by said plaintiffs, (which form the basis of the  
20 indebtedness for which judgment is now confessed, and for which a mortgage is this day given,) and amounting to about twenty-three thousand dollars, and all moneys paid to the said plaintiff by Coffin and Hanford, shall be credited upon the said judgment, and not upon said mortgage, until said judgment is paid.

And further, that the said the Hudson County Bank shall be at liberty to collect any moneys due upon checks, notes, or other securities for which said judgment is confessed and mortgage given, from any other person than Coffin and Hanford, or Yost, Coffin and Hanford, but shall apply all such moneys to the payment of  
30 the judgment so to be confessed, and to no other purpose whatever, until judgment is paid, and that directions shall be given to the officer who shall receive the execution, in conformity with the above agreement, to, stay the advertisement and sale of said machinery and fixtures, and with the agreement to levy upon nothing but said machinery and fixtures.

And it is further agreed, that the property levied upon shall be left in the hands of the defendants, as storekeepers for the sheriff, for the benefit of the plaintiff, and that in case of any proceedings by or in behalf of third persons, or by or in behalf of the defend-  
40 ants, contrary to the true object and interest of this stipulation, or whereby the interest of the plaintiffs in this execution may be prejudiced, then the said execution to be enforced, the object of this

agreement being to secure to the plaintiffs the priority of their liens under said execution.

In case of any error in favor of the defendants in the calculation of the amount due from them, whereby it should appear that less than twenty-three thousand dollars (the amount of said judgment and said mortgage) is now due to the plaintiff from the defendants, shall be deducted from and be considered as a payment on account of said judgment.

Nov. 7th, 1853.

A. T. SMITH, 10  
*Cashier Hudson County Bank.*  
 J. D. MILLER, *Att'y.*

#### SCHEDULE B.

This indenture, made the nineteenth day of November, in the year one thousand eight hundred and fifty-three, between George M. Coffin, of the city and state of New York, and Sarah A. H. his wife, and William L. Hanford, of Jersey City, in the state of New Jersey, and Mary his wife, parties of the first part, and Russell W. Adams, of the city of Brooklyn, county of Kings, and state of New York, merchant, party of the second part, witness- 20  
 eth, that the said parties of the first part, for and in consideration of the sum of ten thousand dollars, lawful money of the United States, to them in hand paid by the said party of the second part at or before ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, for ever released and discharged from the same by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part and to 30  
 his heirs and assigns for ever, all that certain parcel of land, being sixteen lots of ground, situate, lying, and being in Jersey City, in the state of New Jersey, bounded and described as follows, to wit: beginning at a point on the westerly line of Hudson street, as the same is laid out on the authenticated maps of said Jersey City, distant one hundred feet southerly from the northeasterly corner of Hudson and Bay streets; running thence westerly, in a straight line through the centre of the block, to the easterly line of Greene-street, four hundred feet; thence northerly, along the said easterly line of Greene street, to the corner formed by its intersec- 40  
 tion with the southerly line of Bay street, one hundred feet; thence

easterly, along the said southerly line of Bay street, four hundred feet, to the westerly line of Hudson street, or to the corner formed by the intersection of Bay and Hudson streets; thence southerly, along the said westerly line of Hudson street, one hundred feet, to the centre point on that line of the block, being the point of beginning, the said described property comprising the said sixteen lots, be the same the said dimensions more or less. And also, all the water front on the said Hudson street side, and all the water privileges thereto attached or in any wise appertaining, so far as

10 the same by law extend, and the whole thereof, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower, and dower right, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties 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, bargained, and described premises, with the appurtenances, unto the said party

20 of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof for ever, subject nevertheless to several mortgages on the same premises held by different parties, the amount payable upon which is in the aggregate upwards of thirty-one thousand dollars, and also subject to a certain judgment, for the sum of six thousand dollars, held and owned by the Hudson County Bank, in Jersey City aforesaid; and the said parties of the first part, for themselves, their heirs, executors, and administrators, do covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first

30 part, at the time of the sealing and delivery of these presents, are lawfully seized in their own right of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid; and that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any

40 let, suit, trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same, and that the

same now are free, clear, discharged, and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances, of what nature or kind soever, except as aforesaid; and also, that the said parties of the first part, and their heirs and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the herein before granted premises, by, from, under, or intrusted for them, shall and will, at any time or times hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns for ever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required. And the said parties of the first part and their heirs the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part and their heirs, and against all and every person and persons, whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents for ever defend.

In witness hereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

G. M. COFFIN,	[L. S.]	
SARAH A. H. COFFIN,	[L. S.]	30
WM. L. HANFORD,	[L. S.]	
MARY HANFORD,	[L. S.]	

Sealed and delivered, in the presence of us, to George M. Coffin and William L. Hanford,

THOMAS MCGRAW.

As to Wm. L. Hanford and Mary Hanford, in presence of Rob't Gilchrist, jun.

State of New York, city and county of New York, ss.—On this 21st day of November, 1853, before me, Richard Goodman, commissioner for New Jersey, personally appeared George M. Coffin 40

and Sarah A. H. his wife, who I am satisfied are the grantors mentioned and described in the within deed, to whom I first made known the contents thereof, and they thereupon acknowledged that they signed, sealed, and delivered the same as their voluntary act and deed; and the said Sarah, being by me privately examined separate and apart from her said husband, acknowledged to me that she signed, sealed, and delivered the same as her voluntary act and deed freely, without any fears, threats, or compulsion of her said husband.

10

RICH'D GOODMAN, *N. J. Com'r.*

New Jersey, Hudson county, *ss.*—On this twenty-first day of November, in the year eighteen hundred and fifty-three, before me, Robert Gilchrist, junior, master in chancery in and for said state, personally appeared William L. Hanford and Mary his wife, who I am satisfied are the grantors named in, and who executed the foregoing deed, and I having made known to them the contents thereof, they thereupon severally acknowledged that they had signed, sealed, and delivered the said deed as and for their voluntary act and deed; and the said Mary, on a private examination  
20 before me separate and apart from her said husband, acknowledged that she had signed, sealed, and delivered the said deed as and for her voluntary act and deed freely, without any fear, threats, or compulsion of her said husband.

ROBERT GILCHRIST, JUN., *M. C.*

A true copy from the original now in my office to be recorded, received 21st November, 1853.

R. GILCHRIST, *Clk.*

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*The answer of the Hudson County Bank to the bill of complaint of  
Russell W. Adams and John McGraw, complainants.*

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

This defendant admits that the said George M. Coffin and William L. Hanford were engaged in business at Jersey City, as in said bill stated, and that they are the owners of real estate, machinery, fixtures, and other chattels, as therein stated.

And this defendant further saith, that the said Coffin and Hanford carried on said business in the name of Yost, Coffin and Hanford; that they kept a bank account with this defendant in such name, and drew their checks, notes, endorsements, &c., accordingly.

And this defendant admits, that the said Yost (Jacob Yost) had 10 no apparent title to the real estate, fixtures, machinery, and chattels used in said business, and this defendant is ignorant of what the legal connection of the said Yost with said Coffin and Hanford was; that the said Yost then resided, as this defendant was informed, in the state of Pennsylvania.

And this defendant further answering saith, that the said Coffin and Hanford, prior to the seventh day of November, eighteen hundred and fifty-three, became indebted to this defendant in the sum of twenty-four thousand five hundred and thirty-nine dollars and forty-one cents, as now correctly computed and ascertained, 20 although on the said seventh day of November it was erroneously computed and estimated to be twenty-three thousand dollars only; that at that time this defendant solicited the said Coffin and Hanford to secure the payment of their said indebtedness to this defendant, which they agreed to do, and for this purpose executed and gave a bond and mortgage, covering their real estate in Jersey City, for the sum of seventeen thousand dollars, payable in eighteen months from the date thereof, with interest at six per cent., and also a bond and warrant of attorney to confess judgment against them for the sum of six thousand dollars, by virtue of 30 which bond and warrant of attorney judgment was entered against them in the Supreme Court of New Jersey, as in said bill of complaint stated.

And this defendant admits, that at the time of the executing and giving the said bond and warrant of attorney to confess judgment, the said Coffin and Hanford insisted upon, and finally obtained from the cashier of this defendant a stipulation or instrument in writing relating to said judgment, and the execution to be thereupon issued, which stipulation or instrument this defendant is informed and believes to be substantially set forth in said bill of 40 complaint.

And this defendant admits, that they did, at the time of the con-

fession of said judgment, hold some commercial and business paper of the said Coffin and Hanford, which had been previously deposited to their account in the usual course of business, and that this defendant hath since that time collected on said business and commercial paper, and credited to their account, several sums of money, a true account of which is contained in *Schedule A*, hereto annexed, and amounting in the whole to the sum of five thousand and sixty-nine dollars and fifty-four cents.

10 And this defendant saith, that the said Coffin and Hanford authorized and requested this defendant to credit the moneys so to be collected to their general account of indebtedness to this defendant, they having been informed and having ascertained that their indebtedness exceeded the sum of twenty-three thousand dollars, as first estimated, so that the amount realized or collected on said business paper should be first applied to the payment of such indebtedness as was not secured either by said judgment or mortgage, as this defendant insists it was lawful and right, and agreeable to common banking use and custom, so to credit such collection, and it has been credited accordingly.

20 And this defendant further says, that on or about the twenty seventh day of October, in the year eighteen hundred and fifty-four, a notice in writing was received by this defendant from the said Coffin and Hanford, of which a true copy, marked *Schedule B*, is hereto annexed.

And this defendant further says, that this defendant had no notice of, and is entirely ignorant of all negotiations, bargains, and transfers between the said Coffin and Hanford and the said complainants, as set forth in said bill of complaint, and cannot therefore answer thereto or to any part thereof.

30 And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

J. D. MILLER,

*Solicitor and of counsel for defendants, the Hudson County Bank.*

## SCHEDULE A.

Yost, Coffin and Hanford,

|                                         |                                                                                                                            | DR.      |       |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------|----------|-------|
| In Account with the Hudson County Bank, |                                                                                                                            |          |       |
| 1853. Nov. 3,                           | To balance due Hudson County Bank,                                                                                         | \$24,539 | 41    |
| 1854. Sept. 26,                         | " cash paid insurance on articles<br>levied on,                                                                            | 50       | 00    |
| " Nov. 21,                              | To cash paid insurance on articles<br>levied on,                                                                           | 50       | 00    |
|                                         | To amount of bill of Van Winkle, at-<br>torney in New York, for legal ser-<br>vices in making collections ( <i>paid</i> ), |          | 10    |
|                                         |                                                                                                                            | 25       | 00    |
|                                         |                                                                                                                            | <hr/>    |       |
|                                         |                                                                                                                            | \$24,664 | 41    |
|                                         |                                                                                                                            | <hr/>    |       |
|                                         |                                                                                                                            |          | CR.   |
| 1853. Nov. 23,                          | By cash collected from Lansing,                                                                                            | \$15     | 33    |
| " Dec. 12,                              | " " collected from "                                                                                                       | 1,004    | 21    |
| " " 29,                                 | " " collected from "                                                                                                       | 1,008    | 25    |
| 1854. Jan. 28,                          | " " collected from Hollister,                                                                                              | 250      | 00    |
| " Feb. 6,                               | " " collected from "                                                                                                       | 500      | 00    |
| " Jan. 23,                              | " " collected from Lansing,                                                                                                | 1,012    | 00    |
| " March 1,                              | " " collected from Hollister,                                                                                              | 785      | 00 20 |
| " " "                                   | " " collected from Townsend,                                                                                               | 252      | 62    |
| " April 28,                             | " " collected from Hollister,                                                                                              | 242      | 04    |
|                                         |                                                                                                                            | <hr/>    |       |
|                                         |                                                                                                                            | \$5,069  | 87    |
|                                         |                                                                                                                            | <hr/>    |       |

## SCHEDULE B.

To the Hudson County Bank.—Please take notice that the undersigned, shortly after the entry of the judgment by confession against them in your favor for the penal sum of twelve thousand dollars, conditioned for the payment of six thousand dollars, sold to Russell W. Adams the land and property levied upon under the execution issued upon said judgment; and that a part of the con- 30  
sideration of such sale was the assumption by said Russell W. Adams of said sum of six thousand dollars, whereby the undersigned, as to so much money as has been or shall be received by you from the undersigned, or from their assets or out of their collaterals, which were deposited with you, are subrogated to your rights, and entitled to enforce from said Adams and his assignees the payment of so much of the moneys mentioned in said judgment as

you have received, or shall receive, in manner aforesaid; and when you shall sell, you are required to make the whole \$6000, and return all moneys before received. And you are further notified not to cancel said judgment on payment thereof, and that, as to so much money so received as above stated, or to be received, the undersigned are owners of said judgment, and entitled to an assignment thereof to the extent of such moneys; and you are forbidden to release the property levied upon from the lien of such judgment, but are to preserve the lien of said judgment intact for  
 10 the benefit of the undersigned, to the amount so received by you from them or out of their assets, or from their collaterals.

Your obedient servants,

COFFIN & HANFORD.

Oct. 27th, 1854.

New Jersey, Hudson county, *ss.*—Albert T. Smith, being duly sworn, on his oath deposeth and saith, that he is the cashier of the Hudson County Bank, that the facts, matters, and things set forth and stated in the foregoing answer, so far as the same relate to the acts and deeds of the said the Hudson County Bank, are true, and  
 20 so far as they relate to the acts and deeds of others, he verily believes them to be true.

A. T. SMITH.

Subscribed and sworn, December 26, 1854, at Jersey City, before me.

JACOB WEART, *M. C.*

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REPLICATION.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that they will aver  
 30 and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said the Hudson County Bank, defendant, is uncertain, untrue, and insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided,



## PETITION OF APPEAL.

## NEW JERSEY COURT OF ERRORS AND APPEALS.

BETWEEN

RUSSELL W. ADAMS and JOHN MCGRAW, ap-  
pellants,

and

THE HUDSON COUNTY BANK, GEORGE M.  
COFFIN, WILLIAM L. HANFORD, and JACOB  
YOST, respondents,} *Petition of appeal.*

10 *To the Honorable the Court of Errors and Appeals in the last resort  
in all causes.*

The humble petition of Russell W. Adams and John McGraw, the appellants in the above stated cause, respectfully shows, that your petitioners find themselves aggrieved by an interlocutory decree, made in the Court of Chancery by the Honorable Benjamin Williamson, esquire, Chancellor of the state of New Jersey, on the day of in a certain cause pending in our said court, wherein the above named appellants were complainants, and the above named respondents were defendants, in this respect, that said interlocutory decree dissolves the injunction there-  
20 tofore issued in said cause.

And your petitioners humbly appeal from the said decree of the Chancellor, which dissolves said injunction, upon the ground that the same is erroneous, and that the said injunction ought not to be dissolved.

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

Dated February 19th, 1856.

30

FREDK. T. FRELINGHUYSEN,  
*Solicitor and of counsel with the above named appellants.*

## OPINION OF CHANCELLOR.

Coffin and Hanford, two of the defendants, were indebted to the Hudson County Bank in a sum exceeding \$20,000. The bank held commercial and business paper of Coffin and Hanford, which had from time to time been deposited to their account in the bank. They were in failing circumstances, and, in order to secure the bank their debt, they executed to the bank a bond and mortgage, covering their real estate in Jersey City, for the sum of seventeen thousand dollars, and also confessed a judgment for the sum of six thousand dollars. At the time of confessing the judgment, an 10 agreement in writing was executed by the bank by which, among other things, it was stipulated and agreed that all moneys that should be paid to the said bank, by any person liable upon the said commercial paper held by the bank, amounting to about \$23,000, and all moneys paid to the bank by the said Coffin and Hanford, should be credited upon the said judgment, and not upon the mortgage, until the said judgment was paid, and that the bank should be at liberty to collect the moneys due upon the said paper, and apply to the said judgment, and to no other purpose, until the said judgment should be paid. The real estate mortgaged to the bank 20 was subject to other mortgages, which, together with the bank mortgage, amounted to about \$31,000.

Coffin and Hanford were also indebted to one of the complainants, Russell W. Adams, in about the sum of ten thousand dollars. To pay this indebtedness, Coffin and Hanford, and their wives, on the 19th day of November, 1853, executed and delivered to Adams their warranty deed in fee simple for the same real estate in Jersey City mortgaged, as aforesaid, to the bank. In the *premises*, the consideration is set out as \$10,000, following the description of the parties. The *habendum* and *tendum* clause is as follows: to have 30 and to hold the above granted, bargained, 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 for ever, subject nevertheless to several mortgages on the same premises, held by different parties, the amount payable upon which is in the aggregate upwards of thirty-one thousand dollars, and also subject to a certain judgment, for the sum of six thousand dollars, held and owned by the Hudson County Bank, in Jersey City aforesaid. Among the usual covenants, is one that the premises "are free, clear, discharged, and unencumbered of and from all 40

former and other grants, titles, charges, estates, *judgments*, taxes, assessments, and encumbrances, of what nature or kind soever, *except as aforesaid.*" Adams has since conveyed one undivided half of the property to John McGraw, the other complainant.

The Hudson County Bank were about enforcing their judgment and execution against the real estate mentioned in the deed and the mortgage. The complainants exhibit their bill to enjoin them.

The equity of the bill is here. It alleges, that when Coffin and Hanford executed and delivered their deed to Adams, they agreed, as part consideration for the extinguishment of the debt they owed him, that Adams should have the benefit of the said securities held, as aforesaid, by the Hudson County Bank, and to have the amount which the bank should receive upon them credited upon the judgment; it alleges that the bank has received the sum of five thousand and fifty-four dollars upon the securities, which they refuse to credit on the judgment, but have applied to the general indebtedness of Coffin and Hanford to the bank.

There is no difficulty between the bank and Coffin and Hanford. After the deed was given to Adams, Coffin and Hanford served a written notice upon the cashier, or president, of the bank, to the effect that they had conveyed the property subject to the judgment, and that the bank must preserve the lien of the judgment upon the property for the benefit of Coffin and Hanford, and not appropriate the assets in their hands to the satisfaction of the judgment.

The whole equity of the bill is denied very fully and circumstantially by the answers, and I think the circumstances of the whole transaction are such, as disclosed by the bill itself, as entitles the defendants to the full benefit of their denial of the complainants' equity.

The allegation of the bill is, that it was part of the consideration between Adams and Coffin and Hanford that Adams should have the benefit of the securities held by the bank, to be applied to the judgment. This is in direct contradiction to the terms of the deed, which makes the mortgages and the judgment part of the consideration. This is not denied by the bill. It admits that the encumbrances upon the property, including this judgment, did not amount to the full value of the property, and that Adams was to pay these encumbrances, but insists he was to have the benefit of the securities to be applied to satisfy, as far as they would, the judgment. Why this agreement, so important to Adams, was not mentioned in the deed, or why it was not reduced to writing, is not in any

way explained. Coffin and Hanford deny that there was any such agreement. They state, circumstantially, what the transaction between the parties was, and their statement is sustained by the writings between them. There is no fraud alleged. The parties rely upon the agreement.

The defendants are entitled to have this injunction dissolved, on the ground that the equity of the bill is denied. They are entitled to a dissolution on another ground, that it is not competent for the complainants to have the benefit of the securities to extinguish the judgment. This is in direct contradiction to the terms of the deed. 10 The deed conveys the property expressly subject to the judgment, and without any qualification. The judgment is made a part of the consideration of the deed. The agreement set up by the complainants is in direct contradiction—it is that the property was only to be subject to the judgment conditionally, and that the grantee was to have the benefit of the grantees' property to pay it; and under that agreement the complainants now claim a credit upon the judgment of \$5054. There is no principle upon which parol evidence of such a character is admissible. It is true the American authorities have been more liberal than the English in admitting parol 20 testimony for some purposes relating to the consideration expressed in a deed. It has been held that the deed is not conclusive as to the amount of the consideration expressed, and although the deed acknowledges the receipt of the purchase money, the grantor is not thereby estopped from showing that it has not been paid. But this is as far as the authorities have gone. If the agreement, alleged to have been made in this case, is competent to be proved, then any essential part of a deed may be varied or contradicted by parol. Here the attempt is not to show that the amount of the consideration money is different from that recited in the deed, but 30 that the consideration passing between the parties and the terms upon which the conveyance is expressed to have been made are totally different, and contradictory to the deed itself. The deed makes the property subject to the judgment absolutely, the alleged agreement only conditionally.

The injunction must be dissolved, with costs.

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