Court of Errors & Appeals.

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Between JAMES P. CRANE, ET ALS., APPELLANTS, *and* THE HOMŒOPATHIC MUTUAL LIFE INSURANCE CO., APPELLEES.	ON APPEAL.

POINTS.

I. The evidence establishes a usurious agreement in respect to the loan, secured by the mortgage set up in the Bill, either

1.—Directly, by the retaining of the premium of Insurance; or

2.—Indirectly, in that the Life Insurance policy was a mere cloak or cover for retaining a usurious interest on the loan.

II. The usurious contract is sufficiently set forth in the Answers of the Appellants, the Defendants below.

IN CHANCERY OF NEW JERSEY.

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Between
THE HOMŒPATHIC MUTUAL LIFE INSURANCE CO., *Complainants,*
and
JAMES P. CRANE, *and als.,*
Defendants.

Testimony.

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An examination of witnesses in the above cause on the part of the complainants, in the presence of the Solicitor of the said complainants, and of the Solicitor of the defendants, notice having been admitted by them, and the testimony taken before me as Master, by consent, this twenty-third day of June, eighteen hundred and seventy-three, at four o'clock in the afternoon of that day.

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THORNDIKE D. HODGES, the Solicitor of the complainants, being duly sworn as a witness for them, deposed:

I saw John R. Crane sign this paper,

[Bond dated the first day of August, one thousand eight hundred and seventy-two, signed Jno. R.

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Crane, and marked Exhibit A, *ex parte*, Complainants.]

and that is my signature as subscribing witness.

[Exhibit shown witness.]

Cross-Examined by Solicitor of defendants.

I examined the title to property of Mr. John R. Crane, which
10 was given as security for Exhibit "A." I drew Exhibit "A," and the mortgage purporting to secure it; both of them. Exhibit "A" was executed in the office of J. R. & N. English, 175 Broad Street, Elizabeth, New Jersey. I had at the time the eleven thousand dollars mentioned in Exhibit "A," in my possession, in bank. I could not tell what I did with that eleven thousand dollars, without referring to my books or memoranda. I made out a statement of the disposition of the eleven thousand dollars for Mr. Halstead, Mr. Crane's administrator, and also for Mr. Crane himself.

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Witness being shown paper writing, marked Exhibit "1," *ex parte*, Defendants, says:

That is a statement of the disposition of the eleven thousand dollars mentioned in Exhibit "A." That is in the handwriting of my clerk, and is signed by me. The items of the disposition of the eleven thousand dollars in this statement were paid by me, so far as I recollect.

Q. To whom was the first item of $1,004.69-100 paid, and when, where and in what manner?

30 A. It was paid to John R. Crane, by a check, dated August twelfth, A. D., 1872, in the office of J. R. & N. English, at the same time of the execution of Exhibit "A." It was paid by my check, which I now produce.

[Which check is marked by the Master, Exhibit "2," *ex parte*, Defendants.]

This check is drawn to the order of John R. Crane, and was delivered to him. He endorsed it then in my presence to the order of the complainants, and I wrote upon the back over his endorsement, "Pay to the order of The Homœpathic Mutual Life Insurance Company, of New York"; I think I wrote that before he endorsed it. After he endorsed it, the check was handed back to me; I sent it to the complainants within a short time.

Witness being shown paper writing, purporting to be policy of insurance by complainants, on life of James P. Crane, which is marked Exhibit "3," *ex parte*, defendants, says: I have seen this paper writing before; I had it in my possession for a week or more, immediately prior to the execution of Exhibit "A"; I received it from the New-York Counsel of complainants, Stewart L. Woodford. I delivered it to John R. Crane, in exchange for check marked Exhibit "2," *ex parte*, defendants. I am sure that the delivery of the bond, Exhibit "A," and the policy of insurance, Exhibit "3," and the check, Exhibit "2," took place not earlier than August twelfth, A. D., 1872, the date of the check; probably it took place about four days after that time. Exhibit "A," was executed the same day it was delivered; that is my impression. Exhibit "3," was executed and sealed, as it appears to be now, at the time it was delivered to me by mail, by Mr. Woodford. It was sent to me, on behalf of complainants, to be delivered to Mr. Crane, as a policy of insurance upon the life of his son. I know the signature of the Secretary of the Company, Mr. Frank B. Mayhew; this is his genuine signature appended to this policy. At that time D. D. T. Marshall, was President of the complainants. I do not think that Exhibit "3," was sent to me before the first day of August, A. D., 1872.

THORNDIKE D. HODGES.

Sworn and subscribed before me, this 23d day of June, A. D., 1873,

HOWARD RICHARDS,
Master in Chancery.

EDWIN M. KELLOGG, a witness on the part of the complainants, being duly sworn, deposed and said; I am the Vice-President of the Homœopathic Life Insurance Company, the complainants. No interest has been paid to the Company upon the bond, marked Exhibit "A."

E. M. KELLOGG.

Sworn and subscribed before me, this 23d day of June, A. D., 1873,

HOWARD RICHARDS,
10 *Master in Chancery.*

The complainants' Solicitor gave notice that the testimony for the complainants was closed.

June 23d, 1873.

HOWARD RICHARDS,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

Between THE HOMŒOPATHIC MUTUAL LIFE INSURANCE CO., *Complainants,* 20 *and* JAMES P. CRANE, *and als.,* *Defendants.*	*Testimony for Defendants.*

An examination of witnesses in the above cause on the part of the defendants, in the presence of the Solicitor of the said complainants, and of the Solicitor of the defendants, notice having been admitted by them, and the testimony taken

before me, as Master, by consent, this twenty-third day of August, eighteen hundred and seventy-three.

JAMES P. CRANE, a witness produced on the part of the defendants, being duly sworn, deposed:

I reside in Elizabeth, New Jersey; I am clerk in a lawyer's office, in the City of New-York, in the office of Beach & Brown; I am son of the late John R. Crane; my father lived in this City, Elizabeth, at the time of his death; he died the first of October, 1872; his health had not been very strong for two or three years before his death; the year immediately 10 preceding his death, his health had been very bad; during the time of his sickness, I aided him in the transaction of his business, to some extent; I know the complainants as a Corporation in New-York City; I know of a transaction my father had with them during the year prior to his death; it was procuring the loan from them on bond and mortgage; as his agent, I acted in that transaction; about the first of July, 1872, my father wanted me to obtain a loan for him of ten or eleven thousand dollars, on his house and lot in Elizabeth, in which he resided; I endeavored to obtain it in the City of New-York. 20 I applied to a broker, named Davenport, whose first name I do not remember, and whose office was in Broadway, about 183 or 185; through him an application was made to the complainants; I went to the office of the complainants about the fifteenth of July, possibly sooner, I suppose, and there made an application to them for a loan; my impression is, I applied to the officers of the Company; I think it was to Frank Mayhew and Dr. Kellogg; I filled up a printed blank application, or one was filled up in my presence for me; I signed the name of John R. Crane to the application; they 30 informed me that the property would be appraised by their appraiser in Elizabeth, New Jersey; I called again at the office of the Company, after the appraisement had been made; I think I saw the President of the Company, Mr. Marshall, who informed me that the application would be submitted to

the Board of Directors of the Company; the next thing I recollect about, is meeting Dr. Kellogg, the Vice-President of the Company, in Jersey street, in Elizabeth; I told him I hoped they would make that loan, as I wanted to get away; this was about the seventeenth, or between the tenth and twenty-fifth days of July, 1872; I asked him if he thought they would; he said he thought it likely, on account of the bonus; I am not certain of the words he used, except the word "bonus"; I am certain he used the word bonus; some time
10 afterwards, perhaps a day or two, I went to the office of the Company to inquire about it, and saw the President, Mr. Marshall; I am not certain whether the Board of Directors had met or not at that time, but I called there several times with regard to this loan; on one occasion he informed me, that is, the President, Mr. Marshall, told me the Board of Directors had considered the matter, and had referred the matter to himself and Mr. Woodford; he either told me at that time or at another time, after he had consulted with Mr. Woodford, as I suppose, that they would grant this loan of eleven thousand
20 dollars, provided the Company could make a thousand dollars.

[This last testimony objected to by the complainants' Counsel, as hypothetical.]

I submitted the proposition to my father, Mr. John R. Crane; he finally accepted the proposition; he accepted it, as he told me, because he must have the money.

[Conversation between witness and J. R. Crane, objected to as hearsay, secondary and incompetent evidence.]

I went to the office of the Company to so inform them; I
30 went with the Secretary, Mr. Mayhew, to the office of Mr. Woodford, to have the matter closed. Mr. Woodford asked me if the mortgage was already drawn or in existence at that time. That was about the twentieth of July, 1872; I told him

no; he then said he did not see how they could make the loan; I then suggested that Mr. Crane make a mortgage to me for eleven thousand, and I sell it to the Company for ten thousand dollars; he said it could not be done; it would be a mere evasion of the usury law; I then suggested insuring my life in the Company; he said he thought that might do; then Mr. Woodford met me at the office of the Company, and told either one of the officers of the Company, the President, Vice-President or Secretary, I don't remember which, that they would grant the loan, provided I was to take out a policy of life insurance in 10 their Company, which would pay them a thousand dollars; I told them I did not care what kind of a policy it was, as the object was to produce just that amount, one thousand dollars; this last statement was made either to the President or Secretary, not to Mr. Woodford; in a conversation with Mr. Woodford, in reference to the matter; he told me when I returned that he would buy this policy from me, that it was not to come back to the Company for sale, but to be taken to him.

The next day or the day after, I was examined by the phy- 20 sician at the Company's office; I don't know his name; I was unwell at the time; I was going away that afternoon for my health; that was the twenty-fifth day of July; the Doctor told me he would not pass me, that I would have to wait 'till I got well; I told him the object of the policy was to allow the Company to make a thousand dollars on a loan on bond and mortgage; he went out and spoke to one of the officers of the Company; he returned to me, and said "Then its all right; I'll pass you."

[The conversation with the Doctor objected to by 30 complainants' Counsel, as incompetent.]

During my interview with Mr. Woodford, he was informed that I intended going away; I did not receive the policy of insurance from the Company at the time of my last interview;

I never received it myself from the Company; I received it from some member of my family in Elizabeth.

Witness being shown Exhibit 3, *ex parte*, Defendants, says: This is the policy I speak of; I never paid the premium on this policy, or any part of it; no part of this transaction commenced as early as April eighth, 1872; the earliest it commenced, was after the first of July; I returned, I think, in the latter part of September, 1872, and received this policy on my return; some time after that, the date I can't tell, I took it to
10 Mr. Woodford's office, and asked him to buy it; he looked at it and informed me that it had expired; the transaction of procuring this loan was agreed on in New-York; I know nothing about the execution of the papers securing the loan; I was away when they were executed.

Cross-Examined by T. D. Hodges, Counsel for Complainants.

Mr. Davenport went with me to the office of the Company. I have never seen him since; I never paid him any commission.

[The last answer objected to as irrelevant.]

20 I don't think he ever made any demand on me for any commission; he said something about a commission, when we started the thing about the 17th or 18th of July.

I met Dr. Kellogg at nine o'clock in the morning; it was about one hundred and fifty feet west of Union Street, on the north side of Jersey Street; it was very pleasant weather; he was walking down to the depot, and so was I. I quickened my pace and joined him; I never knew him, before I went to the Company's office, for the first time; the first thing I said was about this loan, and expressed my hope that the Com-
30 pany would grant it; the substance of his answer was, that they would grant the loan on account of the bonus; I am positive of the word, bonus; I said I hoped so, or something to

that effect, I don't know what; I don't know that he made any reply; we did not then separate; I think we went to the depot together, perhaps to New-York together; I think we dropped the subject then and there; I will not swear that this was all that passed between us on that subject; it is all I recollect; I will swear that that is all I recollect; I had full authority from my father to do all that I did in this transaction; I first went with Mr. Mayhew to the office of Mr. Woodford, not earlier than the tenth and before the twenty-fifth of July, 1872. 10

My first interview with Mr. Woodford was at the office of the Company, just after an adjourned meeting of the Directors; I don't recollect the conversation between us at that interview; it was in reference to this loan; I can't recollect the conversation; the next interview was at his office, I think; this is the interview to which I referred in my direct-examination; Mr. Mayhew was present; whether he remained I don't recollect; my impression is, that he did remain; I don't recollect who first introduced the subject of the loan; the first remark, that I recollect, was Mr. Woodford's asking me 20 whether the mortgage was already in existence and executed; I told him, no; I don't recollect what remark led to this question; I don't recollect who introduced the subject of the loan; Mr. Woodford came to ask that question, by the subject of the loan being brought up; I don't recollect that anything had been said about a discount on the mortgage; there might have been.

The further examination of this witness is, by the consent of the Counsel for the parties, postponed, until after the examination of the next witness, D. C. Halstead. 30

DAVID C. HALSTEAD, a witness, produced on the part of defendants, being duly sworn, deposed and said:

I reside at Bergen Point, Hudson Co., N. J.; I am one of the defendants in this case, as Administrator of John R.

Crane, deceased; I knew him before his death, and since childhood; I knew in his lifetime that he procured a loan from the complainants; some time after I became Administrator, I called at the office of Mr. Hodges, and was accompanied by my request by James P. Crane; Mr. Hodges not being in, I requested his clerk to have Mr. Hodges to supply Mr. Crane, or some member of the family, with a detailed statement of this money transaction between the complainants and John R. Crane; I called again at the office, and saw Mr. Hodges; he
10 stated to me that he had sent me this statement, and had handed it to one of the young men at the house of the late John R. Crane; I went there and got the statement.

Witness being shown Exhibit No. 1, *ex parte*, defendants, says: This is the statement I got.

I was personally cognizant, that on the nineteenth day of August, 1872, at the office of Mr. English, Attorney, in this City, I met Mr. Hodges with Mr. Crane, and knew that Mr. Crane then agreed with Mr. Hodges to perfect a mortgage for a sum to be loaned to him; I do not know the sum; there
20 had been a disagreement in relation to the perfecting of this matter on account of a judgment, and it was understood at that time, that it was to be paid out of the loan. The estate of John R. Crane, of which I am administrator, is insolvent.

I have not found any personal estate, except that taken by the widow and family.

The inventory of the whole of the personal estate amounts to $194.80-100.

There are claims against the estate to the amount of $40,000, including in that amount, mortgages, judgments and claims
30 sent in, exclusive of complainants' mortgage; the claims exceed the fair market value of all the real estate of which he died seized.

[All the above testimony is objected to as illegal, irrelevant and secondary.]

Cross-Examined, by T. D. Hodges.

I don't think I saw the mortgage delivered to you at the interview, at the office of Mr. English; I do not think I understood that the transaction was closed at that time.

Re-Examined, by Mr. Magie.

Q. Please state what you mean by the transaction being closed?

A. I mean that the money balance was not paid to Mr. Crane; the mortgage was not delivered to my knowledge.

D. C. HALSTEAD. 10

Sworn and subscribed before me, August 23d, 1873,

HOWARD RICHARDS,
M. C. C.

The examination was here adjourned by consent of the parties, to Thursday, August 28, at 10 A. M., at my office.

HOWARD RICHARDS,
M. C. C.

The *Cross-Examination* of James P. Crane, resumed, this twenty-eighth day of August A. D., 1873, at my office, at 20 Elizabeth, in the presence of T. D. Hodges, for the complainants and W. J. Magie, for the defendants.

I cannot state anything further, as to anything being said as to a discount on the mortgage, than I have already stated; no one else but Mr. Mayhew was present, to my knowledge; it was somewhere about the middle of the day; it was in a lawyer's private office; I presume Mr. Woodford's private office; I can't tell whether it was a rear or a front room; I don't recollect saying to either of the officers of the Company, (the complainants,) that there was a mortgage in existence on the 30 premises in question for sale. When Mr. Woodford said that if the mortgage was not in existence, the loan could not be made, I suggested that I should take a life Insurance Policy

in their Company, the premium on which would pay them a thousand dollars; this was after I had suggested that my father should make a mortgage to me, to be sold to the Company, and after Mr. Woodford had rejected the suggestion; he said, a new mortgage to me would not do, because it would be an evasion of the usury law; in answer to my suggestion, that I take a life policy, he said, "That will do," or words to that effect; I can't give the words in any other way; I don't recollect any remark made by Mr. Mayhew, after the introduction of me to Mr. Woodford; when he presented me, he told Mr. Woodford what business I came for; I can't give you his words; the whole interview was in regard to obtaining this loan; when Mr. Woodford said the life policy would do, I said that was satisfactory; I don't recollect any further remark of his; I think I left; my impression is, my next interview with Mr. Woodford was at the Company's office.

Q. Are you sure?

A. I can't give you any further answer. I am sure I met Mr. Woodford at the Company's office, after seeing him at his own office; my impression is, that Mr. Woodford stated to either the President or Secretary, or perhaps both, that they would grant the loan, provided I would take out a policy; not more than a few days elapsed between those two interviews; it was at least, one day, I think; I don't recollect whether I met Mr. Woodford by chance or by appointment, there at the office of the Company; I did see him there; I don't know whether he was there when I got there, or whether he came in afterwards; I think the clerks were all there; my attention was not called specially to that; I think we had this conversation in the Directors' room.

Q. Are you sure to which officer Mr. Woodford said that?

A. I can't give you any further answer to that question; it has been already given. I don't recollect whether Mr. Woodford remained during the whole of that interview with the officers of the Company; I think he left; I don't recollect whether he was present or not; when I said I did not care

what sort of a policy it was, I did not fix at that interview what kind of a policy it should be; all that I recollect was said on that subject was, that I did not care what kind of a policy it was, as long as the premium netted the Company the amount required; I don't recollect any reply made to that remark of mine; I don't recollect anything said prior to that at that interview; I met Mr. Woodford altogether, I think, four times; twice at the office of the Company, and twice at his office in Broadway; I think the first time it was at the office of the Company; I can't give the date any more than I have; it was, I think, immediately after the adjournment of a meeting of the Directors; I think the second meeting was at his office in Broadway; I think the third was at the office of the Company, and the fourth was at his office in Broadway; the fourth interview was after the fourth of October; it may have been as late as December; I think I have said something about the first interview before, during this examination; I don't recollect the words that were said at the first interview; I can't give you any further answer than I have done; the subject of this loan was brought up for discussion; I don't know; I don't recollect whether any one else was present; I think there were; I think some of the officers of the Company were present; I don't recollect what was said by the officers of the Company at the first interview, at which Mr. Woodford was present.

Witness being shown paper writing marked Exhibit "C," *ex parte*, complainants, says: "The filling in of that is in my handwriting, except the words, "two stories and French roof;" the endorsement is not in my handwriting.

I cannot tell whether it was the first time or not, that I saw Mr. Marshall, that he told me, the Directors had referred the matter to himself and Mr. Woodford; I was in the office of the Company, when he made that statement to me; I don't know who else was present in the room; I think there were several in the room; I think no one else participated in the

interview; I am quite certain Mr. Woodford was not present at that interview; I don't recollect that I made any remark in answer to Mr. Marshall; before he made it I conversed with him, in relation to the loan; I can't remember what he said; I was making a verbal application for this loan. I don't recollect anything further said by Mr. Marshall at that interview; the next time that I saw him was a few days after, at the office of the Company; I think he then told me that he and Mr. Woodford had considered the matter, and that they
10 would make this loan of eleven thousand dollars upon this property, provided they could make for the Company, a thousand dollars out of it; that was the first time the one thousand dollars was mentioned to me, by any of the officers of the Company; I don't recollect my ever making any such proposition to them, prior to that interview; I think there was some one else present in the room, when Mr. Marshall made that proposition to me; I think no one else participated in the interview; there may have been some one else within hearing; I don't know; I think Mr. Woodford was not
20 present; I think it was previous to the interview at his office; my impression is, that it was after I had seen Mr. Woodford for the first time; it was after I had been informed that the matter was referred to Mr. Marshall and Mr. Woodford, that I was told that they would take the loan, provided the Company could make a thousand dollars out of it; I don't recollect who told me it was referred to them; my impression is, it was Mr. Marshall himself.

Q. Were you told that the matter had been referred to Mr. Marshall and Mr. Woodford, after the interview with Mr.
30 Woodford, and which you say occurred at the office of the Company, just after the adjournment of the Directors' meeting?

[Question objected to, as contrary to the rules, by Mr. Magie, defendants' Counsel.]

A. I think it was after.

[The complainants' Counsel having stated that the last question was taken down, in order to correctly understand the evidence; the defendants' Counsel withdrew his objection.]

I think Mr. Woodford told me, that as this was a New Jersey property, the examination of the title must be referred to a New Jersey Attorney; I don't recollect his saying, that the matter must be closed in New Jersey; I don't think he did; I don't recollect Mr. Woodford saying, that as an additional reason for sending the matter to New Jersey, he desired to deal with his father, the principal; before my father's death, I did not receive a letter upon this matter, from either of the officers of the Company or its Counsel; I do not know of any note being sent; I do recollect seeing at my house some notes from Mr. Hodges, to my father, about October, in relation to this business.

[The last answer objected to as irrelevant and incompetent.]

I have not got those notes; I don't know where they are; I cannot state their substance.

[These last two answers objected to as irrelevant and incompetent, by the Counsel for defendants.]

Re-Examined by Mr Magie.

Mr. Mayhew accompanied me to the office of Mr. Woodford, for the purpose of this loan, of consulting him in relation to it; I don't think he was to be consulted upon any specific point in regard to it; I think it was just in general; the premium upon the life policy was to be paid out of this loan; when I made the application for the policy, I was in the Company's office; it was in writing; it was partly in print;

a blank form to be filled up; it was partly filled up, when I signed it; after I signed it, it was left with the Company.

Then the defendants demanded the production of the application afore mentioned, and it was produced by complainants' Counsel, and being shown to the witness he says: This is the application I speak of.

[The paper marked Exhibit No. 4, *ex parte*, defendants.]

The following blanks were not filled, at the time I signed it;
10 those in the upper right hand corner, within the lines forming a square, occurring after the words, "*These blanks to be filled at the office.*" There was no writing within that square, at the time I signed it; in section No. 5, there were no erasures, figures, pen marks or writing, all the way across the page, at the time I signed it; as far as I perceive, the rest of the application was filled up as it is now; Mr. Mayhew signed it at the time I did; I had the interview with the doctor, the same day; I think it was the twenty-fifth day of July; I signed the questions on the back of Exhibit No. 4, at my examination by
20 the Doctor; the Doctor at that time filled in some of the blanks, but the words, "*five years endowment,*" were not there at the time I signed it; I had given the name of my usual medical attendant, in my application; I was not required to procure his certificate; so far as I know, it was not procured; I had also given the name of an intimate friend who could be referred to, as to my state of health, in my application; I was not required to produce any certificate from him, and so far as I know, no certificate was obtained; no amount for which I was to be insured was specified; that they were to
30 fix afterwards.

Q. In what way was the amount you were to be insured for to be calculated and fixed?

[Objected to as incompetent, and because it re-

quires the witness to testify to results, and not to facts.]

A. Any way to make the premium amount to a thousand dollars; I know this by conversations with the officers of the Company at the time; I had never previously applied to this Company for insurance.

Q. Would you have made this application for insurance, but for the purpose of enabling your father to procure the loan?

[Objected to as incompetent and irrelevant.] 10

A. I would not.

Q. What was your father's pecuniary condition then?

[Objected to as incompetent, irrelevant and immaterial.]

A. He was pressed for money; I have no pecuniary interest in this suit, as the estate is insolvent.

[Objected to as immaterial.]

Re-Cross-Examination, by Mr. Hodges.

In stating that the amount of the policy was to be fixed, so as to produce the Company a thousand dollars premium, and 20 that I knew it by conversations with the officers of the Company; I referred in part to the conversation already detailed, and partly to the conversation with the Doctor, at the time the examination was made; the amount of the policy was not filled up, and the Doctor asked me about it, and I referred him to the Secretary; I told the Doctor I did not know what the amount of the policy was to be; I don't recollect what the Doctor said; the amount of the policy was not fixed by me at any time; that is all I recollect of that conversation; there

was no other conversation that I can refer to; none that I can recollect; I can't say, of my own knowledge, that he spoke to any officer of the Company; I know he did not go out of the office; he went to another room and returned; I cannot state positively whether the signature of "F. F. Allen," was upon the back of the application (Exhibit No. 4) at the time I signed to the left on the back.

JAMES P. CRANE.

10 Sworn and subscribed before me, this 28th day of August, 1873,

HOWARD RICHARDS,
M. C. C.

The examination was adjourned to Saturday, the twentieth of September, at ten o'clock A. M., by consent of both parties.

H. RICHARDS,
Master.

The defendants offer in evidence, the paper writing containing the account made by T. D. Hodges, marked Exhibit No. 1; also a check on the National State Bank at Elizabeth, to 20 the order of John R. Crane, dated August 12th, 1872, for $1,004.69-100, endorsed John R. Crane, to the order of the Homœopathic Life Insurance Company of New-York, marked Exhibit No. 2, and also policy of insurance, issued by complainants, on life of James P. Crane, for $8,800, marked Exhibit No. 3; also application of James P. Crane to complainants for an insurance, marked Exhibit No. 4; also a stipulation made by the Solicitors of the respective parties, for the admission of extracts of certain Laws of the State of New-York, and marked by me as Exhibit 5, *ex parte*, de- 30 fendants.

Before closing the complainants' testimony the paper writing, marked Exhibit "B," being the mortgage in the bill mentioned, was duly offered in evidence, and marked by me as aforesaid, on June 23d, 1873. This minute is made by the consent of the defendants' Solicitor.

IN CHANCERY OF NEW JERSEY.

Between THE HOMŒOPATHIC MUTUAL LIFE INSURANCE CO., *Complainants,* *and* JAMES P. CRANE, *and als.,* *Defendants.*	*Testimony.*

An examination of witnesses on the part of the complainants, in rebuttal of the testimony of the defendants, taken before Mr. Howard Richards, one of the Examiners of this Court, at my office, in Elizabeth, on the twentieth day of September, A. D., 1873, in the presence of the Counsel for the complainants, T. D. Hodges, Esq., and of Wm. J. Magie, Esq., of Counsel with the defendants, due notice thereof having been acknowledged. 10

EDWIN M. KELLOGG, a witness for the complainants, being duly sworn, deposed:

[Defendants' Counsel objects to their examination of this witness, because he has been previously examined in this case and dismissed by complainants.] 20

I remember meeting Mr. James P. Crane, in July, 1872, or rather his overtaking me in Jersey street, in Elizabeth; it was in the morning when I was going to New-York; he went to the depot with me; I don't recollect that he went to New-York with me; I remember seeing him only once at about that time and place; my recollection of the conversation was

that it principally was that his father was fond of a game of whist, and invited me to come to his house some evening while I was staying at Elizabeth; he also asked me what the prospect was of the complainants making the loan for which he had applied; to which I answered, that I could not say, as that was not in my department; that comprised all the conversation, as far as I can remember; it was over in a few moments. I have no recollection of Mr. Crane using any such word as bonus; I did not say anything to him about a bonus
10 in connection with that loan; to the best of my knowledge or recollection the word bonus was not used in that conversation by either of us, nor any word of like import; previous to that I used to see Mr. James P. Crane at his Aunt's, frequently, when he was a lad, ten or twelve years ago; his Aunt married my Uncle, Elijah Kellogg. When Mr. Crane first met me at the complainants' office and learned my name, he recognized me as having known me before.

Cross-Examined, by Mr. W. J. Magie.

When I said James P. Crane alluded to a loan for which
20 he applied; I mean for which he applied in behalf of his father; at the interview in the Company's office when I told him who I was, he recognized me by saying, "I remember seeing you in Elizabeth," or words to that effect; when I had previously seen him in Elizabeth he was a lad from eight to twelve years old, or thereabouts.

And being *Re-Examined*,

When I said that I don't recollect that he went to New-York with me, I mean that I do not know whether he was on the same train; I separated from him at the depot, and saw no
30 more of him that day.

E. M. KELLOGG.

Sworn and subscribed, this twentieth day of September, 1873,

HOWARD RICHARDS,
Master.

The further examination of witnesses for complainants, was adjourned by the consent of both parties, to October 4th, at one o'clock P. M., at my office.

HOWARD RICHARDS,
Master.

Examination continued on the twenty-sixth day of December, A. D., 1873, before me, in the presence of T. D. Hodges, for complainants, and of W. J. Magie, for defendants.

TIMOTHY F. ALLEN, a witness produced on the part of the complainants, being duly sworn according to law, deposed and said: 10

I reside at No. three (3) East 33d street, New-York; I have been practising as a physician, in New-York, for about ten years. I remember examining James P. Crane, for the complainants, by referring to the policy.

Witness being shown Exhibit No. 4, *ex parte*, defendants, says:

I recognise that paper; it is partly in my handwriting; I recollect the interview between James P. Crane and myself, in relation to that Exhibit; the term, policy, I use as referring to Exhibit No. 4; the gentleman came to me to be examined for a life policy, at the physician's office of the Company, at No. 231 Broadway; I cannot tell the date; I cannot recollect the date; I used to frequently go to the office of the Company, to examine applicants for life insurance, in the absence of Dr. Kellogg, and do not recollect the date of this particular examination; I examined the applicant and was not satisfied with his physical condition, in reference to a life policy which he desired; he then appeared very anxious to obtain a policy, and I told him that I thought he would be a good risk for a short endowment, which he accepted; I do not remember the details of the conversation, but remember his desiring a 20 30

policy, because it was important to raise some money on it; I remember he told me he wanted the policy to raise some money on it; that is all I remember distinctly; I recollect leaving the room during the interview, and then returning and resuming it; I told the Acting Secretary, Mr. Mayhew, that I was not willing to take him on a life plan.

[The defendants' Counsel here objected to this last question and the answer to it.]

Q. Then that was the purpose for which you left the room?

10 [Question objected to by defendants' Counsel, as leading.]

A. Yes.

After my return from the conversation with Mr. Mayhew, I told Mr. Crane that I would take him on an endowment; I remembered, before seeing the application, that it was for a few years, but I remember distinctly after seeing the application, that it was for five years; I did not think he was a good risk for a longer period than that; that was the longest I was willing to take him for; I felt a little shaky about the risk, 20 and I gave him some good advice.

Q. What was Mr. Mayhew's reply to the statement to which you have testified?

[Question objected to by defendants' Counsel, as incompetent and irrelevant.]

A. He suggested that I should pass him on an endowment. He seemed anxious to be insured that he might raise some money; he spoke of going to Halifax; I do not remember that he told me that the object of the policy was to allow the Company to make a thousand dollars on bond and mortgage; 30 I think I should have remembered it, if it had been said.

Q. Immediately after your return from seeing Mr. Mayhew, did you say "It's all right, I'll pass you"?

A. I should say—not those words.

Q. Or that in substance?

[Objected to as incompetent.]

A. I told him I would be willing to pass him on an endowment plan.

Q. Had the endowment plan been mentioned between you and Mr. Crane before you saw Mr. Mayhew?

A. It had; I do not remember at whose suggestion; I think by Mr. Crane; I could not take my oath on that, but I think it was at his suggestion. 10

Q. Why did Mr. Crane mention that he was going to Halifax?

[Objected to as incompetent, by defendants' Counsel.]

A. I think it was in reference to his health; I remember some conversation as to effect on his health of the trip.

Q. Did he, or not, use this intended trip to Halifax as an argument in favor of haste? 20

[Objected to as incompetent and leading.]

A. He seemed very anxious to obtain the policy.

Q. Do you remember whether the amount to be insured, was in this paper, Exhibit No. 4, *ex parte*, defendants, at the time of your examination of Mr. Crane?

A. I know there was some amount there; I don't remember the exact amount; there must have been of course.

Cross-Examined, by Mr. Magie.

At the time of this examination I was in the employment of

the Company; in the absence of Dr. Kellogg, I was the regular examiner of the Company. I am very sure Dr. Kellogg was absent at this time; I remember that from other circumstances than that I did make this examination; I remember it from a message from Mr. Mayhew to attend at the office of the Company to make examinations; I received that message some days before this examination; I remember, in connection with this examination, that I was at the office of the Company more than once making examinations; I had never
10 seen Mr. Crane before making the examination, nor have I seen him since; it is very doubtful whether I should know him now; my interview with him was in one of the offices of the Company, used for the purposes of examination, and in the same building with the other offices of the Company.

The answers on the back of Exhibit No. 4, *ex parte* defendants, to the questions to be answered by the Medical Examiner of the Company, are in my handwriting; also the writing in the same place, under the heading of "Additional Remarks"; it is all in my handwriting above my signature on
20 the back.

I suppose the words "of five year endowment," were written at the same time the other words were written by me; they seem to be in another ink; a different ink; I had not noticed it before; at the time I wrote on the back, some of the writing on the inside of the Exhibit No. 4 was there; the blanks in the square of the upper right hand corner were not there at the time; the writing below the words, "it is hereby declared," I do not remember; the sum to be insured, I am not positive about; the amount of the first premium was not
30 there; the scratches in the "kind of premium" were not there; also no scratches under "Kind of policy." The figures after endowment were not there; the date of risk was not there; I do not recollect the sum to be insured; I believe there was some sum there, but I could not remember it; I could not take my oath as to it; the figures opposite "Sum to be insured," seem to be altered; also figures opposite

amount of first premium; if they had been altered at the time I wrote on the back of this, I think I should have recollected it; it is customary for the Doctor to be informed of the amount of insurance applied for; I think I knew the amount Mr. Crane had applied for at that time for insurance; I have a vague impression he wanted a sum in the neighborhood of ten thousand dollars; the difficulty about his condition was in his lungs; I stated the difficulty in my certificate on the back of Exhibit No. 4; I do not recollect whether I stated to Mr. Mayhew the nature of the difficulty; my impression is, that I did; the words "Of five year endowment," my recollection is, were written after the conversation with Mr. Mayhew; I think the other words, all of them, were written by me, before I saw Mr. Mayhew; I mean to include my signatures.

In speaking of a life policy, I mean a policy where the money is payable at death only; it is only my impression that he wanted a life policy; the words in the "Additional Remarks," "Good for five years," written by me, recall to me that the applicant wanted a long policy; there is nothing but my impression, that he wanted it as long as life; I do not recollect from whom the money was to be borrowed by Mr. Crane; I recollect he intended to go to Halifax very soon; I don't recollect that he was going that day; I don't think I stated to Mr. Mayhew that Mr. Crane was very anxious; I don't recollect; I don't think I had any conversation with Mr. Mayhew, in reference to Crane's going to Halifax, as a reason for determining what kind of a policy he should have; I told him that I could not pass him for a life policy, but would for an endowment. The nature of his disease was such that it would not destroy life in a few years, and it might shorten his life; I don't know whether Mr. Crane saw Mr. Mayhew then; I believe he saw him afterwards.

TIMOTHY F. ALLEN, M.D.

Sworn and subscribed before me, this 26th day of December, A. D., 1873,

HOWARD RICHARDS,
M. C. C.

DAVID PARKS FACKLER, a witness produced by the complainants, and being by me duly sworn, deposed and said :

I reside in New-York City; I am a Consulting Actuary; that is I am not dependent upon any one Company. He has an independent office, and gives advice to Companies and individuals as may be required; an Actuary is a person skilled in the Mathematics of Life Insurance. I am employed by as many as twenty Companies in a single year; last year I was em-
10 ployed by thirty Companies; The Equitable, The New-York Life, The Brooklyn Life, The Massachusetts Mutual Life, have all employed me in the course of my business experience. I have been in this business eight years, and I have been an Actuary fourteen years.

[Witness being shown Exhibit No. 3, *ex parte*, defendants.]

Q. Please examine this Exhibit, and tell us as to the rate of premium, whether it is the usual and fair market rate for such a policy?

20 [Objected to; no evidence appears of witness' knowledge of the market rate. Question withdrawn.]

Q. Tell us what is the usual and fair market rate of premium for such a policy?

[Objected to for the same reason as to the last question.]

A. The rate adopted by most of the Mutual Companies in New-York City, is two hundred and nineteen dollars and seventy-six cents for such a policy, annually, per thousand;
30 and for the policy in question, of eighty-eight hundred dol-

lars, the annual rate would be nineteen hundred and thirty-three dollars and eighty-nine cents; if paid semi-annually the charge would be somewhat higher, viz., one thousand and five dollars and sixty-three cents to be paid each six months; it is higher when made semi-annually, to make up for the loss of interest upon the deferred payment, and also for the additional expense of two collections instead of one; four per cent. is added to each half of the annual premium where the payments are made semi-annually.

Q. Suppose a policy such as the one shown you, was dated in April and issued in August of the same year; what would be the profit or loss resulting therefrom to either party? 10

[Objected to as incompetent, and not within the scope of the previous examination of the witness.]

A. In case no interest were charged on the premium from the hypothetical date of the policy; the Company would lose by such a contract, but I cannot state how much without making a troublesome calculation, which I have no means of making now; the assured would make a corresponding profit. 20

Q. What is the custom with regard to dating life insurance policies?

[Objected to as incompetent and irrelevant.]

A. They are usually dated from the time they are issued from the principal office of the Company; sometimes they are dated back so as to be able to count the insured as a year younger; the age of the insured being counted from the nearest birthday.

Q. Which party profits by that transaction?

[Objected to as incompetent and irrelevant.] 30

A. The insured, provided that no interest is charged on the premium from the time the policy is dated back.

Cross-Examined, by Mr. Magie.

The rates I name are not adopted by all the Insurance Companies.

[Witness being shown Exhibit No. 3, *ex parte*, defendants.]

Q. Supposing the insured under this policy to pay all the premiums, as they came due, for the five years mentioned therein; how much would those premiums and the interest thereon, calculated at the rate usual in Insurance Companies, 10 amount to at the expiration of the five years?

A. I suppose it would be sufficient to say over eleven thousand five hundred dollars, calculating interest at six per cent.

Re-Examined, by Mr. Hodges.

[It is agreed that the witness may furnish the Master "a rate book of the Mutual Life Insurance Company of New-York," which may be marked as an Exhibit, the same as if proved by this witness to be such book. Subject to the objection of defendants' Counsel to the same, as 20 being incompetent and irrelevant.]

About twenty per cent. of this eleven thousand five hundred dollars is for expenses and contingences; about three and a half per cent. is for insurance, and the balance is for the payment of the endowment at maturity; the dividends come out of the twenty per cent.

D. P. FACKLER.

Sworn and subscribed before me, this 26th day of December, A. D., 1873.

HOWARD RICHARDS,

30 *M. C. C.*

The continuation of the examination of witnesses before me, in the presence of T. D. Hodges, of Counsel for complainants, and of W. J. Magie, of Counsel for defendants, by consent, with the understanding that the cross-examination of Stewart L. Woodford shall not be proceeded with, unless the defendant, James P. Crane, appears at this time.

FRANK B. MAYHEW, a witness on the part of the complainants, being duly affirmed, said:

I reside in the City of Brooklyn, Kings County, New-York; I am the Secretary of the complainants' Company; I was the Secretary in 1872. 10

Witness being shown Exhibit No. 4, *ex parte*, defendants, says: I recognise that document.

Q. Do you remember the conversation that you had with the defendant, James P. Crane, at the time he was examined by Dr. Allen, about this document?

A. I remember a conversation had the day he was examined; I suppose you would call it about this document; I would call it about his insurance; it was in our office; it was partially before and partially after the examination. 20

Q. Please tell us what was said as near as you can remember?

[Objected to as incompetent.]

A. Mr. Crane wanted insurance with us, and the amount talked of between him and me, was twelve thousand dollars, on what we call the five year life, or the five payment life, or five year plan; and I ordered the application made out by one of the clerks, and handed him over to the Doctor to be examined; this is the paper (Exhibit No. 4) that was made out at that time; at the time I handed him over to the Doctor, this paper was in this condition, viz.: At the top right hand corner the square was not filled up; there was nothing there 30

except the printed matter; the answer to question four "A" was twenty-four; to question five, I cannot remember the entire condition of the answers to this question; I am quite positive that the date and the kind of policy was not then written; it is my impression that $12,000 was then written where $8,800 now stands, and the figures of amount of premium were written in as the premium on that amount; the figures here appear to have been eight hundred and something dollars, and something cents; I remember the kind of policy
10 asked for, distinctly; the rest of the document was, I think, as it now is, and of course the back of the document was blank; I cannot give the premium on a five year life policy, without referring to my tables; it is seventy-two dollars and fifty-four cents per thousand; for $12,000 it is $870.48-100.

[All this evidence relating to the conversations respecting Exhibit No. 4, is objected to by the defendants' Counsel.]

Q. Please state if any conversation occurred between you and Dr. Allen, in relation to Exhibit No. 4, and if so, state
20 what it was?

[Objected to as incompetent and irrelevant.]

A. After the examination he came out from the back room and said Mr. Crane was not a good life risk; I asked him, "can't you take him on another plan." I don't remember any more conversation between Doctor Allen and myself, in regard to it, unless he told me that he passed him for a five year endowment policy; that is all the conversation that I can remember with Doctor Allen, and I don't think that anything else was said in relation to it; I saw Mr. Crane before
30 the entire examination was concluded, and before the second examination was concluded; I don't remember what passed between us, excepting that he was very urgent that we would

accept him; Doctor Allen was not present at this interview; the only interview between Mr. Crane and myself, at which Doctor Allen was present, was sufficiently long only to permit me to present him to the Doctor as a gentleman to be examined; at the last interview with Mr. Crane, after the examination was concluded, we looked over the application and rates and agreed upon the policy to be issued, as stated in the Exhibit No. 4, *ex parte*, defendants, now; I did not fill up the blanks at that time, all of them; I filled up the sum to be insured, the amount of first premium, kind of policy and age 10 I did not fill up the date of commencement of risk; the clerk in whose handwriting the application was made, filled up the date of commencement of risk; the square in the right hand top corner was filled when the policy was made out, as is the custom; I cannot say that the date was filled up in the presence of Mr. Crane, but by his order; it is my impression that I omitted to put the date in, and handed it to the clerk for the policy to be made; that he asked me when to date the policy, and he wrote in the date to question five; the date was agreed upon at the time that I made the figures; the 20 date was made in April, at the request of Mr. Crane; I cannot positively say that he asked it to be dated in April, but he asked it to be dated at a date to bring him of the age of twenty-three; Mr. Crane spoke of the date first; it is my impression that I made the rate from the Rate Book of the New England Company, in which I think there is a clause, in reference to dating a policy at the age of the nearest birthday, and April ninth would pass the half year which would make him twenty-four; he saw that book; it was open before him; we were looking it over together to see how much the 30 insurance policy should be made for.

[All the above conversation so far as it related to Exhibit No. 4, and its contents, objected to by defendants' Counsel as incompetent.]

I do not remember an interview with Mr. Crane, when Mr. Woodford was present.

Q. Did Mr. Crane ever say to you the following in words or in substance, I don't care what kind of a policy it is, as the object is to produce just this amount, $1,000?

A. No sir, I don't think he ever said anything to me, which was like what you have read; I cannot remember taking Mr. Crane to Mr. Woodford's office, but I think it quite likely I did so, as I have frequently taken other parties to Mr. Wood-
10 ford's office, to introduce them to him. I don't remember any material fact to be added to my testimony.

Cross-Examined, by Mr. Magie.

I became Secretary to complainants, in January, 1872. As Secretary I presented applications for loans to the Finance Committee, or recorded such applications as were presented by others to that Committee, and also kept record of the action taken on such applications, and the record of loans made are in my care.

Witness being shown Exhibit "C," *ex parte*, complainants,
20 says:

The day when I first saw this I cannot say; I do remember seeing it and presenting it to the Committee; I could not tell how long after its date without a reference to a book, but I could tell by such reference; I think it was about the twentieth of July, 1872, I received Exhibit "C"; I think from Mr. Marshall, the President; I am not positive; the endorsement is in my handwriting; I think I did not receive this paper until after I had seen Mr. Crane at the office of the Company. He was at the office of the Company in relation to a loan; I presume it
30 was the loan mentioned in Exhibit "C"; I saw him not in reference to any negotiation of the loan; yet I saw him in reference to it; and heard him talk about it. He saw the President; I think it was first spoken of to the President; the Committee finally took action upon it, referring it to Counsel

for completion; by Counsel, I mean Mr. Woodford; no other action of the Committee took place in reference to agreeing to make this loan. The Committee referred this loan to Mr. Woodford, on the day I presented it; which day I cannot fix by memory, but by reference to books I can do so; I can't say who filled up Exhibit "C," or where it was filled up; I don't know who signed it; I may have known at the time who signed it; but I don't think I did; I know who appeared in relation to this loan; Exhibit No. 4 was taken to the Doctor when Crane went to be examined; I think Crane signed Exhibit No. 4 before he went into the Doctor for examination; Arthur Roberts is the name of the clerk who filled out the blanks in Exhibit No. 4. He is not in the employ of the Company; I do not exactly know where he is.

Q. What part of the figures appearing on Exhibit No. 4 in question 5, after "sum to be insured," was written by you?

A. I think the two eights and the following naught ("0") were; I think that I wrote the first eight; I cannot say whether I erased anything at this place when I wrote what I did write.

Q. What makes you think that $12,000, was the sum written in this place before you wrote there? Is it the appearance of the paper, or your recollection of the conversation you have spoken of in your direct-examination?

A. I recollect the conversation about the $12,000; it is not the appearance of the paper that leads me to that conclusion.

In my direct-examination the policies I spoke of as five year life, and five payment life are the same kind of policy.

There is no blank to express that kind of policy upon Exhibit No. 4, under question 5; that kind of policy is one in which the policy is payable only at death, but the premium only for five years; I cannot say from memory when the policy was made out; it will tell by the date of its execution. After the examination of the Doctor was concluded, Mr. Crane and I looked over the rates of the New England Mutual, I think, or the Mutual of New-York; he did not take a policy of

the kind the Doctor passed him for, $12,000, because it was too expensive; it was fixed at $8,800, and not at some even sum, because he did not wish to pay a larger sum, much to exceed one thousand dollars, at that time; I think that Mr. Crane gave that as the reason for making the policy $8,800; I don't remember his giving any reason for urging the Company to accept him; I think he said he was going away the next day to somewhere in the Provinces; the rate of this policy, supposing Crane to have been rated at the age of
10 twenty-four, would be two hundred and nineteen dollars and eighty-five cents annual premium per thousand, and one hundred and fourteen dollars and thirty-two cents semi-annual premium; I refer now in giving these rates to a table established by the Alliance Mutual Insurance Company; it is the only one I happen to have with me; in the tables prepared for our Company, the complainants, and published by them, there are no rates for a policy, such as issued to James P. Crane, for any age under twenty-five years; that was the reason I referred to the rate book of the New England Life or
20 some other Company at the time with Mr. Crane. From memoranda now in my possession, I can state that the application, Exhibit "C," was presented to the Committee on the seventeenth day of July, A. D., 1872, eighteen hundred and seventy-two, and acted upon by them the same day; it was presented by me that day, and referred that day.

Re-Examined:

In taking risks the complainants do not usually insure, so as to carry more than six thousand dollars on any single life, over and above all re-insurance thereon; we do write policies
30 for a larger amount, and re-insure with another Company for the portion we do not wish to carry; on high cost policies we can, because of the larger amount of money in hand, carry an excess in the amount of insurance, as the actual risk is smaller than the face. Our Allopathic rate is almost the same as that of the sound conservative Companies, the Homœopathic rate will average about eleven per cent. less.

Re-Cross-Examined:

We did not re-insure Mr. Crane's life.

FRANK B. MAYHEW.

Affirmed and subscribed before me, this 3d day of January, 1873.

HOWARD RICHARDS,
Master in Chancery.

Examination continued, in the presence of T. D. Hodges, Counsel for complainant, and of W. J. Magie, Counsel for defendants, on the tenth day of January, A. D., 1874, by the consent of the parties. 10

DANIEL D. T. MARSHALL, a witness produced on the part of the complainants, being duly sworn, deposed and said: I live in the City of New-York, and am President of the complainants' Company; I think I should know the defendant James P. Crane; I had only five or six interviews with him; I am not positive that I should know him now; I did know him then. All of the interviews were at our office, No. 231 Broadway; the office of the Company; I never saw him anywhere else; I think the first one was some time in the month of July, 1872; he was either sent or brought to me by a man named Davenport. I had a conversation with Mr. Davenport, and he mentioned the young man, and said he had an application, and would send him. Mr. Crane said he wanted to negotiate a loan for his father, on property in Elizabeth; I asked him the amount; he said ten or twelve thousand dollars; I told him we did not feel like making any loans in New Jersey, just at that time; he seemed very anxious about it; said it was a very fine property, very desirable, finely situated; I asked him to give me a description of it, which he did; I told him I would write or see some friends in Elizabeth, and 20 30

get a valuation of the property, and let him know about it, and if we concluded to take any more loans in New Jersey, we would take his into consideration. We had several other applications for loans in our hands from Mr. Benjamin Ogden, at the same time; mortgages for sale; that is all at that interview; before I saw him next, I spoke to or wrote to Mr. Hodges, and also to Mr. Benjamin Ogden; we have usually employed Mr. Ogden to value pieces of property, we have made loans on in this vicinity; I think your valuation was
10 from $18,000 to $20,000, and Mr. Ogden's was considerably higher; Mr. Crane's valuation was $32,000; I remember that distinctly. That is all that occurred before the next interview, as far as I am concerned. I should say about three or four days or a week elapsed between the first and second interview; I could not say exactly; there may have been some body present at the first interview. Mr. Mayhew, Mr. Arthur Roberts, Mr. Mortimer Seymour, were clerks in the office, and generally there; Mr. Mayhew is the Secretary; they probably listened to the conversation; I don't know that they did; I think
20 none of these gentlemen took part in the prior interview, or any other interview, as far as his associations with me are concerned; I can do that myself.

At the second interview, I told him I thought we should decline the loan altogether; he wanted to know the reason why, which I gave; I told him we had several applications for loans from policy holders in our Company, and that in making loans, we made the same distinction there, that I did in the Savings Bank of which I was President, that with everything else, all securities being equal, I always gave preference to
30 policy holders or depositors, and also that our appraisal of the property did not come quite up to the rule of the Company, of double the value of the loan; the property must be double the value of the loan; he then for the first time said he wanted to become a policy holder in the Company; that he was going traveling, and his father desired to have him insured before his going; I told him to make out his application,

and appoint the day when he would come to the office to be examined, and if the examiner approved of his application, we would grant him the policy, and that this would obviate that part of the objection to making the loan, that is, of his not being a policy holder; subsequently he did come to the office; I was present when he came; he was examined by Dr. Allen; I think he was examined for a ten year life; a ten payment life; the same thing; that is my recollection of it; that is merely in regard to the character of the policy; Doctor Allen left Mr. Crane in the Medical Examiner's department, and 10 came out to my desk, and told me he could not pass him for a life policy; he thought he had a tendency to lung difficulty, and that the only policy that he would pass him for, would be a short endowment; that is all at that time.

I can say that the application for this loan was presented, laid before the finance committee, and by the finance committee referred to the President and Counsel, with power to make the loan. I think I saw Mr. Crane on the same day after the examination of Doctor Allen, and Mr. Mayhew went into the room with them. Nothing else passed between Mr. Crane 20 and myself on that day. Mr. Mayhew's desk and mine are immediately adjoining each other; a conversation with one is almost a conversation with the other. I don't think I have had any other interview with Mr. Crane; I may have passed the time of day with him.

Q. Did you ever say to Mr. Crane, that the Company would grant the loan of eleven thousand dollars, provided they could make a thousand dollars by it?

A. No, sir; nor nothing like it.

Q. Did Mr. Crane ever say to you that he did not care what 30 kind of a policy he took, as the only object was to produce this thousand dollars?

A. No, sir; we had no conversation of the kind whatever.

Q. Did Mr. Woodford ever say to you in Mr. Crane's presence, that he advised granting the loan, provided Crane took out a policy that would pay a thousand dollars?

A. No, sir; never recollect having any conversation with Mr. Crane in Mr. Woodford's presence, or any interview with him.

The closing of the transaction was entirely in the hands of Counsel; I signed the check for the money in New-York, to the order of the Counsel, or somebody the Counsel directed; this amount of the check was eleven thousand dollars.

Cross-Examined, by Mr. Magie.

I became President of the complainants' in May, 1868; I
10 have been there ever since; at the first interview Mr. Crane wanted a loan of from ten to twelve thousand dollars; that is my recollection; I don't know that he gave any reason particularly at that time for being anxious, at the first interview; I think that it was afterwards at the second interview, but I cannot remember, that he said he was anxious to go away, that his father wanted the money to pay some debts, and that he was anxious to close the matter before he went away; I cannot give the date of the first interview; it was after the fourth, in the early part of July; I cannot tell what date I
20 made the application for an appraisal of the property; I know that I have a line from Mr. Ogden upon the subject; we depended upon Mr. Hodges, principally, as his appraisal was more conservative. At the first interview I don't think either the Secretary or the clerks I have named took any part in the conversation; it is a rule of the Company always to give preference to policy holders, everything else being equal. It is an unwritten rule and not in writing; I understand it is a rule with all Companies; it does make a difference with the Companies in the amounts of the premiums received from
30 the policy holders according to the amounts to be loaned them. For instance, if "A" held a policy in our Company, on which he was paying us a premium of one thousand dollars per annum, and "B" held a policy in our Company, on which he was paying us a premium of five hundred dollars per annum, and both should apply for a loan on the same day for

the same amount; the securities for both loans being perfectly satisfactory, and the Company being able to loan only the amount of one of the applications, the Company consider that the man, paying the Company the largest amount of premium should be entitled to the loan; and I will say here that this was the sole reason why the Company made the loan to Mr. Crane, because the amount of the premium he was to pay was the largest; it does not make any difference if the party holding the policy is not the party obtaining the loan, provided he is interested in the loan; the reason is that the 10 party actually receiving the loan may not be insurable, or have an insurable life. He first told me his father was anxious to insure him at the second interview; nothing was said then as to the amount of policy, or the amount of premium; I don't think anything was said with me as to the amount of premium to be paid. We have only one way of paying premiums, and that is cash; I don't think I ever knew the exact amount of the premium; I first knew his premium was greater than that of another applicant for loans, when the matter came up before the Sub-Committee, consisting of myself and Mr. Woodford. 20

I am inclined to think Mr. John R. Crane would not have got this loan, if his son had not insured his life and taken out this policy. I certainly should have voted against it myself, so far as my influence is concerned, and it would have probably been made to some other policy holder, interested in the welfare of the Company; I am pretty clear that I never had but three interviews with Mr. Crane in this matter; it is possible I may have had four. When Doctor Allen told me he could not pass him, I don't recollect telling him anything; I am certain I gave him no instructions; I think I did not tell Mr. 30 Crane that the Company was offered a loan of $40,000 in Williamsburgh, upon which they were offered a premium of ten per cent.; I did not tell him of premiums obtained on loans in our office. When a mortgage is offered us for sale, which is a purchase money mortgage, and everything is satisfactory about it, we take the matter into consideration, and purchase it at as low rate as we can.

I think we brought this loan within the rate of the Company that the property should be double the value of the loan, by averaging the valuations of Mr. Hodges and Mr. Ogden.

D. D. T. MARSHALL.

Sworn and subscribed before me, this 10th day of January, 1874.

HOWARD RICHARDS,
Master in Chancery.

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10 STEWART L. WOODFORD, a witness produced on the part of the complainants, and being duly sworn by me according to law, said:

I reside in Brooklyn, and my business, is that of a Counsellor at Law, in New-York, and I am the general Counsel for the complainants; I think I met Mr. James P. Crane twice in the summer of 1872; once at the office of the complainants, and once at my own office; I think the meeting at the office of the Company was either on the day when his father's application for the loan was presented to the Finance Committee, or be-
20 fore that; I could not tell how long before; a few days; I recollect nothing beyond our being introduced to each other, the second meeting was after his father's application for a loan had been referred by the Finance Committee to the President and myself; I don't think anyone else was present; he wanted us to make the loan; I objected, on the ground that the security was in New Jersey, where I was unfamiliar with the value of property; I recall that something was said by him about going soon to some part of Canada, and that he wanted to secure the loan befor he went; I gave no assurance
30 that he could have it, and after again requesting my favorable action he left.

Q. Did you ask Mr. Crane if the mortgage was already drawn or in existence at that time?

A. I do not think I did.

Q. Did Mr. Crane propose to you that a mortgage should be made to him and then sold to you for the Company?

A. No, sir.

Q. What, if anything, was said with reference to the defendant, James P. Crane, or his father, being a policy holder in the Company?

A. When I objected to making the loan, Mr. Crane urged as a reason why he should have the money for his father, either that one of them was, or was going to become a policy holder in the Company; I have given the substance of the conversation. 10

Yes; I do recall another matter which occurred. During the conversation, I told him that even if the loan should be made, the final arrangements would have to be closed through Mr. Hodges, in Elizabeth, as I was not familiar with New Jersey law, and when we made loans in that State, we did it through Mr. Hodges, who was our Counsel there; but I was opposed to making the loan, and gave him distinctly so to understand, or thought I did.

Q. Did you subsequently, or at any time in the presence of Mr. James P. Crane, tell either of the officers of the Company that they would grant the loan, provided he, Crane, was to take out a policy which would pay them a thousand dollars? 20

A. No, sir.

Q. Or in substance?

A. No, sir; nor in substance; I will add to my answer there, neither in form nor substance.

Q. Did you have any talk with Mr. James P. Crane about buying this policy from him?

A. I have an indistinct recollection that Mr. Crane, when I first met him at the office of the Company, said something about the surrender value or the purchase value of life insurance policies; just what it was I do not now recall; some months afterwards he called at my office and asked me if I would buy a policy upon his life; he had it with him; I referred him to the Secretary of the Company. I presume this 30

transaction was closed at Elizabeth; it was not closed at my office, nor did I close it.

Cross-Examined, by Mr. W. J. Magie.

After the Company had agreed to take the loan, it was referred to me, and by me to Mr. Hodges, to examine title, prepare papers, and close the matter; the check for the money, the amount of the loan, was not sent to me; it was sent to Mr. Hodges directly from the Company.

My first interview with Crane was about the middle of July; 10 that was the one at which Mr. Crane was introduced to me, and there was some casual conversation; my impression is that he was mentioned to me as one who was an applicant for a loan; I don't recall whether that introduction was on the day when the application was referred to the Finance Committee, or before it; my next interview with him was a few days after, at my office; I think no one came with him; but if any one did he must have left very soon, because I know that most of our conversation was between us alone; the reason I gave him, why I was opposed to making the loan, was 20 because the property was in New Jersey, and I was not familiar with the value of property there, to act intelligently; at that time the application had been referred to Mr. Marshall and me; I don't recall that I had had any conference with Mr. Marshall at that time; my impression is, that at that time it had come to my knowledge that appraisals had been made of the property, by Mr. Ogden and Mr. Hodges; I don't think I saw Mr. Crane after that, until some months afterwards, when he came to ask me to buy the policy; I continued the opposition to this loan, until finally I gave way to oblige Mr. 30 Marshall; at the interview at my office, Mr. Crane spoke first, in reference to himself, or his father being or about to be a policy holder in the Company; I don't recall my reply; I was opposed to the loan, and Mr. Crane was in my office, and I sought to put him off, as easily and courteously as I could. The Company at times has bought some mortgages; there

was no conversation at that interview, in reference to a mortgage on the property being sold; I had seen the application for a loan; it was an application for a direct loan of eleven thousand dollars upon the property.

Q. Is it from the fact that the application was for a direct loan, and known to you to be such, or from your memory of what actually took place at the interview, that you state that nothing was said as to selling a mortgage to the Company?

A. It is from my memory. I recall now the manner of his request; he said that his father was in poor health, that he owed some money on his place, which had been called in; he added that his father was rich, but had not ready means, and that, if the old man got the loan, he was going to pay off the incumbrance on the property, and, out of the balance, he was going to give him money, to go up the Provinces, for his summer trip; I think I first heard from the Company, that he either had, or was going to take out a policy, from Mr. Marshall, the President; I think it was at the interview between the President and myself, when I consented that the Company might make the loan; I had previously heard Mr. Crane speak about taking a policy, at the interview in my office; I don't recall where the interview was with Mr. Marshall, either at the office of the Company or at my office, or other places where we met; it was in New-York.

At the time he asked me to buy the policy I think it had expired; I think I noticed it; he had it with him; I did not examine the form of a policy; there are some forms under which it is their habit to permit a policy to be revived after its expiration; it is barely possible that I may have met Mr. Crane at the office of the Company, after the loan had been agreed to by Mr. Marshall and myself; but if so, the meeting must have been very casual, for nothing of a business nature about this loan passed between us after the interview at my office.

Re-Examination, by Mr. Hodges.

The fact, that either Mr. Crane or his father was a policy

holder, was no inducement to me, in consenting to the loan; at the interview with Mr. Marshall, at which I assented to the loan, Mr. Marshall urged making it, on the grounds that Mr. Crane or his father, and I do not remember which, was a policy holder in the Company, and so entitled to have the preference in the matter of the loan; he also urged that the young man expected part of the money to use for his summer trip, which he wanted to begin in a few days; I thought it injudicious for a man to raise money by a mortgage to spend
10 on a summer vacation, and urged, that one who borrowed money for such a purpose, would likely have difficulty in paying his interest.

[The conversation between Mr. Marshall and witness, above detailed in this re-examination, is objected to by defendants' Counsel, as incompetent and irrelevant.]

STEWART L. WOODFORD.

Sworn and subscribed before me, this 17th day of January, A. D., 1874,

20 HOWARD RICHARDS,
Master in Chancery.

The complainant offered in evidence a check, dated Homœopathic Mutual Life Insurance Company, 231 Broadway, New-York, August 1st, 1872, Fifth National Bank, pay to the order of T. D. Hodges, Esq., eleven thousand dollars, and signed by Frank B. Mayhew, Secretary, and by D. D. T. Marshall, President, which is admitted as evidence by Mr. Magie, the Counsel for defendants, and marked by me as Exhibit "C, 1," *ex parte*, the complainants.

30 The complainants' Solicitor also offered in evidence a copy of an Act to amend section eight, of chapter four hundred

and sixty-three, of the laws of eighteen hundred and fifty-three, in relation to Corporations in the City of New-York, passed April twenty-four, 1868, certified to by the Secretary of State, of the State of New-York, under the Seal of his office, which is admitted by Mr. Magie, of Counsel for defendants, and marked my me as Exhibit "D," *ex parte*, complainants.

The Solicitor of the complainants also offered in evidence a small book or pamphlet having on the cover, "Mutual Life Rates," and marked by me as Exhibit "E," *ex parte*, complainants. 10

He also offered in evidence, a like pamphlet, having on the cover "The Mutual Life Insurance Company of New-York," F. S. Winston, President, rates for insurance at all ages, on every kind of policy, and marked by me as Exhibit "F," *ex parte*, complainants.

He also offered in evidence a like pamphlet, having on the cover "The New England Mutual Life Insurance Company, 39 State Street, Boston," and marked by me as Exhibit "G," *ex parte*, complainants.

He also offered in evidence a like pamphlet, having on the 20 cover "Tables of Rates, Equitable Life Assurance Society of the United States, 120 Broadway, N. Y.," and marked by me as Exhibit "H," *ex parte*, complainants.

[Defendants' Counsel object to the above, as incompetent and irrelevant.]

IN CHANCERY OF NEW JERSEY.

Between
THE HOMŒOPATHIC MUTUAL LIFE INSURANCE CO., *Complainants*,
and
JAMES P. CRANE, *and als.*, *Defendants*.
Testimony.

A re-examination of witnesses, on the part of the defendants: Present, T. D. Hodges, for complainants, W. J. Magie, for de-
10 fendants.

JAMES P. CRANE, a witness reproduced on the part of defendants, is now re-examined by consent, and it is consented that an order may be made for such re-examination at any time, and this examination admitted, as if taken after the date of the order; and it is further consented, that the objection made by defendants' Counsel to the re-examination of Edwin M. Kellogg, shall be withdrawn, and that examination considered as taken by consent, and to be included in the order for the like purpose above mentioned: and being by me duly
20 sworn, said:

Witness being shown Exhibit No. 4, *ex parte*, defendants, said: The date, "April eighth," under section five, of this application, was not there when I signed this, and I did not authorize it to be put there; nothing occurred about that date; all the dates were left blank, to be filled in afterwards; I did not request it to be filled in at that date; I did not request it to be filled in as of a date that would bring me of

the age of twenty-three; on the day that I signed that application in the Company's office, I was not shown, to the best of my recollection, any rate book of the Company; I don't recollect anything at all being said in regard to my age, except that I gave my age as it was at that time; I first discovered that my policy of Life Insurance was dated on the eighth of April, eighteen hundred and seventy-two, when I went to Mr. Woodford's office, and he showed it to me; that was in either November or December, 1872; my impression is that it was in December, 1872; up to that time, to the best of my know- 10 ledge and belief, there was nothing said to me by any of the officers of the Company upon the subject of dating the policy back.

JAMES P. CRANE.

Sworn and subscribed before me, this 11th day of February, A. D., 1874,

HOWARD RICHARDS,
Master in Chancery.

Defendants' Exhibit No. 1.

JOHN R. CRANE, Esq., 20

In account with T. D. HODGES.

1872.				
Aug.	1.	By loan from Hom. Life Ins. Co.	$11,000.00	
"	1,	To premium on Life Pol. for son	1,004.69	
"	1,	" mortgage to Virolet, paid,	8,000.00	
"	19,	" interest on mortgage on Virolet, from July 3, 1871	631.54	
"	"	" costs on mortgage to Virolet.	26.35	
"	"	" judgment in favor of Jones and Brown, paid	326.68	30
"	"	" interest on judgment, in favor of Jones and Brown, paid, from June 8, 1872,	4.50	

Aug.	19,	To	judgment in favor of Tunis Berry, paid	$147.00
"	"	"	interest on same from July 27, 1872..	63
"	"	"	printers bill on same.....	2.81
"	"	"	Sheriff's fees on both.....	17.25
"	"	"	Essex County Register's fees.....	6.73
"	"	"	Essex County Clerk's fees.....	75
"	"	"	Union County Clerk's fees.....	13.02
"	"	"	Supreme Court Clerk's fees.....	5.00
"	"	"	District Court Clerk's fees.....	3.18
"	"	"	Circuit Court Clerks' fees.....	3.78
"	"	"	City Treasurer's fees.....	1.00
"	"	"	stamping and recording mortgage....	14.50
"	"	"	drawing bond and mortgage..... ..	10.00
"	"	"	engrossing, abstract and certifying title, 1 per ct	110.00
"	"	"	Union Co. Clerk's fee, for continuation	1.25
"	"	"	taxes paid.....	506.88
Sept.	2,	"	cash on account.....	100.00
"	16,	"	cash insurance premium.....	40.00
				$10,977.54

1872.

Sept.	16,	To	cash on final balance.....	$22.46
"	"	"	amount brought over.....	10,977.54
				$11.000.00

Defendants' Exhibit No. 2, is check of T. D. Hodges, on National State Bank of Elizabeth, for $1,004.69-100, dated August 12th, 1872, made to order of John R. Crane, and endorsed to the order of complainants, John R. Crane.

Defendants' Exhibit No. 3, is policy of insurance, on life of James P. Crane, issued by complainants, dated April 8, 1872, for $8,800, payable on April 8, 1877, or at death, if previous, premium $1,004.69, semi-annually, for five years.

Defendants' Exhibit No. 4, is the application for said insurance.

Defendants' Exhibit No. 5.

Stipulation of Solicitors that the following Laws of New-York were in force at the time of the transaction in question.

EXTRACT OF THE LAWS OF NEW-YORK.

Title III.

§ 1. The rate of interest upon the loan or forbearance of any money, goods or things in action, shall continue to be seven dollars upon one hundred dollars for one year, and after that rate, a greater or less sum, or for a longer or shorter time. 10

§ 2. No person or corporation shall *directly* or *indirectly* take or receive in money, goods or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of any money, goods or things in action, than is above prescribed.

§ 3. Every person, who for any such loan or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives may recover in an action against the person who shall have taken or received the same, and his personal representatives, the amount of the money so paid or value, delivered above the rate aforesaid, if such action be brought within one year after such payment or delivery. 20

§ 4. If such suit be not brought within the said one year and prosecuted with effect, then the said sum may be sued for and recovered, with costs, at any time within three years after the said one year, by any overseer of the poor of the town where such payment may have been made, or by any County Superintendent of the poor of the county in which the payment may have been made. 30

§ 5. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever, (except bottomry and respondentia bonds and contracts), and all deposits of goods or other things whatsoever, or whereupon or whereby there shall be reserved, or taken or secured, or agreed to be reserved or taken, any greater sum or greater value for the loan or forbearance of any money or other things in action, than is above prescribed, shall be void, but this act shall not affect such paper, as has been made and transferred previous to the time it shall take effect. (As amended 1837, ch. 430, § 1.)

§ 6. Every person offending against the provisions of this title, shall be compelled to answer on oath any bill that may be exhibited against him in the Court of Chancery, for the discovery of any sum of money, goods or things in action, so taken, accepted or received in *violation* of the foregoing provisions, or either of them.

§ 7. Every person who shall discover and repay or return the money, goods or other things so taken, accepted or received, or the value thereof, shall be acquitted and discharged from any other or further forfeiture, penalty or punishment which he may have incurred by taking or receiving the money, goods or other things so discovered and repaid, or returned, as aforesaid.

§ 8. Whenever any borrower of any money, goods or things in action, shall file a bill in Chancery, for a discovery of the money, goods or things in action, taken or received in violation of either of the foregoing provisions, it shall not be necessary for him to pay, or offer to pay, any interest whatever on the sum or thing loaned, nor shall any Court of Equity require or compel the payment or deposit of the principal sum, or any part thereof, as a condition of granting relief to the borrower, in any case of a usurous loan, forbidden by this chapter.

§ 9. For the purpose of calculating interest, a month shall

be considered the twelfth part of a year, and as consisting of thirty days, and interest for any number of days, less than a month, shall be estimated by the proportions which such number of days shall bear to thirty.

§ 10. Whenever, in any statute, act, deed, written or verbal contract, or in any public or private instrument whatever, any certain rate of interest is or shall be mentioned, and no period of time is stated for which such rate is to be calculated, interest shall be calculated at the rate mentioned by the year, in the same manner as if the words "*per annum*," or "*by the year*," had been added to such rate. 10

Title 3 *of the Revised Statutes, Vol. I, page* 725.
Corrected by Vol. III, 5th Ed., page 72.

CHAPTER 430.

An Act to prevent usury.

Passed May 15, 1837.

§ 1. The fifth section of title three, of chapter four, part two, of the Revised Statutes, is hereby amended, so as to read as follows:

§ 5. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever, (except bottomry and respondentia bonds and contracts,) and all deposits of goods or other things, whatsoever, whereupon, or whereby there shall be reserved, or taken or secured, or agreed to be reserved or taken, any greater sum or greater value, for the loan or forbearance of any money, goods or other things in action, than is above prescribed, *shall be void*, but this act shall not affect such paper as has been made and transferred previous to the time it shall take effect. 20

§ 2. Whenever in an action at law the defendant shall plead or give notice of the defence of usury, and shall verify the 30

truth of his plea or notice by affidavit, he may for the purpose of proving the usury call and examine the plaintiff as a witness, in the same manner as other witnesses, may be called and examined.

§ 3. Every person offending against the provisions of the said title, or of this act, may be compelled to answer on oath, any bill that shall be exhibited against him, in the Court of Chancery, for relief, or discovery, or both.

§ 4. Whenever any borrower of money, goods, or things in action, shall file a bill in Chancery for relief or discovery, or both, against any violation of the provisions of the said title or of this act, it shall not be necessary for him to pay, or offer to pay, any interest or principal on the sum or thing loaned, nor shall any Court of Chancery require or compel the payment or deposit of the principal sum or interest, or any portion thereof, as a condition of granting relief, or compelling or discovering to the borrower in any case, usurious loans forbidden by said title or by this act.

§ 5. Whenever it shall satisfactorily appear by the admission of the defendant or by proof, that any bond, bill, note, assurance, pledge, conveyance, contract, security, or any evidence of debt, has been taken or received in violation of the provisions of said title or of this act, the Supreme Court shall declare the same *to be void*, and enjoin any prosecution thereon, and order the same to be surrendered and cancelled.

§ 6. Any person who shall *directly* or *indirectly* receive any greater interest, discount or consideration than is prescribed in the said title, and in violation of the provisions of said title or of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, the person so offending shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both.

§ 7. It shall be the duty of all Courts of justice to charge the grand jury, especially to inquire into any violations of the provisions of the said title or of this act.

§ 8. Every plaintiff, examined as a witness, pursuant to the provisions of this act, or any defendant under the provisions of this act, who shall swear falsely, shall upon conviction thereof, suffer the pains and penalties of wilful and corrupt perjury; but the testimony given by any plaintiff or the answer of any defendant made pursuant to the said title or of this act, shall not be used against such person before any grand jury, or on the trial of any indictment against such person.

§ 9. So much of title third, chapter fourth, and part second 10
of the Revised Statutes, as is inconsistent with the provisions of this act, is hereby repealed.

BILL.

The Bill was in the ordinary form for the foreclosure of a mortgage given by John R. Crane and wife to the complainants, dated August 1st, 1872, on lands in the city of Elizabeth, New Jersey, recorded August 19th, 1872, conditioned for the payment of $11,000, in one year from date, with interest at seven per cent. per annum.

ANSWERS.

The answers of all the defendants are like the following: 10

IN CHANCERY OF NEW JERSEY.

Between THE HOMŒOPATHIC MUTUAL LIFE INSURANCE COMPANY, *Compl'ts,* and JAMES P. CRANE, and Others, *Def'ts.*	On Bill, &c.

The joint and several answer of John J. Crane, Harry B. Crane and Lucy W. Crane, Infants under the age of twenty-one years, by David C. Halstead, their Guardian, three of the defendants, to the Bill of Complaint of the complainants. 20

The defendants saving and reserving to themselves all and all manner of advantage of exception to the many

errors, untruths, uncertainties and other imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as the defendants are advised is material for them to make answer unto, they answering by their guardian, say, that they admit that said David C. Halstead was, about the time in said bill mentioned, duly appointed and now is the administrator of the estate of John R. Crane, late of the city of Elizabeth, in the county of Union, and State of New Jersey,
10 deceased; that Nancy D. G. Crane is the widow, and that said James P. and Kate C. Crane and John J., Harry B. and Lucy W. Crane are the children and heirs-at-law of said John R. Crane, and that said John J., Harry B. and Lucy W. Crane are infants under the age of twenty-one years.

And these defendants by their guardian answering, admit that said John R. Crane in his lifetime, and about the time in that behalf mentioned in said bill, made, executed and delivered to said complainants the bond in said bill
20 described. And that he and the said Nancy D. G. Crane, about the time in that behalf mentioned in said bill, made, executed, acknowledged and delivered the mortgage in said bill described; that said bond and mortgage contained the condition and clauses respecting interest, in said bill set forth; that said mortgage was acknowledged and recorded as in said bill set forth, and that about the time in that behalf in said bill mentioned, said John R. Crane died, leaving his said widow and children above named.

30 And these defendants further, by their said guardian answering, say, that upon such information as they have been able to obtain, and such belief as they have been able to form, they deny that said John R. Crane, at the date of said bond and mortgage, or at any other time, was indebted to said complainants in the sum of eleven thousand dollars or any other sum; and further deny

that the complainants are entitled to recover upon said bond and mortgage the said sum of eleven thousand dollars, or any other sum; and they say that said bond and mortgage were given to secure the payment of a pretended loan from said complainants to said John R. Crane; that the contract for said loan was made between said complainants and said John R. Crane, by the defendant, James P. Crane his Agent in the City of New York in the State of New York, and that in pursuance of such contract the said bond and mortgage were made and executed, and were delivered to said complainants in said City of New York in the State of New York. And that at the time of making said contract, and of making, executing, and delivering said bond and mortgage, and from thence to this time, by the statutes and public laws of the said State of New York, by section one of title three of chapter four of part two of the Revised Statutes of said State, it was, and yet is enacted and provided, that the "rate of interest upon the loan or forbearance of any money, goods, or things in action shall continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum or for a longer or shorter time." And by section five of the same title as amended by an Act of the Legislature of said State, entitled "An Act to Prevent Usury" passed May 15, 1837, it was further enacted and provided that "all bonds, bills, notes, assurances, conveyances, and other contracts or securities whatsoever (except bottomry and respondentia bonds and contracts), and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken or secured or agreed to be reserved or taken any greater sum or greater value for the loan or forbearance of any money, goods, or other things in action than that above stated, shall be void, which above recited acts were in force at the making of said contract and bond and mortgage. And these defen-

dants further say that the said contract and the bond aforesaid were neither a bottomry or respondentia bond or contract; and that by the said contract between the complainants and said John R. Crane, it was agreed that said complainants should reserve and take, and said complainants did reserve and take for the said sum of eleven thousand dollars loaned for one year, the sum of one thousand and four dollars and sixty-nine cents as a bonus besides and in addition to the sum of seven per
10 cent. per annum reserved and taken as mentioned in the condition of said bond and mortgage. And that said sum of one thousand and four dollars and sixty-nine cents was actually reserved, taken and kept back by said complainants out of eleven thousand dollars, besides the said interest, and was so paid by said John R. Crane to said complainants. And that by said laws of said State of New York such contract, and the said bond and mortgage given therefor were and are wholly usurious and void, and of no effect or force.

20 And these defendants, further answering by their said guardian, say, that if by reason of said mortgage being upon lands within the State of New Jersey, and having been executed and acknowledged within this State or otherwise, the said contract and bond and mortgage should be considered and held as amenable to the laws of the State of New Jersey, then these defendants, further answering by their said guardian, say that by an Act of the Legislature of this State entitled "A further Supplement to the Act entitled 'An Act against
30 Usury, approved April 12, 1864,'" it is amongst other things enacted that "In all cases of suits at law or in equity "to enforce any note, bill, bond, mortgage, contract, cove-"nant, conveyance or assurance which shall be hereafter "made for the payment or delivery of any money, wares, "merchandise, goods, or chattels lent, and on which a "higher rate of interest shall be reserved or taken than

"was or is allowed by the law of the place where the "contract was made or is to be performed, the amount "or value actually lent, without interest or costs of suit, "may be recovered and no more; and if any premium "or illegal interest shall have been paid to the lender, "the sum or sums so paid shall be deducted from the "amount that may be due as aforesaid, and recovery "had for the balance only."

And these defendants further say that by a further supplement to said Act, approved March 15, 1866, it is amongst other things further enacted by the Legislature of this State that "Upon all contracts hereafter made "for the loan of or forbearance or giving day of pay-"ment for any money, wares, merchandise, goods, or "chattels, it shall be lawful for any person or persons "or body corporate to take the value of seven dollars "for the forbearance of one hundred dollars for a year, "and after that rate for a greater or less sum, or for a "longer or shorter period, and that when interest is al-"lowable by law the legal rate shall be seven per "centum, anything in the act to which this is a supple-"ment to the contrary notwithstanding, and that so much "of the said act as conflicts with the supplement be and "the same is hereby repealed."

And these defendants, by their said guardian, therefore say that the said contract and bond and mortgage were illegal and usurious, and that only the sum of nine thousand nine hundred and ninety-five dollars and thirty-one cents was advanced thereupon by said complainants to said John R. Crane, and the sum of one thousand and four dollars and sixty-nine cents was taken by said complainants as a premium for said loan.

And these defendants, further answering by their said guardian, admit that the sum of three hundred and eighty-five dollars of interest was not paid, either on the first day of February, eighteen hundred and seventy-

three, or at any other time; but they deny that thereby any sum of money came due upon said bond and mortgage, or any right accrued to said complainant, upon or by virtue of said mortgage.

And these defendants, further answering by their guardian, say, that they are informed and believe that the complainants are a corporation, existing under and by virtue of the laws of the said State of New York, and not otherwise; and that, by the statutes and public
10 laws of the said State of New York, the said complainants had, at the time of the execution and delivery of said bond and mortgage, no power or authority to invest moneys upon the security of lands within the State of New Jersey, but, by the laws and statutes aforesaid, were expressly prohibited from so doing; and therefore, these defendants, by their said guardian, say that the complainants are not entitled to the relief prayed in said bill.

And these defendants, further answering by their said
20 guardian, deny that either Thomas B. Budd, David Mulford, Joseph A. Davis, Seth B. Ryder, or the National State Bank of Elizabeth, ever recovered, against said John R. Crane, the respective judgments in said bill set forth.

And these defendants, further answering by their guardian, insist upon the respective statutes above set forth, and claim the same benefit therefrom as if they had pleaded the same. And these defendants, being infants, under the age of twenty-one years, respectfully
30 submit to the judgment of this Honorable Court, and pray that their rights and interest in the lands in said bill set forth may be protected and saved to them, and they may be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

D. C. HALSTED,
Guardian.

NEW JERSEY, *ss.*:

David C. Halsted, guardian of the infant defendants within mentioned, being duly sworn, according to law, on his oath saith, that the facts and allegations in the within answer set forth and contained, 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 other persons, he believes them to be true.

D. C. HALSTED.

Sworn and subscribed before me, this 30th day of May, A. D. 1873, at

JAMES R. ENYLIN, *M. C. C.* 10

A true copy.

H. S. LITTLE, *Clerk.*

OPINION.

The cause was heard before Hon. A. Dodd, Vice Chancellor, who filed the following opinion.

THE HOMŒOPATHIC MUTUAL LIFE INSURANCE CO.,

against

JAMES P. CRANE, and Others.

Mr. T. D. HODGES and Mr. WM. H. ARNOUX, for Complainants. 20

Mr. CROSS and Mr. MAGIE, for Defendants.

The VICE CHANCELLOR:

Part of the sum received by the mortgage in this suit, was the first premium of an insurance policy issued by the complainants at the making of the mortgage loan, and upon the facts constituting this part of the transaction, the defense of Usury is sought to be maintained. I think there are two reasons, one substantial, and one technical, why payment of the mortgage cannot thus be avoided. First, the facts and cir-
10 cumstances as disclosed by the proofs do not support the defence; and second, if the facts and circumstances so disclosed are sufficient to support it, they are not stated with sufficient certainty in the answer.

The mortgage is for eleven thousand dollars, dated August 1, 1872, and made by John R. Crane and wife, to the complainants, a Life Insurance Company of New York. The mortgagor resided in Elizabeth, in this State, where the mortgaged lands lie, and in or about July, 1872, through his son James P. Crane, then a law
20 clerk in New York, applied to the complainants for a loan. The son negotiated with the officers of the company, and the loan was agreed to, provided the son became a policy holder. The policy on his life was for eight thousand eight hundred dollars. It was payable five years after date if he should then be alive, or at his death, if he should die before the five years expired. The premium, payable every six months, was one thousand and four dollars and sixty-nine cents. This premium was not unusual or excessive in amount. It was,
30 and is very nearly, if not exactly the premium usually charged by Companies for this well-known description of policies. Upon this point there is no room for doubt. On behalf of the complainants, the contention is, that the Company had a right to prefer policy holders in making their loans; that such was their practice; that

the son became a policy holder at his own suggestion and request, and in the policy received a full and fair equivalent for the sum of one thousand and four dollars and sixty-nine cents, which was paid by the father, who understood and approved the arrangement. On behalf of the defendants it is insisted that the issuing of the policy was a mere device to obtain interest on the loan at a higher rate than seven per cent per annum, and the testimony of the son goes strongly to establish it. But the testimony of the son is 10 directly contradicted by several witnesses, officers of the Company, who explicitly and positively deny material statements made by him, as to what was said in the interviews when the transaction was discussed and agreed upon. The weight of testimony is against the view which he gives of it. The defence of usury must be made out by cogent proof. It must be clearly and conclusively shown that more than the lawful rate of interest was intentionally reserved. The usury will not be permitted to escape the legal penalties 20 against it, under cover of a fictitious or pretended business operation, designed merely to be a cloak to disguise the truth and substance of the bargain. But that the operation was, in fact, a pretence, and not a reality, must be proved, either directly or by inference, so as to leave no reasonable misgivings in the mind of the judge who is called upon to declare it to have been so. It will not be so declared because suspicious circumstances attach to it, nor because operations of that character are susceptible of being used for this illegal and reprehen- 30 sible purpose.

In the present case, the taking out of the policy was made a condition to the procurement of the loan. This circumstance is not denied by the complainants, but, whatever criticism it may expose their business methods to, it can hardly be contended, by itself, to make the

bargain a usurious one. The circumstance that the policy was dated back to the eighth of the preceding April is objectionable, and is much relied on for the defendants. It was not delivered till the early part of August, at the delivery of the mortgage, so that nearly four months had gone of the six at the end of which the second premium would be due. This circumstance, however, would not necessarily be in the interest of, or to the advantage of, the Company. It might or might not
10 be a cloak to cover usury. Policies of life insurance, as the evidence in this case explicitly proves, are sometimes dated back, in the interest of, and for the pecuniary advantage of, the insured. If the policy now in question had been continued by the insured, and not allowed to lapse, the ante-dating of it, so as to bring the premium down to the lower rate for a younger age, and so also as to save the interest for four months on the premium, would have been against the Company, and in favor of Crane. It was the latter's fault or choice that
20 it has not been so continued. But if, on the other hand, the understanding or agreement expressed or implied between the parties was, that the policy was not to be kept up, but was to lapse at the end of the first premium period, then the circumstance of the ante-dating was an appropriate part of the plan to take more than lawful interest. The evidence does not warrant the conclusion that it was so understood or agreed. I think this feature of the case is clearly open to suspicion, and is one not to be commended. But it is consistent with a fair
30 and just bargain on the Company's part, as well as with a usurious one. The testimony is explanatory of it—especially that of the expert, Mr. Fackler. The calculations made, on the part of the defendants, with a view to show that the premium charged was excessive, are fallacious. They do not allow for dividends expected to arise yearly from the premiums, nor for the value of the

indemnity against death during the five years covered by the policy.

I am satisfied, upon a careful consideration of the evidence in this case, that usury is not proved by it. Where a policy is issued in good faith, at the fair and customary rates, as part of a general operation wherein a loan to the policy holder is the other part, I see no reason to question the legality of the loan, even though it depends on the taking out of the policy. It is a question of *bona fides*, and must be so dealt with. The expediency of it, as a business transaction is one thing; the legality of it is another thing. 10

The second and technical difficulty in the way of this defense is, that it is not set forth with requisite legal certainty in the answer. The rule as to this is expressed by Justice Depue in the Court of Appeals in Taylor *v.* Morris, 7 C. E. G., 612. "In setting up," he says, "a defense of usury in a suit in chancery, the defendant must in his answer, as in a plea of usury in an action at law, set out the particular facts and circumstances of the supposed usurious agreement, that the Court may see that the agreement was in violation of the statute." The authorities referred to in his opinion are to the same effect. In the present case, the particular facts and circumstances of the alleged usurious agreement are altogether omitted in the answer. No hint is given of them. The allegations of the answer do not in the remotest way suggest the facts and circumstances intended to be proved, and the complainants are in no way apprised by the answer of the facts necessary to be met by them in resisting the defense. There is a variance between the allegations and the proofs. The answer avers that it was agreed that said complainants should reserve and take, and said complainants did reserve and take, for the said sum of eleven thousand dollars loaned for one year, the sum of one thousand and four dollars and sixty-nine cents, as a 20 30

bonus besides and in addition to the sum of seven per cent. per annum, reserved and taken, as mentioned in the condition of said bond and mortgage, and that said sum of $1,004.69 was actually reserved, taken, and kept back by said complainants, out of $11,000, besides the said interest, and was so paid by said John R. Crane to said complainants; and that by said laws of said State of New York (in which State the answer avers the contract was made) such contract and the said bond and mortgage
10 given therefor were and are wholly usurious and void, and of no effect or force." If the proofs corresponded with the allegations, the technical difficulty as to the pleading would be wanting. If $1,004.69 had been kept back and reserved, as the answer avers, and nothing given in return for it, the variance would not exist. But no such bargain was made. A marketable and valuable commodity was given in exchange for it. If a controversy can fairly exist upon the facts as disclosed by the evidence, it is a controversy not indicated by the answer.
20 It is not fairly presented by the answer, and should, therefore, be excluded from the defense.

In this view of the case it is unnecessary to decide whether the mortgage contract is amenable to the laws of New York or to the laws of New Jersey.

DECREE.

Whereupon such proceedings were had as that final decree was entered on August 22d, 1874, for $12,577 77 and costs, and the defendants all duly appealed within the required time.

N. J. COURT OF ERRORS AND APPEALS.

Between JAMES P. CRANE and others, *Appellants,* *and* THE HOMŒOPATHIC LIFE INS. CO., *Appellees.*	*On Appeal.*

COURT OF APPEALS
IN THE LAST RESORT, ETC. 10

Between DAVID C. HALSTEAD, Administrator of JOHN R. CRANE, deceased, NANCY D. G. CRANE, JAMES P. CRANE, KATE C. CRANE, and JOHN J. CRANE, HARRYB. CRANE, and LUCY W. CRANE, infants, by DAVID C HALSTEAD, Guardian, etc., *Appellants,* *and* THE HOMŒOPATHIC MUTUAL LIFE INSURANCE COMPANY, *Appellees.*	*On Bills, etc.* *Petition of Appeal.* 20

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

The humble petition of David C. Halstead, administrator of John R. Crane, deceased, Nancy D. G. Crane,

James P. Crane, Kate C. Crane, and David C. Halstead, gaurdian of John J. Crane, Harry B. Crane, and Lucy W. Crane, infants, the appellants in the above-stated cause, respectfully shows, That your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Raynor, Chancellor of N. J., bearing date the 22d day of August, in the year 1874, wherein the said The H. M. L. Ins. Co., were complainants, and your petitioners were defendants in these
10 respects, to wit: that the said decree adjudges that the complainants' mortgage in the pleadings in the cause mentioned is a good, valid, and lasting encumbrance on the premises in said pleadings mentioned, and that there is due to the complainants thereon the sum of $12,577 77, and that the said decree is for the complainant. And your petitioners humbly appeal from the said decree of the said Chancellor, upon the ground that the same is erroneous, for that the said complainants' mortgage on the said pleadings mentioned is not good, valid, and last-
20 ing encumbrance on said premises, but is void and of no effect, and for that neither said sum, nor any part thereof, is due complainant thereon, and for that, said decree should have been for the defendants, with costs.

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

MAGIE & CROSS,
Solicitors & Counsel.

COURT OF APPEALS IN THE LAST RESORT, ETC.

Between DAVID C. HALSTEAD, Admr. of JOHN R. CRANE, deceased, NANCY D. G. CRANE, JAMES P. CRANE, KATE C. CRANE and JOHN J. CRANE, HARRY B. CRANE and LUCY W. CRANE, Infants,—By DAVID C. HALSTEAD, Gardian, &c., *Appellants,* *and* THE HOMŒOPATHIC MUTUAL LIFE INSURANCE COMPANY, *Appellee.*	*On Bill, &c.* *Answer of Appellee to Petition of Appeal.* 10

The answer of the Homœopathic Mutual Life Insurance Company, appellee, to the petition of appeal of David C. Halstead, and others, appellant:

This appellee, saving and reserving to itself all and all 20 manner of exception to the many errors, untruths, uncertainties and other imperfections in the appellant's said petition contained for answer thereunto, to so much thereof as it is advised is material for it to make answer unto, says:

That it denies that the petitioners are or find themselves aggrieved by the decree of the Chancellor in their said petition referred to in any particular; and it charges

and insists that its said mortgage is a good, valid and existing encumbrance on the premises in said pleadings mentioned, and that there is due the appellee thereon the sum of twelve thousand five hundred and seventy seven dollars and seventy seven cents, with interest thereon, and that in equity and good conscience the said decree should be for the appellee, and should so direct and decide; and it denies that the appellants are aggrieved thereby in either of said respects; and the appellee further denies that said decree is erroneous in any respect, but charges and insists that its said mortgage is a good, valid and existing encumbrance, and is not void or of no effect, and that the whole of said sum is due to this appellee, and that said decree should have been, as it was, for the complainants and not for the defendants with or without costs, and that the appellants have not, on these or any other grounds, cause of grievance or appeal.

The appellee therefore prays, that the said decree may be affirmed, with interest and costs in this behalf most wrongfully sustained, and that the appellee may have such relief as to this honorable Court may seem meet, in the premises.

T. D. HODGES,
Solicitor, and of Counsel with Appellee.