

In Chancery of New Jersey. 1

BILL OF COMPLAINT.

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

Humbly complaining, shows unto your Honor, your Orator, Edward A. Phelps, Jr., of the City of Brooklyn, in the County of Kings, and State of New York :—

1. That on the first day of July, A. D. eighteen hundred and seventy-one, your Orator was, by Daniel A. Morrison and James O. Watkins, partners in trade, comprising the firm of D. A. Morrison & Co., requested to 2
endorse a certain promissory note, drawn and signed by said firm of D. A. Morrison & Co., under their firm name, dated New York, July 1st, A. D. 1871, whereby they promised to pay, ninety days after said date, to the order of your Orator, the sum of five thousand dollars at the office of Messrs. Turner Bros., No. 14 Nassau street, New York, for value received.

2. That in compliance with said request, and to accommodate said firm, your Orator did then and there endorse said promissory note for the purpose of enabling 3
said firm to have the same discounted, and without receiving any consideration for said endorsement.

3. That said firm did have said promissory note discounted and did receive the value thereof from said firm of Turner Brothers.

4. That when said promissory note was about to mature, the said firm of D. A. Morrison & Co., being unable or unwilling to pay the same, made an arrangement with the holders thereof for an extension or renewal
4 of the same, and on the day of its maturity, to wit: October 2d, A. D. 1871, requested your Orator to endorse a certain other promissory note, drawn and signed by said firm of D. A. Morrison & Co., under their firm name, dated New York, October 2d, A. D. 1871, whereby they promised to pay, ninety days after said date, to the order of your Orator, the sum of five thousand dollars at the office of Turner Brothers, No. 14 Nassau street, New York, for value received.

5. That in compliance with said last named request,
5 and to accommodate said firm, your Orator did then and there endorse said last named promissory note for the purpose of enabling said firm to procure an extension or a renewal of said first named promissory note, and without receiving any consideration for said endorsement.

6. That said firm did thereby procure an extension or a renewal of said first named promissory note, and the same was surrendered by the holders thereof on receipt of said other promissory note.

7. That when said last named promissory note fell due,
6 the same was not paid by said firm of D. A. Morrison & Co., but was protested for non-payment, and your Orator was thereof notified, and was afterwards, on the fourth day of January, A. D. 1872, compelled to pay and did pay to said firm of Turner Brothers, the holders thereof, the whole amount thereof, with fees and costs of protesting the same.

8. That on the twenty-third day of May, A. D. eighteen hundred and seventy-two, your Orator recovered a judgment, founded upon said payment, in the Circuit Court of the County of Hudson, in this State, against ⁷ said Daniel A. Morrison and James O. Watkins, for the sum of five thousand, one hundred and thirty-six dollars and seventy-four cents, inclusive of costs.

9. That your Orator caused to be issued (at an additional cost of one dollar and fifteen cents), out of said Circuit Court, upon the said judgment, a writ of *facias de bonis et terris*, causing the same to be first duly sealed and recorded, which writ was directed and delivered to the Sheriff of the County of Hudson aforesaid, and was made returnable on the twenty-eighth day of ⁸ May, A. D. eighteen hundred and seventy-two, and was duly returned by said Sheriff "*nulla bona aut tenementa.*"

10. That the said judgment has never, in whole or in part, been paid, or in any way satisfied unto your Orator, but that the whole amount thereof, with lawful interest thereon, still remains due and owing unto your Orator.

11. That at the time of the endorsing by your Orator of said first named promissory note, as aforesaid, to wit: July 1, A. D. 1871, and for upwards of five years previous thereto, the said Daniel A. Morrison was seized and possessed, in his own right, in fee simple of certain real estate situate in this State, particularly described as follows, to wit: "All that certain lot of land and premises, with the three-story brick dwelling erected thereon, situate in Jersey City, in the County of Hudson and State of New Jersey, bounded and described as follows: Beginning at a point on the south side of South Second street, distant one hundred feet east from the southeast corner of said South Second street and Erie street; thence running ⁹ south, parallel with Erie street, one hundred feet; thence running east, parallel with South Second street, twenty ¹⁰

- feet; thence running north, to, through and beyond the centre of the party wall, standing partly on the lot hereby described and partly on the lot next adjoining easterly thereto, and parallel with Erie street, one hundred feet to the south line of South Second street; thence west, along the south side of Second street, twenty feet, to point or place of beginning—being twenty feet front and rear and
- 11 one hundred feet deep; being the westerly part of lot No. 25, on block 248, as laid down on R. C. Bacot's map of Jersey City, made in 1861, and filed in the Clerk's office of Hudson County," the same having been conveyed to him by William Hanks and wife and others by deed, dated April 30, 1866, acknowledged May 3, 1866, and recorded in the office of the Clerk of the said County of Hudson on August 2, 1866, in Liber 136 of Deeds for said County, on page 428, &c.; to which deed, or the record thereof, for greater certainty, your Orator begs
- 12 leave to refer.

12. That afterwards, being so seized, the said Daniel A. Morrison, with Maryett Morrison, his wife, by an alienation and conveyance, devised and contrived of malice, fraud, covin, collusion and guile, to the end, purpose and intent to delay, hinder or defraud your Orator and others, his creditors, of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures and demands, did grant, bargain and sell, alien, remise, release, convey and confirm unto one W. Sterling Yard and to his heirs and assigns forever, the premises herein before described, to have and to hold the same to him
- 13 his heirs and assigns forever, which conveyance bears date July 1st, 1871, was acknowledged October 12th, 1871, and recorded in said office on November 6th, 1871, in Liber 234 of Deeds for said County, on page 280, &c.; to which said deed, or the record thereof, your Orator for greater certainty, begs leave to refer.

13. That, although said conveyance purports to have been made for and upon the consideration of the sum of

seven thousand dollars lawful money of the United States, no such sum nor any sum actually passed from said Yard or to said Morrison therefor, and although said conveyance bears date July 1st, 1871, it was not actually drawn and executed until long after that date, and although made to said Yard nominally, he was not a *bona fide* purchaser of said premises, but merely an instrument or conduit used in pursuance of the device and contrivance for the purpose of vesting the title to said premises in Maryett Morrison, wife of the said Daniel A. Morrison, to the end, purpose and intent aforesaid. 14

14. That in pursuance of such device and contrivance, and to the end, purpose and intent aforesaid, the said W. Sterling Yard, by a like conveyance, did grant, bargain and sell, alien, remise, release convey and confirm unto the said Maryett Morrison, wife of the said Daniel A. Morrison, and to her heirs and assigns forever, the premises hereinbefore described, so as aforesaid conveyed to him by said Daniel A. Morrison and wife, to have and to hold the same to her, her heirs and assigns forever, which said conveyance by said Yard to said Maryett Morrison bears date October 9th, 1871, was acknowledged on October 12th, 1871, and recorded in said office on November 23d, 1871, in Liber 234 of Deeds for said county, on pages 546, &c.; to which said deed, or the record thereof, for greater certainty, your Orator begs leave to refer. 15 16

15. That although said last mentioned conveyance purports to have been made for and upon the consideration of the sum of seven thousand dollars lawful money as aforesaid, no such sum, nor any sum, actually passed from said Maryett Morrison or to said Yard therefor, and although said conveyance bears a different date from that to said Yard above mentioned, yet it was actually drawn and executed at the same time therewith, the two conveyances together constituting one complete transaction, ex- 17

ecuted in pursuance of said device and contrivance, and to the end, purpose and intent aforesaid.

And your Orator therefore charges and insists that by virtue of the statute in such case made and provided, both the said conveyance to said Yard from said Morrison and wife and the said conveyance from said Yard to said
 18 Maryett Morrison, wife of the said Daniel A. Morrison, should be deemed and taken to be, and are, as against your Orator and others, the creditors of said Daniel A. Morrison, clearly and utterly void, frustrate and of no effect, any matter or thing to the contrary thereof notwithstanding; and your Orator therefore further charges and insists that the premises hereinbefore described are subject in equity to the lien of your Orator's said judgment so as aforesaid recovered in the said Circuit Court of Hudson County, and may be so decreed by this honorable Court.
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And your Orator further shows unto your Honor that he has frequently and in a friendly manner represented unto the said Daniel A. Morrison and Maryett Morrison, his wife, the facts above stated, and has requested them to pay unto your Orator the amount of the said judgment so as aforesaid recovered by your Orator.

And your Orator well hoped that the said Daniel A. Morrison and Maryett Morrison, his wife, would have complied with such reasonable request, as in justice and
 20 equity they ought to have done; but now, so it is, may it please your Honor, that the said Daniel A. Morrison and Maryett Morrison, his wife, the Defendants herein, combining and confederating with divers other persons, at present unknown to your Orator, but whose names, when discovered, your Orator prays may be inserted herein, with proper and apt words, to charge them as Defendants hereto, to defraud, injure and aggrieve your Orator in the premises, not only refuse to pay unto your Orator the amount of the said judgment, or in any

manner to comply with your Orator's reasonable request ; 21
 but they, the said Defendants, Daniel A. Morrison and
 Maryett Morrison, his wife, pretend and give out in
 speeches that the said premises are not liable in law or in
 equity to any lien by reason of your Orator's said judg-
 ment, and that the said Daniel A. Morrison has no in-
 terest therein except as the husband of the said Maryett
 Morrison, and that the same are the separate property of
 the said Maryett Morrison, and were purchased with her
 own money, not derived or acquired directly or indirectly
 from her said husband (but how or when derived or ac- 22
 quired they do not state), whereas your Orator expressly
 charges the contrary thereof to be the truth.

All which actings and pretences of the said Defend-
 ants are contrary to equity and good conscience, and tend
 to the manifest wrong and injury of your Orator.

In tender consideration whereof, and forasmuch as
 your Orator is without an adequate remedy in the prem-
 ises by the strict rules of the common law, and without
 the assistance of this honorable Court, where matters of
 this nature are properly cognizable and relievable. 23

To the end therefore that the said Defendants and
 their confederates, when discovered, may, upon their
 several and respective corporal oaths or affirmations, full,
 true, direct, perfect and distinct answer make to all and
 singular the matters aforesaid, and that as fully as if the
 same were here again repeated and they thereto particu-
 larly interrogated, paragraph by paragraph, and that by
 the decree of this honorable Court the two conveyances
 aforesaid, the one from said Daniel A. Morrison and wife
 to said W. Sterling Yard, and the other from said W. 24
 Sterling Yard to said Maryett Morrison, wife of said
 Daniel A. Morrison, may be adjudged and decreed to be
 both and each clearly and utterly void, frustrate and of
 no effect, and that the premises therein and hereinbefore
 described may be adjudged and decreed to be subject to

the lien of your Orator's said judgment, recovered as aforesaid, and may be ordered to be sold to pay and satisfy said judgment, with interest and costs, and that your Orator may have such other and further relief in
 25 the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your Orator a writ of subpcena of the State of New Jersey, issuing out of and under the seal of this honorable Court, to be directed to the said Daniel A. Morrison and Maryett Morrison, his wife, therein and thereby commanding them and each of them, at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor,
 26 in this honorable Court, then and there to answer the premises, and to stand, to abide by and perform such decree as to your honor shall seem meet; and your Orator, as in duty bound, will ever pray, &c.

DIXON & COLLINS,

Solicitors for, and GILBERT COLLINS,

Of Counsel with Compl't.

ANSWER OF MORRISON AND WIFE.

The joint and several answers of Daniel A. Morrison and Maryette Morrison, his wife, to the bill of complaint
 27 of the Complainant, Edward A. Phelps.

These Defendants now, and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors

and insufficiencies in the Complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these Defendants are advised are material for them to make answer unto, they severally answer and say :—

1. The Defendant, Daniel A. Morrison, admits that he and John O. Watkins, partners in trade, composing the firm of D. A. Morrison & Co., requested said Complainant to endorse the note mentioned in paragraph 1 of said bill, and the promissory note mentioned in paragraph 4 of said bill, but he says the fact is that said Complainant was, on said first day of July, A. D. 1871, and for a long time prior thereto, had been engaged in the business of coffees, spices, &c., and being desirous of obtaining the trade of the said firm of D. A. Morrison & Co., represented to said firm that he could raise five thousand dollars for them, for six months, from said Turner & Bro's, through his relations with one Decker, a member of said firm of Turner & Brothers, provided the said D. A. Morrison & Co. would trade with said Complainant and keep their bank account with said Turner & Brothers; that this Defendant and said Watkins thereupon agreed to the same, and they were thereupon introduced by said Complainant to said Turner & Brothers, and thereupon a note was drawn for six months, to be signed by this Defendant in the name of the firm of D. A. Morrison & Co., which said Decker, acting as agent of said Turner & Brothers, refused to take, alleging that it was contrary to the rules of their house to discount for longer than three months. That this Defendant refused to sign a note for only three months because contrary to the agreement, and then they agreed that it should be made for three months and be renewed when it came due for three months longer, and thereupon the same was carried into effect, and the last note came due according to the agreement on the fourth day of January, A. D. 1872.

That with this exception this Defendant, Daniel A.

Morrison, admits paragraph 1, 2, 3, 4, 5 and 6 of said bill of complaint.

And this Defendant, Maryette Morrison, says that she knew nothing whatever of the transaction mentioned in paragraphs 1, 2, 3, 4, 5, 6 and 7 of said bill until the filing of said bill, but she has since been informed and believes the statements as hereinbefore mentioned of Daniel A. Morrison.

2. The Defendant, Daniel A. Morrison, admits that he
32 did not pay said note, but is ignorant whether said Phelps had to pay it or not.

3. That these Defendants deny the facts stated in paragraph 8 of said bill, but say that this Defendant, Daniel A. Morrison, on or about that day confessed judgment to said Complainant.

4. That these Defendants admit paragraph 9 of said bill, but insist that the Sheriff made no attempt whatever to collect said execution, and that no time was given him for that purpose, and that he was instructed by said Com
33 plainants, or his attorneys, to make the return mentioned in said 9th paragraph immediately and for the purpose of commencing this suit.

5. That these Defendants admit paragraphs 10 and 11 of said bill.

6. That these Defendants admit that they conveyed the real-estate referred to in paragraph 12 of said bill to W. Sterling Yard by the conveyance mentioned in said paragraph 12, and admit the conveyance by said Yard to this Defendant and Maryette Morrison, as stated in said
34 paragraph, but deny that the said conveyance was devised or contrived of malice or fraud or covin or collusion or guile, or to the end or purpose or intent to delay, to hinder or to defraud said Complainant or others, his creditors, of their just or lawful actions or suits or debts or

accounts or damages or penalties or forfeitures or demands, or for either of them.

7. And these Defendants admit that said Yard was merely an instrument or conduit for the purpose of vesting said land in this Defendant, Maryette Morrison, but deny that it was for the purpose mentioned in said bill, and charge and insist that at that time said Morrison was solvent, and had a perfect right and full authority to convey the same to his wife in the way he did, and deny that said conveyances are of no effect and void, and that the said judgment of the Complainant is a lien on said premises. 35

8. And these Defendants, answering, say, that on the fifteenth day of April, in the year eighteen hundred and seventy-two, this Defendant, Maryette Morrison, entered into a contract with Andrew Allendorph, of Morrisania, to sell to him all the premises described in the bill of complaint in this cause for the sum of six thousand five hundred dollars. 36

9. That in pursuance of said agreement the said Maryette Morrison on the tenth day of June, in the year eighteen hundred and seventy-two, executed and delivered to said Andrew Allendorph a deed in fee simple, conveying to him in fee simple all said premises described in said bill of complaint for the said sum of six thousand five hundred dollars actually paid to her, and that said deed was acknowledged on the said tenth day of June, in the same year, before Charles Nettleton, a Commissioner for New Jersey in New York, and recorded on the said tenth day of June, in the same year, in Liber 243 of deeds for Hudson County, on pages 286, &c. 37

10. That at the time of last mentioned conveyance, this Defendant, Maryette Morrison, had no notice of the commencing of any suit in Chancery.

11. That on the tenth day of June, in the year eight-
 38 teen hundred and seventy-two, this Defendant, Daniel A. Morrison, executed and delivered to said Andrew Allendorph a deed of quit-claim of all his right, title and interest in said premises, mentioned in said bill of complaint to said Andrew Allendorph in consideration of one dollar, which deed was acknowledged on the eighteenth day of June, 1872, before Stephen Morgan, a Commissioner of Deeds for the State of New Jersey, and recorded on the twentieth day of July, in the same year, in Liber 243 of Deeds for Hudson County, on pages 660, &c.

39 And these Defendants deny all unlawful combination and confederacy in the said bill charged without this, that any other matter and thing material for this Defendant to make answer unto and not then or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, are true to the knowledge and belief of these Defendants.

All which matters and things these Defendants are ready to aver, maintain and prove, as this honorable Court shall direct, and humbly pray to be hence dismissed
 40 with their reasonable costs and charges in this behalf most wrongfully sustained.

ARCH. K. BROWN,

Solicitor and of Counsel with Defendants.

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

Daniel A. Morrison, of full age, being by me duly sworn on his oath, says that he is one of the Defendants in the above answer; that the matters, facts and things

therein set forth, so far as they relate to the acts and deeds of this deponent, are true, and so far as they relate 41
to the acts and deeds of others, he believes them to be true, and that especially the matters and things stated in paragraph 1 of said answer, are within this deponent's knowledge, and are true; that he did confess judgment to said Complainant, as related in paragraph 3 of said answer; that this deponent did make the conveyance mentioned in paragraph 10, as there stated.

DANIEL A. MORRISON.

Subscribed and sworn before me this 24th day of September, A. D. 1872.

42

ISAAC ROMAINE,

Master in Chancery.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.:

Maryette Morrison, of full age, being by me duly sworn on her oath, saith that she is one of the Defendants in the above answer, that the matters, facts and things therein set forth, so far as they relate to this deponent, are true, and so far as they relate to the acts of others, she believes them to be true; that she made the contract 43
mentioned in paragraph 8 of said answer at the time there mentioned, and that she made the deed mentioned in paragraph 9 of said answer, and that both said paragraphs are true in every particular to the knowledge of this deponent.

MARYETTE MORRISON.

Subscribed and sworn to this 24th day of September, A. D. 1872, before me.

ISAAC ROMAINE,

Master in Chancery. 44

ORDER AMENDING BILL OF COMPLAINT.

This cause being opened to the Court, it is, on this twenty-fourth day of October, A.D. eighteen hundred and seventy-two, on motion of Jonathan Dixon, of counsel with the Complainant, ordered—

That the bill of complaint in this cause be amended by adding thereto, after the charging part thereof, as follows, to wit:—

45

“And your Orator further shows unto your Honor that one Andrew Allendorph, of Morrisania, in the County of Westchester, and State of New York, claims to have made a contract on or about the fifteenth day of April, in the year one thousand eight hundred and seventy-two, with the said Maryett Morrison, to purchase from her the said premises for the sum of six thousand five hundred dollars, or some other sum; and the said Maryett Morrison claims to have made a contract with said Andrew Allendorph to sell and convey the said premises to him for such sum, or some other sum.

46

“And your Orator further shows unto your Honor that the said Maryett Morrison, on or about the tenth day of June, in the year last aforesaid, signed, sealed, acknowledged and delivered to said Andrew Allendorph a paper writing, purporting to be a deed of conveyance, whereby she pretended to grant, bargain and sell, and convey said premises to said Andrew Allendorph, and to his heirs and assigns forever, which paper writing bears date June 10th, A.D. 1872, and was acknowledged by said Maryett Morrison on the same day, and on the same day recorded in Hudson County Clerk's office, in Liber 243 of deeds for said county, on page 286, &c.

47

“And your Orator further shows unto your Honor that the said Daniel A. Morrison, the husband of said Maryett Morrison, was not made a party to, and did not execute the said paper writing purporting to be a deed of conveyance, but that afterwards, on or about the eighteenth day of June, A.D. 1872, he, the said Daniel A. Morrison, executed a quit-claim deed of said premises to said Andrew Allendorph, and to his heirs and assigns, 48 which said quit-claim deed is dated June 10th, A.D. 1872, was acknowledged June 18th, A.D. 1872, by said Daniel A. Morrison, and on July 20th, A.D. 1872, was recorded in said Clerk’s office, in Liber 243 of deeds for said county, on page 660, &c.

“And your Orator further shows unto your Honor that the said Andrew Allendorph, and Rebecca, his wife, on or about September 10th, A.D. 1872, executed a deed whereby they purported 49 to convey the said premises unto one John A. Bennett, of the City, County and State of New York, and to his heirs and assigns forever, which said deed is dated September 10th, A.D. 1872, was acknowledged by said Andrew and Rebecca on September 11th, A.D. 1872, and on September 23d, A.D. 1872, was recorded in the said Clerk’s office, in Liber 246 of deeds for said county, on page 658, &c., as by the said several instruments or the record thereof, if reference 50 thereunto be had will more fully and at large appear.

“And your Orator charges and insists that if any such contract as is claimed by said Maryett Morrison and said Andrew Allendorph to have been made between them was so made, it was a void contract so far as your Orator is con-

51 cerned, both because said Maryett Morrison had no legal power to make such a contract, and because she had no legal title to said premises as against your Orator, for that the two deeds hereinbefore referred to, by which she claims title, were then, and are, for the reasons aforesaid, clearly and utterly void, frustrate, and of no effect.

52 “And your Orator further charges and insists that before said contract (if any such exist) was executed, and before any money was paid by said Andrew Allendorph on account thereof, he, the said Andrew Allendorph, had full notice of the fraudulent character of said two deeds, and also had full notice of your Orator’s claim against said premises.

53 “And your Orator further charges and insists that the paper writing hereinbefore referred to, purporting to be a deed of conveyance from said Maryett Morrison to said Andrew Allendorph and his heirs and assigns, is void and of no effect as such a deed of conveyance, both because for the reasons aforesaid, the said Maryett Morrison had no title to the premises therein described, and because the said Daniel A. Morrison, her husband, was not made a party thereto, and did not join with the said Maryett Morrison in the execution thereof.

54 “And your Orator further charges and insists that said quit-claim deed from Daniel A. Morrison to said Andrew Allendorph, his heirs and assigns, was executed, delivered and accepted, with full notice both to said Morrison and Allendorph, not only of the claim of your Orator, but also of the pendency of this suit, and that therefore if the same have any force or effect whatever, it cannot affect the right of your Orator to the relief prayed

for in his bill of complaint, and hereinafter prayed for.

“And your Orator further charges and insists that the deed purporting to convey said premises from said Andrew Allendorph and wife to said John A. Bennett, is void and of no effect as against your Orator, because the said Andrew 55 Allendorph had no title to said premises, and by reason of the matters aforesaid, and also because said John A. Bennett had full notice of the claim of your Orator, and of the pendency of this suit at the time of the execution and delivery thereof.”

And it is further ordered that said bill of complaint be also amended by inserting in the clause charging confederacy, after the words “Maryett Morrison, his wife,” the names of said Andrew Allendorph and John A. Bennett, and by adding after the prayer for relief, as follows:— 56

“And that the said Andrew Allendorph may be decreed to have had no title, and the said John A. Bennett to have no title to said premises as against your Orator’s said judgment; and that the said premises may, notwithstanding the pretended claims of said Allendorph and said Bennett, or any other matter or thing whatsoever, be decreed to be subject to the lien of your Orator’s said judgment, and ordered to be sold to pay and satisfy the same, with costs and interest, and the costs of this suit, 57 and that your Orator may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity.”

And it is further ordered that the said bill of complaint be also amended by adding to the prayer for the writ of subpoena, after the words “Maryett Morrison, his wife,” the names of Andrew Allendorph and John A. Bennett.

A. O. ZABRISKIE, *C.*

58 It is hereby agreed that the foregoing order be made without notice.

ARCH. K. BROWN,

Sol. of Def^{ts}, D. A. Morrison and

ANSWER OF ALLENDORPH.

The answer of Andrew Allendorph, one of the Defendants in the amended bill of complaint of the said Complainant to the bill of complaint, as amended.

This Defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and
59 advantage. of exception to the many errors and insufficiencies in the Complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this Defendant is advised are material for him to make answer unto, answers and says:—

1. That he is a stranger to all and singular the matters and things in the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh paragraphs of the said Complainant's bill of complaint contained, and therefore leaves the Complainant to make such proof as
60 he shall be able to produce.

2. That he is a stranger to all and singular the matters and things in the twelfth, thirteenth and fourteenth paragraphs of the said Complainant's bill of complaint contained, except so much of said paragraphs as appears upon the records of conveyances in the office of the Clerk of Common Pleas of the County of Hudson, and this Defendant admits that, in so far as said bill of complaint purports to be a copy from the said records, that the same is correctly copied therefrom.

3. And this Defendant admits that a contract was 61
made between this Defendant and Maryette Morrison on
the fifteenth day of April, eighteen hundred and seventy-
two, to purchase said premises from her for six thousand
five hundred dollars, as mentioned in said amended bill.

4. And this Defendant further admits that said Mary-
ette did execute a conveyance to this Defendant, dated
June 10, A. D. 1872, and recorded same day in Liber
243 of Deeds, pages 286, &c., as stated in said amended
bill.

5. And this Defendant admits that said Daniel A. 62
Morrison was not made a party to or executed last men-
tioned deed, and also admits that he did execute a deed
of quit-claim of the date, and recorded at the time men-
tioned in said amended bill, to this Defendant.

6. And this Defendant further admits that he, with
his wife, executed a deed to John A. Bennett, as men-
tioned in said amended bill. And this Defendant denies
that said contract of Maryette Morrison and this Defen-
dant is void so far as the said Complainant is concerned,
or any one else, and this Defendant charges for either of 63
the reasons alleged in said amended bill of complaint.

7. And this Defendant further denies that, before said
contract was executed, or before any money was paid, he,
this Defendant, had full notice of the fraudulent char-
acter of said two deeds from Morrison to Yard and from
Yard to Maryette Morrison, and denies that at that time
he had full notice of said Complainant's claim against
said premises. On the contrary, this Defendant distinctly
asserts and insists that he had no notice whatever of said
Complainant's claim either against said premises or against 64
said Daniel A. Morrison or Maryette Morrison until after
the recording of the said deed to this Defendant from
said Maryette Morrison, and therefore could not, and dis-
tinctly says he did not, have any notice that said deeds

were fraudulent, even if they were fraudulent, which this Defendant denies.

8. And this Defendant distinctly insists that the whole of said consideration money was paid, viz.: the sum of six thousand five hundred dollars, before the execution of 65 said deed to this Defendant above mentioned.

9. And this Defendant denies that said deed to him from Maryette Morrison was void for the reasons stated in said amended bill of complaint, or for any other reasons.

10. And this Defendant denies that at the time of the said conveyance by Daniel A. Morrison to this Defendant was executed, delivered and accepted with full notice or any notice to this Defendant of the claim of Complainant or of the pendency of this suit.

66 11. And this Defendant insists that if said contract and deeds were void at law, yet in this Court they are not void, but that this Defendant is entitled to have said premises conveyed to him by the said Morrison free and clear of all claim and incumbrances, including Complainant's, if he have any, and also insists that the money so advanced by this Defendant in good faith and without notice is a prior lien to the Complainant's claim, if he have any, to said land and premises.

67 And this Defendant further denies that said conveyance by him to John A. Bennett is void and of no effect, even if said John A. Bennett had full notice of the claim of said Complainant and of the pending of this suit (which notice and knowledge this Defendant, on information and belief, denies), for the reason that this Defendant, having no such knowledge or notice, it is immaterial whether said Bennett had or not.

And this Defendant denies all unlawful combinations and confederacy in the said amended bill charged, with-

out this, that any other matter and thing material for this Defendant to make answer unto, and not herein or hereby 68 well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this Defendant.

All which matters and things this Defendant is ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ARCH. K. BROWN,

*Solicitor and of Counsel with Defendant, Andrew 69
Allendorph.*

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss. :

Andrew Allendorph, of full age, being by me duly sworn on his oath, saith that he is the Defendant in the above answer; that the matters, facts and things therein set forth, so far as they relate to the acts and deeds of this deponent are true, and so far as they relate to the acts and deeds of others, he believes them to be true.

ANDREW ALLENDORPH. 70

Subscribed and sworn at Jersey City, in the County and State aforesaid, this twentieth day of January, A. D. 1873, before me.

I. W. SCUDDER,

Master in Chancery.

ANSWER OF BENNETT.

The answer of John A. Bennett, one of the Defendants, to the amended bill of complaint of the said Complainant, to the bill of complaint as amended.

71 This Defendant, John A. Bennett, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the Complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this Defendant is advised is material for him to make answer unto, he answers and says :—

1. That he is a stranger to all and singular the matters and things in the original bill of complaint alleged, except so far as the same is a copy of or taken from the conveyances recorded by the Court of Common Pleas of the County of Hudson, and in this respect this Defendant admits that the same is truly copied therefrom.

72

And this Defendant therefore leaves said Complainant to make proof of all the facts set up in said original bill as he shall be able to produce.

2. This Defendant has heard read the answer of Andrew Allendorph to the amended bill of complaint, in this cause filed or to be filed herein ; that he believes the statement therein contained as to the contract with Maryette Morrison, and the deed from her to him, and the deed by Daniel A. Morrison to said Allendorph, and as to the payment of the consideration money mentioned in said deed to said Allendorph before any notice of any claims or equities of said Complainant to said premises or of the pending of this suit and of the other facts set up in the said answer.

73

And this Defendant admits that Andrew Allendorph and wife, on September 10th, 1872, executed a deed whereby they not only intended, but did actually convey 74 to this Defendant the said premises, and that said deed was recorded as in said amended bill stated.

And this Defendant denies that said deed is void or of no effect, either against said Complainant or any one else, because either said Andrew Allendorph had no title to said premises or because said John A. Bennett had full notice of the claim of Complainant or the pending of this suit at the time of the execution thereof, or for any other reason; but this Defendant virtually insists and charges that said title of said Andrew Allendorph was good 75 and effectual, and that he had full power and authority to convey to this Defendant. Yet, if it was void, yet this Defendant would be entitled, by reason of said deed to him from said Allendorph, to have said premises conveyed to him by Maryette Morrison and her husband, free and clear of all incumbrances and claims, including the said Complainant's, if he have any; and he also insists that in any case he is entitled to have all the money advanced by this Defendant repaid to him before 76 said Complainant can have any claim whatever to said premises, and that the claim of this Defendant is a prior claim to the Complainant's.

And this Defendant further denies that he had full notice, or any notice, of the claim of said Complainant, or of the pending of this suit as at the time of the execution and delivery of the said deed. And this Defendant respectfully insists that he purchased said premises from Andrew Allendorph for the sum of seven thousand dollars, and that the same was *bona fide* and in good faith, and without notice of any claim of said Complainant's to said premises. 77

And this Defendant denies all unlawful combination and confederacy in the said bill charged without, that

any other matter and thing material for this Defendant to make answer unto, and not therein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of this Defendant.

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

ARCH. K. BROWN,

Solicitor and of Counsel with Defendant,
John A. Bennett.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss :

John A. Bennett, of full age, being by me duly sworn,
79 on his oath saith, that he is the Defendant in the above answer, that the matters, facts and things therein set forth, so far as they relate to the acts and deeds of this deponent, are true, and so far as they relate to the acts and deeds of others, he believes them to be true.

JOHN A. BENNETT.

Sworn and subscribed to before me at Jersey City this
20th day of January, 1873.

I. W. SCUDDER,
Master in Chancery of New Jersey.

80 The Complainant filed the usual replication to the several answers.

OPINION OF THE CHANCELLOR

ON FINAL HEARING ON PLEADINGS AND PROOFS.

The facts of the case sufficiently appear in the opinion of the Chancellor.

The Chancellor—

This suit is brought by a judgment creditor of Daniel A. Morrison, one of the Defendants, to obtain payment of his debt out of certain real-estate in Jersey City, which, at the time when the liability on which the judgment was founded was incurred, was the property in fee simple of Morrison, but which very soon after that time he voluntarily conveyed, without consideration, to another person, by whom, by like conveyance, it was conveyed to the Defendant, Maryette Morrison, wife of Daniel A. Morrison. 81

The Complainant's debt, judgment and execution, and the proceedings thereon preliminary to the bringing of this suit, are not brought into question. The liability above referred to was incurred by the Complainant in endorsing for the accommodation of Daniel A. Morrison a promissory note for \$5,000, made by the latter in the name of his firm of D. A. Morrison & Co., which, having been discounted for the firm, was subsequently, and at or about the time of its maturity, renewed for its full amount, the Complainant, at the instance and request of the firm, endorsing without consideration, and for their accommodation, the note given in renewal. 82

It appears from the evidence that the original note was made and discounted a day or two prior to the first day of July, 1871. In the latter part of June of that year Daniel A. Morrison, being about to enter into business 83

in New York with James O. Watkins, applied to the Complainant for a loan of \$4,000 or \$5,000, which he wanted for part of his contribution to the capital of the firm. The Complainant being unable to accommodate him, proffered to put him in the way of raising the money by the discount above mentioned, and an arrangement for it was made accordingly through the Complainant with
84 certain bankers. The firm of D. A. Morrison & Co. contemplated commencing business on the first day of July, 1871, and therefore wanted the money ready for that day. To accommodate them, the note was made on the last Thursday or Friday in June, but was dated on the first of July. It was endorsed by the Complainant on the day it was made, and was then delivered for discount to the bankers. When it fell due, on the second day of October, 1871, it was renewed, as above stated, for ninety days. At the maturity of the note given in
85 renewal, D. A. Morrison & Co. had failed, and the note having been duly protested for non-payment, the Complainant was compelled to pay it. By deed dated July 1, 1871, and after the making and endorsement of the original note, Daniel A. Morrison conveyed, without consideration, to W. Sterling Yard, the premises in question—a dwelling-house and lot—for the purpose of vesting, by means of a like conveyance from Mr. Yard, the title in fee in Morrison's wife. The deed to her, however, was not made till October, 1871. It is dated on the ninth of
86 that month, was acknowledged the next day, and recorded November 23d, 1871. The deed from Morrison to Yard was acknowledged October 12, 1871. It seems to have been stamped on that day, and it was recorded on the 6th of November following.

The character of this transaction is fully proved. The object of Morrison was to secure the property to his wife against the chances of the business he had engaged in. Yard testifies that Morrison told him, when he applied to and advised with him on the subject, that he expected to

do a good business, but he could not tell what might hap- 87
pen to a man in business; that he had a piece of property
in New Jersey which he would like to secure to his wife,
and asked him how he should do it.

The Complainant's liability for Morrison was incurred
in June; the deed to Yard was not made until some time
in July, at the earliest. The Complainant, by endorsing
the note for the accommodation of Morrison, became a
creditor within the meaning of the statute. *Howe v.*
Ward, 4 *Greenl.*, 195. *Bump on Fraud, Conv.* 485,
and cases there cited. 88

As between the Complainant and Mrs. Morrison, the
conveyance to her could not be permitted to prevail
against his claim. He was a creditor of her husband
when the voluntary conveyance to her was made, and as
against the Complainant as between her and him, it is
void for fraud.

But she sold the property and attempted to convey it,
and both she and the purchaser undoubtedly supposed
she had effectually done so. On the fifteenth day of 89
April, 1872, she executed a contract for the sale of it to
the Defendant, Andrew Allendorph, by which she agreed
to convey it to him in sixty days from that date, for
\$6,500 cash. June 10th, 1872, she executed a deed to
him, intended to convey the property to him in fee simple
for that price, which he paid to her in cash. Both the
contract and the deed were executed by her without her
husband. Under the deed Allendorph went into pos-
session, and being in possession, afterwards sold the
property to the Defendant, John A. Bennett, for \$7,500,
which are proved to have been paid to him by Bennett, 90
to whom he conveyed it by deed dated September 10th,
1872, and Bennett, under his deed, went into possession,
which he still retains. Allendorph's deed to Bennett
contains the usual full covenants, including general war-
ranty. The contract and deed executed by Mrs. Morrison

were both void at law. *Den. v. Lawshe*, 4 Zab. 613. *Moore v. Rake*, 2 Dutch, 574. This Court would not have enforced the one, nor will it give effect to the other. *Wooden v. Morris*, 2 Green, Ch. 65. *Pentz v. Simonson*, 2 Beas., 232. *Armstrong v. Ross*, 5 S. C. E. Green, 109. The legal title to the property then, stands as if the deed to Allendorph had never been made. But, I do not find proof in the case to fix fraud on Allendorph. I do not find evidence of his want of *bona fides*, or of his having had notice of the character of the conveyance to Mrs. Morrison. He is, it is true, her uncle by marriage, and he may perhaps be suspected of having known the circumstances of the conveyance to her. He may not have paid the \$6,500 *bona fide*. But I cannot say in the
 91 face of the evidence that he had notice, did not act in good faith, or did not honestly pay the consideration he swears he paid. The record of the Complainant's judgment against Mr. Morrison was not notice to Allendorph. When he made the contract, and when he took his deed, the legal title to the property was in Mrs. Morrison. The judgment was not a legal incumbrance on the premises. The deed from Morrison to Yard, and that from Yard to Mrs. Morrison, contained on their face no evidence of their voluntary character. The former expressed a con-
 92 sideration of \$7,000, and the latter one of \$7,200.

Under these circumstances, while I cannot give effect to the deed to Allendorph, I ought to extend to him or his grantee in his stead, the protection of this Court, at least so far as regards the amount he paid for purchase money. In equity, his claim on the premises to that extent at least is superior to that of the Complainant. He is a *bona fide* purchaser for valuable and adequate consideration without notice. He has paid the consideration to Mrs. Morrison. His grantee is in possession. This Court
 94 would not permit her to recover the property against the latter except on equitable terms. It will not permit the Complainant to do more. In *Stanhope v. Earl Verney*,

2 *Eden*, 81. Lord Northington says, "There is not a case to be put of a contest between two purchasers where the first purchaser, by paying his money, does not get an equity; and that equity, if free from fraud, stands with a priority in this Court according to the time of its creation, so that the nature of the equity continues the same; but a purchaser, without notice, for a valuable consideration is a bar to the jurisdiction of this Court; and it is of no 95 consequence when the legal advantage was acquired, if the purchase was made and the money paid without notice." On the principle of the cases of *Basset v. Northworthy*, *Ca. temp. Finch* 102; *Collet v. De Gols.*, *Cases temp.*, *Talbot* 65; *Hitchcock v. Sedgwick*, 2 *Vern.* 156; *Jones v. Powles*, 3 *M. & K.* 581, and *Joyce V. DeMoleyns*, 2 *J. and L.* 374. Allendorph and his grantee will be protected in this Court at least to the extent above indicated. They are *bona fide* purchasers without notice, against whom this Court will not grant its 96 aid.

I shall, therefore (*Pentz v. Simonson*, 2 *Beas.* 236), charge upon the premises the money paid by Allendorph to Mrs. Morrison, \$6,500, and interest from the time it was paid, subject to a proper deduction for the rents and profits since then. Subject to that charge the premises will be charged with the Complainant's debt.

FINAL DECREE.

This cause coming on to be heard at a regular term of the Court of Chancery of New Jersey, held at Trenton 97 on the third Tuesday of May, in the year eighteen hundred and seventy-three, in the presence of Jonathan Dixon, of counsel for the Complainant, and of Archibald

K. Brown, of counsel for the Defendants, and the bill of complaint, and the amendments thereto, and the answers of the said Defendants, and the testimony and proofs taken herein, having been read, and the arguments of counsel on both sides having been heard and considered, and it satisfactorily appearing to the Court, by the

98 pleadings and proofs herein, that at and before the time of the making of the deeds hereinafter mentioned, the said Complainant, Edward A. Phelps, Jr., was a creditor of the Defendant, Daniel A. Morrison, and did, on the twenty-third day of May, A. D. 1872, recover a judgment for his debt (amounting, for damages and costs, to the sum of \$5,136.74) against the said Morrison in the Circuit Court of Hudson County, upon which judgment a writ of *feri facias de bonis et terris* was on said day issued to the Sheriff of said County, the same having

99 been first duly recorded, which writ was returnable on May 28, 1872, and on said day was duly returned by said Sheriff, endorsed by him "*nulla bona aut tenementa*," and that the deed made by said Daniel A. Morrison and Maryette, his wife, to W. Sterling Yard, dated July 1, 1871, acknowledged October 12, 1871, and recorded in Hudson County Clerk's office November 6, 1871, in Liber 234 of Deeds, page 280, and also the deed made by W. Sterling Yard to the said Maryette Morrison, dated October 9, 1871, acknowledged October 12, 1871, and

100 recorded in Hudson County Clerk's office November 23, 1871, in Liber 234 of Deeds, page 546, were voluntary, without consideration, and designed, devised and contrived of fraud, to the end, purpose and intent to delay, hinder and defraud the creditors of the said Daniel A. Morrison of their just and lawful actions and demands; and that on the fifteenth day of April, A. D. 1872, the said Maryette Morrison alone executed a contract for the sale of the lands and premises described in the said deeds to the Defendant, Andrew Allendorph, by which she

101 agreed to convey said land and premises to said Allendorph in sixty days from that date, of \$6,500 cash, and

that on the tenth day of June, A. D. 1872, the said Maryette Morrison alone (her husband aforesaid being still alive, but not joining in the deed) executed a deed to said Allendorph, intended to convey said land and premises to him in fee simple, for the said price of \$6,500, which he then paid to her in cash; and that, under said deed, the said Allendorph went into possession of said premises, and so being in possession, afterwards made a deed of the same, dated September 10, 1872, to the Defendant, John A. Bennett, for the sum of \$7,500, which said Bennett then paid to him; that there is no sufficient evidence of any want of *bona fides* on the part of the said Allendorph in said purchase, or of his having had notice of the fraudulent character of the conveyance aforesaid to said Maryette Morrison, or of his not honestly paying said sum of \$6,500.

It is thereupon, on this twentieth day of November, A. D. 1873, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor does, by virtue of power and authority of this Court, order, adjudge and decree that the said deed made by Daniel A. Morrison and wife to W. Sterling Yard, and the said deed made by said Yard to Maryette Morrison, are and each of them is, and from the time of its execution and delivery, has been as against the Complainant in this suit, absolutely void, frustrate and of no effect, and that the said John A. Bennett, as assignee of the said Andrew Allendorph, is entitled to an equitable lien on the premises described in said deeds for the sum of six thousand five hundred dollars and interest thereon from June 10, 1872, less the amount due to or received by said Andrew Allendorph or John A. Bennett for rent of said premises, and that the said lien of the said Bennett is prior to the lien of the Complainant herein on said premises for the amount of his said judgment, and that the Complainant herein has a lien on said land and premises for the sum of five thousand one hun-

dred and thirty-six dollars and seventy-four cents, with
105 interest thereon from May 23, 1872.

And it is further ordered, adjudged and decreed that
the said lands and premises, and all the right, title and
interest therein of the several parties to this suit be sold,
and that a writ of *feri facias* do issue for that purpose,
directed to the Sheriff of Hudson County, commanding
him to make sale according to law of the said land and
premises; and, out of the proceeds of such sale, to pay
first to the said John A. Bennett such sum as may here-
after be found to be due to him in accordance with this
106 decree, and, in the second place, to pay to the Complain-
ant, or to his solicitors herein, the sum of five thousand
one hundred and thirty-six dollars and seventy-four cents,
with interest thereon from May 23, 1872, besides his
costs of this suit to be taxed; and, in case there be any
surplus, after making such payments, to bring the same
into this Court and deposit it with the Clerk thereof, to
abide the further order of the Court, and that the said
Sheriff make return to this Court of his proceedings by
virtue of said writ.

107

THEODORE RUNYON, C.

 APPEAL.

The Complainant hereby appeals from so much of the
final decree made in this Court, in the above stated cause,
as declares that Andrew Allendorph paid to Maryett
Morrison the sum of \$6,500, on the delivery by her to
him of her instrument purporting to convey to him the
premises described in the bill of complaint, and that
under said instrument, called a deed, the said Allendorph
went into possession of said premises, and so being in
108 possession, afterwards made a deed of the same, dated

September 10, 1872, to the Defendant, John A. Bennett, for the sum of \$7,500, which said Bennett then paid to him; that there is no sufficient evidence of any want of *bona fides* on the part of the said Allendorph in his purchases, or of his having had notice of the fraudulent character of the conveyances to said Maryett Morrison, or of his not honestly paying said sum of \$6,500.

And the Complainant also appeals from so much of said decree as orders, adjudges and decrees that the said John A. Bennett, as assignee of the said Andrew Allen- 109 dorph is entitled to an equitable lien on the premises described in said deeds, for the sum of six thousand five hundred dollars, and interest thereon from June 10, 1872, less the amount due to or received by said Andrew Allendorph or John A. Bennett for rent of said premises, and that the said lien of the said Bennett is prior to the lien of the Complainant herein in said premises for the amount of his judgment, and that out of the proceeds of the sale of said premises to be made by the Sheriff of Hudson County, the said Sheriff shall pay first to the said John 110 A. Bennett such sum as may hereafter be found to be due to him in accordance with said decree.

Such appeal is made to the Court of Appeals in the last resort in all causes of law and equity.

DIXON & COLLINS,

Sols. of Compl't.

JONATHAN DIXON,

Of Counsel.

Dated November 26, 1873.

I conceive there is good cause for *Appeal* in the above 111 stated cause.

JONATHAN DIXON,

Of Counsel.

PETITION OF APPEAL.

To the Honorable Court of Appeals in the last resort in all cases at law or in equity :—

The humble petition of Edward A. Phelps, Jr., the Appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing
 112 date the twentieth day of November, in the year eighteen hundred and seventy-three, wherein the said Edward A. Phelps, Jr., was Complainant, and the said Daniel A. Morrison and Maryett his wife, and Andrew Allendorph and John A. Bennett were Defendants in these respects, to wit: that the said decree declares that said Andrew Allendorph paid to said Maryett Morrison the sum of \$6,500 on the delivery by her to him of an instrument purporting to convey to him the premises described in the bill of complaint, and that under said instrument called
 113 a deed, the said Allendorph went into possession of said premises, and so being in possession, afterwards made a deed of the same, dated September 10, 1872, to the Defendant, John A. Bennett, for the sum of \$7,500, which said Bennett then paid to him; that there is no sufficient evidence of any want of *bona fides* on the part of said Allendorph in said purchase, or of his having had notice of the fraudulent character of said conveyances to said Maryett Morrison, or of his not honestly paying said sum of \$6,500.

114 And also that the said decree orders, adjudges and decrees that the said John A. Bennett, as assignee of the said Andrew Allendorph, is entitled to an equitable lien on the premises described in said deeds for the sum of six thousand five hundred dollars, and interest thereon from June 10, 1872, less the amount due to or received by said

Andrew Allendorph or said John A. Bennett for rent of said premises, and that the said lien of the said Bennett is prior to the lien of the Complainant herein on said premises for the amount of his judgment; and that out of the proceeds of the sale of said premises to be made by the Sheriff of Hudson County, the said Sheriff shall pay first to the said John A. Bennett such sum as may hereafter be found to be due to him in accordance with the said decree. 115

And your petitioner humbly appeals from the above-mentioned parts of said decree upon the ground that the same are, and each of them, is erroneous, for that the said Allendorph did not so pay the said sum of \$6,500, or any sum, to the said Maryett Morrison, and the said Bennett did not so pay the said sum of \$7,500, or any part of it, to said Allendorph, and neither the said Allendorph nor the said Bennett went into possession of said premises; and there was not *bona-fides* on the part of said Allendorph in said purchase, and he had notice of the fraudulent character of the conveyances to Maryett Morrison. And for that the said Bennett, or his assignor, the said Allendorph, is not entitled to an equitable lien, or any lien, upon said premises for said sum, or for any sum, prior to the lien of the judgment of your petitioner, the said Complainant; and out of the moneys to be raised by sale of said premises by the Sheriff of said County, the said Sheriff should pay first to your petitioner, the amount of his said judgment and interest and costs; and should not first pay any sum to the said Bennett or Allendorph. 116

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden; and that your 117

petitioner may have such relief in the premises, as to this
118 honorable Court shall seem meet.

DIXON & COLLINS,

Sols. of Compl't.

JONATHAN DIXON,

Of Counsel.

The Defendants filed the usual answer.

ARCH. K. BROWN,

Solicitor for and of Counsel with said Defendants.

In Chancery of New Jersey.

1

Between

EDWARD A. PHELPS, Jr.,
Compl't,

and

DANIEL A. MORRISON and Wife
et als., Def'dts.

2

Examination of witnesses, &c., in the above entitled cause on the part of the complainant, taken before me, Isaac Romaine, a master and examiner of said court, at my office, No. 111 Washington street, Jersey City, on Monday, March 3d, 1873, at two o'clock in the afternoon, in the presence of Gilbert Collins, counsel for complainant, and Archibald R. Brown, counsel for defendants.

3

Counsel for complainant offers in evidence a certified copy of a judgment record in the Hudson Circuit Court, in a suit in which Edward A. Phelps, Jr., is the plaintiff, against Daniel A. Morrison and James O. Watkins, defendants, which is marked Exhibit C, 1, on part of complainant.

Also offers in evidence the execution issued on said judgment, returned "*nulla bona*," with the several certificates thereon, which is marked Exhibit C, 2, on part of
4 complainant.

Also offers in evidence a deed made by Daniel A. Morrison and wife to W. Sterling Yard, dated July 1st, 1871, which is marked Exhibit C, 3, on part of complainant.

Also offers in evidence a deed made by W. Sterling Yard to Maryett Morrison, dated October 9th, 1871, which is marked Exhibit C, 4, on part of complainant.

Also offers in evidence a deed made by Maryett Morrison to Andrew Allendorph, dated June 10th, 1872, which is marked Exhibit C, 5, on part of complainant.
5

Also offers in evidence a deed made by Daniel A. Morrison to Andrew Allendorph, dated June 10th, 1872, which is marked Exhibit C, 6, on part of complainant.

Also offers in evidence a deed made by Andrew Allendorph and Rebecca Allendorph to John A. Bennett, dated September 10th, 1872, which is marked C. 7, on part of complainant.
6

Edward A. Phelps, Jr., a witness produced on the part of the complainant, being duly sworn, on his oath, saith :

I am the complainant in this suit, and reside in Brooklyn, in the State of New York. I am a merchant in New York city. I have had business with the late firm of D. A. Morrison & Co., composed of Daniel A. Morrison and James O. Watkins; the judgment, the record of which has just been offered, was founded on an indebtedness from them
7 to me.

Previous to the 29th of June, 1871, Mr. Morrison talked with me several times in relation to the restaurant business, and it was about the last week in June that he made up his mind to go in that business with Watkins, a person at that

time unknown to me ; and in the conversations with me he said, that if he went in that business, it would be a first-rate place, and whatever things he wanted in my line he would purchase from me ; and at that time he stated what price was to be paid, and he was to put in a farm in Rockland county ; was to be put in in trade, and the balance to be paid in notes ; that Mr. Morrison was very anxious to pay his share without giving his individual note, and wished to know if I could loan him an amount of \$4,000 or \$5,000. I told him I could not ; he then wanted to know if I could get a discount for him. I told him I did not know whether I could or not. He spoke about the Irving Bank. I told him I could not there, but I thought I might possibly at Turner Brothers, New York, provided he would keep a bank account with them. I then saw Turner Brothers, and made an arrangement with them, and introduced Mr. Morrison there. They finally agreed to discount a note for him for \$5,000, provided I would endorse the note, which I did. I went over with Mr. Morrison to the office of Turner Brothers, introduced him to Mr. Decker of the firm, and they brought in their autograph book, in which persons enter the name in which they draw checks. In that book Mr. Morrison wrote the firm name, D. A. Morrison & Co., in the way that they would sign checks. Mr. Morrison then spoke regarding a discount, saying he might want to draw checks against his account before he made deposits, and wanted to know if his discount would be ready on the first. Mr. Decker said, then, in that case, he better draw his note and leave it ready for the first. Mr. Decker obtained a blank note, which Mr. Morrison filled up, but signed his name in a different manner than he had signed it on the autograph book, when the note was destroyed, and another one filled up at once. This note was signed by Mr. Morrison with the firm name, and endorsed by me, when it was handed to Mr. Decker. That was on the last Thursday or Friday in June, 1871. It was previous to the first day of July. The note was dated July 1st, 1871, for the

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amount \$5,000, payable ninety days after date to my order at the office of Turner Brothers, 14 Nassau street.

- I did not receive any compensation for my indorsement,
- 12 it was an accommodation indorsement. At the time the note was drawn, Mr. Morrison spoke of making it a six months' note. Mr. Decker said that was against their rules, three months being the longest time they would discount, but presumed the note could be renewed for part or the whole. That note fell due on October 2d, 1871. On that day Mr. James O. Watkins came to the store with another note for the same amount saying they were not prepared to take up the note, but wished to renew the note for ninety days longer, but would take it up before that time, which
- 13 note was a duplicate of the first note, except as to dates; the date of this second note was October 2d, 1871, and was signed D. A. Morrison & Co. I indorsed it and he took it back to Turner & Brothers; the first time I was in there afterwards, Mr. Decker showed me the first note, and said they had continued the loan, and I had better destroy that note; I tore it to pieces in his office. The second indorsement I received no consideration for. It was an accommodation to take up the other note. Before this first note became due, I met Morrison and asked him if they
- 14 were prepared to take up that note. He said no; they had about \$1,600 over in the bank, and would have to get it continued, and they would be ready to take it up before the 1st of January.

The second note is not in my possession, it was given by me to John H. Price, a lawyer, to commence an action against Morrison and Watkins, but owing to his inability to find Watkins, in order to serve papers, he brought no action. Mr. Price is now in Europe, and I have searched for the note in his office and cannot find it. That note is

- 15 now merged in this judgment.

I took up this note at Turner Brothers, paid it in full after it became due.

The judgment founded upon this note, and costs, is still unsatisfied.

EDW'D A. PHELPS, JR.

Taken, sworn to, and subscribed, }
 this 3d day of March, A. D. }
 1873, at Jersey City, before me, }

16

ISAAC ROMAINE,
Master in Chancery.

Whereupon the examination was adjourned to Friday, March 21st, 1873, at two o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties. 17

Joseph S. Decker, a witness produced on the part of the complainant, being duly sworn on his oath, saith :

I reside in New York city ; I am a member of the firm of Turner Brothers, bankers. I know the complainant, Daniel A. Morrison and James O. Watkins ; Morrison and Watkins were partners in New York in 1871, under the name of D. A. Morrison & Co. ; they banked with our firm ; they were introduced to us by the complainant. 18

The first business we did with the firm was to discount a note of \$5,000 for them ; the account with us was opened with a discount ; that note was a note of D. A. Morrison & Co., drawn to the order of the complainant, and indorsed by him ; I think it was dated July 1st, 1871. It was given to me, for our firm, by Morrison. It was either the 29th or 30th of June, on Thursday or Friday ; it may have been on the 30th, but I think it was the 29th. It was not later than the 30th.

Witness, being shown a book, says that is one of the 19 books of the firm of Turner Brothers. It is the individual ledger of the firm, a book of original entry.

Pages 862 to 865, contains the account of D. A. Morrison & Co. That account was opened July 1st, 1871. Two

checks were paid on that day; one for \$50 00, the other for \$5,000. On July 1st, they made a deposit of \$125 00.

20 The check of \$5,000 was paid out of the avails of the note spoken of and that deposit. The avails of that note, \$4,909 58, passed to the credit of the firm of D. A. Morrison & Co., by our firm, July 1st, 1871. It is shown on our books as July 3d; going through the bookkeeper's hands, a discount does not appear until the day after it is allowed. The next day, in this case, was Sunday, therefore, it does not appear until Monday, July 3d.

21 Mr. Morrison stated to us that the copartnership was to commence July 1st, but that he wanted to have the note in our hands, as checks would probably be given out early and presented on the first of July, and to protect such checks, he wanted us to have the note in our hands; this was at the time the note was executed. The discount was actually granted on the day the note was presented to us to take effect on the first of July. That note was not paid at maturity. It was a three months' note. The note was paid by a renewal, October 3d, 1871. The new note was a like note, the same maker and same endorser, and I think the same time to run. The second note was not paid at maturity by the maker. It was protested, and the endorser 22 notified. E. A. Phelps, Jr., the complainant, paid the note. I can't tell when he paid it, but I know he did pay it. I should say in January.

The ledger referred to is offered in evidence, and the account is marked Exhibit C, 8, on part of complainant.

JOSEPH S. DECKER,

And being cross-examined he says :

23 I think most of the checks were drawn by Mr. Watkins, but I don't know, it is only presuming.

And being again examined in chief, he says :

We have D. A. Morrison's signature in the office. He drew the first checks.

JOSEPH S. DECKER.

Taken, sworn to, and subscribed, }
 this 21st day of March, A. D., }
 1873, at Jersey City, before me, }

24

ISAAC ROMAINE,

Master in Chancery.

It is admitted that a copy of the account of D. A. Morrison & Co., shall be used in lieu of the ledger.

Wesley Sterling Yard, a witness produced on the part of the complainant, being duly sworn on his oath, saith:

25

Witness, being shown Exhibits C, 3 and C, 4, says: I drew those deeds.

I am the grantee in Exhibit C, 3, and the grantor in Exhibit C, 4.

Mr. Morrison called at my office on several occasions. He had other business with me about that time, and said he had gone in business with a man named Watkins. He told me where, he said they had bought out Rudolph's place on Broadway, and that he had invested a large amount. I understood that they had paid \$30,000, and he, Morrison, had put in \$14,000 in cash, or what represented cash. He said they had accepted a farm as part payment.

26

I told him it was a good place and a good business. He said that he expected to do a good business, but he said he couldn't tell what might happen to a man in business, but that he had a piece of property in New Jersey which he would like to secure to his wife, and asked how he should do it. I told him that if he was perfectly solvent, had no judgments against him, owed no creditors, that it was perfectly proper for him to do it by deeding it to a third party, which party could deed it to his wife. He said he would come in in a day or two and see me about it again. I saw him either once or twice after that before he concluded to do it, and he then told me to make out the deeds and left

27

me the description. I then made out the deed to myself, and he took it and executed it. It was drawn up about the time it bears date, on or about that date. It wasn't
 28 acknowledged until some time after that. I won't swear positively as to the date of drawing the deed. It was about the time they commenced business. They were flourishing. I gave the deed after I made it out to myself to Mr. Morrison. I am not sure if he signed it on that day. He was to take it to get his wife's signature. He took it on the day it was made out or the next day. I won't be positive what hour of the day he took it, but it was during business hours. Henry Rickway was a clerk in my office at that time. He witnessed the deed. He is somewhere in New
 29 York now. I can find him. He is not in our employ now. I acknowledged my deed, and Mr. Morrison and his wife acknowledged theirs on the same day.

I think I got Exhibit C, 3 back from Morrison before the deeds were acknowledged. I must have had it to draw the other deed from. I do not remember of seeing either Morrison or Mrs. Morrison signing the deed to me. I don't remember whether Rickway was present when Mrs. Morrison signed the deed.

I don't recollect of Mrs. Morrison signing any papers
 30 at the Commissioner's office. She went in and acknowledged the papers that is all. Richard S. Newcomb, the Commissioner's office, is at 293 Broadway, the same building as my office. We went to the Commissioner's office.

I don't recollect whether Mr. and Mrs. Morrison brought the deed Exhibit C, 3 with them when they came to acknowledge it.

I don't recollect when the deed first came into my possession after Morrison and his wife had signed it. Morrison took it to get it signed and afterwards gave it to me, the
 31 time I do not recollect. I am sure I had the deed in my possession after the signatures were on it. I told Morrison that he ought to take it and have it acknowledged and recorded, that that was necessary to be done.

I am not positive whether I drew Exhibit C, 4 as soon as I got Exhibit C, 3 back. I don't think I did.

Q. Was there a formal delivery of the deed C, 3 to you before it was acknowledged?

There was a delivery, as I understood it, by his handing me the deed. The form of words used I don't remember. 32

I don't know when this was. I can't state positively. It was some little time after it was signed.

I can't tell you when I drew Exhibit C, 4. It was, I think, some days previous to the date. I am sure the two deeds were not drawn on the same day.

They were not both drawn in the month of October. One, as I said before, was drawn in hot weather.

I don't know why I fixed the date in the deed to Mrs. Morrison as October 9th, unless it was that he expected his wife over on that day, or bring her over for the purpose of acknowledging the other deed and receiving Exhibit C. 4. 33

No consideration passed to Morrison from me for Exhibit C, 3, or from Mrs. Morrison to me for Exhibit C, 4, nor any consideration that I know of from Mrs. Morrison to Mr. Morrison. It was one transaction for the purpose of vesting the title in the wife.

The deeds were not dated on the same day, because the deed from Morrison and wife to me was not acknowledged until some time after the deed was drawn.

The consideration of Exhibit C, 3, is fixed at \$7,000, and in Exhibit C, 4 at \$7,200, at my suggestion, so that if the property should be sold, it would sell at a better price. 34

And being cross-examined, he says:

I am an attorney and counsellor-at-law, of New York State. In the drawing of these deeds, I acted as attorney principally in settling this property on Mrs. Morrison; I know Mr. Hull here present; he called to see me the other day; he spoke to me about this case as counsel for the complainant; he did not tell me he was acting as counsel for Mr. Phelps. 35

Mr. Hull came in and sat down and spoke about Morrison, and said he was a good fellow, that he had done

business for him I think; I supposed he was acting for Morrison.

- 36 He asked me in regard to these deeds; he asked me if I had drawn deeds for Morrison; I told him yes, and I had done the thing straight the same as he would do under the same circumstances; he told me about Phelps losing money; I said I could sympathize with him; that was the first I supposed he was acting for Mr. Phelps; he said Phelps had lost \$5,000 by the operation; I told him that Morrison had lost \$14,000, and they ought to get it from Watkins. I think he asked me if the deeds were drawn the same day; I told him no, that I thought the first deed had been lying in my office for some time, this was before
- 37 I knew what he was driving at.

And being again examined in chief, he says:

I did not come here to-day under subpoena from the complainants, nor did I come here to be examined, nor did I expect to be until you called me.

I came here to-day with Mr. Morrison and his counsel from his counsel's office here.

I related this visit of Hull and his conversation to me, to Morrison, and his counsel.

- 38 I had heard of this suit being commenced; I can't say that I am associate counsel to Morrison in this matter; I have advised with Morrison and his counsel about this case to-day.

Mr. Hull very likely told me about the time he was leaving that his correspondents in New Jersey were about commencing a suit against Morrison for the purpose of setting aside the deed.

- 39 I might have said as Hull was going out that there was no use in trying to rip this up, as Morrison had made the conveyance when he was out of debt.

Taken, sworn to, and subscribed, this 21st day of March, A. D., 1872, at Jersey City, before me,

W. S. YARD.

ISAAC ROMAINE, *Master in Chancery.*

Whereupon the examination was adjourned to Friday, April 4, 1873, at two o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties. 40

The complainants not having any further testimony to offer, he declared the case on his part closed.

IN CHANCERY OF NEW JERSEY.

Between

EDWARD A. PHELPS

Compl't,

and

DANIEL A. MORRISON and Wife

et als.,

Def'ts.

41

Examination of witnesses, &c., in the above entitled cause on the part of the defendants, taken before me, Isaac Romaine, a master and examiner of said court, at my office, No. 111, Washington street, Jersey City, N. J. on Monday, April, 21st, 1873, at three o'clock in the afternoon, in the presence of Archibald R. Brown, counsel for the defendants, and Gilbert Collins, counsel for the complainant. 42

Andrew Allendorf, a witness produced on the part of the defendants, being duly sworn on his oath saith: 43

I reside in Morrisania, Westchester county, State of New York. I do not know the complainant, Edward A. Phelps, Jr. I am acquainted with the defendants, Daniel A. Morrison and wife.

I am acquainted with the property described in the bill of complaint in this case. On or about the 15th day of April, I entered into negotiations with Mrs. Morrison
 44 for the purchase of this property.

Witness being shown a paper purporting to be an agreement to convey, says, that is the identical agreement I signed, my name is written at the bottom of it.

Said paper is offered in evidence on the part of the defendants and is marked exhibit D, 1.

Counsel for complainant objects to the offering of the exhibit.

Under and by virtue of that agreement, I purchased the property described in the bill, and received two deeds for
 45 it.

Exhibits C, 5 and C, 6, being shown the witness he says those are the deeds.

I paid \$6,500 for the purchase of that property. I paid it to Maryett Morrison. I paid it by a certified check on the Bowery National Bank.

Witness being shown a check dated June 10th, 1872, drawn payable to Maryett Morrison and signed by A. Al-
 46 lendorph, says, that is the check I gave her. The check was certified before I gave it to her and paid by the bank. Said check is offered in evidence on the part of the de-
 fendants and is marked exhibit D, 2.

I had no knowledge of any claim or pretended claim of the complainant, or any other person, on this property at the time I purchased it. I am not the present owner of the property.

My wife and I conveyed the property to John A. Ben-
 47 nett, of New York City. We conveyed it about the 10th of September, 1862. John A. Bennett paid me \$7,000 for the property. I received that amount, or its equivalent, from Mr. Bennett. I received it on the same day that I conveyed it I think.

Witness being shown exhibit C. 7, says, that is the identical instrument by which I conveyed the property to Mr. Bennett.

And being cross-examined he says:

I reside on Franklin Avenue between 5th street and Spring Place, Morrisania. Fifth street is called 167th street, New York. 48

My wife owns the house we live in ; my place of business is corner of Bleecker and Mercer streets, New York city.

I am a dealer in furniture and upholstery, partly for myself and partly for others ; I sell on commission. There is a firm carries on business at the same place ; the firm is called Mathesius and Frey ; their business is the same ; I am in their rooms ; I have an office and some goods there ; I am not in the employ of this firm ; I do not receive any compensation from them ; my office has been with that firm since 1864, I think ; it may be since 1863 ; since that time I have been carrying on business as I do now ; I sell goods for them, and they pay me a commission when I sell their goods. 49

That is not the bulk of my business, selling goods on commission for that firm : I have no other warehouse than that ; I receive orders for goods and execute them ; I pay the firm I am with a great deal of money for goods they manufacture for me ; they manufacture portions of the articles they sell ; I do not manufacture any goods myself ; sometimes I have a small stock of furniture on hands ; it is only remnants or pieces left over from previous orders ; I do not keep any on hand. 50

I cannot tell what my average nett income has been since 1864 ; some years I have made \$2,000, some years more or less, I can't tell ; I cannot tell what income tax I have paid ; I have paid income tax ; I cannot tell what year I paid for last ; I did not pay any last year ; I could not tell you if I paid any for the year before ; I don't know if I made any return of income for the year before last ; if I made any, I would have made it in our town ; John F. Henry was the assessor ; I don't remember what district it was in ; I don't know who the collector was, he 51

came to Judge Gifford's office to collect; I have lived in Morrisania 18 or 19 years.

52 Prior to the time of my opening my office with Mathesius and Frey, I had a place in Elizabeth street, I think it was No. 49. My business there was desks, &c.; I was in the business for myself; I had a stock of goods I sold at retail generally.

I did not fail there in that business.

Question objected to by defendant's counsel.

I gave up the business because I thought I could do better in the business I am in now. The business in Elizabeth was carried on in my name, as agent for the parties 53 who gave me goods to sell on commission. I sold there partly on commission, part was my own business.

The principal part of the business was commission business.

I was in business at 105 Fulton and 56 Ann street, running through, just before I went to Ann street, there I was in my own name in business.

I think I went there in 1859, and was there up to 1862, I think, I am not certain; I failed in business there.

54 It was a total failure. In my assignment I showed \$8,000 assets over liabilities, but that was not realized. It was a total failure, and there was nothing left. Lorin Ingersoll was the assignee.

As far as my recollection goes, Exhibit D, 1 is in the handwriting of Daniel A. Morrison. I suppose he drew it when it bears date; I don't know where; I don't know where I signed it. I do not remember aside from the date when the agreement was drawn. It was a month or two before the delivery of the deed to me by Daniel A. Morrison.

55 I couldn't swear whether any money passed on the execution of the agreement, but I think one dollar was paid to bind the agreement. It was paid I think to Mrs. Morrison; I think not to Mrs. Morrison; Mrs. Morrison and I signed this agreement together at the same time; I cannot

tell at what place; I think Mr. Morrison was present at the time; the agreement was signed in duplicate; this is my copy, the other was left with Mrs. Morrison.

This property was brought to my notice by Mr. and Mrs. Morrison asserting that they would have to sell the property. When they purchased it, I told them I would take it off their hands at any time at the figure he, Morrison paid for it; by figure, I mean price; I knew that Morrison originally bought this property. 56

At the time the agreement was made, I understood that the property had been sold, and the title to it was then vested in her, Mrs. Morrison. I understood that from their telling me so; they told me they had sold it; I presumed the property had been sold and re-sold to Mrs. Morrison; that is what I understood from them; I don't know that I had any other supposition but what I learned from them. 57

Q. Did you not suppose from what you learned from them or from other sources, that the title to the property had been simply transferred to Mrs. Morrison through a third party, without consideration from her?

I don't know that I had any suppositions in the matter at the time.

Q. Question repeated. 58

I did not know anything of the considerations in the matter at all.

Q. Question again repeated.

I could not answer that question any more direct than I have, because I have no personal knowledge in the matter whatever.

I am related by marriage to Mrs. Morrison, she is my wife's niece.

I have known Mrs. Morrison since her girlhood, for thirty-two years. 59

She has not to my knowledge had sufficient means to purchase this property; I don't know anything about it.

I don't know that I would be likely to know; she was a girl in moderate or poor circumstances; she was not

what would be termed a wealthy person at the time of her marriage.

60 At the time of her marriage she earned her own living by dressmaking or hatmaking or something of that kind; she has been married about twenty years; I, with my family have been on visiting terms with her since then; we were as intimate as relatives usually are, that is, we visited each other occasionally.

At the time of the execution of Exhibit D, 1 Mrs. Morrison said she would have to dispose of the property. I told them I would take the property at the price they paid for it. The contract was then reduced to writing; she gave no reason to me for having to dispose of the property.
61

I don't recollect whether anything was said at that time about the transfer of the property from Mr. Morrison to Mrs. Morrison.

I can't tell you who first asked me to purchase this property, whether Mr. or Mrs. Morrison, or both.

I did not ask either of them any questions relative to the transfer of the property to Mrs. Morrison; I did not think it strange that it had been transferred; I knew that the property had been sold by Mr. Morrison, but did not
62 know it came back to Mrs. Morrison, until just prior to the signing of the agreement; I did not ask any questions of them about the sale or the transfer back to the wife.

I don't think I heard at the time to whom it had been sold; I heard it afterwards, after this agreement, and before the deed to me, that they had conveyed to Mr. Yard; I think it was Mr. Morrison, it may have been Mrs. Morrison who told me, I am not certain; I have seen Mr. Yard; I wouldn't know him if I saw him again; I have no personal acquaintance with him; I suppose he is a lawyer, he
63 has got a sign out; I have been in his office; I couldn't tell you how many times; I presume I have been there twice, once with my wife, the other time I went alone; my impression is that the first time I went there, I went alone;

I couldn't tell you what time that was when I went there alone; I went to get him to make a deed for me to Mr. Bennett; I don't whether he was recommended to me or not for that purpose; I can't say who recommended me. 64

The second time when I went with my wife was to execute the deed.

Mr. Morrison may have recommended him to me; I can't say.

I had never conversed with Yard before this first time I went to his office. I saw him. I may have seen him, but I have no recollection of it.

I have no knowledge of speaking to Mr. Yard about it before the deed from Mrs. Morrison to me. 65

I was not prepared to take a deed for the property when I contracted for it. I always demanded a contract when I purchased real estate. I have bought a great deal of real estate since I have settled up with all my creditors.

I did not cause a search to be made of the property. I took the assurance of the lawyer who drew the deed from Mrs. Morrison to me, that the title was right; he assured me it was right, and I relied upon that.

Last part of the answer objected to by counsel for complainant. 66

I did not employ this lawyer to search the title. Cole was the lawyer's name. I don't remember his initials; his office was in Pine street, N. Y.

This deed was drawn up there, I believe, and executed there. I was present when Mrs. Morrison signed it. I can't tell where Cole lives. Cole was not my lawyer, and was not employed by me in this transaction. I presume he was employed by Mrs. Morrison to make the deed. I can't tell exactly how long I have kept an account at the Bowery National Bank. I suppose about six or seven years. 67

Q. How high have your average bank accounts been?

A. I can't tell how high my account has averaged.

Question and answer objected to by counsel of defendant.

68 I can't tell from where the money came that I paid Mrs. Morrison; it was the gatherings up. I don't keep all the money I have in the Bowery Bank. I have money in the hands of different individuals that is working for seven per cent., instead of lying in the bank for nothing.

Q. Was any of the money you paid for this property derived directly or indirectly from Daniel A. Morrison, Maryett Morrison, or John A. Bennett?

A. No, sir; not a cent.

69 Q. Did any of this money come back to you, directly or indirectly, from Mr. or Mrs. Morrison?

A. No, sir; it did not.

I don't think I had enough in the bank more than a day to draw a check of \$6,500 from, before I drew it.

Being shown Exhibit D, 2, says that the signature "A. Allendorph," stands for Andrew Allendorph; and that check was drawn against my money.

The endorsement under Mr. Morrison's on Exhibit D, 2, "J. W. & Co." I don't know whose it is, who made it, or what it means.

70 That money is from the gatherings up of money that I had. I had money out working at seven per cent.

Q. State from whom you received any of this money?

A. It was from business checks and from moneys I had out.

Q. Did you not in answer to the last question first say that you declined to state anything about your private business?

(Question objected to by counsel for def'ts.)

71 A. That is what I stated a little while ago.

Q. Do you decline to state from whom you received this money?

A. I could not to save my life tell from whom I got all this money.

Q. Will you state from whom you received any of it?

A. Yes, sir; I will do that to a certain extent. I can't remember all of it; my impression is that I had in bank at the time some \$1,500. I received from Pacific Mail Steam Ship Co. checks or check; and I think from Mr. William R. Garrison, agent for Savannah and Brazilian line; I do the work for these lines, and do not remember amounts of these checks; I cannot approximate the amounts, for I don't know. I don't recollect now who the other parties were; I may have borrowed some—I don't know—I did not borrow any from either of the parties in this suit. 72

In 1866 I guess I was not worth property of much value; I had some money, don't know how much. Undoubtedly since then I have acquired what I now have. At that time I was a poor man. 73

Witness being shown Exhibit C, 5, being deed from Maryett Morrison to himself, is asked:

Q. Who wrote on that deed in pencil the words "no publication?"

A. I don't know; I don't know anything about it. I don't know why they were written; I never knew or noticed that it was on there, till you called my attention to it. 74

I did not know that the deed was not to be published.

Mr. and Mrs. Morrison occupied this house from June 10th, when I bought, to September 10th, when I sold. They have paid me rent; they paid me every month when the rent became due; I rented to them by the month. I made a proposition to Bennett to buy this property; I guess it was about the first of September; did not negotiate long about it; don't know whether he took me up at the first offer or not. He paid part cash, and part real estate; I think \$3,000 in cash, the rest real estate; by cash I mean money. The real estate was in West Virginia in Decfield Co.; I have been on the lands. I was cognizant of the purchase at the time Bennet bought it, and knew they would not have bought it if the title was not good. I never examined the title to it. 75

Re-examination in chief:

76 I think I settled with all my creditors in 1866. I am perfectly solvent now, and have been since then.

A. ALLENDORPH.

Taken, sworn to, and subscribed, }
 this 12th day of May, A. D. }
 1873, at Jersey City, before me, }

ISAAC ROMAINE,

Master in Chancery.

77 At which time the examination was adjourned to Monday, May 26th, 1873, at two o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties, when the counsel for the defendant declared the case closed on his part.

JOHN A. BENNETT, a witness produced on the part of the defendants, being duly sworn, on his oath saith :

78 I reside at No. 665 Greenwich street, New York City. I don't know Mr. Phelps, the complainant; I know the defendant Allendorph; I purchased from him and his wife the property described in Exhibit C, 7; I purchased it along the latter end of August or the first of September; I guess it was the 10th of September when I bought it; I paid \$7,000 for it; that consideration has been paid to the grantor Mr. Allendorph. It was paid at or about that time.

79 At the time of the purchase from Allendorph I had no notice of any claim against the property by Mr. Phelps or any one else. I am a *bona fide* holder of this property for a valuable consideration; in my opinion I am the present owner of it.

At the time of the purchase I had no knowledge of any indebtedness from Mr. Morrison to Mr. Phelps.

And being cross-examined, he says :

I am a butcher at No. 6 and 8 Clinton Market, and I live in New York City.

I have lived in New York a little over fifty-two years. 80

Mr. Allendorph and I married sisters, that is all the relation we are. Mrs. Morrison is my wife's niece.

I paid Andrew Allendorph \$7,000 for the property ; I paid \$3,000 in cash and some small checks, and I transferred an interest I had in some real estate for a consideration of \$4,000. The real estate to which I held an interest was in Ritchie county, Virginia, for which I paid \$3,500 in legal money ; I gave him a deed for the property in Ritchie county, Virginia ; four of us bought it together, and I transferred my interest to him. I think there were 506 81 acres.

A man named Miller, one named Conger, the Parkersburg bank of Virginia, and myself bought it ; the Mr. Conger is not Conger the butcher. Miller is named Frederick A. Miller ; he is in Pine street. We bought of a man named Wightman ; we bought it I think in 1865.

The \$3,000, which I paid in cash, I worked for and earned. I sometimes carry more than \$3,000 with me. I do not keep a bank account only in a Savings Bank. I did not draw the money from the Savings Bank ; I received 82 the money in my business ; it is wholesale and retail ; I do not use checks : I don't know what the custom is among butchers ; I pay in money for what I buy ; I have never given but one or two checks in my life ; I think they were on the Savings Bank ; I do not own any other real estate. I have bonds and mortgages ; I hold a bond and mortgage for \$2,800 on property in Lisenard street ; I own some real estate in Monmouth county, in this State ; I expect to have the title in my own name ; I only bought it a little while ago ; I have only got a contract for it ; I have not 83 got the deed. It is in I. B. Aiken's hands, a lawyer who is searching the title for me. Mr. Aiken has been my lawyer for quite a good while, and his brother before him.

The title to this Allendorph property was not searched by me; I got the deed for the property at once without any contract. I didn't have the title searched because I
 84 took his word for it; I had had transactions with him to the amount of thousands of dollars, and always found him right. He told me the property was all right; I don't know whether he told me who he bought it of; I thought he bought it of Daniel A. Morrison or his wife; Maryett A. Morrison I think her name is. He showed me his deed when I bought the property, and gave it to me when he gave me the deed for this property, at the time I paid the money for it. I don't think I had seen the deed to Allendorph before that; I examined it then; I did not have any
 85 lawyer to examine it for me; I did not have any lawyer to examine my own deed. I thought Allendorph ought to know how to draw papers; he had been in the real estate business, and I trusted to him to draw these papers right, and paid him the \$3,000 without having anybody else to examine it. I don't know who drew the deed from Allendorph to me; I know his signature; I don't think he drew the deed, I think he got a lawyer to do it.

It was say a week or two weeks before I got the deed that I negotiated with Allendorph for the purchase; he offered
 86 me the property, and I said I would take it; he offered it to me for \$7,000.

I don't know that I told him anything when he offered me the property for \$7,000; I told him I would take it; there was no more bargaining than that; I told him on the spot I would take it; I did not take the deed on the spot, because I hadn't paid the money; I hadn't the money with me, I had it home; I have always got money home; I don't always carry that amount of money with me.

87 I think it was 227 Seventh street, Jersey City, that Allendorph said he wanted to sell me; he didn't describe it in that way, he said it was the house Morrison lived in. I had been to the house not very often; I had been there after my wife in the afternoon; I had been through the

house not over twice to see how it looked. It was a good while before I bought. The house is No. 227 Seventh street, Jersey City, I think, between Grove and Erie streets, on the South side of the street. The house is three story and basement, brick; I can't tell you how large it is; the house is twenty feet wide, I should think, and I should think it is thirty-five feet deep; I don't give this as positive evidence. 88

I never owned any other real estate in Jersey City, and I never want to own any other either.

Allendorph did not tell me why he bought this house; I can't say that he told me how much he gave me for it; I can't say that he told me how much it was worth. I had it in my own mind from what I had heard; Joe Benson had spoken to me about it; he said property was selling well about there. 89

I had not heard anything else particularly about it. Men in our market had said to me that property was selling well about there.

On the day I got my deed I laid it in a bureau drawer; I left it there six, seven, eight or ten days, and then took it to the Hudson county Clerk's office, myself, to have it recorded. I paid Allendorph for the property eight or ten days before I got the deed recorded. 90

I couldn't tell you what Allendorph did with the Virginia deed; Allendorph has not given me anything for my money but the deed of the house; Daniel A. Morrison lives in that property now. I get rent from him; I get fifty-five dollars a month; I have received five months' rent from him.

I made the bargain with Morrison at fifty-five dollars a month; as soon as I got the deed I went to see about it and made the bargain with him; it was to run from the time I took it; I will pay the taxes and repairs if it is necessary; Mr. Morrison took the house for a year; I don't know how long he will keep it; there is no written lease with me. 91

I bought this property from Allendorph because I thought there was money in it; in the value of it. I think

it is worth \$8,000 to-day; it did not surprise me when I found Morrison had sold the property for \$6,500; it did not interest me. I wasn't making anything for it.

I never had any dealings with Morrison; I sold him one day's meat when he was in the restaurant business; he paid me for it. I did not go to him for his trade, he sent for me and I went, and he gave me an order for one day's meat; I gave it to him good; the next day I didn't get it, and that was the end of that deal. I never knew much about Morrison, although in the same family.

JOHN A. BENNETT,

Taken, sworn to and subscribed this }
5th day of May, A. D. 1873, at }
Jersey City, before me,

ISAAC ROMAINE,
Master in Chancery.

93 At the close of the examination of John A. Bennett the further examination was adjourned to Monday, May 12th, 1873, at two o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties, when the examination of Andrew Allendorph was continued and closed, and at the close of his examination the further examination was adjourned to Monday, May 26th, 1873, at two o'clock in the afternoon, at the same place.

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

94 It is admitted by the counsel of the respective parties that the notice of *Lis pendens* was filed June 11th, 1872, and that a notice of *Lis pendens* on amended bill was filed October 28th, 1872.

Whereupon the examination was by the counsel for the defendant closed on his part.

COMPLAINANT'S EXHIBITS.

EXHIBIT C, 1.

Certified copy of the record of a judgment in Hudson County Circuit Court, recovered May 23d, 1872, for \$5,136 74, debt and costs, in favor of Edward A. Phelps, Jr., against Daniel A. Morrison and James O. Watkins, on bond and warrant of attorney to confess judgment.

95

EXHIBIT C, 2.

Certified copy of a writ of *feri facias de bonis et terris*, issued on the above judgment against both defendants, tested May 23d, 1872; recorded May 23d, 1872, in Liber 8 of Executions, page 122. Returnable May 28th, 1872, and duly returned by the sheriff of Hudson county, to whom the same was issued "*Nulla bona aut tenementa.*"

96

EXHIBIT C, 3.*Deed.*

DANIEL A. MORRISON and MARY
YETT, his wife,

To

W. STERLING YARD.

Dated July 1, 1871. Acknowledged Oct. 12, 1871. Recorded Nov. 6, 1871. Liber 234, p. 280. U. S. Stamp, \$7. Expressed consideration, \$7,000.

97

Purports to grant, bargain, sell, alien, remise, release, convey and confirm to Yard and to his heirs and assigns for ever, the westerly part of lot 25 in block 248, on R. C. Bacot's map of Jersey City, made in 1861. Said part

being 20x100 feet, and being the premises in question.
Habendum in fee. Full covenants and warranty.

98

EXHIBIT C, 4.*Deed.*

W. STERLING YARD

To

MARYETT MORRISON,

Wife of

DANIEL A. MORRISON.

Dated Oct. 9, 1871. Acknowledged Oct. 12, 1871. Recorded Nov. 23, 1871, Liber 234, p. 546. U. S. Stamp, \$7 50. Expressed consideration, \$7,200.

- 99 Purports to grant, bargain, sell, alien, remise, release, convey and confirm to said Maryett, and to her heirs and assigns forever the same premises. Habendum in fee. Full covenants and warranty.

EXHIBIT C, 5.*Paper Purporting to be a Deed.*

MARYETT MORRISON,

Wife of

DANIEL A. MORRISON,

To

ANDREW ALLENDORPH.

100

Dated June 10, 1872. Acknowledged June 10, 1872.

Recorded June 10, 1872, Liber 243, p. 286. U. S. Stamp, \$6 50. Expressed consideration, \$6,500.

Purports to give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to Allendorph and to his heirs and assigns, the same premises. Habendum in fee. Covenants of ownership against encumbrances, right to convey and of warranty. 101

EXHIBIT C, 6.

Deed.

102

DANIEL A. MORRISON

To

ANDREW ALLENDORPH.

103

Dated June 10, 1872. Acknowledged June 18, 1872. Recorded July 20, 1872, Liber 243, p. 660. U. S. Stamp, 50c. Expressed consideration, \$1.

Remises, releases and quit-claims to Allendorph and to his heirs and assigns forever, the same premises. Habendum in fee. No covenants.

EXHIBIT C, 7.*Deed.*

104

ANDREW ALLENDORPH and RE-
BECCA, his wife,

To

JOHN A. BENNETT.

105 Deed Sept. 10, 1872. Acknowledged Sept. 11, 1872.
Recorded Sept. 23, 1872, Liber 246, p. 658. U. S.
Stamp, \$7. Expressed consideration, \$7,000.

Purport to give, grant, bargain, sell, alien, release, en-
feoff, convey and confirm to said Bennett, and to his heirs
and assigns forever, the same premises. Habendum in fee.
Covenants of ownership, against incumbrances, right to
convey, and of warranty.

106

EXHIBIT C, 8.

Copy of account of D. A. Morrison & Co., with Tur-
ner Bros., Bankers.

D. A. MORRISON & Co., in account with TURNER BROTHERS,
Bankers.

Please Examine and Report.

1871.						
	July 1.	C.	\$50	July 1.	C.	\$625
	" "	"	5,000	" 3.	"	4,909 88
107	" 10.	"	500	" 7.	"	578 90
	" 12.	"	72 09	" 8.	"	500
	" 14.	"	213	" 11.	"	235
	" 19.	"	84 59	" 12.	"	220
	" "	"	19 31	" 13.	"	225
	" "	"	191 85	" 15.	"	305
	" 20.	"	148	" 18.	"	375
						Dis.

July 21.	C.	\$25	July 20.	C.	220
" 24.	"	45 65	" 22.	"	350
" 25.	"	310	" 25.	"	260
" 26.	"	62	" 27.	"	350
" 27.	"	36 50	" 28.	"	220
Aug. 1.	"	70 96	" 31.	"	303
" 2.	"	3,000	Aug. 1.	"	500
" " "	"	62 92	" 2.	"	250
" 3.	"	25	" 4.	"	350
" 4.	"	171	" 5.	"	400
" 7.	"	42 15	" 8.	"	425
" " "	"	38	" 10.	"	400
" " "	"	100	" 11.	"	200
" 8.	"	50	" " "	"	500
" " "	"	58	" 12.	"	150
" " "	"	48 21	" 14.	"	100
" " "	"	32	" 15.	"	150 50
" " "	"	156 88	" " "	"	150
" " "	"	125	" 17.	"	210
" 9.	"	78 34	" 18.	"	300
" " "	"	40	" 19.	"	275
" " "	"	127	" " "	"	250
" 10.	"	188 97	" 22.	"	250
" 11.	"	1,000	" 23.	"	275
" " "	"	128	" " "	"	100
" " "	"	92 67	" 24.	"	700
" " "	"	74 40	" 25.	"	135
" " "	"	25 38	" 26.	"	200
" 12.	"	27 90	" " "	"	250
" " "	"	100	" " "	"	250
" 14.	"	29 50	" 28.	"	200
" " "	"	17 50	" 30.	"	200
" 15.	"	24	" 31.	"	200
" " "	"	200	Sept. 1.	"	600
" 16.	"	85	" 5.	"	450
" " "	"	33 25	" 7.	"	350
" " "	"	21 20	" " "	"	450 60
" 17.	"	19 70	" 8.	"	350
" 18.	"	215 71	" 11.	"	585
" " "	"	19 85	" 12.	"	257 70
" " "	"	75	" 14.	"	500
" 19.	"	48 99	" 16.	"	535
" " "	"	48 93	" 19.	"	600
" " "	"	39	" 21.	"	400
" " "	"	1,658 34	" 23.	"	460
" 21.	"	80 78	" " "	"	300
" 23.	"	85 10	" 26.	"	500
" " "	"	79 59	" 27.	"	485
" " "	"	18 50	" 28.	"	500
" 24.	"	478 75	" 30.	"	750
" " "	"	72 83			
" 25.	"	65 52			
" 28.	"	101 40			
" " "	"	500 00			
" 29.	"	37 94			
" " "	"	128 39			
" 30.	"	79 17			
" " "	"	50			
" 31.	"	43 90			

108

109

110

111

	Sep.	2.	C.	\$176			
	"	"	"	100			
	"	6.	"	90 50			
	"	"	"	84			
112	"	"	"	78 34			
	"	"	"	73 31			
	"	7.	"	55 65			
	"	"	"	32 50			
	"	"	"	125			
	"	8.	"	234 56			
	"	"	"	27 50			
	"	"	"	100			
	"	9.	"	125			
	"	11.	"	170 63			
	"	"	"	16 80			
	"	"	"	95			
	"	12.	"	26 17			
	"	13.	"	10 11			
	"	"	"	78 76			
	"	"	"	66 34			
113	"	"	"	33 61			
	"	14.	"	15 50			
	"	"	"	287 50			
	"	"	"	65 76			
	"	"	"	25			
	"	15.	"	15			
	"	16.	"	229 54			
	"	"	"	30 50			
	"	18.	"	338 25			
	"	"	"	74 90			
	"	"	"	22			
	"	19.	"	600			
	"	"	"	57 09			
	"	"	"	28 25			
	"	20.	"	109			
	"	"	"	58 34			
114	"	21.	"	19 94			
	"	22.	"	271 20			
	"	"	"	57 35			
	"	"	"	29			
	"	23.	"	81 13			
	"	25.	"	11 88			
	"	26.	"	44			
	"	"	"	27 95			
	"	27.	"	300			
	"	"	"	69 50			
	"	"	"	37 78			
	"	"	"	22 20			
	"	"	"	336			
	"	"	"	200			
	"	28.	"	346 57			
	"	"	"	121 24			
115	"	"	"	52 92			
	"	"	"	51 72			
	"	29.	"	185			
	"	30.	"	61 71			
	Oct.	3.	"	5,000	Oct.	3.	C. Dis. 4,907 08
	"	"	"	90 43	"	"	" 525
	"	4.	"	269 59	"	5.	" 450

Oct. 4.	C.	\$62 37	Oct. 6.	C.	\$1,000	
" "	"	20 70	" 10.	"	700	
" "	"	44 59	" 12.	"	500	
" 5.	"	1,000	" "	"	1,000	
" "	"	304 78	" 14.	"	2,283 34	116
" 9.	"	484 70	" "	"	450	
" 10.	"	26				
" "	"	1,000				
" 11.	"	84 97				
" "	"	40 84				
" "	"	21 90				
" "	"	58 50				
" 12.	"	140 80				
" "	"	112 69				
" "	"	28 95				
" "	"	125				
" 13.	"	266 76				
" "	"	98 91				
" "	"	88 77				
" "	"	78 75				
" 14.	"	1,000				117
" "	"	49 85				
" "	"	10 50				
" 16.	Balance,	3,153 44				
		<u>\$36,735 70</u>			<u>\$36,735 70</u>	

Oct. 16.	C.	\$55 88	Oct. 16.	Balance,	\$3,153 44	
" "	"	15	" 17.	C.	450	
" "	"	31 20	" 19.	"	375	
" 17.	"	284 14	" 21.	"	400	
" "	"	61 50	" 24.	"	500	
" "	"	60 59	" 25.	"	540	
" "	"	34 12	" 27.	"	400	
" "	"	1,700	" "	"	500	
" 18.	"	168 48	" 28.	"	200	118
" "	"	96 90				
" "	"	39				
" "	"	38 75				
" "	"	19 55				
" 19.	"	20 25				
" "	"	200				
" 20.	"	80 50				
" "	"	298 77				
" "	"	127 74				
" 21.	"	44				
" "	"	34 50				
" "	"	11 50				
" "	"	9				
" "	"	75				
" 23.	"	13				
" "	"	24				
" "	"	10 60				119
" 24.	"	106 64				
" "	"	69 73				
" 25.	"	37 94				
" "	"	26 25				
" "	"	500				
" 26.	"	25 19				

	Oct. 4.	C.	\$150		
	" 27.	"	31 80		
	" "	"	206 69		
	" "	"	20 89		
120	" "	"	57 89		
	" "	"	1,000		
	" "	"	100		
	" 28.	"	93 30		
	" 30.	Balance,	538 20		
			<u>538 20</u>		
			<u>\$6,518 44</u>		<u>\$6,518 44</u>
	Nov. 1.	C.	\$41 40	Oct. 30.	Balance,
	" "	"	71 63	" 31.	C.
	" 4.	"	3,000	Nov. 3.	"
	" 8.	"	25 20	" 7.	"
	" 9.	"	140 78	" 8.	"
			<u>140 78</u>	" 10.	"
			<u>\$3,279 01</u>	Dec. 2.	Balance,
121			<u>\$3,279 01</u>		
	Dec. 2.	Balance,	55 81	Dec. 30.	By profit and loss,
			<u>55 81</u>		55 81

DEFENDANT'S EXHIBITS.

122

EXHIBIT D, 1.*Contract.*

" Article of agreement made and entered into this fifteenth day of April, 1872, between Maryett Morrison, of Jersey City, State of New Jersey, party of the first part, and Andrew Allendorph, of Morrisania, Westchester county, State of New York, party of the second part, Witnesseth :

123

" The said party of the first part, in consideration of the sum of one dollar to her in hand paid, the receipt whereof is hereby acknowledged, hereby agrees to sell unto said Andrew Allendorph, all those certain premises and improvements known as number (227) two hundred and twenty-seven South Second street, in the city of Jersey City, for the sum of (\$6,500) sixty-five hundred dollars, which the said Andrew Allendorph agrees to pay to the said Maryett Morrison, as follows :

" The said Andrew Allendorph agrees that within 124 sixty days from the date hereof, to pay in cash the full sum (\$6,500) of sixty-five hundred dollars, and in default thereof to forfeit the sum of one thousand dollars (\$1,000) to the said Maryett Morrison, her heirs and assigns.

" And the said Maryett Morrison, on the payment of the said sum of (\$6,500) sixty-five hundred dollars agrees, at her own proper cost and expense, to execute, acknowledge and deliver to the said Andrew Allendorph, a good and sufficient deed for the conveying and assigning to him the said premises, free from all incumbrance.

125

" It is understood and agreed that the foregoing stipulations are to bind the heirs, executors, administrators and assigns of the parties hereto.

126 “In witness whereof, the above-named parties have hereunto set our hand and seal this fifteenth day of April, in the year eighteen hundred and seventy-two.

Witness :

MARYETT MORRISON, [L.S.]
ANDREW ALLENDORPH, [L.S.]

“D. A. MORRISON.”

{ U. S. Rev. Stamp, 5c. }
Cancelled. }

127

EXHIBIT D, 2.

Bank Check.

‘No. 529.

“New York, June 10th, 1872.

“The Bowery National Bank, of New York, pay to Maryett Morrison, or order, six thousand and five hundred dollars.

“\$6,500.

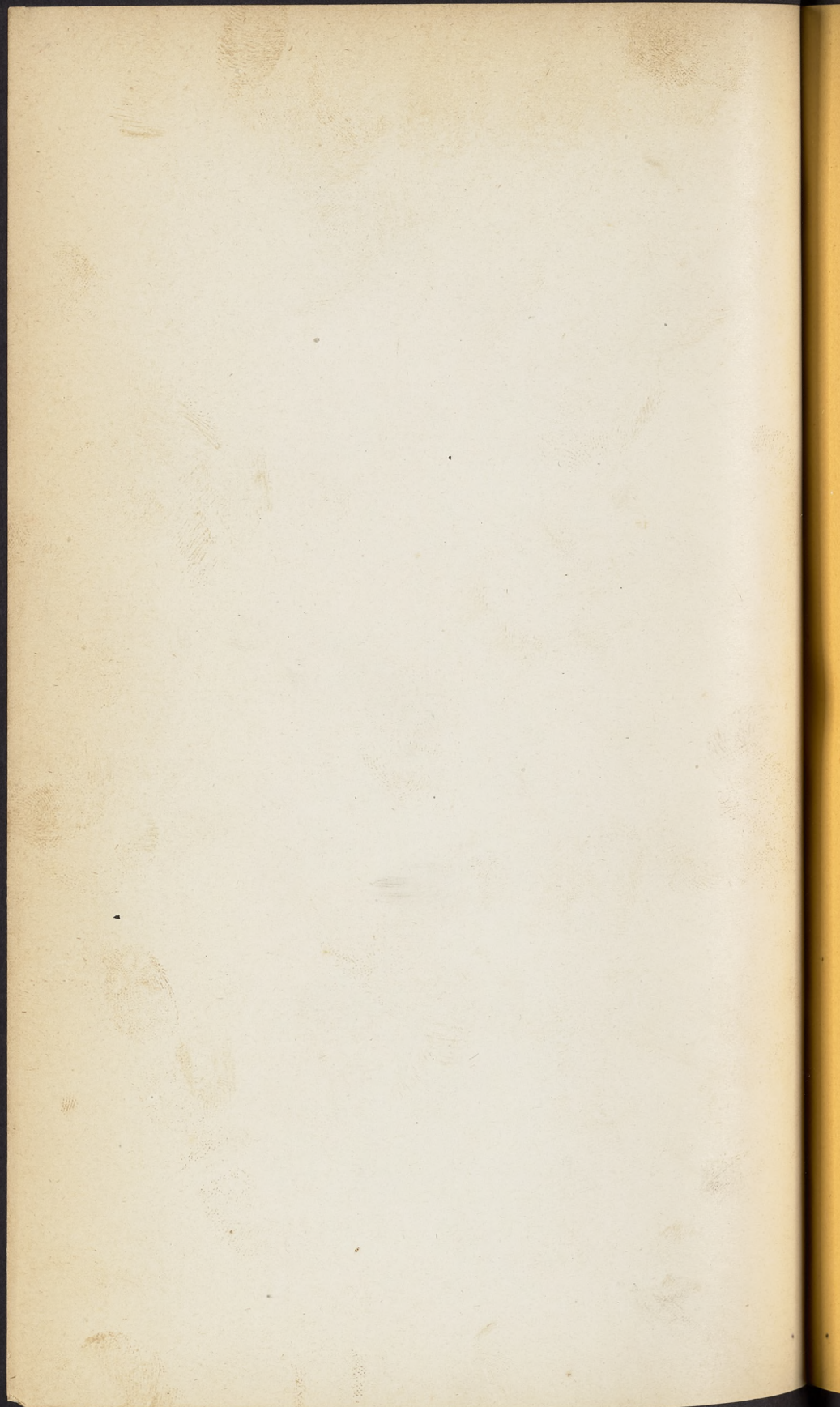
“A. ALLENDORPH.”

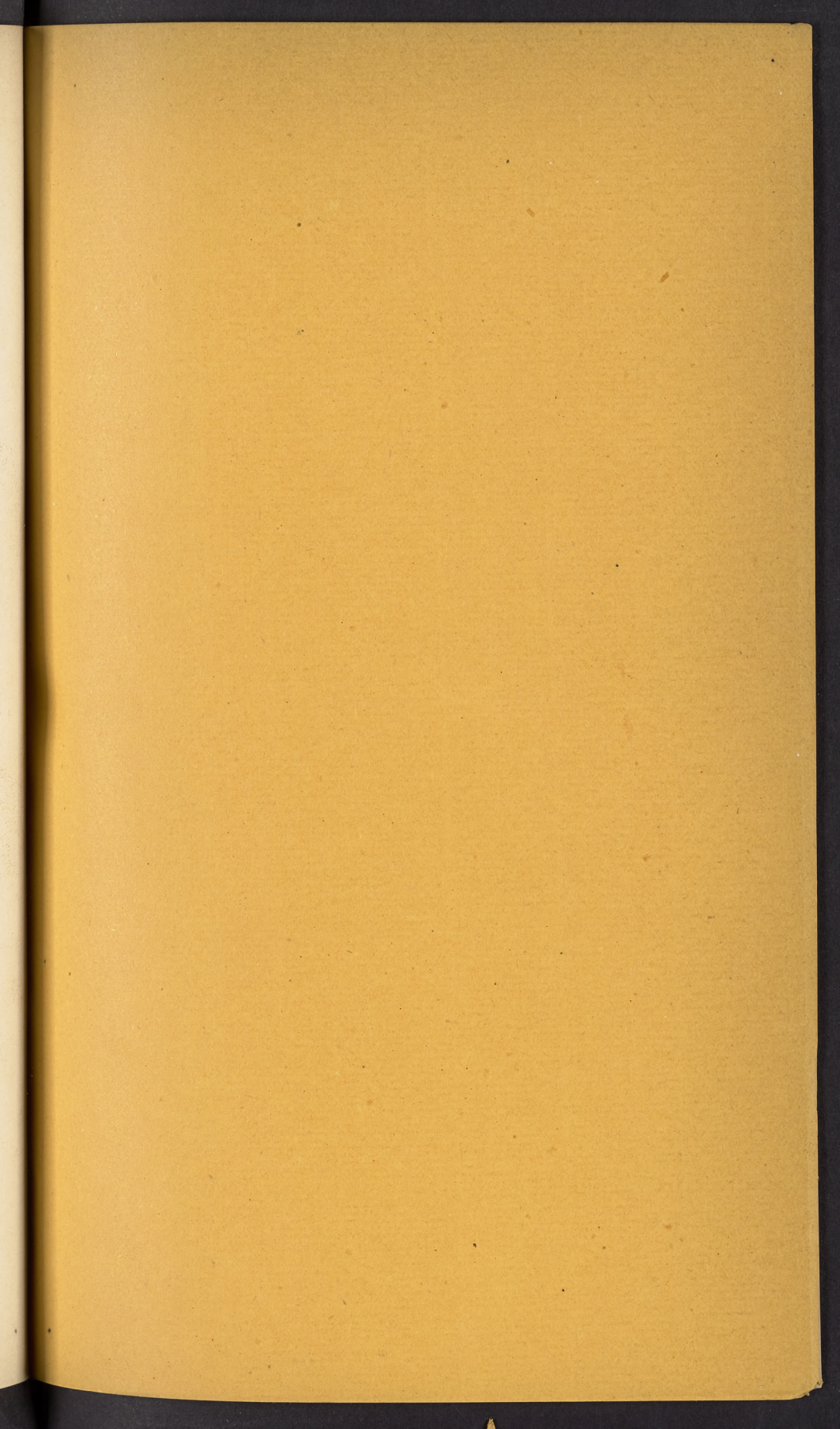
128 (Endorsed,)

“MARYETT MORRISON,
“J. W. & Co.”

{ U. S. Rev. Stamp, 2c. }
Cancelled. }

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