

Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

JANE W. BERRYMAN, and WILLIAM H. BERRYMAN her husband, appellants, and WILLIAM GRAHAM, re- spondent.	} } } Bill to foreclose.
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Charles H. Voorhis, of counsel for appellants.

Lansing Zabriskie, of counsel for respondent.

Bill of Complaint.

[Filed February 25, 1867.]

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

In chancery complaining, showeth unto your Honor, your orator, William Graham, of the city, county, and state of New York, that on or about the twenty-third day of August, in the year eighteen hundred and sixty-five, Jane W. Berryman, and William H. Berryman her husband, of the township of New Barbadoes, in the county of Bergen, and state 10 of New Jersey, made and executed, as party of the first part, unto your orator, as party of the second part, a certain indenture of mortgage, bearing date on the day and year last

aforesaid, wherein it was recited that the said Jane W. Berryman was justly indebted to your orator in the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, lawful money of the United States, and had agreed with your orator, that she would pay the same to him, his executors, administrators, and assigns, on the twenty-third day of February, eighteen hundred and sixty-seven, and would pay to him or them the interest thereon at the rate of seven per cent. per annum from the date thereof, at the end
10 of each and every half year. And it was thereby witnessed, that the said Jane W. Berryman, and William H. Berryman her husband, for the better securing the payment of the said sum of money, with interest thereon, as therein above mentioned, and also for and in consideration of the sum of one dollar to them in hand paid by your orator, at or before the ensembling and delivery of those presents, did grant, bargain, sell, alien, release, convey, and confirm unto your orator, his heirs and assigns forever, all that certain tract or parcel of land and premises situate in the township of New Barbadoes,
20 in the county of Bergen, and state of New Jersey, beginning at the centre of the Spring Valley road, in range with the northerly line of Albert Terhune; and running thence (1) north, forty-five and a half degrees west, sixty-one chains to the centre of Sprout brook; thence (2) northerly, along said brook to a stake and southerly line of Albert A. Voorhis; thence (3) south, forty-five and a half degrees east, ten chains and sixty links to a stump and northwest corner of woodland of Garret G. Oldis; thence (4) south, twenty-eight and a quarter degrees west, three chains and fifty links to a maple
30 tree, marked; thence (5) south, forty-five and a half degrees east, nineteen chains and fifteen links to a stake; thence (6) north, forty-six and a quarter degrees east, three chains and thirty-four links to an oak tree, marked; thence (7) north, forty-five and a half degrees west, five chains and thirty-five links to the southeasterly corner of land of Andrew A. Voorhis; thence (8) north, twenty-five and a quarter degrees east, two chains and eighty-four links to a stake; thence (9) south, forty-five and a half degrees east, thirty-four chains to a stake; thence (10) north, forty degrees east, seventy-eight links to
40 a stake four links north of a gum tree; thence (11) south,

forty-five and a half degrees east, forty-four chains and forty links to lands of Joseph Hague; thence (12) south, twenty-nine and a quarter degrees west, ten chains and eighty-seven links; thence (13) north, forty-five and one quarter degrees west, forty chains and twenty links to the centre of the Spring Valley road; thence (14) north, thirty degrees and fifteen minutes east, forty-five links, along the centre of said road, to the place of beginning; containing eighty-seven acres and eighty-seven hundredths of an acre. The above being the same premises conveyed to said Jane W. Berry- 10 man by Thomas Voorhis and wife, by deed dated April 29th, 1861. Together with all and singular the tenements, hereditaments, and appurtenances thereunto appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, curtesy, right of curtesy, profits, possession, claim, and demand whatsoever, in law as well as in equity, of the said party of the first part, of, in, and to the same and every part and parcel thereof, with the appurtenances. To have and to hold the above granted and described premises, with 20 the appurtenances, unto his heirs and assigns, to his and their own proper use, benefit, and behoof; provided those presents were upon this express condition, that if the said party of the first part, their heirs, executors, and administrators, should well and truly pay or cause to be paid unto your orator, his executors, administrators, or assigns, the said sum of money first above mentioned, at the times and in the manner therein above mentioned, according to the true intent and meaning of the agreement above set forth, that then those presents and the estate thereby granted, should cease, 30 determine, and be void. And the said party of the first part, for themselves, their heirs, executors, and administrators, did covenant and agree with your orator, his executors, administrators, and assigns, that they would pay the said debt or principal sum first above mentioned, and the interest, at the time and in the manner therein above specified. As in and by said indenture of mortgage now in your orator's possession, ready to be produced and proven as this court shall direct, will more fully and at large appear.

And your orator further shows, that after the execution of 40

said indenture of mortgage, the same was in due form of law acknowledged by the said Jane W. Berryman, and William H. Berryman her husband, before Lansing Zabriskie, a master of this court, and duly recorded in the office of the clerk in and for said county of Bergen, in Book S of Mortgages for said county, on pages 476, 477, and 478, on the twenty-fifth day of August, in the year eighteen hundred and sixty-five, as by the certificate of the clerk of said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator for greater certainty begs
10 leave to refer, if it be necessary so to do.

And your orator further shows, that the whole of the said principal money mentioned in the said bond or obligation and secured thereby, and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to your orator, so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises, the said deed of mortgage and the estate thereby
20 mortgaged as aforesaid, has become absolute in your orator and his heirs.

And your orator further shows, that the said Jane W. Berryman and William H. Berryman, since the execution of your orator's said mortgage, have possessed and enjoyed, and that they do still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive, the rents, issues, and profits thereof.

And your orator further shows and expressly charges, that
30 the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he or some other person or persons for him, have frequently and in a friendly manner applied to the said Jane W. Berryman and William H. Berryman, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage herein before mentioned and set forth; and your orator well hoped that they would have complied
40 with such reasonable requests of your orator, and would have

paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done. But now so it is, may it please your Honor, that the said Jane W. Berryman and William H. Berryman, combining and confederating together, and to and with divers other persons at present unknown to your orator but whose names, when discovered, he prays may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve 10 your orator in the premises, and defraud him of the said principal and interest moneys, so as aforesaid due to your orator on the said bond or obligation and deed of mortgage herein before mentioned, sometimes give out and pretend, that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with 20 other encumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover; whereas your orator charges and insists that if any such pretended encumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud, to injure and aggrieve your orator, and ought to be delivered up to be cancelled, or declared to be of no effect against your orator, who had no notice of any such pretended encumbrances. All which actings and doings of the said de- 30 fendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator. In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and deed of mortgage without the aid and decree 40 of this honorable court.

To the end, therefore, that the said Jane W. Berryman and William H. Berryman, and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full, and perfect answers make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, and belief; and that the said defendants, or some one of them, may be decreed
10 to pay to your orator the said principal sum so due to him on the said bond or obligation and deed of mortgage herein before mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable court; and in default thereof that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them, may be foreclosed of and from all equity of redemption or claim of, in, and to the said mortgaged premises, and every
20 part and parcel thereof, with the appurtenances, and may deliver over unto your orator all deeds, demises, and writings whatever relating to or concerning the same, or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this honorable court, be sold, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your
30 orator's costs and charges in this behalf sustained; and that your orator may have such further and other relief in the premises as to your honor may seem meet and shall be agreeable to equity and good conscience, may it please your honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Jane W. Berryman, and William H. Berryman her husband, therein and thereby commanding them, and each of them, on a certain day and under a certain penalty therein to be in-
40 serted, to be and appear before your honor in this honorable

court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your honor shall seem meet and shall be agreeable to equity and good conscience.

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

L. & A. ZABRISKIE,

Solicitors, and

L. ZABRISKIE,

Of counsel with complainant.

Answer.

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[Filed May 11, 1867.]

The answer of Jane W. Berryman, and William H. Berryman her husband, the defendants to the bill of complaint of William Graham.

These defendants, now and all times hereafter, saving and reserving unto themselves 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 these 20 defendants are advised is or are material or necessary for them to make answer unto; these defendants answering say—that they admit that on or about the twenty-third day of August, in the year one thousand eight hundred and sixty-five, these defendants made and executed, as party of the first part, unto said complainants, as party of the second part, a certain indenture of mortgage, bearing date the day and year aforesaid, containing the recitals in that behalf set forth in said bill, and that it was by the said mortgage witnessed that these defendants, for the better securing the pay- 30 ment of the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, with interest from the date thereof, at seven per cent. per annum; and also, in consideration of one dollar to them in hand paid by complainant,

did grant, bargain, sell, alien, release, convey, and confirm, unto said complainant, his heirs and assigns forever, the lands and premises set forth and described in said bill of complaint, and that said mortgage contained the other recitals set forth in said bill in that behalf.

And these defendants further answering admit, that they did, at or about the time in the said bill of complaint in that behalf alleged, acknowledge the execution of the said indenture of mortgage before the said Lansing Zabriskie, in due form of law, but whether the said mortgage was recorded, as in the said bill alleged, or not, these defendants are not informed, save by the said complainant's said bill of complaint, and cannot answer.

And these defendants further answering say, that at the time of executing the said mortgage, the said William H. Berryman gave to said complainant his notes, maturing at various times, and amounting in the aggregate (including the interest on them) to said sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, and that said mortgage was given to secure the payment of the said notes. And these defendants further answering say, that the whole of said sum has been paid by said defendants, William H. Berryman and Jane W. Berryman, except the sum of five thousand dollars, or thereabouts.

And these defendants further answering say, that the said notes and the said mortgage were obtained from these defendants by the said complainant as payment for a stock of dry goods and lease of a store in the city of New York, number forty-one, Catharine street, where said dry goods were, and that the said notes and said mortgage were so obtained through the false and fraudulent representation of the said complainant, in reference to the quality and value of the goods aforesaid, and in reference to the business capacity and the reliable character of one Alexander Just, who was to take part in the business at said store; that these defendants were induced, by the said representations of said complainant, to purchase the said goods and lease of said store at the sum aforesaid, which was a grossly extravagant price, and to share the said business with said Alexander Just, by reason whereof and of the fraudulent doings of said

Alexander Just, these defendants were obliged to close up the said business within five months thereafter, to wit, on the first day of January, eighteen hundred and sixty-six, and they aver that the said complainant has already been paid by these defendants more than the fair, honest value of the goods and property sold by him to them as aforesaid; and these defendants are advised by counsel and believe and insist that the said mortgage is null and void, and that the same and the said notes which are still unpaid, ought, under the decree of this honorable court, to be cancelled and given 10 up and surrendered to these defendants.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are 20 ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges by them in this behalf most wrongfully sustained.

CHAS. H. VOORHIS,

Sol. for and of counsel with defendants.

New Jersey, ss.—William H. Berryman and Jane W. Berryman, the defendants above named, being duly sworn according to law, on their respective oaths do depose and say— that the matters and things set forth in the foregoing an- 30 swer, so far as they relate to their own acts and doings, are true, and so far as they relate to the acts and doings of others, they believe them to be true.

W. H. BERRYMAN,
JANE W. BERRYMAN.

Sworn and subscribed, this 11th day of May, A. D. 1867,
before me, at Jersey City.

W. B. WILLIAMS, M. C.

Replication.

[Filed May 29, 1867.]

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; 10 without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; 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.

L. & A. ZABRISKIE,
Solicitors for, and

L. ZABRISKIE,
Of counsel with complainant.

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Petition.

[Filed November 25, 1867.]

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

The petition of Jane W. Berryman, and William H. Berryman her husband, of the township of New Barbadoes, in the county of Bergen, and state of New Jersey, showeth, that on the twenty-fifth day of February last past, one William Graham, of the city of New York, filed in this court, against

your petitioners, his bill for the foreclosure of a certain mortgage, therein particularly set forth, given by your petitioner to the said William Graham, upon certain lands in said county of Bergen, mentioned and described in said mortgage and said bill; that your petitioners, within the time presented by law, filed their answer to the said bill, setting forth, that at the time of executing the said mortgage the said William H. Berryman gave to said complainant his notes, maturing at various times, and amounting in the aggregate, including the interest on them, to the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, (the amount of said mortgage;) and that said mortgage was given to secure the payment of said notes, and that the whole of said sum has been paid by your petitioners, except the sum of five thousand dollars, or thereabouts; and that said notes and said mortgage were obtained from your petitioners by said complainant as payment for a stock of dry goods and lease of a store in the city of New York, number forty-one, Catharine street, where said dry goods were; and that the said notes and said mortgage were so obtained through the false and fraudulent representations of the said complainant in reference to the quality and value of the goods aforesaid, and in reference to the business capacity and the reliable character of one Alexander Just, who was to take part in the business at said store; that these petitioners were induced by the said representations of said complainant to purchase the said goods and lease of said store at the sum aforesaid, which was a grossly extravagant price, and to share the said business with said Alexander Just, by reason whereof, and of the fraudulent doings of said Alexander Just, these petitioners were obliged to close up the said business within five months thereafter, to wit, on the first day of January, eighteen hundred and sixty-six, and they aver that said complainant has already been paid by these petitioners more than the fair, honest value of the goods and property sold by him to them as aforesaid, and that they are advised by counsel, and believe and insist that the said mortgage is null and void, and that the same and said notes which are still unpaid ought, under the decree of the honorable court, to be cancelled, and given up and surrendered to these petitioners.

And these petitioners further show, that the examination of witnesses in said cause is not yet concluded.

These petitioners further show, that on the thirtieth day of August last, the said William Graham commenced an action of ejectment in the Supreme Court of this state against these petitioners, to recover possession of said premises under and by virtue of said mortgage; that issue was joined in said action on or about the sixteenth day of the present month, and that, although less than twenty days in-
 10 tervened between the joining of issue and the commencement of the Bergen Circuit Court, in December next, the said William Graham caused the said cause in the Supreme Court to be noticed for trial on the sixteenth day of November instant, on a late day in the coming Term of said Circuit Court, to wit, on the sixth day of December next.

And these petitioners further show, that the allegations in said answer contained are true, and that said answer was filed in good faith, and not for delay, and that they cannot have a complete and safe remedy against the said mortgage,
 20 as they are advised by counsel in a court of common law, but only in this honorable court. Your petitioners therefore pray your honor, the premises considered, to grant unto your petitioner the state's writ of injunction, issuing out of, and under the seal of this honorable court, to be directed to said William Graham, restraining and enjoining him, his agents, attorneys, and servants, from proceeding any further in the said suit at law. And your petitioners will ever pray.

CHAS. H. VOORHIS,

Solicitor of, and of counsel with petitioners.

30 Dated Nov. 23, 1867.

New Jersey, Bergen county, ss.—William H. Berryman, being duly sworn according to law, on his oath saith—that the matters and things set forth in the foregoing petition are true, and that the matters and things set forth in the answer above referred to are true.

W. H. BERRYMAN.

Sworn and subscribed this 25th day of November, A. D. 1867, before me.

WILLIAM S. BANTA, *M. C.*

Petition for Injunction.

[Filed December 18, 1867.]

The above named defendants, having filed their petition in this cause to the Chancellor, praying that the above named complainant should be restrained and enjoined by the injunction of this court, from proceeding further in a certain action at law in ejectment, pending in the Supreme Court of this state, upon the mortgage set forth in the bill of complainant, and the matter having been heard by the Chancellor in presence of Charles H. Voorhis, esquire, of counsel with 10 the said petitioners, and L. Zabriskie, of counsel with said complainant—

It is thereupon, on this second day of December, in the year eighteen hundred and sixty-seven, ordered by the Chancellor that the prayer of said petition be refused.

A. O. ZABRISKIE, C.

Cross-bill.

[Filed December 21, 1867.]

*To the Honorable Abraham O. Zabriskie, Chancellor of the State
of New Jersey.* 20

In chancery humbly complaining, show unto your Honor your orators, Jane W. Berryman, and William H. Berryman her husband, of the township of New Barbadoes, in the county of Bergen, and state of New Jersey, that on or about the twenty-third day of August, in the year one thousand eight hundred and sixty-five, the said Jane W. Berryman was seized in fee simple and possessed in her own right, of a certain farm hereinafter described, to wit, all that certain tract or parcel of land and premises, situate in the township of New Barbadoes, in the county of Bergen, and state of New 30 Jersey, beginning at the centre of the Spring Valley road, in range with the northerly line of Albert Terhune; and run-

ning thence (1) north, forty-five and a half degrees west, sixty-one chains to the centre of Sprout brook; thence (2) northerly, along said brook, to a stake and southerly line of Albert S. Voorhis; thence (3) south, forty-five and a half degrees east, ten chains and sixty links to a stump and north-west corner of woodland of Garret G. Oldis; thence (4) south, twenty-eight and a quarter degrees west, three chains and fifty links to a maple tree, marked; thence (5) south, forty-five and a half degrees east, nineteen chains and fifteen links
10 to a stake; thence (6) north, forty-six and a quarter degrees east, three chains and thirty-four links to an oak tree, marked; thence (7) north, forty-five and a half degrees west, five chains and thirty-five links to the southeasterly corner of land of Andrew A. Voorhis; thence (8) north, twenty-five and a quarter degrees east, two chains and eighty-four links to a stake; thence (9) south, forty-five and a half degrees east, thirty-four chains to a stake; thence (10) north, forty degrees east, seventy-eight links to a stake four links north of a gum tree; thence (11) south, forty-five and a half degrees east,
20 forty-four chains and forty links to lands of Joseph Hague; thence (12) south, twenty-nine and a quarter degrees west, ten chains and eighty-seven links; thence (13) north, forty-five and one quarter degrees west, forty chains and twenty links to the centre of the Spring Valley road; thence (14) north, thirty degrees and fifteen minutes east, forty-five links along the centre of said road to the place of beginning, containing eighty-seven acres and eighty-seven hundredths of an acre. That long prior to the said month of August, in the said year eighteen hundred and sixty-five, one Alexander
30 Just had importuned your orator, the said William H. Berryman, to assist him in starting himself in business of some kind in the city of New York, and stated that your oratrix could enjoy part of the benefits of any adventure into which she might enter with him. That your orator, the said William H. Berryman, had no money of his own to invest in that way, and his wife's whole property consisted of the farm before described, and he was induced, by the importunity of said Just, to open the matter to your oratrix, the said Jane; that your oratrix requested her husband to ascertain what
40 plan could be suggested to enable said Just to get employ-

ment, and to enable her to participate in the profits thereof, and be secure for any investment she might make, and what it was necessary for her to do to accomplish the object proposed; that said Just was informed of such authority given by your oratrix to her husband, and the said Just introduced your orator, the said William, to one William Graham, then of the firm of Graham and Aitken, the owners of a stock of dry goods in the store number forty-one, Catharine street, New York, and of a lease of said store which he wished to sell, and your orator, the said William, was so impressed with 10 the behavior of the said Graham that he gave him his confidence, and called him aside to ask him as to the capacity for business and the character of the said Just for honesty, your orator's knowledge of the said Just never having been such as to inform him as to these matters; that said Graham thereupon told your orator that the said Just was an honest and sober man, though he might, once in a year, go on a spree; that said Just was one of the best salesmen and buyers of dry goods in New York, and in relation to the said stock of goods and lease, the said Graham told your orator that 20 the said stock was worth one hundred cents on the dollar of the cost thereof, and if your orator's wife would purchase the same the goods could be sold for a clear profit of from twenty-five to fifty per cent.; and the said Graham then offered to sell the said stock of dry goods and lease to your orator's wife for ninety cents on the dollar of the price that he had bought the said goods for, and would throw in the lease of the store, which was to run for three years from the next May; said Graham further stated that the lease was a valuable one and at a low rent; that his inducement to make 30 such a good offer was to assist Just, whom he desired to benefit, as he was aware said Just was to share in the profits of the purchase; that said offer was further, that the stock and lease should be paid for to the amount of four or five thousand dollars in cash, and the balance secured to be paid in eighteen months, without interest; that said Graham also then stated that he could get ten per cent. more than he offered to sell said stock for from a Jew in Catharine street, and from one Cahill, in the Bowery; that afterwards, on or about the twenty-third day of August, in the year eighteen 40

hundred and sixty-five, your oratrix being induced to do so by her belief in the representations of the said Graham, made to her husband and repeated to her by him, an agreement was made on behalf of your oratrix by her husband and the said Just with the said William Graham, acting for himself and his partner, one James Aitken, whereby it was agreed that your oratrix should purchase from the said Graham and Aitken the said stock of dry goods and lease at twelve and
5 a half per cent. less than said stock of dry goods had been
10 bought for by the said Graham and Aitken, your orator, the said William, agreeing to give his notes therefor at three, six, nine, twelve, fifteen, and eighteen months, and your oratrix agreeing to secure the payment of the said price of said stock of dry goods and lease by a mortgage upon her said farm; that to fix the price, your oratrix was to pay for said stock of dry goods and lease, the said Graham and Aitken undertook to measure the goods composing said stock of dry goods and to ascertain the cost price thereof, and did, by themselves, their servants, and agents, go through the forms of measuring
20 ing the said goods and ascertaining said cost prices, and said Aitken wrote in a book what pretended to be the honest and just measurements and cost prices of said goods, and handed the said book to your oratrix's said agent, as a just and true account of the quantity and cost prices of said stock of dry goods, but your orator's charge that the said part of said book which contained said pretended just and true account of the quantity and cost prices of said stock of goods, did not contain a just and true account thereof, but the said account was false and fraudulent; that your orators are
30 unable to say whether the said Just was a party to the said fraud, but they desire a discovery thereof, and they charge that he was either a party to said fraud or was incapacitated to take care of your orator's interest by his habitual intoxication about that time, and was imposed upon by the said Aitken; that the said stock of dry goods was measured untruly, and the measurements thereof, in said account stated, were in excess of the true measurements by as much as from fifty to one hundred per cent., and the prices in said account stated as cost prices of said goods, were in excess of the true
40 cost prices by as much as from fifty to one hundred per cent.;

that the marking up of said measurements and prices was so glaring, that notwithstanding said Just's perfidy, if he were a party to the fraud, or his intoxication, that said Just charged the said Aitken and his agent, one Robert Gage, who aided said Aitken in making out said false account while the same was being made up, with marking up the prices of said goods beyond the cost price, and also with marking up the measurements thereof, and said Aitken, in one or two instances, lowered the prices and perhaps the measurements, but said Just, either from forgetfulness or fraud, 10 never informed your orator or oratrix of the fact that said goods were marked up in measurements or prices; that your oratrix and your orator being entirely unaware of the said fraud in estimating, according to the agreement, the price of said goods and lease, and relying upon the truthfulness of said account of the measurements and cost prices of said stock of dry goods, your oratrix bought the said stock of dry goods and lease at the sum of said fraudulent prices, multiplied by the false number of yards of the said goods, which amounted to nine thousand two hundred and seventy-six 20 dollars and fifty-one cents; and your orator gave to said Graham his notes therefor, all payable to the order of Alexander Just, and dated August 23d, 1865, as follows: one for \$1695.82, payable three months after date; one for \$1724.98, payable six months after date; one for \$1754.14, payable nine months after date; and three notes for \$1425.50 each, payable respectively in twelve, fifteen, and eighteen months; and your oratrix joined with her husband and gave a mortgage (without a bond) upon her said farm to said Graham alone, for said sum of nine thousand two hundred 30 and seventy-six dollars and fifty-one cents, so fraudulently arrived at as the value of said goods and lease of said store, according to the agreement, which mortgage bears date on the twenty-third day of August, in the year eighteen hundred and sixty-five, wherein it was recited that your oratrix, the said Jane, was justly indebted to said William Graham in the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, lawful money of the United States, and had agreed with said William Graham that she would pay the same to him, his executors, administrators, 40

and assigns, on the twenty-third day of February, eighteen hundred and sixty-seven, and would pay to him or them the interest thereon at the rate of seven per cent. per annum from the date thereof, at the end of each and every half ; and it was thereby witnessed that your oratrix and your orator, for the better securing the payment of the said sum of money, with interest thereon as therein above mentioned, and also for and in consideration of the sum of one dollar, to them in had paid by the said William Graham, at or
10 before the ensealing and delivery of those presents, did grant, bargain, sell, alien, release, convey, and confirm, unto said William Graham, his heirs and assigns forever, all the said farm above set forth and described, together with all and singular the tenements, hereditaments, and appurtenances thereunto appertaining, and the reversions and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, curtesy, right of curtesy, property, possession, claim, and demand whatsoever, in law as well as in equity, of your orators, of, in, and to
20 the same and every part and parcel thereof, with the appurtenances, to have and to hold the above granted and described premises, with the appurtenances, unto said William Graham, his heirs and assigns, to his and their own proper use, benefit, and behoof; provided these presents were upon this express condition, that if your orators, their heirs, executors, and administrators, should well and truly pay, or cause to be paid unto said William Graham, his executors, administrators, or assigns, the said sum of money first above therein mentioned, at the times and in the manner therein
30 above mentioned, according to the true intent and meaning of the agreement therein above set forth; that then these presents and the estate thereby granted should cease, determine, and be void; and your orators, for themselves, their heirs, executors, and administrators, did covenant and agree with said William Graham his executors, administrators, and assigns, that they would pay the said debt or principal sum, and the interest at the time and in the manner therein above specified; that said mortgage is the same mortgage set out and described in the bill filed in this court, on the twenty-
40 fifth day of February last past, by the said William Graham

against your orator and oratrix, and by said bill sought to be foreclosed; and your oratrix acknowledged the said mortgage in due form of law to pass the estate described in said mortgage, as in said bill set forth, being still under the belief that the said representations of the said Graham, as to the character of said stock of goods and the value thereof, and as to the character of said Just and his business capacity, and that the said false account of the quantities of said goods and of the cost prices thereof, so made out and written in said book by said Aitken, were true; but your orator and oratrix charge the fact to be that said account was false and fraudulent, and that the said Just was a drunkard, and that the said goods were not worth one half of the cost prices thereof, nor could they be sold at any profit, and that said lease was not a valuable one nor at a low rent, and that said representations and account were known to be false and fraudulent by both said Aitken and Graham; that at the execution and delivery of the said mortgage in order to make said mortgage conform to the agreement, that the amount of the purchase money beyond five thousand dollars should be payable in eighteen months, without interest, the said William Graham endorsed upon said mortgage the receipt of four hundred and forty-nine dollars and two cents, as interest, said sum being the interest in full on \$4276.51, from August twenty-third, eighteen hundred and sixty-five, to February twenty-third, eighteen hundred and sixty-seven; that said Graham hold said mortgage and such of said notes as have not been paid, for himself and said Aitken.

And your orator and oratrix are advised by counsel, and humbly aver that under the circumstances herein stated, the said notes and mortgage are fraudulent and void, and said notes should be delivered up to your orator, and said mortgage to your oratrix, and cancelled, your orator and oratrix being willing, notwithstanding the fraudulent and void character of said securities, to pay and hereby offering to pay the value of the said goods and lease, as such value was at the date of said sale, or the value according to the terms of the agreement, if that be more agreeable to equity, upon an account being taken under the order of this court of such value, deducting the moneys and securities paid by or on

behalf of your oratrix and your orator, to said Graham or Aitken.

And your orator and oratrix charge the fact to be, that your oratrix, by her said agents, the said Just and her husband, entered into possession of said store and the stock of goods at about the date of said mortgage, and proceeded to sell the same, and after about a week's time from the giving of the said mortgage, the said Just absented himself from the said store and was in a state of intoxication for two
10 weeks, when your orator called upon said Graham and told him that said Graham had deceived your orator and oratrix as to the character of said Just, and asked said Graham where he could find the said Jew and Cahill, who, as he had before said, would pay one hundred cents on the dollar for said goods, that your orator and oratrix might sell the said stock and lease to them, and said Graham laughed at your orator, and said those men had no money; that he had nothing to do with it; that all he and his partner wanted was to sell the place; that their money was safe; that it would be best for
20 your orator to continue Just in the employ of his wife, and he would yet carry the thing through; that Just had been led off, and would, if again trusted, attend to the business; that Just did come back after he had recovered from his debauch, and attended to the business for about three weeks, but again went off drinking and carousing for about three weeks; and during this three weeks, your orator called upon said Graham and complained of Just's conduct being so different from that which said Graham had represented it to be; and said Graham told your orator that he had a
30 damned good partner; laughed at your orator, and said their money was secure; that when said Just came back, he again attended to the said business for about two weeks, and again went off for about five weeks on another drinking bout; and your orator, during this five weeks, advertised the stock and lease for sale, and got said Graham's consent to allow any parties desiring to buy to apply to said Graham, at his place of business; and said Graham succeeded, about the first of January, eighteen hundred and sixty-six, in selling said stock and lease and a large amount of goods besides
40 the said stock so bought of said Graham and Aitken, which

your oratrix had bought afterwards to have on hand an assorted stock; and said Graham appropriated a large amount of the money and securities he received on said sale to and on account of said mortgage. And your orator and oratrix further say, that during the time said Just attended to the said business, he sold the goods so bought of said Graham and Aitken, at prices from twenty-five to one hundred per cent. below that at which your oratrix purchased the same of said Graham and Aitken.

And your orator and oratrix further show, that a large 10 amount of the money and securities received by the said Graham on said sale, he appropriated to the payment of debts of the said Just, and has never accounted to your oratrix or orator therefor.

And your orator and oratrix further show, that the said notes given by your orator for said stock and lease were made payable to said Just's order, and not to the order of said Graham and Aitken, or either of them.

And your orator and oratrix have frequently applied to the said Graham, Aitken, and Just to come to an account 20 with your orator and oratrix, and deduct from the claim said Graham and Aitken make upon said notes and mortgage, the amount of money unjustly inserted in said notes and mortgage, as a part thereof for goods which were never sold or delivered to your oratrix, but were represented in said false measurements, and for the excessive prices charged as cost prices therefor, and to deduct the moneys and value of the securities received by either of them on said sale by your oratrix of said stock and lease, and of said other goods so bought and put in said store after the original purchase of 30 said stock and lease of said Graham and Aitken, and to deduct the moneys unlawfully paid out by said Graham and Aitken for debts of said Just, and the moneys paid by your oratrix or orator on account of said notes and mortgage, but said Graham, Aitken, and Just refused your oratrix and orator's reasonable requests; and the said Graham hath not only brought the said bill in this court to foreclose the said mortgage, but hath brought an action of ejectment thereon in the Supreme Court of the state of New Jersey, for the purpose of turning your oratrix out of the possession of the said 40

farm described and mortgaged to said Graham in and by said mortgage, and is prosecuting the said action to judgment; and, although your oratrix and orator insist and charge that said notes and mortgage are fraudulent and void in equity, by reason of the facts before stated, yet the said mortgage being under seal, it is doubtful whether your orator can set up the facts herein stated at law, before the court in which said action of ejectment is pending; and it is doubtful whether said court of law hath power to declare said mortgage void, for or by reason of the same facts herein stated, for and by reason of which this court hath power to, and, as your orator and oratrix are advised and humbly insist, ought to declare the same void. And although the said mortgage may be paid, and nothing will appear on the account to be ordered by this court to be due to the said Graham or Aitken, yet a court of law cannot take such an account; and unless this honorable court will restrain said action of ejectment, your orator and oratrix may be remediless and be turned out of possession under a void and fraudulent mortgage.

To the end, therefore, that the said William Graham may, under his corporal oath, true, full, and perfect answer make to the matters herein set forth, and that he may answer and set forth, in particular, whether the said Just had not, long prior to August, 1865, importuned your orator to assist him in starting himself in business in the city of New York, and had not stated that your oratrix could enjoy part of the benefits of any adventure into which she might enter with him, and whether said Just was not informed of the authority given by your oratrix to your orator to ascertain what plan could be suggested to enable said Just to get employment and to enable her to participate in the profits thereof, and be secure for any investment she might make, and what was necessary for her to do to accomplish the object proposed; whether the said Just introduced your orator to said William Graham, and whether your orator did or not call said Graham aside and ask him as to the capacity of said Just for business and his character, for honesty, and whether said Graham did not thereupon tell your orator that said Just was an honest and sober man, though he might, once in a year, go on a

spree; that said Just was one of the best salesmen and buyers of dry goods in New York, and that said stock and lease were worth one hundred cents on the dollar of the cost thereof, and if purchased by your oratrix, could be sold for a clear profit of from twenty-five to fifty per cent., and what the said Graham did tell your orator in regard to these matters, and what offer said Graham made in regard to the sale of said goods and lease, and whether he did or not state that said lease was a valuable one and at a low rent, and that his inducement to make such a good offer was to assist 10 Just; and whether or not said Graham did also state that he could get ten per cent. more than said offer from a Jew, in Catharine street, and from one Cahill, in the Bowery; whether or not it was agreed that your oratrix should purchase from said Graham and Aitken the said stock of goods and lease at twelve and a half per cent. less than said stock of goods had been bought for by said Graham and Aitken, your orator agreeing to give his notes therefor as above stated, and your oratrix agreeing to secure the payment of said price of said goods and lease by a mortgage on her said 20 farm; (and if such was not the agreement, what was the agreement) and whether to fix said price said Graham and Aitken undertook to measure said goods, and went through the form of measuring the same and ascertaining the cost prices, and wrote in a book what pretended to be the honest and just measurement and cost prices thereof; and whether or not said book was handed, and by whom, to your oratrix or her agents, as containing a just and true account of the quantity and cost prices aforesaid; and whether or not the said account was false and fraudulent, and whether said Just 30 was a party to said fraud or not; and whether or not he was a drunkard and incapacitated at that time to take care of your orator's interest, and whether or not the said Just was imposed upon; and whether or not said stock of goods was measured untruly; and whether or not the measurements thereof, in said account stated, were in excess of the true measurements, and how much; whether or not the said Just charged said Aitken and his agent, Robert Gage, with marking up said goods; and whether said Aitken did or not lower the prices and measurements in some instances; and 40

whether any endorsements were made on said mortgage of interest moneys received thereon, and when, for what amount, and for what reason; and whether said Graham holds said mortgage and said notes, and for whom he holds them; and whether, after said sale, said Just absented himself from said store, when, for what period, and for what reason; and whether your orator called upon said Graham and told him that said Graham had deceived your orator and oratrix as to the character of said Just, and asked where

10 said Jew and Cahill could be found, and what your orators did say in regard to these matters, and what replies the said Graham made; whether said Just, while he attended to said business, sold any of said goods below their cost prices, and how much below; to whose order said notes were made payable, and for what reason they were made so payable; whether said Graham made a sale of said goods and other goods which had been afterwards bought with said store for your orator and oratrix, and whether he appropriated any

20 portion of the money or securities received therefor to the payment of debts of said Just, and what portion; and whether he applied any portion upon said mortgage, and what portion; and that the said Graham may come to a just and true account with your orator and oratrix, and that an account may be taken and stated of the value of the said stock of goods and lease so sold to your oratrix by the said Graham and Aitken, or, if more agreeable to equity, of the value of the same, calculated on the basis of said agreement for the sale, and ascertaining the quantities by just and honest measurements of the said goods, and by ascertaining

30 the cost prices thereof, and charging your orator and oratrix in such account with one or the other of said values, and deducting from such charge the amounts received by said Aitken, Graham, or Just, in money or securities, in payment on said notes or mortgage, and the amounts in money or securities received by said Aitken, Graham, or Just, on the re-sale by your oratrix of the goods in the store, 41 Catharine street, New York city, and of the lease thereof, your orator and oratrix hereby offering to pay the balance that shall be found due from them or either of them on such

40 account; and that if, upon such account being taken or

stated, it shall appear that any is due to your oratrix or orator, the same may be paid by the said Graham, and that the said notes and mortgage may be delivered up, the notes to your orator, and the mortgage to your oratrix, to be cancelled; and that the said Graham may be restrained, by injunction and decree of this court, from prosecuting said action of ejectment, and that your orator and oratrix may have such other and further, or other or further relief as to the court shall seem meet, and shall be agreeable to equity and good conscience. May it please your honor to grant 10 unto your orator and oratrix not only the state's most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said William Graham, commanding and enjoining him to desist and refrain from prosecuting the said action of ejectment in the Supreme Court, brought by him, the said William Graham, against your orators, the said William H. Berryman, and Jane W. his wife, until this honorable court shall make other order to the contrary; but also, the state's most gracious writ of subpœna, issuing out of and under the seal of this honora- 20 ble court, directed to the said William Graham, commanding him, on a certain day, and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and to abide such order and decree as this honorable court shall think meet. And your orator and oratrix, as in duty bound, will ever pray, &c.

CHAS. H. VOORHIS,

Solicitor of, and of counsel with the complainants.

New Jersey, ss.—William H. Berryman, being duly sworn according to law, on his oath saith—that in and before August, 30 eighteen hundred and sixty-five, his wife, Jane W. Berryman, was seized in fee in her own right of the farm described in the annexed bill, that as therein stated, Alexander Just had importuned deponent to assist him in starting himself in some business in New York, and stated that said Jane could enjoy part of the benefits of any adventure into which she might enter with him; that deponent had no money of his own to invest in the matter, and that the bulk of the property of his wife consisted of said farm; that through Just's

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importunity deponent was induced to open the matter to his wife, and was by her requested to ascertain what plan could be suggested to enable said Just to get employment, and to enable her to participate in the profits thereof, and be secure for the investment she might make, and what she should do to accomplish the object proposed; that said Just was informed thereof, and he introduced deponent to William Graham, then of the firm of Graham and Aitken, owners of a stock of dry goods in the store forty-one Catharine street, 10 and of a lease of said store, which he wished to sell; that deponent was so impressed with the behavior of said Graham that he gave him his confidence, and called him aside to ask him as to the capacity for business and the character of the said Just for honesty, (that deponent's knowledge of said Just never had been such as to inform him as to these matters); that said Graham thereupon told deponent that said Just was an honest and sober man, though he might, once in a year, go on a spree; that said Just was one of the best salesmen and buyers of dry goods in New York, and 20 told deponent that said stock of dry goods was worth one hundred cents on the dollar of the cost thereof, and if deponent's wife would purchase the same the goods could be sold for a clear profit of from twenty-five to fifty per cent., and the said Graham then offered to sell said stock of goods and lease to deponent's wife for ninety cents on the dollar of the price that he had bought the said goods for, and would throw in the lease, which was to run for three years from the next May; that said Graham further stated that the lease 30 was a valuable one and at a low rent; that his inducement to make such a good offer was to assist Just, whom he desired to benefit, as he was aware that Just was to share in the profits of the purchase; that said offer was, further, that the stock and lease should be paid for to the amount of four or five thousand dollars in cash, and the balance secured to be paid in eighteen months, without interest; that said Graham also then stated that he could get ten per cent. more than he offered to sell said stock for from a Jew in Catharine street, and from one Cahill, in the Bowery; that afterwards, on or about the day of August, 40 eighteen hundred and sixty five, the said Jane being in-

duced to do so by her belief in the said representations of said Graham, and which were repeated to her by deponent, an agreement was made on behalf of said Jane, by deponent and said Just, with said Graham acting for himself and his partner, James Aitken, whereby it was agreed as is particularly set forth in said bill of complaint of the complainant hereto annexed in that regard, and that to fix the price which said Jane was to pay, the said Graham and Aitken undertook to measure the goods composing said stock of dry goods, and to ascertain the cost price thereof, and did, by themselves, 10 their servants, and agents, go through the forms of measuring said goods and ascertaining said cost price, and said Aitken wrote in a book what pretended to be the honest and just measurements and cost prices of said goods, and handed said book to said Jane's said agents, as a just and true account of the quantity and cost prices of said goods; that said part of said book which contained said pretended account of the quantity and cost prices of said goods, did not contain a just and true account thereof, and that the said account was false and fraudulent; and that deponent cannot say 20 whether the said Just was a party to the said fraud, but that he was either a party to the said fraud or was incapacitated to take care of said Jane's interest by his habitual drunkenness about that time, and was imposed upon; that said goods were measured untruly, and the measurements thereof in said account stated were in excess of the true measurements by as much as from fifty to one hundred per cent., and the prices in said account stated as cost prices of said goods, were in excess of the true cost prices by as much as from fifty to one hundred per cent.; that the said marking up was so 30 glaring that said Just charged said Aitken and his agent, Robert Gage, who aided him in making out said account, while the same was being made up, with marking up the prices of said goods beyond the cost price, and also with marking up the measurements thereof, and said Aitken, in one or two instances, lowered them; but that said Just never informed deponent or said Jane of the fact that said goods were marked up; that said deponent and said Jane being entirely unaware of said fraud in estimating the price of said goods and lease, and relying upon the truthfulness of said 40

account of the measurements and cost prices of said goods, the said Jane bought the said stock and lease at the sum stated in said bill, and said notes and mortgage were given therefor as set forth in said bill; that said mortgage is the same mortgage set out and described in the bill filed in this court, on the twenty-fifth day of February last past, by said William Graham against deponent and the said Jane, and by said bill sought to be foreclosed; that said mortgage was duly acknowledged by this deponent and said Jane while
10 they were still under the belief that said representations of said Graham, as to the character of said stock of dry goods and the value thereof, and as to the character of said Just and his business capacity, were true; and that the said false account of the quantities of said goods and of the cost prices thereof, so made out and written in said book by said Aitken, were true. Deponent further saith, that said account was false and fraudulent, and that the said Just was a drunkard, and that the said goods were not worth one half of the cost prices thereof, nor could they be sold at any profit; and that
20 said lease was not a valuable one, nor at a low rent; and deponent further saith, that at the execution of said mortgage, the receipt of four hundred and forty nine dollars and two cents was endorsed thereon, as interest for the reason set forth in said bill in that regard.

Deponent further saith, that said Graham holds said mortgage, and such of said notes as have not been paid, for himself and said Aitken.

Deponent further saith, that said Jane, about the date of said mortgage, entered into possession of said store and
30 stock of goods in the manner stated in said bill, and proceeded to sell the same; that in a about a week thereafter said Just absented himself and was in a state of intoxication for two weeks, when deponent called on said Graham and told him that said Graham had deceived deponent and said Jane as to the character of said Just, and asked said Graham where he could find the said Jew and Cahill, that deponent and said Jane might sell said stock and lease to them; that said Graham laughed at deponent and said those men had no money, that he had nothing to do with it, that all he and partrer wanted
40 was to sell the place, that their money was safe, that it would

be best for deponent to continue Just in the employ of his wife, and he would yet carry the thing through, that Just had been led off and would, if again trusted, attend to the business; that Just came back after he had recovered from his debauch and attended to the business for about three weeks and then went off drinking and carousing for about three weeks; that during these three weeks this deponent called upon said Graham and complained of Just's conduct being so different from that which said Graham had represented it to be, and said Graham told deponent that he had a damned good 10 partner, laughed at deponent, and said their money was secure; that when said Just came back, he again attended to the said business for about two weeks, and again went off for about five weeks on another drinking bout; and during this five weeks deponent advertised the stock and lease for sale, and got said Graham's consent to allow parties desiring to to buy apply to said Graham, at his place of business, and said Graham succeeded, about the first of January, eighteen hundred and sixty-six, in selling said stock and lease, and a large amount of goods besides said stock so bought of Graham 20 and Aitken, which said Jane had bought afterwards from other parties, and said Graham appropriated a large amount of the money and securities he received on said sale to and an account of said mortgage.

Deponent further saith, that during the time said Just attended to the said business he sold the goods so bought of Graham and Aitken, at prices from twenty-five to one hundred per cent. below that at which the said Jane purchased the same of said Graham and Aitken.

Deponent further saith, that he is informed and verily 30 believes, that said William Graham appropriated to the payment of debts of said Just a large amount of the money and securities received by him on said sale, and that said Graham has not accounted therefor to deponent or said Jane.

Deponent further saith, that all the said notes were made payable to said Just's order.

W. H. BERRYMAN.

Sworn and subscribed, this 18th day of December A. D. 1867, before me.

GARRET ACKERSON, *M. C.*

New Jersey, ss.—Jane W. Berryman, being duly sworn according to law, on her oath saith—that she is the wife of William H. Berryman, named in the foregoing affidavit, that she has heard the foregoing affidavit read, and that the matters and facts therein stated and set forth are true.

J. W. BERRYMAN.

Sworn and subscribed, this 18th day of December, A. D. 1867, before me.

GARRET ACKERSON, *M. C.*

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Answer to Cross-bill.

[Filed January 14, 1868.]

This defendant, now and at all times saving to himself all benefit and advantage of exception 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 necessary or material for him to make answer unto, answering says—that he admits it to be true, as in said bill stated, that the said complainant, Jane
20 W. Berryman, on the twenty-third of August, in the year eighteen hundred and sixty-five, was seized in fee simple, in her own right, of the tract of land in the said bill described.

And this defendant further answering says, that as to whether long prior to the month of August, in the said year eighteen hundred and sixty-five, one Alexander Just importuned the complainant, William H. Berryman, to assist him in starting himself in business of some kind in the city of New York, or as to whether he stated that the complainant, Jane W. Berryman, could enjoy part of the benefits of any
30 adventure into which she might enter with him, or as to whether the complainant, William H. Berryman, had no money of his own to invest in that way, or as to whether his wife's whole property consisted of the farm therein before described, or as to whether the said complainant, William H. Berryman, was induced by the importunity of said Just to open the matter to the said complainant, Jane W. Berry-

man, or as to whether the said complainant, Jane W. Berryman, requested her husband to ascertain what plan could be suggested to enable said Just to get employment, and to enable her to participate in the profits thereof, and be secure for any investment she might make, and what it was necessary for her to do to accomplish the object proposed, or whether said Just was informed of such authority given by the complainant, Jane W. Berryman, to her said husband, as in said bill stated, this defendant has no knowledge or information, except from the statements thereof in said bill 10 contained.

And this defendant further answering admits it to be true, that the said Alexander Just introduced to him the complainant, William H. Berryman, and that this defendant was then one of the firm of Graham and Aitken, who were the owners of a stock of dry goods in the store at number forty-one, Catharine street, in the city of New York, and of a lease of said store, and that this defendant wished to sell the said stock of dry goods and lease, and had the same for sale; but this defendant did not know, and does not now 20 know, except from the statement in said bill contained, that the said complainant, William H. Berryman, was so impressed with the behavior of this defendant that he gave him his confidence, and says that he neither did nor said anything to the said William H. Berryman with the intention, or for the purpose of obtaining his confidence, and this defendant denies that there existed any confidential relation between him and the complainants, or that they had any reason to place any special confidence in him, for that he was a stranger to them, as they were strangers to him, and 30 that they only knew him from his having for sale the said stock of dry goods and lease; and that he only knew them as persons wanting to buy the same. Nor does this defendant know as to whether the complainant's knowledge of the said Just had or not been such as to inform them, or either of them, as to his capacity for business, or as to his character for honesty, except that they appeared to this defendant, as far as he saw them together, to be on intimate terms with said Just, and to place reliance in his judgment and integrity; and this defendant cannot answer said allegations 40 in said bill as to his belief or otherwise.

And this defendant answering, denies that the said complainant, William H. Berryman, called him aside to ask him as to the capacity for business and the character of said Just for honesty, and that this defendant thereupon told him that said Just was an honest and sober man, though he might, once in a year, go on a spree, or that said Just was one of the best salesmen and buyers of dry goods in New York; and this defendant also denies that he told the complainants, or either of them, that the said stock of dry goods
10 was worth one hundred cents on the dollar of the cost thereof, or that if the complainant, Jane Berryman, would purchase the same the goods could be sold for a clear profit of from twenty-five to fifty per cent.; and this defendant denies that he made any representations whatever to the complainants, or either of them, either as to the said Just, or his character or capacity, or as to the said stock of dry goods, except this, that he may have made some general observations in commendation of said goods, such as any seller might and could honestly make in reference to his
20 merchandise that he was offering for sale, but he denies that he made either to the complainants or to said Just, any statements or representations about said dry goods or said lease, that were false, dishonest, or calculated to deceive or mislead them, for he knew that both said goods and store were open to their view and inspection, and that they were merchantable articles, the value of which would easily be ascertained, and moreover that the said Just, who was acting for and in the interests of the complainants, was an old and experienced hand in the dry goods business; and this de-
30 fendant believed that the complainants and the said Just were buying the said goods and lease of store upon their own judgment, and at their own risk, without regard to any statements or representations of his about the same.

And this defendant further answering says, that he did offer to sell to the complainants the said stock of dry goods, together with the lease of said store, for ninety cents on the dollar of the price he had bought the said goods for, or eighty-seven and a half cents on the dollar of said price, he does not now precisely recollect which; and that said lease had
40 two years from the month of May then next, to run; but he

denies that he threw in the said lease as stated in said bill, for it was a part of the said purchase, paid for with the said dry goods; and this defendant further says, that he does not recollect whether he stated, as in said bill alleged, that the said lease was a valuable one and at a low rent, but that he may have so stated, for such he did believe and still believes to be the fact. And this defendant denies that he stated that his inducement to make such a good offer was, as in said bill alleged, to assist said Just, whom he desired to benefit, as he was aware said Just was to share in the profits of the said purchase, but that his only inducement to sell was the payment of what he considered a fair value for said goods and lease, and that he had no consideration for said Just whatever in said transaction; for although he had known him as a mere business acquaintance for a number of years, from having seen him in different dry goods sales rooms; and from having on one occasion sold to him a few hundred dollars worth of dry goods, yet he was not intimate with him, and had no particular interest for him, and no special desire to assist him. 20

And this defendant further answering says, that when said purchase was first talked about between himself and said Berryman and Just, the offer and agreement was that the sum of five thousand dollars of said price should be paid in cash, and the balance by promissory notes, secured by mortgage, and payable within eighteen months, which agreement, out of consideration for the complainants, was afterwards departed from, as below stated; but this defendant denies that he then stated that he could get ten per cent. more than he offered to sell said stock for from a Jew, in Catharine street, or from one Cahill, in the Bowery, though the fact was he had been offered ten per cent. more for said goods by some one or more persons, to whom he refused to sell the same for want of proper security for the payment of the price therefor. 30

And this defendant further answering says, that it was afterwards agreed that the complainants and said Just should purchase the said stock of dry goods and lease at ninety cents or eighty-seven and a half cents (this defendant does not now certainly recollect which,) on the dollar of the cost price 40

of said goods, and that the payment of the whole price should be secured by a mortgage on the said farm or tract of land in said bill described, and owned by the complainant, Jane W. Berryman; this defendant, at the urgent request of the complainant, William H. Berryman, and said Just, allowing the whole price of said goods to be included in said mortgage, instead of a part only, as first agreed, so that they could have the balance, which was to have been paid in cash, to put into the business and buy new goods; and that said
10 promissory notes were to be given to arrange the times of payment of the said money so to be secured by said mortgage, and when paid were to be credited and endorsed upon said mortgage as part payment thereof.

And this defendant further answering says, that he does not know what the said complainant, William H. Berryman, may have repeated to his said wife, as to the representations of this defendant to him, or as to whether she had faith or belief in any statements of her said husband, as to any alleged representations of this defendant, and cannot answer thereto
20 as to his belief or otherwise; but this defendant denies that the complainant, Jane W. Berryman, was induced to enter into said agreement through any actual representations of this defendant, in fact, made to her said husband, for no such representations were ever made to him by this defendant.

And this defendant further answering says, that he and his partner, James Aitken, with a view to ascertain for themselves, for their own information, in order to fix for themselves the price to be paid to them for said stock of dry goods, ordered their agent, under whose supervision the said store
30 in Catharine street was, to take an account of said stock, at its actual cost prices, and that thereupon the said account of said stock was taken, as this defendant believes, truly at its actual cost prices, and which were subsequently, as given to him by said agent, written down in a book by this defendant's partner, James Aitken.

And this defendant believed and still believes, that the said stock list contained as true and just and accurate an account of the said stock of dry goods, and its quantities and cost prices, as it was possible to make out; but this defend-
40 ant denies that he handed the said stock list to said William

H. Berryman and said Just, as a true account of the quantities and cost prices of said dry goods, or that he said, or in any way gave them to understand, that it was accurate and true, though he believed the same to be so.

And this defendant says, that he handed the said William H. Berryman and said Just such stock list and expressly told them to take it and look over it, and compare it with the said goods in said store, and see if the quantity of goods and prices called for thereby were correct, and that it was distinctly and clearly understood, both by this defendant and by the said Berryman and Just, that the said stock of dry goods was not to be purchased upon the faith of said stock list, and that the same was handed over by this defendant and taken by said Berryman and Just, merely for the purpose of examining therewith the said stock of dry goods which was open to their inspection, and at their disposal for that object. 10

And this defendant denies that the said stock list was false and fraudulent, and says, that to the best of his knowledge, information, and belief, the same contained a just and true account of the quantity and cost prices of said dry goods. 20

And this defendant further answering, denies all knowledge of any fraud on the part of said Alexander Just, and also denies all intercourse or relation with him in or about the sale of said dry goods and lease, except as the agent or copartner of the complainants, and he also denies all knowledge of the incapacity of said Just from intoxication; and he denies that he was imposed upon by said Aitken; and he denies that said stock of dry goods was measured untruly, and that the measurements in said account stated were in excess of the true measurements by as much as from fifty to one hundred per cent., or that they were at all in excess thereof, or that the prices stated in said account as the cost prices of said goods, were in excess of the true cost prices by as much as from fifty to one hundred per cent.; but this defendant admits, upon information, that the said Just charged this defendant's agent, Robert Gage, in the presence of the said James Aitken, with marking up the cost prices in two instances, or on two pieces of goods of said stock, which charge the said Robert Gage denied, and that the said James 40

Aitken, though not believing the said charge to be true, and in order to prevent an angry dispute between said Just and Gage, and it being an item of little importance, ordered the said prices to be reduced in accordance with the views of said Just, and that they were so reduced.

And this defendant denies, upon information and belief, that in any other instances the said Just charged that said goods had been marked up in measurement or price; and this defendant does not know whether or not the said Just
10 ever informed the complainants that the said goods were marked up in measurement and in price, and this defendant says that the said Just was the agent of the complainants and was acting on their behalf, and that he was not the agent of this defendant nor in any wise interested for him; and this defendant was not responsible for the acts or omissions of said Alexander Just; and as to what he said or did to the complainants, or omitted to say or do to them, in reference to the sale of said dry goods and lease, this defendant has no
20 knowledge or information, and can neither admit or deny any of the statements in said bill contained, in reference thereto as to his belief or otherwise.

And this defendant further answering says, that about the space of two weeks intervened between making the agreement for the purchase of said goods and lease above mentioned, and the making of the said mortgage for the purchase money thereof; during which the complainants and their said agent had ample time and opportunity for examining and inspecting said stock; that the same was open to their view, and they had free access to the said store where the said
30 goods were, at all proper times, to measure them, to ascertain their value and quality, and to see and judge what they were worth, and also whether the stock list above spoken of was true and correct; and that during that period of about two weeks before the actual purchase of and payment for said goods, both said complainant William H. Berryman, and said Just, were frequently at said store for the purpose of examining said stock, and that said Alexander Just, who was experienced in the dry good business, and on whose skill and judgment said Berryman appeared greatly to rely,
40 looked over and examined the stock particularly on different

occasions, both in the presence of said Berryman and while he was away.

And this defendant further answering says, that after the making out of the said stock list and the said inspection of said stock of dry goods by the complainants and their said agent, it was agreed upon by and between him and them, that the price to be paid for said stock and lease amounted to the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, which sum, as this defendant believed and still believes, truly represented ninety per cent. 10 or eighty-seven and a half per cent. of the cost prices of said goods; and this defendant says that if the said sum total did not truly represent the said per centage of the cost prices of said goods, or the actual quantity of said goods in said stock, he had no knowledge whatever thereof and no means of knowing except from the statements contained in said stock list, and that the said complainants and the said Just had the same or equal means and opportunity with this defendant of knowing and ascertaining for their own satisfac- 20 tion, whether the said sum total was a fair and correct price for said goods and lease, and whether it correctly represented the said per centage of the cost of said goods; and this defendant denies all knowledge of any fraud or false representation in making up the said sum total to be paid as the price of said stock and lease.

And this defendant admits that six notes were given by said William H. Berryman and endorsed by said Just, and that said notes were made on the day and for the sums, and payable at the times respectively in said bill named, except as to the first note in said bill named, which, having been 30 paid and delivered up, this defendant cannot now state what was the precise amount of the same. And this defendant also admits, that the said complainants did, on the twenty-third day of August, in the year eighteen hundred and sixty-five, make and execute to this defendant a mortgage, for the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, for the price of said stock of dry goods and lease, upon the farm or tract of land in said bill described, and that such mortgage was substantially the same as that stated in said bill, being more fully and accurately 40

set forth in the original bill of complaint in this cause, to which and to said mortgage itself this defendant prays leave to refer for greater certainty; and he admits that the same was duly acknowledged by the complainants, and is now recorded in Bergen county clerk's office. But this defendant denies that the said complainants, or either of them, executed the said mortgage on account of any representations of this defendant as to the value or character of said stock of dry goods, or as to the character or business capacity
10 of said Just as in said bill charged, for that this defendant made no such representations whatsoever, except that he may have made, as before stated, some general observations such as any seller would be likely to make in commendation of said goods, but he does not know that he even did this. And this defendant further denies the charge in said bill contained, that said account of the prices and quantities of said goods was false and fraudulent, or that said goods were not worth one-half of the cost prices thereof; and he denies the charge that said goods could not be sold at any profit,
20 for he believes if the said store had been properly and prudently conducted by the complainants and their said agent, that said goods could have been sold at a good profit; and he also denies the charge that said lease was not a valuable one and not at a low rent, for he believes that the said leased premises were, at the time of said sale, worth about five hundred dollars a year more than the rent reserved upon said lease, which, as he now recollects, was the sum of thirteen hundred dollars a year; and this defendant denies the charge in said bill contained, that said representations and
30 account were known to be false and fraudulent by both said Aitken and himself. And this defendant answering says, that he did not know, except from the statement in said bill contained, that said Just was a drunkard, and does not believe that he was what is commonly called a drunkard, though he might drink ardent spirits, and sometimes drink too much.

And this defendant admits, that at the time said mortgage was given, he endorsed thereon a receipt for the sum of four hundred and forty-nine dollars and two cents, which
40 was for interest on the sum of four thousand two hundred

and seventy-six dollars and fifty-one cents of the principal of said mortgage, from the day of the date thereof to the day whereon it was made payable, in accordance with the original agreement, that said part of the principal should be secured without interest.

And this defendant further answering says, that the legal title to both said mortgage and the said notes unpaid, is in himself alone, and that he has a right in his own name to sue upon the same and recover the money due thereon, and insists that he is not bound to answer hereby as to what 10 rights or claims the said James Aitken may have in the moneys collected or to be collected upon said securities.

And this defendant further answering says, that he admits it to be true that the complainants and their said agent did, at or about the day of the date of said mortgage, enter into possession of said store and stock of dry goods; but as to whether they proceeded to sell the same, or as to whether, after about a week's time from the giving of the said mortgage, the said Just absented himself from the said store and was in a state of intoxication for two weeks, or : s to whether 20 said Just came back, after he had recovered from his debauch, and attended to the business for about three weeks, or as to whether he again went off drinking and carousing for about three weeks, or as to whether when said Just came back he again attended to the said business for about two weeks, and again went off for about five weeks on another drinking bout, this defendant has no knowledge or information, except from the statements in said bill contained, and can neither admit nor deny the same, as to his belief or otherwise.

And this defendant answering, denies that the complain- 30 ant, William H. Berryman, called upon him and told him that he, this defendant, had deceived him, the said Berryman, and his said wife, as to the character of the said Just, or asked this defendant where he could find the said Jew and Cahill, who, as he had before said, would pay one hundred cents on the dollar for said goods in order that the complainant might sell the said stock and lease to them; and he denies that he laughed at the said complainant and said those men had no money, and that he had nothing to do with it, and that all he and his partner wanted was to sell 40

the place, that the money was safe, or that it would be best for the complainant to continue said Just in the employ of his wife, and that he would yet carry the thing through, and that Just had been led off, and would, if again trusted, attend to the business; and he also denies that during the time stated in said bill, the said complainant called upon him and complained of Just's conduct being so different from that which he had represented it to be, or that he told the said complainant that he had a damned good partner, and laughed
10 at him, and said that their money was secure, and denies that he held any such conversations with the complainants, or either of them, as in said bill stated; but this defendant says, on the contrary, that whenever he met the said complainant, William H. Berryman, after the sale of said stock and lease, he always, in one way or another, expressed himself satisfied with the conduct of this defendant in reference to said sale, and thanked him for his kindness and forbearance in reference to the payment of the purchase money of said goods and lease; and that afterwards, and after the said
20 stock of dry goods had been sold, as hereinafter stated, to Connery and O'Donnel, the said William H. Berryman complained to this defendant of the conduct of said Just, and told him how he had cheated him and taken goods away from the store, and giving this as the reason why he failed to succeed in the said dry goods business.

And this defendant further answering says, that in or about the month of December, in the year eighteen hundred and sixty-five, the complainant, William H. Berryman, came to this defendant to ask his assistance in selling out the said
30 stock of dry goods and lease; that the complainant owed considerable money to other parties than this defendant, which they appeared to be unable to pay, and some of their creditors were pressing them severely for payment; and that this defendant did, thereupon, at the request of the said complainant, and without any consideration, except the hope of a more prompt payment of the said indebtedness to this defendant, undertake to sell out for him and his wife, the said stock of goods and lease, and that he did, within a few weeks thereafter, sell out the same to the firm of Connery
40 and O'Donnel, for ninety or eighty-seven and a half per

cent. of the cost prices of said goods, amounting to over the sum of seven thousand eight hundred dollars, one-half being paid in cash, and the other half in good endorsed notes, payable at two and four months.

That the said stock of dry goods so sold out to Connery and O'Donnel, contained a large amount of the goods that were in said stock when it was sold by this defendant to the complainants, being the poorer and most unsaleable parts of said stock, and that also it contained considerable new goods in addition thereto; but that said stock so sold to Connery and O'Donnel was not as large nor as good as the stock so sold to the complainants; and that at the time of said sale to Connery and O'Donnel, the dry goods trade was duller and prices not so high in the market as at the time of the sale to the complainants; and this defendant avers, that considering the different states of said stocks of goods, and considering the difference in the state of the dry goods market as above mentioned, the price paid by said Connery and O'Donnel for said stock of goods and lease, was a higher price than that paid by the complainants, though the former paid half 20 cash and the balance on a credit of two and four months; whereas, the complainants had a credit for the whole price of from three to eighteen months.

And this defendant denies that he appropriated any moneys or securities received from said sale to Connery and O'Donnel to and on account of said mortgage, except as directed or consented to by the complainant, William H. Berryman, and that such amount so applied was the sum of five hundred and ninety-one dollars and ninety-one cents, for the payment of a new note of that sum given as part payment of the first 30 of the original notes of the said complainant, which had become due a month or so before, and also the sum of six hundred dollars on account of the second of said original notes, which was then nearly due, which this defendant, at the time, endorsed thereon as part payment thereof; and also one of the notes of Connery and O'Donnel for two thousand dollars, which, when paid, this defendant was to credit on said mortgage debt, and which has been paid and credited; and that no other part of said moneys or securities was taken or appropriated by this defendant in any way. 40

And this defendant further answering says, that as to whether, during the time said Just attended to said business, he sold the goods so bought of this defendant and said Aitken, at prices from twenty-five to one hundred per cent. below that at which the complainant, Jane W. Berryman, purchased the same of them as in said bill alleged, he has no knowledge or information, except from the statements in said bill contained, and cannot answer the same as to his belief or otherwise.

- 10 And this defendant further answering, denies that he appropriated a large amount or any amount of the money or securities received by him on said sale to Connery and O'Donnell to the payment of the debts of said Just, or that he has never accounted to the complainants therefor; but this defendant says, on the contrary, that he paid all of the said moneys and securities to the complainant, William H. Berryman, himself, except such part of the same as he paid according to his directions, and with his consent, to satisfy the claims of his creditors, who were urgent for payment,
- 20 and such as retained by him as aforesaid on account of said mortgage debt; and this defendant says, that the said Connery and O'Donnell would not, according to his belief, have purchased the said stock and lease, unless he had taken charge of the said sale in the way he did, and given them the assurance that said goods were or should be free from all claims of the creditors of the complainants, one of whom had already commenced a suit by attachment against said goods.

- And this defendant answering admits, as in said bill stated, that the said notes given as aforesaid were made payable to
- 30 the order of Alexander Just, and not to the order of this defendant, or said Aitken, and that the reason why said notes were so made payable, as this defendant believes, was that said Just, who was interested in said purchase, should also, by his endorsement of said notes, be held liable for the said purchase money.

- And this defendant answering, denies that the complainants ever applied to him, or to said Aitken, to come to an account with them or that they ever applied to this defendant or to said Aitken, to make any deductions whatever
- 40 from said mortgage, or ever spoke about any false measure-

ments or excessive prices as to said stock of dry goods, but that on the contrary, the said complainant has uniformly expressed himself satisfied with the conduct and transactions of this defendant with himself and wife; and that, though shortly after the filing of this defendant's original bill of complaint in this cause, for the foreclosure of the complainant's equity in the said mortgaged premises, the said complainant, William H. Berryman, expressed himself dissatisfied to this defendant, because he had not longer delayed the bringing his suit, and threatened that he would put in 10 an answer and keep him out of his money for two years longer on account thereof, yet he never claimed or asked any deduction whatever to be made from the said moneys due on said mortgage.

And this defendant further answering says, that the stock of dry goods and lease were sold to the complainants and said Just for the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, being the sum for which said mortgage was given, which sum of money said complainants and said Just, after examining and inspecting said goods 20 and store so leased, agreed upon their own judgment to pay, as the fair value thereof, and that this defendant made to them, or either of them, no representations, assurances, or agreement, as to the quality, quantities, or cost prices of said goods; except as above stated; that the said goods were at their disposal to examine and look at, the cost prices of said goods being marked on them in tradesmens characters, the key to which was given to the complainants and said Just, or one of them, and that they had every means and way that this defendant had to judge and determine as to 30 character, quality, quantity, and cost prices of said dry goods; that when this defendant first handed said stock list to said William H. Berryman and Just, although it was given to him as, and he believed it to be, a true statement of said stock, yet he gave them to understand that they should not rely upon it and particularly told them to go and examine the said goods themselves with it, and see if it was correct; that said store, at forty-one Catharine street, was a retail store, and not a retail store of the first class; and that the said stock of goods there was an assorted stock, some of the 40

goods were of good quality, others were poor, some were new, and some were old, as in all stocks of this description, but it was on the whole a fair average stock of dry goods for a store of that description; that this defendant and said James Aitken were, and had been for many years, wholesale dry goods merchants in New York, and that business mainly occupying their attention they were unable to take any particular charge of said store in Catharine street, and therefore they put the same under the management and control of one
10 Robert Gage, who conducted the business there for them, and employed such clerks as he needed to assist him; and this defendant and said Aitken having given up their wholesale store, being about retiring altogether from the dry goods business, directed said Gage to advertise the said stock of dry goods and lease, at forty-one Catharine street, for sale, which the said Gage did; and it was in answer to this advertisement that the said Berryman and Just came to this defendant to make said purchase.

And this defendant further answering says, that he is advised by counsel and insists that he is not bound to answer
20 the statements and allegations in said bill of complaint contained, as to the bringing of an action of ejectment by this defendant upon said mortgage, in the Supreme Court of this state, for that the same is improper subject matter to be contained in said bill; and this defendant is also advised and insists, that the said complainants are not entitled by their said bill, as prayed therein, to have this defendant restrained by the injunction and decree of this court from prosecuting said action of ejectment, or to the writ of injunction thereby
30 prayed; and this defendant prays that he may have the same benefit of said objection to said bill, on account of said last named statement and prayers, being joined therein as if he had demurred thereto.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing in the said complainants said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and suf-
40 ficiently answered, confessed, traversed, and avoided or de-

nied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be here dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

L. & A. ZABRISKIE,
Solicitors, and

L. ZABRISKIE,
Of counsel with defendants. 10

State of New Jersey, county of Hudson, ss.—William Graham, the above named defendant, being duly sworn, upon his oath doth depose and say—that the matters and things in the foregoing answer set forth, so far as they relate to his own acts, are true, and so far as they relate to the acts of other persons he believes them to be true.

WILLIAM GRAHAM.*

Sworn to and subscribed, this 14th day of January, A. D. 1868, before me, at Jersey City.

ISAAC REMAINE, *M. C.* 20

Replication.

[Filed January 16, 1868.]

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

is true; all which matters and things these repliants are, and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

CHAS. H. VOORHIS,

Solicitor for, and of counsel with complainants.

Depositions for Complainants.

[Filed February 5, 1868.]

Examination of witnesses, &c., in the above entitled cause,
 10 on the part of the complainants, taken before me, Isaac
 Remaine, a master and examiner of said court, at my
 office, No. 7 Exchange Place, Jersey City, on Thursday,
 June twentieth, eighteen hundred and sixty-seven, at ten
 o'clock in the forenoon, in the presence of Lansing Za-
 briskie, counsel for complainants, and Charles H. Voorhis,
 counsel for defendants.

The complainants offer in evidence a paper writing, pur-
 porting to be a mortgage for \$9276.51, dated the 23d of
 August, 1865, made by Jane W. Berryman, and William
 20 H. Berryman her husband, executed and acknowledged, and
 said paper is marked *Exhibit C No. 1*, on part of complain-
 ants, and offered in evidence.

William Graham, a witness produced on the part of com-
 plainant, being duly sworn, deposes and says—I am the
 complainant in this suit; I have seen William H. Berryman,
 one of the defendants in this suit, write.

Witness being shown a note marked *Exhibit C 2*, for
 \$1425⁵⁰/₁₀₀, dated August 23d, 1865, payable to the order of
 Alexander Just, and signed W. H. Berryman, endorsed
 30 Alexander Just, says—this is the signature of William H.
 Berryman; I saw him write it.

Said note is offered in evidence, and marked *Exhibit C 2*,
 on part of complainants.

Witness being shown a note dated August 23d, 1865, for \$1754¹⁴/₁₀₀, payable to the order of Alexander Just, signed W. H. Berryman, endorsed Alexander Just, says—the signature thereto is that of William H. Berryman; I saw him write it.

Said note is offered in evidence, and marked *Exhibit C No. 3*, on part of complainants.

Witness being shown a note of the same date, for \$1425⁵⁰/₁₀₀, signed by W. H. Berryman to the order of Alexander Just, and endorsed by him, payable fifteen months after date, 10 says—the signature thereto is that of William H. Berryman.

Said note is offered in evidence, and marked *Exhibit C No. 4*, on part of complainants.

Witness being shown note of same date for \$1724⁸⁰/₁₀₀, payable to the order of Alexander Just, signed W. H. Berryman, endorsed by Just, payable six months after date, says—the signature thereto is that of William H. Berryman.

Said note is offered in evidence, and marked *Exhibit C No. 5*, on part of complainants.

Witness being shown a note of same date for \$1425⁵⁰/₁₀₀, 20 signed W. H. Berryman, payable to the order of Alexander Just, and endorsed by him, payable eighteen months after date, says—that the signature thereto is that of William H. Berryman.

Said note is offered in evidence, and marked *Exhibit C No. 6*, on part of complainants.

I am acquainted with the handwriting of Alexander Just; the endorsements on the respective notes, just offered in evidence, are in the handwriting of Alexander Just; the last one, *Exhibit C No. 6*, was endorsed by him this day, just 30 before it was offered in evidence.

Quest. What was the consideration for which these notes and this mortgage were given?

Ans. A stock of dry goods and the lease of the store No. 41 Catharine street, New York city; they were given as collateral for the mortgage, or rather the mortgage was given as collateral for them; both were given at the same time, for the same thing—that is the stock of dry goods and lease of the store.

Quest. Was it agreed, before the goods were sold, that the 40 mortgage should be given to secure the payment?

Ans. Yes, sir.

Quest. Why were the notes given?

Ans. They were given to arrange the manner of payment.

Quest. When you sold the goods, was it understood that he was to give these notes, or was that an after arrangement?

Ans. When we sold the goods the arrangement was that we was to have \$5000 cash, the balance to be secured by bond and mortgage; but in consultation afterwards with Mr. Berryman and Mr. Just, we agreed to take a bond and mortgage for it all, so that they could have the \$5000 cash to buy goods outside, to be able to carry on the business more profitably—that's the answer to that.

Question repeated.

The answer repeated.

Quest. When was it arranged that he should give these notes, and why?

Ans. It was arranged when we agreed to take a bond and mortgage for the entire amount, and these notes were to regulate the mode of payment.

20 *Quest.* Were these notes considered at the time as any part of the consideration for these goods, or was the mortgage the real security for which they were sold? [Question objected to.]

Ans. The mortgage was the real security for which they were sold.

Quest. What was the real consideration for which these goods were ultimately sold?

Ans. The mortgage.

30 *Quest.* How did you become acquainted with William H. Berryman and his wife, or either of them?

Ans. I was introduced by Alexander Just to Mr. Berryman, and by W. H. Berryman to his wife.

Quest. Will you state the circumstances under which the purchase of these goods were made of you?

Ans. Alexander Just came to me and said that he had a party that wanted to go in business, who had \$5000 cash, and wanted to know if we would sell this party that stock of goods and take the \$5000 cash, and a bond and mortgage on their farm for the balance; we ultimately agreed to do it,
40 and sold Mr. Berryman the stock of goods for his wife and

Mr. Just; I mean, sold them to Mr. Just and Mr. Berryman for Mr. Berryman's wife, one of the defendants; and the payments were arranged in this way by notes secured by bond and mortgage.

Quest. Was this mode of payment arranged afterward?

Ans. It was arranged afterwards.

Quest. What was the fair value of these goods and lease at the time of the sale?

Ans. The price at which they were sold, together with the lease of the store, was a low price for them at that time; I mean to say this, that the price was a low price for the goods, because there was a three years' lease of the store, which was sold with the goods at \$1300 a year, which was worth \$2500 a year.

Quest. Have you had any conversations with Mr. Berryman and Mrs. Berryman since these transactions?

Ans. I have had several conversations with Mr. Berryman, and two or three with Mrs. Berryman; they were perfectly satisfied, so far as their transactions with me were concerned.

Quest. Did they so express themselves? [Question objected to.]

Ans. Mr. Berryman thanked us repeatedly for our forbearance and what we had done for him; he wanted me to find him a party who would take a mortgage on his farm so that he could pay us, and he wouldn't be particular about the rate of interest; he would allow almost any rate of interest to get the money; I sold out the stock of goods and the lease for him the following December—that is in December, 1865, or early in January, 1866; he since then placed money in my hands to be paid out for him; I paid it out for him and handed him the balance when he called for it; I sold the stock of goods for him for eighty-seven and a half cents on the dollar, which made \$7832.20.

Quest. Had they sold much out of the stock?

Ans. They had been selling out of it some four months, and eight or nine days; this that I sold for this price was what was left; the price I first sold it to them for ninety cents on the dollar.

Quest. Did this last sale include the lease?

Ans. Yes, sir.

Quest. In any of the conversations with Mr. Berryman or Mrs. Berryman, was anything said about these goods having been sold to them for more than they were worth, or did either of them find fault with their bargain?

Ans. Never a word, nor did they ever find fault with their bargain; Mr. Berryman, last summer, called on me almost every week, sometimes oftener than that, and requested us to have a little patience with him, that he had his farm in the hands of agents, and had it advertised, and that he expected to
10 sell it every week, when he would pay us all up; he requested me to write him a dunning letter so that he could show it to his friends that they might help him raise the money; he then asked us to wait until he could get a government situation that he was then after; that if he could only secure that situation that he would have plenty of friends and plenty of money; after he got the situation he wanted us to wait a little longer; that he was watched by those who were looking for the same situation; that he had no opportunity of taking money that was within his reach, on account of being
20 watched.

Quest. At the time of this sale did you make representations to the defendants, or either of them, as to the quality of these goods, or as to the character of Alexander Just; and if so, what were they—were they true or false? [Question objected to.]

Ans. I made no representations to them—I told both Mr. Just and Mr. Berryman to go and look at the goods, be satisfied that they were a good value, and to see that the quantity of goods were there that the invoice called for.

30 *Quest.* The defendants set up in their answer that these notes and this mortgage were obtained through your false representations in reference to the quality of these goods, and as to the character of Alexander Just; did you ever make any such representations, and if so, what were they?

Ans. No, sir; I made none, and the man who swore to that ought to be indicted.

Quest. What is the amount now due on this mortgage?

Ans. On the 15th of February, 1867, there was due \$5265.
10, which amount, with interest, is still due; I have seen
40 Mr. Berryman since this action was commenced; I told him

I supposed it would be two or three months before this was reached and he would have the benefit of that time; oh yes, he said, but it would take me two years now, instead of two months, to get my money, as he would put in an answer.

And being cross-examined, he says—I think I am forty years old on the 21st of February last; I live at No. 97 West Forty-eighth street, New York city; I might almost say I am a gentleman now, I do scarcely any business, I buy a few promissory notes sometimes; when I was last in business my occupation was a dry goods merchant; the last place we¹⁰ did business was at No. 20 Walker street, New York; by we, I mean our firm, composed of Graham and Aitken; before that we did business at No. 108 Chambers street, New York; before that at No. 6 Park Place; before that at 86 Cedar street; before that at 80 Cedar street; before that at 54 Cedar street; before that at 35 Liberty street; before that at No. 1 Bowery, corner Division street; before that at No. 7 Carmine street; I quit business at the place last mentioned about seventeen or eighteen years ago; the firm was not the same; the firm was the same since January, 1859; that firm²⁰ began business at No. 6 Park Place; we owned a store at No. 41 Catherine street, and had a man carrying it on; I couldn't tell you accurately how long we carried it on; from about eighteen hundred and sixty-two until we made this sale; Robert Gage carried it on for us; the place is now owned by Mr. Connery; I sold it for Berryman to him for \$7832.20; that is the lease and stock of goods; in saying we owned the store, I mean we only owned the lease; Mr. Connery paid \$3832.20 cash, and he gave two notes for \$2000 each, for the balance; Berryman got these notes; I³⁰ delivered them to Berryman; Berryman gave one of them to me afterwards, as part payment of the mortgage; \$611.66 of the cash was paid to William H. Leigh & Co.; \$1020 was paid to McIntyre and Gibson; \$591.91 was paid to Graham and Aitken; when Berryman's first note became due they didn't have enough money to pay it, and Mr. Just came down with what money they had, and gave me a note for the balance of the note; and that \$591.91 was given to pay that new note; \$682.73 was paid to Jacob L. Seixas; that made

\$2892.50; he paid me then on account of that mortgage \$600, and the balance he put in his pocket.

Quest. How many notes did you get in all from Berryman, at the time when you got the mortgage?

Ans. Six; I can't state the amount of the first one, for that is paid, and I have no record of it; it must have been about \$1400; they were all dated August 23d, 1865; the
 10 first was for three months; the second was for six months, \$1724.98; the next was nine months, \$1754.14; the next is twelve months, \$1425.50; the next is fifteen months, \$1425.50; the next is eighteen months, \$1425.50; the notes, when added together, I believe, made the same amount as that specified in the mortgage; Mr. Just paid the first note for Mrs. Berryman; there has been paid on account of this mortgage \$600 in cash, on the 9th of January, 1866; Connery's note for \$2000, which has been paid; nothing else has been paid on this mortgage; these notes and this mortgage were delivered to me at the same
 20 time, in Mr. Zabriskie's office, at or about their date, by Mr. and Mrs. Berryman; they were both present at that time; I don't remember whether we made a bill of sale of the goods or not; we made an invoice in a book, and handed them the book; we did that about that same day, in Catharine street; after we had the mortgage and notes, we took them over, and gave them formal possession; I do not remember of giving them anything in Mr. Zabriskie's office; I do not know that there was any person present, except Mr. Zabriskie, Mr. and Mrs. Berryman, and myself; Just was not there; our firm owns all these notes, except \$2600 that has
 30 been paid; our firm owns this mortgage, too; the mortgage is to me, individually, but my firm owns it; by my firm I mean Graham and Aitken; that is, myself and James Aitken; he is at 25 Pine street; he has an office there, and lives at West Hoboken, in this state.

Quest. Witness being shown *Exhibit C No. 1*, is asked to read the endorsement thereon signed W. G.?

Ans. "Received \$449.02, as on the within;" it is in my handwriting; I did not receive that money; I put that endorsement there at the time the mortgage was received in
 40 Mr. Zabriskie's office; I can't say whether I was introduced to Mrs. Berryman, before I was introduced to her in Mr.

Zabriskie's office, when I received the mortgage; I was first introduced to Mr. Berryman, two or three weeks previous to that; I think the first time was in the street, in College Place; I couldn't tell you whether he had then seen these goods or not; I was introduced to him as the man who wanted to buy the stock of dry goods and the lease; nothing else occurred at that time; our meeting at that time was accidental; I don't know where I saw him next; between that time and the time I saw him in Mr. Zabriskie's office, I saw him, say five or six times; I saw him at our office, and at 10 41 Catharine street; I couldn't tell you whether I saw him more than once in Catharine street before I met him at Mr. Zabriskie's office with his wife, or not; I conducted the negotiation on the part of Graham and Aitken; Graham and Aitken owned the stock of goods in that store, since 1862; some of it had been bought a few days before; it was carried on the same as any other store; the value of that stock of goods was independent of the lease; would at forced sale have brought seventy cents on a dollar—say \$7500.

Quest. For what amount did you sell that stock and that 20 lease to Berryman and Just?

Ans. The amount set forth in that mortgage and those notes.

Quest. What was that amount? [Question objected to.]

Ans. \$9276.51.

Quest. Were the six notes of which you have spoken given to pay that sum?

Ans. Yes, together with the mortgage as security.

Quest. How long have you known Mr. Connery?

Ans. I have known him since December, 1865; he owns 30 that place still; I have known Alexander Just for thirteen or fourteen years; I have known him personally eight or nine, that is to converse with him; I have never been connected in business with him in any way; Berryman and Just carried on this store, 41 Catharine street, after we sold it to W. H. Berryman; Mr. Just had a paper from Mrs. Berryman authorizing him to carry on the business for her; I have seen that paper; Just showed it to me once, some time after they bought out the place, and before Connery bought; he had to show that as his authority for buying goods in the 40

name of Mrs. Berryman ; he bought goods where I had my office, from that firm ; we had no goods to sell then ; that was in 1865 ; soon after they bought the stock and store ; I don't remember whether he had then shown me this paper of which I have spoken ; Mr. Just never bought any goods for Mrs. Berryman of me or through me.

Quest. Did Mr. Berryman ever inquire of you with reference to the business capacity of Alexander Just ?

Ans. No.

10 *Quest.* Did he ever talk to you on that subject ?

Ans. When, what time have you reference to ?

Quest. Did he ever do so, at any time ?

Ans. Since he sold that place, he has talked to me about Just ; how he cheated him ; nothing else, that I remember, of any consequence ; he said Just had taken goods away out of that store and sent them to his store in the country. [Conversation of Berryman concerning Just objected to.]

He never talked to me about Just's integrity or honesty before the place was sold to Connery ; Berryman and Just,
 20 when I first met them, seemed to be personal friends ; seemed to know each other very well ; I have never seen the farm that mortgage covers ; my partner saw it ; he went out at the solicitation of Mr. Berryman ; he wanted him to buy the place, or find him a customer ; that was last summer—I think it was in July last ; I don't think we had the title examined, before we took the mortgage ; he brought us all the papers, and the liens he said he had against it, the receipts, &c., and Just assured us that it was all right, that there was
 30 nothing against it ; Berryman begged us last fall not to foreclose, because if we did it would not bring much more than the amount of our mortgage ; we told him we didn't want his farm, or didn't want to foreclose, we wanted him to sell his farm to the best advantage, and pay us the mortgage ; he said he was doing his best to sell it ; he was as anxious as we were to sell it ; he told us parties had been out there, and parties were going out to morrow, who, he thought, would buy it, he wanted us to take a new mortgage on it, or get some one who would, we told him we must have our
 40 money by the 1st of January, as we were going into a business where we would be required to use it ; I advised him to let the sheriff put it up and sell it at auction ; I told him I

thought it would bring as much now as ever; I told him he might have a sheriff's sale, and sell it as though it was being foreclosed; I did not tell him I would buy it or anything of the kind; I did not tell him I would take it for the amount of the mortgage; I didn't want it; I wanted him to make the most he could out of it.

Quest. You have stated what Mr. Connery paid for the goods and lease together, how much of that sum was for the goods, and how much for the lease?

Ans. I don't know.

10

Quest. Did you not negotiate that whole affair?

Ans. I did; if I had not the sheriff would have negotiated Mr. Berryman out of the shop in another day; Mr. Just was there up to the time I sold to Mr. Connery.

Quest. How much of the \$9276.51 was for the goods, and how much for the lease?

Ans. It wasn't sold in that way either time.

Quest. How, then, was that result reached—how was the amount ascertained?

Ans. The stock was sold at ninety cents on the dollar, I think, and at ninety cents it amounted to that \$9276 51; it was the understanding that the lease should be assigned to the purchaser, but the lease was, notwithstanding, part of the consideration.

Quest. Why was \$611.66 paid to W. H. Lee & Co.?

Ans. Because they had to put on an attachment against Mrs. Berryman for merchandise, and the goods would have to be sold subject to the attachment unless we became responsible; I only know from Berryman and Just that it was for merchandise.

30

Quest. Why was \$1006.20 paid to McIntyre and Gibson?

Ans. Berryman agreed to pay that as soon as he sold out and could get the money, else an attachment would be put on by them, too; that was for merchandise for the store.

Quest. For what were \$682.73 paid to Jacob L. Seixas?

Ans. That was paid on an order given by Berryman to Jacob L. Seixas on me, as the sale could be completed, and the money paid over; this was for merchandise too, for the same store—so I understand; Berryman took one of the two notes for \$2000; I do not know what became of it; it never came back to me or my partner.

40

Quest. Have Graham and Aitken parted with any of these five notes?

Ans. No.

Quest. You have said that on the 15th day of February, 1867, there was owing on these notes and mortgage \$5265.10, did you read from a statement in writing here, showing that amount to be so owing?

Ans. Yes, sir.

Quest. Produce that statement?

10 *Ans.* Here it is. Said statement is offered in evidence, and marked *Exhibit D No. 1*, on part of defendants. [Offering of exhibit objected to by counsel for complainants.] I have lived in New York about nineteen years; I am not a native of New York; I was born in Ireland.

Quest. Did Mr. Berryman buy \$5000 worth of merchandise outside of what he bought from Graham and Aitken?

Ans. I don't know anything about it.

Quest. Did you, at the time of the sale, understand that Alexander Just was to have an interest, or to share in the
20 business?

Ans. I knew he was to be there; I didn't know anything of his having an interest.

Quest. Was that part of the inducement to you for selling?

Ans. There was no inducement to me at all; I could sell to anybody that wanted to buy.

Quest. How came Just to talk to you about having a man to buy that property?

Ans. I think he had advertised the property; he came the same as anybody else would come.

30 *Quest.* How long had it been advertised?

Ans. I don't know.

Quest. Was he to be paid or rewarded in any way for helping you make a sale?

Ans. By me—no, sir; nor my partner.

Quest. How often had Just talked with you about it before he introduced Berryman to you as the man who wanted to buy?

Ans. That I don't know—probably two or three times; I had given him my price, and so on—I sold for that price.

40 *Quest.* Did I understand you to say that you do not own

this mortgage, or any of the notes, but that they all belong to you and your partner, Mr. Aitken, and that the amount owing on them is not owing to you, but to you and your partner, Mr. Aitken?

Ans. The amount is owing to me and my partner, and not to me individually; by my partner, I mean James Aitken.

Direct examination resumed.

Quest. In whom is the legal title to this mortgage—is it in you, or is it in Graham and Aitken? [Question objected to.] 10

Ans. It is in myself, William Graham.

Quest. Did you ever make any assignment of the mortgage or your interest in it to any body?

Ans. No, sir.

Quest. Do you continue to hold it in the manner in which it was originally given, and did you so hold it at the time this suit was commenced?

Ans. I do; I have always held it.

Quest. In disbursing the money received by you from the defendants from the sale of this property, as you have stated, 20 did you do it according to the directions and with the consent of the defendants?

Ans. Yes, sir; Mrs. Berryman came down to complete this sale; she completed it through me and asked me to take charge of it; this man wouldn't buy it unless I would be responsible for the title.

Quest. In ascertaining the amount due upon this mortgage, as you have stated, have you given credit to the defendants for the amount endorsed upon the mortgage as paid?

Ans. I don't think I have. 30

Quest. How is it you have not done so—is it an oversight?

Ans. I have not done so; I believe it is an oversight; the endorsement of \$449.02 was made at the time for the purpose of including the interest on the amount of the mortgage in excess of \$5000, for the time the mortgage had to run; at least, that is my impression; I can't state positively now.

Quest. Can you state positively whether the credit has been allowed of this \$449.02?

Ans. I cannot state positively now; I have given defendants credit for the \$2000 note of Connery.

Cross-examination resumed.

Quest. Has your ownership in this mortgage and these notes ever been different from what it now is?

Ans. No, sir; I always owned it legally, and I own it legally now; my partner and I are still doing business together and interested with each other.

WILLIAM GRAHAM.

Subscribed and sworn to, this 20th day of June, A. D. 1867,
at Jersey City, before me.

10

ISAAC ROMAINE, *M. C.*

Alexander Just, a witness produced on the part of the complainant, being duly sworn, deposes and says—I reside in English Neighborhood; I know Jane W. Berryman and William H. Berryman, the defendants in this suit; I have known them about twelve years; we have been intimate for quite some time; on visiting terms for eleven or twelve years; I have known Mr. Graham for nearly eighteen years; I introduced Mr. Berryman to Mr. Graham; I can't say exactly when it was; it was in reference to the sale and previous to
20 it about two or three weeks; the purpose for which I introduced him was my wife and Berryman's wife had been talking about Berryman's getting a store and finding money, the sum of \$5000 was his proposition, and he wanted me to take charge of it; I was with Mr. Berryman when he talked with Mr. Graham about purchasing the stock of goods and store; Mr. Berryman was there, at the store No. 41 Catharine street, before he bought the goods; he liked the location and wanted to have it under any circumstances; I did not hear Mr. Graham make any representations about these
30 goods at any time.

Quest. Was the bargain, in reference to these goods, between the parties made in your presence?

Ans. I think it was.

Quest. When Mr. Berryman went to look at these goods before the sale, what did he say in reference to his satisfaction with them?

Ans. He was perfectly satisfied—expressed himself so.

Quest. What was the value of these goods at the time of the sale?

Ans. Ninety cents on the dollar was considered the value of them, in connection with the lease; they were considered a fair value for the price paid for them; by ninety cents on the dollar, I mean ninety cents on the dollar of the cost price to Mr. Graham.

Quest. Did you ever refer Mr. Berryman or Mrs. Berryman to Mr. Graham as to your capacity for business?

Ans. No, sir.

10

Quest. What was the character of your acquaintance with Mr. Berryman before this sale, or before you introduced him to Mr. Graham?

Ans. Nothing further than this, friendly calls and riding with him in the cars; I was very intimate with him; when he wanted anything he came to me; at the time of this sale he owed me money on a bill for groceries, that stands on the books in English Neighborhood to-day; I don't know what the name of the place is where Berryman lives, about a mile and a half from Hackensack station; he has lived there as long as I have known him.

Quest. With whom were you the more intimate at the time of this introduction of Mr. Berryman to Mr. Graham, with the former or the latter?

Ans. With the former—with Mr. Berryman.

Quest. Was Mrs. Berryman interested in this store at No. 41 Catharine street?

Ans. Yes, sir; solely interested, I believe.

Quest. Who furnished the funds and the credit?

Ans. None was furnished; I lent him money to keep him going until he sold some of the stock that Mr. Graham had sold to him; I can't tell you the exact amount which was sold while Berryman had the store, without the book which Mr. Berryman has in his possession, or had; he took it away from the store; everything is entered in that book that I ever had anything to do with; the sales are entered, and what money was paid out, and what he drew out himself, individually, from the first day we commenced to sell, I believe.

Quest. What is the amount of the daily sales, during the time the defendants had the store?

40

Ans. I suppose they would vary from \$25 to \$200 and odd dollars.

Quest. What should you judge was the average? [Question objected to.]

Ans. I can't tell; the weather was very bad, and the sales were very light; I was not interested in the store; I was employed there on a salary; the occasion of the sales being very light was bad weather; the stock was very light and we didn't have money to buy goods.

- 10 And being cross-examined he says—my salary was \$2000 a year, but I didn't get any, except a few goods which appears in the books; Mr. Berryman wanted me to take plenty of goods and fill the store in English Neighborhood, but I declined; I have no store there—my wife has, I can't own anything myself; I have not seen either Mr. or Mrs. Berryman since I parted with them, at No. 41 Catharine street.

Quest. Are you on good terms with Mr. Graham, and did you come here to-day at his request, without subpoena?

- 20 *Ans.* Yes, sir.

Quest. Then you are not now on visiting terms with Mr. and Mrs. Berryman?

Ans. No, sir.

Quest. What difficulty have you had with them?

Ans. None that I am aware of.

Quest. Has your wife had some goods, too, from the store?

Ans. These are the goods that I allude to.

Quest. To what amount?

Ans. I really don't know to what amount.

- 30 *Quest.* Have you had any litigation with Berryman and his wife?

Ans. No, sir; not that I know of.

Quest. What was your business before you engaged to go to this store in New York?

Ans. I was in the dry goods business—I have been all my life; I was not in the dry goods business, except at home for my wife, at the time I went in the employ of Mrs. Berryman; I have been unable to do anything in my own name since 1857; while I was with Mr. Berryman my health was very

bad, I had erysipelas in the face, so that I had to be away a great deal, five or six weeks, the latter part of the period I was with Mrs. Berryman ; before that my health was pretty good ; I was at the store regularly ; I have the paper under which I was employed ; it is not here, it is at home ; I have never had a settlement with Berryman and his wife ; I don't know how much they owe me ; I haven't brought any suit to recover it ; I am a native of Scotland, I came here in 1845 ; my wife had no interest whatever in this store No. 41 Catharine street ; my wife has had a store at English Neighbor-¹⁰hood since we came down there, a little over two years since ; we moved there from New Bridge ; my wife never had a store before that ; two or three different men assisted me in the store ; they were employed by Mrs. Berryman ; Mr. Berryman used to come down every day and nearly smoked us all out. He drew out the money pretty fast.

ALEXANDER JUST.

Subscribed and sworn to, this 20th day June, A. D. 1867,
at Jersey City, before me.

ISAAC ROMAINÉ, *M. C.*

Whereupon the examination was adjourned to Wednesday, 20 July 15th, A. D. 1867, at 10 o'clock A. M., at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

John Moore, a witness produced on the part of the complainant, being duly sworn, deposes and says—I reside in the city of New York—am at present engaged in the dry goods business ; I know the complainant in this suit, Mr. Graham ; I am not acquainted with Mr. Berryman—I know him by sight ; I have been in the employ of Robert Gage—his business was a dry goods merchant—his place of busi-³⁰ness was at 41 Catharine street ; it is from three years to three years and a half ago—I lived with him a year before he sold out—I do not know when he sold out—he sold out to Mr. Berryman, and, I think, Mr. Just—at least Mr. Just looked over the stock ; I always understood that it was Mr. Gage's stock.

Quest. Who took the stock of goods after Mr. Gage gave it up?

Ans. Mr. Graham got it in his own hands and sold it to Mr. Berryman; I was employed in the store up to the time the stock was delivered over to Mr. Berryman; I saw Mr. Berryman and Mr. Just in the store before the stock was given up—they used to come there to look over the stock.

Quest. State more particularly what they did on these occasions when they came to the store?

10 *Ans.* Mr. Berryman didn't look over the stock, he seemed to leave Mr. Just to look over it; I don't know that Mr. Berryman knew anything about the business; when they came to the store Mr. Just went behind the counter and looked over the stock, and I told him the prices of the goods as he examined them, and he didn't seem to find any fault with the prices; I can't say how many visits Mr. Berryman and Mr. Just made to the store before the stock was delivered up—they were there two or three times; we measured
20 made out of the stock; the goods were put down at first cost prices, some were put down at less.

Quest. Did they have this book containing a list of the stock when they came to the store?

Ans. They did not, not as I know of—Mr. Graham had it; they did not have a copy from the book as I know of.

Quest. At what prices did Mr. Berryman buy these goods, at the prices put down in the book?

Ans. At the prices set down in the books—that was the first cost.

30 *Quest.* Do you or not know what sum was actually paid by Mr. Berryman for these goods?

Ans. No, sir.

Quest. Did Mr. Berryman appear to be satisfied with these goods on these occasions when he was at the store, or not?

Ans. I can't say as to Mr. Berryman, he made no remarks or suggestions; Mr. Just appeared to be satisfied, and I understood he was the party who made the purchase for him; on two or three of these occasions Mr. Berryman and Mr. Just were present together.

40 *Quest.* Were all these goods that this stock list called for, in the store at the time Mr. Berryman took it?

Ans. I believe they were.

Quest. You said you gave Mr. Just, in Mr. Berryman's presence, the prices of these goods—were these the prices named in the stock list you have spoken of?

Ans. Yes, sir.

Quest. Was Mr. Just, in the inspection of goods, acting for or on behalf of Mr. Berryman? [Question objected to.]

Ans. He was acting for Mr. Berryman.

Quest. Who was Mr. Just acting for in this inspection of these goods? [Question objected to.]

10

Ans. For Mr. Berryman.

And being cross-examined, he says—

Quest. How do you know that?

Ans. By seeing Mr. Berryman there along with him—that's all I know about his acting for Mr. Berryman in this matter; Mr. Gage is now doing business in Brooklyn as clerk; I do not know if Mr. Gage sold to Mr. Graham—Mr. Graham took the stock and sold it to Mr. Berryman; when Mr. Graham took the stock I was clerk for Mr. Gage; while Mr. Graham had the stock I was in Mr. Gage's employ—I 20 am now in Mr. Johnson's employ; the first time I saw Mr. Graham was when I went to Mr. Gage's store; I cannot say at what price Mr. Graham took the goods; the goods were sent from Mr. Graham's store, down town, to the store 41 Catharine street, and he sent bills with the goods when they came up; all the goods on the stock list were not taken from Mr. Graham's store.

Quest. How long did Mr. Graham take these goods before he sold them to Mr. Berryman?

Ans. I don't know when they were taken by Mr. Graham. 30

Quest. Was not Mr. Gage in the employ of Mr. Graham, while you were in Mr. Gage's employ?

Ans. I suppose so; I was always under the impression that Mr. Gage was the proprietor of the store.

Quest. Did you not hear Mr. Graham say here a few moments ago that Mr. Gage was only their agent, in their employ? [Question objected to.]

Ans. Yes; I did hear him say so.

Quest. What did Mr. Graham, a few moments ago, say about Mr. Gage being only his agent? [Question objected to.]

Ans. He said that he was really agent for him; that he only employed the clerks.

Quest. What clerks were there—give their names?

Ans. Mr. Foy, Mr. Calder, Mr. Hernidge, and myself; there were four.

Quest. Were are these three now?

Ans. There are two doing nothing, and Calder is with A. T. Stewart & Co.; I have known Just this fifteen years; I did not know him in the old country; I first lived with him in the store in Catharine street as clerk; he and I are old friends; we are now on speaking terms.

Quest. Were you present when Mr. Just took possession?

Ans. I was; I did not remain there very long after he took possession; he took another clerk with him and commenced to fix the goods on the shelves; Just and Berryman were there not very long, perhaps an hour, on these occasions of which I have spoken; the stock book was made three or four days before they got possession; the tickets were all on the goods; it was not more than two or three weeks after they first came there that Just took possession; I am certain we did not continue to sell the goods until Just took possession; the store was closed for two or three days; I forget how long it was closed.

Quest. Was it closed at all during business hours?

Ans. I believe it was.

Quest. What was the value of those goods?

Ans. I couldn't tell that.

30 *Quest.* Was not the dry goods trade very dull at that time?

Ans. It was not particularly dull at that time.

Quest. Were not many of these goods of an inferior quality?

Ans. There was bad stock among them, like every other old stock.

Quest. Had not a very large part of this stock come from the store of Graham and Aitken?

Ans. Yes; there had considerable of it come from their store.

Quest. Have you seen Mr. Just frequently since that time?

40 *Ans.* I have not; I have seen him two or three times.

Quest. Did you see him quite often while he had that store?

Ans. No, sir; I was not in the city at all at the time he had it; there was a very respectable nice trade at that store; I do not know that Mr. Just and Mr. Graham were very intimate; I am not a native of New York; I was born in Ireland; I have been in this country about twenty-five years; I can't say that Mr. Graham was at the store with Mr. Just on any of these occasions, except the morning they took possession.

Quest. Was Berryman there when Just took possession? 10

Ans. I think he was there that morning.

Quest. Don't you recollect that when Just was there looking at the goods, the prices of some of them were marked up higher?

Ans. He might have thought so; I have no knowledge of their having been marked up; I didn't do it; we took nothing but what they cost; some of the goods were bought when they were very high; they might possibly have been bought for less at that time.

Quest. Is not Mr. Just a man of very intemperate habits? 20

Ans. I don't know much about him; I have heard some say so.

Quest. Were the goods which had been sold the day before taken off the stock book when Mr. Just took possession?

Ans. I expect they were taken off; if there were any goods sold after the stock was taken, they were taken off the stock book; I was not the book keeper while I was there; Mr. Gage was the book keeper.

Direct examination resumed.

Quest. Were any of these goods sold between the time 30 when Mr. Just and Mr. Berryman inspected the stock, and the time they took possession of the store?

Ans. I cannot recollect whether goods were sold up to the time they took possession or not, but what goods were sold I think must have been taken off the stock book; Mr. Gage can answer that question better than I.

JOHN MOORE.

Subscribed and sworn to, this 17th day of July, A. D. 1867,
at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Depositions for Defendants.

[Filed February 5, 1868.]

Take notice of examination of witnesses in above cause, before Isaac Romaine, esq., one of the masters of this court, at his office in Jersey City, on Wednesday, the sixth day of November next, at eleven o'clock A. M.

10

Your obd't servant,

CHAS. H. VOORHIS,

Solicitor of defendants.

Dated October 31, 1867.

Examination of witnesses, &c., in the above stated cause, on the part of the defendants, taken before me, Isaac Romaine, a master and examiner of said court, at the office of Charles H. Voorhis, No. 1 Exchange Place, Jersey City, on Wednesday, the sixth day of November, in the year eighteen hundred and sixty-seven, at ten o'clock in the forenoon, in presence of Charles H. Voorhis, of counsel with defendants, and Lansing Zabriskie, of counsel for complainant, pursuant to notice.

20

Thomas Porter, a witness produced on the part of the defendants, being duly sworn, deposes and says—I reside in New York city; I am in the dry goods business; that has been my occupation for twenty-eight years; the last twenty-four years I have been in New York city; I know William Graham, the complainant in this case; I have known him two years, or more; I know the defendants in this cause, 30 Mr. Berryman and wife; I have been employed at No. 41 Catherine street—was employed there six weeks; I was there at the time this place was sold to Mr. Berryman and Just; I think it was about the second week in August—August, 1865; Mr. Just met me on the corner of Chambers

street and Broadway, and asked me what I was doing ; I told him I had nothing to do for three weeks to come ; he said, in reply, he was very glad he had met me ; that I was just the man he wanted to assist him to take an inventory of the stock which he had purchased in Catherine street, in connection with a partner, and which was worth some \$75,000 ; he then asked me for my address, which he wrote down in his memorandum book, and said I would hear from him in a day or so ; I received a note from him the following evening, and requested me to meet him in Messrs. Gra- 10
ham and Aitken's office the next morning ; I saw him the next morning at the place designated, and was appointed to meet him on the Monday following, at his store in Catherine street ; on that day the inventory was taken, I think, by Mr. Aitken ; Mr. Gage was there, and Mr. Just ; Mr. Berryman was not there ; it was some days afterwards that I first saw Mr. Berryman there ; it must have been a week—full that—before Mr. Just took possession ; during that week, Mr. Graham said I might consider myself in his employ ; I was present when possession was given of the store and 20
stock ; he called me up to witness the transaction ; he said after that I must consider myself as employed by Mr. Just ; Mr. Graham, Mr. Just, and myself were present then ; I continued employed at that store for about six weeks from that time ; I was, at that time, a good judge of the value and quality of dry goods ; the condition of those goods was a very bad one in every respect ; they had been badly kept, and apparently a long time on hand ; a great many of them were shop-worn and damaged by constant exposure on the sidewalk ; there were a great many remnants in the store, 30
and a great many unsaleable goods ; I think fifty cents on the dollar would be a good price for them ; by fifty cents on the dollar, I mean fifty cents on the dollar of what they cost ; part of the stock consisted of made-up goods ; there was a considerable number of cloaks there—ladies' cloth cloaks—and thin summer cloaks, made from a lighter material ; I should think the value of them was very little ; they were out of style, and been rendered unsaleable by being exposed on the sidewalk ; the shawl stock was equally as bad as the cloaks ; it was not looked upon as being a 40

very valuable stand, but was a very fair stand for business; after the inventory was completed by Mr. Just and I, we found short measures frequently; these short measures were found after the place was delivered to Mr. Just; Mr. Just made the matter of short measurements a complaint to Mr. Gage; there was some difficulty about the prices the goods had been taken at; he charged Mr. Gage with having the prices marked up from the original cost; from my knowledge of the value of goods, I should think it had been done;

10 the stock of goods in the store was replenished to a very small extent while I was there; there was very little business doing at the store during the six weeks I was there; Just professed to know the value of these goods; the style of the firm was Alexander Just, agent; I first saw Berryman the early part of the week following that I went there in the employ of Mr. Just and Mr. Graham; I know John Moore; he is a dry goods salesman; he is employed at the corner of Catharine and Madison streets; it is reported it is Mr. Graham's business; Mr. Crow has the superintendence

20 of it; he has been employed there since last spring; I know of his being employed at No. 41 Catharine street; he was employed there by Mr. Gage the time Mr. Just took possession; he was not present when possession was delivered; he was present when the inventory was made; Mr. Just and Mr. Graham are intimate; they appear to be very old acquaintances; it was understood that the lease of this property or store went with the stock; I would say that the lease was of no value, for it was advertised a long time, with no takers—from February until Just took it; I used to pass

30 there three or four times a day, and saw in the windows that the lease and stock was for sale.

And being cross-examined, he says—

I should say the best of these goods had been some months on hand; I judge they had been some months on hand from their appearance, their value, their style—they had been purchased when goods were much higher than they were at that time; by the original prices marked on the goods; I mean the prices they were marked at.

Quest. What do you mean by the original price marked on the goods?

Ans. I mean the price at which they were purchased by Mr. Gage.

Quest. What do you mean when you say the prices on the goods?

Ans. The prices that were marked on them.

Quest. That is, you mean the prices at which they were bought?

Ans. At which they were represented to have been bought; 10 these prices were marked on the goods in private characters, and these prices were the prices at which they were mentioned.

Quest. Did you not state, in your direct examination, that you should judge the prices of these goods had been marked up?

Ans. I did.

Quest. You state that from the prices marked on the goods you should judge they had been on hand some time?

Ans. Yes, sir; judging from the style and condition of the goods, too.

Quest. Do you believe that price mark was a correct one?

Ans. No, sir.

Quest. Well, now, if you think it was not correct, how do you judge from it that the goods were bought some time ago?

Ans. I judge from it in connection with the condition in which the goods were, also in connection with the style of goods.

Quest. What connection do you make with a false mark put upon goods, and their condition and style?

Ans. I connect them as I would any other facts; I was 30 present when the inventory was taken—I assisted Mr. Moore in handing the goods down and Mr. Aitken took the prices; Mr. Just was present part of the time, but they had a squabble and he got angry and left.

Quest. Was not the price placed down in that inventory, the price agreed upon by Mr. Just and Berryman?

Ans. Yes, sir; I so understood it.

Quest. Why did Mr. Graham tell you that you might consider yourself in his employ?

Ans. Because Mr. Just had old debts or judgments stand- 40

ing over him, and which he was afraid the stock might be taken from him to satisfy these old claims.

Quest. Did you not know that the reason you might consider yourself in my employ, was waiting for Mr. Berryman to give security for the merchandise?

Ans. No, sir, I knew nothing about any security he was giving, or about any of their private arrangements, or what they were to give for the stock.

Quest. Do you know that when Mr. and Mrs. Berryman, 10 gave settlement for the stock of the goods, I delivered them up formal possession?

Ans. I have reason to believe so, and I was also called up by Mr. Graham to Mr. Just; I was told by Mr. Graham to consider myself in future in Mr. Just's employ—the place had been transferred and was legally his; I don't remember Mr. Berryman's name being mentioned.

Quest. Was not Mr. and Mrs. Berryman present when that conversation took place?

Ans. No, sir.

20 *Quest.* Were you ever in business for yourself?

Ans. I was, sixteen years.

Quest. Where?

Ans. In Third avenue, New York city.

Quest. Was this a fair average stock of dry goods, for a store that had been running five or six years?

Ans. I think the cloak and shawl stock was heavy, too heavy, in comparison to the amount of other goods.

Quest. You say there was some shawls damaged—was not the price of them much less than a perfect shawl would be?

30 *Ans.* No, sir.

Quest. Do you remember what the price of those light cloaks were?

Ans. They ranged from five to ten dollars, to retail, as far as I can recollect.

Quest. Was there nothing lower than five dollars?

Ans. I have no recollection of it.

Quest. Will you swear there was not?

Ans. To the best of my knowledge.

Quest. At that time what would a good cloak cost, to buy it?

Ans. Made as those were made, and of the same material, about the same price.

Quest. Do you mean to say you would get a good cloak of of the same kind for the same price?

Ans. Yes, sir.

Quest. Is it usual to put goods in show windows and outside the door?

Ans. Yes, sir; but they are changed about once a week.

Quest. Do they get more or less soiled by being so exposed?

Ans. Yes, sir; the longer they are out the worse they look, and the more unsaleable they become.

Quest. Is that applicable to goods in all stores?

Ans. Yes, sir.

Quest. Were you there when Mr. Just and Mr. Berryman took possession?

Ans. I saw very little of Mr. Berryman, and have no recollection of him until at least one week from the time I went there.

Quest. Were you there from the time Mr. Just and Mr. Berryman took possession? [Question objected to.] 20

Ans. I was there from the time Mr. Just took possession; Mr. Berryman was not there.

Quest. How long were you there altogether?

Ans. About six weeks.

Quest. How often did you see Mr. Berryman there during the six weeks?

Ans. Well, after the first week I saw him almost daily.

Quest. What did he do when he was there daily?

Ans. Didn't do anything.

Quest. Did he go behind the counter? 30

Ans. Yes, sir; once or twice he set in a chair and smoked a cigar—that was his usual occupation.

Quest. Did he ever go to the money drawer?

Ans. Yes, sir.

Quest. Did he ever take any money out of the drawer to your knowledge?

Ans. Yes, sir; in Mr. Just's absence.

Quest. Did he take charge in Mr. Just's absence?

Ans. He appeared to, though he had little to say.

Quest. Do you know of his taking goods away for his own use?

Ans. After they were charged.

Quest. Did he charge money too when he took it?

Ans. Yes, sir; and a memorandum was left in the drawer, and when Mr. Just came he would collect them and enter them in a book.

Quest. Was you cashier there?

Ans. I was when Mr. Just and Mr. Berryman were not there; I was cashier, salesman, and porter at one time—I had the whole thing on my shoulders.

Quest. How many new goods do you suppose went into that store during the six weeks you were there?

Ans. Not more than \$2000 worth.

Quest. Then your stock was not very well assorted?

Ans. It was not assorted; Mr. Just was away a great part of the time, and we could not get any one to buy goods or anything else for us.

Quest. If your stock had been better assorted, would you not have done a more profitable business?

Ans. Yes, sir.

Quest. Did you ever hear Just complain that Berryman did not put the money in the business that he promised to?

Ans. No, sir; he would always boast that Mr. Berryman was worth \$75,000, and could raise \$10,000 any day he wanted to make a purchase; that he had a friend in the Butchers and Drovers Bank from whom he could get any amount he wanted.

Quest. Do you know John Moore to be in Mr. Graham's employ?

Ans. I do by rumor; the store in which he works is supposed to be Mr. Graham's; Mr. Crow is superintendant of the place.

Quest. Are you willing to swear that Mr. Graham owns the place, corner of Catharine and Madison streets?

Ans. No, sir.

Quest. Are you willing to swear that he has any interest in that place, in any shape or form?

Ans. No, sir.

40 *Quest.* Do you know who keeps that place?

Ans. I do not ; common report says it is Mr. Graham's.

Quest. How do you know that Mr. Just and Mr. Graham are on intimate terms ?

Ans. From what Mr. Just has said, and from the friendly manner in which he has spoken of Mr. Graham.

Quest. Is that all you know of their intimacy ?

Ans. That's all I know.

Quest. Did Mr. Just speak in a very friendly way of Mr. Berryman ?

Ans. I believe he did ; I have no recollection of his having 10 spoken otherwise.

Quest. Did Mr. Just and Mr. Berryman seem to be on intimate terms during the six weeks you were with them ?

Ans. They were very little together during my stay ; when Mr. Just was there Mr. Berryman was not ; the business was left to Mr. Just's management.

Quest. When Mr. Just and Mr. Berryman met there did they seem to be friendly ?

Ans. Yes, sir ; Mr. Berryman used to complain bitterly of Mr. Just's neglect of business. 20

Quest. You say the lease went with the stock, how do you know that ?

Ans. It was so advertised in the show window.

Quest. Will you repeat, as near as possible, how that advertisement in the show window read ?

Ans. I can't be positive about the words, whether it was "to let," or "lease and stock for sale ;" the two were connected, that I am positive of.

Quest. Then when you say in your direct examination that the lease went with the stock, do you mean that the lease 30 was thrown in ?

Ans. No, sir ; I mean that the lease was held out as an inducement for some one to purchase the stock.

Quest. You say the lease was of no value, how do you know that ?

Ans. From the fact that it was held so long and no one to take it ; and that the dearness of the stock would overbalance any inducement there might be in that lease for any purchaser.

Quest. Do you know what they were asking for that lease, separate from the stock ? 40

Ans. I do not.

Quest. Do you know how long that lease had to run?

Ans. I know from what Mr. Just says, that it had a year, from the following May, to run.

Quest. Do you know what the yearly rent of that store was?

Ans. Only from what Mr. Just says.

Quest. Then if you do not know what the yearly rent of the store was, how do you know that the lease was of no value?

- 10 *Ans.* I know the rent was \$1300, from having seen it counted out, and from the tenant in the basement having given up, and Mr. Just trying to let it again; it was then Mr. Just stated what the rent was; Mr. Just was debating in his own mind whether he would connect it with the store or re-let it; he got \$25 for the basement—\$300 a year.

Quest. Were you conversant with what stores were letting for in the same block, and in the block below, at the same time?

Ans. In a measure, I was; I had heard several rents quoted.

- 20 *Quest.* Did, or do you know what the lease and fixtures of the store on the corner above was sold for?

Ans. No.

Quest. Do you know what such a store and basement on that block, or the block below, would rent for at that time?

Ans. I think about \$1500, if the stock was out and repairs made; Mr. Just made some repairs.

- Quest.* Would you be willing to swear, to the best of your knowledge, that there was a store like this, on this block, or the block below, that would let for the year before or the
30 year after, for less than \$2000?

Ans. I have so heard; I would swear, to the best of my recollection, and the best of my belief, and a store better than this.

Quest. What store was that?

- Ans.* I cannot name any; they were dry good stores on that street, with better fronts; I am not prepared to name them; they were in the middle of the block; this store was on the corner; sometimes a store on the corner is more valuable than one in the middle of the block; it is for liquors
40 and groceries, but not so much for dry goods; I have heard

of parties that were willing to pay four or five hundred dollars more for a store on the corner; I thought they were very foolish; I know nothing whatever about the private arrangements of Mr. Just and Mr. Berryman, or what they gave for the store; I heard him, Just, say it was valued at one hundred cents on the dollar; I would swear that the goods were marked up above their original cost; I know Mr. Gage was accused by Mr. Just with doing it; I do not know how it was settled; I swear that the goods were marked up above their cost.

10

Quest. How do you know what the goods cost?

Ans. I know from the fact that Mr. Just accused Mr. Gage of having marked them from a certain price up to a certain price; I am now a dry goods clerk at Lord and Taylor's, New York city.

Quest. How often have you seen Mr. Berryman in regard to coming here to testify?

Ans. Twice; five minutes each time.

Quest. Did he give you anything for coming over here?

Ans. Yes, sir; he paid me five dollars—four for my day's 20 wages, and one dollar for my expenses.

Quest. Did he promise to give you anything more than five dollars?

Ans. No, sir; I do not expect any more; it is now eight years since I was in business for myself; I failed in business; I made an assignment, and have been clerking it since, first at ten dollars a week.

Quest. Did you fail more than once?

Ans. I made a compromise previous to my failure, and along with that I had to make an assignment.

30

Quest. How much did you pay on compromise? [Question objected to, and witness instructed not to answer.]

Ans. I object to answer.

Quest. How much did your creditors get on compromise? [Question objected to, and witness advised not to answer.]

Ans. I object to answer; I have worked with Lord and Taylor since my failure in 1861, or shortly after; I had worked with them before I went in business for myself; I was sent for by the superintendent of Lord and Taylor's; I informed Mr. Just, when I went to him, that I was engaged 40

for the 1st of September to go to Lord and Taylor's; goods were selling in August, 1865, for less than they had been previous; a good, heavy brown sheeting was selling at from twenty-five cents to forty cents a yard; the lowest bleached shirting, York mills, was twenty-five cents—from that to sixty cents; Sprague print was worth—I cannot say how much; I could not answer these questions without a price-list; I do not know that these goods were worth more in August, 1865, than they were in April and May of that year;

10 I know that the market was fluctuating during that month.

THOMAS PORTER.

Subscribed and sworn to, this sixth day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

William Smith, a witness produced on the part of the defendants, being duly sworn, deposes and says—I live at 129 White street, New York city; I am a dry goods clerk, that has been my occupation about 25 years; I know the parties to this suit; I have seen Mr. Graham once or twice while I

20 was doing business for the firm of which Mr. Just was agent; that business was carried on at No. 41 Catharine street, New York; I was doing business for the the firm about two months previous to their selling out the stock; I continued until the selling out; I think we sold out in January, 1865, or 1866; I went there, I think, in November; U. Reynolds, and a relation of his, I forget his name, were employed there; no one else except the porter; Mr. Just was not there; he did not attend to the business; he was in once or twice during that time; he just walked in and looked over things;

30 there was a very dirty stock of goods in that store while I was there; I don't think there was any stock brought in except a couple of peices of merino; if I was going to purchase the stock that was there myself, I would not give more than forty or fifty on the dollar; I think I am a good judge of the value of dry goods; that stock consisted of some dress goods, remnants of calico, some blankets, and flannel; they were soiled from exposure in the windows, and at the door; were not properly taken care of; the double folds were all white

on the edges; there was a lot of old style trimmings, and remnants of trimmings; there were some cloaks there, some forty or fifty—light basques, and black cloaks; these were nearly all old styles, some of the black cloaks were moth eaten; there were some shawls there—a couple of hundred; they were old, and pretty much faded, most of them; none of them were moth eaten, there were some middling good wool shawls; there were no sheetings; the stock was not assorted properly—of some things there were none at all, there was a very slow trade there; it was not a good place for business; I was there when occurred what seemed to me to be an attachment; I do not know how long these goods had been in that store; I do not know anything about the value of the lease of that store; I heard Mr. Just was sick during the time that I was there; I was told his sickness was from drinking; he had the name of being troubled that way; there was very little bleached shirting in that stock of goods; I don't think there were any Sprague prints, there were prints there; I am now employed at No. 387 Broadway, by W. H. S. Ward. 10

And being cross-examined, he says—

20

I think it was in November, as near as I recollect, that I went to the store in Catharine street—it was in 1865 or 1866; the stock was sold to a man named Connery, I think; there was another name to it, I think, O'Donnell; I do not know how much they paid for the store; we took an account of stock previous to selling out to Connery; that account was taken by measuring the goods and marking the length on the goods and classified them; what they were marked at I don't know; we marked no price on the goods or inventory; there were very few calicoes there, just a few remnants, and no shirting or sheetings; if a stock of goods is not replenished, and sales are made from it, we usually get rid of domestic goods first. 30

Quest. In selling out of a stock of goods of that kind for six months, would it not be natural that most of the domestic and staple goods should be sold out?

Ans. It would.

Quest. Would not the worst of the goods naturally remain on hand?

Ans. They would; I went there in November, I stayed 40

there until the place was sold out to Connery and O'Donnell; while Mr. Berryman was there Mr. Reynolds had charge; Mr. Just and Mr. Berryman were both boss; I think goods were a little lower the time I was there than they were shortly before.

Quest. Do you remember that after the war was over, and the president killed, that goods fell very much for a short time?

Ans. I do.

10 *Quest.* Do you remember that in two months goods went up again?

Ans. I don't recollect; it would take two or three months for goods to get soiled or to have the double edges whitened; if they had very bad treatment they would get so in two or three weeks; I don't know from whom those old trimmings that were there were bought; there were not too many cloaks for a store of that kind; I guess there was from six to eight thousand dollars worth of goods there, when I first went to the store; I should think, to make the business profitable, a person would want from twelve to eighteen thousand dollars worth of goods; a good cloth cloak at that time would cost from eighteen to twenty dollars.

WILLIAM SMITH.

Sworn to and subscribed, this 6th day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Whereupon the examination was adjourned to Friday morning, November 8th, 1867, at ten o'clock, at the same place.

30 At which time and place the examination was resumed in the presence of the counsel for the respective parties.

Hugh Ronald, a witness produced on the part of the defendant, being duly sworn, deposes and says—I live in Jersey City; I am a dry goods salesman; I have been in this business since the 8th day of February, 1849; I profess to be a good judge of the quality and value of dry goods; I know

the premises 41 Catharine street, New York; I was employed there from the beginning of September, 1865, to the following January, when the place was sold out; I was employed there as a salesman, and when Mr. Just and Mr. Berryman were not there, I was cashier and everything else; while I was there Mr. Porter was there, and a John Adams, since dead, and a man named William Smith, and another young man named John Kearns—I don't know where he is; the quality of the goods in that store, when I went there, was quite good—that is, some of the goods, but they were in a bad condition—they were damaged and soiled by exposure—¹⁰ not properly taken care of; there was cloaks, shawls, dress goods, calicoes, and muslins—there were new goods brought into the store while I was there—I suppose there might be from three to four thousand dollars worth, perhaps more; Mr. Just was the buyer of the goods, and I, sometimes; Mr. Just did not give much attention to the business, not what any man ought to that was attending to a business—he was very often tight while there—once he was gone five weeks; I would not have given fifty cents on the dollar for the stock ²⁰ that was in the store when I went there—I told them so the first day I went there—I told Mr. Berryman so, and Mr. Porter so at the same time—I also told Mr. Just so; we had goods there that were marked \$1.25 per yard, which we marked down to seventy-five cents right away, to sell at; the cloaks were in a very bad condition, indeed—the prices on those were extremely high—I remember some cloaks there that were marked in the invoice to cost \$25 that were not worth the half of it, because they were soiled, moth eaten, and everything else—their style was old—there were not ³⁰ many at that price, only some three or four; I suppose there were altogether some forty or fifty cloaks—none of them were new style, and none were in good condition—there were cloaks there that cost \$18 that I saw sold myself for \$10 by Mr. Porter—that was all they were worth, and more than they were worth; the muslins that were there were only trash—they were not worth calling muslins—they were soiled, dirty, and of an inferior quality—if there were any sheetings I never saw them; the goods that were purchased afterwards were a very fair article; from the length of time ⁴⁰

the lease had to run, I should suppose it was worth but little—it had only a year to run from the May following; from the condition the house was in, I should say it wasn't worth anything more than the rent; the back part of the premises was in such a filthy condition that I went to the sanitary police and asked to have it cleaned; if that store had been properly taken care of it might have been a desirable place for business—it was no better than any other in the street, and not as good as some—it had not been properly taken
10 care of.

And being cross-examined, he says—

I am now a dry goods salesman; I am now employed at 54 Newark avenue, Jersey City; I am employed by Joseph Hendry—I have been here in Hendry's employ from the latter end of February or the first of March last—my salary is \$18 per week, besides a commission, amounting to, on an average, \$2 per week more; before this I was employed by Cornelius O. Donald, in Catharine street—I was with him about eight or nine months; before that I went south and
20 lived there with his father—I went south about six weeks after leaving Berryman; when Mr. Just was not at the store Mr. Berryman was there the greatest part of the time—he was there sometimes when Mr. Just was there, not much, very little; the defects in these goods were easily observed—they were noticeable to any man that was a judge of dry goods; there was a great deal of fluctuation in the dry goods business while I was with Mr. Berryman, all the time; I think the rent for this store, on the lease, was \$1300 per year—I can't swear positively, but I think it was some-
30 wheres thereabouts; I think the lease was worth but little, because it had only a little over a year to run—if it had four or five years to run, I would consider it worth some money, but as it was, I didn't consider it worth anything at all—if it had had four or five years to run it would be worth more or less, according to how the place was fitted up—I can't say how much it would be worth if it had that time to run; rents, in New York, were on the rise about that time; I don't know when the lease for \$1300 a year was dated—I only know what Mr. Just told me, that it had a year to run; I

was with Mr. Berryman until he sold out—I believe he sold it out himself—at all events he published it himself to sell out; he sold out to Connery and O'Donnell—he sold the stock at ninety cents on the dollar of the invoice price; it was a much better stock that was sold out than was bought—some of the goods had been dyed, and some were new goods; a great many of the goods we could do nothing with until they were dyed; I went with Mr. Berryman about four weeks after he took possession, then I went there permanent; during the four weeks before I went there permanent, 10 I went there about every other day; when I first went there I noticed the defects in these goods—I detected them as soon as I laid eyes on them, as any dry goods man would; after I left here Mr. Just got me a situation with Owen Jones, 505 Eighth avenue, where I remained until I went south.

And being re-examined in chief, he says—

Mr. Berryman was not a judge of dry goods—he did not know one piece from another in the store.

And being cross-examined again, he says—

20

I noticed the defects in the goods before I went there permanently—I spoke of it to Mr. Porter the first time I went in the store.

HUGH RONALD.

Sworn to and subscribed, this 8th day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Whereupon the examination was adjourned to Wednesday, November 13th, 1867, at 10 o'clock A. M. at the same place.

30

At which time and place the examination was resumed, in the presence of the counsel of the respective parties.

Thomas O'Donnell, a witness produced on the part of the defendants, being duly sworn, deposes and says—I live at

87 Madison street, New York; am in the dry goods business; I have been in that business eight years; I am now employed at the store No. 41 Catharine street; I have been employed there since last January, twelve months—from January 1st, 1866; I have been employed there since the first day Connery and O'Donnell took possession; I took the account of stock for Mr. Just; the lease of that store expires the first of next May; when O'Donnell and Connery went there the stock amounted to \$7800, with ten per cent. off; 10 the goods were marked higher than the market price; the style of the goods was bad—unsaleable; the quality of some of the goods was bad—the greater part of them; the goods were bad in quality and styles both; the goods that were bad in styles were plaid dress goods, broche shawls, wool shawls, and cloaks; all the shawls were bad, with a few exceptions; some domestic goods were bad; fancy goods bad; the stock was of miserable value; I buy for R. Connery, who now has the store; I think I am a judge of the quality and value of dry goods; some of the goods must 20 have been in the store many years; they were what we would call shop-worn; customers call them old shop-keepers; some of these inferior goods are still in Mr. Connery's stock; at the prices he paid for it, there is near two thousand dollars' worth; Mr. O'Donnell, of O'Donnell and Connery, was in the business seven years; Mr. Connery took him in as partuer, and gave him half the profits; he had only \$400 as capital; after that, Mr. O'Donnell neglected the business, and Mr. Connery got rid of him by giving him \$1500, and \$700 charged against him on the books; during 30 the war, \$2000 a year could have been got for the premises, but at the present time, the rent that is paid for it, \$1300, is a fair value; at the time Connery and O'Donnell took it, in January, 1866, it is my opinion it was worth \$1800.

And being cross-examined, he says—

Mr. Connery, who succeeded Mr. Berryman, is my uncle; he is a bill-poster; he was never in the dry goods business; he bought this stock of goods through Mr. O'Donnell; he made him believe he could make a great deal more money than having his money invested in houses; Mr. Connery

paid ninety cents on the dollar of the cost price of the goods in the store; Mr. Connery did not sell off these goods; he has some left yet; according to the price he paid, he has some \$2000 left.

Quest. Take the whole purchase together, did he make or lose money by it?

Ans. He would be doing well if he had his own, if he sold out now; this kind of dry goods has fallen a great deal during the last year.

Quest. Then if he had sold out six months ago he would 10 have made some money on this purchase?

Ans. Yes, sir; that is my belief.

Quest. How much, or what per cent. have dry goods of this description fallen during the last six months?

Ans. Goods in the market have fallen twenty per cent.

Quest. What would have been the difference between the value of these goods if they had been put in the market six months ago, and their value now?

Ans. The old stock, put in the auction room at any time, would not bring twenty-five cents on the dollar; to take 20 the whole stock, it would make a difference of \$1500, I suppose.

Quest. How do you know that this old stock, or any part of it, was any portion of the stock sold by Graham to Berryman?

Ans. I was there at the time it was entered; and, by looking at the goods at the present day, you can tell they are old styles.

Quest. You say you were there at the time it was entered; what do you mean by that? 30

Ans. At the time the stock was handed over to Mr. Connery by Mr. Just and Berryman, January 1st, 1866.

Quest. Then this is the way that you know, and are willing to swear that these were a part of the original stock sold by Graham to Berryman?

Ans. Yes, sir; at the present day, I could pick out every yard of them.

Quest. When was the first time you ever saw these goods?

Ans. The day before the stock was taken; I think it was the 28th or 29th of December, 1865. 40

Quest. How did you come to see them there then?

Ans. I was working in grand street; Mr. Connery came for me to go down there; he told me that he and Mr. O'Donnell had the store and stock taken, and wanted me to go to work for them.

Quest. Do you know that Mr. Berryman bought all the goods that were in the store at the time of the sale to Connery and O'Donnell, of Mr. Graham?

Ans. I know nothing about it.

10 *Quest.* And yet you say that he did buy this old stock of Mr. Graham?

Ans. Not of Mr. Graham—of Mr. Just; I didn't know that Mr. Graham had anything to do with it at any time.

Quest. Then you don't really know whether this old stock, or any of the stock that was in the store at the time of the sale to Connery and O'Donnell, was sold by Mr. Graham to Mr. Berryman?

Ans. I did not know from whom it was bought, or who bought it.

20 *Quest.* Did you ever see the lease of this store No. 41 Catharine street?

Ans. No, sir; I never saw it—Mr. Connery told me about it.

Quest. Do you know how long it has to run?

Ans. Until the first of next May.

Quest. Have rents in the city of New York fallen since the war?

Ans. For stores in that part of the city.

Quest. What per cent.?

Ans. That I can't say.

30 *Quest.* Did you ever own a store?

Ans. No, sir.

Quest. Did you ever lease one?

Ans. No, sir; they are not in such a demand there now, as they were then.

Quest. How do you know that rents have fallen since the war?

Ans. At that time people were anxious to get a store in Catharine street—at the present time, business not being so good, they would not be willing to pay the rent now that
40 they would then.

Quest. Then this is the only reason that you know that rents have fallen?

Ans. That is the only reason that I think a place not to be of the same value.

And being re-examined in chief, he says—

Quest. Could these goods, which were in the store when O'Donnell and Connery took it, have been brought to the condition in which they were in six months?

Ans. Not all of them.

Quest. What portion could? 10

Ans. Half.

Quest. What did you say just now about styles?

Ans. The styles had been out of market for a length of time.

Cross-examination resumed.

Quest. Did you look at these goods for your uncle and Mr. O'Donnell before they bought them?

Ans. Nothing more than to go in the store and look around—that was the night they took it.

Quest. In your opinion, did they pay more or less than the 20 stock was worth?

Ans. In my opinion, they paid more than the stock was worth.

Quest. What per cent. on the dollar was the whole stock worth at this time, in your opinion?

Ans. The highest would be seventy cents on the dollar of the original cost.

Quest. What per cent. on the dollar did Connery and O'Donnell pay for them?

Ans. They paid ninety cents to the dollar. 30

Quest. Then, in your opinion, they paid twenty cents on the dollar too much?

Ans. Yes, sir.

Quest. Did Mr. Berryman sell these goods himself to Mr. Connery and O'Donnell, or did some person do it for him—do you know?

Ans. I do not.

THOMAS O'DONNELL.

Subscribed and sworn to, this 13th day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Samuel D. Hernidge, a witness produced on the part of the defendants, being duly sworn, deposes and says—I live in New York city; I know the store 41 Catharine street—I have been employed there in the capacity of clerk by Robert Gage, at the period of the sale to Mr. Berryman and Just; I was there up to that time—I had been there about a year
10 to the best of my knowledge.

Quest. Then you are acquainted with the stock which was delivered there in 1865 to Mr. Just, or Mr. Berryman and Mr. Just?

Ans. Yes, sir; I assisted in taking an account of that stock in August, 1865; Mr. Foye, Mr. Moore, and Mr. McGrath assisted me; I can't tell you exactly the date—it was the time of the sale—I don't remember the date; the account of stock was entered by Mr. Foye, and afterwards by Mr. Aitken; this stock was taken by the direction of Mr. Graham
20 —I suppose the firm was Graham and Aitken; I took an account of the cloths, calicoes, muslins, lace veils, hosiery, and fancy goods—we advanced them in price from what they were marked originally to cost, some portion of them; it was generally understood to do so around the store, to bring out the stock as large as possible; these goods that were so marked up were not more valuable than cost—they were above the market price at that time, some of them; the condition of the stock of my department was only middling—goods were then on the decline; my department was muslins,
30 prints, fancy goods, cloths, domestics in general; the goods were measured in taking the account of stock—the measurements were marked down on the goods—some were marked correctly, others were not—some had been marked to contain ten yards or so more than it actually had in it; that was done to bring out the stock to as large an amount as possible; the styles in the store at that time were a very poor assortment and high in price; I don't know of any but my own stock, that was marked up four or five cents on muslins and fancy goods, just as we saw fit—couldn't tell how much we ad-

vanced prices; these goods were bought principally in Graham and Aitken's store, in Chambers street, and some in other stores in their name; all sorts of goods were furnished to this store from Graham and Aitken's.

Quest. Was not this store made a receptacle for the unsaleable portions of Graham and Aitken's stock? [Question objected to.]

Ans. Some goods were sent to us from their store that weren't suitable for our trade; I could not enumerate the goods, calicoes, et cetera; they were not suitable for that trade, because the styles were not desirable; they were not desirable, because the styles were not suitable. 10

Quest. Were there any cloaks there?

Ans. No, we got up our own cloaks, there were no cloaks sent from Graham and Aitken's; there were cloaks in the store, in Mr. Foye's department; I would not give fifty cents on the dollar for the goods all round that were in the store in Catharine street, when I left; I would not give fifty cents on the dollar of the original cost; I do not know anything about the value of the lease of the store, I should say at the present time the store would be worth \$1200 a year; I was in the store 41 Catharine street last Saturday, I recognized some of the old shop-keepers; I saw some of the old goods; there was quite a large lot of plaid dress goods, and striped dress goods, old styles and bad colors; I mean these were some of the goods that were there at the stock-taking, at which I was present. 20

And being cross-examined, he says—

I am now a dry goods clerk; I am not employed at present; I have been laid up with a sore hand, with sickness; I was last employed at W. R. Roberts', No. 252 Bowery; it is about four weeks since I left there, to the best of my belief; my duties here was salesman, my salary was sixteen dollars for a week; I was only employed at Roberts' only a short time, I don't know exactly how long; it is not a year since I first went there; before I went to Roberts', I was employed at William Abbett's, in the Bowery, I was there fifteen months; I was out of the business some time before I went there, before that I was with Hugh Kelly, in the Bowery, No. 138, I think; 30

I was there over five years; I was there before I went with Mr. Gage, after Mr. Kelley failed I went with Mr. Gage—I was with him ; I know Mr. Graham, the complainant in this suit—I have no acquaintance, except very slight, with Mr. Berryman, one of the defendants—I have known him by sight since he took the store, that's all—I did not know him to speak to him until the present day—I met him at 41 Catharine street—I met him there at the request of another gentleman, Mr. O'Donnell; Mr. O'Donnell requested
 10 me to meet Mr. Berryman last Saturday, when I was in the store; that is the first I was requested to meet Mr. Berryman; I was not told for what purpose Mr. Berryman wanted to see me.

Quest. You went to see Mr. Berryman, then, without knowing him, or knowing what he wanted?

Ans. Positively; but I had heard from other parties there was a suit pending; Mr. Gage had charge of the store 41 Catharine street; when I was there—his first name was Robert—Mr. Gage employed me.

20 *Quest.* Did he have full control of the store?

Ans. Yes, sir.

Quest. And of the goods in it?

Ans. Yes, sir; Mr. Graham was frequently in the store—he was there sometimes once a week and sometimes once a fortnight, and in the dull season not so often; I can't tell you for what purpose he came there, that wasn't my business; it was generally supposed there was a mortgage on the goods in the store to Messrs. Graham and Aitken.

30 *Quest.* What proportion of these goods were marked up, above the cost prices, that you have spoken of?

Ans. That I cannot answer, as those in charge of the different stocks put the tickets on their own goods.

Quest. Did you mark up the prices of any goods except those in your own department?

Ans. No, sir; I know that the prices of the others had been marked up by being present when it was done in the cloak and shawl department; the goods in my department that were marked up, were principally calicoes, fancy goods, and muslins; high priced muslins were not marked up—
 40 you could buy them for half the price at the time; there was some cloths and old truck that wouldn't fetch anything;

that were not marked up, they wouldn't bear it; they were not marked up because they were too dear as they were; the others were marked up to make the stock run large.

Quest. Who told you to mark up the goods?

Ans. It was generally understood in the house we were to do so; I can't tell where the order came from.

Quest. Did Mr. Graham tell you to do it?

Ans. No, sir; we received no orders from Mr. Graham at any time.

Quest. Did Mr. Gage tell you to do it?

10

Ans. I can't actually bring to mind who it was told it, but he was aware of it.

Quest. On what proportion of these goods did you mark up the measurement?

Ans. A large proportion of the stock that I had charge of.

Quest. Can you tell what proportion—a half, a quarter, or a tenth?

Ans. No, sir; but it is more than a tenth; I did this myself in my department; I don't know exactly who the order came from.

20

Quest. Did Mr. Gage tell you to do this?

Ans. I can't exactly say who gave the order, only it was given—Mr. Graham did not tell me to do it—we received no orders from Mr. Graham at all.

Quest. Did you consider this a fair and business-like transaction?

Ans. It is frequently done where stocks is doubtful.

Quest. By respectable houses?

Ans. By all kinds of houses, especially those under such men as Graham.

30

Quest. What do you mean when you say it is frequently done where stocks are doubtful?

Ans. When it won't come to the amount to satisfy the merchants down town, who supports the house.

Quest. To satisfy them in what?

Ans. In their expectations of what they had done from the former stock, taking that as the criterion by which the principal creditor down town goes.

Quest. Was the increase of prices and measurements here done for this purpose?

40

Ans. Yes, sir.

Quest. Was it done to satisfy Messrs. Graham and Aitken?

Ans. They were the principal creditors—they held the mortgage on the stock.

Quest. Then this marking up was as against their interest?

Ans. It was in their interest, for they got paid for what wasn't there.

Quest. But it was done, was it not, for the purpose of deceiving Graham and Aitken?

10 *Ans.* No, sir; it was done for keeping Mr. Gage in possession—a man they had so ill-used.

Quest. How was this to have kept him in possession?

Ans. By showing a larger amount of stock than he really had.

Quest. By showing a larger amount to whom?

Ans. To Graham and Aitken; in taking an account of stock the goods are measured and entered.

Quest. When a man buys a stock of goods like this, don't he generally look over them and measure them before he
20 pays for them?

Ans. Not always—some trust to folks' honesty that had the stock prior to them.

Quest. Wouldn't a prudent man do it?

Ans. I don't know—I can't account for what other people would do; I would do it myself; Mr. Gage is now doing business in Brooklyn; he don't keep any store—he is in a dry goods store—he is clerking for another man.

Quest. When you said these goods were worth only fifty cents on the dollar of their cost, did you mean of their actual
30 cost or their marked cost?

Ans. Their prime first cost; I did not buy any of these goods.

Quest. How do you know what the prime first cost was, then?

Ans. By the invoice when you mark them, that you receive with the goods.

Quest. Did you see the invoices on all these goods?

Ans. No, sir; I could not see them, the accumulation of six or seven years' business, and I resided only about one
40 year with him.

Quest. Then you only know the cost prices of those goods whose invoices you saw?

Ans. No, sir; I know the cost of all from the marks on the goods.

Quest. What marks were these?

Ans. The cost mark—there is the cost and selling mark.

Quest. How do you know these marks were the cost marks?

Ans. There is a regular mark in every store for both—for cost and selling.

Quest. Well, is not this cost mark ever altered? 10

Ans. No, sir; there is only one cost mark.

Quest. Then you believe that you knew the original cost of these goods, on the supposition that the cost mark had never been altered?

Ans. Yes, sir.

Quest. In speaking of the marking up of goods, you say it is frequently done by all kinds of houses, but particularly those under such men as Graham, what do you mean by such men as Graham?

Ans. Such skimmers of a firm as they are. 20

Quest. What do you mean by skimmers of a firm?

Ans. Close; those that have no principle.

SAMUEL K. HORNIDGE.

Sworn and subscribed to, this 13th day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, M. C.

Whereupon the examination was adjourned to Friday, November 15th, 1867, at 10 o'clock A. M., at the same place.

At which time and place the examination was resumed, in the presence of the counsel of the respective parties. 30

Richard Foy, a witness produced on the part of the defendants, being duly sworn, deposes and says—I reside in New York city; I know the premises No. 41 Catharine street, New York; I was employed there—worked there for about two years, as a salesman for Mr. Gage; the first time that I went to Mr. Gage's would be about the year 1862, in the month of September; then I left there and worked for W. R. Roberts, No. 252 in the Bowery; I then went back

to Mr. Gage; I worked for Mr. Roberts about six months; I was sent for by Ellison, and went to Gage, and stayed there until he closed, in 1865—until the place was handed over to Just and Berryman; I was acquainted with the stock of goods that was handed over to Just and Berryman; I assisted and took down an account of stock; I took it down in the book here in January and July, 1865; all the accounts taken in those months are in my handwriting; I assisted in taking another account of that stock in August of the same year; 10 it is recorded in the same book, in Mr. Aitken's handwriting, a partner of Mr. Graham's; the August account is all in his handwriting; there was no new stock brought in between the two accounts—not a yard; I mean between the stock taken in July and the stock in August; the July account was taken about the 25th or 26th of July; it was taken for some Jews that lived in the street; they wanted to buy the stock, and came to look at it; I see, by the book, it was the 24th; I would not give more than sixty cents on the dollar for the stock that was taken in August; that is, from my general knowledge and experience in the trade; I mean 20 sixty cents on the dollar of the cost of the goods; we take it on the invoice; the August account was taken for the purpose of giving over the stock to Mr. Just and Mr. Berryman; I know where this stock came from; part of it came from Graham and Aitken—not all; the principal part I mean; the quality of the goods was just suitable for a Catharine street trade; some of them were very inferior; in taking down an account of stock, we take the cost value; these figures in the dollars and cents columns indicate just what the goods cost.

30 *Quest.* Do the cost prices of the goods in the July and August account agree? [Question objected to.]

Ans. No, sir; what I would say is this: the entries of July and August are different for the same goods.

Quest. Name an instance? [Question objected to.]

Ans. Shawls; there is four shawls, at \$14.00, marked in the August stock; there is only one marked at \$14.00 in the July stock; I can point out a great deal of discrepancies in the same kind of goods.

40 *Quest.* Were, or were not any of the goods, at the time of

taking the August stock, marked up beyond their true cost prices? [Question objected to.]

Ans. They were; it was generally understood to do so; there was no direct orders given, but it was an understood thing through the store to mark up the goods; the measurements were not correctly given; it is usual, in taking an account of the stock of that kind, to measure the goods. [The witness, having handed to counsel for defendants a paper, at which the counsel looks and then asks witness a question, the counsel for complainant objects thereto.] 10

Quest. What were the styles of the shawls?

Ans. In the stock in August they were bad; I have been to that store lately; I saw some of that old stock there; there is some of it on the shelves now; some of the cloaks in the August stock were bad, and some fair enough; I have been in the dry goods business about twenty years; I served my time in Liverpool; the firm is Cooke and Townsend.

Quest. The lease of this store—can you say when that expires?

Ans. From Mr. Gage's own words, it expires the first of 20 next May; I understood that the value of that lease in August, 1865, taking it by comparison with the store opposite, which is a larger and better one, was the highest price.

Book referred to in foregoing testimony, as containing accounts of stock, is here offered in evidence, and marked *Exhibit D 2*. [Offering of exhibit objected to.]

And being cross-examined, he says—

I do business nowhere now; I was with Roberts, in the Bowery, up till last Saturday night, when I left; I left because I had to come over here in this case on Monday last, 30 and they won't give a man a day off; so I gave up my situation; I had to do one or the other; they would not give me a day off, so I had to take it, because I had to come over here to testify to what I knew was the truth; I got, as salary, sixteen dollars a week at this place; I got fifteen dollars and a commission on my sales when I was with Mr. Gage; some weeks I might make five or six dollars, and some weeks not more than four, as commissions; I would average about four; I did not get a commission from Mr. Roberts.

Quest. Does this account of the stock of goods represent the whole stock in the store?

Ans. Yes, sir.

Quest. Have you had that book in your possession?

Ans. No, sir.

Quest. Is this the first you have seen it since August last?

Ans. Yes, sir.

Quest. Do you know where this book came from to-day?

Ans. It has been in Mr. Voorhis' possession; the stock account of January and July are both in my handwriting; August is in the handwriting of Mr. Aitken, Mr. Graham's
10 partner; I saw him write it; I don't know Mr. Aitken's first name.

Quest. How do you know he is a partner of Mr. Aitken?

Ans. The firm went under the name of Graham and Aitken all the time, and Mr. Aitken used to come up to the store occasionally, and order what was to be done; the best proof is, that he took down the account; I understood that anything over a certain amount, the stock belonged to Mr. Gage; he told me that himself—he told me that Mr. Graham had a bond for a certain amount, and anything over
20 that belonged to himself.

Quest. In taking this August account, was the price and measurement of these goods marked up?

Ans. They were, sir; I know it from my own personal experience; I marked up my own goods, and I saw some of the others marked up; my goods were shawls and cloaks; in taking the July and January accounts, we did not mark up any of the goods; in the August account, we marked them up, because it was a *bona fide* sale.

Quest. Did Mr. Graham tell you to mark them up?

30 *Ans.* He did not; Mr. Gage did not tell us, individually, to mark them up, but it was an understood thing to do so; he knew it—he saw it, and was cognizant of the fact; the whole stock was generally marked up—some more and some less; it depended on the class of goods; lace veils were marked up fully one hundred per cent.; shawls and cloaks were marked up from forty to fifty per cent., and other things in proportion; only one class of goods was marked up one hundred per cent.; all the goods were marked up from thirty to forty per cent., except the dress goods—they
40 would not bear anything at all.

Quest. Why were these goods marked up?

Ans. To make the stock larger—to make the most money out of it.

Quest. For whose benefit?

Ans. There was only one benefit in it; Graham and Aitken.

Quest. Didn't you say that Graham had a bond on the stock for a certain amount, and all over that belonged to Mr. Gage?

Ans. So Mr. Gage told me—the stock amounted to about \$12,000, and it was sold to Mr. Berryman for eighty-seven and a half cents on the dollar; I was with Mr. Gage up to 10 the time the store was closed—up to the last day; I saw Mr. Berryman and Mr. Just in the store before I left—I might have seen them two or three times; as far as I could understand from Mr. Just, they were there for the purpose of taking stock—looking at the goods to see if they would please them or no—look around like any other man to see if they would buy it.

Quest. Didn't you hand a paper to Mr. Voorhis, counsel for defendants, during the direct examination?

Ans. Yes, sir.

20

Quest. What was it?

Ans. A statement of what I could prove.

Quest. Will you read that paper?

Ans. I will—I have given him all the information there is in it.

Quest. Why don't you read it?

Ans. Because I can't get it.

Quest. Won't Mr. Voorhis give it to you?

Ans. He says no.

And being re-examined in chief, he says—

30

I know John Moore who used to be employed in that store; his hearing at that time was bad—I have seen ladies ask him questions and he would pay no attention to them—you would have to speak pretty loud to him for him to hear you.

And being again cross-examined, he says—

Quest. Did you hear Mr. Just, about the time he and Mr. Berryman were going to purchase the stock of goods, say anything about their being marked up?

Ans. No remark made at all; but on the morning of the 14th, when the stock was bought by Mr. Berryman, when Mr. Just came to see the goods entering in this book, he said they were marked up; on the morning of the 14th, Mr. Aitken and Mr. Graham and Mr. Just came in; then the orders were given to take down the stock by Mr. Graham; Mr. Aitken remained and took it down—he was there two days; Mr. Just, from what he had seen of the goods previous to the 14th, said, on the 14th, they had been marked up;

10 Mr. Just was a judge of these goods—he knew what they were as well as any other man; Mr. Berryman was not present at the time this remark was made; I did not see Mr. Berryman in the store on the morning of the 14th—I think he was there in the morning, but he left immediately—I am not positive; it occupied two days taking the stock, the 14th and 15th.

And being examined in chief a third time, he says—

Quest. Were you ordered to make stock?

Ans. I don't know what you mean; but to mark it up,

20 that was understood.

RICHARD FOYE.

Subscribed and sworn to, this 15th day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINÉ, *M. C.*

Depositions for Complainants.

[Filed February 5, 1868.]

Examination of witnesses, &c., in the above stated cause, on the part of the complainant, taken before me, Isaac Romainé, a master and examiner of said court, at my office,

30 No. 7 Exchange Place, Jersey City, on Friday, November twenty-second, in the year eighteen hundred and sixty-seven, at ten o'clock in the forenoon, in presence of Lansing Zabriskie, esq., of counsel with complainant, and

Charles H. Voorhis, of counsel with defendant, by consent of parties.

Solicitor for defendants here requests the master to note, that the defendants here notify the solicitor of the complainant, as they notified him at the conclusion of the preceding testimony, that they intend, at the hearing of the above cause, to object to the reading of the testimony of William Graham in this cause, and shall move the chancellor to strike out the same, on the ground that said William Graham cannot be a witness in this cause.

10

Solicitor for complainants objects to the entry of the above note in the testimony, as said objection should have been made at the time of swearing the witness.

Robert Gage, a witness produced on the part of the complainants, being duly sworn, deposes and says—I reside in Brooklyn—my occupation is that of a dry goods clerk—I have been in the dry good business for nearly thirty years—part of the time I was in business for myself, scarcely two years; I have been in the store known as No. 41 Catharine street, New York; I was there two years, or a little more; I left there about two years ago, in August last; I was there up to the time the store was taken by Mr. Berryman and Mr. Just, and a little over two years previous; I had charge of the store at that time for Mr. Graham and Aitken—I took charge of the store—sold goods and bought goods—had charge in general; I had charge of the clerks in the store—it was a retail store altogether; the duties of the clerks employed in this store was to sell the goods.

Quest. Anything else?

Ans. Sell the goods, dress the store, and attend to the business; they did not have anything to do with buying the goods.

Quest. Who attended to this branch of the business?

Ans. I did.

Quest. When a piece of goods was bought, did it have the cost mark on?

Ans. Certainly not—we put it on when it came in the store, and we checked the invoice.

Quest. Did these goods have the measurements on, or did you measure them and put them on?

Ans. When they come into the store they have the lengths marked on them—whole pieces; when a whole piece came in we did not measure it; we only bought by the whole piece; when whole pieces, they had the manufacturer's measures marked on them; we might buy ten pieces or fifty pieces at a time, or only one, according to the consumption; in selling these goods, we would sell any length a person

10 wanted—half a yard, a yard, two yards, or ten yards.

Quest. How did you mark the cost prices on these goods that you bought?

Ans. We marked them from the invoice; we never put a label on the goods; if there was a board in them, we would mark the price on the end of it; if there was a label on the goods we marked the price on that; if there is no label we put a card on the end of the board, or on the goods.

Quest. Then all these goods had the cost price either on a ticket, or on the label?

20 *Ans.* Yes, all had the cost price.

Quest. How was the cost mark designated on the label?

Ans. By a private mark; by characters.

Quest. Were these private marks designating the original cost of these goods ever altered in any way?

Ans. No, sir.

Quest. Did you ever order the clerks under you to alter these cost marks?

Ans. No, sir.

Quest. If they had have been altered would you have

30 known it?

Ans. Certainly I would.

Quest. Can you state positively whether any of these cost prices were altered or not?

Ans. They were not altered. Mr. Berryman, I believe, took this store and stock of good when I gave it up; he had Alexander Just with him.

Quest. When did they take this store?

Ans. In August, about two years ago.

Quest. Do you remember when they took formal posses-

40 sion of the goods?

Ans. Somewhere about the middle of August—I can't exactly remember the date.

Quest. Were Just and Berryman in the store before they took possession?

Ans. Certainly.

Quest. How often?

Ans. Well, I can't exactly tell—they were there several times.

Quest. During what period or for how long before they took possession? 10

Ans. I couldn't tell you; perhaps for two or three weeks—they were there several times.

Quest. What did they do on these occasions?

Ans. Just looked over the stock—examined it.

Quest. Was an account of stock taken at this time?

Ans. They examined the stock, and after that an account was taken

Quest. Was this account of stock taken in the presence of Mr. Just, or Mr. Berryman, or either of them?

Ans. It was taken in the presence of Mr. Just. 20

Quest. Please state what was done in taking this account of stock?

Ans. Nothing—only write it down in the book.

Quest. State what was put down in this book?

Ans. Goods contained in the store.

Quest. Were the cost prices of the goods put down in this book?

Ans. Yes.

Quest. Were the measurements or number of yards in the goods put down in the book? 30

Ans. Yes.

Quest. Were the goods measured before they were put down?

Ans. Yes.

Quest. Why were they measured?

Ans. So as to give an account of the stock.

Quest. Was each piece measured?

Ans. Yes, sir.

Quest. Had anything been sold off of these pieces of goods since the last account of stock was taken?

Ans. No, sir. 40

Quest. Were you not continually selling goods by the yard off of these pieces?

Ans. Yes, sir; previous to the taking stock.

Quest. Then did the pieces that you had when the July account was taken, or when any previous account was taken, contain the same number of yards when the August account was taken?

Ans. No; they were measured a second time to take the August stock—some might have had the same lengths, and
10 some not.

Quest. Why didn't some have the same lengths?

Ans. Perhaps they might have been cut, sold off of.

Quest. Were these measurements truly put down in the account of stock for August?

Ans. Yes, sir.

Quest. For what purpose was Mr. Just present at the taking of this August account of stock?

Ans. I dare say to see that it was taken correctly.

Quest. State particularly what he did?

20 *Ans.* He stood there while I was calling out the goods and examined them.

Quest. Did he look at every piece of goods?

Ans. I can't say exactly; I presume he did.

Quest. Do you know on whose behalf Mr. Just was acting?

Ans. I can't say exactly whether it was Berryman, or Just, or both.

Quest. What chance did he have to look over, inspect, and measure the goods?

30 *Ans.* He had plenty of chance to measure them after the stock was taken, and after he had taken possession of the store.

Quest. When you say "after he had possession," what do you mean?

Ans. When he got the keys of the store.

Quest. For what purpose were the keys of the store given to him?

Ans. To give him possession, I suppose.

Quest. I want to know whether or not Mr. Just or Mr. Berryman had any opportunity to measure and examine the

stock of goods in this store before they took it as their own, and what such opportunity was?

Ans. They never asked any.

Quest. Did they have possession of the store before they paid for the goods?

Ans. I can't tell you anything about that.

Quest. When did they get possession of the store?

Ans. I don't know exactly when they got possession; I think it was the day the stock was taken, for I took the keys down to Graham. 10

Quest. Were Mr. Berryman and Mr. Just before they took the store at liberty to examine and measure the goods that were in it?

Ans. Certainly.

Quest. Did you communicate to Mr. Just or Mr. Berryman, before they took this stock, the meaning of the characters that denoted the cost prices of these goods as marked on the labels and tickets?

Ans. I gave it to Just.

Quest. Did Mr. Just make any remark to you about the 20 prices or measurement of the goods being marked up?

Ans. He did.

Quest. What did he say?

Ans. He said the goods were marked up—I told him they were not.

Quest. Was this remark made before he took the store?

Ans. Before he got possession of it.

Quest. Did Mr. Berryman accompany Mr. Just on his visits to the store before he took possession of it?

Ans. Yes, sir; Berryman was there sometimes. 30

Quest. Before they finally took the store, how did they express themselves as to being satisfied with the stock of goods? [Question objected to.]

Ans. I don't know anything about that—I dare they had a conversation with Graham about it.

Quest. Did you hear them express any dissatisfaction?

Ans. I don't recollect.

Quest. In purchasing a stock of goods of this kind, is it or not usual for the purchaser to measure them?

Ans. Certainly it is. 40

Quest. Why?

Ans. To ascertain if they are correct.

Quest. How was the dry goods market, in reference to prices, at the time this store was taken by Berryman and Just?

Ans. Pretty high.

Quest. How long did the prices continue so high?

Ans. A good while.

Quest. How long?

10 *Ans.* A year or more, I guess.

Quest. Wasn't there a fall in the dry goods market a few months after this sale?

Ans. No, I think not.

Quest. What was the value of this stock of goods and the lease of the store, at the time they were sold to Berryman? [Question objected to.]

Ans. Do you mean what the stock came to? The stock that was there was all bought for cash, at cash prices.

20 *Quest.* Do you know what Mr. Berryman paid for the stock and lease?

Ans. I understood that he paid eighty-seven and a half or ninety cents on the dollar. [Answer objected to.]

Quest. Was this stock worth this amount—stock and lease, I mean—at this time? [Question objected to.]

Ans. Certainly it was.

Quest. How long had this lease to run at the time of the sale to Berryman?

Ans. Pretty near three years.

Quest. What was the rent paid upon it?

30 *Ans.* \$1300 a year.

Quest. When was the lease made at this rent?

Ans. It had been made for years, but was renewed in May, I think.

Quest. Renewed at the same rent?

Ans. Yes; the landlord didn't raise the rent on him.

Quest. Was this the rent for the whole building?

Ans. No; the store and basement.

Quest. Was this a high or a low rent for this store, at the time of the sale to Berryman?

40 *Ans.* It was worth a great deal more rent.

Quest. How much rent was it worth ?

Ans. Well, I dare say it was worth \$2000 a year.

And being cross-examined, he says—

Quest. What is your age, Mr. Gage ?

Ans. My age is forty-eight.

Quest. In whose employ are you now ?

Ans. Marshall N. Huey's.

Quest. Where ?

Ans. South Brooklyn.

Quest. Where did you go when you left this Catharine 10 street store—in whose employ ?

Ans. Across the street, in James Cragin's employ.

Quest. What wages do you get ?

Ans. I get eighteen dollars a week.

Quest. How long have you known William Graham ?

Ans. About sixteen years.

Quest. For whom had you charge at 41 Catharine street ?

Ans. Mr. Graham.

Quest. On what terms ?

Ans. A salary.

20

Quest. State what salary.

Ans. Sixteen dollars a week.

Quest. Whose goods were those in that store ?

Ans. Graham's.

Quest. Who employed the clerks in that store ?

Ans. I did.

Quest. Give their names.

Ans. Samuel R. Hernidge, Richard Foye, John Moore.

Quest. Where is John Moore employed now ?

Ans. 43 Catharine street.

30

Quest. In whose employ is he ?

Ans. Arthur Johnson's.

Quest. Has Mr. Graham any interest in that store ?

Ans. I know nothing about it.

Quest. How long has Mr. Johnson been in business there ?

Ans. I can't tell you, exactly ; something less than a year.

Quest. Is Mr. Johnson a nephew of Mr. Graham ?

Ans. I believe so.

Quest. Do you know how long Moore has been in Johnson's employ?

Ans. No, I don't, exactly.

Quest. What part did you take in the work of taking an account of stock at 41 Catharine street, in July, 1865?

Ans. I call out to a man that was entering the lengths of the goods and the prices.

Quest. What prices?

Ans. The cost prices of the goods.

10 *Quest.* Did you do all that yourself?

Ans. Yes, sir.

Quest. Who entered it?

Ans. Some of the men—I don't exactly recollect.

Quest. Who assisted you in taking that account in July, 1865?

Ans. The men.

Quest. Name the men?

Ans. Hernidge, Foye, and Moore?

Quest. What did Hernidge do in the matter?

20 *Ans.* He measured the goods—took them down and put them up again.

Quest. What did Foye do?

Ans. Entered the goods in the store; I think it was he entered the stock.

Quest. What did Moore do?

Ans. He assisted to measure the goods and fix them straight again.

Quest. What part did you take in making up the account of stock in August, 1865?

30 *Ans.* I called out the lengths and prices.

Quest. What prices?

Ans. The cost prices of the goods.

Quest. What else did you do in that matter?

Ans. Nothing else, except to assist in putting up the stock after it was taken.

Quest. Who assisted you in taking that account?

Ans. James Aitken wrote it down.

Quest. Who else assisted?

Ans. No one else.

40 *Quest.* What part did Hernidge take in it?

Ans. Measured the goods—took them down on the counter, and put them on the shelf again.

Quest. Did he mark the measurements before you called them off?

Ans. Yes, sir.

Quest. What did Foye do?

Ans. Foye and Moore, all of them, measured the stock, and marked the measurements down.

Quest. Where do you get the cost prices of the goods?

Ans. Marked on the goods when they come in—from the 10 invoice.

Quest. Was there any mark on the goods except the cost price?

Ans. The selling price.

Quest. Witness being shown *Exhibit D 2*, is asked, in whose handwriting is that part of this book which purports to be an account of stock taken in July, 1865?

Ans. Foye's, I believe.

Quest. Is this the book in which the July account, of which you have spoken, was entered, as you called off the measurements and prices?

Ans. Yes.

Quest. In whose handwriting is the August account, as entered in that book?

Ans. James Aitken's.

Quest. Is he the partner of Mr. Graham?

Ans. I guess so.

Quest. Have you ever seen the lease of that store, 41 Catharine street?

Ans. No; not the last lease. 30

Quest. How do you know what the rent used to be?

Ans. I had the former lease locked up in the desk?

Quest. How came you to have that lease?

Ans. It was left there by Graham.

Quest. Where is that desk in which that lease is locked up?

Ans. It was in the store, 41 Catharine street.

Quest. Who owned the store?

Ans. A Mr. Carpenter—I think that's his name.

Quest. What goods were sold out of the store after the August account, and before Just took the place? 40

Ans. No goods.

Quest. Were there any basques in the store ?

Ans. Yes.

Quest. Don't you remember that two basques were sold for forty dollars, or some other sum, after the August account, and before Just took the place ?

Ans. There were not—there were basques in the drawer with money paid on it; they had been sold previous to that, with some money paid on them as a sort of guarantee that
10 we would keep them; they came that day and took them away; they were not entered on Just's stock list, or any stock list.

Quest. Were there any basques at all entered in that stock list ?

Ans. Basques and cloaks that were in the store, were entered under the head of basques or cloaks, I don't know which, perhaps both.

Quest. I understood you to say that Mr. Just and Mr. Berryman was not by when the stock was being taken—is
20 that so ?

Ans. Just was there.

Quest. When, how long was he there ?

Ans. The day the stock was entered down; he wasn't there the whole time, I think.

Quest. Was he there when you commenced taking an account of stock in August, 1865 ?

Ans. He was.

Quest. How long did he stay ?

Ans. I forget whether it took one day or two days; he
30 went away part of one day any way.

Quest. What did he do while he was there ?

Ans. He was handling goods—looking at them and laying them one side after we had entered them.

Quest. Did you measure any of the goods yourself ?

Ans. I did, some.

Quest. What ?

Ans. I can't exactly tell what it was.

Quest. Did you compare any of the cost prices marked on these goods with the original invoices ?

40 *Ans.* I did not—it would be impossible to find the invoices

for each piece of goods in a stock like that—I couldn't find them, and no one else.

Quest. Are not the original invoices kept?

Ans. Yes.

Quest. Will you describe the characters that were used in that store as cost marks?

Ans. They were a sort of little strokes, crosses, and so on—I can't actually tell what they were.

Quest. Indicate the character or mark which meant one?

Ans. This Y means one or two, I can't tell which; I 10 believe, to the best of my recollection, it means one—I wouldn't swear to it; if this means one, the reverse of it means two, X thus; these marks mean one and two, to the best of my recollection, but I wouldn't swear to it.

Quest. Make the mark for three?

Ans. It is the same with a cross, thus *

Quest. What was the mark for four?

Ans. I believe this is four *, but I wont swear to it.

Quest. What was the mark for five?

Ans. That I can't make out; this † is either six or five; 20 I don't recollect any of the rest of them.

Quest. Why was the July account of stock taken?

Ans. Graham told me to take it.

Quest. Why?

Ans. I dare say to sell to somebody.

Quest. Why was the August account of stock taken?

Ans. To sell it to Mr. Berryman.

Quest. By whose order was it done?

Ans. Mr. Graham's.

Quest. Did Mr. Graham inform you of the sale and its 30 terms, before you took this August account?

Ans. Of the sale—not the terms.

Quest. Is this account in *Exhibit D 2*, purporting to be an account of stock taken in August, 1865, the account of stock which was taken in August, 1865, by you and the men and Mr. Aitken, as you have stated?

Ans. Yes.

Quest. You say Mr. Just said the goods were marked up—when did he say that?

Ans. On the day we were taking stock.

Quest. To whom did he address that remark?

Ans. To me.

Quest. How did he come to say so?

Ans. I don't know, indeed.

Quest. How long had he been in the store at the time he made this remark?

Ans. Sometime—I don't know exactly.

Quest. What reply did you make?

Ans. I told him he wasn't telling the truth?

10 *Quest.* What else did you say?

Ans. Well, I don't recollect.

Quest. What else did he say?

Ans. He said nothing that I can recollect of.

Quest. Did he remain.

Ans. I don't think he did.

Quest. Did he not call you "an old bummer" in that conversation?

Ans. He didn't.

Quest. Did you say any such thing to him?

20 *Ans.* Perhaps I did.

Quest. Do you know Mr. Berryman?

Ans. Yes.

Quest. When did you first see him?

Ans. Sometime before he bought the stock—while they were negotiating for it, in the store, 41 Catharine street.

Quest. Have you ever hired a store?

Ans. Yes.

Quest. Where and when?

30 *Ans.* In Catharine street—I don't recollect now, I guess it was sometime about 1859.

Quest. How long have you known Mr. Just?

Ans. I knew him to speak to him for six or seven years; I knew him to see him for fifteen or sixteen years; he was the first man I applied to for a situation when I first came to this country.

Quest. From what country did you come?

Ans. Ireland.

Quest. Was Mr. Just an old bummer?

Ans. I don't know much about him.

40 *Quest.* When have you seen him last?

Ans. I don't know—I haven't seen him in a good while—within a year any way.

Quest. How long have you known Mr. Graham?

Ans. Fifteen or sixteen years.

Quest. For what period of that time have you been in his employ.

Ans. Between three and four years.

Quest. What are you paid for attending here as a witness?

Ans. Nothing.

Quest. What have you been promised? 10

Ans. Nothing.

Quest. What do you expect?

Ans. Nothing; if my employer does not wish to pay me my day's salary I will lose it, that's all I expect to gain by it.

And being re-examined in chief, he says—

Quest. You say that this lease was renewed in May—May of what year?

Ans. May, or some time before it, 1865.

Quest. Wasn't it in May, 1864?

Ans. I couldn't say—I won't be positive whether it was 20 May, 1864, or May, 1865, I think it was May, 1865.

Quest. Do you know how it was that it was renewed at the same rent?

Ans. There was a man in it at the time Graham got it; Graham had something to do with paying the rent, and the landlord let it to him on that account at the same rent.

Quest. Does this August account contained in *Exhibit D* 2, contain a correct account of the cost of goods contained in the store, and their measurements?

Ans. Yes. 30

Quest. From what were these costs and measurements obtained?

Ans. The costs from the invoice, the measurements by measure; the goods were marked from the invoice when they first came in.

Quest. Then the cost and measurement of these goods was taken directly from the marks on the goods themselves?

Ans. Yes.

Quest. Is this the way you always did?

Ans. Yes.

Quest. Why didn't you refer to the original invoices?

Ans. It was an impossibility—I couldn't do it; it would take a year to do it and then he couldn't.

Quest. Why?

Ans. Well there is goods of one kind, for instance, bought in one store, and the same kind be bought in another store.

Quest. Did Mr. Graham ever give you any instructions about taking this August account, other than to take it.

10 *Ans.* He told me to take the goods at exactly what they cost.

Quest. Are you sure that you did this?

Ans. I am.

Quest. You have made some statements about the private marks on these goods, are you willing to swear that the indications of these marks as given by you are correct?

Ans. I gave them as near as I could—but I wouldn't swear it.

And being again cross-examined, he says—

20 *Quest.* What knowledge have you of the reasons why the landlord renewed this lease for the same rent?

Ans. Mr. Graham told me so.

Quest. Is that all you know about it?

Ans. Yes, sir.

Quest. Do you know anything about the renewal of the lease, except from what Mr. Graham had told you?

Ans. No, sir.

ROBERT GAGE.

Taken, subscribed, and sworn, this twenty-second day of November, A. D. 1867, at Jersey City, before me.

30

ISAAC ROMAINE, *M. C.*

Whereupon the examination was adjourned to Monday, November 25th, 1867, at two o'clock P. M., at the same place.

At which time and place the examination was resumed in the presence of the counsel for the respective parties.

Alexander Just, a witness produced on the part of the complainant, being duly sworn, deposes and says—[Solicitor of defendants here objects to the re-examination of *Alexander Just*, a witness produced by the complainants.

Solicitor for defendant withdraws the witness.]

James Aitken, a witness produced on the part of the complainant, being duly sworn, deposes and says—[Solicitor for defendants objects to the examination of *James Aitken*, on the ground that he is a party to the suit.]

I reside in West Hoboken, Hudson county, New Jersey; 10 I am a broker; I have been a broker since last January; before that, I was in the dry goods business; had been in that business for fifteen years; I was of the firm of *Graham and Aitken*.

Quest. Do you know the premises 41 Catharine street?

Ans. I do.

Quest. Were you ever interested in those premises, and if so, how?

Ans. I were, and was interested as part owner of the stock of dry goods contained in said store. 20

Quest. When, and to whom did you sell this stock?

Ans. Sold it in August, 1865, to *Berryman and wife*.

Quest. You mean *Berryman and wife*, the defendants?

Ans. Yes, sir.

Quest. Was anybody interested with them?

Ans. *Mr. Just* was interested with them, as agent, as far as I know.

Quest. What is *Just's* first name?

Ans. *Alexander*.

Quest. Did you have anything to do with making this 30 sale—if so, what?

Ans. Nothing more than to help take account of the stock in the store.

Quest. Describe how this account was taken.

Ans. The goods were measured first, and then called off to me by *Mr. Gage*, and I wrote them down—the quantities and cost prices—and *Mr. Just* checked them and piled them up to keep them separate from any other goods in the store that had not been taken; we would take down a shelf full

at a time, and take off the quantities and prices, and he would lay them one side.

Quest. Did Mr. Just look at every particular piece of goods?

Ans. Pretty much.

Quest. Did he have an opportunity so to do, and measure the goods if he chose?

Ans. Yes, sir.

Quest. Did you, yourself, have anything to do with measuring the goods?

Ans. Nothing to do.

Quest. Did you do anything but take the measurements and enter the prices in the book, as they were given to you?

Ans. Nothing.

Quest. Were the goods measured in the presence of Mr. Just or Mr. Berryman?

Ans. Some were in the presence of Mr. Just, as I happened to be there myself a short time when he was there, and the goods were being measured.

20 *Quest.* Were the goods measured when you were there, taking an account of stock?

Ans. They were.

Quest. Wasn't Mr. Just there all this time?

Ans. I don't know.

Quest. Who was there?

Ans. When the stock was being taken down, if you mean that, Just was there.

Quest. Were the goods all measured while you were there?

30 *Ans.* Certainly not; it takes two or three days to measure the stock, to get it ready to take it down.

Quest. Did you have anything to do with the measuring yourself?

Ans. Nothing.

Quest. Was Mr. Berryman in the store at any time before he took these goods—if so, when and how often?

Ans. He was, two or three times or more, previous to our taking an inventory of the stock.

Quest. Wasn't he there while the inventory was being taken, any time?

40 *Ans.* Not while I was there.

Quest. Was he there after the inventory was taken?

Ans. I don't know—I suppose he was.

Quest. When was this account taken?

Ans. I don't remember the day—about the first of August.

Quest. What opportunity, if any, did Mr. Berryman and Mr. Just have to measure and inspect these goods before they took them?

Ans. The stock book was placed in their hands; full time was given for them to examine and check the stock over, to see if the stock and quantity was there, also the cost prices, 10 which they did, and said they were satisfied.

Quest. Were the goods at their disposal to look at and measure, before the giving the mortgage mentioned in this case?

Ans. Yes, for eight or nine days.

Quest. How long were Mr. Just and Mr. Berryman in this store?

Ans. About six months.

Quest. Did they dispose of it—and if so, to whom?

Ans. They disposed of it to Connery and O'Donnell. 20

Quest. Did they dispose of it themselves, or did anybody do it for them?

Ans. They disposed of it through my partner, Mr. Graham, he found them a purchaser.

Quest. Do you know what these purchasers paid for it?

Ans. They paid eighty-seven and a half cents on the dollar of the cost.

Quest. How was this paid?

Ans. Paid by notes, most of it, four months' notes. [All this testimony in regard to the sale to Connery and O'Donnell, and their manner of paying for it, objected to as not rebutting testimony.]

Quest. Do you know how this stock was, as to quality, when they sold to Connery and O'Donnell?

Ans. The stock was a good one, and a great many of the goods was thirty to forty per cent. under the market price.

Quest. How was the quality of stock in comparison with what it was when you sold it to Berryman? [Question objected to.]

Ans. I have just answered that question; the quality was 40

about the same ; the quality was full as good when we sold to Berryman, if not better, because there were more domestics in it.

Quest. In taking this account of stock, did you hear Mr. Just make any remark as to the goods having been marked up—and if so, what was it ?

Ans. He did in two instances, on two different lots of prints ; he told Mr. Gage that they were marked up ; Mr. Gage said it was untrue, when they had some words, and I
10 stopped them, and told Mr. Just that I would make the price right, what he considered right, which was done, and that was the only instance that occurred in the whole stock.

Quest. Did you ever give any order to any one to mark up the cost prices or measurements of any of these goods ?

Ans. No, never ; on the contrary, we told Mr. Gage, in the presence of Mr. Just, and I think Mr. Berryman, that the goods were to be taken at the exact cost, and the true measurement ?

Quest. Did you ever know that any of the goods had been
20 marked up ?

Ans. No, sir.

Quest. Did you ever hear any complaint made by either Mr. Berryman or Mr. Just, other than in the two instances above named, that the prices or measurements of these goods had been marked up ?

Ans. Not previous to the commencement of this suit.

Quest. Have you had any conversations with Berryman or Just ?

Ans. Had several conversations with Mr. Berryman since
30 the purchase of this stock.

Quest. Did he speak of this stock of goods and sale—and if so, what did he say ?

Ans. He spoke in regard to the stock, that Mr. Just had been buying goods, and he was not getting money enough out of it ; he felt dissatisfied in the manner in which Just was conducting the business for him, and that he wasn't receiving money enough out of the proceeds to meet his liabilities for the purchase of that stock, and he would like to sell it out ; he wished we could find a purchaser for him.

40 *Quest.* In any of these conversations did Mr. Berryman

ever allude to the prices and measurements of these goods sold by you to him, having been marked up?

Ans. Never.

Quest. Did he ever make any complaint of any kind with his bargain, before the bringing of this suit?

Ans. No, sir, never; on the contrary, he said we were the best friends he ever had.

And being cross-examined, he says—

Quest. When did he say that?

Ans. At different periods. 10

Quest. When did you first become acquainted with Mr. Berryman?

Ans. A short period previous to his purchasing the stock 41 Catharine street.

Quest. What knowledge have you of the sale to Connery and O'Donnell?

Ans. I know of its being completed, because we received some of the assets of that sale in the shape of a note?

Quest. Did you make the sale?

Ans. Mr. Graham made it; I was a party to it. 20

Quest. Then what you know about it Mr. Graham has told you, has he not?

Ans. He told me, and handed me a note, which, as I was book-keeper, I credited Mr. Berryman as so much paid, one of the notes of Connery and O'Donnell.

Quest. Then that is all you know about it?

Ans. Directly, yes, sir.

Quest. Were you ever in that store after Berryman took it?

Ans. I was.

Quest. Were you there when he did take it? 30

Ans. No, sir.

Quest. Were you there when Connery and O'Donnell took it?

Ans. No, sir.

Quest. Were you there between the time Berryman took it, and the time Connery and O'Donnell took it?

Ans. Yes, sir; I was in the store.

Quest. How often?

Ans. I think twice.

Quest. When?

Ans. From one to two months after Berryman took it.

Quest. How long were you there on that occasion?

Ans. Ten to twenty minutes, I suppose.

Quest. What were you doing there?

Ans. I called to see Just, and asked him how trade was; it is customary among business men—a friendly visit, that's all.

Quest. Was that the last time you were there before the
10 sale to Connery and O'Donnell?

Ans. This was not the last time, I was there twice; I didn't go there specially at all.

Quest. When was the second time?

Ans. From one to four weeks after the first time—I can't say.

Quest. Then you were not there again until after the sale to Connery and O'Donnell?

Ans. I wasn't there afterwards at all.

Quest. Were you present here the other day, while Gage
20 was testifying?

Ans. I was.

Quest. You heard his testimony?

Ans. I heard some of it, I didn't pay attention.

Quest. You were here the whole time he was testifying?

Ans. No, sir; I went to New York to obtain another witness, I was not here the fore part at all.

Quest. You were here while his testimony was being read to him?

Ans. I think I was.

30 *Quest.* You say Mr. Just and Mr. Gage had words—what words?

Ans. I don't know, they were a little excited, that's all—I don't remember the conversation.

Quest. What did Just say, as near as you can state the conversation?

Ans. He said some of these goods were marked up.

Quest. What did Gage say?

Ans. He said it was not so—not true.

Quest. Did not Mr. Just thereupon leave the store?

40 *Ans.* No, not immediately.

Quest. How soon did he ?

Ans. I suppose half an hour.

Quest. Did you continue taking stock after he left ?

Ans. About half an hour.

Quest. Did he complain about the cost, or measurement, or both ?

Ans. Complained of the cost only.

Quest. You say you fixed the price to suit him, how ?

Ans. I did, by reduction ; for instance, if a thing cost twenty cents we made it eighteen, which was satisfactory to Mr. Just.

Quest. Were you present at the giving of the mortgage ?

Ans. I think not.

Quest. In taking this account of stock you put down, as I understand you, the cost prices and quantities, just as Mr. Gage called them out to you, did you not ?

Ans. I did.

Quest. Were you present during the measuring of the goods, or were they measured and prepared before you went there to take account of stock ? 20

Ans. I was there while they was measuring some of them on the afternoon of the day previous to the taking the account of stock.

Quest. How long were you there on that occasion ?

Ans. Some three hours.

Quest. What were you doing ?

Ans. Looking over the stock—seeing it measured.

Quest. Who were measuring ?

Ans. Some men in the store ; I don't know their names except from hearsay, except Gage—he was measuring. 30

Quest. Who placed the stock book in Mr. Berryman's hands, and when ?

Ans. Mr. Graham gave it to Mr. Just, I believe—I don't know positively.

Quest. Then it wasn't done in your presence ?

Ans. It wasn't done in my presence ; no, sir.

Quest. Then all you know about the stock book being placed in Mr. Berryman's hands, is from what Mr. Graham told you ?

Ans. Well, I don't know whether he told me or whether I knew—I can't say.

Quest. Did Mr. Just or Mr. Berryman ever in your presence take the stock book and look to see that the measurements and cost prices were there?

Ans. Mr. Just did, as to the cost—I don't know about measurements.

Quest. When did he do that?

Ans. The time we were taking account of the stock.

10 *Quest.* Then he did not do that, so far as you know, after the stock book had all been made up?

Ans. Except what he told me, he said he was going over the stock book then; he was partially through then; he was going through the stock book with the stock, and so far he had found them right. [Answer objected to by the defendant.]

Quest. Did Mr. Berryman ever, to your knowledge, go over the stock after the book had been made up?

Ans. No, sir.

20 *Quest.* Did Mr. Berryman ever, to your knowledge, go over the stock to see if the measurements were there, and the cost prices?

Ans. He said he did not know anything about dry goods, and that Mr. Just would look over them.

Quest. Did Berryman understand anything about dry goods?

Ans. He did not—he is an engineer—he said he did not himself.

Quest. Then Berryman did not go over the stock to see that the measurements were there and the cost prices?

Ans. Not to my knowledge.

30 *Quest.* To whom did he say that Just would look over them?

Ans. He said it in presence of Mr. Graham, Just, and myself, at our office in Chambers street.

Quest. Did Mr. Berryman ever have any conversation with you after he took the goods?

Ans. Yes; a great many.

Quest. Did he ever talk with you about these goods after you sold them to him?

Ans. Nothing in regard to the goods at all.

40 *Quest.* The part of *Exhibit D 2*, which purports to be ac-

count of stock "August 14th, 1865," is in whose handwriting?

Ans. My own.

Quest. The whole of it?

Ans. The whole of it.

Quest. Is that the account called off by Gage, entered by you, as you have stated in your testimony here?

Ans. It is.

Quest. Had the goods in the two instances, about which Just complains, been marked up or not? 10

Ans. Our representative says not, that is Mr. Gage.

Quest. Is that all you know about it?

Ans. It is.

Quest. How long have you been in partnership with Mr. Graham?

Ans. About ten years.

Quest. Are you in partnership with him now?

Ans. I am.

Quest. How long have you known Alexander Just?

Ans. I suppose ten years, fully. 20

Quest. Are you intimate with him?

Ans. I am intimate with him only as with other customers; we sold him goods when he was in business for himself, and he would buy of us for other houses.

Quest. Do you sell goods through him yet?

Ans. I am not in the dry goods business, nor is Mr. Graham.

Quest. What sort of a broker are you?

Ans. Commercial paper—business paper.

Quest. Are you and Mr. Graham in that business together? 30

Ans. Yes, sir; we have never changed since we went together.

Quest. Where is your office?

Ans. 25 Pine street.

And being re-examined in chief, he says—

Quest. When you reduced the prices of the goods in these two instances on Mr. Just's complaint, what reason did you have for doing it?

Ans. That everything should be just and right, as we

stated it previous to taking the account of stock, and to satisfy him that we meant to do right?

Quest. Did you do it because you believed the goods were marked too high, or simply to satisfy Mr. Just? [Question objected to.]

Ans. I did it to satisfy Mr. Just, not that I thought he was correct at all.

Quest. Did you make any inspection, or inquiry, to see if his complaint was correct?

10 *Ans.* I asked Mr. Gage, and he said the price was correct—they were not marked up; I then allowed it to satisfy Mr. Just.

Quest. How do you know what the character of this stock in this store was, when Connery and O'Donnell took it?

Ans. I only knew it from what I heard.

Quest. Do you know whether Mr. Just or Mr. Berryman had this stock book any time before they took these goods?

Ans. Mr. Just had nominal possession of the store for several days, as well as this stock book, to afford him every
20 facility for examining, measuring, and completing the transfer of this store to Berryman.

JAMES AITKEN.

Taken, subscribed, and sworn to, this twenty-fifth day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Whereupon the examination was adjourned to Tuesday, November 26th, 1867, at ten o'clock A. M., at the same place.

At which time and place, the examination was proceeded with in the presence of the counsel for the respective parties.

30 *Patrick O'Donnell*, a witness produced on the part of the complainants, being duly sworn, deposes and says—I live at 32 Catharine street, New York; I am a dry goods salesman; I am with D. Hauser & Co., No. 385 Broadway; I was of the firm of Connery and O'Donnell; they did business at No. 41 Catharine street, New York; they were in business there from the first of January, 1866, to the latter part of August,

of the same year; the store was occupied, before we occupied it, by Jane W. Berryman; it was in her name we bought the stock—that is we bought the stock from her; we bought the stock from her—she had to come over from her place in Jersey, to sign the sale of it; we bought the stock for ninety cents on the dollar, or the cost price less ten per cent.; it was a poor stock enough when we bought it, as to quality; as to value, we considered it was worth ninety cents on the dollar, with the stand and lease; there were old goods in this stock—most of them were old goods; some of these goods had 10 been in the store a long time—some years.

Quest. How could you tell that?

Ans. I could tell because they looked so, they looked soiled, they were there in Gage's time; I know they were there in Gage's time because I was there often, and seen the stock.

Quest. Did you take the lease of this store when you bought the goods?

Ans. Richard Connery took the lease, that is my partner.

Quest. What was the rent on this lease? 20

Ans. It was \$1300 a year, that is the store and basement; at that time the basement was let for \$300 a year.

Quest. What was the value of this store at this time, a year?

Ans. I considered it was very cheap at that price.

Quest. What, in your opinion, was the store worth a year?
[Question objected to.]

Ans. I considered, at the time, the lease of the store for the two years would be worth \$2000 to us—that is, bonus.

Quest. Had rents in this locality risen or fallen in the year before you took it? 30

Ans. They were rising; stores were in great demand at the time.

Quest. Were rents any higher at the time you took the store, than they were six months previous?

Ans. I don't think they were; I suppose they were about the same; six months don't make any difference in rents; if they had been let the May previous, it would have been more than six months.

Quest. Do you know a man named Samuel K. Hernidge?

Ans. I have seen him. 40

Quest. Where does he live?

Ans. I don't know.

Quest. Do you know anything as to his reputation for truth and veracity? [Question objected to.]

Ans. I couldn't say.

And being cross-examined, he says—

Quest. What capital did you put in the firm of Connery and O'Donnell?

Ans. \$450.

10 *Quest.* When did you cease to be a member of that firm?

Ans. The latter part of August, the same year—1866.

Quest. Did you sell out to your partner?

Ans. Yes, sir.

Quest. For how much?

Ans. \$1500.

Quest. Is he continuing the business there still?

Ans. Yes.

Quest. Have you ever seen Mrs. Jane W. Berryman?

Ans. Yes.

20 *Quest.* What salary are you getting now?

Ans. I get no salary at all—I am selling on commission.

Quest. Do you know anything about rents in Catharine street now?

Ans. I know a little.

Quest. Are they higher now than when you owned that lease?

Ans. I don't know that they have changed very much; I know a party there who expects to get more for a store than he hired it for two years ago; I know a building there that
30 the rent has nearly doubled since that time; a dry goods place; from what I heard the landlord say, he is going to raise the rent—he told me so himself. [Latter part of answer objected to by solicitor for defendants.]

Quest. Did you do a prosperous business while you and Connery had the store No. 41 Catharine street?

Ans. I don't know; we never took an account of stock; we sold a good many goods.

Quest. Did you buy a good many goods, too?

Ans. Yes.

Quest. Had rents advanced any from May 1st, 1865, to May 1st, 1866?

Ans. I know some stores that has advanced.

Quest. Did you consider that lease worth more when you sold out to your partner than it was when you bought it?

Ans. I never made any calculations of that kind.

Quest. Do you know Mr. Graham, the complainant?

Ans. Yes, sir; I have seen him the last six or seven years, but never became acquainted with him until the buying out of that store. 10

Quest. Do you know Alexander Just?

Ans. Yes, sir; I knew him as long as I did Mr. Graham, but became acquainted with him before I was with Mr. Graham.

Quest. Do you know anything about Mr. Just's reputation for truth and veracity?

Ans. I don't know anything against Mr. Just's reputation.

Quest. Are you a native of this country?

Ans. No, sir.

Quest. Where were you born? 20

Ans. In Ireland.

Quest. Have you ever been in Mr. Graham's employ?

Ans. No, sir.

Quest. Have you ever seen this lease of which you speak?

Ans. Yes, I saw the lease.

Quest. How were you paid this \$1500 which you got from your partner when you sold out?

Ans. I don't see as that has anything to do with the case; I don't want to answer that question. [Question objected to as irrelevant.] 30

Quest. Last question repeated. [Same objection.]

Ans. I have answered that before.

Quest. Were you paid in cash when you sold out to your partner?

Ans. I object to answer; that's the same question again; if I saw that it had any bearing on the case, I would answer, but I don't see that it has.

Quest. Was this \$1500 paid to you in money, or not?

Ans. Well, that's just the same question again. I answer the same way. 40

Quest. Who paid you for selling out to Mr. Connery your interest in that concern?

Ans. I object to answer that.

Quest. Last question repeated.

Ans. I object to answer.

Quest. Were you ever paid at all?

Ans. I object to it; I sold out for \$1500 to him—that's what I said.

Quest. Was not this \$1500 paid to you by cancelling your 10 indebtedness to the concern?

Ans. I object to answer it.

Quest. Do you object because it was so paid?

Ans. I object to answer that.

Quest. Who has suggested to you to decide for yourself what questions you will answer and what questions you will not answer?

Ans. Nobody.

Quest. What did Mr. Graham say here when you first declined to answer the question?

20 *Ans.* He made some remark to Mr. Zabriskie here—what words he used I can't exactly say.

Quest. State what he said?

Ans. I understood him to say that I need not answer the question—I wasn't paying much attention at the time.

Quest. Did Mr. Graham's counsel say anything? [Question objected to.]

Ans. Yes.

Quest. What did he say?

Ans. Am I obliged to tell the same words? if I am, I can't.

30 *Quest.* What did you understand him to say?

Ans. I understood him to be of the same opinion as Mr. Graham.

Quest. Of the same opinion in regard to what?

Ans. To my answering the question how I was paid.

Quest. Who employed you to come over here to-day?

Ans. Mr. Graham asked me to come over.

Quest. Did he pay you for coming?

Ans. No, sir.

Quest. Did any body?

40 *Ans.* No, sir.

Quest. Who is to pay you ?

Ans. Nobody ; I earn a living different from pay of that kind.

Quest. Have you ever been a witness before ?

Ans. No.

Quest. Do you still decline to answer how you were paid the \$1500 ?

Ans. Yes, sir.

Quest. Why ?

Ans. Because I don't see as it has any bearing on the case 10 at all.

Quest. Does it make any difference to you whether this case is affected by your testimony or not ?

Ans. No, sir.

Quest. Then, why should you object because, in your judgment, the question has no bearing on this case ?

Ans. I don't see the use in it at all ; I won't answer that question.

Quest. If it makes no difference to you whether the case is affected by the testimony or not, why can you not favor us 20 with an answer ?

Ans. I don't see the use in answering it at all ; I won't answer it, so you might as well drop it.

Quest. What is your age, Mr. O'Donnell ?

Ans. Thirty-two years, nearly.

Quest. Do you care which side wins in this case ?

Ans. I don't see as it makes any material difference to me — I don't.

Quest. Have you ever been paid the \$1500, or is it owing to you ? 30

Ans. I object to answer it.

Quest. Does Mr. Connery owe it to you now ?

Ans. I object to answer anything of the kind.

Quest. Have you any claim now against Mr. Connery on account of this \$1500 ?

Ans. I object to answer those questions.

Quest. Will you please state what objection you have to the question ?

Ans. I answered that before ; I don't see what bearing it has to the case, what I testify too. 40

Quest. Do you know what bearing any of your testimony has upon this case?

Ans. No, sir; no more than I can tell when we bought the stock and how much we paid for it.

Quest. Then you were told before you came here what you were to swear to, were you?

Ans. No, sir.

Witness, upon the examination being read to him, desires to correct his answer to the question "Had rents advanced
10 from May 1st, 1865, to May 1st, 1866?" and says—I understood it to be May 1st, 1867. As to whether they advanced from May 1st, 1865, to May 1st, 1866, "I can't say," because most of the stores there are upon lease, and I don't know of any lease expiring then.

Counsel for complainant objected to all the above questions put to the witness in reference to the manner in which he was paid the said fifteen hundred dollars. During the course of the above examination, the counsel for the complainant objected to all the questions put to the witness as
20 to the manner of paying said fifteen hundred dollars, and desired the master to note such objections; whereupon the master suggested that the objection should be noted at the end of the examination.

PATRICK O'DONNELL.

Taken, subscribed, and sworn, this 26th day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Hugh Doherty, a witness produced on the part of the complainant, being duly sworn, deposes and says—I board at
30 Leggat's hotel, New York; I am in the dry goods business, at 471 Eighth avenue, New York; I know the store 41 Catharine street, New York; I am acquainted all over the city with rents a good deal, that is store property; I own some store property—by this means I got my knowledge of rents; rents in Catharine street have risen during the last three years; rents have been raising for two or three years—I think three years ago they started to go up.

Quest. Were rents higher there in August, 1865, than they were in May, 1865?

Ans. They were higher in August; they advanced gradually for the last three years—that is, if there were any places to let there.

Quest. In your opinion, as an owner of real estate, what was the value per year of the store and basement of No. 41 Catharine street, in August, 1865? [Question objected to.]

Ans. From May 1st, 1865, to May 1st, 1867, it was worth \$2500 per year, that is store and basement. 10

And being cross-examined, he says—

Quest. What store property do you own?

Ans. No. 106 Franklin street.

Quest. Is that all?

Ans. That's all—I lease too places beside.

Quest. Where?

Ans. I lease 88 Franklin street and No. 471 Eighth Avenue.

Quest. Did you ever lease a store in Catharine street?

Ans. I did.

Quest. When? 20

Ans. I think it was in 1861 or 1862, I won't be positive.

Quest. What part of Catharine street?

Ans. The same block as No. 41, I am pretty certain—it is in the middle of the block.

Quest. Have you leased any property there since 1862?

Ans. I have not—I tried to buy there, but they wouldn't take my price.

Quest. When?

Ans. Last spring, I think it was.

Quest. Do you devote yourself exclusively to the dry goods 30 business?

Ans. I do now, but only for the last two or three weeks; I collect my rents, of course; if I see a good bargain in real estate I take it.

Quest. Do you know what rents in Catharine street were in 1865?

Ans. I think they commenced going up in 1865; when they have a lease they can't put them up until the lease expires.

Quest. What rent did you pay in Catharine street in 1861, or 1862?

Ans. \$600.

Quest. How long have you known Mr. Graham?

Ans. Ten years or more.

Quest. Are you and he intimate?

Ans. Nothing extra; I speak to him when I meet him, and he speaks to me.

Quest. Have you any business relations with each other?

10 *Ans.* No, sir; I suppose if I had a piece of paper he might buy it of me, that's his business.

Quest. How long have you resided in New York?

Ans. A long time, back and forth—I resided in Boston sixteen years, and ten or twelve years after that I lived in New York; I am a bachelor.

Quest. What is your age?

Ans. Forty-one years last September.

Quest. Are you a native of this country?

Ans. No, sir.

20 *Quest.* Where were you born?

Ans. In Ireland.

And being re-examined in chief, he says—

Quest. What is that store you rented in Catharine street, for \$600 a year, worth now?

Ans. \$2000, that is by making some repairs.

Quest. Do you know what it is rented for now?

Ans. I do not.

HUGH DOHERTY.

Taken, subscribed, and sworn to, this twenty-sixth day of 30 November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Depositions for Defendants.

[Filed February 5, 1868.]

Examination of witnesses, &c., in the above stated cause, on the part of the defendants, taken before me, Isaac Romaine, a master and examiner of said court, at my office, No. 7 Exchange Place, Jersey City, N. J., on Friday, November 29th, in the year one thousand eight hundred and sixty-seven, at one o'clock in the afternoon, in presence of Charles H. Voorhis, esq., of counsel with defendants, and Lansing, Zabriskie, esq., of counsel with complainants, by consent of parties. 10

Whereupon the examination was adjourned to Saturday, November 30th, 1867, at ten o'clock A. M., at the same place.

At which time and place the examination proceeded.

Andrew McGrath, a witness produced on the part of the defendants, being duly sworn, deposes and says—I reside at 332 Bowery—I board there; I am a dry goods clerk; I have been in that occupation about four years; I am now employed at 360 Bowery, by H. B. Russell; I have charge of his house up there—I am superintendent; I know the premises No. 41 Catharine street, New York; I was employed there from, I think, the second week in January, 1865, to August, the time of the winding up of Mr. Gage; I was employed by Mr. Gage as a dry goods clerk; I was first engaged as a porter; when business got brisk, I got inside the counter; I assisted in taking an account of stock while I was there; I assisted in taking the August stock—that was at the time of the winding up; Mr. Moore, Mr. Foye, and Hernidge, with me, assisted in taking the stock; Mr. Aitken was not there while the stock was being prepared; 20 in taking stock, we commence by taking the number of yards and cost price; we mark the quantity and price of the goods on a ticket, and put it on the goods; after it has been prepared in this way, one party calls it off, and another 30

enters it in a book; Mr. Just was not present when these goods were measured; he was there for a very short time when the goods were called off; he was there about twenty minutes or half an hour; these goods, in taking that August account, were not measured correctly; the correct cost prices were not marked on them; I answer for those I did myself; I marked the goods over what they were in measurement, and over what they were in cost; I marked some of the goods four, five, six, and eight yards over what they
 10 measured, more or less; I marked up the cost prices five, six, and eight cents a yard—some more, some less; these goods were calicoes, muslins, cloths, and flannels; the other clerks marked up goods too; Mr. Gage was aware that these things were being done; some of the goods were marked up one hundred per cent.; this was part of the stock that Mr. Hernidge took; they were veils, lace collars; they were marked up more than one hundred per cent.; some of the goods were not worth what the original cost was, but were marked up higher; some of the muslins could be bought
 20 from twenty to twenty-five per cent. lower than the original cost was. [Answer objected to by complainant.]

I could not say what that store would let for now. [Solicitor for complainant objects to all the above testimony relative to the marking up of the goods, and as to their value.]

And being cross-examined, he says—

I have been at the place I am now, two years last September; I superintend the place, and manage all the business; I was present during the whole time of taking the stock in August, 1865; we marked up the goods because I was in-
 30 formed so to do by Mr. Foye; Mr. Foye was one of the salesmen employed by Mr. Gage; he had charge of the cloak and shawl department; Mr. Gage did not tell me to mark up the goods; Mr. Graham did not tell me; I saw Mr. Berryman in the store before he took it; I could not state, exactly, how often; I have seen him several times in the store; he would come in and ask if Mr. Just was there.

Quest. Did you see Mr. Berryman in the store several times before he took possession of it as owner? [Question objected to.]

Ans. Yes, sir; I have seen him in the store; I can positively say I saw him there once—that I am certain of; I did not know Mr. Berryman at the time, but he was pointed out to me as Mr. Just's partner in taking the store.

Quest. How often did you see Mr. Just in the store before he took possession of it?

Ans. I have seen him there four or five times.

Quest. What did he come there for?

Ans. I do not know, sir.

Quest. What did he do while he was there?

10

Ans. He has looked at some of the stock.

Quest. What else did he do?

Ans. The day of stock taking he came in, the day of entering the stock, and made some remark as regards the stock to Mr. Gage; Mr. Gage got angry at the words that passed between him and Mr. Just; he then told Mr. Just, "the drunken old bummer," to leave the store, that the store was his yet, and he had no right to talk to him as he did; Mr. Gage insisted on his leaving the store, so Mr. Just left.

Quest. What remark did Mr. Just make?

20

Ans. That I don't know—it was some remark concerning the stock.

Quest. Did you see Mr. Just in the store after this occasion?

Ans. Yes, sir.

Quest. Can you tell how often?

Ans. When the stock was entered Mr. Just came in—I have seen him once after that.

Quest. What did he do then?

Ans. Well, whatever occurred between Mr. Aitken, who was there, and Mr. Gage, and him.

30

Quest. Was Mr. Just or Mr. Berryman present when any of the stock was measured?

Ans. No, sir.

ANDREW McGRATH.

Taken, subscribed, and sworn to, this 30th day of November, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Whereupon the examination was adjourned to Monday, December 2d, 1867, at eleven o'clock A. M., at the same place.

At which time and place, the examination was resumed in the presence of the counsel of the respective parties.

Andrew L. Osborn, a witness produced on the part of the defendants, being duly sworn, deposes and says—I reside in New York; my office is 424 Canal street; my occupation is that of a builder; I am familiar with New York property, and with rents; I have been in that business for the last fifteen years; I collect rents and let property for others to the extent of about thirty or forty thousand dollars a year; 10 some two hundred buildings, stores, and other property to take care of; I have seen the premises No. 41 Catharine street.

Quest. Can you say what a lease of the store and basement No. 41 Catharine street, at a rent of \$1300 a year, having three years to run, was worth, in August, 1865? [Question objected to.]

Ans. I should think it was very good rent for it at that time, in 1865, a big price; I have some knowledge of dry goods—in my younger days I was in it; I was then engaged 20 in that business; I saw some of the dry goods in the store No. 41 Catharine street, while Mr. Berryman had it; I think it was about October I was there, 1865; I can't say much as to the value and quality of the goods; I saw some goods at that time there that were dirty—my attention was called to them; I know Alexander Just.

Quest. Do you know what his reputation for truth and veracity is? [Question objected to.]

Ans. Very objectionable—I have never known him to speak the truth to me in any business transaction.

30 *Quest.* Would you believe him under oath? [Question objected to.]

Ans. I would not.

And being cross-examined, he says—

I am a real estate agent; I have been such about fifteen years; I never leased any stores in Catharine street, but I have in Front street, Water street, and Pearl street, and a great many on the north side; rents have risen in New York since 1865; rents have been at their present price in New

York a year and a half, some not over a year; the latter part of 1866 they began to go up higher than they were in 1865; rents did not begin to rise till after May, 1865; rents were no higher in 1865 than they were in 1864—they were lower, if anything; in August, 1866, rents began to go up, and went up rapidly through that year; I have not seen this Catharine street store more than once to have my attention called to it; I consider myself reliable, under the circumstances, of giving an opinion of the rent of this store in 1865.

A. L. OSBORN. 10

Taken, subscribed, and sworn to, this 2d day of December, A. D. 1867, at Jersey City, before me.

ISAAC ROMAINE, *M. C.*

Opinion.

The hearing of this cause was brought on upon bill, cross-bill, and proofs. The bill was filed to foreclose a mortgage given by Berryman and wife, upon her farm, to Graham. A cross-bill was filed by Berryman and wife to have the mortgage set aside as void, and the notes of Berryman, to secure which it was given, delivered up to be cancelled, on the 20 ground of fraud in the consideration. The alleged fraud consisted in fraudulent representations by Graham to Mrs. Berryman, first of the character and fitness of the agent employed by her to purchase from Graham the lease of a dry goods store, and the goods contained in it, and intended to be employed to conduct the business for her; and next, of the value, quantity, and original cost of the goods. The contract alleged was that Graham agreed to sell the lease, and the goods in the store, for the original cost of the goods, less ten per cent. And the cross-bill alleges that Graham furnished 30 to Mrs. Berryman a list of the goods in which quantity and original cost of them were fraudulently mis-stated as greater than they in fact were, for the purpose of defrauding her; and insists that five thousand dollars, which had been paid on the mortgage, was equal to the value of the goods at the

contract price; and that the notes and mortgage should be declared void and given up to be cancelled, and that an injunction should issue against proceeding in an ejectment brought by Graham upon the mortgage. The cross-bill contains also the general prayer of relief.

The complainant in the original suit, Mr. Graham, was sworn as a witness without objection at the time; objection was made to his competency at the closing of complainant's evidence, and before any testimony had been taken by the
10 defendant, and testimony was taken by both parties after this objection. There is no doubt but that Graham is an incompetent witness, as Berryman and his wife are both adverse parties in interest, and either cannot be sworn. The only question made was that the objection was not made in the proper time, that is, at his examination. Counsel on the argument declined to press or argue the objection, but distinctly stated that he did not waive it, and it is therefore my duty to decide it.

Chancellor Pennington held in *Neville v. Demeritt*, 1 Gr.
20 C. R. 334, "that witnesses should be objected to at the time of their examination." But his intention in this expression must be gathered by what he had just before stated "that in the case of a witness when interest might be released by the party offering him, I would certainly not sustain such an objection for the first time made at the hearing without giving an opportunity to release that interest, and for a re-examination, if the party thought proper." And the only authority cited by him, the case of *Mohawk Bank v. Atwater*,
2 Paige 60, says: "The objection must be made at the time of
30 the examination, or at least before the proofs in the cause are closed." The reason on which the rule is founded does not require that the objection should be made at the very time of examination and not after. But it must be made in time for the party to remove the incompetency of the witness if practicable, or to supply, by other evidence, the want of his testimony. This I hold to be the true rule.

Here the objection was made at the closing of complainant's evidence, and when, as the case stood, he had no right to take further evidence, I was inclined to think that it

came too late even under the modification of the rule in *Neville v. Demeritt*, above stated. But objections to testimony that are substantial objections, as this is, should not be lost or waived by a slight inadvertence which causes no injury to the opposite party. And as the court would always in such case grant further time to restore competency to the witness, or to procure other testimony, I must hold that in this case the objection was in time, and overrule Graham's evidence.

A mortgage cannot be reformed, corrected, or declared, 10
void, for fraud or mistake in the consideration, in a suit
brought to foreclose it, nor can that suit be defended on such
grounds. The only remedy is by cross-bill for that purpose,
Miller v. Gregory, 1 *C. E. Green*, 274, and therefore, in this
case, the only remedy for the defendants is upon their cross-
bill. And in that suit the answer of Graham is evidence
so far as responsive to the bill.

Graham's answer denies fully all fraud in representations
as to the agent of the defendants, and as to that, is conclusive,
as no proof is offered on that point. It also denies the 20
charge in the cross-bill that he or his partner, Aitken, handed
to Mrs. Berryman's agents a book in which the measure-
ments and prices of the goods were written, as a just and
true account of the quantity and cost prices of said stock of
goods, or that he said or in any way gave them to under-
stand, that it was accurate and true, and the answer avers
that the list was made for themselves, to ascertain the amount
and cost of the stock of goods, to enable them to fix the
price, and that he handed it to Mrs. Berryman's agents, and
expressly told them to take it and compare it with the goods, 30
and see if the quantity and prices were correct; and that it
was distinctly understood between him and them that the
goods were not to be purchased upon the faith of that stock
list; and it also avers that he believed, and still believes,
that the stock list was correct and was privy to and intended
no fraud. These allegations are responsive, and are not im-
pugned or contradicted by any witness. There can, there-
fore, be no relief on the ground of fraud.

The counsel for Graham insists, that as the bill is for re-
lief on the ground of fraud, no relief can be had except on 40

that ground, and that in this suit no relief can be had on the ground of mistake. In the case of *Read's adm'r v. Cramer*, 1 Gr. C. R. 271, the contrary doctrine was acted on, if not announced, by Chancellor Pennington, and the rule is, that under the general prayer for relief, any relief can be had that the complainant is entitled to upon the facts stated in his bill so far as proved. If a failure of consideration is shown by such mistake between the parties, as can be relieved in this court, although it was occasioned by the mistake, and not the fraud of the party, as charged in the bill, the relief can be granted in the suit. If Mrs. Berryman is entitled to relief from the mortgage on the ground of mistake, I am of opinion she can have it on this cross-bill.

The answer of Graham admits, that he agreed to sell the stock of goods for ninety per cent. of the cost price of the goods; this is the agreement, as charged in the cross-bill, and the complainants in it contend that if, by mistake, and without fraud, a greater sum was inserted in the mortgage, it should be reformed and corrected to the true amount.

20 Courts of equity will relieve against mistake, and will correct and reform deeds and instruments of the most solemn character, to grant such relief. But when relief is sought from deeds or other writings, the mistake must be clearly proved. 1 *Story's Eq. Jur.*, § 152.

Again: the mistake must be as to a fact, not only not known to the party, but one which he could not, by reasonable diligence, have ascertained. Where a party ought, in the exercise of ordinary prudence, to have made inquiry, and neglects to ascertain the facts upon which his contract
30 is based, in cases where it is not necessary to repose confidence in the other party, or where it is as much his duty as that of the party with whom he deals, to know the facts, courts of equity will not relieve against his own negligence.

In this case, Graham did not undertake, except for himself, to ascertain the quantity or cost price of the goods. He gave the purchaser the result of his inquiry as an aid, and invited her to examine for herself. No person of ordinary prudence would have neglected to examine the quantity, and inquire into the cost of the goods of an old store, purchased
40 for over nine thousand dollars, as these were. The oppor-

tunity was given. The goods were at his service, for more than a week, and the clerks were there who, by their own testimony, when produced by him, changed the cost prices, which they then knew. 1 *Story's Eq. Jur.*, § 146, and *n.*

Besides, she sold these goods without re-measurement, and without giving Graham any opportunity of ascertaining the amount of the error, if any; she sold and disposed of them without any complaint to Graham until payment of the mortgage was insisted on, eighteen months after the sale. This negligence in this case, would work a grievous wrong 10 to Graham, who was guilty of no fraud, by depriving a vigilant man of all means of ascertaining the truth and correctly rectifying the mistake, in order to relieve a negligent purchaser from her own laches.

But I am not satisfied by the evidence that there was any error or mistake, of any importance, in the list of goods and prices, to rectify.

The principal, if not the only proof of it, is the testimony of the three witnesses, Hornidge, Foy, and McGrath. They were three clerks in the store up to the time of sale, em- 20 ployed by Gage, who, for years, had conducted it as if his own, for Graham and Aitken. These clerks seem to have supposed that Gage owned the goods and business, and had mortgaged or pledged them to Graham and Aitken. They were present at the making out the account of stock in question. They measured the goods and marked the quantity and prices on them, and they testify that they falsely marked the quantity and prices too large—that they did it voluntarily, without request from Graham, Aitken, or Gage—they did not know that Graham or Aitken knew of it, 30 but suppose that Gage did. Two of them supposed that they were aiding Gage to take advantage of Graham, to whom they had an antipathy; and one took it for granted that, as there was to be a real sale, the goods were expected to be marked up. Witnesses attempting to aid a party by voluntarily swearing to a fraud concocted by themselves without a request from any one, are hardly such as come up to the rule requiring *clear evidence* to set aside or reform a solemn instrument. The evidence of these witnesses is hardly credible, even if it had not been contradicted. 40

Besides the answer of Mr. Graham, it is contradicted by the evidence of Gage, who called off from the marks upon the goods themselves, the quantity and prices that Aitken put down in the stock book. Gage knew the goods longer and better than any witness; he knew the old cost marks on them, which he says were never changed; from these marks he called them out to Aitken. Unless Gage is false, there was no mistake in that list as contended. His want of truthfulness is not shown by his own evidence, or any
10 other evidence in the cause. Moore was present at the account, and took part in it; he denies that there was any marking up of measurement or prices. It is true, that these ingenious clerks, bent on fraud, might have done it in his presence and concealed it from him, but their testimony that it was understood by all in the store, cannot be true if he is believed.

The fact which appears by the responsive answer of Graham that Berryman was satisfied, and made no complaints until called on to pay the residue of the mortgage when
20 due, leads to the conclusion that this defence was got up to meet the emergency, and would not have been thought of had no difficulty occurred about urging payment.

The relief sought in the cross-bill must be refused and the bill dismissed. The complainant is entitled to a foreclosure of his mortgage, and to have an account taken of the amount due on it.

Interlocutory Decree.

[Filed February 13, 1868.]

This cause having been only set down for hearing on the
30 third Tuesday of October, in the Term of October last, and notice thereof duly given to the solicitor of the defendants, and the hearing of the same coming on at the said Term upon the pleadings, exhibits, and proofs, in the presence of L. Zabriskie, of counsel with the complainant, and Charles H. Voorhis and Robert Gilchrist, of counsel with the defendant;

and the said pleadings, proofs, and exhibits, having been read and examined; and the arguments of the counsel of the respective parties having been heard and considered, and it appearing to the chancellor that there was no fraud or mistake in the consideration of the mortgage in the original bill in this cause set forth, and given by the defendants to the complainant, for the sum of nine thousand two hundred and seventy-six dollars and fifty-one cents, and dated on the twenty-third day of August, in the year eighteen hundred and sixty-five, and that the defendants are not entitled to the 10 relief against said mortgage prayed by their cross-bill of complaint in this cause; and that the complainant is entitled to have an account taken of the amount due to him for principal and interest upon said mortgage—

It is thereupon, on this thirteenth day of February, in the year eighteen hundred and sixty-eight, ordered, adjudged, and decreed, by Abraham O. Zabriskie, Chancellor of the state of New Jersey, that the cross-bill of complaint of the defendants in this cause, be dismissed, and that the complainant is entitled to have paid to him the principal and 20 interest due upon said mortgage, given to him by the said defendant as aforesaid in full. And it is further ordered, that it be referred to Washington B. Williams, one of the masters of this court, to ascertain and report the amount due to the complainant for principal and interest upon his said mortgage. And all further equity and directions are reserved until the coming in of said master's report.

A. O. ZABRISKIE, C.

Appeal.

[Filed February 22, 1868.]

30

The defendants hereby appeal from so much of the interlocutory decree, made in this court in the above stated cause, on the thirteenth day of February, instant, as declares that there was no fraud or mistake in the consideration of the mortgage in the original bill in said cause set forth, and that

the defendants are not entitled to the relief against said mortgage prayed by their cross-bill of complaint in said cause, and adjudges that the cross-bill of complaint of the defendants in said cause be dismissed, and that the complainant is entitled to have paid to him the principal and interest due upon said mortgage given to him by the said defendants in full, to the Court of Errors and Appeals in the last resort in all causes of law.

Dated February 21, 1868.

10

CHAS. H. VOORHIS,

Solicitor for and of counsel with defendants.

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

CHAS. H. VOORHIS,

Of counsel with defendants.

Petition of Appeal.

[Filed March 11, 1868.]

Between

20	Jane W. Berryman, and William H. Berryman her husband, <i>appellants</i> ,	}	<i>On bill, &c.</i>
	<i>and</i>		
	William Graham, <i>appellee</i> .		

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

The humble petition of Jane W. Berryman, and William H. Berryman her husband, the appellants in the above stated cause, respectfully shows—that your petitioners find themselves aggrieved by an interlocutory decree, made in the Court of Chancery, by Abraham O. Zabriskie, Chancellor of
 30 New Jersey, bearing date the thirteenth day of February, in the year one thousand eight hundred and sixty-eight, wherein said William Graham was complainant, and the said Jane

W. Berryman, and William H. Berryman her husband, were defendants, in this respect, to wit, that the said decree declares that there was no fraud or mistake in the consideration of the mortgage in the original bill in said cause set forth, and that the defendants are not entitled to the relief against said mortgage prayed by their cross-bill of complaint in said cause, and adjudges that the cross-bill of complaint of the defendants in said cause be dismissed, and that the complainant is entitled to have paid to him the principal and interest due upon said mortgage given to him by the said 10 defendants in full.

And your petitioners humbly appeal from that part of the said decree of the chancellor which decrees as aforesaid, on the ground that the same is erroneous, for that there was fraud or mistake in the consideration of said mortgage, and that your petitioners are entitled to the relief against said mortgage prayed by their said cross-bill of complaint, and that their said cross-bill ought not to have been dismissed, and that complainant is not entitled to have paid to him the principal and interest due upon said mortgage in full. 20

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

Dated February 21, 1868.

CHAS. H. VOORHIS,
Solicitor for and of counsel with appellants.

Answer.

[Filed March 14, 1868.]

30

This respondent, not confessing all or any of the matter to be true, as in and by the said petition of appeal are mentioned and set forth, for answer thereunto says—that such decree as is complained of was made by the Court of Chancery, as in the said petition of appeal is mentioned and set forth; but as to the date, substance, and extent thereof,

this respondent humbly craves leave to refer thereunto when the same shall be produced,

And this respondent humbly conceives, and is advised that the said decree is agreeable to equity and justice, and therefore humbly hopes that the same may be affirmed, and said appeal may be dismissed in this honorable court with costs.

Dated March 13, 1868.

L. & A. ZABRISKIE,
Solicitors, and

10

L. ZABRISKIE,
Of counsel with respondent.

Master's Report.

[Filed April 25, 1868.]

February 22d, 1868, the parties appeared before the master by their respective solicitors, in pursuance of an order of reference, dated February 13th, 1868, and upon summons duly issued by me.

The complainant's solicitor admits that payments have been made on account of the principal and interest of his mortgage, as follows:

1. Endorsement on mortgage to go on interest, (endorsed at date of mortgage,)	10 \$449 02
2. On November 26th, 1865,	1695 82
3. " January 3d, 1866,	600 00
4. " March 6th, 1866,	2000 00

These admissions were accepted as correct by the defendant and his solicitor.

Schedule is appended.

W. B. WILLIAMS, M. C.

SCHEDULE.

Mortgage of complainant marked <i>Exhibit A</i> , dated August 23d, 1865, made by defendant to him, to secure payment of \$9276.51, on February 23d, 1867, and interest half yearly from date,	20 \$9276 51
Add interest ta 7per cent. from August 23d, 1865, to November 26th, 1865, ninety-five days,	168 99
	<u>\$9445 50</u>
Deduct payment endorsed at date of mortgage, to go on account of interest,	449 02
Balance,	\$8996 48
Deduct payment of November 26th, 1865,	1695 82 30
Balance,	<u>\$7300 66</u>

	Brought forward,	\$7300 66
	Add interest to January 3d, 1866, thirty-eight days,	53 20
	Amount,	\$7353 86
	Deduct payment of January 3d,	600 00
	Balance,	\$6753 86
	Add interest to March 6th, 1866, sixty-two days,	80 29
	Amount,	\$6834 15
	Deduct payment of March 6th, 1866,	2000 00
10	Balance,	\$4834 15
	Add interest to April 6th, 1868, two years and thirty-one days,	705 51
	Amount due complainant at date of report,	\$5539 66

Dated April 6th, 1868.

W. B. WILLIAMS, *M. C.*

In pursuance of an order of reference, dated the thirteenth day of February last, whereby it was referred to me to ascertain and report the amount due for principal and interest on the complainant's mortgage, I respectfully report—that I
 20 have been attended by the solicitors of complainant and defendants, on summons duly issued, and in their presence have marked as an exhibit, the complainant's mortgage, and made the computation directed in said order—

And I find there is due at this date thereon, the sum of five thousand five hundred and thirty-nine dollars and sixty-six cents, as will appear from the schedule, and from the statement annexed, showing the payments admitted in the presence of both parties.

All which is respectfully submitted.

30 Dated April 6th, 1868.

WASHINGTON B. WILLIAMS, *M. C.*

Final Decree.

[Filed May 22, 1868.]

Upon opening the matter to the court by L. Zabriskie, of counsel with the complainant, and upon reading and filing the report made in this cause by Washington B. Williams, one of the masters of this court, in pursuance of the interlocutory decree heretofore made therein by this court, and which report is dated on the sixth day of April instant, and from which it appears that there was due to the complainant at the date of said report, for principal and interest upon his said mortgage set forth in the bill of complaint in this cause, the sum of five thousand five hundred and thirty-nine dollars and sixty-six cents; and it appearing that a copy of the rule *nisi* confirming said report has been duly served upon the defendants' solicitor, and no cause being shown to the contrary—

It is thereupon, on this twenty-second day of May, in the year eighteen hundred and sixty-eight, by Abraham O. Zabriskie, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge, and decree, that the said report and all the matters and things therein contained do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy to the complainant the said sum of five thousand five hundred and thirty-nine dollars and sixty-six cents, together with lawful interest thereon, to be computed from the sixth day of April, in the year eighteen hundred and sixty-eight, being the date of the said master's report, with the complainant's costs in this cause to be taxed; and that a writ of *feri facias* do issue for that purpose out of this court, directed to the sheriff of the county of Bergen, commanding him to make sale according to law of the said mortgaged premises, and that out of the money arising from such sale he pay to complainant or his solicitor his said debt, interest, and costs; and in case more money should be raised by the said sale than shall be sufficient to answer such payment, that such

surplus be brought into this court to abide the further order of this court, and that the said sheriff make return without delay of his proceedings by virtue of such writ.

And it is further ordered, adjudged, and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to, the said mortgaged premises, when sold as aforesaid by virtue of this decree.

A. O. ZABRISKIE, C.

10

Appeal.

[Filed May 30, 1868.]

The defendants hereby appeal from so much of the final decree made in this court in the above stated cause, as adjudges and decrees that the master's report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy to the complainant the sum of five thousand five hundred and thirty-nine dollars and sixty-six cents, together with the lawful interest thereon from the sixth day
20 of April, eighteen hundred and sixty-eight, with the complainant's costs to be taxed, and that a writ of *feri facias* do issue for that purpose, directed to the sheriff of the county of Bergen, commanding him to make sale of said mortgaged premises, and out of the money arising from such sale to pay to complainant or his solicitor said sum, and interest, and costs; and which adjudges and decrees that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to, the said mortgaged premises when sold by virtue of said decree, to the Court of
30 Errors and Appeals in the last resort in all causes.

Dated May 30, 1868.

CHA'S H. VOORHIS,

Solicitor and of counsel with defendants.

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

CHA'S H. VOORHIS,

Of counsel with defendants.

Petition of Appeal.

[Filed June 16, 1868.]

COURT OF ERRORS AND APPEALS.

Between

Jane W. Berryman, and William H. Berryman her husband, *appellants*,

and

William Graham, *appellee*.

} *On bill, &c.*

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

10

The humble petition of Jane W. Berryman, and William H. Berryman her husband, 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 Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the twenty-second day of May, in the year one thousand eight hundred and sixty-eight, wherein said William Graham was complainant, and the said Jane W. Berryman, and William H. Berryman her husband, were defendants, in this respect, to wit, that the said decree adjudges and decrees 20 that the master's report, and all the matters and things therein contained, do stand ratified and confirmed, and that said mortgaged premises be sold to raise and satisfy to the complainant the sum of five thousand five hundred and thirty-nine dollars and sixty-six cents, together with the lawful interest thereon from the sixth day of April, eighteen hundred and sixty-eight, with the complainant's costs to be taxed, and that a writ of *feri facias* do issue for that purpose, directed to the sheriff of the county of Bergen, commanding him to make sale of said mortgaged premises, and out of the 30 money arising from such sale to pay to complainant or his solicitor said sum, and interest, and costs; and which adjudges and decrees that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to said mortgaged premises, when sold by virtue of said decree. And your petitioners humbly appeal from that part

of said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, and that the decree of the Chancellor should have been in favor of your petitioners.

Your petitioners, therefore, pray that said decree of the 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 16th, 1868.

10

CHA'S H. VOORHIS,
Solicitor for and of counsel with appellants.

Answer.

[Filed June 26, 1868.]

The answer of William Graham, respondent, to the petition of appeal of Jane W. Berryman and William H. Berryman her husband, appellants.

This respondent, not confessing all or any of the matters to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto, says—that such
20 decree as is complained of was made by the Court of Chancery, as in said petition of appeal is mentioned and set forth, but as to the date, substance, and extent thereof, this respondent humbly craves leave to refer thereunto when the same shall be produced.

And this respondent humbly conceives and is advised that the said decree is agreeable to equity and justice, and therefore humbly hopes that the same may be affirmed; and that the said appeal may be dismissed in this honorable court, with costs.

30 Dated June 25th, 1868.

L. & A. ZABRISKIE,
Solicitors, and

L. ZABRISKIE,
Of counsel with respondent.

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N. J. Court of Errors and Appeals

John Doe vs. Jane Doe
Plaintiff vs. Defendant

Alfred W. Johnson
Attorney for Plaintiff

John Doe vs. Jane Doe

John Doe vs. Jane Doe

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John Doe vs. Jane Doe

John Doe vs. Jane Doe

John Doe vs. Jane Doe