

NEW JERSEY

COURT OF

ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CAUSES.



IN CHANCERY OF NEW JERSEY.

JOHN BENTLEY, Appellant,

vs.

JOHN WHITTEMORE et al., Respondents.

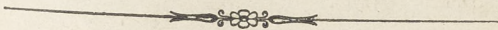
} On bill, &c.

SOCRATES TUTTLE,

*Solicitor for and of counsel with appellant.*

JOHN W. TAYLOR and  
AARON S. PENNINGTON,

*Solicitors for and of counsel with respondents.*



TRENTON :

PRINTED BY HOUGH & GILLESPIE,

Chancery Building, State street.

1867.

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ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CASES

IN CHANCERY OF NEW JERSEY

1857

THE ATTORNEYS AT LAW

BOOTH & TUTTLE

JOHN W. TAYLOR and  
MORON B. BRIDGEMAN

Solicitors for and in counsel with respondents

TRINITY

PRINTED BY HUGH & GILLIS

1857

## COURT OF ERRORS AND APPEALS.

### Bill for Relief and Injunction.

[Filed February 4, 1864.]

*To His Honor Henry W. Green, Chancellor of the State of  
New Jersey.*

Humbly complaining showeth unto your Honor, your orator, John Bently, of the city of Paterson, in the county of Passaic, and state of New Jersey, that John Whittemore, of the city, county, and state of New York, on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, did make and execute a 10 certain deed of assignment for the benefit of his creditors, or some of them, in pursuance of the laws of the state of New York, the date whereof is the day and year above mentioned, wherein the said John Whittemore, survivor of John Whittemore and Company, was the party of the first part, and William Kumbell and David V. Freeman, of the city, county, and state of New York, were the parties of the second part; in and by which deed of assignment the said John Whittemore, for a consideration in the said deed mentioned and expressed, to wit, the sum of one dollar, lawful 20 money of the United States, to him in hand paid by the said parties of the second part in the said deed of assignment mentioned, did grant, bargain, sell, assign, and transfer, unto the said William Kumbell and David V. Freeman, certain tracts or parcels of land and premises, situate in the state of New York, and also the following described tract of land and premises, situate, lying, and being in the city of Paterson, in the county of Passaic, and state of New Jersey. Beginning at the northeast corner of the lot heretofore conveyed by the Society for Establishing Useful Manufactures to the 30 Beaver Woolen Factory, which corner is four hundred and

fifteen feet and six inches northerly from Boudinot street, thence running westerly along said Beaver Woolen Factory lot one hundred feet to the northwest corner of said lot; thence, northerly at right angles seventy feet, more or less, to the Passaic river; thence, easterly down the said river one hundred feet; and thence, southerly seventy feet to the place of beginning. And also, all the stock in trade, tools, implements, machinery, goods manufactured and unmanufactured, and in process of manufacture, and all notes, bills, dues, 10 choses in action, and demands whatsoever, and all other property whatsoever belonging to the said firm of John Whittemore and Company, or to the said John Whittemore as such survivor or otherwise, except his household furniture, and all books of account, vouchers, and securities relating thereto; to have and to hold the same unto the said parties of the second part to the said deed, their heirs, executors, administrators, and assigns forever, in trust, that they sell and dispose of all real estate thereby conveyed, and give good and sufficient deeds therefor, and sell all other property thereby 20 assigned, and collect and receive all moneys due and to grow due on the notes, bills, dues, and demands thereby assigned; and that they apply the net proceeds of such sales and collections, in the first place, to the payment of the expenses of drawing the said deed of assignment and the actual expenses attending the execution thereof; and in the next place, that they pay the several persons and parties named in the schedule hereto annexed, marked *A*, the amounts set opposite their respective names, or so much of said amounts as should be actually due to them after applying all securities or trans- 30 fers or mortgages which either of them might hold for the payment of any indebtedness due to them; provided however, that in case the said proceeds should not be sufficient to pay the several persons in *Schedule A*, after applying as aforesaid, then the said parties of the second part to pay the same ratably and proportionably. And in the next place, after making such payments as aforesaid, should any of the said proceeds remain, that the said parties of the second part should pay the several creditors, and such as should become such by reason of any contract then existing of the said 40 party of the first part and John Whittemore and Company,

the amounts of their respective demands, so far as the said proceeds would enable them to do, and if not in full, then ratably and proportionably to the amounts of their respective demands. And the said John Whittemore, party of the first part to the said deed of assignment, did therein and thereby irrevocably make, constitute, and appoint the said William Kumbell and David V. Freeman his true and lawful attorneys, in his name or otherwise, to collect, recover, and receive the goods, property, claims, and demands thereby assigned or intended so to be, and to do and perform all that 10 should be necessary to be done and performed for the converting the said goods or other property into cash, and collecting and receiving the said dues and demands, as fully and as amply as the said party of the first part to the said deed could do or perform were he personally present and the said assignment had not been made.

And your orator further shows unto your Honor, that the said deed of assignment was duly executed under the hand and seal of the said John Whittemore, party of the first part, and under the hand and seal of the said William Kumbell 20 and David V. Freeman, parties of the second part, and was duly acknowledged by the said parties on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before James V. Hyatt, esquire, a commissioner of deeds of the state of New York; and was also duly acknowledged by the said John Whittemore, the grantor, on the same day and year last aforesaid, before Moses B. McClay, esquire, a commissioner, resident in the city of New York, duly commissioned and qualified under 30 the laws of the state of New Jersey to take the acknowledgment of deeds, &c.; and was duly recorded in the clerk's office of the county of Passaic, in this state, on the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven; reference to the said deed of assignment, the certificates of acknowledgment, and the certificate of the clerk of the county of Passaic thereon, or a duly certified copy thereof now in the custody of your orator, will more fully and at large appear.

And your orator further shows, that the names of the parties and the sums attached to their respective names in the 40

schedule marked *A*, annexed to the said deed hereinbefore mentioned, are as follows, to wit :

	William Kumbell,	-	-	-	\$13,992 14
	Horace and Robert B. Whittemore,	-	-	-	1131 17
	Robert B. Whittemore,	-	-	-	1171 15
	Wm. and C. C. Keeler,	-	-	-	1420 10
	J. F. Tyson,	-	-	-	1200 00
	William Borden,	-	-	-	1000 00
	F. Del Hoys,	-	-	-	900 00
10	E. A. Whittemore,	-	-	-	600 00
	Horace Whittemore,	-	-	-	505 83
	J. Wilder,	-	-	-	500 00
	Keeler & Singg,	-	-	-	300 00
	James M. Frees,	-	-	-	533 13
	O. S. Hathaway,	-	-	-	1390 50
	F. Cole,	-	-	-	187 92
	Paterson Bank,	-	-	-	923 01
	Estate of Jane Muneigh,	-	-	-	425 00

To which schedule your orator, for greater certainty, begs  
20 leave to refer, if it be necessary so to do.

And your orator further shows, that the said William Kumbell, mentioned in the said schedule, is one of the assignees mentioned in the aforesaid deed of assignment.

And your orator further shows, that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman, assignees of the said John Whittemore, pretending to be seized of an estate in fee, in  
30 the said premises, for the consideration of eight thousand dollars, to them in hand paid by your orator, by deed of conveyance under their respective hands and seals, without special covenants of warranty, did grant, bargain, sell, alien, remise, release, convey, and confirm unto your orator, his heirs and assigns forever, all that tract or parcel of land hereinbefore particularly described, situate, lying, and being in the city of Paterson, in the county of Passaic, and state of New Jersey aforesaid.

And your orator further shows, that on the same twelfth day of January, in the year of our Lord one thousand eight

hundred and fifty-eight, the said deed of conveyance so made by the said William Kumbell and David V. Freeman to your orator, was duly acknowledged by the said David V. Freeman and William Kumbell before Ashbel Green, esquire, a commissioner under and by virtue of the laws of the state of New Jersey, resident in the state of New York, and duly recorded in the clerk's office of the county of Passaic on the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, in Book C 2, of Deeds, for said county, as by the said deed of conveyance 10 and the certificate of the clerk of said county endorsed thereon will more fully appear, and to which registry and certificate thereof, so as aforesaid endorsed on the said indenture or deed of conveyance, your orator for greater certainty begs leave to refer, if it be necessary so to do.

And your orator further shows, that on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, and before the making and execution of the said deed of assignment by the said John Whittemore to the said William Kumbell and David V. Free- 20 man, the said John Whittemore made, executed, and delivered to one Mary Morrell a certain indenture of mortgage upon the said lot of land and premises herein particularly described and conveyed to your orator as aforesaid, to secure the payment of the sum of two thousand dollars in one year from the date thereof, with the interest which should accrue or become due thereon; and that the said mortgage was duly acknowledged and recorded in the clerk's office of the county of Passaic; and that the said sum of two thousand dollars intended to be secured by the said mortgage remained un- 30 paid at the time of the conveyance of the said premises to your orator as aforesaid, and that the said mortgage was a lien upon the said premises; and that the said premises were conveyed to your orator subject to the encumbrance of the said mortgage, and that your orator has, since the said conveyance to him, paid the whole of the principal and interest money due upon the said mortgage to the said Mary Morrell.

And your orator further shows, that when the said lot of land and premises were conveyed to him by the said William 40

Kumbell and David V. Freeman as aforesaid, there was a two-story frame building standing in part upon the said lot of land, and in part upon land belonging to the Society for Establishing Useful Manufactures; which said building had long been used as a mill for the manufacture of card clothing, and for other manufacturing purposes; that prior to the purchase by, and conveyance of the said premises to your orator as aforesaid, all the machinery and fixtures which had before been in the said building were removed therefrom,  
 10 leaving the same a mere shell and in a dilapidated condition.

And your orator further shows, that shortly after the purchase and conveyance of the said premises as aforesaid by him, he put the said building in complete repair, putting in new floors and otherwise improving the said property, at a very considerable expense and outlay of money, and that he also converted the said building into a flouring mill, putting therein, at very great expense to himself, several run of stone and all kinds of machinery and fixtures necessary and proper  
 20 for the successful manufacture of flour and feed, and that your orator has been for several years last past, and still is engaged in the business of manufacturing flour and feed in the said mill.

And your orator further shows unto your Honor, that the machinery in said mill has always been run by water power, and that the property in the said water power and the right to use the same, are in your orator, and were acquired by him by a perpetual lease from the Society for Establishing Useful Manufactures, renewable every twenty-one years.

30 And your orator further shows, that the building standing upon the said lot of land, and used as a flouring mill by your orator as aforesaid, is about sixty feet long by thirty-two feet wide, more or less, and that the easterly line of the lot of land herein described and conveyed by the said William Kumbell and David V. Freeman to your orator aforesaid, runs nearly through the middle of said building, leaving about sixteen feet in width, and the whole of the length of the same standing upon land which your orator holds under a  
 40 lease from the Society for Establishing Useful Manufactures, and to which the said John Whittemore or the said William

Kumbell and David V. Freeman never had, or pretended to have, any title.

And your orator further shows, that on or about the twenty-third day of June last, one Samuel Anable recovered a judgment, in the Supreme Court of Judicature of the State of New Jersey, against the said John Whittemore, for the sum of nine hundred and three dollars and forty-three cents debt, and four dollars costs, or some other sum, upon which said judgment a writ of *feri facias de bonis et terris* was issued out of said court, directed and delivered to William Douglass, 10 then sheriff of the county of Passaic; and that the said William Douglass, sheriff as aforesaid, has levied upon the said lot of land and premises of your orator, so conveyed to him by the said William Kumbell and David V. Freeman, under and by virtue of the said writ of execution, as the property of the said John Whittemore.

And your orator further shows, that on or about the twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-three, one Edward W. Walker recovered a judgment in the Supreme Court of Judicature 20 of the State of New Jersey, against the said John Whittemore, for the sum of one thousand six hundred and twenty-four dollars debt and costs, or some other sum, upon which said judgment a writ of *feri facias de bonis et terris* was issued out of said court, directed and delivered to William Douglass, then sheriff of the county of Passaic; and that the said William Douglass, sheriff as aforesaid, has levied upon the said lot of land and premises of your orator, under and by virtue of the said writ of execution, as the property of the said John Whittemore. 30

And your orator further shows, that on or about the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-three, one Ezra P. Howard recovered a judgment in the Supreme Court of Judicature of the State of New Jersey, against the said John Whittemore, for the sum of seven hundred and ninety-nine dollars debt and costs, or some other sum, upon which said judgment a writ of *feri facias de bonis et terris* was afterwards issued out of said court, directed and delivered to the sheriff of the county of Passaic, or to some other sheriff. 40

And your orator further shows, that he is informed and believes it to be true, that the said last mentioned writ of execution was afterwards returned to the said court unsatisfied, in whole or in part; and that an *alias fieri facias de bonis et terris* was afterwards issued out of said court, and delivered to William Douglass, then sheriff of the county of Passaic; and that the said William Douglass, sheriff as aforesaid, has levied upon the said lot of land and premises under and by virtue of the said last mentioned writ of execution, as the  
 10 property of the said John Whittemore.

And your orator further shows unto your Honor, that on or about the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, one Elias Hempstead recovered a judgment in the Supreme Court of Judicature of the State of New Jersey, against the said John Whittemore, for the sum of six hundred and fifteen dollars debt and costs, or some other sum, upon which said judgment a writ of *fieri facias de bonis et terris* was issued and delivered to William Douglass, then sheriff of the county of  
 20 Passaic, to be executed; and that the said William Douglass, sheriff as aforesaid, has levied upon your orator's said lot of land and premises, under and by virtue of the said writ of execution, as the property of the said John Whittemore.

And your orator further shows, that he is informed and believes and therefore charges the fact to be, that the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, all reside in some foreign state or country, and not in the state of New Jersey, and that neither of them  
 30 was a citizen of this state at the time or since the debt for which his said judgment against the said John Whittemore was recovered, as hereinbefore stated, was contracted.

And your orator further shows and charges the fact to be, that the respective judgments recovered by the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, against the said John Whittemore, as aforesaid, were confessed by the said John Whittemore to them respectively; and your orator expressly charges, that the said judgments were, and each of them was fraudulent and void,  
 40 and confessed for no good or legal consideration, and are no lien upon your orator's said premises.

And your orator further shows, that the said William Douglass, sheriff as aforesaid, on or about the twelfth day of October last, advertised the said lot of land and premises of your orator, so purchased from the said William Kumbell and David V. Freeman, as aforesaid, for sale under the aforesaid respective writs of execution, and that he has adjourned the sale of said premises until the sixth day of February instant, at which time he threatens to sell the same by public auction, to the highest bidder, and to make, execute, and deliver a deed therefor to the purchaser. 10

And your orator shows unto your Honor, that he is the true, lawful, and right owner of all and singular the said lot of land and premises, with the appurtenances so conveyed to him by the said William Kumbell and David V. Freeman, as aforesaid, and the said John Whittemore has no right, title, or interest in the same.

And your orator further shows, that the said William Douglass has not any just right or lawful authority, either as sheriff of the county of Passaic, under and by virtue of the said writs of execution or otherwise, to levy upon, advertise 20 for sale, sell or convey, or in any other manner to interfere with your orator's said property; and that such levying upon, advertising for sale, and threatening to sell your orator's said land and premises, puts a cloud upon the title of your orator, greatly reduces the value of the said premises in the estimation of other people, and, if persisted in, will prevent your orator from selling and disposing of the same, if he should desire so to do, in so advantageous a manner as he otherwise might and could do.

And your orator further shows unto your Honor and in- 30 sists, that if the aforesaid deed of conveyance and assignment, made by the said John Whittemore, as aforesaid, to the said William Kumbell and David V. Freeman, is legally defective or void, or if the said deed of conveyance from the said William Kumbell and David V. Freeman to your orator for the said land and premises, should be held to be defective or insufficient to convey any title in the said premises to your orator, yet that your orator is entitled to relief in the premises in this honorable court.

And your orator further shows, that he believes it to be 40

true and therefore charges the fact to be, that the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, are combining and confederating together with divers other persons, whose names are unknown to your orator, to defraud your orator out of the large sums of money paid by your orator to the said William Kumbell and David V. Freeman, as the consideration money for the said lot of land and premises so conveyed to your orator by them, and wrongfully and unjustly to deprive your orator of the large improvements, fixtures, and machinery, now owned by your orator and by him put in and upon the said premises, and greatly to depreciate your orator's said property, break up and destroy his business, and impoverish and wholly ruin him, and also to defraud your orator of the said sum of two thousand dollars, with the interest thereon, so paid by your orator to the said Mary Morrell, in satisfaction of the said mortgage held by her upon the said premises when purchased by and conveyed to your orator, as afore-

10  
20 said.

And your orator further shows, that he is informed and believes it to be true and therefore charges the fact to be, that either the whole or a large part of the sum of six thousand dollars of the said purchase money, so paid by your orator to said assignees for the said land and premises, was received and appropriated by them, or one of them, to their own use or to the payment of his or their individual claim or claims against the said Whittemore; and your orator claims and insists that the said John Whittemore, and the

30 said William Kumbell and David V. Freeman, are bound in equity and good conscience to indemnify, save, and defend your orator against any and all claims and demands of the creditors of the said John Whittemore, as liens upon the said premises, and to protect him in the peaceable and quiet enjoyment of the said premises against all such claims, if any there be.

And your orator further shows, that he has frequently and in a friendly manner applied to the said John Whittemore, William Kumbell, and David V. Freeman, Samuel

40 Anable, Edward W. Walker, Ezra P. Howard, Elias Hemp-

stead, and William Douglass, or some or one of them, and requested them or some one of them, to desist and refrain from advertising or selling your orator's said land and premises under the said respective writs of execution or any or either of them, or in any other manner from interfering with your orator's said premises. And your orator well hoped that no disputes would have arisen touching your orator's said land and premises or his title thereto, or his right to the peaceable and quiet enjoyment of the same, but that the defendants would have complied with such reasonable request of 10 your orator, as in conscience and equity they ought to have done.

But now so it is, may it please your Honor, that the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, combining and confederating together, and with divers persons at present unknown to your orator, whose names, when discovered, your orator prays he may be at liberty to insert herein, with apt and proper words to charge them as parties defendant hereto, and 20 contriving how to wrong and injure your orator in the premises, they, the said defendants, absolutely refuse to comply with such request, and they at times pretend that the said John Whittemore never did make, execute, and deliver to the said William Kumbell and David V. Freeman the said deed of assignment and conveyance hereinbefore mentioned, or any deed of assignment and conveyance for the said lot of land and premises of your orator, and that the said William Kumbell and David V. Freeman never did make, execute, and deliver to your orator the said deed of 30 conveyance, or any other deed of conveyance for the said lot of land and premises of your orator, and that your orator never paid to them, the said William Kumbell and David V. Freeman, the said sum of six thousand dollars of consideration money, or any other sum of money for the said premises, the contrary whereof your orator expressly charges to be true. And at other times they pretend that the said deed of conveyance and assignment from the said John Whittemore to the said William Kumbell and David V. Freeman, is fraudulent and void, or is insufficient to pass any title to the said 40

lot of land and premises of your orator; and that the said William Kumbell and David V. Freeman never had any legal title to the said land and premises under the said deed of assignment and conveyance to them, or otherwise; and that the said deed of conveyance from the said William Kumbell and David V. Freeman to your orator, is fraudulent or void, or was given for no good or legal consideration, the contrary of all which your orator expressly charges to be true. And at other times they give out and pretend that the

10 title to the said lot of land and premises so purchased from the said Kumbell and Freeman of your orator, is in the said John Whittemore and not in your orator, or that he has some right, property, or interest in the said premises; whereas your orator expressly charges the contrary thereof to be true. And at other times they give out and pretend that the said sum of six thousand dollars, part of the said sum of eight thousand dollars, the purchase money of the said land and premises, was not received by the said Kumbell and Freeman,

20 own use or to the payment of his or their individual claim or claims against the said John Whittemore; whereas your orator expressly charges the contrary thereof to be true. And at other times they pretend that the said William Douglass, as sheriff of the county of Passaic, never did levy upon the premises of your orator under and by virtue of the said writs of execution, or any other writs of execution, as the property of the said John Whittemore, and that he never did advertise or threaten to sell the same, or in any other manner to interfere with your orator's said property, title,

30 and estate; whereas your orator expressly charges the contrary thereof to be true.

All which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that the said John

40 Whittemore, William Kumbell, David V. Freeman, Samuel

Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, and the rest of the confederates, when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay, or belief; and more especially 10 that they may answer and set forth whether the said John Whittemore did not make, execute, and deliver unto the said Kumbell and Freeman, as assignees of the said Whittemore, such deed of assignment, or a deed of assignment of such purport and effect as is hereinbefore stated; and whether the said William Kumbell and David V. Freeman did make, execute, and deliver to your orator a deed of conveyance of such date, for such consideration, for the same lot of land and premises, and of such general purport and effect as is hereinbefore stated, or not; and whether the consideration 20 money of eight thousand dollars, mentioned in the said deed of conveyance, has been paid or not, and to whom, and when, and how the same was paid, and whether the said premises were conveyed to your orator subject to an encumbrance by mortgage of two thousand dollars, or some other encumbrance, and if any, what encumbrance, whether by mortgage or judgment, and for what amount; and if by mortgage by whom the same was given, and whether the said encumbrance has since been paid, and by whom, and if the said purchase money, or any part thereof, was paid in cash to the 30 said Kumbell and Freeman by your orator; whether the same or some part thereof, and if any, how much was appropriated by them or either of them to his or their own individual use, or for the payment and satisfaction, either in the whole or in part, of the private claims and demands, or claim and demand of the said Kumbell and Freeman, or of either of them and which of them, against the said John Whittemore.

And whether the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, are citizens of 40

the state of New Jersey or of some foreign state or country, and of what state or country, and in what particular city, town, or place they now reside, respectively, and if they or either of them are citizens of the state of New Jersey, when he or they became so. And whether the said John Whittemore is indebted to them, respectively, in the respective sums for which the aforesaid respective judgments were confessed, or in any other sums, and when and for what the said indebtedness accrued, and whether the same has not  
10 been paid or secured, in whole or in part, and whether the said indebtedness, if any there be, has not been settled by compromise or otherwise, and discharged; and that they and each of them may set forth a full and perfect copy of their and each of their respective accounts, notes, bonds, bills, writings obligatory, or other evidence of indebtedness against the said John Whittemore, upon which the said judgments, respectively, were confessed, and the items of the account or accounts, and true consideration, if any there be, of any note or notes, bond or bonds, bill or bills, or other  
20 writings upon which the said judgments, respectively, were entered or confessed, and a true copy of all credits, endorsements, or payments thereon. And that the said William Douglass, sheriff as aforesaid, may be restrained from any further advertising and from selling your orator's said lot of land and premises, and from all further interference with your orator's said premises under the said respective writs of execution. And that the said John Whittemore, William Kumbell, and David V. Freeman, or some or one of them, may be decreed to pay and satisfy the said respective judgments  
30 of the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, or, if in the opinion of this honorable court the aforesaid deed of conveyance from the said John Whittemore to the said Kumbell and Freeman is void, or for any cause insufficient to pass the title to your orator's said lot of land and premises, or that your orator's title from said Kumbell and Freeman to said premises is in any manner defective, that the said John Whittemore, William Kumbell, and David V. Freeman, may be decreed to perfect the same, or to refund to your orator the said sum of  
40 eight thousand dollars of purchase money so paid by your

orator for the said premises, and to pay to your orator all costs, charges, and expenses for improvements upon the said premises, and to indemnify your orator against all loss and damages by reason of such defective title, and that your orator may have such other and further relief in the premises as the nature of his case shall require, and as to your Honor shall seem meet.

May it please your Honor, the premises considered, to grant to your orator not only the state's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, restraining them and each of them, from selling the lot of land and premises aforesaid, and from any further advertising, or in any manner interfering therewith; but also a writ or writs of subpœna of the state of New Jersey, to be directed to the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, therein and thereby commanding them and each of them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet, &c., and your orator, as in duty bound, will ever pray, &c.

SOCRATES TUTTLE,

*Solicitor for and of counsel with complainant.*

State of New Jersey, *ss.*—John Bentley, the complainant above named, being duly sworn according to law, doth depose and say—that the matters and things set forth in the foregoing bill of complaint, so far as they relate to his own acts are true, and so far as relates to the acts of others, he believes them to be true.

And deponent further says—that William Douglass, late sheriff of the county of Passaic, lately told deponent that he had in hand several writs of execution, issued out of the Supreme Court of the State of New Jersey, one in favor

of Samuel Anable above named, one in favor of Edward W. Walker above named, one in favor of Ezra P. Howard above named, and one in favor of Elias Hempstead above named, all against John Whittemore above named, and that he had levied upon deponent's lot of land and premises described in the foregoing bill of complaint, and that he was going to sell the same under the said writs of execution as the property of the said John Whittemore, and that he has published an advertisement for the sale of the same, and  
 10 threatens to sell on Saturday next; that since deponent purchased said premises, he has expended upon them four thousand dollars and upwards in fixed machinery and improvements, and has paid off a mortgage given by said Whittemore upon them, for the sum of two thousand dollars.

JOHN BENTLEY.

Sworn and subscribed, February 3d, 1864, before me, at Paterson.

WM. GLEDHILL, M. C.

On filing this bill let an injunction issue pursuant to the  
 20 prayer thereof.

February 4th, 1864.

HENRY W. GREEN, C.

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### Order for Injunction.

[Filed February 4, 1864.]

Upon reading the bill of complaint in this cause and the affidavit thereunto annexed, and on motion of S. Tuttle, of counsel with the complainant, it is ordered, that upon filing the said bill and affidavit an injunction do issue, according to the prayer of the said bill.

30 Dated February 4th, 1864.

HENRY W. GREEN, C.

## Answer of Samuel Anable.

[Filed April 28, 1864.]

### IN CHANCERY OF NEW JERSEY.

*The answer of Samuel Anable, one of the defendants to the bill of complaint of John Bentley, complainant.*

The defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says—he admits that on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, John Whittemore, survivor of John Whittemore and Company, in the said bill named, did make and execute to William Kumbell and David V. Freeman, therein also named, a deed of assignment of such date and purport as in the said bill set forth, so far as the same is therein set forth; and that the same was acknowledged by the said John Whittemore and recorded as in the said bill stated; but this defendant denies that the said deed was duly acknowledged by the said William Kumbell and David V. Freeman, parties of the second part thereto, and says that their acknowledgment was not taken before an officer authorized by the laws of New Jersey to take the same, nor taken in the manner required by the said laws; and he also denies that the said deed of assignment ever did or could take effect or operate as a valid or effectual assignment or conveyance of that portion of the property or premises therein described, situated and lying in the state of New Jersey, or of any estate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion; inasmuch as the said deed of assignment, in its provisions, contravened the laws of the said state of New Jersey, as this defendant submits and hereinafter more particularly shows.

And this defendant further answering says, he also admits that the names of the parties and the sums attached to their respective names in the schedule marked *A*, referred to in the said deed of assignment and thereto annexed, are as set forth in the said bill, so far as the same are therein set forth; and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits  
 10 that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport and for such consideration as set forth in the said bill, so far as the same is therein set forth; and that the same was acknowledged and recorded, as in the said bill stated; but whether such consideration, or any part thereof, was actually paid, or if paid, when, how, or to whom the same was paid, this defendant does not know  
 20 and has not been informed, save by the said bill, and the recitals in the said deed to the said complainant, and cannot set forth as to his belief, or otherwise; and he denies that the last mentioned deed took effect or operated to convey or transfer the land and premises therein described, or any estate, right, title, or interest in or to the same, the said parties of the first part thereto not being legally seized of the said land and premises, or having any such estate, right, title, or interest therein or thereto, as this defendant submits.

And this defendant further answering says, he admits that  
 30 on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the said John Whittemore made, executed, and delivered to Mary Morrell, in the said bill named, an indenture of mortgage of such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged and registered and recorded as in the said bill stated, and was a lien upon the premises described in the said deed to the said complainant; and that the said deed to the said complainant was made subject to the en-  
 40 cumbrance of the said mortgage; but whether the sum of

two thousand dollars intended to be secured by the said mortgage was unpaid or not, at the time the said deed of conveyance to the said complainant was executed and delivered, or what sum was then due and unpaid thereon, this defendant knows not, and has not been informed, save by the complainant's said bill and the statements or recitals in the said last mentioned deed, and cannot set forth as to his belief or otherwise; and he further saith, that he has been informed, and believes it to be true, that on or about the twenty-seventh day of May, in the year of our Lord one 10 thousand eight hundred and sixty-three, the said mortgage, so as aforesaid given by the said John Whittemore to the said Mary Morrell, was cancelled of record, from which circumstance he thinks it probable and believes that the whole of the principal and interest due thereon has been paid, and that it may have been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or at what particular time prior to the date last aforesaid the same was paid, this defendant has no knowledge or information, save that derived from the said bill, and cannot 20 set forth as to his belief or otherwise.

And this defendant further answering says, he admits that at the time of the execution and delivery of the said deed to the said complainant, for the lot of land therein and in the said bill described, there was a two story frame building standing thereon; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not the said building stood, in part, upon land belonging to the Society for Establishing Useful Manufactures, in said 30 bill named, or otherwise; nor whether or not the said building had been used for the purposes in the said bill alleged, or for what purposes the same was used, nor whether or not, prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the condition in the said bill stated, nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building, or converted the same into a flouring mill, or put therein machinery or fixtures, or has been, was, or is 40 engaged in manufacturing flour or feed in the said mill.

And this defendant further answering says, he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building or mill, as alleged in the said bill of complaint, has always been run by water power, or how long the same has been so run; nor whether or not the property in the said water power, or right to use the same, is or was in the said complainant, or was acquired by him by a perpetual lease, as in the said bill alleged, or  
 10 otherwise; nor whether or not the said building is of the dimensions mentioned in the said bill, or the easterly line of the said lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant under a lease from the Society for Establishing Useful Manufactures, or otherwise.

And this defendant further answering says, he admits that Ezra P. Howard, Edward W. Walker, and Elias Hempstead, in the said bill named, did, respectively, recover judgments in the Supreme Court of Judicature of the State of  
 20 New Jersey, by confession, at the times and for the amounts in the said bill mentioned, respectively; and that writs of *feri facias de bonis et terris* were issued on the said judgments, respectively, and delivered to William Douglass, then sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs, and that of this defendant, hereinafter mentioned, levied on and advertised for sale, as the property of the said John Whittemore, the lot of land and premises described in the said deed of conveyance to the  
 30 said complainant, and by him alleged in the said bill to be his own property.

And this defendant further answering says, that it is true, as stated in said bill, that this defendant, on or about the twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment by confession in the said Supreme Court against the said John Whittemore, for the sum of nine hundred and seven dollars and forty-three cents, debt and costs, as set forth in the said bill; and that a writ of *feri facias de bonis*  
 40 *et terris* was issued thereon, as in the said bill mentioned, and

delivered to the said William Douglass, sheriff of the county of Passaic, who, as such sheriff, under and by virtue thereof, levied on the said lot of land and premises described in the said deed to the said complainant, as the property of the said John Whittemore.

And this defendant further answering says, that it is true, as charged in the said bill, that he resides out of the state of New Jersey (being a resident of the city of Albany, in the county of Albany and state of New York), and was not, when the debt on which his said judgment was founded, 10 accrued or was contracted, and has not been since, a citizen of the said state; but this defendant does not know and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said Ezra P. Howard, Edward W. Walker, and Elias Hempstead, or either of them, reside or ever resided in the said state, or are or ever have been citizens thereof; this defendant having no acquaintance and never having communicated with them or either of them, and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this 20 defendant.

And this defendant further answering says, that he knows not and has never been informed, and cannot set forth as to belief or otherwise, whether or not the said judgments of the said Ezra P. Howard, Edward W. Walker, and Elias Hempstead, or either of them, were fraudulent or void, or confessed for no good or legal consideration, or are no liens on the said lot of land and premises, as charged in the said bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says 30 that the said John Whittemore was at the time the said judgment was confessed, and is now justly indebted to this defendant in the sum for which the same was confessed, being the amount due on a certain judgment obtained by this defendant against the said John Whittemore in the Superior Court of the City of New York, on or about the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three, for the sum of nine hundred and three dollars and forty-three cents, on a promissory note given and made by the said John Whittemore and Company 40

(whom the said John Whittemore had survived), to this defendant, for goods sold and delivered by this defendant to the said John Whittemore and Company, at their request.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured, otherwise than by the said judgment so as aforesaid confessed to this defendant, by the said John Whittemore, and that the same or any part thereof has not been settled or discharged by compromise or otherwise.

- 10 And this defendant further answering says, that he has in the schedule to this his answer annexed or underwritten, and which he prays may be taken as a part hereof, set forth, according to the best and utmost of his knowledge, information, remembrance, and belief, a full, true, and perfect abstract of the judgment last described, also a copy of the said promissory note whereon the same was founded, and of the items of the account of goods sold and delivered, for which the said note was given, and also of all credits, endorsements, and payments thereon, respectively. And although  
20 the record of the last mentioned judgment, or a copy thereof, is not in the possession or under the control of this defendant, yet he will procure and produce a copy thereof, if the same should be required by the said complainant.

- And this defendant further answering says, he admits that the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and premises so as aforesaid levied on under the said executions, adjourned the sale thereof, as in the said bill alleged, and that he declared his purpose to sell the said premises to  
30 the highest bidder therefor, and to make, execute, and deliver a deed therefor to the purchaser thereof; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether the said sheriff "threatened" to sell the said premises or manifested his determination to sell the same, otherwise than by advertisements set up and published according to the requirements of the laws of the said state of New Jersey.

- And this defendant further answering, submits and insists,  
40 that there is no truth in the assumptions and assertions in

the said bill, that the said complainant is the true, lawful, and right owner of the land and premises with the appurtenances, so advertised by the said sheriff to be sold, or that the said John Whittemore has no right, title, or interest in the same, or that the said William Douglass has just right or lawful authority to levy upon, advertise for sale, sell or convey, or in any manner to interfere with the said property.

And this defendant further answering, submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made 10 to hinder, delay, and defraud the creditors of the said John Whittemore aforesaid, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor, in proportion to their several demands, but for the special benefit of a part thereof, and preferred some of the said creditors over others, providing and requiring that some of said creditors should be first paid and have a greater proportion in respect of their claims than others, in open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer 20 the estate, right, title, or interest of the said John Whittemore in or to the land and premises so levied on and advertised to be sold as aforesaid; and he further submits and insists that the said William Kumbell and David V. Freeman, or either of them, had no estate, right, title, or interest in or to the said premises, and did not nor could convey or transfer the same or any estate, right, title, or interest therein or thereto to the said complainant, who was well aware or bound to know, and should have known the illegal character 30 of the said deed of assignment, and that by the laws of the said state of New Jersey it was void and utterly ineffectual to transfer the premises in question.

And this defendant further answering says, he did not come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand or any part thereof to the assignees for payment or settlement, or otherwise; and he submits and insists that he ought not to be, and is not bound, prejudiced, or in anywise affected by the said deed of assignment, and that this defendant's judgment 40

first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof on the land and premises so levied on; and that the said William Douglass, as such sheriff under the said execution, so as aforesaid issued on the said judgment, and directed and delivered to him, had not only a just right and lawful authority, but it was his duty to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does  
 10 not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the said sum of six thousand dollars alleged in the said bill to have been paid by the said complainant to the said assignees, or any part thereof, was received and appropriated by them or either of them, to their own use or the use of either of them, or to the payment of their individual claims, or the individual claim of either of them against the said John Whittemore.

And this defendant denies all and all manner of unlawful  
 20 combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant 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  
 30 his reasonable costs and charges in this behalf most wrongfully sustained.

SAM'L ANABLE.

JOHN W. TAYLOR,

*Solicitor and of counsel with the defendant.*

State of New York, county of New York, ss.—Samuel Anable, the defendant above named, being duly sworn, on his oath saith—that the matters and things in the foregoing answer set forth, so far as they relate to his own acts are true, and so far as they relate to the acts and deeds of others,  
 40 he believes them to be true.

SAM'L ANABLE.

Sworn and subscribed, this 27th day of April, A. D. 1864,  
before me.

CHARLES NETTLETON,  
*Commissioner for New Jersey in and for the city and county  
of New York, in the state of New York.*

Schedule referred to in the foregoing answer.

1. *Items of account.*

1856. Nov. 28. John Whittemore & Son,

Bought of Samuel Anable.

155 Sides curried leather, @ \$4,	-	-	\$620 00	10
122 lbs. Splits, @ 5 cts.	-	-	6 10	
Cartage,	-	-	25	
			<hr/>	
			\$626 35	

2. *Copy of note.*

\$626.35.

New York, Nov. 28, 1856.

Six months after date we promise to pay to the order of  
Samuel Anable, six hundred and twenty-six 35-100 dollars,  
at Mechanics Bank, value received.

(Signed)

JOHN WHITTEMORE.

3. *Abstract of judgment.*

20

Names of parties against whom judgments have been ob-  
tained, - - - John Whittemore, survivor, &c.  
Names of parties in whose favor judgments have been ob-  
tained, - - - Samuel Anable.  
Damages and costs, - - - \$903.43

Time of filing, June 16, 1863, 10.55 A. M.

Attorney's name, - - - D. G. Wild.  
Office of the Clerk of the Superior Court of the City of  
New York, June 16th, 1863.

I certify, that the foregoing is a correct transcript from 30  
the Docket of Judgments kept in my office.

ROB'T D. LIVINGSTON, *Clerk.*

Above is the schedule referred to in the foregoing answer.

SAM'L ANABLE.

Answer of E. W. Walker.

[Filed April 28, 1864.]

IN CHANCERY OF NEW JERSEY.

*The answer of Ebenezer W. Walker (in the bill called Edward W. Walker), one of the defendants, to the bill of complaint of John Bentley, complainant.*

This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception to the many errors, uncertainties, and other imperfections in  
 10 the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says—he admits that, on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, John Whittemore, survivor of John Whittemore and Company, in the said bill named, did make and execute to William Kumbell and David V. Freeman, therein also named, a deed of assignment of such date and purport as in the said bill set  
 20 forth, and that the same was acknowledged by the said John Whittemore, and recorded as in the said bill stated; but this defendant denies that the said deed was duly acknowledged by the said William Kumbell and David V. Freeman, parties of the second part thereto, and says that their acknowledgment was not taken before an officer authorized by the laws of New Jersey to take the same, nor taken in the manner required by the said laws; and he also denies that the said deed of assignment ever did or could take effect or  
 30 that portion of the property or premises therein described, situated and lying in the state of New Jersey, or of any estate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion, inasmuch as the said deed of assignment, in its provisions, contravened the laws of the said state of New Jersey, as this defendant submits and hereinafter more particularly shows.

And this defendant further answering says, he also admits that the names of the parties and the sums attached to their respective names in the schedule marked A, referred to in the said deed of assignment and thereto annexed, are as set forth in the said bill, so far as the same are therein set forth, and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits that on or about the twelfth day of January, in the year of 10 our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport and for such consideration as set forth in the said bill, so far as the same is therein set forth, and that the same was acknowledged and recorded as in the said bill stated; but whether such consideration or any part thereof was actually paid, or if paid when, how, or to whom the same was paid, this defendant does not know and has not been informed, save by the said bill and the re- 20 citals in the said deed to the said complainant, and cannot set forth as to his belief or otherwise; and he denies that the last mentioned deed took effect or operated to convey or transfer the land and premises therein described, or any estate, right, title, or interest in or to the same, the said parties of the first part thereto not being legally seized of the said land and premises, or having any such estate, right, title, or interest therein or thereto, as this defendant submits.

And this defendant further answering says, he admits that, on or about the nineteenth day of May, in the year of our 30 Lord one thousand eight hundred and fifty-five, the said John Whittemore made, executed, and delivered to Mary Morrell, in the said bill named, an indenture of mortgage of such date, purport and effect as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged and registered or recorded, as the said bill stated, and was a lien upon the premises described in the said deed to the said complainant; and that the said deed to the said complainant was made subject to the encumbrance of the said mortgage; but whether the sum of two thousand 40

dollars, intended to be secured by the said mortgage, was unpaid or not, at the time the said deed of conveyance to the said complainant was executed and delivered, or what sum was then due and unpaid thereon, this defendant knows not, and has not been informed, save by the complainant's said bill, and the statements or recitals in the last mentioned deed, and cannot set forth as to his belief or otherwise. And he further saith, that he has been informed and believes it to be true, that on or about the twenty-seventh day of May, in the 10 year of our Lord one thousand eight hundred and sixty-three, the said mortgage, so as aforesaid given to the said Mary Morrell, was cancelled of record, from which circumstance he thinks it probable and believes, that the whole of the principal and interest due thereon has been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or at what particular time prior to the date last aforesaid, the same was paid, this defendant has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise.

20 And this defendant further answering says, he admits that at the time of the execution and delivery of the said deed to the said complainant, for the lot of land therein, and in the said bill described, there was a two-story frame building standing thereon; but this defendant does not know, and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not the said building stood in part upon land belonging to the Society for Establishing Useful Manufactures, in said bill named, or otherwise; nor whether or not the said building 30 had been used for the purposes in the said bill alleged, or for what purposes the same was used, nor whether or not, prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the condition in the said bill stated; nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building, or converted the same into a flouring mill, or put therein machinery or fixtures, or has been, was, or is engaged in manufacturing flour or feed in the said mill.

40 And this defendant further answering says, he does not

know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building or mill, as alleged in the said bill of complaint, has always been run by water-power, or how long the same has been so run; nor whether or not the property in the said water-power, or the right to use the same, is or was in the said complainant, or was acquired by him by a perpetual lease, as in the said bill alleged, or otherwise; nor whether or not the said building is of the dimensions mentioned in the said bill, or the easterly 10 line of the said lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant under a lease from the Society for Establishing Useful Manufactures, or otherwise.

And this defendant further answering says, he admits that Samuel Anable, Elias Hempstead, and Ezra P. Howard, in the said bill named, did respectively recover judgments in the Supreme Court of Judicature of the State of New Jersey, by confession, at the times and for the amounts in the said bill mentioned respectively, and that writs of *feri facias de bonis et terris* were issued on the said judgments respectively, 20 and delivered to William Douglass, then sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs and that of this defendant, hereinafter mentioned, levied on and advertised for sale, as the property of the said John Whittemore, the lot of land and premises described in the said deed of conveyance to the said complainant, and by him alleged in the said bill to be his own property.

And this defendant further answering says, that it is true, 30 as stated in the said bill, that this defendant, on or about the twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment, by confession, against the said John Whittemore, for the sum of sixteen hundred and twenty-four dollars, as set forth in the said bill, and that a writ of *feri facias de bonis et terris* was issued thereon, and delivered to the said William Douglass, sheriff of the said county of Passaic, who, as such sheriff, under and by virtue thereof, levied on the said lot of land and premises described in the said deed to the said com- 40 plainant, as the property of the said John Whittemore.

And this defendant further answering says, that it is true as charged in the said bill, that he resides out of the state of New Jersey (being a resident of the city of Providence, in the county of Providence, and state of Rhode Island), and was not when the debt on which his said judgment was founded, accrued, or was contracted, and has not been since, a citizen of the said state; but this defendant does not know, and has never been informed and cannot set forth as to his belief or otherwise, whether or not the said Samuel Anable,  
 10 Elias Hempstead, and Ezra P. Howard, or either of them, reside or ever resided in the said state, or are or ever have been citizens thereof; this defendant having no acquaintance, and never having communicated with them or either of them, and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this defendant.

And this defendant further answering says, that he knows not and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said judgments  
 20 of the said Samuel Anable, Elias Hempstead, and Ezra P. Howard, or either of them were fraudulent or void, or confessed for no good or legal consideration, or are no liens on the said lot of land and premises as charged in the said bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says that the said John Whittemore was, at the time the said judgment was confessed and is now, justly indebted to this  
 30 defendant in the sum for which the same was confessed, being the amount due for goods sold and delivered by this defendant to the said John Whittemore and Company (whom the said John Whittemore survived), at their request.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured otherwise than by the said judgment so as aforesaid confessed to this defendant by the said John Whittemore, and that the same or any part thereof, has not been settled or discharged by compromise or otherwise.

And this defendant further answering says, that he has in the schedule to this his answer annexed or underwritten,  
 40 and which he prays may be taken as a part hereof, set forth

according to the best of his knowledge, information, remembrance, and belief, a full, true, and perfect copy of the items of the accounts of goods sold and delivered as aforesaid, and also of all credits and payments thereon.

And this defendant further answering says, he admits that the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and premises so as aforesaid levied on under the said executions, adjourned the sale thereof as in the said bill alleged, and that he declared his purpose to sell the said premises to the highest bidder therefor, and to make, execute, and deliver a deed therefor to the purchaser thereof; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether the said sheriff "threatened" to sell the said premises, or manifested his determination to sell the same otherwise than by advertisements set up and published, according to the requirements of the laws of the said state of New Jersey. 10

And this defendant further answering, submits and insists, that there is no truth in the assumptions and assertions in the said bill that the said complainant is the true, lawful, and right owner of the land and premises, with the appurtenances so advertised by the said sheriff to be sold, or that the said John Whittemore has no right, title, or interest in the same, or that the said William Douglass has no just right or lawful authority to levy upon, advertise for sale, sell or convey, or in any manner to interfere with the said property. 20

And this defendant further answering, submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made to hinder, delay, and defraud the creditors of the said John Whittemore aforesaid, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor in proportion to their several demands, but for the special benefit of a part thereof, and preferred some of said creditors over others, providing and requiring that some of said creditors should be first paid and have a greater proportion in respect of their claims than others, in 40

open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer the estate, right, title, or interest of the said John Whittemore, in or to the lands and premises so levied on and advertised to be sold as aforesaid; and he further submits and insists, that the said William Kumbell and David V. Freeman, or either of them, had no estate, right, title, or interest in or to the said premises, and did not nor could convey or transfer the same,  
 10 or any estate, right, title, or interest therein or thereto to the said complainant, who was well aware or bound to know, and should have known the illegal and fraudulent character of the said deed of assignment, and that by the laws of the said state of New Jersey it was void and utterly ineffectual to transfer the premises in question.

And this defendant further answering says, he did not come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand or any part thereof to the said assignees, for payment or settlement, or other-  
 20 wise; and he submits and insists, that he ought not to be, and is not bound, prejudiced, or in anywise affected by the said deed of assignment; and that this defendant's judgment first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof on the land and premises so levied on, and that the said William Douglass, as such sheriff under the said execution, so as aforesaid issued on the said judgment and directed and delivered to him, had  
 30 to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the said sum of six thousand dollars, alleged in the said bill to have been paid by the said complainant to the said assignees, or any part thereof was received and appropriated by them or either of them, to their own use or the use of either of them, or to the payment of their individual claims, or the individual claim of either of them, against the  
 40 said John Whittemore.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant 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 his reasonable costs and charges in this behalf most wrongfully sustained. 10

EBENEZER W. WALKER.

JOHN W. TAYLOR,

*Solicitor and of counsel for the defendant.*

State of Rhode Island, county of Providence, ss.—Ebenezer W. Walker, above named, being duly sworn, on his oath saith—that the matters and things in the foregoing answer set forth, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true. 20

EBENEZER W. WALKER.

Sworn and subscribed, this 21st day of April, A. D. 1864, before me.

HENRY MARTIN,

*A commissioner of the state of New Jersey, for the state of Rhode Island.*

Schedule referred to in the foregoing answer.

1856. Messrs. John Whittemore & Co.,

To E. W. Walker, Dr.

Oct.	18.	To 20 doz.	sheep skins,	@ \$6,	\$120.00	
"	"	" 12 "	lamb "	" " 3½,	42.00	
						<u>\$162.00</u>
"	23.	" 10 "	calf "	" " 18,		180.00
"	28.	" 10 "	sheep "	" " 7,		70.00
1857.						
10 Jan.	19.	" 5 "	calf "	" " 22,		110.00
Mar.	3.	" 9 "	" "	" " 22,	198.00	
"	"	" 1 "	" "	" " 18,	18.00	
						<u>216.00</u>
"	4.	" 15 "	sheep "	" " 6,		90.00
April	13.	" 4 "	calf "	" " 24,	96.00	
"	"	" 10 "	sheep "	" " 6,	60.00	
						<u>156.00</u>
"	18.	" 6 "	calf "	" " 24,	144.00	
"	"	" 12 "	sheep "	" " 6,	72.00	
20						<u>216.00</u>
						<u>\$1200.00</u>

Average date sold, Feb. 1857, at 6 months.

1863.

June 1.	To 5 years and 10 months int. to date,	420.00
		<u>\$1620.00</u>

The foregoing is the schedule referred to in the foregoing answer.

EBENEZER W. WALKER.

## Answer of Ezra P. Howard.

[Filed April 28, 1864.]

## IN CHANCERY OF NEW JERSEY.

*The answer of Ezra P. Howard, one of the defendants, to the bill of complaint of John Bentley, complainant.*

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering says—he admits that on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, John Whittemore, survivor of John Whittemore and Company, in the said bill named, did make and execute to William Kumbell and David V. Freeman, therein also named, a deed of assignment of such date and purport as in the said bill set forth, so far as the same is therein set forth; and that the same was acknowledged by the said John Whittemore, and recorded 10 as in the said bill stated; but this defendant denies that the said deed was duly acknowledged by the said William Kumbell and David V. Freeman, parties of the second part thereto, and says that their acknowledgment was not taken before an officer authorized by the laws of New Jersey to take the same, nor taken in the manner required by the said laws; and he also denies that the said deed of assignment ever did or could take effect or operate as a valid or effectual assignment or conveyance of that portion of the property or premises therein described, situated and lying in the state of New Jersey, or of any estate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion; inasmuch as the said deed of assignment, in its provisions, contravened the laws of the said state of New Jersey, as this defendant submits and hereinafter more particularly shows. 20 30

And this defendant further answering says, he also admits

that the names of the parties and the sums attached to their respective names, in the schedule marked *A*, referred to in the said deed of assignment and thereto annexed, are as set forth in the said bill, so far as the same are therein set forth, and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits that on or about the twelfth day of January, in the year of  
 10 our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport, and for such consideration as set forth in the said bill, so far as the same is therein set forth; and that the same was acknowledged and recorded as in the said bill stated; but whether such consideration, or any part thereof, was actually paid, or if paid, when, how, or to whom the same was paid, this defendant does not know and has not been informed, save by the said bill and the recitals in  
 20 the said deed to the said complainant, and cannot set forth as to his belief or otherwise; and he denies that the last mentioned deed took effect or operated to convey or transfer the land and premises therein described, or any estate, right, title, or interest, in or to the same, the said parties of the first part thereto not being legally seized of the said land and premises, or having any such estate, right, title, or interest therein or thereto, as this defendant submits.

And this defendant further answering says, he admits that on or about the nineteenth day of May, in the year of  
 30 our Lord one thousand eight hundred and fifty-five, the said John Whittemore made, executed, and delivered to Mary Morrell, in the said bill named, an indenture of mortgage of such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged, and registered or recorded, as in the said bill stated, and was a lien upon the premises described in the said deed to the said complainant, and that the said deed to the said complainant was made subject to the encumbrance of the said mortgage; but whether the sum  
 40 of two thousand dollars, intended to be secured by the said mortgage, was unpaid or not at the time the said deed of

conveyance to the said complainant was executed and delivered, or what sum was then due and unpaid thereon, this defendant knows not and has not been informed, save by the complainant's said bill, and the statements or recitals in the last mentioned deed, and cannot set forth as to his belief or otherwise; and he further saith, that he has been informed and believes it to be true, that on or about the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, the said mortgage, so as aforesaid given by the said John Whittemore to the said Mary Morrell, 10 was cancelled of record, from which circumstance he thinks it probable and believes that the whole of the principal and interest due thereon has been paid, and that it may have been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or at what particular time prior to the date last aforesaid the same was paid, this defendant has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise.

And this defendant further answering says, he admits that 20 at the time of the execution and delivery of the said deed to the said complainant for the lot of land therein and in the said bill described, there was a two-story frame building standing thereon; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not the said building stood in part upon land belonging to the Society for Establishing Useful Manufactures in said bill named, or otherwise; nor whether or not the said build- 30 ing had been used for the purposes in the said bill alleged, or for what purposes the same was used, nor whether or not, prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the condition in the said bill stated; nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building, or converted the same into a flouring mill, or put therein machinery or fixtures, or has been, was, or is engaged in manufacturing flour or feed in the said mill.

And this defendant further answering says, he does not 40

know, and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building or mill, as alleged in the said bill of complaint, has always been run by water power, or how long the same has been so run; nor whether or not the property in the said water power, or the right to use the same, is or was in the said complainant, or was acquired by him by a perpetual lease, as in the said bill alleged, or otherwise; nor whether or not the said building  
 10 is of the dimensions mentioned in the said bill, or the easterly line of the said lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant under a lease from the Society for Establishing Useful Manufactures, or otherwise.

And this defendant further answering says, he admits that Samuel Anable, Edward W. Walker, and Elias Hempstead, in the said bill named, did, respectively, recover judgments in the Supreme Court of Judicature of the State of New Jersey, by confession, at the times and for the  
 20 amounts in the said bill mentioned, respectively, and that writs of *feri facias de bonis et terris* were issued on the said judgments, respectively, and delivered to William Douglass, sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs, and that of this defendant hereinafter mentioned, levied on and advertised for sale, as the property of the said John Whittemore, the lot of land and premises described in said deed of conveyance to the said complainant, and by him alleged in the said bill to be  
 30 his own property.

And this defendant further answering says, that it is true, as stated in the said bill, that this defendant, on or about the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment by confession in the said Supreme Court against the said John Whittemore, for the sum of seven hundred and ninety-nine dollars, debt and costs, as set forth in the said bill; and that a writ of *feri facias de bonis et terris* was issued thereon and returned unsatisfied, as stated in the said bill; and also, that  
 40 an alias writ of execution, as in the said bill mentioned, was

issued on the said judgment of this defendant, on or about the ninth day of June, in the year of our Lord one thousand eight hundred and sixty-three, and delivered to the said William Douglass, sheriff of the said county of Passaic, who, as such sheriff, under and by virtue thereof, levied on the said lot of land and premises described in the said deed to the said complainant as the property of the said John Whittemore.

And this defendant further answering says, that it is true as charged in the said bill, that he resides out of the state 10 of New Jersey, (being a resident of the town of Washington, in the county of Sullivan, and state of New Hampshire), and was not, when the debt on which his said judgment was founded, accrued, or was contracted, and has not been since a citizen of the said state; but this defendant does not know, and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said Samuel Anable, Edward W. Walker, and Elias Hempstead, or either of them, reside or ever resided in the said state, or are or ever have been citizens thereof; this defendant having no 20 acquaintance and never having communicated with them or either of them, and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this defendant.

And this defendant further answering says, that he knows not and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said judgments of the said Samuel Anable, Edward W. Walker, and Elias Hempstead, or either of them, were fraudulent or void, or confessed for no good or legal consideration, or are no liens 30 on the said lot of land and premises, as charged in the said bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says that the said John Whittemore was, at the time said judgment was confessed, and is now, justly indebted to this defendant in the sum for which the said judgment was confessed, being the amount due on four certain judgments, obtained by this defendant against the said John Whittemore, as follows, *viz.* one for two hundred and sixty dollars and forty cents, entered or docketed in the District Court of 40

the City of New York, for the first judicial district, on or about the seventh day of December, in the year of our Lord one thousand eight hundred and fifty-nine; another for three hundred and fifty-seven dollars and twenty nine cents, entered or docketed in the Marine Court of the City of New York, on or about the sixteenth day of July, in the year of our Lord one thousand eight hundred and sixty; another for nineteen dollars and twenty-one cents, entered or docketed in the Court of Common Pleas of the City and County of

10 New York, in the state of New York, on or about the eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty; and the other for twenty-one dollars and thirty-six cents, entered or docketed in the same court, on the same day; the two first mentioned judgments being founded respectively on two promissory notes, given and made by the said John Whittemore and Company (whom the said John Whittemore had survived) to this defendant, for goods sold and delivered by this defendant to the said John Whittemore and Company, at their request;

20 and the two last mentioned judgments being for costs of reversal, on appeal, of two prior judgments rendered in the said Marine Court and District Court, respectively, in favor of the said John Whittemore, in the suits brought in the said courts by this defendant, on the said promissory notes respectively.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured, otherwise than by the said judgment so as aforesaid confessed to this defendant by the said John Whittemore, and that the same

30 or any part thereof has not been settled or discharged by compromise or otherwise.

And this defendant further answering says, that he has in the schedule to this his answer annexed or underwritten, and which he prays may be taken as a part hereof, set forth, according to the best and utmost of his knowledge, information, remembrance, and belief, full, true, and perfect abstracts of the four judgments last described; also copies of the said promissory notes, whereon the same were respectively founded, and of the items of the accounts of goods sold and

40 delivered, for which the said notes were respectively given,

and also of all credits, endorsements, and payments thereon, respectively; and although he has not the records of the said judgments or copies thereof, in his custody or under his control, he is ready and willing to procure and produce exemplified copies thereof, if the said complainant shall require the same.

And this defendant further answering says, he admits that the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and premises so as aforesaid levied on under the said execu- 10  
tions, adjourned the sale thereof, as in the said bill alleged, and that he declared his purpose to sell the said premises to the highest bidder therefor, and to make, execute, and deliver a deed therefor to the purchaser thereof; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth, as to his belief or otherwise, whether the said sheriff "threatened" to sell the said premises, or manifested his determination to sell the same, otherwise than by advertisements set up and published according to the requirements of the laws of the 20  
said state of New Jersey.

And this defendant further answering submits and insists, that there is no truth in the assumptions and assertions in the said bill that the said complainant is the true, lawful, and right owner of the land and premises, with the appurtenances, so advertised by the said sheriff to be sold, or that the said John Whittemore has no right, title, or interest in the same, or that the said William Douglass has no just right or lawful authority to levy upon, advertise for sale, sell or convey, or in any manner to interfere with the said prop- 30  
erty.

And this defendant further answering submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made to hinder, delay, and defraud the creditors of the said John Whittemore, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor in proportion to their several demands, but for the special benefit of a part thereof, and preferred some of said creditors over others, providing and 40

requiring that some of said creditors should be first paid and have a greater proportion in respect of their claims than others, in open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer the estate, right, title, or interest of the said John Whittemore in or to the lands and premises so levied on and advertised to be sold as aforesaid; and he further submits and insists that the said William Kumbell and David V. Freeman, 10 or either of them, had no estate, right, title or interest in or to the said premises, and did not nor could convey or transfer the same or any estate, right, title, or interest therein or thereto to the said complainant, who was well aware or bound to know, and should have known the illegal and fraudulent character of the said deed of assignment, and that by the laws of the said state of New Jersey it was void and utterly ineffectual to transfer the premises in question.

And this defendant further answering says, he did not 20 come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand, or any part thereof, to the said assignees for payment or settlement, or otherwise; and he submits and insists, that he ought not to be, and is not, bound, prejudiced, or in anywise affected by the said deed of assignment; and that this defendant's judgment first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof on the land and premises so levied on; and that the said William Douglass, 30 as such sheriff, under the said execution so as aforesaid issued on the said judgment, and directed and delivered to him, had not only a just right and lawful authority, but it was his duty to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the said sum of six thousand dollars, alleged in the said bill to have been paid by the said complainant to 40 the said assignees, or any part thereof, was received and ap-

propriated by them or either of them, to their own use or to the use of either of them, or to the payment of their individual claims or the individual claim of either of them, against the said John Whittemore.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant 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 his reasonable costs and charges in this behalf most wrongfully sustained.

EZRA P. HOWARD.

JOHN W. TAYLOR,

*Solicitor and of counsel for the defendant.* 20

State of Massachusetts, county of Suffolk, city of Boston,  
ss.—Ezra P. Howard, the above named defendant, being duly sworn, on his oath saith—that the matters and things set forth in the above answer, so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

EZRA P. HOWARD.

Sworn and subscribed, this 21st day of April, A. D. 1864,  
before me.

GEO. T. ANGELL, 30

*Commissioner of the state of New Jersey, resident in said Suffolk county, duly qualified Commissioner of the State of New Jersey in said Suffolk, to take depositions, affidavits, &c.*

[L. s.] Witness my hand and official seal, at said Boston, this April 21st, 1864.

GEO. T. ANGELL,

*Commissioner of New Jersey, in Boston.*

Schedule referred to in the foregoing answer.

1. *Copy of account.*

1856. John Whittemore & Co.,

Bought of E. P. Howard.

Nov. 17.	105 $\frac{9}{12}$	doz. No. 9 card boards,	@ 35c,	\$37.01
" "	152 $\frac{5}{12}$	" " 10 " " " "	36c,	54.87
" "		61 boxes,	21c,	12.81
Dec. 9.	200 doz.	No. 10 card boards,	@ 36c,	72.00
" "		48 boxes,	21c,	10.08
10 " 22.	200 doz.	No. 10 card boards,	@ 36c,	72.00
" "		48 boxes,	21c,	10.08

1857.

Jan. 28,	The young Mr. Whittemore was here and I let him have cash (to get home with),			10.00
Feb. 4.	200 doz.	No. 10 card boards,	@ 36c,	72.00
" "		48 boxes,	" 21c,	10.08
March 7.	200 doz.	No. 10 card boards,	" 36c,	72.00
" "	99 $\frac{8}{12}$	" " 9 " " "	" 35c,	34.99
20 " "		71 boxes,	" 21c,	14.91
April 9.	300 doz.	No. 10 card boards,	" 36c,	108.00
" "		72 boxes,	" 21c,	15.12

—————  
\$605.95

1856.

Nov.	Cr. by freight paid,	\$45.31
Dec.	" " " "	12.03

1857.

Jan.	Cr. by freight paid,	11.86
March.	" " " "	17.70
30 April.	" " " "	17.46

—————  
104.36

—————  
\$501.59

## 2. Copies of Notes.

[1]

NEW YORK, 15 December, 1856.

\$280. $\frac{00}{100}$ 

Six months after date, we promise to pay to the order of E. P. Howard, two hundred and eighty dollars, at the Mechanics' Bank, value received.

(Signed,)

JOHN WHITEMORE &amp; Co.

Due June 18.

[2]

NEW YORK, March 23d, 1857. 10

\$211. $\frac{59}{100}$ 

Six months after date, we promise to pay to the order of E. P. Howard, two hundred and eleven  $\frac{59}{100}$  dollars, at the Mechanics' Bank, value received.

(Signed,)

JOHN WHITEMORE &amp; Co.

Due Sept. 23—26.

[3]

## ABSTRACTS OF JUDGMENTS.

Against whom,	- - -	John Whitemore, survivor, &c.
In whose favor,	- - -	Ezra P. Howard.
Where perfected,	- - -	1st Judicial District, N. Y. 20
When perfected,	- - -	1859, Dec. 7.
Transcript filed,	- - -	1859, Dec. 8.
Damages and Costs,	- - -	\$260.40

City and county of New York, county clerk's office, ss.—  
I, Henry W. Genet, clerk of the city and county of New York, certify that the above is a true and correct extract from the Docket of Transcripts kept in my office.

New York, March 31, 1864.

H. W. GENET, *Clerk.*

Against whom, - - -	John Whittemore, survivor, &c.
In whose favor, - - -	Ezra P. Howard.
Where perfected, - - -	Marine, N. Y.
When perfected, - - -	1860, July 16.
Transcript filed, - - -	1860, July 18.
H. M. - - -	9.55
Damages and costs, - - -	\$357.29
Attorney, - - -	D. G. Wild.

City and county of New York, county clerk's office, ss.—  
 10 I, Henry W. Genet, clerk of the city and county of New York, certify that the above is a true and correct extract from the Docket of Transcripts kept in my office.  
 New York, March 30, 1864.

H. W. GENET, *Clerk.*

Against whom, -	John Whittemore, survivor, &c., resp't.
In whose favor, - - -	Ezra P. Howard, appl't.
Where perfected, - - -	Common Pleas, N. Y.
When perfected, - - -	1860, July 18.
H. M. - - -	10.45.
20 Transcript filed, - - -	1860, July 19.
H. M. - - -	11.20
Damages and costs, - - -	\$19.14
Attorney, - - -	D. G. Wild.

City and county of New York, county clerk's office, ss.—  
 I, Henry W. Genet, clerk of the city and county of New York, certify that the above is a true and correct extract from the Docket of Transcripts kept in my office.  
 New York, March 30, 1864.

H. W. GENET, *Clerk.*

30 Against whom, -	John Whittemore, survivor, &c., resp't.
In whose favor, - - -	Ezra P. Howard, appl't.
Where perfected, - - -	Common Pleas, N. Y.
When perfected, - - -	1860, July 18.
H. M. - - -	10.40.
Transcript filed, - - -	1860, July 19.
H. M. - - -	11.20
Damages and costs, - - -	\$21.36
Attorney, - - -	D. G. Wild.

City and county of New York, county clerk's office, ss.—  
I, Henry W. Genet, clerk of the city and county of New  
York, certify that the above is a true and correct extract  
from the Docket of Trauscripts kept in my office.

New York, March 30, 1864.

H. W. GENET, *Clerk.*

The foregoing is the schedule referred to in the prece-  
ding and annexed answer.

EZRA P. HOWARD.

Answer of Elias Hempstead.

10

[Filed April 28, 1864.]

IN CHANCERY OF NEW JERSEY.

*The answer of Elias Hempstead, one of the defendants, to the bill  
of complaint of John Bentley, complainant.*

This defendant now and at all times hereafter, saving and  
reserving unto himself all benefit and advantage of exception  
to the many errors, uncertainties, and other imperfections in  
the complainant's said bill of complaint contained, for answer  
thereunto, or unto so much and such parts thereof as this  
defendant is advised is or are material or necessary for him 20  
to make answer unto, answering, says—he admits that, on or  
about the twenty-eight day of May, in the year of our Lord  
one thousand eight hundred and fifty-seven, John Whitte-  
more, survivor of John Whittemore and Company, in the  
said bill named, did make and execute to William Kumbell  
and David V. Freeman, therein also named, a deed of assign-  
ment of such date and purport as in the said bill set forth,  
so far as the same is therein set forth; and that the same was  
acknowledged by the said John Whittemore, and recorded 30  
as in the said bill stated; but this defendant denies that the  
said deed was duly acknowledged by the said William Kum-  
bell and David V. Freeman, parties of the second part thereto,  
and says that their acknowledgment was not taken before

an officer authorized by the laws of New Jersey to take the same, nor taken in the manner required by the said laws; and he also denies that the said deed of assignment, ever did or could take effect or operate as a valid or effectual assignment or conveyance of that portion of the property or premises therein described, situated and lying in the state of New Jersey, or of any estate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion, inasmuch as the said deed of assignment, in its provisions,  
 10 contravend the laws of the said state of New Jersey, as this defendant submits and hereinafter more particularly shows.

And this defendant further answering says, he also admits that the names of the parties and the sums attached to their respective names in the schedule marked *A*, referred to in the said deed of assignment and thereto annexed, are as set forth in the said bill, so far as the same are therein set forth, and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits  
 20 that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman, made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport, and for such consideration, as set forth in the said bill, so far as the same is therein set forth; and that the same was acknowledged and recorded as in the said bill stated; but whether such consideration, or any part thereof, was actually paid, or if paid, when, how, or to whom the same was paid, this defendant does not know  
 30 and has not been informed, save by the said bill and the recitals in the said deed to the said complainant, and cannot set forth as to his belief or otherwise; and he denies that the last mentioned deed took effect or operated to convey or transfer the land and premises therein described, or any estate, right, title, or interest therein or thereto as this defendant submits.

And this defendant further answering says, he admits that, on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the said  
 40 John Whittemore made, executed, and delivered to Mary

Morrell, in the said bill named, an indenture of mortgage, of such date, purport, and effect, as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged, and registered or recorded as in the said bill stated, and was a lien upon the premises described in the said deed to the said complainant; and that the said deed to the said complainant was made subject to the encumbrance of the said mortgage; but whether the sum of two thousand dollars, intended to be secured by the said mortgage, was unpaid or not at the time the said deed of conveyance to the said complainant was executed and delivered, or what sum was then due and unpaid thereon, this defendant knows not and has not been informed, save by the complainant's said bill and the statements or recitals in the last mentioned deed, and cannot set forth, as to his belief or otherwise; and he further saith, that he has been informed and believes it to be true, that on or about the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, the said mortgage, so as aforesaid given by the said John Whittemore to the said Mary Morrell, was cancelled of record; from which circumstance he thinks it probable and believes that the whole of the principal and interest due thereon has been paid, and that it may have been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or at what particular time prior to the date last aforesaid the same was paid, this defendant has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise.

And this defendant further answering says, he admits that at the time of the execution and delivery of the said deed to the said complainant for the lot of land therein and in the said bill described, there was a two story frame building standing thereon; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not the said building stood in part upon the land belonging to the Society for Establishing Useful Manufactures, in said bill named, or otherwise; nor whether or not the said building had been used for the purposes in the said bill alleged, or for

what purposes the same was used, nor whether or not, prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the condition in the bill stated; nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building, or converted the same into a flouring mill, or put therein machinery or fixtures, or has been, was, or is engaged in manufacturing flour or feed in the said mill.

- 10 And this defendant further answering says, he does not know, and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building, or mill, as alleged in the said bill of complaint, has always been run by water-power, or how long the same has been so run; nor whether or not the property in the said water-power or the right to use the same is or was in the said complainant, or was acquired by him by a perpetual lease as in the said bill alleged, or otherwise, nor whether or not the said building is of the
- 20 dimensions mentioned in the said bill, or the easterly line of the lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant under a lease from the Society for Establishing Useful Manufactures, or otherwise.

And this defendant further answering says, he admits that Samuel Anable, Edward W. Walker, and Ezra P. Howard, in the said bill named, did, respectively, recover judgments in the Supreme Court of Judicature of the State of New Jersey, by confession, at the times and for the amounts in the

30 said bill mentioned, respectively, and that writs of *feri facias de bonis et terris* were issued on the said judgments respectively, and delivered to William Douglass, then sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs and that of this defendant hereinafter mentioned, levied on and advertised for sale, as the property of the said John Whittemore, the lot of land and premises described in the said deed of conveyance to the said complainant, and by him alleged in the said bill to be his own property.

- 40 And this defendant further answering says, that it is true,

as stated in the said bill, that this defendant, on or about the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment by confession, in the said Supreme Court, against the said John Whittemore, for the sum of six hundred and fifteen dollars and thirty cents, debt and costs, as set forth in the said bill; and that a writ of *feri facias de bonis et terris* was issued thereon as in the said bill mentioned, and delivered to the said William Douglass, sheriff of the said county of Passaic, who, as such sheriff, under and by virtue thereof, 10 levied on the said lot of land and premises described in the said deed to the said complainant, as the property of the said John Whittemore.

And this defendant further answering says, that it is true as charged in the said bill, that he resides out of the state of New Jersey (being a resident of the city of Brooklyn, in the county of Kings, and state of New York), and was not, when the debt on which his judgment was founded, accrued or was contracted, and has not been since a citizen of the said state; but this defendant does not know and has never been 20 informed, and cannot set forth as to his belief or otherwise, whether or not the said Samuel Anable, Edward W. Walker, and Ezra P. Howard, or either of them, reside or ever resided in the said state, or are or ever have been citizens thereof; this defendant having no acquaintance, and never having communicated with them or either of them, and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this defendant.

And this defendant further answering says, that he knows not and has never been informed, and cannot set forth as to 30 his belief or otherwise, whether or not the said judgments of the said Samuel Anable, Edward W. Walker, and Ezra P. Howard, or either of them, were fraudulent or void, or confessed for no good or legal consideration, or are no liens on the said lot of land and premises, as charged in the said bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says that the said John Whittemore was, at the time the said judgment was confessed, and is now, justly indebted to this defendant in the sum for which the same was con- 40

fessed, being the amount due on a certain promissory note given and made by the said John Whittemore to the order of T. W. Whittemore, for the sum of four hundred and sixty-five dollars and seventy-one cents, and by the said payee endorsed to Hoyt Brothers, who endorsed the same to this defendant; which note, as this defendant has been informed and believes to be true, was given in settlement at the rate of thirty cents on the dollar or thereabouts, of an account of said Hoyt Brothers against the said John Whittemore and Company,  
 10 for goods sold and delivered by said Hoyt Brothers to the said John Whittemore and Company, (whom the said John Whittemore had survived), at their request.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured, otherwise than by the said judgment so as aforesaid confessed to this defendant by the said John Whittemore, and that the same or any part thereof, has not been settled or discharged by compromise or otherwise.

And this defendant further answering says, that he has in  
 20 the schedule to this his answer annexed or underwritten, and which he prays may be taken as a part hereof, set forth according to the best and utmost of his knowledge, information, remembrance, and belief, full, true, and perfect copies of the items of the accounts of goods sold and delivered as aforesaid, by the said Hoyt Brothers to the said John Whittemore and Company, and of the said promissory note given in settlement thereof as aforesaid, and also of all credits, endorsements, and payments thereon.

And this defendant further answering says, he admits that  
 30 the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and premises so as aforesaid levied on under the said executions, adjourned the sale thereof as in the said bill alleged, and that he declared his purpose to sell the said premises to the highest bidder therefor, and to make, execute, and deliver a deed therefor to the purchaser thereof; but this defendant does not know, and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether the said sheriff "threatened" to sell the  
 40 said premises, or manifested his determination to sell the same, otherwise than by advertisements set up and published

according to the requirements of the laws of the said state of New Jersey.

And this defendant further answering, submits and insists, that there is no truth in the assumptions and assertions in the said bill, that the said complainant is the true, lawful, and right owner of the land and premises with the appurtenances, so advertised by the said sheriff to be sold, or that the said John Whittemore has no right, title, or interest in the same, or that the said William Douglass has no just right or lawful authority to levy upon, advertise for sale, sell or 10 convey, or in any manner to interfere with the said property.

And this defendant further answering, submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made to hinder, delay, and defraud the creditors of the said John Whittemore aforesaid, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor in proportion to their several demands, but for the special benefit of a part thereof, and preferred 20 some of said creditors over others, providing and requiring that some of said creditors should be first paid, and have a greater proportion in respect of their claims than others, in open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer the estate, right, title, or interest of the said John Whittemore in or to the land and premises so levied on and advertised to be sold as aforesaid; and he further submits and insists, that the said William Kumbell and David V. Freeman, or either of them, 30 had no estate, right, title, or interest in or to the said premises, and did not nor could convey or transfer the same or any estate, right, title, or interest therein or thereto to the said complainant, who was well aware, or bound to know, and should have known the illegal and fraudulent character of the said deed of assignment, and that by the laws of the said state of New Jersey, it was void and utterly ineffectual to transfer the premises in question.

And this defendant further answering says, he did not come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand, or any part 40

thereof to the said assignees, for payment or settlement, or otherwise; and he submits and insists that he ought not to be, and is not bound, prejudiced, or in anywise affected by the said deed of assignment; and that this defendant's judgment, first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof, on the land and premises so levied on; and that the said William Douglass, as such sheriff, under the said execution so as aforesaid issued  
 10 on the said judgment, and directed and delivered to him, had not only a just right and lawful authority, but it was his duty to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does not know and has never been informed, save by the said bill, and cannot set forth, as to his belief or otherwise, whether or not the said sum of six thousand dollars, alleged in the said bill to have been paid by the said complainant to the said assignees, or any part thereof, was received and appropriated by them, or either of them, to their own use, or the  
 20 use of either of them, or to the payment of their individual claims, or the individual claim of either of them, against the said John Whittemore.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant 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  
 30 his reasonable costs and charges, in this behalf most wrongfully sustained.

ELIAS HEMPSTEAD.

JOHN W. TAYLOR,  
*Solicitor and of counsel for the defendant.*

State of New Jersey, county of Hudson, ss.—Elias Hempstead, the defendant in the above answer named, being duly sworn, on his oath saith—that the matters and things therein set forth, so far as they relate to his own acts are true, and so far as they relate to the acts of others, he believes them to be true.

ELIAS HEMPSTEAD.

Sworn and subscribed, this 21st day of April, A. D. 1864, before me, at Jersey City.

A. S. JACKSON, M. C. 10

Schedule referred to in the foregoing answer.

1. *Items of account.*

1856. John Whittemore & Co.,	To Hoyt Brothers, Dr.		
Oct. 29. To 15,306 ft. 1½ in. belting, 9c.,	\$1377.54		
Less 10 per ct.,	- - - 137.75		
			\$1239.79
Dec. 5. To 85 feet 18-inch hemlock,			
double belting, \$3.64,	- \$309.40		
Less 20 per cent,	- - - 61.88		20
		\$247.52	
Less 10 per cent.,	- - - 24.75		
			222.77
			\$1462.56

1. *Promissory note.*

\$465  $\frac{71}{100}$ . New York, February 1st, 1858.  
Ten months after date, I promise to pay to the order of  
T. W. Whittemore, four hundred and sixty-five  $\frac{71}{100}$  dollars,  
value received.

(Signed) JOHN WHITTEMORE. 30

Endorsed—Pay Hoyt Brothers, or order.

T. W. WHITTEMORE.

Pay to the order of Elias Hempstead, without recourse.

HOYT BROTHERS.

Above is the schedule referred to in the foregoing answer.

ELIAS HEMPSTEAD.

Answer of William Kumbell and David V. Freeman.

[Filed October 25, 1864.]

IN CHANCERY OF NEW JERSEY.

*The answer of William Kumbell and David V. Freeman, two of the defendants to the bill of complaint of John Bentley, complainant.*

These defendants, now and at all times hereafter, saving and reserving to themselves all benefit and advantage of ex-  
 10 ception to the many errors, uncertainties, and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, they answering, say—they admit that on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, John Whittemore, survivor of John Whittemore and Com-  
 20 pany, in the said bill named, did make, execute, and deliver to these defendants, William Kumbell and David V. Free- man, therein also named, a deed of assignment of such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth, and that the same was acknow-  
 20 ledged and recorded as in the said bill stated.

And these defendants further answering say, that they admit that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, these defendants, William Kumbell and David V. Freeman, assignees as aforesaid, for the consideration of eight thou-  
 30 sand dollars, did grant, bargain, sell, alien, remise, release, convey, and confirm to the said John Bentley, his heirs and assigns, the aforesaid lot of land and premises situate in Paterson, New Jersey, subject to the payment of a mortgage (as stated in said deed), for two thousand dollars, which said mortgage was assumed by the said John Bentley, as by reference to said deed or a certified copy thereof will appear, which deed was acknowledged and recorded, as in said bill stated.

And these defendants further answering say, that the said mortgage for two thousand dollars formed part of the said

consideration money of eight thousand dollars, and that the residue of the consideration money has been paid to these defendants' assignees as aforesaid.

And these defendants further answering say, that the said deed from these defendants, William Kumbell and David V. Freeman, to the said John Bentley, is a simple deed of conveyance without any covenant of any kind inserted therein.

And these defendants further answering say, that at the time of making the said deed of assignment from the said John Whittemore to these defendants, the said John Whittemore and these defendants resided in the state of New York; and the said John Whittemore, for the purposes stated and set forth in the said deed of assignment, executed the said deed to these defendants as trustees for the purposes stated in said deed, that such deed conveyed property situated in the state of New York, and also the said property situated in New Jersey; that such deed of conveyance was perfectly lawful according to the laws of the state of New York, where all the parties to the said deed then lived, and that these defendants at the time of the execution of said deed of assignment, and at the time of the execution of their deed of assignment to the said John Bentley, believed that they had a perfect right to sell the same as such assignees, for the purpose of performing their duties as such assignees; that the said John Bentley resided in Paterson, in New Jersey, and took the said deed without making any objection thereto, and these defendants, until lately, never heard any doubt expressed by any one as to their right to sell the said lot of land and premises situate in Paterson; and these defendants, assignees as aforesaid, being ignorant of the laws of New Jersey, do not know whether the said deed is valid or not, but leave that matter to be decided by the courts of New Jersey.

And these defendants further answering say, that this defendant, William Kumbell, was one of the creditors of the said John Whittemore, but that this defendant, David V. Freeman, was not one of the creditors intended to be secured by the said deed of assignment, and these defendants say that all of the said sum of six thousand dollars received by them as aforesaid from the complainant, has been received by them from the complainant as such assignees, and that

they, as such assignees, have paid all of the said money so received from the complainant to and among the *cestui que trusts* mentioned in said deed of assignment, in the proportion and as directed by the said deed of assignment.

And these defendants, William Kumbell and David V. Freeman, say they acted in good faith, and made the said deed for the purpose of performing their duty as trustees, and for no other purpose whatsoever; and inasmuch as they have paid over all the said money, and have not entered into  
 10 any covenant in said deed, they are advised that these defendants, assignees as aforesaid, are not in any way answerable to the complainant or accountable to him for the same.

And these defendants further answering admit, that at and before the making and executing the said deed of assignment by the said John Whittemore to these defendants, the said John Whittemore made, executed, and delivered to one Mary Morrell a certain indenture of mortgage upon the said lot of land and premises, situate in Paterson aforesaid, to secure the payment of the sum of two thousand dollars, with  
 20 interest; that the said mortgage was acknowledged and recorded in the clerk's office of the county of Passaic, in New Jersey, and that the said sum of two thousand dollars remained unpaid at the time of the conveyance of the same premises by these defendants to the said complainant, that the said mortgage was a lien on the said premises at that time, and is the same mortgage of two thousand dollars referred to in the said deed from these defendants to the said complainant.

And these defendants further answering say, that they  
 30 have lately heard and believe that the complainant has paid off the said mortgage to the said Mary Morrell, but these defendants have no knowledge of the same.

And these defendants further answering say, that at the time of the said conveyance by these defendants as such assignees to the complainant, there was a two story building standing in part upon the said lot of land and in part upon land then belonging to the Society for Establishing Useful Manufactures; that the said building had been before that time used for the manufacture of card, clothing, and for  
 40 other manufacturing purposes; that at the time of said sale

all the machinery and fixtures which had been in said building had been removed, leaving the same a mere shell, and in a dilapidated condition.

And these defendants further answering say, that they do not know what has been done with the said building since the said sale to the complainant, except that these defendants have heard and believe it to be true, that the complainant has converted the same into and used the same for a flouring mill.

And these defendants further answering say, that the machinery in said mill has always been run by water power, 10 but these defendants, as such assignees, did not own or convey any water power to the said complainant; but these defendants have no knowledge of any lease from the Society for Establishing Useful Manufactures to the complainant, of water power, as stated in the complainant's bill, but they suppose it is as stated in said bill.

And these defendants further answering say, that they cannot answer as to the description of the lot, and as to where the line of said lot cuts the said building, but suppose 20 that the complainant has correctly set out the same in said bill.

And these defendants further answering say, that they have heard that Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, have recovered judgments in the Supreme Court of New Jersey against the said John Whittemore, but for what amounts, these defendants have no knowledge, save by the complainant's bill; and these defendants suppose that they have issued executions upon said judgments, and have taken such proceedings thereon as are 30 stated in the complainant's bill, but they have no knowledge of the same.

And these defendants deny all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly 40

pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

A. S. PENNINGTON & SON, *Solicitors.*  
A. S. PENNINGTON, *Of counsel.*

State of New York, city and county of New York, ss.—  
Personally appeared before me, William Kumbel and David V. Freeman, who being by me duly sworn according to law, depose and say—that the facts, matters, and things set forth and contained in the foregoing answer, so far as they relate  
10 to their own acts and deeds, are true of their own knowledge, and so far as they relate to the acts and deeds of any other person or persons, they believe them to be true.

WM. KUMBEL,  
D. V. FREEMAN.

Sworn and subscribed before me, this 18th day of October,  
A. D. 1864.

A. P. WHITEHEAD,  
*Commissioner in the state of New York for the state of New Jersey.*

### Replication.

[Filed October 25, 1864.]

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto saith—that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue and insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever in the said  
30 answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is untrue; all which matters and things this repliant is and will

be ready to aver and prove as this honourable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

S. TUTTLE,  
*Solicitor of complainant.*

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Answer of William Kumbel.

[Filed January 18, 1865.]

IN CHANCERY OF NEW JERSEY.

*The answer of William Kumbel, to the bill of complaint of John Bentley, complainant.* 10

This defendant now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception to the many errors, uncertainties, and imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, he answering, says—that on or about the eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, John Whittemore became and was indebted to this defendant in a sum exceeding the sum 20 of eight thousand dollars, and in order to secure to this defendant the sum of eight thousand dollars, did make, execute, and deliver to this defendant his indenture of mortgage upon the property hereinafter mentioned and described, bearing date the day and year aforesaid, between the said John Whittemore, of the first part, and this defendant, of the second part, reciting that the said party of the first part was justly indebted to this defendant in the sum of eight thousand dollars for moneys lent and advanced by this defendant to the said John Whittemore; therefore it was witnessed that the said 30 John Whittemore, for the better securing the payment of the said sum of money, and the interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid

by this defendant, at or before the ensealing and delivery of the said indenture of mortgage, the receipt whereof was thereby acknowledged, did grant, bargain, sell, alien, release, convey, and confirm, unto this defendant and to his heirs and assigns forever, all that tract or parcel of land or premises situate, lying, and being in the township of Paterson, in the county of Passaic, and state of New Jersey, beginning at the north east corner of the lot heretofore conveyed by the Society for Establishing Useful Manufactures to the Beaver

10 Woolen Factory, which corner is four hundred and fifteen feet six inches northerly from Boudinot street; thence, running westerly along said Beaver Woolen Factory lot, one hundred feet to the northwest corner of said lot; thence, northerly at right angles seventy feet more or less to the Passaic river; thence, easterly down the said river one hundred feet; and thence, southerly seventy feet to the place of beginning; bounded on the south by said lot sold to said Beaver Woolen Factory, on the north by Passaic river, and

20 said society, reserving however to the said parties of the first part, their successors and assigns, the privilege of continuing their tail race through the said lot as it then was and of discharging their water through the same, and also of entering upon said lot, at all proper times and seasons, for the purpose of amending, opening, clearing out and repairing said tail race, so that their water may flow into the Passaic river without obstruction, to be kept in repair by the said company or their successors—together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any

30 wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same and every part and parcel thereof, with the appurtenances; to have and to hold the therein granted, bargained, and described premises, with the appurtenances, unto this defendant, his heirs and assigns, to his and their own proper use, benefit, and behoof forever, subject to a proviso or condition for re-

40 demption in the said indenture of mortgage contained, that

if the said John Whittemore, his heirs, executors, or administrators, should well and truly pay or cause to be paid to this defendant, his executors, administrators, or assigns, the said sum of eight thousand dollars, together with interest thereon from the date thereof, then the said indenture of mortgage and the estate thereby granted to cease and be determined; together with a provision for sale in case of default in payment of the money, as in and by the said deed of indenture of mortgage, duly executed under the hand and seal of the said John Whittemore, when produced will fully 10 appear; and this defendant further shows, that on the day aforesaid, the said deed was acknowledged before Ashbel Green, a commissioner for New Jersey, by the said John Whittemore, and that the same was duly recorded in the clerk's office of the county of Passaic, on the ninth day of May, A. D. 1857, as appears by endorsements thereon.

And this defendant answering admits, that on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the said John Whittemore, survivor of John Whittemore and Company, in the 20 said bill named, did make, execute, and deliver to these defendants, William Kumbell and David V. Freeman, a deed of assignment of such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth, and that the same was acknowledged and recorded as in the said bill stated; and this defendant says that the lot described in the said deed as lying in the township of Paterson, is the same described in this defendant's said mortgage.

And this defendant further answering says, that he admits that on or about the twelfth day of January, in the year of 30 our Lord one thousand eight hundred and fifty-eight, these defendants, William Kumbell and David V. Freeman, assignees as aforesaid, for the consideration of eight thousand dollars, did grant, bargain, sell, alien, remise, release, convey, and confirm to the said complainant, his heirs and assigns, the aforesaid lot of land and premises, situate in Paterson, New Jersey, and being the same lot of land and premises described in this defendant's said mortgage, subject to the payment of a mortgage, as stated in said deed, for two thousand dollars, which said mortgage was assumed by the 40

said complainant, as by reference to said deed or a certified copy thereof, will appear, which deed was acknowledged and recorded as in said bill stated; and further, that the said mortgage of two thousand dollars formed part of the said consideration money of eight thousand dollars.

And this defendant further answering says, that at the time of making the said deed of assignment from the said John Whittemore to this defendant and David V. Freeman, the said John Whittemore and this defendant resided in the  
 10 state of New York; that said deed conveyed property situated in the state of New York, and also the said property situated in New Jersey; that such deed of conveyance was perfectly lawful according to the laws of the state of New York, where the parties to said deed then lived, and that this defendant, at the time of the execution of said deed of assignment, and at the time of the execution of the said deed to the complainant, believed that the said assignees had a perfect right to sell the same as such assignees, for the purpose of performing their duty as such assignees.

20 And this defendant further answering says, that this defendant, William Kumbell, was one of the creditors named in the said deed of assignment to this defendant and David V. Freeman, to the amount of thirteen thousand nine hundred and ninety-two dollars and fourteen cents, the said mortgage of this defendant for eight thousand dollars being part of said indebtedness; that this defendant, being so large a creditor of said John Whittemore, wished to make the said sale to the complainant, and being also one of the said assignees, and believing that the said sale to the complainant  
 30 was good and valid, and wishing to be liberal to the other creditors intended to be secured by the said deed of assignment, was willing, in order to give to the said complainant a good title for the said Paterson property, with a view to remove the said encumbrance of this defendant's mortgage from the said property, consented to have the said mortgage of this defendant removed from the said property, wrote on the said mortgage as follows:

“I acknowledge satisfaction of the within mortgage, and consent that the same be discharged of record. New York,  
 40 January 12, 1858;” and on the same day it was acknow-

ledged before Ashbel Green, commissioner for New Jersey, and this defendant sent the same to the attorney of the complainant to have the same satisfied of record, which was done on the fourteenth day of January, 1858, as appears by endorsement thereon.

And this defendant says, that the said mortgage was not paid by the said John Whittemore, or by any other person, but was done for the purpose of perfecting the title of the complainant to the said property situate in Paterson aforesaid; and this defendant says, that if he had had any doubt 10 of the right of this defendant and the said David V. Freeman, assignees as aforesaid, to sell the said Paterson property and give a good and valid title to the same, he would not have had the said mortgage cancelled of record; and this defendant is ignorant of the laws of New Jersey, and says that if, by the laws of New Jersey, the Chancellor shall be of opinion that the assignees could not give a good and valid title to the said property, then this defendant insists that the cancellation of the said mortgage of this defendant having been made under a mistake, and without any consideration 20 therefor, except being a creditor as aforesaid, that the said mortgage of this defendant should be established as a valid and subsisting mortgage, and the cancellation be set aside, especially as against the defendants, John Whittemore and the several judgment creditors.

And this defendant further answering says, that he has heard that Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, have recovered judgments in the Supreme Court of New Jersey against the said John Whittemore, but for what amounts this defendant has no 30 knowledge, save by the complainant's bill; and this defendant supposes that they have issued executions upon such judgments, and have taken such proceedings as are stated in the complainant's bill, but he has no knowledge of the same.

And this defendant says that he has received, under the said assignment to this defendant and David V. Freeman, from the sales of the property, including the said sum of six thousand dollars received from the complainant for said deed, about seven thousand dollars, leaving due to this defendant the sum of about seven thousand dollars, with interest there- 40 on from eighteen hundred and fifty-seven.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays that justice may be done to him, and that either the said deed may be established, or that his said mortgage may be set up as a valid and subsisting mortgage.

A. S. PENNINGTON & SON,

*Solicitors and of counsel with the defendant, Wm. Kumbell.*

William Kumbell, being by me duly sworn according to law, deposeseth and saith—that the facts, matters, and things set forth and contained in the foregoing answer, so far as they relate to his own acts and deeds, are true, of his own knowledge, and so far as they relate to the acts and deeds of any other person or persons, he believes them to be true.

WM. KUMBEL.

Sworn and subscribed before me, at the city, county, and state of New York, this 13th day of January, 1865.

A. P. WHITEHEAD,

*Commissioner for the state of New Jersey in the state of New York.*

20

### Depositions.

[Filed February 25, 1865.]

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein John Bentley is complainant, and John Whittemore and others are defendants, taken at the office of Thomas W. James, in Jersey City, on the sixteenth day of February, in the year one thousand eight hundred and sixty-five, before the said Thomas W. James, one of the masters and examiners of the said court, in the presence of Aaron S. Pennington, esquire, solicitor for and of counsel with William Kumbell, and also of counsel with David V. Freeman, assignees, and John W. Taylor, esquire, of counsel with the judgment creditors mentioned in the pleadings.

This examination on the part of William Kumbell, on consent of said John W. Taylor, esquire.

*William Kumbell*, one of the defendants, being duly sworn according to law, on his oath saith—I am one of the defendants in this case; I and David V. Freeman resided in the state of New York, in the year eighteen hundred and fifty-seven; I have resided there for many years—always in that state; John Whittemore also resided in, and did business in the state of New York, in the year 1857; on the 8th of May, in the year 1857, John Whittemore was indebted to me, individually, in a large sum of money—within a very few dollars of fourteen thousand dollars; in order to secure 10 a part of that sum the said Whittemore executed and delivered to me the mortgage now produced and shown to me, and marked *Exhibit P, No. 1*, in this case, for eight thousand dollars; it was taken in the sum of eight thousand dollars because the property was presumed to be worth not more than that amount; there was no intention or agreement that that mortgage was to settle the whole of my claim, it was designed only to secure a part of the claim; after that mortgage was given to me, John Whittemore made a deed of assignment to me and David V. Freeman, for property in the 20 city of New York and elsewhere, and also for the property now in dispute in this cause, in the city of Paterson, in trust for me and others, creditors, as in the said deed is stated; on or about the 12th day of January, 1858, Mr. Freeman and myself agreed to convey, and did convey, to John Bentley, the complainant, the property in the city of Paterson, by deed, bearing date on that day, for the sum of eight thousand dollars—which property was subject to a mortgage for two thousand dollars, which formed part of the said consideration money; that at the time of making the agreement 30 for said sale with Mr. Bentley, the mortgage marked *Exhibit P, No. 1*, was a subsisting lien and encumbrance upon that property, which had not, nor any part of it, been paid by the said John Whittemore or any other person, to this deponent. Mr. Freeman and myself, at that time, believed that the conveyance from Mr. Whittemore to ourselves, as trustees, was perfectly valid, and that we had a perfect right to sell and give a good title for the property in Paterson; the mortgage marked *Exhibit P, No. 1*, was cancelled for the purpose of making the title clear to Mr. Bentley, and from the hope 40

that the assignment would be sufficient to pay all the debts mentioned in the assignment; the deed to Bentley, and the cancellation of that mortgage, were parts of one and the same transaction.

I recovered from that assignment, including the sale to Bentley, about one half of the whole amount which was due to me; if I had had any doubt as to the validity of the deed of assignment from Whittemore to Freeman and myself, I would not have cancelled the mortgage marked *Exhibit P, No. 1*; there was no consideration given by John Whittemore, or any other person to this deponent, for the cancellation of that mortgage, other than the interest I suppose I had in the assignment.

I never heard any doubt suggested as to the right of the assignees to sell the property to John Bentley, until within a year past.

I understand that the deed of assignment from Whittemore to Freeman and myself, would be, by the laws of the state of New York, a good and valid deed.

20

WM. KUMBELL.

Subscribed and sworn to before me, in Jersey City, this 16th day of February, A. D. 1865.

THO'S W. JAMES, M. C.

## Cross-examination.

*William Kumbell*, the above named witness, being cross-examined on the part of the judgment creditors named in the bill, by John W. Taylor, esquire, their solicitor and counsel, at the office of Thomas W. James, in Jersey City, this twenty-fourth day of February, in the year one thousand eight hundred and sixty-five, in the presence of Aaron S. Pennington, esquire, of counsel with William Kumbell and David V. Freeman, assignees.

30 The said witness, William Kumbell, being sworn previous to his examination in chief, upon his cross-examination, now further, on his oath, saith—

When the mortgage for \$8000, marked *Exhibit P, No. 1*, was made to me, I do not recollect that the assignment mentioned in the pleadings, was contemplated; I recollect of Mr. Whittemore speaking of his circumstances at the time

that mortgage was given; he was in failing circumstances, and very much depressed, pecuniarily; I do not know that he then spoke about the assignment particularly; but I think he had it in contemplation; we received \$6000 from Mr. Bentley, on the conveyance to him; I received my dividends, which embraced the proceeds of what we received from Mr. Bentley; we threw what we received into one mass; the amount of the consideration of the sale to Mr. Bentley was not sufficient to pay the two mortgages upon the property.

*Quest.* As the net proceeds of the sale to Bentley were but 10 \$6000, and your mortgage upon the property sold was for \$8000, why did you not retain that \$6000 and apply it towards the payment of your mortgage, or the indebtedness to secure which that mortgage was given?

*Ans.* I felt that after I had relinquished that mortgage, I had not the right of applying the funds.

*Quest.* Why?

*Ans.* Because that I had relinquished the mortgage; my reasons were, my obligations and duty towards the creditors.

*Quest.* You knew that you had a right under the assign- 20 ment to be paid the amount of your mortgage, did you not?

*Ans.* I did; that is if the property would pay it.

WM. KUMBEL.

Sworn on the 16th day of February, and subscribed on this 24th day of February, A. D. 1865, before me, in Jersey City.

THO'S W. JAMES, *M. C.*

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[Filed May 1, 1866.]

Examination of witnesses, &c., in above stated case, began at the office of S. Tuttle, esq., in the city of Paterson, New Jersey, in the presence of Aaron S. Pennington, esq., 30 solicitor for William Kumbell, and of Socrates Tuttle, esq., solicitor for John Bentley, the complainant, and of John W. Taylor, solicitor of the defendants, Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, on Wednesday, January 25th, 1865, at 10 o'clock in the forenoon, upon due notice, service of which was duly acknowledged, before me.

WM. GLEDHILL, *M. C.*

*Socrates Tuttle*, a witness produced on behalf of William Kumbell, one of the defendants in this cause, being by me duly sworn according to law, on his oath saith—

1 *Quest.* Were you concerned for John Bentley in examining the title to and making the purchase of the property described in a deed from William Kumbell and David V. Freeman, assignees to John Bentley, the complainant mentioned and set out in the complainant's bill?

*Ans.* I was employed by Mr. Bentley to search for encumbrances on the property, and have no recollection of having  
10 done anything more for him.

2 *Quest.* In making that search, did you find that there was a mortgage recorded in the county of Passaic on that property given by John Whittemore to William Kumbell, for \$8000?

*Ans.* I did.

3 *Quest.* Did you advise Mr. Bentley that it was advisable to get that mortgage out of the way before he could make that purchase?

*Ans.* I do not remember what I advised him about it; but I presume I did.

20 4 *Quest.* Was the delivery of the deed and the cancelling of this mortgage part of the same transaction?

*Ans.* Yes, sir.

5 *Quest.* Was the mortgage sent to you from New York to be cancelled, or how did it come to your hands?

*Ans.* My recollection is that it was sent to me from New York to be cancelled.

6 *Quest.* Did you procure it to be cancelled?

*Ans.* I did.

A paper being shown to witness marked *Exhibit P, No.*  
30 1, he is asked—

7 *Quest.* Is that the paper that you mentioned as the mortgage sent to you to be cancelled?

*Ans.* It is.

S. TUTTLE.

This paper is here offered in evidence by Mr. Pennington.

Cross-examination—none.

Sworn and subscribed, January 25th, 1865, before me, at Paterson.

WM. GLEDHILL, *M. C.*

*John Bentley*, a witness produced on behalf of complainant, being by me duly sworn according to law, on his oath saith—

1 *Quest.* Where do you live, what is your age, and what is your occupation ?

*Ans.* I live in Paterson ; I am 63 ; my occupation at present is milling.

2 *Quest.* Are you the complainant in this suit ?

*Ans.* Yes, sir.

Mr. Tuttle here offers in evidence a paper purporting to be a copy of a deed of assignment from John Whittemore to William Kumbell and David V. Freeman, dated May 28th, 1857, acknowledged May 29th, 1857, before Moses B. Maclay, commissioner for New Jersey resident in New York, which paper I have marked *Exhibit T, No. 1.*

Also, a deed of conveyance executed by William Kumbell and David V. Freeman, of the city of New York, assignees of John Whittemore, to John Bentley, of Paterson, New Jersey, dated January 12th, 1858, and recorded January 14th, 1858, acknowledged before Ashbel Green, commissioner for New Jersey residing in New York, which paper I have marked *Exhibit T, No. 2.*

WM. GLEDHILL, *M. C.*

3 *Quest.* Are the premises described in the deed marked *Exhibit T, No. 2*, the same premises that are in controversy in this suit ?

30

*Ans.* Yes, sir.

4 *Quest.* What power have you upon those premises, and how did you acquire it ?

*Ans.* Water power, under lease from the Society for Establishing Useful Manufactures.

Mr. Tuttle here offers in evidence a lease from the Society for Establishing Useful Manufactures to John Bentley, dated

Nov. 1st, 1857, due execution of which is admitted by the solicitor, Mr. Taylor, which paper I have marked *Exhibit T, No. 3.*

WM. GLEDHILL, M. C.

5 *Quest.* Do you hold your right to the power used on said premises under the paper marked *Exhibit T, No. 3,* exclusively?

*Ans.* I do.

6 *Quest.* At the time of the purchase of those premises from the assignees of Whittemore, was there any encumbrance subsisting on them—if so, what?

*Ans.* Two thousand dollars; yes; a mortgage held by Mary Morrell.

7 *Quest.* Have you, since that purchase, paid off that mortgage, with the interest—if so, when?

*Ans.* Yes, sir; the date I don't remember.

8 *Quest.* State as nearly as you can?

*Ans.* I think it is two years ago; two or three years ago next May.

20 9 *Quest.* Where is that mortgage?

*Ans.* I think I destroyed it.

10 *Quest.* Have you made search for it and been unable to find it?

*Ans.* Yes, sir; I cannot find it.

Mr. Tuttle here offers in evidence a certified copy of the record of that mortgage from John Whittemore and wife to Mary Morrell, dated May 19th, 1855, to secure his bond to her of same date for \$2000, with interest at the rate of 7 per cent. per annum, which paper I have marked *Exhibit T, No. 4.*

30

WM. GLEDHILL, M. C.

11 *Quest.* At the time of the purchase from the assignees of Whittemore of the said premises, how much, if anything, did you pay for the same?

*Ans.* I paid \$8000 for the premises.

12 *Quest.* How did you pay it?

*Ans.* \$6000 in cash, and assumed Mary Morrell's mortgage for \$2000.

13 *Quest.* Did you or not, at the time of the purchase, suppose that the mill stood wholly on the land described in your deed from the assignees? [Objected to.]

*Ans.* Yes, sir.

14 *Quest.* Describe the building on said premises as it was when you bought the property?

*Ans.* The mill was a mere shell; it was a frame building, about sixty feet by thirty feet, and three stories high, with an attic; there is an addition in the rear that runs with the depth of the lot about seventy feet; that is only one story high; there is also a small brick building attached to the main building; it was built for an engine house; they used a steam engine in it; it is about twelve feet by twenty feet, as near as I judge; it is one story high.

15 *Quest.* What was the condition of the building itself?

*Ans.* Very bad; the lower floor and timbers were in part rotten, and had to be renewed; the other floors had to be strengthened, heavier timbers put in.

16 *Quest.* Since the purchase of the property, have you put upon it any improvements and repairs of a permanent nature—and if so, of what value? 20

*Ans.* Masonry and carpenters work; yes; they consisted of new timbers and floors, and walls underneath; the amount was between \$700 and \$800, at a low estimate.

17 *Quest.* Have you the means of stating the precise expense?

*Ans.* No, sir; it was between \$700 and \$800.

18 *Quest.* Besides repairs to the building, have you put into it any machinery or fixtures that are fast to the freehold—if so, state what? 30

*Ans.* Yes, sir, to near the amount of \$2000; if taken out to-day they would depreciate 50 per cent.; the machinery consists of "bolts," "elevators," stones, crackers, and cleaning machines; they are fastened to the building so that they cannot be taken out without depreciating in value 50 per cent.

19 *Quest.* State why the machinery in that mill would be so much depreciated by removal?

*Ans.* Because it is built in to suit the mill.

20 *Quest.* How many run of stone have you there?

*Ans.* Three.

21 *Quest.* Since your purchase of the property, have you ascertained that the building stands entirely on the land described in your deed or not—and if not, how otherwise?

*Ans.* I have ascertained that it does not stand entirely on that land; it stands, one half of the building on the society's land; the whole front, to the depth of sixteen feet, is on the society's land; the rest of the building is on the land purchased of Whittemore's assignees.

22 *Quest.* When did you first discover that the building did not stand wholly on the Whittemore lot?

*Ans.* Soon after the advertisement of the property to be sold by the sheriff.

23 *Quest.* How did you ascertain it?

*Ans.* By measuring the lot.

24 *Quest.* Have you had that lot surveyed?

*Ans.* No, sir.

25 *Quest.* Have you acquired from the society any right or title to the land upon which the easterly half of the building stands?

*Ans.* Yes, sir.

26 *Quest.* What is the nature of that title, and how did you acquire it?

*Ans.* By lease from the society.

27 *Quest.* Where is your lease?

*Ans.* In Mr. Tuttle's possession.

28 *Quest.* Upon whose land does the water which drives your mill, flow?

30 *Ans.* The society's.

29 *Quest.* At the time of your purchase of and payment for said premises, had you any doubt that the assignees of Whittemore had a legal title to the premises, and did you purchase with the understanding that their deed to you conveyed to you a legal title to the land and premises? [Objected to.]

*Ans.* I had no doubt; I presumed the title was good; I purchased with that idea.

Mr. Tuttle here offers in evidence a lease, dated Dec. 7th, 1863, made by the said society to John Bentley, for land, in

Paterson, the execution of which Mr. Taylor, the solicitor of defendants, admits; the paper I have marked *Exhibit T*, No. 5.

30 *Quest.* Is the paper now produced and marked *Exhibit T*, No. 5, a lease from the society to you for the strip of land belonging to them upon which part of your building stands?

*Ans.* Yes, sir.

Cross-examination.

31 *Quest.* What are the dimensions of the frame addition 10 in the rear of which you spoke?

*Ans.* One story high; the full depth of the lot about seventy feet.

32 *Quest.* How old is the main building?

*Ans.* I could not say.

33 *Quest.* Did you strengthen the timbers because they were decayed, or because you required unusually strong timbers for the purpose for which you meant to use the building?

*Ans.* I put in new timbers in consequence of rot, and 20 strengthened some in consequence of weakness.

34 *Quest.* Was any portion of the building, except the floor and lower timbers, rotted?

*Ans.* No, sir.

35 *Quest.* You state that the others had to be strengthened. Why had they to be strengthened?

*Ans.* Because they were very light timber, too weak to bear machinery.

36 *Quest.* The machinery and fixtures requisite for a grist mill are unusually heavy, are they not? 30

*Ans.* Generally, but not in this case.

37 *Quest.* You state that you took up a mortgage of \$2000; was it before or after you put another mortgage on the place?

*Ans.* It was after.

38 *Quest.* If you have put other mortgages on the place, state when and to what amount?

*Ans.* At the time of the purchase \$2500, and that has since been paid.

39 *Quest.* When was it paid?

*Ans.* Within the last two years, and not since this suit commenced; there is no mortgage on the place now, against me; I know of none on the place.

JOHN BENTLEY.

Sworn and subscribed, January 25th, 1865, before me.

WM. GLEDHILL, *M. C.*

*Abraham A. Fonda*, a witness produced on behalf of complainant, being by me duly sworn according to law, on his  
10 oath saith—

1 *Quest.* What is your age, and occupation, and name?

*Ans.* My name is Abraham A. Fonda; my age is thirty-three years, past; my occupation is that of a surveyor and engineer.

*Exhibit T, No. 2*, being shown to witness, he is asked—

2 *Quest.* Are you acquainted with the premises described in that exhibit?

*Ans.* Yes, sir.

3 *Quest.* Have you recently made a survey of those prem-  
20 ises, to ascertain whether the buildings situated thereon, used as a flouring mill by Mr. Bentley, are situated wholly upon the land described in said exhibit or not?

*Ans.* I have.

4 *Quest.* State whether the said mill is wholly upon the said lot—and if not, how otherwise?

*Ans.* It is not; the easterly line of the mill at the south-east corner is at least fifteen feet five inches east of the easterly line of the lot; I did not run the line all the way up; the mill will run nearly parallel to the line of the lot in  
30 that exhibit; I mean the easterly line of the mill will run nearly parallel with the easterly line of that lot.

Examination adjourned till to-morrow, at 4 o'clock P. M.

WM. GLEDHILL, *M. C.*

Thursday, January 26th, 1865, examination of witness resumed, as follows:

5 *Quest.* Since the adjournment, have you made a careful survey of Bentley's mill and lot?

*Ans.* I have.

6 *Quest.* Please state the result of the survey?

*Ans.* I find that on the north end the easterly line of his mill extends thirteen feet easterly beyond the easterly line of the lot conveyed to him by Whittemore's assignees, and the south end of the mill extends fourteen feet easterly of that line.

The paper here produced by me and marked *Exhibit T*, No. 6, by the master, is a diagram or plan of the Bentley mill, and the lot occupied by him, and the buildings.

The dotted line *A, D*, represents the easterly line of the 10 lot conveyed by the deed of Whittemore's assignees to Bentley.

I made the survey to-day from the society's monument, which defines the line between Low's lot and the Bentley lot, or rather the Beaver Mill lot, on rear of which Bentley's mill stands.

ABM. A. FONDA.

Sworn and subscribed, January 26th, 1865, before me.

WM. GLEDHILL, *M. C.*

The paper marked *Exhibit T*, No. 6, was offered in evidence on behalf of complainant.

WM. GLEDHILL, *M. C.*

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### Order for Leave to File Amended Bill.

[Filed November 21, 1866.]

This cause coming on to be heard before the Chancellor, in the presence of S. Tuttle, of counsel with the complainant, and of A. S. Pennington, of counsel with the defendant, William Kumbell, and the Chancellor being of opinion that in the present state of the pleadings therein the cause cannot properly be heard.

30

It is thereupon, on this twenty-first day of November, A. D. eighteen hundred and sixty-six, ordered by the Chancellor, that the complainant in the cause have leave to file an amended bill therein, and that the said defendant, Wil-

liam Kumbell, have leave to file a cross-bill therein, as he may be advised, and that the costs abide the event of the suit.

A. O. ZABRISKIE, C.

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Amended Bill.

[Filed November 21, 1866.]

*To his Honor Abraham O. Zabriskie, Chancellor of the State of New Jersey.*

Humbly complaining showeth unto your Honor, your  
 10 orator John Bentley, of the city of Paterson, in the county of Passaic, and state of New Jersey, that John Whittemore, of the city, county, and state of New York, on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, did make and execute a certain deed of assignment for the benefit of his creditors, or some of them, in pursuance of the laws of the state of New York, the date whereof is the day and year above mentioned, wherein the said John Whittemore, survivor of John Whittemore and Company, was the party of the first part, and Wil-  
 20 liam Kumbell and David V. Freeman, of the city, county, and state of New York, were the parties of the second part; in and by which deed of assignment the said John Whittemore, for a certain consideration in the said deed mentioned and expressed, to wit, the sum of one dollar, lawful money of the United States, to him in hand paid by the said parties of the second part, in the said deed of assignment mentioned, did grant, bargain, sell, assign, and transfer unto the said Wil-  
 30 liam Kumbell and David V. Freeman, certain tracts or parcels of land and premises, situate in the state of New York, and also the following described traet of land and premises, situate, lying, and being in the city of Paterson, in the county of Passaic, and state of New Jersey—beginning at the northeast corner of the lot heretofore conveyed by the Society for Establishing Useful Manufactures to the Beaver Woollen Factory, which corner is four hundred and fifteen feet and

six inches northerly from Boudinot street ; thence, running westerly along said Beaver Woollen Factory lot one hundred feet, to the northwest corner of said lot ; thence, northerly at right angles twenty feet more or less, to the Passaic river ; thence, easterly down the said river one hundred feet ; and thence, southerly seventy feet to the place of beginning ; and, also, all the stock in trade, tools, implements, machinery, goods manufactured and unmanufactured and in process of manufacture, and all notes, bills, dues, choses in action and demands whatsoever, and all other property whatsoever belonging to the 10 said firm of John Whittemore and Company, or to the said John Whittemore as such survivor or otherwise, except his household furniture, and all books of account, vouchers, and securities relating thereto ; to have and to hold the same unto the said parties of the second part to the said deed, their heirs, executors, administrators, and assigns forever, in trust, that they sell and dispose of all real estate thereby conveyed, and give good and sufficient deeds therefor, and sell all other property thereby assigned, and collect and receive all moneys due and to grow due on the notes, bills, dues, and demands 20 thereby assigned, and that they apply the net proceeds of such sales and collections, in the first place to the payment of the expenses of drawing the said deed of assignment and the actual expenses attending the execution thereof ; and in the next place, that they pay the several persons and parties named in the schedule hereto annexed marked A, the amounts set opposite to their respective names, or so much of said amounts as should be actually due to them after applying all securities or transfers or mortgages which either of them might hold, for the payment of any indebtedness due to 30 them ; provided, however, that in case the said proceeds should not be sufficient to pay the several persons in schedule A, after applying as aforesaid, then the said parties of the second part to pay the same ratably and proportionably, and in the next place, after making such payments as aforesaid, should any of the said proceeds remain, that the said parties of the second part should pay the several creditors, and such as should become such by reason of any contract then existing of the said party of the first part, and John Whittemore and Company, the amounts of their respective demands, so 40

far as the said proceeds would enable them to do, and if not in full, then ratably and proportionably to the amounts of their respective demands. And the said John Whittemore, party of the first part to the said deed of assignment, did therein and thereby irrevocably make, constitute, and appoint the said William Kumbell and David V. Freeman, his true and lawful attorneys, in his name or otherwise, to collect, recover, and receive the goods, property, claims, and demands thereby assigned or intended so to be, and to do and perform  
 10 all that should be necessary to be done and performed for the converting the said goods or other property into cash, and collecting and receiving the said dues and demands, as fully and as amply as the said party of the first part to the said deed could do or perform, were he personally present and the said assignment had not been made.

And your orator further shows unto your Honor, that the said deed of assignment was duly executed under the hand and seal of the said John Whittemore, party of the first part, and under the hand and seal of the said William Kumbell  
 20 and David V. Freeman, parties of the second part, and was duly acknowledged by the said parties on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before James V. Hyatt, esquire, a commissioner of deeds of the state of New York, and was also duly acknowledged by the said John Whittemore, the grantor, on the same day and year last aforesaid, before Moses B. Maclay, esquire, a commissioner resident in the city of New York, duly commissioned and qualified, under  
 30 ledgments of deeds, &c., and was duly recorded in the clerk's office of the county of Passaic, in this state, on the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven, as by reference to the said deed of assignment, the certificates of acknowledgment, and the certificate of the clerk of the county of Passaic thereon, or a duly certified copy thereof, now in the custody of your orator, will more fully and at large appear.

And your orator further shows, that the names of the parties and the sums attached to their respective names, in the  
 40 schedule marked A, annexed to the said deed herein before mentioned, are as follows, to wit :

William Kumbell, - - - - -	\$13,992.14	
Horace & Robert B. Whittemore, - - - - -	1,131.17	
Robert B. Whittemore, - - - - -	1,171.15	
Wm. & C. C. Keeler, - - - - -	1,420.10	
J. F. Tysen, - - - - -	1,200.00	
William Borden, - - - - -	1,000.00	
F. Del Hoys, - - - - -	900.00	
E. A. Whittemore, - - - - -	600.00	
Horace Whittemore, - - - - -	505.83	
I. Wilder, - - - - -	500.00	10
Keller & Singg, - - - - -	300.00	
James M. Frees, - - - - -	533.13	
O. S. Hathaway, - - - - -	1,390.50	
F. Cole, - - - - -	187.92	
Paterson Bank, - - - - -	923.01	
Estate of Jane Muneigh, - - - - -	425.00	

To which schedule your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows, that the said William Kumbell, mentioned in the said schedule, is one of the assignees mentioned in the aforesaid deed of assignment. 20

And your orator further shows, that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman, assignees of the said John Whittemore, pretending to be seized of an estate in fee of the said premises, for the consideration of eight thousand dollars, to them in hand paid by your orator, by deed of conveyance under their respective hands and seals, and without special covenants of warranty, did grant, bargain, sell, alien, remise, release, convey, and confirm unto your orator, his heirs and assigns for ever, all that tract or parcel of land herein before particularly described, situate, lying and being in the city of Paterson, in the county of Passaic and state of New Jersey aforesaid. 30

And your orator further shows, that on the same twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said deed of conveyance, so made by the said William Kumbell and David V. Freeman to your orator, was duly acknowledged by the said David V. 40

Freeman and William Kumbell, before Ashbel Green, esquire, a commissioner under and by virtue of the laws of the state of New Jersey, resident in the state of New York, and duly recorded in the clerk's office of the county of Passaic on the fourteenth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, in Book C 2, of Deeds for said county, as by the said deed of conveyance and the certificate of the clerk of said county endorsed thereon, will more fully appear, and to which registry and certificate thereof, so  
 10 as aforesaid endorsed on the said indenture or deed of conveyance, your orator for greater certainty begs leave to refer, if it be necessary so to do.

And your orator further shows, that on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, and before the making and execution of the said deed of assignment by the said John Whittemore to the said William Kumbell and David V. Freeman, the said John Whittemore made, executed, and delivered to one Mary Morrell, a certain indenture of mortgage  
 20 upon the said lot of land and premises herein particularly described and conveyed to your orator, as aforesaid, to secure the payment of the sum of two thousand dollars, in one year from the date thereof, with the interest, which should accrue or become due thereon; and that the said mortgage was duly acknowledged and recorded in the clerk's office of the county of Passaic, and that the said sum of two thousand dollars intended to be secured by the said mortgage, remained unpaid at the time of the conveyance of the said premises to your orator as aforesaid; and that the said mortgage was a  
 30 lien upon the said premises, and that the said premises were conveyed to your orator subject to the encumbrance of the said mortgage, and that your orator has, since the said conveyance to him, paid the whole of the principal and interest money due upon the said mortgage to the said Mary Morrell.

And your orator further shows unto your Honor, that on the eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, the said John Whittemore, being indebted to the said William Kumbell in the sum of eight thousand dollars, for moneys lent and advanced by the  
 40 said William Kumbell to the said Whittemore before that

time, as your orator is informed and believes to be true, made, executed, and delivered to said William Kumbell a certain deed or indenture of mortgage, bearing date the day and year last aforesaid, in and by which said deed or indenture of mortgage the said John Whittemore, for the better securing the payment of the said last mentioned sum of money and the interest thereon, did grant, bargain, sell, alien, release, convey, and confirm, unto the said William Kumbell and to his heirs and assigns forever, all that tract or parcel of land and premises herein before described, and 10 conveyed by said Kumbell and Freeman, assignees as aforesaid, to your orator, 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, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said John Whittemore, party of the first part thereto, of, in, and to the same and every part and parcel thereof, with the appurtenances; to have and to 20 hold the said granted and bargained premises with the appurtenances, unto the said William Kumbell, party of the second part thereto, his heirs and assigns, to his and their own proper use, benefit, and behoof, forever. Provided always, and the said indenture of mortgage was upon this condition, that if the said party of the first part, his heirs, executors, or administrators, should and did well and truly pay or cause to be paid to the said party of the second part, his executors, administrators, or assigns, the said sum of eight thousand dollars, together with interest thereon from 30 the date thereof, on demand, then those presents and the estate thereby granted should cease and determine. And your orator further shows, that after the execution of the said deed or indenture of mortgage by the said John Whittemore, as aforesaid, the same was in due form of law acknowledged by the said John Whittemore before Ashbel Green, esquire, a commissioner for the state of New Jersey, residing in the state of New York, and was recorded in the clerk's office of the county of Passaic, on the ninth day of the same month of May, in Book G of Mortgages, for said county, as 40

by the said deed or indenture of mortgage and the certificate of acknowledgment and record thereof, now in the possession of your orator and ready to be produced as this honourable court shall direct, will more fully and at large appear.

And your orator further shows unto your Honor, that at the time of the execution and delivery of the said deed of assignment by the said John Whittemore to the said Freeman and Kumbell, and at the time of the conveyance by the said Freeman and Kumbell of the said premises to your  
 10 orator as aforesaid, the said deed or indenture of mortgage so made and executed by said Whittemore to said William Kumbell, was a subsisting lien upon the said premises so conveyed by said Freeman and Kumbell to your orator, no part of the said sum of eight thousand dollars thereby intended to be secured having then been paid or satisfied.

And your orator further shows unto your Honor, that at the time of the execution and delivery to him of the said deed of conveyance by said Kumbell and Freeman, as herein before stated, your orator paid to said Kumbell the sum  
 20 of six thousand dollars, part of said sum of eight thousand dollars intended to be secured by said last mentioned mortgage, and also at the same time assumed and agreed to pay, and afterwards did pay, as before stated, the said sum of two thousand dollars due to said Mary Morrell on her said mortgage, thereby paying and satisfying in full to said William Kumbell the said sum of eight thousand dollars, so secured to him by his said mortgage; and thereupon the said William Kumbell, on the twelfth day of January, eighteen hundred and fifty-eight, being the same day on which the said  
 30 Kumbell and Freeman executed and delivered their deed to your orator as aforesaid, did deliver the said mortgage to your orator, and by writing endorsed on the said mortgage, did acknowledge satisfaction of the same, and consent that it should be discharged of record, reference thereto will fully appear.

And your orator further shows, that on the fourteenth day of January, eighteen hundred and fifty-eight, the said mortgage was cancelled of record, by order of your orator or his  
 40 counsel. And your orator shows further, that if he had supposed there was any defect in his title to the said land and

premises under his said deed from the said Kumbell and Freeman, your orator would not have had the said eight thousand dollar mortgage or the said two thousand dollar mortgage cancelled of record, but would have procured the same to have been assigned and transferred to him, and would have held them as muniments of title.

And your orator claims and insists before this honorable court, that the legal title to the said land and premises so conveyed to him by said Kumbell and Freeman, by their deed as assignees, was at the time of the said conveyance to 10 your orator in the said William Kumbell, under and by virtue of the said deed or indenture of mortgage then held by him as aforesaid, and that all the title which said Kumbell then had in the said premises, either as co-assignee with said Freeman or in his individual right, passed to and vested in your orator by the deed of conveyance of said Kumbell and Freeman to your orator.

And your orator further claims and insists, that if, in the judgment of this honorable court, the title of your orator under the said conveyance from said Kumbell and Freeman 20 to him is defective or void, that then the said respective mortgages so given by said Whittemore to said Mary Morrel and William Kumbell ought to be established by the decree of this honorable court as subsisting liens, prior to the judgments hereinafter mentioned upon your orator's said property, in favor of your orator and for his benefit.

And your orator further shows, that when the said lot of land and premises were conveyed to him by the said William Kumbell and David V. Freeman as aforesaid, there was a two story frame building standing in part upon the said 30 lot of land and in part upon land belonging to the Society for Establishing Useful Manufactures, which said building had long been used as a mill for the manufacture of card, clothing, and for other manufacturing purposes; that prior to the purchase by and conveyance of the said premises to your orator as aforesaid, all the machinery and fixtures which had before been in the said building were removed therefrom, leaving the same a mere shell, and in a dilapidated condition. And your orator further shows, that shortly after the purchase and conveyance of the said prem- 40

ises as aforesaid by him, he put the said building in complete repair, putting in new floors and otherwise improving the said property, at a very considerable expense and outlay of money. And that he also converted the said building into a flouring mill, putting therein, at very great expense to himself, several run of stone, and all kinds of machinery and fixtures necessary and proper for the successful manufacture of flour and feed, and that your orator has been for several years last past and still is engaged in the business of  
 10 manufacturing flour and feed in the said mill.

And your orator further shows unto your Honor, that the machinery in said mill has always been run by water power, and that the property in the said water power, and the right to use the same, are in your orator, and were acquired by him by a perpetual lease from the Society for Establishing Useful Manufactures, renewable every twenty-one years.

And your orator further shows, that the building standing upon the said lot of land and used as a flouring mill by your orator as aforesaid, is about sixty feet long by thirty-two feet  
 20 wide, more or less, and that the easterly line of the lot of land herein described and conveyed by the said William Kumbell and David V. Freeman to your orator as aforesaid, runs nearly through the middle of said building, leaving about sixteen feet in width, and the whole of the length of the same standing upon land which your orator holds under a lease from the Society for Establishing Useful Manufactures, and to which the said John Whittemore or the said William Kumbell and David V. Freeman never had nor pretended to have any title.

30 And your orator further shows, that on or about the twenty-third day of June last, one Samuel Anable recovered a judgment in the Supreme Court of Judicature of the State of New Jersey against the said John Whittemore, for the sum of nine hundred and three dollars and forty-three cents debt, and four dollars costs, or some other sum; upon which said judgment a writ of *feri facias de bonis et terris* was issued out of said court, directed and delivered to William Douglass, then sheriff of the county of Passaic, and that the said William Douglass, sheriff as aforesaid, has levied upon the  
 40 said lot of land and premises of your orator, so conveyed to

him by the said William Kumbell and David V. Freeman, under and by virtue of the said writ of execution, as the property of the said John Whittemore.

And your orator further shows, that on or about the twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-three, one Edward W. Walker recovered a judgment in the Supreme Court of Judicature of the State of New Jersey against the said John Whittemore, for the sum of one thousand six hundred and twenty-four dollars, debt and costs, or some other sum, upon which 10 said judgment a writ of *feri facias de bonis et terris* was issued out of said court, directed and delivered to William Douglass, then sheriff of the county of Passaic; and that the said William Douglass, sheriff as aforesaid, has levied upon the said lot of land and premises of your orator, under and by virtue of the said writ of execution, as the property of the said John Whittemore.

And your orator further shows, that on or about the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-three, one Ezra P. Howard recovered a judg- 20 ment in the Supreme Court of Judicature of the State of New Jersey against the said John Whittemore, for the sum of seven hundred and ninety-nine dollars, debt and costs, or some other sum, upon which said judgment a writ of *feri facias de bonis et terris* was afterwards issued out of said court, directed and delivered to the sheriff of the county of Passaic, or to some other sheriff. And your orator further shows, that he is informed and believes it to be true, that the said last mentioned writ of execution was afterwards returned to the said court unsatisfied, in whole or in part, and 30 that an *alias feri facias de bonis et terris* was afterwards issued out of said court and delivered to William Douglass, then sheriff of the county of Passaic; and that the said William Douglass, sheriff as aforesaid, has levied upon the said lot of land and premises under and by virtue of said last mentioned writ of execution as the property of the said John Whittemore.

And your orator further shows unto your Honor, that on or about the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, one Elias 40

Hempstead recovered a judgment in the Supreme Court of Judicature of the State of New Jersey against the said John Whittemore, for the sum of six hundred and fifteen dollars, debt and costs, or some other sum; upon which said judgment a writ of *feri facias de bonis et terris* was issued and delivered to William Douglass, then sheriff of the county of Passaic, to be executed; and that the said William Douglass, sheriff as aforesaid, has levied upon your orator's said lot of land and premises, under and by virtue of the said writ of  
 10 execution, as the property of the said John Whittemore.

And your orator further shows, that he is informed and believes, and therefore charges the fact to be, that the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, all reside in some foreign state or country and not in the state of New Jersey, and that neither of them was a citizen of this state at the time or since the debt for which his said judgment against the said John Whittemore was recovered, as herein before stated, was contracted.

And your orator further shows and charges the fact to be,  
 20 that the respective judgments recovered by the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, against the said John Whittemore, as aforesaid, were confessed by the said John Whittemore to them respectively. And your orator expressly charges that the said judgments were, and each of them was fraudulent and void and confessed for no good or legal consideration, and are no lien upon your orator's said premises. And your orator further shows, that the said William Douglass, sheriff as aforesaid, on or about the twelfth day of October last, advertised  
 30 the said lot of land and premises of your orator, so purchased from the said William Kumbell and David V. Freeman, as aforesaid, for sale under the aforesaid respective writs of execution, and that he has adjourned the sale of said premises until the sixth day of February, instant, at which time he threatens to sell the same by public auction to the highest bidder, and to make, execute, and deliver a deed therefor to the purchaser.

And your orator shows unto your Honor, that he is the true, lawful, and right owner of all and singular the said lot  
 40 of land and premises with the appurtenances, so conveyed

to him by the said William Kumbell and David V. Freeman, as aforesaid, and that the said John Whittemore has no right, title, or interest, in the same.

And your orator further shows, that the said William Douglass has not any just right or lawful authority, either as sheriff of the county of Passaic, under and by virtue of the said writs of execution or otherwise to levy upon, advertise for sale, sell or convey, or in any other manner to interfere with your orator's said property; and that such levying upon, advertising for sale, and threatening to sell your orator's said land and premises, puts a cloud upon the title of your orator, greatly reduces the value of the said premises in the estimation of other people, and if persisted in will prevent your orator from selling and disposing of the same, if he should desire so to do, in so advantageous a manner as he otherwise might and could do.

And your orator further shows unto your Honor and insists, that if the aforesaid deed of conveyance and assignment, made by the said John Whittemore, as aforesaid, to the said William Kumbell and David V. Freeman, is legally defective or void, or if the said deed of conveyance from the said William Kumbell and David V. Freeman to your orator for the said land and premises, should be held to be defective or insufficient to convey any title in the said premises to your orator, yet that your orator is entitled to relief in the premises in this honorable court.

And your orator further shows, that he believes it to be true and therefore, charges the fact to be, that the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, are combining and confederating together, with divers other persons whose names are unknown to your orator, to defraud your orator out of the large sums of money paid by your orator to the said William Kumbell and David V. Freeman, as the consideration money for the said lot of land and premises so conveyed to your orator by them, and wrongfully and unjustly to deprive your orator of the large improvements, fixtures, and machinery, now owned by your orator and by him put in and upon the said premises, and greatly to depreciate your orator's said property, break up and destroy his business and im-

poverish and wholly ruin him, and also to defraud your orator of the said sum of two thousand dollars, with the interest thereon, so paid by your orator to the said Mary Morrell in satisfaction of the said mortgage held by her upon the said premises when purchased by and conveyed to your orator as aforesaid, and also to defraud your orator of the said sum of six thousand dollars, with the interest thereon, so paid by your orator to said William Kumbell, as aforesaid.

10 And your orator further shows, that he is informed and believes it to be true and therefore charges the fact to be, that either the whole or a large part of the sum of six thousand dollars of the said purchase money, so paid by your orator to said assignees for the said land and premises, was received and appropriated by them or one of them to their own use or to the payment of his or their individual claim or claims against the said Whittemore; and your orator claims and insists that the said John Whittemore and the said William Kumbell and David V. Freeman, are bound in  
20 equity and good conscience to indemnify, save, and defend your orator against any and all claims and demands of the creditors of the said John Whittemore, as liens upon the said premises, and to protect him in the peaceable and quiet enjoyment of the said premises against all such claims, if any there be.

And your orator further shows, that he has frequently and in a friendly manner, applied to the said John Whittemore, William Kumbell, and David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and  
30 William Douglass, or some or one of them, and requested them or some or one of them to desist and refrain from advertising or selling your orator's said land and premises under the said respective writs of execution, or any or either of them, or in any other manner from interfering with your orator's said premises. And your orator well hoped that no disputes would have arisen touching your orator's said land and premises, or his title thereto, or his right to the peaceable and quiet enjoyment of the same, but that the defendants would have complied with such reasonable request of your  
40 orator, as in conscience and equity they ought to have done.

But now so it is, may it please your Honor, that the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, combining and confederating together, and with divers persons at present unknown to your orator, whose names when discovered your orator prays he may be at liberty to insert herein, with apt and proper words to charge them as parties defendants hereto, and contriving how to wrong and injure your orator in the premises, they, the said defendants, absolutely refuse to comply with such request, and they at times pretend that the said John Whittemore never did make, execute, and deliver to the said William Kumbell and David V. Freeman the said deed of assignment and conveyance herein before mentioned, or any deed of assignment and conveyance for the said lot of land and premises of your orator, and that the said William Kumbell and David V. Freeman never did make, execute, and deliver to your orator the said deed of conveyance, or any other deed of conveyance for the said lot of land and premises of your orator, and that your orator never paid to them, the said William Kumbell and David V. Freeman, the said sum of six thousand dollars of consideration money, or any other sum of money for the said premises, the contrary whereof your orator expressly charges to be true. And at other times they pretend that the said deed of conveyance and assignment from the said John Whittemore to the said William Kumbell and David V. Freeman, is fraudulent and void, or is insufficient to pass any title to the said lot of land and premises of your orator, and that the said William Kumbell and David V. Freeman never had any legal title to the said land and premises under the said deed of assignment and conveyance to them or otherwise, and that the said deed of conveyance from the said William Kumbell and David V. Freeman to your orator is fraudulent or void, or was given for no good or legal consideration, the contrary of all which your orator expressly charges to be true. And at other times they give out and pretend that the title to the said lot of land and premises so purchased from the said Kumbell and Freeman by your orator, is in the said John Whittemore, and not in your orator, or that

he has some right, property, or interest in the said premises, whereas your orator expressly charges the contrary thereof to be true. And at other times they give out and pretend, that the said sum of six thousand dollars, part of the said sum of eight thousand dollars, the purchase money of the said land and premises, was not received by the said Kumbell and Freeman, and appropriated by them or either of them to their own use, or to the payment of his or their individual claim or claims against the said John Whittemore,

10 whereas your orator expressly charges the contrary thereof to be true. And at other times they pretend that the said William Douglass, as sheriff of the county of Passaic, never did levy upon the premises of your orator, under and by virtue of the said writs of execution, or any other writs of execution, as the property of the said John Whittemore, and that he never did advertise or threaten to sell the same or in any other manner to interfere with your orator's said property, title, and estate, whereas your orator expressly charges the contrary thereof to be true.

20 All which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator. In consideration whereof, and forasmuch as your orator is entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable—

To the end, therefore, that the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and  
30 William Douglass, and the rest of the confederates, when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect answer make to all and singular the matters herein before stated and charged, as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay, or belief, and more especially that they  
40 may answer and set forth whether the said John White-

more did not make, execute, and deliver unto the said Kumbell and Freeman, as assignees of the said Whittemore, such deed of assignment, or a deed of assignment of such purport and effect as is herein before stated, and whether the said William Kumbell and David V. Freeman did make, execute, and deliver to your orator a deed of conveyance of such date for such consideration, for the same lot of land and premises, and of such general purport and effect as is herein before stated or not, and whether the consideration money of eight thousand dollars, mentioned in the said deed 10 of conveyance, has been paid or not, and to whom and when and how the same was paid, and whether the said premises were conveyed to your orator subject to an encumbrance by mortgage of two thousand dollars, or some other encumbrance, and if any, what encumbrance, whether by mortgage or judgment, and for what amount, and if by mortgage, by whom the same was given, and whether the said encumbrance has since been paid and by whom, and if the said purchase money or any part thereof was paid in cash to the said Kumbell and Freeman by your orator, whether the 20 same or some part thereof, and if any, how much was appropriated by them or either of them to his or their own individual use, or for the payment and satisfaction either in the whole or in part of the private claims and demands or claim and demand of the said Kumbell and Freeman, or of either of them, and which of them, against the said John Whittemore; and whether the said William Kumbell did not, at the time of the conveyance to your orator of said premises by said Kumbell and Freeman, hold a mortgage upon said premises for the sum of eight thousand dollars, and whether 30 your orator did not pay off the same as herein before stated; and whether the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, are citizens of the state of New Jersey, or of some foreign state or country, and of what state or country, and in what particular city, town, or place they now reside, respectively, and if they or either of them are citizens of the state of New Jersey, when he or they became so, and whether the said John Whittemore is indebted to them respectively in the respective sums for which the aforesaid respective judgments were confessed, 40

or in any other sums, and when and for what the said indebtedness accrued, and whether the same has not been paid or secured in whole or in part, and whether the said indebtedness, if any there be, has not been settled by compromise or otherwise, and discharged; and that they and each of them, may set forth a full and perfect copy of their and each of their respective accounts, notes, bonds, bills, writings obligatory, or other evidences of indebtedness against the said John Whittemore, upon which the said judgments respectively were confessed, and the items of the account or accounts, and true consideration, if any there be, of any note or notes, bond or bonds, bill or bills, or other writings upon which the said judgments respectively were entered or confessed, and a true copy of all credits, endorsements or payments thereon.

And that the said William Douglass, sheriff as aforesaid, may be restrained from any further advertising and from selling your orator's said lot of land and premises, and from all further interference with your orator's said premises, under the said respective writs of execution. And that the said John Whittemore, William Kumbell, and David V. Freeman, or some or one of them, may be decreed to pay and satisfy the said respective judgments of the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, or if, in the opinion of this honorable court, the aforesaid deed of conveyance from the said John Whittemore to the said Kumbell and Freeman is void, or for any cause insufficient to pass the title to your orator's said lot of land and premises, or that your orator's title from said Kumbell and Freeman to said premises is in any manner defective, that the said John Whittemore, William Kumbell, and David V. Freeman, may be decreed to perfect the same, or to refund to your orator the said sum of eight thousand dollars of purchase money so paid by your orator for the said premises, and to pay to your orator all costs, charges, and expenses for improvements upon the said premises, and to indemnify your orator against all loss and damage by reason of such defective title, and that your orator may have such other and further relief in the premises as the nature of his case shall require, and as to your Honor shall seem meet.

May it please your Honor, the premises considered, to grant to your orator not only the state's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, restraining them and each of them from selling the lot of land and premises aforesaid, and from any further advertising or in any manner interfering therewith, but also a writ or writs of subpoena of the state of New Jersey, to be directed 10 to the said John Whittemore, William Kumbell, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, therein and thereby commanding them and each of them, at a certain day, and a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to and abide and perform such decree as to your Honor shall seem meet, &c., and your orator as in duty bound, will ever pray, &c. 20

S. TUTTLE,

*Solicitor for and of counsel with complainant.*

State of New Jersey, ss.—John Bentley, the complainant above named, being duly sworn according to law, doth depose and say—that the matters and things set forth in the foregoing bill of complainant, so far as they relate to his own acts are true, and so far as relates to the acts of others, he believes them to be true. And deponent further says, that William Douglass, late sheriff of the county of Passaic, lately told deponent he had in hand several writs of execution, issued 30 out of the Supreme Court of the State of New Jersey, one in favor of Samuel Anable, above named, one in favor of Edward W. Walker, above named, one in favor of Ezra P. Howard, above named, and one in favor of Elias Hempstead, above named, all against John Whittemore, above named; and that he had levied upon deponent's lot of land and premises, described in the foregoing bill of complaint, and that he was going to sell the same, under the said writs of execution, as the property of the said John Whittemore. That

since deponent purchased said premises, he has expended  
 thousand dollars and upwards in fixed machinery  
 and improvements, and has paid off a mortgage given by  
 said Whittemore upon them, for the sum of two thousand  
 dollars.

JOHN BENTLEY.

Sworn and subscribed before me, this 20th day of November, 1866.

JAMES VAN BLARCOM, *M. C.*

10

Cross Bill.

[Filed November 27, 1866.]

*To his Honor Abraham O. Zabriskie, Chancellor of the State of New Jersey.*

Humbly complaining showeth unto your Honor, your orator, William Kumbell, of the city of New York, and state of New York, that John Bentley filed his bill in this honorable court against your orator, John Whittemore, David V. Freeman, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, thereby  
 20 praying that the said William Douglass, sheriff, may be restrained from any further advertising and from selling the complainant's lot of land and premises in the said bill set forth and described, and from all further interference with the said complainant's said premises under certain writs of execution, and that the said John Whittemore, William Kumbell, and David V. Freeman, or some or one of them, may be decreed to pay and satisfy the said respective judgments of the said Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, or, if in the opinion  
 30 of this honorable court the deed of conveyance from John Whittemore to the said Kumbell and Freeman is void, or for any cause insufficient to pass the title to the said John Bentley, the complainant, of the said lot of land and premises, or that the said title to said premises is in any way defective, that the said John Whittemore, William Kumbell,

and David V. Freeman may be decreed to perfect the same, or to refund to the said John Bentley the sum of eight thousand dollars of purchase money paid by him for the said premises, and to pay to him all costs, charges, and expenses for improvements upon the said premises, and to indemnify him against all loss and damage by reason of such defective title; and your orator appeared and filed his answer thereto, and the said John Bentley replied thereto; and the said David V. Freeman, and William Kumbell, Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, 10 have filed their answers thereto, and witnesses have been examined, as by the said bill, answers, and other proceedings in said cause now remaining filed as of record in this honorable court, reference being thereunto had will more fully appear.

And your orator further showeth, that the said cause has not been finally heard.

And your orator further shows, that at the time of giving the deed from John Whittemore to your orator and David V. Freeman, in trust, the said John Whittemore was in- 20 debted to your orator in a large sum of money, and that in order to secure him for part of the money so due to him, John Whittemore gave to your orator a bond and mortgage, bearing date the eighth day of May, eighteen hundred and fifty-seven, for eight thousand dollars, with interest, upon that part of the property described in the said deed, lying in Paterson, New Jersey; which mortgage was duly acknowledged and recorded in the clerk's office of the county of Passaic, on the ninth day of the same month of May, as by reference to the same will fully appear. 30

And your orator further shows, that at the time of the giving of the deed from your orator and David V. Freeman to John Bentley, the said mortgage was a subsisting encumbrance on the said property, and that there was then due to your orator a much larger sum than eight thousand dollars from the said John Whittemore; that your orator, as such mortgagee, held the legal title to said property. And your orator shows, that there is due to your orator, after deducting all the money he has received under said deed to him and David V. Freeman, over eight thousand dollars. And 40

your orator shows, that by the laws of New York the deed from John Whittemore to your orator and David V. Freeman, was valid and legal; that your orator believing that there could be no objection to the said deed as a matter of liberality to the other creditors of the said John Whittemore, named in the said deed, and in order to make the title to the said John Bentley good, consented to have his said mortgage cancelled of record, and thereby your orator lost the benefit he would have had from the said mortgage, and would  
 10 receive as the largest creditor named in the said deed to your orator and David V. Freeman, his proportion of the money to be received from the said sale to Bentley.

And your orator further shows, that if he had had any doubt as to the validity of the said deed to Bentley, he would not have cancelled his said mortgage, but would have retained his said mortgage or would have assigned it to the said John Bentley as a security for his title.

And your orator charges, that he is advised that the said deed from your orator and David V. Freeman to John Bentley, is a valid deed.  
 20

That the said John Whittemore, David V. Freeman, and your orator, at the time of giving the said deed, all resided in the state of New York, and it was a New York transaction and should be governed by the laws of New York, against all persons not citizens of New Jersey, and especially against citizens of New York.

And your orator further shows, that the plaintiffs in two of the said judgments are residents of the state of New York, and the plaintiffs in the other judgments are residents  
 30 of other states, none of them residing in the state of New Jersey.

And your orator further charges, that if the said deed from your orator and David V. Freeman to John Bentley, should for any reason or to any extent be considered invalid, that the proper remedy for the said judgment creditors was to file a bill against your orator and David V. Freeman, in the Court of Chancery, to proceed under the law of New Jersey under the act to secure to creditors an equal and just division of the estates of debtors, who convey to assignees  
 40 for the benefit of creditors, and then your orator and the

other creditors of John Whittemore would have come in and received their *pro rata* share of the fund raised or to be raised by the sale of the said New Jersey property.

And your orator charges, that your orator's said mortgage having been cancelled of record by a mistake of your orator and the said John Bentley, it ought to be established as a valid mortgage, in case the said deed should for any reason be held invalid, and that the money invested by the said John Bentley in repairing and improving the said property, should in equity, be paid him out of the proceeds of the sale, 10 if your orator and David V. Freeman should be directed by this honorable court to proceed under the said statute.

And your orator further shows, that the said mortgaged premises were at the time of said sale subject to a mortgage to Mary Morrell for two thousand dollars. And your orator denies that he is bound to pay back any money to the said John Bentley in any event, inasmuch as your orator and the said Freeman were trustees and have paid over the moneys received by them to the persons named in said deed from John Whittemore. 20

And your orator prays that the said deed may be held to be valid, and that if, for any reason, the said deed should be held invalid, that your orator's said mortgage should be decreed to be paid and satisfied, and also the said mortgage of Mary Morrell should be decreed to be paid and satisfied, and that your orator should have a fair proportion of the value of the premises after the payment of said mortgages and improvements, if any there should be; and that your orator may have such other and further relief in the premises as to your orator may seem meet and agreeable to equity 30 and good conscience.

May it please your Honor, the premises considered, to grant to your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said John Bentley, David V. Freeman, John Whittemore, Samuel Anable, Edward W. Walker, Ezra P. Howard, Elias Hempstead, and William Douglass, therein and thereby commanding them and each and every of them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honor- 40

able court, then and there to answer the premises, and to stand to, abide and perform such decree as to your Honor shall seem meet and agreeable to equity and good conscience.

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

A. S. PENNINGTON & SON,  
*Of counsel and solicitor for the complainant.*

### Answer of Samuel Anable.

[Filed January 30, 1867.]

10 *The answer of Samuel Anable, one of the defendants to the amended bill of complaint of John Bentley, complainant.*

This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says—he admits that on or about the twenty-eighth day of May, in the year of our  
 20 Lord one thousand eight hundred and fifty-seven, John Whittemore, survivor of John Whittemore and Company, in the said bill named, did make and execute to William Kumbell and David V. Freeman, therein also named, a deed of assignment, of such date and purport as in the said bill set forth, so far as the same is therein set forth, and that the same was acknowledged by the said John Whittemore, and recorded as in the said bill stated; but this defendant denies that the said deed was duly acknowledged by the said William Kumbell and David V. Freeman, parties of the second  
 30 part thereto, and says that their acknowledgment was not taken before an officer authorized by the laws of New Jersey to take the same, nor taken in the manner required by the said laws; and he also denies that the said deed of assignment ever did or would take effect or operate as a valid or effectual assignment or conveyance of that portion of the property or premises therein described, situated and lying

in the state of New Jersey, or of any estate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion, inasmuch as the said deed of assignment in its provisions contravened the laws of the said state of New Jersey, as this defendant submits and hereinafter more particularly shows.

And this defendant further answering says, he also admits that the names of the parties and the sums attached to their respective names in the schedule marked *A*, referred to in the said deed of assignment and thereto annexed, are as set forth in the said bill, so far as the same are therein set forth, and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman, made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport and for such consideration as set forth in the said bill, so far as the same is therein set forth, and that the same was acknowledged and recorded as in the said bill stated, but whether such consideration, or any part thereof, was actually paid, or if paid, when, how, or to whom the same was paid, this defendant does not know and has not been informed, save by the said bill and the recitals in the said deed to the said complainant, and cannot set forth as to his belief or otherwise, and he denies that the last mentioned deed took effect or operated to convey or transfer the land and premises therein described, or any estate, right, title, or interest in or to the same, the said parties of the first part thereto not being legally seized of the said land and premises or having any such estate, right, title, or interest therein or thereto, as this defendant submits.

And this defendant further answering says, he admits that on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the said John Whittemore made, executed, and delivered to Mary Morrell, in the said bill named, an indenture of mortgage of 40

such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged and registered and recorded, as in the said bill stated, and was a lien upon the premises described in the said deed to the said complainant, and that the said deed to the said complainant was made subject to the encumbrance of the said mortgage, but whether the sum of two thousand dollars, intended to be secured by the said mortgage, was unpaid or not at the time the said deed of conveyance to the said complainant was executed and delivered, or what sum was then due and unpaid thereon, this defendant knows not and has not been informed, save by the complainant's said bill and the statements or recitals in the said last mentioned deed, and cannot set forth as to his belief or otherwise; and he further saith, that he has been informed and believes to be true, that on or about the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, the said mortgage so as aforesaid given by the said John Whittemore to the said Mary Morrell, was cancelled of record, from which circumstance he thinks it probable and believes that the whole of the principal and interest due therein had been paid, and that it may have been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or at what particular time prior to the date last aforesaid, the same was paid, this defendant has no knowledge or information save that derived from the said bill, and cannot set forth as to his belief or otherwise.

And this defendant further answering says, that he admits that the said John Whittemore, at or about the time in the said bill in that behalf stated, executed to the said William Kumbell an indenture of mortgage of such date and purport as therein set forth, and that the same was acknowledged and registered as therein alleged; but he denies that the said mortgage was executed or received in good faith, or for a valid consideration, and says that he has been informed and believes to be true, and therefore charges that the said mortgage was given when the said John Whittemore was insolvent and in embarrassed pecuniary circumstances, and in contemplation and on the eve of the said fraudulent

assignment, and for the purpose and with the design of protecting the said property so mortgaged from this defendant and the other creditors of the said John Whittemore, and of giving an undue and fraudulent preference to the said William Kumbell; and that said William Kumbell well knew that such was the purpose of the said John Whittemore, and co-operated with him fully and actively in the accomplishment thereof.

And this defendant also admits, that the said complainant paid to the said Kumbell and Freeman the said sum of six 10 thousand dollars, part of the said consideration of eight thousand dollars agreed to be paid for said premises, and that he paid the residue thereof by assuming and afterwards paying the said mortgage for two thousand dollars; but he denies the insinuation in said bill that such payment of six thousand dollars was made upon or on account of said mortgage for eight thousand dollars, or had any connection therewith or reference thereto, directly or indirectly; and he says that he has been informed and believes, and he therefore charges, that the said last mentioned mortgage was dis- 20 charged by the said William Kumbell, previous to the execution of the said conveyance by him and the said David V. Freeman; that the same thereby became inoperative and extinct before the delivery of said conveyance, and that none of the parties to the said conveyance ever intended or contemplated the assignment thereof to the complainant, or that it should be kept alive or in force, or that it should enure in any way to the benefit of the said complainant.

And he further says, that he has no knowledge or information, save that derived from the said bill, and cannot set 30 forth as to his belief or otherwise, whether or not the said mortgage was, after its discharge delivered to the said complainant, but he charges and insists that if so delivered, it was not as a muniment of title or by way of an equitable or other assignment thereof, but as a memorandum or receipt showing its payment or discharge, and for the purpose of having the same cancelled of record; and this defendant submits and respectfully insists, that the said mortgage ought not to be restored, revived, or re-established as against this defendant, and to his prejudice. 40

And this defendant also denies, that the said six thousand dollars was paid to the said William Kumbell in any other capacity than as one of the assignees of John Whittemore as aforesaid, and he submits and respectfully insists, that whatever title to said premises the said William Kumbell may have had, whether legal or equitable, by virtue of said mortgage so as aforesaid given to him, became extinct before the execution of the said deed to the said complainant, and that it did not pass or enure to the said complainant by  
 10 the said deed or otherwise, nor ought the said complainant to be subrogated to any interest or title which may ever have existed in the said William Kumbell by virtue of said mortgage or otherwise, to the prejudice of this defendant.

And this defendant further answering says, he admits that at the time of the execution and delivery of the said deed to the said complainant for the lot of land therein, and in the said bill described, there was a two-story frame building standing thereon, but this defendant does not know and has  
 20 not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not the said building stood in part upon land belonging to the Society for Establishing Useful Manufactures in said bill named, or otherwise; nor whether or not the said building had been used for the purposes in the said bill alleged, or for what purposes the same was used; nor whether or not, prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the  
 30 condition in the said bill stated; nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building, or converted the same into a flouring mill, or put therein machinery or fixtures, or has been, was, or is engaged in manufacturing flour in the said mill.

And this defendant further answering says, he does not know and has never been informed save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building or mill, as alleged in the said bill of complaint, has always been run by water  
 40 power, or how long the same has been so run; nor whether

or not the property in the said water power, or right to use the same, is or was in the said complainant, or was acquired by him by a perpetual lease, as in the said bill alleged, or otherwise; nor whether or not the said building is of the dimensions mentioned in the said bill, or the easterly line of the said lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant under a lease from the Society for Establishing Useful Manufactures or otherwise.

And this defendant further answering says, he admits that 10  
Ezra P. Howard, Edward W. Walker, and Elias Hempstead, in the said bill named, did respectively recover judgments in the Supreme Court of Judicature of the State of New Jersey, by confession, at the times and for the amounts in the said bill mentioned respectively, and that writs of *feri facias de bonis et terris* were issued on the said judgments respectively, and delivered to William Douglass, then sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs, and that of this defendant hereinafter mentioned, levied 20  
on and advertised for sale as the property of the said John Whittemore, the lot of land and premises described in the said deed of conveyance to the said complainant, and by him alleged in the said bill to be his own property.

And this defendant further answering says, that it is true, as stated in the said bill, that this defendant, on or about the twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment by confession in the said Supreme Court against the said John Whittemore, for the sum of nine hundred and seven 30  
dollars and forty-three cents, debt and costs, as set forth in the said bill; and that a writ of *feri facias de bonis et terris* was issued thereon, as in the said bill mentioned, and delivered to the said William Douglass, sheriff of the county of Passaic, who, as such sheriff, under and by virtue thereof, levied on the said lot of land and premises described in the said deed to the said complainant, as the property of the said John Whittemore.

And this defendant further answering says, that it is true as charged in the said bill, that he resides out of the state of 40

New Jersey, (being a resident of the city of Albany, in the county of Albany and state of New York,) and was not, when the debt on which said judgment was founded, accrued, or was contracted, and has not been since a citizen of the said state; but this defendant does not know and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said Ezra P. Howard, Edward W. Walker, and Elias Hempstead, or either of them, reside or ever resided in the said state, or are or ever have been  
 10 citizens thereof, this defendant having no acquaintance and never having communicated with them or either of them, and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this defendant.

And this defendant further answering says, that he knows not and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said judgments of the said Ezra P. Howard, Edward W. Walker, and Elias Hempstead, or either of them, were fraudulent or void, or  
 20 confessed for no good or legal consideration, or are no liens on the said lot of land and premises, as charged in the said bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says that the said John Whittemore was, at the time the said judgment was confessed, and is now, justly indebted to this defendant in the sum for which the same was confessed, being the amount due on a certain judgment obtained by this defendant against the said John Whittemore, in the  
 30 Superior Court of the city of New York, on or about the sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three, for the sum of nine hundred and three dollars and forty-three cents, on a promissory note, given and made by the said John Whittemore and Company (whom the said John Whittemore had survived) to this defendant, for goods sold and delivered by this defendant to the said John Whittemore and Company, at their request.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured, otherwise  
 40 than by the said judgment so as aforesaid confessed to this

defendant by the said John Whittemore, and that the same or any part thereof, has not been settled or discharged by compromise or otherwise.

And this defendant further answering says, that he has in the schedule to this his answer annexed or underwritten, and which he prays may be taken as a part hereof, set forth, according to the best and utmost of his knowledge, information, remembrance, and belief, a full, true, and perfect abstract of the judgment last described, also a copy of the said promissory note whereon the same was founded, and of the 10 items of the account of goods sold and delivered, for which the said note was given, and also of all credits, endorsements, and payments thereon respectively. And although the record of the last mentioned judgment or a copy thereof, is not in the possession or under the control of this defendant, yet he will procure and produce a copy thereof, if the same should be required by the said complainant.

And this defendant further answering says, he admits that the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and prem- 20 ises so as aforesaid levied on under the said executions, adjourned the sale thereof as in the said bill alleged, and that he declared his purpose to sell the said premises to the highest bidder therefor, and to make, execute, and deliver a deed therefor to the purchaser thereof; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether the said sheriff "threatened" to sell the said premises, or manifested his determination to sell the same otherwise than by advertisement, set up and published ac- 30 cording to the requirements of the laws of the said state of New Jersey.

And this defendant further answering submits and insists, that there is no truth in the assumptions and assertions in the said bill that the said complainant is the true, lawful, and right owner of the land and premises with the appurtenances so advertised by the said sheriff to be sold, or that the said John Whittemore has no right, title, or interest in the same, or that the said William Douglass has just right or lawful authority to levy upon, advertise for sale, sell, or convey, or 40 in any manner to interfere with the said property.

And this defendant further answering submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made to hinder, delay, and defraud the creditors of the said John Whittemore aforesaid, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor, in proportion to their several demands, but for the special benefit of a part thereof, and preferred some of the said creditors over others, providing  
 10 and requiring that some of said creditors should be first paid and have a greater proportion in respect of their claims than others, in open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer the estate, right, title, or interest of the said John Whittemore in or to the land and premises so levied on and advertised to be sold as aforesaid; and he further submits and insists, that the said William Kumbell and David V. Freeman, or either of them, had no estate, right, title, or interest in or  
 20 to the said premises, and did not nor could convey or transfer the same or any estate, right, title, or interest therein or thereto to the said complainant, who was well aware, or bound to know, and should have known the illegal character of the said deed of assignment, and that by the laws of the said state of New Jersey it was void and utterly ineffectual to transfer the premises in question.

And this defendant further answering says, he did not come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand, or any part  
 30 thereof to the assignees, for payment or settlement or otherwise; and he submits and insists, that he ought not to be, and is not bound, prejudiced, or in anywise affected by the said deed of assignment; and that this defendant's judgment first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof on the land and premises so levied on, and that the said William Douglass, as such sheriff, under the execution so as aforesaid issued on the said judgment, and directed and delivered to him, had  
 40 not only a just right and lawful authority, but it was his duty to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the said sum of six thousand dollars, alleged in the said bill to have been paid by the said complainant to the said assignees, or any part thereof, was received and appropriated by them or either of them to their own use, or the use of either of them, or to the payment of their individual claims, or the individual claim of either of them against the said John Whittemore. 10

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material, or necessary for this defendant 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 20 shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN W. TAYLOR,

*Solicitor and of counsel for defendant.*

Schedule referred to in the foregoing answer.

1. *Items of account.*

1856.	John Whittemore & Son,			
		Bought of Samuel Anable.		
Nov. 28.	155 Sides curried leather, @ \$4,	-	\$620	00 30
	122 lbs. Splits, @ 5 cts. - - -	-	-	6 10
	Cartage, - - - - -	-	-	25
				<hr/>
			\$626	35

2. *Copy of note.*

\$626.35.

NEW YORK, Nov. 28th, 1856.

Six months after date we promise to pay to the order of Samuel Anable, six hundred and twenty-six  $\frac{35}{100}$  dollars, at Mechanics Bank, value received.

(Signed)

JOHN WHITTEMORE.

3. *Abstract of judgment.*

Names of parties against whom judgments have been obtained, - - - John Whittemore, survivor, &c.  
 10 Names of parties in whose favor judgments have been obtained, - - - - - Samuel Anable.  
 Damages and costs, - - - - - \$903.43  
 Time of filing, June 16, 1863, 10.55 A. M.  
 Attorney's name, - - - - - D. G. Wild.  
 Office of the Clerk of the Supreme Court of the City of New York, June 16th, 1863.

I certify, that the foregoing is a correct transcript from the Docket of Judgments kept in my office.

ROB'T D. LIVINGSTON, *Clerk.*

20 Above is the schedule referred to in the foregoing answer.  
 SAM'L ANABLE.

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Answer of E. W. Walker.

[Filed January 30, 1867.]

IN CHANCERY OF NEW JERSEY.

*The answer of Ebenezer W. Walker, (in the bill called Edward W. Walker), one of the defendants to the amended bill of complaint of John Bentley, complainant.*

This defendant, now and at all times hereafter saving and reserving to himself all benefit and advantage of exception  
 30 to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof

as this defendant is advised is or are material or necessary for him to make answer unto, answering, says—he admits that on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, John Whittemore, survivor of John Whittemore and Company, in the said bill named, did make and execute to William Kumbell and David V. Freeman, therein also named, a deed of assignment of such date and purport as in the said bill set forth; and that the same was acknowledged by the said John Whittemore and recorded as in the said bill stated; 10 but this defendant denies that the said deed was duly acknowledged by the said William Kumbell and David V. Freeman, parties of the second part thereto, and says that their acknowledgment was not taken before an officer authorized by the laws of New Jersey to take the same, nor taken in the manner required by the said laws; and he also denies that the said deed of assignment ever did or could take effect or operate as a valid assignment or conveyance of that portion of the property or premises therein described, situated and lying in the state of New Jersey, or of any es- 20 tate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion; inasmuch as the said deed of assignment in its provisions contravened the laws of the said state of New Jersey, as this defendant submits and hereinafter more particularly shows.

And this defendant further answering says, he also admits that the names of the parties and the sums attached to their respective names in the schedule marked *A*, referred to in the said deed of assignment and thereto annexed, are as set forth in the said bill, so far as the same are therein set forth, 30 and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman, made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport and for such consideration as set forth in the said bill, so far as the same is therein set 40

forth; and that the same was acknowledged and recorded as in the said bill stated; but whether such consideration, or any part thereof, was actually paid, or if paid, when, how, or to whom the same was paid, this defendant does not know and has not been informed, save by the said bill, and the recitals in the said deed to the said complainant, and cannot set forth as to his belief or otherwise; and he denies that the last mentioned deed took effect or operated to convey or transfer the land and premises therein described, or any estate, right, title, or interest in or to the same, the said parties of the first part thereto not being legally seized of the said land and premises, or having any such estate, right, title, or interest therein or thereto, as this defendant submits.

And this defendant further answering says, he admits that on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the said John Whittemore made, executed, and delivered to Mary Morrell, in the said bill named, an indenture of mortgage of such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged and registered or recorded as in the said bill stated, and was a lien upon the premises described in the said deed to the said complainant, and that the said deed to the said complainant was made subject to the encumbrance of the said mortgage, but whether the sum of two thousand dollars, intended to be secured by the said mortgage, was unpaid or not at the time the said deed of conveyance to the said complainant was executed and delivered, or what sum was then due and unpaid thereon, this defendant knows not and has not been informed, save by the complainant's said bill, and the statements or recitals in the last mentioned deed, and cannot set forth as to his belief or otherwise; and he further saith, that he has been informed and believes it to be true, that on or about the twenty-seventh day of May, in the year of our Lord one thousand thousand eight hundred and sixty-three, the said mortgage so as aforesaid given to the said Mary Morrell, was cancelled of record, from which circumstance he thinks it probable and believes that the whole of the principal and interest due thereon has been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or

at what particular time prior to the date last aforesaid the same was paid, this defendant has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise.

And this defendant further answering says, that he admits that the said John Whittemore, at or about the time in the said bill in that behalf stated, executed to the said William Kumbell an indenture of mortgage of such date and purport as therein set forth, and that the same was acknowledged and registered, as therein alleged; but he denies that the said mortgage was executed or received in good faith or for a valid consideration, and says that he has been informed and believes to be true, and therefore charges that the said mortgage was given when the said John Whittemore was insolvent and in embarrassed pecuniary circumstances, and in contemplation and on the eve of the said fraudulent assignment, and for the purpose and with the design of protecting the said property so mortgaged, from this defendant, and the other creditors of the said John Whittemore, and of giving an undue and fraudulent preference to the said William Kumbell; and that said William Kumbell well knew that such was the purpose of the said John Whittemore, and co-operated with him fully and actively in the accomplishment thereof

And this defendant also admits, that the said complainant paid to the said Kumbell and Freeman the said sum of six thousand dollars, part of the said consideration of eight thousand dollars agreed to be paid for said premises, and that he paid the residue thereof, by assuming and afterwards paying the said mortgage for two thousand dollars; but he denies the insinuation in said bill that such payment of six thousand dollars was made upon or on account of said mortgage for eight thousand dollars, or had any connection therewith or reference thereto, directly or indirectly; and he says that he has been informed and believes, and he therefore charges, that the said last mentioned mortgage was discharged by the said William Kumbell previous to the execution of the said conveyance by him and the said David V. Freeman; that the same thereby became inoperative and extinct, before the delivery of said conveyance and that none

of the parties to the said conveyance ever intended or contemplated the assignment thereof to the complainant, or that it should be kept alive or in force, or that it should enure in any way to the benefit of the said complainant.

And he further says, that he has no knowledge or information save that derived from the said bill, and cannot set forth as to his belief or otherwise, whether or not the said mortgage was, after its discharge, delivered to the said complainant; but he charges and insists, that if so delivered, it  
 10 was not as a muniment of title or by way of an equitable or other assignment thereof, but as a memorandum or receipt showing its payment or discharge, and for the purpose of having the same cancelled of record; and this defendant submits and respectively insists that the said mortgage ought not to be restored, revived, or re-established as against this defendant and to his prejudice.

And this defendant also denies, that the said six thousand dollars was paid to the said William Kumbell in any other capacity than as one of the assignees of John Whittemore,  
 20 as aforesaid; and he submits and respectfully insists, that whatever title to said premises the said William Kumbell may have had, whether legal or equitable, by virtue of said mortgage so as aforesaid given to him, became extinct before the execution of the said deed to the said complainant, and that it did not pass or enure to the said complainant by the said deed or otherwise, nor ought the said complainant to be subrogated to any interest or title which may ever have existed in the said William Kumbell by virtue of said mortgage or otherwise, to the prejudice of this defendant.

And this defendant further answering says, he admits that  
 30 at the time of the execution and delivery of the said deed to the said complainant, for the lot of land therein and in the said bill described, there was a two-story frame building standing thereon; but this defendant does not know, and has not been informed save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not the said building stood in part upon land belonging to the Society for Establishing Useful Manufactures, in said bill named, or otherwise; nor whether or not the said build-  
 40 ing had been used for the purposes in the said bill alleged,

or for what purposes the same was used, nor whether or not, prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the condition in the said bill stated; nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building, or converted the same into a flouring mill, or put therein machinery or fixtures, or has been, was, or is engaged in manufacturing flour or feed in the said mill.

And this defendant further answering says, he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building or mill, as alleged in the said bill of complaint, has always been run by water power, or how long the same has been so run; nor whether or not the property in the said water power, or the right to use the same, is or was in the said complainant, or was acquired by him by a perpetual lease, as in the said bill alleged, or otherwise; nor whether or not the said building is of the dimensions mentioned in the said bill, or the easterly line of the said lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant under a lease from the Society for Establishing Useful Manufactures, or otherwise.

And this defendant further answering says, he admits that Samuel Anable, Elias Hempstead, and Ezra P. Howard, in the said bill named, did respectively recover judgments in the Supreme Court of Judicature of the State of New Jersey, by confession, at the times and for the amounts in the said bill mentioned, respectively, and that writs of *fiery facias* *de bonis et terris* were issued on the said judgments respectively, and delivered to William Douglass, then sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs and that of this defendant hereinafter mentioned, levied on and advertised for sale as the property of the said John Whittemore, the lot of land and premises described in the said deed of conveyance to the said complainant, and by him alleged in the said bill to be his own property.

And this defendant further answering says, that it is true, as stated in the said bill, that this defendant, on or about the twenty-third day of June, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment by confession against the said John Whittemore for the sum of sixteen hundred and twenty-four dollars, as set forth in the said bill, and that a writ of *feri facias de bonis et terris* was issued thereon, and delivered to the said William Douglass, sheriff of the said county of Passaic, who, as  
 10 such sheriff, under and by virtue thereof, levied on the said lot of land and premises described in the said deed to the said complainant, as the property of the said John Whittemore.

And this defendant further answering says, that it is true as charged in the said bill, that he resides out of the state of New Jersey, (being a resident of the city of Providence, in the county of Providence, and state of Rhode Island), and was not when the debt on which his said judgment was founded, accrued, or was contracted, and has not been since,  
 20 a citizen of the said state; but this defendant does not know and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said Samuel Anable, Elias Hempstead, and Ezra P. Howard, or either of them, reside or ever resided in the said state, or are or ever have been citizens thereof, this defendant having no acquaintance and never having communicated with them or either of them, and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this defendant.

30 And this defendant further answering says, that he knows not and has never been informed, and cannot set forth as to his belief or otherwise whether or not the said judgments of the said Samuel Anable, Elias Hempstead, and Ezra P. Howard, or either of them, were fraudulent or void, or confessed for no good or legal consideration, or are no liens on the lot of land and premises, as charged in the said bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says that the said John Whittemore was, at the time the said  
 40 judgment was confessed, and is now, justly indebted to this

defendant in the sum for which the same was confessed, being the amount due for goods sold and delivered by this defendant to the said John Whittemore and Company, (whom the said John Whittemore survived), at their request.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured, otherwise than by the said judgment so as aforesaid confessed to this defendant by the said John Whittemore, and that the same or any part thereof, has not been settled or discharged by compromise or otherwise. 10

And this defendant further answering says, that he has in the schedule to this, his answer, annexed or underwritten, and which he prays may be taken as a part hereof, set forth according to the best of his knowledge, information, remembrance, and belief, a full, true, and perfect copy of the items of the accounts of goods sold and delivered as aforesaid, and also of all credits and payments thereon.

And this defendant further answering says, he admits that the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and premises so as aforesaid levied on under the said executions, adjourned the sale thereof as in the said bill alleged, and that he declared his purpose to sell the said premises to the highest bidder therefor, and to make, execute, and deliver a deed therefor to the purchaser thereof; but this defendant does not know, and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether the said sheriff "threatened" to sell the said premises or manifested his determination to sell the same, otherwise than by advertisements set up and published according to the requirements of the laws of the said state of New Jersey. 20 30

And this defendant further answering submits and insists, that there is no truth in the assumptions and assertions in the said bill, that the said complainant is the true, lawful, and right owner of the land and premises, with the appurtenances, so advertised by the said sheriff to be sold, or that the said John Whittemore has no right, title, or interest in the same, or that the said William Douglass has no just right or lawful authority to levy upon, advertise for sale, sell 40

or convey, or in any other manner to interfere with the said property.

And this defendant further answering submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made to hinder, delay, and defraud the creditors of the said John Whittemore aforesaid, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor, in proportion to their several  
 10 demands, but for the special benefit of a part thereof, and preferred some of said creditors over others, providing and requiring that some of said creditors should be first paid and have a greater proportion in respect of their claims than others, in open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer the estate, right, title, or interest of the said John Whittemore, in or to the lands and premises so levied and advertised to be sold as aforesaid ; and he further submits and in-  
 20 sists, that the said William Kumbell and David V. Freeman, or either of them, had no estate, right, title, or interest in or to the said premises, and did not nor could convey or transfer the same or any estate, right, title, or interest therein or thereto to the said complainant, who was well aware or bound to know, and should have known the illegal and fraudulent character of the said deed of assignment, and that, by the laws of the said state of New Jersey, it was void and utterly ineffectual to transfer the premises in question.

And this defendant further answering says, he did not  
 30 come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand, or any part thereof, to the said assignees for payment or settlement, or otherwise ; and he submits and insists, that he ought not to be, and is not bound, prejudiced, or in any wise affected by the said deed of assignment ; and that this defendant's judgment first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof on the land and premises so levied on ; and that the said William Douglass, as  
 40 such sheriff, under the said execution so as aforesaid issued

on the said judgment and directed and delivered to him, had not only a just right and lawful authority, but it was his duty to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the said sum of six thousand dollars, alleged in the said bill to have been paid by the said complainant to the said assignees, or any part thereof, was received and appropriated by them or either of them, to their own use or to the use of either of them, or to the payment of their individual claims, or the individual claim of either of them, against the said John Whittemore.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this defendant 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 thence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN W. TAYLOR,

*Solicitor and of counsel with the defendant.*

Schedule referred to in the foregoing answer.

30

1856. Messrs. John Whittemore & Co.,

To E. W. Walker, Dr.

Oct.	18.	To	20 doz.	sheep skins,	@ \$6,	\$120.00	
"	"	"	12 "	lamb	" " 3½,	42.00	
							\$162.00
"	23.	"	10 "	calf	" " 18,		180.00
"	28.	"	10 "	sheep	" " 7,		70.00

1857.							
Jan.	19.	To	5 doz.	calf	skins,	@ \$22,	\$110.00
Mar.	3.	"	9	"	"	" 22,	\$198.00
"	"	"	1	"	"	" 18,	18.00
"	4.	"	15	"	sheep	" " 6,	216.00
April	13.	"	4	"	calf	" " 24,	\$96.00
"	"	"	10	"	sheep	" " 6,	60.00
10	"	18.	"	6	"	calf " " 24,	\$144.00
"	"	"	12	"	sheep	" " 6,	72.00
							216.00
							<u>\$1200.00</u>

Average date sold, Feb., 1857, at 6 months.

1863.

June 1.	To	5 years and 10 months interest to date,	420.00
			<u>\$1620.00</u>

The foregoing is the schedule referred to in the foregoing 20 answer.

EBENEZER W. WALKER.

### Answer of Ezra P. Howard to Amended Bill.

[Filed January 30, 1867.]

IN CHANCERY OF NEW JERSEY.

*The answer of Ezra P. Howard, one of the defendants to the amended bill of complaint of John Bentley, complainant.*

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception to the many errors, uncertainties, and other imperfections in 30 the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as

this defendant is advised is or are material or necessary for him to make answer unto, answering, says—he admits that on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, John Whittemore, survivor of John Whittemore and Company, in the said bill named, did make and execute to William Kumbell and David V. Freeman, therein also named, a deed of assignment of such date and purport as in the said bill set forth, so far as the same is therein set forth; and that the same was acknowledged by the said John Whittemore, and 10 recorded as in the said bill stated; but this defendant denies that the said deed was duly acknowledged by the said William Kumbell and David V. Freeman, parties of the second part thereto, and says, that their acknowledgment was not taken before an officer authorized by the laws of New Jersey to take the same, nor taken in manner required by the said laws; and he also denies that the said deed of assignment ever did or could take effect or operate as a valid or effectual assignment or conveyance of that portion of the property or premises therein described, situated and lying in the state of 20 New Jersey, or of any estate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion; inasmuch as the said deed of assignment, in its provisions contravened the laws of the said state of New Jersey, as this defendant submits and hereinafter more particularly shows.

And this defendant further answering says, he also admits that the names of the parties and the sums attached to their respective names, in the schedule marked A, referred to in the said deed of assignment and thereto annexed, are as set 30 forth in the said bill, so far as the same are therein set forth, and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits that on or about twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman, made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport and for such consideration as set 40

forth in the said bill, so far as the same is therein set forth; and that the same was acknowledged and recorded, as in the said bill stated; but whether such consideration or any part thereof was actually paid, or if paid, when, how, or to whom the same was paid, this defendant does not know and has not been informed, save by the said bill, and the recitals in the said deed to the said complainant, and cannot set forth as to his belief or otherwise; and he denies that the last mentioned deed took effect or operated to convey or transfer  
 10 the land and premises therein described, or any estate, right, title, or interest, in or to the same, the said parties of the first part thereto not being legally seized of the said land and premises, or having any such estate, right, title, or interest therein or thereto, as this defendant submits.

And this defendant further answering says, he admits that on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the said John Whittemore made, executed, and delivered to Mary Morrell, in the said bill named, an indenture of mortgage of  
 20 such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged and registered as in the said bill stated, and was a lien upon the premises described in the said deed to the said complainant; and that the said deed to the said complainant was made subject to the encumbrance of the said mortgage; but whether the sum of two thousand dollars, intended to be secured by the said mortgage, was unpaid or not at the time the said deed of conveyance to the said complainant was executed and delivered, or what sum was then  
 30 due and unpaid thereon, this defendant knows not, and has not been informed, save by the complainant's said bill, and the statements or recitals in the last mentioned deed, and cannot set forth as to his belief or otherwise; and he further saith, that he has been informed and believes it to be true, that on or about the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, the said mortgage so as aforesaid given by the said John Whittemore to the said Mary Morrell, was cancelled of record, from which circumstance he thinks it probable and believes  
 40 that the whole of the principal and interest due thereon has

been paid, and that it may have been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or at what particular time prior to the date last aforesaid the same was paid, this defendant has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise.

And this defendant further answering says, that he admits that the said John Whittemore, at or about the time in the said bill in that behalf stated, executed to the said William Kumbell an indenture of mortgage of such date and purport 10 as therein set forth, and that the same was acknowledged and registered as therein alleged; but he denies that the said mortgage was executed or received in good faith or for a valid consideration, and says that he has been informed and believes it to be true, and therefore charges that the said mortgage was given when the said John Whittemore was insolvent and in embarrassed pecuniary circumstances, and in contemplation and on the eve of the said fraudulent assignment, and for the purpose and with the design of protecting the said property so mortgaged from this defendant and the 20 other creditors of the said John Whittemore, and of giving an undue and fraudulent preference to the said William Kumbell; and that said William Kumbell well knew that such was the purpose of the said John Whittemore, and cooperated with him fully and actively in the accomplishment thereof.

And this defendant also admits, that the said complainant paid to the said Kumbell and Freeman the said sum of six thousand dollars, part of the said consideration of eight thousand dollars, agreed to be paid for said premises, and 30 that he paid the residue thereof by assuming and afterwards paying the said mortgage for two thousand dollars; but he denies the insinuation in said bill that such payment of six thousand dollars was made upon or on account of said mortgage for eight thousand dollars, or had any connection therewith or reference thereto, directly or indirectly; and he says that he has been informed and believes, and he therefore charges that the said last mentioned mortgage was discharged by the said William Kumbell previous to the execution of the said conveyance by him and the said David V. 40

Freeman; that the same thereby became inoperative and extinct before the delivery of said conveyance, and that none of the parties to the said conveyance ever intended or contemplated the assignment thereof to the complainant, or that it should be kept alive or in force, or that it should enure in any way to the benefit of the said complainant.

And he further says, that he has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise, whether or not the said  
 10 mortgage was, after its discharge, delivered to the said complainant; but he charges and insists that if so delivered it was not as a muniment of title, or by way of an equitable or other assignment thereof, but as a memorandum or receipt showing its payment or discharge, and for the purpose of having the same cancelled of record; and this defendant submits and respectfully insists, that the said mortgage ought not to be restored, revived, or re-established as against this defendant, and to his prejudice.

And this defendant also denies, that the said six thousand  
 20 dollars was paid to the said William Kumbell in any other capacity than as one of the assignees of John Whittemore, as aforesaid; and he submits and respectfully insists, that whatever title to said premises the said William Kumbell may have had, whether legal or equitable, by virtue of said mortgage so as aforesaid given to him, became extinct before the execution of the said deed to the said complainant, and that it did not pass or enure to the said complainant by the said deed or otherwise, nor ought the said complainant to be subrogated to any interest or title which may ever  
 30 have existed in the said William Kumbell by virtue of said mortgage or otherwise, to the prejudice of this defendant.

And this defendant further answering says, he admits that at the time of the execution and delivery of the said deed to the said complainant, for the lot of land therein and in the said bill described, there was a two story frame building standing thereon; but this defendant does not know, and has not been informed save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether  
 40 or not the said building stood in part upon land belonging

to the Society for Establishing Useful Manufactures, in said bill named, or otherwise; nor whether or not the said building had been used for the purposes in the said bill alleged, or for what purpose the same was used; nor whether or not, prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the condition in the said bill stated; nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building, or converted the same into a flouring mill, 10 or put therein machinery or fixtures, or has been, was, or is engaged in manufacturing flour or feed in the said mill.

And this defendant further answering says, he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building or mill, as alleged in the said bill of complaint, has always been run by water power, or how long the same has been so run; nor whether or not the property in the said water power, or the right to use the same, is or was in the said complainant, or was ac- 20 quired by him by a perpetual lease, as in the said bill alleged, or otherwise; nor whether or not the said building is of the dimensions mentioned in the said bill, or the easterly line of the said lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant, under a lease from the Society for Establishing Useful Manufactures, or otherwise.

And this defendant further answering says, he admits that Samuel Anable, Edward W. Walker, and Elias Hempstead, in the said bill named, did, respectively, recover judgments 30 in the Supreme Court of Judicature of the State of New Jersey, by confession, at the times and for the amounts in the said bill mentioned, respectively, and that writs of *fiери facias de bonis et terris* were issued on the said judgments respectively, and delivered to William Douglass, sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs, and that of this defendant hereinafter mentioned, levied on and advertised for sale as the property of the said John Whittemore, the lot of land and premises 40

described in said deed of conveyance to the said complainant, and by him alleged in the said bill to be his own property.

And this defendant further answering says, that it is true, as stated in the said bill, that this defendant, on or about the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment by confession in the said Supreme Court against the said John Whittemore, for the sum of seven hundred and ninety-nine  
 10 dollars, debt and costs, as set forth in the said bill; and that a writ of *feri facias de bonis et terris* was issued thereon, and returned unsatisfied, as stated in the said bill; and also, that an alias writ of execution, as in the said bill mentioned, was issued on the said judgment of this defendant, on or about the ninth day of June, in the year of our Lord one thousand eight hundred and sixty-three, and delivered to the said William Douglass, sheriff of the said county of Passaic, who, as such sheriff, under and by virtue thereof, levied on the said lot of land and premises described in the said deed  
 20 to the said complainant, as the property of the said John Whittemore.

And this defendant further answering says, that it is true, as charged in the said bill, that he resides out of the state of New Jersey (being a resident of the town of Washington, in the county of Sullivan, and state of New Hampshire,) and was not, when the debt on which his said judgment was founded, accrued, or was contracted, and has not been since, a citizen of the said state; but this defendant does not know and has never been informed, and cannot set forth as  
 30 to his belief or otherwise, whether or not the said Samuel Anable, Edward W. Walker, and Elias Hempstead, or either of them, reside, or ever resided in the said state, or are, or ever have been citizens thereof; this defendant having no acquaintance and never having communicated with them or either of them, and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this defendant.

And this defendant further answering says, that he knows not and has never been informed, and cannot set forth as to  
 40 his belief or otherwise, whether or not the said judgments

of the said Samuel Anable, Edward W. Walker, and Elias Hempstead, or either of them, were fraudulent or void, or confessed for no good or legal consideration, or are no liens on the said lot of land and premises, as charged in the said bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says that the said John Whittemore was, at the time said judgment was confessed, and is now, justly indebted to this defendant in the sum for which the said judgment was confessed, being the amount due on four certain judgments <sup>10</sup> obtained by this defendant against the said John Whittemore, as follows, *viz.* one for two hundred and sixty dollars and forty cents, entered or docketed in the District Court of the city of New York for the first Judicial District, on or about the seventh day of December, in the year of our Lord one thousand eight hundred and fifty-nine; another for three hundred and fifty-seven dollars and twenty-nine cents, entered or docketed in the Marine Court of the city of New York, on or about the sixteenth day of July, in the year of our Lord one thousand eight hundred and sixty; another <sup>20</sup> for nineteen dollars and twenty-one cents, entered or docketed in the Court of Common Pleas of the city and county of New York, in the state of New York, on or about the eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty; and the other for twenty-one dollars and thirty-six cents, entered or docketed in the same court, on the same day; the two first mentioned judgments being founded respectively on two promissory notes, given and made by the said John Whittemore and Company (whom the said John Whittemore had survived) to this de- <sup>30</sup> fendant, for goods sold and delivered by this defendant to the said John Whittemore and Company, at their request; and the two last mentioned judgments being for costs of reversal on appeal of two prior judgments rendered in the said Marine Court and District Court, respectively, in favor of the said John Whittemore, in the suits brought in the said court by this defendant, on the said promissory notes respectively.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured, otherwise <sup>40</sup>

than by the said judgment so as aforesaid confessed to this defendant by the said John Whittemore, and that the same or any part thereof has not been settled or discharged by compromise or otherwise.

And this defendant further answering says, that he has in the schedule to this his answer, annexed or underwritten, and which he prays may be taken as a part hereof, set forth according to the best and utmost of his knowledge, information, remembrance, and belief, full, true, and perfect abstracts  
 10 of the four judgments last described, also copies of the said promissory notes whereon the same were respectively founded, and of the items of the accounts of goods sold and delivered, for which the said notes were respectively given, and also of all credits, endorsements, and payments thereon, respectively; and although he has not the records of the said judgments or copies thereof in his custody or under his control, he is ready and willing to procure and produce exemplified copies thereof, if the said complainant shall require the same.

20 And this defendant further answering says, he admits that the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and premises, so as aforesaid levied on under the said executions, adjourned the sale thereof, as in the said bill alleged, and that he declared his purpose to sell the said premises to the highest bidder therefor, and to make, execute, and deliver a deed therefor to the purchaser thereof; but this defendant does not know, and has not been informed save by the said bill of complaint, and cannot set forth as to his belief or  
 30 otherwise, whether the said sheriff "threatened" to sell the said premises or manifested his determination to sell the same, otherwise than by advertisements set up and published according to the requirements of the laws of the said state of New Jersey.

And this defendant further answering submits and insists, that there is no truth in the assumptions and assertions in the said bill, that the said complainant is the true, lawful, and right owner of the land and premises, with the appurtenances, so advertised by the said sheriff to be sold, or that  
 40 the said John Whittemore has no right, title, or interest in

the same, or that the said William Douglass has no just right or lawful authority to levy upon, advertise for sale, sell or convey, or in any manner to interfere with the said property.

And this defendant further answering submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made to hinder, delay, and defraud the creditors of the said John Whittemore, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor in proportion to their several demands, but for the special benefit of a part thereof, and preferred some of said creditors over others, providing and requiring that some of said creditors should be first paid and have a greater proportion in respect of their claims than others, in open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer the estate, right, title, or interest of the said John Whittemore in or to the lands and premises so levied on and advertised to be sold as aforesaid; and he further submits and insists, that the said William Kumbell and David V. Freeman, or either of them, had no estate, right, title, or interest, in or to the said premises, and did not nor could convey or transfer the same, or any estate, right, title, or interest therein or thereto to the said complainant, who was well aware or bound to know, and should have known the illegal and fraudulent character of the said deed of assignment, and that by the laws of the said state of New Jersey it was void and utterly ineffectual to transfer the premises in question. 20 30

And this defendant further answering says, he did not come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand, or any part thereof, to the said assignees for payment or settlement, or otherwise; and he submits and insists, that he ought not to be, and is not bound, prejudiced, or in any wise affected by the said deed of assignment; and that this defendant's judgment first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof, on the land and prem- 40

ises so levied on; and that the said William Douglass, as such sheriff, under the said execution so as aforesaid issued on the said judgment, and directed and delivered to him, had not only a just right and lawful authority, but it was his duty to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, 10 whether or not the said sum of six thousand dollars, alleged in the said bill to have been paid by the said complainant to the said assignees, or any part thereof was received and appropriated by them or either of them, to their own use or to the use of either of them, or to the payment of their individual claims, or the individual claim of either of them against the said John Whittemore.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter, 20 cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant 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 his reasonable costs and charges in this behalf most wrongfully sustained.

30

JOHN W. TAYLOR,  
*Solicitor and of counsel for defendant.*

Schedule referred to in the foregoing answer.

1. *Copy of account.*

1856.

John Whittemere & Co.,

Bought of E. P. Howard.

Nov.	17.	105 $\frac{9}{12}$	doz. No. 9 card boards, @ 35c,	\$37.01	
"	"	152 $\frac{5}{12}$	" " 10 " " " 36,	54.87	
"	"	61	boxes,	21,	12.81
Dec.	9.	200	doz. No. 10 card boards, " 36,	72.00	
"	"	48	boxes,	" 21,	10.08 10
"	22.	200	doz. No. 10 card boards, " 36,	72.00	
"	"	48	boxes,	" 21,	10.08

1857.

Jan.	28.	The young Mr. Whittemore was here and I let him have cash (to get home with),			10.00	
Feb.	4.	200	doz. No. 10 card board, " 36,	72.00		
"	"	48	boxes, " 21,	10.08		
March	7.	200	doz. No. 10 card boards, " 36,	72.00		
"	"	99 $\frac{8}{12}$	" " 9 " " " 35,	34.99 20		
"	"	71	boxes, " 21,	14.91		
April	9.	300	doz. No. 10 card boards, " 36,	108.00		
"	"	72	boxes, " 21,	15.12		
				<hr/>		
				\$605.95		

1856.

Nov.		Cr. by freight paid,	\$45.31	
Dec.		" " " "	12.03	

1857.

Jan.		" " " "	11.86	
March.		" " " "	17.70	30
April.		" " " "	17.46	
			<hr/>	
			\$104.36	
			<hr/>	
			\$501.59	

2. *Copies of notes.*

[1]

\$280 $\frac{00}{100}$ 

NEW YORK, 15th December, 1856.

Six months after date, we promise to pay to the order of E. P. Howard, two hundred and eighty dollars, at the Mechanics Bank, value received.

(Signed,)

JOHN WHITTEMORE &amp; Co.

Due June 18.

[2]

\$211 $\frac{59}{100}$ 

NEW YORK, March 23d, 1857.

10 Six months after date, we promise to pay to the order of E. P. Howard, two hundred and eleven  $\frac{59}{100}$  dollars, at the Mechanics Bank, value received.

(Signed,)

JOHN WHITTEMORE &amp; Co.

Due Sept. 23—26.

3. *Abstracts of judgments.*

Against whom,	-	John Whittemore, survivor, &c.
In whose favor,	-	Ezra P. Howard.
Where perfected,	-	1st Judicial District, N. Y.
When perfected,	-	1859, Dec. 7th.
20 Transcript filed,	-	1859, Dec. 8th.
H. M.	-	- 1.00.
Damages and costs,	-	\$260.40.

City and county of New York, county clerk's office, ss.—  
I, Henry W. Genet, clerk of the city and county of New York, certify that the above is a true and correct extract from the Docket of Transcripts kept in my office.

New York, March 31st, 1864.

H. W. GENET, *Clerk.*

Against whom,	-	John Whittemore, survivor, &c.
In whose favor,	-	Ezra P. Howard.
Where perfected,	-	Marine, N. Y.
When perfected,	-	1860, July 16th.
Transcript filed,	-	1860, July 19th.
H. M.	-	9.55.
Damages and costs,	-	\$357.29.
Attorney,	-	D. G. Wild.

City and county of New York, county clerk's office, ss.—  
I, Henry W. Genet, clerk of the city and county of New York, certify that the above is a true and correct extract from the Docket of Transcripts kept in my office.

New York, March 30th, 1864.

H. W. GENET, *Clerk.*

Against whom,	John Whittemore, survivor, &c., resp't.
In whose favor,	Ezra P. Howard, appl't.
Where perfected,	Common Pleas, N. Y.
When perfected,	1860, July 18th.
H. M.	10.45.
Transcript filed,	1860, July 19th. 20
H. M.	11.20.
Damages and costs,	\$19.14.
Attorney,	D. G. Wild.

City and county of New York, county clerk's office, ss.—  
I, Henry W. Genet, clerk of the city and county of New York, certify that the above is a true and correct extract from the Docket of Transcripts kept in my office.

New York, March 30th, 1864.

H. W. GENET, *Clerk.*

Against whom,	John Whittemore, survivor, &c., resp't. 30
In whose favor,	Ezra P. Howard, appl't.
Where perfected,	Common Pleas, N. Y.
When perfected,	1860, July 18th.

H. M.	-	-	-	-	-	10.40.
Transcript filed,	-	-	-	-	1860, July 19th.	
H. M.	-	-	-	-	-	11.20.
Damages and costs,	-	-	-	-	-	\$21.36.
Attorney,	-	-	-	-	-	D. G. Wild.

City and county of New York, county clerk's office, ss.—  
I, Henry W. Genet, clerk of the city and county of New  
York, certify that the above is a true and correct extract  
from the Docket of Transcripts kept in my office.

10 New York, March 30th, 1864.

H. W. GENET, *Clerk.*

The foregoing is the schedule referred to in the preceding  
and annexed answer.

EZRA P. HOWARD.

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### Answer of Elias Hempstead.

[Filed January 30, 1867.]

IN CHANCERY OF NEW JERSEY.

*The answer of Elias Hempstead, one of the defendants to the  
amended bill of complaint of John Bentley, complainant.*

- 20 This defendant, now and at all times hereafter, saving and  
reserving unto himself all benefit and advantage of excep-  
tion to the many errors, uncertainties, and other imperfec-  
tions in the complainant's said bill of complaint contained,  
for answer thereunto, or unto so much and such parts thereof  
as this defendant is advised is or are material or necessary  
for him to make answer unto, answering, says—he admits  
that on or about the twenty-eighth day of May, in the year  
of our Lord one thousand eight hundred and fifty-seven,  
John Whittemore, survivor of John Whittemore and Com-  
30 pany, in the said bill named, did make and execute to Wil-  
liam Kumbell and David V. Freeman, therein also named, a  
deed of assignment of such date and purport as in the said  
bill set forth, so far as the same is therein set forth; and that  
the same was acknowledged by the said John Whittemore,

and recorded as in the said bill stated; but this defendant denies that the said deed was duly acknowledged by the said William Kumbell and David V. Freeman, parties of the second part thereto, and says that their acknowledgment was not taken before an officer authorized by the laws of New Jersey to take the same, nor taken in the manner required by the said laws; and he also denies that the said deed of assignment ever did or could take effect or operate as a valid or effectual assignment or conveyance of that portion of the property or premises therein described, situated 10 and lying in the state of New Jersey, or of any estate, right, title, or interest of the said John Whittemore, survivor as aforesaid, in or to such portion; inasmuch as the said deed of assignment in its provisions contravened the laws of the state of New Jersey, as this defendant submits and herein after more particularly shows.

And this defendant further answering says, he also admits that the names of the parties and the sums attached to their respective names in the schedule marked *A*, referred to in the said deed of assignment and thereto annexed, are as set 20 for thin the said bill, so far as the same are therein set forth; and that William Kumbell, named in the said schedule, is one of the assignees mentioned in the said deed of assignment.

And this defendant further answering says, he also admits that on or about the twelfth day of January, in the year of our Lord one thousand eight hundred and fifty-eight, the said William Kumbell and David V. Freeman, made, executed, and delivered a deed of conveyance to the said complainant, of such date and purport and for such considera- 30 tion as set forth in the said bill, so far as the same is therein set forth; and that the same was acknowledged and recorded as in the said bill stated; but whether such consideration or any part thereof was actually paid, or if paid, when, how, or to whom the same was paid, this defendant does not know and has not been informed, save by the said bill and the recitals in the said deed to the said complainant, and cannot set forth as to his belief or otherwise; and he denies that the last mentioned deed took effect or operated to convey or transfer the land and premises therein described, or any 40

estate, right, title, or interest therein or thereto, as this defendant submits.

And this defendant further answering says, he admits that on or about the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five, the said John Whittemore made, executed, and delivered to Mary Morrell, in the said bill named, an indenture of mortgage, of such date, purport, and effect as in the said bill set forth, so far as the same is therein set forth; that the said mortgage was acknowledged and registered or recorded as in the said bill stated, and was a lien upon the premises described in the said deed to the said complainant; and that the said deed to the said complainant was made subject to the encumbrance of the said mortgage; but whether the sum of two thousand dollars, intended to be secured by the said mortgage, was unpaid or not at the time the said deed of conveyance to the said complainant was executed and delivered, or what sum was then due and unpaid thereon, this defendant knows not and has not been informed, save by the complainant's said bill and the statements or recitals in the last mentioned deed, and cannot set forth as to his belief or otherwise; and he further saith, that he has been informed and believes it to be true, that on or about the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and sixty-three, the said mortgage so as aforesaid given by the said John Whittemore to the said Mary Morrell, was cancelled of record; from which circumstance he thinks it probable and believes that the whole of the principal and interest due thereon has been paid, and that it may have been paid by the said complainant; but whether paid or not by the said complainant, or by whom, how, or at what particular time prior to the date last aforesaid the same was paid, this defendant has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise.

And this defendant further answering says, that he admits that the said John Whittemore, at or about the time in the said bill in that behalf stated, executed to the said William Kumbell an indenture of mortgage of such date and purport as therein set forth, and that the same was acknowledged

and registered as therein alleged ; but he denies that the said mortgage was executed or received in good faith or for a valid consideration ; and says that he has been informed and believes to be true, and therefore charges that the said mortgage was given when the said John Whittemore was insolvent and in embarrassed pecuniary circumstances, and in contemplation and on the eve of the said fraudulent assignment, and for the purpose and with the design of protecting the said property so mortgaged from this defendant, and the other creditors of the said John Whittemore, and of giving 10 an undue and fraudulent preference to the said William Kumbell ; and that said William Kumbell well knew that such was the purpose of the said John Whittemore, and co-operated with him fully and actively in the accomplishment thereof.

And this defendant also admits, that the said complainant paid to the said Kumbell and Freeman the said sum of six thousand dollars, part of the said consideration of eight thousand dollars, agreed to be paid for said premises, and that he paid the residue thereof by assuming and afterwards paying 20 the said mortgage for two thousand dollars ; but he denies the insinuation in said bill that such payment of six thousand dollars was made upon or on account of said mortgage for eight thousand dollars, or had any connection therewith or reference thereto, directly or indirectly ; and he says that he has been informed and believes and he therefore charges, that the said last mentioned mortgage was discharged by the said William Kumbell previous to the execution of the said conveyance by him and the said David V. Freeman ; that the same thereby became inoperative and extinct before the 30 delivery of said conveyance, and that none of the parties to the said conveyance ever intended or contemplated the assignment thereof to the complainant, or that it should be kept alive or in force, or that it should enure in any way to the benefit of the said complainant.

And he further says, that he has no knowledge or information, save that derived from the said bill, and cannot set forth as to his belief or otherwise, whether or not the said mortgage was, after its discharge, delivered to the said complainant ; but he charges and insists that if so delivered it 40

was not as a muniment of title, or by way of an equitable or other assignment thereof, but as a memorandum or receipt, showing its payment or discharge, and for the purpose of having the same cancelled of record; and this defendant submits and respectfully insists that the said mortgage ought not to be restored, revived, or re-established as against this defendant, and to his prejudice.

And this defendant also denies, that the said six thousand dollars was paid to the said William Kumbell in any other  
 10 capacity than as one of the assignees of John Whittemore as aforesaid; and he submits and respectfully insists, that whatever title to said premises the said William Kumbell may have had, whether legal or equitable, by virtue of said mortgage so as aforesaid given to him, became extinct before the execution of the said deed to the said complainant, and that it did not pass or enure to the said complainant by the said deed or otherwise, nor ought the said complainant to be subrogated to any interest or title which may ever have  
 20 existed in the said William Kumbell by virtue of said mortgage or otherwise, to the prejudice of this defendant.

And this defendant further answering says, he admits that at the time of the execution and delivery of the said deed to the said complainant for the lot of land therein and in the said bill described, there was a two story frame building standing thereon; but this defendant does not know and has not been informed, save by the said bill of complaint, and cannot set forth as to his belief or otherwise, whether or not the said building stood in part upon land belonging to the Society for Establishing Useful Manufactures, in said bill  
 30 named, or otherwise; nor whether or not the said building had been used for the purposes in the said bill alleged, or for what purposes the same was used, nor whether or not prior to the execution and delivery of the said deed to the said complainant, all or any part of the machinery and fixtures had been removed therefrom, leaving the same in the condition in the said bill stated; nor whether or not the said complainant, as alleged in the said bill, repaired or improved the said building or converted the same into a flouring mill, or put therein machinery or fixtures, or has been, was, or is en-  
 40 gaged in manufacturing flour or feed in the said mill.

And this defendant further answering says, he does not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the machinery in the said building or mill, as alleged in the said bill of complaint, has always been run by water power, or how long the same has been so run; nor whether or not the property in the said water power, or the right to use the same, is or was in the said complainant, or was acquired by him by a perpetual lease, as in the said bill alleged, or otherwise; nor whether or not the said building is of the dimensions mentioned in the said bill, or the easterly line of the lot runs as stated in the said bill, or leaves a part thereof standing on land held by the said complainant under a lease from the Society for Establishing Useful Manufactures, or otherwise.

And this defendant further answering says, he admits that Samuel Anable, Edward W. Walker, and Ezra P. Howard, in the said bill named, did respectively recover judgments in the Supreme Court of Judicature of the State of New Jersey, by confession, at the times and for the amounts in the said bill mentioned, respectively, and that writs of *feri facias de bonis et terris* were issued on the said judgments respectively, and delivered to William Douglass, then sheriff of the county of Passaic, in the said bill named; and that the said William Douglass, as such sheriff, under and by virtue of the said writs and that of this defendant, herein after mentioned, levied on and advertised for sale, as the property of the said John Whittemore, the lot of land and premises described in the said deed of conveyance to the said complainant, and by him alleged in the said bill to be his own property.

And this defendant further answering says, that it is true as stated in the said bill, that this defendant, on or about the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, recovered a judgment, by confession, in the said Supreme Court, against the said John Whittemore, for the sum of six hundred and fifteen dollars and thirty cents, debt and costs, as set forth in the said bill; and that a writ of *feri facias de bonis et terris* was issued thereon, as in the said bill mentioned, and de-

livered to the said William Douglass, sheriff of the said county of Passaic, who, as such sheriff, under and by virtue thereof, levied on the said lot of land and premises described in the said deed to the said complainant, as the property of the said John Whittemore.

And this defendant further answering says, that it is true as charged in the said bill, that he resides out of the state of New Jersey, (being a resident of the city of Brooklyn, in the county of Kings, and state of New York,) and was not,  
 10 when the debt on which his judgment was founded, accrued, or was contracted, and has not been since, a citizen of the said state; but this defendant does not know and has never been informed, and cannot set forth as to his belief or otherwise, whether or not the said Samuel Anable, Edward W. Walker, and Ezra P. Howard, or either of them, reside or  
 ever resided in the said state, or are or ever have been citizens thereof; this defendant having no acquaintance, and never having communicated with them or either of them,  
 20 and being utterly ignorant as to their residences or citizenship, and each and all of them being entire strangers to this defendant.

And this defendant further answering says, that he knows not and has never been informèd, and cannot set forth as to his belief or otherwise, whether or not the said judgments of the said Samuel Anable, Edward W. Walker, and Ezra P. Howard, or either of them, were fraudulent or void, or  
 confessed for no good or legal consideration, or are no liens on the said lot of land and premises, as charged in the said  
 30 bill; but he denies that the said charge is true in any particular or respect as to the said judgment of this defendant, and says that the said John Whittemore was, at the time the said judgment was confessed, and is now, justly indebted to this defendant in the sum for which the same was confessed, being the amount due on a certain promissory note given and made by the said John Whittemore, to the order of J. W. Whittemore, for the sum of four hundred and sixty-five  
 dollars and seventy-one cents, and by the said payee endorsed to Hoyt Brothers, who endorsed the same to this defendant; which note, as this defendant has been informed and be-  
 40 lieves to be true, was given in settlement at the rate of thirty

cents on the dollar, or thereabouts, of an account of said Hoyt Brothers against the said John Whittemore and Company, for goods sold and delivered by said Hoyt Brothers to the said John Whittemore and Company (whom the said John Whittemore had survived) at their request.

And this defendant further answering says, that no part of the said indebtedness has been paid or secured, otherwise than by the said judgment so as aforesaid confessed to this defendant by the said John Whittemore, and that the same or any part thereof has not been settled or discharged by 10 compromise or otherwise.

And this defendant further answering says, that he has in the schedule to this, his answer, annexed or underwritten, and which he prays may be taken as a part hereof, set forth, according to the best and utmost of his knowledge, information, remembrance, and belief, full, true, and perfect copies of the items of the accounts of goods sold and delivered as aforesaid by the said Hoyt Brothers to the said John Whittemore and Company, and of the said promissory note given in settlement thereof as aforesaid, and also of all credits, 20 endorsements, and payments thereon.

And this defendant further answering says, he admits that the said William Douglass, sheriff as aforesaid, as stated in the said bill, advertised for sale the said lot of land and premises so as aforesaid levied on under the said executions, adjourned the sale thereof, as in the said bill alleged, and that he declared his purpose to sell the said premises to the highest bidder therefor, and to make, execute and deliver a deed therefor to the purchaser thereof; but this defendant does not know and has not been informed, save by 30 the said bill of complaint, and cannot set forth as to his belief or otherwise, whether the said sheriff "threatened" to sell the said premises or manifested his determination to sell the same otherwise than by advertisements set up and published according to the requirements of the laws of the said state of New Jersey.

And this defendant further answering submits and insists, that there is no truth in the assumptions and assertions in the said bill, that the said complainant is the true, lawful, and right owner of the land and premises, with the appur- 40

tenances, so advertised by the said sheriff to be sold, or that the said John Whittemore has no right, title, or interest in the same, or that the said William Douglass has no just right or lawful authority to levy upon, advertise for sale, sell, or convey, or in any manner to interfere with the said property.

And this defendant further answering submits and insists, that the said deed of assignment from the said John Whittemore, survivor of John Whittemore and Company, was made  
 10 to hinder, delay, and defraud the creditors of the said John Whittemore aforesaid, or some of them, including this defendant, and was not made for the equal benefit of all the creditors of the said assignor, in proportion to their several demands, but for the special benefit of a part thereof, and preferred some of said creditors over others, providing and requiring that some of said creditors should be first paid, and have a greater proportion in respect of their claims than others, in open violation and contravention of the laws of the said state of New Jersey, and that the same was fraudulent and wholly void, and did not pass, convey, or transfer  
 20 the estate, right, title, or interest of the said John Whittemore in or to the land and premises so levied on and advertised to be sold as aforesaid; and he further submits and insists, that the said William Kumbell and David V. Freeman, or either of them, had no estate, right, title, or interest in or to the said premises, and did not nor could convey or transfer the same, or any estate, right, title, or interest therein or thereto, to the said complainant, who was well aware or bound to know, and should have known the illegal  
 30 and fraudulent character of the said deed of assignment, and that by the laws of the said state of New Jersey it was void and utterly ineffectual to transfer the premises in question.

And this defendant further answering says, he did not come in under the said assignment, or submit to or acquiesce in the same, or present his claim or demand, or any part thereof, to the said assignees for payment or settlement, or otherwise; and he submits and insists, that he ought not to be and is not bound, prejudiced, or in any wise affected  
 40 by the said deed of assignment; and that this defendant's

judgment, first above described, from the time of the entry thereof in the said Supreme Court, became and was a lawful and valid lien for the full amount thereof, on the land and premises so levied on; and that the said William Douglass, as such sheriff, under the said execution so as aforesaid issued on the said judgment, and directed and delivered to him, had not only a just right and lawful authority, but it was his duty to levy upon, advertise for sale, and sell the said property.

And this defendant further answering says, that he does 10 not know and has never been informed, save by the said bill, and cannot set forth as to his belief or otherwise, whether or not the said sum of six thousand dollars, alleged in the said bill to have been paid by the said complainant to the said assignees, or any part thereof, was received and appropriated by them, or either of them, or to the payment of their individual claims, or the individual claim of either of them against the said John Whittemore.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said 20 bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant 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 his reasonable costs and charges in this behalf most 30 wrongfully sustained.

JOHN W. TAYLOR,  
*Solicitor and of counsel for defendant.*

Schedule referred to in the foregoing answer.

1. *Items of account.*

1856.

John Whittemere & Co.,

To Hoyt Brothers, Dr.

Oct. 29.	To 15,306 feet 1½ inch belting,			
	9c.,		\$1377.54	
	Less 10 per ct.,	-	-	137.75
			<u>          </u>	\$1239.79
10 Dec. 5.	To 85 feet 18-inch hemlock,			
	double belting, \$3.64,	-	\$309.40	
	Less 20 per cent,	-	-	61.88
			<u>          </u>	\$247.52
	Less 10 per cent,	-	-	24.75
			<u>          </u>	222.77
				<u>          </u>
				\$1462.56

*Promissory note.*

\$465 <sup>71</sup>/<sub>100</sub>

NEW YORK, February 1st, 1858.

Ten months after date, I promise to pay to the order of J. 20 W. Whittemore, four hundred and sixty-five <sup>71</sup>/<sub>100</sub> dollars, value received.

(Signed,)

JOHN WHITTEMORE.

Endorsed—Pay Hoyt Brothers, or order.

J. W. WHITTEMORE.

Pay to the order of Elias Hempstead, without recourse.

HOYT BROTHERS.

Above is the schedule referred to in the foregoing answer.

ELIAS HEMPSTEAD.

Answer of Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead.

[Filed January 30, 1867.]

IN CHANCERY OF NEW JERSEY.

*The joint and several answer of Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, four of the defendants to the cross-bill of complaint of William Kumbell, complainant.*

These defendants now and at all times hereafter, saving and reserving to themselves and each of them, all benefit 10 and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said cross-bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised is or are material or necessary for them or any of them to make answer unto, they, severally answering, say—that they admit that John Bentley, in the said cross-bill named, filed his bill of complaint in this honorable court against such persons, as defendants, and containing such prayer, as in said cross-bill 20 mentioned and set forth; and that such pleadings were filed, and such proceedings had and taken in said cause as in said cross bill stated; and they further admit that said cause has not been finally heard.

And these defendants further severally answering say, that they admit that John Whittemore, in said cross-bill named, executed and delivered to the said William Kumbell a bond and mortgage of such date and purport as in the said cross-bill set forth, and that the same was registered or recorded as therein stated; but whether the said John White. 30 more was indebted to the said William Kumbell, as therein stated, or gave the said bond and mortgage for the purpose of securing such indebtedness, as in said cross-bill alleged, these defendants severally say, that they or any or either of them, to the knowledge or belief of the others or other of them, do not know and have never been informed, save by the

said cross-bill and the original bill so as aforesaid filed by the said John Bentley, and cannot set forth as to their belief or otherwise; but they have been informed and believe it to be true, and therefore charge, that the said bond and mortgage were given in bad faith, when the said John Whittemore was insolvent and pecuniarily embarrassed and threatened with litigation by his creditors, and shortly prior to and in contemplation of an assignment, with preferences, for the benefit of his creditors, but not for their equal benefit, 10 and were designed to cover the property so mortgaged, and protect the same from the honest claims of these defendants and the other creditors, and to give an undue and fraudulent preference to the said William Kumbell, who well knew the circumstances and fraudulent purposes of the said John Whittemore in the premises, and co-operated with him fully and actively in the execution of such fraudulent purposes.

And these defendants further severally answering, deny that the said mortgage was a valid subsisting encumbrance on the premises comprised in said mortgage at the time 20 of the pretended or alleged conveyance thereof by the said William Kumbell and his co-assignee, David V. Freeman, in said cross-bill named, to the said John Bentley; and they further deny that the said Kumbell held the legal title or any title whatever under said mortgage, or that the said mortgage had any validity or effect as against these defendants to whom the said John Whittemore, at the time of giving the same, was largely and honestly indebted, as in their answers to said original bill set forth, it having been given to defraud them of their said debts or claims, or hinder and 30 delay them in the recovery thereof.

And these defendants deny that the said mortgage was cancelled as a matter of liberality to the other creditors of the said John Whittemore, or by mistake on the part of the said Kumbell, as in said cross-bill in that behalf alleged; and they say, that if it is true, as alleged in the said cross-bill, (which these defendants expressly deny), that said mortgage was given to secure a debt or any portion of a debt due to the said Kumbell from the said Whittemore, the said Kumbell, as one of the preferred creditors of the said Whittemore, 40 more, was entitled or empowered by the deed of assignment

in the said original bill set forth, to apply the proceeds of the sale of the said premises to the payment of said indebtedness, and that he did so apply the same; and they deny that the said Kumbell lost the benefit which he would have had from the said mortgage, in consequence of such cancellation thereof.

And these defendants severally admit, that their places of residence, respectively, are and were as stated in said cross-bill; and they submit and respectfully insist, that the said mortgage ought not to be re-established or restored or made in any way to operate to the prejudice of these defendants, or enure to the benefit of the said William Kumbell and the said John Bentley, or either of them. 10

And these defendants severally deny that there is any other matter or thing in the said bill charged or contained, material or necessary for these defendants, or any of them, 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, or any of them; all which matters and things these 20 defendants, and each of them, 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.

JOHN W. TAYLOR,

*Solicitor and of counsel for the defendants.*

## Opinion.

The defendant, Whittemore, on the twenty-eighth day of May, 1857, conveyed and assigned to the defendants, Freeman and Kumbell, all his property, real and personal, excepting his household furniture, on trust, to sell and collect the same, and out of the proceeds to pay his debts, in the order specified; certain debts, amounting to twenty-six thousand dollars, enumerated in *Schedule A*, annexed to the deed, were directed to be first paid, and then all other debts

10 ratably. This deed described a tract of land in New York, and the lot at Paterson, in this state, afterwards conveyed to Bentley, all the other property was conveyed by general terms. Whittemore, Freeman, and Kumbell, all resided in New York, where the assignment was made and executed. Two years before the assignment, Whittemore had given a mortgage on the Paterson lot to Mary Morrell, for two thousand dollars, and twenty days before the assignment he had given another mortgage on the same lot to the defendant, Kumbell, for eight thousand dollars. Both these mortgages

20 were duly registered, and were subsisting encumbrances at the date of the assignment. The deed of assignment was recorded in the office of the clerk of the county of Passaic.

On the twelfth day of May, 1858, Freeman and Kumbell sold and conveyed the lot and mill, in Paterson, to the complainant, by deed dated on that day, in which they are styled assignees of Whittemore. This sale was for the consideration of eight thousand dollars, which was expressed in the deed, and was paid by assuming the Morrell mortgage and six thousand dollars in cash. The mortgage to Kumbell

30 was, at this sale, given up and cancelled in fact, and was cancelled on the record of registry two days afterwards, when the deed was recorded. Bentley afterwards paid the Morrell mortgage, and had it cancelled of record on the twenty-seventh day of May, 1863, and destroyed the mortgage. Bentley repaired and fitted up the mill at large expense, and carried on his business in it.

The defendants, Hempstead, Anable, Howard, and Walker, were creditors of Whittemore. At different times, from

the eighth day of June, 1863, to the thirtieth day of September, in the same year, each recovered a judgment against him in the Supreme Court of this state, and caused an execution to be issued and levied upon the mill and lot sold to Bentley, and caused it to be advertised for sale. They contending that the assignment by Whittemore was void by the law of New Jersey, on account of preference to some creditors, and that the title still remained in Whittemore. The bill is filed for an injunction to restrain the sale, and to have the mortgages, alleged to be cancelled by mistake, again set up and declared valid liens to protect the complainant's title. 10

Kumbell filed a cross-bill to have the mortgage to him set up as having been cancelled by mistake, or rather under misapprehension, as he supposed that the assignment was valid, and that the deed to the complainant conveyed the title.

The defendants, Hempstead and Anable, reside in New York, Walker in Rhode Island, and Howard in New Hampshire, and did so reside at the date of the assignment. 20

The first question is, whether the assignment of Whittemore is void. The construction of the assignment act on this point was settled by the Supreme Court in *Varnum v. Camp*, 1 *Green* 326. The court there held that the directions of the first section of the act, that all assignments in trust for the payment of creditors should be for their equal benefit, in proportion to their demands, made that pro rata equality essential to the validity of the assignment, and that assignments made contrary to this requirement were void. This part of the act was held to be imperative, although in 30 the same section it was declared that the preference should be void. And this decision has been acquiesced in by the courts and the bar as the correct construction of that act. In *Goodrich v. Down*, 6 *Hill* 438, the Supreme Court of New York gave the same effect to a similar provision. And the fact that at the revision of 1846, after that construction had been given and accepted for years, this statute was re-enacted in the same words, with the approval of the eminent jurists to whom that revision was entrusted, would almost make that construction a part of the law, and put it beyond 40

the power of the courts to reconsider it. The only doubt thrown over that decision was by the ruling of the Supreme Court in *Moore v. Bonnell*, decided at the Term of June, 1864, and not yet reported. In that case the court held, that as personal property is held to follow the domicil of the owner, and transfers of it made at the place of his domicil must be governed by the law of that domicil; therefore, a preferential assignment of personal property situate in New Jersey, made in New York by an inhabitant of that state, and  
 10 valid by its laws, was valid to pass the title to that property as against a creditor living in New York, though as to a creditor residing in New Jersey it would have been void. The rule that personal property shall be transferred according to the law of the domicil of the owner and not the law of *rei sitæ*, does not apply when the rights of residents in the state where the property is situate will be affected by it. This ruling does not affect the decision in *Varnum v. Camp*, as to the construction of the statute. Nor does it contra-  
 20 vene the applicaton of it in that case, if, as is generally understood, the plaintiff in the execution was a resident of this state. In fact this construction of the statute is re-affirmed by the opinion in *Moore v. Bonnell*, and it is shown that it did not apply to assignments of personal property when both the debtor and creditor were residents of the same foreign state by the law of which it was valid.

But the distinction made in *Moore v. Bonnell* has nothing to do with the case before us. That was founded on the rule as to personal property. As regards real property the rule is different. It is well settled in England and the states  
 30 where the common law is in force, that the transfer and descent of real property is governed by the law of the state in which it lies. This rule is without exception, and I am not aware of any case or any authority on which it is questioned.

*Story's Confl. of Law*, § 424, 428, and 435; *Burrill on Assignments*, ch. XXX, p. 371; *Broadie v. Barry*, 2 *Ves. & Bea.* 130; *Birtwhistle v. Vardell*, 5 *B. & C.* 438; *Bing. N. C.* 385; *S. C. in Error*, 9 *Bligh.* 32 and 6; *Elliott v. Ld. Minto*, 6 *Madd.* 16; *Curtis v. Hutton*, 14 *Ves.* 537; *Crosby v. Mason*, 7 *Cranch* 115;

*Clark v. Graham*, 6 *Wheat.* 597; *Kerr v. Mason*, 9 *Wheat.* 566; *Hosford v. Nichols*, 1 *Paige* 220; *Chapman v. Robertson*, 6 *Paige* 627; *Cutler v. Davenport*, 1 *Pick.* 81.

The assignment to Freeman and Kumbell is void as to the lands in this state, it conveyed no title to them, and of course they could convey none to the plaintiff.

The complainant contends, that if the assignment is void, yet that he is entitled to have the cancellation of the mortgages set aside as done by mistake and misapprehension, and as they were paid by him that he shall be decreed to be 10 the equitable assignor, and to have priority to that extent to the defendants. This claim is founded on justice and ought to be sustained, if it can be without violating established principles of equity. These two mortgages when paid and cancelled, were valid, subsisting liens on Whittemore's property, valid against him and his creditors—they were paid by the complainant with the belief that the payment would enure to his benefit.

Courts of equity have power to correct mistakes and protect from the consequences of them; it is one of the well 20 established heads of equity jurisdiction, and this court has frequently exercised this power in the case of mortgages cancelled by mistake. But it is only mistakes as to fact that entitle to this relief. It is well settled that this court will not relieve for a mistake as to the law. Few transactions would be safe if they could be set aside for a misapprehension of the legal rights of the parties to them. The doctrine is too well settled by authority, and too well supported by the reason on which it is founded to be disregarded. This principle was considered affirmed and applied to the 30 cancelling of a mortgage in the case of *Garwood v. Eldridge's Adm'rs.*, 1 *Green Ch.* 145. The same doctrine is recognized in 2 *J. C. R.* 60; *Lyon v. Richmond*, and *J. C. R.* 170; *Storrs v. Barker*, and is discussed at large by Justice Story in 1 *Eq. Jur.*, section 121 to 138, who after an elaborate review of the authorities arrives at the conclusion that a court of equity will not relieve a party from the effect of his mistake of the law unless when accompanied by fraud or imposition of the other party.

Although a mistake as to the law of a foreign state is considered a mistake of fact in most cases, yet when a non-resident enters into a contract to be performed in another state or relating to lands in a foreign state, he is held to know the law of such state, and in that case the mistake is one of law. Besides, Bentley, who seeks the relief and paid the mortgages, and cancelled them by mistake, was a resident of this state.

The bill and cross-bill must be dismissed.

10

### Final Decree.

[Filed May 28, 1867.]

This cause coming on to be heard before the Chancellor, at the stated February Term, eighteen hundred and sixty-seven, in the presence of Socrates Tuttle, of counsel with the complainant, and of Aaron S. Pennington, of counsel with the defendant, William Kumbell, and of John W. Taylor, of counsel with the defendants, Elias Hempstead, Samuel Anable, Edward W. Walker, and Ezra P. Howard, upon bill, answers, replication, and proofs, and cross-bill and  
20 answer, and the pleadings and proofs having been read, and the arguments of counsel heard and considered, and the Chancellor being of the opinion that the complainant in the original cause is not entitled to the relief prayed in his bill of complaint, and that the defendant, William Kumbell, is not entitled to the relief prayed in his cross-bill—

It is thereupon, on this twenty-eighth day of May, A. D. eighteen hundred and sixty-seven, ordered, adjudged, and decreed, that the bill of complaint in the original cause be dismissed, with costs, and that the injunction heretofore  
30 issued thereon be dissolved; and that the complainant in the said original cause, John Bentley, do, within twenty days after service upon his solicitor of a copy of this decree, pay to the said defendants, Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, respectively, or to their solicitor, their respective costs in the said original suit, to be taxed; and that the cross-bill of complainant, filed by the said defendant, William Kumbell, be also dis-

missed, with costs; and that the said defendant, William Kumbell, do, within twenty days after service upon him or his solicitor, of a copy of this decree, pay to the solicitor of the said defendants, Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, their costs in the said cross-cause, to be taxed.

A. O. ZABRISKIE, C.

### Notice of Appeal.

[Filed June 4, 1867.]

The complainant hereby appeals from so much of the 10 final decree made in this court in the above stated cause as declares that the complainant is not entitled to the relief prayed in his bill of complaint to the Court of Appeals in the last resort in all causes of law.

S. TUTTLE,

*Solicitor of complainant.*

WM. GLEDHILL, *Of counsel.*

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

WM. GLEDHILL, *Of counsel, &c.* 20

### Notice of Appeal.

[Filed June 4, 1867.]

The complainant in the cross-bill, William Kumbell, hereby appeals from so much of the said decree made in this court in the above stated cause, as declares that the complainant in the cross-bill is not entitled to the relief prayed in his said cross-bill to the Court of Appeals in the last resort in all causes of law.

A. S. PENNINGTON,

*Solicitor and of counsel with William Kumbell.* 30

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

JOHN HOPPER, *Of counsel, &c.*

## Petition of Appeal.

[Filed June 18, 1867.]

COURT OF ERRORS AND APPEALS.

Between

John Bentley, appellant,

and

John Whittemore, William Kumbell,  
 David V. Freeman, Samuel Anable,  
 Edward W. Walker, Ezra P. How-  
 10 ard, Elias Hempstead, and William  
 Douglass, appellees.

} On bill, &amp;c.

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

The humble petition of John Bentley, the appellant in the  
 above stated cause, respectfully shows, that your petitioner  
 finds himself aggrieved by a final decree made in the Court  
 of Chancery, by his Honor, Abraham O. Zabriskie, Chan-  
 cellor of the State of New Jersey, bearing date the twenty-  
 eighth day of May, in the year of our Lord one thousand  
 20 eight hundred and sixty-seven, wherein the said John Bent-  
 ley was complainant, and the said John Whittemore, Wil-  
 liam Kumbell, David V. Freeman, Samuel Anable, Edward  
 W. Walker, Ezra P. Howard, Elias Hempstead, and William  
 Douglass, were defendants, in this respect, to wit, that the  
 said decree adjudges that the complainant in the original  
 cause is not entitled to the relief prayed in his bill of com-  
 plaint, and that the bill of complaint in the original cause  
 be dismissed, with costs; and that the injunction theretofore  
 issued therein be dissolved, with costs; and that the com-  
 30 plainant in the said original cause, John Bentley, do, within  
 twenty days after service upon his solicitor of a copy of the  
 said decree, pay to the said defendants, Samuel Anable, Ed-  
 ward W. Walker, Ezra P. Howard, and Elias Hempstead,  
 respectively, or to their solicitor, their respective costs in the  
 original suit, to be taxed.

And your petitioner humbly appeals from that part of the  
 said decree of the Chancellor which decrees as aforesaid,

upon the ground that the same is erroneous, for that the said complainant is entitled to the relief prayed in his bill of complaint, and the said bill of complaint in the original cause ought not to have been dismissed, and the injunction theretofore issued therein dissolved; your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

S. TUTTLE, 10  
*Solicitor of appellant.*

WM. GLEDHILL,  
*Of counsel with appellant.*

Dated June 18th, 1867.

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Petition of Appeal.

[Filed June 18, 1867.]

COURT OF APPEALS IN THE LAST RESORT.

Between

William Kumbell, appellant,

and

John Whittemore and others, appellees. }

*Cross-bill, &c.* 20

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

The humble petition of William Kumbell, the appellant in the above stated case, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Abraham O. Zabriskie, Chancellor of the State of New Jersey, bearing date the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, wherein the said Wil- 30  
liam Kumbell was complainant in the cross-bill, and the said John Whittemore and others were defendants, in this respect, to wit, that the said decree adjudges that the said William Kumbell, the complainant in the said cross-bill and defend-

ant in the original bill, is not entitled to the relief prayed in his said cross-bill and answer.

And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said complainant in the cross-bill, William Kumbell, is entitled to the relief prayed in his said cross-bill.

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

A. S. PENNINGTON & SON,  
*Solicitor for appellant, Wm. Kumbell.*

I conceive that there is good cause for this appeal.

A. S. PENNINGTON,  
*Of counsel with the appellant, William Kumbell.*

Dated June 17th, 1867.

### Answer to Petition of Appeal.

20

COURT OF ERRORS AND APPEALS.

Between

John Bentley, appellant,

*and*John Whittemore, William Kumbell, et.  
al., respondents.} *On bill, &c.*

*The answer of Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, respondents to the petition and appeal of John Bentley, appellant.*

30 These respondents, not confessing or acknowledging all or any of the matters and things in the said petition and appeal mentioned, to be true as the same are therein set forth, and reserving to themselves all benefit and advantage

of exception to the errors, defects, and imperfections in the said appeal contained, for answer thereunto say—that they admit that the Court of Chancery did make such decree as in the said petition and appeal is mentioned and complained of, but as to the date and contents of such decree the respondents, for greater certainty, refer to the said decree when the same shall be produced; but the respondents are advised, and humbly apprehend, that the decree complained of is agreeable to equity and justice, and therefore humbly hope the same will be affirmed and the appeal dismissed 10 with costs.

JOHN W. TAYLOR,

*Solicitor and of counsel for respondents.*

A true copy.

H. N. CONGAR, *Clerk.*

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Answer to Petition of Appeal.

COURT OF ERRORS AND APPEALS.

Between

William Kumbell, appellant,

and

John Whittemore, et. al., respondents.

} *Cross-bill, &c.* 20

*The answer of Samuel Anable, Edward W. Walker, Ezra P. Howard, and Elias Hempstead, respondents, to the petition of appeal of William Kumbell, appellant.*

These respondents, not confessing or acknowledging all or any of the matters and things in the said petition and appeal mentioned to be true, as the same are therein set forth, and reserving to themselves all benefit and advantage of exception to the errors, defects, and imperfections, in the said appeal contained, for answer thereunto say—that they 30 admit that the Court of Chancery did make such decree as in the said petition and appeal is mentioned and complained of; but as to the date and contents of such decree, the respondents, for greater certainty, refer to the said decree when

the same shall be produced ; but the respondents are advised, and humbly apprehend, that the decree complained of is agreeable to equity and justice, and therefore humbly hope the same will be affirmed, and the appeal dismissed with costs.

JOHN W. TAYLOR,  
*Solicitor and of counsel for respondents.*

A true copy.

H. N. CONGAR, *Clerk.*

## Complainant's Exhibits.

## EXHIBIT T, No. 1.

This indenture, made the twenty-eighth day of May, one thousand eight hundred and fifty-seven, between John Whittemore, transacting business in the city of New York, and survivor of John Whittemore and Company, of the first part, and William Kumbell and David V. Freeman, of the city of New York, of the second part, witnesseth, that the said party of the first part, in consideration of the sum of one dollar, lawful money of the United States of America, 10 to him in hand paid by the said parties of the second part, at and before the ensealing and delivery herof, the receipt whereof is hereby acknowledged, has granted and sold, and by these presents does grant, bargain, and sell, assign, transfer unto the said parties of the second part, all that certain piece or parcel of land situate in the county of New Yarning, and state of New York, and distinguished as lot number forty-three, of the tract known by the name of the township of Benson, as the same is described in the field book and map of said township, filed in the surveyor general's office, 20 containing one hundred and sixty acres; also all that certain lot of land situate and lying in the city of Buffalo, in the county of Erie and state of New York, bounded as follows: commencing at a point on Court street, forty-one feet easterly from the intersection of Court and North Canal street; thence, at right angles with Court street northerly, to a line commencing fifteen feet north from the intersection of Court with North Canal street, and running easterly at right angles with the line of the Erie Canal; thence, along said line to a point one hundred feet from the line of North Canal 30 street; thence, at right angles southerly fifteen feet; thence, on a line which will intersect Court street at right angles with the said street; thence, along Court street to the place of beginning; and also, all that tract or parcel of land lying in the township of Paterson, county of Passaic, and state of New Jersey: beginning at the northeast corner of the lot heretofore conveyed by the Society for Establishing Useful Manu-

factures to the Beaver Woolen Factory, which carried four hundred and fifteen feet and six inches northerly from Boudinot street; thence, running westerly along said Beaver Woolen Factory lot, one hundred feet to the northwest corner of said lot; thence, northerly at right angles seventy feet more or less, to the Passaic river; thence, easterly down the said river one hundred feet; and thence southerly seventy feet to the place of beginning; and also all the stock in trade, tools, implements, machinery, goods manufactured

10 and unmanufactured and in process of manufacture, and all notes, bills, dues, choses in action and demands whatsoever, and all other property whatever belonging to the said farm of John Whittemore and Company, and to the party of the first part as such survivor or otherwise, except his household furniture, and all books of account, vouchers, and securities relating thereto; to have and to hold the same unto the said parties of the second part, their heirs, executors, administrators, and assigns, for ever in trust, that they sell and dispose of all real estate hereby conveyed, and give good and sufficient

20 deeds therefor, and sell all other property hereby assigned, and collect and receive all moneys due and to grow due on the notes, bills, dues, and demands hereby assigned; and that they apply the net proceeds of such sales and collections in the first place to the payment of the expenses of drawing this assignment, and the actual expenses attending the execution hereof; and in the next place, that they pay the several persons and parties named in the Schedule hereto annexed marked *A*, the amounts set opposite to their respective names, or so much of said amounts as shall be actually

30 due to them, after applying all securities or transfers or mortgages which either of them may hold for the payment of any indebtedness due to them; provided however, that in case the said proceeds shall not be sufficient to pay the several persons in *Schedule A*, after applying as aforesaid, then the said parties of the second part do pay the same ratably and proportionally; and in the next place, after making such payments as aforesaid, should any of the said proceeds remain, that the said parties of the second part do pay the several creditors, and such as shall become such by reason of any contract now existing of the said party of the first

part and John Whitmore & Co., the amounts of their respective demands, so far as the said proceeds will enable them to do, and if not in full then ratably and proportionably to the amount of their respective demands. And the said party of the first part doth hereby irrevocably make, constitute, and appoint the said parties of the second part his true and lawful attorneys, in his name or otherwise, to collect, recover, and receive the goods, property, claims, and demands hereby assigned or intended so to be, and to do and perform all that shall be necessary to be done and performed for the converting the said goods or other property into cash, and collecting and receiving the said dues and demands, as fully and as amply as the said party of the first part could do or perform, were he personally present and this assignment had not been made. 10

In witness whereof, the parties hereto have interchangably set their hands and seals the day and year first above written.

JOHN WHITMORE. [L. S.]

WILLIAM KUMBEL. [L. S.]

D. V. FREEMAN. [L. S.] 20

The words, "and state of New York," interlined between lines nineteen and twenty, first page, before execution.

Sealed and delivered in the presence of

JAMES V. HYATT.

City and county of New York, ss.—On this twenty-ninth day of May, A. D. 1857, before me, came John Whitmore, William Kumbel, and David V. Freeman, known to me to be the same persons described in, and who executed the foregoing indenture, and acknowledged that they executed the same.

JAMES V. HYATT, *Commissioner of Deeds.* 30

State of New York, city and county of New York, ss.—Be it remembered, that on this twenty-ninth day of May, A. D. 1857, before me, Moses B. Maclay, a commissioner resident in the city of New York, duly commissioned and qualified under the laws of the state of New Jersey to take the acknowledgment of deeds, &c., personally appeared John Whitmore, whom I am satisfied is the assignor mentioned

in the within assignment, and to whom I first made known the contents thereof, and thereupon he acknowledged that he had signed, sealed, and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

MOSES B. MACLAY,

*Commissioner for New Jersey in New York.*

*Schedule A, referred to in the annexed assignment.*

	William Kumbel,	\$13,992 14
	Horace and Robert B. Whittemore,	1,131 17
10	Raborel & Whittemore,	1,171 15
	Wm. & C. C. Keeler,	1,420 10
	J. F. Tysen,	1,200 00
	William Borden,	1,000 00
	F. Del Hoys,	900 00
	E. A. Whittemore,	600 00
	Horace Whittemore,	505 83
	I. Wilder,	500 00
	Keller & Singg,	300 00
	James M. Freed,	533 13
20	O. S. Hathaway,	1,390 50
	F. Cole,	187 92
	Paterson Bank,	923 01
	Estate of Jane Muneigh,	425 00
		<hr/>
		\$26,179 95

JOHN WHITTEMORE.

New York, May 28th, 1857.

Witness—JAMES V. HYATT.

Received in the office and recorded June 1st, 1857.

CANFIELD, *Clerk.*

30 State of New Jersey, Passaic county, ss.—I, Thomas D. Hoxey, clerk of said county, do hereby certify that the foregoing is a correct copy of the record of a deed, as the same remains of record in Book B 2, of Deeds, for the county of Passaic.

Witness my hand and the seal of said county this  
[L. s.] twenty-eighth day of November, A. D. 1863.

THOS. D. HOXEY, *Clerk.*

## EXHIBIT P, No. 1.

This indenture, made the eighth day of May, in the year one thousand eight hundred and fifty-seven, between John Whittemore, transacting business in the city of New York, and residing in New Brighton, in the county of Richmond, and state of New York, of the first part, and William Kumbel, transacting business in the same city aforesaid, of the second part: whereas, the said party of the first part is now justly indebted to the party of the second part in the sum of eight thousand dollars for moneys lent and advanced by the 10 party of the second part to the party of the first part; now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money and the interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid, by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, 20 alien, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land or premises hereinafter particularly described, situate, lying, and being in the township of Pater- son, in the county of Passaic, and state of New Jersey, be- ginning at the northeast corner of the lot heretofore con- veyed by the Society for Establishing Useful Manufactures to the Beaver Woolen Factory, which corner is four hundred and fifteen feet six inches northerly from Boudinot street; 30 thence, running westerly along said Beaver Woolen Factory lot one hundred feet to the northwest corner of said lot; thence, northerly at right angles seventy feet more or less to the Passaic river; thence, easterly down the said river one hundred feet; and thence, southerly seventy feet to the place of beginning, bounded on the south by said lot sold to said Beaver Woolen Factory, on the north by Passaic river, and the east and west by lands now or formerly belonging to said society; reserving however, to the said parties of the

first part, their successors and assigns, the privilege of continuing their tail race through the said lot as it now is, and of discharging their water through the same, and also of entering upon said lot at all proper times and seasons for the purpose of amending, opening, clearing out, and repairing said tail race, so that their water may flow into the Passaic river without obstruction, to be kept in repair by the said company or their successors ; together with all and singular the tenements, hereditaments, and appurtenances thereunto  
 10 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, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances ; to have and to hold the above granted, 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;  
 20 provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, shall and do well and truly pay or cause to be paid unto the said party of the second part, his executors, administrators, or assigns, the said sum of eight thousand dollars, together with interest thereon from the date hereof, on demand, then these presents and the estate hereby granted shall cease and determine ; and if default shall be made in the payment of the said sum of money  
 30 or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators, or assigns therein, at public auction, according to the act in such case made and provided. And as the attorney of the said party of the part, for that purpose by these presents duly authorized, consti-  
 40 tuted, and appointed, to make and deliver to the purchaser

or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said indebtedness, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money, if any there shall be, unto the said John Whittemore, his heirs, executors, administrators, or assigns; which sale so to be made, shall for ever be a perpetual bar, both in law and equity, against the said party of the first 10 part, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them or any of them.

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

JOHN WHITTEMORE. [L. S.]

Fourth line written before execution.

Sealed and delivered in the presence of

CHAS. E. CONNOR. 20

State of New York, ss.—Be it remembered, that on this eighth day of May, 1857, before me, a commissioner for New Jersey residing in New York, personally appeared John Whittemore, who is, I am satisfied, the grantor mentioned in the foregoing mortgage named, and the contents thereof having been first made known to him by me, he did thereupon acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

ASHBELL GREEN, *N. J. C.* 30

I acknowledge satisfaction of the within mortgage, and consent that the same be discharged of record.

New York, January 12th, 1858.

WM. KUMBEL.

State of New York, ss.—On this 12th day of January, 1858, before me, a commissioner for New Jersey residing in New York, personally appeared William Kumbel, who is, I

am satisfied, the person who executed the foregoing instrument, and the contents thereof having been first made known to him by me, he thereupon acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

ASHBELL GREEN, *Com'r.*

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EXHIBIT T, No. 2.

This indenture, made the twelfth day of January, one thousand eight hundred and fifty-eight, between William  
 10 Kumbel and David V. Freeman, of the city of New York, assignees of John Whittemore, of the first part, and John Bentley, of Paterson, county of Passaic, and state of New Jersey, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of eight thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have  
 20 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 his heirs and assigns forever, all that tract or parcel of land and premises herein after particularly described, situate, lying, and being in the township of Paterson, in the county of Passaic, and state of New Jersey, beginning at the northeast corner of the lot heretofore conveyed by the Society for Establishing Useful Manufactures to the Beaver Woolen Factory, which corner is four  
 30 hundred and fifteen feet six inches northerly from Boudinot street; thence running westerly along said Beaver Woolen Factory lot one hundred feet, to the northwest corner of said lot; thence northerly at right angles seventy feet more or less to the Passaic river; thence easterly down the said river one hundred feet; and thence southerly seventy feet to the place of beginning; bounded on the south by said lot sold to said Beaver Woolen Factory; on the north by Passaic river, and on the east and west by lands now or formerly

belonging to said society ; reserving, however, to the Monroe Manufacturing Company, their successors and assigns, the privilege of continuing their tail race through the said lot as it now is, and of discharging their water through the same ; and also of entering upon said lot at all proper times and seasons for the purpose of of amending, opening, clearing out, and repairing said tail race, so that their water may flow into the Passaic river without obstruction ; to be kept in repair by the said company or their successors ; subject to the payment of a mortgage for two thousand dollars, which said mortgage is to be assumed by the party of the second part, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof ; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances ; to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, for ever.

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

WM. KUMBEL. [L. S.]

D. V. FREEMAN. [L. S.]

Sealed and delivered in the presence of

RICHARD H. BOWNE. 30

State of New York, city and county of New York, ss.—  
Be it remembered, that on this twelfth day of January, eighteen hundred and fifty-eight, before me, a commissioner under and by virtue of the laws of New Jersey for the acknowledgment and proof of deeds, resident in the state of New York, personally appeared William Kumbel and David V. Freeman, who I am satisfied are the grantors mentioned in the within deed, and I having first made known to them the contents thereof, they acknowledge that they had signed

sealed, and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

ASHBEL GREEN, *N. J. Com'r,*  
20 *Ex. Place, New York City.*

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EXHIBIT T, No. 3.

An indenture, made this first day of November, in the year of our Lord one thousand eight hundred and fifty-seven, between the Society for Establishing Useful Manufactures, of the first part, and John Bentley, of the city of Paterson, in the county of Passaic, and state of New Jersey, of the second part; whereas, the said John Bentley now occupies the mill and premises in rear of the mill of the Globe Mill Manufacturing Company, recently occupied by John Whittemore & Co., as a card factory in Paterson aforesaid, bounded on the north by the Passaic river, and on the east by the waste race of the said society; and whereas, the said John Whittemore & Co., by and with the permission of the said society, used on their said premises certain surplus and waste water flowing from the canal of said society in Boudinot street toward said river, by means of a trunk or trough on the easterly side of the premises aforesaid of the said Bentley, and on the westerly side of said society's waste race, in which the said waste water flows; and whereas, the said John Bentley desires to use said surplus water on his said premises, for the purpose of driving a grist mill; now this indenture witnesseth that the said parties of the first part, for and in consideration of the rents, covenants, conditions, terms, and payments herein mentioned and contained, have demised, leased, and to farm, let, and by these presents do demise, lease, and to farm, let, unto the said John Bentley, his heirs, executors, administrators, and assigns, the privilege of taking from the said waste race and using on the said premises of said Bentley, the waste water that may from time to time be running down said waste race, to be taken at the place and in the manner the same was taken by the said John Whittemore & Co., through the trough or trunk now erected for that purpose, or such other trough or trunk of like size, di-

mensions, and location, as may be built instead thereof, and in no other way, to have and to hold the said privilege to the said John Bentley, his heirs, executors, administrators, and assigns, to and for his and their use for and during and until the full end and completion of the term of twenty years, to be completed and ended from and after the date hereof, subject to all the conditions, covenants, restrictions, and agreements contained herein, yielding and paying therefor yearly and every year, during the continuance of this demise, the clear net yearly rent of fifty dollars, lawful money of the 10 United States of America, in ——— yearly payments, from and after the date hereof, free and clear of all taxes, assessments, and impositions, of every nature and kind whatever.

And the said John Bentley, for himself, his heirs, executors, administrators, and assigns, doth covenant, promise, and agree to and with the said parties of the first part, their successors and assigns, that he, the said John Bentley, his heirs, executors, administrators, or assigns, shall and will take and use the said waste water from the said waste race through the trunk or trough aforesaid, and not otherwise, 20 without the written consent of the said parties of the first part, their successors or assigns; that he will pay or cause to be paid the aforesaid yearly rent in the manner and at the times aforesaid to the said parties of the first part, their successors or assigns; that he will pay or cause to be paid all taxes, assessments, rates, and impositions of every kind that shall and may be laid, levied, rated, or imposed upon the said water privilege, so that the said yearly rent and the demised premises may be free and clear of and from all such taxes, assessments, rates, and impositions during the said 30 term; that he will maintain the said trunk or trough through which the said water is to be taken and used, in the same position and of the same dimensions as they now are, and will construct all and every such new trunk or trough as may be needed for taking and using said water, of like dimensions, and in the same position, and not otherwise, without the written consent of the said parties of the first part, their successors or assigns; that the said parties of the first part, their successors and assigns, shall and may have the full and complete right and power of collecting the rent 40

hereby reserved, by way of distress, in like manner as landlords may and can now collect their rents, according to the laws of the state of New Jersey; and that in case the said party of the second part, his heirs, executors, administrators, or assigns, shall and do fail to perform, or neglect or infringe, or violate any covenant herein contained, or in anywise abuse the privilege hereby demised, then it shall and may be lawful for the said parties of the first part, their successors and assigns, without any suit or proceeding at law or in equity, 10 to stop the flow of said waste water through said trunk or trough, and to prevent the use thereof by the said party of the second part, his heirs, executors, administrators, or assigns, and, at their option, to declare these presents and everything herein contained to be null and void; and that at the expiration of the said term or sooner determination thereof, he will surrender up the said demised premises to the said parties of the first part, their successors or assigns, and cease to take or use the said waste water thenceforth, without the written consent of the said parties 20 of the first part, their successors and assigns.

And it is expressly understood and agreed by and between the parties to these presents, and it is expressly agreed and understood and declared to be the true intent and meaning of these presents, that the said parties of the first part, their successors and assigns, are not to be restrained by anything herein contained from leasing, selling, using, or disposing of the water in their several canals, or from renewing any leases or grants of water heretofore made by them, or from leasing, using, selling, granting, or disposing of all the water in said 30 canals, including their canal in Boudinot street, in such way and manner as they may see fit, or from altering or changing any of their said canals, or from altering or changing the said waste race; and that the said party of the second part, his heirs, executors, administrators, or assigns, may take and use only such waste water as shall be running through said waste race from time to time after the said society or their lessees or grantees or assigns shall have used their proper quantities of water from said canals, and without any guaranty on the part of the said society that any water shall flow 40 through the said waste race; and further, that the distress

aforesaid may be levied and enforced against any goods, chattels, personal property and machinery of the said John Bentley, his heirs, executors, administrators, or assigns, in or upon the premises where the said water may be used by said Bentley or his said representatives, or in any mill on the said premises occupied or owned as aforesaid by him.

In witness whereof the said society have caused their governor to set his hand and affix their seal, and the said John Bentley hath set his hand and seal the day and year first above written.

By order,

A. S. PENNINGTON, [L. S.]

*Dep. Gov. S. U. M.*

JOHN BENTLEY. [L. S.]

Signed, sealed, and delivered in presence of

THOMAS O. SMITH.

Rent of within to commence December 1st, 1857.

THOMAS O. SMITH, *Agent S. U. M.*

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EXHIBIT T, No. 4.

Mortgage given by John Whittemore and Mary B., his wife, of the city of New York, to Mary Morrell, of the city 20 of Paterson, dated the nineteenth day of May, A. D. eighteen hundred and fifty-five, and acknowledged before Henry M. Alexander, commissioner, to secure the payment of a bond of the same date, given by said John to said Mary, conditioned to pay two thousand dollars in one year from the date hereof, with interest at the rate of seven per cent. per annum, on all that tract or parcel of land and premises, situate, lying, and being in the township of Paterson, in the county of Passaic, and state of New Jersey; beginning at the northeast corner of the lot heretofore conveyed by the Society for Es- 30 tablishing Useful Manufactures to the Beaver Woolen Factory, which corner is four hundred and fifteen feet six inches northerly from Boudinot street; thence, running westerly along said Beaver Woolen Factory one hundred feet, to the northwest corner of said lot; thence, northerly at right angles seventy feet more or less to the Passaic river; thence, easterly down the said river one hundred feet; and, thence southerly

seventy feet to the place of beginning ; bounded on the south by said lot sold to said Beaver Woolen Factory, on the north by Passaic river, and on the east and west by lands now or previously belonging to said society ; reserving to the Monroe Manufacturing Company, their successors and assigns, the privilege of continuing their tail race through the said lot as it was in 1839, and of discharging their water through the same, and also of entering upon said lot at all proper times and seasons for the purpose of amending, opening, clearing out, and repairing said tail race, so that their water may flow into the Passaic river without obstruction, to be kept in repair by the said company and their successors.

Received in the office and recorded May 19th, 1855.

CANFIELD, *Clerk.*

State of New Jersey, Passaic county, ss.—I, Thomas D. Hoxey, clerk of the county of Passaic, hereby certify that the above is a true copy of the registration of the above mortgage, as the same remains of record in my office.

20 Witness my hand and official seal this twentieth day of January, A. D. 1865.

The word "the," on the fourteenth line from top, and interlined, and the words "to the," on the twenty-second line from top, erased before certifying this copy.

THOS. D. HOXEY, *Clerk.* [L. S.]

This mortgage is, this twenty-seventh day of May, A. D. 1863, cancelled of record, the same being shown to me with satisfaction written thereon by the mortgagee.

THOS. D. HOXEY, *Clerk.*

## EXHIBIT T, No. 5.

This indenture, made this seventh day of December, in the year of our Lord one thousand eight hundred and sixty-three, between the Society for Establishing Useful Manufactures, in the county of Passaic, and state of New Jersey, of the first part, and John Bentley, of the city of Paterson, in the county of Passaic, and state of New Jersey, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the rents, covenants, and agreements hereinafter reserved and contained, do demise, lease, and to farm, 10  
 let, unto the said party of the second part, his executors, administrators, and assigns, all that strip of land situate in said city, sixteen feet along the easterly line of mill lot of said John Bentley, esquire, westerly of Prospect street, beginning at the northeast corner of a lot conveyed by the said society to the Beaver Woolen Factory, known as the Beaver mill lot, and being the southeast corner of a lot conveyed by William Kumbel and David V. Freeman, assignees of John Whittemore, to John Bentley, by deed, dated January 12th, 1858, and running thence northerly along said Bentley's easterly line twenty feet more or less to the Passaic 20  
 river; (2) easterly, along the southerly line of said river to the point of intersection by a line drawn parallel with and distant sixteen feet at right angles easterly from the first line; (3) southerly, along said parallel line seventy feet more or less, to the point along said parallel line seventy feet more or less to the point where said parallel line would be intersected by the northerly line of the Beaver mill, if extended easterly; and (4) westerly, along said line sixteen feet to the 30  
 place of beginning, to have and to hold the said premises for the term of fifteen years from the first day of January, in the year of our Lord one thousand eight hundred and sixty-four, yielding and paying therefor the annual rent of ten dollars, in yearly payments, from and after the commencement of this demise; provided, that if the said payment so as aforesaid reserved, or any part of the same, shall be unpaid for the space of ten days next after any day whereon the same should be paid, (the same being first demanded

lawfully or otherwise,) then it may be lawful for the said parties of the first part, their successors or assigns, to re-enter and hold the said premises, as of his or their former estate or estates; and the said party of the second part do, for himself, his executors, administrators, and assigns, covenant with the said parties of the first part, their successors and assigns, that he, the said party of the second part, his executors, administrators, or assigns, shall and will pay, or cause to be paid to the said parties of the first part, their successors or assigns, the aforesaid yearly rent of ten dollars, at the times appointed as aforesaid; and shall and will, at his own proper costs and charges, keep the premises in good and sufficient repair during said term, the usual wear and tear excepted. And further, that, at the expiration of the said term, the said premises shall be yielded up in good and sufficient repair as aforesaid, (destruction by fire, war, and tempest always excepted) unto the said parties of the first part, their successors or assigns.

It being fully understood and agreed between the respective parties to this demise, that in case a dispute or litigation shall occur during the time or term mentioned in this demise, that then and in that case the said John Bentley shall, at his own proper costs and charges, defend and pay the expenses of defending the title of said parties of the first part to the premises hereby demised.

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

MORGAN S. COLT. [L. s.]  
Gov. S. U. M.

JOHN BENTLEY. [L. s.]

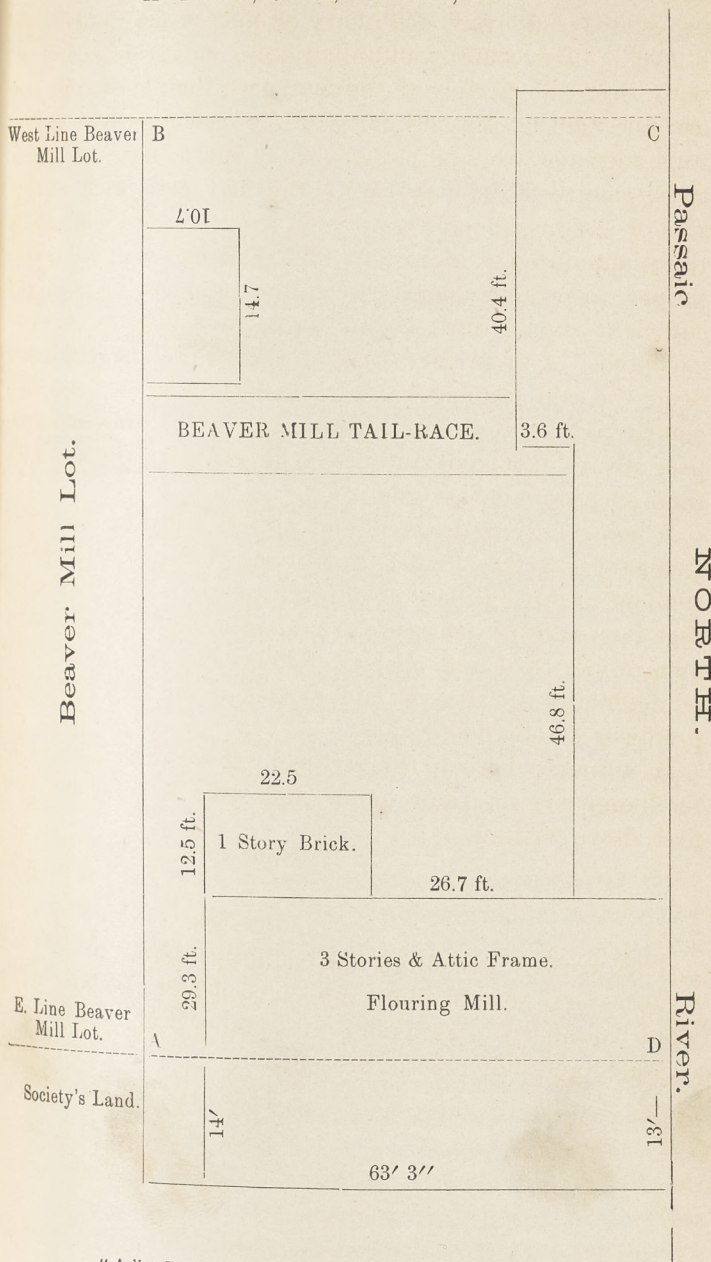
The words "executors and administrators" erased, and "successors" several times interlined before execution. The word "January" erased and "December" interlined.

Sealed and delivered in presence of

DE GRASSE B. FOWLER.

## EXHIBIT T, No. 6.

Premises of John Bentley. Surveyed January 26th, 1835. Ab'm  
A. Fonda, C. E., Paterson, N. J.



"A," "B," "C," "D," corners of Flouring Mill Lot.

