

NEW-JERSEY  
COURT OF ERRORS AND APPEALS.

---

PETER MARTIN AND WILLIAM MARTIN, Appellants, and MICHAEL RIGHTER, and als, Respondents.	}	On Bill, &c.  Petition of Appeal.
---	---	---

To the Honorable the Court of Errors and Appeals in the last resort in all causes, &c.

The humble petition of Peter Martin and William Martin, the appellants in the above stated cause, sheweth, that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor Benjamin Williamson, Chancellor, dated the seventh day of February, in the year eighteen hundred and fifty-five, in a certain cause wherein the appellants were complainants and the appellee defendant, whereby it was adjudged that complainants' mortgage is barred by a certain release, in said pleadings mentioned, and that complainants' bill be dismissed, with costs. 10

Your petitioners appeal from said final decree, on the ground that the same is erroneous, and that complainants' mortgage is not barred by said release; that complainants are bona fide assignees of said mortgage, for a full and valuable consideration, without notice of said release; that said release was executed by mistake; that the execution of it was procured by the fraud of defendant practiced on complainants, and that defendant is estopped by his subsequent conduct from setting the same up against complainants, they having advanced their money on the faith of that conduct, in the full belief that the said mortgage was a valid subsisting security, and so admitted to be by defendant. 20

Your petitioners therefore pray that the said decree of said Chancellor may be reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as this Honorable Court shall think them entitled to by the laws of the land.

E. W. WHELPLEY, *Solicitor of Appellants,*  
*and of Counsel.* 30

To his Honor OLIVER S. HALSTED, Esquire, Chancellor of the State  
of New-Jersey.

IN CHANCERY.

Humbly complaining, shew unto your Honor your Orators Peter Martin and William Martin of the city of New-York, that on the fifth day of July, in the year of our Lord one thousand eight hundred and forty-two, or about that time, in the Circuit Court held at Morristown in and for the County of Morris, and in the July term of that Court, one Stephen W. Righter, of the County of Morris, in the State of New-Jersey, by the judgment and consid-  
10 eration of the said Court recovered in an action of trespass on the case upon promises, against one Michael Righter, a judgment for the sum of eleven hundred and thirty-four dollars and fifty-seven cents damages, and twenty-five dollars and eighty-five cents costs of suit, as by the said judgment now remaining of record in said Court will fully and at large appear, and to which your Orators for greater certainty pray leave to refer themselves.

And your Orators further shew unto your Honor, that they have been informed and believe, and so charge the fact to be, that the said sum of money for which the said judgment was entered was at the time of the entry thereof  
20 as aforesaid due and owing by the said Michael Righter to the said Stephen W. Righter, and that no part of the principal sum or the costs aforesaid for which the same was entered, or any interest, had been paid or satisfied in any way to the said Stephen W. Righter by said Michael Righter, at the time of the execution (as hereinafter stated) of the bond and mortgage next hereinafter stated, but that the whole amount secured by said judgment was then due and owing by said Michael Righter to said Stephen W. Righter.

And your Orators further shew unto your Honor, that they have been informed by the said Stephen W. Righter, and believe, and so state, that on or about the seventh day of September, in the year of our Lord eighteen hundred and forty-two, the said Michael Righter was indebted to the said  
30 Stephen W. Righter in the further sum of one hundred and sixty-one dollars and twenty-five cents, for moneys which the said Stephen W. Righter had agreed and bound himself to pay, for and in behalf of the said Michael Righter, to one George P. MacCulloch, in discharge of a debt due and owing by said Michael Righter to the said George P. MacCulloch.

And your Orators further shew unto your Honor, that the said Michael Righter, being so indebted on the said judgment, and in the sum last mentioned, to the said Stephen W. Righter, as aforesaid, in order more effectually to secure to the said Stephen W. Righter the amount of such indebtedness,  
40 on or about the said seventh day of September, in the year of our Lord eighteen hundred and forty-two, made his certain bond or obligation in writing, under his hand and seal, dated the day and year last aforesaid, and thereby acknowledged himself held and firmly bound unto the said Stephen W. Righter, in the sum of two thousand six hundred and sixty-seven dollars and thirty cents, lawful money of the United States, well and truly to be paid to the said Stephen W. Righter, his certain attorney, executors, administrators and assigns, to which payment, well and truly to be made, the said Michael Righter thereby bound himself, his heirs, executors, and administrators, firmly.

Which said bond or obligation was and is subject to a condition thereunder  
50 written: That if the said Michael Righter, his heirs, executors, administrators, or any of them, should and did well and truly pay, or cause to be paid unto the said Stephen W. Righter, his certain attorney, executors, administrators or assigns, the just and full sum of one thousand three hundred and thirty-three dollars and sixty-five cents on demand, with interest from date,

as collateral to other claims held by the said Stephen against the said Michael, as expressed and referred to in a certain acknowledgment and declaration, under seal, executed and delivered by said Stephen W. Righter, to said Michael Righter, of the same date and in the said condition referred to, then the said obligation was to be void and of none effect, or else to remain in full force and virtue, as by the said bond or obligation, now in the possession of your Orators, ready to be produced and proven as this Honorable Court shall direct, and to which your Orators pray leave to refer themselves, will more fully and at large appear.

And your Orators further shew unto your Honor, that, in order the more effectually to secure unto the said Stephen W. Righter the moneys so due to him as aforesaid, the said Michael Righter, on or about the said seventh day of September, in the year eighteen hundred and forty-two, made, executed, and delivered to the said Stephen W. Righter, a certain Indenture of Mortgage, bearing date the same day and year last aforesaid, wherein the said Michael Righter was party of the first part, and the said Stephen W. Righter was party of the second part, which Indenture witnessed: that the said party of the first part, for and in consideration of the sum of one thousand three hundred and thirty-three dollars and sixty-five cents, good and lawful money of the United States, to him in hand paid by the said party of the second part, and the said party of the first part, therewith fully satisfied, contented and paid, had given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by the said Indenture did give, grant, bargain, sell, alien, release, enfeoff, convey, and confirm, to the said party of the second part, and to his heirs and assigns forever, all that lot, tract or parcel of land and premises, hereinafter particularly described, situate in the village of Rockaway, in the County of Morris, as follows, to wit: Beginning at a stake standing on a course south thirty-three degrees and thirty minutes, west distant seventy-five links, from a rock marked T. C., also being the second corner of a lot of land which William Jackson sold to Stephen W. Righter, containing three thousand two hundred and sixty-seven square feet; thence running, 1st, south thirty-three degrees and thirty minutes west, four chains and forty links to a stake; thence, 2d, south fifty-six degrees and thirty minutes east, one chain and eight links to a stake; thence, 3d, north thirty-three degrees and thirty minutes east, five chains and ninety links to a stake; thence, 4th, north fifty-six degrees and thirty minutes west, fifty-eight links to the fourth corner of the said Stephen W. Righter's lot; thence, 5th, south thirty-three and a half degrees west, along said Righter's lot, one chain and fifty links to the third corner of the same; thence, 6th, north fifty-six degrees and thirty minutes, west along said Stephen W. Righter's lot, fifty links to the place of beginning, containing fifty-five hundredths of an acre, more or less; together with all and singular, the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging, or in anywise appertaining; also, all the right, title, interest, property, claim and demand whatsoever of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof. To have and to hold all and singular the above described tract of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

Which said Indenture of Mortgage was made subject to a condition thereunder written: That if the said Michael Righter, his heirs, executors or administrators did and should well and truly pay or cause to be paid, to the said Stephen W. Righter, his executors, administrators or assigns, the sum of one thousand three hundred and thirty-three dollars and sixty-five cents, on demand, with interest from the date of said Indenture, according to the

condition of the hereinbefore recited bond or obligation, then the said bond and indenture should cease and be void, anything in either contained to the contrary in anywise notwithstanding. And the said Michael Righter thereby, for himself, his heirs, executors and administrators, did covenant and grant to and with the said Stephen W. Righter, his heirs and assigns, that the said Stephen W. Righter, his heirs and assigns, should and might from time to time, and at all times after default should be made in the performance of the condition of the said Indenture contained, peaceably and quietly enter  
 10 granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said Michael Righter, his heirs or assigns, or any other person or persons whatsoever.

As by the said Indenture, duly executed under the hand and seal of the said Michael Righter, now in the possession of the said complainants, ready to be produced and proven, as this Honorable Court shall direct, and to which your Orators pray leave to refer, will fully and at large appear.

And your Orators further shew unto your Honor, that on or about the tenth day of September, in the year eighteen hundred and forty-two, the said Michael Righter personally appeared before William N. Hennion, then  
 20 being one of the Commissioners for taking the proof and acknowledgment of deeds for the County of Morris, and the said Commissioner being satisfied that he was the grantor in the said Indenture mentioned, and having first made known to him the contents thereof, he did thereupon acknowledge, before said Commissioner, that he signed, sealed, and delivered the said Indenture, as his voluntary act and deed, and for the uses and purposes therein expressed, as by the certificate of the said Commissioner, endorsed on the said Indenture, will fully and at large appear, and to which your Orators pray leave to refer for greater certainty.

And your Orators further shew unto your Honor, that the said Indenture  
 30 of Mortgage having been so as aforesaid acknowledged, was afterwards, to wit, on the twentieth day of September, in the year eighteen hundred and forty-two, duly lodged in the office of the Clerk of the County of Morris, to be recorded, and was afterwards on the same day, by David B. Hurd, then being Clerk of the County of Morris, duly recorded in the Clerk's Office of said County, in Book T, of Mortgages, folios 299 and 300, as by the registry aforesaid, or the certificate thereof duly endorsed on the said mortgage, by the said Clerk, will fully and at large appear, and to which your Orators for greater certainty, pray leave to refer.

And your Orators further shew unto your Honor, that the original paper  
 40 shewing for what purpose the said bond and mortgage were executed, and what claims the same were intended to secure, was by the said Stephen W. Righter, delivered to the said Michael Righter, and is still in his possession, but your Orators were, at the time of the assignment to them of the said bond and mortgage by said Stephen W. Righter, as hereinafter mentioned, furnished by the said Stephen W. Righter with what was alleged by him, and believed by your Orators to be, a copy of said paper, by which it appears that the said Stephen W. Righter acknowledged that he had received the aforesaid bond and mortgage, to secure to him the payment  
 50 of the moneys secured by, and due on the said judgment, and also the further sum of one hundred and sixty-one dollars and twenty-five cents, with interest from the seventh day of September, in the year eighteen hundred and forty-two, and your Orators charge that to be the purport of the said declaration, signed by the said Stephen W. Righter, and pray that the said Michael Righter may be compelled to produce the said original paper, or discover, under oath, the contents thereof.

And your Orators further shew unto your Honor, that on or about the

first day of November, in the year eighteen hundred and forty-nine, the said Stephen W. Righter, by his deed of assignment bearing date the same day and year last aforesaid, acknowledged that for and in consideration of the sum of fifteen hundred and eleven dollars and seventy cents due, and by said deed of assignment guaranteed to be due, on the said bond and mortgage and judgment hereinbefore set forth and described, the receipt whereof was thereby acknowledged, the said Stephen W. Righter did grant, bargain, sell, assign, transfer and set over to your Orators, their executors, administrators and assigns, the said indenture of mortgage, and all the lands and real estate therein described, subject to the equity of redemption of the said Michael Righter, if any he had, together with the bond therein mentioned, and all the moneys due and to grow due thereon, and also the said judgment and all moneys due and to grow due thereon, as by the said deed of assignment duly executed under the hand and seal of the said Stephen W. Righter, now in the possession of your Orators, ready to be produced and proven as this Honorable Court shall direct, and to which when produced your Orators for greater certainty pray leave to refer, will fully and at large appear. 10

And your Orators further shew unto your Honor, that a short time prior to the execution of the said deed of assignment to your Orators as above stated, the said Stephen W. Righter applied to your Orators, who are Merchants in the City of New-York, doing business there as Wholesale Grocers, to sell goods, wares and merchandize, and to advance moneys to him the said Stephen W. Righter, and offered in payment for the same to assign to your Orators the said judgment and bond and mortgage and all the moneys due thereon, representing to your Orators that the said judgment and bond and mortgage were the first and only lien and incumbrance upon the said property in the said mortgage mentioned and described; and your Orators employed Edward W. Whelpley, a Counsellor at Law residing at Morristown, New-Jersey, to examine and report to them whether the said judgment and mortgage were the first lien and incumbrance on the said mortgaged premises, and to look after their interests touching an assignment to them of the said judgment, bond and mortgage, and to act as their counsel in the matter, and that the said Edward W. Whelpley reported to them that the said judgment and mortgage were the first lien and incumbrance upon the said mortgaged premises, and that in his opinion they could safely advance to the said Stephen W. Righter the amount represented by said Stephen to be unpaid and due upon the said judgment and bond and mortgage. And your Orators are informed and believe, and so charge the fact to be, that before reporting to your Orators in regard to the said bond and mortgage and judgment, and before the execution of the said deed of assignment thereof as aforesaid to your Orators, and before your Orators advanced any money to said Stephen W. Righter on account of said assignment, the said Edward W. Whelpley required the said Stephen W. Righter to settle and agree with the said Michael Righter whether any, and if any, what credits should be endorsed on the said bond and mortgage, prior to the assignment thereof to your Orators. 20 30 40

And your Orators further shew unto your Honor, that they have been informed by the said Edward W. Whelpley, and believe the fact so to be, and so charge, that the said Stephen W. Righter, after being so required by the said Edward W. Whelpley to settle and agree with the said Michael Righter as aforesaid, and before the said assignment to your Orators as aforesaid, and on or about the twentieth day of October, eighteen hundred and forty-nine, the said Stephen called on the said Michael, and they settled the amount due upon the said mortgage; and it was agreed between the said Stephen W. and Michael Righter, in order to reduce the amount due on said mortgage on the seventh day of September, eighteen hundred and forty- 50

nine, to the sum of fifteen hundred dollars, that in addition to the credits already endorsed on said bond there should be endorsed an additional credit of seventy-three dollars and seventy-nine cents, and in part payment of said sum of money so to be endorsed on said bond and mortgage, the said Michael gave to the said Stephen W., his due bill bearing date the same day, for the sum of twelve dollars and eighty-six cents, payable in lime at his kiln, at Middle Forge, and thereupon the said Stephen W. gave to the said Michael a receipt in writing, for the said sum of seventy-three dollars and seventy-nine cents on account of said bond, and the said Michael gave to the said

10 Stephen W. Righter, a memorandum in his own handwriting of the amount aforesaid, to be credited on the said bond and mortgage, which last mentioned receipt and the said memorandum bore date on or about the twentieth day October, in the year eighteen hundred and forty-nine, and that the said Stephen W. Righter produced to the said Edward W. Whelpley, the said memorandum, signed by the said Michael Righter as aforesaid, and directed the said Edward W. Whelpley to credit the same on the said bond, and that the said Edward W. Whelpley did, in consequence of the production of the said memorandum, and the direction of the said Stephen W. Righter as

20 aforesaid, credit on the said bond as of the said twentieth day of October, in the year eighteen hundred and forty-nine, the said sum of seventy-three dollars and seventy-nine cents, and the said credit was signed by the said Stephen W. Righter, and that the said Edward W. Whelpley, in consequence of the production to him as aforesaid, of the said memorandum, signed by said Michael Righter, was induced to believe and did believe that the said last mentioned sum of money was all the credits which the said Michael Righter claimed to have entered on said bond and mortgage, except what had been already credited thereon, and advised your Orators that it was safe for them to loan the said money, and take an assignment of the said bond and mortgage and judgment.

30 And your Orators further shew unto your Honor, that they relied on the advice of the said Edward W. Whelpley in regard to the assignment of the said bond and mortgage, and would not have taken the same, and advanced their money, and sold their goods, wares and merchandise, unless he had advised them that it was safe so to do, on the security of the assignment of the said bond and mortgage and judgment; and that your Orators in good faith, without any notice whatever that the said Michael Righter disputed his liability on the said bond and mortgage and judgment, or that he had or claimed to have any defence either at law or in equity against the said bond and mortgage and judgment, or that he had been or claimed to be in any

40 way released from the payment of the same, and believing the said bond and mortgage and judgment to be good, valid, subsisting and unsatisfied securities for the said sum of money by your Orators agreed to be paid for them, paid to the said Stephen W. Righter the sum of seven hundred and fifty dollars in cash, and sold to him goods to the amount of sixty-five dollars and eleven cents, at the time of the delivery of the said assignment to them, and agreed to sell to him goods, wares and merchandise to the amount of the balance of the consideration expressed in said assignment, and to receive the said assignment in payment of the sum of one hundred forty-one dollars and seventy-two cents then due them from him, and have since sold and delivered to said Stephen W. Righter goods and merchandise to the amount of

50 two hundred and thirty-four dollars and fifty-nine cents, in payment for said mortgage, bond and judgment.

And your Orators further shew unto your Honor, that at the time of the said assignment of the said bond and mortgage to your Orators as aforesaid, in addition to the receipt hereinbefore specified, there was endorsed a receipt from the said Stephen W. Righter for the sum of three hundred and twenty

dollars and seven cents, in full for four years' interest due on the said bond from September 7, 1842, to September 7, 1846. And your Orators expressly charge and insist, that the whole amount of the principal and interest moneys mentioned in and intended to be secured by the said mortgage, except as aforesaid, is still due and unpaid thereon, and that no part thereof has been paid and satisfied to the said Stephen W. Righter, or to your Orators, since the said assignment thereof to them as aforesaid.

And your Orators further shew unto your Honor, that shortly after the rendition of the said judgment in the said Circuit Court against the said Michael Righter, in favor of the said Stephen W. Righter, a writ of fieri facias de bonis et terris was in due form of law issued out of said Court upon the said judgment, and placed in the hands of Jeremiah M. DeCamp, then being Sheriff of the County of Morris, to be executed, and that under it the said Sheriff duly levied on the lands and real estate in said indenture of mortgage described.

And your Orators further shew unto your Honor, that the said Michael Righter has at all times since the execution and delivery of the aforesaid mortgage, possessed and enjoyed, and still does possess and enjoy the said mortgaged premises, and has at all times received and still does receive the rents, issues and profits thereof.

And your Orators further shew unto your Honor, that shortly after the execution and delivery of the said assignment of the said bond and mortgage and judgment, as aforesaid, to them, they caused the said Jeremiah M. DeCamp, late Sheriff, to proceed with the execution of the said writ of execution, and to advertise for sale the said lands and real estate levied on by virtue of said writ of execution, and directed him to proceed to make the money as by the said writ he was commanded, and that the said Jeremiah M. DeCamp did advertise the said mortgaged premises for sale by virtue of said writ and levy; and that afterwards, and on the eighteenth day of February as they are informed and believe, the said Michael Righter caused to be served upon the said Edward W. Whelpley, their attorney, a notice of a motion to be made before the Circuit Court of the said County of Morris, to be held at Morristown, on the twenty-first day of February then instant, for a rule to show cause by such day as the Court should appoint, why the said judgment above recited, should not be satisfied on record by order of the said Court, on the ground that the same had been satisfied to the said Stephen W. Righter, and for an order of the said Court, staying all further proceedings on the said judgment, and the execution thereon issued, and at the same time served upon their said attorney a copy of a certain release alleged to have been executed by said Stephen W. Righter to said Michael Righter, which copy was in substance as follows:—“To all to whom these presents shall come, or may concern, greeting: Know ye that I, Stephen W. Righter, of the County of Morris and State of New-Jersey, for and in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid by Michael Righter, of the same place, have remised, released, and forever discharged, and by these presents do for myself, my heirs, executors and administrators, remise, release and forever discharge the said Michael Righter, his heirs, executors and administrators, of and from all and all manner of action, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, balances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against him I ever had, now have, or which my heirs, executors or administrators hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

"In witness whereof, I have hereunto set my hand and seal, the nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-seven.

Sealed and delivered in }  
the presence of }  
JOHN S. HAGER. }

Signed,  
STEPHEN W. RIGHTER. [L. S.]"

And your Orators further shew unto your Honor, that in pursuance of the said notice, the said Michael Righter caused the said motion to be made before the said Court, at the term of February last, and such proceedings were had before the said Court, that the said Circuit Court granted a rule upon the plaintiff in and assignees of said judgment, to show cause on the first day of next May term of said Court, to be held at Morrystown on the third Tuesday of May, in the year eighteen hundred and fifty, why satisfaction should not be entered of record of said judgment, and that all proceedings for the enforcement of the said judgment and execution should in the mean time be stayed, and that both parties should have leave to take affidavits.

And your Orators further shew unto your Honor, that they are informed and believe, and so charge the fact to be, that the said Michael Righter intends to proceed under the said rule to show cause, to enforce the entry of satisfaction of record of said judgment as fast as the rules of the said Court will permit, and that he relies upon the said release above referred to as evidence of satisfaction of said judgment, and has and claims to have no other evidence thereof, and intends offering it in evidence on the argument of said motion.

And your Orators further shew unto your Honor, that they have been informed by said Stephen W. Righter, and believe, and state the facts so to be, that the said release, a copy of which is above set forth, was executed under the following circumstances, and for the following described purposes: That one Joseph C. Righter, being the owner of certain drafts or bills of exchange hereinafter mentioned, and entitled to the proceeds thereof when collected, being desirous of bringing suit thereon to collect the amount of moneys due thereon, against Matthias Kitchel the drawer thereof, and being in embarrassed circumstances, and fearful that the collection thereof might be embarrassed by the creditors of him, the said Joseph C. Righter, if suit should be brought in his own name upon said drafts, applied to the said Stephen W. Righter, to take the said drafts or bills of exchange, and suffer a suit for the collection thereof to be brought in the name of him the said Stephen W. Righter, against the said Matthias Kitchel, but for the sole benefit and use of him the said Joseph C. Righter; that the said Stephen W. Righter assented to this arrangement, and that in pursuance of said arrangement and consent, a suit was brought in the Circuit Court of the County of Morris by the said Joseph C. Righter, in the name of said Stephen W. Righter, that John S. Hager, Esq., then one of the attorneys of the Supreme Court of this State, was the attorney of the plaintiff in that suit, and conducted the same as attorney and counsel for the said Joseph C. Righter, that said suit was brought to recover of the said Matthias Kitchel, the amount due on a draft or bill of exchange drawn by said Matthias Kitchel, dated Rockaway, June the fifteenth, eighteen hundred and forty, directed to Messrs. Bennet, Farraday & Co., New Orleans, whereby the said Matthias Kitchel requested them at sight to pay to the order of Mr. Michael Righter six hundred and forty-two dollars, on account of wagons shipped for Thos. R. Shields, with the current rate of exchange on New York, and endorsed by said Michael Righter, also upon another draft or bill of exchange drawn by said Matthias Kitchel, dated Rockaway, June the eighteenth, eighteen hundred and forty, directed to Wm. M. Lambeth & Thompson, New Orleans, whereby the said Matthias Kitchel requested them to pay at sight

to the order of Michael Righter, three hundred and twelve dollars on account of wagons shipped for Cragn & Pierce, with the current rate of exchange on New York, endorsed by said Michael Righter, also upon another draft or bill of exchange, drawn by said Matthias Kitchel, dated Rockaway, New Jersey, June the eighteenth, eighteen hundred and forty, directed to M. Bogert, Esq., New Orleans, whereby at sight the said Matthias Kitchel requested him to pay to the order of Michael Righter, three hundred and four dollars on account of wagons and harness, shipped for Mr. S. Clifton, and a cart for Mr. W. A. Shaffer, with the current rate of exchange on New York, endorsed by said Michael Righter, that said suit was brought on or after 10  
or about the eighteenth day of March, in the year eighteen hundred and forty-five, that the said wagons and merchandize on account of which said drafts were drawn, were manufactured by the said Michael Righter and Joseph C. Righter, jointly and at their joint expense, and were their joint property, that the said Michael & Joseph C. Righter were about that time jointly interested in other business carried on by them, that before the bringing of the said action, the said Michael Righter and Joseph C. Righter dissolved all their connection in business, and the said Michael Righter assigned to the said Joseph C. Righter all his interest in the property, rights and credits belonging to them jointly, and among other things the said drafts or bills of exchange above described, and that in consideration of such assignment of their joint property to the said Joseph C. Righter, he the said 20  
Joseph C. Righter agreed to pay and discharge all the debts for which they were jointly liable, and that by means of the premises the said Joseph C. Righter became the sole and exclusive owner of the aforesaid drafts or bills of exchange, and that the same remained and continued, and still are the property of the said Joseph C. Righter, and that the said Stephen W. Righter never had any beneficial interest therein, and that when the said suit upon the said drafts was about to come to trial, the said Michael Righter alleged that he was interested in the said drafts, and in the event of said 30  
suit, and said Stephen W. Righter who did not expect to be present at the said trial, and was not present thereat, was advised by the said John S. Hager, Esq., that it might become necessary upon the said trial, in order to rebut any defence which the said Matthias Kitchel might set up against said drafts, to call and examine as a witness the said Michael Righter, that it would appear from the testimony of the said Michael Righter, if sworn as a witness upon the said trial, that he was connected in some way with the said drafts, so as to make him interested in the event of the said suit, and that as his testimony might be objected to on the ground of his interest in 40  
the event of suit, that it was necessary and proper in order to obviate any such objection for him the said Stephen W. Righter, to execute a release to the said Michael Righter, to discharge any interest he might have in the event of the suit, that the said John S. Hager, Esq., then filled up a printed form of a general release, (being the release in question,) and requested the said Stephen W. Righter to sign it, that the said Stephen W. Righter objected (and in the presence of the said Michael Righter,) to the release as being too broad and general in its terms, as covering everything, whereupon the said Michael Righter replied that it was no matter as the release should be given up to him, the said Stephen W. Righter, as soon as the trial was over, and that it was necessary to execute the said release in order to discharge 50  
his interest in the suit, (the said Michael Righter then having and well knowing that he had no interest in the said suit, and that it was unnecessary to execute the said release to enable him to be sworn as a witness upon said trial,) and the said John S. Hager, Esq., advised the said Stephen W. Righter, that it was right and safe for him to sign the same, that thereupon, and in consequence of such promise as aforesaid made by the said

Michael Righter, and the said advice of the said John S. Hager, Esq., thinking that no harm could or would arise to him, the said Stephen W. Righter, on account of the said release, he, the said Stephen W. Righter, executed the said release, in the presence of the said John S. Hager, who subscribed the same as an attesting witness, and with whom the same was left for safe keeping, that the said release was delivered to the said Michael Righter, and that he was sworn and examined as a witness on the trial of the said cause, that the said Stephen W. Righter never received any consideration for the said release, not even the nominal sum of one dollar mentioned therein, that no consideration was agreed to be paid by the said Michael Righter to the said Stephen W. Righter, or to any other person for the said release, that there never was any settlement or adjustment of accounts, claims or demands between them, or any agreement or understanding in consequence of which and to carry out which between them the said Michael and Stephen W. Righter, the said release was executed, that there never was any intention on the part of the said Stephen W. Righter at the time of the execution and delivery of said release, to release anything except what was necessary to make the said Michael Righter a competent witness in the trial of the said cause, that the said Michael Righter never asked the said Stephen W. Righter to release him from the said judgment or intimated to him in any way that he wished him to execute the said release for that purpose, and that if he, the said Michael Righter, had done so, the said Stephen W. Righter never would have executed the same, and that the said Michael Righter now seeks by means of the said release, so obtained, to perpetrate a fraud upon your Orators.

And your Orators further shew unto your Honor, that they have been informed and believe and so state, that since the execution and delivery of the said release as aforesaid, the said Michael Righter has frequently admitted his liability on the said judgment, bond and mortgage, both to the said Stephen W. Righter, and to other persons, and was paid the interest or a part thereof on the sum secured thereby as aforesaid, and has applied to different persons at different times to pay to the said Stephen W. Righter the amount secured thereby, and take an assignment therefor, and hold the same for the convenience and accommodation of the said Michael Righter so as to give him time to redeem the same, and that on or about the twentieth day of October, in the year eighteen hundred and forty-nine, the said Michael Righter presented an account of moneys due him from said Stephen W. Righter, and that the amount thereof or of some items therein was by agreement between them credited on the said judgment, bond and mortgage, or the claim secured thereby, or agreed to be.

And your Orators had well hoped that the said Michael Righter would have paid to your Orators, the said sum of money secured by the said judgment, bond and mortgage, as in equity and good conscience he ought to have done, but now so it is, may it please your Honor, that the said Michael Righter combining and confederating with divers other persons whose names are at present unknown to your Orators, but which when discovered, they pray may be inserted in this their bill of complaint with proper and apt words to charge them as parties thereto, how to injure and aggrieve your Orators in the premises, altogether refuses to pay to your Orators the amount so as aforesaid due for principal and interest on the said judgment, bond and mortgage, and for so doing, makes divers untrue and inequitable allegations and pretences, and sometimes gives out and pretends that he has paid to the said Stephen W. Righter, the amount due upon the said judgment and bond and mortgage, whereas your Orators charge the contrary thereof to be true, and that the whole amount secured thereby is still due and owing to your Orators, no part thereof having been paid, except the interest here-

inbefore stated to have been endorsed upon the said bond ; and at other times gives out and pretends that although he has not paid to the said Stephen W. Righter before the said assignment thereof, the amount due upon the said judgment and bond and mortgage, or to your Orators since the said assignment thereof, yet that he the said Michael Righter has, in his possession, a release duly executed under the hand and seal of the said Stephen W. Righter, to him, the said Michael Righter, dated since the rendition of the said judgment and the execution of the said bond and mortgage, and before the assignment thereof to your Orators, fully discharging and barring the same, whereas your Orators charge that the said release was obtained from the said Stephen W. Righter, by fraud and misrepresentation of the said Michael Righter, and that the same was executed by the said Stephen W. Righter, under a mistake of fact on the part of the said Stephen W. Righter, produced by certain false representations, made by said Michael to said Stephen W. Righter, and is void as against your Orators, and ought to be given up to be cancelled ; and at other times the said Michael Righter gives out and pretends that on the day of the date of said release, or on some other day about that time, the said Michael Righter and Stephen W. Righter met together and had a settlement of all their business transactions, and that there was a balance found due to the said Stephen W. Righter, from the said Michael Righter, and that in liquidation and settlement of such balance, he the said Michael paid to the said Stephen W. Righter, the balance so found due, and that the said Stephen W. Righter thereupon executed and delivered to the said Michael Righter, a release in full of all demands against him, said Michael Righter, whereas your Orators charge the contrary thereof to be the truth, and that the said Stephen W. Righter and Michael Righter never met together for the purpose of the settlement of their business transactions, about the time of the date of the said release, and never had, about that time, or before that time, any such settlement, and that the said Michael Righter did not pay to the said Stephen W. Righter any sum of money as the consideration of such release ; and at other times the said Michael Righter gives out and pretends that he paid to the said Stephen W. Righter the amount due him on the said judgment and bond and mortgage, in part, by assigning to him, the said Stephen W. Righter, the one equal half part of the principal exchange interest and protest fees of three certain drafts, belonging to him the said Michael Righter, and drawn in his favor, by one Matthias Kitchel, one dated June fifteenth, eighteen hundred and forty, at sight, on Messrs. Bennet, Farraday & Co., of New-Orleans, for six hundred and forty-two dollars, with current rate of exchange, on New York, one dated June eighteenth, eighteen hundred and forty, at sight, on Messrs. W. M. Lambeth & Thompson, of New-Orleans, for three hundred and twelve dollars, with the same current rate of exchange, and the other dated June eighteenth, eighteen hundred and forty, at sight, on Wm. Bogart, of New-Orleans, for three hundred and four dollars, with like exchange, and that the said assignment was made some time in the year eighteen hundred and forty-three, and that at the time of the assignment thereof, the said Stephen W. Righter agreed to allow the amount in part payment of said judgment, whereas your Orators charge the contrary of the said pretence, and that the said drafts were not at the said time the property of the said Michael Righter, but were the property of Joseph C. Righter, that the same, or any part thereof, were never in any way assigned by the said Michael Righter to said Stephen W. Righter, and that the said Michael Righter and Stephen W. Righter never had any conversation or agreement about the assignment thereof, or of any part thereof, and that on the contrary, the said Michael Righter assigned his interest in the said drafts to Joseph C. Righter,

who settled with and paid him for the same, or agreed so to do, and the said drafts came to the hands and possession of said Stephen W. Righter, from Joseph C. Righter, under an agreement between the said Stephen W. Righter and Joseph C. Righter, (which agreement was well known to said Michael Righter,) that the same were to be collected for the sole use and benefit of said Joseph C. Righter, and without any part thereof being retained by said Stephen W. Righter, for his own use.

10 All which actings, doings and pretences of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your Orators.

In tender consideration whereof, and forasmuch as your Orators are without adequate remedy in the premises, by the strict rules of common Law, and without the assistance of this honorable Court, where matters of this nature are particularly cognizable and relievable :

To the end, therefore, that the said defendant and his confederates, when discovered, may, upon their several and respective corporal oaths, or affirmations, full, true and perfect answer make to all and singular the said premises, and that as fully and particularly as if the same were hereinafter repeated, and they thereto and to every part thereof, fully interrogated, and that  
20 the said Michael Righter may full, true and perfect answer make, upon his corporal oath, or solemn affirmation, to the following

#### INTERROGATORIES.

1st. Who was present when the release hereinbefore stated to have been executed and delivered to you by said Stephen W. Righter was executed and delivered, and when was the same executed and delivered ?

2d. By whose advice was the same executed, and on what occasion was the said release to be used, and for what purpose—was it executed for the purpose of being offered in evidence on the trial of the cause hereinbefore stated, so as to make you a competent witness ?

3d. At whose request was the said release drawn up ?

4th. Was the said release drawn up and executed before, or during the trial of the cause hereinbefore stated ?

5th. Was the said release executed at the office of the said John S. Hager, Esq., in Morristown, in your presence, and the presence of the said John S. Hager—what was said at the time of its execution or delivery in regard to it, by either yourself, the said Stephen W. Righter, or the said John S. Hager ?

6th. Did the said Stephen W. Righter at the time of the execution or delivery of the said release make any objection to the terms of said release, and if so, what objection? Did you promise the said Stephen W. Righter or the said John S. Hager to give up the said release, after you had been sworn and examined as a witness upon the said trial, or at any other time ?

7th. Was there any calculation or statement of account made out at any time after the entry of the said judgment against you, in favor of the said Stephen W. Righter, and before the delivery of the said release, by yourself and the said Stephen W. Righter, for the purpose of showing how much you were indebted to the said Stephen W. Righter ; if so, when was it made, and how much did you owe him ?

8th. State fully the whole consideration of the said release as you claim  
50 it to be.

9th. Did you not on or about the twentieth day of October, in the year eighteen hundred and forty-nine, present an account or claim of your own against Stephen W. Righter, to said Stephen W. Righter, for payment or allowance ; if so, for how much ?

10th. Was not the amount due you on the account referred to in the last

interrogatory, or some part thereof, paid to you, or settled between yourself and the said Stephen W. Righter, by his agreement to credit the same on his judgment hereinbefore stated, or the said mortgage, or the moneys secured thereby, or some part thereof?

11th. Was there an item of eighty dollars in the last mentioned account, charged against Stephen W. Righter, for cash paid to Stephen W. Righter, on the twenty-ninth day of April, eighteen hundred and forty-nine; if so, on what account was that payment made?

12th. Was the last mentioned item of eighty dollars on the settlement of that account credited to said Stephen W. Righter, and if so, why was it credited? 10

13th. Was the last mentioned payment of eighty dollars paid by you or received by said Stephen W. Righter, or allowed by him at any time with your assent on account of the said judgment, bond or mortgage, or any note or notes secured thereby, or given by you to him in part payment of said judgment, bond or mortgage?

14th. When was the said release actually delivered into your hands and possession, and by whom, and at what place?

15th. Was the said release delivered to you while the said trial was before the said Court, and after you had been called as a witness and objected to on the ground of interest in the event of the said suit? 20

16th. Was the said release delivered to you on the day it bears date?

17th. Were you in the Morris County Court Room when the said release was handed to you; if so, what trial was then before the Court?

18th. When (if any such agreement ever was made) was it agreed between yourself and said Stephen W. Righter, that you should assign to him one half of the amount due upon said drafts or bills of exchange in part satisfaction of said judgment, what was the conversation between you and the said Stephen W. Righter at the time, what did you say and what did he say, where were the drafts then, in whose possession? 30

19th. Did you ever deliver to said Stephen W. Righter the said drafts, and how did he come into possession of them?

20th. How did you assign and deliver the said drafts to said Stephen W. Righter? Did you give him a written assignment signed by yourself of your interest in them, or take from him any receipt to show how the avails of your interest in them were to be appropriated or applied?

21st. Did you ever give to said Stephen W. Righter any written evidence that you had assigned your interest in said drafts to him?

22d. Was it agreed between you and said Stephen W. Righter, that the one half of the amount due on said drafts should, if collected by him, and when collected and not before, be applied in satisfaction of said judgment? 40

23d. Did you give to the said Stephen W. Righter, on or about the twentieth day of October, in the year eighteen hundred and forty-nine, your due-bill for the sum of twelve dollars and eighty-six cents, payable in lime at your lime kilns, at Middle Forge—on what settlement and for what purpose was that due-bill given?

24th. Was not that due-bill mentioned in the last interrogatory given by you, to make up a part of said sum of seventy-three dollars and seventy-nine cents, for which the said Stephen W. Righter gave you a receipt on the 20th October, 1849? 50

25th. Did not you and said Stephen W. Righter, meet on or about the twentieth day of October, in the year eighteen hundred and forty-nine, in order to settle and agree upon the amount due on the said mortgage, and did you not then agree that the sum of seventy-three dollars and seventy-nine cents, should be endorsed on said bond, and if so, how was the amount of that credit paid or secured to said Stephen W. Righter?

26th. Did you not on or about the twentieth day of October, in the year eighteen hundred and forty-nine, agree with the said Stephen W. Righter, that a sufficient credit should be endorsed on said bond, to reduce the sum which appeared to be due on the seventh day of September, then last past, thereby to the sum of fifteen hundred dollars ?

27th. How did you pay or secure to the said Stephen W. Righter the said sum of seventy-three dollars and seventy-nine cents, for which he gave you his receipt, and if you did not pay or secure it to him, why did he give you that receipt for that amount ? what consideration did he receive for it ?

10 28th. Did not you and said Stephen W. Righter, on or about the twentieth day of October, in the year eighteen hundred and forty-nine, have a conversation in regard to the said bond and mortgage ? What was that conversation ?

29th. Did not the said Stephen W. Righter tell you in that conversation that he wished a payment made so as to reduce the amount due on said mortgage to the sum of fifteen hundred dollars ? and did you not agree to comply with his request, and comply with it ?

20 30th. Did you not in that conversation admit to him, the said Stephen W. Righter, that after allowing the said credit of seventy-three dollars and seventy-nine cents on said bond and mortgage, there would be due thereon the sum of fifteen hundred dollars, or about that sum, with interest from the seventh day of September, then last the date of the said bond, being the seventh day of September, eighteen hundred and forty-two ?

And that the said Michael Righter may be decreed to pay unto your Orators the amount so as aforesaid endorsed by them and paid for the assignment of the said judgment and bond and mortgage, and due thereon as aforesaid, by a short day to be appointed for that purpose, by this honorable Court, and that on failure thereof the said Michael Righter and all persons claiming, or to claim by, through or under him, may be barred and foreclosed  
 30 forever of and from all right, title and equity of redemption of, in and to the said mortgaged premises, and every part thereof, and may deliver the possession of the said mortgaged premises, and all deeds, evidences and muniments of title relating to or concerning the same, to your Orators, or if your Honor shall deem it more equitable and just that the said mortgaged premises, with the appurtenances, may be sold to pay unto your Orators the money due and owing to them on the said judgment, bond and mortgage, and their costs and charges, and that the said Michael Righter, his attorneys, counsellors and agents, and every of them, and all persons claiming  
 40 under him or them, may be perpetually enjoined from all further proceedings under the said rule to shew cause granted by the Circuit Court of the County of Morris, and from proceeding to take any affidavits or testimony by virtue of said rule, and from moving the said Court to make the said rule absolute in whole or in part, and from offering the said release in evidence before said Court upon any motion to have satisfaction entered of record of said judgment, and from attempting in any way before said Circuit Court, to use said release as evidence of the satisfaction or payment of the said judgment, and that the said release may be declared fraudulent and void as to your Orators, or that the same may be declared to have been executed by mistake ;  
 50 or that if, in the opinion of this honorable Court, the said release was executed by the said Stephen W. Righter, under the advice of his counsel, merely for the purpose of discharging the interest of the said Michael Righter in the said suit, so as to render him a competent witness therein, that the said release so far as the same might effect your Orators' rights under the said mortgage, may be reformed and restricted in its operation to a release of the said interest only, and that your Orators 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 being considered, to grant unto your Orators not only the State's writ of injunction issuing out of and under the seal of this honorable Court, to be directed to the said Michael Righter, his attorneys, solicitors, counsellors and agents, restraining them and every of them from all further proceedings under the rule to show cause, granted by the Circuit Court of the County of Morris, on the application of the said Michael Righter as aforesaid, and from proceeding to take any affidavits or testimony by virtue of said rule, and from moving the said Court to make the said rule absolute in whole or in part, except as to staying the further execution of the said writ of Fieri Facias, and from offering the said release in evidence before the said Court upon any motion to have satisfaction entered of record of such judgment, and from attempting in any way before said Circuit Court to use said release as evidence of the satisfaction or payment of the said judgment, but also that the State's writ of subpoena issuing out of and under the seal of this honorable Court, may be directed to the said Michael Righter, therein and thereby commanding him, on a certain day and under a certain penalty therein to be specified, to be and appear before your Honor, in this honorable Court, then and there to answer all and singular the premises contained in this your Orators' bill of complaint, and to stand to and abide by such order and decree in the premises, as shall seem meet and agreeable to equity and good conscience.

And your Orators, &c.

EDWARD W. WHELPLEY, *Solicitor for*  
and of Counsel with the Complainants.

NEW-JERSEY, HUDSON COUNTY, *ss.*—Peter Martin and William Martin, the above named Complainants, being duly sworn, on their several and respective oaths depose and say, that the acts, matters and things in the above bill of Complaint contained, so far as relate to their own acts and deeds, are true, and so far as they relate to the acts and deeds of other persons, they believe them to be true.

Subscribed and sworn to before me, this 26th  
day of March, 1850, at Jersey City.  
PETER BENTLEY,  
*Master in Chancery of New-Jersey.*

PETER MARTIN,  
WM. MARTIN.

NEW-JERSEY, MORRIS COUNTY, *ss.*—Stephen W. Righter being duly sworn, on his oath deposeth and saith, that the acts, matters and things in the above bill of complaint contained, so far as relates to his own acts and deeds, are true, and so far as they relate to the acts and deeds of other persons, he believes them to be true.

Subscribed and sworn to before me,  
this twenty-seventh day of March,  
A. D., 1850, at Morristown.  
DAVID DAY,  
*Justice of the Peace.*

STEPHEN W. RIGHTER.

Between PETER MARTIN AND WILLIAM MARTIN, Complainants,  
and MICHAEL RIGHTER, Defendant. On Bill, &c. Answer.

The answer of Michael Righter, defendant, to the bill of complaint of Peter Martin and William Martin, complainants.

This defendant now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained for answer thereunto, or unto so much and such parts thereof, as this defendant is advised is material for him to make answer unto, he answers and says, 10 that he admits that Stephen W. Righter, in the Circuit Court of the County of Morris, in the July term thereof, in the year one thousand eight hundred and forty-two, obtained a judgment for the sum mentioned in said bill of complaint, as stated and set forth therein, and that the whole amount thereof, with interest, was due and owing from this defendant to said Stephen W. Righter, at the time of the execution of said bond and mortgage, as therein and hereinafter stated.

And this defendant further answering saith, he admits that on or about the seventh day of September, in the year aforesaid, he was indebted unto the said Stephen W. Righter, in the further sum of one hundred and sixty-one dollars and twenty-five cents, or about that sum, as and for the consideration stated in said bill of complaint. 20

And this defendant further answering saith, that he admits that on or about the day and year last aforesaid, he this defendant did make his certain bond and indenture of mortgage of such date and of such purpose and effect, as is in the said bill of complaint stated and set forth, and that the said indenture of mortgage was afterwards by him, the said defendant, duly acknowledged, and the same recorded in the office of the clerk of the said County of Morris, as is alleged and stated in said bill of complaint.

And this defendant further answering saith, that he has such a paper, 30 which was delivered to him by and under the hand and seal of Stephen W. Righter, showing for what purpose the said bond and mortgage was given, and what claims they were intended to secure, of the same purport and effect as is stated in said bill of complaint to have been delivered to this defendant, and which paper this defendant is ready to produce when and where this Honorable Court shall direct, to be proven, and this defendant admits that said bond and mortgage were given for the purpose and consideration stated in said bill of complaint, as being expressed in said alleged copy of paper, and which is therein stated to have been shown to complainants by the said Stephen W. Righter.

And this defendant further answering saith, that he knows nothing of the 40 assignment of the said bond and mortgage and judgment from Stephen W. Righter to the said complainants, as stated in said bill of complaint, nor of the consideration thereof, if any such assignment was executed, other than it is so stated in said bill of complaint, except that this defendant heard shortly before the filing of this bill of complaint, and believed and still believes, that said Stephen W. Righter had been endeavoring to dispose of the said bond and mortgage to several persons at a large discount, and that he had disposed thereof to certain persons trading as merchants in the city of New York, under the name, style and firm of P. & W. Martin, but upon 50 what terms and under what representations by the said Stephen W. Righter to them made, and what consideration the said Stephen W. Righter received for the same, if anything, or whether the said complainant employed counsel named in said bill, or any other counsel to examine into the validity of said bond and mortgage, or if so, who such counsel was, or what report he made to said complainants, or whether they relied on such

report, or upon the advice of Edward W. Whelpley, and if so, how far they relied thereon, or what requirements of said Stephen W. Righter were made by such counsel, this defendant has no knowledge whatever, except from the complainants' bill of complaint, and never heard of anything of the kind until this defendant heard said bill read to him by his counsel, and therefore cannot state whether the same be true, as stated in said bill, or not.

And this defendant further answering saith, that he expressly denies that on or about the twentieth day of October, eighteen hundred and forty-nine, or at any other time since the date of said release hereinafter and in said bill mentioned, the said Stephen W. Righter and this defendant settled the amount due upon the said mortgage, or that it was then or at any other time agreed between this defendant and the said Stephen W. Righter, in order to reduce the amount due on said mortgage, on the seventh day of September, in the year last aforesaid, to the sum of fifteen hundred dollars, that there should be endorsed on said bond, in addition to the credits already endorsed thereon, a credit of seventy-three dollars and seventy-nine cents, as alleged in said bill, or that this defendant then or ever gave to the said Stephen W. Righter, any such memorandum in the hand writing of this defendant, of the amount aforesaid, to be credited on the said bond and mortgage, as alleged in said bill to have been given, and to bear date on or about the twentieth day of October, eighteen hundred and forty-nine, or that any other memorandum of such character, signed by this defendant, was ever produced by the said Stephen W. Righter, to the said Edward W. Whelpley, as is in the said bill of complaint mentioned stated and set forth.

And this defendant saith, and expressly charges the facts to be, that this defendant some time in the Summer of eighteen hundred and forty-nine, was applied to by Lyman A. Chandler, to settle up the interest due on said bond and mortgage, said Chandler then representing to defendant, that he had been requested by said Stephen W. Righter, to ask the same for him, and that this defendant then told said Chandler that he would not pay anything on said bond and mortgage, that this defendant had an account against said Stephen W. Righter, and that any settlement of said bond and mortgage must be made between this defendant and said Stephen W. Righter, and further, that this defendant then or at a subsequent time and within a vrey few days afterwards, when applied to the second time by said Chandler, for the same purpose, but at which time defendant does not recollect, told said Chandler this defendant held said release, and showed it to said Chandler, and that this defendant has been informed by said Chandler, and believes it to be true, that he thereupon returned the said bond and mortgage to said Stephen W. Righter, and informed him of the answer this defendant had given to said Chandler.

And this defendant, not very long afterwards, and during the same Summer, as nearly as he can recollect, heard that Benjamin Crane, of said county of Morris, had said bond and mortgage with a view to try and enforce the same against this defendant, and that this defendant took the release hereinafter mentioned and started with it to see said Crane, with the intention and for the purpose of showing the same to him, and for the purpose of informing him of the contents, circumstances, and effect thereof as hereinafter stated, in bar of the said bond and mortgage; and that on his way to the residence of said Crane, some ten miles from the residence of this defendant, he, this defendant, learned that said Crane was absent from home, and this defendant thereupon returned home, and was thereby deterred from seeing said Crane and giving him the said information at that time, but intended so to do at an early day thereafter; and that shortly afterwards, thinking that said Stephen W. Righter was the proper person, and

the only one who ought to adjust the said bond and mortgage and the matters therewith connected, with this defendant, and this defendant having a balance due him upon his books of account from said Stephen W. Righter for services done and performed for him, and for goods sold to him, which had been accruing for the space of two or three years previous to that date, and since the last settlement between this defendant and said Stephen W. Righter, which took place on or about the twenty-eighth day of November, eighteen hundred and forty-six, and prior to the date of said release, took his books of account and said release, and went to the residence of said Stephen W. Righter, at Parsippany, in said County of Morris, for the purpose of settling said account with him, and with the intention to have a final adjustment of all matters between them, (this defendant then supposing said bond and mortgage to be in possession of said Stephen W. Righter) and to use the said release for that purpose, and in effecting such adjustment and settlement, the said Stephen W. Righter then knowing defendant had said release; and that this defendant and said Stephen W. Righter then looked over their accounts, and found about the sum of sixty-one dollars due this defendant from said Stephen W. Righter, and this defendant then told said Stephen W. Righter to bring out the said bond and mortgage, and said to him that this defendant wanted them, and that said Stephen W. Righter then told this defendant that he had them not then in his possession, but that they were in the possession of Benjamin Crane, and as it was then Saturday night that he would send his son Peter after them on the Monday then next, and they should soon afterwards be adjusted, and that said Stephen W. Righter then commenced to make calculations upon paper, and shortly afterwards told this defendant that there was due the sum of seventy-three dollars and seventy-nine cents for interest upon said bond and mortgage, up to some period mentioned by him, and which this defendant thinks, as nearly as he can recollect, was on or about the seventh day of September in the same year, in order to leave due thereon at the said period by him the said Stephen W. Righter mentioned, the sum of fifteen hundred dollars; and also said to this defendant that he wanted more lime, and requested this defendant to give his due bill to said Stephen W. Righter, payable in lime, for a sum which, added to the balance found due as aforesaid on account to said defendant, would make the sum of seventy-three dollars and seventy-nine cents, and that this defendant then and there gave him such due bill, being the same due bill mentioned in said bill of complaint, and at the same time told said Stephen W. Righter, that he this defendant wanted said bond and mortgage, and if there was anything due thereon to have it settled and adjusted; and that this defendant then and thereby meant and intended when said bond and mortgage should be produced, and ever since the giving of the said release as hereinafter mentioned, has intended—although, by force of said release and under the agreement with said Stephen W. Righter and the circumstances hereinafter stated, he has not considered himself and insists he is not and cannot be held or made legally liable so to do—to ascertain and compute the amount of the principal and interest of said bond and mortgage, and then to ascertain the amount of one equal half of the principal, interest, protest, fees, and exchange, due upon the said drafts or bills of exchange hereinafter mentioned, and which this defendant believed would be something less, but not much less than the said principal and interest of said bond and mortgage, and if the said Stephen W. Righter did and should without objection, allow the amount of the said equal half of the said principal, interest, protest, fees, and exchange of said drafts or bills of exchange, as payment to him of so much of the principal and interest of said bond and mortgage, then to pay to the said Stephen W. Righter the balance of said principal and inter-

est due thereon; but as the said bond and mortgage were not then present, this defendant did not then make any proposition to that effect, or speak of said release to said Stephen W. Righter, but determined to do so so soon as said Stephen W. Righter should get the said bond and mortgage into his possession again, and purposely deferred it until that time, and that this defendant having such and no other views and intentions, gave said due bill to said Stephen W. Righter, and took from him the receipt for seventy-three dollars and seventy-nine cents mentioned in said bill of complaint as stated therein, but this defendant insists that no mention was made to him by said Stephen W. Righter of any intended assignment or disposition of said bond and mortgage, or of any such having been made, nor did he assign any reason to this defendant for his said calculation of the amount of said bond and mortgage, nor was it then agreed, understood, or settled, that there then remained the sum of fifteen hundred dollars, or any sum due thereon, nor did this defendant, then or at any time, in pursuance or memory of any such settlement, agreement or understanding, give to the said Stephen W. Righter any memorandum or writing signed by this defendant, showing, ratifying, or confirming, or intended to show, ratify, or confirm any such settlement, agreement, or understanding, as that stated in said bill of complaint, nor any settlement whatever of the amount due upon said bond and mortgage, nor did the said Stephen W. Righter ask of this defendant any such memorandum or writing, but that if the said Stephen W. Righter ever had any paper with marks upon it made by this defendant of any kind, relating to the occurrences and transactions of that Saturday night, it is only a small scrap of paper upon which this defendant put in figures the sum of seventy-three dollars and seventy-nine cents, and which was not signed by this defendant, and was made and intended only as a memorandum of the actual amount of defendant's said balance of account, and of the said due bill, but was not delivered to the said Stephen W. Righter by this defendant for any other purpose, nor for any purpose connected with said bond and mortgage; and this defendant prays that he may be allowed to inspect the said alleged memorandum in the hand writing of said defendant, and that the same may be produced and proven under the order of this Honorable Court; and this defendant saith that said Stephen W. Righter being a near relation of this defendant, and they having been up to that time upon friendly and intimate terms, this defendant did not suspect that said Stephen W. Righter would seek to gain any advantage over him, and that this defendant gave said due bill under the circumstances and with the views and intentions above set forth, without any intention to yield any of his rights or to impair the force and validity of said release, confidently expecting that said Stephen W. Righter would regard and act in accordance with his agreements previously as aforesaid made with this defendant.

And this defendant further answering saith, that all the receipts endorsed on said bond and mortgage of which he has any knowledge, are in the hand writing of this defendant, and that the last one so written by this defendant was endorsed thereon before the date of said release, which was the said receipt in said bill mentioned, for three hundred and twenty dollars and seven cents, and was for interest due to seventh of September eighteen hundred and forty-six, and that he does not know anything of the endorsement alleged in said bill to have been made thereon by Edward W. Whelpley, and signed by said Stephen W. Righter, or of the reasons or motives which influenced said Whelpley to make such endorsement, except as he has learned the same from the statements made in said bill, but that this defendant insists that said Whelpley had no right, nor had the said complainants any right to infer from any such memorandum as was ever made by this defendant, that such endorsement was to be made, or that

this defendant had or claimed those credits, or those and no other credits upon said bond and mortgage, or that he had no other discharge from or defence against the same, and that the said complainants had no right to rely upon any advice of said Edward W. Whelpley in that respect, in regard to the validity of said bond and mortgage, and that if they were in any respect deceived in relation thereto, it was not by the fault, act, or agency of this defendant in any wise done or committed, and that the said complainants under the circumstances hereinbefore and hereinafter stated, cannot claim and ought not to stand in any other position, or claim any other or greater equities in this Honorable Court towards or against this defendant in relation to the said judgment, bond and mortgage, than the said Stephen W. Righter would stand in or could claim, if he were complainant in said bill of complaint, and the said alleged assignment of said bond and mortgage had never been made to them by said Stephen W. Righter, and that this defendant ought not thereby to be deprived of any defence in this Honorable Court against said bond and mortgage, or said bill of complaint, to which he would be entitled under the facts hereinbefore and hereinafter stated, if said Stephen W. Righter were complainant, because this defendant never heard of any such assignment of the said bond and mortgage to said complainants, or that any such was intended, until after the same was made, nor does this defendant know anything of the amount paid to said Stephen W. Righter, if anything, by said complainants, for the said assignment of said bond and mortgage, or whether the same was paid in money or in merchandise, and if in merchandise, how much was so paid, except as is stated in said bill of complaint.

And this defendant further saith he has been informed and believes, and so charges the fact to be, that the said complainants have been informed of this defendant's defence to said bond and mortgage and judgment, and have, since the filing of their bill of complaint, required the said Stephen W. Righter to redeem and retake from them the said bond and mortgage and judgment, and to give them other security therefor, and that said Stephen W. Righter has yielded to and complied with such requirement, and is now the owner of said judgment, bond and mortgage, and that the said complainants now have no interest in the same, and this defendant prays the same benefit and advantage thereof as if the same were set up by plea to said bill of complaint.

And this defendant further answering saith, that he admits the issuing of a writ of fieri facias de bonis et terris out of said Circuit Court upon said judgment, and a levy thereunder made, as in said bill is stated and set forth; and that this defendant has at all times since the execution and delivery of the said mortgage, possessed and enjoyed, and still does possess and enjoy the said mortgaged premises, and has during that time always received and still does receive the rents, issues and profits thereof.

And this defendant further answering saith, that he admits that he has been informed by Jeremiah M. DeCamp, late Sheriff of the County of Morris, in whose hands was said writ of execution on said judgment, and believes the same to be true, that in or about the month of December in the year last aforesaid, he, the said Jeremiah M. DeCamp, was directed by the attorney of said complainants to proceed upon said execution, and this defendant admits that such advertisement of said lands and premises levied on under said execution for sale, was by said DeCamp as such late Sheriff made, and this defendant further admits that when he thereby learned that said complainants were thus acting, and that an attempt was being made to enforce said judgment against the property of this defendant, he employed counsel, and caused to be served upon Edward W. Whelpley, the attorney of the complainants, a notice of such purport and effect, and

for such time as is specified in said bill of complaint, and also at the same time served upon said attorney a copy of a release then held by this defendant, which is the same hereinbefore and hereinafter mentioned, and which copy is in said bill correctly set forth; and that this defendant did at the Term of February last of said Circuit Court, cause such motion as was specified in said notice, to be made before said Circuit Court, and that such motion was after argument of counsel of the respective parties to said notice, as is in said bill set forth, and that this defendant intended to proceed under said rule to obtain a satisfaction of said judgment, to be entered of record, as the most ready and least expensive mode of defending himself against the attempted enforcement of said judgment against him, the said defendant, at the time and until he was restrained therefrom by the order and injunction of this Honorable Court, and that he intended to rely upon said release as evidence, and also upon other evidence, of the satisfaction of such judgment, as he humbly insists under the facts and circumstances herein stated, and by the laws of the land, he had a right to do.

And this defendant further answering saith, that he denies that the said release was executed under the circumstances and for the purposes alleged and mentioned in said bill of complaint, upon information of Stephen W. Righter, and insists that the said release was executed and delivered under the following circumstances, and for the purposes and under an agreement and understanding made and had by and between this defendant and said Stephen W. Righter, which are hereinafter stated, as follows: That this defendant being in business in Rockaway, in the said County of Morris, was in the spring of the year eighteen hundred and forty, by one Matthias Kitchel, offered the opportunity to make and furnish eleven wagons and one cart, and also four sets of harness, for certain persons at the South, being the same wagons and cart and harness mentioned in said bill, and for the same persons therein in connection therewith mentioned, upon orders from said persons obtained and sent to said Kitchel by Rev. Silas H. Hazard, a brother-in-law of said Kitchel, then residing in Mississippi, as this defendant was informed by said Kitchel, and this defendant about that time entered into a certain written agreement with said Matthias Kitchel, acting on the part of said persons upon whose orders the said wagons and cart were to be made, which was made and signed by this defendant and said Kitchel, bearing date on or about the sixteenth day of March, eighteen hundred and forty, which provided among other things for the manufacture of said wagons and cart by said defendant, at certain prices, and of a certain kind and dimensions therein specified, and to be by the first day of August then next completed, and to be paid for when completed and bills of lading therefor could be obtained and receipted for the shipment thereof to New Orleans, by drafts at sight upon New Orleans upon the agents of the persons who ordered the said wagons and cart, and to which agreement this defendant for greater certainty prays leave to refer, if he shall deem it necessary so to do, and offers to produce and prove the same as this Honorable Court shall direct, and that shortly after said written agreement was made, this defendant also made a verbal agreement for the manufacture of said harness upon similar terms, and that this defendant under and in pursuance of said agreements with said Kitchel, and shortly after the date of said written agreement, procured the said wagons, cart and harness to be manufactured at Rockaway aforesaid, and after the same were completed and the same freighted to New York city and shipped for the port of New Orleans, this defendant received in accordance with said agreement from said Kitchel for the same three certain drafts at sight, being the same drafts mentioned and set forth in said bill of complaint, and shortly

after sent the said drafts with bill of lading to the city of New Orleans, whence the said drafts were soon afterwards returned protested for non-payment; and this defendant saith that for the space of two or three years next before the said orders were received, and at that time and until the latter part of the year last mentioned or the early part of the following year, this defendant was ostensibly doing business only on his own account, but that said Joseph C. Righter during that period was really interested jointly with this defendant in said business, but having previously, and in the year eighteen hundred and thirty-seven, failed in business, and having made an assignment of his property to this defendant for the benefit of his creditors, and not desiring his name to be used therein, the said Joseph C. Righter had requested this defendant to conduct the mercantile business as aforesaid in his, this defendant's name, but for the joint benefit and on the joint account of this defendant and the said Joseph C. Righter, and this defendant assented to said request, and from about the year eighteen hundred and thirty-eight to about the early part of the year eighteen hundred and forty-one, did so conduct said business, and that during said period the said wagons, cart and harness were made and furnished as aforesaid by this defendant, but really upon the joint account of this defendant and the said Joseph C. Righter, and that said drafts, although drawn payable to this defendant, were really the joint property of this defendant and said Joseph C. Righter, and that in or about the early part of the year last mentioned, this defendant and the said Joseph C. Righter commenced doing business at Rockaway aforesaid, as partners, under the name and firm of "M. Righter & Co.," and so continued until some time in the year eighteen hundred and forty-two, when this defendant and said Joseph C. Righter sold out their stock of goods to certain persons using the name, style and form of "S. S. Beach & Son," and that this defendant and said Joseph C. Righter thereupon dissolved the said firm of "M. Righter & Co.," and thereupon dissolved their business connection, being the same dissolution mentioned in said bill of complaint; and thereupon, or very shortly afterwards, an article of assignment in writing was drawn up for and between them by one Freeman Wood, in and by which this defendant assigned to said Joseph C. Righter the books of account of said firm of "M. Righter & Co.," and of this defendant, and other property, all which was as this defendant well recollects and expressly charges, specifically enumerated in said assignment, and in which said assignment the said Joseph C. Righter, in consideration thereof, agreed and promised this defendant to pay off and discharge all the debts of the said firm of "M. Righter & Co.," and also all the store debts remaining due from this defendant while he was so as aforesaid doing business in his own name, and the most of which said debts so as aforesaid to be paid were in the said assignment specially enumerated, and a general clause inserted therein to cover and include the residue thereof, and which said assignment was left and deposited in the hands of said Freeman Wood for safe keeping, and for the benefit of this defendant and said Joseph C. Righter, this defendant never having seen it since, and having no copy thereof; and this defendant saith he has frequently applied to said Freeman Wood to see said assignment in relation to certain of said debts and the amount thereof, and that about four or five years ago upon so applying to said Wood, the said Wood informed him, as he has often since informed him, that he had searched for the said assignment and could not find the same, and did not know where the same was, unless the said Joseph C. Righter had it; and this defendant verily believes, and so charges, that the said Joseph C. Righter has the said assignment in his possession, and purposely withholds the same for his own interests, and this defendant prays that he, the

said Joseph C. Righter, may be required to produce the same to be proven under the order of this Honorable Court, and when and where the same shall direct, for the benefit of this defendant; and this defendant expressly charges that this defendant did not include in said assignment or thereby assign to the said Joseph C. Righter the said drafts in said bill mentioned, or either thereof, nor were the said drafts in anywise mentioned therein, but that this defendant being then as aforesaid indebted to said Stephen W. Righter, and being anxious to pay and discharge that indebtedness, and being the owner of one equal half of said drafts and the monies due thereon, had before then determined to devote and appropriate the interest of this defendant therein, to and towards the payment of his said indebtedness to the said Stephen W. Righter, and so informed both said Stephen W. Righter and said Joseph C. Righter, and that shortly after the execution of said assignment, and when this defendant and said Joseph C. Righter were about to separate their business interests, this defendant placed said drafts, then in his possession, in the hands of said Joseph C. Righter, with and upon the understanding and agreement then had between them, in accordance with said determination so as aforesaid expressed by this defendant, that the said Stephen W. Righter should thenceforth be entitled to and have the proceeds of this defendant's one equal half of the said drafts, and the interest thereof, for the purposes aforesaid, and that the same should be collected for the joint and equal benefit of said Stephen W. Righter and said Joseph C. Righter by being sent to the South, and enforced against the persons for whom the said wagons, cart and harness were made, upon which said drafts were drawn and founded, and that such was the understanding in regard to their collection between this defendant and the said Joseph C. and Stephen W. Righter, and that no mention was made of any attempt to collect the same against said Matthias Kitchel being made or intended; and that the said Joseph C. Righter never owned but one half of said drafts, and that the other half thenceforward belonged to said Stephen W. Righter, and that this defendant afterwards urged the said Joseph C. and Stephen W. Righter to send the said drafts to New Orleans for collection, but that they, or one of them, continued to hold the same in their possession, without taking any steps, to the knowledge of this defendant, for the collection thereof, until in or about the year eighteen hundred and forty-five this defendant spoke to said Stephen W. Righter concerning said drafts, asked him how he got along with them, and was by him then informed, that he had left them in the hands of John S. Hager, Esquire, for collection against Matthias Kitchel, that Joseph C. Righter thought it was best to sue Kitchel and get a judgment against him, and thereby compel said Kitchel to get them paid by the parties thereto at the South, and that this defendant then expressed to said Stephen W. Righter his dissatisfaction with that course and told him it was wrong, that this defendant was anxious to have the monies collected, so that the claim of the said Stephen W. Righter against this defendant would be paid, and that they ought to be sent South for collection; and this defendant saith, further, that he admits that aid suit was afterwards instituted in the Circuit Court of the County of Morris, but exactly at what term thereof this defendant does not recollect, in the name of said Stephen W. Righter, by John S. Hager, Esquire, his attorney, against said Kitchel as alleged in said bill, but as this defendant expressly charges, without the advice or consent of this defendant, and for the joint benefit of said Stephen W. Righter and Joseph C. Righter; and this defendant saith he knows nothing of any representations made by the said Joseph C. to the said Stephen W. Righter, in relation thereto, as the same are stated in said bill, and insists that if any such representations and arrangement were made as therein stated, they were in fraud of the

rights of this defendant, and ought to be so declared and held by this Honorable Court, against both the said Stephen W. and the said Joseph C. Righter; and this defendant further saith, that the said suit remained depending in said Court, undetermined for about two years, and that shortly before the same came on for trial, this defendant was in Morristown, and the said John S. Hager, Esquire, asked this defendant about said drafts, and what his interest therein was, and that this defendant then stated to him the circumstances hereinbefore mentioned in relation thereto in full, and that this defendant would not be sworn on said trial until he had something to show for said drafts, and an equivalent for this defendant's interest therein, and said Hager then said to this defendant, that it would be necessary, that he and said Stephen W. Righter should come down to his office before said trial, and make an arrangement of those matters, as he thought this defendant had an interest in said drafts, and would yet have to be sworn as a witness on said trial; and this defendant further saith, that within a few days afterwards said Stephen W. Righter came to see this defendant and said he had recently seen said Hager, and desired this defendant to go to Morristown upon a day then fixed by said Stephen W. Righter with him to said Hager's office, to arrange the matters in regard to said drafts, and that this defendant on the day then fixed, and which this defendant thinks was the day of the date of said release, did go to Morristown, and at the office of the said Hager met the said Stephen W. Righter, and in his presence then and there told said Hager the circumstances, facts and agreements in relation to said drafts, which have been hereinbefore stated by this defendant, and expressed his dissatisfaction with said suit against said Kitchel, and fear that the amount thereof would be lost in that way, and declared that he, this defendant, would not consent to be sworn upon said trial, or have anything to do with said suit, unless the said interest of this defendant in said drafts was divested, and the same accounted for to and settled with him by the said Stephen W. Righter, and that the one equal half of said drafts was nearly equal to the amount then owed by this defendant to said Stephen W. Righter, and this defendant saith, that said Hager then told said Stephen W. Righter, it would according to the agreement and under the circumstances then stated by this defendant, be proper and necessary for him, the said Stephen W. Righter, to execute a release to this defendant, and that thereupon said Hager filled up a printed release and the same was then and there executed by said Stephen W. Righter, and witnessed by said Hager, which is the same release hereinbefore and in said bill mentioned, and by said Hager for said Stephen W. Righter delivered to this defendant, who put it in his pocket, and this defendant saith, that said release was then and there delivered to and received by this defendant as a general release, of such force and effect in fact as the same would have in law; and this defendant insists that the same then was and still is a good and complete bar to the said judgment, bond and mortgage, and should be so declared by this Honorable Court, and this defendant prays the same advantage and benefit thereof as if the same were pleaded in bar to this bill of complaint and the action of the complainants; and that in a few minutes afterwards the said Hager said that the said release might need to be read, and the execution thereof proven in Court, upon said trial, and requested this defendant to hand the same to him and he would return it to this defendant in Court, and that this defendant therefore handed the said release back to the said Hager, who afterwards returned it to this defendant in said Court as he had promised to do; and this defendant denies any knowledge of any such statements as are alleged in said bill to have been made by said Hager to said Stephen W. Righter in said release, in anywise different from those hereinbefore stated; and this defend-

ant denies that he heard said Stephen W. make any objection to the said release, or that he ever heard of his making such objection to the giving thereof, as stated in said bill; and this defendant expressly denies that he then or at any time promised or said that it was no matter about the release being too broad, or that it should be given up so soon as said trial was over, or that said Stephen W. Righter executed said release in consequence of any such promise made by this defendant, or under any mistake of law or fact, or that the same was in anywise obtained from him by fraud, or that after the execution thereof, the same was left with said Hager for safe keeping, or was in his possession, except as hereinbefore stated, and insists that the same was executed and delivered in the manner, for the purposes and consideration hereinbefore expressed and set forth. 10

And this defendant further answering saith, he denies that he has ever at any time since the execution of said release, admitted to the said Stephen W. Righter, or to any other person any liability of him the said defendant upon said judgment, bond and mortgage, and that he, this defendant, denies that he has ever at any time since the date of said release applied to any person or persons to pay to the said Stephen W. Righter the amount secured thereby, and to take an assignment thereof, and hold the same for the convenience and accommodation of this defendant, so as to give him time to redeem the same, as is alleged against this defendant in said bill of complaint. 20

And this defendant denies that on or about the twentieth day of October eighteen hundred and forty-nine, or at any other time, since the date of said release, he has presented any account to said Stephen W. Righter, and agreed that the same, or any items thereof, should be credited on said judgment, bond and mortgage, otherwise than that this defendant presented an account as is hereinbefore stated to have been by him presented to the said Stephen W. Righter, and the said Stephen W. Righter gave to this defendant such receipt thereof, and under the circumstances and with the views and intentions hereinbefore stated in connection therewith, and this defendant humbly insists that even though he did indulge such views and intentions as are hereinbefore expressed towards the said Stephen W. Righter, in relation to the said bond and mortgage, yet that neither the said Stephen W. Righter, nor the said complainants, can equitably demand the performance thereof by this defendant, but that the same if ever performed by this defendant, must and should be of his own free will and consent and not otherwise. 30

And this defendant further answering saith, he insists that said Stephen W. Righter has assigned away said bond and mortgage and judgment, if any such assignment thereof has been made to the complainants as is alleged in said bill, for the purpose of attempting to relieve himself from the proper effect of said release, and in order to prevent if possible its being made use of in bar of said judgment, bond and mortgage, and with that view to render himself a witness in any action that might be instituted for the enforcement or collection thereof against this defendant. 40

1st. And this defendant further answering to the first interrogatory proposed in said bill saith, that John S. Hager, Stephen W. Righter and this defendant, were the only persons present when said release was executed and delivered, which was on the day of the date thereof. 50

2d. To the second interrogatory he saith, I can't say that any person advised the execution of said release; it was to be used on the trial of the cause hereinbefore mentioned, and was intended to discharge my interest in said drafts, and as a general release from said Stephen W. Righter to myself, of such force and effect as it purports to be, and I made use of that opportunity to insist upon and obtain it.

3d, 4th, 5th & 6th. To the third, fourth, fifth and sixth interrogatories he saith : I insisted upon a discharge and settlement as above mentioned ; and before the said trial commenced, it was drawn up at the office of John S. Hager, and by him delivered to me as hereinbefore stated, and without any such promise made to said Stephen W. or to said Hager to give up said release, and without any objection thereto by me heard from said Stephen W. Righter, and I have hereinbefore stated as fully as I can, what was said at that time.

7th. To the seventh interrogatory he saith, there was no calculation or  
 20 statement of accounts made out after the entry of said judgment, and before the execution and delivery of said release, except as hereinbefore specified, that I recollect of.

8th. To the eighth interrogatory he saith, I claim the consideration of said release to have been the absolute transfer of my right and interest in said drafts and in said suit thereon, to said Stephen W. Righter, and discharge of all claims I then held against said Stephen W. Righter.

9th. To the ninth interrogatory he saith, I did present such account, for about sixty-one dollars.

10th. To the tenth interrogatory he saith, that amount and also the  
 20 amount of said due bill, were receipted for to me by said Stephen W. Righter as hereinbefore stated.

11th, 12th, 13th. To the eleventh and twelfth and thirteenth interrogatories he saith, I do not remember any item of eighty dollars in said account, but on or about the day in this interrogatory mentioned there was by me paid to the said Stephen W. Righter, the sum of eighty dollars in part payment of a certain note by me given to said Stephen W. for one hundred and three dollars and seventy-six cents, dated November twenty-eighth, eighteen hundred and forty-six, and made payable thirty days after date, and which eighty dollars was endorsed May first, eighteen hundred  
 30 and forty-eight, upon said note ; and that note was given for a part of the sum of three hundred and twenty dollars and seven cents, then endorsed upon said bond, and for nothing besides.

14th, 15th, 16th, 17th. To the fourteenth and fifteenth and sixteenth and seventeenth interrogatories he saith, the release was delivered to me, at the time and in the manner hereinbefore stated.

18th, 19th, 20th, 21st & 22d. To the eighteenth, nineteenth, twentieth, twenty-first and twenty-second interrogatories he saith, the drafts were placed in said Joseph C. Righter's hand at the time, in the manner and for the purposes hereinbefore stated, and after I had agreed with said Stephen  
 40 W. Righter that he should have my interest therein, as hereinbefore stated, while said drafts were in my possession, and I cannot state the conversation that took place at that time, any more fully than I have already done ; the said drafts were all endorsed by me, and were transferred into the hands of said Joseph C. Righter, with those endorsements thereon ; and at the time of such transfer, and by the agreement with Stephen W. Righter, such amount was to be allowed me on said judgment, bond and mortgage, when said drafts should be collected.

23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th. To the twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth,  
 50 twenty-ninth and thirtieth interrogatories he saith, on or about the twentieth of October, eighteen hundred and forty-nine, I did meet with said Stephen W. Righter as hereinbefore stated, and such transactions and conversations took place and were had as hereinbefore stated, and not otherwise, but the said Stephen W. Righter and myself did not agree upon nor did I admit any sum whatever to be then due, or to have been at any time due on said judgment, bond and mortgage, or to reduce the amount thereof to the

sum of fifteen hundred dollars, at any date, nor did the said Stephen W. Righter request me to make such admission, and if he had I should not have done so.

And this defendant denies all unlawful pretences, combination and confederacy in said bill charged, without this that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant; and he prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

L. A. CHANDLER, *Solicitor.*

and JAMES J. SCOFIELD, of  
*Counsel with Defendant.*

NEW-JERSEY ss.—Michael Righter, the above named Defendant, being duly sworn, on his oath saith, that the matters and things set forth in the above answer, so far as relates to his own acts are true, and so far as relates to the acts of others he believes them to be true.

Sworn and subscribed this eighteenth  
day of September, A. D., 1850,  
before me, at Morristown.

ARAM G. SAYRE,  
*Master in Chancery.*

MICHAEL RIGHTER.

20

### REPLICATION.

### TESTIMONY.

Examination of witnesses, &c. in a cause depending in the Court of Chancery of the State of New-Jersey, wherein Peter Martin and William Martin are complainants, and Michael Righter is defendant, taken at the office of Augustus W. Cutler, in Morristown, on the tenth day of October, in the year of our Lord one thousand eight hundred and fifty-three, before Augustus W. Cutler, one of the Masters and Examiners of said Court, in the presence of Edward W. Whelpley, Esquire, Solicitor and of Counsel for the said complainants, and of Lyman A. Chandler, Esquire, Solicitor and of Counsel for the said complainant.

Complainants produced a mortgage: Michael Righter to Stephen W. Righter, dated September 7, 1842, and was marked by me as Exhibit "A."

The complainants also produced a bond: Michael Righter to Stephen W. Righter, and was marked by me Exhibit "B."

Complainants also produced an assignment of a mortgage and judgment: Stephen W. Righter to Peter Martin and William Martin, November 1, 1849, which was received and was marked by consent as Exhibit "C."

Complainants also produced a declaration: Stephen W. Righter to Michael Righter, which was received and marked by consent as Exhibit "D." Defendant also produced a release: Stephen W. Righter to Michael Righter, which was offered, received by consent, and marked as Exhibit "E."

Edward W. Whelpley, of the township of Morris, in the County of Morris, a witness produced on the part of the aforesaid complainants,

40

deposeth and saith, (witness objected to by the defendant, by reason of his being Solicitor and of Counsel with the complainants) I was employed by Peter Martin and William Martin, the complainants, to look after their interest, and examine the title in regard to the bond and mortgage and judgment mentioned in the bill of complaint; the complainants informed me that they were about to advance the money, or a part of it, due upon that bond and mortgage and judgment, to Mr. Stephen W. Righter, who was to assign the same to them (the complainants) and I acted as the counsel of the complainants in the matter; Mr. Stephen W. Righter brought the papers to me and I drew the assignment of the mortgage to P. and W. Martin, which assignment has been exhibited here; I was employed by P. and W. Martin to examine and see if the mortgage was the first incumbrance upon the premises, and to see to all things necessary to ensure their safety in making the investment; I did make the examination, and represented to them, after making the examination, that the bond and mortgage was as I believed the first lien and incumbrance upon the property, and that they could safely loan their money upon it, as I believed; among other things the complainants wanted to know how much was due upon the mortgage from Michael Righter to Stephen W. Righter, and wanted Michael Righter and Stephen W. Righter to agree and settle between them how much was due upon the bond and mortgage; this was before the assignment was drawn or executed; I informed Mr. Stephen W. Righter that the complainants required him and Michael to agree upon the amount due upon the bond and mortgage before they would advance any money upon it; and that Stephen W. Righter and Michael Righter must agree upon the amount and endorse all payments and credits upon the bond and mortgage, which Michael Righter was entitled to have there, or furnish me with some evidence of the fact that they had agreed as to how much credits was to be endorsed upon the bond and mortgage, so that it might be endorsed before the assignment; and the amount due upon the bond and mortgage was to be reduced by arrangement between themselves to a certain sum of even money, which sum I think was the sum of fifteen hundred dollars; (the witness being about to state what Stephen W. Righter stated to him, the same was objected by the counsel of the defendant;) after I had given Mr. Stephen W. Righter the instruction of what was required of him by the complainants before the money would be advanced by the complainants upon the bond and mortgage, Mr. Stephen W. Righter told me that he and Michael would have a settlement, or that he would try and get him to have a settlement, I don't recollect which, as regards to the amount that would be left due, and the amount to be credited in addition to what had already been credited; some time afterwards, and before the execution of the assignment, Mr. Stephen W. Righter came to my office upon this business, and represented to me that he and Michael Righter had met and settled the amount due upon the mortgage, and agreed to have an additional credit endorsed upon the bond of seventy-three dollars and seventy-nine cents, so as to reduce it and leave the sum due upon the mortgage on the seventh day of September, A. D. 1849, fifteen hundred dollars; that this settlement between them was made upon the twentieth day of October, 1849; and at that time Michael Righter had paid him, or he had allowed a bill of Michael's to that amount, and directed me to endorse upon the bond that sum of seventy-three dollars and seventy-nine cents, as of the twentieth day of October, 1849; he also stated to me that he had given to Michael his loose receipt for that amount; I made the endorsement which is apparent upon the back of the bond, and is signed by Stephen W. Righter, in sequence of what he told me and of his exhibiting to me a paper at the time; before making the endorsement, I asked him where is the evidence that you and Michael

have agreed that making this endorsement upon the bond, will leave the sum of fifteen hundred dollars due upon the same; he then produced this paper to me, which is attached by wafers to another paper, and was produced by the witness (and marked by me as Exhibit F.) and which he said was in the hand-writing of Michael Righter; I asked Mr. Righter why he did not get a statement upon a bigger piece of paper; he made some careless answer, and I think he said that he asked Michael for a better looking statement than that, and that Michael's answer was that it was all understood, and that it was all right; and I thought it was all right, and had no suspicion but that that paper had been given by Michael Righter to Stephen W. Righter, so that that amount should be endorsed upon the mortgage and so as to leave but fifteen hundred dollars due; I recollect of thinking at the time, that I supposed that the matter was all understood between the parties, and that they had sent that loose memorandum as being all sufficient; I thought the memorandum was in the hand writing of Michael Righter; I had often seen his hand writing, and had no reason to doubt but what it was his hand writing; I concluded and was satisfied from that paper, and the statement that Stephen W. Righter made at the time he produced it, that it had been agreed between them that that credit should be endorsed upon the bond and mortgage, so as to reduce the amount due to fifteen hundred dollars, and that when that credit was made in pursuance of the memorandum, there would be fifteen hundred dollars due; I recollect these matters because it is my habit in superintending the assignment of a bond and mortgage past due, to require some evidence that the parties have agreed upon the amount due, so that papers may pass into the hands of the assignee clean and without any disputes; in consequence of the production of this paper, and the conversation between me and Stephen W. Righter in regard to it, I was satisfied that there was no trouble between Stephen W. and Michael as to the amount due upon the mortgage, and so informed Peter Martin and William Martin, the complainants, that that thing had all been arranged between Stephen W. and Michael, and that they could now go on and advance money and take the assignment of the mortgage; and the assignment was afterwards executed and delivered.

Being cross examined by the counsel of the defendant, says:

On the day that Stephen W. brought this memorandum to me I had the bond and mortgage in my possession, and had had them for some time previous thereto; I had gone before this to see Mr. Ford; I also required a copy of the declaration of the matter for which the mortgage was given; it was represented to me that Mr. Ford had done the business, and I went to see Mr. Ford in reference to it, as it was a curious mortgage, given to secure a judgment and a note; Stephen told me that Mr. Ford had done the business and could tell me that it was all right; I think that Stephen W. Righter brought me afterwards a copy of the declaration; Stephen W. Righter brought to me the bond and mortgage; I have no recollection of Benjamin Crane handing the bond and mortgage to me; nor have I any recollection to talking with Benjamin Crane in reference to it; Stephen W. Righter did not produce to me at the time of producing this memorandum, any paper signed by Michael, other than the bond and mortgage, as I recollect; I do not think that Stephen W. produced to me at that time, an account settled between him and Michael, but not until after the motion was made to cancel the judgment, and when I was about preparing the bill of complaint; I have an account in my possession left in my hands by Stephen W. Righter, (counsel for complainants objects to all questions in reference to the contents of the account;) the account has a receipt upon it signed by either Stephen or Michael, or both, my impression

- is it is the receipt of Michael ; Stephen W. Righter said that the bond and mortgage were not present when he and Michael settled ; I never spoke to Michael Righter in reference to the bond and mortgage prior to the time Stephen W. handed me the memorandum ; I did not ask Stephen W. to bring Michael to me as I recollect ; (the counsel for the defendant here asked the witness to produce the account spoken of by the witness above ;) whereupon the witness produced the account to the counsel, subject to the same rules as though it had been produced under a regular notice to produce ; the account was here presented by the defendant and marked exhibit "G."
- 10 This account was not shown to me the day the memorandum was handed me, and the endorsement made upon the bond by me. Had you not seen the release mentioned in the bill of complaint prior to the assignment of the bond and mortgage to P. and W. Martin ? I was employed by Matthias Kitchel to assist Mr. Scofield in the trial of a cause brought by Stephen W. Righter against Kitchel, and did assist upon the trial as counsel ; if this release was offered in evidence upon the trial I may have seen it ; but I had no recollection of it at the time of the transfer of the bond and mortgage, nor did I then know that there was any connexion between that suit and this, and if my attention was called to it on that trial, it was simply to
- 20 see if the interest of the witness in that suit was discharged ; I do not know of my own knowledge that P. and W. Martin paid Stephen W. Righter anything for the assignment ; I was not present when the papers were exchanged.

The complainants reside in New-York.

Sworn and subscribed before me, this } E. W. WHELPLEY.  
 10th day of October, A. D. 1853. }  
 AUG'S. W. CUTLER,  
 M. C. Chancery, New-Jersey. }

- 30 The examination of witnesses in this cause was commenced this day before Augustus W. Cutler, and is now continued before me by consent of parties, October 10th, 1853, Alfred Mills, a Master of the Court of Chancery of New-Jersey.

- Garret Demott, of Morris County, a witness produced on the part of complainants being duly sworn, on his oath says, I heard of a suit between Stephen W. Righter and Matthias Kitchel on some drafts after the suit was over; the suit was in the Morris County Circuit Court; Michael Righter told me about it; he said they had brought the suit in Stephen Righter's name so as to make a witness of him (Michael Righter;) he said Stephen W. Righter was not interested in the suit; Michael Righter told me this at
- 40 our house when we were husking corn; he lived about a quarter of a mile from me, and was at my house frequently; it was a short time after the suit was decided, probably a day or two; I did not ask about it; I am a cousin of his.

- Being cross examined by counsel for defendant, says, I think Michael Righter complained that other persons were not sued at the same time instead of Kitchel; said that the money might have been collected out of them; this was the way the conversation commenced; I don't recollect who he said had the management of it; I don't recollect whether he said they or he brought the suit; I don't think anything was said about the bond
- 50 and mortgage, or the proceeds where they were to go.

Sworn and subscribed before me this 10th } GARRET DEMOTT.  
 day of October, A. D. 1853. }  
 ALFRED MILLS, M. C. C. }

Joseph C. Righter, of Morris County, a witness produced on the part of complainants, being duly sworn, on his oath says :

Q. Look at this paper (handing him paper writing marked exhibit H. on part of complainants.)

Question. In whose hand-writing is that paper ?

A. The face of it is in my hand-writing.

Q. In whose hand-writing is the receipt endorsed on the paper ?

A. John S. Hager's.

Q. Was a suit brought in the Circuit Court on that paper ?

A. It was.

Q. What attorney brought the suit ?

A. John S. Hager.

Q. Whom did Hager deliver that receipt to ? To you ?

A. I can't say for certain. I think he delivered it to me.

Q. Who gave him the drafts to bring the suit on ?

A. I think I did.

Q. Did you employ him to bring the suit ?

A. I went to see him about it and spoke to him to be concerned ; he said he would ; I paid him his costs at different times.

Q. Was the suit brought by you for your benefit ?

A. Yes, sir, it was brought by me in Stephen's name. There was an understanding between me and Michael and Stephen that the suit should be brought in Stephen's name.

Q. Had Stephen any interest in it except to permit his name to be used as a nominal plaintiff ?

A. No, sir, he had no interest. He merely consented that we might use his name in suing the papers.

Q. Who made the arrangement with him for liberty to use his name ?

A. I did.

Q. Who directed the attorney in the prosecution of the suit, as the plaintiff ?

A. I did.

Q. Were you present when the cause was tried ?

A. Yes, Sir.

Q. Do you know of your own knowledge, or from Michael Righter, under what promise the paper marked Exhibit E. on part of complainants, being the release mentioned in the pleadings, was executed ?

A. Michael and I had the matter talked over before we sued Kitchel in regard to employing Mr. Hager, and after employing him, I asked Hager if Michael could be used as a witness. Hager said tell Michael to come down. After Michael came down, Hager said Michael could be used as a witness if Stephen would release him. Michael said Hager told him that.

Q. Do you know how Stephen was prevailed upon by Michael to execute that release ?

A. I don't think I heard the conversation between them.

Q. Did Michael ever tell you for what purpose it was given ?

A. It was expressly understood between Michael and Stephen and me, that the release was given expressly to make Michael a witness, and for nothing else.

Q. Do you know anything about any understanding between Michael and Stephen that the release was to be returned after the trial ?

A. I didn't hear them talk together.

Q. Did you ever hear Michael say anything about its being returned ?

A. I can't say that I did.

Q. Whose property were those drafts at the time the suit was brought ?

A. I considered they were mine. They were my property.

Q. How did they become yours ?

The counsel for defendant here objected to any examination as to the ownership of these drafts, on the ground that the witness is interested in such question and in the suit.

A. Michael Righter had been in the store business in his own name and in that of Michael Righter & Co. ; that firm was composed of Michael Righter and Joseph C. Righter. We were about dissolving, and we did agree in the first place that Michael should take all the books, notes, accounts and papers of every kind, and have everything, and pay every-  
10 thing, and he commenced doing business on his own account, and continued some six or eight weeks, and he said he couldn't make it go, and wanted me to take it off his hands on the same terms. Finally, Michael and I made a written agreement about it, and put the agreement in the hands of Freeman Wood of Rockaway.

Q. Is that agreement lost ?

A. Mr. Wood says it is lost. Michael and I have been to him several times to hunt it up.

Q. Did you ever see Mr. Wood hunt for it ?

A. I don't think I did ; he said he had hunted over and over for it.

20 Q. Did you ever hear Michael say that it was lost ?

A. I think I have heard Michael say Mr. Wood said it was lost. I have never seen it since it was put in the hands of Mr. Wood.

Q. Did Michael Righter claim at the time the suit against Kitchel was brought, any interest in these drafts ?

A. No, sir, he claimed none then.

Q. What were the contents of that agreement between you and Michael ?

Counsel for defendant objected to this question, and it was waived by counsel for complainants until Mr. Wood was produced.

Q. Did Mr. Wood say he was subpoenaed here to-day ?

30 A. He did.

Q. Why did he not come ?

A. He said he was quite unwell, and was not able to come, and did not know anything about the matter. He did not look well.

Q. Did Michael Righter ever request you to take an assignment of the mortgage that he gave to Stephen Righter ?

A. I don't think he did. He did say something about getting some one to take it. I think he said at uncle John.

Q. Was this before or after the trial ?

A. I can't remember, it is so long ago.

40 Q. When you left those drafts with Hager for collection you say you owned them ; did you know of any arrangement made between Michael and Stephen, or between you three, that Stephen should have half or any part of the proceeds of those drafts, when collected, in consideration of executing a release of all his claims of every kind against Michael ?

A. There never was any such arrangement. The release was expressly for the purpose of making Michael a witness, and nothing else.

Q. Was Matthias Kitchel considered insolvent at the time that suit was brought to trial ?

A. He was so considered. I think it was notorious at that time.

50 Being shown paper marked exhibit F. on the part of the complainants, the following question was put to witness :

Q. In whose hand-writing is that memorandum attached to that exhibit ?

A. In Michael Righter's. I have often seen him write, and am well acquainted with his hand-writing.

Q. Are the figures in his hand-writing ?

A. Yes, all of them.

Being cross examined by counsel of defendant.

Q. Do you now recollect having delivered the drafts to Mr. Hager?

A. I don't recollect distinctly. I handed them to him or sent them. He told me he had got them. I took his receipt for them.

Q. Where were the drafts delivered to Mr. Hager?

A. At his office, I think.

Q. Was not Stephen W. Righter present and did he not deliver them?

A. I can't say who was present or delivered them. I took his receipt.

Q. Had not Stephen received the drafts from you before that time?

A. I won't say certain, but what Stephen received them first. I rather think he did.

Q. Did Stephen give you any receipt for them?

A. It seems there is one on that paper. I think Stephen and I went down together to see Hager.

Q. You say there was an understanding between you and Michael and Stephen in reference to the suit. What was the understanding between you and Michael?

A. It was understood that the suit should be commenced in Stephen's name.

Q. Why did you have an understanding with Michael?

A. We had been together a good many years and generally talked matters over. We expected Michael to be a witness in this cause if he could be made one.

Q. Was there any other reason?

A. He knew more about the business than I did. He had the making of the bargains with Squire Kitchel.

Q. Did you ever consult Michael because he had any interest in the drafts?

A. No, sir. Not at that time.

Q. Did you at any time after the making of the agreement that was put in Wood's hands, consult Michael about the drafts, as being interested in them?

A. No, sir.

Q. Were you interested in the business while Michael Righter was doing business in his own name, before the firm of Michael Righter & Co. was formed?

A. Not in the time the business was going on.

Q. Did these drafts accrue while Michael Righter was doing business in his own name, or in the firm of Michael Righter & Co.?

A. Michael Righter, I think.

Q. Did not Michael Righter negotiate those drafts and send them to New Orleans for acceptance? and did they not then belong to him?

A. Yes, he negotiated them and they then belonged to him.

Q. Did you at the time they were taken, claim or have any interest in them?

A. I claimed no interest then, but it turned out when we settled that I had an interest in them.

Q. Did you have an interest in the drafts when they were made?

A. Michael Righter first did business on his own hook, and the drafts were taken at that time for wagons, carts and harness made by him. When I went into the firm with Michael Righter, the books and drafts and accounts all went in and belonged to the firm. I suppose that is the way I acquired my first interest in the drafts.

Q. Were you present when the release was executed by Stephen?

A. I can't say certainly.

Q. Did you ever hear Stephen and Michael talk about that release?

A. We all talked about it and had it all understood, before the release was executed, and I don't know but at the time it was executed too.

Q. Did not Michael Righter at that time live in Boonton?

A. Whether he lived in Boonton at that time, I can't say.

Q. Was the release executed before or during the term of Court at which the cause was tried?

A. I can't distinctly recollect whether it was just before or at the time of Court.

10 Q. Do you recollect the fact of your being present at the making of the release? and can you say that you was then present?

A. I think I was present when it was made. I can't say certainly that I was present when it was signed.

Q. Did you not hear Michael Righter refuse to be sworn or be a witness on that trial, until he had something from Stephen to show for his interest in the drafts? or until he had a settlement with him?

A. I never heard any such *pretensions*.

Q. Was not the first time you saw that release when it was produced in Court, when Michael was called to be sworn?

A. No, I think not.

20 Q. Did you see the release produced on the trial?

A. I think I either saw it or heard it read.

Q. Do you recollect and can you now state that you ever saw that release before it was produced on the trial? and if so, when and where?

A. I can't say that it was signed when I saw it before it was produced on the trial. I can't say certainly that I saw it before the trial after it had been signed. There was a good deal of talk that Michael must be released before the trial.

Q. When, where and by whom were these drafts delivered to you?

30 A. I can't say when I got them first, whether they were given to me with the books, &c., or afterwards. The drafts had been protested before they were delivered to me.

Q. Were not these drafts delivered to you by Michael in the back store?

A. I don't recollect.

Q. Was there any particular request made of you, or contract made with you, by Michael, at the time of delivering the drafts to you? State the conversation that took place.

A. I don't recollect of any conversation at the time I got them, nor where I got them.

40 Q. At the time Michael handed the drafts to you, did he not tell you that as he owed Stephen, and you owed Stephen, you should deliver them to Stephen and let him collect them from the persons on whom they were drawn, and divide the amount equally, and that Michael's one-half should be kept by Stephen on account of what Michael owed him, and the other half be paid over to you?

A. I don't recollect of his handing the drafts to me at all; and if he had said so, I should not have done so, for the drafts belonged to me.

Q. Had not Michael obtained the necessary depositions drawn by Judge Whitehead to be sent on to New Orleans to collect the drafts, and were not those depositions with the drafts when you received them?

50 A. The depositions, I think, were drawn soon after the drafts were protested, and sent on to New Orleans to satisfy the people that the contract had been complied with. I do not think the depositions were returned with the drafts.

By consent of parties, I here adjourned this examination until to-morrow morning, at nine o'clock.

ALFRED MILLS, *Master in Chancery.*

TUESDAY MORNING, October 11, 1853. The parties appearing by their counsel, I proceeded with the examination of Joseph C. Righter.

ALFRED MILLS, M. C. C.

Question put by counsel for defendant.

Q. Did Michael insist upon having a release?

A. No, sir, I never heard anything like that, it was all understood that he had to be released to make a witness of him.

Q. Since the trial of the suit against Kitchel, has not Michael claimed one-half of these drafts to be allowed to Stephen for him?

Question objected to by counsel for complainants, on the ground that defendant cannot enquire as to his own declarations. 10

A. I know nothing about his claiming from Stephen, but since the agreement was known to be lost, Michael and I differed as to the purport of the agreement. I understood Michael had so claimed, but don't know anything about it.

Q. Prior to that trial do you not know that Michael declared that such an arrangement was made between him and Stephen?

Question objected to by counsel for complainants on same grounds that last question was objected to.

A. He never declared so to me. 20

Q. At or about the time of the making of the agreement left with Wood, did you hear Michael say anything about paying Stephen, and if so, in what way?

A. I don't recollect any conversation about it, at that time or near that time.

Q. Have you ever at any time heard Michael say that Stephen was to have half of these drafts?

Question objected to by counsel for complainants on the same ground as before.

A. I don't know that I have ever heard Michael say so, but since the agreement was lost I have understood that he said so. 30

Q. Since the losing of the agreement, as you say, has he not always so insisted, so far as you know or have heard?

A. I don't know that I have ever heard anything like it from him.

(Question objected to by counsel for complainants.) Report said that if Michael could have these drafts it would be all right between him and Stephen.

Q. Did not Michael prior to the suit against Kitchel say that the drafts ought to be sent South for collection? and also say so after the making of the agreement left with Wood?

A. No, sir. It was understood that judgment should be got against Kitchel and the drafts then be sent South. 40

Q. Did not Michael say that six hundred dollars could be had from Shields alone, and produce letters to that effect?

A. I never saw any such letters. Squire Kitchel wrote on to see what they were willing to do, and Kitchel said that Shields would pay \$600; that Shields had failed, and one of the other men had failed, and the other would do nothing about it. I never saw the letter to Kitchel.

Q. Did not Michael Righter draw a draft on Shields for \$600 and send it on?

A. I never heard of any such draft. 50

Q. Was not such a draft sent on through D. M. Wilson & Co. of New York?

A. I have no knowledge of it.

Q. Was there not a release, to your knowledge, sent on from Matthias Kitchel and, Michael Righter, with such a draft, after the information was received from Kitchel that six hundred dollars could be had?

- A. I don't know. I think I have some faint recollection of something of that kind being done.
- Q. Were you not in embarrassed circumstances when Michael Righter was doing business in his own name?
- A. Yes, sir, I made an assignment for the benefit of my creditors to Michael Righter, in 1837 or 1838.
- Q. How long ago was the reconveyance made to you of the property assigned?
- Counsel for complainants here objected to any testimony in regard to this assignment, as irrelevant to the issue.
- 10 A. I can't recollect the time, it was at least 3 or 4 years after the assignment, perhaps twice that time.
- Q. You stated in regard to the drafts that Michael hoped something would be left for him. What do you mean by that?
- A. After the agreement was lost, we disagreed about its purport. Michael said he had an interest in one half. I did not understand it so.
- Q. Of what value did you regard these drafts at the time you took them?
- A. Not much, if anything. I was not willing to risk the costs in collecting them at New Orleans.
- 20 Q. Was not such draft for \$600, sent on to Shields, and returned for want of acceptance, because Shields was absent from New Orleans?
- A. I know nothing about it. If it was so, Michael had all to do with it.
- Q. Did you ever say to Matthias Kitchel, since the agreement was left with Wood, that you wished him to pay these drafts or get them paid, as Michael needed the means because he was in bad health, or words to that effect?
- A. No, sir. I did tell Squire Kitchel that Michael had assigned the drafts to me, and if he (Kitchel) could do anything by writing and get a settlement, I would pay him well for his trouble.
- 30 Q. Did you ever tell Matthias Kitchel that Michael was to have the proceeds of those drafts, or any part thereof?
- A. No, sir, not after the agreement was left with Wood. I don't know that I ever said so.
- Q. Did you ever tell Stephen W. Righter, Cyrus H. Righter, John Righter, Samuel F. Righter, and Freeman Wood, or any of them, that such was the case, or words to that effect, since the agreement was left with Wood, or at the time of making the agreement: if so, to which of these persons, and when?
- A. No, sir, I have offered to let him have the drafts on condition of his making a settlement with Stephen, and not make any trouble on account of the mortgage. This was a voluntary offer of mine.
- 40 Q. Were you notified of the meeting at Cyrus H. Righter's, or were you present?
- A. I was the means of bringing about the meeting. I was not notified of it nor was I present.
- Q. Did you not at that time know of Michael's claim that one-half of these drafts should be allowed to Stephen for him?
- A. I understood that Michael claimed a share of these drafts.
- Q. Did you ever tender those drafts to Michael on any such condition?
- 50 A. I don't think I did.
- Q. Have you had any conference with Michael on the subject of his claim to these drafts since the making of the agreement left with Wood?
- A. Not that I recollect.
- The cross examination being closed, an examination was commenced by counsel for complainants.
- Q. What were the contents of the paper that was left with Mr. Wood?

This question was objected to by counsel for defendant on the ground that the agreement must be produced.

A. All the effects of Michael Righter and Michael Righter & Co. were assigned over to me. I was to take them for better or worse, and pay all the liabilities of Michael incurred in his store business, and all the liabilities of Michael Righter & Co. I don't think there was a schedule annexed to the agreement. I gave a paper to Mr. Wood showing how the agreement was to be drawn. He drew the agreement and we signed it. There was no inventory made out at this time I think, showing what was conveyed by this agreement to me.

10

Q. When did you get the drafts?

A. I don't recollect.

Q. Did you hear anything of Michael's claiming any interest in those drafts until after the loss of this agreement?

A. No, Sir, not until after the injunction was brought against his selling his house and lot.

Q. Were you ever asked to give your consent that Stephen should have an interest in these drafts, by Michael Righter, or any one else, in payment of Stephen's mortgage?

A. I don't know that I was.

20

Q. Were you secretly interested in the store business of Michael Righter when he was doing business in his own name?

A. I sold out to Michael and took his notes, put the notes in the assignment, and told him he should lose nothing by it, and if after my business was settled, he chose to have a salary, he should have one of five hundred dollars, or as good as that.

Q. Was there not an honorable understanding, as you understood it, that you were to be interested in the results of the business of M. Righter, when the business came to be settled?

A. I made this offer to Michael, and we finally settled by his taking the five hundred dollars.

30

Q. Did you have the avails of the business?

A. I think I did.

Q. Did you take any part in the management of the business while it was carried on in the name of M. Righter?

A. I did.

Q. Did you not take as much part as if you had been openly interested?

A. I helped attend and see to the business as usual.

Q. When you finally adjusted the business, did you not adjust the business as though the firm had always been M. Righter & Co.?

40

A. Yes, sir, I think I did.

Q. Was that settlement made according to the understanding had when the business commenced, or did you make a new understanding?

A. It was before we went into partnership that I allowed the salary. The settlement was made according to an understanding made after the close of the business of M. Righter & Co.

Q. Did you have anything to do in the manufacturing of the wagons?

A. Michael had principally to say about that. I was there assisting in the whole business.

Q. Were the wagons made out of the store capital?

50

A. They were.

Q. Why did you not permit your name to appear as concerned in the firm of M. Righter?

A. I had failed. I know no other reason.

Q. Was it your design to be supported by the profits of that business, and was it so understood by Michael?

Question objected to by counsel for defendant.

A. Yes, it was, and we so settled.

Q. Did you have the profit and loss, and he the salary?

A. That was the way we settled.

Q. Did Michael Righter ever tell you what the difficulty was in way of settlement between him and Stephen with regard to the Martin mortgage?

Question objected to by counsel for defendant, on the ground that it is principal testimony.

A. I don't recollect he ever told me there was any difficulty.

10 Q. Did you direct Michael to have proofs of the loss of the articles shipped made out, with a view of getting the parties upon whom the drafts were drawn, to pay?

A. I think we had that thing talked over and found it was necessary.

Q. Was this before or after the firm of M. Righter & Co. was formed?

A. I think it was before, it might have been after too.

Witness being here shown a paper marked Exhibit I. on part of the complainants, said: The signature of this paper is Stephen W. Righter's and the body of the paper is in Michael Righter's hand-writing.

Counsel for defendant resumed cross examination.

20 Q. Was there not a schedule of debts and inventory of the effects which were transferred to and assumed by you in the agreement left with Wood, attached to that agreement, and left with Wood at the same time?

A. I think not. Am pretty certain of it.

Q. Was there not such a schedule of debts and a general clause in the agreement, that you were to appropriate the surplus of the assets, after paying the debts of M. Righter & Co., to the payment of certain specified debts of Michael Righter, or generally to the payment of the debts of Michael Righter, one or the other, or a clause to that effect?

A. I think not.

30 Q. Did not Michael Righter, when doing business alone, prior to the firm of Michael Righter & Co., borrow several hundred dollars of his mother?

A. I have understood he borrowed some money of his mother, but can't say when he borrowed it.

Q. Did he not pay some sum of money to his mother for money that you borrowed of her?

A. He did not pay it for me alone. If he paid it he did so under some arrangement when we went into partnership.

40 Q. Are you still willing to transfer those drafts to Michael on condition of his settling with Stephen?

This question was objected to by counsel for complainants.

A. It would depend upon how he settled with Stephen.

Q. Did you formerly say that you were willing, or do you now say that you are willing to make a transfer of the drafts to Michael upon conditions, as you say, as a voluntary offer by way of gratuity, or because you are under a legal or equitable obligation so to do?

This question was objected to by the counsel for complainants.

50 A. I have formerly offered to do it gratuitously, and I feel myself at liberty to do it still; either to do it or let it alone, at my option. I am under no legal or equitable obligation to do so.

The counsel for complainants resumed the examination.

Q. Where are those drafts now?

A. I don't know whether I ever got them from Stephen, nor whether Stephen has got them from Hager. I think that either Stephen or I have them.

Q. Who paid the costs which defendant recovered in that suit?

A. I paid the taxable costs to the defendant's attorney.

Q. Were you ever reimbursed by Stephen for those costs, or do you ever expect to be?

A. No, sir, I never have asked him and never expect to ask him.

Further deponent saith not.

Taken and subscribed this 11th day of } JOS. C. RIGHTER.  
October, A. D. 1853, before me,  
ALFRED MILLS, M. C. C. }

Cyrus H. Righter, a witness produced on the part of the complainants, on his oath saith :

I once had a conversation with Michael Righter about a mortgage held by P. and W. Martin. It was at a blacksmith shop opposite to where I lived. It appears that after this suit was commenced, I saw Michael drive up at the blacksmith shop. I thought I would take it upon myself to say something to him about it, and I asked him why this thing could not be settled, as it was a family concern, and that it ought to be settled in some way. Michael said that he was willing at any time to have it settled. I told him that I thought it was a pity to hold an innocent man as I thought Stephen was, in such away. I told him that I had understood that Stephen had had nothing to do with it, only to make a witness of him. Michael said, that I am willing to make all things right with Stephen; Stephen and I can settle in five minutes if Josey would do right by me, or something like that; and afterwards I used my influence to get them together. 10

Q. Did you ever learn afterwards from Michael what he required Joseph C. Righter to do in order that a settlement might be made? Michael said something about the drafts, if Josey would do what was right, Stephen and he could settle; don't know that I inquired particularly. Did Michael tell you in the blacksmith shop, that Stephen had agreed to take the drafts or any part of them in payment of the mortgage, or anything to that effect? I do not recollect any such talk as that. Michael and Stephen agreed to meet together and try to have it settled; they were to meet at my house; they did meet at my house, and Joseph C. Righter was not there. Did you ever hear Michael Righter say that he would give a deed for the property provided Joseph C. Righter would assign the drafts? I do not recollect of his saying anything about a deed, he said he did not want to injure Stephen the first penny. 20

Being cross examined by the counsel of the defendant, says :

Joseph C. Righter and Stephen W. Righter are brothers of mine; what Michael said at the blacksmith shop was in reply to my questions to him; Michael did not say that he found fault with Stephen that he did not collect the drafts of the men at the South instead of Kitchel, as I recollect; there was something said about the drafts, but I do not recollect what. I guess there was no settlement effected at my house. I guess it was only talked over. 30

Sworn and subscribed this 10th day of } C. H. RIGHTER.  
October, A. D. 1853, before me,  
AUG'S. W. CUTLER,  
M. C. C. Chancery, New-Jersey. }

Freeman Wood, a witness produced on the part of the complainants, being duly sworn, on his oath saith :

There was an agreement in reference to the dissolution of the firm of Michael Righter and Joseph C. Righter which was left with me for safe keeping; it was left with me some ten or twelve years ago; I drew the agreement, it was executed by Michael and Joseph C. in my presence, and was left with me by them; it was left with me while I was occupying Mr. 50

Righter's foundry building, should think it was the year 1843. I do not know where the agreement is now; I have no recollection of ever giving it up to either of the parties; do not think I ever gave it up to either of the parties; it was not to be given up; it was left with me for safe keeping; because there was not time to make copies. I have made diligent search among my papers for the agreement some three or four times; I have looked for it until I was tired out. It is not possible for me to find it among my papers.

Being cross examined by the counsel for the defendant, says :

- 10 I put the agreement in a bundle where I kept papers of that kind; in a desk in the office of the machine shop of Joseph C. Righter's. I do not think Joseph C. Righter had any more access to it than any other person who came into my office. I think after I sold out to Fuller & Hoagland, I moved my desk and papers to Joseph C. Righter's store, which I rented of him. I should think the desk was removed within one year from the time the agreement was left with me. Joseph C. Righter acted as clerk for me a month or so after I moved up to Righter's store, and might have had access to my papers if he chose. I have no recollection of looking after the paper from the time I deposited it in the bundle in my desk in the foundry, until some time after I moved up to the store room. There was a schedule of debts and liabilities and assets of the firm of M. Righter & Co. accompanying the agreement; what was transferred was stated in writing. I did not at the time of the making of that agreement see any Southern drafts delivered by Michael to Joseph C. Righter, nor did I hear of any at that time. I understood from them, at the time, that the assets would be greater than the liabilities of the firm, and that there would be something over. I have no recollection of losing any paper of any importance left with me. Michael Righter applied to me some three or four times for the purpose of obtaining the agreement. Michael was very anxious for me to find it, he assisted me in examining, and at his request I made search after search. Michael was anxious I think to see the paper, and see if Joseph C. Righter was not bound to pay certain debts for which Michael had been sued. Michael applied to me at several and different times to make the search; at times some length of time apart. I do not think that at the time the agreement was left with me, that any papers or books were present, or that the Southern drafts or any other papers were passed over at that time by delivery by Michael to Joseph C. Righter.

Sworn and subscribed before me,

October 11, 1853,

- 40 AUG'S. W. CUTLER,  
M. C. Chancery, New-Jersey.

FREEMAN WOOD.

John Righter, a witness produced on the part of the complainants, being duly sworn, deposeth and saith :

I live in Parsippany, Morris County. Stephen W. Righter is a nephew of mine, and a brother's son. I was present when Stephen and Michael Righter had a meeting at Cyrus H. Righter's, at Parsippany. Esquire Quinby and I went there to see if the difficulty between Stephen and Michael could not be settled.

Q. What did Michael say about the difficulty?

- 50 (Question objected to by counsel of defendant.)

A. Michael said that there was no difficulty between him and Stephen but between him and Joseph.

Q. No difficulty about what?

A. About their affairs; about the mortgage I took it.

I do not recollect the time exactly when this conversation took place. It was since this suit was commenced.

Being cross examined by the counsel of the defendant, says :

Stephen was there; all the parties was there except Joseph. I recollect perfectly well, that Michael said there was no difficulty between him and Stephen, but that the difficulty between him and Joseph was about the contents of the agreement left with Mr. Wood. I have talked with Stephen, Joseph and Michael about this matter.

Have you not understood from these parties always that Michael was to have one-half of the proceeds of these drafts? 10

Question objected to by counsel of complainants, particularly as to what he has understood from Michael and from Stephen.

A. I think I have understood so, that Michael was to have the half of the proceeds of the draft.

Q. Have you not understood so from Michael?

(Objected to.)

A. I think I have understood so from Michael.

Q. Have you not understood so from Joseph?

(Objected to.)

A. I have. 20

Q. Have you not understood from Stephen that Michael claimed and was to have one-half of the proceeds of the drafts?

(Objected to.)

A. I do not think I have.

Q. How long ago did your conversations about this matter begin?

A. Shortly after the commencement of this suit.

Q. Did you ever state to Stephen the claim that Michael made?

A. I do not recollect that I stated it to Stephen, but have talked to Joseph.

No settlement was effected between the parties at Cyrus H. Righter's, and the reason was that Joseph did not come. 30

Being re-examined by the complainant's counsel, says :

I never heard Joseph say anything about Michael having half of these drafts before the Martin suit was brought, as I know of.

Q. Did Joseph say then that Michael was entitled to have them by the original agreement left in Wood's hand, or did he say that he was willing he should have them to bring about a settlement?

(Question objected to)

A. He said that Michael was entitled to half, and thought that something might be obtained, that a letter had been written to Esquire Kitchel that one of the men was ready to pay something. 40

Q. Did not Joseph tell you by the agreement in Wood's hands that all the drafts were assigned to him, or that he was to take all and pay all at the time he dissolved? 45

A. I heard Joseph say that he was to have the accounts, notes and goods, and was to pay the debts, but do not recollect he said anything about his having the drafts. I do not remember the first time that Joseph spoke about it; it was after the suit was commenced.

Q. Did you undertake to find out in your conversation with Joseph, whether Michael was entitled by the agreement to the drafts, or that he would let him have a share of the drafts to get the thing settled? 50

A. I did not ask him for the sake of finding out.

Q. If Joseph admitted that half of the drafts in law belonged to Michael, and Michael claimed to be the owner of half of the drafts, what was the difficulty between Michael and Joseph that the matter could not be arranged? 55

A. I do not know what the difficulty was; something was said about the agreement that was lost.

Q. Was'nt it whether the drafts were assigned by or mentioned in the agreement, and that it could not be ascertained without the production of the agreement?

A. They disagreed about what the article was about more than on one point.

Q. Was'nt you authorized by Joseph to say to Michael for the purpose of bringing about a settlement, that he might have the drafts or a half of them?

A. Joseph said if that was all the difficulty he might have all the drafts, that he was entitled to or had been promised one-half, and if that would settle the difficulty he might have the whole.

10 Being cross examined, witness says :

Q. Was not this last remark of Joseph recently, and if so, how recently?

A. I think it was since the meeting at Cyrus H. Righter's. I think as he was not there, that the next time I met him I talked to him about it.

Q. Were you not in your former conversations with Joseph and Michael, as their relative, desiring to find out the right of the matter between them?

A. I was, and felt a desire to find out the right, and was desirous to effect a compromise.

Michael I think lived at the time of the Kitchel suit, on the Demorest place, at Boonton.

20 Q. Do you recollect that the drafts had anything to do with their misunderstanding about the agreement?

A. I do not know that it was mentioned at the time; have no such recollection.

Sworn and subscribed this 10th day of  
October, A. D. 1853, before me.

AUG'S. W. CUTLER,

M. C. Chancery, New-Jersey.

JOHN RIGHTER.

30 Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New-Jersey, wherein Peter Martin and William Martin are complainants, and Michael Righter is defendant, taken before me, Amzi Dodd, one of the Masters and Examiners of the said Court, in the presence of Edward W. Whelpley, Esq., Solicitor and of Counsel for the said complainants, and of Lyman A. Chandler, Esq., Solicitor and of Counsel for the said defendant, at my office, No. 259 Broad street, in the city of Newark, Essex County, New-Jersey, on the twenty-ninth day of November, eighteen hundred and fifty-three.

40 *William E. Pearson*, a witness produced on the part of the complainants, being duly sworn, and being shown a paper writing marked Exhibit (C.) on the part of the complainants, says: That is my hand-writing as subscribing witness to this instrument. I saw Stephen W. Righter sign, seal and deliver that assignment. The complainants gave in consideration of this assignment, cash seven hundred and fifty dollars, and goods for the balance. The money was paid at the time the assignment was executed. At the time of the execution of the assignment, Stephen W. Righter was indebted to Peter Martin and William Martin in the sum of one hundred and forty-one dollars and sixty-six cents. The understanding so far as I understood it at the time, was that he was to take goods for the balance of the amount due on the mortgage, over and above the seven hundred and fifty paid in cash, and the previous debt. I was present, and it  
50 was talked over in my presence by the parties. I was the book-keeper of Peter and William Martin at that time. They were wholesale grocers, doing business in the City of New-York. This transaction took place in their counting-room in New-York; they furnished Mr. Righter the amount of goods for the balance due on the mortgage afterwards, and whilst I was

in their employ, to the amount of seven hundred and seventy-two dollars and seventy-six cents; this includes the sum of one hundred and forty-one dollars and sixty-six cents owed by Righter to the said Peter and William Martin previous to the assignment of the mortgage; these goods were furnished in payment of the balance due on the mortgage; the one hundred and forty-one dollars and sixty-six cents were furnished previous to the assignment of the mortgage; the last amount was furnished in goods in September and October, eighteen hundred and forty-nine. They paid the seven hundred and fifty dollars by a check on a bank.

Being cross examined, he saith: The total amount of the account of Stephen W. Righter previous to the assignment of the mortgage, was one hundred and fifty-five dollars and thirty cents; and on the 28th of September, 1849, he is credited by cash thirteen dollars and sixty-four cents, leaving the balance as stated at the time of the transfer of the mortgage. I won't say that those goods were delivered on account of or in expectation of the transfer of the mortgage. I don't recollect at the time of the making of the subsequent bills, that anything was said about it being on account of the mortgage. 10

Question. Did you hear the whole of the bargain made between the complainants and Stephen W. Righter, either before or at the time of the transfer of the mortgage? 20

A. I did not. I was in and out of the office during their conversation.

The last goods were furnished on the 23d day of May, 1850. I think I delivered three-fourths of the goods personally, and perhaps all. I can't say. I can't say that I heard from Stephen W. Righter the bargain as to the transfer of the mortgage. I received my information as to the bargain, partly from what I heard of their conversation, and also from what I heard from Peter and William Martin at the time they were consummating the bargain. I don't know when the eleven dollars and six cents, the excess of the debt, cash and goods over and above the amount of the mortgage, was paid. I left there on the 10th, or thereabouts, of April last. I don't recollect the date of the payment. There is an entry on their books of the payment and the date. I did't take it off because I did't think it necessary. 30

*Direct Examination resumed.* There was delivered in cash and goods prior to the 19th of January, 1850, and after the transfer of the mortgage, nine hundred and eighty-one dollars and eighty-nine cents.

Sworn and subscribed before me at  
Newark, this 29th day of November, 1853.

AMZI DODD,  
Master in Chancery.

WM. E. PEARSON.

40

William A. Righter, Esq., a witness produced on the part of the complainants, being duly sworn, says: I had a conversation with Michael Righter, in the summer of 1847 or 1848, I think, in regard to his circumstances. The first conversation to which I refer took place before I obtained my license; the second one occurred I think afterwards. I was licensed in 1848; I don't know but the second took place also before my license. It was while he was at Middle Forge carrying on the lime business. This was the second conversation. I asked him how he was getting along in his business; he said very well; his business had done well so far as he had gone with it; that his debts were mostly paid up, with the exception of the mortgage that Stephen held on his property in Rockaway. I should think this conversation occurred in the year 1848; this last conversation was in warm weather. I can't tell how long after the first conversation, the second one occurred, or whether it was before or after I was licensed; the first one 50

may have been in the spring of 1848. It was about the time Michael commenced business at Middle Forge. The first conversation was in reference to a suit against Matthias Kitchel, upon some drafts from the South. I think he said the suits were brought in Stephen's name because Joseph, who was the owner of the drafts, was a neighbor of Kitchel's and didn't want to sue him. He said he had no interest in the drafts. His conversation was more directly to the liability of Mr. Kitchel upon the drafts. He said it was a subject of question, whether he himself could be a witness in the case, as he had been connected with Joseph in the business.

10 I told him his being a witness would depend upon his having any interest in the event of the suit. I never heard anything more of the suit particularly until very recently.

*Being cross examined*, he saith: Michael took the license to build the kilns of my brother Samuel. In the first conversation he was talking to me about the contract. I drew the contract; the first conversation occurred at the time they were making the bargain before it was put into writing. I give the language of the conversation as near as I can recollect it. He said he had settled up his affairs with Joseph, and that he had at that time no interest in the drafts. I don't recollect that he said how he had parted

20 with his interest. I do not recollect that he said what Stephen was to do with the proceeds of the drafts when collected. He said it would have been better, in his opinion, to have called upon the parties South; he expressed that opinion very strongly; he gave me none of the particulars of his settlement with Joseph. I don't think he told me how he had transferred his interest in the drafts. In the second conversation my only object was to ascertain about his circumstances, in regard to his business at Middle Forge. I knew there had been some small claims against him. All he said about it was that he had nearly paid them all up, except the mortgage; the reference to the mortgage came in incidentally. I think he said that most of his debts

30 were settled up, with the exception of the mortgage. I think that was his language. I think nothing further was said on the subject of the mortgage than what I have said. I never mentioned this matter to Peter and William Martin, or to their counsel, or to Stephen W. Righter, before the assignment of the mortgage.

Sworn and subscribed before me, at  
Newark, this 29th day of November, A. D., 1853.  
AMZI DODD, *Master in Ch'y.*

WILLIAM A. RIGHTER.

40 Examination of witnesses and making of exhibits on the part of the defendant in this cause, at the office of L. A. Chandler, in Rockaway, in the presence of Edward W. Whelpley, Esquire, Solicitor and of Counsel with complainants, and of L. A. Chandler, Solicitor and of Counsel with defendant, due notice of the same being acknowledged by Solicitor of complainants, taken before me, Samuel B. Halsey, one of the Masters and Examiners in Chancery of New-Jersey, this 28th day of October, 1854.

Matthias Kitchel, a witness produced on the part of the defendant, being duly sworn, on his oath deposeth and saith—I know the parties to this suit; I have known the defendant for twenty years. The paper marked exhibit H. being shown to witness, he says—Question: Do you remember

50 after the protesting of those drafts, sending on to Thomas R. Shields a release for the purpose of obtaining the amount of the draft drawn upon him, or any part thereof? If so, when was it? by whom was the release executed and what was the result? and at whose instigation was it sent? Question objected to by counsel for complainants as irrelevant, and also

because the existence, execution and contents of the paper cannot be proved in this way. Answer: I recollect sending on such a release, but the precise time I cannot recollect; it must have been three or four years after the protesting of the drafts; the release was executed by myself and Michael Righter, and was left in his hands to be sent on; I do not know that anything was received from it; it was sent in consequence of my having received letters from Mr. Shields on the subject; those letters I have at my house; I cannot recollect how long after the date of the last letter I received from Mr. Shields, but it was after the date of the last letter from Mr. Shields on that subject, and before I was sued, I think. Question: Do you recollect Joseph C. Righter applying to you upon the subject of these drafts at any time, when he mentioned Michael Righter's name; if so, when was it, with reference to your being sued on the drafts, and what did he say? A. I recollect Joseph C. Righter speaking to me on the subject of the drafts, but cannot tell whether it was before or after I was sued upon them. He said that Michael Righter was in very bad health, had the asthma, was very necessitous and needed the means contained in those drafts, and requested me to write on and use every means to persuade them to pay. I did write, and had a good deal of correspondence on the subject of those drafts, but received nothing. Michael Righter, at the time of this conversation with Joseph C. Righter, did not live in Rockaway; I think he had been absent from Rockaway a considerable time, but I do not know to what place he had removed. I had had correspondence on this subject before this conversation; I think I received letters from Mr. Shields after this conversation. The release was sent after the receipt of a letter from Mr. Shields proposing to pay a certain sum, and in consequence of that letter, and the conversation with Joseph C. Righter, was also after that; I know this because Michael Righter did not live in Rockaway at the time of the conversation, and he did live in Rockaway at the time the release was executed.

Subscribed and sworn, this twenty-eighth day of October, A. D., 1854, before me. } MATTHIAS KITCHEL. 30  
 SAM'L. B. HALSEY,  
*Master in Chancery.* }

Freeman Wood, a witness produced on the part of the defendant, being duly sworn, on his oath deposeth and saith: I now recollect the agreement between Michael Righter and Joseph C. Righter having been left with me, as stated in my previous examination in this cause; there was an inventory and schedule of liabilities and assets attached to the agreement; I do not recollect that anything was said at that time with respect to the Southern drafts; I do not recollect distinctly about it, but I think these drafts were not included in the schedule of assets; I think so because the schedule was made up of the odds and ends of their business, and of small sums, and if there had been so large an amount as these drafts, I think I should have recollecting it; and besides, these drafts, according to my recollection, had nothing to do with the business settled at that time; it was some ten years ago, and it is difficult to recollect particulars so long; I think the drafts alone amounted to about as much as the whole of the schedule of assets; I think the assets in the schedule exceeded the debts in amount, and the surplus of assets collected over and above debts, was to be paid to Michael Righter, or applied to the payment of his private debts; I do not remember which: I don't recollect having any conversation with Joseph C. Righter, respecting these drafts, after this agreement was left with me.

Subscribed and sworn, this 28th October, } FREEMAN WOOD. 50  
 1854, before me. SAM'L. B. HALSEY,  
*Master in Chancery.* }

IN CHANCERY OF NEW-JERSEY—Between Peter Martin and William Martin,  
Complainants, and Michael Righter, Defendant.

An examination in the above stated cause, taken before me, in the presence of Edward W. Whelpley, who appeared on the part of the complainants, and of Lyman A. Chandler, who appeared on the part of the defendant, at Morristown, New-Jersey, this eleventh day of December, in the year of our Lord eighteen hundred and fifty-four. Taken by consent of both parties.

ALFRED MILLS,

*Master and Examiner in Chancery of N. Jersey.*

- 10 Lyman A. Chandler, Esq., of Rockaway, a witness sworn on the part of the defendant, deposeth and says : (The counsel for complainants here objected to any acts or declarations of the defendant being given in evidence.) Sometime in the Summer of 1849, or possibly the last of the Spring, and before this suit was commenced, and before the proceedings were taken in the Circuit Court for the cancellation of the judgment, Stephen W. Righter handed to me, at Rockaway, where Michael Righter then lived, the bond and mortgage in question in this suit, and I think another paper relating to the same, called a declaration, with a request that I would get Michael Righter to pay up the interest. I called upon Michael Righter a very short time afterwards and asked payment of the interest, and he said that he didn't owe Stephen W. Righter anything. (This was objected to by counsel of complainants.) He said that he wondered that Stephen W. Righter did not call upon him. He said he had something that put an end to that bond and mortgage, and said he would show it to me; and within a very few days after that, how long exactly I cannot tell, he showed me the release which has been made an exhibit in this case, and said it was given to discharge that bond and mortgage and everything else he had against him, and that the bond and mortgage were to have been given up to him. Some few weeks after that, I should think not more than two or three weeks, I returned the bond and mortgage to Stephen W. Righter, and told him what Michael had said. I think I saw S. W. Righter passing, and ran out and handed them to him at my gate, and he took them without saying anything, and passed on.
- 20
- 30

Sworn to and subscribed this 11th day of December, A. D., 1854, before me,  
ALFRED MILLS,  
*A Master of the Court of Chancery  
of New-Jersey.*

L. A. CHANDLER.

### EXHIBIT A.

ON THE PART OF COMPLAINANTS.

- 40 THIS INDENTURE, made this seventh day of September, A. D. eighteen hundred and forty-two, between Michael Righter, of the township of Pequannack, in the County of Morris, and State of New-Jersey, of the first part, and Stephen W. Righter, of the township of Hanover, in the County and State aforesaid, of the second part, witnesseth : that the said party of the first part for and in consideration of the sum of one thousand

three hundred and thirty-three dollars and sixty-five cents, good and lawful money of the United States, to him in hand well and truly paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to his heirs and assigns forever, all that lot, tract or parcel of land and premises, hereinafter particularly described, situate in the village of Rockaway, in the said township of Pequannack, and bounded as follows, to wit: Be-

10  
beginning at a stake standing on a course south thirty-three degrees and thirty minutes west, distant seventy-five links from a rock marked T. C., also being the second corner of a lot of land which William Jackson sold to Stephen W. Righter, containing 3,267 square feet; thence running (1) south thirty-three degrees and thirty minutes west, four chains and forty links, to a stake; thence (2) south fifty-six degrees and thirty minutes east, one chain and eight links, to a stake; thence (3) north thirty-three degrees and thirty minutes east, five chains and ninety links, to a stake; thence (4) north fifty-six degrees and thirty minutes west, fifty-eight links, to the fourth corner of the said Stephen W. Righter's lot; thence (5) south thirty-three

20  
and a half degrees west, along said Righter's lot, one chain and fifty links, to the third corner of the same; thence (6) north fifty-six degrees and thirty minutes west, along said Stephen W. Righter's lot, fifty links, to the place of beginning, containing fifty-five hundredths of an acre, more or less: together with all and singular the houses, building, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining; also, all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in and to the same, and of, in and to every part and parcel thereof—to have

30  
and to hold all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. *Provided always,* nevertheless, and it is the true intent and meaning of these presents, that if the said Michael Righter, of the first part, his heirs, executors or administrators, do and shall well and truly pay or cause to be paid to the said Stephen W. Righter, party of the second part, his executors, administrators or assigns, the sum of one thousand three hundred and thirty-three dollars and sixty-five cents, on demand, with interest from the date hereof, according to the condition of a certain Bond or Obligation bearing even date herewith,

40  
executed by the said Michael to the said Stephen, in the penal sum of two thousand six hundred and sixty-seven dollars and thirty cents, conditioned for the payment of the aforesaid sum of one thousand three hundred and thirty-three dollars and sixty-five cents, on demand, with interest, as collateral to certain other claims held by the said Stephen against the said Michael, as by reference to the said bond or obligation and the condition thereof, will more fully and at large appear, then as well the said bond or obligation as also these presents shall cease and be void, anything herein and therein contained to the contrary in any wise notwithstanding. And the said Michael Righter, for himself, his heirs, executors and administrators, doth covenant and grant to and with the said Stephen W. Righter, his heirs and assigns, that the said Stephen W. Righter, his heirs and assigns, shall and may from time to time, and at all times, after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances,

50

without the let, suit, trouble, hindrance or denial of the said Michael Righter, his heirs or assigns, or of any other person or persons whatsoever.

In witness whereof, the said Michael Righter hath hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered in presence of } MICHAEL RIGHTER. [L. S.]  
 [The word 'dollars,' in the ninth line on the first page, was interlined previous to the signing and sealing of this instrument.] }  
 10 Wm. N. HENNION. }

Acknowledged before Wm. N. Hennion, September 10, 1842.

### EXHIBIT B.

#### ON THE PART OF COMPLAINANTS.

KNOW ALL MEN BY THESE PRESENTS, That I, Michael Righter, of the township of Pequannock, in the County of Morris and State of New-Jersey, am held and firmly bound unto Stephen W. Righter, of the township of Hanover, in the County and State aforesaid, in the sum of two thousand six hundred and sixty-seven dollars and thirty cents, legal money of the United States, well and truly to be paid to the said Stephen W. Righter, his certain attorney, executors, administrators or assigns. To which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly, by these presents.

Sealed with my seal. Dated the seventh day of September, in the year of our Lord one thousand eight hundred and forty-two.

The condition of this Obligation is such, that if the above bounden Michael Righter, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above named Stephen W. Righter, his certain attorney, executors, administrators or assigns, the just and full sum of one thousand three hundred and thirty-three dollars and sixty-five cents, on demand, with interest from date, as collateral to other claims held by the said Stephen against me, as expressed and referred to in a certain acknowledgment and declaration, under seal, executed and delivered by him to me, of this date, as by reference to the same will more fully appear, then the above obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of } MICHAEL RIGHTER. [L. S.]  
 Wm. N. HENNION. }

1842, September 7th. I acknowledge that the within named Stephen W. Righter, has in due form demanded of me, the within named obligor, the money mentioned in the within condition, and that I cannot at this time pay the same. Dated, 7th Sep., 1842. MICHAEL RIGHTER.

Rec'd from Michael Righter three hundred and twenty dollars and seven

cents, in full for four years interest due on the within bond, from Sept. 7, 1842, to September 7, 1846.      STEPHEN W. RIGHTER.  
\$320 07.

Received, Oct. 20, 1849, on this bond, seventy-three 79-100 dollars, for which M. Righter has my loose receipt.

STEPHEN W. RIGHTER.

### EXHIBIT C.

ON THE PART OF COMPLAINANTS.

KNOW ALL MEN BY THESE PRESENTS, That I, Stephen W. Righter, of the County of Morris, and State of New Jersey, for and in consideration of the sum of fifteen hundred and eleven dollars and seventy cents, due, and hereby by me guarantied to be due, on a certain bond and mortgage and judgment hereinafter mentioned and specified, the receipt whereof is hereby acknowledged, do grant, bargain, sell, assign, transfer and set over unto Peter Martin and William Martin, of the city of New York, their executors, administrators and assigns, a certain indenture of mortgage executed to me by Michael Righter, on the seventh day of September, A. D. 1842, dated the same day, and recorded in the Morris County Record of Mortgages, Liber T, fol. 299 and 300, and all the lands and real estate therein described, subject to the equity of redemption of the said Michael Righter, if any he hath, together with the bond therein mentioned and all the monies due and to grow due thereon, and also a certain judgment recovered by me in the Circuit Court of the County of Morris, on the fifth day of July, A. D. 1842, for the sum of eleven hundred and sixty dollars and forty-two cents, together with all monies due and to grow due thereon, and also any other judgment which I may have in the said Court against the said Michael Righter.

And I, the said Stephen W. Righter, for myself, my heirs, executors and administrators, do covenant and grant to and with the said Peter Martin and William Martin, that the above stated judgment and mortgage are the first and a valid lien and incumbrance on the said mortgaged premises, and that the said mortgaged premises are an abundant security for the monies due thereon, and that I will and do guaranty the payment of the said monies to the said Peter and William Martin, and their executors, administrators and assigns, and in case they should see fit to proceed at law or equity for the recovery of the said monies, to pay all costs and legal expenses to which they may be put in attempting to recover the same, in case of failure to recover the same of said Michael Righter.

Witness my hand and seal this first day of November, in the year eighteen hundred and forty-nine.      40°

Sealed and delivered in the  
presence of  
WILLIAM PEARSON. }

STEPHEN W. RIGHTER. [L. S.]



the County of Morris, State of New Jersey, for and in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid by Michael Righter of the same place, have remised, released, and forever discharged, and by these presents do, for myself, my heirs, executors, and administrators, remise, release, and forever discharge, the said Michael Righter, his heirs, executors, and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, whatsoever, in law or in equity, which against him I ever had, now have, or which my heirs, executors, or administrators, hereafter can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents. 10

In witness whereof, I have hereunto set my hand and seal the nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-seven.

Sealed and delivered in the presence of } STEPHEN W. RIGHTER. [L. S.]  
JNO. S. HAGER. } 20

### EXHIBIT F.

ON THE PART OF COMPLAINANTS.

\$73 79, Rec'd Oct. 20, 1849.

### EXHIBIT G.

ON THE PART OF DEFENDANT.

Mr. STEPHEN W. RIGHTER,  
1848.

To MICHAEL RIGHTER, Dr.

Jan'y 13.	To 1 day's services drawing off accounts from your Wan-		
	aque Books, at your House.....	\$1 00	
15.	1 day at do. at my House.....	1 25	30
17.	1 " " " .....	1 25	
18.	1 " " " .....	1 25	
19.	1 day's services going to Paterson and back, attending		
	to suit between you and H. H. Brown.....	1 25	
	Traveling expenses, toll, horse keeping, &c.....	0 98	
21.	1 day's services drawing off accounts, 10s.....	1 25	
			\$8 23

1848.		Amount brought forward.....		\$8' 23
Jan'y 22.		1 day's services, 10s.....		1 25
24.		$\frac{1}{2}$ day's drawing off N. Hazelton acp'e.....		63
		$\frac{1}{2}$ day adjourning suit between you and Sam'l Davis....		31
Feb'y 2.		1 day services going with you to Paterson to attend as witness on suit between you and H. H. Brown.....		1 00
	7.	Making out appeal bond on S. Davises suit, and state off demand against H. H. Brown.....		0 50
10		$\frac{1}{2}$ mo. services at Wanaque, which was not credited to me, as I commenced May 2d, and Wm. Harrison credited my time from May 10, to Feb'y 23d, when I did not quit until Feb'y 27, and was there at different times until Ap'l, at \$300 pr. yr., is.....		11 89
Sept. 14.		Serving as a witness on the 2d day of Sept. at A. B. Romes, in Passaic Co., before J. R. Nafie, Esq., in the follow suits, viz:		
		H. P. Brown, witness fees.....		1 00
		Milage.....		1 50
		Wm. Talmage.....		2 50
20		Isaac Hand.....		2 50
		E. Akin.....		2 50
Nov'r 25.		30 bushels B Lime, 7cs.....		2 10
Dec'r 4.	35	" " 7.....		2 45
1849.				
Jan'y 2.	30	" " 7.....		2 10
	3.	35 " " 7.....		2 45
	4.	38 " " 7.....		2 66
	5.	30 " " ".....		2 10
	6.	30 " " ".....		2 10
30	8.	40 " " ".....		2 80
	9.	40 " " ".....		2 80
	16.	33 " " ".....		2 31
May 8.	35	" " ".....		2 45
June 2.	30	" " ".....		2 10
		Your receipt for cash p'd Ap'l 29, 1848.....		80 00
				\$142 23
		Attending as witness in Passaic Co., at A. P. Rome, before John R. Nafie, between you and John H. Brown on the 28th Oct., 1848.....		2 50
40		Attending on suit of appeal at Paterson, John H. Brown, 1 day.....		1 00
		Milage.....		1 50
		1 day in Paterson.....		0 50
		Attending as witness on suit between you and John H. Brown, at Singack, before John R. Nafie, in Passaic Co.....		1 00
		Milage.....		1 00
				\$149 73
		Deduct the receipt ch'd Ap'l 29, 1848.....		80
50				\$69 73
		Amount of Elias Search account for stove.....		15 00
				\$84 73

Amount brought forward.....	\$84 73
Interest on the same 2 years. 1 day to your house and back; started to go to Paterson and came back.	1
Account of work not allowed above.....	11 89
And stove.....	15 00
	<hr/>
	26 89
	<hr/>
	68 23
Rec'd payment in full for the above account, Oct. 20, 1849.	
	MICHAEL RIGHTER. 10

---

**EXHIBIT H.**
**ON THE PART OF COMPLAINANTS.**

- \$642 00. Rock'y, June 15, 1840.  
 At sight, please pay to the order of Mr. Michael Righter, six hundred and forty-two dollars, on acc't of waggons shipped for Thos. R. Shields, with the current rate of exchange on New York, which place to acc't of Yours &c.  
 (Copy)  
 Signed, MATTHIAS KITCHELL.  
 To Messrs. Bennet, Farriday & Co., }  
 New-Orleans. } 20  
 Endorsed, pay to Bogart, Hathorne & Co., or order.  
 (Copy.) MICHAEL RIGHTER.
- \$312 00. ROCKAWAY, N. Jersey, June 18, 1840.  
 At sight, please pay to the order of Michael Righter, three hundred and twelve dollars, on acc't of waggons shipped for Cragor & Pierce, with the current rate of exchange on New York, which place to the acc't of Yours. &c.  
 Signed, MATTHIAS KITCHELL.  
 To Messrs. Wm. M. Lambert & Thomp- }  
 son, New-Orleans. } 30  
 Endorsed, pay Messrs. Bogart & Hathorne, or order.  
 Signed, MICH'L RIGHTER.
- \$304. Rock'y, New Jersey, June 18, 1840.  
 At sight, please pay to the order of Michael Righter three hundred and four dollars, on acc't of waggons and harness, spip'd shiped for Mr. L. Clifton, and a cart for W. A. Shaffer, with the current rate of exchange on New York, which place to the acc't of Yours, &c.  
 Signed, MATTHIAS KITCHELL.  
 To M. Bogart, Esq'r., N. Orleans.  
 Endorsed, pay Messrs. Bogart & Hawthorne, or order. 40  
 Signed, MICHAEL RIGHTER.
- Rec'd Morristown, March 18, 1845, of Jos. C. Righter, three draughts as above stated, for collection, to be accounted for.  
 STEPHEN W. RIGHTER.
- Rec'd, Mar. 18, 1845, of Mr. Stephen W. Righter, the drafts within set forth, made by Matthias Kitchel, for collection.  
 JNO. S. HAGER.

## EXHIBIT I.

ON THE PART OF COMPLAINANTS.

[This paper is admitted to be in hand writing of the defendant, Michael Righter.]

\$73 79. Rec'd from Michael Righter seventy-three dollars and seventy-nine cents, on account of interest due on a bond and mortgage which I hold against said M. Righter, for about thirteen hundred and thirty-three dollars. Octob. 20, 1849. STEPHEN W. RIGHTER.

## FEBRUARY TERM, 1855.

- 10 PETER MARTIN, AND  
WILLIAM MARTIN, } E. W. WHELPLEY for Complainants.  
vs. } L. A. CHANDLER for Defendant.  
MICHAEL RIGHTER.)

THE CHANCELLOR. On the 5th of July, 1842, Stephen W. Righter recovered against Michael Righter, the Defendant in this suit, a judgment in the Circuit Court of the County of Morris, for the sum of eleven hundred and sixty dollars and forty-two cents, damages and costs of suit. Afterwards, the Defendant becoming further indebted to the said Stephen W. Righter, for the purpose of securing such indebtedness, and as collateral  
20 and further security for the judgment debt, on the 7th of September, 1842, gave the bond and mortgage in controversy in the present suit, conditioned for the payment of \$1,333 65, on demand, with interest. As to the amount or the honesty of the debt, there is no dispute.

On the 19th of May, 1847, Stephen W. Righter executed in due form of law, under his hand and seal, a release to the Defendant. It expresses to be for the consideration of one dollar paid, and to remise, release, and forever discharge the Defendant, his heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills,  
30 specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which the said Stephen W. Righter ever had, then had, or which his heirs, executors, or administrators, thereafter could, should or might have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of the release.

This release is set up as a bar to a recovery upon the bond and mortgage. About 18 months after the execution of the release, Stephen W. Righter assigned the bond and mortgage to Peter Martin and William Martin, the  
40 complainants. They caused an execution to be issued upon the judgment. The defendant then interposed this release, and obtained a rule of the Circuit Court of the County of Morris, upon the complainants, to shew cause why the judgment should not be cancelled of record. The complainants then filed this bill, praying that the said release may be declared fraudulent and void, as to them, or that it may be declared to have been executed by

mistake, or that it may be reformed so far as respects the bond and mortgage, so as not to apply to them, and that the mortgaged premises may be sold, &c. An injunction was allowed. The cause is now brought to a final hearing upon its merits. There can be no controversy but that the release is comprehensive enough to include the judgment, and bond and mortgage. That release must be removed out of the way before the judgment or mortgage can be enforced.

No parol testimony can be admitted for the purpose of shewing that the intention of the parties, or either of them, was different from that expressed in and by the release itself. If it can be shown, that the instrument was procured by fraud, that will vitiate it, and it will be set aside *in toto*.— If it can be shown that there was a mistake in the drawing up and executing it: for instance, that the scrivener was instructed that in preparing the release he should exclude the judgment and mortgage, and that it was executed under the impression that it was drawn according to such instructions, but that by mistake the scrivener had omitted to make the exception, in such case this Court will relieve the party whose rights are affected by such mistake. But such mistake must be established by evidence so clear and incontrovertible that the Court may feel an assurance that it cannot itself make any mistake in confiding its judgment upon it. Courts of Equity have gone quite far enough in reforming sealed instruments. There are instances where it would seem that the supposed hardship of the case has had more weight than the evidence, in influencing the judgment of the Court. Parties are not entitled to relief against their own mere carelessness and negligence.

A mistake in a sealed instrument can be proved only by reliance upon parol testimony. It is always dangerous, when parties have reduced their intention and agreement to writing, to undertake to substitute what they intended to do, for that which they actually did do.

The complainants endeavor to avoid the release upon three grounds.— First, fraud; second, mistake; third, that the defendant's conduct induced them to advance their money, and to purchase the judgment and mortgage, and he is chargeable, therefore, with standing by, and seeing the complainants advance their money upon obligations of his own which were worthless.

First. Was there anything in the manner in which the release was executed, which subjects it to the charge of fraud, or to make it fraudulent for the defendant to apply it to the judgment and mortgage? Let us take the case as it is made by the bill. The bill alleges that one Joseph C. Righter and the defendant were connected in business; that they held the drafts of Matthias Kitchell for about \$1250, which had been drawn in their favor, upon different mercantile houses at the South, and which had been protested for non-payment; that Jos. C. Righter and the defendant dissolved their business connections, and in their arrangements the drafts became the individual property of Joseph C. Righter; that Joseph C. Righter being desirous of bringing suit at law to collect the amounts due on the drafts against the drawer, and being in embarrassed circumstances, and fearful that the collection of the drafts might be embarrassed by his creditors, if he should bring suit in his own name, applied to Stephen W. Righter to take the drafts, and institute a suit upon them in his name, but for the benefit of him, Joseph C. Righter; that Stephen W. Righter did accordingly commence the suit; that when the said suit was about to be tried, the defendant alleged that he was interested in the said drafts and in the event of the suit, and John S. Hager, Esq., who was attorney in the suit, thereupon advised, that it might be necessary to examine the defendant as a witness, and that it was necessary for that purpose to release him, in order to discharge

any interest he might have ; that the said attorney then filled up a printed form of general release and requested Stephen W. Righter to sign it ; that he objected on the ground of the release being too broad and general in its terms, whereupon the defendant replied that it was no matter, as the release should be given up to him as soon as the trial was over, and that it was necessary to execute the release in order to discharge his interest in the suit, (the defendant then well knowing that he had no interest, and that the release was unnecessary ;) that the attorney advised that it was right and safe to execute the release, and that no harm could come from it ; that the defendant was examined as a witness in the cause, and that the only intention of the parties was to release the defendant's interest in that suit ; that no consideration passed for the release, and that the defendant has frequently since admitted his indebtedness on the bond and mortgage.

What was there in this transaction to justify the Court in declaring that the defendant procured the release by fraud ? The proposal did not come from him to give the release. It is said he committed a fraud in pretending he was interested in the drafts, when he was not, and when he knew he was not. If this were so, it was no fraud. Joseph W. Righter, who declared the drafts belonged to him, was standing by to contradict the assertion. But the evidence in the cause shews, that there was a dispute as to the ownership of the drafts, and the weight of the testimony is that the defendant was interested in the drafts to the amount of one half. But it is said there is another fact : he promised the release should be given up as soon as the trial was over, that there was no consideration given for the release, and the only object of it was to make the defendant a competent witness in the suit. But all this is at variance with the instrument itself ; and to permit the complainants to prove it, would be admitting parol testimony to contradict and vary the plain and unambiguous terms of a sealed instrument. If the object was not to release the defendant from anything except from such liabilities as made him incompetent to be a witness in the suit, why was not such a release drawn ? There is no pretence that the defendant dictated the terms of the release. It was drawn by the attorney of the party, and was retained for some time and then delivered ; there can be no pretence that it was done hastily or through inadvertance.

But there is another view of this feature of the case. This release was offered in evidence, and was received by the Court as a valid release between the parties. Upon the faith of it the defendant was admitted as a competent witness, and was permitted to give evidence in the suit at Law. Stephen W. Righter, or the complainants who stand in his place, now come into a Court of Equity, and allege that the release was to be delivered up after it had effected its purpose with the Court, and the defendant not fulfilling his promise, this Court is called upon to declare it fraudulent and void. Such a case cannot be favoured in this Court. The Agreement, if there was such a one, was fraudulent. It was imposed upon the Court as a valid release, when the parties had agreed it should be considered a mere matter of form, and be cancelled.

But there is another circumstance connected with this part of the case, as the complainants state it in their Bill, very unfavourable to a party seeking redress in a Court of Equity. It is stated as a favourable circumstance to the complainants' case, that it is admitted, by all parties, that Stephen W. Righter had no interest in the suit at Law. It is asked : Why then would he release this defendant of a debt of fifteen hundred dollars, well secured, without deriving any advantage to himself ? The answer is, he did release it, and there is his release under his hand and seal. But the misfortune of Stephen W. Righter is, that while assuming a position to avail himself of this argument, he is obliged to admit that he was conducting the suit for the

benefit of Joseph C. Righter, and doing it in his own name for the purpose of enabling Joseph C. Righter to protect his property from his creditors. The fraudulent position which he occupied forced upon him the necessity of executing the release. Where a party, in committing a fraud, has a still greater one practised upon himself, he can have no redress against it in a Court of Equity.

The proof does not sustain the allegation of fraud on the part of the defendant in procuring this release. It was given to him without his solicitation. I can see no fraud in his setting it up as a defence against a recovery upon this bond and mortgage. They are embraced in the legal construction of the instrument, and it is not competent to shew that it was the intention of the parties that it should be limited in its legal application. 10

2d. The Bill prays that the release may be declared to have been executed by mistake. The power of the Court to correct a mistake in the execution of a written instrument, was well considered in the cases of *Smith vs. Allen* and others, Saxton 46, and *Hendrickson et al vs. Ivins*, Saxton 568. The mistake alleged is this: That when the Attorney of Stephen W. Righter had prepared the release, he objected to sign it, on the ground that it was too broad and general in its terms, as covering everything; whereupon the defendant replied, it was no matter as the release would be given up, and then Mr. Hager, the Attorney, advised Stephen W. Righter to sign it. It is manifest that the mistake was not in Stephen W. Righter's signing the release under a misapprehension as to its comprehensiveness, for when he made this objection neither the defendant or the Attorney questioned the correctness of his judgment as to the character of the instrument. He did not execute the release under any misconception or mistake, as to its contents, or as to its comprehensiveness or effect. He executed it relying upon the promise of the defendant that he would return it to him. In that respect the result has proved he was mistaken; but that kind of mistake this Court cannot remedy. It is an obligation of honour which the parties must settle between themselves. 20

3d. The complainants insist that the defendant should not be permitted to set up the release as against them, because they were induced by the acts and conduct of the defendant to advance their money upon the bond and mortgage. The complainants are the assignees of the bond and mortgage. They are bona fide assignees. Do they stand in any better situation, in respect to the defence set up, than the obligee himself did at the time of the assignment? The assignee of a bond takes it subject to all the legal objections and equities which exist against it in the hands of his assignor. If, at the time of the assignment, this release was a legal defence as against the obligee, it is a legal defence against the complainants, his assignees. But they may avoid this defence in Equity, by shewing that they were induced to take the assignment and advance their money upon it, by the acts and conduct of the defendant, which make him guilty of a constructive fraud, or by such omissions, or gross negligence, as imply fraud. 30

If the complainants had made application to the defendant to know what amount was due upon the bond and mortgage, and the defendant had told them the amount without apprizing them of the existence of the release; or if the defendant had stood by silently and seen the complainants advance their money upon the assignment, he would not in a Court of Equity be permitted to set up the release against the party claiming under such assignment. A man who designedly produces a false impression upon another, who is thereby drawn into some act or contract injurious to his own rights or interests, is guilty of constructive fraud, against which a Court of Equity will afford an adequate relief. This is a familiar principle of Equity. 40

will be found supported by numerous authorities in 1 Story Eq. J., S. 384, and following sections, and notes to the same.

Let us see whether the complainants can avail themselves of this principle. It is said that the defendant treated the bond and mortgage as valid and subsisting obligations, binding upon him, after the execution of the release. An acknowledgment of the amount of money due upon the bond, and that it was a subsisting debt, would not, either in a Court of Equity or Law, prevent the defendant from pleading the release as against the obligee. Such an acknowledgment would not destroy the release. To make it avail-  
 10 able to these complainants, they must show that the act was prejudicial to them, and was made under circumstances to induce them, upon the faith of such acknowledgment, to part with their money. If the acknowledgment was not made for the purpose or under circumstances calculated to mislead the complainants, it could not be construed as a fraud upon them.

The only acknowledgment proved to have been made by the defendant, is by a witness who says that some time in 1848 he had a casual conversation with the defendant, and asked him how he was getting along with his business. "He said very well: his business had done well, so far as he had gone with it—that his debts were mostly paid, with the exception of the  
 20 mortgage that Stephen held upon his property in Rockaway." There certainly was nothing in this conversation which Stephen W. Righter could take advantage of in any way. It was about this time that he sent the bond and mortgage by Mr. Chandler to the defendant to collect the interest upon it, when the defendant produced the release, and claimed it as a discharge of the bond and mortgage. But how did anything said by the defendant, in the conversation alluded to, prejudice the complainants? They do not allege that what was then said was ever known to them at the time of the assign-  
 30 ment, and there is no proof that it was ever heard of by them, until testified to by the witness. There can be no pretence that they advanced their money upon the strength of that conversation. If they did, that circumstance would not help them, for they ought not to have relied upon it.

There is only one other fact upon which the complainants rely to show a constructive fraud, and that is, the payment of interest on the bond on the 20th of October, 1849. Of what took place at the time of this payment, and of the circumstances under which it was made, we have no legal proof. The statements of the bill as to the particulars of the transaction, are denied by the answer, and neither the statements of the bill or answer are sustained by proof. The evidence of the attorney, detailing the negotiation between  
 40 himself and Stephen W. Righter, and the declarations of the latter, are ruled out as incompetent to be given in evidence. We have the fact, that on the 20th of October, 1849, the defendant paid to Stephen W. Righter seventy-three dollars and twenty-nine cents, for interest money due on the bond; that when the payment was made the bond was not there, and a loose receipt was given for the payment; that no money was paid, but the defendant gave his due bill for \$12 86, payable in lime, and the balance, making up the amount of \$73 29, was settled by an account which the defendant had against Stephen W. Righter.

The mere fact of this payment is no bar or estoppel to the defendant's pleading the release at Law, or setting it up in this Court against the  
 50 obligor. The release the defendant might or might not set up, as he pleased. It was a legal discharge to the whole amount due; but because the defendant did not choose to take advantage of it to its full extent, what reason has the obligor to complain? The payment was for his own benefit, and did not or could not prejudice him in any manner. A sealed instrument could not be defeated by such an act. If it is said the payment is an admission of the obligor that the release does not extend to the bond, or that it

was not the intention of the parties that it should extend to it, the answer is: the release speaks for itself, and as to its embracing the bond there is no question; the instrument must be construed as to its legal effect, and the intention of the parties cannot be substituted.

Do the complainants stand in any better situation than their assignor? The complainants had the opportunity of making application directly to the defendant, to know whether he had any defence, legal or equitable, against the bond. If such application had been made, and the defendant had told them the sum of \$1500 was due, and had not disclosed their release, then the defendant would have been estopped from setting it up against them. This is quite as far as any of the cases referred to, go. In *Davison vs. Franklin*, (1 Barn. & Adol. 142, 20 E. C. L. 363.) a warrant of attorney was given to confess a judgment for a gaming debt. The plaintiff, Davison, purchased the judgment, but before doing so, his attorney produced the bond to the defendant and informed him it had been offered for sale, and asked him whether he admitted it to be a good debt, and whether it was given for a good and valuable consideration. The defendant replied, "Yes, this is my hand writing; I owe Mr. Davison the money, and have no objection to make to it; it will be paid when it is due." In *Watson's Executors vs. McLaren*, 19 Wend. 557, the extent of the principle established was, that declaring a note to be good, to one about to purchase it, or standing by in silence when it is transferred for consideration, is an estoppel *in pais* against a debtor. In *Foster vs. Newland* (21 Wend. 94), the principle settled was, that when a debtor admits to a third person an existing balance due from him on a bond or other chose in action, and upon the strength of such admission such person takes an assignment of the bond or other chose in action, the debtor, in a suit subsequently brought for the recovery of such balance, is estopped from showing a claim against the original creditor for the purpose of reducing the amount of the recovery, although the assignment was taken for a *precedent debt*.

Now, in this case, no application was made by the complainants, or on their behalf, to the defendant, to ascertain the validity of the bond, or what was due upon it. He was not apprised of their intention to purchase the bond. He was guilty of no act of commission or omission having any reference to the complainants' purchase. The payment of the interest was a private dealing between the debtor and creditor, without any reference to third persons, and affecting no one's interest but their own. The complainants may have been induced by it to run the risk of purchasing the bond, but they cannot say that they have been defrauded by the defendant's conduct. The bond in the hands of a third person was *prima facie* evidence that the amount it called for was due and owing, and that it was a valid bond. The payment of interest upon it was *prima facie* evidence that the balance was due. The complainants chose to take the bond upon the representations of the obligee, and not upon the faith of anything that was done by the obligor.

The truth is, the complainants did not take the bond relying upon anything that was said or done by the obligor. How did they know that the interest was paid on the 20th of Oct., 1849? They derived their information from the obligee alone. He brought to their attorney, written on a paper about two inches long and one inch wide, the following memorandum in the handwriting of the defendant: "\$73 79, Rec'd. Oct. 20, 1849." They took his word for it, that this was for interest on the bond. In looking at the conduct of the defendant, there can be no doubt that if application had been made directly to him, he would have denied his liability upon the bond, and insisted upon the release. No one can look at the case, the pleadings, the evidence, and the circumstances, and not be satisfied that the procuring

of the payment of the interest, and of the memorandum referred to, was a contrivance of Stephen W. Righter to obtain something from the defendant which would estop him from pleading the release against an assignee of the bond.

This case is an extremely hard one for Stephen W. Righter. It is evident that he has never received payment of the money intended to be secured by the bond and mortgage. But here is a solemn instrument, executed under his seal, by which he releases the obligee from the payment of that bond. This Court has no right to set it aside, unless for fraud, or to control its legal effect, unless some mistake can be shown. I can make no new principle of law of equity, to relieve the particular hardship of any case.

IN CHANCERY OF NEW-JERSEY—Between Peter Martin and William Martin, Complainants, and Michael Righter, Defendant. On Bill, Ans., and Proofs.

DECREE OF DISMISSAL.

This cause, coming on to be heard at the last regular term of the Court of Chancery, held at the State House in the City of Trenton, before the Chancellor, in the presence of Edward W. Whelpley, Solicitor and of Counsel with the Complainants, and Lyman A. Chandler, Solicitor and of Counsel with the Defendant, and the pleadings, depositions, exhibits and proofs, being read, and the arguments of the respective Counsel being heard and considered, and the Chancellor having taken time to advise thereon, and now, on this seventh day of February, in the year of our Lord one thousand eight hundred and fifty-five, it appearing to the Chancellor that the Complainants are not entitled to the relief sought and prayed for by them in their said bill of complaint—

It is ordered, adjudged and decreed, that the said Complainants' bill be, and the same is hereby dismissed, with costs, and that the injunction issued in the cause be dissolved.

B. WILLIAMSON, C.