

In Chancery of New Jersey,

Between EDER V. HAUGHWOUT and GEORGE }
POMEROY, Compl't, }
and } *Bill for Relief.*
MICHAEL MURPHY, Defd't. }
PITNEY & YOUNGBLOOD, Sol'rs of Def'ts.

To the Honorable Abraham O. Zabriskie, Chancellor of the State
of New Jersey.

Humbly complaining, show unto your Honor, your orators 20
Eder V. Haughwout and George Pomeroy, of the Township of
Chatham, in the County of Morris, and State of New Jersey,
that heretofore, to-wit, on or about the twenty-fourth day of
September, eighteen hundred and sixty three, one Amidee Bois-
aubin, of Chatham, aforesaid, was seized in fee simple of a cer-
tain tract of land situate in said Township of Chatham, called
the Spencer Woods, and containing twenty-one acres and twen-
ty seven hundredths of an acre, and that on the day and year
last aforesaid, the said Eder V. Haughwout entered into a con-
tract in writing with said Amidee Boisaubin for the purchase of 30
said tract of land, on or before the first day of March, 1864,
at the sum and price of two hundred dollars per acre, which
said contract was in the words and figures or to the effect, fol-
lowing :

.. New York, 24th September, 1863. Agreement made this
day between me, Amidee Boisaubin and Eder V. Haughwout,
for the sale and purchase of a farm of seventy acres of ground,
situated at Cedar Grove, Madison, State of New Jersey ; said
seventy acres of farm land being opposite to the residence of
Mr. George Pomeroy, for the sum of nine thousand dollars. 40

Mr. Boisaubin agrees to sell and Mr. Haughwout agrees to purchase said farm with all its improvements, fences, out houses, barns, &c., now upon the said premises, for the sum of nine thousand dollars. Mr. Boisaubin is to give a full and clear Warranty Deed for the same, and permit Mr. Haughwout to employ a proper lawyer to search the title, the costs of said search to be divided between the parties. The land is to be surveyed and a plain map of the same to be attached to the Deed, and Mr. Boisaubin guarantees that the land shall not be less
 10 than seventy acres. The examination of the title, &c., to be made as soon as convenient, and the deeds to be delivered and payments to be made on the 4th day of November, 1863, at the office of Mr. Haughwout, 490 Broadway. Mr. Boisaubin agree also to sell to Mr. Haughwout, the plot of land of about twenty-two acres called the Spencer Wood, for the sum of two hundred dollars per acre, and Mr. Haughwout has until the 1st day of March, 1864 to accept the proposition. Mr. Boisaubin also agrees that Mr. Haughwout may go on and make improvements in the land, even before the deeds are delivered and mon-
 20 20ies paid, but must not make such changes before that time as would injure the property or be objectionable to Mr. Boisaubin.
 (Signed.)

AMIDEE BOISAUBIN,
 E. V. HAUGHWOUT.

Signed in presence of

WILLIAM MACGEVY, JR.

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 }

And your orators further show. That afterwards, on the last day of February, 1864, the said Eder V. Haughwout did notify the said Amidee Boisaubin that he desired to complete the purchase of said Spencer Woods, and did demand and require of him to convey the same to him, the said Haughwout, and did tender to him the consideration money thereof, and did do and perform all other matters and things on his part necessary to be performed and done in order to entitle him to a conveyance
 40 thereof from said Boisaubin, but the said Boisaubin inequitably

and unlawfully refused to make such conveyance, and from thence forward until on or about the thirty-first day of August, 1865, the said Haughwout persisted in demanding a conveyance of said Spencer Woods, and the said Boisaubin persisted in refusing to make such conveyance.

And your orators further show, That afterwards, on the said thirty-first day of August, 1865, the said Eder V. Haughwout, failing by negotiation or other friendly means, to induce said Boisaubin to fulfill his said contract and complete the title of said Haughwout to said Spencer Woods, exhibited his bill of 10 complaint in this Court against said Amidee Boisaubin, setting forth among other things the making of said contract, and praying that said Boisaubin might be decreed specifically to perform and fulfill the same, and to convey to said Haughwout the said tract of land called the Spencers Woods, and that he might be enjoined from selling or conveying the same or any part thereof, to any person or persons whatever, and from charging or attempting to charge the same with any manner of encumbrance whatsoever.

And your Orators further show, That upon filing said bill of 20 complaint, an injunction was issued out of this Court, according to the prayer of said bill of complaint and duly served upon said Boisaubin, on the first day of September, 1865, and process of subpoena to answer was duly issued out of this Court, directed to said Boisaubin and served upon him and such proceedings were had thereon, that said Boisaubin filed his answer to said bill of complaint on the third day of November, 1865, and said Haughwout filed his replication thereto in due season, and proofs thereupon taken upon the issues made by said pleadings, according to the rules and practice of this Court, and the said 30 cause was duly brought to hearing and such proceedings had therein, that afterwards, at the term of February, 1867, of this Court, it was ordered, adjudged and decreed by this Court that said Amidee Boisaubin should specifically perform his said contract so made with the said Haughwout, by conveying to him the said tract of land called the Spencer Woods, as in and by the said bill of complaint, answer, decree and other proceedings in said suit in this Court now recorded and enrolled in the office of the Clerk thereof will more fully appear, and to which for greater certainty your orators beg leave to refer.

And your orators further show, That afterwards in pursuance and fulfillment of said decree, the said Amidee Boisbaubin, did, on or about the tenth day of August, 1867, make, execute and deliver to said Haughwout a deed of conveyance of said Spencer Woods, wherein and whereby he did grant, bargain, sell and convey to said Haughwout the said Spencer Woods, with the appurtenances as in and by the said deed of conveyance now in possession of your orators, ready to be produced and proven as the Court may direct, reference being thereto had will
10 more fully appear.

And your orators further show, That said Haughwout paid to said Boisbaubin the full amount of the purchase money provided for in said agreement of purchase, to wit : the sum of two hundred dollars per acre, the amount so paid being applied, under the decree of the Court, toward certain encumbrances on said premises.

And your orators further show, That afterwards, on or about the 14th day of October, 1867, the said Eder V. Haughwout, by deed of conveyance of that date, did grant, bargain, sell
20 and convey unto the said George Pomeroy, the one equal undivided one-half part of the said tract of land called the Spencer Woods, by his deed of conveyance of that date, as by reference to said last mentioned deed of conveyance in possession of your orators and ready to be produced and proven as this Court shall direct, reference thereto had will more fully appear.

And your orators further show, That by means of the premises your orators became, and were, and still are seized in fee simple as tenants in common of said tract of land called the Spencer Woods as the same is hereinafter more particularly de-
30 scribed, metes and bounds.

And your orators further show, That the said Eder V. Haughwout after the filing of the said bill of complaint, to-wit, on the first day of September, 1865, filed in the office of the Clerk of the Court of Common Pleas of the County of Morris, a notice of the pendency of said suit for specific performance of said contract of purchase in the words and to the effect, following :

IN CHANCERY OF NEW JERSEY.

Between EDER V. HAUGHWOUT, and AMIDEE BOISAUBIN, Defendants.	}	<i>On Bill for Specific Reformance. Lis Pendens.</i>
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Notice is hereby given to all persons interested or that may be in any wise concerned, that the complainant in the cause above stated, filled his bill in the Court of Chancery of the State of New Jersey, on the thirty first day of August, eighteen hundred and sixty-five, against the defendant above named, to compel the specific performance of a certain agreement in said bill stated in and by which the said defendant agreed to sell and convey to the said complainant, a certain tract of land lying near Madison, in the Township of Chatham, County of Morris, and State of New Jersey, known and called the "Spencer Woods," containing about twenty acres of land for the price or sum of two hundred dollars per acre, and particularly described by metes and bounds, as follows :

The first lot, beginning at a point on the south-westerly side 20
of the South Madison Road, called High Street, opposite the
lands of George Pomeroy, late S. L. Tuttle, said point is dis-
tant ten chains and seventy one links in the said side of High
Street, south easterly from the corner of William Brittin's land,
and late William Spencer, aforesaid, and runs, thence (1) in the
side of said road south, forty-five degrees and forty minutes east,
fourteen chains and ninety-four links to the northerly corner of
another lot of said Alfred B. Brittin, at the angle of the stone
fence, late a line and corner of John Leonard's lands ; thence
(2) with the fence on said A. B. Brittin's line, late Leonard's, 30
south, thirty one degrees and twenty minutes west, five chains
and seventy eight links to the angle of the stone fences on the
northerly side of the road leading from Union Hill to Joseph
Roberts, formerly Samuel Roberts ; thence (3) with the north-
erly side of said road south, eighty-eight degrees and forty min-
utes west, eleven chains to an angle of the fences and to the line
of Charles Gillam's land ; thence (4) with his line and fence
north, seven degrees and thirty minutes west, three chains and
forty-one links to a chestnut post at an angle of the fences for
his corner ; thence (5) with his line and fences north, eighty-two 40

degrees and thirty minutes west, seven chains and sixty six links to a post at an angle of the fences for Gillam's corner, and to the line of Loomis land, formerly Utters; thence (6) with that line north, seven degrees west, one chain and twelve links to a stake for a corner of part of said lands, now William Brittin's; thence (7) with the line of William Brittin's, part of said lands north forty-eight degrees and forty-five minutes east, fifteen chains and forty-three links to the place of beginning, containing nineteen acres and twenty-four hundredths of an acre of

10 land, be the same more or less. The second tract begins on the south-westerly side of High Street, at the easterly corner of the late "Spencer Woods lot" above described, seventy-four links distant, square across the road from the face of George Pomeroy's stone wall in front of his yard or lawn, and runs thence (1) on the side of said road south, forty five degrees and thirty minutes east, four chains and seventy-four links to a stake at a turn of the road fence eighty two links distant to the right of, or square across the road from said Pomeroy's stone wall; thence (2) on the side of said road south, fifty-one degrees forty

20 minutes east, two chains and sixty-six links to a stake at the junction of the South Madison Road, or High Street, with the northerly side of the road leading to Joseph Roberts, said stake is sixty-five and three fourths links distant square across the road from the face of said stone wall; thence (3) on the northerly side of said last mentioned road, north, eighty-nine degrees forty five minutes west, eight chains and fifty-one links to the south-easterly corner of said Spencer Wood Lot; thence (4) with the line of said lot, north, thirty-one degrees thirty minutes east, five chains and seventy-eight links to the place of beginning, containing two acres and three hundredths of an acre of land more

30 or less. And that the general object of the complainants bill is to compel the said defendant Amidee Boisaubin, to convey the said lots of land to the said complainant, at and for the sum of two hundred dollars per acre in said agreement mentioned, and also for a writ of injunction, restraining the said Amidee Boisaubin from making sale of the whole or any part of said lots of land to any person or persons whatsoever, and also to restrain him from charging or encumbering said land with any further or other encumbrances, and also restrain him from cut-

40 ting any wood and timber on said lands, or any part thereof.

and from committing any other waste, spoil or destruction thereof or therein, until the Court of Chancery shall make further order in the premises.

Dated, September 1, 1865.

THEO. LITTLE, Sol'r,
Of Complainant.

Filed and Recorded September 1, 1865.

WM. McCARTY, Clerk.

And that the same was on the same day duly recorded at large by said Clerk, in the book by him provided for recording such notices, on page 86, thereof.

And your orators further show, That some time after the commencement of said suit for specific performance of said contract, said Haughwout was informed that one Michael Murphy claimed to own a portion of the said Spencer Woods, by virtue of a conveyance thereof from said Boisaubin, that the first information said Haughwout had of said claim on the part of said Murphy, was on or about the fifth day of April, 1866, when said Murphy was examined as a witness on the part of said Boisaubin, in said suit for specific performance, before Alfred²⁰ Mills, Esquire, Examiner, and on that occasion exhibited a deed of conveyance from said Boisaubin to said Murphy for a portion of said Spencer Woods, bearing date August 7, 1865, and Recorded Oct. 5, 1865, in Book R. 6, page 359, of Morris County Registry of Deeds, and that the portion of said Spencer Woods, purporting to be comprised in and conveyed by said deed, is described as follows: Being part of a tract purchased by said Amidee Boisaubin of Alfred B. Brittin, lying on the south-westerly side of High Street, in the village of Madison, opposite the lands of George Pomeroy, beginning on the south-³⁰ westerly side of High Street, three hundred and twenty-five and one half feet from a stake at the junction of High Street and the northerly side of the road leading to Joseph Roberts, said stake is sixty-five and three-fourths links distant square across the road from the face of George Pomeroy's stone wall; thence (1) along the side of said street north-west, forty-five degrees fifty minutes one hundred and fifty feet to a stake at the easterly corner of lot No. seven; thence (2) along the easterly line of said lot No. seven, south west, forty-four degrees ten minutes one hundred and fifty feet to the line of Amidee Boisaubin's⁴⁰

lands ; thence (3) along the same south-east, forty-five degrees fifty minutes one hundred and fifty feet to the south west corner of lot No. three, and said Boisaubin's land ; thence (4) along the westerly line of said lot No. three, north-east, forty-four degrees ten minutes one hundred and fifty feet to the place of beginning, known and designated on a map of the said property made for A. Boisaubin by Thos. Hughes, surveyor, as lots No. four, five and six, on Block C.

And your orators further show, That although the said deed
10 of conveyance from said Boisaubin to said Murphy, was dated on the seventh day of August, 1865, yet your orators charge the truth to be that the same was not actually delivered to said Murphy until on or about the day the same was recorded, to-wit, the fifth day of October, 1865, and no part of the consideration money expressed therein was paid, until long after that time and long after the filing of said bill of complaint of said Haughwout, in this Court, and long after the filing of said notice of the pendency of said suit in the said office of the Clerk of said Court of Common Pleas.

20 And your orators further show and charge the truth to be, That long before the delivery of said last mentioned deed, and long before the payment by said Murphy of any part of the consideration money of said deed, and before the filing of said bill of complaint, the said Michael Murphy had full, complete and actual knowledge and notice of the said contract of purchase above set forth, and that said Haughwout claimed the said Spencer Woods under said contract, and was about to commence a suit in this Court to compel the specific performance thereof.

And your orators charge the truth to be, That said Murphy
30 accepted the said conveyance, and paid the purchase money therefor with full and actual knowledge and notice of the existence of said contract, and that said Haughwout claimed the said tract of land thereunder, and of the pendency of said suit for the specific performance thereof.

And your orators further show, That the said Michael Murphy claims title to the three small lots of land, so described in his said deed of conveyance, and parcel of said Spencer Woods, and claims the right, and threatens to take possession thereof, and to hold, use, possess and enjoy the same, and to enforce such
40 claim by proceeding at law, under and by virtue of the said

conveyance from said Boisaubin to said Murphy, dated August 7, 1865.

And your orators show and insist, That such claim on the part of said Murphy is inequitable and unjust, and the existence of the record of said deed is a cloud upon the title of your orators to said land and premises. And your orators further show, that on or about the twenty-fourth day of March, 1868, they applied to said Michæl Murphy and requested him to execute and deliver to them a release of his pretended right and interest in said three lots of land, renounce his claim thereto, and to 10 remove the cloud from their title thereto, and they well hoped the said Michæl Murphy would have complied with such reasonable request of your orators, as in justice and equity he ought to have done, but now so it is, may it please your Honor, that the said Michæl Murphy, not only refused to execute and deliver to them any release of his claim to said three lots of land or otherwise to comply with such reasonable requests of your orators, but he pretends that he is a bona fide purchaser for a valuable consideration of said lots of land without notice of the claim of said Haughwout thereto, under said contract of purchase, and 20 without notice of the pendency of said suit for specific performance, and is entitled to the protection of a bona fide purchase for value, whereas your orators expressly charge the contrary thereof to be true.

All which actings and sayings of said Michæl Muryhy, are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators.

In tender consideration, whereof, and foreasmuch as your orators are without adequate relief in the premises by the rules of the common law and without the aid of this Court. 30

To the end therefore, that the said defendant Michæl Murphy, may answer all and singular the premises, (but not under oath, your orators waiving an answer under oath,) and that the title of your orators to the said three lots of land, so mentioned and described in the said deed of conveyance from said Amidee Boisaubin to said Michæl Murphy, may be ratified and established by this Court, and declared to be good and valid as against the claim of title so made to the same by said Michæl Murphy, and declared to be paramount thereto, and that the claim of title to said lots of land so made by said Murphy, un- 40

der the said deed of conveyance from said Amidee Boisaubin, may be declared by this Court to be invalid, not good and of no effect as against the title of your orators above set forth, and that said Michæl Murphy may be perpetually enjoined and restrained by this Court from setting up and preferring any title or claim of title to said three lots of land or either of or any part of the same under said last mentioned deed of conveyance and from taking possession or attempting to take possession of the same, and from prosecuting any suit at law to recover possession thereof, and from selling, assigning, granting and conveying the same or any part thereof, to any person whatever, and from charging or in any wise encumbering the same, and that the said Michæl Murphy may be ordered and directed by this Court, to release and convey the same to your orators. And that your orators may have such other and further relief as may be agreeable to equity and good conscience. May it please your Honor, the premises considered to grant unto your orators the state's writ of subpœna, under the seal of this Court, to be issued out of this Court and directed to the said
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 20 Michæl Murphy, commanding him on a certain day and under a certain penalty, personally to be and appear in this Court to answer all and singular the premises, and to stand to, abide and perform such decree as to your Honor may seem meet, and your orators, as in duty bound, will ever pray, &c.

PITNEY & YOUNGBLOOD,
 Sol's and Counsel.
 H. C. PITNEY, of Counsel.

A true copy,
 B. GUMMERE, Clerk.

IN CHANCERY OF NEW JERSEY.

The answer of Michael Murphy, defendant, to the bill of complaint of Eder V. Hauhwout and George Pomeroy, complainants :—

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint, contained for answer thereto or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and 20 says, that he has no knowledge of the contract of sale or of the agreement set out in the said bill of complaint, purporting to have been made by and between Amidee Boisaubin and the said Eder V. Haughwout, and no information in respect thereto, except what is furnished by the said bill of complaint and loose casual information which came to this defendant long after he had recorded his deed of conveyance from Amidee Boisaubin, mentioned in said bill of complaint, and after this defendant had paid for the land described in said deed. And this defendant in further answering says, that he has no knowledge or infor- 30 mation whatsoever, and therefore cannot admit or deny that said Haughwout did notify said Boisaubin that he, said Haughwout, desired to complete the purchase of said Spencer woods, or that he, said Haughwout, did demand or require of said Boisaubin, to convey the same to him, said Haughwout, or that he did tender to him the consideration money thereof, or that he, said Haughwout, did do or perform all or any of the other matters and things on his part necessary to be performed and done in order to intitle him to a conveyance thereof from said Boisaubin, or that said Boisaubin inequitably or unlawfully refused 40

to make such conveyance, and he, this defendant, leaves the said complainants to make such proof thereof as they may be advised to be necessary for them to make.

And this defendant in further answering says, That he was never made a party to the cause mentioned in the said bill of complaint, as having been instituted in this Honorable Court, by the said Eder V. Haughwout, against the said Amidee Boisbin, nor did this defendant ever have any actual notice of the said suit, nor did this defendant in any way hear or learn of the
 10 existence or pendency of said suit, until long after this defendant had bought, paid for and received a conveyance for the said three lots of land described in said bill as being claimed by this defendant. And as to the said *lis pendens*, mentioned in the said bill of complaint, this defendant never saw the said same as the record thereof, and never knew, heard or in any manner learned of the same until the filing of the said bill of complaint, which this defendant is now answering.

And this defendant respectfully submits, That said *lis pendens* should not and cannot have any application to a force or effect
 20 against this defendant in any way or for any purpose whatsoever.

And this defendant in further answering respectfully submits and insists, That he is in every sense and for every purpose a stranger to the said suit in this Honorable Court, wherein the said Eder V. Haughwout was complainant, and Amidee Boisubin was defendant, and that this defendant should not and cannot be in any manner bound or affected by any of the proceedings, orders or decrees made or had in said suit.

And this defendant in further answering says, That he has
 30 no knowledge and no information, except what is imparted by the said bill of complaint, as to whether the said Amidee Boisubin did, for any consideration whatsoever, on or about the 10th day of August, 1867, or at any other time make, execute or deliver to said Haughwout a deed of conveyance of said Spencer woods, as stated in said bill of complaint, but if he did, this defendant respectfully submits that such deeds should not and did not in any manner affect or impair the right or title of this defendant to his said three lots of land. And this defendant further saith, that he has no knowledge or information, ex-
 40 cept from said bill of complaint, that the said Eder V. Haugh-

wout ever conveyed any part of said land to said George Pomeroy. And this defendant further saith, that he has no knowledge and no information, except from the said bill of complaint, of or concerning the *lis pendens* set out in the said bill of complaint.

And this defendant in further answering says, that in the years 1863, 1864 and 1865, Amidee Boisaubin, in said bill of complaint named, was the owner of the said Spencer woods, and was in the actual possession thereof, and he continued in the uninterrupted possession thereof, except as to some small lots 10 which he from time to time sold off until in the year 1867, by mortgage, bearing date April 1st, 1865, recorded May 1st, 1865, said Boisaubin mortgaged said Spencer woods to Nicholas C. Geoffrey, to secure the payment of thirty-seven hundred dollars and interest, and by mortgage dated 1st July, 1865, recorded July 1st, 1865, said Boisaubin again mortgaged said Spencer woods to one Thomas Nugent, to secure the payment of thirty four hundred dollars with interest. In the spring of 1864, commencing as early as the month of March in that year, said Boisaubin had said Spencer woods openly surveyed and 20 laid out and marked by stakes and other monuments set in the ground into numerous building lots, and had said lots marked and laid down on a large map of said Spencer woods tract, and in the residue of the year 1864, and the spring and summer of 1865, said Boisaubin openly, publicly and generally offered said lots for sale, and on said Spencer woods tract near the highway and nearly in front of the residence of the said George Pomeroy, in the spring of 1864, said Boisaubin put up a large sign board on which was painted in large letters, "Lots for Sale, inquire of Amidee Boisaubin," or words of similar import, 30 meaning and effect, and said sign stood in this same place until and during the spring and all of the summer of 1865, and in the early part of the month of August, said Boisaubin sold and conveyed, devise of said lots to divers purchasers. While all these proceedings of said Boisaubin in respect to said Spencer woods were going on, and during the spring, summer and autumn of 1864, and 1865, the said complainants each occupied a property adjoining the said Spencer woods tract, and almost daily if not every day, saw said Spencer woods tract and what was being done thereon and therewith, and so far as this defendant knows, 40

has heard and as he has been informed and believes, the said complainant or either of them in no way asserted any right or claim to the same, gave no manner of notice to this defendant of the existence of the said contract of sale set out in said bill, but by their silence and inaction permitted and induced this defendant and all other persons to believe that the said Amidee Boisaubin was the right owner of said premises, and had full and perfect right to dispose of said premises as he saw fit.

And this defendant further saith, That in the summer of 10 1865, (this defendant bargained with said Boisaubin to buy of him three of the said building lots, and this defendant did buy said lots of said Boisaubin for the price of two hundred dollars for each lot or six hundred dollars for the three, and on the seventh day of August, 1865, said Boisaubin did make and deliver to this defendant a warranty deed of conveyance bearing date and acknowledged the day and year last aforesaid, and at the same time this defendant did pay to said Boisaubin four hundred dollars in money as and for part of the purchase money or price for the said three lots of land, apart of the agreement 20 upon which this defendant purchased the said lots, was that as to two hundred dollars of the said purchase money this defendant should have a credit of one year by giving his bond for that sum to said Boisaubin, payable in one year with interest, and to secure the said bond by a mortgage of said three lots, made by this defendant to said Boisaubin, and between the 7th and 20th days of August, 1865, this defendant did deliver the said bond and mortgage to said Boisaubin.

And this defendant in further answering says, that when he purchased said three lots, and when the said deed was delivered to him, and when this defendant paid for the same in manner aforesaid, he did not know, had not heard nor had this defendant received any manner of notice of the said agreement of sale from said Boisaubin to said Haughwout of said Spencer woods set out in said bill of complaint, nor of any agreement by which said Boisaubin had agreed to convey said Spencer woods to said Boisaubin, nor did this defendant then know nor had this defendant then any notice that said Haughwout had any right, title or interest, or that he claimed any right, title or interest in or to the said Spencer woods or any part thereof. 40 And this defendant further saith, that he purchased said lots

and paid for them in good faith and without any intent to injure or defraud the said Haughwout, or any other person.

And this defendant denies all and every part of said bill of complaint, which alleges in any way that this defendant had knowledge or notice of the said contract of purchase set out in said bill before he received his said deed and paid the purchase money, and he also denies every part of said bill which alleges that this defendant had knowledge or notice that said Haughwout claimed the said Spencer woods under said contract, or that he, said Haughwout, was about to commence a suit in this Court for the specific performance of said contract, or for any purpose before this defendant received his said deed and paid the purchase money therefor. 10

And this defendant also denies every part of the said bill which alleges that the said deed made to this defendant by said Boisaubin, was not delivered to this defendant until after the said Haughwout had filed his said bill of complaint and recorded said *lis pendens* against said Boisaubin.

And this defendant respectfully insists and submits, That he is the legal and equitable owner of the said three lots of land, and is entitled to have and hold the same free and clear of any claim or demand thereon or therein by the said complainants or either of them. 20

This defendant further in answer saith, That the said bond and mortgage so as aforesaid given by this defendant, in or about the month of May, 1866, were by said Boisaubin assigned and transferred to one Nicholas C. Geoffrey, who with said Boisaubin was a defendant named in the bill of complaint for specific performance filed by said Haughwout, mentioned in the said complainant's bill, said Geoffrey was such defendant because he held and owned the mortgage for thirty-seven hundred dollars and the mortgage for thirty-four hundred dollars hereinbefore mentioned. He also held by deed of conveyance from said Boisaubin several building lots, which said Boisaubin had sold out of the said Spencer woods tract after April, 1864, said Geoffrey filed his answer to said bill for specific performance, and therein claimed to be a bona fide mortgagee of the said Spencer wood tract and a bona fide purchaser of portions of the same tract without any notice of the contract of sale; the specific performance whereof, was prayed in the said bill of complaint, said 30 40

Geoffrey was examined and gave his evidence as a witness in said cause on the eight day of February, 1866, and this defendant prays leave to refer to the said answer and testimony of said Geoffrey, if it be necessary so to do.

And this defendant in further answering says, That after the evidence had been closed in the said suit for specific performance, said Haughwout became convinced, and concluded that he could not in said suit defeat the two mortgages, (one for thirty-seven hundred and the other for thirty-four hundred dollars,) so
 10 as aforesaid held and owned by said Geoffrey, and thereupon and therefore said Haughwout purchased the two last mentioned mortgages of said Geoffrey, and also the bond and mortgage so as aforesaid made by this defendant, and also the building lots made of parts of the Spencer woods tract which said Bois-aubin had conveyed to said Geoffrøy, and on or about the day of _____, 1866, said Geoffrey, at the request of and for the accommodation of said Haughwout, assigned the said mortgages, including the said bond and mortgage made by this defendant to one William Davidson, who was a partner in busi-
 20 ness with said Haughwout, but said Haughwout directly or indirectly furnished the consideration which was paid to said Geoffrey for said assignment to said Davidson, and said Davidson held and used the said bond and mortgage made by this defendant for the use and benefit and according to the direction of said Haughwout.

And this defendant further saith, That sometime before the 16th day of August, 1866, the solicitor of said Haughwout demanded of this defendant the payment of the said bond and mortgage made by this defendant, and on that demand this de-
 30 fendant on the 16th day of August, 1866, paid to the solicitor of said Haughwout the sum of two hundred and twelve dollars and thirty cents, for the principal and interest due upon the said mortgage, and this defendant took up the same and had the said mortgage on the 16th day of August, 1866, cancelled of record. And this defendant charges that said bond and mortgage were collected of him by the order and direction and for the use and benefit of said Haughwout, and that the money paid by this defendant in satisfaction of the said bond and mortgage was paid to or in some manner directly or indirectly
 40 applied to the use, benefit and advantage of said Haughwout.

And this defendant respectfully insists and submits, That said Houghwout, by procuring an assignment to be made for his use and benefit of the said bond and mortgage made by this defendant, and by collecting and receiving from this defendant to his use the money due upon said bond and mortgage, ratified the said deed of conveyance made by said Boisabuin to this defendant, and so far as he is or can be concerned he has precluded himself from questioning or disputing the validity of this defendant's said deed of conveyance.

And this defendant in answering further admits, That he not only claims title to the said three lots of land, but he saith that he entered into actual possession thereof, on or about the first of April, 1865, and he has been in possession thereof ever since, and is in possession now.

And this defendant denies all unlawful combination and confederacy in said bill charged without this that any other matter or thing material for this defendant 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 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 he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

VANATTA & DEMOTT, Sol's.
 JACOB VANATTA, of Counsel
 With Defendant.

A true copy,
 B. GUMMERE, Clerk.

IN CHANCERY OF NEW JERSEY.

Between	}	<i>On Bill, &c. Depositions.</i>
EDER V. HAUGHWOUT and GEORGE POMEROY,		
Complainants,	}	
<i>and</i>		
MICHAEL MURPHY,	}	
Defendant		

Examination of witnesses in the above stated matter taken pursuant to notice, before Samuel S. Halsey, one of the Masters and Examiners of this Court, at his office, in Morristown, New Jersey, on Wednesday, the second day of September, A. D. eighteen hundred and sixty-eight, in the presence of Henry C. Pitney, Sol. and of Counsel with complainants, and Jacob Vanatta, Sol. and of Counsel with defendant.

Counsel for complainant offered in evidence an agreement between Eder V. Haughwout and Amidee Boisaubin, dated August 24th, 1863, which I have marked Exhibit A, on the part of complainants.

30 - (See page 1.)

Also, a transcript of the proceedings, bill and answer, in a certain cause in the Court of Chancery of New Jersey, wherein Eder V. Haughwout was complainant, and Amidee Boisaubin, et. als. were defendant, which I have marked Exhibit B, on part of complainant.

Also, a warranty deed from Alfred B. Brittin and wife to Amidee Boisaubin, dated July 1st, 1863, which I have marked Exhibit C, on part of complainants.

Also, transcript of proceedings in Chancery wherein Eder V. Haughwout was complainant and Amidee Boisaubin was defendant, which I have marked Exhibit D, on part of complainant.

Also, a quit claim deed from Amidee Boisaubin to Eder V. Haughwout, dated May 27th, 1867, which I have marked Exhibit E, on part of complainant.

Also, transcript of proceedings in a certain cause in the Court 10 of Chancery, wherein William Davidson was complainant, and Amidee Boisaubin and others, were defendants, which I have marked Exhibit F, on part of complainants.

Also, fieri facias in a certain cause in the Court of Chancery wherein William Davidson was complainant and Amidee Boisaubin, et. als., were defendants, which I have marked Exhibit G on part of complainant.

Also, Sheriffs deed from Joseph W. Coe to Eder V. Haugh- 20 wout, dated August 27th, 1867, which I have marked Exhibit H, on part of complainant.

Also, a quit claim deed from Eder V. Haughwout and wife to George Pomeroy, dated Oct. 14th, 1867, which I have marked Exhibit I, on part of complainants.

Also, quit claim deed from William Davidson and wife, to Eder V. Haughwout and George Pomeroy, dated August 5th, 1867, which I have marked Exhibit J, on part of complainants. 30

Also, deposition of Michael Murphy in a certain cause in the Court of Chancery, wherein Eder V. Haughwout is complainant, and Amidee Boisaubin, et. als, are defendants, which I have marked Exhibit K, on part of complainants.

The admission of all the foregoing Exhibits in evidence was objected to as they were each offered on the part of complainants, by Mr. Vanatta, Sol. of defendant.

Examination adjourned, by consent, to Friday, Sept. 11th, 1868, at ten o'clock, A. M., at my office.

SAMUEL S. HALSEY, M. C. C.

Friday morning, Sept. 11th, 1868, examination of witnesses pursuant to adjournment.

James C. Youngblood, a witness, called and sworn on the part of complainants, deposes and says :

Counsel for complainants offered in evidence a deed of bargain and sale from Michael Murphy and his wife to the complainants, which I have marked Exhibit L, on part of complainants.

This Exhibit L shown witness, he says : I went to Mr. Murphy on the twenty-fourth of March last, and told him I had a blank quit claim deed; without covenants for the land which he pretended to have bought of Amidee Boisaubin, which I wished him and his wife to execute to the complainants in this case—Mr. Haughwout and Mr. Pomeroy ; he refused to execute it ; this is the deed I took to him, Exhibit L ; I showed it to him ; I told him I came there as one of the attorneys of the complainants, and that I could take the acknowledgement, and that I wished him and his wife to execute it ; he replied that he would not have anything to do with it, and would not sign any paper.

Cross-examination by Mr. Vanatta.

I saw Murphy at the barn on the place on which he works ; I think it is Mr. Beaupland's ; I think he is farmer for Mr. Beaupland ; this conversation all took place at the barn ; no one was by at the time except a small boy or girl ; I don't know whose child it was nor whether it was a boy or girl ; I think it was a boy ; upon reflection I now know it was a small boy, because he rode out with me when I came away.

JAS. C. YOUNGBLOOD.

Sworn and subscribed this 11th day of September, A. D., 1868, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

John A. Dalrimple, a witness, called and sworn on the part of complainants, deposes and says :

I am deputy clerk of Morris County.

Counsel for complainants offered in evidence a copy of notice of lis pendens, filed in the office of the Clerk of Morris County, which I have marked Exhibit M. on part of complainants.

(See page 5.)

Witness says : I wrote this exhibit ; I compared it with the original notice of lis pendens on file in the Clerks' Office, and also with the record in the book of Lis Pendens ; I have the original notice of lis pendens here now with me ; I cannot let this go out of the office to go to the Chancellor ; this copy which I have compared is a true copy, I have compared it three times ; 10 according to the rules of the office, the endorsement, " Sept. 1st, 1865, shows the date when the notice was filed in the office and recorded.

JOHN A. DALRIMPLE.

Sworn and subscribed this 11th day of September, A. D., 1868, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Frank G. Haughwout, a witness, called and sworn on the part of complainant, deposes and says : 20

I am the son of Eder V. Haughwout ; I know William MacGeorge, Jr. ; he now lives in Brooklyn ; he was formerly a book keeper in my father's store. The signature of Wm. MacGeorge, Jr., as witness in Exhibit A, shown witness, he says : I know that that is Wm. MacGeorge's, Jr., hand-writing, and the signature E. V. Haughwout, I know to be my father's signature ; my father is in New York to day ; he leaves the city at noon for Staten Island to see my grandfather, who is very ill.

FRANK G. HAUGHWOUT.

Sworn and subscribed this 11th day of September, A. D., 30 1868, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Henry C. Pitney, a witness, called and sworn on the part of complainants, deposes and says :

I was counsel for the complainant in the cause of Eder V. Haughwout against Amidee Boisaubin, enrolled proceedings whereof were marked exhibit B in this cause ; this agreement marked exhibit A in this cause was not marked as an exhibit in that case or produced before the Master, because as I under- 40

stood it, it was mislaid and could not be found by Mr. Haughwout until shortly before the argument of the cause on final hearing before Mr. Dodd, when it was found and produced and used on the argument, by consent, if I recollect aright; I was present in Alfred Mills office, April 5th, 1866, and took part in the examination of Michael Murphy, the defendant in this cause, as a witness in the cause of Haughwout against Boisaubin, and I have read over the certified copy of his deposition, which is marked exhibit K, in this cause, and it corresponds with my
 10 recollection of what he swore to on that occasion, my memory of what he swore to has been kept refreshed by frequent perusals of his evidence from time to time, as occasion required.

H. C. PITNEY.

Sworn and subscribed this 11th day of September, A. D.,
 1868, before me, SAMUEL S. HALSEY,
 Master in Chancery of New Jersey.

Daniel D. Craig, a witness, called and sworn on the part of complainants, deposes and says:

20 I am cashier of the National Iron Bank, Morristown, New Jersey; I am acquainted with Amidee Boisaubin of Madison; he has dealt with our bank; I used to pay a great many of his checks, and in that way I got acquainted with his hand-writing. Exhibit A shown witness. Signatures of Amidee Boisaubin pointed
 out to him, witness says: I should think that both of these signatures, "Amidee Boisaubin" and "A. Boisaubin." were his signatures.

D. D. CRAIG.

Sworn and subscribed this 11th day of September, A. D.,
 30 1868, before me, SAMUEL S. HALSEY,
 Master in Chancery of New Jersey.

Theodore Little, a witness, called and sworn on the part of complainants, deposes and says:

I was originally the counsel for complainant in the cause of Eder V. Haughwout against Amidee Boisaubin; the bill was filed by me; I recollect of having a notice of lis pendens prepared in that cause; I caused it to be filed, either the same day the bill was filed or shortly after, in the Clerks' Office of Morris County; at and prior to that time I was President of the
 40 First National Bank Morristown, N. J.

Q. Do you recollect of the fact of a man's calling upon you in the bank and showing you a deed for a portion of the Spencer wood tract, which was involved in the suit of Haughwout against Boisaubin ?

(Objected to on the ground that the same was a privileged communication.)

A. Yes, I recollect of a man's showing me a deed of what purported to be a part of the land involved in that suit, or what he said was a deed for part of that tract ; I don't recollect the description.

Q. How near in point of time was that to the filing of the bill ?

(Same objection.)

A. I can't tell with any certainty ; it was after the bill was filed ; I can't tell how long after.

Q. What did you say to him about it ?

(Same objection.)

A. As near as I can relate the conversation it was of this nature : the person was an entire stranger, he was an Irishman, and handed me a deed which purported to be made by Amidee Boisaubin, and asked me if it was a good deed, saying that he had been to see Mr. Dalrimple ; my recollection is that he said Mr. Dalrimple was not at home, and he gave that as a reason for calling upon me ; his question was whether it was a good deed ; I told him it was as far as I could see, properly executed, and then asked him if he did not know that that property was in dispute ; his answer to my question I don't recollect, whether he said he did or did not ; I told him that the title was in dispute and that Mr. Haughwout claimed it, and that Mr. Haughwout had commenced a suit against Mr. Boisaubin, to compel him to convey the property to him, and that if Mr. Haughwout succeeded in his suit his title under that deed would be good for nothing ; with a good deal of emphasis and some gestures, he replied that he knew that Mr. Haughwout was lawing Mr. Boisaubin about the property, but he did not care for that, Mr. Haughwout never could get the title away from Boisaubin ; I replied to him, that he seemed to be a laboring man, and if he wanted a lot he certainly could buy one about which there was no dispute, that it was folly for him to risk his money by taking a deed for property that was in dispute ; he said if that was the only risk he would take it, for he had confidence in Mr. Bois-

aubin, that is all I recollect of it ; I did not charge him any fee, and did not pretend to act as his counsel in any way ; I am quite sure that I told him I had been acting for Mr. Haughwout, and that was the way I came to know of the difficulty about the title ; I don't recollect the man's name ; this occurrence never happened but once : I never had but one such a conversation ; it occurred in the bank, when the bank was located where John Runyon's store now is.

10 Cross-examination by Mr. Vanatta.

I understood the man to hand the deed to me because he knew I was a lawyer ; he had no other business at the bank on that occasion that I know of ; my recollection is quite indistinct, but I think there was somebody with him, I think it was a man who was with him, whose name I don't recollect now, but I think I did know him at the time ; I don't recollect whether anything was said at that time as to where Mr. Dalrimple had gone to or what the occasion of his going away was.

THEO. LITTLE:

- 20 Sworn and subscribed this 11th day of September, A. D.,
1868, before me,
SAMUEL S. HALSEY,
Master in Chancery of New Jersey.

Counsel for complainant here declared the testimony on the part of complainant closed under the rule, except that as Mr. Haughwout was kept away by illness in his family, he wishes to reserve the privilege of calling him to prove the identity, date and formal execution of Exhibit A, and that it was mislaid during the progress of the cause of Haughwout against Boisauvin. if he shall be advised so to do, but he now awaits the
30 production of the defendant's case.

SAMUEL S. HALSEY, M. C. C.

William Davidson, a witness, called and sworn on the part of the defendant, deposes and says :

I do not recollect that in the subpoena duces tecum served up on me there was mention made of an assignment of a mortgage from Nicholas C. Geoffrey to me, dated July 2d, 1866 ; I first
40 saw this assignment July 4th, 1866, at Henry C. Pitney's of
fice ; I think Mr. Geoffrey was not there on that occasion, but

I am not positive: I won't say that he was not there; Mr. Geoffrey did not apply to me to purchase the mortgage mentioned in this assignment; Mr. Haughwout first informed me that Mr. Geoffrey had the mortgage, mentioned in this assignment. Witness reads the assignment, and says, this is not the mortgage to which I was referring; I think Mr. Pitney first informed me of the existence of this mortgage; it was at that time, July 4th, 1866; I can't recollect whether Mr. Pitney had the bond and mortgage mentioned in this assignment, there on that occasion or not; I don't recollect distinctly of ever seeing the bond 10 and mortgage mentioned in this assignment.

Q. Did you furnish the money that was paid to Mr. Geoffrey for this bond and mortgage mentioned in this assignment?

(Objected to because it does not appear that any money was paid for this assignment.)

A. I did not purchase this mortgage outright, I received it, as I understood, as collateral to two other mortgages which I purchased of Geoffrey, and he assigned me; I am a partner in business with Mr. Haughwout, and was in 1866; this bond and mortgage made by Michael Murphy, was not paid to me di- 20 rectly; I do not know of my own knowledge who did receive the pay for it; I did not receive the pay for that bond and mortgage, unless my attorney has collected it and put it to my credit.

Q. You say that you got this bond and mortgage as collateral to two other bonds and mortgages which Mr. Geoffrey assigned to you, how did you come to get that assignment, at whose instance?

A. At Mr. Haughwout's instance; Mr. Haughwout did not furnish the money that was paid to Mr. Geoffrey for those mort- 30 gages; I paid it myself; I paid it with a draft on my firm which was charged to my account. I mean the firm of E. V. Haughwout & Co., the firm that I am interested in; the draft was charged to my individual account; there was no arrangement made between Mr. Haughwout and me before I purchased the mortgages, except that Mr. Haughwout said I should not loose anything if I purchased it; I refer to the mortgages purchased of Geoffrey, and to which the Murphy mortgage was collateral; I reassigned the mortgages to Mr. Haughwout, or else to Mr. Haughwout and Pomeroy; I can't give the date when; 40

I can't recollect the exact date of the transaction ; I am not positive until I look at copies of the papers and refresh my recollection. Witness looking at Exhibit J in this cause says, I am mistaken, it was by deed and not by reassignment that the mortgaged property was conveyed to Mr. Haughwout and Pomeroy ; the amount of the draft I drew to pay Mr. Geoffrey was five thousand eight hundred dollars, to the best of my recollection ; I was reimbursed this sum ; I don't know that it can be considered in the light of a reimbursement ; I actually sold
10 and gave a quit-claim deed for the property to Mr. Haughwout and Pomeroy ; I can't tell without referring to the documents, whether I gave more than one deed or not ; I could not possibly say without looking at the documents.

Q. From whom did you get back the money mentioned in that draft ?

A. Mr. Haughwout said he would make me whole, that I should not lose anything by the transaction, and he did so ; I made no pecuniary profit in the transaction.

Q. Did you expect to make any pecuniary profit to yourself
20 when you gave that draft to Mr. Geoffrey, or did you do it to oblige Mr. Haughwout ?

A. One of the inducements for purchasing the mortgages was that my counsel Mr. Pitney, told me that I was getting mortgages worth about \$6100 for \$5800 ; I did it, not exactly with the expectation of making anything out of it ; I had the right to if I chose to avail myself of it ; partially for both reasons.

Q. If you expected to make a pecuniary profit out of the transaction, out of whom did you expect to make it ?

A. Out of the mortgages—by collecting the mortgages ; I
30 don't know that I had any particular person out of whom I expected to make it ; I had \$6100 in mortgages, for which I paid \$5800 ; if the property did not bring that sum Mr. Haughwout said I should not lose anything ; the amount, \$5800, was to my credit ; I had the money there when the money was drawn ; it had not been placed to my credit for the purpose of meeting this draft ; I had it in the concern, and more to ; Mr. Haughwout, as I have before said, made me whole in the transaction, so that I did not suffer any loss, either of principal or interest ; as nearly as I can tell it was some time this year that he made
40 me whole, I think it was about February ; I can't now recol-

lect whether I had any interview with Mr. Pitney, in reference to these mortgages prior to July 4th, 1866; he was my counsel and I had interviews with him at various times, but I can't now recollect what part between us; my first business to Mr. Pitney was not in relation to these mortgages; Mr. Haughwout did not give any reason for wanting me to get an assignment of these mortgages; I think Mr. Haughwout wrote me a note one day when he was not at the store, in which he promised to make me whole; the principal bargain was verbal; it was not a formal note; I do not know where it is; it was written one 10 day when he was sick; it was his verbal promise that I relied on, I understand that the Spencer wood tract was sold under foreclosure of the mortgages I bought of Geoffrey; I was not present at the sale; after the assignment of those mortgages was made to me, they remained in Mr. Pitney's hand, they were left there for the purposes of collection; I am not able to say whether the mortgages were in suit at the time I took the assignment.

Q. At the time you took that assignment from Mr. Geoffrey, did not Mr. Haughwout have a suit pending in the Court of Chan- 20 cery of New Jersey against Amidee Boisaubin and Nicholas C. Geoffrey, in which Mr. Haughwout was disputing the validity of one or both of Mr. Geoffrey's mortgages which you had purchased, I mean the validity as against Mr. Haughwout's claim?

(Objected to as a matter not within the knowledge of this witness, and about which he can only know by hearsay, and which must be proven by the record and not otherwise.)

A. I understood there was a dispute between Mr. Haughwout and Mr. Boisaubin, but the nature or condition of the le- 30 gal proceedings I did not know, I made no special inquiry as to the nature of those proceedings at the time I bought the mortgages, I relied on my counsel that there was nothing that would invalidate those mortgages, I did not expect Mr. Pitney to pay me back the \$5800, if the mortgages should prove good for nothing, I did not take that into consideration

Cross-examination by Mr. Pitney.

There was a statement made up between Mr. Geoffrey and me when I purchased these mortgages of him, I believe this paper 40

which I hold in my hands is either this statement or a copy, I am not sufficiently familiar with Mr. Geoffrey's handwriting to testify to it.

This paper offered in evidence, and by me marked Exhibit N, on part of complainant.

Q. I see at the bottom of this paper is "Bond and Mortgage of Michael Murray, Aug. 7th, '65," what does that mean?

A. I understood that I took that as collateral security, I understood Michael Murphy to be referred to by Michael Murray, this statement was a true statement of the transaction, correctly made at the time, I recollect of hearing of the sale of the property under foreclosure at the time it was sold, it was after this that Mr. Haughwout settled with me and made me whole.

Q. Did you hear at the time who bought the property sold under foreclosure?

(Objected to.)

A. I probably did but I don't recollect now; I recollect that at the time I bought these mortgages of Mr. Geoffrey I bought some land of him, also, the corner plot.

Counsel here offered in evidence a deed to witness from Nicholas C. Geoffrey, dated July 2d, 1866, which I have marked Exhibit O, on part of complainants.

Witness says, this is the deed for the corner plot. Witness comparing Exhibit J with Exhibit O, says, the property described in these deeds is the same; the property I conveyed to Messrs. Haughwout and Pomeroy was the same I purchased of Mr. Geoffrey; I never signed any deed or other paper in relation to that transaction or property, except what was prepared in Mr. Pitney's office, I recollect shortly after July 4th, 1866, that a man called at my house in Madison, and wanted to pay me a mortgage; I did not know the man; I referred him to Mr. Pitney; I think the amount he wanted to pay was \$200; I neither asked him to pay it, nor sent him word to pay it.

Q. Do you recollect shortly after that of my sending you a check for about \$200?

(Objected to.)

A. Yes, I recollect it.

Check shown witness, which I have marked Exhibit P.

Witness says, that is my endorsement on the back; drawing

a draft on the firm was my usual way of getting money for my own use.

Q. Was there anything that passed between you and Mr. Haughwout, or in the nature of the transaction that prevented you from fairly claiming the profit of \$300, if it were made on the mortgages?

(Objected to.)

A. No, sir; I can't speak positively as to who purchased the property at the sale under foreclosure; I can't recollect whether I signed more than one paper or not; I only signed such as you 10 prepared in the case, and such as were necessary to protect my interest in the mortgages.

Mr. Pitney's docket here shown witness, witness says, this is my hand-writing—I signed this; I now recollect from this document who purchased the property at the sale; I was not present at the sale.

Q. Was the money actually paid back to you at the time you signed that memorandum, Aug. 5th, 1867, had it been paid back to you then?

(Objected to.)

20

A. No, sir; I was paid back the amount of the draft by charging Mr. Haughwout with the money, and crediting my self; principal and interest; in February or March last.

Re-direct examination by Mr. Vanatta.

Q. What is the date of the receipt you signed on Mr. Pitney's docket?

(Objected to because there is no receipt on the docket.)

A. There is an order for the Sheriff to deliver the deed, the date is August 5th, 1867; the order is as follows: "The prop- 30 erty covered by the mortgages in the above case having been sold by Sheriff of Morris County and purchased by Eder V. Haughwout, at about amount of decree, the Solicitor of complainant is hereby directed to direct the Sheriff to deliver the deed to said Haughwout without payment of the consideration, he having settled with me for the same Aug. 5th, 1867.

"WM. DAVIDSON."

I am unable to say how much the property produced at the day of sale; I was not present at the sale; I left the matter entirely in my counsel's hands; I cannot recollect whether I was 40

present when Mr. Geoffrey signed Exhibit N or not ; I can't say whether Exhibit N was made in my presence ; it was shown to me at the time ; I can't say whether it had Mr. Geoffrey's signature when it was first shown me ; I am acquainted with Louis Beaupland of Madison, by reputation, I am not acquainted with him personally, and don't know him when I see him ; a person did call upon me in the fall of 1866, and wanted to pay a mortgage ; I can't recollect what name the person calling gave ; I referred the person to Mr. Pitney as I always do, matters of that kind ;

10 I did not tell the person calling that I did not know anything about the Murphy mortgage ; I might have told him that in reference to the amount due, but as to nothing else ; what I said would depend somewhat upon what he asked me ; what I mean is I never said that I did not know of the existence of the mortgage ; I think the check I gave in the Geoffrey transaction was for \$6800 ; it included the land and mortgages too.

WM. DAVIDSON.

Sworn and subscribed before me, this 21st day of September, A. D., 1868.

SAMUEL S. HAISEY,

20

Master in Chancery of New Jersey.

Counsel for defendant here offered in evidence the assignment of mortgage of Murphy by Geoffrey to Davidson, which I have marked Exhibit 1, on part of defendant.

Examination of witnesses continued Monday morning, Oct. 19th, 1868, pursuant to notice, in presence of the respective Solicitors.

Michael Murphy, a witness, called and sworn on behalf of himself, defendant, deposes and says :

30 I bought three lots of land from Amidee Boisaubin ; I got a deed for them.

Witness shown paper which I have marked Exhibit 2, on part of defendant.

He says, this is the deed ; at the time I got that deed I paid him four hundred dollars ; he left a mortgage with me at the time he gave me the deed ; I was to sign the mortgage and give it to him in part payment of the land ; I signed the mortgage the on nineteenth of August, and I got the deed the seventh of August ; I signed the mortgage at Vancleve Dalrimple's

40 house.

Paper shown witness, which I have marked Exhibit 3, on part of defendant.

He says, this is the mortgage I signed ; after I signed the mortgage that day I went up to the Clerks' Office ; I found a mortgage on the books at the Clerks' Office on my lot that was not canceled ; I remember that the mortgage was Mr. Brittin's ; I understood that Col. Brittin owned the mortgage ; when I found that that mortgage was not canceled, I came to Mr. Boisaubin and told him of it.

Q: What did you tell him?

10

(Objected to as incompetent.)

I told him that there was three mortgages on the place, and that this Brittin mortgage was not canceled ; he said that the Brittin mortgage was canceled. (This testimony objected to as hearsay while being given.) I told him that it was not, that he might go up to Morristown and see it there, he said he would, and I said I would go with him, and he said that he had to go to Whippany, and he had to go to Mr. Geoffrey's, and that it would be useless for me to go with him ; and I said I would ; and he said it would be only taking me away from my work, 20 and that the mortgages would not be got off that day ; he saw me very anxious to go with him, and to satisfy me that the mortgages were to be canceled, he gave me money out of his box until he should come back from Morristown, and until that mortgage should be canceled ; I said I did not want any money, and he forced the money on me, which I did not want ; he took the money out of his trunk, and put it into my pocket ; I did not consent to receive it ; he said it was safer with me, that he did not want to carry so much money about him ; I really did not know at that time how much money he did give me ; he 30 afterwards bought me a letter from Mr. Dalrimple, to show that the mortgage had been canceled ; I have the letter that Mr. Dalrimple wrote me.

This letter was here produced by witness and offered in evidence, and I have marked it Exhibit 4, on part of defendant.

Witness says, this is the letter, Mr. Amidee Boisaubin brought the letter to me, on the 29th day of August, 1865, at the time I got the letter from Mr. Dalrimple I did not know that Mr. Boisaubin had bargained or sold the land to Mr. Haughwout, I had not heard at that time or before that of any 40

such bargain; I gave the money back to Mr. Boisaubin that he gave me, either on the 29th or 30th of August, I gave him the money when I got the letter from Mr. Dalrimple, which Mr. Boisaubin handed me, to satisfy me that the mortgages were all canceled; I gave Mr. Boisaubin the mortgage the day after I gave him the money last, I afterwards paid the mortgage; Mr. Louis Beaupland paid the money for me; it was my money, but he did the business for me, I was then working for him, and am still; I ploughed the lot that fall; the next year I planted potatoes on the lot, I gathered the potatoes myself, and had some help that I got; it was in 1867 or 1866, I had the potatoes in; it was year before last I had the potatoes in the lot; I sowed nothing in it a year ago, but this year I mowed it.

Cross-examined by Mr. Pitney.

I went once to see Mr. Dalrimple about this; I never talked with Mr. Dalrimple but once after I signed the mortgage about this; I never was in his office; when I acknowledged the mortgage I was at his own house; I did not see Mr. Dalrimple at his office, I saw him in the street; the time I saw him in the street was after I went to his house to acknowledge the mortgage; this was sometime along about the last of August or first of September; I know I came up to Town here looking for Mr. Dalrimple, and I could not get him in his office when I came to his office, his office was closed and a man told me that he had gone down to the bank; I did see him that day but not at that time; I saw Mr. Little that day; it was after I saw Mr. Little that I saw Mr. Dalrimple; I wanted to see Mr. Dalrimple that day to get him to look over the deed for me, I never had gotten him to do that before that; when I acknowledged the mortgage at Mr. Dalrimple's house I had no talk with him about Mr. Haughwout's claim; I said nothing at all to him about Mr. Haughwout's claim, nor he to me; I did talk to Mr. Dalrimple about Mr. Haughwout's claim at one time; when I acknowledged the mortgage at Mr. Dalrimple's I had no talk with him about any claims on the property; I asked Mr. Dalrimple if there was any mortgages on the property, he said there was, but that they were canceled; I had the deed with me the day the mortgage was acknowledged before Judge Dalrimple, I believe Mr. Dalrimple saw the deed in my hand, but he did not say anything

more about it ; when I got the deed from Amidee Boisaubin, I saw that Judge Dalrimple's name was to it as a witness, but it did not satisfy me about that ; I mean I did not ask him about the deed, nor did he make any remarks to me about it.

Q. When you went to Judge Dalrimple's to get the mortgage acknowledged, why did you not ask him about your deed, whether it was right, &c. ?

A. I did not think there was any occasion of asking him about it ; the reason why I did not put the deed on record that day, my wife was not very well, and when we signed the mortgage 10 I went right home with her ; I took my wife to Judge Dalrimple's house to sign the mortgage ; she did not sign it for there was no occasion for her to do it ; the day I signed the mortgage I went to the Clerks' Office to look for mortgages.

Q. When did you first find out that there was any occasion to ask about the deed ?

A. The first I found out was what Mr. Little told me ; he told me that that place was in trouble, that Mr. Haughwout had a claim on it, or something to that effect.

Q. What business brought you to Town the day you saw Mr. 20 Little ?

A. I came up to see whether the mortgages were all off or not ; I had got the letter from Judge Dalrimple before this ; I mean the letter that has been exhibited here ; I did believe the mortgages were all off, I knew the mortgages were paid but not canceled.

Q. If you believed that what Judge Dalrimple wrote in his letter was true, why did you want to come to Morristown to ascertain whether the mortgages were all off of the record ?

A. I did not get my deed looked over, and came to Town to 30 get my deed looked over ; I did not ask Mr. Dalrimple to look over my deed on the 19th of August, because I did not think anything about asking him ; I don't know why I did not get my deed recorded the day I saw Mr. Little in the bank ; I did not want to get the deed recorded that day ; it did not suit me ; I did not think anything about getting it recorded that day ; it would have done any time to get it recorded.

Q. After you heard that Haughwout had a claim on the property, did you not think you ought to get your deed recorded as soon as possible ?

A. I did not think it ; it suited me to get it recorded on the fifth of October, and that is how I happened to get it recorded that day.

Q. How did it suit you any better to get it recorded on the fifth of October, then on the day you saw Mr. Little in the bank ?

A. It was a little more neglect than anything else ; I showed the deed to Mr. Little ; I did not show the deed to Judge Dalrimple the same day ; I never showed the deed to Judge Dalrimple at any time, only the time that I signed the mortgage. 10 the day I saw Mr. Little ; I asked Mr. Dalrimple what claim Mr. Haughwout had on the place, that Mr. Little had told me he had ; Mr. Dalrimple told me that he had no claim on the place, that he had abandoned the property, and that it was all in the clouds, or something to that effect ; this satisfied me ; I saw Amidee Boisubin the same night or the night after that ; it was a short time after I saw Mr. Little and Judge Dalrimple ; I believe I met Mr. Amidee in the street or at his house ; there was not much passed between us at that time ; I asked him if 20 Mr. Haughwout had any claim on the property, he said no he had not, and I asked him how did it come that it was spoken of, and he said that he was selling it to him, and that then he abandoned the property and did not want to buy it ; I don't know of anything else that passed between us the same night ; I did not look at the money that Mr Boisubin handed back to me ; I never counted it ; I could not say how much was in it ; I handed it back to him in the same package that he handed it to me ; no one had it after I got it ; I put it in the desk, and it 30 in the desk all the time while I had it ; he asked me for the money when he gave me the letter, and of course when I got the letter I gave him the money ; I was at home where I then lived when I gave him the money ; I gave him the bond and mortgage the day after I gave him the money ; I did not want his money, he forced it on me ; any time when the mortgage would be canceled I wanted him to take his money.

Q. Did you not see Mr. Amidee a few days before you paid him the money, and ask him to come and get it ?

A. I did not want to take the money at all ; I did not want 40 the money in the house, for I had no one to keep house for me

only a lorn woman ; the reason why I did not give him the mortgage at the same time was, it was a kind of a forget of mine ; I think it was the 30th or 31st of August that I went into the bank to see Mr. Little ; I really cannot exactly tell the time, I did not keep track of the time ; it is four miles from where I live to Morristown, or a little over ; I will have lived in Madison nine years next March ; the first time I went to Morristown about this business was August 19th ; I never saw Mr. Little more than once about this business ; I went to Judge Dalrimple's house to sign the mortgage in the afternoon ; it was 10 after I went to his house that I went to the Clerk's Office ; I heard some talk of Mr. Haughwout's seeing Amidee after I saw Mr. Little in the bank ; I could not tell how many days after ; I never thought of such a thing.

Q. After Amidee Boisaubin had been to Morristown on the 29th day of August, 1865, and got the mortgages arranged, did not he tell you it would not do for him to take that money from you for there had been an injunction served on him by which he was prevented from selling the property, or any part of it ?

A. He did not. 20

Q. Did you not offer him the money several times, and he refused to take it ?

A. He did not refuse.

Q. You say that he handed you back the \$400 when you told him that you had found that the Brittin mortgage was not canceled, and then that you handed him the same package on the 29th or 30th of August, the question is, did Amidee Boisaubin, after you had paid him the money the second time on the 29th or 30th of August, hand that money or other \$400 back to you or your wife again ?

A. No, he did not. 30

Q. Do I understand you to say that neither you nor your wife, directly or indirectly, got any money back from Mr. Boisaubin after the 29th of August, 1865 ?

A. We never did.

Q. Did you or your wife ever pay Mr. Boisaubin any money in November or December, 1865 ?

A. No ; I had the package of money that Mr. Amidee handed me a couple of weeks in my possession. 40

Q. How long a time was it from the time Amidee handed you the money till you handed it back to him?

(Objected to as already answered.)

A. It was, I guess, the 20th or 21st of August that he put the money into my pocket and he went to Morristown, and I gave it to him when I got the letter from Mr. Dalrimple; it was the 29th or 30th of August; I know it was the 29th or the 30th of August by that letter; I had that letter in my possession ever since it was given me; I can't tell how many days Mr. Amidee had the letter in his pocket; I can't tell but he gave it to me that day; he did not tell me what he wanted to do with the money, if he did I forget it; I really don't know.

Q. Were you sworn before Mr. Alfred Mills in his office, three doors west of this, in the suit between Mr. Haughwout and Mr. Boisaubin, on the 5th day of April, 1866?

A. I was, but I was taken short, and I made a statement, but I did not have this letter; I suppose Mr. Amidee Boisaubin knew when I handed him back this money; I don't know whether he did or not; Mr. Amidee Boisaubin resides now at the hotel in Madison; he has lived in Madison as long as I have known him; I don't know who wrote this deed, Exhibit 2; Amidee Boisaubin is in Morristown to day, here in Mr. Halsey's office; he has been in here all the time I have been in here.

Re-direct examination.

Q. You say you were taken short when you were examined before Mr. Mills, explain what you mean by this?

A. What I mean is that I had not that letter along with me so that I could not really say the time that I gave the money. that is all; I cannot read or write.

2d cross examination.

Mr. Louis Beaupland put the deed on record for me.

his

MICHAEL X MURPHY.

mark

Sworn and subscribed this 19th day of October, A. D., 1868, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

40 Examination adjourned till 2 1-2 o'clock.

Monday afternoon, examination of witnesses continued pursuant to adjournment.

Amidee Boisaubin, a witness, called and sworn on the part of defendant, deposes and says :

I sold Michael Murphy three lots of ground, which were part of the Spencer wood tract ; I gave him the deed for them on the seventh or eighth of August, 1865, and a bond and mortgage to be signed for a part of the consideration money, and received from him four hundred dollars in cash, in payment for these three lots ; on the nineteenth day of August of the same 10 year, in the evening ; I next heard from Murphy in relation to these lots ; he told me that he had been to Morristown on that day, and that he had signed the bond and mortgage, and that he then went to the Clerks' Office and found that the Alfred Brittin mortgage, which he understood I had paid to Mr. George Pomeroy, on the first day of July of the same year, had not been canceled on the books, I told him that I hardly could believe that that was so for the reason that I had left the mortgages with Mr. Dalrimple, on the first day of July, the day on which it was paid, for the purpose of having it cancelled, that I had left 20 the mortgage at Mr. Dalrimple's house, finding his office closed and that in the course of a day or two afterwards, I reminded Mr. Dalrimple that I had left it at his house, and asked him if he had received it, and asked him to have it canceled, and he told me that he would attend to it ; I then told Michael Murphy that I would go to Morristown on the following day and ascertain whether the information that he had received from the Clerk, as regards the mortgage not being canceled, was correct ; on the following morning Michael Murphy came to my house with the intention of going to Morristown with me ; I told him 30 there was no occasion for his going with me, as I could attend to the matter alone ; the conversation lasted for a half an hour ; finding that he was quite uneasy about the Brittin mortgage not being canceled, and not being able to understand why Mr. Dalrimple had not had it canceled, and in order to satisfy Murphy that I had paid the mortgage and left it to be canceled, and that it was undoubtedly an oversight of Mr. Dalrimple, and in order that he might not lose his days work, and thereby be found fault with by his employers, I asked him as a favor to keep this sum of money, handing him a roll of bills, until my 40

return from Morristown in the evening, which he refused to do, and which money he refused to take, finding that it was useless to coax him to take it and keep it for me, I followed him around the room and forced the package of bills into his pocket; he threw the money on my desk and refused to take it, saying that he had no call to it whatever and that he did not want it in his possession; I then told him that I would probably be away all day, and that I considered the money would be safer in his pocket than in my desk, and I asked him again to keep the
 10 money till my return from Morristown in the evening, which he finally consented to do; I then told him that if I did not satisfy him after having seen Mr. Dalrimple that I had left the mortgage to be canceled, that if there was anything wrong about it that it was Mr. Dalrimple's fault and not mine, and that he might keep the money and the land; I then left him and started for Morristown.

(All the foregoing testimony objected to while being given as hearsay.)

The Brittin mortgage was satisfied on the 29th of August, A.
 20 D., 1865.

This mortgage offered in evidence, which I have marked Exhibit 5, on part of defendant.

I did not get it canceled sooner because I was informed by Mr. Dalrimple's clerk that Mr. Dalrimple was away in Trenton; on the day this mortgage was canceled I took a letter from Mr. Dalrimple to Michael Murphy. Exhibit 4 shown witness, he says, this is the letter; I delivered this letter to Michael Murphy on the 29th day of August, A. D., 1865, in the evening at about nine o'clock, at the house where Michael Murphy then
 30 sided; Mr. Haughwout commenced a suit in Chancery against me, in which an injunction was served on me; before this injunction was served on me I had never told Michael Murphy that I had made a bargain with Mr. Haughwout for the sale of the Spencer wood lot; before the serving of that injunction there had never been any talk between me and Michael about Haughwout's claiming, or pretending to have a claim on that Spencer wood property. Witness being shown bond, which I have marked Exhibit 6, on part of defendant, says: this is the bond
 40 I gave Michael Murphy to sign; it is the bond secured by Exhibit 3; I assigned that bond and mortgage to Nicholas C.

Geoffrey ; the receipt of payment endorsed on the back of this bond is in the hand-writing of Mr. Pitney.

Q. For what purpose did you leave that money with Michael Murphy on the 20th of August ?

(Objected to as immaterial and irrelevant.)

A. For the purpose of satisfying him that I had paid the Alfred Britten mortgage, and that I had left the mortgage with Mr. Dalruple to be canceled, and to induce him to remain at home.

Q. Was it left for any other purpose except those two specified ?

A. I don't recollect of any other now.

Q. After you delivered exhibit 2 to him, being the deed for his three lots, did he ever deliver it back to you or offer to ?

I don't remember of having counted the money I left with him on the 20th of August, but I am under the impression that the amount was \$400 ; Michael delivered this money back to me.

Cross-examined by Mr. Pitney.

Q. You always had the greatest confidence that you would beat Mr. Haughwout in the Chancery suit you had with him until the decision was rendered, hadn't you ?

A. Did any one ever tell you so ?

Q. Question repeated ?

A. I don't understand how to answer that.

Q. Did you not feel very certain of beating Mr. Haughwout up to the time the Master rendered his opinion ?

A. No, I did not ; I did not tell any of the persons with whom I had bargained to sell lots, that I was perfectly sure of beating Mr. Haughwout ; I cannot tell what I did with the roll of money that Murphy handed me after he handed it back to me ; I counted it ; there was \$400 ; I did not keep any account of the disposition I made of that money ; I may have deposited it in the bank ; I can't say ; I did not pay the same bills that I received from Murphy to Geoffrey ; I did not pay Geoffrey a dollar in money about the time I got the money from Murphy ; I do not recollect of ever paying to Mr. Geoffrey four hundred dollars even money, on account of the mortgages he held against me.

Q. Did you ever make any payment in money to Mr. Geof-

frey on account of the mortgages he held against you?

A. What kind of money do you mean?

Q. I mean ordinary cash, such as people use and call money?

A. I don't understand what you mean—do you mean bank bills?

Q. Bank bills, check, coin, or anything which was understood between the parties to be a payment of money?

A. In that case I have; on the second day of January, A. D., 1866, I did; I gave him a government bond or Treasury note for \$500, with the coupon attached, and he returned me fifty dollars in cash, that is what I paid him.

Q. When was it that Mr. Murphy handed you back a second time this \$400?

A. He never handed it back a second time; he paid it to me first, and then handed it back to me once; on the occasion of my handing him that letter of Mr. Dalrimple's he handed it back to me; this was Aug. 29th, 1865; I am quite sure of this and can prove it by two witnesses; I put in an answer to Mr. Haughwout's suit; I recollect of swearing to it; I did not write a word of it out for Mr. Vanatta; Mr. Vanatta wrote the answer; I gave him the material to write it from; I sat by at the table while he was writing it; I read it myself and heard it read over, both I think, before it was sworn to; I am not sure that Mr. Vanatta read it over, but I am sure I did; I may have read a part of the answer—may have referred to it since I swore to it; I never read it all over since I swore to it; I have never seen a copy of it since I swore to it; I intended to swear to the truth in that answer; I know now that I was mistaken about something in it; I swore to it as I remembered things to be at the time, and I believe it is so stated in it, any one is liable to mistakes.

Q. I refer you now to a part of your answer, contained on the 21st and 22d pages thereof, which I will repeat here: "Another part of said premises being three lots fifty by one hundred and fifty feet each, this defendant sold Michael Murphy for the price of six hundred dollars, and delivered to him a deed therefor about the twentieth of August, 1865, and received from him at that time four hundred dollars on account of said sale; some days after the delivery of said last mentioned deed, said Murphy informed this defendant that a mortgage of said Spencer

woods, given by this defendant to Alfred B. Brittin, had not been canceled, and finding it had not been this defendant handed the said four hundred dollars back to said Murphy, leaving with him the deed and the four hundred dollars, telling him to retain the four hundred dollars until this defendant should get said last mentioned mortgage canceled ; the said last mentioned mortgage was canceled on the 29th day of August last, after that, before this defendant again saw said Murphy, the injunction in this case was served, and since then this defendant has not taken said four hundred dollars from said Murphy, although he has since several times offered said money to this defendant ; this defendant considers that said Murphy is entitled to keep said deed, and that this defendant is entitled to have the six hundred dollars the price of said lot." Was this true or not ?

A. A part of it was true, and a part of it was a mistake.

Q. Which part was true and which part was a mistake ?

A. If you will read it slowly I will correct it as you go along ; one part of it which says the deed was delivered on the 20th of August is undoubtedly a mistake ; the deed was delivered on the seventh or eighth ; the price six hundred dollars was not a mistake. 20

Counsel for complainants here reads the above extract. Witness says, that portion of the answer which refers to not having seen Michael Murphy after the 29th of August until the injunction was served, is a mistake ; I saw Murphy the same day that the mortgage was canceled, and before the injunction was served ; that part of the answer which refers to Murphy's not having paid me the \$400 back from the time of the service of the injunction to the time of swearing to the answer, is also a mistake 30

Q. How came you to make such a mistake as that in your answer ?

A. It was owing to the answer being a lengthy one, and I suppose there being so many statements to make, as regards the different lots, I got the matter confused and mixed up.

Q. With what did you get this matter mixed up and confused ?

A. With the statements concerning the sales of the other lots ; I don't know of anything else ; I can't account for it in any other way. 40

Q. Did you hand back money to any other purchaser?

I handed back what was equivalent to money to Lawrence Shea or Lawrence Shea's wife; I handed her back either a note which she gave me in part payment for two lots that I had sold her husband, or two hundred dollars and interest in money; this was before I put in my answer in that case; I have no date as to when I did this; it was sometime in the month of August or July; I could not say how long that remained in her possession; it was money upon reflection that I handed
10 back to her; I exchanged \$200; she gave me two hundred dollars in money, and afterwards she was sick and wanted the money and I gave it back to her, and took a note of John Lopacker for \$200.

Q. Was there any other party to whom you sold lots out of the Spencer wood property, who had a \$400 cash transaction?

A. Nothing more than that I sold two lots for \$400 to John Cummings, but never received any consideration, nor did I deliver the deed; there was no other person who paid me \$400 in cash, to whom I sold lots out of the Spencer wood property.

20 Q. Then what other party did you have dealings with about those lots with whom you got the Murphy transaction confused?

A. I have already stated that it was very probably the Shea transaction that I had in my mind when I made the statement in regard to the Murphy transaction; in other words I mixed up the two; Shee paid me \$200 in money and \$200 in mortgage.

Q. Will you tell me, if you please, how you could confuse the \$400 transaction with Murphy, with the \$200 transaction with Shea

30 A. By not remembering correctly at the time I made the statement.

Q. Don't you suppose that on the third day of November, 1865, when you swore to that answer to the bill of Haughwout, that you knew perfectly well and recollected all about the Murphy transaction, and the repayment of the \$400?

A. No, sir, I did not recollect all about it, and I said at the time I was not positively sure, but I had to go according to my memory at the time; I mentioned this to my counsel, and more over I was unwell at the time and was not fit to put in an answer, and told him so at the time, and I have been unwell for

the past two years, with a complaint that will offset any one's memory; viz. the liver complaint—an enlargement of the liver; my memory has been improving with my health during the last three months.

Q. Then your memory is pretty good to-day, is it not?

A. It answers my purpose; my head is pretty clear—clearer than it was then.

Q. Then your head was not pretty clear when you put in that answer?

A. No, my memory was affected.

10

Q. What makes you think now that you delivered that deed to him on the seventh of August?

A. I don't think anything about it, I know that I did.

Q. What reason have you for being so sure?

A. Because I remember that it was on the seventh or eighth when I delivered it; I think I delivered Dunn's deed before I did Murphy's, for the reason that he was working at my house on the seventh and eight of August, 1865; I requested Mr. Dalrymple to have Dunn's and Murphy's deeds both done at the same time: I think they were both done and acknowledged at the same time, and I carried them both back to Madison at one time, and neither Dunn nor Murphy went to Morristown with me when I got the deeds.

Q. I find that in your answer, on the bottom of the 20th page, to which I call your attention, you swear that you delivered Dunn his deed on the seventh day of August, 1865, is that true?

A. I have already stated that I delivered the deed on the seventh or eighth of August.

Q. Why, if you acknowledged these deeds at one time and took them to Madison at one time, and delivered them at one time or nearly at one time, why did you state in your answer that you delivered Dunn's on the seventh of August, and Murphy's about the twentieth of August?

30

A. I have already stated that it was a mistake on my part to have stated in the answer, that I delivered Michael Murphy's deed to him on the twentieth of August, and I can't account for the mistake in any other way than that my memory failed me at the time I made the statement.

Q. I see that by your answer on the 22d page, you state that you delivered Shea's deed to him on the 15th of August, please

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to tell us how you fixed that date?

(Objected to.)

A. I have no recollection now how I fixed that date ; the deed from me to Murphy was drawn by me and the acknowledgment was drawn by Mr. Dalrimple ; I have not the releases which Mr. Geoffrey gave me from releasing the land from the line of his mortgages ; I believe Mr. Vanatta has them, or else they are in the record office ; they were exhibited in my suit.

10 Counsel for complainants requests witness to produce these releases at next meeting for taking testimony.

Examination of witnesses adjourned to Wednesday evening, Oct. 21st, 1868, at 7 1-2 o'clock, by consent.

Friday morning, Feb. 12th, 1869, cross examination of Amidee Boisaubin continued, by consent.

The injunction in the case of Haughwout *vs.* Boisaubin, was served upon me, either upon the thirty-first day of August or the
20 first day of September ; it was on Friday ; some time in the afternoon, after twelve o'clock ; I don't remember whether there was a subpoena served with the injunction or not ; Van
cleve Dalrimple was my counsel at that time ; I think I came to Morristown to see him the next day after the injunction was served ; I don't remember whether I handed or showed the in-
junction to him ; I think I did ; I told him that Haughwout had commenced a suit against me ; I don't remember how soon after
that it was that I saw Murphy ; I have no recollection of that ; it might have been a week or two weeks I can't say it was so
30 long ago ; I think I had a conversation with him after the in-
junction was served about Haughwout's suit ; I couldn't say what I said to him ; I don't remember the conversation ; I don't
now remember that I ever told him that Haughwout had sued me ; after the injunction was served I think Murphy spoke to
me about the matter ; I have no recollection of telling Murphy that Haughwout had abandoned his claim to the property, I
may have done so ; I have said it to others, and I always con-
tended that he did abandon his claim ; I don't consider that it
40 was an abandonment of the suit on the part of Haughwout when
he brought suit against me.

Q. Is this what you mean to say, that up to the time the injunction was served you believed and supposed that Mr. Haughwout had abandoned his claim?

A. Yes; after he brought his suit I thought he had abandoned his claim; I mean that I thought I had a defense to the suit, on the ground that he had abandoned his claim; I gave Murphy an opportunity to look over his deed before I finally delivered it to him; I am wrong; I delivered him the deed but once; he then had an opportunity to examine it; he has had the deed to this day; I have never had it since I first delivered 10 it to him.

Q. If the deed was delivered to Murphy at the time you handed it to him, what time or opportunity had he for examining it or submitting it to counsel before closing the transaction?

A. I don't know when he saw his counsel, I delivered him his deed on the seventh of August.

Q. Do you understand the difference between handing a deed to a person to examine it, and delivering a deed outright?

A. Yes, I do

Q. When Murphy told you that he had found out that the 20 Brittin mortgage was on the property, did he say anything about the Nugent mortgage or the Geoffrey mortgage?

A. Not that I remember.

Q. Can you tell why the Brittin mortgage troubled Murphy any more than the Nugent mortgage or the Geoffrey mortgage?

A. The Brittin mortgage is the only mortgage that he knew about; Murphy did not tell me how he learned about the Brittin mortgage.

Q. Did you think it was right for you to deliver a deed to 30 Murphy, and take your pay for a lot which was covered by over \$7000 in mortgages?

A. I never did anything of the kind or offered to do anything of the kind.

Q. What was the condition of Murphy's lots on the seventh of August in that respect?

A. I have no answer to make to that until I see the papers.

Witness is here shown a release from Nicholas C. Geoffrey to Amidee Boisaubin, dated Aug. 15th, 1865, ack. Aug. 15th, 1865, and Recorded Aug. 29th, 1865, in Book 2, 6, of Deeds for Mor-40

ris County, page 598, &c., marked Exhibit R, on the part of complainants; also, a release from Thomas Nugent to Amidee Boisaubin, dated Aug. 15th, 1865, ack. Aug. 24th, 1865, Recorded Aug. 28th, 1865, in Book 2, 6, page 588, &c., and marked Exhibit S. Counsel asked witness, what is the answer to your question now?

A. Murphy's lot was a part of the land embraced in these mortgages; his lot was to have been released from the Nugent and Geoffrey mortgages before the seventh of August, and Mr. 10 Nugent both told me that they came to Morristown for the purpose of signing those releases; Nugent said he went there twice for that purpose, and found Mr. Dalrimple away, and on the seventh of August I objected to delivering the deed to Murphy on the ground that these three lots that I had sold him had not been released, Mr. Dalrimple answered me that I could deliver the deed, saying that the balance of the property was good for the mortgages, and that these lots would not be affected by them unless the balance of the property sold for less than the mortgages; Murphy was not with me at Dalrimple's office.

20

AMIDEE BOISAUBIN.

Sworn and subscribed before me, this 11th day of February, A. D., 1869.

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Evidence on part of complainant was here resumed.

Henry C. Pitney, a witness, called and sworn on part of complainant, deposes and says:

I negotiated with Mr. Geoffrey for the purchase of the two 30 bonds and mortgages, assigned by Exhibits U and X, in this cause; Mr. Davidson paid for those mortgages; Mr. Geoffrey stated to me that he held as collateral to the mortgages against Boisaubin, a small bond and mortgage of Lawrence Shea to Amidee Boisaubin, and a small bond and mortgage given by Michael Murphy to Amidee Boisaubin for two hundred dollars; those mortgages were assigned over by Geoffrey to Davidson as collateral, and Exhibit N in this case was made at the time, and shows a true history of the transaction; no money was paid to Mr. Geoffrey on account of those small mortgages; the 40 word "*Murray*" in Exhibit N was written by my clerk for

"Murphy," by mistake; sometime prior to the maturity of the Murphy mortgage for \$200, a gentleman by the name of Beaupland, who is a first cousin of Amidee Boisaubin, I believe, and was the employer of Michael Murphy, called at my office and inquired if I had in my possession a mortgage given by Murphy to Boisaubin; I told him I had, and I think, showed him the mortgage; he offered to give me the money for it, I refused to accept it; afterwards, and I think on the day of the maturity of the mortgage, (I can't say for certain, for the mortgage is not now before me) either the same gentleman or Michael Murphy 10 called, (I think it was the same gentleman,) and insisted on giving me the money for the mortgage; I received the money and gave up the bond and mortgage; I made no demand whatever on any person for pay for the mortgage; the payment was purely and entirely voluntary; I told the party calling that it was purely optional with him to pay or not to pay, that he might do as he chose about it, that it was a matter of indifference to Mr. Davidson whether he paid or not; I explained to the party calling how the mortgage came into Mr. Davidson's hands; I was very careful about that because I knew that the mortgage had 20 been given on these lots involved in this controversy, and I knew that Mr. Haughwout claimed title to them, paramount to Mr. Murphy's, and when this Mr. Beaupland call upon me to pay the mortgage before it was due, I suspected at once that Murphy was acting under advice, and wanted to pay his mortgage in order to strengthen his title.

H. C. PITNEY.

Sworn and subscribed this 11th day of February, A. D., 1869,
before me,

SAMUEL S. HALSEY,

M. C. C. 30

Counsel for complainants offered in evidence the following Exhibits:

A mortgage from Amidee Boisaubin to Nicholas Geoffrey, dated April 1st, 1865, Recorded May 1st, 1865, in Book K, 2, of mortgages for Morris County, pages 116, &c, which I have marked Exhibit T, on part of complainants.

An assignment of the above mentioned mortgage, dated July 40

2d, 1866, Recorded July 3d, 1866, in Book No. 2, fols. 358, &c., of assignments of mortgages for said County, from Nicholas C. Geoffrey to William Davidson, which I have marked Exhibit X, on part of complainants.

A mortgage from Amidee Boisaubin to Nicholas C. Geoffrey, dated September 8th, 1865, Recorded November 18th, 1865, in Book K, 2, of mortgages, fols. 423, &c., which I have marked Exhibit W, on part of complainants.

10

An assignment of the last stated mortgage, dated July 2d, 1866, Recorded July 3d, 1866, in Book No. 2 of assignment of mortgages, fols. 356, &c., from Nicholas C. Geoffrey to William Davidson, which I have marked Exhibit U, on part of complainants.

A mortgage from Amidee Boisaubin to Thomas Nugent, dated July 1st, 1865, Recorded July 1st, 1865, in Book K, 2, of mortgages for Morris County, fols. 234, &c., which I have 20 marked Exhibit V, on part of complainants.

SAMUEL S. HALSEY,
Master in Chancery of New Jersey.

February 11th, 1869.

Monday, April 12th, 1869, examination of witnesses continued pursuant to notice.

Vaneleve Dalrimple, a witness, called and sworn on the part of complainant, deposes and says :

While practicing at the bar I did considerable business for
30 Amidee Boisaubin ; he never had any litigated business prior to
the suit of Haughwout *vs.* Boisaubin, that I recollect of ; I drew
some deeds and papers for him before that ; Mr. Boisaubin
showed me the written agreement, (Exhibit A on part of com-
plainant), between him and Mr. Haughwout, and employed me
to draw the deed and take it to New York and tender it to Mr.
Haughwout or his lawyer, which I did ; Mr. Haughwout re-
fused to accept it on the ground that Mr. Boisaubin had told
him that the Springer mortgage could remain ; according to my
instructions the Springer mortgage was to have been paid ;
40 some days after Mr. Haughwout and Mr. Boisaubin met at my

office and the matter seemed to have been amicably arranged between them, and was closed up in my office, I acting then for both of them for Mr. Haughwout paid me for some writing I did for him that day ; I have now no recollection of seeing Mr. Boisaubin or of his consulting me about the matter from that time until the day when Mr. Arnold, Mr. Haughwout's lawyer, came to my office about the deed for the Spencer wood property, which was, I believe, the twenty-ninth of February, 1864, although I may have seen Mr. Boisaubin about it several times ; I drew a deed on that day from Mr. Boisaubin to Mr. Haughwout for the 10 Spencer wood tract.

(This testimony objected to while being given)

Exhibit A, on part of complainants, being shown witness, he says: I suppose this to be the agreement referred to ; on the twenty-ninth of February, 1864, after Boisaubin had gone from my office Mr. Arnold came and said that he had been to Mr. Boisaubin's house to get the deed of the Spencer wood tract, or the second lot mentioned in the agreement, that Mr. Boisaubin was not at home, and he had come to my office and had a check or the property. 20

Q. Shortly afterwards did you learn that other efforts had been made to get the deed ?

A. I have no recollection of what efforts were made shortly after to get the deed, except what Mr. Boisaubin may have told me, or Mr. Little ; Mr. Little spoke to me something about his being employed to commence a suit for Houghwout *vs.* Boisaubin ; I think I met Mr. Haughwout in the spring and he said something about it ; Mr. Boisaubin talked with me subsequently to the twenty-ninth day of February 1864, about his rights under the agreement ; he told me had seen ex-Chancellor Wil 30 liamson and advised with him, and he told me what Williamson had advised him, and I have no doubt he talked with me several times about the matter, however, there was so much talk about the Pomeroy mortgage and other matters that I can't recollect the particulars distinctly ; I think there were three mortgages upon the Spencer wood tract in 1865 ; Pomeroy held the Brittin mortgage, and Nugent held a mortgage given to take up the Brittin mortgage, and Geoffrey had a mortgage, and I think there was another mortgage given to somebody ; I had something to do with taking up the Pomeroy mortgage and my 40

impression is that I drew one or more releases from mortgage or mortgages for small lots in the Spencer wood tract, and I also drew some deeds for small lots, and Mr. Boisaubin drew some; I knew that Mr. Boisaubin wanted to sell off small lots from the Spencer wood tract, and turn them into money as fast as he could; I think I held the Brittin mortgage for some time after it was paid, in order the better to secure Mr. Nugent; I have no recollection of any objections being made made to taking title to the lots on account of the Brittin mortgage or other

10 mortgage, except in the case of Mr. Murphy; at that time I did not suppose that Mr. Haughwout would press his claim for the property, nor that he had any valid claim at that day; all I recollect of the conversation, in reference to Mr. Haughwout's claim, I had with Mr. Murphy is this: (This testimony objected to while being given,) Mr. Murphy who was a stranger to me, but who, I suppose, knew me, met me somewhere one day in Morristown and said that he had found three mortgages on the record against Mr. Boisaubin's property, a part of which he was about to sell or had sold to him, Murphy, and seemed to be some-

20 what disappointed and excited, and I explained the situation of the mortgages to him, and told him that they did not stand in the way, still he did not seem to be satisfied with my statement, and could not see how there were so many mortgages on the record; I assured him more than once that the mortgages were not at all in the way, and further, that so far as I knew there was nothing whatever that could be brought against, his title, and that I knew of nothing against the property, nor of any claim anybody had, except that there was a man in New York; I don't know whether I mentioned Mr. Haughwout's name or not; who once

30 had an agreement to purchase it, but so far forth as that was concerned that I did not think it stood in the way, and I would not hesitate to buy the property if I wanted it, but he had better, perhaps, see some other counsel; I mentioned the agreement to him because he seemed to be an ignorant man, and he seemed to be under the impression that either Mr. Boisaubin or I had not done right towards him with respect to the mortgages, and I wanted to put myself right with him, if any question should, by any possibility, ever be made with respect to this agreement; not having anything to conceal myself, and suppos-

40 ing Mr. Boisaubin was in the same situation, all I recollect

about the conversation I had with Mr. Murphy is that it was hurried—I standing at the top of my office stairs and he standing at the bottom; another reason I had for mentioning the precise situation of the property was, that he worked for the Beaupland's at Madison, as I understood, and they were both friends and clients of mine, and I have a faint impression that before I saw Murphy, that one of the Beaupland's had said to me that their man Murphy was about purchasing one of these lots, and whether they mentioned that he had searched the records and found the mortgages or not, I don't recollect; I told 10 Mr. Murphy that I was acting for Mr. Boisaubin or was his lawyer, and for that reason he had better see some one else; Mr. Murphy did not seem to be satisfied with anything I told him, because he had been deceived about the mortgages, and I stated that I was Mr. Boisaubin's lawyer and that he had better see some other lawyer; I have no recollection of seeing Murphy after that; my recollection is that this conversation took place before the suit of Haughwout *vs.* Boisaubin for specific performance had commenced; I had heard of no suit at that time; the reason why I did not conduct the defense of that suit for 20 Boisaubin is, I supposed I should be a witness in the suit and I advised him that he had better retain Mr. Vanatta.

Q. Was that conversation you had with Murphy before or after you wrote that letter No. 11?

A. I can't tell that; I have no recollection of ever having written such a letter; at the time I had the conversation with him the mortgages were on the property; my impression is that I had the Brittin mortgage canceled; I retained the Brittin mortgage in my safe from the time it was paid until it was canceled, as a protection to Mr. Nugent. Exhibit No. 5 shown 30 witness, he says: this is the Brittin mortgage, I suppose, to which I have referred; it may have been that Murphy came into my office to see me about it, but I think I have a recollection of the talk's taking place in the place I have stated, and it occurs to me that something must have passed between Mr. Boisaubin and me, in reference to the Spencer wood tract, before February 29th, 1864, because I think I recollect something being said about Mr. Haughwout's being in New Orleans, and expecting to remain there until after the first of March, and I don't know who that conversation could have been with unless 40

with Mr. Boisaubin, for I did not see Hull nor Arnold nor Haughwout during that winter, and it may have been that something was said about preparing the deed a few days before the 29th of February, 1864, but I can't undertake to speak with any accuracy, in respect to conversations which took place so long ago, and which have mostly passed out of my mind; I was sworn as a witness in the case of Haughwout *vs.* Boisaubin, and I don't think I should have recollected as much as I do now, if I had not, at the request of Mr Pitney read over that evidence 10 this morning.

V. DALRIMPLE.

Sworn and subscribed this 12th day of April, A. D., 1869,
before me,

SAMUEL S. HALSEY,

M. C. C.

IN CHANCERY OF NEW JERSEY.

Between
 EDER V. HAUGHWOUT, Compl't,
and
 AMIDEE BOISAUBIN, et. als., Def'ts.

} *Deposition.*

Michael Murphy, a witness, produced on part of defendants, being duly sworn on his oath, says :

I live at Madison—have lived there six years, going on seven ; I am a farmer ; I work for Mr, Louis Beaupland ; I know the tract of land that Amidee Boisaubin owns, in front of Mr. Pomeroy's ; I bought a part of it ; I bought it of Amidee Bois-²⁰aubin ; I got a deed for it on the 7th August, 1865 ; I bought three lots, the price was \$200 a lot ; I paid \$400 in cash, the other \$200 I gave a mortgage for ; I gave the mortgage about the last of September, to the best of my recollection ; I gave the mortgage the last of November or 1st December ; he gave me the deed and the mortgage, and I kept the mortgage some-time ; I paid him the \$400 on the 7th of August, the day I got the deed. Here witness produces paper purporting to be deed from Amidee Boisaubin to Michael Murphy, dated 7th August, 1865, and recorded in Morris Co., 7, Records of Deeds, R, 6, 30 tols. 359. &c., which the Master here marks Exhibit 16, on part of defendants. I applied to Mr. Amidee Boisaubin for that land ; when I bought it I did not know Mr. Haughwout pretended to have any claim to it ; I never had heard that he had made any bargain for it ; I acknowledged the mortgage I gave to Mr. Amidee before Mr. Dalrimple. Here mortgage purporting to be from witness to Amidee Boisaubin, dated 7th August, 1865, and acknowledged on 19th August, 1865, before Mr. Dalrimple, to secure \$200, is here offered in evidence, and marked by the Master Exhibit 17, on part of defendants.

40

Cross-examination by Mr. Pitney.

Q. After you had paid the money and got the deed, did you find out there was a mortgage on the premises?

A. I heard there was a mortgage; I spoke to Mr. Boisaubin about it, but I didn't concern me anything; I did not ask Mr. Boisaubin to give back the money; Mr. Boisaubin gave me the money—the \$400—it wasn't with my wishes that he gave it to me; if it was \$4000 I would have left it with him as soon as \$400.

10 Q. How did you hear there was a mortgage on it?

A. I heard it from Mr. Dalrimple; I asked him if there was a mortgage on it, he said there was, but it was took off the books; I didn't see no other lawyer.

Q. Do you recollect going into a bank down the street one day and talking with a gentleman there about this land you got of Mr. Boisaubin?

20 A. I pulled out my deed to show it to him; Mr. Dalrimple wasn't at home; he said the land was bought; he advised me that the deed was wrong; I have bought it, I said, and I will keep it; I had seen Mr. Dalrimple before; I hadn't seen him at that time; that was the 27th of August, or somewhere along there, that I saw Mr. Little at the bank; I wanted to see Mr. Dalrimple that day to see if the deed was right: this was after I signed the mortgage.

Q. Did Mr. Little tell you who had bought the property?

A. He didn't tell me who had bought it, but that some one had bought it or was going to buy it; he handed me the deed and I went away.

30 Q. For what purpose did you want to see Mr. Dalrimple that day?

A. About that Brittin mortgage.

Q. Didn't Mr. Dalrimple tell you about the Brittin mortgage when you signed the mortgage to Mr. Amidee?

A. He did not.

Q. Didn't you tell Mr. Little in the bank, that Mr. Haughwout couldn't hold Mr. Boisaubin for that property, that you knew all about that, and that Mr. Haughwout couldn't make Mr. Amidee give him a deed for the property, or something to that effect?

40 A. No, but he said Mr. Boisaubin couldn't give a right deed for it.

Q. Was Mr. Haughwout's name mentioned?

A. Not if I know.

Q. Hadn't you heard before you went into the bank that day that there was trouble or a dispute between Mr. Boisaubin and Mr. Haughwout about the property?

A. Well, I had a little slightly account, but not much.

Q. How long before that?

A. Some six or seven days before I went there.

Q. Who told you?

A. Well, I heard it in Town, from Mr. Dalrimple.

10

Q. When was that, the day you signed the mortgage?

A. Not till after that.

Q. How long after you signed the mortgage?

A. On the 28th August it was that I heard there was some claim between Mr. Boisaubin and him.

Q. How many times did you see Mr. Dalrimple before you saw Mr. Little?

A. Well, I only saw him once; on that day I asked him if there was any claim on it; well he said Mr. Haughwout's claim wasn't much.

20

Q. Did he tell you what Mr. Haughwout's claim was?

A. He did not, and I didn't ask him much about it; I didn't think the claim was much.

Q. What made you think it wasn't much?

A. Well, I saw the sign up for building lots, and I saw him out it a long time before, and I thought if Mr. Haughwout had a claim on it, the sign wouldn't be up there for building lots; Mr. Amidee told me that Mr. Haughwout had no claim on the land whatsoever.

30

Re-examination by Mr. Vanatta

Q. Was this talk you had with Mr. Dalrimple about Mr. Haughwout's claim on the day you acknowledged the mortgage, or on a day after that?

A. It was the day after that.

Q. How long was it after you acknowledged the mortgage that you were next at Mr. Dalrimple's office?

A. I was about eight days.

Q. You say that Mr. Dalrimple told you about that on the 28th August, how do you remember it was the 28th?

40

A. I know it was the 28th. I had a remembrance for it.

Q. Was that talk which you had with Mr. Amidee about Mr. Haughwout's claim, before or after you had had that talk with Mr. Little in the bank?

A. That was before I saw him.

Q. Last question repeated?

A. It was after that, after I see Mr. Little in the bank I had the talk with Mr. Amidee.

Q. How long did you keep your money after Amidee handed
10 it back to you?

A. I kept it three weeks—somewhere along there.

Q. Did you ever consent to give back the deed and keep the money yourself?

A. Never.

Q. Why did Amidee leave the money with you?

(Objected to by Mr. Pitney.)

A. Well, I went up to Mr. Amidee and I asked him about the Brittin mortgage, and he told me that he would give me the money until he come back from Town; I told him to keep the money, I didn't want it; he insisted that I should take, because
20 he thought my wife wasn't satisfied; she had heard of the mortgage not being canceled.

Q. What was he going to town for?

(Objected to.)

A. He was going to town to see that mortgage, if it wasn't canceled off of the books,

Q. How long was he going to leave the money with you?

(Objected to)

A. He said that he would leave it with me till he came from Morristown, or something to that effect; i know he said some-
30 thing about that

Q. Did he not tell you that he would leave the money with you until he got the Brittin mortgage canceled?

(Objected to as leading and hearsay)

A. Yes, he said he come from Morristown.

2d cross examination.

Q. How long after you saw Mr. Little was it that Mr. Bois
aubin handed you back the \$400?

A. It was before it.

40 Q. You had perfect confidence in Mr. Boisaubin, had you not.

that he would give you a good title, and protect your title, and wouldn't keep your money if the title didn't prove good, hadn't you?

A. I knew he wouldn't take my money if the title wasn't good

Q. On the last of Nov. or 1st Dec., when you gave Mr. Boisaubin the bond and mortgage, what conversation passed between you?

A. Well, there didn't much pass between us at that time.

Q. How did you happen to give him the mortgage that day?

A. Because I gave him the money that he gave to me, and 10 then I gave him up the mortgage.

Q. You, on that day, gave him back the \$400, did you?

A. I gave him back the \$400 and I kept the mortgage in the desk till the next night after, and then I went up to his place and gave it to him.

Q. How long did you have that \$400 in your possession after Amidee handed it to you?

A. About three weeks.

Q. Didn't you hear two or three days after you saw Mr. Little in the bank, that Mr. Haughwout had sued Mr. Boisaubin for 20 that land?

A. I did, but it was sometime after; I should think it was near a couple of weeks.

Q. Didn't Mr. Little tell you in the bank that Mr. Boisaubin had given an agreement to Mr. Haughwout to sell him that land, and that Mr. Haughwout claimed it, or something to that effect?

A. He said something of it, but I can't exactly tell what he said.

Q. Didn't he advise you for that reason not to buy the property of Mr. Boisaubin?

A. He did.

Q. When you paid Mr. Boisaubin the money the second time, about last Nov. or 1st Dec., as you have stated, what conversation did you have with Mr. Boisaubin?

A. I didn't have any; the man came in the house, he was in a hurry; I gave him the money; I told him a few days before to come for it.

Q. What conversation occurred when you told him to come for the money?

A. Him and me hadn't much to say, only I told him to come down to the house for the money.

his
MICHÆL ✕ MURPHY.
mark

Sworn and subscribed this 5th day of April, A. D., 1866,
before me,

ALFRED MILLS,
M. C. C.

I, Barker Gummere, Clerk of the Court of Chancery of the
10 State New Jersey, do hereby certify that the foregoing is a true
copy of the affidavit of Michæl Murphy, in the cause wherein Eder
V. Haughwout is complainant, and Amidee Boisaubin, et als.,
are defendants, now on the files of my office.

In testimony, whereof, I have hereto set my hand and affixed
the seal of the said Court, at Trenton, this twentieth day of
August, A. D., eighteen hundred and sixty-eight.

BARKER GUMMERE, Cl'k.

EXHIBIT P.

MORRISTOWN, N. J., Aug. 13th, 1866.

20 National Iron Bank, pay to William Davidson, Esq., or or-
der, (Murphy mortgage,) two hundred and twelve dollars.
\$212.

HENRY C. PITNEY.

EXHIBIT 4.

MORRISTOWN, August 29th, 1865.

Sir :—Amidee has Nugent's and Brittin's mortgages canceled,
and Geoffrey has released the lots bought by you. These are
all the incumbrances on the property I have ever known of.

Yours, &c.,

V. DALRIMPLE.

30 Mr. MICHÆL MURPHY.

2

signed by said Amidee Boisaubin, and your orator, and was duly stamped with the proper revenue stamp required by law, of which said agreement the following is a copy, to-wit:

“NEW YORK, 24th September, 1863.

“Agreement made this day between Mr. Amidee Boisaubin and Eder V. Haughwout for the sale and purchase of a farm of seventy acres of ground, situate at Cedar Grove, Madison, State of New Jersey, and seventy acres of farm land lying opposite to the residence of Mr. George Pomeroy, for the sum of 10 nine thousand dollars. Mr. Boisaubin agrees to sell, and Mr. Haughwout agrees to purchase said farm with all its improvements, fences, outhouses, barns, &c., now upon said premises, for the sum of nine thousand dollars. Mr. Boisaubin is to give a full and clear warrantee deed for the same, and permit Mr. Haughwout to employ a proper lawyer to search the title, the cost of said search to be divided between the parties. The land is to be surveyed, and a plain map of the same be attached to the deed, and Mr. Boisaubin guarantees that the land shall not be less than seventy acres. The ex- 20 amination of the title, &c., to be made as soon as convenient, and the deeds to be delivered and payment to be made on the 4th day of November, 1863, at the office of Mr. Haughwout, 491 Broadway. Mr. Boisaubin also agrees to sell to Mr. Haughwout the plot of land of about twenty-two acres, called the ‘Spencer Wood,’ for the sum of two hundred dollars per acre, and Mr. Haughwout has until the 1st day of March, 1864, to accept of the proposition. Mr. Boisaubin also agrees that Mr. Haughwout may go on and make improvements on the land, even before the deeds are delivered and monies paid, 30 but must not make such changes before that time as would injure the property, or be objectionable to Mr. Boisaubin.

(Signed,)

AMIDEE BOISAUBIN.

E. V. HAUGHWOUT.

Signed in the presence of

WM. MARGEORGE, JR.”



3

Which said written agreement signed by your orator, and the said Amidee Boisaubin, your orator is ready to produce and prove, and to which your orator for greater certainty prays leave to refer.

And your orator further shows, that after said written agreement was made and signed as aforesaid by your orator, and said Amidee Boisaubin, the time for the delivery of the deed for the said first mentioned tract of land was extended by the parties until the eleventh day of November, eighteen hundred and sixty-three, and an agreement to that effect was 10 endorsed on said written agreement on or about the second day of November of that year, and was signed by said Amidee Boisaubin, and by your orator by Solomon L. Hull his Attorney, and agent for that purpose, by your orator duly authorized.

And your orator further shows unto your Honor, that with the exception of the alteration hereinbefore last mentioned, no change or alteration of the said written agreement between your orator and said Amidee Boisaubin was ever made or in any way consented to by your orator, and the same remains 20 in full force and binding, as your orator insists, on said Amidee Boisaubin; your orator never having in any way discharged or released said Boisaubin from its obligation. And your orator further shows, that said Amidee Boisaubin, in accordance with the said agreement, executed and delivered unto your orator a deed for the tract of seventy acres mentioned therein, bearing date on or about the tenth day of November eighteen hundred and sixty-three; that your orator received said deed, paid to said Boisaubin the price agreed upon, and entered into possession of said lands and premises, 30 and has already made expensive improvements on the same, and has made arrangements for the erection of a large and expensive house on said lands, intending to occupy the same as his own residence during a considerable part of the year.

Your orator further showeth, that before he entered into said contract he made a thorough examination of both of said tracts of land therein mentioned, and was impressed with the conviction that if he purchased the said tract of seventy acres he would also need for several reasons the control at least of the said "Spencer Woods," although he was not then pre-40

pared to make an absolute purchase of the same, but your orator felt it to be important to secure the right to purchase the same within a reasonable time if he should wish so to do, and accordingly it was made a part of his said contract or agreement with said Boisaubin that if your orator so desired, he should have the privilege of purchasing the same at the price mentioned in said agreement, if he so determined before or on the said first day of March eighteen hundred and sixty-four. And your orator insists that that provision in reference
10 to the purchase of said "Spencer Woods" was part of the same contract by which he agreed to buy of said Boisaubin, and said Boisaubin agreed to sell and convey to your orator, the said seventy acre tract; that the privilege of buying the "Spencer Woods" at the price mentioned in said agreement was a part of the inducement to your orator to buy said seventy acres, and as your orator believes and insists was so regarded by said Boisaubin.

And your orator further shows unto your Honor that some time before the said first day of March in the year eighteen
20 hundred and sixty-four, your orator was called to the City of New Orleans on business, and he committed to his attorneys in New York the completion of the said contract with said Boisaubin, directing them to notify him of your orator's acceptance of his proposal, and of his intention to take the title to the said "Spencer Woods" according to the tenor of said written agreement; that his attorneys, as your orator is informed and believes, did notify said Boisaubin of your orator's acceptance, and was informed by him that he would leave the
30 matter of the delivery of the deed to your orator for said "Spencer Woods" with his Attorney, Vancleve Dalrimple, Esq. of Morristown, and that your orator, or his attorneys, should call on Mr. Dalrimple and get the deed and pay to him the purchase money.

That at the time said agreement was entered into, said Boisaubin informed your orator that said "Spencer Woods" was incumbered by a mortgage for three thousand two hundred and fifty-four dollars, which would not fall due until the first day of July eighteen hundred and sixty-five, and the
40 understanding was your orator was to take the title to said lot subject to said mortgage, and to pay to said Boisaubin the

difference between said mortgage and the purchase price of said lot.

That accordingly on the last day of February or about that time, and before the said first day of March, one J. H. V. Arnold, an Attorney of the State of New York, on behalf of Solomon L. Hull, and as your orator's attorney, went from New York to Mr. Boisaubin's residence in Madison, prepared to accept said deed; that his said attorney was informed that Mr. Boisaubin was in Morristown; that your orator's attorney left word with the brother of Mr. Boisaubin that he 10 was, as your orator's attorney, then ready to receive the deed and pay the purchase money for said "Spencer Woods," and then went to Morristown hoping to find Mr. Boisaubin at the office of his said attorney, but was informed by Mr. Dalrimple that Mr. Boisaubin had been there, but had just left to go home. That the attorney of Mr. Boisaubin was then informed that your orator's attorney had come to receive the deed for said "Spencer Woods," and was prepared to accept the same and pay the purchase money; that your orator's attorney was also informed by Mr. Dalrimple that he 20 had prepared a deed for said Boisaubin for conveyance of said lot to your orator, which Mr. Boisaubin had taken away with him and would come to New York next day and deliver it. That your orator's attorney expressed a desire that Mr. Boisaubin should know that he had come to accept the deed, and the attorney of Mr. Boisaubin then assured him he would notify him of that fact immediately, and your orator believes and charges that he did so. That the next day, being the first day of March, proved to be a very stormy day, and as Mr. Boisaubin did not bring the deed to the office of your orator's 30 attorney, said attorney in the afternoon of that day in order to avoid all mistake in the matter, again wrote Mr. Boisaubin a letter to the effect that your orator accepted his offer of sale contained in said written agreement. That your orator's attorney had been out to Madison to see him to receive the deed, and asking him to appoint some time for its delivery.

And your orator further shows, that instead of the said Boisaubin coming to New York, as his attorney stated he would do as hereinbefore stated, your orator's attorney received a letter from another attorney claiming to represent said 40

Boisaubin, saying that said Boisaubin declined to deliver to your orator a deed for said "Spencer Woods," and immediately thereafter, and as your orator is informed and believes on the same day said letter was received, your orator's attorney again went from New York to Madison in the said County of Morris, and saw said Boisaubin and demanded a deed to your orator for said lands, and tendered himself ready to pay to said Boisaubin the money for the same. That said Boisaubin then admitted your orator had done all that was
10 incumbent on him to do to comply with said contract, admitted as your orator is informed and believes all that had been done in the premises by your orator's attorney in behalf of your orator as hereinbefore stated, and did not pretend but what your orator had accepted the proposition to sell to him said land within the time mentioned in said agreement, and duly notified him of such acceptance, or that your orator had done anything or omitted to do anything required of him by said agreement, but refused to comply with his said agreement and to deliver said deed, because as he said the contract
20 was not binding on him, and because your orator had not given him a written acceptance of the proposition to sell contained in said agreement.

And your orator further showeth unto your Honor that he was on the said first day of March eighteen hundred and sixty-four, and hath always since that time been and still is ready and willing to accept and receive a deed from said Amidee Boisaubin for the said "Spencer Woods," and to pay him the amount for which by said agreement the said Boisaubin agreed to sell the same to your orator, that is to say the sum
30 of two hundred dollars per acre, as the said Boisaubin has been repeatedly informed and well knows. And your orator further shows that he has delayed filing his bill, hoping to induce said Boisaubin to comply with his said agreement without the vexation and expense of litigation, and being desirous of preventing controversy in the neighborhood of said lands such as suits of this nature usually creates. And that he has also been prevented from filing his said bill, on account of the protracted illness and extreme ill health, for more than a year last past, of Solomon L. Hull, who was
40 your orator's attorney about the transaction of the business

connected with the purchase of said lands, who resides in the City of New York, and with whom it was necessary for your orator's counsel in this suit to confer before filing your orator's bill of complaint therein; and to that end has frequently and in a friendly manner requested said Boisaubin to make such conveyance to your orator, but said Boisaubin declines to make said conveyance, and as your orator charges for the purpose of annoying your orator and to compel him to give a much larger sum of money for said land, and much more money than it is really worth; has had some part of said 10 lands surveyed and laid off in small building lots, and threatens to sell the same in such small lots to purchasers whom he well knows would be a nuisance to your orator; and has permitted one Patrick English to place a small hut or dwelling on said lot, and to build a pig pen immediately adjoining the public road and not far from the front of your orator's residence. And as your orator is informed, said Patrick English claims to have some right in said premises, but what it is your orator does not know, but whatever it may be, your orator claims that he took it with full knowledge of 20 your orator's claim under said agreement, and for the purpose of aiding said Boisaubin in his endeavors to compel your orator to purchase said "Spencer Woods" at such enormous sum of money as said Boisaubin may place the consideration at, to free himself from the nuisances to his property said Boisaubin is endeavoring to create. And your orator further shows unto your Honor that he cannot give a full and particular description of said "Spencer Woods" by metes and bounds, but prays that the said Amidee Boisaubin may, in his answer, set forth and describe the same fully and speci- 30 cally, and give the quantity thereof. And your orator further shows unto your Honor, that since the first day of March eighteen hundred and sixty-four, said Boisaubin has paid off the mortgage which was an incumbrance on said premises when the aforesaid contract with your orator for the purchase thereof was made, but that said Boisaubin has never had said mortgage canceled of record, so that the records of the County of Morris show the same to be still a lien on said premises, and your orator charges that said mortgage is pretended to be kept alive by said Boisaubin, for the purpose 40

of embarrassing your orator in his endeavors to procure a title to said lands from said Boisaubin as also to give color and pretense that said lands are of much greater value than said Boisaubin placed upon them at the time of making his aforesaid agreement with your orator for the sale of them.

And your orator further shows unto your Honor, that on or about the first day of April eighteen hundred and sixty-five, and before the aforesaid mortgage was paid off, said Boisaubin gave another mortgage on said "Spencer Woods" 10 to one Nicholas C. Geoffrey, for the sum of three thousand seven hundred dollars, but your orator charges that said last mentioned mortgage was without consideration, and placed on said lands by collusion between said Boisaubin and said Geoffrey, for the purpose of embarrassing your orator in compelling said Boisaubin to make a conveyance to your orator of said lands at the price or sum agreed upon in the aforesaid agreement. And your orator further charges, that even should said last mentioned mortgage have been given for so much money advanced by said Geoffrey to said Boisaubin, yet 20 that the same is void as regards your orator, because said Geoffrey, as your orator charges, well knew at the time he received said mortgage from said Boisaubin, that your orator had an equitable claim upon said lands by virtue of his said agreement with said Boisaubin.

And your orator further shows unto your Honor, that on or about the first day of July, in the year eighteen hundred and sixty-five, said Boisaubin gave another mortgage on said premises to one Thomas Nugent, for the sum of thirty-four hundred dollars, which sum your orator charges was appropriated to the 30 payment and discharge of the said first-mentioned mortgage; and your orator is willing either to pay said last mentioned mortgage as a part of the said purchase money, or to take the title of said lands subject to the same.

And your orator further shows unto your Honor, that much of the value of the said "Spencer Woods" consists in the wood and timber growing thereon; that said Boisaubin has since the first day of March eighteen hundred and sixty-four, as your orator has been informed and believes to be true, cut down a number of trees, and threatens to commit further 40 destruction of the wood and timber standing, growing and

being upon said premises. And your orator further shows, that he well hoped that the said Amidee Boisaubin would have specifically performed his part of said agreement, as in justice and equity he ought to have done.

But now so it is, may it please your Honor, that the said Amidee Boisaubin, combining and confederating 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 defendants hereto, and contriving how to wrong and injure your orator in the premises, he the said Amidee Boisaubin refuses to perform his part of the said agreement, and gives out and pretends that the said agreement is not binding upon him, because your orator did not sign it, and because your orator did not make known his acceptance of the proposal to sell to him said "Spencer Woods" within the time mentioned in said agreement, and because your orator did accept said proposal he did not do so in writing, and because he the said Boisaubin had the right to revoke said proposal, and because your orator did not pay any part of the purchase money for said "Spencer Woods" at the time said contract was made. At other times the said Amidee Boisaubin threatens to sell the said "Spencer Woods" in small lots to such persons as he well knows would be a nuisance to your orator, and threatens to cut down and destroy the wood and timber standing, growing and being upon said premises. And still at other times the said Amidee Boisaubin gives out and pretends that even were he desirous of making conveyance of said "Spencer Woods" to your orator, yet that he could not do so by reason of the excess in value of the mortgages given on said lots above what your orator was to give him for the purchase money of said "Spencer Woods." All which acting, refusals and pretences of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In tender 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 Amidee Boisaubin, and the rest of the confederates, when dis-

covered, 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 herein again repeated, and they thereto distinctly interrogated; and more especially that the said Amidee Boisaubin may, in manner aforesaid, answer and set forth whether he was not seized and possessed of, or otherwise entitled unto the said tract of land, situate in the said Township of Chatham, known as the "Spencer Woods," and

10 that he may set forth and give in his said answer to your orator's bill a full description of said tract of land by its metes and bounds, stating also the number of acres contained therein, and that he may further answer and state whether he did not at the time hereinbefore in that behalf mentioned, enter into an agreement to sell to your orator the said tract of seventy acres, situate at Cedar Grove, and lying opposite to the residence of George Pomeroy, and whether said contract was not reduced to writing and signed by said Boisaubin and your orator, and duly stamped according to law, and whether he

20 did not at the same time and by the same written agreement, agree to sell to your orator the said lot or tract of land known as the "Spencer Woods" for the sum of two hundred dollars per acre, giving to your orator until the first day of March then next ensuing, to determine whether he would buy said tract or not, and whether what is hereinbefore set forth and contained as a copy of said written agreement is not a true copy thereof, and if not a true copy of said agreement, that he may also in his said answer set forth a full and correct copy thereof, and that he may also answer and state what was done

30 with said agreement when it was signed by the parties thereto, and where the same is now; and whether he did not, in pursuance of said written agreement, afterwards execute and deliver to your orator a deed for the said seventy acres; and whether he was not informed by your orator or some one in his behalf, and if by any other person, by whom, that your orator accepted his proposition or agreement to sell to him the said "Spencer Woods," and would take his deed and pay the purchase money at the time mentioned in said agreement; and whether said notice or information was not given to him long before the

40 said first day of March; and at what time as near as he can

tell he did first receive such notice ; and whether he did not in pursuance of said agreement, cause a deed to be prepared to your orator for said "Spencer Woods," and by whom the same was prepared ; and whether he did not tell your orator's attorney that he would leave the deed for said land with his attorney, Vancleve Dalrimple, Esquire, at Morristown, and that your orator could or should go to him and get the deed, and pay to him the purchase money ; and whether the attorney of your orator did not go to Madison to the residence of said Boisaubin to see about said deed, and to receive it and 10 pay the purchase money, on the last day of February, eighteen hundred and sixty-four ; and whether said attorney did not afterwards, and on or about the seventh day of March, eighteen hundred and sixty-four, again go to the residence of said defendant, and demand said deed, and tender himself ready in behalf of your orator, to pay the said purchase money ; and whether said defendant did not then and there decline to deliver a deed for said premises to your orator, and has not continued to refuse so to do until the present time ; whether the said mortgage which was an incumbrance on said "Spencer 20 Woods" at the time of the making of the aforesaid agreement has not been paid off, and if so, when and to whom the same was paid, and what amount was paid in discharge thereof, and why the same has not been canceled of record ; whether the said mortgage hereinbefore mentioned as given by the said defendant to Nicholas C. Geoffrey is not fictitious, and placed upon said property for the purpose of giving it an apparent value in excess of the sum of money your orator was to give therefor, according to his aforesaid agreement, and if not, what was the true consideration of said mortgage, and the times 30 when that consideration was paid to the said defendant ; and whether said Geoffrey at the time he took said mortgage was not advised, and did not know of the claim your orator made to said land under the aforesaid agreement ; and whether said mortgage was not given for the purpose of embarrassing your orator in the enforcement of his claim to said land, and what time said Geoffrey first became informed of your orator's claim to said "Spencer Woods," and why the said defendant did not inform said Geoffrey of that fact when he gave the said 40 mortgage ; whether he has not had a survey of the said

“Spencer Woods” made, and also laid the same, or a part thereof, off in small lots, and if so, what part; and whether his object in so doing is not by disposing or pretending to dispose of such lots to persons who would make nuisances thereof to your orator, to endeavor to compel your orator to purchase good neighborhood by paying the said defendant an extravagant price for said “Spencer Woods,” and much more money than is specified in his agreement with your orator; and whether he has not caused wood and timber to be cut and
 10 taken from said tract of land since the said first day of March last past, and what number and kinds of trees he has caused to be cut and removed therefrom, what quantity of wood and timber he has so cut and removed, and why he cut the same, what he has done with it, and what its value was.

And that the said defendant, Amidee Boisaubin, may be decreed specifically to perform the said agreement entered into with your orator as aforesaid, and to make to your orator a good and sufficient deed for the said “Spencer Woods,” your orator being ready and willing, and hereby offering specifically to perform the said agreement on his part; and upon
 20 the said defendant making and delivering to him a good and sufficient deed or conveyance therefor, to pay the said purchase money to said defendant; and that in the meantime the said defendant may be enjoined from selling or disposing of any part of said premises to any person or persons whatsoever, and from further charging the same with incumbrances, and from cutting wood and timber thereon, or committing any other waste, spoil or destruction thereof; and that your orator may have such further and other relief in
 30 the premises, as to your Honor shall seem meet, and the nature of the case may require. May it please your Honor, the premises considered, to grant unto your orator as well the State’s writ of injunction issued out of and under the seal of this Honorable Court, to be directed to the said Amidee Boisaubin, therein and thereby strictly enjoining and commanding him that he do henceforth altogether desist and refrain from selling and disposing of the whole or any part of the “Spencer Woods” to any person or persons whatsoever, and from further charging the same with any manner of in-
 40 cumbrance whatsoever, and from cutting down, carrying

away, removing or destroying any manner of wood or timber now standing, growing or being upon said premises, or from committing or doing any further or other waste, spoil or destruction, in or upon the said premises or any part thereof, until this Court shall make other order to the contrary ; as also the State's writ of subpœna, to be directed to the said Amidee Boisaubin, therein and thereby commanding him, 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, 10 and to stand to, abide, and perform such decree as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience. And your orator as in duty bound will ever pray, &c.

THEODORE LITTLE, Sol'r. for
and of Counsel with Complainant.

* * * * *

ORDER FOR INJUNCTION.

(Filed August 31, 1865.)

Upon reading the bill of complaint in this cause, and the 20 affidavits thereunto annexed, and on motion of Theodore Little, Esquire, of Counsel with the Complainant, it is ordered that, upon filing the said bill and affidavits, an injunction do issue, according to the prayer of said bill.

HENRY W. GREEN, C.

Dated, August 31st, A. D., 1865.

ORDER TO AMEND.

(Filed September 5, 1865.)

This cause being opened to the Court by Theodore Little, 30 of Counsel with the Complainant, and it being represented to the Chancellor that the names of Nicholas C. Geoffrey and Patrick English, two of the parties named in the bill of complaint in the cause, were inadvertently omitted in the prayer for process of subpœna, it is thereupon ordered that the said bill of complaint be, and the same is hereby ordered to be amended, by inserting in the prayer for process of subpœna the names of Nicholas C. Geoffrey and Patrick English, as parties defendants ; and the said bill being a sworn bill, it is ordered that the amendment be made, without costs, and by engross- 40

ing the same upon a separate sheet of paper, and filing the same, and that the said bill of complaint be not engrossed anew.

HENRY W. GREEN, C.

Dated, September 5, 1865.

AMENDMENTS TO BILL.

(Filed September 5, 1865.)

In the prayer for process of subpoena in the bill of complaint in the above-stated cause, on page 20, line 8, of said bill, and after the word "Boisaubin," insert the words "Nicholas C. Geoffrey and Patrick English."

THEO. LITTLE, Sol'r,
and of Counsel with Complainant.

* * * * *

ANSWER OF AMIDEE BOISAUBIN.

(Filed November 3, 1865.)

The answer of Amidee Boisaubin, one of the defendants to the bill of complaint of Eder V. Haughwout, complainant, 20 This defendant now and hereafter saving and reserving unto himself all benefit 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 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, this defendant, answering, says: That on the twenty fourth day of September, eighteen hundred and sixty-three, he was seized and possessed of the two tracts of land mentioned and de- 30 scribed in said bill of complaint, and on or about the day and year aforesaid, this defendant did enter into a contract in writing to sell and convey to the said complainant the seventy acres of land mentioned in said bill, which contract, (excepting four mistakes, which probably have occurred in copying said contract, or else in copying the bill of complaint, this defendant does not know which) is correctly copied in to said bill of complaint, but in order that there may be no mistake as to any of the words of said written contract, this defendant prays that reference may be had to the original written con- 40 tract to obtain the precise language of said contract.

And this defendant in further answering admits, that at the request of S. L. Hull, who said that he made said request for and on behalf of the said complainant, this defendant did sign an additional agreement which was endorsed upon the said written contract in these words :

“The time for the delivery of the deed is hereby extended to November 11th, 1863.

Nov. 2d, 1863.

A. BOISAUBIN.

E. V. HAUGHWOUT. 10
per S. L. HULL.”

Which is the only agreement of any kind, which this defendant ever made for the extension of the time for the performance of any part of the said written contract.

And this defendant in further answering admits, that he did make, execute and deliver to the complainant a deed of conveyance of the said seventy acres of land, and the said complainant paid this defendant the contract price therefor, but the said deed was not accepted or the consideration therefor paid by the complainant until on or about the six-20 tenth day of November, eighteen hundred and sixty-three, although this defendant was ready, willing, and offered to deliver the said deed on or before the eleventh day of the month last named.

And this defendant in further answering says, that in a very few days after the said written contract was made, and not later than the first of October, eighteen hundred and sixty-three, the said complainant entered upon the said seventy acres of land and commenced making alterations and improvements, and had employed thereon from fifteen to 30 thirty workmen, and before he, the said complainant, received or paid for said deed, he had the foundation of a large dwelling-house upon said seventy acres, in part, if not entirely erected.

And this defendant admits, that the said complainant has been in the possession of the said seventy acres ever since about the first of October, eighteen hundred and sixty-three.

This defendant in further answering says, that in the spring of eighteen hundred and sixty-four, the said complainant resumed his building operations upon the said seventy acres, 40

and during that spring and the ensuing autumn, erected the exterior at least of a large dwelling-house, conservatory and other buildings, upon the said last mentioned lot, and on or about the first day of June, eighteen hundred and sixty-five, the said complainant moved his family into the said new dwelling-house upon the said seventy acre lot, and the complainant and his family have dwelt therein ever since. And after the said complainant had received said deed of this defendant, he built a dwelling-house upon the said seventy
 10 acres for the use of his gardener or foreman, and the said gardener or foreman, with his family, commenced living therein in summer or fall of eighteen hundred and sixty-four, and said last mentioned house has been used for the same purpose ever since. And so far as this defendant knows, and as he believes, both of the dwelling-houses hereinbefore mentioned were substantially, if not fully completed before they were severally put into use and occupation as hereinbefore stated.

And this defendant in further answering, denies that the
 20 complainant's purchase of the said seventy acres was in any way dependent upon his having an option to buy the said "Spencer Woods" lot.

And this defendant in further answering as to the last mentioned point says, that the first he ever saw or knew of the complainant, or that he had any wish to buy any property of this defendant, was in the early part of September, 1863, when the complainant called to see this defendant at the said seventy acre lot, and inquired of this defendant whether said last mentioned lot was for sale, and this de-
 30 fendant's price therefor. This defendant then gave the information asked for by the complainant, but not one word was then said by the complainant to this defendant about selling the said "Spencer Woods" to the complainant, nor was said last mentioned lot at that time alluded to by the complainant, nor was it then spoken of or ever thought of by this defendant.

A few days after the call, so as aforesaid made by the complainant, he again came to see this defendant, and he and this defendant went over the said seventy acre lot and took a
 40 general view thereof, but not one word was then said about

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this defendant's selling or the complainant's buying the said "Spencer Woods," nor was said "Spencer Woods" tract mentioned or alluded to. The complainant after taking the general view of the said seventy acre lot last before mentioned, went and looked at other properties in the vicinity of Madison, which were then for sale, or supposed to be.

A few days after the last mentioned visit of the complainant, he the complainant came again to see this defendant, and he then desired this defendant to show to him the lines and corners of the said seventy acre lot, which this defendant did, and as this defendant and the complainant were about completing the last mentioned view, and were near to the said "Spencer Woods," the complainant asked this defendant to whom the last mentioned lot belonged. Upon being informed that it belonged to this defendant, he asked this defendant if he would sell it. This defendant replied that he did not care to sell it, but if he, the complainant, desired it, he could have it, if to have it would be an accommodation to him. He the complainant inquired this defendant's price therefor. This defendant replied that he, this defendant, had paid two hundred dollars an acre for it, and if it was any accommodation to him, the complainant, this defendant would let him have it at the same price which this defendant had paid therefor, to which the complainant replied that he would see about it, and there the conversation as to the said "Spencer Wood" lot then ended. The complainant did not then say that he desired to buy said last mentioned lot, nor even that he desired to have a privilege or option to buy it, and made no examination of it, except to look at it as he passed along the road near to one side of it. 30

Nothing more was said about the said "Spencer Woods" lot by the complainant to this defendant, nor by this defendant to the complainant, until the occasion next herein-after mentioned.

A few days after the interview with the complainant last mentioned, this defendant met the complainant at his request at his store in the City of New York. At this last mentioned interview, after some conversation as to the healthfulness of the neighborhood of said seventy acres, the said complainant said to this defendant that he had concluded to take depo- 40

ant then asked the complainant to go with him and look at said last mentioned lot, which the complainant did, going over and examining the same with considerable particularity, after which this defendant again asked the complainant if he would take said lot, when he again replied that he could not say, that he would think or see about it. Again, a week or two after the conversation last mentioned and before said deed was delivered to the complainant, this defendant again asked said complainant whether he was going to take the said "Spencer Woods," to which he again replied, as before, that 10 he did not know, could not tell, &c., would see or think about it. And this defendant further saith that after the conversation last mentioned, he never again spoke to the complainant about the said "Spencer Woods" lot, nor has the complainant, since the occasion last mentioned, ever spoken to this defendant upon the subject last mentioned.

And this defendant further saith, that since the day the said deed was delivered to the complainant, this defendant has not spoken one word to the complainant, nor since that day has the complainant spoken one word to this defendant 20 upon any subject whatever, except that, on the 27th of November, 1863, the complainant sent a letter to this defendant requesting this defendant to request Vancleve Dalrimple, Esq., to send some papers to him, the complainant, to which letter this defendant did not reply by any answer to the complainant.

And this defendant in further answering says, that the said complainant did not, on or before the first day of March, eighteen hundred and sixty-four, in any way accept to this defendant of the proposition made in and by the said written 30 contract, to sell to the complainant the plot of land of about twenty-two acres, called the "Spencer Wood," nor did the complainant, or any one for him, on or before the first day of March, 1864, pay, or offer to pay, to this defendant the purchase money for the said "Spencer Wood" lot, or any part of the said purchase money.

And this defendant in further answering says, that he is entirely ignorant as to what arrangements the complainant made with his attorneys, in respect to the said "Spencer Wood," before the first of March, 1864, nor did this de-40

fendant hear, until after the day last named, that there was any pretence that the complainant had left any directions as to the said "Spencer Wood," and the said alleged contract in reference thereto, with his attorneys.

And this defendant in further answering says, it is not true that any attorneys or attorney of the complainant, at any time or in any way, prior to the second day of March, 1864, except as hereinafter stated, notified this defendant that the complainant had accepted, or would accept the said proposal
10 to sell the said "Spencer Wood," contained in said written contract.

And this defendant in further answering denies, and says it is not true, that he ever at any time or in any way said to the attorneys, or to any attorney, of the complainant, that he, this defendant, would leave the matter of the delivery of the deed to the complainant for said "Spencer Wood," with this defendant's attorney, Vancleve Dalrimple, Esq., of Morristown, nor that the complainant, or his attorney, should call on said Dalrimple and get the deed and pay to him the pur-
20 chase money, nor did this defendant ever give any such authority to said Dalrimple.

And this defendant further answering says, that the only attorney of the complainant whom this defendant had seen to know prior to the seventh of March, 1864, was Solomon L. Hull, Esq., who made the searches for the complainant, as to the lands mentioned in said written contract ; that the last time but one that this defendant ever saw said Hull was at
Morristown, on the second day of November, 1863 ; that then said Hull did not, nor before that did he in any way in-
30 form this defendant that said complainant would take said "Spencer Wood," nor did this defendant then, or at any time before or after that, tell said Hull that this defendant would leave the matter of the delivery of the deed to the complainant of said "Spencer Wood," with said Vancleve Dalrimple, nor anything like it.

And this defendant in further answering saith, that since the day last mentioned he has seen said Hull but once, which was in January or February, 1864, in New York city, and then only for a few minutes, at which time not one word was
40 said about the complainant's taking the said "Spencer

Wood," or said Dalrimple's having anything to do with that business.

And this defendant in further answering says, that he did not on the day said contract of sale was written and signed, but he did on the day the complainant accepted said deed, speak to the complainant of the fact that the said "Spencer Wood" was incumbered with a mortgage, a fact which had been disclosed by the searches as to said lands made by said Hull; but this defendant denies, and says it is not true, that he then, or at any other time, came to or had any understanding with the complainant that the complainant should take the said "Spencer Wood" lot, subject to the said mortgage, and pay this defendant the difference between the amount due on that mortgage and the amount of the purchase money. 10

And this defendant in further answering says, that he did not see J. H. V. Arnold on the 29th of February, 1864, to know who he was nor to speak to him, nor had this defendant, so far as he knows, ever seen him before that day, nor did this defendant see said Arnold, so as to speak to him or know who he was, prior to the seventh day of March, 1864. 20

And this defendant in further answering says, that on the 29th of February, 1864, wishing to be ready in case said complainant should accept the said offer of sale of the "Spencer Wood," pursuant to the said offer in writing, to perform on his part, he, this defendant, went to the office of Vancleve Dalrimple, Esq., and had him prepare a deed from this defendant to the complainant of the said "Spencer Woods," and this defendant signed and acknowledged the same, and took the said deed home with him, leaving the office of said Dalrimple between eleven and twelve o'clock in the forenoon. 30

And this defendant further saith that he did not tell said Dalrimple that he, this defendant, would next day go to New York to deliver said deed, or for any other purpose, but, on the contrary, this defendant when parting with said Dalrimple on that day informed him that this defendant would not go to New York the next day, but would stay at home that he might be there in case the complainant, or any one for him, should come to this defendant's house to demand and receive a deed for said "Spencer Wood." And while this defendant does not of his own knowledge know how the fact is, yet he 40

does not believe that said Dalrimple did, on the 29th of February, 1864, tell said Arnold that this defendant would go to New York the next day and deliver said deed or any deed.

And this defendant in further answering says, that he reached his residence, on the day last named, about noon, and when there he was informed by his, defendant's, brother that a man had been there to see this defendant who said that he was Mr. Haughwout's lawyer (but this defendant's brother did not know the said person), and that he wanted
10 this defendant's brother to say to this defendant that Mr. Haughwout would take that property, and that he, the said lawyer, had with him a check for one thousand dollars to pay for it.

And this defendant in further answering says, that he remained at home the remainder of the day last named, and the day next thereafter, for the purpose of meeting the complainant, or any one who might call to see this defendant in his behalf, but no one came, nor did this defendant receive any intelligence from the complainant, or any one in his be-
20 half, until the second day of March, 1864, except that in the afternoon of the 29th of February, 1864, this defendant received a letter from Vancleve Dalrimple, Esq., of which the following is a copy :

“MORRISTOWN, February 29th, 1864.

DEAR SIR :—

Hull's partner has been here with check for \$1,000, ready to take deed subject to mortgage, &c. He says he called at your place this morning and found you were away, and must have passed you on the road. You can go to New York with
30 the deed to-morrow, if you like, or wait till my return for further developments. As I stated to you this morning, it is very doubtful whether you are bound to make the deed under the agreement ; still there is a good deal to be said on both sides of the question, and I would hardly advise you to get into a lawsuit on such a point. I hope to get home on Thursday morning next at latest—perhaps Wednesday.

Yours in haste,

V. DALRIMPLE.

MR. A. BOISAUBIN.”

40 And this defendant in further answering says, that on the

second of March, 1864, by the mail, he received a letter, of which the following is a copy :

S. L. HULL,
S. H. CONABLE,
J. H. V. ARNOLD.

“SOLOMON L. HULL,
Law and Collection Office,
18 WALL STREET.
NEW YORK, March 1st, 1864.

A. BOISAUBIN, Esq., Madison, N. J.

DEAR SIR :—

We expected you at the office to-day, from what Mr. Dal-
ruple and your brother told us yesterday. As the weather 10
has probably prevented this, we would like to make an ap-
pointment to close on Saturday at 12 M. at our office. If not
convenient to you, please notify us when you can be here.

Yours, &c.,
HULL, CONABLE & ARNOLD,
Attorneys for E. V. Haughwout.”

And this defendant further saith, that he made no reply
to said letter last above set forth.

And this defendant in further answering saith, that after
receiving said last stated letter, he consulted with Benjamin 20
Williamson, Esq., as to whether this defendant was bound to
convey said “Spencer Woods,” and at or about that time, said
Williamson on behalf of this defendant, wrote to the said
attorneys of the complainant to the effect that this defendant
declined to convey the said “Spencer Wood” to the complain-
ant.

And this defendant in further answering says, that on the
seventh day of March, 1864, the said Arnold called to see
this defendant at his place of residence, at Madison, and in-
quired of this defendant if he was willing to deliver a deed to 30
the complainant for the said last mentioned lot. This de-
fendant replied in the negative. He then said he had some
money, said he had one thousand dollars, and partly pulled
out of his vest pocket two United States treasury notes, and
asked this defendant if he would accept them. This defendant
replied no, not under the contract hereinbefore set out, and
told him that he was too late in making a tender, and that
the amount was insufficient, as this defendant would not con-
vey said lot and leave his bond secured by the aforesaid mort-
gage outstanding. Said Arnold then said, suppose we pay 40

you something more for the property, would you not then be willing to settle this matter? To which this defendant replied no, not under that contract. He then urged this defendant to consent to receive something more than two hundred dollars an acre for said land, saying if this defendant would not, that it would leave us in a bad fix, and we will be to blame for all these matters, but this defendant declined to accede to his request.

And this defendant in further answering says, that he has 10 not seen said Arnold since the day last mentioned, nor has he had any communication with him or his firm since then.

And this defendant in further answering says, that at the interview with said Arnold last mentioned, nor at any other interview with him, did this defendant say or admit that the complainant had done all that was encumbent on him to do to comply with said contract, nor that the complainant's attorneys had done all the things which in said bill of complaint are alleged to have been done by them, and instead of admitting that the complainant had accepted the proposition to sell 20 to him said land within the time mentioned in said agreement, and duly notified this defendant of his acceptance, this defendant insisted that neither of those things had been done.

And this defendant in further answering says, that in the evening of the 7th of March, 1864, he received a letter from said Solomon L. Hull, dated 5th March, 1864, in which among other things he said to this defendant that unless this defendant should immediately deliver to them, (meaning his firm) a deed for the complainant, they would have a suit at once commenced against this defendant to carry out the said 30 agreement, and saying that he wrote to this defendant before putting him (this defendant) to any cost.

And this defendant in further answering says, that since the seventh day of March, 1864, prior to the filing of the said bill of complaint, neither the said complainant or any one for him in any way requested this defendant to convey the said "Spencer Wood" to the complainant.

And this defendant further saith, that the said complainant returned from New Orleans in the spring of 1864, in April or May, and after he returned, as this defendant has been in- 40 formed and believes, upon being asked what he was going to

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do about the said "Spencer Wood," the said complainant replied that he would wait and see what this defendant was going to do with said property, which information came to this defendant in the spring of 1864.

Knowing said complainant had not accepted said offer to sell contained in said written agreement within the time nor in the manner required by said agreement, hearing that said complainant had said he was waiting to see what use this defendant was going to make of said "Spencer Woods," and finding that said complainant said nothing to this defendant 10 about said land, and did nothing to acquire said land, this defendant in the latter part of May, 1864, had said land surveyed and a large map thereof made, then soon after that offered said lot for sale openly and publicly, requested a real estate agent living at Madison, and doing business in New York, and other persons, to sell it for this defendant, and to send him a purchaser for it, and it was generally known in and about Madison that this defendant had said lot for sale and was offering it for sale. In the spring of 1865, in March or April, not having sold said "Spencer Woods," this defendant 20 had a surveyor go up on that part of said "Spencer Woods" lot nearest to the complainant's residence, and survey and mark upon the ground by stakes, a large number of building lots, and without advertising in the newspapers, this defendant made his wish and intention to sell building lots as public as he could, and to aid in advertising this defendant's said wish and intention, in April, eighteen hundred and sixty-five, this defendant put in public view on said "Spencer Woods" lot near to, and facing the public road, and less than four hundred yards from the entrance leading from said public road to 30 the complainant's dwelling-house, and where the complainant had to pass by it whenever he went to his house from the railroad station, and from the latter place to his house, a large sign marked, "building sites for sale in lots to suit purchasers ; apply to Amidee Boisaubin ;" which sign has remained there ever since. In the month of August, 1865, this defendant sold and delivered to William Dunn, a deed for a part of said "Spencer Woods," viz : A lot of fifty feet by one hundred and fifty feet, for two hundred dollars, the deed for which this defendant delivered to said Dunn on the seventh day of 40

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August, 1865. That on or about the sixteenth day of August, 1865, this defendant delivered to said Nicholas C. Geoffrey, a deed for portions of the said "Spencer Woods" tract being for five lots designated on this defendant's map of said premises, the price for which was one thousand dollars, which sum was to be credited to this defendant on a bond and mortgage of said "Spencer Woods" for thirty-seven hundred dollars, given by this defendant to said Geoffrey.

Another part of said premises, being three lots fifty by one
10 hundred and fifty feet each, this defendant sold to Michael Murphy for the price of six hundred dollars, and delivered to him a deed therefor, about the twentieth of August, 1865, and received from him at that time four hundred dollars on account of said sale. Some days after the delivery of said last mentioned deed, said Murphy informed this defendant that a mortgage of said "Spencer Woods" given by this defendant to Alfred B. Brittin had not been cancelled, and finding it had not been, this defendant handed the said four hundred
20 dollars back to said Murphy, (leaving with him the deed and the four hundred dollars,) telling him to retain the four hundred dollars until this defendant should get said last mentioned mortgage cancelled. The said last mentioned mortgage was cancelled on the 29th day of August last; after that, before this defendant again saw said Murphy, the injunction in this case was served, and since then this defendant has not taken said four hundred dollars from said Murphy, although he has since several times offered said money to this defendant. This defendant considers that said Murphy is entitled to keep
30 said deed, and that this defendant is entitled to have the six hundred dollars, the price of said lots.

Another part of said premises, consisting of two lots, 50 x 150 feet each, this defendant sold to Lawrence Shay for the price of four hundred dollars, and delivered to him a deed therefor about the fifteenth of August last, on which last mentioned sale this defendant received two hundred dollars at the delivery of said last mentioned deed.

Another portion of said premises, being a lot of 50 x 150 feet, this defendant sold to Jeremiah O'Brien, and received from him one hundred dollars on account thereof, about the
40 sixteenth or seventeenth day of August last past; and this

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defendant, at the same time, gave said O'Brien a receipt in writing therefor, expressing in the receipt that the payment was on account of a lot sold to him by this defendant. About the time of said payment this defendant delivered a deed of conveyance of said lot so sold to him, duly executed and acknowledged by this defendant. After the said delivery of said last mentioned deed, this defendant asked said O'Brien to leave his deed with this defendant until this defendant could get the surveyor to mark on this defendant's map the lot described in said deed to O'Brien. He did so, and before this defendant had re-delivered said deed to said O'Brien the injunction in this case was served, and therefore said last mentioned deed still remains in this defendant's hands.

At and about the time of making the last mentioned sale, this defendant agreed with one John Cummings to sell to him another portion of said premises, being two lots, 50 x 150 feet each, for which this defendant made out a deed to said Cummings, and stamped and acknowledged it, but before this defendant had actually delivered it the injunction in this case was served, and therefore said last mentioned deed still remains in this defendant's hands.

Prior to the 17th of August, 1865, this defendant agreed to sell another portion of said premises, a lot 50 x 150 feet, to Jeremiah Dunn for two hundred dollars. This defendant made out, and, on the day last named, stamped a deed to said Dunn for said last mentioned lot, but before it was actually delivered the injunction in this case was served, and hence said last mentioned deed remains in this defendant's hands.

Prior to the 23d of August, 1865, this defendant bargained another portion of said premises, a lot 50 x 150 feet, to one John Smith, for one hundred and fifty dollars, on account of which the wife of said Smith paid to this defendant, about the date last named, twenty dollars, for which this defendant gave a receipt in writing, expressing therein on what account the payment had been made.

On or about the day last named this defendant also agreed to sell another portion of said premises, viz. : two lots about 50 x 150 feet each, to one Michael Freny, for three hundred dollars. This contract was merely verbal and no payment was made on account of it.

And this defendant further says that in making sale of, and agreeing to sell the lots aforesaid, he acted in good faith, and in the belief, fully, that the complainant had abandoned all intention of endeavoring to enforce any pretended right or claim to the said "Spencer Wood" tract. And this defendant's object in selling said lots was to raise means thereby to pay off the mortgages upon said premises. And this defendant believes and charges that the said complainant did not really desire to purchase the said premises, but was content to
 10 be without the title to said premises, and exempt from paying for them, so long as said premises should be used as he desired. And this defendant denies that by selling the said premises in lots, as aforesaid, any nuisance was created, or intended to be created. And this defendant saith that said purchasers are humble laboring men, but yet honest, industrious, orderly, quiet, well-behaved citizens.

And this defendant in further answering denies that he has permitted Patrick English to place any hut or dwelling on said premises, or to build any pig pen thereon, nor has said
 20 English placed any hut, dwelling or pig pen on said premises since the 24th of September, 1863, nor at any time since the said "Spencer Woods" has been owned by this defendant.— This defendant became the owner of said "Spencer Woods" in July, 1863 ; at that time said Patrick English was occupying a small dwelling thereon, and had a pig pen near to it, and he has occupied the same dwelling and used the same pig pen ever since, and no other dwelling or pig pen on any part of said "Spencer Woods" lot. The said house occupied
 30 by said English has stood upon said premises ever since this defendant knew them, and according to the information which this defendant has received, and which he believes, it has stood where it now is for more than twenty years last past. And this defendant further saith that said English is a mere occupant, on a small part of said premises, by the sufferance or permission of this defendant ; but this defendant has never sold or conveyed any part of said premises to said English, nor has said English, so far as this defendant knows, any kind of title to any part of said premises except as a mere occupant.

40 And this defendant in further answering says, that in clear-

ing the brush from the margin of the muck pond, in order to get at the muck, this defendant cut down some scraggy, deformed persimmon and sassafras trees of scarcely any value, all of which together only made about four small two-horse loads of unmerchantable wood, not worth over two dollars a load delivered. This was done in January or February, 1865. About the same time this defendant cut down an old hickory tree, the trunk of which was nearly rotted off, which this defendant cut down to prevent its falling over into the garden of an adjoining proprietor. Besides these, this defendant, in 10 April or May, 1864, cut down what cedar bushes and trees were on the south-easterly part of said premises, which were scattered over several acres, all of which, when cut down, were not worth over forty dollars. And this defendant cut said cedars because he believed they were an injury to said premises, and should be cut down for the benefit thereof. Besides these, this defendant has not cut, or authorized to be cut, upon said premises, any wood or timber, excepting underbrush, since the 24th of September, 1863. And this defendant further saith that he has been informed by his workmen, 20 and he believes it to be true, that when the workmen of this defendant, in April or May, 1864, were cutting the said cedars on said premises, the said complainant was upon the said premises, among the workmen of this defendant who were cutting said cedars; that the complainant then saw and knew that said cedars were being cut, and was informed and knew that they were being cut by the orders and direction of this defendant, but he made no objection to said cutting, although this defendant then had four or five workmen then working upon said premises in view of the complainant, nor 30 to this defendant's workmen being upon said premises, nor did he ever, before filing his bill of complaint, make known to this defendant any objections to any of the said cutting, nor of the workmen of this defendant being employed upon the said premises. And this defendant further saith, that on the 25th of August, 1864, he commenced throwing muck out of the muck pond on said premises, and continued to do so until the first of October then next, and did so afterwards. And from about the first of October, 1864, to 27th of July, 1865, this defendant took, and had taken from said lot, four hun- 40

dred and sixteen loads of muck, about one hundred and eighty loads of which were sold to and carted away by George Pomeroy, the near neighbor of the complainant, and the said raising and removal of said muck was open, visible, and no doubt fully known to the complainant, and yet he made no objection thereto.

And this defendant in further answering says, that when he made the said agreement set forth in the complainant's bill, the said "Spencer Woods" lot was encumbered with a
10 mortgage given by this defendant to Alfred B. Brittin, to secure the payment of three thousand two hundred and fifty-four dollars, in two years from date, with interest, dated the first day of July, 1863. This mortgage and the bond it secured were assigned by said Brittin to George Pomeroy, on or about the 26th of October, 1863. This bond and mortgage this defendant paid in full to said Pomeroy on the first day of July, eighteen hundred and sixty-five, and the said mortgage was cancelled of record on the 29th of August, 1865. To pay said bond and mortgage, this defendant bor-
20 rowed of Thomas Nugent, three thousand four hundred dollars. To secure said Nugent for that loan, this defendant, on the first day of July, 1865, made and delivered to said Nugent a bond of that date, conditioned to pay thirty-four hundred dollars in one year with interest, and to secure that bond this defendant executed and delivered on the day last named, a mortgage to said Nugent of the said "Spencer Woods" lot. This defendant had previously mortgaged the same premises to Nicholas C. Geoffrey, to secure the payment of thirty-seven hundred dollars, as the money furnished by
30 said Nugent was to be used, was used, to pay the said mortgage given to said Brittin, and as the last mentioned mortgage was prior to said Geoffrey's said mortgage, said Geoffrey agreed with said Nugent and this defendant that said Nugent's mortgage should have priority over the said mortgage of said Geoffrey.

And this defendant in further answering says, that along in August, 1865, being engaged in selling off lots as aforesaid, and needing to have the lots sold released to the purchasers, and as said Nugent lived in an opposite direction from Mad-
40 ison to what said Geoffrey does, and as it was inconvenient

to see two mortgagees to get releases from each, and this defendant felt averse to making frequent calls upon said Nugent to execute releases, this defendant requested said Geoffrey as he held the second mortgage to take up said Nugent's said mortgage and thus place the whole incumbrance in the hands of one person. This said Geoffrey consented to do, and on the twenty-sixth of August last, the said Geoffrey furnished this defendant with twenty-four hundred dollars to take up said mortgage, upon the understanding that said Nugent's said bond and mortgage should be assigned to him. 10 On that same day said Geoffrey paid said Nugent one thousand dollars on account of said bond and mortgage, and late that same Saturday night, the 26th of August, 1865, this defendant paid to said Nugent the said twenty-four hundred dollars furnished to him by said Geoffrey, (this defendant furnished the money to pay the interest which had accrued on said last mentioned mortgage and paid it to said Nugent,) and that night received said bond and mortgage. As this defendant could not get said last mentioned bond and mortgage assigned by said Nugent to said Geoffrey without getting 20 said Nugent to go to Morristown, the then next week for that purpose, and as this defendant had already put said Nugent to considerable trouble in respect to the loan which he had so as aforesaid made to this defendant, this defendant felt so averse to troubling him any more in regard to said mortgage that he then and there concluded not to ask him to assign said mortgage, but that this defendant would give said Geoffrey a new mortgage for the means advanced by him to take up said Nugent's mortgage, this defendant not knowing but that and supposing that a new mortgage would 30 be as good to said Geoffrey as an assignment of said Nugent's mortgage, or if that should not be satisfactory to said Geoffrey, that then this defendant would make a deed to said Geoffrey for said premises, or in some other way secure and satisfy him without putting said Nugent to any more trouble; and accordingly on Monday, August 28th, 1865, without having seen said Geoffrey since he gave to this defendant the twenty-four hundred dollars last hereinbefore mentioned, this defendant had the said mortgage so as aforesaid given to said Nugent cancelled of record, and then there being no special 40

haste necessary so far as this defendant knew or supposed, before he, this defendant, had made any mortgage to said Geoffrey for the said thirty-four hundred dollars, or in any manner secured him for the payment thereof, the injunction in this case was served upon this defendant.

And this defendant in further answering says, that in the latter part of February, 1865, said Nicholas C. Geoffrey delivered to this defendant seventeen hundred dollars in gold coin, to be sold for and on account of said Geoffrey. That
10 afterwards, and before this defendant had sold said gold, and before the first of April, 1865, when said Geoffrey was expressing fears that he might lose on his said gold, this defendant proposed to keep it as a loan, and to pay said Geoffrey therefor what he said it had cost him, namely, the sum of thirty-seven hundred dollars, and to secure the payment of that sum to him by a bond and mortgage of the said "Spencer Woods" tract of land, payable in one year with interest, which proposal said Geoffrey accepted, and afterwards in the month of April, 1865, this defendant executed and delivered the said
20 last mentioned bond and mortgage to said Geoffrey, which last mentioned mortgage was recorded on the first of May, 1865, in the Morris County record of mortgages, Book K 2, page 161.

And this defendant in further answering says, that said last mentioned mortgage was proposed, executed and delivered by this defendant without any kind of reference to the complainant, or his pretended claim to said mortgaged premises. And so far as this defendant can now remember, and as he believes, he did not even have a thought of the
30 complainant or his pretended claim to said mortgaged premises in connection with said loan and mortgage, nor as to how said mortgage would or might affect the complainant or his pretended claim to the said mortgaged premises, or anything of the kind. And so far as this defendant can now remember, and as he believes, the complainant, or his said claim, or any claim or pretences of his as to the said mortgaged premises, was not once spoken of by this defendant to said Geoffrey, or by him to this defendant, from long prior to this defendant's receiving said gold until long after said last mentioned mort-
40 gage had been delivered to said Geoffrey.

And this defendant in further answering says, that so far as he can remember, and as he verily believes, the only time that he, this defendant, ever said any thing to said Geoffrey as to this defendant's having ever made any kind of contract in respect to said "Spencer Woods" lot, was once, and that was in or about the month of June, 1864, at the residence of said Geoffrey, and that was this: alluding to said "Spencer Woods," I gave Haughwout the refusal of that once, at the time I sold the other property to him, but he did not take it in time, and I have it yet, or words of that purport, meaning and effect. 10

And this defendant in further answering says, that when he paid off the said mortgage so as aforesaid given to Alfred B. Brittin, he sent the same to Vancleve Dalruple, Esq., to be cancelled, and he supposed the same had been cancelled until the latter part of August last, when this defendant learned from Michael Murphy that said mortgage had not been cancelled, and this defendant went and had it cancelled in a few days afterwards, and this defendant denies that said mortgage remained uncanceled a single hour for the purpose of embarrassing the complainant, or any one else, or for any 20 fraudulent or improper purpose. And this defendant denies all unlawful combination and confederacy in the said bill charged, without this, that any other matter or thing material for this defendant 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 this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court shall direct, and he humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained. 30

JACOB VANATTA, Sol'r. and
of Counsel with the Defendant, Amidee Boisaubin.

New Jersey, }
Morris County, ss. }

Amidee Boisaubin, of the said County of Morris, the defendant named in the within answer, being duly sworn, on his oath saith, that he has read the within answer, and that the facts, matters and things therein stated, so far as they relate to his own acts and deeds, are true, and so far as they relate 40

to the acts or deeds of any other person or persons, he believes them to be true.

AMIDEE BOISAUBIN.

Sworn and subscribed before }
me, November 3d, 1865. }

ALFRED MILLS,

Master in Chancery of New Jersey.

ORDER TO AMEND, &C.

(Filed Oct. 31st, 1865.)

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It being suggested by the affidavit of Nicholas C. Geoffrey, one of the defendants in this cause, that he paid to Thomas Nugent the bond and mortgage given to said Nugent by the defendant, Amidee Boisaubin, to secure the payment of three thousand four hundred dollars, bearing date the first day of July, eighteen hundred and sixty-five, (which bond and mortgage are mentioned in the complainant's bill of complaint,) upon an understanding and agreement that said bond and mortgage should be assigned to him; said Geoffrey, as

20 security for the money which he advanced to pay the said bond and mortgage to said Nugent, and that by misunderstanding or mistake, the said mortgage was cancelled of record on the twenty-eighth day of August, eighteen hundred and sixty-five. And it further appearing that a copy of said affidavit, and notice of a motion for this order were duly served upon the solicitor of the complainant. It is thereupon, on this thirty-first day of October, eighteen hundred and sixty-five, on motion of Jacob Vanatta, of counsel with the said Nicholas C. Geoffrey, ordered by the Chancellor that the

30 writ and order for an injunction made and issued in this cause be, and the same is so modified, altered and amended as to permit the defendant, Amidee Boisaubin, to execute and deliver to the said Nicholas C. Geoffrey a mortgage of the said "Spencer Woods" tract of land mentioned and referred to in the said bill of complaint, or so much thereof as was included in the said mortgage to said Nugent at the time said mortgage was cancelled, to secure the payment to the said Nicholas C. Geoffrey of the said bond so made as aforesaid, by the said Amidee Boisaubin to the said Thomas Nugent; such

40 mortgage so to be executed, however, is not to and shall not

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impair or prejudice any rights or equities which the said complainant had, or could have had, as against the said mortgage so as aforesaid cancelled, and the bond mentioned therein at the time of or before the cancellation of said mortgage, nor as against the said Nicholas C. Geoffrey in respect to the said bond and the said cancelled mortgage, or the mortgage by this order allowed to be made. The object of this order is to permit the said Nicholas C. Geoffrey to be secured as to any and all rights he may have in respect to the said bond and the said cancelled mortgage, but at the same time, in no way to impair or prejudice any rights of the complainant in respect to said bond and said mortgages; said mortgage to express upon the face thereof that the same is made subject to all the rights and equities which the said complainant had in said premises before or at the time of the cancellation of the aforesaid mortgage.

HENRY W. GREEN, C.

ORDER DENYING MOTION TO DISSOLVE
INJUNCTION.

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(Filed December 5th, 1865.)

This cause coming on to be heard before the Court in the presence of Theodore Little of counsel with the complainant, and of Jacob Vanatta of counsel with the defendants, upon a motion in behalf of said defendants to dissolve the injunction heretofore issued in this cause, and the arguments of counsel having been heard and considered—It is thereupon, on this fifth day of December, A. D., eighteen hundred and sixty-five, ordered by the Chancellor, that the motion to dissolve the injunction in the cause be, and the same is hereby denied, and that the injunction be continued until the hearing of the cause.

HENRY W. GREEN, C.

I respectfully advise the Chancellor to sign the foregoing order.

J. WILSON,
Master in Chancery.

REPLICATION.

(Filed February 2d, 1866.)

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This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, 10 confessed and avoided, traversed or denied, is untrue, all which matters and things this repliant is, and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he has already prayed.

THEO. LITTLE, Sol'r,
and of Counsel with Complainant.

ORDER TO CLOSE TESTIMONY.

(Filed February 17th, 1866.)

It is ordered on motion of Jacob Vanatta, solicitor for, and 20 of counsel with the defendants, that the examination of witnesses in the above cause be closed in fifty days from and after the date of this order.

By the Court,
BARKER GUMMERE, Clerk.

RULE OF HEARING.

(Entered May 15th, 1866.)

It is ordered on motion of Theodore Little, solicitor for, and of counsel with the complainant, that this cause be set 30 down for hearing on the first day of the next stated term of this Court, to be held at the State House, in the City of Trenton, at the hour of ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard thereon.

By the Court,
BARKER GUMMERE, Clerk.

INTERLOCUTORY DECREE.

(Filed March 27th, 1867.)

This cause having been heretofore referred to Amzi Dodd, 40 Esq., one of the Masters of this Court, to hear and determine

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the same upon the pleadings and evidence, and to report thereon to the Chancellor in an advisory way ; and the same having been duly heard and argued before said Master, and he having made his report to the Chancellor, bearing date the fifteenth day of March, eighteen hundred and sixty-seven, whereby it appears that the said Master is of the opinion that the complainant is entitled to the relief prayed for in his bill of complaint against the said defendant, Amidee Boisaubin, and that said Amidee Boisaubin should perform his contract with said complainant set out in said bill of 10 complaint, by conveying to said complainant the tract of land called the "Spencer Woods," containing about twenty-two acres, mentioned therein, at the price therein mentioned, and the complainant at the hearing having abandoned all claim for relief against the defendant, Nicholas C. Geoffrey, and admitted that the several mortgages held by said Geoffrey are valid and existing liens upon the said premises, except such portions thereof as have been released therefrom as set forth in the answer of said Geoffrey, and the said Boisaubin also alleging and insisting that said mortgages are valid and 20 subsisting liens as aforesaid ; and the said Master being further of the opinion that the purchase money mentioned in said contract so set forth in said bill of complaint should be applied towards the payment of said encumbrances, and if any thing remains due thereon after such application, the said Amidee Boisaubin should be decreed to pay and satisfy the same in order to relieve said premises from the encumbrance thereof ; and it further appearing by the evidence that some portion of said premises have been sold and conveyed by said Boisaubin to divers persons before the filing of 30 complainant's bill of complaint, and that said Amidee Boisaubin has received divers sums of money in payment thereof, and holds divers bonds and mortgages as the securities for the payment of part of the consideration money of such sales, but whether or not the several purchasers from said Boisaubin of portions of said premises had notice or not of the complainant's equitable title to said premises prior to their several purchases, does not fully appear—

It is therefore, on this twenty-seventh day of March, eighteen hundred and sixty-seven, ordered that it be referred to 40

George W. Forsyth, Esq., one of the Masters of this Court, to ascertain and state the number of acres in said tract of land called the "Spencer Woods," and the price thereof, at two hundred dollars per acre, and also the amount due on the several bonds and mortgages mentioned and set forth in the pleadings herein given by said Boisaubin, and now or heretofore held by said Geoffrey, and also the amount of moneys or securities therefor received by said Boisaubin from any bona fide sales of any portion of said tract of land, made by him
 10 to any person or persons, without notice of complainant's equity therein, and the said Master shall be at liberty to use the testimony and exhibits heretofore taken and exhibited in this cause, and shall make his report with all convenient speed, and all further equities are reserved until such report shall come in.

A. O. ZABRISKIE, C.

I approve the within decree, and respectfully advise the Chancellor to sign the same.

AMZI DODD, Master.

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MASTER'S REPORT.

(Filed May 7th, 1867.)

In pursuance of an order of this Court, entered in the above cause, bearing date the twenty-seventh day of March, eighteen hundred and sixty-seven, I have been attended by the solicitor of the complainant, no person attending for the defendant, Amidee Boisaubin, although duly summoned by summons served by myself on his solicitor, on the twenty-third day of April, eighteen hundred and sixty-seven, and
 30 annexed hereto, and in the presence of the party attending before me I have considered of the matters thereby referred to me. The solicitor of the complainant produced before me the testimony and exhibits heretofore taken and exhibited in this cause. And from an inspection and examination of a certain deed from Alfred B. Brittin and wife to said Amidee Boisaubin, one of said defendants, bearing date July 1st, 1863, recorded in Morris County record of deeds, Book F 6, pages 437, &c., and marked exhibit No. 1 on part of complainant in this cause, I do ascertain that the tract called in
 40 said order of reference the "Spencer Woods" is composed of

two lots of land, the first lot containing nineteen acres and twenty-four hundredths of an acre, and the second lot containing two acres and three hundredths of an acre, making in the whole twenty-one acres and twenty-seven hundredths of an acre of land, and I do ascertain and report the price thereof at two hundred dollars per acre, at four thousand two hundred and fifty-four dollars. And I do certify and report that the schedule hereunto annexed and marked No. 1, and making part of this, my report, contains a statement of the number of acres in said the "Spencer Woods," and the price 10 thereof, at two hundred dollars per acre.

And I do further certify and report that the solicitor of the complainant at the same time presented and produced before me a certified copy of a certain final decree in this Court for foreclosure of mortgaged premises in a certain cause in this Court, founded on the mortgages set forth in the pleadings in the cause above stated, and formerly held by Nicholas C. Geoffrey, in which decree William Davidson is complainant, and the said Amidee Boisaubin and Eder V. Haughwout are defendants, and which decree bears date 20 March the fourth, eighteen hundred and sixty-seven. Also the execution issued out of this Court founded on said decree, and which execution by certificate of the Clerk of this Court endorsed thereon is recorded in Book Y 2, of executions, pages 286, &c.

And I do certify and report, that at the date of the Master's report in said decree mentioned there was due for principal and interest on said two mortgages formerly held as encumbrances on the said "Spencer Woods" by said Nicholas C. Geoffrey, (and which report of the Master appears by said 30 decree to have been made on the twenty-first day of February, eighteen hundred and sixty-seven,) the sum of five thousand nine hundred and twenty-two dollars and ninety-five cents, and that from the said execution the costs of said William Davidson, the complainant in said foreclosure suit, were taxed by the Clerk of this Court on the seventh day of March, eighteen hundred and sixty-seven, at one hundred and two dollars and seventy-eight cents.

And I do certify and report, that there is now due on the decree on said bonds and mortgages for principal, interest 40

and costs, the sum of six thousand one hundred and nine dollars and seventy-six cents. And I do certify and report, that the schedule hereunto annexed marked No. 2, and making part of this my report, contains a statement of the amount found due by said decree on said bonds and mortgages, and of the amount due the said William Davidson this day for principal, costs and interest on said decree. And I do further certify and report, that there was produced before me the record of a certain deed from said Amidee Boisaubin to
10 Nicholas C. Geoffrey, for part of the said "Spencer Woods," which deed bears date August 8th, eighteen hundred and sixty-five, and is recorded in Morris County records of deeds, Book V 6, folio 390, &c., and conveys certain lots of land therein mentioned for the sum of one thousand dollars. And also that the deed in the pleadings in said cause mentioned made by said Amidee Boisaubin to Lawrence Shae for part of the said "Spencer Woods" in consideration of four hundred dollars, and marked exhibit No. 15 on the part of defendants in this cause, was produced before me. And that
20 the complainant in this cause admitted before me, that the grantee in each of said deeds was a bona fide purchaser of the part of said land described in his respective deed. And I do certify and report, that the said Amidee Boisaubin has received in money or securities therefor for the portion of lands in said deeds mentioned, portions of said "Spencer Woods," the sum of fourteen hundred dollars. And I do certify and report, that the schedule hereunto annexed marked No. 3, and making part of this my report, contains a statement and account of the moneys received by said Amidee
30 Boisaubin from the sale of the part of the "Spencer Woods" in said deeds mentioned. All which is respectfully submitted this third day of May, eighteen hundred and sixty-seven, to which time the hearing of the matters referred was adjourned by me, from the thirtieth day of April, eighteen hundred and sixty-seven.

GEORGE W. FORSYTH, Master, &c.

SCHEDULE NO. 1 REFERRED TO IN FOREGOING
REPORT.

40 Deed from Alfred B. Brittin and wife to Amidee Boisaubin,

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for the "Spencer Woods," dated July 1st, 1863, recorded Morris County records of deeds, Book F 6, pages 437, &c. conveys two lots of land.

The first containing - - - 19.24 acres.
 The second containing - - - 2.03 acres.

In the whole containing - - - 21.27 acres
 at \$200 per acre. 200.

is - - - - - \$4,254 00 10

GEO. W. FORSYTH, Master, &c.

May 3d, 1867.

SCHEDULE NO. 2.

Amount due William Davidson on the two mortgages formerly held by Nicholas C. Geoffrey, as appears by the decree mentioned in the foregoing report, as having been ascertained and reported by the Master.

February 21st, 1867. \$5,922 95

Interest from 21st February, 1867, to 3d May, 1867, 2 months 12 days. 82 92 20

Amount taxed by the Clerk of the Court of Chancery for William Davidson's costs on foreclosure of said mortgages.

March 7th, 1867. 102 78

Interest from 7th March, to 3d May, 1867, 2 months less 4 days, 1 11

Total amount, May 3d, 1867, \$6,109 76

GEO. W. FORSYTH, Master, &c.

May 3d, 1867.

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SCHEDULE NO. 3.

Purchase money for lots of land described in a deed from Amidee Boisaubin to Lawrence Shae, dated August 7th, 1865, lodged for record in Morris County records of deeds, May 21st, 1866, marked as exhibit No. 15 for defendants in the above cause. \$400 00

Purchase money received by Amidee Boisaubin from Nicholas C. Geoffrey, for lots of land described in deed from Amidee Boisaubin to Nicholas C. Geoffrey, dated 8th August, 1865, recorded Morris

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~~42~~

County records of deeds, Book V 6, pages 390, &c.

\$1,000 00

\$1,400 00

GEO. W. FORSYTH, Master, &c.

May 3d, 1867.

FINAL DECREE.

(Filed May 7th, 1867.)

George W. Forsyth, Esq., to whom it was referred by
10 order of this Court in this case, dated March twenty-seventh,
eighteen hundred and sixty-seven, to ascertain and state the
price of the tract of land known as the "Spencer Woods," at
the rate of two hundred dollars per acre, and also the amount
due on the several bonds and mortgages mentioned and set
forth in the pleadings in this cause, given by said Amidee
Boisaubin, and lately held by Nicholas C. Geoffrey, and also
the amount of money or securities therefor received by said
Boisaubin from any bona fide purchaser of any portion of said
20 land and premises, having made his report in writing, bearing
date May third, eighteen hundred and sixty-seven, by which
it appears that the price of said tract of land and premises at
the rate aforesaid is four thousand two hundred and fifty-four
dollars, and that the amount due upon said bonds and mort-
gages is six thousand one hundred and nine dollars and sev-
enty-six cents, and that said Boisaubin has received from bona
fide purchasers of portions of said premises to wit: from
Nicholas C. Geoffrey and Lawrence Shae, the sum of fourteen
hundred dollars. It is ordered, adjudged and decreed by
30 and said Chancellor doth hereby order, adjudge and decree,
that the said Master's report do stand ratified and confirmed,
and the said Amidee Boisaubin do specifically perform his
agreement mentioned and set forth in the bill of complaint
herein, in the presence and under the direction of said George
W. Forsyth, in the following manner, to wit: on a certain
day, and at a certain place, to be fixed by said Master, of
which five days notice shall be given to said Amidee Boisaubin
and the said complainant, the said Amidee Boisaubin shall
execute, acknowledge and deliver to said complainant, a deed
40 of bargain and sale in the ordinary form, without covenants,

to be prepared by said Master at the expense of complainant, conveying to said complainant the said tract of land called the "Spencer Woods," by the metes and bounds contained in the deed thereof from Alfred B. Brittin to said Boisaubin, marked No. 1 in this cause, excepting and reserving therefrom such parts of said premises as were conveyed by said Boisaubin to Nicholas C. Geoffrey and Lawrence Shae, as mentioned in the pleadings herein, and the report of said Master, and at the same time the said complainant shall pay to said Master the sum of two thousand eight hundred and fifty-four dollars in 10 cash, being the whole amount of purchase money above mentioned, less the sum of fourteen hundred dollars above mentioned, which money shall be applied by said Master toward the payment and satisfaction of the amount due as above mentioned upon said bonds and mortgages to be first applied toward the payment of the amount due upon the bond and mortgage, executed by said Amidee Boisaubin to said Nicholas C. Geoffrey, dated April 1st, 1865, and that said Amidee Boisaubin shall at the same time pay to said Master the sum of three thousand three hundred and fifty-five dollars and 20 seventy-six cents in cash, or such other sum of money as shall be sufficient to pay and discharge the balance remaining due upon the said bonds and mortgages, and in case the said Boisaubin shall fail to pay the amount remaining due on said bonds and mortgages, and the complainant shall choose to pay the same in discharge of said land and premises from said bonds and mortgages, he shall be at liberty so to do, and the said Master shall report to this Court the proceedings had before him by virtue hereof. And all further orders are re- 30 served until he shall make such report.

A. O. ZABRISKIE, C.

I approve within decree, and respectfully advise the Chancellor to sign the same.

AMZI DODD, Master in Chancery.

10 EXHIBIT D, FOR COMPLAINANT.

IN CHANCERY OF NEW JERSEY,

Between EDER V. HAUGHWOUT, Compl't, } *On Bill,*
and } *Appeal.*
AMIDEE BOISAUBIN, et als Defendants. }

The defendant, Amidee Boisaubin, hereby appeals from all and every part of the final decree, made in this Court in the 20 cause above stated, bearing date the seventh day of May, eighteen hundred and sixty-seven, to the Court of Errors and Appeals.

JACOB VANATTA,
Solicitor of Defendant Boisaubin.

Dated, May 17th, 1867.

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

JACOB VANATTA, of Counsel.

30 MASTER'S REPORT.

(Filed July 27th, 1867.)

In pursuance of a decree of this Court, entered in the above cause, made on the seventh day of May, eighteen hundred and sixty-seven, I did on the fourteenth day of May, eighteen hundred and sixty-seven, issue a summons under my hand, in the cause above stated, directed to Amidee Boisaubin, one of the defendants above named, therein and thereby notifying, summoning and requiring the said Amidee Boisaubin personally to be and appear before me, at my office in Morristown, 40 on Tuesday the twenty-first day of May, then instant, at the

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hour of ten in the forenoon of that day, then and there under my direction, and in my presence, to do, perform and execute all matters and things required to be done, performed and executed by him, in pursuance of and in obedience to the requirements of the said decree, a copy whereof was annexed to said summons, and therewith personally served on the said Amidee Boisaubin, on the fifteenth day of May, eighteen hundred and sixty-seven, as appears by the affidavit of Edward J. Fennell endorsed on the duplicate of said summons, and copy of decree annexed to this, my report, and forming part 10 thereof. And I further certify and report, that I did on the said fourteenth day of May, eighteen hundred and sixty-seven, verbally notify Henry C. Pitney, Esq., the solicitor of the said complainant, Eder V. Haughwout, to be present before me on the said twenty-first day of May, eighteen hundred and sixty-seven, at the hour of ten in the forenoon of that day, at my office in Morristown aforesaid, to do and perform on the part of said Haughwout, those things required by said decree to be done and performed by said Haughwout.

And I do further certify and report, that on the said twenty-20 first day of May, I had prepared and ready for execution by said Boisaubin a deed drawn in pursuance of the terms of said decree from said Boisaubin to said Haughwout, for the said tract of land in controversy in the above cause, and called in the pleadings and testimony in said cause "The Spencer Woods."

And I do certify and report, that at the said time and place mentioned in said summons, Henry C. Pitney, Esq., the solicitor of said Eder V. Haughwout, appeared before me on behalf of, and for said Haughwout, and tendered himself 30 ready and willing to pay me the amount of purchase money by said decree required to be paid by said Haughwout, on account of the purchase money for the said "The Spencer Woods," upon compliance by said Boisaubin with the requirements of the said decree by said Boisaubin to be performed in the execution and delivery of said deed, but said Boisaubin failing to appear before me pursuant to the requirements of said summons, nothing further was done in the premises at that time.

And I do further certify and report, that on the twenty-40

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seventh day of June, eighteen hundred and sixty-seven, I did issue another summons under my hand in the cause above stated, directed to the said Amidee Boisaubin, wherein and whereby, after reciting the service of the former summons and copy of said decree upon said Boisaubin as aforesaid, and his neglect to appear before me according to the requirements thereof, I did again notify, summon and require said Boisaubin personally to be and appear before me, at my office in Morristown, on Tuesday the second day of July, eighteen
10 hundred and sixty-seven, at the hour of ten in the forenoon of that day, then and there in my presence and under my direction, to do, perform and execute all matters and things required to be done, performed and executed by him in pursuance of, and in obedience to the requirements of said decree, which last mentioned summons was served on said Boisaubin personally on the twenty-eighth day of June, eighteen hundred and sixty-seven, as appears by a duplicate of said summons hereto annexed with the affidavit of Edward J. Fennell of the service thereof endorsed thereon. And I did
20 also, on the said twenty-seventh day of June, verbally notify Henry C. Pitney, Esq., the solicitor of the said complainant, Eder V. Haughwout, to be present at the time and place in said last mentioned summons mentioned on the part of said Haughwout, to do and perform those things required by said decree to be done and performed by said Haughwout.

And I do further certify and report, that in pursuance of the summons and notice last aforesaid, the defendant, Amidee Boisaubin, in person, and the complainant, Eder V. Haughwout by Henry C. Pitney, his solicitor and counsel, appeared
30 before me at the time and place in said summons and verbal notice mentioned. And the said Henry C. Pitney, on behalf of said Eder V. Haughwout, tendered himself ready and willing to pay me the sum of money required to be paid by said Haughwout in and by said decree as and for the purchase money for the said "Spencer Woods." And thereupon I produced and offered for the inspection of said Boisaubin the deed from said Boisaubin to said Haughwout for said "Spencer Woods," which I had prepared pursuant to said decree, but said Boisaubin would not examine said deed, and upon
40 my request to said Boisaubin either that he would execute

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said deed or decline to do so, said Boisaubin replied that he intended to prosecute his appeal in this cause and withdrew from my office, leaving the said deed in my possession unexecuted, and did not afterwards return to my office to execute the said deed. All which is respectfully submitted July 2d, 1867.

GEO. W. FORSYTH, Master, &c. in Chancery.

ORDER OF ATTACHMENT.

(Filed July 29th, 1867.)

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It appearing by the report of George W. Forsyth, Esq., one of the Masters of this Court, dated July second, eighteen hundred and sixty-seven, that Amidee Boisaubin, the defendant above named, both neglected and refused to obey and perform the decree of this Court, made herein on the seventh day of May, eighteen hundred and sixty-seven,

It is ordered that the said Amidee Boisaubin do show cause before the Hon. Mercer Beasley, one of the Masters of this Court, sitting for the Chancellor at the State House at Trenton, on Friday the ninth day of August next, at eleven 20 o'clock in the forenoon, why an attachment should not issue against him for a contempt of this Court, in refusing to obey and perform said decree. July 29th, 1867.

By the Statute, M. BEASLEY, M.

ORDER FOR ATTACHMENT.

(Filed August 9th, 1867.)

It appearing to the Court that by an order, dated the twenty-ninth day of July, eighteen hundred and sixty-seven, Amidee Boisaubin, the above named defendant, was directed 30 to appear before the Hon. Mercer Beasley, one of the Masters of this Court, sitting for the Chancellor at the State House at Trenton, on Friday the ninth day of August, eighteen hundred and sixty-seven, at eleven o'clock in the forenoon, and show cause why an attachment should not issue against him for a contempt of this Court, in refusing to obey and perform a certain decree of this Court made in the above stated cause on the seventh day of May, eighteen hundred and sixty-seven, and that he has not appeared or shown cause as by the said order he was directed to do, although a 40

copy of that order was duly served upon him. Now on motion in behalf of Henry C. Pitney, of counsel with the complainant, it is ordered that an attachment as for a contempt be issued against the said Amidee Boisaubin, in refusing to obey and perform said decree, returnable on the thirtieth day of August instant. Dated the ninth day of August, in the year eighteen hundred and sixty-seven.

By the Statute, M. BEASLEY, M.

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SUPPLEMENTARY REPORT.

(Filed August 15th, 1867.)

I, George W. Forsyth, the Master to whom and under whose directions and supervision certain matters were referred to be done, performed and executed by the said Amidee Boisaubin, by a certain decree of the Court of Chancery of New Jersey made in the above stated cause, on the seventh day of May, eighteen hundred and sixty-seven, having on the second day of July, eighteen hundred and sixty-seven, reported to the said Court what had been done in the premises, 20 as by reference to my report, bearing date the day and year last aforesaid, now on the files of the said Court, will fully appear, do hereby report supplementary thereto. That on the tenth day of August, eighteen hundred and sixty-seven, the said Amidee Boisaubin came before me, at my office in Morristown, and in my presence did execute, acknowledge and deliver to the complainant such deed as the said Amidee was by said decree required to execute, acknowledge and deliver for the said lots of land called the "Spencer Woods," 30 as by said decree were directed to be excepted. And that I in the presence of said Amidee Boisaubin, at the same time delivered the said deed of conveyance to Henry C. Pitney, Esq., the solicitor of the complainant, who received the same for and on behalf of the said complainant.

All which is respectfully submitted.

August 1867. GEO. W. FORSYTH, Master, &c.

EXHIBIT E, FOR COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

Between EDER V. HAUGHWOUT, and	} <i>On Bill,</i>
GEORGE POMEROY, Compl'ts,	
<i>and</i>	
MICHAEL MURPHY, Defendant.	<i>&c.</i>

This indenture, made the twenty-first day of May, in the 20 year one thousand eight hundred and sixty-seven, between Amidee Boisaubin, of the Township of Chatham, in the County of Morris, and State of New Jersey, of the first part ; and Eder V. Haughwout, of the Township of Chatham, in the County of Morris, and State of New Jersey, of the second part ; Witnesseth, That the said Amidee Boisaubin, for and in consideration of the sum of two thousand eight hundred and fifty-four dollars, lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at and before the sealing and de-30 livery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, hath granted, bargained, sold, aliened, remised, released, and forever quit-claimed, and by these presents doth grant, bargain, sell, alien, remise, release, and forever quit-claim, unto the said party of the second part, and to his heirs and assigns, all those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Chatham, in the County of Morris, and State of New Jersey.

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The first tract beginning at a point on the south-westerly side of the south Madison road called High Street, opposite the land of George Pomeroy, late S. L. Tuttle. Said point is distant ten chains and seventy-one links on the said side of High Street, south-easterly from the corner of William Brittin's land and late William Spencer aforesaid, and runs, thence (1) on the side of said road south, forty-five degrees and forty minutes east, fourteen chains and ninety-four links to the northerly corner of another lot of said Alfred B. Brittin at the angle of the stone fences, late a line and corner of John Leonard's lands; thence (2) with the fence on said A. B. Brittin's line, late Leonard's south, thirty-one degrees and twenty minutes west, five chains and seventy-eight links to the angle of the stone fences on the northerly side of the road leading from Union Hill to Joseph Roberts, formerly Samuel Roberts; thence (3) with the northerly side of said road south, eighty-eight degrees and forty minutes west, eleven chains to an angle of the fences, and to the line of Charles Gillam's land; thence (4) with his line and fence north, seven degrees and thirty minutes west, three chains and forty-one links to a chestnut post at an angle of the fences for his corner; thence (5) with his line and fence north, eighty-two degrees and thirty minutes west, seven chains and sixty-six links to a post at an angle of the fences for Gillam's corner, and to the line of Loomis' land, formerly Ulters; thence (6) with that line north, seven degrees west, one chain and twelve links to a stake for a corner of part of said lands now William Brittin's; thence (7) with the line of William Brittin's part of said lands north, forty-eight degrees and forty-five minutes east, fifteen chains and forty-three links to the place of beginning, containing nineteen acres and twenty-four hundredths of an acre of land, be the same more or less.

The second tract begins on the south-westerly side of High Street at the easterly corner of the late "Spencer Wood Lot" above described, seventy-four links distant square across the road from the face of G. Pomeroy's stone wall in front of his yard or lawn, and runs thence (1) on the side of said road south, forty-five degrees thirty minutes east, four chains and forty-seven links to a stake at a turn of the road fence

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eighty-two links distant, to the right of or square across the road from said Pomeroy's stone wall; thence (2) on the side of said road south, fifty-one degrees forty minutes east, two chains and sixty-six links to a stake at the junction of the south Madison road or High Street with the northerly side of the road leading to Joseph Roberts—said stake is sixty-five and three-fourth links distant square across the road from the face of said stone wall; thence (3) on the northerly side of said last mentioned road north, eighty-nine degrees forty-five minutes west, eight chains and fifty-one links to the south-easterly corner of said "Spencer Wood Lot;" thence (4) with the line of said lot north, thirty-one degrees thirty minutes east, five chains and seventy-eight links to the place of beginning, containing two acres and three hundredths of an acre of land more or less, being the same premises conveyed to Amidee Boisaubin by Alfred B. Brittin and wife, by deed dated July 1st, A. D. 1863, recorded in Morris County records of deeds, Book F 6, pages 437, &c., excepting out of the above described lots so much thereof as was heretofore conveyed by said Amidee Boisaubin by two deeds of conveyance: one to Nicholas C. Geoffrey, dated August 8th, A. D. 1865, recorded in the aforesaid records of deeds, Book V 6, pages 390, &c., the other to Lawrence Shae, dated August 7th, A. D. 1865, and lodged for record in the aforesaid records May 21st, A. D. 1866, but not as yet recorded. This conveyance is made and executed in pursuance of a decree of the Court of Chancery of New Jersey, made on the seventh day of May, eighteen hundred and sixty-seven, in a cause pending in said Court, wherein Eder V. Haughwout is complainant, and Amidee Boisaubin and others are defendants. Together with all and singular the profits, privileges and advantages, with the appurtenances to the same belonging, or in any wise appertaining; also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in, and to every part and parcel thereof; to have and to hold all and singular the above described tracts or lots of land and premises with the appurtenances, unto the said party of the second part, his heirs and assigns, to the proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said Amidee Boisaubin hath hereunto set his hand and seal in the day and year first above written.

AMIDEE BOISAUBIN.

Signed, Sealed and Delivered }
in the presence of }

GEORGE W. FORSYTH.

2 DOL.
US REV
STAMP.

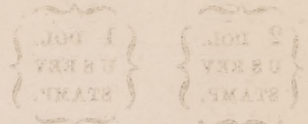
1 DOL.
US REV
STAMP.

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Acknowledged August 10th, 1867, before George W. Forsyth, Master.

In witness whereof the said Amidee Boisaubin hath hereunto set his hand and seal in the day and year first above written.

Subscribed and Delivered in the presence of
 GEORGE W. FORSYTH



W EXHIBIT N, FOR COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

Between EDER V. HAUGHWOUT,
 GEORGE POMEROY, Compl'ts, } *On Bill,*
and } *&c.*
 MICHAEL MURPHY, Defendant.

Statement of certain bonds and mortgages held by Nicholas 20
 C. Geoffrey against Amidee Boisaubin, and assigned by said
 Geoffrey to William Davidson, Esq.

July 2d, 1866.

First. Bond dated April 1st, 1865, at one year,	\$3,700 00
Interest to August 16th, 1865, 4 1-2 months,	83 25

\$3,783 25

Then paid by conveyance by Boisaubin to Geoffrey of part mortgaged premises,	1,000 00
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2,783 25

Interest to January 2d, 1866, 4 1-2 months,	62 01
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2,845 26

Then paid cash,	400 00
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2,445 26

Interest to July 2d, 1866, 6 months,	73 35
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2,518 61 40

Second. Bond of Amidee Boisaubin to Thomas Nugent, dated July 1st, 1865, at one year.
 Amount of this bond 3,400 00
 Was advanced by Geoffrey to Nugent, August 26th, 1865, old mortgage cancelled and new mortgage given by Boisaubin to Geoffrey, dated September 8th, 1865.
 Interest August 26th, 1865, to July 2d, 1866, 189 27

10 6,107 88

As collateral.
 Bond and mortgage of Lawrence Shae, Aug. 7th, 1865, \$200.
 Bond and mortgage of Michael Murray, August 7th, 1865, \$200.
N. C. GEOFFREY.

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The bill is to recover the specific performance of a contract to convey land to the plaintiff. The defendant claims that he would be entitled to the land if the plaintiff had not conveyed it to him. The plaintiff claims that he conveyed it to him in good faith and for value. The court finds in favor of the plaintiff and awards him the land. The court also awards him the interest on the purchase price of the land from the date of the purchase to the date of the judgment. The court also awards him the costs of the suit.

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OPINION OF THE CHANCELLOR.

IN CHANCERY. *May Term, 1870.*

HAUGHWOUT, and POMEROY, }
vs
MURPHY. }

Argued upon pleadings and proofs.

Mr. Pitney for Complainants.

20

Mr. Vanatta for Defendant.

THE CHANCELLOR :

The bill is to enforce the specific performance of a contract to convey lands. In September, 1863, A. Boisaubin agreed in writing with the complainant, Haughwout, that he would convey to him a tract of land containing twenty-two acres, known as the "Spencer Wood," for \$200 per acre, and gave Haughwout until March 1st, 1864, to accept the proposition. Haughwout accepted it on the last day of February, 1864. A deed was about this time prepared from Boisaubin to Haughwout for this tract, but for some reason which does not appear, it was not executed or delivered. There is no proof that any thing was done by either party in fulfilment of the contract, or to demand its execution by the other, until August 31st, 1865. During this time Boisaubin had publicly by a placard set up on the tract advertised it for sale in lots. Lots were sold to several purchasers, and on the 7th of August, 1865, Murphy the defendant, purchased of Boisaubin for \$600 three lots, the property in question in this suit. The conveyance was made and delivered on that day, and \$400, part of 40

the consideration, was paid on delivery of the deed ; a mortgage for \$200, the residue of the consideration, was executed and acknowledged on August 19th, but not then delivered. On the 20th of August, Murphy found that two prior mortgages on the whole tract had not been canceled of record, and went to see Boisaubin about it. Boisaubin said they were satisfied, and he supposed that they were canceled. He promised to see to it, and handed to Murphy \$400, which he insisted on his taking and keeping until these mortgages should
10 be canceled of record. He found upon inquiry that releases of these three lots from the two mortgages had been properly executed, but by some inadvertence had not been recorded, and brought a note dated August 29th, from Mr. Dalrimple, his counsel, to Murphy, stating that the mortgages were canceled and released. This note was delivered to Murphy by Boisaubin on the evening of the 29th or 30th of August, when the \$400 was handed back to Boisaubin, and the next day Murphy delivered to him the mortgage for the \$200. About these dates there is some uncertainty, and some dis-
20 crepancy in the evidence of both Murphy and Boisaubin, and especially between their evidence in this suit, and in that heretofore brought by Haughwout against Boisaubin. But upon a careful examination of the whole I am satisfied that it establishes the facts as I have stated them. On the 31st of August, Haughwout filed a bill in this Court against Boisaubin to compel a conveyance of the whole tract, but did not make Murphy a party. A notice of *lis pendens* was filed in the County Clerk's office September 1st, 1865. It does not appear that any subpoena was issued or served : It is
30 from the service of the subpoena only that *lis pendens* has effect.

Murray vs. Ballow, 1. J. C. R., 576.

The Statute, Nix. Dig., 112, §57, does not give any effect to the notice required to be filed by it, but declares that the suit shall not be notice until such filing.

Murphy had no notice of the contract with Haughwout at the time of the conveyance, and payment of the \$400. But it is contended that he had power to retain the \$400 given to him by Boisaubin, and that waiving such power he paid it
40 back to him after he had notice of Haughwout's claim. The

\$400 handed to him by Boisaubin was for a specific purpose ; it was a pledge that Boisaubin would free the property from the mortgages. It was not given to refund the purchase money or to rescind the sale and take back the property. Like any other pledge, it must be delivered up when the purpose for which it was given was accomplished. Murphy had no claim or lien upon it for any other object, whether connected with the purchase or not. He was bound both in conscience and in law to return it, and the contract with Haughwout would have been no defence at law to a suit for 10 this \$400, any more than if a watch or diamond had been pledged.

Murphy then must be held to have taken his title and to have paid \$400, being two-thirds of the consideration money, before any notice of the claim of Haughwout or the contract on which that claim was founded. There is no question but that a person to whom the owner of land has contracted to sell it may compel any one who after such contract, and with notice of it, takes the legal title from the vendor to perform the contract. Such person to hold the title against such con- 20 tract of sale must be a *bona fide* purchaser without notice, and must have paid the purchase money ; if part remains unpaid after the sale, as to such part he is not protected, but it may be claimed by the prior purchaser. But in such case as was held by Justice Story in the important and well considered case of *Flagg vs. Mann and al.*, 2 Sumner, 566. The purchaser will hold the legal title conveyed to him, free from any claim under the prior contract, except to the purchase money not paid until after notice of the contract.

This narrows the case to the claim of the complainants to 30 have the \$200 secured by the mortgage appropriated to their claim. It is held that a *bona fide* purchaser without notice is only protected so far as the purchase money is actually paid before notice. That securities have been given for the payment is not sufficient to protect him. The lien of the purchaser under the prior contract would be a sufficient defence to those securities, and the grantee ought not to pay them. In this case the mortgage itself was delivered to Boisaubin after the notice in the conversation with Dalrimple. I consider it very doubtful whether the vague notice from 40

Dalrimple was sufficient to put Murphy on his inquiry, but I shall assume that it was sufficient for the purpose of this decision.

But the complainant has been guilty of laches in bringing his suit for the lots in question in this cause. On the thirty-first of October, 1865, he had notice that Murphy had purchased these lots, and claimed to hold them, and that as to them Boisaubin could not give a legal title. He did not, so far as appears, make any demand on Murphy until March 10 24th, 1868, and did not file his bill until after that. He suffered two years and a half to elapse in which Murphy did not know whether he would be called on to convey these three lots. In the mean time the mortgage became due, and Murphy paid it. It is at least doubtful whether Murphy could have offered a legal defence to it, for the title conveyed to him was good, unless Haughwout should bring suit for specific performance.

It is the doctrine of equity that specific performance will not be decreed in favor of a complainant who has been guilty 20 of laches, either in performing his part of a contract or in applying to the Court for relief.

Fry on specific performance, §730, 732, 736 and 737.

Lord Chancellor Cranworth says in *Eads vs. Williams*, 4 De. G. Mc. N. and G., 591,

“Specific performance is relief which this Court will not give, unless in cases where the parties seeking it come as promptly as the nature of the case will permit,” and he quotes with approbation, *Watson vs Reid*, 1. Russ and My. 236, in which Sir John Leach considered a delay of twelve 30 months unaccounted for, a ground to refuse relief. And *Southcomb vs. The Bishop of Exeter*, 6 Hare, 213, in which V. C. Wigram held that delay in bringing suit from February, 1842, to August, 1843, was fatal to relief.

Murphy might have been made a party to the bill against Boisaubin, he was a proper if not a necessary party, and if his deed was not known to Haughwout at the filing of the bill, he had notice by the filing of the answer in October, 1865, stating the giving of this deed, and might then have amended his bill so as to make Murphy a party, or he might 40 then have commenced suit against him. The final decree in

that suit was in March, 1867, and this suit was not commenced until more than a year after that. This delay is unaccounted for ; there does not appear to exist any good reason for it ; it is mere laches.

The only claim that exists is for the \$200, and Murphy might presume that all damages sustained by not conveying these lots would be adjusted in the suit with Boisaubin, and that a suit would not be brought against him for that amount. No claim was made on him for any deficiency of Boisaubin in paying the damages, nor does it appear by any 10 evidence that any such deficiency exists, which would absorb this \$200, if it had not been paid.

In addition to these facts, this mortgage for \$200 was bought up by Davidson, a partner of Haughwout, by the advice and under the direction of Haughwout's counsel, and at his request ; I do not doubt but with Davidson's own money, but for the benefit of Haughwout. It was held and controlled by the counsel of Haughwout in such manner as leaves no room to doubt that it was so bought and controlled for his benefit alone. The mortgage was assigned to David- 20 son as collateral to the principal mortgages which he purchased at the same time, for which he paid only \$5,800, being the amount due on them ; Murphy paid this \$200 to Haughwout's counsel, nominally for the use of Davidson, but it really went to Haughwout, who paid Davidson only the \$5,800 paid by him for the principal mortgages. The evidence is somewhat confused, but I am convinced that the amount of \$200 secured by this mortgage was actually received by Haughwout. And it would be highly inequitable under such 30 circumstances to allow him in any way to compel Murphy to pay the same a second time.

The bill must be dismissed.

Murphy might have been made a party to the bill if Boisaubin he was a proper if not a necessary party and if his deed was not known to Haughwout at the time of the bill he had notice by the filing of the answer in October 1865 stating the filing of this deed and might then have amended the bill so as to make Murphy a party or he might do then have commenced suit against him. The final decree is

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between EDER V. HAUGHWOUT, and GEO. POMEROY, Appellants, <i>and</i> 10 MICHAEL MURPHY, Appellee.	}	<i>On Bill, &c.</i>
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To the Honorable the Court of Errors and Appeals of the State of New Jersey :

The humble petition of Eder V. Haughwout and George Pomeroy, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by the Hon. Abraham O. Zabriskie, Chancellor of New Jersey, dated May twenty-fourth, eighteen hundred and seventy, wherein your petitioners were complainants, and the said Michael Murphy 20 was defendant, in this respect, that the said decree adjudges that your petitioners are not entitled to the relief prayed for in their bill of complaint in said cause, or any part thereof, and that your petitioners' bill of complaint should be dismissed with costs.

And your petitioners humbly appeal from all and every part of said decree, upon the ground that the same is erroneous, for that your petitioners are entitled to the relief prayed for in their said bill of complaint, or some part thereof.

Your petitioners therefore pray that the said decree of the 30 said Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

Dated June 6th, 1870.

PITNEY & YOUNGBLOOD, Sol^r,
and of Counsel with the Appellants.

New Jersey Court of Errors and Appeals.

HAUGHWOUT AND POMEROY,
Complainants and Appellants,
and
MICHAEL MURPHY,
Defendant and Appellee. } On Appeal from Decree
of Chancellor.

BRIEF OF H. C. PITNEY, FOR APPELLANTS.

Haughwout's title to the premises in question became perfect in equity on or about March 1st, 1864, when the option to purchase the Spencer Woods was accepted by him, and the offer made to complete the contract.

From that time, Boisaubin became a mere trustee of the legal estate for Haughwout, and the latter a trustee of the purchase money for the former.

So much is conclusively settled by the record in Haughwout *vs.* Boisaubin, p. 63-64, 79-81.

Whoever took the legal estate from Boisaubin after that date, took it burthened with this trust, unless he took it under such circumstances as to entitle him to the position of a bona fide purchaser for value paid before notice of the trust.

Complainants contend that defendant does not occupy such position, and ask a declaration to that effect.

They do not ask for specific performance of the contract between Haughwout and Boisaubin; that has already been performed, and a conveyance made and executed by Boisaubin to Complainants, including the premises claimed by defendants.

Exhibit E, p. 19 and 107.

Complainants' chain of legal title is complete. What they ask is, that the Court shall decree and declare that such title is paramount to defendant's as to the lots in question in this suit.

Prayer of bill, p. 9 and 10.

Complainants do not claim or ask for any part of the purchase money paid by Murphy to Boisaubin. Such claim is not within the scope of their bill.

They disaffirm the sale from Boisaubin to Murphy, and claim the land itself.

Haughwout established his equitable title against Boisaubin after a fierce litigation. The only question in this cause is whether or not Murphy is entitled to the position of a bona fide purchaser, for value paid before notice of Haughwout's equitable title.

Constructive notice in pais is sufficient; that is, notice of such facts and circumstances as would excite the suspicions of a prudent man and put him on inquiry.

We allege and prove distinct and direct notice, from three sources.

1. Judge Dalrimple's warning.
2. Mr. Little's do.
3. Lis pendens duly filed and recorded Sept. 1st, 1865, the day after filing bill in Chancery for specific performance.

Defendant in this cause swears he paid Boisaubin \$400 on account of purchase money, about August 7th; that Boisaubin handed this money back to him about August 20th or 21st; that he paid Boisaubin this money a second time shortly after the date of Judge Dalrimple's letter of August 29th.

Exhibit 4, p. 58.

Complainants contend that such second payment was not made until long after Sept. 1st. The evidence on this point, will be referred to hereafter.

As to the date of notice to Murphy of Haughwout's equity.

The conversation with Judge Dalrimple was undoubtedly *before* Murphy received the letter of August 29th.

Murphy swears he saw the Judge twice only. Once Aug. 19th, when the mortgage to Boisaubin was acknowledged, (p. 30, l. 28-30. Exhibit No. 3. Acknowledgment of mortgage is dated Aug. 19th,) and once again, *before* he received the letter of August 29th, p. 32, l. 15, to p. 34, l. 25.

The date of this last interview with Murphy is fixed by the nature of the language used by Judge Dalrimple to Murphy, p. 50-51, and by his positive evidence, p. 51, l. 16-20, and by Murphy's evidence in the former suit, p. 55, l. 3-30.

Judge Dalrimple was counsel for Boisaubin. Knew that Haughwout claimed the property, and threatened suit, p. 48, l. 29—p. 49, l. 35. He had also acted as counsel for Mr. Haughwout in closing the title to the other tract purchased by Haughwout from Boisaubin.

Boisaubin brought the injunction in *Haughwout vs. Boisaubin* to Judge Dalrimple as soon as it was received, p. 44, l. 18-28.

Judge Dalrimple would not have talked to Murphy as he did, after he knew that the bill was filed against Boisaubin. See Murphy's account, p. 34, l. 8-25.

The notice from Judge Dalrimple was quite sufficient.

The doctrine that notice must come from the party claiming title, is exploded. 2 W. & T. L. C. in Eq. Ed. of 1859, 157-60, Am. notes.

Curtis vs. Mundy. 3 Met. 405.

Ripple vs. Ripple. 1 Rawle, 386.

Jackson vs. Caldwell. 1 Cow. 641-2, 644-5.

Williamson vs. Brown. 15 N. Y. 354.

Green vs. Slayter. 4 J. C. 46.

The conversation with Mr. Little was almost contemporaneous with that with Judge Dalrimple, and undoubtedly was the result of Judge Dalrimple's advice to see some other lawyer, p. 32 and 34, p. 54, l. 10—p. 55, l. 20, p. 55, l. 30, —56, l. 10.

The whole conduct of the man, and his evidence in both causes, prove that at the time he called on Mr. Little and Judge Dalrimple, the purchase of the lots was still in fieri, the transaction unfinished, his money under his control if not in his actual possession, and he debating whether to complete the purchase or not.

He does not give the real reason for his calling on Mr. Little, p. 32, l. 20-30, p. 33, l. 5-40, p. 54, l. 16—p. 55, l. 20.

The notice of *lis pendens* was filed before Murphy repaid the \$400 to Boisaubin.

In his deposition in the other cause, made April 5th, 1866, only a few months after the transactions in question, he said nothing about Judge Dalrimple's letter in connexion with the second payment of the money.

"Q. When you paid Mr. Boisaubin the money the second time about last Nov. or 1st Dec. as you have stated, what conversation did you have with Mr. Boisaubin ?

"A. I did not have any ; the man came in the house ; he was in a hurry ; I gave him the money ; *I told him a few days before to come for it.*"

"Q. What conversation occurred when you told him to come for the money ?"

"A. Him and me hadn't much to say, *only I told him to come down to the house for the money.*"

P. 57, l. 35—p. 58, l. 2.

(See also, p. 34, l. 37-40, p. 35, l. 15-24, where he avoids swearing that he requested Boisaubin to come for the money. See Boisaubin's answer, p. 84, l. 25-30.)

This he swore on both occasions, was the day before he delivered the mortgage, p. 57, l. 5-17, p. 34, l. 33-35, and was the last of Nov. or 1st of Dec., p. 53, l. 20-35.

“I bought a part of it; I bought it of A. Boisaubin; I got a deed for it on the 7th of Aug. 1865; I bought three lots; the price was \$200 per lot; I paid \$400 in cash; the other \$200 I gave a mortgage for; I gave the mortgage about the last of September; I gave the mortgage the last of Nov. or 1st of Dec.”

In the same evidence he speaks of other dates, Aug. 28th and Aug. 29th, &c. He also swears he kept the money three weeks, p. 56, l. 9-11.

He received it back from Boisaubin after the acknowledgment of the mortgage, Aug. 19th; the exact date was, as Murphy says, Aug. 20th or 21st, p. 36, l. 1-10; three weeks from that time would bring it to Sept. 10th, ten days after filing *lis pendens*.

Murphy has no knowledge that Judge Dalrimple's letter was delivered *immediately* after its date. Boisaubin is the only witness who swears to that, and he is hopelessly impeached; see his answer, p. 40, l. 33—p. 41, l. 15, p. 84, l. 9-30, sworn to Nov. 3d, 1865.

His attempted explanation of this discrepancy, makes it worse, p. 42, l. 32—p. 43, l. 40.

Murphy's swearing several times over that he asked Boisaubin to come down for the money several days before it was paid, is conclusive that it was not paid the second time until after the filing of the *lis pendens*, or the interview with Mr. Little, and disconnects such payment entirely from the date of Judge Dalrimple's letter, and falsifies his evidence in this cause.

The deed from Boisaubin to Murphy was recorded October 5th, 1865; the mortgage for \$200, several months later. No reason is assigned for this delay. Murphy visited Judge Dalrimple and the Clerk's office, August 19th; visited the Judge again before the receipt of his letter of Aug. 29th; also Mr. Little; learned the property was in dispute, and yet did not record his deed until October 5th, see p. 33, l. 30; —p. 34, l. 10.

Boisaubin's answer, though sworn to, Nov. 3d, was probably drawn some time previously, and, it may be, before Oct. 5th.

Read Murphy's evidence in both causes, in connection with Boisaubin's answer, on this point, and no one can resist the belief that Boisaubin's answer in this respect is true, and that when that clause was penned, Murphy still had in his possession the whole purchase money of the three lots in question, and that the transaction was considered unfinished, the money being retained to indemnify him against Haughwout's claim.

There was at that time no such occasion to prevaricate, as has arisen in this cause. Compare Murphy's evidence, p. 57, l. 37, p. 35, l. 20–22, and Boisaubin's answer, p. 84, l. 27.

Murphy is estopped from setting up in this cause that he was mistaken in his testimony in the other cause. In order to adjust the equities between Haughwout and Boisaubin arising out of the peculiar circumstances of the case, it became necessary to enquire what portions of the land had been sold by Boisaubin to bona fide purchasers, without notice of Haughwout's equitable rights; such portions were to be excepted from Boisaubin's conveyance to Haughwout, and Bois-

Boisaubin was to account to Haughwout for the price of the lots so sold.

See order of reference and Master's report, p. 94, 95, 96, p. 98, l. 6-30, and Schedule B, p. 99, l. 30. Final decree, p. 100, 101.

This equity was adjusted as follows:

21, 27-100 acres of land at \$200 \$4,254 00

Less received by Boisaubin from Geoffrey, and Shaeg 1,400 00

Amt. H. must pay B. for land; \$2,854 00

To be applied, however, toward the mortgage, which amounted 6,109 76

\$3,255 76

This amount was the deficiency which Boisaubin was decreed to pay towards the discharge of the mortgages.

The Master was satisfied, upon reading Murphy's deposition, that he was not in the position of a bona fide purchaser, and so did not charge Boisaubin with the \$600 purchase money of his deed. If he had done so, the deficiency against Boisaubin must have been so much more.

In this matter, the Chancellor fell into a palpable error; see opinion, p. 117; l. 10.

Haughwout paid Boisaubin for these very lots, on the assumption that he would acquire a good title by the conveyance of Boisaubin under the decree in that cause.

The bill in this cause distinctly alleges that a subpoena to answer was issued and served in the specific performance suit, p. 3, l. 20-30.

This allegation is not denied by the answer, nor are the complainants asked to prove it.

It therefore stands admitted.

Under the present practice of answering without oath, the the element of discovery is eliminated from the answer, and its office is simply to make an issue, to ascertain which of the allegations of the bill are to be disputed, to be put in issue. And such as are not so put in issue, are admitted for the purposes of the suit.

It is proven that an injunction was issued immediately after the bill was filed, and served on Boisaubin. The record shows that he answered within the time required by law, and that the cause was proceeded in with diligence, and brought to a hearing.

Under such circumstances, and a notice of *lis pendens* having been duly filed in the Clerk's Office, the issuing of a subpoena is an idle ceremony and not necessary to make the recorded notice effectual.

The mere filing the bill with the Clerk and taking no steps thereon, might be nugatory; *but any means which result in bringing the defendant into Court, and in the active prosecution of the suit, are sufficient.*

The Chancellor's ruling is contrary to the letter and spirit of the statute, (Nixon's Digest, p. 112, sec. 57,) and the understanding of the profession.

The prompt filing of the answer and diligent prosecution of the suit, raises a presumption that the subpoena was issued and

served ; especially as it was distinctly alleged in the bill and not denied by the answer.

The true measure of protection to a bona fide purchaser for value paid, before notice, is *indemnity*.

Campbell vs. Nichols. 4 Vroom, 87-88.

Holcomb vs. Wyckoff. Feb. T., 1870, Supreme Court.

Having innocently dealt with a person clothed with apparent title, he is entitled to be made whole, *and no more*, by the real owner, before being dispossessed.

Murphy purchased from Haughwout's trustee, and took the property burthened with the trust. If he paid any money before he had notice of the trust, he will be protected to that extent. Whatever he paid before notice he is entitled to have returned to him. The controversy is not as to whether complainants are entitled to any money from deft., but whether deft. is entitled to any money from compl'ts., as a condition to the relief prayed for.

If he paid his \$400 in good faith before he had notice of Compl'ts equity, he is entitled to have it returned by compl'ts.

Compl'ts do not affirm the deed from Boisaubin to Murphy, and claim the purchase money as unpaid ; but they disaffirm it, and pray that it may be set aside, and the title under it be declared subsequent to theirs.

The decree in Flagg vs. Hann and al, 2 Sumner 566, referred to by the Chr. in his opinion, was the result of the peculiar circumstances of that case, and of the prayer of the bill, which prayed for unpaid purchase money.

On the other hand, Judge Story in his *Equity Juris'e*, sec. 64 c., says : " So the purchaser must have paid his purchase money before notice, for otherwise he will not be protected ; *and if he have paid a part only, he will be protected pro tante only.*"

And in *Wormley vs. Wormley*, 8 Wheaton, 421, 449-450, he says : " It is a settled rule in equity, that a purchaser without notice, to be entitled to protection, must not only be so at the contract or conveyance, but at the payment of the purchase money. The answer of Castleman and McCormick does not allege any such want of notice. On the contrary, it is in proof that upwards of \$3,000 of the purchase money was paid in the Autumn of 1813 and Spring of 1814, not only after full notice of the anterior transactions, but after the commencement of the present suit. It appears, therefore, * * * that Castleman and McCormick were not purchasers without notice of the material facts constituting the breach of trust, *and that the Frederic lands ought, in their hands, to stand charged with the trusts in the marriage settlement.*" And such was the decree.

In *Jones vs. Powles*, 3 Mylue and Keen, 581, 599, the defendants claimed title under a person in possession of an equity of redemption, as devisee under a forged will, and were protected by a conveyance of the legal estate from a mortgagee of the original owner and alleged testator.

The Master of the Rolls decreed the estate to the complainants, the heirs at law, upon payment to defendants of the sums (a part only of the purchase money) actually paid by them to the pretended devisee before notice of the forgery.

“It is essential to entitle the vendee to protection in Eng-
 “land, that the purchase should have been brought to a con-
 “clusion by the payment of the whole of the purchase money,
 “on the one part, and the execution of the conveyance on the
 “other; and relief will be denied if notice be given while the
 “transaction is incomplete in either particular.”

Am. Notes to *Basset vs. Nosworthy*, 2 W. and T. L. C. in Eq. Ed. 1859, p. 101.

“In *Flagg vs. Mann*, 2 Sumner 486, the Court would
 “seem to have entertained the opinion that part payment of
 “the purchase money entitled the purchaser to the land itself,
 “subject to a lien for the part unpaid, in favor of the holder
 “of the antecedent equity which the purchaser had defeated.
 “But it is plain that as equity will afford a purchaser protec-
 “tion as against a vendor who has sold in fraud or in con-
 “tempt of the trust, by enjoining the collection or compelling
 “the surrender of a bond given or obtained for purchase
 “money, the right to relief” (on the part of the subsequent
 purchaser) “against the cestui que trust,” (the holder of the
 prior equity), “must, in general, be limited to compensation
 “and reimbursement for the amount actually expended on the
 “land or paid for it before notice.”

Am. Notes to *W. & T., L. C. in Eq.* Ed. 1859, p. 117.

Lord St. Leonard's, in 3 V. & P., ch. 22, sec. 2, par. 16,
 says: “Notice before actual payment of all the money, al-
 “though it be secured and the conveyance actually executed,
 “or before the execution of the conveyance, notwithstanding
 “that the money be paid, is equivalent to notice before con-
 “tract.”

Chancellor Williamson, also, went on the principle of indemnity only to the subsequent purchaser, in *Campbell vs. Campbell*, 3 Stock, 1277.

The plea in equity of bona fide purchaser for value, was generally used as a protection against discovery, in aid of a claim of title absolute, and possession under it; and the fact that a portion of the purchase money remaining unpaid, made the plea vicious, shows that a defendant under such circumstances could not escape and retain the land by simply paying over the amount remaining unpaid.

The rule adopted by the Chancellor, gives the subsequent purchaser, who has paid ever so little of his purchase money before notice of the claim of the prior purchaser, more than indemnity, viz. The benefit of his bargain, which is the very equity belonging to the prior purchaser, and which, in a case like this, he seeks by his suit in equity.

Where the dispute is simply which party is entitled to the profit of his bargain, the oldest equity, other things being equal, must prevail.

The principle upon which the Court decided *Campbell vs. Nichols*, and *Hollecomb vs. Wyckoff*, also intervenes against the purchaser having the benefit of his bargain.

It is no relief in favor of a holder of a prior contract of purchase, and against a subsequent purchaser, to merely order the latter to pay the unpaid purchase money to the former.

Suppose A on the first day of April contracts to convey to B on the first day of May a tract of land at the price of \$10,000, to be paid on the delivery of the deed; and suppose on the 25th of April A conveys the land to C (who has no notice of B's contract) and receives cash \$1,000, and bond

and mortgage \$9,000, and then, on May 1st, B tenders the money to A and demands conveyance, and at once files a bill in equity against A and C, praying that C may convey to him on payment of the \$1,000 paid by C before notice; in the mean time the land turns out to be worth \$25,000; what sort of relief would it be to say to B, "C must keep the land and pay you the \$9,000 of purchase money remaining unpaid?"

Of course B must at once hand the \$9,000 over to A as purchase money, or rather he is not entitled to it at all; and so he would take nothing by his bill, and lose the profit and benefit of his bargain, which he was clearly entitled to as against C by reason of his equity being older than C's, and which was the only thing in dispute between the parties. 2 W. & T. L. C. * 34, 35, note to *La Neve vs. La Neve*.

The English rule strictly carried out, refused *any* relief to a bona fide purchaser unless he had paid *all* his purchase money; but in this country, he was relieved to the extent of reimbursement of what he had paid in good faith before notice. 2 W. & T. L. C. p. 116.

Youst vs. Martin. 3 S. & R. 423.

Bellas vs. McCarty. 10 Watts, 13.

Uhrick vs. Beck. 1 Harris Pa. 631, was an issue to test the validity of a judgment for \$1,500, recovered upon bonds given in part payment of purchase money of land which the vendor held in trust for himself and others as tenants in common. \$250 in cash had been paid before notice of the trust.

The defence to the judgment was, that the judgment debtor had been notified of the trust before payment of the judgment. The Court held this a good defence, and set aside the judgment, and said: "It is true that Beck paid \$250, to

Uhrick who was the *apparent* legal owner ; and if he purchased without notice of the trust, he would have an interest in the land to *that extent*, for which he is *probably more than compensated by the rents and profits.*"

And again : " So far as an innocent purchaser is concerned, *he is protected so far as he has paid his money.*"

After the \$400 had been handed back by Boisaubin to Murphy, and while the latter retained it in his possession, he stood as if no money had been paid. The Chancellor's view of the transaction is erroneous, see p. 114, 115.

The money was handed back as *purchase money* ; it was the exact amount and identical money paid; and the object was to put Murphy in *statu quo*.

If he had refused to pay the second time, Boisaubin must have sued him for *purchase money*, and Murphy could have defended on the ground that there was a prior claim to the property, of which he had notice.

2 W. & T. L. C. * 54 & 55, Ed. 1859, p. 152, and authorities cited.

Jones vs. Stanly. 2 Eq. Cas. Ab. 685.

Wigg vs. Wigg. 1 Atkins, 384.

Tourville vs. Naish. 3 P. Wm's, 307.

Murphy having advised with Judge Dalrimple, and talked with Mr. Little, and heard Boisaubin's story, decided deliberately to pay the money and *keep the property*. "*I have bought it, I said, and I will keep it,*" p. 54, l. 19.

He had confidence in Boisaubin, and believed and trusted him. "*I did not ask Mr. Boisaubin to give me back the money.* Mr. Boisaubin gave me the money, the \$400; it wasn't with my wishes he gave it to me; if it was \$4,000 I would have left it with him as soon as \$400," p. 54, l. 5-10.

"Q. You had perfect confidence in Mr. Boisaubin, had you not, that he would give you a good title and protect your title, and wouldn't keep your money if the title didn't prove good, hadn't you?"

"A. *I knew he wouldn't take my money if the title wasn't good,*" p. 56, l. 40—p. 57, l. 4.

So Mr. Little, "*he said if that was the only risk, he would take it, for he had confidence in Mr. Boisaubin,*" p. 23, l. 40—p. 24, l. 2.

The whole case shows that he was willing to take the chances, and having so decided, put his deed on record, and told Boisaubin to come for his money.

Having had actual and constructive notice of Haughwout's claim and the suit brought thereon, before he paid his money, and while there was ample *locus penitentiae*, he must be held bound by the result.

If he thought he could make a better defence than Boisaubin, it was his right and duty to make himself a defendant to this suit, and not doing so, he is barred.

Finch vs. Newnham. 2 Vernon, 216.

Landon vs. Morris. 5 Sim., 247, 262.

Metcalf vs. Pulvertoft. 2 V. & B., 206, 207.

2 Story's Eq. Jur. 908 and note.

Haughwout had no notice of the deed to Murphy until after it was filed. The deed was not recorded, and no possession was taken under it until long afterwards, April, 1866, p. 32, l. 5-15; Answer, p. 17, l. 10; BH, p. 7, l. 10-25; and Haughwout was not obliged to file a supplemental bill to bring Murphy in, as he had no perfect title in the premises.

It is the settled rule of the Court, that no notice need be taken by the complaints of parties coming in *pendente lite* under the defendant.

The position of the defendant is not strengthened by the payment of the \$200 mortgage.

It was assigned to Davidson as collateral to Boisaubin's bond and mort., and the payment ensured to Boisaubin's benefit only. His bonded debt was reduced so much thereby, and as a consequence, the decree for deficiency against him was reduced. See exhibit F.

The payment was purely voluntary. P. 28, l. 30-35. P. 47.

Haughwout re-paid to Davidson the whole sum, \$5,800, with int., advanced by him to Geoffrey. P. 25, l. 15-35. P. 29, l. 10-40.

The \$212 received by Davidson's Solicitor from Murphy, was paid to Davidson individually; did not go into the cash of the partnership, and was entirely forgotten by Davidson until the check was shown him. P. 25, l. 18-25. P. 28, l. 30-40.

The evidence shows that Mr. Davidson made the \$212 as a profit on the transaction, as he had a perfect right to do. P. 26, l. 20-27. P. 29, l. 3-8.

The rules which govern suits for specific performance in England and require any prompt action on part of the complainant, have no application to this case.

New Jersey Court of Errors and Appeals

IN SENATE, JANUARY 18, 1884.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE

IN ANSWER TO A RESOLUTION PASSED BY THE SENATE, MARCH 18, 1883.

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