

In Chancery of New Jersey.

TO HIS HONOR, THEODORE RUNYON,

Chancellor of the State of New Jersey:

Complaining, shows unto your Honor your orator, William Tinnock, of the City of Paterson, in the County of Passaic and State of New Jersey; that on or before the fifteenth day of September, eighteen hundred and eighty-four, James Finnegan, of the said City of Paterson, was possessed of and the owner of the goods and chattels hereinafter mentioned and described, that is to say: Three (3) black walnut bedroom setts and beddings, two (2) mahogany bedsteads and beddings, two (2) dressing cases and chairs, wardrobes, four (4) mirrors, one (1) piano, stool and cover, one (1) ebony cabinet, one (1) ebony parlor suit, six (6) lace curtains, one (1) ebony easel, one (1) Axminster carpet, twelve (12) rugs, six (6) ottomans, one (1) lot of pictures, one (1) lot of statuary, one (1) lot of bric-a-brac blk, one (suit of haircloth furniture, one (1) library table, one (1) marble top table, one (1) book case and books, one (1) lot of lace curtains, one (1) lot of marble and window lambrequins, one (1) gilt clock and vase, carpets, one (1) sett dining room furniture, one (1) dining room extension table, one (1) lot of silver-ware, one (1) buffet, one (1) lot of china-ware, one (1) lot of glassware, and one (1) lot of kitchen utensils

And your orator further shows that the said James Finnegan was also, on or before the day and year last aforesaid,

seized and possessed in fee simple of all those tracts or parcels of land hereinafter mentioned and described, situate, lying and being in the City of Paterson aforesaid, that is to say:

FIRST TRACT. Beginning in the westerly line of Marshall Street, at the distance of one hundred and fifty feet southerly from the line of lands formerly of John Marselis, and running thence (1) southerly along Marshall Street twenty-five feet, (2) westerly parallel with said Marselis' line about one hundred and ninety feet to Mill Street, (3) northerly along Mill Street twenty-five feet, and (4) easterly parrallel with said Marselis' line to place of beginning; being the same premises described in a deed from Aaron S. Pennington, Special Master, to James Finnegan, dated September 1, 1886, and recorded in the Clerk's Office of Passaic County, in Book B. 3 of Deeds, on page 379, &c.

SECOND TRACT. Beginning on the north side of Ward Street in the town of Paterson at the corner of certain lots formerly belonging to Aaron King, thence running westerly along the line of said street fifty feet, thence northerly at right angles to Ward Street one hundred feet, thence easterly fifty feet to the line of said lots formerly belonging to Aaron King. Thence southwardly along the line of said lots one hundred feet to the place of beginning, being the same premises described in a deed from Clifford D. Jaffray, Guardian of Mary E. C. Jaffray, to James Finnegan, dated June 24, 1867, and recorded in the Clerk's office of Passaic County, in Book G. 3 of Deeds, on page 175, &c.

THIRD TRACT. Beginning in the south-westerly corner of Grove Street and Getty Avenue and running from thence (1) southerly along the westerly line of Getty Avenue one hundred feet, thence (2) westerly parallel with Grove Street one hundred and fifty feet, thence (3) northerly parallel with Getty Avenue one hundred feet to the southerly line of Grove Street, and thence (4) easterly along the same one hundred and fifty feet to the place of beginning, being lots numbers three hundred and ninety-four, three hundred and ninety-six, three hundred

and ninety-eight and four hundred on Getty Avenue, and numbers thirty-eight and forty on Grove Street, on map of property of South Side Company made by J. K. Goetschins, C. E., April, 1871, and being the same premises described in a deed from the South Side Land Company to James Finnegan, dated June 1, 1875, and recorded in the Clerk's Office of Passaic County, in Book M. 5 of Deeds, on page 215, &c.

FOURTH TRACT. Beginning in the northerly line of Barclay Street in the line of Francis Blair's and running thence (1) along said Blair's line north seven degrees and forty-five minutes, west thirty-seven feet and five inches to a point two inches east of the northeast corner of said Blair's house, thence (2) northerly along the same fifty-six feet and two inches to the northeast corner of said Blair's lot, thence (3) still along the same south eighty-two degrees and fifteen minutes west sixty seven feet and two inches to the lands of the Delaware, Lackawanna and Western Railroad, thence (4) along said lands north seven degrees and forty-five minutes, west one hundred and fifty-four feet and eight inches more or less to the lands formerly of James Close, thence (5) along said Close's land south forty-seven degrees and thirty minutes, east sixty-four feet more or less to a corner of the same, thence (6) north fifty-four degrees and thirty minutes, east two hundred and fifty-five feet and five inches, thence (7) south eighteen degrees and fifteen minutes, east one hundred and seventy-four feet and four inches to the northerly side of Barclay Street, thence (8) along said street south forty-nine degrees and forty-five minutes, west two hundred and seventy feet to the place of beginning; being the same premises described in a deed from Atlas Insurance Company to James Finnegan, dated December 16, 1879, and recorded in the Clerk's Office of Passaic County, in Book C. 7 of Deeds, on page 491, &c.

FIFTH TRACT. Beginning on the north side of Ward Street at the southwest corner of four building lots formerly belonging to Oliver D. Ward, thence running along the line of said street

westerly fifty feet, thence northerly at right angles to Ward Street one hundred feet, thence easterly parallel with said street fifty feet, thence southerly one hundred feet to the place of beginning, being known as numbers 33 and 35 Ward Street.

SIXTH TRACT. Beginning on the south side of Elm Street one hundred and fifty feet westerly from Cross Street, at the northeast corner of a lot conveyed by Thomas Oliver to Rain Berry and running thence southerly at right angles to Elm Street along the line of said Rain Berry's lot one hundred feet, thence easterly parallel to Elm Street twenty-five feet, thence northerly at right angles to Elm Street one hundred feet to Elm Street, and thence westerly along the line of Elm Street twenty-five feet to the place of beginning. Known as 34 Elm Street, being the same premises described in a deed from John Norwood, Mary E. his wife and James Booth and Addie his wife to James Finnegan, dated August 31, 1881, and recorded in the Clerk's Office of Passaic County, in Book Z. 6 of Deeds, on pages 307, &c.

And your orator further shows that on or about the seventh day of June, eighteen hundred and eighty-four, the said James Finnegan became indebted to your orator in the sum of four hundred dollars and liable to pay him that sum of money upon a certain promissory note for said sum, made by one Hector C. Hudson, bearing date on that day and payable six months after the date thereof to the order of the said James Finnegan, at the First National Bank of Paterson, and which said note was afterwards, to-wit: on the same day endorsed by the said James Finnegan and Henry C. Hudson, and delivered by the said James Finnegan to your orator.

And your orator further shows that afterwards, to-wit: on or about the fifteenth day of September in the year last aforesaid, and before the said promissory note became due and payable according to the terms thereof, and while the said James Finnegan was liable for the payment thereof as aforesaid, the said James Finnegan, being possessed and owner as

aforesaid of the said goods and chattels, by a bill of sale dated on that day, and recorded in the Clerk's office of the said County of Passaic, in Book E of Miscellaneous for said County, on page 56, &c., pretended to convey the said goods and chattels of every kind description in the house and on the premises at No. 35 Ward Street, in the City of Paterson aforesaid to one William W. Welch, for the nominal consideration of one dollar; and that the said William W. Welch afterwards, to-wit: on or about the day and year last aforesaid, by a bill of sale dated on that day, and recorded in the Clerk's Office of the said County of Passaic, in Book E of Miscellaneous for said County, on page 54, &c., pretended to convey the same goods and chattels, pretended to be conveyed to him as aforesaid, to Margaret Finnegan, the wife of the said James Finnegan, for the nominal consideration of one dollar.

And your orator further shows, that on or about the day and year last aforesaid, the said James Finnegan being seized and possessed as aforesaid of said tracts of land, together with his said wife, by deed dated on that day and recorded in the Clerk's Office of the said County of Passaic, in Book U 7 of Deeds for said County, on page 317, &c., pretended to convey the said tracts of land to the said William W. Welch, for the nominal consideration of one dollar, and that the said William W. Welch, afterwards, to-wit: on or about the day and year last aforesaid, by two separate deeds bearing date on that day, one of which was an ordinary quit claim deed, recorded in said Clerk's Office in Book U 7 of Deeds for said County, on pages 321, &c., and the other of which was what is known as a deed with covenant against grantor, recorded in said Clerk's Office in Book E 8 of Deeds for said County, on page 284, &c., and both of which said deeds comprised the same premises, and the latter of which said deeds was made for the reason that the former being a mere quit claim deed, was not satisfactory, pretended to convey the said tracts of land to the said Margaret Finnegan for the nominal consideration of one dollar.

And your orator further shows, that he has been informed and believes it to be true, and therefore expressly charges that no consideration whatever was paid or given for on account of either of the said pretended conveyances ; that they were made for the purpose of transferring the title to said goods and chattels and tracts of land from the said James Finnegan to his said wife, in order to secure the same for his or her use, and to protect the same from the said claim of your orator, and the claims of other creditors against him, and hinder and delay your orator and his other creditors in the collection of said debt and other debts, then owing by him, and defraud them out of the same, and that the said James Finnegan, since the execution of the said pretended conveyances, has always held, possessed and enjoyed the said goods and chattels, and held, occupied, possessed and enjoyed and received the rents and profits of said lands, except the portion thereof conveyed as hereinafter mentioned, as fully to all intents and purposes as before the execution of said pretended conveyances.

And your orator further shows, that on or about the fifteenth day of April, eighteen hundred and eighty-six, the said Margaret Finnegan and James Finnegan, by a deed dated on that day and recorded in the Clerk's Office of the said County of Passaic, in Book E 8 of Deeds for said County on page 344, &c., conveyed to John Fitzpatrick and Bridget Theresa Fitzpatrick, a portion of the said tract of land hereinbefore first described, the portion so conveyed being described in said deed as follows:

"Beginning on the westerly line of Marshall Street at the distance of one hundred and fifty feet southerly from the line of lands formerly of John Marselis, and running thence (1) southerly along Marshall Street twenty-five feet, (2) westerly parallel with said Marselis' line one hundred feet, (3) northerly and parallel with first course twenty-five feet, and thence (4) easterly parallel with said Marselis' line to place of beginning. Said lot is known as No. 172 Marshall Street.

And your orator further shows, that on or about the second day of January, eighteen hundred and eighty-five, the said Margaret Finnegan and James Finnegan executed a mortgage dated on that day and recorded in the Clerk's Office of the said County of Passaic, in Book Z 2 of Mortgages for said County on page 449, &c., to secure the payment of the sum of fifteen hundred dollars, to one Edo V. Cadmus, upon the tract of land hereinafter secondly described.

And your orator further shows, that on or about the seventh day of January, eighteen hundred and and eighty-five the said Margaret Finnegan and James Finnegan executed a mortgage, dated on that day, and recorded in the Clerk's Office of the said County of Passaic, in Book Y 2 of Mortgages for said County, on page 470, &c., to secure the payment of the sum of nine hundred and fifty dollars to one Edo V. Cadmus, upon the tract of land hereinbefore secondly described, and the tract of land hereinbefore fourthly described.

And your orator further shows, that the said deed to the said John Fitzpatrick and Bridget Theresa Fitzpatrick and the said mortgages to the said Edo V. Cadmus were executed as aforesaid after the said indebtedness of the said James Finnegan to your orator was incurred as aforesaid, but as your orator believes that the said John Fitzpatrick and Bridget Theresa Fitzpatrick took their said deed and the said Edo V. Cadmus took his mortgage in good faith and without any fraud on their part or knowledge of any fraud on the part on the part of the said James Finnegan and Margaret Finnegan, your orator does not claim in this suit any equities as against such grantees and mortgagee.

And your orator further shows, that on or about the sixteenth day of July, in the year of our Lord one thousand eight hundred and eighty-four, and before the said note became due, the said Hector C. Hudson departed this life intestate and utterly insolvent, and that no administrator of his estate has ever been appointed.

And your orator further shows, that the said promissory note not having been paid by the said Henry C. Hudson or the said James Finnegan or any one else when it became due and payable as aforesaid, and the same or any part thereof not having been afterwards paid by either of them, although the said James Finnegan was duly notified of the non-payment thereof, your orator afterwards, to-wit: on or about the twenty-sixth day of December, eighteen hundred and eighty-four, commenced an action of assumpsit against the said Henry C. Hudson and James Finnegan for the recovery of the amount thereof, including principal and interest in the Circuit Court in and for the said County of Passaic, and such proceedings were thereupon had in the suit, that afterwards, to-wit: on the thirtieth day of April, eighteen hundred and eighty-six, your orator recovered a judgment against the said Henry C. Hudson and James Finnegan in the said Court, for the sum of four hundred and sixty-six dollars and fifteen cents, damages and costs of suit as by the record of the said judgment now remaining in the office of the Clerk of the said Court, at Paterson aforesaid, reference being thereunto had will more fully and at large appear.

And your orator further shows, that for the purpose of obtaining satisfaction of said judgment he caused to be issued thereon, out of said Court, a writ of *feri facias de bonis et terris*, tested on the nineteenth day of May, 1886, and returnable on the third Tuesday of June in the year last aforesaid, which writ, having been first duly recorded, was delivered to the Sheriff of the said County of Passaic, to whom it was directed, and thereby he was commanded that of the goods and chattels of the said Henry C. Hudson and James Finnegan, in his County, he should cause to be made the said sum of four hundred and sixty-six dollars and fifteen cents so as aforesaid adjudged to your orator; and that if sufficient goods and chattels of the said Henry C. Hudson and James Finnegan in his county he could not find, whereof to make said moneys, he should cause the whole or the residue, as the

case might require, of the said moneys to be made of the lands, tenements, hereditaments and real estate whereof the said Henry C. Hudson and James Finnegan were seized on the said thirtieth day of April, in the year last aforesaid, or at any time afterwards, in whose hands soever the same might be, and that the said Sheriff should have those moneys before said Court, on the return day of said writ, to render to your orator in satisfaction of his said judgment and that he should have then and there the said writ.

And your orator further shows, that the said Sheriff, to whom the said writ was directed and delivered, being unable to find any goods and chattels, lands, tenements, hereditaments or real estate of the said Henry C. Hudson whereon to levy and make the said judgment, or any part thereof, and being also unable to find any goods and chattels, lands, tenements, hereditaments or real estate of the said James Finnegan, excepting such as he had pretended to convey as aforesaid, whereon to levy and make the said judgment, or any part thereof, levied upon all the goods and chattels hereinbefore mentioned and the lands and premises hereinbefore described as property of the said James Finnegan, as by the said writ of execution, on the record thereof, and the return to said writ thereto annexed, reference being thereto had will more fully and at large appear.

And your orator further shows, that no part of the said judgment has been paid, and that he has frequently and in a friendly manner applied to the said James Finnegan and Margaret Finnegan to pay the same or to cause and surrender the said fraudulent conveyances, or to reconvey or cause to be reconveyed the said goods and chattels and premises with the exception of the part thereof conveyed to the said John Fitzpatrick and Bridget Theresa Fitzpatrick as aforesaid, to the said James Finnegan, so that they may be sold under execution for the satisfaction of the said judgment and a good and clear title given therefor to the purchaser thereof, subject to the said mortgage, as in equity and good conscience they

ought to have done, and as your orator well hoped they would have done, but which they wholly refuse to do.

In consideration whereof, and for as much as your orator is remediless in the premises at common law and cannot have adequate relief except by the aid of this honorable Court.

To this end, therefor, that the said James Finnegan and Margaret Finnegan, defendants hereto, and their confederates when discovered, may without oath, full, true and perfect answer, make to all and singular the premises according to the best of their knowledge, information, remembrance and belief, and that they may set forth and discover the real and personal estate belonging to the said James Finnegan and conveyed as hereinbefore mentioned, and what disposition has been made of, or encumbrance put upon the same, fully and particularly, and in whose possession the same has been since the thirtieth day of April eighteen hundred and eighty-six, and whether the same or any part thereof is encumbered and if so in what manner, in whose favor, by whom, and to what amount, and whether such conveyances as aforesaid mentioned were made of said real and personal estate, and if so, for and upon what consideration, and to whom, when and by whom and in whose presence the same was paid, and who has possessed and enjoyed the said personal estate, and possessed, occupied and enjoyed the said real estate, and received the rents, issues and profits therefor since the said alleged or pretended conveyances thereof, and that the defendants, or one of them, may be decreed to pay to your orator the full amount due and owing to him on the said judgment, with the interest, costs and execution fees accrued thereon, and that the said fraudulent conveyances and all other fraudulent conveyances and encumbrances, made, created or suffered between the said defendants and affecting the said goods and chattels and lands may be set aside and declared null and void ; and that the said goods and chattels and lands excepting the land conveyed to John Fitzpatrick and Bridget Theresa Fitzpatrick as aforesaid, may be sold free and clear and discharged of and from the said fraud-

ulent bills of sale and deeds and all other fraudulent bills of sale and deeds and encumbrances, under the said writ of execution or otherwise, and the proceeds therefor, or such part of the same as may be necessary may be applied to the payment of your orator's said judgment; and that your orator may have such other or further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant to your orator the State's writ of subpoena issuing out of and under the seal of this honorable Court, directed to the said James Finnegan and Margaret Finnegan his wife, therein and thereby commanding them and each of them, at a certain day and under a certain penalty to be therein expressed, personally to be and appear before your Honor in this honorable Court, then and there to answer the premises, and to stand to and abide by and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

HENRY E. SAMUELS,

Solicitor for Complainant.

GEO. S. HILTON,

Of Counsel with Complainant.

A true copy,

ALLAN McDERMOTT, *Clerk.*

In Chancery of New Jersey.

Between

WILLIAM TINNOCK,

Complainant,

AND

JAMES FINNEGAN AND MAR-

GARET FINNEGAN HIS

WIFE,

Defendants.

*On Bill.**Answer.*

The joint answer of James Finnegan and Margaret Finnegan his wife, defendants to the bill of William Tinnock, complainant.

These defendants now, and at all times hereafter, reserving to themselves all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained for answer thereunto, or unto so much thereof as these defendants are advised, it is material or necessary for them to make answer unto, answering says:

That the defendant, James Finnegan, in the year eighteen hundred and eighty-four and the year following, was out of the State on business, and his wife the said defendant, Margaret Finnegan, was compelled to deal with tenants and employed one Henry E. Samuels, an Attorney at Law and Solicitor in Chancery, to put out some tenants, in landlord and tenant proceedings, and the case failed because the notice signed by Margaret Finnegan was not legal notice to quit; that said Henry E. Samuel then advised said defendant, Margaret Finnegan, to have the property placed in her name as her husband was out of the State, so much that it would be to her advantage in similar cases in the future and also in case of accident to her husband, the said defendant James

Finnegan, who was engaged in the railroad business, a precarious employment, it would be advantageous to have the property in her name. That thereupon said Samuels was employed to make the transfer, and, in pursuance thereof, the deeds mentioned in said bill of complaint were made out and passed, the sum of one dollar passing from the grantee to the grantor in each case as consideration.

That the whole transaction was performed at the suggestion of said Samuels, who was the Attorney and Counsel of the said defendants at that time and that the deeds that the same Henry E. Samuels, as Solicitor for the complainant in this cause, is attacking as fraudulent; that these defendants most emphatically deny that there was any fraudulent intent on the part of either of them, as at that time the only intent was as above mentioned and suggested by said Samuels at the time, viz: to enable Margaret Finnegan to manage the property in the absence of her husband the said James Finnegan, and in case of accident to said James Finnegan. That at the time of the transfer said property was mortgaged to nearly its full value, and the proceeds of the sale of the premises mentioned in said bill, was used partly to pay back interest and taxes.

These defendants further admit that because of the giving of an improper deed in said transfer according to the advice of said Henry E. Samuels it became and was necessary in selling a part of said premises to have another deed drawn up to cure said defect.

And these defendants deny that the said James Finnegan ever received any consideration from said note from any person, and that he delivered said note to the complainant; but on the contrary, the said James Finnegan, for the accommodation of the maker of said note, one Henry C. Hudson, endorsed said note on a Sunday afternoon and never saw the complainant in this case, never delivered the said note to him, and did not know what disposition said Hudson had made of said note until proceedings were commenced against him.

which was after this transfer, and the endorsing of said note had passed out of mind entirely.

It is admitted that said note was made prior to said transfer and did not come due until three months after said transfer, but at the time of said transfer the existence of said note was not thought of.

That if said transfer was not legal it was through no fault or intent on the part of these defendants, and they are surprised to see, by reading the bill of complaint drafted by Henry E. Samuels, the solicitor of the complainant in this cause, characterized as fraudulent the transaction which he advised and counceled and the deeds which he drew.

And these defendants leaves the complainant to make proof of the matters and things contained in said bill of complaint and prays that the said bill on failure of proof be dismissed, &c., with costs.

Dated Oct. 30th, 1886.

JOHN F. KERR,

Solicitor of Counsel for Defendant.

A true copy,

ALLAN McDERMOTT, *Clerk.*

In Chancery of New Jersey.

Between

WILLIAM TINNOCK,

Complainant,

AND

JAMES FINNEGAN AND MARGARET FINNEGAN HIS WIFE,

Defendants.

On Bill, &c.

The joint answer of James Finnegan and Margaret Finnegan his wife, defendants to the bill of William Tinnock, complainant.

These defendants now, and at all times hereafter, reserving to themselves all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained for answer thereunto, or unto so much thereof as these defendants are advised, it is material or necessary for them to make answer thereunto, answering say :

That they deny that on or before the fifteenth day of December, eighteen hundred and eighty-four, the defendant, James Finnegan, was possessed of and the owner of the goods and chattels mentioned and described in the complainant's bill of complaint filed in this cause, but on the contrary thereof, they aver that, on before the day and year aforesaid, the defendant Margaret Finnegan was possessed of and the owner of all the following goods and chattels in said bill mentioned and described, that is to say : three black walnut bedroom sets and beddings, two mahogany bedsteads and beddings, two dressing cases and chairs, wardrobes, four mirrors, one ebony cabinet, one ebony parlor suit, six imitation lace curtains one ebony easel, one Axminster carpet, twelve rugs, six

ottomans, one lot of pictures, a lot of statuary, one lot of bric-a-brac, one suit of haircloth furniture (given to her by her father), one suit of black walnut furniture, one library table, one marble top table, one lot of imitation lace curtains, one lot of mantel and window lambrequins, one gilt clock and vases, carpets, one dining-room extension table, one buffet, one lot of chinaware, one lot of glassware, and one lot of kitchen utensils; that the piano, piano stool and cover in said bill mentioned are the property of Mary Finnegan, daughter of said defendants, and that the residue of said goods and chattels in said bill mentioned and described, to-wit: one book case and books, one set of dining-room furniture and one lot of silverware were owned and possessed by said James Finnegan; that the said goods and chattels heretofore set forth and belonging to said Margaret Finnegan are worth the sum of eight hundred dollars or thereabouts; that the said Margaret Finnegan purchased the same in her own right periodically between the years eighteen hundred and fifty-seven and eighteen hundred and eighty-two, and with her own separate money, which said money was obtained and acquired by her in the manner hereinafter set forth, to-wit: the sum of two hundred dollars applied to the purchase of said goods and chattels was given to the said Margaret Finnegan by her father, John Kerr, in or about the year eighteen hundred and seventy-five; that by and with the consent of her said husband the said Margaret Finnegan, during the years eighteen hundred and seventy-five and eighteen hundred and seventy-six, at Bound Brook and Millstone and other places in the State of New Jersey, carried on the business of keeping boarders in her own individual right and name, and thereby earned and accumulated about the sum of twelve hundred dollars, which was the separate money of the said Margaret Finnegan, a portion of which, to-wit: about the sum of six hundred dollars was applied by the said Margaret Finnegan to the purchase of said goods and chattels hereinbefore mentioned as belonging to her.

And these defendants, further answering, admit that the said James Finnegan, on or before the fifteenth day of September, eighteen hundred and eighty-four, had in him the title of all those tracts or parcels of land in said bill mentioned and described ; and these defendants, further answering, admit that on or about the seventh day of June, eighteen hundred and eighty-four, a promissory note for the amount in said bill mentioned was made by said Hudson and endorsed by said James Finnegan, but they deny that the said James Finnegan, on the day and year last aforesaid or at any time, became indebted to the said complainant in the said sum of four hundred dollars or any other sum on said note or otherwise, and they deny that said James Finnegan endorsed said note on the same day when the same was made as in said bill alleged, but on the contrary thereof they aver that the said note was endorsed by said James Finnegan on a day subsequent to said making, to-wit: on the eighth day of June, eighteen hundred and eighty-four, which said last mentioned day was the first day of the week commonly called Sunday.

And these defendants , further answering, say : That said James Finnegan endorsed said note as an accommodation, endorser for said Hudson ; that he endorsed the same at the request of said Hector C. Hudson ; that he was unacquainted with and never saw the complainant in this suit ; that he never delivered the said note to him or never received any consideration for said note from any person whatever ; that said Hector C. Hudson informed said James Finnegan that his said endorsement on said note would be a mere matter of form inasmuch as he, said Hudson, would pay and take up said note at maturity, and that said James Finnegan so endorsed said note believing it to be a mere matter of form, and that he incurred no liability thereby ; and that said James Finnegan did not know what disposition had been made of said note and that such endorsement had utterly passed from the memory of said Finnegan until a short time before the com-

mencement of the action in said bill mentioned, and after the making of the deeds hereinafter mentioned to said William W. Welch from said defendants, when he returned from the City of Paterson aforesaid, from a protracted absence therefrom, and up to that time had never suspected in the slightest that he had incurred any liability by said note and that the said Marget Finnegan, at the time of the making of said deeds, did not know that said note had been made.

And these defendants, further answering, admit that on or about the fifteenth day of September, in the year last aforesaid, bills of sale of said goods and chattels of about the import in said bill set forth were made, but they aver that said goods and chattels except those thereof as hereinbefore set forth as the property of said James Finnegan as aforesaid, were the property of said Margaret Finnegan in her own right; and that said bills of sale were made at the suggestion and by the advice of Henry E. Samuels, the solicitor for the complainant herein, and at that time the Counsel of the defendants, who drafted the same and advised these defendants that it was to their interest to have the same executed, and that these defendants did not understand the nature of said last mentioned conveyances nor the effects thereof, but placed explicit reliance upon the advice of their said counsel to execute the same, believing that it was to their interest to follow the advice of said counsel and without understanding or considering the nature and effects of the said last mentioned conveyances, the said James Finnegan signed the said bill of sale in said bill first mentioned although they aver that said goods and chattels, with the exception aforesaid, were the separate property of said Margaret Finnegan in her individual right as aforesaid.

And these defendants, further answering, admit that said deeds of said tracts of land of about the date and import as in said bill set forth were made, and that the consideration of one dollar appears on the face of said deeds, but they deny that no consideration whatever was paid or given for or on

account of conveyances and that they were made for the purpose of transferring the title to said goods and chattels and tracts of land from the said James Finnegan to the said Margaret Finnegan in order to secure the same for his and her use and to protect the same from the said claim of said complainant and the claims of other creditors against him, and hinder and delay the complainant and his other creditors in the collection of said alleged debt and debts then owing by him, and defraud them out of the same. And the said James Finnegan since the execution of said conveyances has always been possessed of and enjoyed the said goods and chattels and held, occupied, possessed and enjoyed and received the rents and profits of said lands except the portion in said bill set forth and thereafter conveyed as fully to all intents and purposes as before the execution of said conveyances as in said bill set forth; but, on the contrary thereof, they aver the truth to be that for a long time prior to the execution of said deeds the said James Finnegan had contemplated transferring the title to said lands to the said Margaret Finnegan, and that although the title to the same was in the said James Finnegan nevertheless, the separate earnings of the said Margaret Finnegan had largely contributed to the purchase of said lands, and her own separate money which came to her through the estate of her father was largely invested therein, and that for the payment of two tracts, to-wit: the tracts in said bill, fifthly and sixthly mentioned and described, her separate money was used and invested as hereinafter set forth; and that the deed for the same was originally intended to be made in her own name, and that by reason thereof she had at the time of said conveyances a large beneficial interest in all of said tracts of land. That although the consideration of one dollar appears upon the face of said deeds as aforesaid. These defendants aver that the actual consideration of such transfer was the said sum of one dollar, together with the said earnings contributed to the purchase and said money of said Margaret Finnegan invested in said lands as aforesaid, as

well as other good and valuable consideration, to-wit: the natural love and affection which the said James Finnegan bore to the said Margaret Finnegan; and that it was upon such consideration as herein set forth and as these defendants aver to be true, that the said James Finnegan passed the title to said tracts of land to the said Margaret Finnegan.

And these defendants charge and insist that such consideration, taking into regard the inchoate right of dower of said Margaret Finnegan, in and the then, existing encumbrances upon said lands as hereinafter set forth was a good and valuable consideration and valid against said complainant.

And these defendants, further answering, aver That the said lands and premises in said bill secondly mentioned and described were purchased by John Kerr, the father of said Margaret Finnegan, in the year eighteen hundred and sixty-seven; for the sum of four thousand dollars for the said Margaret Finnegan, and that the separate money of the said Margaret Finnegan was used and applied to the purchase thereof as follows, to-wit: sixteen hundred dollars thereof, which the said Margaret Finnegan received as a gift from her said father in the year eighteen hundred and sixty-seven, the sum of eight hundred dollars thereof which she received from her brother, George Kerr, deceased, about the year eighteen hundred and sixty-four or eighteen hundred and sixty-five; the sum of fifteen hundred dollars thereof which she, by and with the consent of her said husband: cleared and realized as profits from her own exertions in and about the sale of property on the west side of Jersey Street in the City of Paterson, fully described in a deed from said defendants to Timothy Brophy, dated September nineteenth, eighteen hundred and seventy-two, and recorded in the Clerk's Office of Passaic County in Book M. 6 of Deeds, page 213, July 16th, 1880, which said sum of fifteen hundred dollars so acquired by the said Margaret Finnegan as aforesaid, by and with the consent of her said husband, was to be her own absolute property; that said property in said bill secondly described is encumbered by

mortgages, held by Edo V. Cadmus, for the sum of thirty-five hundred dollars and several years' taxes thereon amounting to about the sum of four hundred dollars; and the further sum of one hundred dollars thereof was paid from and out of the moneys earned and saved by her before her marriage, to-wit: in the year eighteen hundred and fifty-seven, in the employment of dressmaking which she had theretofore carried on for several years.

And these defendants, further answering, aver that the said lands and premises in said bill, fifthly and sixthly described, are encumbered by a mortgage held by the Paterson Savings Bank for the sum of six thousand dollars, and was an encumbrance thereon at the time of the purchase thereof by the said defendandant Margaret Finnegan; that said last mentioned lands and premises were purchased by said Margaret Finnegan with her separate money for the sum of nine thousand five hundred dollars; that the deed therefore was intended to have been made in her own name, but was not so made through any inadvertency; that the separate money of said Margaret Finnegan was used and applied for the purchase of said last mentioned premises as follows, to-wit: the sum of three thousand five hundred dollars paid by her for the same was acquired by her as follows, that is to say: seventeen hundred dollars thereof from her said father at his death, to-wit, in the year eighteen hundred and seventy-seven; the sum of five hundred dollars of which the said Margaret Finnegan acquired by and with the consent of her husband as her share of the profits arising from the sale of certain lands and premises situate on the corner of Main and Slater Streets in the City of Paterson, described in a deed from said defendants to William H. Heap, dated April 25th, 1866, recorded in Book Z 2, page 386, being same premises purchased by said James Finnegan and Margaret Finnegan from Samuel Pope, and the sum of thirteen hundred dollars thereof being part of the money acquired from the rents accruing at two hundred dollars per year for the period of eight years from the said lands and

premises on the west side of Jersey Street aforesaid, amounting to the sum of sixteen hundred dollars..

And these defendants, further answering, aver that the said Margaret Finnegan advanced and loaned to her said husband the sum of about nine hundred dollars for the payment of the lots purchased by him in said bill thirdly described, situated on Getty Avenue and Grove Street in the City of Paterson, which said sum was her own separate money and acquired by her as follows: six hundred dollars thereof being earnings in the business of keeping boarders as aforesaid, and the sum of three hundred dollars thereof from said rents of the lands on Jersey Street aforesaid ; and that said lands in said bill thirdly described have diminished in value since the purchase thereof by the said James Finnegan, so that they are now not worth more than the said sum of nine hundred dollars so advanced by said Margaret Finnegan as aforesaid.

And these defendants, further answering, aver that the said lands and premises in said bill secondly, fifthly and sixthly mentioned and described were always controlled by said Margaret Finnegan, and regarded by her and her said husband as her individual property ; that her separate money was wholly used and applied to the purchase of the same, and that the said James Finnegan's money never contributed to the payment of the same or any part thereof.

And these defendants, further answering, aver that by virtue of said conveyances in said bill mentioned, the said Margaret Finnegan acquired a perfect title to the absolute estate in said lands in fee simple, and that by means of the premises said goods and chattels and said lands are free from and in no way charged by reason of any liability arising from said note or judgment recovered or execution issued thereon ; that at the time said deeds were made the said James Finnegan was a person of large means and held a large amount of personal property other than the goods and chattels and tracts of land hereinbefore mentioned ; that these defendants were not in-

duced to make said deeds for the purpose of evading payment of said note or for the purpose of evading any indebtedness whatever ; that such motive or purpose did not in anywise enter into the transfer of said goods and chattels or real estate, but that at the time of the making of said deeds the said James Finnegan and Marget Finnegan did not know what disposition had been made of said note nor did either of them ; and that the existence of the same and his endorsement thereon had passed entirely out of the mind of the said James Finnegan, and that the said Margaret Finnegan never knew of the existence of the said note, and that he did not even suspect that he had incurred any liability by virtue thereof as aforesaid ; that, at a long time previous to the making of said deeds of said lands, he had contemplated and intended to convey said lands to the said Margaret Finnegan, believing that she ought of justice to have the title thereto in her name inasmuch as she had the beneficial interest therein as aforesaid, and that such intent and purpose of transfer had, for a long time previous to said transfer, been definitely formed and determined upon by said James Finnegan and Margaret Finnegan, but that the same was brought to a consummation at the time in said bill set forth owing to the fact that the said Margaret Finnegan was embarrassed in her dealings with tenants, in her husband's absence from this State, by reason of her being unable to give legal notice to said tenants to quit, inasmuch as the title to said real estate was in her husband the said James Finnegan ; and that they deny each and every allegation of fraudulent intent on the part of them or either of them by reason of said conveyances for the purpose of defrauding the complainant or other creditors, charged against them in said bill of complaint, or any other person or persons whatever ; and they aver that said Henry E. Samuels, who was then employed as their counsel and being fully acquainted with the circumstances of the said James Finnegan, advised them to make said conveyances so alleged to be fraudulent in said bill of complaint, and

informed these defendants that to make such conveyance a perfectly proper transaction and that they had a perfect right so to do, but, on the contrary, allege the facts to be that said conveyances were made in good faith with the full intention to vest the said title to said real estate in fee simple, absolute in said Margaret Finnegan ; and that at the time said deeds were made there was no indebtedness existing against the said James Finnegan ; and that the said Margaret Finnegan, since the execution of said conveyances, has always been possessed of and enjoyed the said goods and chattels as she had theretofore possessed and enjoyed them except those thereof as aforesaid, and that since said conveyances she has held, occupied, possessed and enjoyed and received the rents and profits of said lands except the portion in said bill set forth as conveyed after said deeds.

And these defendants, further answering, admit that it is true as in said bill set forth that these defendants executed a deed to John Fitzpatrick and Bridget Theresa Fitzpatrick, of the date and import, and conveying the land in said bill mentioned and described, and that they executed mortgages to Edo V. Cadmus of the date and import and covering upon the lands mentioned and described in said bill ; that they admit that said note has not been paid by said James Finnegan ; that such action at the time and of the signification in said bill mentioned was commenced ; that such judgment was recorded, such execution issued, and such levy made as in said complainant's bill set forth, so far as these defendants know.

And these defendants deny, all and all manner of unlawful combination and confederation wherewith they are by the said bill charged, without that any other matter or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants.

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

JOHN E. KERR AND Z. M. WARD,
Solicitors and of Counsel with Defendants.

In Chancery of New Jersey.

Between

WILLIAM TINNOCK,

Complainant,

AND

JAMES FINNEGAN AND MARGARET FINNEGAN

Defendants.

Examination of witnesses taken this twenty-fourth day of September, eighteen hundred and eighty-seven, at ten o'clock in the forenoon, before WILLIAM PENNINGTON, Master and Examiner in Chancery, at his office No. 148 Ellison Street, Paterson, in the presence of George Hilton, of Counsel with the complainant, and John F. Kerr, of Counsel with the defendants.

ON NOTICE.

Examination adjourned two weeks to the same hour and place.

Examination adjourned until Saturday, October 22d, 1887, at two o'clock P. M., at the office of William Pennington.

Note made by H. C. Hudson, to order of James Finnegan, dated June 7th, 1884, referred to in the bill and answer is offered in evidence and marked Exhibit A 1. (Protest attached to t.)

WILLIAM TINNOCK, a witness on part of complainant, being by me duly sworn according to law, on his oath, saith: I am complainant in this case. I live in Totowa, Paterson, Sheridan Avenue. Exhibit A 1 shown witness, says: That is the note I got from H. C. Hudson. It was Justice Hudson, Justice of the Peace. He died about three weeks after he gave me the note. It was June seventh, 1884, on Saturday, that I got the

note. I lent him four hundred dollars and he gave me the note for it. No part of it has been paid. I think he paid interest to December 7th, 1884, at the time he gave me the note.

Sworn and subscribed to this }
 22d October, A. D. 1887, } WILLIAM TINNOCK.
 before me

WILLIAM PENNINGTON,

Master in Chancery of New Jersey.

Record of judgment, Tinnock vs. Finnegan and Hudson, offered and marked Exhibit A 2 on part of complainant.

Warranty deed, James Finnegan and wife vs. William W. Welch. Dated September 15th, 1884, offered and marked Exhibit A 3 on part of complainant.

Bill of sale, Welch to Margaret Finnegan. Dated September, 1884, offered and marked Exhibit A 4 on part of complainant.

Deed, Welch to Margaret Finnegan. Dated September 15th, 1884, offered and marked Exhibit A 5 on part of complainant.

Certified copy of execution and levy annexed, in case of William Tinnock vs. James Finnegan and Henry C. Hudson, offered and marked Exhibit A 6 on part of complainant.

Examination adjourned to Saturday, November 19th, 1887, ten o'clock A. M.

Saturday, November 19th, 1887, ten o'clock A. M.

WILLIAM TINNOCK, witness on part of the complainant, being re-called, says:

When I took the note from Mr. Hudson and gave him the money, I did not at that time see Mr. Finnegan's name of the note. Mr. Hudson had the money for six months before the note was given. He had given me a note. He tore up that note when it became due and gave me this one in place of it. I think I saw Finnegan's name on the back of the note when I took it. Mr. Hudson,

Question. What did Mr. Hudson say to you about Mr. Finnegan's responsibility at the time of taking this note?

Question objected and exception taken by defendant's counsel, Mr. Ward, on the ground that it is hearsay evidence.

This objection is overruled on the ground that the question is asked simply to obtain the full statement of the *res gestar* appeal.—Nov. 19th, 1887.

WILLIAM PENNINGTON, Examiner.

Answer. He said Finnegan was worth fifty thousand dollars.

I was born in 1808.

Sworn Nov. 19th, 1887.

WILLIAM PENNINGTON, Examiner.

Adjourned two weeks to Saturday, December 3rd, 1887, 10 A. M.

Adjourned from time to time until January 21st, 1888.

Complainant's Counsel offers in evidence a bill of sale, James Finnegan to William W. Welch, marked A 7; also one Welch to Finnegan, marked A 8.

JAMES W. MCKEE, being by me duly sworn according to law, says: I was Sheriff of the County of Passaic in 1886.

I remember serving some papers on Mr. Finnegan at his house. I have no recollection of making a levy.

Robert I. Burke, was my deputy. As a rule he attended to matters of this kind. Burke is dead. He died May first, eighteen hundred and eighty-seven. I may possibly have made that levy myself. The paper will show.

Sworn Jan. 21st, 1888, before

WILLIAM PENNINGTON, Examiner.

Adjourned until January 28th inst.

Adjourned until February 11th, 1888, at ten o'clock in the forenoon.

Counsel of Complainant offers a certificate of the Registrar of Vital Statistics of the City of Paterson, purporting to be a certificate of the death of Hector C. Hudson. Marked Exhibit A 9 on part of complainant.

HENRY SAMUELS, a witness on part of complainant, being by me duly sworn according to law, on his oath, saith :

I am an Attorney at Law.

Mr. Samuels' examination in this case is objected to in this case on the ground that he was the attorney of defendants in this case, James Finnegan and Margaret Finnegan his wife. That the papers were drawn-up by him and under his supervision, upon his counsel and advise, he then stood in relation of Counsel towards them ; any information which he received from said defendants he received as their counsel, and such communications being sacred he should not be allowed to divulge them.

The examination of this witness is allowed, although not as to matter which he attained knowledge of in his supposed capacity as counsel of defendants, if he was. Decision of the Examiner is appealed from.

I reside in Paterson and practice in Paterson, (Exhibit A 3 on part of complainant) being a deed from James Finnegan, Margaret his wife to William W. Welch, being shown witness. State whether that was drawn by you or under your direction.

Answer. I had it drawn under my directions. No consideration passed to my knowledge. That deed was made to be re-transferred to Mrs. Finnegan.

Exhibit A 8 on part of complainant being shown witness and being a certified copy of a deed from William W. Welch to Margaret Finnegan. Witness says the original of that paper was drawn by my direction. That was for the purpose of re-transferring to Mrs. Finnegan.

Exhibit A 7 on part of complainant, being a copy of bill of sale from James Finnegan to William W. Welch.

Shown witness : The original was drawn under my direction. No consideration passed to my knowledge. The object of it was to transfer the goods and chattels therein described to Margaret Finnegan.

A 4, on part of complainant shown witness, purporting to

be a bill of sale from William W. Welch to Margaret Finnegan.

Witness says: That was drawn under my direction. The object was to transfer the goods to Margaret Finnegan.

Witness not cross-examined.

Sworn and subscribed to this }
eleventh day of February, } HENRY E. SAMUELS.
A. D. 1888, before me }

WILLIAM PENNINGTON,

Master in Chancery of New Jersey.

Mr. James McKee having arrived, his examination is continued.

I have examined the original execution and levy referred to in his former testimony. I found the levy was made by my deputy, Robert I. Burke. I know nothing more than that. I find it was made in his handwriting.

Sworn and subscribed to, before }
me, this 11th day of February, A. } JAMES W. McKEE.
D. 1888. }

WILLIAM PENNINGTON,

Master in Chancery of New Jersey.

It is admitted that Hector C. Hudson died without a will and that no administrator has been appointed of his estate.

Adjourned to Wednesday next, February 15th, 1888.

Adjourned to Saturday, February 18th, 1888.

Mrs. EMMA B. HUDSON, being by me sworn according to law, on her oath, saith:

I am the widow of Hector C. Hudson, late of this City. He died July 16th, 1884. He left no real estate to my knowledge. He left a life insurance policy of 500 dollars, which was payable to me. He left no other personal property that I know of. Henry C. Hudson was my son. He has not been

worth anything to my knowledge since 1883.

Witness not cross-examined.

Sworn and subscribed to this 18th }
 day of February, A. D. 1888, } EMMA B. HUDSON.
 before me

WILLIAM PENNINGTON,

Master in Chancery of New Jersey.

Testimony on part of complainant is closed.

Testimony on behalf of defendants taken May 21st, A. D. 1888, at 10 o'clock in the forenoon. Present: Mr. Ward, of Counsel with Defendants; Mr. Hilton and Mr. Samuels, of Counsel with Plaintiff and of the Plaintiff Defendants.

Mrs. MARGARET FINNEGAN, being by me duly sworn according to law, on her oath, saith:

Mrs. Margaret Finnegan declined to be sworn.

May 21, 1888.

WILLIAM PENNINGTON,

In Chancery of New Jersey.

Between

WILLIAM TINNOCK,

Complainant,

AND

JAMES FINNEGAN AND MARGARET FINNEGAN

Defendants.

On Bill, &c.

Decree.

This cause coming on to be heard at the last regular term of this Court, in the presence of George S. Hilton, of Counsel with the Complainant, and Zebulon M. Ward, of Counsel with the Defendants, and the pleading and proofs having been read, and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the several bills of sale in the complainant's bill mentioned and described, for the goods and chattels therein set forth, and the several deeds of conveyance in said bill mentioned and described, executed by the defendants James Finnegan and Margaret Finnegan to William W. Welch, and by the said William W. Welch to the said Margaret Finnegan, for the lands and premises therein set forth, were made and executed with the intent to defraud the complainant as a creditor of the said defendant James Finnegan, and that the said complainant is entitled to the relief prayed for in his said bill of complaint.

It is thereupon, on this twelfth day of November, eighteen hundred and eighty-eight, on motion of George S. Hilton, of Counsel with the Complainant, ordered, adjudged and decreed, and the Chancellor by virtue of the power and authority of this Court does hereby order, adjudge and decree that the

said bills of sale in the said bill mentioned and described for the goods and chattels therein set forth, and the said deeds of conveyances in said bill mentioned and described for the lands and premises therein set forth, that is to say, the bill of sale made by the defendant James Finnegan to William W. Welch, bearing date the fifteenth day of September, eighteen hundred and eighty-four, and recorded in the Clerk's Office of the County of Passaic in Book E of Miscellaneous for said County on page 56, &c. And the bill of sale made by the said William W. Welch to the said defendant Margaret Finnegan, bearing date the day and year last aforesaid and recorded in the Clerk's Office of said County of Passaic in Book E of Miscellaneous for said County on pages 54, &c., and the deed of conveyance made by the defendants James Finnegan and Margaret Finnegan to the said William W. Welch, bearing date the day and year last aforesaid and recorded in the Clerk's Office of the said County of Passaic in Book U 7 of Deeds for said County, on pages 321, &c. ; and the deed of conveyance made by the said William W. Welch to the said Margaret Finnegan, bearing date the day and year last aforesaid, and recorded in the Clerk's Office of the said County of Passaic in Book U 7 of Deeds for said County on pages 321, &c. ; and the deed of conveyance made by the said William W. Welch to the said Margaret Finnegan, bearing date the day and year last aforesaid, and recorded in the Clerk's Office of the said County of Passaic in Book E 8 of Deeds for said County on pages 284, &c., be and the same are hereby set aside, annulled and made void as against the judgment recovered by the said complainant against the said James Finnegan and one Henry C. Hudson, in the Circuit Court in and for the County of Passaic, on or about the twenty-ninth day of April, eighteen hundred and eighty-six, and in said bill set forth and described, and as against the writ of *feri facias de donis et terris* issued out of the said Circuit Court on the said judgment, and in said bill mentioned and set forth ; and that the defendants do pay the costs of the complainant in this

cause to be taxed, and the complainant have execution therefor according to the practice of this Court.

And it is further ordered that unless the defendants shall, within ten days after service upon them of a copy of this decree and of the taxed bill of costs, pay to the complainant or to his Solicitor the amount due to him upon his said judgment in this cause referred to, and the taxed costs of this suit. The Sheriff of the said County of Passaic, to whom was directed and delivered the aforesaid writ of *feri facias de bonis et terris*, do proceed to sell the said goods and chattels and lands and premises (excepting so much of said lands and premises as was conveyed by the said defendants to John Fitzpatrick and Bridget Theresa Fitzpatrick by a deed bearing date the fifteenth day of April, eighteen hundred and eighty-six, and recorded in the Clerk's Office of the said County of Passaic in Book E 8 of Deeds for said County on pages 344 &c.), free, clear and discharged of and from the said bills of sales and deeds of conveyance and of and from all claims of the said Margaret Finnegan thereunder or by virtue thereof.

ALEX. T. MCGILL, JR.,

Chancellor.

A true copy,

ALLAN McDERMOTT, *Clerk*.

In Chancery of New Jersey.

Between

WILLIAM TINNOCK,

Complainant.

AND

JAMES FINNEGAN AND MAR-

GARET FINNEGAN HIS

WIFE,

Defendants.

On Bill, &c.

The defendants in the above stated cause hereby appeal from the final decree made in this Court in the above stated cause and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated November 27, 1888.

Z. M. WARD,

Solicitor and of Counsel

with the Defendants.

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

Z. M. WARD,

Of Counsel with Defendants.

A true copy.

ALLAN McDERMOTT, Clerk.

STATE OF NEW JERSEY }

} ss:

COUNTY OF PASSAIC.

WILLIAM M. DREW, being duly sworn according to law, upon his oath, says: That he served a copy of the petition of appeal hereto annexed upon Henry E. Samuels, the Solicitor of William Tinnock, the appellee in said cause, on Saturday the eighteenth day of May instant, by delivering the same to him

and deponent, informed him that the said copy was a copy and asked him if he would acknowledge service thereof upon the back of the petition hereto annexed, but said Henry E. Samuels refused, saying he could acknowledge service.

Sworn to and subscribed, be- }
 fore me, this 18th day of } WILLIAM M. DREW.
 May, A. D. 1889, }

JOHN H. REYNOLDS,

Master in Chancery of New Jersey.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE LAST RESORT IN ALL CAUSES.

Between
JAMES FINNEGAN AND MARGARET FINNEGAN HIS WIFE,
Appellants.
AND
WILLIAM TINNOCK,
Appellee.

*On Appeal from Decree of the
Court of Chancery.
Petition of Appeal.*

To the Honorable 'The Court of Errors and Appeals, in the last resort in all causes.

The humble petition of James Finnegan and Margaret Finnegan his wife, the appellants in the above stated cause, respectfully shows that your petitioners find themselves agrieved by a final decree made in the Court of Chancery by his Honor, Alexander T. McGill, Chancellor of the State of New Jersey, bearing date the twelfth day of November, in the year of our Lord one thousand eight hundred and eighty-eight, and filed of record in said cause on the seventeenth day of November, A. D. eighteen hundred and eighty-eight, wherein the said William Tinnock was the complainant and the said James Finnegan and Margaret Finnegan his wife were the defendants in this respect, to-wit: that the said decree declares that the several bills of sale in the complainant's bill mentioned and described, for the goods and chattels therein set forth, and the several deeds of conveyances in said bill mentioned and described, executed by the said James Finnegan and Margaret Finnegan to William W. Welch, and by the said William W. Welch to the said Margaret Finnegan, for

the lands and premises therein set forth, were made and executed with the intent to defraud the complainant in said cause, in the Court of Chancery, as a creditor of the said defendant in said cause James Finnegan, and that the said complainant is entitled to the relief prayed for in his said bill of complaint, and orders, adjudges and decrees that the said bills of sale, in the said bill mentioned and described, for the goods and chattels therein set forth, and the said deeds of conveyance in said bill mentioned and described for the lands and premises therein set forth, that is to say, the bill of sale made by the defendant James Finnegan to William W. Welch, bearing date the fifteenth day of September, eighteen hundred and eighty-four, and recorded in the Clerk's Office of the County of Passaic in Book E of Miscellaneous for said County on page 56, &c. And the bill of sale made by the said William W. Welch to the said defendant Margaret Finnegan, bearing date the day and year last aforesaid and recorded in the Clerk's Office of said County of Passaic in Book E of Miscellaneous for said County on pages 54, &c., and the deed of conveyance made by the said defendants James Finnegan and Margaret Finnegan to the said William W. Welch, bearing date the day and year last aforesaid and recorded in the Clerk's Office of the County of Passaic in Book U 7 of Deeds for said County, on pages 317, &c. ; and the deed of conveyance made by the said William W. Welch to the said Margaret Finnegan, bearing date the day and year last aforesaid, and recorded in the Clerk's Office of the said County of Passaic in Book U 7 of Deeds for said County on pages 321, &c. ; and the deed of conveyance made by William W. Welch to the said Margaret Finnegan, bearing date the day and year last aforesaid, and recorded in the Clerk's Office of the said County of Passaic in Book E 8 of Deeds for said County on pages 284, &c., be and the same are hereby set aside, annulled and made void as against the judgment recovered by the said complainant against the said James Finnegan and one Henry C. Hudson, in the Circuit Court in and for the County of Passaic, on or about the twenty-ninth

day of April, eighteen hundred and eighty-six, and in said bill set forth and described, and as against the writ of *feri facias de bonis et terris* issued out of the said Circuit Court on the said judgment, and in the said bill mentioned and set forth; and that the said defendants do pay the costs of the complainant in the said cause to be taxed. And also in this respect, to-wit: that the said decree orders that unless the defendants shall, within ten days after service upon them of a copy of the said decree and of the taxed bill of costs, pay to the said complainant or to his Solicitor the amount due to him upon his said judgment and the taxed costs of the said suit. The Sheriff of the said County of Passaic, to whom was directed and delivered the aforesaid writ of *feri facias de bonis et terris*, do proceed to sell the said goods and chattels and lands and premises, free, clear and discharged of and from the said bills of sale and deeds of conveyance and of and from all claims of the said Margaret Finnegan thereunder or by virtue thereof.

And your petitioners humbly appeal from all those parts of the said decree of the Chancellor, which declare, order, adjudge and decree as aforesaid upon the ground that the same is erroneous, for that the said several bills of sale and deeds of conveyance from the said James Finnegan and Margaret Finnegan to the said William W. Welch, and from the said William W. Welch to the said Margaret Finnegan, in the said decree mentioned and set forth, were not nor were any or either of them made or executed with any intent to defraud the said complainant, as a creditor of the said defendant James Finnegan.

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

Dated May 17th, 1889.

S. B. RANSOM,
Solicitor for and of Counsel
with the Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
JAMES FINNEGAN AND MAR-
GARET FINNEGAN
Appellants.

AND
WILLIAM TINNOCK,
Respondent.

On Appeal.

*Answer to Petition of
Appeal.*

The answer of the above named Respondent to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true for answer thereto, nevertheless, says and admits: That a decree was made on the twelfth day of November last past, and filed of record on the seventeenth day of November last past, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs, to be adjudged to this respondent.

HENRY E. SAMUELS,

Solicitor of Respondent.

GEO. S. HILTON,

Of Counsel with Respondent.

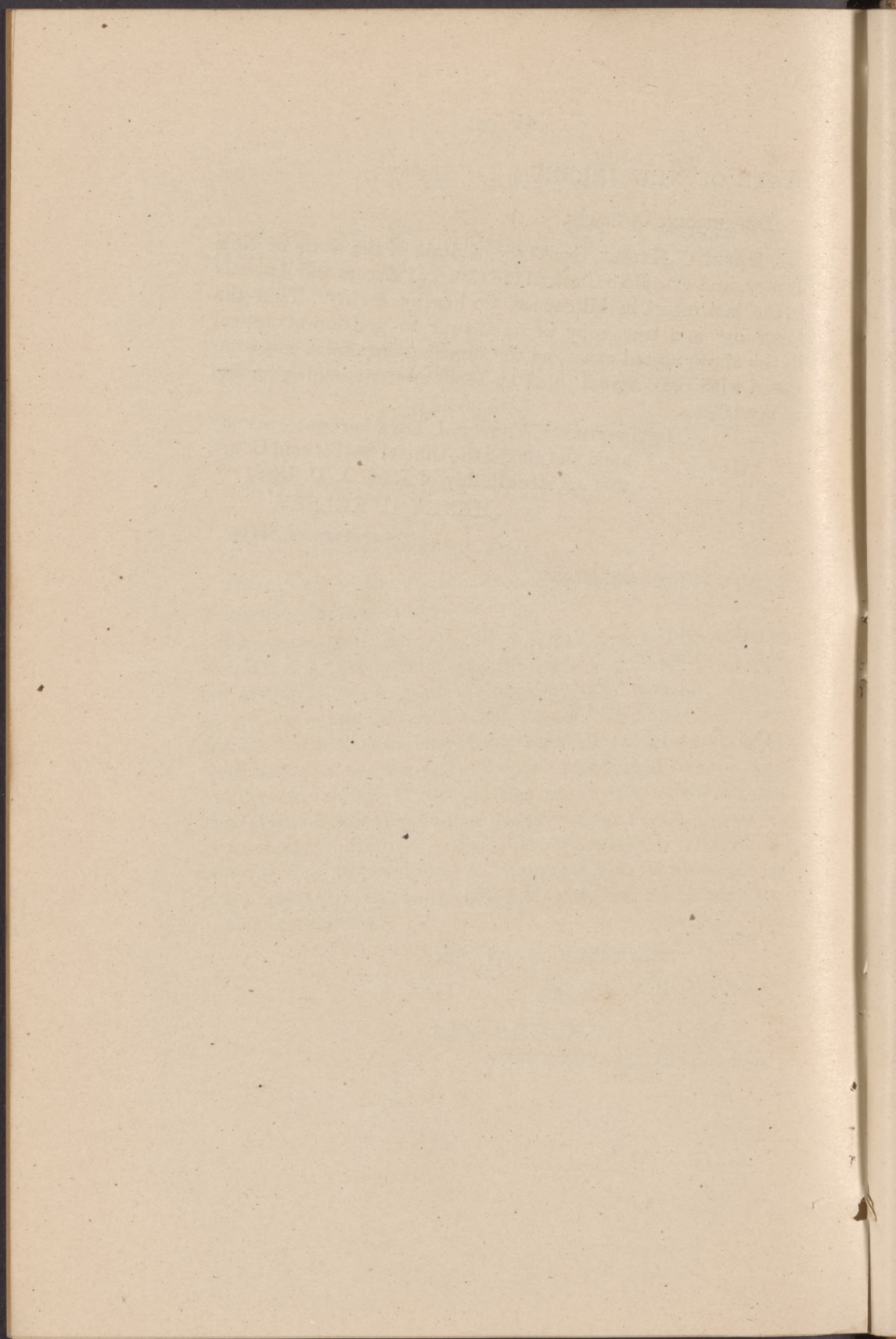
STATE OF NEW JERSEY, }

DEPARTMENT OF STATE. }

I, HENRY C. KELSEY, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify : That the foregoing is a true copy of an answer to petition of appeal in the above stated cause, as the same is taken from and compared with the original (filed 18-1889) now remaining on file in my office.

[L. S.] IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of said Court, this eighteenth day of June, A. D. 1889,

HENRY C. KELSEY,
Secretary of State.



NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JAMES FINNEGAN and

MARGARET FINNEGAN

his Wife,

Appellants,

and

WILLIAM TINNOCK,

Appellee.

On Appeal from the Decree of the Court of Chancery.

Brief and Points for Appellants.

I.

The Bill is defective for want of parties.

The Bill was filed by the Appellee for the purpose of setting aside certain conveyances and bills of sale executed by James Finnegan to one William W. Welch, and by the said William W. Welch to the said Margaret Finnegan, by which certain real and personal estate was transferred by the said James Finnegan to his said wife, Margaret Finnegan.

On the 30th day of April, 1886, the said appellee recovered a judgment in the Circuit Court of the County of Passaic against one Henry C. Hudson and the said appellant, James Finnegan, for the sum of \$466.15 of damages and costs, on which execution was issued against both defendants to the Sheriff of the County of Passaic, who levied it upon the real estate and personal property of the appellant, Margaret Finnegan, which had been

transferred to her by her said husband. The bill charges that these conveyances and bills of sale were made to defraud creditors. Henry C. Hudson is not made a party to the suit. We insist that he is a necessary party, and should have been joined as a defendant in the suit.

See *Fox v. Moyer*, 54 N. Y. R., 129, where it is held that all the judgment debtors in such a case are necessary parties.

II.

The complainant has not exhausted his remedy at law.

Before the deeds from James Finnegan to Welch, and from Welch back to Mrs. Margaret Finnegan, can be attacked for fraud it must appear in some way either by the return of an execution *nulla bona*, or in some other way, that the defendants have no other property out of which the judgment can be made.

There is not a word of testimony in the case to show that it is at all necessary to set aside these transfers to enable the complainant to make his money on his judgment.

Henry C. Hudson, one of the defendants in the judgment at law, and the one primarily liable, for aught that appears, may have an abundance of property out of which the money may be made.

It is true they call his mother to swear that he has not been worth anything, to her knowledge, since 1883. But the Sheriff is not called upon to show that he could not find property belonging to him.

No testimony is adduced to show that Finnegan had no other property out of which the money could be made.

The answer alleges that Finnegan, at the time the deeds

were made, was a man of large property, other than that transferred to his wife. (See Ans. p. 22.)

And the complainant himself proved that he was worth \$50,000. (See testimony of complainant, William Tinnock, p. 28, line 9.)

See 1 Storys, eq. Juris, § 355.

Dunham v. Cox, 2 Stock. R., 437.

III.

The said deeds and bills of sale from the said James Finnegan to the said William W. Welch, and from the said William W. Welch to the said Margaret Finnegan cannot be impeached, defeated, or made void, because they were made for a good and valuable consideration, and *bona fide*.

The natural love and affection which the said James Finnegan bore to his said wife was a good consideration, and in addition to this there was a valuable consideration.

See page 20 of Paper Book.

See also Rev. p. 447, § 15.

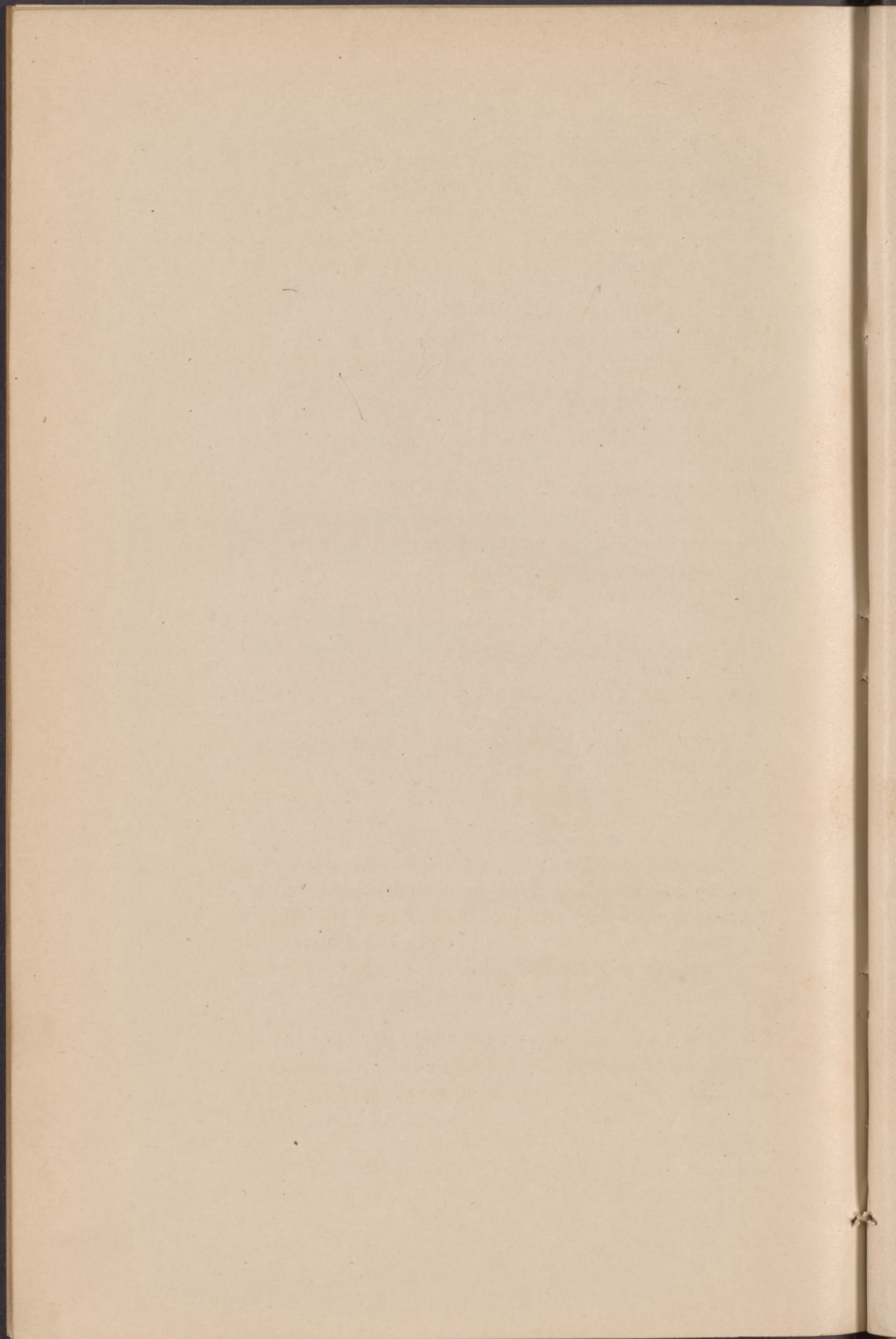
See also 8 Wheat. (Sup. Ct. U. S.) 229.

IV.

The note on which complainant Tinnock recovered his judgment against James Finnegan was endorsed by Finnegan on Sunday, and under our Statute such endorsement was absolutely void.

S. B. RANSOM,

Of Counsel with Appellants.



New Jersey Court of Errors and Appeals.

Between

JAMES FINNEGAN, and
MARGARET FINNEGAN,

Appellants.

AND

WILLIAM TINNOCK,

Respondent.

On Appeal.

Respondent's Brief.

FACTS.

This is an ordinary creditor's bill.

The principal facts are as follows :

1. On and before September 15, 1884, the appellant, James Finnegan, was seized and possessed of considerable real and personal property, in the bill in this case described.

2. On or about June 7, 1884, a promisory note was made by one Hector C. Hudson, for \$400, dated on that day, and payable six months after date to the order of the said James Finnegan, and which was indorsed by the said James Finnegan and one Henry C. Hudson, and delivered to the respondent.

3. The consideration of said note and indorsements thereof was the sum of \$400 loaned by the respondent to the said Hector C. Hudson. *Can, p. 27, l. 1.*

4. The said loan was made on the said note on the strength of the said James Finnegan's indorsement thereof, he being at the time represented to the respondent as worth considerable property. *Can, p. 28, l. 1 ac.*

5. On or about July 16, 1884, the said Hector C. Hudson died intestate and utterly insolvent, and no administrator of his estate has ever been appointed. *Can, p. 30, l. 22; p. 30, new bottom.*

6. The said Henry C. Hudson, the other indorser of said note, was a man of no pecuniary means whatever. *Can, p. 30, last line ac.*

7. On or about September 15, 1884, the said James Finnegan transferred his said real and personal property, through a third party, to his wife, the said Margaret Finnegan.

8. The said transfers were purely voluntary conveyances, without any consideration whatever, the consideration stated in the deeds and bills of sales being one dollar.

9. The said note not having been paid when due was protested for non-payment, &c., and on December 26, 1884, a suit was commenced by the respondent on the said note against the said James Finnegan and Henry C. Hudson, which resulted on April 29, 1886, in a judgment against the defendants for \$466.15.

10. An execution was issued on said judgment, and the Sheriff, not finding any property of the said Henry C. Hudson, nor any of the said James Finnegan, except that transferred by him to his wife as aforesaid, levied on the property so transferred, and returned the execution with such levy annexed.

11. Afterwards the bill in this case was filed for the purpose of enforcing the said judgment against the property so levied on.

12. An answer was filed to the said bill, on October 30, 1886, which set up no valid defence, but in reality admitted the whole case made and claimed by the respondent. *Can, p. 12,*

13. On March 24, 1887, an amended answer was filed, setting up, as the main defence, that at least the principal part of said property was purchased with money belonging to the said Margaret Finnegan. *Can, p. 12,*

14. No testimony was taken on behalf of the appellants. *Can, p. 31,*

15. On November 12th, 1888, the decree in the case, from which the appeal is taken, was made. *Can, p. 32,*

ARGUMENT.

FIRST.

The case is not affected by the fact that the indebtedness of the said James Finnegan to the respondent consisted of the said James Finnegan's indorsement of a note not due when the conveyances were made. *Cook vs. Johnson, 1 Beas. 51, 54.*

SECOND.

The debt having existed at the time the conveyances were made, the law raises a conclusive presumption of fraud. *Clafin vs. Mees, 3 Stew. 211, 212; Cook vs. Johnson, 1 Beas. 51, 54; City National Bank vs. Hamilton, 7 Stew. 158, 160; Annin vs. Annin, 9 Stew. 189, 194.*

THIRD.

If it should be held that the debt did not exist until after the note became due, and therefore not until after

the conveyances were made, so as to make it necessary that actual fraud should be shown or appear, it is plain that actual fraud is shown by the circumstances of this case.

The inference is irresistible that the conveyances were prompted by the death of the maker of the note in a state of utter insolvency, and in order to prevent the making of the amount thereof out of the property of Mr. Finnegan upon his indorsement.

And there is no evidence to rebut this inference.

This case is at least as strong for the creditor as that of Cook vs. Johnson, *supra*, was ; and it was there held that the circumstances showed actual fraud, and that the conveyance in question was made with the view of placing the property beyond the reach of the creditors, 1 Beas. 54.

FOURTH.

The main point urged in behalf of the appellants in the court below was that the respondent must show that the judgment debtor, Mr. Finnegan, did not have any other property out of which this judgment could have been made.

But that is not required.

All that was required on the part of the respondent was the issue of an execution on his judgment and the return of the execution unsatisfied. Bigelow Blue Stone Co. vs Magee, 12 C. E. Gr. 392, 393.

And that was done in this case.

Besides, this bill alleges that the sheriff being unable to find any property of the said Henry C. Hudson

whereon to levy and make the said judgment, or any part thereof, and also being unable to find any property of the said James Finnegan, excepting such as he attempted to convey as aforesaid, whereon to levy and make the said judgment, or any part thereof, levied upon the property aforesaid. *Can, p. 8, l. 10 et seq.*

There is no denial of this allegation in either of the answers.

The allegation, therefor, so far as material, must be taken as confessed, Sanborn vs. Stryker, 2 Stew, 338, 344, 345 ; Lee vs. Stiger, 3 Stew, 610, 611 ; Jones vs. Knauss, 4 Stew, 609, 618 ; Pinnell vs. Boyd, 6 Stew, 190, 191.

And the answer admits the allegations of the bill as to what was done in respect to the judgment and execution thereon. *Can p. 24, l. 25 et seq.*

GEORGE S. HILTON,

Of Counsel with Respondent.

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