

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between
Charles A. Lippincott and
Isaac Lippincott, partners,
etc., trading as C. A. Lip-
pincott & Bro., Complain-
ants,
and
Harvey A. Shivers et al., De-
fendants.

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ON BILL FOR RELIEF.

BRIEF OF DEFENDANTS. 20

The chattel mortgage in this case is attacked on two grounds:

1. For want of a consideration.
2. For informality in the affidavit stating the consideration.

The first point is particularly conceded by the brief of the complainant, namely, that there was a good and valid consideration to support the mortgage, which con-30 sideration existed at the time of the filing of the bill. This being a matter of fact and fully covered by the affidavits filed on behalf of the defendant, no further argument on that point need hereby be made, and especially in view of the fact that the facts contained in the affidavits will be discussed in the following point:

Second, with respect to the allegation of the informality of the affidavit, the statute requires that the affidavit shall state the consideration of the mortgage. The affidavit

sets forth that the consideration of the mortgage is three promissory notes, payable at the Moorestown National Bank: \$307.26 with interest, \$637.88 with interest, and \$40 with interest, bearing date in order as follows: /10/26/09, 4/29/15, 7/26/15, on demand, amounting to \$1,702.20, which was given to George T. Middleton, mortgagee, for a store account and money advanced. There is no proof that these notes, at the time of the filing of the bill, were not justly due and owing unto George T. Middleton by Harvey A. Shivers and Rebecca J. Shivers. The fact that the note for \$307.26 was not made by Harvey A. and Rebecca J. does not operate in favor of the complainant as against the defendant in this cause and can only be availed of by Rebecca J. and Harvey A. Shivers. The statute of frauds might operate in favor of Shivers, but it cannot operate in favor of the complainant in this cause. Rebecca J. and Harvey A. Shivers, having taken the assets of their decedent, became liable to the payment of the decedent's debts by operation of law, but in addition to this obligation they assumed actually the debt of the ancestor and there was a novation of the obligation to pay the sum of \$307.26, and this note which had been assumed by them was the consideration of this chattel mortgage. In *Collerd v. Tully*, 76 Eq., page 439, the affidavit set forth a balance on a judgment, and the Court in that case held that the antecedent obligations had become merged in the judgment and that it was unnecessary to set forth the antecedent transactions, so a promissory note which the Shivers had assumed became the consideration of the chattel mortgage in this case.

A point has been made in the brief of the complainants that the affidavit sets forth that the notes are made payable on demand, whereas the note for \$307.26 was not on demand. An inspection, however, of the original chattel mortgage clearly shows that "on demand" applies only to the note under date of 7/26/15; the following being the form of the affidavit relating thereto:

STATE OF NEW JERSEY, }
 BURLINGTON COUNTY, } ss.

George T. Middleton, the mortgagee in the foregoing mortgage named, being duly sworn on his oath, says that the true consideration of said mortgage is as follows, viz.: three promissory notes payable at the Moorestown National Bank as \$307.26 with interest, \$637.88 with interest, and \$40 with interest, bearing date in order as follows: 10/26/1909, 4/29/1915, 7/26/1915, on demand, **10** amounting to ten hundred and seventy-two dollars and twenty cents (\$1,072.20), which was given to George T. Middleton, mortgagee, for store account and money advanced, and that there is due on said mortgage the sum of ten hundred and seventy-two dollars and twenty cents (\$1,072.20) due one day from date, besides lawful interest thereon from the thirtieth day of October, A. D. 1915.

GEORGE T. MIDDLETON. [SEAL]

Sworn and subscribed this thirtieth day of October, **20**
 A. D. 1915, before me,

EDWIN D. ROGERS,
Commissioner of Deeds for New Jersey.

And in that respect it is truthful. I understand, however, the Legislature never intended to require that every detail of the note should be set forth, but only the consideration of the chattel mortgage, and even though a mistake might be made in the description in the instrument, which is the consideration of the chattel mortgage, **30** if the statement is substantially true the Courts will not declare it void.

It is further argued that the notes are not set out with such definiteness as to meet the requirements of the act, and *Dunham v. Cramer*, 63 Eq., 151, is cited for authority of this proposition. An inspection, however, of the case will plainly reveal the clear distinction between

that case and the case at bar. In the case *Dunham v. Cramer*, the statement was "for the payment of a certain promissory note, dated July 8th, 1898, for the sum of \$800." It is, therefore, evident that the description of this promissory note is not sufficient to identify; the description of the promissory note set forth in the affidavit, attached to the chattel mortgage now in question, is much more specific and elaborate, the amount, dates, place at which they are payable are all stated in the affidavit so

10 that it seems that there could be no question about the sufficiency of the description of all these notes which was really the question in *Dunham v. Cramer*. But if there is any lack of definiteness with regard to the promissory notes, the whole thing has been cured in the present case by the last words in the affidavit, which recites (referring to the promissory notes): "Which was given to George T. Middleton, mortgagee, for store account and money advanced," so that the affidavit in the present case goes back antecedent to the execution of the promissory notes

20 and states that the consideration of these promissory notes was for store account and money advanced. If all in the affidavit referring to the promissory notes were stricken out with the exception of "three promissory notes amounting to ten hundred and seventy-two dollars and twenty cents (\$1,072.20), which was given to George T. Middleton, mortgagee, for store account and money advanced," there would, in my opinion, have been a perfectly good statement of the consideration. The mere fact that a

30 reference has been made to the amounts and dates of the notes certainly cannot operate to invalidate the affidavit, but aid in identifying the promissory notes, the consideration of which was for store account and money advanced. The chattel mortgage in question recites that the condition of the chattel mortgage is that the mortgagor shall pay to the mortgagee "the sum of ten hundred and seventy-two dollars and twenty-one cents one day from date to either with six per cent. (6%) interest per annum." The affidavit to the chattel mortgage recites that the con-

sideration of the said mortgage is as follows, viz: "Three promissory notes payable at the Moorestown National Bank as \$307.26 with interest, \$637.88 with interest, and \$40 with interest, bearing date in order as follows: 10/26/1909, 4/29/1915, 7/26/1915, on demand, amounting to ten hundred and seventy-two dollars and twenty cents (\$1,072.20), which was given to George T. Middleton, mortgagee, for store account and money advanced." It seems, therefore, in view of the case *Black v. Pidgeon*, 70 N. J. Law, page 802, that the true consideration of the mortgage is stated in the affidavit. In the latter case the affidavit read as follows: **10**

"Thomas Black, the mortgagee in the foregoing mortgage named, being duly sworn, on his oath says that the true consideration of said mortgage is as follows, viz: for the better security of a certain promissory note given to the said Thomas Black for the sum of \$368.74, in payment for one gray mare and one gray horse, and payable at the expiration of seven months from January 20th, 1903, at the First National Bank of Woodbury, New Jersey, and that there is due on said mortgage the sum of \$368.74, besides lawful interest thereon from the twentieth day of January, A. D. 1903." **20**

The Court held that "I think, that all the requisites essential to a substantial compliance with the requirements of the statute have been complied with." The present case is almost identical with *Black v. Pidgeon*. There a promissory note was secured by the chattel mortgage--only the amount of the promissory note was stated, but it was added that the promissory note was given in payment of one gray mare and one gray horse. The affidavit attached to the present chattel mortgage is that the promissory notes were given for store account and money advanced, so it seems to me that the present affidavit is in substance identical with the affidavit of *Black v. Pidgeon*, which the Court of Errors and Appeals held to be good; the opinion being written by Judge Vroom. **30**

Vice-Chancellor Reed, in the case of *Wilson v. Lippin-*

cott, 44 Atl. Rep., 989, held an affidavit to a chattel mortgage which states that the consideration for the mortgage is milk and part of a vendue bill, and then sets out the amount due is a sufficient statement of the true consideration of the mortgage required by 2 Gen. Stat., p. 2113, Sec. 52. In that case the Court said: "I incline to the notion that this statement is sufficient. It is, of course, not stated with the precision which would have been used by a lawyer, but I think that the language employed carries **10** the meaning that the debt secured was for milk furnished by the mortgagee to the mortgagor, and for goods of the mortgagee bought by the mortgagor at vendue. Nor do I think that, in view of the explanatory facts stated in the answering affidavits, the affirmation of the mortgager is to be regarded as a nullity."

I, therefore, assume that the Court will consider the facts submitted on behalf of the defendant as explaining the affidavit attached to the chattel mortgage.

It is, therefore, respectfully submitted that the appeal **20** should be dismissed.

JAMES MERCER DAVIS,
Attorney of Defendants.

IN CHANCERY OF NEW JERSEY

BETWEEN CHARLES A. LIPPINCOTT AND ISAAC LIPPINCOTT, PART- NERS ETC., TRADING AS C. A. LIPPINCOTT & BRO., Complainants, AND HARVEY A. SHIVERS, ET ALS., Defendants.	}	ON BILL FOR RELIEF BRIEF OF COMPLAIN- ANTS.	10
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The bill in this matter is filed to set aside an alleged chattel Mortgage given by Harvey A. Shivers and Rebecca J. Shivers to George T. Middleton, which chattel mortgage is dated October 30, 1915, and was recorded November 1, 1915 in the Office of the Clerk of the County of Burlington.

The mortgage is attacked on two grounds:

(1) Because the mortgage was not given for a good, valid and subsisting debt owing by the said Harvey A. Shivers to the said George T. Middleton. 30

(2) The fact that the chattel mortgage did not have annexed to it or accompanying it an affidavit stat-

ing the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon.

The affidavit accompanying the bill alleges that George T. Middleton stated to Charles A. Lippincott, one of the complainants, that Harvey A. Shivers did not owe Mr. Middleton anything and had entirely straightened up with him. The allegation of Mr. Middleton is that he stated that Shivers had made arrangements to secure
10 its payment.

The affidavits do not show that any particular credit or money was advanced to Harvey A. Shivers. The allegation is that credit was extended to Harvey A. Shivers and his mother, Rebecca J. Shivers, but there is nothing to show whether this credit was extended to them jointly or that part was given to Rebecca J. Shivers and part to Harvey A. Shivers.

INSUFFICIENT AFFIDAVIT

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The affidavit accompanying the mortgage does not show the true consideration for said mortgage.

The mortgage was given not by a husband and wife, but by two individuals, and it does not show the amount that each of these individuals owed the mortgagee.

I have not been able to find a case bearing upon this question, but the purpose of the affidavit is to acquaint a third party with the consideration for which the mortgage was given and where a mortgage has been given by
30 two individuals, the affidavit should state the amount due from each to the mortgagee, or allege that one was the maker of the note or the other the endorser, or that it was a joint note, or the manner in which the two persons became indebted to the mortgagee.

The case of *Collerd vs Tully* 77, Equity 439, 447 (1910) holds, "And our cases all hold that this affidavit must show how the debt arose on which the mortgage is founded; how the debt came into existence and how the relation of debtor and creditor as between the mortgagor and the mortgagee was created."

The affidavit accompanying the mortgage does not set forth the true consideration as disclosed by the answering affidavit.

All of the defendants admit that the note for \$307.26, 10 dated October 26, 1909, was given by Joseph C. Shivers in his life time, and the affidavit accompanying the mortgage does not show either that the goods or money was advance to Joseph C. Shivers, or that he gave the note, and consequently does not show how the relation of debtor and creditor existed as between the parties.

The affidavit accompanying the mortgage does not show by whom any of the notes were made nor to whom they were payable, and in the affidavit it alleges that the note of \$307.26 was payable on demand, while the affi- 20 davits disclose that it was a six months note.

In *Thropp vs Knight* 28 Atl. 1037 (1894) The Vice Chancellor says: "My impression is that to comply with the statute it is necessary to show the amount of each note, and the date thereof, as nearly as may be, and also the name of the payee or holder."

In *Ehler vs Turner* 35 Equity 68, 70 (1882).

"General terms may be used for the Legislature has not required a specification, yet it must be sufficiently 30 precise to disclose the real nature of the transaction."

In *Dunham vs Cramer* 63 Equity 151, 157 (1902) a chattel mortgage was held defective because,

"Nothing in the affidavit shows whose promissory note is secured by the chattel mortgage in question, nor who is the holder of that promissory notenor how

the debt was created to secure which the chattel mortgage was made."

In *Graham Button Co. vs Spielmann* 50 Equity 120, 123 (1892) Affirmed 50 Equity 796,

"Unless the mortgage when recorded is accompanied by an affidavit which states fully and plainly the consideration on which it is founded, the statute says that the courts shall treat the mortgage as absolutely void as against the creditors of the mortgagor."

10 In *Collerd vs Tully* 78 Equity 557, 560.

"The chattel mortgage is absolutely void as against creditors unless the affidavit is annexed, and the statute makes it obligatory that it should set forth the consideration of the mortgage, not partially, but completely."

If the affidavit is defective so far as the note given by Joseph C. Shivers for \$307.26 is concerned, the chattel mortgage must fall, as the courts have held that the affidavit must stand or fall as a whole, and in the case of *Collerd vs Tully* 77 Equity 439, 447 above quoted, the
20 courts held that as part of the affidavit was defective, that the entire affidavit was defective, and consequently did not support the mortgage.

And since the answering affidavits show that Harvey A. Shivers and Rebecca J. Shivers assumed and agreed to pay the note of Joseph C. Shivers, and the affidavit accompanying the mortgage fails to set this forth, it absolutely fails to show how the relation of debtor and creditor was created between the mortgagor and the mortgagee.

30 In the case of *Howell vs Stone* 75 Equity 289, (1908), the court held, "The affidavit stated the consideration with substantial truth and it is immaterial that it is inartificially drawn and not technically precise," but in that case there was no question of a debt of some third party to the mortgagee, and the court held that even

tho the affidavit did not recite all of the transaction in the matter that it was sufficient.

So also in the case of American S. F. Co., vs Stalzenbach 75 Law 721, the court quoted ~~an~~ ^{with} approval.

~~In~~ the case of Kelley vs Calhoun 95 U. S. 710.

"In the absence of fraud, instruments so common in the course of commercial transactions by the laity should be sustained whenever there is an honest and substantial compliance with the statute. Criticisms directed to matter of artifices rather than to those of substance ought not to prevail." And in the Stalzenbach case the court further said that the affidavit was sufficient if it stated the consideration by giving truthfully and substantially the transaction. 10

The affidavit incorrectly states with regard to the first note of \$307.26, in that it alleges that it is a demand note, when the affidavits show that it was a six months note, and it does not substantially set forth the transaction because it does not show that the note was given by Joseph C. Shivers and that the mortgagors agreed to pay 20 this note. It does not show to whom credit was extended or at least what amount of credit was extended to each of the parties. It does not show who was the maker, endorser or payee of these notes, nor does it allege that these notes, even tho given sometime before the mortgage was executed, were still outstanding and unpaid

There is nothing in the affidavit accompanying the mortgage to show the transaction that took place between the parties to the chattel mortgage and the third party, Joseph C. Shivers. 30

In the case of Collerd vs. Tully above quoted, the court held that where the affidavit alleged that there had been an assignment of a judgment, that this was not sufficient without alleging either the origin of the debt or a consideration for the assignment. The affidavit ac-

companying the mortgage does not even show that the original contract so far as the note of \$307.26 is concerned was with Joseph C. Shivers and that the mortgagors have assumed its payment, and much less does it show that there was any consideration for the assumption of said debt by the said mortgagors.

(Filed January 5, 1916.)

IN CHANCERY OF NEW JERSEY

BETWEEN CHARLES A. LIPPINCOTT AND ISAAC LIPPINCOTT, PART- NERS ETC., TRADING AS C. A. LIPPINCOTT & BRO., Complainants, AND HARVEY A. SHIVERS, ET ALS., Defendants.	}	BILL FOR RELIEF	10
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To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

The Complainants, Charles A. Lippincott and Isaac Lippincott, partners, etc., trading as C. A. Lippincott & Bro., of Moorestown, in the County of Burlington and State of New Jersey, respectfully show:

1. On October 23, 1915 they caused a summons and complaint to be issued and served on defendant, Harvey A. Shivers, and on November 20, 1915 they recovered a judgment against the said defendant in said suit in the New Jersey Supreme Court in the sum of \$1,316.32 debt, and \$37.65 costs of suit. 30

2. On November 20, 1915 an execution was issued on the said judgment directed to the Sheriff of the

County of Burlington, and a levy made by him on December 1, 1915, on Horses, Cows, Heifers, Wagons, Harness, Stock, Machinery, etc., in the possession of the said Harvey A. Shivers on his farm near Marlton, in said County of Burlington, and the property levied on by the said Sheriff was the same property described in the Schedule of the Chattel Mortgage a copy of which is hereto annexed.

10 3. On October 30, 1915 the said defendant, Harvey A. Shivers, and Rebecca J. Shivers executed and delivered to George T. Middleton a paper purporting to be a chattel mortgage, which having been acknowledged and the certificate of acknowledgment endorsed thereon, and an affidavit of the mortgagee, George T. Middleton, having been thereto annexed, was recorded in the Burlington County Clerk's Office in Book of Chattel Mortgages, page etc., on November 1, 1915, a copy of said chattel mortgage is hereto annexed and made a part hereof.

20 4. The defendant, Harvey A. Shivers, has no property subject to execution and levy except that which is included in the said alleged chattel mortgage, which is claimed to be a lien on the said goods and chattels and prior to the levy of the complainants' judgment and levy.

30 5. Complainants charge that the said alleged chattel mortgage was executed by Harvey A. Shivers and Rebecca J. Shivers, defendants, after Harvey A. Shivers had been duly served with a copy of the summons and complaint in an action above recited and was given in order to secure his property for his own use and to protect it from the claim of the complainants, and to hinder complainants from collecting their debt; that it was not given to secure any good, valid and subsisting debt owing by the said Harvey A. Shivers to the said George T. Middleton; that the said alleged chattel mortgage was

not accompanied by a delivery or change of possession of the goods mortgaged; that it had not annexed to it nor is it accompanied by an affidavit stating the consideration of said mortgage, and as nearly as possible the amount due and to grow due thereon, and is, as to them, the said complainants, a creditor of said Harvey A Shivers, the chattel mortgagor, fraudulent void and of no effect.

Complainants are without adequate relief in the courts of law and therefore pray: 10

1. That Harvey A. Shivers, Rebecca J. Shivers and George T. Middleton, who are the defendants to this suit, may answer this bill of complaint without oath and every statement therein made.

2. That defendant, George T. Middleton, be restrained from exercising any right of ownership under his said alleged chattel mortgage and from interfering with the chattels therein mentioned until the determination of this suit.

3. That the said alleged chattel mortgage given by Harvey A. Shivers and Rebecca J. Shivers to George T. Middleton may be declared null and void as against the judgment and execution of the complainants. 20

4. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

GEORGE B. EVANS,
Solicitor and Counsel with
Complainants. 30

KNOW ALL MEN BY THESE PRESENTS, that we, Rebecca J. Shivers and Harvey A. Shivers of the Township of Evesham in the County of Burlington and State of New Jersey party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of one dollar to us duly paid by Geo. T. Middleton of the Township of Evesham County of Burlington and State of New Jersey party of the second part, at or before the ensealing and delivery of these
 10 presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell, unto the said party of the second part his executors, administrators and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in my possession.

TO HAVE AND TO HOLD all and singular the said goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part his executors, administrators and assigns, forever. And Rebecca J. and Harvey A. Shivers, the said parties of the
 20 first part, for our heirs, executors, administrators, all and singular the said goods and chattels above bargained and sold unto the said party of the second part, his executors, administrators and assigns, against us the said party of the first part, and against all and every person or persons whomsoever, shall and will warrant and forever defend.

UPON CONDITION, that if Rebecca J. and Harvey A.
 30 Shivers, the said parties of the first part shall and do well and truly pay unto the said party of the second part his executors, administrators and assigns, the sum of ten hundred and seventy two dollars and twenty one cents one day from date together with six per cent (6%) intrest per annum,

then these presents shall be void. And We, Rebecca J. and Harvey A. Shivers, the said parties of the first part, for our heirs, executors, administrators and assigns, do covenant and agree, to and with the said party of the second part his executors, administrators and assigns, that in case default shall be made in the payment of the said sum above mentioned, or in case the said party of the first part shall, at any time before the day of payment herein provided for, remove the said goods and chattels, or any of them, or permit or suffer any at- 10
 tachment or other process against property to be issued against us or permit or suffer any judgment to be entered up against us then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for and Rebecca J. and Harvey A. Shivers

the said parties of the first part do hereby authorize and empower the said party of the second part Geo. T. Middleton

his executors, administrators and assigns, with the aid 20
 and assistance of any person or persons, to enter into and upon our dwelling-house, store and other premises, and such other place or places whatever, in which the said goods and chattels, or any of them, are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain, and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto us the said party of the first part, our heirs, executors, 30
 administrators or assigns

IN WITNESS WHEREOF, we the said party of the first part have hereunto set our hands and seals the thir-

tieth day of October in the year of our Lord one thousand nine hundred and fifteen.

SEALED AND DELIVERED IN THE	}	REBECCA J. SHIVERS
PRESENCE OF		(SEAL)
EDWIN D. ROGERS		HARVEY A. SHIVERS (SEAL)

SCHEDULE

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<p>1 Gray team Dick and Frank</p> <p>1 Bay team Chubby and Nancy</p> <p>1 Sorrel Horse Billy</p> <p>10 cows</p> <p>3 Heffers</p> <p>1 Truck Shelvings cut under Cox</p>	<p>1 Heavy Wagon open Haines</p> <p>1 Milk Wagon</p> <p>1 Carryall Wagon</p> <p>2 Set. D. Work Harness</p> <p>1 set single Harness</p> <p>2 Potato Diggers</p> <p>2 -2 h. plows</p> <p>2 riding cultivators</p>
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and all stock and mechnery now in possession or that may purchase to add to or relase any of the named stock and mechnery. and all crops now in my possession and all crops now growing or that may be grown on the farm we now occuepy

This is to certify the above schedule is the one referred to in the above mortgage and is correct.

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SEALED AND DELIVERED IN THE	}	REBECCA J. SHIVERS
PRESENCE OF		(SEAL)
EDWIN D. ROGERS		HARVEY A. SHIVERS (SEAL)

STATE OF NEW JERSEY }
 BURLINGTON COUNTY } ss.

GEO. T. MIDDLETON

the mortgagee in the foregoing mortgage named, being duly sworn on his oath says that the true consideration of said mortgage is as follows, viz: three promissory notes payable at the moorestown National Bank as \$307.26 with intrest, \$637.88 with intrest and \$40. with intrest bearing date in order as follws 10-26-1909, 4-29-1915, 7-26-1915 on demand amounting to ten hundred and seventy two dollars and twenty cents, (\$1072.20) which was given to Geo. T. Middleton mortgagee for Store account and money advanced, and that there is due on said mortgage the sum of ten hundred and seventy two dollars and twenty cents (\$1072.20) due one day from date besides lawful interest thereon from the thirteenth day of October A. D. 1915

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Sworn and subscribed this }
 30th day of October A. D. }
 1915 before me }
 EDWIN D. ROGERS } GEORGE T. MIDDLETON
 Com. of Deeds } (SEAL)
 for New Jersey }

STATE OF NEW JERSEY, }
 BURLINGTON COUNTY, } ss.

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BE IT REMEMBERED, that on this thirtieth day of October in the year of our Lord one thousand nine hundred and fifteen before me, a commissioner of Deeds for New Jersey personally appeared Rebecca J. Shivers (widow) and Harvey A. Shivers who I am satisfied

are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed.

EDWIN D. ROGERS,
Com. of Deeds.

IN CHANCERY OF NEW JERSEY

BETWEEN CHARLES A. LIPPINCOTT AND ISAAC LIPPINCOTT, PART- NERS ETC., TRADING AS C. A. LIPPINCOTT & BRO., Complainants, AND HARVEY A. SHIVERS ET ALS, Defendants.	}	ON BILL AFFIDAVIT	10
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STATE OF NEW JERSEY BURLINGTON COUNTY,	}	ss.	20
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CHARLES A. LIPPINCOTT of full age being duly affirmed on his affirmation says:—

1. I am one of the complainants in the above entitled cause, and partner in the firm of C. A. Lippincott & Bro., and Isaac Lippincott, the other partner in said firm and myself both reside in Moorestown, Burlington 30 County, New Jersey.

2. The defendant, Harvey A. Shivers, resides near Marlton, in the County of Burlington aforesaid, is indebted to the partnership in the sum of \$1316.32 and

costs of suit, amounting to \$37.64, on a judgment recovered in the New Jersey Supreme Court on November 20, 1915. This judgment is based on two promissory notes, one for \$200. and interest, one for \$700. and interest, and a book account of \$370.58 with interest

3. On October 23, 1915 I caused my attorney, George B. Evans, to bring suit on said notes and book account against the said Harvey A. Shivers, and on that
10 day the summons and complaint was sent to the Sheriff of Burlington County for service.

4. On October 30, the said Harvey A. Shivers together with Rebecca J. Shivers executed a paper purporting to be a chattel mortgage to George T. Middleton, which chattel mortgage was recorded in the Office of the Clerk of Burlington County on November 1, 1915; said chattel mortgage was for \$1072.21 and covered all of the stock, crops and farming implements, and
20 all personal property of the said Harvey A. Shivers; the mortgagee named in said alleged chattel mortgage is one George T. Middleton.

5. I was advised by Mr. Middleton, the mortgagee, about two months prior to the time suit was started, that Harvey A. Shivers did not owe him anything and had straightened up entirely with him.

6. The summons and complaint was served upon
30 the defendant, Harvey A. Shivers on October 29, 1915, and on November 20, 1915 defendant having failed to file any pleading judgments by default was taken in the sum of \$1316.32, and \$37.65 costs of suit. Execution has been issued and levy made on the identical property

described in the Schedule of the said alleged chattel mortgage.

The foregoing facts and things are true so far as they relate to my own acts, and so far as they relate to the acts of others I believe them to be true.

Sworn and subscribed to before me this 22 day of December A. D. 1915.
ALBERT S. PETTIT,
Justice of the Peace.
My commission expires May 1, 1918.

CHARLES A. LIPPINCOTT 10

Filed January 12, 1916

IN CHANCERY OF NEW JERSEY

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BETWEEN

CHARLES A. LIPPINCOTT AND
ISAAC LIPPINCOTT PART-
NERS ETC., TRADING AS C.
A. LIPPINCOTT & BRO.,
Complainants.

AND

HARVEY A. SHIVERS, ET ALS,
Defendants.

BILL FOR RELIEF

ORDER TO SHOW
CAUSE

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30 Upon reading the bill of complaint in this cause and the affidavit thereto annexed, and on the motion of George B. Evans, of counsel with the complainants, it is on this Eleventh day of January A. D. 1916, ordered that the defendant, George T. Middleton, show cause before the Chancellor at the Chancery Chambers in the Courthouse, in the City of Camden, on the Seventeenth day of January A. D. 1916, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue restraining the said George T. Middleton from selling or exercising any right of ownership under an alleged chattel mortgage made by Harvey A. Shivers and Rebecca J. Shivers to

the said George T. Middleton, bearing date October 30, 1915, and from interfering with the chattels therein mentioned, and for such further relief as may be just.

And it is further ordered that the said Defendant, George T. Middleton, his agents, servants, workmen, etc., in the meantime and until the further order of this court in the premises desist and refrain from selling or exercising any right of ownership over the goods mentioned in said alleged chattel mortgage, and from interfering with the chattels therein mentioned.

10

And it is further ordered that a copy of said bill and affidavit, together with a copy of this order, (said bill, affidavit and order need not be certified) be served on the said defendant, George T. Middleton, within one day from date of this order.

E. R. WALKER, C.

Respectfully advised,

E. B. LEAMING, V. C.

Filed January 25, 1916.

IN CHANCERY OF NEW JERSEY

BETWEEN
 CHARLES A. LIPPINCOTT AND
 10 ISAAC LIPPINCOTT, PART-
 NERS, ETC., TRADING AS C.
 A. LIPPINCOTT & BRO.
 Complainants,
 AND
 HARVEY A. SHIVERS, ET ALS,
 Defendants.

ON BILL FOR RELIEF
 ANSWERING AFFIDA-
 VITS

STATE OF NEW JERSEY }
 20 COUNTY OF CAMDEN } ss.

GEORGE T. MIDDLETON, of full age, being duly sworn
 according to law on his oath deposes and says; I am one
 of the persons mentioned in the foregoing cause of action
 and one of the defendants therein, and am the person
 mentioned in the chattel mortgage attached to said bill of
 complaint. I know Harvey A. Shivers, and Rebecca
 Shivers, Joseph C. Shivers, deceased, was the father of
 30 Harvey A. Shivers, and the husband of Rebecca J.
 Shivers.

I conduct a business of general merchandise at Marl-
 ton, Burlington County, New Jersey, and have conducted
 it for twenty-three years. During the whole of this
 time Jos. C. Shivers, during his lifetime and Rebecca and
 Harvey A. Shivers have been customers of mine and re-

ceiving credit when they desire it, and at the time of the death of Joseph C. Shivers, the said Joseph C. Shivers was indebted to me in the sum of Three Hundred and Seven Dollars and Twenty-six Cents, with interest thereon from October 26th, 1909. Joseph C. Shivers died on or about the twenty-seventh day of June, nineteen hundred and fourteen and left as his heirs at law and next of kin a son, Harvey A. Shivers, and a widow, Rebecca J. Shivers, and was possessed of farming implements and stock on the farm, known as the Jacob Wills farm, near Marlton, aforesaid, and the said Rebecca J. Shivers, was the owner of the farm on which the goods were, and the defendant, Harvey A. Shivers was the tenant on said farm by virtue of a lease from Joseph C. Shivers and Rebecca J. Shivers, dated March 1st, 1911. On October 26, 1909, Joseph C. Shivers made and executed a promissory note, payable six months from the date thereof to the order of George T. Middleton, for the sum of \$307.26, being the amount of the indebtedness owed by said Joseph C. Shivers to the deponent. Joseph C. Shivers died intestate and by a family arrangement between Harvey A. Shivers and Rebecca J. Shivers the estate of Joseph C. Shivers was administered without letters of administration, it being arranged with the creditors, including the deponent, that the debts of the said Joseph C. Shivers, should be assumed by Harvey A. Shivers and Rebecca J. Shivers, and that creditors should not press for administration on the estate. Thereafter the deponent extended credit to Harvey A. Shivers and Rebecca J. Shivers to the extent of \$677.88, and the said Harvey A. Shivers made to the deponent's order on date of April 29, 1915, his promissory note on demand for the sum of \$637.88, and a further promissory note on July 26, 1915, for the sum of \$40.00—the consideration for the two notes was for

money which the deponent had paid for the use and benefit of the said Harry A. Shivers and Rebecca J. Shivers, and for money loaned and on a book account; some of the money paid for the benefit, as above set forth, consisted in certain promissory notes, which the deponent had taken up, and another part of the consideration was for goods sold and delivered by the deponent to the said Harvey A. and Rebecca J. Shivers; that to secure the payment of said promissory notes due and owing from
10 Harvey A. Shivers and Rebecca J. Shivers and incurred by them, and to secure the payment of the obligation of Joseph C. Shivers, which had been assumed by the said Harvey A. and Rebecca J. Shivers, a chattel mortgage was made and executed by Rebecca J. Shivers and Harvey A. Shivers, on the thirtieth day of October 1915, on the goods and chattels which were formerly the goods and chattels of Joseph C. Shivers, deceased, and descended to Rebecca J. and Harvey A. Shivers, as his next of kin and heirs at law, a purported copy of said
20 chattel mortgage is attached to the bill in this cause.

The deponent says that all of the facts, matters and things set forth in the affidavit, executed by him and attached to said chattel mortgage are true, and that the consideration is truly expressed in the affidavit attached to such chattel mortgage, and that the sum due to the deponent from the said Harvey A. and Rebecca J. Shivers is the sum of \$1072.20, with interest thereupon as set forth in the affidavit attached to the said chattel mortgage.

30 The deponent denies that about two months prior to the filing of a suit by the complainants or at any other time, that he told Charles A. Lippincott that Harvey A. Shivers did not owe him anything and had straightened up entirely with him, but the deponent says that as a matter of fact Charles A. Lippincott did come to see

him about Harvey A. Shivers; that said Lippincott inquired whether or not Harvey A. Shivers dealt with the deponent, to which the deponent answered "He does." The said Lippincott then inquired how said Shivers paid the deponent, the deponent replied "Sometimes by cash and other times credit was extended." The said Lippincott then asked the deponent whether or not the said Shivers asked him if he owned any sum of money. I replied that "said Shivers did owe me a sum of money, but that we had made arrangements to secure its payment." The deponent further says that this is substantially all of the conversation that took place between said Lippincott and deponent. The deponent further says that it is not proved that said Shivers did not owe the deponent but avers that the sum of \$1072.20 was then due and owing from said Harvey A. and Rebecca J. Shivers to deponent and is still due and owing; that the deponent has in his possession promissory notes made as aforesaid and is ready to produce them upon the hearing of this matter.

10

20

Sworn and subscribed to before me this 17th day of January, 1916.
 CHARLES ATKINSON,
 M. C. C. of N. J.)
 GEO. T. MIDDLETON

STATE OF NEW JERSEY, }
 COUNTY OF CAMDEN } SS

30

EDWARD K. MIDDLETON, of full age, being duly sworn according to law on his oath, deposes and says: that he is the son of George T. Middleton and is a Jus-

tice of the Peace, with his office in Marlton, Burlington County, N. J., that he is acquainted with most of his father's business transactions and particularly is he acquainted with the business transaction of his father and Harvey A. and Rebecca J. Shivers; that he was applied to by Harvey A. Shivers and his father, George T. Middleton to adjust their business affairs; that there were presented a number of promissory notes and checks and a book account, all showing the several sums of money paid, loaned or credited by George T. Middleton to Harvey A. Shivers and Rebecca J. Shivers, together with a promissory note for \$307.26 under date of October 26, 1909 and signed by Joseph C. Shivers—he was directed by the parties thereto to prepare a chattel mortgage securing the sum of \$307.26 which Harvey A. and Rebecca J. Shivers were to assume; the same being the promissory note of Joseph C. Shivers, the sum of \$637.88 and the further sum of \$40.00 as evidenced by the promissory notes and the interests thereon from the date of the making of the said notes; that accordingly he drew a chattel mortgage, a copy of which is attached to the bill of complaint, and the same was signed and executed by Harvey A. and Rebecca J. Shivers before Edwin D. Rogers, a Commissioner of Deeds, in the presence of the deponent, and further that the deponent knows of his own personal knowledge that the said sum of money mentioned in said chattel mortgage has not been paid by Harvey A. and Rebecca J. Shivers, but is due and owing as set forth in said chattel mortgage.

30

Sworn and subscribed to before me this 17th day of January, 1916.

CHARLES ATKINSON,
M. C. C. of N. J.

EDW. K. MIDDLETON

STATE OF NEW JERSEY, }
 COUNTY OF CAMDEN } ss.

HARVEY A. SHIVERS, of full age, being duly sworn according to law on his oath, deposes and says; I am one of the defendants in the foregoing cause of action. Rebecca J. Shivers is my mother. Joseph C. Shivers, deceased, was my father. He died on or about June 27th, 1914, leaving my mother and myself as his next of kin and heirs at law. At the time of his death he owned nothing except some farming stock and utensils, situate on the farm described in the lease made and executed by my father and mother to me and dated March 1st, 1911. The stock, farming utensils, etc., mentioned in the lease, or those brought upon the farm to replace those mentioned in the lease are the same stock, utensils, etc., as is mentioned in the schedule of a chattel mortgage mentioned in said bill of complaint. In the lifetime of my father, Joseph C. Shivers, he became indebted, to George T. Middleton, in the sum of \$307.26 and on November 26, 1909, he made his promissory note to the order of Mr. Middleton for said sum. My father died without a will and the note at the time of his death was unpaid. My mother and I agreed that we would assume all the obligations of my father and particularly the debt owing to Mr. Middleton and that we would settle my father's estate without letters of administration and arrange with Mr. Middleton who was the chief creditor of my father to assume the said obligation of my father without the formal grant of letters of administration. This was agreeable to Mr. Middleton and further credit was extended to my mother and I by Mr. Middleton amounting in all to the sum of \$677.88, made up of various items including an item of \$105.00, a promissory note paid by the said Middleton

to the Standard Guano Company, the further sum of \$125. and an additional sum due to said Middleton on the book account for goods sold and delivered. On the thirtieth day of October, 1915, my mother and myself and Mr. Middleton with Mr. Edward K. Middleton, arranged a settlement between us wherein all of the outstanding claims of George T. Middleton were incorporated in a chattel mortgage and all of the notes, to wit, the note of \$307.26, the note of \$637.88 and a
 10 further note of \$40.00, all of which sums were then due and owing to Mr. Middleton from my mother and myself, were secured by a chattel mortgage, under date Oct. 30th, 1915, which said chattel mortgage is mentioned in the complainant's bill. The deponent further says that the said sum of \$1072.20 is still due and owing from the deponent and Rebecca J. Shivers to the said George T. Middleton and that no sum on account there-
 of has been paid. Deponent further says that all of the claim as mentioned in said chattel mortgage is justly
 20 due and owing to the said George T. Middleton.

Sworn and subscribed to be-
 fore me this 17th day of
 January 1916. }
 CHARLES ATKINSON } HARVEY A. SHIVERS
 M. C. C. of N. J. }

30 STATE OF NEW JERSEY, }
 BURLINGTON COUNTY. } SS.

REBECCA J. SHIVERS, of full age, being duly sworn according to law on her oath deposes and says; that she is one of the defendants in the foregoing cause of action;

that she is at the present time in delicate health and unable to come to Court; that she has read the affidavit of George T. Middleton and Harvey A. Shivers in this cause, and that the matters and things set forth in said affidavits are to her own knowledge true, and she desires to be considered as testifying to the matters and things therein set forth as fully as if the same were incorporated in this affidavit.

Sworn and subscribed to before me this 17th day of January, 1916. 10

EDW. K. MIDDLETON
Justice of Peace
(Seal)

} REBECCA J. SHIVERS

EXHIBIT NO. 2.

\$637.88 20 Moorestown, N. J., 4 | 29 1915.

On demand or after date I promise to pay to the order of Geo. T. Middleton Six Hundred and Thirty Seven 38 | 100 Dollars, at Moorestown National Bank, Moorestown, N. J. 55-345, without defalcation or discount. Value received.

Credit the drawer.

HARVEY A. SHIVERS.

EXHIBIT NO. 1

\$307.26 | 100 30 Moorestown, N. J. 10 | 26 | 1909.

Six months after date I promise to pay to the order

of Geo. T. Middleton Three Hundred & Seven 26 | 100
Dollars, at the Moorestown National Bank, Moorestown,
N. J., without defalcation or discount value received.

No.....

Credit the drawer.

Due.....

..... JOSEPH C. SHIVERS

Endorsed:

- 10 10 | 26 1910 Interest paid to date,
G. T. Middleton.
- 10 | 26 | 1911 Paid interest in full to date.

EXHIBIT No. 3.

Moorestown, N. J. 7 | 26 1915.

\$40 00 | 100

- 20 On demand months after date I promise to pay to
the order of Geo. T. Middleton Forty xx | 100 at the
Moorestown National Bank, Moorestown, N. J. 55-345
without defalcation or discount. Value received.

Credit the drawer.

..... H. A. SHIVERS.

Filed February 24, 1916.

IN CHANCERY OF NEW JERSEY

<hr style="width: 10%; margin: 0 auto;"/>		10
CHARLES A. LIPPINCOTT AND ISAAC LIPPINCOTT, PART- NERS TRADING AS C. A. LIPPINCOTT & BRO., Complainants, AND HARVEY A. SHIVERS, ET AL, Defendants.	}	ON BILL OF JUDG- MENT CREDITOR TO SET ASIDE LIEN OF CHATTEL MORTGAGE FOR INSUFFICIENCY OF AFFIDAVIT OF CONSIDERATION. HEARING ON RETURN OF ORDER TO SHOW CAUSE. CONCLUSIONS
		20

GEORGE B. EVANS, ESQ., for complainants.

MESSRS. DAVIS & DAVIS, for defendants.

30

LEAMING, V. C.

The single question here involved is whether the affidavit annexed to defendant's chattel mortgage satisfies the requirements of our statute.

The affidavit is as follows:

10 "Geo. T. Middleton the mortgagee in the foregoing mortgage named, being duly sworn on his oath says that the true consideration of said mortgage is as follows, viz: three promissory notes payable at the Moorestown National Bank as \$307.26 with interest, \$637.88 with interest and \$40. with interest bearing date in order as follows 10-26-1909, 4-29-1915, 7-26-1915, on demand amounting to ten hundred and seventy two dollars and twenty cents (1072.20 which was given to Geo. T. Middleton Mortgagee for Store account and money advanced, and that there is due on said mortgage the sum of ten hundred and seventy two dollars and twenty cents (1072.20) due one day from date besides lawful interest thereon from the thirtieth day of October A. D. 1915".

20 The statutory requirement is that the affidavit shall state "the consideration of said mortgage and as nearly as possible the amount due and to grow due thereon."

The affidavits filed at the return of the order to show cause adequately establish that the chattel mortgage affidavit here in question was true and entirely accurate to the following extent: There was due to the mortgagee from the mortgagors at the time the mortgage was executed the sum named in the affidavit annexed to the mortgage and that indebtedness was evidenced by three
30 several promissory notes held by the mortgagee of the dates and amount specified in the affidavit, and these three promissory notes had been given to the mortgagee for "store account and money advanced."

The details of the transactions between the parties to the mortgage which disclose more specifically the

origin and history of the notes and the indebtedness which they represent, and which are not included in the affidavit annexed to the mortgage, relate almost wholly to the old note of October 26, 1909. That note, it is now shown, was given to the mortgagee on the day it bears date by Joseph C. Shivers for supplies from the store of the mortgagee. Joseph C. Shivers subsequently died intestate leaving a widow, Rebecca Shivers, one of the mortgagors, and a son, Harvey A. Shivers, the other mortgagor. The deceased at the time of his death still owed the present mortgagee the note referred to and was also indebted to others in small amounts. The chattels covered by the present mortgage are farming implements and farm stock which were owned by Joseph C. Shivers at the time of his death. To save the necessity of administering the estate of Joseph C. Shivers in court the son and widow (present mortgagors) took over the chattels as their own and arranged with all the creditors to waive court administration of the estate by assuming the payment of all debts. Among the debts so assumed was the note of October 26, 1909, referred to in the chattel mortgage affidavit. Middleton, the mortgagee, after the decease of Joseph C. Shivers and the assumption of payment of the note by his son and widow continued to supply goods from his store to the son and widow as he had formerly extended credit to Joseph C. Shivers, and also assisted the son and widow in paying the debts of Joseph C. Shivers by supplying money for that purpose. The three notes named in the affidavit are the note of Joseph C. Shivers, the payment of which had been assumed by his widow and son (the present mortgagors) and two other notes which had been made by the son after his father's death for goods supplied to the son from the store and money advanced to assist the son and widow in discharging debts of Joseph C. Shivers.

There is also an inaccuracy in the mortgage affidavit in referring to the notes as "on demand." The old note of Joseph C. Shivers was not a demand note; the two notes of the son were demand notes.

Had the foregoing illuminating details been embodied in the affidavit annexed to the mortgage no question touching its sufficiency could now arise. The only question now is whether the omission of these details, or any of them, renders the affidavit insufficient to meet the requirements of the statute.

It will be observed that the affidavit annexed to the mortgage accurately states the amount of the indebtedness of the mortgagors to the mortgagee and accurately states the dates and amount of each of the three notes held by the mortgagee for that aggregate indebtedness and the place where the three notes are payable, and truthfully states, though not with detailed accuracy, that the three notes were given to the mortgagee for "store accounts and money advanced," but does not specifically state the names of the makers of the notes or the fact that the store account represented by the old note was a store account of Joseph C. Shivers for which the old note had been given by him and assumed by his son and widow.

The situation thus presented is that of an honest transaction between laymen who have sought to secure by a mortgage an honest indebtedness and to that end the mortgagee has made and annexed to the mortgage an affidavit stating the consideration of the mortgage as he understood it. The consideration was stated by him with substantial truth. It lacked details which would have been useful to enable a stranger to fully understand the course of dealings which had brought about the indebtedness, but it was an honest statement of substantial truth so far as the consideration was concerned.

That I understand to be the test of sufficiency applied in *Howell vs. Stain*, 75 N. J. Eq. 289. The error in the failure to limit the words "on demand" to the two later notes is not an error which goes to the question of consideration. The broad view of the situation as it would almost necessarily appeal to laymen was that the consideration of the mortgage was the three notes specified in the affidavit as having been "given to Geo. T. Middleton, mortgagee, for store account and money advanced." From the viewpoint of the mortgagee that was the whole transaction; he had supplied the goods and money and had received for his goods and money the three specified notes and the mortgagors owed him the amount and the mortgage was being executed to secure the amount. The legislation in terms exact no more than the naked requirement that the consideration of the mortgage be stated in the affidavit of the mortgagee, and the statute is wholly silent as to the purpose of the requirement; in such circumstance it seems impossible to determine that any fair and honest and reasonably accurate statement of the indebtedness which the mortgage is to secure is insufficient to meet the requirements of the statute. I am convinced that the affidavit here in question states the consideration of the mortgage with substantial truth and must be held sufficient.

I will advise an order discharging the order to show cause.

30

Submitted: February 3, 1916.

Determined: February 24, 1916.

Filed March 21, 1916.

IN CHANCERY OF NEW JERSEY.

	BETWEEN		
	CHARLES A. LIPPINCOTT, AND	} ON BILL, ETC.	
10	ISAAC LIPPINCOTT, PART-		
	NERS, TRADING AS C. A.		
	LIPPINCOTT & BRO.,		
	Complainants,		ORDER.
	AND		
	HARVEY A. SHIVERS, ET AL,	} DEFENDANTS.	
	Defendants.		

An order to show cause in the above-entitled cause having been allowed and the Court having heard and
20 considered the same.

It is, on this 20th day of March, 1916, on motion of James Mercer Davis, Solicitor of the defendant, Ordered, that the rule to show cause and the restraint therein imposed, is hereby discharged with costs.

RESPECTFULLY ADVISED,	} E. R. WALKER, C.
E. B. LEAMING, V. C.	

Approved as to form
30 GEO. B. EVANS
Sol'r. for Complainant.

A TRUE COPY
ROBERT H MCADAMS,

Clerk.

Filed March 30, 1916.

IN CHANCERY OF NEW JERSEY.

BETWEEN
 CHARLES A. LIPPINCOTT AND
 ISAAC LIPPINCOTT, PART-
 NERS ETC., TRADING AS C
 A LIPPINCOTT & BRO.,
 Complainants,
 AND
 HARVEY A. SHIVERS ET ALS,
 Defendants.

10

} NOTICE OF APPEAL

The plaintiffs, Charles A. Lippincott and Isaac
 Lippincott, partners etc., trading as C. A. Lippincott &
 Bro. hereby appeal from an order made in the above
 stated cause, bearing date the Twentieth day of March
 1916, ordering the rule to show cause and the restraint
 therein imposed, discharged, and from the whole and
 every part thereof, to the Court of Errors and Appeals
 in the last resort in all causes.

GEO. B. EVANS,
 Solicitor for Complainants.

Dated March 23, 1916. 30

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

GEO B. EVANS,
 Of Counsel with complainants.

Filed April 1, 1916.

NEW JERSEY COURT OF ERRORS AND
APPEALS

<p>10 BETWEEN CHARLES A. LIPPINCOTT AND ISAAC LIPPINCOTT, PART- NERS ETC., TRADING AS C. A. LIPPINCOTT & BRO., (Complainants) Appellants, AND HARVEY A. SHIVERS ET ALS., (Defendants) Respondents.</p>	}	<p>ON APPEAL PETITION OF APPEAL</p>
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To the Honorable Court of Errors and Appeals in
the last resort in all causes:

The petition of Charles A. Lippincott and Isaac
Lippincott, partners, etc., trading as C. A. Lippincott
& Bro., the appellants in the above stated cause, respect-
fully shows:

That your petitioners find themselves aggrieved by
an order made in the Court of Chancery by his Honor
30 Edwin Robert Walker, Chancellor of the State of New
Jersey, bearing date the twentieth day of March, 1916,
wherein the said Charles A. Lippincott and Isaac Lippin-
cott, partners etc., trading as C. A. Lippincott & Bro.,
were complainants, and the said Harvey A. Shivers, Re-

becca J. Shivers and George T. Middleton were defendants, in this respect, to wit, that the order adjudged that the rule to show cause and the restraint therein imposed is discharged with costs.

And your petitioners humbly appeal from that part of the order of the Chancellor which orders as aforesaid, upon the ground that the same is erroneous, for that the affidavit annexed to the alleged chattel mortgage does not state the consideration for said mortgage as required by statute.

10

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

GEO B. EVANS,
Solicitor for and of Counsel with
Appellants.

Filed May 25, 1916.

IN CHANCERY OF NEW JERSEY.

	—————	
	BETWEEN	
	CHARLES A. LIPPINCOTT, AND	}
	ISAAC LIPPINCOTT, PART-	
	NERS, ETC., TRADING AS C.	
10	A. LIPPINCOTT & BRO.,	
	(Complainants.)	ON BILL, ETC.
	Appellants.	}
	AND	
	HARVEY A. SHIVERS, ET ALS,	
	(Defendants)	
	Respondents.	ANSWER TO PETITION OF APPEAL
	—————	

The answer of the above-named respondents to the
20 petition of appeal of the above-named appellants.

These respondents, not acknowledging all or any
of the matters, which in the petition of appeal are con-
tained to be true, for answer thereto, nevertheless, say
and admit that the order was, on the twentieth day of
March, 1916, made and entered in the Court of Chan-
cery, in the cause for that purpose mentioned in said
petition as is therein stated; but as to the substance and
form thereof these respondents pray to refer thereto
when the same shall be produced. And these respon-
30 dents are advised and believe that the said order is agree-
able to equity and they pray that the same may be af-
firmed with costs to be adjudged to these respondents.

JAMES MERCER DAVIS,
Sol'r and of counsel with
the respondents.

