

1888

New Jersey Court of Errors.

TUNIS D. MELICK, et al.,
Appellants,
and
FISHER PIDCOCK,
Respondent.

On Appeal.

POINTS FOR APPELLANTS.

I.

The mortgage was given without *Consideration* ~~consultation~~ and to prevent the collection of debts due to the creditors of Tunis D. Melick. This is sustained

By the testimony of Tunis D. Melick, page 5, line 30, and pages 6 and 7, to line 20.

By the written agreement between the parties. Exhibit "Agreement for Defendants, July 28, 1887," page 138.

By the testimony of J. N. Voorhees, pages 27 and 28.

By the testimony of Ernest Melick, pages 61 and 62.

By the testimony of Hockenbury, page 106.

By the circumstances surrounding the execution of the mortgage. *It* was made after the commencement of the

Kline Melick suit and before the trial—just before. The consideration, if any, was fabricated to give a color of truth to the transaction. No interest was ever paid or demanded on the mortgage. The assignment to the complainant was a sham. He has no interest in it.

II.

The complainant fails to show any satisfactory consideration.

The only witness is Peter W. Melick, the party in interest, and he talks about paying out large sums for his son, without even asking why.

III.

The previous foreclosure did not extinguish the lien of the Kline Melick judgment now held by Sarah D. Melick by assignment, notwithstanding the fact that, at the date of the filing of the previous bill, P. W. Melick held the judgment by assignment and was a party defendant; because Tunis D. Melick, the defendant in that judgment, was not made a party, his interest in the land was not affected, or foreclosed, and the lien of a judgment against him was not disturbed.

As to the first point:

This mortgage first sprang into existence in April, 1878.

Tunis was a defendant in an action then being prosecuted against him, in which it was sought to recover from him damages amounting to \$3,000. Tunis says that the mortgage was given to prevent the collection of any judgment that might be recovered in that suit and to provide for its settlement. That it was given at the proper time to effectuate such a purpose is beyond question. And while the father pretends that there was a consideration, it is strange that it occurred to them just at that time that this old debt should be secured.

The next step in this transaction was taken after the verdict was rendered. Tunis says, that he then wished to have something that would show the terms upon which the mortgage had been given; the amount of the verdict was much smaller than he had expected, and the mortgage greatly exceeded it.

At this juncture of their affairs the written agreement was made which defined the terms upon which the mortgage was executed. And while the original paper was lost we have a true copy, duly proved and admitted in evidence. The treatment of this evidence by the Advisory Master is, to say the least, very novel. He admits the paper to have been properly proved. It was executed by both father and son in the office of Mr. Voorhees, and in his presence, and could refer to nothing but this mortgage. The proofs show there was no other.

The fact that such a paper was executed is proved as conclusively as it is possible to prove anything by human testimony. The Master admits that *Mr. Voorhees is without bias, and that his testimony must be accepted as true*. If true, the statements of the father are disproved, and the statements of the son sustained. And in considering the weight to be given to the testimony this circumstance should be borne in mind. The father might have forgotten the execution of the paper before his attention was called to it, but his testimony, denying the execution of

the paper, after it had been called to his attention, ought seriously to affect the credit to be given to his statement.

After admitting that the agreement was executed, as claimed by the defendants, the Master proceeds to dispose of it as follows: In the first place he says that it was without consideration and *nudum factum*, because executed after the mortgage. This is not my understanding of the law. This mortgage was given upon a verbal agreement—the father took it upon certain trusts, which were afterwards put in writing. It was only carrying out the previous understanding. We claim that it is a declaration by the father of the trusts upon which he took the mortgage, but if it is not it proves the truth of the son's story.

The second circumstance which seems to have made an impression on the Master's mind is that this was not set up as a defense in the previous suit. The proceedings in that case show that the suit was instituted against the children of T. D. Melick, and a decree had been obtained before counsel were employed. This decree was opened and the infants allowed to answer. In the preparation of the case, it is true, as stated by the defendant, Tunis D. Melick, that he insisted that Mr. Voorhees had a paper that would explain the matter, and that application was made to Mr. Voorhees for it, and that he had forgotten about it. Mr. Voorhees's statement that he had no such paper may have led counsel to think that Tunis was mistaken about the execution of such a paper, especially as nearly seven years had elapsed since its execution. Every lawyer knows that ignorant people are apt to imagine that what was agreed to be done has been done, and I am free to say that in this case, notwithstanding his strong claims, I thought Tunis was mistaken in his assertion regarding the paper. I have since found he was correct.

Nor is it strange that Mr. Voorhees should have forgotten about it until, finding the paper, and reading its con-

tents, all the facts relating to it were recalled to his mind. Certainly this circumstance is not sufficient to overcome the written agreement.

It is fair to call the attention of the Court to the fact that in the first case we were met by the rule of law which prevents one, who makes a voluntary conveyance, from seeking to defeat it, and had not the presence of a judgment creditor to defend against this fraud, the principal defense allowed in that case was that which prevents the fraudulent grantee from having the assistance of a court of equity to enforce his claim.

The next trouble the Master has is the general release accepted by the defendant Melick. The stress laid by the Master on this point is not warranted by the circumstances.

While this first foreclosure was pending the parties met to arrange, if possible, a settlement. An arrangement was made of every matter excepting the mortgage. The wife of Tunis took an assignment of the judgment of Kline Melick and paid for it its full value, and all matters in difference were closed, excepting the status of this mortgage—about that they could not agree. The father had assigned it, so far as we then knew, by an absolute assignment to Fisher Pidcock. This matter was left open to be settled by law, and Tunis was indemnified against personal liability, in case the mortgage was held good.

The argument of the Master that if the bona fides of the mortgage was then contested it would have broken off the negotiation, shows that he is not acquainted with the litigious nature of Peter W. Melick. We were glad to settle as far as we could. And I am satisfied that the course taken was the wisest; it confined all the litigation to this one suit. And in consideration of the settlement Tunis was relieved from all personal liability. If defeated in the contest, the land alone was to be taken to satisfy the mortgage.

And the Master seems to have entirely overlooked the fact that this first suit was pending when this release was made, that it was not discontinued, but proceeded to its conclusion immediately thereafter, with notice to all concerned that this release had just been signed, and Peter W. Melick was a witness in the cause. Neither he nor his counsel then claimed any benefit from the release. He knew that Tunis had not waived his right to make a defense.

All the parties acted on this understanding when it was fresh in their minds, and it should not now at this late day be assumed that the defendant, Tunis, intended to admit the validity of a mortgage which he at once, in behalf of his children, contested, without the interposition of any objection by the other party.

It is a weak attempt to explain away the force of a written agreement.

As to the second point :

The circumstances surrounding this mortgage at the time of its execution, just before the trial of the suit against the son, that it was not signed by the wife ; that no interest was ever paid nor payment demanded from its date until 1884, all required the father to give a fair explanation of its consideration. In this he failed absolutely. No one believes his statements that he paid to Dennis Van Liew large sums of money on account of his son, without ever asking the nature of the difficulty his son was in. It is beyond credence that any one would pay out such sums to settle troubles for another without inquiry as to their nature. And these payments, he says, were made to one long since deceased, who could not be called to contradict them.

And then his story about his financial straits is not true. He is a person of large property, and never attempted to realize on the mortgage.

As to the third point :

At the time the wife bought the Kline Melick judgment from Peter W. Melick he was a party defendant in the first suit, and had not answered, the time having elapsed, and of course the assignee stood in his position as regarded that suit. But my insistment is that the judgment being against T. D. Melick, and he not having been a party to that suit, his interest in the land was not affected, nor was the lien of the judgment on that interest disturbed.

The holder of a judgment under such circumstances might safely refuse to answer, as the interest of T. D. Melick in the lands was not sought to be sold, nor was the lien of the judgment on it called in question.

The equity of redemption of Tunis D. Melick was not affected by the foreclosure proceedings, and still remains subject to the lien of the judgment.

Brunder v. Walker, 1 Beasley 140.

To illustrate: Suppose that after this foreclosure the equity had been levied upon and sold, would it be pretended that the purchaser had been foreclosed?

The greatest sufferer from this decree is the wife of Tunis. The bona fides of her claim is beyond dispute, and its truth clearly shown on the trial.

JAMES J. BERGEN,
For Appellants.

NEW JERSEY

Court of Errors and Appeals.

Between

TUNIS D. MELICK and SARAH

M. MELICK,

Appellants,

and

FISHER PIDCOCK,

Respondent.

On Appeal.

Petition.

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

The petition of Tunis D. Melick and Sarah M. Melick, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, Alexander T. McGill, Jr., Chancellor of New Jersey, bearing date the twelfth day of November, eighteen hundred and eighty-seven, wherein the said Fisher Pidcock was complainant, and Tunis D. Melick and Sarah M. Melick were defendants, in respect to wit: that the said decree adjudges that the mortgage of the complainant is a valid and subsisting lien upon the premises described in the bill of complaint in said cause, and is prior to the lien of the judgment of the defendant, Sarah M. Melick, which was assigned to her by James J. Bergen, as in the bill of complaint set forth, and that the said complainant, by proceedings heretofore instituted by him in this court, as set forth in the bill of complaint, obtained a foreclosure and sale of the rights of all parties having an interest in the said premises at the time of the institution of the said proceedings, with the exception of the interests of the defendants, Tunis D. Melick and Sarah M. Melick, and that by said proceedings the lien upon said premises of the judgment of the defendant, Sarah M. Melick, which was assigned to her by one

Peter W. Melick, as in her cross-bill in this cause set forth, was extinguished.

And also, that in default of the said defendants, or either of them, paying to the said complainant, or to his solicitor, the sum of one thousand four hundred and twenty-one dollars and seventy-one cents, with interest from the fourth day of November, eighteen hundred and eighty-seven, within thirty days after the service of a copy of said decree, the said defendant, Tunis D. Melick, should stand absolutely debarred and foreclosed of and from all equity of redemption in and to the said mortgaged premises, and that the said Sarah M. Melick does stand absolutely debarred and foreclosed of and from all right, title or interest which she has in and to the said mortgaged premises, by virtue of her said judgment, which was assigned to her by James J. Bergen.

And your petitioners humbly appeal from that part of the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous; for that the said decree should have adjudged and decreed that the mortgage of the complainant was not a lien upon the premises therein described, nor was the same prior to the lien and incumbrance of the aforesaid judgment of the defendant, Sarah M. Melick, nor that the lien of this judgment of Sarah M. Melick, assigned to her by Peter W. Melick, was extinguished by the previous foreclosure proceedings, instituted by the complainants, as set forth in said decree.

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

GASTON & BERGEN,

Sol. for and of Counsel with Appellants.

NEW JERSEY
Court of Errors and Appeals.

Between	}	Answer	
TUNIS D. MELICK and SARAH		to Petition of	
M. MELICK,			Appeal.
Appellants,			
and			
FISHER PIDCOCK,	Respondent.		

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree was, on the twelfth day of November, in the year of our Lord eighteen hundred and eighty-seven, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may affirmed, with costs to be adjudged to this respondent.

Dated Dec. 30, 1887.

A. C. HULSIZER,
Sol. for, and

J. G. SHIPMAN,
Of counsel with, Resp't.

PIDCOCK

v.

MELICK.

Conclusions of Ad-
visory Master.

The bill in this cause is filed for a strict foreclosure of mortgaged premises, under the following circumstances: On the 20th day of April, 1878, the defendant, Tunis D. Melick (his wife not joining with him), executed a mortgage to his father, Peter W. Melick, for the expressed consideration of \$1,200, on the 15th day of May, 1878, the defendant conveyed all his interest in the premises conveyed by the mortgage, for a nominal consideration, to one Sarah Ann Studdiford, in trust for his children. The trust deed, however, contained no words of inheritance. On the 4th day of June, in the same year, a judgment was recovered against the said Tunis D. Melick in the Supreme Court of this State, by one Kline Melick, for the sum of \$348.56. Kline Melick subsequently assigned this judgment to Clark & Schomp, who, in turn, and on the 5th day of April, 1880, assigned the same to Peter W. Melick, and he, on the 23d day of December, 1884, assigned it to the defendant, Sarah M. Melick, the wife of Tunis D. Melick. On the 24th day of July, 1884, Peter W. Melick assigned the mortgage and the bond secured thereby to the complainant, Fisher Pidcock. No money consideration was paid by the complainant. He received it for the purpose of collecting the amount due upon it and applying the proceeds in payment of certain promissory notes upon which he was indorser (the notes presumably being those of his assignor, Peter W. Melick). On August 19th, 1884, the complainant filed a bill in this court for the foreclosure and sale of the premises embraced in his said mortgage, and such proceedings were

had in that suit that, on the 8th day of October, 1885, a final decree was entered in the usual form against all of the defendants therein, one of whom was Peter W. Melick, who was made a party by reason of his ownership of the Kline Melick judgment, which he had not at the time of the commencement of the suit assigned to Sarah M. Melick. The other defendants were the children of Tunis D. Melick, who were the *cestius que trustent* named in the trust deed above mentioned. Tunis D. Melick was not made a party to that suit, although Sarah Ann Studiford, the grantee in the trust died, had died before the bill was filed, and the mortgaged premises had consequently reverted to him.

Execution was issued on the final decree in that cause, and a sale of the mortgaged premises was had thereunder, the complainant becoming the purchaser for \$700.

Subsequent to the sale under the execution in that suit, and on the 6th day of April, 1886, a judgment was recovered against the defendant, Tunis D. Melick, in the Hunterdon Circuit Court, by one James J. Bergen, for the sum of \$1,261.93, and was assigned on the same day to the defendant, Sarah M. Melick, the foundation of the judgment being a debt of Tunis D. Melick, incurred by him prior to the execution of the complainant's mortgage.

The present bill is filed to foreclose the interest of the defendant, Tunis D. Melick, in the mortgaged premises, and also such interest as his wife, Sarah M. Melick, has therein by reason of her ownership of the last-mentioned judgment. Both Tunis D. Melick and his wife have answered the bill, setting up as a defense that the complainant's mortgage was made without consideration and with intent to defraud creditors, and they insist that it is consequently void. Admitting the fact to be as they allege, so far as the defendant, Tunis Melick, is concerned, it is no defense to this suit. By virtue of the statute of frauds a mortgage, made with intent to delay, hinder or

defeat creditors, is only void as to creditors whose actions are thereby hindered, disturbed or defeated; as to all others, and especially as to the parties to the transaction, it is unimpeachable. His wife, however, stands upon a different plane. She occupies the position of a judgment creditor, and her judgment is based upon a debt of her husband's which was incurred by him prior to the execution of the complainant's mortgage. She is consequently entitled to question the validity of the mortgage, and that is so, notwithstanding the fact that the complainant holds it by assignment, for he is in reality a mere trustee for Peter W. Melick in the matter, and therefore any defense that could be made against Peter W. Melick can be made against the complainant. And even if this were not so, the result would be the same, the rule being well settled that the assignee of a mortgage, even where he has paid full value for it, holds it subject to the same defenses which existed against it in the hands of the mortgagee.

Woodruff v. Depue, 1 McCart. J. 168.

Sarah M. Melick sets up in her answer not only that she is the owner of the judgment last above mentioned, and by reason whereof she is made a party defendant to this suit, but further, by way of cross-bill, that she is the owner of the Kline Melick judgment, and asks a decree establishing the priority of both of these judgments over the complainant's mortgage. So far, however, as the Kline Melick judgment is concerned, she is not now in a position to raise the question of its priority over the complainant's mortgage. When the complainant filed his bill in this court in the original suit, that judgment was held by Peter W. Melick, and he was for that reason made a party defendant in the suit. It was afterwards assigned by him to Sarah M. Melick pendente lite, and the final decree in that cause bound her so far as that judgment was concerned as effectually as if she had been a party thereto. That decree fixed the relative positions of the complainant's mortgage and of the Kline Melick judgment, giving the first priority, and extinguished the

lien of the judgment upon the mortgaged premises, upon a sale thereof being made under the execution, and so long as that decree stands it must be held to be conclusive as to all questions determined thereby so far as parties and privies are concerned.

The priority of her other judgment (the Bergen judgment) over the complainant's mortgage, however, was not adjudicated upon in the original suit, and if the object of making the complainant's mortgage was to hinder delay and defraud creditors, then, as against that judgment, it is void, and the judgment is a first lien upon the mortgaged premises.

This brings me to the consideration of the question of the bona fides of the mortgage, and the evidence on this subject is so contradictory in character, and so closely balanced, as to make it almost impossible to reach a perfectly satisfactory conclusion. The principal witnesses in the case are the mortgagor and mortgagee (who are son and father), and the testimony of the one is in direct conflict with that of the other in every particular. The story told by the son on the witness stand is that he had been sued by Kline Melick for \$3,000, and that, by the advice of his father, and for the purpose of putting his property in such a shape that even if a judgment was recovered against him by Kline Melick nothing could be realized thereon, he executed the mortgage in question and delivered it to his father, the latter paying no consideration whatever for it. He further says that the understanding was that his father should settle the Kline Melick judgment as cheap as he could, and that when he (the son) should have repaid to his father the amount paid by him for the judgment, then the father was to surrender the mortgage to him; and that, after the mortgage was made, he told his father that he wanted some paper to show the arrangement under which the mortgage was held, in order that he might be protected in the event of his father's death; and that he and his father subsequently went to the office of J. Newton Voorhees,

an attorney at law of Flemington, and that there a written statement of the arrangement between them was drawn up and executed by them.

The father, on his part, absolutely denies the story told by the son, or that he ever signed any paper of the purport above recited. He testifies that, prior to the making of the mortgage, he had paid out moneys, at different times, for his son's benefit, amounting altogether to from \$1,200 to \$1,500, keeping memoranda thereof on loose slips of paper; that, at the time of making the mortgage, being in financial straits, he told his son that he wanted the indebtedness represented by these payments to be put in the shape of a mortgage in order that he might use the same as a collateral; that his son agreed to this proposition, and that they went over the amount of the indebtedness together and agreed to fix it at \$1,200, although it was in reality a larger amount, and that the mortgage in question was afterwards made for that amount, for the sole purpose of securing the payment of the son's indebtedness.

The memoranda spoken of by the father are not produced. He accounts for this fact by saying they were destroyed at the time when the mortgage was executed. The father, however, swears to the various amounts of money which he claims to have paid for his son's benefit, and the various accounts upon which they were paid. The story told by the father is, in turn, denied in every particular by the son.

There is evidence in support of each of these conflicting stories. In support of the story of the son, Ernest Melick testifies that, in a conversation which the witness had with the father some years ago, concerning the Kline Melick judgment, the latter said "he had taken his son's *property* into his possession to keep the Clarks from getting it." The witness does not attempt to give the exact words of the conversation, but merely the substance of it. The declaration testified to seems to me so ambiguous as

to be entitled to little weight. It is not pretended that the object of the making of the mortgage was to interfere with Clark, who, it will be remembered, acquired no interest in the Kline Melick judgment until several years after the mortgage was made, but that it was made for the purpose of defrauding Kline Melick; and when it is taken into consideration that, as is stated by the son himself on the witness stand, some time after the mortgage was made and shortly after the Kline Melick judgment was assigned to Clark & Schomp, they had a levy made on the son's property and were about to sell, and that, in that situation of affairs, the father went to Clark & Schomp and purchased the judgment of them, it seems to me reasonable to suppose that the idea intended by the father to be conveyed, in his conversation with the witness (if such a conversation took place), was that he had bought the Kline Melick judgment to save his son's property—to keep Clark from getting it.

Another witness in support of the son's story, Jacob Hockenbury, testifies that in 1879, and while he was in the employ of Peter W. Melick, he overheard a conversation between him and one Robinson, in which Peter W. said that he took the mortgage (presumably the one in dispute) to keep Kline Melick from making his claim. This, if true, is important testimony. The witness, however, admits that at the time when he overheard this conversation he did not know Kline Melick, although he thinks his name was familiar to him, and that he did not then know that there had been any trouble between Kline Melick and the defendant, Tunis D. Melick. It seems rather singular that this witness should be able to remember this important admission, made in a conversation held eight years ago, between third parties, about a matter the existence of which was unknown to him until that moment, and in which he had no interest whatever, especially when one of the parties to whom the conversation related was a stranger to him; and I am compelled to believe, both from the improbability of his being able to recollect it, and from other coincidence in the case to

which I shall hereafter refer, and also from the denial of Peter W. Melick that he ever made such a statement, either, that no such conversation ever took place, or, if it did, that the witness misunderstood its import.

The most important evidence, however, offered in corroboration of the story told by the son, is a copy of the written statement referred to by the son as having been executed by him and his father in the office of Mr. J. Newton Voorhees for the purpose of having on paper the arrangement under which the mortgage was made. The original statement is not produced, and the father denies that it was ever made. Mr. Voorhees, however, swears it was made, and was executed in his presence by both the father and the son. He is apparently without bias in the matter, and his testimony must be accepted as true. He also proves the loss of the original paper. The copy reads as follows :

"It is agreed that the mortgage this day executed by Tunis D. Melick to Peter W. Melick for twelve hundred dollars shall be returned to him at any time he shall demand the same, on his being repaid the judgment which Kline Melick has, and which judgment Peter W. Melick is to settle, if possible. If Peter W. Melick does not pay such judgment, then the mortgage is to be considered null and void.

"(Signed) PETER W. MELICK,

"(Signed) TUNIS D. MELICK."

It is not contended by the defendants that the rights of the parties were in any way changed by this agreement, for, although it recites that it was made on the same day upon which the mortgage was executed, and is apparently a part of the same transaction, it was, in fact, made some months afterward ; and, that being so, it is without consideration so far as the father is concerned, and *undum factum*. The defendants, however, insist that the paper, even if void as an agreement, conclusively demonstrates the truth of the son's story that the mortgage was

made without consideration and in fraud of creditors, and ordinarily it would have this effect. I say ordinarily, because, in this case, its force is materially weakened by the following circumstances. Although it was made not long after the execution of the complainant's mortgage, yet, when the prior suit was tried, notwithstanding the same defense was made as is now set up, not a word was said which would suggest its existence; and this omission is explained by Tunis D. Melick, not by saying that its existence was forgotten by him, which would have been sufficiently strange, seeing that the very object of making the paper was, as he claims, to protect him against any claim which might be made against him under this mortgage, but, what is still more remarkable, he explains it by saying that when the former suit was brought he went to Mr. Voorhees's office, in whose custody the paper had remained since its execution, for the purpose of obtaining possession of it, and that Mr. Voorhees was unable to find it, but told him that he thought he (the son) could get along without it. He further says that his counsel in the prior suit, at the time of its trial, was aware that this paper had been made. It seems to me, under these circumstances, impossible to believe that this paper was intended to be evidence of the fact that the mortgage was made without consideration and merely as a cover, for, had that been its object, no counsel would have advised the defendant that the paper was not necessary to him in making a defense to the foreclosure of this mortgage, nor would any counsel have rested the defendant's case without putting in evidence so vital a piece of testimony. I must admit that it is difficult to conceive, under the evidence in the case, any other purpose in the making of this paper than that which seems to be apparent on its face; but, nevertheless, in view of the circumstances already alluded to, and in view also of other circumstances to which I shall hereafter refer. I am compelled to believe that it was not intended to be, and that it is not, in fact, an admission on the part of Peter W. Melick that the mortgage in question was made without

consideration and for the purpose of defrauding creditors.

The other circumstances to which I have referred as leading me to this conclusion, and also as showing that the conversation testified to by the witness Hockenbury either never took place, or else was misunderstood by him, are these: Prior to the institution of the former suit there had been a considerable amount of litigation between the father and son, and, shortly after the answer in that suit had been filed, they met at the office of the son's counsel for the purpose of settling all matters in dispute between them. This meeting took place on the 23d day of December, 1884, the same day upon which the Kline Melick judgment was assigned by Peter W. Melick to his son's wife, Sarah M. Melick, and, as that assignment was witnessed by the counsel in whose office the meeting was held, it is fair to presume that the assignment was a part of the settlement between the parties. Mutual releases were, at that time, executed and delivered by the father and son; that executed by the son releasing the father from all claims of every description which the son had against him. The release executed by the father was similar in its terms to that executed by the son, with this pregnant exception: that the mortgage in suit is expressly excluded from its operation. The reservation is in the following words: "I also agree to indemnify the said Tunis D. Melick against any loss or from being called upon to pay anything on account of the bond or mortgage which I have assigned to Fisher Pidcock, as *I am to look to the land for the payment of the said bond and mortgage.*" When it is remembered that, notwithstanding the assignment to Fisher Pidcock, the father still retained the beneficial interest in the mortgage, the force of this clause cannot be overestimated. It is a declaration on the part of the father that he holds the mortgage as a valid lien upon the premises embraced in it; and the acceptance of the release by the son, with this provision in it, is an admission on his part of the validity of the father's claim. It is im-

possible for me to believe that, when these parties met for the purpose of settling all matters in difference between them, and when the father, in that settlement, had received the moneys he had paid out in the purchase of the Kline Melick judgment, the son would have permitted the mortgage to have been excepted out of the settlement if it had not been given for a valid consideration, or if the agreement executed in Mr. Voorhees's office had been intended to limit, under all circumstances, the amount to be recovered upon the mortgage to the sum which the father might expend in the purchase of that judgment. The very state of affairs which the son claims was intended to be provided for, by that agreement, had arrived. The father had been repaid the moneys he expended in the purchase of the Kline Melick judgment; and, if the mortgage had been made without consideration and was held by him merely as security for the moneys expended by him in that purchase, his refusal to include the mortgage in the settlement, and his insistence that the land covered by it should still remain liable for its payment, would have been so outrageously unfair as to have at once broken off all negotiations between him and his son looking to an amicable arrangement of the matters in difference between them. That a settlement was reached by these parties in which the father was permitted to retain the lien of a mortgage made to him by the son for which he had never paid a dollar, and after the moneys for which he held it as security had been repaid to him, is a supposition so at variance with the rules of human conduct that it cannot be entertained. I am led to the conclusion, after a careful consideration of all the evidence in the case, that the mortgage sought to be foreclosed was made for a valid consideration, and not for the purpose of defrauding creditors.

This conclusion I have reached after considerable hesitation, for the evidence is so conflicting as to make it a task almost of impossibility to determine with certainty the truth of the matter. Nevertheless, I am clear that the complainant is entitled to a decree. The burden is

now on the defendants to prove the invalidity of the mortgage, and this they were bound to establish by the clear weight of the evidence. They have failed to do so, and consequently their defense cannot prevail.

One other question remains to be considered, and that is the amount due upon the complainant's mortgage. It will be remembered that a sale was had under the decree in the former suit, and that the complainant was the purchaser thereat for the sum of \$700. He now contends that, as he got nothing of value by his purchase, the sale was a mere nullity and void.

In my opinion this contention is without force. While it may be that, if the complainant had applied to this Court to be relieved from his purchase on the ground that nothing of value had passed by the sale for want of proper parties to the suit, the sale would have been set aside and the Court would have opened the final decree and allowed the proceedings to be amended for the purpose of bringing in the proper parties, yet he has not seen fit to take that course. As the matter now stands there has been a foreclosure and sale of the rights of some of the parties having real or apparent interests in the mortgaged premises, and \$700 has been realized therefrom. If the purchaser had been a stranger to the proceedings there can be no doubt that, unless the sale had subsequently been set aside, the purchase money, less the costs of suit and execution fees, would have gone in reduction of the mortgage. The fact that the purchaser was the holder of the mortgage, instead of a stranger, cannot have the effect of altering the rights of the parties. Instead of applying to this Court to have the sale set aside, and leave granted to him to so amend the proceedings in the former suit as to bring all the proper parties before the Court, the complainant has seen fit to institute an independent suit, for the purpose only of foreclosing the interests of those parties who were not embraced in the prior suit, standing on the validity of the decree in that suit so far as it determines the rights

of the parties thereto. It is clear that, at best, the sale was only voidable and not a mere nullity, and the complainant has ratified it by the course which he has pursued.

The defendants are entitled to have credited upon the mortgage the amount of the purchase money realized at the sale under the decree in the former suit, after deducting the costs of that suit, including the Sheriff's execution fees, amounting together to \$120.21, making the sum to be credited \$578.79, and that sum should be first applied in reduction of the interest which has accrued upon the mortgage, rather than upon the principal.

The bringing of this suit having been caused by the failure of the complainant's solicitor to bring before the court, in the original suit, all parties having an interest in the mortgaged premises, the rule as to costs adopted by the Chancellor, in *Parker v. Childs*, 10 C. E. Gr. 41, should be followed, and neither party will be required to pay costs to the other.

It is hardly necessary to add that the decree to be entered will not affect the inchoate right of dower, which the defendant, Sarah M. Melick, has in the mortgaged premises.

I will advise a decree in conformity to these views.

WM. S. GUMMERE,
Advisory Master.

In Chancery of New Jersey. ¹⁰

FISHER PIDCOCK,

Complainant,

AND

TUNIS D. MELICK, *et. al.*,

Defendants.

20

Transcript of shorthand notes of testimony, etc., taken in the above entitled cause, before William S. Gummere, Esq., sitting as Advisory Master, at the Court House, in the village of Flemington, N. J., on Tuesday, July 12, 1887.

APPEARANCES.

Mr. J. G. Shipman and Mr. Hulsizer for the Complainant.

30

Mr. Bergen for the Defendants.

Complainant's counsel offered in evidence the bond and mortgage in suit (execution being admitted), and the same were marked Exhibits A and B for Complainant.

Also offered in evidence the assignment of said mortgage from Peter W. Melick to the Complainant, Defend- 40

ants' counsel admitting the execution of said assignments marked Exhibit C for Complainant.

Also offered in evidence trust deed made by Tunis D. Melick to Mrs. Studdiford, and the same was marked Exhibit D for Complainant, the execution thereof being admitted.

COMPLAINANT RESTS.

10 TUNIS D. MELICK (one of the defendants), sworn on behalf of the Defendant.

Direct examination, by Mr. Bergen :

Q.—You are one of the defendants in this case? A.—Yes, sir.

Q.—And the husband of Sarah M. Melick, who is another defendant? A.—Yes, sir.

Q.—Where is she to-day? A.—She is at home, sick.

Q.—What is the trouble? A.—Pleurisy in her side.

20 Q.—To such an extent that she is unable to come? A.—Yes, sir.

Q.—Did she expect to be here? A.—Yes, sir.

Q.—You were sued, were you not, by Peter K. Melick, for keeping a vicious dog? A.—Yes, sir.

Q.—Was judgment recovered against you? A.—Yes, sir.

Q.—Where was that trial? A.—At Somerville.

Q.—What was the result of that trial—what was the verdict of the jury in that case? A.—\$250.

30

Mr. Shipman.—I object to that.

The Court.—The proper proof would be the production of the record.

Mr. Bergen.—I want to show the amount of the verdict. I will just stop here and offer in evidence a copy I have of the record on the Circuit.

40 Mr. Shipman.—I object to that.

Mr. Bergen.—I think I have a right to show by this witness whether the verdict was rendered before the giving of the mortgage or afterwards.

Mr. Shipman.—No ; I object to that. I object to the record on the Circuit.

Mr. Bergen.—Well, I do not press that now, as to the record. I ask the Court's permission to ask this witness whether the mortgage which he gave was given before or 10 after that verdict was rendered.

Mr. Shipman.—I object to that, because there is a record of it.

The Court.—If counsel want to prove when that verdict was recovered, it can only be done by the production of the record. If they want to prove the mortgage was executed subsequent to the recovery of a verdict in a certain suit, that fact may be proved. 20

Mr. Shipman.—The stenographer will note our objection to it.

Q.—Will you tell us whether this \$1,200 mortgage was executed before or after the jury rendered their verdict in the Peter K. Melick suit, if you recollect? A.—I cannot say whether— [Interrupted.]

Q.—Well, if you do not know, that is all. Now, do you recollect the giving of this \$1,200 mortgage? A.— 30 Yes, sir.

Q.—Will you tell us how it happened to be given? A.—We had this trial over this dog ; they sued me for \$3,000, and father came to me and said : "They will ruin you, you must put your property in shape so that you can fight it, if they get a judgment against you, so that they cannot make their money."

Q.—Who was your father, Peter W. Melick? A.—Yes.

Q.—What did you do in pursuance of that? A.—He came up to my place—I was living on his farm—and said 40

I had better go to Flemington and make a mortgage, and so I did ; we came down here to make a friendly mortgage.

Mr. Shipman.—If this is in reference to the consideration of the mortgage we object to it. This man cannot undertake to prove that this mortgage was given to cheat creditors, or to prove it at all.

- 10 The Court.—I understand the object of this testimony is to benefit the wife, who claims to be a judgment creditor ; if the case shows she is not a judgment creditor, or has no claim as a judgment creditor, the evidence amounts to nothing ; but if she establishes her claim under the judgment it is competent for her to attack this mortgage ; and that I understand is the object of this testimony.

Mr. Bergen.—Yes, sir.

- 20 The Court.—Proceed, then.

Q.—Where did you go when you came to Flemington?

A.—To Mr. J. Newton Voorhees's law office.

Q.—What was done there—tell us all that happened?

A.—This mortgage was—we made out the mortgage, father and I, and then he was to sell the judgment, and then he was to hand back the mortgage ; I was to pay off the judgment, and then when it was paid he could give the mortgage back again ; it was only a friendly mortgage.

- 30 Q.—What else was done then, after the mortgage was made out? A.—We made a paper to that effect ; Mr. Voorhees wrote a paper to that effect—that he was to hand back the mortgage.

Mr. Shipman.—We object to the contents of the paper.

Witness.—It was to the same effect, and father told me several years afterwards he had destroyed this mortgage.

Q.—Had you ever paid any interest or not on this mortgage? A.—No, I never paid any interest.

Q.—When did you last see this paper? A.—Some time in May.

Mr. Shipman.—What paper?

Mr. Bergen.—The paper he refers to.

Q.—In whose possession was it then—who had the 10 paper? A.—Mr. Voorhees.

Q.—Which Mr. Voorhees—J. Newton Voorhees? A.—Newton Voorhees.

Q.—Have you ever seen it since then, or not? A.—No, sir.

Q.—Where did you leave the paper? A.—At Voorhees's office.

Q.—Will you state, if you please, what other consideration, other than what you have named, passed between you and your father, as a foundation for this mortgage? 20 A.—No other consideration.

Q.—Do you know what became of the Peter K. Melick judgment—do you know who owns it now? A.—My wife bought it.

Q.—Of whom? A.—Of him.

Q.—Of Peter W. Melick? A.—Of Peter W. Melick.

Q.—Where you present when the money was paid, or not? A.—Yes, sir.

Q.—Were you present, or not, when your father bought the judgment of Clark & Schomp, or paid it? A.— 30 No, sir.

Q.—You do not know when that was done? A.—No.

Q.—You recollect whether there was an attempt to sell any goods by Messrs. Clark & Schomp? A.—Yes, sir; they came down to my place and made a levy, and were going to sell, and father, he went up to Mr. Clark's partner and bought this judgment of them; I don't know what he gave for it.

Q.—You were not present? A.—No, sir.

Q.—How do you know he bought it? A.—Well, I know he had it afterward; that's all I know about it.

Q.—(Showing witness two papers pinned together, one being a note of March 6, 1872, for \$233.23, and the other a note dated April 28th, 1873, for \$150.) Who made those two notes? A.—I made them.

Q.—What were they given for? A.—For horses and machinery at a vendue of my mother-in-law's.

Q.—They are made payable to the estate of Studdiford? A.—Yes, sir.

Q.—One is L. V. Studdiford and the other is Sarah Ann Studdiford? A.—Yes, sir.

Q.—Who paid those notes? A.—My wife.

Q.—For you? A.—Yes, sir.

Q.—I show you another paper dated March 27th, 1886, being a note for \$594, and ask you who made that note? A.—I made it; making those two notes together.

Q.—It is for the first two notes? A.—Yes, sir.

Q.—And includes the principal and what else? A.—Interest.

Q.—That is the note dated March 27th, 1886, to Sarah Ann Melick? A.—Yes, sir.

Q.—Whose indorsement is on the back of it? A.—My wife's.

Mr. Bergen.—We want to offer those papers in evidence, if the Court please.

Mr. Shipman.—Not until after we cross-examine him.

Mr. Bergen.—No; I am not offering them yet.

Q.—(Showing witness bundle of papers.) Just look at those papers and tell me what they are? A.—Checks given by my wife to pay debts.

Q.—What is the last paper in the bundle? A.—A note.

Q.—For how much? A.—\$641.64.

Q.—What was that note given for? A.—For the amount of checks that I got from her.

Cross-examination, by Mr. Shipman :

Q.—This note, date March 6th, 1872, "Pay to the administrators of the estate of Luther Ford, \$233.20, without defalcation, for value received," is signed by Peter W. Melick and Tunis D. Melick, is it not? A.—I do not know the note at all; I do not know the parties; I do not know anything about it.

Q.—Why? A.—I never signed it; I do not know the parties at all.

Q.—Didn't you sign this note? A.—No, sir. 10

Q.—Dated in 1872? A.—No, sir.

Q.—You did not? A.—No, sir; I don't know the parties at all.

The Court.—I think you read the note wrong, Mr. Shipman. Is it not payable to the estate of Studdiford?

Q.—Yes; to the estate of Studdiford; did you ever sign that note? A.—Yes, sir.

Q.—Whose debt was it? A.—Mine. 20

Q.—Did Peter W. Melick sign it, too? A.—Yes, sir.

Q.—How came he to sign it? A.—He went security on the—it was farming utensils, horses, machinery, wagons, mowing machine and thrasher, and all those things.

Q.—Your father bought the goods, did he not, and gave them to you? A.—No, sir; he never paid a dollar for them.

Q.—How came he to sign his name first? A.—I don't know how it came.

Q.—What? A.—I don't know how that came; he never paid a dollar for them, or I either. 30

Q.—When was this note taken up? A.—After my mother's death.

Q.—When was that? A.—1874.

Q.—Who took it up? A.—My wife; it was taken out of her estate.

Q.—(By Mr. Bergen.) Her share? A.—Out of her share; yes, sir.

Further cross :

Q.—How was it taken out of her share? A.—Because the note was charged up to me.

Q.—Was your wife a Studdiford? A.—Yes, sir.

Q.—When was there any payment made on the note? A.—There was some interest paid on to it.

Q.—Well, after your mother's death, you said—when did your mother die? A.—1874.

Q.—How was it taken up after your mother's death?

10 A.—When the estate was settled.

Q.—Whose estate? A.—Her estate.

Q.—Your mother's estate? A.—My wife's mother.

Q.—Or your wife's mother's estate? A.—Yes, sir.

Q.—When was the note taken up by your wife? A.—At that time when the estate was settled.

Q.—When was that? A.—1874 or 1875; along there; as soon as they could get their settlement.

Q.—Do you know when it was? A.—Well, it was along there, yes, sir; my father never paid a dollar of it,

20 nor me either.

Q.—I want to know when the note was taken up?

A.—Well, never mind—the note was paid.

Q.—All right; you didn't pay it? A.—No, sir.

Q.—And nobody paid it, did they? A.—Yes, sir; my wife paid it.

Q.—When? A.—After her mother's death.

Q.—How long after her death? A.—As soon as they could settle the estate.

Q.—Well, how long after? A.—Well, you might 30 say six months or a year after.

Q.—Six months or a year after 1874? A.—Yes, sir; or 1875; it might be 1876; somewhere along there; it was settled as soon as they could settle the farm.

Q.—Did you ever pay any interest on it? A.—Yes, sir.

Q.—Who to? A.—My mother-in-law.

Q.—For what years did they pay interest on it? A.—The paper shows for itself.

Q.—I want you to tell.

A.—The paper shows for itself.

Q.—I want you to tell when you paid any interest on the note? A.—When was the note given?

Q.—Well, that is what I want you to tell. The note purports to be given in 1872, though, I will tell you that.

A.—How many times was there interest paid on it?

Q.—That's what I want you to answer? A.—Two or three, anyhow.

Q.—Did you pay it? A.—Yes, sir.

Q.—To whom? A.—My mother-in-law. 10

Q.—It says, "Received on the within note the interest up to this date, April 1st, 1876." Whom did you pay that to? A.—It never was paid up to 1876.

Q.—What? A.—It was not paid in 1876.

Q.—Then that indorsement is not true? A.—My wife might have paid it in 1876.

Q.—Look at that. Whose handwriting is that—the first indorsement—"Paid interest up to pril, 1874"?

A.—It looks like my wife's.

Q.—Is it your wife's? A.—I think so. 20

Q.—Do you know whether it is or not; you ought to know? A.—Yes, sir; I guess it is my wife's.

Q.—Eh? A.—It aint mine, I know.

Q.—Now, do you swear that is your wife's handwriting, that first indorsement? A.—It looks like her handwriting.

Q.—When did she make it?

Witness.—Is this the note you had, Mr. Bergen?

30

Mr. Bergen.—Yes.

Q.—Well, I am asking you now? A.—That is her writing. Is there five dollars on here?

Q.—Never mind that, answer the first one first? A.—Yes, I am satisfied that is my wife's writing.

Q.—Did you pay it to her? A.—She paid it for me.

Q.—She paid that for you? A.—Yes, sir.

Q.—The next one is, "Received on the within note in-

40

terest to this date, 1875." Whose handwriting is that?

A.—Hers.

Q.—Who paid that? A.—She did.

Q.—To whom? A.—To the estate.

Q.—Did she pay it in money? A.—Yes, sir.

Q.—Where did she get the money? A.—She always had money.

Q.—Where did she get it? A.—From her father.

Q.—Was her father living? A.—No, sir.

10 Q.—When did he die? A.—He died before I married her.

Q.—When did he die? A.—I think in 1877.

Q.—When did you marry her? A.—I think I married her in 1872; 1871 or 1872; somewhere there.

Q.—Did she get any money from her father's estate? A.—Yes, sir.

Q.—How much? A.—That is none of your business, I guess.

20 Q.—Yes; it is my business, too.

Mr. Bergen.—Answer the question.

A.—She got about \$2,000; in that neighborhood.

Q.—What did she do with it? A.—She paid some of my debts with some of it—started farming with it.

Q.—It says, "Received on the within note the interest up to this date, April 1st, 1876." Whose handwriting is that? A.—It is Cal. Corle's, the President of the Somerset County Bank.

30 Q.—Do you know his handwriting? A.—I do not; but I think he wrote it.

Q.—I ask you whose handwriting it is; if you don't know, don't swear? A.—I think that is his handwriting, because he was settling up the Studdiford estate, as administrator.

Q.—"Received on the within note interest up to date, April 1st, 1876." Then the principal was not paid?

A.—No, sir; it was not paid until they sold the farm.

40 Q.—"Paid, April, 1882, on the within note, \$5." That is your name, is it not? A.—Yes, sir.

Q.—Tunis D. Melick? A.—Yes, sir.

Q.—Whom did you pay that five dollars to? A.—
Cal. Corle.

Q.—You paid five dollars to him in 1882? A.—Yes,
sir.

Q.—Did he hold the note then? A.—Yes, sir.

Q.—When did you get this note? A.—When they
settled the estate.

Q.—When was that? A.—Some time in 1884; some-
wheres along after my mother died. 10

Q.—You said she died in 1874? A.—Well, I meant
in 1884.

Q.—She died in 1884? A.—Yes, sir.

Q.—What time in 1884? A.—Along—in the year
1884 or 1885, in the Fall; along in October; September
or October—along there; early in the Fall she died.

Q.—Then you never paid anything on the note from
April 1st, 1876, until April, 1882? A.—No.

Q.—Then you paid five dollars? A.—Yes, sir.

Q.—To Calvin Corle, you say? A.—Yes, sir. 20

Q.—Do you know whose handwriting that is? A.—
I think it is his.

Q.—Do you know? A.—Well, I am satisfied.

Q.—How came you to find that? A.—Because, it
was my note.

Q.—When did you put your name there? A.—
When I gave him the five dollars.

Q.—To whom did you give the five dollars? A.—
To Cal. Corle.

Q.—Was anybody by? A.—My wife. 30

Q.—Anybody else? A.—I think my wife's sister was
in the room; he came up to our place.

Q.—Do you know how much this note amounted to
when you paid it off? A.—Not exactly.

Q.—(Showing witness note dated April 28th, 1873.)
Whose handwriting is the body of that note in? A.—
My wife's.

Q.—That is her handwriting—your wife's—the body of
the note? A.—Yes, sir.

Q.—You are sure of that? A.—Yes, sir; she settled up the estate partly.

Q.—I only ask you if that is her handwriting? A.—Yes, sir; and *that* is mine.

Q.—The signature to it? A.—Yes, sir.

Q.—“April 1st, 1874, interest to date.” Is that her handwriting? A.—Yes, sir.

Q.—And 1875, is that hers? A.—It looks like it.

Q.—“On within note interest to this date, 1876.” Is
10 that hers? A.—I think that is hers or Cal. Corle’s; one or the other.

Q.—Whose is it? A.—I would not say.

Q.—You would not like to swear that is your wife’s?

A.—Not positively.

Q.—Would you at all? A.—One or the other.

Q.—(Showing witness two papers.) Will you swear *this* looks like *that* writing? A.—It is a little different ink, but very much alike.

Q.—You are willing to swear that you take that as your
20 wife’s handwriting? A.—Yes, sir.

Q.—And “Interest on the within note, 1877”? A.—Yes, sir.

Q.—That is your wife’s? A.—Yes, sir.

Q.—“Received on within note \$5, February 24th, 1883, T. D. Melick.” Did you receive the five dollars? A.—Yes, sir.

Q.—Who paid it to you? A.—I gave the five dollars to Calvin Corle.

Q.—When? A.—At the time he came up there with
30 his note; he had all these papers against me.

Q.—When did he deliver that note to you? A.—I cannot say; I think sometime— [Interrupted.]

Q.—Did he ever do it? A.—Yes, sir.

Q.—When? A.—Well, I think in the next Spring, after he made the heirs all equal; he took this money out first—out of her estate.

Q.—This note of March 27th, 1876, when was that made? A.—That was two notes made together.

Q.—Those two last notes I have just shown you? A.—
40 Yes, sir.

Q.—Who made that out? A.—Mr. Bergen.

Q.—Was that made to cover those, principal and interest? A.—Yes, sir.

Q.—When was the interest calculated from, do you know? A.—From the time the notes were given.

Mr. Bergen.—The bills show that.

Q.—(By the Court.) In whose possession were those two notes of 1872 and 1873, from the time they were made until 1882? A.—In my mother-in-law's, until she died; she died in 1884, and we were married in 1872.

Further cross :

Q.—This note, dated March 27th, 1886, was that given for all those checks, etc.? A.—Part of them.

Q.—What? A.—Yes, sir; these checks.

Q.—What were these checks given for? A.—These checks were given for debts.

Q.—To pay debts—what kind of debts—you lived on your father's farm, did you not? A.—Yes, sir.

Q.—Well, you had the rents, issues and profits of it? A.—Part of it.

Q.—You never paid him anything? A.—He got most of everything; he got everything that was wanted; he came and got whenever he pleased—and horses— [Interrupted.]

Q.—Well, you got what you pleased, and he what he pleased? A.—Yes, sir.

Q.—These sums were advanced—your wife advanced something to pay for the things— A.—No, sir.

Q.—And got her pay back from profits on the farm? A.—No, sir.

Q.—Did you never pay her any part of those checks at all? A.—No, sir.

Q.—No part of that, at all? A.—No, sir.

Q.—You let them lay all this time until this controversy arose, and then you went to work to fix these up?

A.—No, sir; she always wanted her money.

Q.—No matter what she wanted; after this controversy, 40

and after that mortgage was foreclosed, you and she fixed this up for the purpose of trying to do your father out of that mortgage? A.—The mortgage was no good.

Q.—Never mind; you got this up so that she could get that judgment and set it up against that mortgage?

A.—No, sir; I gave it to her because it was her own money.

Q.—Didn't you do it for that purpose? A.—No, sir; that mortgage was no good at any time.

10 Q.—What did you give Mr. Bergen a judgment for?

A.—To make her good.

Q.—On what? A.—I will have some other property some day.

Q.—Why did Mr. Bergen assign the judgment to your wife if you expected to have some property? A.—

Well, this property has always been mine; it was given from my grandfather.

Q.—What property? A.—What the mortgage was on.

Q.—You went to work and got the judgment for the
20 purpose of preventing your father getting this mortgage foreclosed, didn't you? A.—No, sir; he had foreclosed it.

Q.—Well, when you found that he ought to have brought you in you went to work and got this? A.—No, sir.

Q.—Yes, you did; you worked it up, didn't you? A.—No, sir; not at all.

Q.—Why of course you did? A.—Not at all; this land was given to me by my grandfather— [Interrupted.]

30 Q.—Why, didn't you give your wife the note and judgment long ago, eh? A.—It did not come convenient.

Q.—It became convenient after you found the order that made you and your wife parties; then it became convenient, didn't it? A.—(Not answered.)

Q.—Were you not advised to get this judgment and put it in against this mortgage? A.—No, sir.

Q.—Didn't you go and ask counsel about it? A.—No, sir.

Q.—You and your wife? A.—No, sir.

Q.—Did they not advise you that it would be the best way to do? A.—No, sir.

Q.—You didn't talk at all about it? A.—No, sir.

Q.—How came it you got Mr. Bergen to prosecute the judgment? A.—He was my attorney.

Q.—That arrangement was made that he should get a judgment, so as to set it up against this mortgage?

A.—No, sir.

Q.—Nothing was said about it at all? A.—No, sir.

Q.—Not a word? A.—No, sir. 10

Q.—How came he to advise you to get a judgment?

A.—My father was lawing me and trying to get everything away from me, and my grandfather had willed me the old homestead, and I wanted to keep something for my children.

Q.—That was the way of it? A.—Yes, sir.

Q.—That is the reason you did it? A.—Yes, sir.

Mr. Bergen.—I think we are entitled to the whole conversation if you go into it. 20

Mr. Shipman.—He has not given any conversation, and has denied all conversation—that there ever was any.

Q.—You were sworn as a witness in the other case, were you not? A.—I think I was; yes, sir.

Q.—Do you remember what you swore to about the consideration of the mortgage? A.—I know the mortgage was made up to that effect—that he should give the mortgage up as soon as the judgment was paid. 30

Q.—Did you swear to anything like that before, at all? A.—I think I did.

Q.—You think you did? A.—Yes, sir.

Q.—Mr. Bergen examined you before, did he not? A.—I think he did.

Q.—You swore that you came down here to Flemington? A.—Yes, sir.

Q.—And the mortgage was given. Well, then, didn't you say in that case that you had a conversation with him and told him he ought to give you that mortgage, as 40

he had the rent of the blacksmith's shop a good long time? A.—He always had that, anyhow.

Q.—Did you swear to that? A.—I don't know as I did.

Q.—Did you swear what he claimed to hold the mortgage for? A.—I don't know as—I don't think I did.

Q.—You don't think you did? A.—Yes, sir; I think I told the Court at that time.

Q.—What did you tell the Court? A.—The same
10 as I did to-day.

Q.—What was that? A.—(Not answered.)

Q.—What was it? A.—Why, it was a friendly mortgage, given to keep the Clarks from making their money; they sued me for \$3,000, and wanted to ruin me; and he said, "If you don't do something with your property they will ruin you."

Q.—That aint what I asked you? A.—I said, "If I cannot trust my father, who can I trust?"

Q.—That aint what I asked you, at all; I asked you if
20 you swore, at all, what your father claimed to hold the mortgage for? A.—I don't think I did, more than that.

Q.—Didn't you swear that he claimed to hold it on account of the Melick judgment? A.—Well, I guess I did; I don't know when we paid for that judgment.

Q.—Didn't you swear he claimed to hold it for the Melick judgment Clark & Schomp had got? A.—Yes, sir.

Q.—You did swear to that? A.—Yes, sir.

Q.—And did you swear that that was the only reason that you would not surrender it? A.—(Not answered.)

30 Q.—Do you remember? A.—(Not answered.)

Q.—Well, you don't answer the question?

[By direction of the Court the stenographer put the question to the witness as follows: "And did you swear that that was the only reason you would not surrender it?"]

A.—I think that was the whole substance of it?

Q.—Who first spoke about giving the mortgage, you or
40 your father? A.—My father came up to my place.

Q.—When? A.—At the time.

Q.—Is that the first you knew about it? A.—Oh, no; they had sued me for it, and I went and talked with him about it.

Q.—When? A.—At the time; and he said we had better go to Flemington and have it fixed up; he said, "They have sued you for \$3,000; they will ruin you, and will take everything you have got."

Q.—Did you tell him you were sued? A.—He knew it as well as I did. 10

Q.—How did he know it—how did he know you were sued? A.—I told him I was.

Q.—You told him you were sued? A.—Yes, sir.

Q.—What did you tell him you were sued for? A.—For a dog biting Klein Melick.

Q.—For your dog biting Klein Melick? A.—Yes, sir.

Q.—That was not a very great thing, was it? A.—No; it amounted to a great deal, though.

Q.—You made a transfer to your mother-in-law, did you not? A.—Yes, sir. 20

Q.—What did you transfer to her? A.—Property that I got.

Q.—What property? A.—Some of the vendue bills.

Q.—Real or personal, estate? A.—Both.

Q.—How much had you? A.—I do not remember.

Q.—It was a chattel mortgage you gave your mother-in-law, was it not? A.—Yes, sir.

Q.—How much for? A.—I have forgotten what the amount was, it was so long ago.

Q.—\$1,500, was it not? A.—I have forgotten; I cannot say. 30

Q.—Well, was it not about that? A.—I cannot say how much it was.

Q.—Then you gave it on the same day you gave the mortgage? A.—I think not.

Q.—Eh? A.—I think not.

Q.—When did you give it? A.—Somewhere about the time.

Q.—You owed your wife how much—did you swear then? A.—I have forgotten. 40

Q.—Did you not swear that you gave a chattel mortgage to secure your wife and mother-in-law together?

A.—Yes, sir.

Q.—What has become of that property? A.—Wore out, most—a good deal of it.

Q.—Did you keep it? A.—Yes, sir; farmed with it for 11 years, and it wore out, and it died, some of it.

Q.—What was it on? A.—Horses, machinery, farming utensils and wagons.

10 Q.—You and your wife have lived together ever since? A.—Yes, sir.

Q.—And you have got the same property that you gave the chattel mortgage on yet? A.—No, sir.

Q.—What did you do with it? A.—Wore it out, and it died, some of it.

Q.—What was it on? A.—Horses.

Q.—What else? A.—Horses and wagons.

Q.—Machinery? A.—Yes, sir.

20 Q.—What kind of machinery? A.—Mower and threshing machines.

Q.—Then, what you gave this chattel mortgage to your wife for, was the same thing that she got this judgment on? A.—These notes; yes, sir.

Q.—Did your mother-in-law furnish you anything on the farm?

Mr. Bergen.—What do you mean, farming utensils?

30 Q.—Yes; any farming utensils? A.—These things that I bought there at the sale.

Q.—What you bought at the sale? A.—Yes, sir.

Q.—How much did you buy? A.—The amount of those notes.

Q.—Which you have already given here? A.—Yes, sir.

Q.—And then on them you gave her a chattel mortgage on the things which you had bought of her? A.—Yes, sir.

40 Q.—Now, was it not your mother-in-law's sale—or was it your father-in-law's sale of his property, that you

bought these things at ? A.—My father-in-law's sale.

Q.—In 1872 ? A.—Yes, sir.

Q.—Now, did you not swear on that occasion that at the time you gave this mortgage you owed your wife \$300 or \$400, or \$400 or \$500 ? A.—I owed these notes.

Q.—Never mind about the notes ; I want to know what you swore to ? A.—And owed her for some borrowed money I borrowed of her ; yes, sir.

Q.—Did you not swear that you owed your wife—
A.—I don't know what I did swear.

10

Q.—Some \$300, or more—that you owed her some \$400 or \$500 ? A.—I do not know.

Q.—Who was your attorney in that suit of Melick's ?
A.—Voorhees and Honeyman.

Q.—Did you go and employ Mr. Voorhees after the summons was served ? A.—I employed Mr. Honeyman, and he employed Mr. Voorhees.

Q.—How soon after it was served ? A.—Before the trial came off ; I do not know how long ; not very long.

Q.—When you came down to fix up with your father, 20
as you say, you came to employ Mr. Voorhees to defend the case ? A.—Yes, sir.

Q.—Was not that the first time you had seen Mr. Voorhees about the affair ? A.—No, sir ; I think not.

Q.—When had you seen him ? A.—I had seen him before.

Q.—How long before ? A.—A short time.

Q.—Did you not come to see Mr. Voorhees to make the mortgage before the return day of the summons ? A.—
I do not know whether it was before or after.

30

Q.—Did you not swear so before ? A.—I cannot say.

Q.—Did you not swear that it was before the return day or before the pleadings were filed, or about that time ? A.—I cannot say, sir.

Q.—Did you not swear it was about ten days before the trial when he came down ? A.—I cannot say, it is so long ago.

Q.—Did you not swear you did not know the difference between a deed and a mortgage ? A.—At the time it was made I think I did.

40

Q.—What? A.—At the time the mortgage was made—I do not know whether I swore or not.

Q.—How old were you then? A.—27 or 28.

Q.—How old are you now? A.—39.

Q.—Did you ever get any horses of your father? A.—No, sir.

Q.—None at all? A.—No, sir.

Q.—Did your father ever pay any money for you? A.—No, sir.

10 Q.—Did you not swear so on the other trial? A.—My grandfather gave me a horse—several horses; and when they would come to maturity my grandfather would sell them and then give me another horse for them.

Q.—Didn't you swear you took a horse, and that horse broke his leg, or something or the other, and that went into the mortgage? A.—Well, before that.

Q.—Didn't you swear to that? A.—Well, he swore to that.

20 Q.—Didn't you, too? A.—No, sir; it was not in the mortgage.

Q.—Did you not swear to that? A.—No, sir; I think not.

Q.—Did you not admit that there was a wagon that went into the mortgage? A.—There was a wagon; we used all wagons; he used them, and I used them.

Q.—Didn't you buy wagons? A.—No, sir; I never bought any wagons.

30 Q.—Didn't he buy it for you? A.—We bought wagons, and we all used them; he was a young man, as well as I, and used them a good many more times than I did; he was more of a young man than I was.

Q.—He bought the wagon, and you used it? A.—Yes, sir; I used them, and he used them, too.

Q.—You took it away with you, didn't you? A.—Yes, sir.

Q.—And kept it? A.—Yes, sir.

Q.—What kind of a wagon was it? A.—A little buggy.

Q.—Single-seated? A.—Yes, sir.

40 Q.—Where did he get it? A.—In town.

Q.—Do you know whose make it was? A.—Sein & Bebescheiner made it.

Q.—When was that? A.—I think about 1870; he got his wife with it, and I got my wife with it.

Q.—Did you not get another wagon beside that? A.—He had one when I was a boy, which we both used.

Q.—Well, you took it away, didn't you? A.—Took this last wagon away?

Q.—You took both wagons? A.—No, sir.

Q.—Didn't you give your wife a chattel mortgage on that wagon? A.—No, sir.

Q.—On both of them? A.—No, sir.

Q.—Your mother-in-law? A.—No, sir.

Q.—On only the one? A.—No, sir; she gave me a carriage.

Q.—Who? A.—My mother-in-law gave my wife a carriage and me together.

Q.—Didn't you get a horse from your father which broke its leg? A.—The horse broke its leg, but it was not my father's.

Q.—Whose was it? A.—Mine.

Q.—Where did you get it? A.—My grandfather gave it to me.

Q.—How old was the horse? A.—7 or 8 years old.

Q.—When did your grandfather die? A.—1874; I always owned a horse from the time— [Interrupted.]

Q.—When did the horse break its leg? A.—I think in 1872 or 1873; it was handed down; when a horse got to be worth \$200 or \$300 he would sell it and give me a colt, and so kept handing them down; he gave me one horse and took it away from me; I raised a couple of colts and he took them away, and sold them to another man.

Q.—Why don't you answer what I ask you? A.—I am answering all about it.

Q.—What made you affected when you were talking about that paper this morning? A.—I was feeling bad about my father lawing me.

Q.—Your father feels bad about you lawing him?

A.—He could not feel that very much or he would not law me 10 or 12 years.

Q.—Well, he thinks you are very bad in doing what you do—don't you think so, too?

[Objected to.]

Cross-examined, by Mr. Hulsizer (by consent):

10 Q.—When this Sheriff's sale was going to take place, which you spoke about this morning, did you not swear in the other proceeding that that property belonged to your wife? A.—Yes.

Q.—Did you swear that you brought the Coroner there for the purpose of replevying those goods, on the other side?

Mr. Bergen.—I submit this is no cross-examination.

20 The Court.—I do not see the object of it myself.

Mr. Hulsizer.—The witness claims that the things he talked about, and that we claim were goods that he had gotten of us, and among other things the Court—on his testimony before he claimed that they belonged to his wife, and these things which went to make up the consideration of this mortgage were the things he got from his wife and his wife's mother.

30 The Witness.—I got a pair of horses from my wife's mother.

The Court.—Defendant has sworn that the mortgage was given without any consideration whatever. It does not seem to me to be competent for you to undertake to prove, on your cross-examination, your answer to his defense.

40 Mr. Hulsizer.—I only want to ask him what he swore to before in relation to those things.

The Court.—That will be proper hereafter, undoubtedly, but it does not seem to me that it is proper cross-examination.

RECESS.

Cross-examination resumed :

Q.—I want you to give in full what you say was the consideration of this mortgage? A.—No consideration; only this judgment of Klein Melick; that is what the mortgage was given for. 10

Q.—Then the mortgage was given for a consideration? A.—Yes; there was a judgment pending in the court.

Q.—How much? A.—Well, we did not know.

Q.—Then it was not a mere friendly mortgage, was it? A.—A friendly mortgage given at that time; yes, sir.

Q.—Now, I want to know, and I want you to state distinctly, what the consideration was for that mortgage at the time when you signed it—no other time? A.— 20 Well, that is what it was—a friendly mortgage—for to settle Klein's judgment, whatever it was.

Q.—That is it? A.—Yes, sir.

Q.—A friendly mortgage, to settle that Klein judgment, whatever it was? A.—Yes, sir; if they got a judgment; I was sued for \$3,000.

Q.—But the mortgage was given just when you were sued? A.—No; I don't know about that.

Q.—You don't know when it was? A.—Sometime along while the suit was under go; that is what it was 30 given for.

Q.—What? A.—For that suit—yes, sir; it would not have been given at all, if it had not been for that.

Q.—And you say now it was to pay whatever was obtained in that suit? A.—Yes, sir.

Q.—You say that? A.—Yes, sir.

Q.—Whether it was more or less? A.—More or less; yes, sir; that is what it was got for; it never would have been given, as I said before, if it was not for that; that is what brought us to Flemington. 40

Q.—For what? A.—For that.

Q.—For what? A.—So that we could get a settlement with Clark and Melick, if they got a judgment against us.

Q.—Were they complainants? A.—Melick was the man who got bit with the dog, and Clark was the lawyer—and Schomp.

Q.—Then that was the consideration which entered into that mortgage—that Mr. Melick was to stand to that
10 —was that it? A.—Yes, sir.

Q.—Then it was not a friendly mortgage, after all?
A.—That is what the friendly mortgage was for.

Q.—What? A.—That is what it was for.

Q.—That is what it was for, eh? A.—Yes; nothing else.

Q.—Nothing else—no other consideration, eh? A.—No, sir.

Q.—Didn't that wagon go into it? A.—What wagon?

Q.—You say you got a wagon of him? A.—I never
20 got a wagon of him.

Q.—You said so awhile ago? A.—We had a wagon; all of us rode in it; he rode in it, and I rode in it.

Q.—You took it away and took a chattel mortgage on it? A.—No, sir; not that wagon; a carriage I gave a chattel mortgage on.

Q.—That you got of him? A.—No, sir.

Q.—That wagon you got of Sein? A.—Yes; but that was no mortgage; he always claimed it and rode in it; whenever he wanted it he came and got it, and rode
30 in it as often as I did; he gave me another wagon, which I got fixed up, and it cost me \$30 to get it painted and put in good shape, and he took it away; meanwhile the horse ran away and broke it all up; then he gave me this black mare we spoke about—a horse; I had her awhile and he took her away and got the money for her.

Q.—Oh, you talk too much? A.—Well, I tell you the truth.

Q.—Yes; but your truth don't stick together.—That's all.

Re-direct examination, by Mr. Bergen :

Q.—Did you ever give your father any other \$1,200 mortgage than this one? A.—No, sir.

Q.—This is the only one? A.—Yes, sir.

JOHN N. VOORHEES, sworn for the Defendant.

Direct examination, by Mr. Bergen :

Q.—You live in Flemington? A.—I do.

Q.—Where you are practicing law? A.—I am ; I 10
know the complainant and the defendant ; the bond and mortgage, Exhibits A and B, are in my handwriting, and I remember the fact that I prepared them.

Q.—Was there any other paper drawn in connection with that bond and mortgage at that time, or subsequently? A.—Well, not at that time.

Q.—Subsequently, then? A.—There was.

Q.—How long after? A.—I am unable to tell you ; but perhaps within a month.

Q.—Did the paper grow out of anything that was said 20 or done?

[Objected to, as leading.]

Q.—At the time this bond and mortgage was drawn—I call your attention to that circumstance—this other paper which you speak of, had it any connection with the bond and mortgage?

Mr. Shipman.—I object to that ; let the paper speak 30 for itself if there is one.

The Court.—Ask the witness how the subsequent paper came to be made.

Q.—How did the subsequent paper come to be made?

A.—The subsequent paper was like this— [Interrupted]

Mr. Shipman.—No ; that won't do.

The Witness.—Well, how it came to be made; it was made by the parties who made this bond and mortgage.

Q.—Peter W. and Tunis Melick? A.—Peter W. and Tunis Melick; it was with reference to this bond and mortgage.

10 Mr. Shipman.—Well, that goes into the contents of the paper, and I object to doing that in anywise. Let us have the paper, and then if there is any explanation to be made of it we will see what it is; but I object to any proof of the contents of the paper, or what led up to it, or any explanation about it at all.

The Court.—Anything that is in the paper can only be proved by the paper itself, but the facts leading to the making of the paper are competent to be proved by this witness.

20 Mr. Bergen.—I think I am entitled to prove the conversations between the Complainant and Defendant.

The Court.—No; not any conversation that goes to make up the body of the paper—any conversation afterwards reduced to writing.

Q.—Do you recollect by whose order and direction this second paper was prepared?

30 Mr. Shipman.—I object to that.

The Court.—I think that is competent.

A.—The parties were at my office together; which of them it was who first suggested the paper I cannot state; it was a mutual arrangement between them.

Q.—You have been subpoenaed to produce that paper, have you not? A.—I have.

Q.—Have you that paper with you? A.—I have not.

40 Q.—Will you tell us where it is? A.—I sent it to

you, as I agreed to, after you subpoenaed me, some time after the 22d of June.

Q.—How did you send it to me? A.—By mail.

Q.—Addressed to me at Somerville? A.—Addressed to you, and marked “personal.”

Q.—Since that time you have not seen it? A.—I have not.

Q.—Do you know whether or not any person has taken a copy of it? A.—I know there was a copy taken about perhaps two or three weeks before I sent it to you; 10 it may have been longer; I am very remiss about those things; I cannot recollect.

Q.—Who took the copy? A.—The circumstances are these: Tunis Melick came to my office for the paper, stating he had been sent—

[Objected to.]

Witness.—Well, I declined to let him take it; I said to him-- 20

[Objected to.]

Witness.—I gave him a copy.

Mr. Shipman.—Well, I think that is not competent, either.

Q.—Do you know who wrote the copy? A.—Peter Voorhees wrote the copy; after I had declined to let him have the paper he went out and came back with Peter 30 Voorhees—County Clerk Voorhees.

Mr. Shipman.—I object to any transaction that took place there not in our presence.

Mr. Bergen.—We propose to show the loss of the paper, but cannot do it all at once.

The Court.—Very well, proceed.

Q.—The copy was taken by Peter Voorhees in your presence, I understand? A.—Yes, sir.

Q.—After the copy was made, what comparison, if any, was made between the original and the copy? A.—It was compared by Peter Voorhees and myself, he either reading or else I did, I don't remember how.

Mr. Shipman.—Does the Court say this is competent?

10 The Court.—To prove the correctness of the copy, certainly.

Mr. Shipman.—Well, I object.

The Witness.—He either read from his paper and I compared, or I read from the paper and he looked over his; the exact way it was done I do not recall, but it was done in that way.

20 Cross-examination, by Mr. Shipman:

Q.—Did you mail it yourself? A.—I gave it to my young man, Mr. Reed, who is in my office, and last night I received a letter from Mr. Bergen— [Interrupted.]

Q.—I ask you, did you put the letter in the post office yourself? A.—I did not; I gave the letter to the young man in my office.

Q.—To some young man in your office? A.—No; I gave it to Mr. Reed, or else laid it on his table, stating to him— [Interrupted.]

30 Q.—Never mind what you said to him. Then I understand you did not mail the letter yourself? A.—I did not.

Q.—But you left it laying in your office? A.—I either left the letter on Mr. Reed's table, directing him to mail it— [Interrupted.]

Q.—Never mind what you said to him. A.—Or else I handed it to him for that purpose.

Q.—You are not sure which? A.—I am not.

Q.—And you are not sure whether you laid it on his 40 table while he was absent, for him to take? A.—I am

sure that I did not lay it on his table while he was absent, because I remember distinctly the directions I gave with reference to it.

Q.—Is he a student in your office? A.—He has been a student; he is now a member of the bar; he is in my office now under a salary.

Q.—At this time? A.—At this time.

Q.—How long ago was that? A.—Well, it was—if *this* date is right, which I do not know.

Q.—I don't want any "ifs" about it. A.—I cannot 10
tell you; I am going to give you the nearest I can, and I am going to fix it by a paper which was served on me; I was over at Somerville, and this paper which I hold in my hand was served on me, and I said to Mr. Bergen I was going away.

Q.—Don't tell what was said. A.—Well, I had a conversation (without stating what it was) with Mr. Bergen, with reference to it, and in that conversation— [Interrupted.]

Q.—Don't tell what it was. A.—I won't, if I can 20
avoid it, and I will try to avoid it.

Q.—Yes; don't tell what it was. When was it that he handed it to you? A.—I cannot fix the date at all.

Q.—As near as you can? A.—This paper which I hold is dated June 22d; whether that date is right or not I do not know; this paper was served on me at Somerville.

Q.—Well, about that time? A.—Yes; I should think so—within a few days; I will look and see if I can find out. (Witness refers to his diary.) Well, I would 30
say now that probably this paper was served on me on Saturday, which would be the 25th of June; it is dated the 22d.

Q.—On the 25th of June a paper was served on you?
A.—Yes, sir.

Q.—That is, June last? A.—Yes; this last June.

Q.—At Somerville? A.—Yes, sir.

Q.—How soon after that paper was delivered to you did you write the letter? A.—I can only answer that in this way: It was after the following Tuesday; it was not 40

before the following Tuesday, and it was after the following Tuesday, which would have been the 28th, and before Saturday, the 2d day of July—or possible on Saturday morning—before Saturday noon; I left Flemington on the 1:30 train, expecting to be away some time.

Q.—You left Flemington on Saturday, at 1:30? A.—That is my recollection—that I left on Saturday, at about 1:30.

Q.—Do you know whether it was on that day when
10 you wrote the letter? A.—No; I don't know that it was before I went.

Q.—But the day you cannot fix? A.—I can only say that it was between Tuesday and that day.

Q.—What kind of an envelope did you put it in? A.—I put it in an ordinary office envelope, with our firm name printed on the envelope, directed to James Bergen, Somerville, and marked "personal."

Q.—Had it "Return" on it, "if not delivered in 5 or 10
20 days, return to Voorhees & Cotter"? A.—(Witness dispatched a messenger to his office to procure an envelope similar to the one referred to by him.)

Q.—It was addressed how? A.—"James J. Bergen, Somerville."

Q.—"James J. Bergen, Counsellor at Law," or anything? A.—I don't remember whether "Counsellor at Law" was on it or not.

Q.—"Somerville, New Jersey"? A.—Yes, sir.

Q.—That was the address—you are sure of it? A.—I would not be willing to say that much was on; whether
30 I put on "Counsellor" or not, I do not recollect.

Q.—Well, that much was on? A.—Yes, sir; it might have been "N. J.," you know, instead of written out "New Jersey."

Q.—What time of day does your mail go out here to Somerville? A.—I understand that our mail leaves here for Somerville in the morning about 7 o'clock, I think, and at noon, about 1, perhaps; whether there is an afternoon one or not, at 4:35—we have a train leaving then, but whether a mail or not I cannot tell; we have a
40 card at the office which gives the departure of the mails.

but am not familiar enough with it to state accurately; I am now giving only my impression.

Q.—Do you remember what time of day it was you prepared the letter? A.—I do not.

Q.—What time of day was it you laid it on Mr. Reed's table? A.—I do not know.

Q.—The day you left home, at what hour were you last in your office? A.—My recollection is that I was in and out of my office all the morning.

Q.—Do you recollect seeing the letter after you gave it to Mr. Reed? A.—I do not. 10

Q.—Do you remember whether you saw it on the morning prior to your leaving home? A.—I do not; the last recollection I have of it was, when I either put it on his table or handed it to him.

Q.—You cannot tell when that was? A.—Excepting between the dates I have given you, and I only fixed those dates from other circumstances.

Q.—When did you say Tunis D. Melick came there about it? A.—I said that Tunis D. Melick came there— 20

Q.—Came to your office? A.—Yes, sir; he came to my office some—possibly a month; I am not accurate as to time at all.

Q.—I only want you to approximate it? A.—I cannot tell any more approximately; I may be two weeks or a month wrong.

Q.—Did he come there before that paper was served on you at Somerville? A.—Yes, sir.

Q.—He did? A.—Yes, sir.

30

[At this point the messenger, whom witness had sent for one of Voorhees & Cotter's envelopes, returned.]

The Witness.—I now have an envelope of the kind that contained this paper.

Q.—Is that the size of it? A.—This is the size of it; those are the only kinds we have in the office, except— 40

ing for larger mail matters; that does not seem to have "Return" on it; it is the card of the office.

Q.—Just read it to the stenographer? A.—It reads, "Voorhees & Cotter, Counsellors at Law, Flemington, N. J."

Q.—Did you put it in such a small envelope as that?

A.—Yes, sir; it was a small paper.

Q.—What sized paper was it written on? A.—It was written on a half sheet—a quarter of a sheet of foolscap—legal cap, rather.

Mr. Hulsizer.—That is half a page? A.—Yes, sir; half a page.

Further cross:

Q.—The envelope contained your letter and that paper?

A.—Yes, sir.

Q.—Did it require more than a two-cent stamp? A.—It did not.

20 Q.—When was it that Peter Voorhees came to your office? A.—After Tunis had been there and failed to

get the paper which I declined to give him; Peter Voorhees came back with him and got the copy, with Tunis.

Q.—Did Peter Voorhees copy it in your office? A.—He did.

Q.—You let Peter Voorhees take it to copy? A.—No, sir; I let Peter Voorhees copy it right on my desk, and I sat by and read it to him, I think— [Interrupted.]

Q.—Don't say what you said. A.—Well.

30 Q.—I don't want to get into the conversation. A.—No; I won't.

Mr. Bergen.—He is telling you how he did it; he said he read it to Peter Voorhees.

The Witness.—Yes; I think I read it to him.

Q.—You said that you let Peter Voorhees take it and copy it? A.—He either sat down at the table and

40 copied it in my presence, or else he and I sat at the same

table, and he copied it as I read it; I do not recall which, but I know I kept the paper.

Q.—It was under your control? A.—Yes, sir; Tunis Melick was there at the same time; they were both together, and both sitting at my elbow.

Q.—Do you remember just when that was, as near as you can, when Peter Voorhees came there? A.—I cannot tell you any nearer than I have; my impression would be that it was in the neighborhood of a month before Mr. Bergen served that subpoena on me; that is only an impression, but I made no memorandum of it. 10

Q.—Yes, of course, you give the best of your recollection? A.—I may be off something as to time, I don't know, but that is my impression.

Q.—But you are pretty sure you had the paper in your custody after Peter Voorhees and Tunis Melick went away? A.—I know I had.

Re-direct examination:

Q.—Did you inform Mr. Reed of the contents of the letter? 20

[Objected to.]

The Court.—I think the conversation between Mr. Reed and Mr. Voorhees at the time of the mailing of this letter is competent; it is part of the *res gestae*, and necessary to show (as I suppose Mr. Bergen intends to do) what became of that letter after it left Mr. Voorhees's hand.

30

Mr. Bergen.—Yes; that is what I want to do.

The Court.—I think that is competent; I admit it.

A.—I did; I want to qualify that answer; I am not willing to say that I said to him it contained the agreement between these parties; I did say to him that it contained a paper which I had sent to you, personally, and I wanted him to be very sure and see it was mailed; but I might have said to him what it was, but I don't recall it. 40

Q.—This particular original paper was in the envelope, was it? A.—It was; and that is the only paper I have sent to you as a personal, inside of three months, as I recall.

SAMUEL N. REED, sworn for the Defendants.

Direct examination, by Mr. Bergen :

- Q.—You live in Flemington? A.—Yes, sir.
 10 Q.—And am an attorney at law? A.—Yes, sir.
 Q.—At present engaged in Mr. John N. Voorhees's office? A.—Yes, sir.
 Q.—If you have any recollection of mailing a letter to me recently, please state it? A.—In the first place, I cannot fix the date; I remember distinctly of mailing a letter to you prior to the day— [Interrupted.]

- Mr. Shipman.—I desire to ask Mr. Voorhees one more question (addressing Mr. John N. Voorhees): Whether
 20 there was considerable correspondence between you and Mr. Bergen—whether a good deal of correspondence passed between you?

Mr. Voorhees.—I stated that it was the only letter that I remember to have sent him, directed to him personally, in three months; we may write to Gaston & Bergen often; I would not want to say that; I think possibly once a fortnight.

- 30 Q.—You have heard Mr. Voorhees's testimony, have you not, in relation to a letter—

[Objected to.]

- Q.—State what you know about it? A.—I remember one day, perhaps two or three weeks ago, Mr. Voorhees handing me a letter, or laying it down on my desk, and touching the letter, saying: "That is important, be sure and send it;" it was directed to James J. Bergen,
 40 Somerville, New Jersey, perhaps "Somerset County" was

on it; in the corner was "Personal," underscored quite heavily.

Q.—What did you do with that letter? A.—I took it to the post office and put it in the place under the delivery office window.

Q.—Was it stamped? A.—It was.

Cross-examination, by Mr. Shipman:

Q.—Where did you put it, did you say? A.—I put it in the post office, under the delivery window; there is 10 a place where you put the letters in; there are two places, and I put it in the one under the delivery window.

Q.—Where they ordinarily deliver letters—the place where you ordinarily put them when you go to the post office?

A.—Yes, sir; there are three places—one for papers and two for letters; as you go in, to the left is for papers; under the delivery window is one place marked for letters, and on the right hand is another one marked for letters; I put it in the centre place—the one under the delivery window. 20

Q.—Had you often put letters there before? A.—Very often; every day, nearly.

Q.—Where you dropped this in? A.—Yes, sir.

Q.—Was the Postmaster there when you put it in? A.—I do not recall.

Q.—What time of the day was it? A.—I cannot recall the time of the day.

Q.—Was it forenoon or afternoon? A.—I think it was the afternoon.

Q.—What day of the week was it? A.—I do not 30 recall; I did not charge my mind with it.

Q.—Don't you remember at all what day of the week it was? A.—I do not; I can only fix that by a certain circumstance.

Q.—Fix what? A.—The day when I sent it—what day of the week it was.

Q.—Well? A.—Mr. Bergen came to our office the next morning, on the train I think that arrives here at some time near 9 o'clock, and the thought occurred to me when he came in the office, "Why, Mr. Bergen".— 40

Q.—Never mind what you thought about it. A.—I cannot recall the day; I can only fix the circumstance, and if his diary would show it you would get the date exactly.

Q.—When he came to your office, had you sent the letter the day before? A.—Yes, sir.

Q.—Can you tell what day he came there? A.—I cannot.

Q.—You cannot tell the day of the week? A.—No, sir.

10 Q.—Was Mr. Voorhees at home when he came? A.—He was not; he was away; that is what seemed so peculiar about it; it struck me so very peculiar.

Q.—Was it the first or the last of the week? A.—I cannot recall.

Q.—You cannot tell at all? A.—No, sir; not as to the day of the week.

Q.—How long had Mr. Voorhees gone away? A.—I am not certain but what he had gone to Trenton.

20 Q.—He had not gone off on his vacation? A.—I am not certain whether he had or not.

Q.—Was it before, or after, the 4th of July that Mr. Bergen came there? A.—It was before.

Q.—How long before? A.—Well, I should think sometime during the week before.

Q.—Do you know what day the 4th of July came on this year? A.—Yes, sir; it came on the 4th.

Q.—What day of the week? A.—It came on Monday, I think.

30 Q.—How long before that was it that Mr. Bergen came there? A.—I cannot recall; I said I thought it was during that week—the week prior to the 4th of July.

Q.—How many days before Mr. Bergen came there do you recollect putting the letter in the post office? A.—The day before.

Q.—What time of the day did Mr. Bergen come there? A.—He arrived on the train, if my memory serves me correctly, which arrives about 9 o'clock, or in the neighborhood of 9—a few minutes before 9.

40 Q.—Do you know what time the mail goes out to Somerville? A.—I do.

Q.—Well? A.—There are several mails go out to Somerville, which one would you like to know about?

Q.—I would like to know about them all? A.—There is a train that leaves here in the morning; I am not certain whether they carry Somerville mail on that; there is one that goes out in the afternoon at 1 o'clock, and there is one goes out in the afternoon at 4:35.

Q.—Do you know whether you put that letter in there in time for either of those mails? A.—I think I put it in time for the 4:35 mail. 10

Q.—You think you did? A.—Yes, sir.

Q.—Do you know what time the mail closes? A.—It usually closes, I think, about 4 o'clock.

Q.—Can you tell what time you took it to the post office? A.—I cannot recall the hour.

Q.—Then you cannot tell whether you mailed it in time for the 4 o'clock mail or not? A.—I mailed it in time for the 4 o'clock train—the mail that goes out at 4:35; I would like to state why I remember that distinctly.

Q.—No; I want you just to answer my questions, and 20 want nothing else. A.—Very well.

Q.—Are you pretty sure there is a 4:35 mail to Somerville? A.—I have been told so by the Postmaster.

Q.—That is the only thing you know it from—what you heard? A.—It is so published in the papers.

Q.—A mail to Somerville? A.—Yes, sir.

Q.—Is it not to New York only? A.—No, sir; the Postmaster has informed me differently—that in going up the road the letters going out of here are changed on the train. 30

Q.—Do you know how many post offices there are between here and Somerville? A.—I could not answer the question.

Q.—The Somerville pouch is a pouch of itself going from here to Somerville? A.—So I have understood it.

Q.—And it is not changed at all? A.—I think not; because there is no mail agent on this train.

Q.—How soon after Mr. Voorhess handed you the letter did you take it to mail? A.—The next time I was going down town; I don't recollect how long after it was; 40

I generally make it a point to take the letters down before the mail goes out, whichever direction they are going in.

Q.—I asked you how soon after Mr. Voorhees delivered that letter to you or laid it on your table, you took it to the post office, if you remember? A.—I do not remember.

Q.—You do not remember? A.—I remember this—of course I do not remember what time it was he laid it
10 down; it would be absolutely necessary I should know what time it was he laid it there in order that I should state this.

Q.—Yes; of course. A.—Well, I did not time myself at all; I did not look at the clock to see what time it was.

Q.—Do you know whether it was before or after dinner? A.—I said after dinner.

Q.—You have not said that before? A.—I said in the afternoon.

20 Q.—About what time does Mr. Voorhees dine? A.—Well, that depends—generally about 1 o'clock; in that neighborhood.

Q.—That is the dinner hour, 1 o'clock? A.—That is his dinner hour; yes, sir; mine is earlier.

Q.—What time does he get in the office after dinner? A.—Mr. Voorhees?

Q.—Yes. A.—Sometimes he comes in right after dinner, sometimes not.

Q.—How was it this day? A.—I do not recall; I
30 do not recall what time he got in the office.

Q.—The letter was sealed up when it was handed to you? A.—It was—when it was laid on my desk.

Q.—Were there any other letters with it? A.—No, sir.

Q.—That was the only letter? A.—That was the only letter.

Q.—What were you doing? A.—I do not recall.

Q.—Were you engaged in any business at all—doing anything? A.—I was doing something on my desk; I do not know if I was writing or reading, or what.

40 Q.—It was on your own desk? A.—Yes, sir.

Q.—Is your office inside or outside—Mr. Voorhees has the back office and you have the next one? A.—I have the front office.

Q.—Was Mr. Cotter there? A.—I do not recall.

Q.—Was he there that day? A.—I do not know; I do not recall; I think he was, but I am not certain as to that.

Q.—Now, just repeat what you say was on the back of the letter? A.—It was addressed—of course it was just one of the envelopes shown you like that (producing 10 envelope).

[Said envelope marked Exhibit E.]

Witness.—It was addressed to James J. Bergen, Somerville, N. J., and perhaps "Somerset County" was on; I am not certain as to that; in the corner was marked "Personal," heavily underscored.

Q.—You are pretty sure you carried that letter to the 20 post office? A.—I am.

Q.—Have you ever seen the envelope since? A.—That envelope?

Q.—Yes. A.—I have not since I put it in the window.

Q.—You have not seen it since? A.—I have not.

JAMES J. BERGEN, sworn for the Defendants.

My name is James J. Bergen, and I live at Somerville, N. J.; that is my post office address; I have not received 30 a letter from Mr. J. N. Voorhees within six weeks at least, and I have never received through the mails a letter from him containing this agreement, or containing any letter referring to it.

Mr. Shipman.—I object to "this agreement"; no agreement has been proved.

Witness.—This paper, then.

Mr. Shipman.—No paper has been proved.

The Court.—You have not received any letter containing any agreement between Tunis D. Melick and Peter W. Melick?

Witness.—Never.

Cross-examination, by Mr. Shipman :

10 Q.—You say not within six weeks—have you about six weeks ago? A.—Not within three months.

Q.—You have a partner—Mr. Gaston? A.—I have.

Q.—The firm name is Gaston & Bergen? A.—Yes, sir.

Q.—The letters all go to the office? A.—The post office; yes.

Q.—To your law office? A.—Yes, sir.

Q.—Are you each in the habit of receiving letters addressed to each separately, in your law business? A.—Yes, sir.

20 Q.—Do you open one another's letters in that way? A.—We do not, sir, under any circumstances.

Q.—Mr. Gaston never opens yours, nor you his? A.—He never has been known to do it.

Q.—Well, I don't know, it is a very common thing to do; if I get letters my son opens them, and I do his. A.—Well, that is a question of etiquette—we don't do it, anyhow.

Q.—You don't open one another's letters? A.—No, sir.

30 Q.—Not relating to law business? A.—We cannot tell whether they concern law business or not.

Q.—Gaston & Bergen are concerned in this case? A.—Yes, sir.

Q.—That is your firm name indorsed on the papers? A.—Yes, sir.

Q.—Did you direct that a letter of this kind should be directed to you? A.—Direct who?

Q.—Mr. Voorhees? A.—Mr. Voorhees said—

Q.—Never mind that. A.—Then I cannot tell you.

Q.—You can tell whether you told him to direct a letter to you personally or not? A.—I did not.

Q.—Was the paper which you served on Mr. Voorhees signed "Gaston & Bergen"? A.—It was not.

Q.—As solicitors? A.—No, sir.

Q.—Signed by you, personally? A.—No, sir; signed by Allan McDermitt, Clerk.

Q.—Were not your names on it? A.—My name was on the writ which I exhibited to him, but not on the ticket. 10

Q.—But on the original subpoena? A.—Yes, sir; I have that here.

Q.—That was shown to Mr. Voorhees? A.—Yes, sir.

Q.—With your firm name on the back of it? A.—No, sir; on the inside of it.

Q.—That subpoena you showed to Mr. Voorhees? A.—Yes, sir.

Q.—With your firm name at the bottom of it? A.—Yes, sir.

Q.—And you did not direct him to address that letter, personally, to you, and not to the firm of Gaston & Bergen? A.—I cannot say that I directed him to do it. 20

Q.—That is what I asked you—whether you did or not? A.—I did not direct him to do it; if you will let me tell what I did say I will do so.

Q.—I only want you to tell me what I ask you—whether he directed that letter to you, personally—"James J. Bergen, Somerville, N. J.," by your direction? A.—By my understanding, not direction; I understood he was to do it, but I did not direct him to do it. 30

Q.—To you, personally? A.—Yes, sir; to me, personally.

Q.—Have you gone to the post office in Somerville and inquired for a letter? A.—I have gone to the post office and got all our letters; yes, sir.

Q.—Who brings your mail from the post office to the office? A.—Ordinarily, I do; we have a clerk, and if he gets down town before I do he goes to the post office, and the letters are brought into our office and put into a particular box; when I get there I see the firm letters, 40

and my own, and hand Mr. Gaston his; the mail always goes through my hands.

Q.—How frequently do you bring it yourself, and how often does your clerk bring it? A.—Well, I should say seven-tenths of the time I get it, and the other three-tenths of the time he does, as near as I can get at it.

Q.—But my question was whether you have ever gone to the post office and inquired for this particular letter addressed to you? A.—No.

10 Q.—You never have? A.—I have gone to the post office and inquired for any letters addressed to me, but not this particular letter.

Q.—Not for any particular letter? A.—No, sir.

Q.—You have done no more than you do every day—you go to the post office and you have a box? A.—Yes, sir; a lock box.

Q.—And your letters are handed to you from that letter box? A.—Yes, sir.

20 Q.—You have done no more than that? A.—Yes; I have done more than that.

Q.—What did you do? A.—I asked the Postmaster if there were any letters for me which were not in the box.

Q.—When did you ask that? A.—I asked that on Monday morning last; that would be yesterday morning.

Q.—A week from yesterday? A.—No, sir; yesterday; it was not with reference to this letter, but a general inquiry I made.

30 Q.—It was yesterday, then, for the first? A.—Yesterday was Monday, was it not?

Q.—Yes; yesterday was Monday. A.—Yes, sir; Monday morning.

Q.—That was the first you had asked, then? A.—Yes, sir.

Q.—Did you ever make any examination at this post office about it? A.—No.

Q.—Do you remember when you were last in Mr. Voorhees's office, prior to this date? A.—I cannot fix the date; I came up here to see him, and he was gone away.

Q.—My question was, if you remember the date?
A.—I do not remember the date, no ; some week or so—

Q.—Before or after the 4th of July? A.—It was before the 4th of July—a short time before the 4th of July.

Q.—What time of the day? A.—I do not recollect.

Q.—What time did you come here? A.—I came here in the morning, and went away on the afternoon train.

Q.—You did not see Mr. Cotter? A.—Yes, sir ; he 10 was in the office, but I said nothing to him about it.

Q.—Did you see Mr. Reed? A.—Yes ; he was in the office, but he did not say anything but “ Good morning.”

PETER VOORHEES, sworn for the Defendants.

Direct examination, by Mr. Bergen :

Q.—You are the County Clerk of this county? A.— 20 I am.

Q.—Do you know Tunis D. Melick? A.—Yes, sir.

Q.—And Peter W. Melick? A.—I do ; I know them both.

Q.—Will you tell us whether or not you were in the office of John N. Voorhees, Counsellor at Law here, with Tunis D. Melick? A.—I was.

Q.—What did you do there? A.—I copied the agreement for Mr. Melick that was between him and his father.

Q.—Will you tell us how you made the copy? A.— 30 I went in the office—Mr. Melick came down to my office and wanted me to go there ; I think he got there a little ahead of me ; I went in there ; he and John N. were in the office together, and as I came in—well, he spoke about making a copy ; Voorhees said to me—

Mr. Shipman.—Never mind what he said.

Witness.—Well, I sat down to his desk and took half a sheet of legal cap paper, and he and Melick were right 40

off to my left, I think, or something similar to that, as I sat by the desk, and he read it off, and I copied it down—copied it just as he read it.

Q.—He read it slowly, so that you could take it down?

A.—Yes, sir.

Mr. Shipman.—Who read it?

10 A.—John N. Voorhees, and I copied it; after I copied it I made the remark—

Mr. Shipman.—Never mind what you said.

Witness.—Very well, I copied it; then we compared it.

Further direct:

Q.—How did you compare them? A.—My impression is, that I read mine back.

20 Q.—He read while you wrote? A.—Yes, sir.

Q.—And then you read back? A.—Yes, sir; I think I read back from mine, and he looked over his—the original.

Q.—Was there a comparison made? A.—Yes, sir.

Q.—One way or the other? A.—Yes, sir; there was a comparison made; either he read from his the second time, or I read; my impression is, I read, because I would not have thought it would have been a true copy, otherwise.

30 Q.—(Showing witness a paper.) Look at that paper and tell me what it is? A.—This is the paper that I—it is a copy that I made there that day—May 17.

Q.—What pencil marks are those on there? A.—Those I made when I came down to the office here; I just thought that I hadn't put any date, and I might be called on to know when I made it, and I just put on "May 17, 1887"; those are my figures.

Q.—That is the date when you made the copy? A.—Yes, sir.

40 Q.—And that is a full copy of all that was read to you?

A.—Yes, sir; and compared back—either from him to me, or from me to him; I am not sure which.

Cross-examination, by Mr. Shipman:

Q.—What date did you put on it? A.—The 17th day of May.

Q.—What time of the day was it you went into Mr. John N. Voorhees's office? A.—My impression was, that it was in the forenoon; yet I am not sure whether it was forenoon or afternoon; I know Mr. Melick was down 10 some time before, and wanted to see Mr. Voorhees, and he had gone away, and he stayed until the evening, and he did not come back; and I think he came down in the forenoon, but I would not say positively whether it was in the forenoon or afternoon.

Q.—Then you cannot tell what time of the day it was? A.—No, sir; I cannot; of course, if I had made a note I could tell; but my impression is that it was in the forenoon; I am rather positive that it was.

Q.—Did Tunis D. Melick come in to get you to go into 20 John N. Voorhees's office? A.—Yes, sir; after he said he had been there— [Interrupted.]

Q.—Never mind what he said; did you know before you went there what he wanted of you? A.—Well, he told me in the office he wanted me to make a copy for him of an agreement.

Q.—I only asked you if you knew, from anything he said, what he wanted of you? A.—Well, that is the way I knew that he did want me.

Q.—You did know what he wanted of you? A.— 30 Yes, sir; before I went up.

Q.—Are you any relation to him? A.—No, sir.

Q.—Did he pay you for copying it? A.—No, sir; I didn't ask him anything.

Q.—How long were you in Mr. Voorhees's office, copying? A.—Well, I don't think I was there over 10 minutes, all told.

Q.—Who furnished you the paper? A.—Mr. Voorhees; as I came in the paper laid kind of on the desk—a

sheet of it—and he shoved it that way (indicating), and said, “You sit down and make a copy.”

Q.—Never mind what he said. A.—I sat right down and copied it.

Q.—Did Mr. Voorhees read it off to you? A.—He did.

Q.—Then you did not have the original in your hand at all? A.—No, sir.

Q.—Nor see it any further than just in Mr. Voorhees’s
10 hand? A.—That is all.

Mr. Bergen.—If the Court please, we offer the copy in evidence now.

Mr. Shipman.—We object to it on the ground that they have not proved the execution of the original at all; also on the ground that it is not proved to be a copy of the original paper.

20 [The offer was then withdrawn for the present.]

JOHN N. VOORHEES, recalled.

Direct examination, by Mr. Bergen :

Q.—This original paper purported to be signed by whom? A.—It was signed by Mr. Peter W. Melick and by Tunis Melick.

Q.—In your presence? A.—Yes, sir.

30 The Court.—Was there any subscribing witness to it?
A.—There was no subscribing witness to it.

Mr. Shipman.—Was it sealed? A.—It was not.

Q.—It was not sealed? A.—No, sir; it was not; not unless there was a scroll to it; and whether there was or not I do not recall.

Q.—Is there a scroll to that copy? A.—I have not seen it.

Q.—(Paper handed to witness.) A.—There is not.

Q.—Then you cannot tell whether there was a scroll to the original or not? A.—I do not remember.

Q.—Or whether there was a wafer seal on it? A.—I am willing to say there was no wafer seal on.

Q.—There were none of those things? A.—No, sir.

Q.—What do you use in your office now, a scroll or a wafer? A.—A wafer, with those ordinary red caps.

Q.—You say you drew the paper? A.—I did.

Q.—About what time? A.—I, as I said, cannot fix dates, but I am willing to say that it was within a month 10 or six weeks after the making of the mortgage.

Q.—Can't you look at the paper—is there any date to the paper? A.—There is no date on it; I did not discover that until Peter Voorhees took the copy, and he called my attention to it—that it was not dated.

Q.—There is no date to the paper? A.—There is not.

Q.—Who came there? A.—Peter W. Melick and his son, Tunis, came together.

Q.—Alone? A.—They were alone in the office.

Q.—Was it about court time—about the time of your 20 court here? A.—Well, not about the time of our regular term, I don't think; our regular term, you know, is in April—the second week in April; if I was going to fix the date I should say it was within a month or six weeks after the execution of the mortgage, and that, I have learned to-day, was dated April 20th, 1878.

Q.—Had there been an ejectment suit between Peter and his son? A.—There was an ejectment suit, but whether then or not I do not know.

Q.—Was this paper drawn after that? A.—My 30 fixing the date of the ejectment suit and the paper I cannot tell; I do not compare them together, so as to associate them at all.

Q.—They had had considerable litigation? A.—They have had.

Q.—Without getting the son off the farm? A.—Yes; I had my docket, and that will give dates; I cannot fix dates.

[Witness dispatched a messenger for his docket.] 40

Mr. Bergen.—I now renew my motion to put the paper in evidence.

[Paper handed to Complainant's counsel for inspection.]

Mr. Shipman.—I object to this for several reasons—the first reason being that the loss of the original is not shown by sufficient testimony; second, that it is totally irrelevant and raises an entirely new issue; furthermore, that there is no consideration to the paper, and even if Peter Melick did sign it, it does not affect the validity of this mortgage—one executed long before the date of the assignment to the present holder of the mortgage, who is a bona fide holder, whose cannot be affected in this way.

The Court.—I understand the rule to be that where an attempt is made to offer secondary evidence of the contents of a written paper, counsel must prove the loss of the original by showing that enquiry has been made at the place where the paper had last been heard of, or where it naturally should be. Defendants' counsel has traced the paper to the custody of the Postmaster at Flemington; it seems to me that to entitle counsel to show, by secondary evidence, the contents of that paper, the Postmaster at Flemington should have been called, and it should have been shown whether he made due search for it. The presumption, it seems to me, is that the paper is either in the post office at Flemington or in the mail pouch which carries the mail from Flemington to Somerville or in the post office at Somerville, and these sources of information should be exhausted before counsel is entitled to prove the contents of the paper. That being my view, I shall have to hold that Defendants' counsel cannot now prove the contents of that paper by the copy.

Mr. Bergen.—Will the Court allow me to call an additional witness?

The Court.—I will permit you at any time before the case is closed to put in such other proof on this point as may be proper under the circumstances.

[Defendants' counsel offered in evidence the assignment of the judgment from Peter K. Melick to Clark & Schomp and from Clark & Schomp to Peter W. Melick, and from Peter W. Melick to Sarah Ann Melick.]

10

[Said papers were marked Exhibits Nos. 1, 2 and 3.]

[Defendants' counsel also offered the Record of Judgments, Vol. 2, of the Hunterdon Circuit Court page 73, for \$1,261.93, being a record of the judgment obtained by James J. Bergen against Tunis D. Melick, dated the sixth day of April, 1886.]

Mr. Bergen.—I also offer in evidence the notes and 20 checks that I proved this morning—the two notes embraced in the note of \$594 and a number of checks embraced in the note of \$641.64.

Mr. Shipman.—We object to them as entirely irrelevant.

Mr. Bergen.—The purpose of these exhibits is to show that the debts upon which this judgment is founded were part of them anterior to the giving of the mortgage.

30

[Objection renewed. Objection overruled.]

[Two bundles of notes and checks were then marked respectively Exhibits Nos. 4 and 5.]

WILLIAM J. PAULSON, sworn for the Defendants.

Direct examination, by Mr. Bergen :

Q.—You are the Postmaster of Flemington?

A.—

Yes, sir.

40

Q.—How long have you been such? A.—One year and three months.

Q.—Do you know anything about a letter bearing the card of Voorhees & Cotter outside, and addressed to James J. Bergen, Somerville, N. J.? A.—No, sir.

Q.—Is there, or not, any such letter in your office? A.—No, sir; not without it has been put in very lately.

Q.—How lately do you mean? A.—Since we sent out a mail at one o'clock.

10 Q.—To-day? A.—Yes, sir.

Q.—Well, say since as long ago as yesterday? A.—Yes, sir.

Q.—This place under the delivery window, where it is claimed that the letter was put in—how often are the letters taken out of that? A.—They are taken out every time before we send out a mail, and we send out twenty-three mails a day.

Q.—What have you to say as to there being or not being any such letter in your office? A.—It would be
20 impossible for me to tell, because I would not be apt to remember where they go to.

Q.—I mean if it is there now? A.—No, sir; there is no such letter there now.

Q.—Are there any places about your office in which it could be dropped or lost? A.—No, sir.

Q.—How recently have you gone through your office and examined it to see that there are no such letters there? A.—We have not made any particular search
30 lost; we take them right out of the box where they are dropped in and stamp them and tie them up.

Q.—Do you say there is no such letter in your office now? A.—I do.

Cross-examination, by Mr. Shipman:

Q.—How many assistants have you in your office?

A.—I have one most of the time and two part of the time.

Q.—Who makes up the Somerville mail? A.—I do.

Q.—Do you ever remember any letter of this kind?
40 A.—No, sir.

Q.—You do not remember it at all? A.—No, sir.

Q.—Do you remember of mailing any letter addressed to James J. Bergen, Somerville, N. J., within three or four months, or within one month or two months? A.—I do not remember; no, sir—seeing his name.

Q.—Does your assistant stamp the letters? A.—Yes, sir; most of them.

Q.—Does he put them in the mail? A.—No, sir; he puts them in a box where we separate them, and I always send out the Somerville mail.

Q.—Does he fold them up? A.—No, sir; he puts them in pigeon-hole boxes when they are stamped.

Q.—He stamps them and puts them in pigeon-hole boxes and you throw them in the pouch? A.—I tie them up and put them in the pouch.

Q.—Do you have a mail agent? A.—No, sir.

Q.—Who takes the mail bags to the cars? A.—The man who works at the depot—one of the railroad men.

[The testimony of Mr. Reed, as to where he deposited the letter in the post office, was then read.]

Q.—Do you remember that place? A.—Yes, sir; I remember the place under the delivery window.

Q.—How many places have you at your office? A.—Three—two for letters and one for papers.

Q.—This place he is speaking of, is that a delivery box for letters? A.—Yes, sir.

Q.—A place where they put them in? A.—Yes, sir.

Q.—Is there any place there where they can get letters or anything? A.—No, sir.

Q.—If they put it in there you take it out? A.—If it was put in there it was sent away.

Q.—Do you remember anybody calling and asking for a letter? A.—No, sir.

Q.—Do they call you or your clerks—would they ask you or your clerks for the letter? A.—Well, either one.

Q.—They do sometimes ask for one or the other? A.—Yes, sir.

10

30

40

Q.—You are always assisted by a clerk in putting up the mail, aint you? A.—As far as stamping the mail goes.

Q.—Were you at home all the time about two weeks ago, or one week ago? A.—I was away last Saturday week; that is the only day.

Q.—Last Saturday week? A.—Yes, sir.

Q.—Were you away all day? A.—I was away from 8 o'clock to 7 o'clock.

10 Q.—Who were your clerks? A.—Mamie Hanson and Harlen Chamberlain.

Q.—Then if that letter had been taken out of that box, it would not have been taken out by you, but one of your clerks? A.—Either me or one of the clerks.

Q.—But they take them out and stamp them and put them in the distributing box, and you put the papers around them? A.—Yes, sir.

Q.—They would have taken them out of that box? A.—Yes, sir; more than likely; because the clerks stamp
20 most all of the letters.

JAMES J. BERGEN, recalled for the Defendants.

The judgment which I recovered against Tunis D. Melick was founded on two notes—Exhibits 4 and 5; one note, the note of \$594 is made up from two notes—one of a \$150, and another of , the notes making, with interest, \$594. The balance of the indebtedness representing the judgment was made up by the checks included
30 in Exhibits 4 and 5.

Cross-examination, by Mr. Shipman:

Q.—What paper is that you have in your hand? A.—A statement I made at the time the notes were given.

Q.—Had you any personal knowledge of what the two notes consisted of, or what they were given for, when they came into your hands at all? A.—I had knowledge; yes, sir.

Q.—Any personal knowledge, I mean—derived from
40 your own knowledge? A.—None.

Q.—You have been acting as the counsel for these parties? A.—I have.

Q.—And all the knowledge you have about it, is what you received from them in your relations with them, as attorney? A.—No, sir; Mr. Calvin Corle told me about the first two notes.

Q.—Well, I did not ask you what anybody told you about it at all. A.—He had the two notes.

Q.—When did you get the two first notes? A.—Mrs. Melick brought them to me about the time the note was dated, in 1886; I had seen them before, but she had taken them home with her. 20

Q.—When did you see them in the hands of Calvin Corle? A.—Never; but he told me about it.

Q.—When? A.—About this time; I cannot recollect the exact time; I wanted to be sure it was all right, and asked him about it, and he said it was.

Q.—He said he had those notes? A.—He had had those notes settling the estate, or was acting for some one who had the notes; he had some knowledge about them. 20

Q.—All you know is what you got from Calvin Corle and from your client, Mrs. Melick? A.—Yes, sir.

Q.—And this statement is made up from the papers she furnished you? A.—No, sir.

Q.—You know nothing about the truth of the statement? A.—Nothing about the truth of the notes; only as they appear here.

Q.—She entrusted the notes to you so that you could get a judgment? A.—Yes, sir.

Q.—You paid her nothing for them? A.—Not at all; not a cent; it was understood that I should assign the judgment, which I did. 30

Q.—You advised her to take that course? A.—No, sir.

Q.—In order to contest this mortgage of Peter W. Melick? A.—Well, I do not say that.

Q.—Well, was not that the fact? A.—That was not the fact; there was not any foreclosure pending then.

Q.—This judgment was not until after the foreclosure

of the first mortgage? A.—That had been disposed of; there was no suit pending when the judgment was given.

Q.—But you knew they were trying to get your client out of possession? A.—I think that had all been disposed of.

Q.—Was not that pending then? A.—I do not recollect about that.

Q.—Was that not pending, and before Vice Chancellor Bird? A.—I do not recollect about that.

Q.—Your object in getting that judgment for her was to be prepared for the second foreclosure against her, or against her husband—was not that the object? A.—No; my object was to protect her against anybody.

Q.—Well, against that mortgage? A.—Not that alone.

Q.—That, in connection with anything else that might come in? A.—Whatever attacked her property; I wanted it protected.

20 Q.—Did you sue in the Circuit Court of the County of Hunterdon? A.—Yes, sir.

Q.—Is that judgment signed? A.—Yes, sir; to Mrs. Melick.

Q.—No; is it signed by the Chief Justice, or is that just the minutes that you have? A.—That is a record of the judgment.

Q.—The official judgment? A.—Yes, sir; the only record they have.

Q.—Signed by the Chief Justice? A.—I do not
30 think it is; it only stands for what it is worth, of course; it is only the record of the Court.

Mr. Shipman.—It does not stand for anything. I move to overrule this, if the Court please (referring to the record of judgment heretofore offered in evidence from the Book of Judgments of Hunterdon County). I object to it as a record—whatever the pleadings may be is a different thing.

MAMIE HANSON, sworn for the Defendants.

Direct examination, by Mr. Bergen :

Q.—I understand you are engaged as clerk in the post office? A.—Yes, sir.

Q.—How long have you been there? A.—Two months—going on three months.

Q.—When did you go there; do you recollect? A.—The first of May.

Q.—It is said that within two or three weeks there was a letter mailed in that post office, directed to James J. Bergen, Somerville, N. J.; what knowledge have you, if any, of such a letter? A.—I have not any; I do not remember any particular letter; still it may have gone through; I don't know; I have no recollection of it. 10

Q.—What have you to say as to whether there was any such letter in the post office? A.—There is not any there now.

Q.—How many mail pouches do you use between here and Somerville? A.—Two. 20

Q.—How often are they returned to your office? A.—Once a day.

Q.—What examination, if any, have you made, or do you make, of the interior of those pouches to see if there is any mail matter left in them? A.—We always examine them, of course, to see if there is anything left in them.

Q.—Every day? A.—Yes, sir.

Q.—Have you done that within the last two or three days? A.—Yes, sir; every day. 30

Q.—And there is no such letter in any of those? A.—No, sir.

Cross-examination, by Mr. Shipman :

Q.—What are your duties in the post office? A.—Taking the letters out of the box, stamping them, putting them up in their proper places, and putting up some of the mails; not all of the mails.

Q.—Who helps you? A.—Mr. Paulson.

Q.—Is there any other clerk in the post office? A.— 40

At the changing of the mails there is sometimes Mr. Chamberlain ; that is all.

Q.—Well, he helps to put up the mail ? A.—No, sir.

Q.—He never helps put them up ? A.—No, sir.

Q.—Mr. Paulson says he does. A.—Not since I have been there.

Q.—When did you first go in the post office ? A.—The first of May.

Q.—Did you commence to take the letters out of the
10 box as soon as you went there ? A.—Yes, sir.

Q.—Do you take them out of both delivery boxes ?
A.—Yes, sir.

Q.—And stamp them ? A.—Yes, sir.

Q.—What did you say Mr. Chamberlain did ? A.—He was there at the changing of the mails—part of them.

Q.—Anything else ? A.—Nothing else, that I know of.

Q.—You stamped them always ? A.—Yes, sir.

Q.—Have you been there all the time since the first of
May ? A.—Yes, sir.

20 Q.—You have been there at every mail ? A.—Yes,
sir ; every mail except the morning mail ; I am not there
at the 7 o'clock mail in the morning.

Q.—Are you there at 4 o'clock in the afternoon ? A.—
Yes, sir.

Q.—Do you ever remember any letter addressed to
James J. Bergen ? A.—No, sir.

Q.—You do not remember taking out any one of that
kind and stamping it ? A.—No, sir.

Q.—You never remember any such letter ? A.—No,
30 sir.

Q.—You never remember seeing a letter addressed to
Somerville ? A.—Yes, sir.

Q.—Can you tell us whose name was on it ? A.—
Oh, I can't tell you whose name was on it ; of course let-
ters go to Somerville ; I remember those ; but I do not
remember whose names are on them.

Q.—You do not remember the name of Mr. Bergen
being on any ? A.—No, sir.

Q.—Do you remember sending out the Somerville mail

ten days ago? A.—No, sir; I do not send the Somerville mail.

Q.—You stamp the letters? A.—Yes, sir.

Q.—Do you remember any letters addressed to Somerville within ten days? A.—Yes, sir.

Q.—What time, about? A.—Well, at 11 o'clock in the morning—in time for the morning mail, and in time for the noon mail.

Q.—I mean, do you remember any letter going to Somerville within 10 days past? A.—Yes, sir. 10

Q.—Or two weeks? A.—Yes, sir.

Q.—You do? A.—Yes, sir.

Q.—And in the afternoon? A.—Going on 1 o'clock.

Q.—At 4 o'clock do they go? A.—No, sir.

Q.—There is a 4 o'clock mail to Somerville? A.—No, sir.

Q.—The last mail to Somerville then is at 1 o'clock? A.—Yes, sir.

Q.—Do you recollect a letter going to Somerville at 1 o'clock within 10 days—do you remember to whom it was addressed? A.—No, sir. 20

Q.—Whether it was addressed to a lawyer? A.—No, sir.

Q.—Whether it was marked "Personal"? A.—No, sir; I do not remember.

Q.—Do you remember anybody's name—any lawyer's name, being printed on the left-hand corner—Voorhees & Cotter? A.—No, sir.

Q.—Did you ever see any letter going through the mail to Somerville with Voorhees & Cotter's name printed on? A.—No, sir; I do not remember any. 30

Q.—You do not remember any? A.—No, sir.

Re-direct examination:

Q.—Who carries the mail from the office to the depot?

A.—Mr. Van Ness.

Q.—Has he a key to the mail pouch? A.—No, sir.

Re-cross examination:

Q.—Is there a mail agent goes on the 1 o'clock train to 40

Somerville? A.—From here to Somerville?

Q.—Yes. A.—No, sir.

Q.—Is there any mail agent at all? A.—No, sir; not from here to Somerville.

Q.—You said you had two mail pouches—suppose you sent one down to-day, when would it come back? A.—It would come back to-night.

Q.—That is, if you sent it at 7 o'clock in the morning?

A.—Yes, sir; it is sent at 7 o'clock in the morning and comes back at 11 o'clock; it goes out at 1 o'clock and comes back at night at 7:20.

Q.—Then you have one mail pouch? A.—Yes, sir.

Q.—One that goes between the two places? A.—Yes, sir.

Mr. Hulsizer.—If a letter was mailed after 1:10 it would stay in the office until next morning? A.—Yes, sir; until 7 o'clock.

20 HARLEN D. CHAMBERLAIN, sworn for the Defendants.

Direct examination, by Mr. Bergen:

Q.—Your occupation is what? A.—I am a lawyer.

Q.—You are employed in the post office part of the time? A.—I assist sometimes.

Q.—You assist the Postmaster? A.—Yes, sir.

30 Q.—What have you to say as to seeing or handling, within the last month, a letter addressed to James J. Bergen, Somerville, N. J., with the card of Voorhees & Cotter on the outside of the envelope? A.—Well, I don't have anything to do with making up the mails; I have to do with the distributing of the mails.

Q.—Have you seen any such letter? A.—I have not seen such.

Q.—Anywhere about the post office? A.—No, sir.

Not cross-examined.

ERNEST MELICK, sworn for Defendants.

Direct examination, by Mr. Bergen :

Q.—Where do you reside? A.—I reside at Clinton, N. J.; I know Peter W. Melick and Tunis D. Melick.

Q.—Did you ever have a conversation with Peter W. Melick in relation to this \$1,200 mortgage? A.—

Yes, sir.

Q.—Tell us what it was—tell us when first?

10

[Objected to.]

The Court.—When was it? A.—Several years ago; I do not remember exactly.

Further direct:

Q.—As nearly as you can tell? A.—I should think three or four years ago; something like that; may be five.

Q.—Just tell us what your conversation was?

20

[Objected to as incompetent, Peter W. Melick not being a party to this suit.]

By the Court.—Do you know whether these declarations, about which you have been asked, were made before or after the assignment? A.—They were made—that is what we are talking about.

Q.—Do you know whether Peter W. Melick was the holder of this mortgage at the time of your conversation with him? A.—That is what he told me.

Q.—He told you that he was? A.—Or had been.

Further direct:

Q.—How long ago was it? A.—I could not say positively; but three or four years ago, I should say.

Q.—Was it as long ago as 1882? A.—It is three or four years ago, and it might be longer; it was after Mrs. Studdiford's death, and after this trial; I heard some-

40

thing about a trial; the Klein Melick trial was about that time.

Q.—That was in 1878? A.—It was after that time; it was one time when I came home from Illinois or Tennessee; I cannot tell which, exactly.

Mr. Bergen.—I submit a party who takes a mortgage by assignment, takes it subject to all the equities that the obligor would have against the original holder of the
10 mortgage.

[Objected to.]

The Court.—It seems to me the evidence is competent, and I admit it; the complainant holds the mortgage as trustee for Peter W. Melick.

Q.—Now, please give us the conversation?

20 Mr. Shipman.—Well, we object to it as irrelevant.

A.—I asked him how he got along with that dog trial; he said that he had taken his property in possession to keep it for him; or keep the Clarks from getting it, rather.

Q.—Getting whose property? A.—Tunis's.

Q.—Who said that? A.—Whitfield.

Q.—Who is Whitfield? A.—Peter W. Melick.

Q.—He said he had done what? A.—Taken the
30 property.

Q.—What property? A.—Tunis's property.

Q.—What did he say? A.—This land over at Rockaway.

Q.—Is that what he said? A.—That it what I understood—and his other property, whatever he had.

Q.—He said he had done what? A.—Taken his property.

Q.—Go on; please state the rest of it? A.—He had to take his property to keep it for him—to keep it

from the Clarks ; that is as near as I can remember the words.

Q.—Do you know, or did he state who the Clarks—
[Interrupted.]

[Objected to on the ground that the witness should state the whole conversation.]

Q.—If anything further was said that would throw any light upon what was meant by the expression—"The Clarks"—give it to us? 10

[Objected to as calling for the opinion of the witness.]

Q.—Well, give us what else was said, if anything—give us the whole conversation? A.—I don't know but

what I have given it all ; shall I tell it over again? I asked him— [Interrupted.]

Q.—Who? A.—Whitfield—Peter W. Melick—what 20
had been done with Tune's trial, and he said he had taken his property to save it for him ; and I do not remember particularly—I knew what property he had up there, and I supposed it was that.

Mr. Shipman.—Well, tell what he said?

The Witness.—Well, that is what he said—he had taken his property to keep it for him—to keep the Clarks from getting it ; that is what he said. 30

Cross-examination, by Mr. Shipman :

Q.—Where did this conversation take place? A.—
I think it was in the field ; next to the race—

Q.—What race? A.—Peter W. Melick's.

Q.—Where had you been before that? A.—I had been to Illinois and about.

Q.—When did you go to Illinois? A.—I went there a good many times.

Q.—When did you go the last time? A.—1881. 40

Q.—Was this conversation before or after that time?
A.—Before, I think.

Q.—Eh? A.—I think it was before; I don't know.

Q.—Eh? A.—I do not know whether it was before or since; it was after I came back, sometime; I do not remember particularly about that.

Q.—What time in 1881 did you go out there? A.—
In the Fall.

Q.—When did you come back? A.—That Winter.

10 Q.—The same Winter? A.—Yes, sir.

Q.—1881, or 1882? A.—1881.

Q.—What time in the Winter? A.—Well, it was
the latter part of the Winter, in December.

Q.—How long did you stay at home then? A.—
Well, I was home one or two years.

Q.—Where did you go then? A.—Tennessee.

Q.—How long were you down there? A.—Well, I
was gone different lengths of time.

Q.—About when did you come back? A.—I came
20 back—once I came back for three or four months, and
once I came back for a year.

Q.—Was this conversation before or after you came
back from Tennessee? A.—I have not got that in my
mind how it was.

Q.—You cannot tell about that? A.—No, sir; I
cannot tell exactly.

Q.—You cannot tell whether it was after you came
from Tennessee the second time or not? A.—No, sir;
30 I do not think it was after that; I think it was before I
went to Tennessee at all; I think it was in 1881 or 1882,
as near as I can tell.

Q.—You are not sure of that? A.—Well, I am
pretty near.

Q.—You did not stay at home long? A.—Not very
many years.

Q.—What did you do while you were at home? A.—
Worked, as I always did; I worked for Peter W. some.

Q.—You have a pretty bad memory sometimes? A.—
Well, I don't know but what I have.

40 Q.—Your memory gets upside down when you get

sleepy, does it not?
 conversation.

A.—Well, I remember the con-

Q.—Well, tell us the conversation?
 want me to tell it again?

A.—Do you

Q.—Yes; every word of it. A.—I asked him about
 this dog trial—how he got along with this dog trial; we
 talked more or less about it, and he was not inclined to say
 much; but he said he had to take the property to save it
 for him—to keep the Clarks from getting it; that is the
 main part of it.

10

Q.—That is all you recollect about it? A.—That is
 the main conversation.

Q.—What else did he say? A.—He gave me to
 understand— [Interrupted.]

Q.—Well, tell us what he said? A.—He said what
 I told you.

Q.—And that is all you remember? A.—Well, I
 could not tell you word for word all our conversation
 during the whole thing.

Q.—You were sworn on this matter before, were you 20
 not? A.—Yes, sir.

Q.—Do you remember what you swore to then? A.—
 Yes, sir.

Q.—Did you swear to anything like this then? A.—
 Yes, sir.

Q.—You think you did, eh? A.—Yes, sir.

FISHER PIDCOCK, sworn for the Defendants.

Direct examination, by Mr. Bergen:

30

Q.—You are the complainant in this case? A.—I
 believe so.

Q.—Well, you know it, don't you? What, if anything,
 did you pay Peter W. Melick for the assignment of this
 mortgage?

Mr. Shipman.—We object; they have called for an an-
 swer under oath.

The Court.—I suppose it does not matter how much he 40

paid for it; the complainant has the right of Peter W. Melick; no more, and no less. The answer to the cross-bill states what the true consideration of the assignment of the mortgage was.

[Defendants' counsel stated that their case was closed, with the exception of calling two witnesses on the subject of the loss of the paper.]

10

Adjourned.

FLEMINGTON, N. J., Thursday, July 28, 1887.

Continuation of case, pursuant to adjournment.

20

[Defendants' counsel read in evidence the depositions (taken under the order of the Court and by consent of complainant's solicitor) of Emma J. Porter, Postmistress of Somerville, N. J., Frank McConaughy, Assistant Postmaster at Somerville, N. J., William S. Vroom, clerk in the post office at Somerville, N. J., Hugh M. Gaston, of the firm of Gaston & Bergen, Counsellors at Law, Somerville, N. J., and James J. Mehan, clerk in the office of Messrs. Gaston & Bergen, at Somerville, N. J.]

30

[Defendants' counsel offered in evidence the copy of agreement between Tunis D. Melick and Peter W. Melick, heretofore produced.]

[Complainant's counsel objected, on the ground that there is no proof that the letter was not taken out of the post office after it had been mailed, by either Mr. Reed or Mr. Voorhees; also on the ground that there is not sufficient proof of the

40

original, or that the paper now offered is a copy thereof.]

The Court.—The proof of the loss of the paper, it seems to me, is full ; I do not see how the defendants could prove any more diligence in the search for the paper, or prove any more conclusively that it is lost. So far as the second objection is concerned, my recollection of the testimony of Mr. John N. Voorhees and of Mr. Peter Voorhees is that this paper, which was mailed by Mr. Voorhees's clerk to Mr. Bergen, was copied in Mr. Voorhees's office by Mr. Peter Voorhees. Mr. John N. Voorhees swears, as I recollect his evidence, that he either took the original paper on his desk, and Mr. Peter Voorhees copied it, or else he read the original paper to Mr. Peter Voorhees, who reduced it to writing, and they then compared the paper. I speak of the two witnesses together as supplementing each other. Mr. Peter Voorhees testified that he copied a paper which Mr. John N. Voorhees read to him, and Mr. John N. Voorhees says the paper he read, and which Mr. Peter Voorhees copied, was the original paper mailed by him to Mr. Bergen at Somerville. I think the proof that the paper written by Mr. Peter Voorhees is a copy of the paper proved to be lost, is complete ; and so far as these objections are concerned I overrule these and admit the paper.

Mr. Shipman.—I have another objection. I object to it now because it creates an entirely new issue.

The Court.—(After argument by counsel.) The defendants ought not to be prevented from making a defense to a suit merely because the defense has been omitted to be set up in the pleadings. In a proper case I should not hesitate to allow the pleadings to be amended, if necessary, in order to permit the defense to be set up. But as I look at that agreement it does not raise any new issue. The defense set up in the answer, and the evidence of the defendants, so far as it is in, is that this mortgage was given without consideration, and for the purpose of de-

feating creditors. Now, admitting that to be so, I understand the settled rule of law to be that a mortgage of that character is good as between the parties, and therefore, when this mortgage was executed and delivered, Peter Melick was the creditor of Tunis Melick to the extent of \$1,200, the face of that mortgage, and was entitled to collect it. Now it is offered to show that subsequent to the execution of that mortgage, and at the time when it was good, as between the parties, they made an agreement by which Peter Melick agreed to hold that mortgage merely as security for the payment of the Klein Melick judgment if he should pay it, or if he did not pay it, then to surrender the mortgage up; but it will be perceived that that agreement was without any consideration, so far as Peter W. Melick was concerned, and therefore it cannot be held to bind him. This mortgage was good for its face when that agreement was made, and the agreement therefore is void, there having been no consideration received by Peter Melick for making it. But I think that the agreement is competent, as evidence having a tendency to show that when the mortgage was made it was made without consideration. I do not intend to say what weight is to be given to it; I only say that I think the agreement is competent as having a tendency to show that fact, and in that aspect of the case I will let the agreement in.

[The copy of the agreement offered in evidence by Mr. Bergen was then marked "Exhibit Agreement for Defendants, July 28, 1887."]

30

CALVIN CORLE, sworn for the Defendants.

Direct examination, by Mr. Bergen :

Q.—I show you three papers pinned together, and marked Exhibit 4 for the defendants; I ask you to look at the first two papers, and tell me whether you have ever seen those before? A.—Yes, sir.

Q.—One is a note dated when—the first one? A.—
March 6, 1872.

40

Q.—When is the next note dated? A.—April 28, 1873.

Q.—How did they come to your possession? A.—
I was the administrator of Mrs. Studdiford, and these
notes were appraised as her property.

Q.—On the back of each note there is an indorsement
of the payment of \$5, signed by Tunis D. Melick? A.—
Yes, sir.

Q.—Will you tell me who made those indorsements?
A.—I wrote the indorsements of the \$5, and Tunis Melick
signed his name to it. 10

Q.—Who paid those notes? A.—Mrs. Melick.

Q.—Who to? A.—Paid them to me.

Q.—Will you tell how they were paid? A.—She
took them as so much money on her distributive share of
her mother's estate; they were passed right over to her
the same as so much money of the estate.

Cross-examination, by Mr. Shipman:

Q.—Did Tunis D. Melick actually pay you the \$5?
A.—No, sir; his wife did. 20

Q.—He didn't? A.—No, sir.

Q.—Did she pay the money? A.—No, sir; I told
her the notes were outlawed; she said nothing about it,
but to charge her with \$5, and when they came to settle
up the estate to take out of her share.

Q.—There was no money paid on either? A.—No,
sir; not at that day; there was no money actually paid
at any time.

Q.—When you came to settle with her afterwards, why,
you charged the \$5 on her share of the estate? A.— 30
Yes, sir; both five dollars.

Q.—How long afterwards? A.—Well—how is that?

Q.—How long after those indorsements were made did
you settle up the estate? A.—I could not exactly tell
you when.

Q.—Some time after? A.—Yes; a short time; not
a great while afterward; I think we settled, if I remem-
ber right, sometime in July, and this was February—
somewhere about that time; I could tell exactly if I had
looked this morning. 40

Q.—How much was her share of the estate; do you know that? A.—I could not tell exactly; in the neighborhood of \$1,500 or \$1,600.

Mr. Bergen.—Personal or real? A.—Personal; I had nothing to do with the real estate at all.

Further cross-examination:

Q.—You took this all out of her share? A.—Yes, sir,

10 Q.—Do you know how much you took out? A.—Between \$500 and \$600; I do not know the exact amount; just what the notes called for was taken out, exactly, at the time, with interest; they were appraised with interest, and she allowed me interest on them when she took them up.

Q.—You delivered up the notes to her? A.—Yes, sir.

The Court.—Do I understand that you were the executor of the estate of the father of Mrs. Tunis D. Melick?

20 A.—The mother of Mrs. Melick.

Further cross:

Q.—Executor, was it? A.—No, sir; administrator for Mrs. Studdiford—Sarah Studdiford.

Q.—Can you tell when you delivered them up? A.—I think it was on the 4th of July following that indorsement; I think I drove up there on the 4th of July and settled with her, and paid that money; my books would show exactly; I mean the July following the last indorsement in 1883; I am pretty certain it was on 4th of July
30 I settled with her.

DEFENDANTS REST.

[Complainant's counsel offered in evidence all of the original papers in the case of Fisher Pidcock v. Clarence Melick, including the execution and the Sheriff's return, which latter two papers are not among the papers now offered. Counsel con-

sents that the Sheriff's testimony may be used on this point, if the complainant's solicitor desires it, or the Sheriff's certificate may be used instead.]

[Complainant's counsel read in evidence deposition of William N. Sine, for the purpose of proving the consideration set up by the complainant in the replication.]

PETER W. MELICK, sworn for the Complainant in re- 10
buttal.

Direct examination, by Mr. Shipman :

Q.—Where do you live ? A.—Tewkesberry town-
ship, New Germantown.

Q.—You are the father of Tunis D. Melick ? A.—
Yes, sir.

Q.—You are the mortgagee in this mortgage named
here ? A.—Yes, sir.

Q.—You assigned that bond and mortgage to Fisher 20
Pidcock, the complainant ? A.—I did.

Q.—Will you state to the Court the circumstances
under which that bond and mortgage were given to you
by your son, Tunis D. Melick, and what they were given
for—state all about it without my asking you anything
more about it ?

A.—I was in jeopardy of a suit in
Chancery between a man by the name of Dayton, on the
farm mill property on which I lived, and Mr. Bird was
my attorney, and they carried that up to the Court of
Errors, and under those circumstances Mr. Bird says— 30

[Objected to.]

Q.—You need not tell what he said to you, unless your
son, Tunis, was by—was Tunis by ? A.—No ; I think
not ; I don't know if he was or not ; I don't remember ;
he was with me a good deal of the time at that time.

Q.—Very well. A.—My situation was this—that he
felt as if he wanted some collateral security for standing
as my attorney in the case, and I told him that I had two 40

claims that I could put in his hands for collateral security, in case he did not get the money to pay him, and told him they were in my two oldest boys' hands, and that, with other personal property, was all the personal I had, so I gave them to him.

Q.—Now, go on, and tell about the giving of this mortgage?

Mr. Bergen.—I understood you to say that Mr. Bird
 10 wanted some collateral security from you for acting as your attorney? A.—He intimated that; and so I gave him this mortgage; Tuney, before that, when I didn't know where I was coming out in the Dayton suit, and must get a settlement, and Mr. Bergen talked that, and I had settled with my other son; he agreed to look over how we stood and talk over matters; and we did, and it amounted to some \$1,500 that I charged him with at different times, over and above what I gave him; and when we came to investigate I told him I would give him clear
 20 of all I had against him except \$1,200; if he gave me a mortgage of \$1,200 that would secure him and me.

Further direct:

Q.—State what entered into that consideration of that, as near as you can? A.—Well, he got in a scrape with a woman and got indicted; that was the first money I had to advance him, and charged him with.

Q.—How much was that? A.—Well, it has got to be so long ago now that I do not remember; it was be-
 30 tween two and three hundred dollars, to the best of my remembrance now; but I cannot come down to dots, because I had never kept any account of it, only— [Interrupted.]

Q.—What was the person's name? A.—I think it was Packer, Mrs. Packer; that was the name; he got indicted and in a scrape, and I helped him out.

Q.—What was the next? A.—The next was he got in some kind of a scrape—I don't know what; Dennis Van Lew came and told me about it, and I spoke to
 40 Tunis about it, and he said it was right, but they had him

in it; and I gave Mr. Van Liew \$120 for a scrape somewhere between Elizabethtown and Newark.

Q.—What was the next? A.—Then he got into another scrape—something or another; he wanted to tell me, but I told him I didn't want to know anything about it; but it seems to me now that was about \$100; that was at Liberty Corner or Basking Ridge; somewhere about there; I don't know what the scrape was, but Van Liew came up again, or some one else.

Q.—What next? A.—Well, a new wagon that I got 10 of Sine, that was \$200, I think, and a set of double harness, that was made for him, was a little over \$100, and a horse, that he got his leg broke and killed, and I charged him with it; that was a little over \$200, I think.

Q.—What else? A.—Then he made a trip out West, and I let him have, to start with, in the neighborhood of \$300; I don't remember exactly; and after he got out there he wanted to go on further West—to Denver or the Rocky Mountains—somewhere, I don't remember where, and wanted more money, and my brother-in-law, Mr. 20 Klein, out there, owed me some \$3,000 or \$4,000, and I sent to him to let him have what he wanted, and I think that was in the neighborhood of \$200.

Q.—Anything more? A.—There was a lot of sheep that we had in common together, and that was put in.

Q.—How much? A.—I think that was—his share was about \$200; what more there was I do not remember.

Q.—Was there anything about a sleigh? A.—Yes, sir; a sleigh he got at Hackettstown—\$50; and I guess 30 he has the sleigh yet, or had it a year or two ago.

Q.—Do you remember going his security at the Sutton sale?

A.—Yes, sir; that is a big four-spring wagon he has yet—bought at the Sutton sale.

Q.—How much was that? A.—Somewhere about \$90, I think.

Q.—That you paid? A.—Yes, sir; I paid that myself.

Q.—Whereabouts did you make this calculation—you

and he made this calculation, you say? A.—In the mill—in the mill office.

Q.—In your mill? A.—Yes, sir.

Q.—After you made it up where did you go? A.—Well, he went home, and in a few days we came down to Flemington here, and Mr. Voorhees made out the papers, and I gave the papers over to Mr. Bird.

Q.—You gave the papers over to Mr. Bird? A.—After I got them; yes, sir.

10

The Court.—Do you mean to say that you assigned the mortgage to Mr. Bird? A.—No, sir; I didn't assign the mortgage, but I assigned the other claim; but Mr. Voorhees didn't sue on the mortgage on account of Mr. Bird.

Further direct:

Q.—You placed them both in Mr. Bird's hand, and one you assigned, and that Mr. Bird sued on? A.—Yes, sir.

20 Q.—For his fees? A.—Yes, sir; for his fees and things he had to pay for.

Q.—Who was that against, your other son? A.—Yes, sir.

Q.—How soon after did you go down to Mr. Voorhees's, at Flemington? A.—I think probably it was a month or more after we made this arrangement to settle.

Q.—Now, your son says that you came to his place one day after he was sued by Peter K. Melick for his dog having bitten Melick, and you told him he had better
30 look after this, that they would have a judgment against him, and if he did not look out they would clean him out, and you had better go along with him and have it fixed up so that they could not get it away from him; did you ever tell him that? A.—No, sir; there was no such talk about it that I ever heard.

Q.—Was there any arrangement made between you and him by which this mortgage was given to defeat his creditors? A.—No, sir.

Q.—Did you go down to Mr. Voorhees's to get this
40 mortgage executed for the purpose of cheating Peter

Melick, or preventing him from collecting that judgment if he got one? A.—At the time when the mortgage

was given he expected to non-suit Mr. Peter Melick for the dog bite; he didn't think he had any show as to making any judgment against him at all; I think they wanted him to give \$50, but counsel had been there to get the thing compromised, and I told him—

[Objected to.]

10

Mr. Bergen.—I ask to have that answer stricken out as not responsive.

The Court.—I think that would be competent in answer to a question by counsel, and it is merely a question whether it be now stricken out and then be repeated in answer to another question.

Mr. Bergen.—I withdraw the objection.

20

The Court.—(To Witness.) It is not proper, Mr. Melick, for you to go on indefinitely; just answer the questions of counsel.

Q.—Was this mortgage given, as your son says, for the purpose of preventing Peter K. Melick from collecting a judgment against him? A.—It was not; there was not any judgment against him, nor he didn't presume to have any, or any other creditor; I didn't know that he owed anybody; I thought all his debts were paid except what he owed me. 30

Q.—Was it given for the purpose you have stated here, and for that consideration? A.—Yes, sir; and nothing else.

Q.—A legitimate consideration? A.—Nothing else; I remember this: when we were figuring it up it amounted to something like \$1,500; that we thought there was about \$300 that I meant him to have.

Q.—Now I want to read you this paper. You have heard the controversy we have had about it, and I will 40

read it to you; the original is not here; of course we cannot ask you about it. (Reading from Exhibit Agreement for Defendants, July 28, 1887.) "It is agreed that the mortgage this day agreed to by Tunis D. Melick to Peter W. Melick for \$1,200 shall be returned to him at any time he shall demand the same, on his being repaid the judgment which Klein Melick has, and which judgment Peter W. Melick is to settle, if possible. If Peter Melick does not pay said judgment, then the mortgage is to be
 10 considered null and void. Peter W. Melick, Tunis D. Melick." Do you know about any such paper as that?

A.—I never heard at all of such a paper until the other day when we were here; I never signed any paper whatever purporting anything about this bond and mortgage, to anybody, excepting assigning it over to Pidcock.

Q.—You never heard of that paper? A.—I never heard of any paper.

Q.—Until it came out here the other day? A.—No, sir; I never heard anything about it; I never signed my
 20 name in Mr. Voorhees's office, that I remember of, in my life, only that I think Mr. Cotter got me to sign a letter that he wrote to my son, Frank, in Kansas, some two or three years ago, about this judgment we are talking about now, that Mr. Bird had obtained against Frank.

Q.—Did your son Tunis ever speak to you about this paper, in the world? A.—No, sir; nor anybody else; I never heard of the paper.

Q.—Did Mr. Voorhees ever call your attention to it? A.—No, sir; no; I never thought of it; never heard of
 30 such a thing.

Q.—You never saw the original—what they say is the original? A.—No, sir.

Q.—You know nothing about it? A.—I know nothing about it no more than if I was not born.

Cross-examination, by Mr. Bergen:

Q.—Where did you first have your talk with Tunis about the giving of this mortgage? A.—In my mill office—about the giving of the mortgage.

40 Q.—That was the first that you ever said anything to

him about it, was it? A.—About making out a mortgage, yes, sir; and I told him why I wanted it.

Q.—Never mind; just answer my questions, please. How long after that conversation in the mill was it before you talked with him again about giving this mortgage? A.—I think it was all settled that day when we

would go to Flemington and have it made out.

Q.—You then, that day, agreed upon a time when you would come to Flemington, did you? A.—I think so.

Q.—And that, you have said, was about a month after you had this talk? A.—It was within a month after

we made the—we went over the papers in the office.

Q.—Well, just answer my questions; you say that the first item of that account was that he got indicted and you had to pay—what, the costs and fine? A.—I do not remember what it was; I suppose that was into it; and Mr. Allen—I don't know whether he did; I think another lawyer—he got the money from me for that purpose.

Q.—Did you pay it? A.—I gave it to him. 20

Q.—You didn't pay it to these parties? A.—No, sir.

Q.—Did you make any memorandum of it? A.—Yes, sir.

Q.—Where? A.—On a piece of paper.

Q.—Where is that piece of paper? A.—I do not know what has become of it now.

Q.—How large a piece of paper was it? A.—I do not remember about that; I had all these items, as I tell you, and we figured it up in the mill.

Q.—How large a piece of paper? A.—I don't remember. 30

Q.—Do you keep any books of account? A.—I do.

Q.—Were any of these items in these books? A.—No, sir; a separate thing altogether.

Q.—You say you charged him on a piece of paper with having let him have this money? A.—I set it down on a piece of paper—the amount of money I let him have at that time.

Q.—Didn't you testify before that you paid that money here for him? A.—Well, I paid it in that way. 40

Q.—No, no; not to him; but you paid it either to the Clerk or the Sheriff here, when he was indicted? A.—No, sir; I don't think I said it that way.

Q.—That is my recollection of it. A.—I do not think I stated it that way; if I did, I was mistaken; I might have paid Mr. Allen some money.

Q.—How long before this supposed settlement had you let him have this \$300? A.—Well, I cannot remember that now, Mr. Bergen.

10 Q.—Was it three or four years? A.—I would say in the neighborhood of that.

Q.—The only evidence of indebtedness you had was a memorandum on a piece of paper? A.—And his recollection and my recollection together, and we figured it out on a piece of paper.

Q.—I say you had no other memorandum of it? A.—Only by memory and by setting it down on a piece of paper at the time.

20 Q.—Was anything else set down on that piece of paper? A.—I think there was, but I do not remember what they were.

Q.—Where is that piece of paper? A.—It was destroyed when this settlement was made—burned up, I think, right there in the office.

Q.—You say the next money you paid was \$150 to Dennis Van Liew? A.—Yes, sir.

Q.—Will you be kind enough to tell what that was for? A.—I do not know.

Q.—Who came to you for that money? A.—Mr. 30 Van Liew.

Q.—Did he tell you what it was for? A.—No, sir; he wanted to tell me, and I did not want to know.

Q.—What did he say to you? A.—He said that Tunis was in a scrape down between Newark and Elizabethtown somewhere.

Q.—I am talking about the first time now? A.—That is the first time.

Q.—And he didn't tell you what it was for? A.—And he could settle it with that amount of money.

Q.—Your talk was with Dennis Van Liew, was it?
A.—And Tanis.

Q.—You didn't know what it was? A.—No, sir.

Q.—You never heard? A.—Never inquired.

Q.—And you paid out to Dennis Van Liew \$150, when it was claimed Tunis was in some kind of a scrape, and didn't even ask what kind of a scrape it was? A.—I didn't ask, and didn't allow him to tell me, either.

Q.—Then, you say, he got into another scrape, when you paid Dennis Van Liew \$100. Did you pay him \$100 10 for him besides? A.—I did.

Q.—What was that scrape about? A.—Something about a horse; they broke somebody else's wagon—and some oats, or something; I can't tell the story; I don't know how it was.

Q.—Did he break somebody's wagon? A.—I can't tell; I never inquired, and did not want to know.

Q.—Didn't you know at the time, when you paid the \$100, what it was for? A.—No, sir; I knew it was something of that character, but I did not inquire, and 20 did not want to know.

Q.—And that was the sort of material you used to make up this mortgage, was it? A.—Yes, sir.

Q.—Where did you get the \$200 new wagon? A.—I got it made at Sine's shop.

Q.—Did you order it made? A.—I did.

Q.—And have it made of extra width? A.—I think it was.

Q.—For your accommodation? A.—Yes, sir.

Q.—After you got the wagon what did you do with it? 30
A.—I had it about two or three months—

Q.—Answer my question. A.—I turned it over to Tunis.

Q.—When you first took the wagon from the shop what did you do with it? A.—I used it, and he used it.

Q.—Was he living with you then? A.—Yes, sir.

Q.—How long did he live with you after that time?
A.—He lived with me that Winter.

Q.—How much longer? A.—I think he only lived with me a part of the time; he was farming the old 40

homestead, or working there, and part of the time lived home, and part of the time up there ; and he got married the Winter I got married.

Q.—During the time he lived with you, and until you were both married, this wagon was on your premises?

A.—Yes, sir.

Q.—And used by you both together in common ? A.—Yes, sir.

Q.—After he married, what became of the wagon?

10 A.—He took it in his possession.

Q.—He took it off to his home ? A.—Why, of course he did ; when he went to keep house he took it.

Q.—Did you ever have any use of it after that ? A.—I think, maybe, I rode in it with him ; I don't think I ever hooked my team to it ; the wagon I gave him in the outset the horses ran away with him and broke it all to pieces about the time he took this wagon.

Q.—This wagon got broken up ? A.—No, sir ; the one I gave him in the first place ; I gave him some har-

20 ness.

Q.—How long did you and he use this wagon, in common, after you got it ? A.—Not over three months.

Q.—Were you not married a year before Tunis was ? A.—No, sir ; I was married in October, and he was married in the Winter.

Q.—You got this wagon before you were married, didn't you ? A.—Yes, sir ; a little while before.

Q.—Two or three months, I think, you said ? A.—Something like that ; I don't remember.

30 Q.—You used the wagon on up till you were married—when you were married Tunis was out West, was he not ? A.—No, sir.

Q.—Was he home when you were married ? A.—I forget about that—whether he got back when I was married or not ; I suppose he was at home—I believe he hadn't got back ; I got married in October, and I don't think he got back until after I was married.

Q.—When he was out West, when you were married, you had this wagon in your possession ? A.—Yes, sir.

40 Q.—He started farming on the homestead farm the

next year after he got married—did he keep house the first year that he was married? A.—No, sir; I think not.

Q.—Where did he live? A.—He lived part of the time with me and part of the time on the farm.

Q.—Where was this wagon during this year? A.—Sometimes he would leave it at my house, and sometimes take it up with him where he was, home; sometimes he would go and leave one horse, and go up there horse-back, because he had his round.

10

Q.—During this time he lived home with you part of the time, didn't you use this wagon? A.—Very little.

Q.—You took it if you wanted to? A.—I had another one.

Q.—You took it if you wanted to? A.—If it was there I used it, perhaps, but I don't remember that I did use it.

Q.—When he took it away, did he take it against your consent? A.—No, sir.

Q.—Didn't you permit him to take it to start in the 20 world? A.—No, sir.

Q.—You let him take it as your son? A.—I had given him one.

Q.—But this particular one? A.—No, sir; I did not.

Q.—You allowed him to take it and use it? A.—Yes, sir.

Q.—You made no objection? A.—I don't know if I did or did not; I had another one.

Q.—What did that wagon cost when new? A.—I think \$205.

30

Q.—You charged it after all this use, in the account you made up, as \$200? A.—That is what we counted it.

Mr. Hulsizer.—You hadn't used it but three months, had you? A.—No, sir; I hadn't used it—

Mr. Bergen.—Never mind, Mr Hulsizer.

Further cross:

Q.—This set of double harness, you charged him with 40

what price did you put on it? A.—\$100; it cost \$105.
I think.

Q.—Where did you buy it? A.—New Germantown.

Q.—What did you pay for it? A.—\$105, I think.

Q.—Are you certain about that? A.—I think so.

Q.—You took this home when you bought it? A.—
I never used it in the world, never; he has this harness.

Q.—What did you do with it after you took it out of
the shop? A.—I did not take it out of the shop.

10 Q.—Who did? A.—Tunis.

Q.—Did you authorize him to go and take it? A.—It
was made for him.

Q.—Did you get it made for him? A.—Yes, sir; I
did; he and I together; we both joined in the order.

Q.—You both ordered it together? A.—Yes, sir;
certainly; he wanted this set of harness, and I permitted
him to have them made as he wanted them.

Q.—You say you never used that set of harness?

A.—I never used that set of harness myself, I had an-
20 other set.

Q.—When you ordered it, did you intend it as a gift
for him? A.—No, sir; I did not; only for his benefit;
I had given him some once.

Q.—Did you charge him with the harness anywhere?
A.—I had it on a piece of paper.

Q.—You put it down at the time, did you? A.—
About the time.

Q.—How long a time after? A.—I don't remember
about that.

30 Q.—You say you charged him with a horse worth
about \$200—where was this horse when he took it?

A.—I think he was over on the Rockaway farm.

Q.—Do you mean the farm he lived on? A.—No.

Q.—The farm that he was working on shares? A.—
No, sir; the old homestead farm; I was hiring men to
run that farm; he had nothing to do with it, but went
there; I was gone West then.

Q.—Who was in possession of this homestead farm, as
you call it, at the time that this horse, as you claim, was
40 taken out? A.—I was.

Q.—What kind of a horse was it? A.—A brown horse.

Q.—Where did it come from? A.—Fisher Pidcock's.

Q.—Who bought it of him? A.—I traded one horse for two.

Q.—Whose horse did you trade? A.—My own.

Q.—A horse that Tunis had an interest in? A.—No, sir; no more than all the rest of my property.

Q.—Didn't Tunis Melick's grandfather give him a horse, and didn't you use the horse and trade it off and get another one for him, treating it as your own property, but calling it his, during his minority, and when he came of age, and was not this horse the result of those transactions and dealings? A.—No, sir; I—

Q.—Well, that is enough. A.—Well, that is the end of it.

Q.—You say he made a trip out West, and you paid him \$300? A.—To start with.

Q.—How did you give it to him? A.—In money.

Q.—Did you have it in your pocket? A.—He had it in his pocket. 20

Q.—Did you pay him the money? A.—I paid him produce, which he took to market and sold for it.

Q.—I asked you if you gave him the money? A.—I did not.

Q.—You gave him no money? A.—I don't remember if I gave him enough to make it up to that, I forget about that; that is what he started with—about \$300.

Q.—He was working for you, was he not? A.—Certainly. 30

Q.—Did you pay him wages? A.—I never agreed to pay him any wages.

Q.—In this settlement which you made with him, in which you charged him \$300, did you allow him anything for his wages at all? A.—He had a big pay for his services outside of that.

Q.—Will you answer my question? I ask you if, when you settled with him, and let him have this \$300, in the way you say, did you allow him anything for wages at

that time--make any statement of wages; was that taken into account? A.—I don't think there was ever any wages talked between us; never, in the world.

Q.—How many years did he work for you? A.—I think about three years after he was 21.

Q.—How long before? A.—He was with me all his lifetime, excepting when he was off at school.

Q.—You say that he wanted some money, and you wrote to your brother-in-law to let him have what he wanted, etc. Have you any written acknowledgment from Tunis D. Melick that he got any money from your brother-in-law? A.—Yes, sir.

Q.—What is the written acknowledgment? A.—That he got and sent him the money, and allowed it in the settlement.

Q.—I ask you if you have any written acknowledgment? A.—I think we had at the time we settled—a note that he gave Mr. Klein for the money which he received; and Klein sent the note on to me, and had that in a settlement.

Q.—Have you a distinct recollection of the fact? A.—I have a remembrance of the circumstance in my best mind.

Q.—I ask you if you have a distinct recollection of ever seeing any such a note? A.—Yes, sir.

Q.—You have? A.—Yes, sir.

Q.—What was the amount of the note? A.—I think in the neighborhood of \$200.

Q.—Have you any recollection of the exact amount? A.—No, sir; I have not.

Q.—You say that there was a lot of sheep, and that his share was \$300; I didn't quite understand that? A.—Well, he was farming on shares, and we put in a stock of sheep; he was to have half and I half; and when we made this settlement we figured up this sheep and all, and I turned over all the interest in the stock that I had to him; and after that I didn't have anything to do with the sheep.

Q.—Did you ever sue him for the sheep afterwards?

A.—Not these sheep; we got sheep afterward again—a year or so afterwards we got another lot of sheep.

Q.—You had a lawsuit about that? A.—No; I don't think we had a lawsuit about it.

Q.—What did you say about a sleigh you got at Hackettstown? A.—He got a sleigh at Hackettstown, and he gave his note; I think it was \$50 or \$15; I don't know which; and when it came due I took the note up.

Q.—Where was it made payable? A.—I forget whether it was payable in bank or to the parties. 10

Q.—Well, if you took it up, you know? A.—Well, a man came with the note, and I took it up, any way.

Q.—You paid it? A.—Yes, sir.

Q.—What did you do with the note? A.—I think it was burned up there, with the other papers, at the time we made a settlement there at the office, and he agreed to give me a mortgage for \$1,200.

Q.—But he had not given the mortgage at that time? A.—No, sir.

Q.—And you destroyed all these evidences of indebtedness? A.—I think we put them all in the stove; that is my recollection, at that time, before the mortgage; because I supposed we would do just what we did do. 20

Q.—You say you bought a four-spring wagon at Sutton's sale? A.—Yes, sir; I forget whether it was struck off to him or to me.

Q.—What was the amount of the note you gave at that sale? A.—I think it was considerably over \$100.

Q.—What does the \$90 represent? A.—A wagon—that was what Tuney got out of it. 30

Q.—Part of the things were his and part yours? A.—Yes, sir.

Q.—Was there not a horse, also? A.—A colt—I bought a colt.

Q.—Do you know how much that was? A.—I think somewhere between \$50 and \$60; I don't remember; somewhere there.

Q.—And you both went on the note? A.—Yes, sir.

Q.—About the time this note came due, did not Tunis 40

D. Melick bring you money to pay his share of it? A.—He did not.

Q.—At the time this mortgage was made you knew that Tunis had been sued, did you not, for \$3,000? A.—I did not know what he was sued for; I knew he had a summons served on him about this time, but the amount I never knew.

Q.—And the trial was shortly to come of? A.—The trial was expected to come off in the Somerville term,
10 but I forget how long it was.

Q.—You attended that trial? A.—Yes, sir.

Q.—And knew all about the result—the verdict? A.—Why, when the verdict was given I heard all about it; I was not there, but I heard all about it; I heard afterwards.

Q.—You attended the trial? A.—I was there at the trial; yes, sir.

Q.—When did you first know that he had been sued?

A.—I don't know whether it was before the first of April,
20 or after; I forget about that.

Q.—Who told you? A.—That I do not know; I do not remember; I think he told me himself, though.

Q.—Did you have any talk with him about the suit?

A.—Well, I think about a week before the trial came off we had a talk about it.

Q.—When he told you about the suit—that he had been sued for \$3,000—
A.—He didn't tell me about the amount.

Q.—When he told you he had been sued, didn't you
30 ask him what it was about? A.—I knew that the dog bit him for several months before he was sued.

Q.—All these items that made up this account—how long had they been due to you—take the longest one before this mortgage was given? A.—Well, I think we didn't go back, except for the wagon and harness, for anything else back of the indictment money.

Q.—Why did you stop there? A.—How do you mean?

Q.—Why didn't you go on and estimate all he owed

you? A.—Well, because a great deal that he owed me I gave to him.

Q.—Is that the only reason you didn't go on back?

A.—Certainly; I didn't put any more claim against him than I claimed he should pay.

Q.—This property which you took a mortgage on, what was its value to you at that time? A.—Well, my father thought it was worth— [Interrupted.]

Q.—No, no; what was it worth then? A.—\$1,000—\$1,200; everything was high then; according to the way 10 things were, \$1,200 or \$1,400.

Q.—You calculated it was worth \$1,200? A.—That was the calculation.

Q.—And you took a mortgage for that amount? A.—Yes, sir; that threw off the balance.

Q.—Why did not Tunis's wife sign that mortgage? A.—Well, I don't think she was ever asked to.

Q.—Did you ever talk to her about her husband's giving this mortgage? A.—I don't think I did.

Q.—Why not, if you have any reason? A.—The 20 reason was, I did not think she had any interest into it, without Tunis died before she did.

Q.—Did you ever collect any interest on this mortgage? A.—No, sir.

Q.—Did you ever pay any taxes on it? A.—They got it in with my personal property.

Q.—I ask you if you ever gave it in to be taxed?

[Objected to.]

30

The Court.—I do not think that is competent.

Q.—Have you stated to us, correctly, all the items that went to make up this calculation—to make this mortgage?

A.—I do not remember whether I have or not; I have given you to-day what is in my mind; I do not know whether it is all or not.

Re-direct examination:

Q.—About this money you gave to Van Liew on these 40

two different times—I think you said that Tunis was present and knew all about it? A.—Yes, sir; he knew all about it.

Q.—Was he present at the second time? A.—Tunis and another man were with Mr. Van Liew.

Mr. Bergen.—Who was that other man? A.—I do not know.

10 The Court.—That was on the first occasion? A.—That was on the second occasion, when another man was with Mr. Van Liew.

Q.—That was on the occasion of the settlement of the Basking Ridge matter? A.—Yes, sir.

20 [Counsel for the complainant produced the record of sales made by the Sheriff of Hunterdon County, on page 128, by which it appears that the Sheriff's fees on sale under execution in the case of Fisher Pidcock, complainant, v. Clarence Melick et al., defendants, amounted to the sum of \$44.42.]

[Counsel for the defendants consents that this proof shall have the same force and effect as if the return of the Sheriff to the execution in that case had been produced and offered in evidence.]

Adjourned.

30

FLEMINGTON, N. J., Thursday, Sept. 2, 1887.

ERNEST MELICK, recalled on behalf of the Defendants.

Direct examination, by Mr. Bergen :

Q.—When you were called before you had not a clear

40

recollection of the date of the conversation.
was in 1882.

A.—It

Q.—Can you tell us why you know that was the date?
A.—I went to Illinois in the Spring of 1885; I was there six years; I sold out in the Fall of 1881 and came home that Winter, and in the Winter of 1882; and I was home that year; I was not in any business that year; and then I worked for Peter W. Melick.

Q.—Were you at home, or in New Jersey, between 1875 and 1881?

10

Mr. Shipman.—Too leading.

A.—I was home sometimes twice a year.

Q.—How do you tell, or how do you fix in your mind, the date as being in 1882, and as not being on some of those visits—have you any reason for that?

A.—I

was working there.

Q.—Where? A.—Working at Peter W's.

Q.—And when you made these visits? A.—I was 20 there off and on then, but I wasn't long in the town.

Q.—I mean on these visits, did you work for anybody?

A.—No, sir; I did not.

Cross-examination, by Mr. Shipman:

Q.—You were sworn before in this business? A.—I was.

Q.—You were asked then whether you could fix the date when you came home? A.—Well, directly—when I came home after I sold.

30

Q.—And you said you thought it was four years ago, didn't you? A.—I didn't fix the date then, particularly.

Q.—Didn't you swear it was in 1881 when you came home? A.—No; I don't think I done that; I came home—I think I came home in 1881, too, and went back to Illinois; didn't I swear that way—that I came home in 1881? I did in the Fall of 1881; but I came home to stay in the Winter of 1882—Spring; early; before the 1st of April, 1882.

40

Q.—Didn't you say you came home in 1881? A.—
Yes; I did come home in 1881; I had one sale in Illinois
of personal property; I can make this all straight now—
[Interrupted.]

Q.—Didn't you swear before that the conversation
took place in 1881? A.—No, sir; I didn't swear
positive to that; I could not have done it.

Q.—Didn't you say it was four years ago from the time
you took this testimony before? A.—I said that it
10 might have been.

Q.—Now, didn't you swear that he did not tell you
that he had taken judgment to save Tunis on that other
case? A.—No, sir; I did not; I never did, because
this thing has been in my mind—

Mr. Bergen.—Do you use the word judgment or
mortgage?

Q.—Well, mortgage; didn't you swear on the other
20 trial that he did not tell you that he had taken the mort-
gage to save Tunis? A.—No, sir; I did not; I never
did; that is what he did tell me.

Q.—Didn't you swear when you were asked before
whether you referred to this 10 acres or to all Tunis's
property, and what you were speaking of, the 10 acres or
the 5, and you said you did not recollect exactly; did
you swear to that? A.—I swore that I did not know
then whether it was one or both; it was his property
that he got from his grandfather that was in my mind in
30 a general way; that is what I swore then and the same
thing goes in my mind— [Interrupted.]

Q.—When did you think about this in reference to the
time when this conversation occurred? You were sworn
before here when we had this examination before; do
you remember what you swore about it then? A.—Yes,
I remember pretty near.

Q.—What did you swear to? A.—About what?

Q.—About the time when this conversation took place?
A.—Well, that thing slipped my mind a little bit then;
40 it is not my case; when I have business of my own I

pay particular attention to that ; when it is somebody else's I don't pay so much attention.

Q.—What did you swear to when you were examined as a witness here some weeks ago in reference to this matter, as to the time when the conversation took place between you and Peter Melick ? A.—I didn't put that so pointed that time.

Q.—What did you swear to ? A.—Well, I swore to that ; I wasn't so strictly positive about it then, about the time. 10

Q.—Didn't you fix a year ? A.—I did not.

Q.—Didn't you say it was in 1881 ? A.—No, I didn't ; I didn't fix no time.

Q.—Didn't you say it was about four years ago ? A.—I said it might have been four years ago, and might have been more.

Q.—Is that the nearest you can swear as to what you swore to on the trial before ? A.—No, it is not the nearest ; I said it might have been more ; I said it might have been 1882 then, and when I came to think, after 20 you put my mind on it, I said it must have been 1882, because I came home in 1881 and 1882.

Q.—Is that what you swore to before ? A.—Yes, I swore to all that.

Q.—Then what did you want to come back and swear to all this again to-day ? A.—What did you want me to ?

Q.—I didn't want you to ; I didn't call you, did I ? A.—You are talking to me now.

Q.—I am asking you what business you have here to-day ; who called you here to-day ? A.—I am talking 30 to you now.

Q.—Eh ? A.—Tunis Melick called me here.

Q.—Did he subpoena you over again ? A.—Yes.

Q.—When ? A.—Last Saturday, I think.

Q.—How often have you talked with Tunis Melick since you went off the stand here before, when you were examined on the 28th of July last ? How many times have you talked with Tunis D. Melick ? A.—Well, I have talked once with him since that. 40

Q.—Where? A.—Along the road; I rode with him from Germantown once; I seen him in Clinton the other day.

Q.—That is three times? A.—No, it is not.

Q.—How many times then? A.—I seen him in Clinton last Saturday, and he gave me this and tells me to come here to-day.

Q.—When before that had you seen him? A.—Some-time before.

10 Q.—How long before? A.—About three weeks.

Q.—Well, where? A.—Between Clinton and Rockaway; I was riding with him in a wagon.

Q.—Well, you talked with him about your evidence, didn't you? A.—I don't know as I did.

Q.—Didn't you talk something about it? A.—Oh, we talked something about it, as we did many times about the same thing.

Q.—He asked you if you could not remember the dates better, didn't he? A.—No; I told him that I had that
20 in my mind.

Q.—You talked it over, did you? A.—Yes, we talked about it, yes.

Q.—How much did you talk about it? A.—Oh, not very much; we had a good deal other stuff to talk about.

Q.—How much did you talk about this? A.—Not very much.

Q.—He told you to think it up, didn't he? A.—No, he didn't tell me that.

30 Q.—Well, you have talked with him since about it? A.—No.

Q.—Did you talk with him Saturday at Clinton about it? A.—No, sir.

Q.—How far did you ride with him that day? A.—From Clinton to Rockaway; about six miles, I suppose.

Q.—Did you ride back with him again? A.—No.

Q.—How often have you talked with counsel about it? A.—Never.

Q.—Did you talk with Mr. Bergen anything about it?
40 A.—No, sir.

Q.—You talked with him this morning before you went on the stand? A.—Talked a little to him just right there; yes, sir.

Q.—What did you tell him about it? A.—Told him I had been thinking this thing over since the other trial.

Q.—Did Tunis Melick pay your fees Saturday? A.—Yes, he paid me to come down here.

Q.—How much did he give you? A.—He gave me a dollar.

Q.—When did he give you that? A.—Saturday. 10

Q.—Did he give you any more besides that? A.—No, sir, he didn't; he just gave me a dollar and says—

Q.—And said he wanted you to come down? A.—That is all; and that is the last I seen him; I was talking to Mr. Wolverton when he went away; he said "Here, I want you to come down Thursday," and gave me a dollar, "can you come down," and I said "I can." That is all the conversation we had about it on Saturday.

Q.—Your memory isn't so very good, is it? A.—Well, it is when I want it to be; when I get to thinking 20 up; sometimes I let things slip that ain't my business, as I told you before.

Q.—Sometimes your memory is very bad, isn't it? A.—Oh, not so bad; I can remember as good as the common run, I think.

Q.—What are you doing now? A.—Well, I am here to-day; do you mean what am I doing when I am home?

Q.—Yes? A.—Picking peaches.

Q.—For whom? A.—Mr. Stiger.

Q.—Well, before that? A.—Well, working harvest 30 and keeping house.

Q.—Do you keep pretty straight now? A.—What do you mean?

[Objected to as not cross-examination.]

DEFENDANTS REST.

[Counsel for complainant states that he desires to introduce the stenographer's copy of the testimony of Mr. Voorhees taken in the previous trial, and asks counsel for defendants if he will admit it as being the testimony of Mr. Voorhees taken at the time stated therein.]

10 Mr. Bergen.—If the Court please, we should object to the introduction of any stenographer's notes of Mr. Voorhees's testimony unless it was for the purpose of contradicting him.

Mr. Hulsizer.—That is the object of offering the testimony.

The Court.—You wish to prove that he did not testify on the former trial to as much as he has testified to on this trial?

20 Mr. Hulsizer.—Yes, sir.

The Court.—One of the objects of the rule in regard to testimony of that character is that the witness who has testified to apparent contradictions may have an opportunity of explaining how the contradictions arise. I do not suppose that Mr. Bergen will make any objection to the absence of proof of the fact that those notes are the notes of the stenographer at the previous trial.

30 Mr. Bergen.—No, I won't stand on that; I want you to call Mr. Voorhees and examine him in the proper way; but I will consent, after the examination by Mr. Voorhees of the testimony, that that is a correct copy of the testimony taken at the previous trial.

JOHN M. VOORHEES, recalled on the part of the Complainant.

Direct examination, by Mr. Shipman:

40 Q.—You were a witness on this matter before, I be-

lieve? A.—I was, by the notes, October, 1885.

Q.—And you stated in that testimony what took place at the time when that mortgage was executed? A.—I did not understand your question.

Q.—In your testimony before I think you testified as to what took place between Peter W. Melick and Tunis D. Melick, as far as you recollect it, at the time of the execution of the mortgage? A.—I did.

Q.—Now, then, do you remember that you were asked whether you testified to all that you remembered with reference to the transaction at that time? A.—I do not recollect that I was asked that question, but if it is there I have no doubt I was. 10

Q.—It is here, and you answered that you had; and then do you remember that you were asked whether since then you had had any conversation with Peter W. Melick with reference to the conversation, and that you answered that you had not; that you had no recollection of it, and you did not think you had; do you remember that? A.—I don't remember that, but if I should be asked the question now I should give the same answer. 20

Cross-examination, by Mr. Bergen:

Q.—Mr. Voorhees, I did not quite understand this last answer that you made; do you mean to say that you had no conversation with Peter W. Melick from the day that mortgage was executed in regard to it?

Mr. Shipman.—I object. What Mr. Voorhees testified to last was merely voluntary; he said he did not recollect; that was an answer to the question, and anything he added was improper and ought to be stricken out, and all counsel can cross-examine about is what Mr. Voorhees testified to on that examination. I ask to have the latter part of the answer stricken out because it is not material. 30

The Court.—As I understand the answer of the witness it was tantamount to saying that he did not recollect

whether he testified so or not, but that was the fact.

Witness.—That is the fact.

Q.—(Previous question repeated.) A.—I did not.

Q.—Did you have a conversation— [Interrupted.]

[Objected to by Mr. Shipman on the ground that the witness has testified to that already.]

10

The Court.—I suppose, Mr. Shipman, that the witness has a right to explain, and counsel has a right to call his attention to, a discrepancy between his testimony given on a former examination and his testimony given at this trial; so far as the question calls for an explanation of any discrepancy, it is competent.

Q.—(Previous question read.)

20 The Court.—That has already been testified to, hasn't it?

Mr. Bergen.—It seems to me it is fair to this witness to allow him to explain and say now why he has a different recollection than he had a year ago on this subject.

Mr. Shipman.—I object to that, your Honor; if we put in that testimony, then they might possibly be permitted to call Mr. Voorhees to make some explanation; 30 but now I do most seriously object to it.

The Court.—It is not necessary to put in the testimony; the witness has already admitted that he did so testify at the former trial, now he is entitled to explain the contradiction.

Mr. Shipman.—Does not your Honor perceive at once they are now making him their witness; they cannot make him a witness until we are through with our case.

40 Mr. Voorhees wants to go away, and if you think it is

competent for him to make an explanation about it we shan't object to their making him their witness now.

The Court.—If you had intended to put in the evidence of Mr. Voorhees on the former trial to contradict what he testifies to on the present trial, you ought, strictly, on your cross-examination of him then, to have called his attention to what he testified on the former trial; and it is a mere matter of courtesy on the part of counsel on the other side that you have been permitted now to have him recalled and to continue your cross-examination of Mr. Voorhees, and this is really now a re-direct examination by Mr. Bergen on that point. 10

Q.—Mr. Voorhees, you have stated here what seems to be a contradiction which I would like to have you explain; that is, in answer to Mr. Shipman's question you say you had no conversation with Mr. Melick after the mortgage was given, and in reply to my question you say you had? 20
A.—What I meant to state was that at the time of the examination I had no recollection of any conversation with Peter W. Melick about the matter subsequent to the time that that paper was executed, and what I intended to say this morning was, that if the same question was asked me I should say the same thing, that at that time I had no recollection of it; I have a recollection that there was a subsequent conversation between Peter W. Melick and his son, now, which recollection I did not have at the time of that examination, and that recollection was brought about by my finding the paper that I have sworn to as having been executed in my office, when I was making a search among Tunis D. Melick's papers, and which was about, perhaps, two months or three months before he was subpoenaed here as a witness. I cannot say the time, or I don't recall the time; I had no recollection whatever of that transaction at the time I was a witness before, and there was nothing occurred then that called my attention to it in any way, and it had been some years before; these parties had had a great deal of litigation and it did not occur to 30 40

me in any way ; I had not thought of it, and would not have thought of it but for running across this paper among Tunis D. Melick's papers, when he had employed Bergen & Gaston, and I was getting the papers I had ready to render to them.

Q.—On the day this paper was executed was there any other paper executed by Tunis D. Melick?

[Objected to by Mr. Shipman.]

10

Mr. Bergen.—I offer to prove that on the same day Tunis D. Melick also executed a chattel mortgage to cover up his property, the purpose being to prevent the collection of this judgment ; if the Court thinks it is incompetent I do not want to insist upon it.

The Court.—I do not think that is material ; it raises a new issue.

20

Mr. Bergen.—All right ; I withdraw my question.

Mr. Shipman.—Mr. Voorhees, I will ask you a question or two in reference to your recollection. There was considerable litigation between Peter W. Melick and his son, Tunis, before that, wasn't there ? A.—I don't think there had been any.

Q.—Don't you remember an action of ejectment being tried here between Peter W. Melick and Tunis D.? A.—I am the poorest hand in the world to remember dates, 30 but I think that was a long time afterwards ; I am talking now about the date of the execution of the mortgage the records will show ; I remember, if you mean by "ejectment," the unlawful detainer case ?

Q.—Yes. A.—That was in 1883 or 1884, and the reason I know that is, because I recently ran across some paper—the certiorari ; there was a certiorari taken in that case, and the parties settled the matter, and I have the original certiorari.

Q.—Don't you remember that Peter W. Melick brought 40 an action of ejectment against Tunis D. Melick to turn

him off the farm after these unlawful detainers were disposed of? A.—I think he did.

Q.—And don't you remember that that was afterward—you were the attorney for the defendant in the case?

A.—I was Tunis D. Melick's attorney, if there was a suit brought, and I think there was one; I referred to the unlawful detainer suit as being the ejectment suit.

Q.—And there was an ejectment suit in the Circuit Court here pending, and when that came to be tried it was agreed to be settled, don't you remember? A.—10
I think so.

Q.—Mr. Clark was with you, I was for Peter W. Melick, and the matter was talked over and a friendly understanding come to, and afterwards they went to Gaston & Bergen to try and fix up all their matters—do you remember that? A.—I remember the fact that there was a case pending here in this court, and it was never tried; and, as I understand, their matters were to be settled; and I learned from Tunis they went to Gaston & Bergen 20
to have it done.

Q.—And there were other matters, weren't there? A.—Oh, yes.

Q.—An action against his son for waste? A.—
There may have been, but I think that was another son of Peter W.'s.

Q.—Weren't they both in it? A.—Possibly they were; I cannot recollect.

Q.—You were the attorney of the defendants? A.—
I was the attorney of the plaintiffs.

Q.—And there was also a bill in Chancery filed, wasn't there? A.—30
I think this is the bill in Chancery you refer to; I think it was a suit for partition, and I think there was a suit for waste.

Q.—There was considerable litigation, that is all. A.—
But my recollection, Mr. Shipman, is that that was since this time; I said I thought that was 1883 or 1884.

Mr. Bergen.—Since the giving of the mortgage, you mean? A.—I do.

Mr. Shipman.—You think this action of ejectment was since giving the mortgage? A.—I think, sometime since.

Q.—And your last testimony, is that since this action of ejectment was settled, or before? A.—The last testimony, I gather from the notes, is the 2d day of October, 1885; that is the only recollection I have of the date.

Q.—Do you remember when the action of ejectment was settled? A.—I do not.

10

SAMUEL SUTTON, sworn on the part of the Complainant.

Direct examination, by Mr. Hulsizer :

Q.—You were sworn here in a suit before between Pidcock and Melick, were you not? A.—Yes, sir.

Q.—Where do you live? A.—I live in Hunterdon County, near New Germantown.

Q.—How long have you lived there? A.—Close to 20 30 years.

Q.—What have you been doing all that time? A.—I have been farming all that time; I am farming now.

Q.—Were you farming in 1876? A.—I was.

Q.—What time did you have a vendue? A.—I don't know as I can tell you what year it was in, but it was about nine years ago, I think; nine or ten years ago; along about the first of April.

Q.—Ten years ago would be 1877; is that about right? A.—Well, I guess it is; yes.

30 Q.—In April? A.—Yes.

Q.—Was Tunis D. Melick to that vendue? A.—Yes, sir.

Q.—And Peter W.? A.—Yes, sir.

Q.—Did Tunis D. Melick buy anything at that vendue? A.—Yes, sir.

Q.—Do you remember what it was? A.—He bought a wagon.

Q.—Do you remember how much he paid for it?

A.—No, sir; I don't, exactly.

40 Q.—How was it paid for? A.—Well, he gave a

note, and Peter W. was on his security, and Peter W. paid me when the note came due; I don't remember what the amount was that Tunis paid for the wagon.

Q.—Do you remember testifying before that it was in the neighborhood of \$80 on the other trial? A.—

Well, I might have said so, and it might have been about that, but I won't say now.

Q.—Do you remember what kind of a wagon it was?

A.—Yes, it was a platform spring wagon, a body wagon that cost me over \$200, and no doubt it would be \$80; it 10 would be cheap then at that.

Cross-examination, by Mr. Bergen:

Q.—Mr. Sutton, did Peter W. Melick buy anything at that sale? A.—Yes, sir.

Q.—Do you know what that was? A.—It was a colt.

Q.—Do you know how much he paid you for it? A.—No, I don't know as I do, but I think somewhere about the neighborhood of \$40 or \$50, thereabout.

Q.—Wasn't the price of the colt and the price of the 20 wagon put in one note and signed by Peter W. and Tunis together? A.—I don't think it was; I think I had two notes; I won't be certain about that.

Q.—Now, how did Peter W. Melick pay you, in cash, or did you owe him? A.—Why, he paid me in cash.

Q.—Both notes? A.—Well, I don't know but what he did.

Q.—Did you owe him at that time? A.—I don't know as I did.

Q.—Have you any recollection on the subject? A.— 30 I don't think I owed him anything at that time; I have owed him and he has owed me.

Q.—Are you able to say when that debt was paid, either one note or two notes, that it was not paid by his taking a credit on the account you owed him? A.— No, sir; I don't think it was done that way.

Q.—Do you recollect anything about it? A.—I think he paid me the money.

Q.—You don't know where the money came from?

A.—Well, it came from him.

Q.—Well, beyond that, I mean ?
 I don't know anything about that.

A.—Oh, no ; I

Mr. Bergen.—I am willing to admit that the copy of the stenographer's notes contained in Book marked No. 1, Fisher Pidcock v. Clarence Melick, is a correct copy of the stenographer's notes of the testimony of the witness taken in that case, but reserve the right to object to its admission in evidence as testimony in this case.

10

Adjourned.

FLEMINGTON, N. J., Monday, Sept. 12, 1887.

20

[Complainant's counsel read in evidence a portion of the testimony of John N. Voorhees, given in the case of Fisher Pidcock against Clarence Melick, at the hearing thereof, before Vice Chancellor Van Fleet, on the 2d day of October, 1885, as follows:]

30

The Court.—Was their talk at this time upon the subject of the consideration of the mortgage? Do you recollect that fact? A.—I am not able to state whether the items of consideration were talked of or not, and I am only able to state generally, that in connection with the question of consideration, all that I can recall is, that the amount of the consideration was the value of the property; I think that Tunis and his father had their talk with reference to what items should constitute that consideration, before they came to my office; I gather that from what occurred while they were there; of course, at the time that the mortgage was executed I understood from both of them, as to the consideration, that it was founded upon their past dealings; nothing for the present; that is, that there was no present consideration

40

at the time the mortgage was given; but whatever the consideration was embraced things that had transpired between the parties in times gone by; and I have a distinct recollection with reference to the horse; I know that the mortgage came to be executed at that time in consequence of the apprehension that the trial would result adversely to Tunis, and that this property would become liable for the payment of any judgment that might be obtained in that suit.

Q.—Was not the mortgage given in anticipation of the result of this— [Interrupted.] 10

[Objected to. Objection sustained.]

The Witness.—I am not willing to state what they said with reference to the consideration, nor whether they stated anything; I have no recollection of inquiring; I don't think I did; I may have done so and forgotten it; but understanding as I did at the time why the mortgage came to be given then, I probably did not inquire further particularly into the consideration. 20

Q.—Tunis D. Melick was a married man at that time?

A.—He was a married man.

Q.—His wife did not execute the mortgage with him?

A.—She did not; it was not necessary.

Q.—The mortgage bears date—

A.—The 20th of

April, 1878.

Q.—Subsequent to that time what was done with any other interest in the lands that Tunis had? A.—Within a few days I think— [Interrupted.] 30

[Objected to. Objection sustained.]

Q.—Have you stated all, Mr. Voorhees, that you remember, with reference to that transaction at that time?

A.—I have.

Q.—Have you, since then, had any conversation with Peter W. Melick, with reference to this transaction?

A.—I have not, that I have any recollection of; I don't think I have. 40

Mr. Shipman.—We desire to offer in evidence all the testimony of Tunis D. Melick, on the former trial.

[After a considerable discussion between counsel and the Court, the foregoing offer was withdrawn by Mr. Shipman.]

Mr. Shipman.—We offer in evidence now, two releases. It appears in evidence that there had been lawsuits between these parties which were settled, and that this mortgage was excepted out of the settlement, as between Tunis D. Melick and Peter W. Melick, and I offer now the release which Peter W. Melick executed to Tunis D. Melick, and also the one to him. Mr. Voorhees testified, and it appeared in the case, that there were several suits, ejectment and others—and they had an action of ejectment pending here, according to what he said, and at last Mr. Clark and myself, as appears in the testimony, told them to go and settle, and they went to Gaston & Bergen and settled, and these papers are the results of it—dated the 23d of December, 1884. They are general releases, and in the paper given by Peter W. Melick is the following: “I agree to indemnify the said Tunis D. Melick against any loss, or from being called to pay anything on account of the bond or mortgage which I have assigned to Fisher Pidcock, as I am to look to the land for the payment of the said bond and mortgage.”

[Said papers were then marked A and B of this date.]

[The release, Exhibit A, was produced by defendants' counsel, pursuant to notice from complainant's counsel, and then offered in evidence by counsel for the complainant.]

PETER W. MELICK, recalled for

Further cross-examination, by Mr. Bergen :

Q.—Do you know or did you know Jacob N. Hockenbury? A.—I know a fellow by that name.

Q.—Did he ever work for you? A.—He has worked for me considerable.

Q.—Did you ever say to him, or in his presence, in about 1879, or, as nearly as I can fix the time, about that time, that Tune had given you a mortgage, or you had taken a mortgage from Tune to keep the Klein Melicks from making their money? A.—No, sir; I never thought of saying such a thing. 10

Q.—Or anything to that effect—I may not use the precise words? A.—Or to that effect—nothing about a mortgage to Jake Hockenbury; he would be the last man I would talk to on such subjects.

ABRAM C. HULSIZER, sworn for the Complainant.

Direct examination, by Mr. Shipman:

Q.—You were present at the trial of this case before?

A.—Yes sir. 20

Q.—And Tunis D. Melick was sworn as a witness in this case? A.—Yes, sir.

Q.—He gave his testimony generally? A.—Yes, sir.

Q.—Did he say anything in that testimony, at all, in reference to this paper which Mr. Voorhees testified about? A.—Not a word.

The Court.—That is the agreement?

Mr. Shipman.—The agreement. 30

Further direct:

Q.—I refer to that paper, of which they produced a copy, purporting to be signed by him and his father?

A.—Yes, sir.

Q.—He said nothing about it on the trial at all? A.—Not a word.

Q.—He was examined thoroughly and cross-examined, was he not? A.—Yes, sir. 40

Q.—With reference to the consideration of the mortgage and all about it? A.—Yes, sir.

Q.—Mr. Voorhees was also a witness, was he not? A.—Yes, sir.

Q.—Neither one of them said a word about it? A.—Not a word.

Q.—It was not alluded to on the trial at all? A.—No, sir.

10 Not cross-examined.

COMPLAINANT RESTS IN REBUTTAL.

JACOB N. HOCKENBURY, sworn for the Defendants

Direct examination, by Mr. Bergen :

Q.—Where do you live? A.—At White House.

Q.—In the County of Hunterdon? A.—Yes, sir.

Q.—Do you know Peter W. Melick? A.—Yes, sir.

20 Q.—How long have you known him? A.—Well, I could not tell exactly; I have known him a good while.

Q.—Did you ever work for him? A.—Yes, sir.

Q.—When—what year? A.—Well, I have worked for him several different times; I lived in his house in 1879 and worked for him.

Q.—You worked in the harvest that year? A.—Yes, sir.

Q.—Did you or not hear Peter W. Melick have any conversation relating to a mortgage Tune had given him? A.—I did.

30 Q.—Just give us what that talk was, and how? A.—It was in the harvest field, me, and him, and Mr. Robinson were taking up wheat; Phil. Robinson; and I heard him talk something about it.

Q.—About What? A.—About this Klein Melick and Tune.

Q.—Tell us what he said? A.—Well, he said that he took the mortgage to keep Klein Melick from making his claim.

Q.—Who was Klein Melick? A.—Well, Klein Melick,
40 I don't know exactly who he is.

Q.—Was or not anything said about what the claim was? A.—No, sir, not that I know of, but I heard talk about its being \$1,200.

Q.—You cannot tell that? A.—He did not say what the claim was.

Q.—What were they talking about which led up to the conversation about the mortgage?

[Objected to. Question withdrawn.]

10

Cross-examination, by Mr. Shipman:

Q.—What were you doing there? A.—Taking up wheat.

Q.—You were working with Peter Melick and this other man, what is his name? A.—Philip Robinson.

Q.—They were off working with themselves? A.—A little way; we were all taking up wheat together; you know how they take up wheat?

Q.—Yes. A.—That is how it was.

Q.—They were in different swathes? A.—Yes, sir.

20

Q.—They were talking and you heard them? A.—

Yes, sir.

Q.—You heard a casual conversation? A.—Yes, sir.

Q.—You have stated all you know about it? A.—I have.

The Court.—You say you don't know who Klein Melick was? A.—No, sir.

Q.—Had you ever heard of him before? A.—I had heard of him before; but I don't know exactly who his father is, or anything more about it.

30

Q.—Was he an entire stranger to you when you heard his name mentioned? A.—Yes, sir.

Q.—Had you ever heard of him before that time? A.—I don't know but what I had.

Q.—You don't know that you had? A.—I don't know but what I had, and seen him before that time, too.

Q.—Was his name familiar to when you heard them talking about it? A.—Yes, sir.

04

Mr. Bergen.—The object of my question, when I asked what led up to this conversation, was to show that he understood what they were talking about.

Re-direct examination:

Q.—You say that you had heard of Klein Melick before—had you heard anything in connection with Tune, or having any trouble? A.—No, sir.

Q.—But you knew the man when you saw him? A.—
10 Yes, sir.

Re-cross examination:

Q.—Where do you reside? A.—White House.

Q.—Have you known Peter Melick at any time? A.—
Yes, sir; ever since I was a boy; my father used to live in his house.

Q.—You never was sworn before in this cause? A.—
No, sir.

Q.—When were you subpoenaed as a witness in this
20 case? A.—Last week; I moved from Pleasant Run to White House last week.

Q.—Whom did you tell this to? A.—What say?

Q.—When did you first tell this? A.—When did I first tell it?

Q.—Yes—what you have sworn to here? A.—Last week.

Q.—That was the first you ever told it? A.—Yes, sir.

Q.—You had known of these suits going on? A.—
No, sir.

Q.—Had you ever known Tunis Melick? A.—Yes, sir.

Q.—When have you met him? A.—I worked for him and lived in his house.

Q.—How long? A.—About nine months I lived in his house.

Q.—When? A.—I can't exactly tell what year that was in.

Q.—How long ago? A.—Some eight or nine years ago.

Q.—Latterly have you been intimate with him? A.—
40 I ain't seen him in several years until here the other day.

TUNIS D. MELICK recalled.

Direct examination, by Mr. Bergen :

Q.—Your father testifies that he had a talk with you in relation to giving him a mortgage, this mortgage was \$1,200, and that he and you had made a calculation, and that the amount that was due from you to him amounted to, as he said, \$1,200 or \$1,500, and you finally agreed to \$1,200. What have you to say as to the truth of that?

A.—No, sir; I never owed him anything.

10

Q.—Did you have any such talk?

A.—No, sir;

never had any such talk; he always— [Interrupted.]

Q.—Just answer my question; he said you got indicted, and he paid between \$200 and \$300 for you; what have you to say to that?

A.—I never was indicted; he never paid a dollar for me in any way, shape or manner, any way.

Mr. Hulsizer.—Do you say you never were indicted?

A.—I was indicted by a woman; but he never paid anything for me in any way, shape or manner.

20

Further direct:

Q.—I show you a paper, and ask you to look at that, and see if you can tell me what it is?

A.—Yes, sir.

Q.—What is it—it is a bill of cost in that indictment, is it not?

A.—Yes, sir.

Q.—Who paid it?

A.—I did.

Q.—The costs amount to \$77.75 and the fine was \$20, making \$97.75; there was a deduction of \$11.05, leaving a balance of \$86.70, who paid that?

30

A.—I paid that.

Q.—Do you know who you paid it to?

A.—To the Clerk.

Q.—Evart?

A.—Yes, sir.

Q.—He said you got in a scrape at Liberty Corner, and Dennis Van Liew came over, and he paid him at one time \$200, and also \$150, to settle the trouble, and that you were present—what have you to say to that?

A.—There is no truth in it; he never paid any money around Liberty Corner for me.

04

Q.—Were you ever present with Dennis Van Liew at that time when he paid him money of this sort? A.—No, sir.

Q.—Did he ever pay Dennis Van Liew any money in your presence? A.—No, sir.

Q.—Now, I want you to think and to recall every transaction you have ever had in the neighborhood of Liberty Corner, and state whether you were in any scrape with anybody there? A.—Nobody; I never spent a dollar
10 there with anybody in the world there for anything—not a dollar.

Q.—Is Dennis Van Liew living or dead? A.—Dead.

Q.—How long has he been dead, about? A.—Four or five or six years.

Q.—Do you know exactly? A.—No, I don't know exactly; four or five years.

Q.—He said another item of the consideration of the mortgage was \$200 for a new wagon; what have you to say about that? A.—He got that wagon when he was a
20 widower in 1870, and he drove the wagon right on until he got married, somewhere in '70; I didn't get married until 1872; we drove the wagon together, and that is all there was about the wagon.

Q.—What became of the wagon finally? A.—I afterwards took the wagon with me up to my place, but he drove it after it was there; whenever he wanted the wagon he came and got it backwards and forwards, and the wagon wore out.

Q.—How long had it been in use before you took it to
30 your place? A.—Four years; I didn't take it to my place until 1874.

Q.—What became of the wagon finally? A.—I kept it—wore the wagon out.

Q.—He said that a set of double harness was included; what do you say about that? A.—There was a set of double harness made for he and I both; he used it; he got married with that harness, and I got married with the same harness two years afterwards.

Q.—What became of the harness? A.—I took the
40 harness home four years afterwards.

Q.—Against his consent, or not? A.—No, sir; he gave it to me.

Q.—Is that the same way with the wagon? A.—Yes, sir.

Q.—You were starting farming? A.—Yes, sir; in 1874.

Q.—He says he charged you \$200 for a horse; what have you to say about that? A.—My grandfather gave me that horse.

Q.—He did not give you this horse? A.—No, sir; ¹⁰ but he bought me a horse to go to school with when I was 15 or 16 years old, and I had that horse, and always had a horse afterwards; when it got to maturity father would take it and sell it; he got \$300 sometimes; and then gave me another one; when we moved on the Huyler farm he sold one for \$250, and so he carried it down; this last one he traded for and gave me the team to start farming with; one of them broke his leg and the other he took himself on the farm.

Q.—He says you took a trip out West, and he let you ²⁰ have \$300, what have you to say as to that? A.—He never gave me any money to go West with; I only had \$25 to go West with, and I was working with Trimmer, an uncle of mine; he came from Illinois, and he wanted me to go back with him; they were going to have a World's Fair at St. Louis that year, and I went back with him.

Q.—He said that some brother-in-law of his out in Illinois let you have money of his on his order? A.—He never let me have any in any way, shape or manner. ³⁰

Q.—Do you know who that brother-in-law is? A.—Yes, sir; Mr. Squire.

Q.—Did he give you any money? A.—No, sir; he gave my brother, Franklin, some.

Q.—He says that there was a lot of sheep put on the farm that you had together, and his share of the sheep was \$200, what have you to say to that? A.—We never had that amount of sheep on the farm; we never had but 25 to 30 sheep on the farm, and bought them for \$3.50 to \$4.00 each, and I had a half interest in them. ⁴⁰

Q.—What became of his half of the sheep afterwards?

A.—My wife paid him for it.

Q.—At what time, when you made this settlement?

A.—Yes, sir; when we made this settlement.

Q.—He said there was a sleigh you got at Hackettstown?

A.—That was got after I was married, and I paid for it.

Q.—Who was it got of? A.—I cannot say; some parties up there in Hackettstown were making sales.

10 Q.—Who bought it? A.—I bought it myself.

Q.—How did you pay for it? A.—With my own money.

Q.—Where? A.—At Hackettstown.

Q.—He says there was a four-spring wagon bought at Sutton's sale for \$90, just tell us about that? A.—I

went over to the sale and I bought this spring wagon; I gave \$76 for the wagon, and we had a joint note; Mr. Sutton knew my father at that time, and he bought some things, too, and we made this note together, and when
20 the note came due I took the \$76; my wife paid me the money; I took it down and paid it to him in his own house.

Q.—Who did you give it to? A.—Father.

Q.—And he paid the note? A.—He paid the note.

Mr. Hulsizer.—How do you know he paid the note?

A.—Why, he took up the note, and I never saw the note since.

30 Further direct examination :

Q.—He says you had all these items and made up a calculation in the mill, and a few days afterwards you came down to Mr. Voorhees's? A.—I never made any

calculation in the mill whatever, at any time.

Cross-examination, by Mr. Shipman :

Q.—How old are you now? A.—Past 40.

Q.—How much past 40? A.—41, I think.

Q.—When were you married? A.—I was married

in 1872, sir, the 22d day of February; Washington's Birthday.

Q.—Of the year 1872? A.—Yes, sir.

Q.—Where were you married? A.—At my wife's home.

Q.—Where was that? A.—South Branch, Somerset county.

Q.—When did you go to farming? A.—In 1873, some; my wife and I didn't go to keeping house until 1874; my wife lived home one year.

Q.—Was that the first year you began to work for yourself in? A.—Pretty much; I worked for father all the time; I drove the milk wagon; once in a while I would go on the farm some and work on the farm some, but I worked in the mill most of the time.

Q.—You went into business for yourself then, in 1873, you say? A.—1874.

Q.—Where did you go? A.—On the Huyler farm.

Q.—How long were you on the Huyler farm? A.—I guess 10 years.

Q.—Whose farm was that? A.—My father's.

Q.—Did you work for wages on that farm? A.—No, sir.

Q.—What did you work for? A.—On shares.

Q.—You talk about being indicted; when were you indicted? A.—I think I was indicted—I think it was in 1874 or 1875—it was 1874.

Q.—What were you indicted for? A.—A woman was trespassing on me—picking berries; I told her to keep away, and she would not do it.

Q.—So you made her keep away, did you? A.—Yes, sir.

Q.—Where did you get this receipt, this paper, from? A.—It came from the court.

Q.—Who gave it to you? A.—I suppose Mr. Evarts.

Q.—I want to know what you know? A.—I do not know; it came from the court; I came to court at the time and paid the bill.

Q.—Where did you get it from? A.—From Evarts.

Q.—When did you first see this paper produced here

to-day? A.—I always had it ever since the transaction.

Q.—You had it on the trial before, did you? A.—Yes, sir.

Q.—And swore to the same thing before? A.—I don't know about that; the paper is an old paper, and has always been in use.

Q.—Did you swear on the other trial that you paid it? A.—I think so.

10 Q.—You did? A.—Yes, sir.

Q.—How did you pay it, in money or in a check? A.—Money.

Q.—Where did you get the money? A.—Sold lambs; I had sheep of my own.

Q.—How many lambs did you sell to get the money? A.—I think we had somewhere in the neighborhood of 30 sheep on our place; I sold lambs for \$6 to John Lewis.

Q.—How many did you sell to get money to pay these costs with? A.—I don't know; I don't know as it all
20 came from lambs or not.

Q.—Do you suppose it did? A.—No; I always had something—I had other money.

Q.—Now, I want to know whether it came from the lambs? A.—It came from me, all the same.

Q.—No matter about that; you say you sold lambs? A.—Well, I did sell lambs, and I sold pigs and other stuff on the farm.

Q.—Well, I want to get at the facts. A.—That is the idea.

30 Q.—You say you sold lambs? A.—I do.

Q.—Did the money you got from the lambs pay all this bill, or not? A.—I don't think it did.

Q.—How much did it pay? A.—Half of it, perhaps.

Q.—Where did you get the other half? A.—I had a lot of pigs.

Q.—How many did you sell? A.—Some years I sold as high as—

Q.—To pay this debt, I want to know? A.—Ten, likely.

40 Q.—Do you remember who you sold them to? A.—

I took them below, where I always carried my stuff, my oats and feed—down onto Summit.

Q.—You sold them there? A.—Yes, sir; I would get as high as \$10 a pair for some pigs.

Q.—With the money you derived from the sale of pigs and sheep you paid this bill of costs? A.—Yes, sir.

Q.—That is what you swear to? A.—Yes, sir.

Q.—You paid \$97.

Mr. Bergen.—No, it is \$86; the Clerk threw off his 10 costs.

Q.—Well, then, you paid \$86 and something? A.—Yes, sir.

Q.—Did you pay it to the clerk yourself? A.—I think I did.

Q.—Eh? A.—I think I did.

Q.—Now you “think” you did? A.—I know I did.

Q.—Now you say positively. Where did you pay it?

A.—In the office. 20

Q.—Which office? A.—The Clerk’s office.

Q.—What time in the year was it? A.—I cannot say that.

Q.—What? A.—I cannot say that, it is so long ago.

Q.—Oh, yes, you can; you ought to remember; you are a young man? A.—I ain’t so very young.

Q.—That is not long ago, ’74.

Mr. Bergen.—That bill of costs tells the date. A.—That tells you all about it, what time it was paid. 30

Mr. Bergen.—April term, 1874.

Q.—That is when the costs were taxed, not when they were paid? A.—They were paid later.

Q.—How much later? A.—I don’t know what time, but he took off some of it so that he could get the money.

Q.—I want to know when you paid it? A.—I cannot tell you. 04

Q.—Was it three months afterwards? A.—Somewhere along there, I cannot tell.

Q.—Was there anybody with you when you paid it?

A.—I think my wife was with me.

Q.—Was not your father with you? A.—No, sir.

Q.—Do you know whether your wife was along? A.—I think she was with me; we were trading here some at Flemington at that time.

Q.—She came down to Flemington with you? A.—
10 Yes, sir.

Q.—She didn't go into the Clerk's office? A.—I don't know but what she did.

Q.—You don't know whether she did or not? A.—I can't say as to that.

Q.—Then this was an indictment for an assault and battery on a woman? A.—Yes, sir.

Q.—What was the name of the woman? A.—Kate Packer.

Q.—Did she sue you in a civil suit, too? A.—I
20 forget about it, what she did do.

Q.—She sued you in a civil suit, too, didn't she? A.—All I know about it is, that we had a trial here at Flemington.

Q.—You traversed the indictment—that is, you pleaded not guilty and had a trial? A.—I don't remember about that.

Q.—You tried it here—you had lawyers engaged, didn't you? A.—Yes, sir.

Q.—How many lawyers had you? A.—I think Mr.
30 Allen, at that time.

Q.—You had two lawyers, didn't you? A.—Not at that trial.

Q.—Didn't you swear on the other trial that you had two lawyers? A.—I know I had Mr. Allen.

Q.—Mr. Allen and Mr. Voorhees? A.—I don't remember if I had them.

Q.—Didn't you swear so? A.—I cannot say.

Q.—Did you not swear that you paid them \$25 apiece for trying it? A.—I don't think so.

Q.—Did you not swear to that? A.—I do not remember.

Q.—Did you not swear distinctly that Mr. Allen and Mr. Voorhees were in the case? A.—It is so long ago I cannot remember.

Q.—Did you not swear it took two or three days to try it? A.—It might have done.

Q.—Did you not swear so? A.—I do not know.

Q.—You do not know what you did swear to? A.—
Not about that; no, sir. 10

Q.—How many witnesses had you here? A.—I had several.

Q.—Seventeen, had you not? A.—I do not know how many.

Q.—Had you not 17 witnesses sworn on the trial? A.—Quite a number; I do not know how many.

Q.—How long were you here? A.—That I cannot say.

Q.—How many days, about? A.—I might have been here two. 20

Q.—The trial did not go on right away after you got here, did it? A.—I cannot say about that.

Q.—Where did you have your witnesses? A.—About town here, where every one else had their witnesses.

Q.—Did you not swear you paid your counsel \$25 apiece, and then the question was asked you, "That would be \$50?" and you said "Yes, sir"? A.—I do not know; I cannot say.

Q.—Your expenses at the time must have been \$200 or \$300, were they not? A.—No; I guess not as bad as
that. 30

Q.—How much were they? A.—I don't know.

Q.—You cannot tell? A.—No, sir.

Q.—You paid your witnesses, did you? A.—I
always pay my witnesses; yes, sir.

Q.—You paid your witnesses for the time they were here, and your counsel and your own expenses—and was your father here? A.—I think he was here one day.

Q.—Was he a witness? A.—No, sir.

Q.—He was not a witness? A.—I think not. 04

Q.—Was he not sworn in your behalf? A.—I do not think he was.

Q.—He did not furnish you any money at all? A.—No, sir.

Q.—None, whatever? A.—No, sir.

Q.—Did he not pay your witnesses' expenses at the hotel? A.—No, sir.

Q.—Did he not pay your expenses? A.—No, sir; he would not ever pay anything for me at any time; whenever I asked him for a dollar he would say, "What are you going to do with it?"

Q.—Can you tell about how much the expenses of that trial were? A.—I cannot.

Q.—You say that your father did not give you any money at all? A.—No, sir; he never gave me any money at all at any time.

Q.—And the expenses of that trial you got from the sheep and pigs? A.—I got it from my wife; she always had money; I said that bill was paid—\$86; and I had that from the pigs, etc.

Q.—That bill of \$86 you got from the pigs, etc.? A.—Yes, sir.

Q.—You had money of your own—where did you get it? A.—I always had it.

Q.—Where did you get it? A.—Worked for it.

Q.—Where? A.—On the farm; I always had a little money.

Q.—You said before that you sold hay off the Farley farm? A.—Yes, sir.

Q.—Did you do that to get the money to pay the expenses of that trial? A.—No doubt of it.

Q.—I ask you whether you did or not? A.—I had a great deal of hay on that farm, so I sold it.

Q.—I ask you whether you did or not? A.—I think I did; I sold hay for \$15 and \$16 a ton.

Q.—Where? A.—Around Germantown.

Q.—When? A.—The same year.

Q.—And you say your father never gave you any money, at all, eh? A.—No, sir.

Q.—None, whatever?
money once in a while.

A.—No, sir—oh, a little

Q.—He did give you a little, then?
great while.

A.—Once in a

Q.—How often, about?
him for a little money; sometimes he would say, “What are you going to do with it?”

A.—Whenever I would ask

Q.—That was only natural for a father to say to his son, was it not? He would ask you that, but always gave you the money?
he was poor and had not any.

A.—Not, always; he would say 10

Q.—But, after all, he generally gave you the money?
A.—Not always.

Q.—But he most always gave you the money?
Not always.

A.—

Q.—Most always?
say, “Well, what are you going to do with it?”

A.—Once in a while he would

Q.—Then he would give it to you?
want me to be without a dollar in my pocket; not down too mean; no, sir.

A.—He did not

20

Q.—You never had any difficulty, you say, down in Elizabeth, at all?
A.—No, sir; never.

Q.—At no time?
A.—Never.

Q.—Did you ever get into any scrapes at all?
Never.

A.—

Q.—You were a pretty lively boy when you were a young man?
A.—Not any more than the other boys.

Q.—Were you not a little more than some other boys?
A.—No, sir.

Q.—And you used to get into frolics a little occasionally, and did not always know just what you were doing?

A.—Never; never in the world, sir.

Q.—You never took any cocktails?
A.—No, sir.

Q.—Didn't you used to drink pretty hard?
never drank any rum in my life; I never was tight in my life.

A.—I

Q.—You never got in scrapes?
A.—Never.

Q.—Your father never helped you out?
got in any scrapes at all that he helped me out of.

A.—I never

Q.—He said you did?
A.—He forgets.

40

Q.—Don't you forget? A.—No, sir; let him bring some testimony here showing that I did.

Q.—You have got a pretty bad memory? A.—I have no bad memory on that fact.

Q.—You say that your father never lifted you out of any trouble at all? A.—Never in the world.

Q.—You bought the wagon of Sutton, did you? A.—Yes, sir.

Q.—And gave a note with your father on it? A.—

10 Yes, sir.

Q.—And your father paid it, did he not? A.—I suppose so; I never saw anything of the note afterwards, after I gave him the money.

Q.—Where is the note? A.—He must have it.

Q.—You never got the note yourself? A.—No, sir.

Q.—You never asked him for it? A.—No, sir.

Q.—And you gave him the money, you say, to pay for the note? A.—Yes, sir.

Q.—You were on the note? A.—Yes, sir.

20 Q.—And you let your father keep the note? A.—I never saw it.

Q.—How much money did you give him to pay on that note? A.—\$75.

Q.—Where was it you gave it to him? A.—In his own house.

Q.—When? A.—At the time the note was nearly due.

Q.—Was anybody by? A.—I think his mother was by and his wife.

Q.—His mother? A.—My mother—stepmother,
30 rather.

Q.—Was that before your mother died? A.—Yes, sir.

Q.—When was it—what year? A.—I think we drew in either '77 or '78.

Q.—When did your mother die? A.—In 1868, my own mother.

Q.—Then she could not have been by when you gave him the money, could she? A.—No, no; it was my stepmother.

Q.—I thought you said your mother?
40 my stepmother. A.—No, sir;

Q.—When did your father get married the second time? A.—I think he got married in 1871 or 1872, I cannot say which; I was not home when he got married; I was in Illinois.

Q.—When did you say it was you gave him this money? A.—I think it was—may be it was 1876; I cannot say which—1876 or 1877, or 1878—along there, one of those years, when we bought that wagon.

Q.—And you gave him the money to pay for it? A.—
Yes, sir. 10

Q.—Where did you get the money from? A.—I sold stuff for it; I had my own share of the grain and sheep and pigs, and everything on the farm; I made calculations and told my wife I wanted money to pay for this wagon.

Q.—I ask you now where you got this money which you gave your father? A.—From my wife.

Q.—All of it, eh? A.—Yes, sir.

Q.—How long before you took it to your father did you get it of your wife? A.—The same morning. 20

Q.—Why did you not go and pay the note yourself? A.—The note was drawn up between him and me together, and I just give him the money, and he could pay it; his money was about the same, that is the reason; my wife wanted me to go and take the money—

Q.—Never mind about your wife. A.—But I thought I could trust my wife with the \$76.

Q.—You and your father were good friends? A.—
Yes, sir.

Q.—And always had been very good friends, had you? 30
A.—Always.

Q.—You always found your father pretty kind to you, did you not? A.—No kinder than he ought to be.

Q.—You never found your father a man who was telling stories about you, did you? A.—He's pretty good at putting jobs up sometimes?

Q.—Ain't you pretty good at putting them up, too?
A.—No, sir.

Q.—You have been putting up a pretty good job on him now, have you not? A.—No, sir. 40

Q.—Aint you trying now, you and your wife, to cheat him out of this mortgage? A.—He never had anything in it.

* Q.—That aint what I ask you.

Mr. Bergen.—I submit this is not cross-examination, and counsel is bound by what he has said.

Q.—Do you remember when this note came due?

10 A.—No, sir.

Q.—Can you tell what year it came due? A.—I cannot.

Q.—Was there not also a similar suit in reference to this matter—I ask you about that?

Mr. Bergen.—Yes.

Q.—Who was your attorney in the civil suit? A.—I don't know whether it was Mr. Allen or Mr. Voorhees.

20 Q.—Were they not both in it? A.—They might have been.

Q.—How much did you pay your lawyer in that civil suit? A.—I do not remember.

Q.—How much costs did you pay? A.—I cannot tell you now.

Q.—That paper is the only receipt you have—have you any other receipts anywhere at all? A.—I don't know but what I have.

Q.—That is the only receipt you have here—that bill of cost? A.—That is all that is here, I believe.

Q.—You do not know of any other receipt? A.—I do not know whether there is or not.

Q.—You do not know? A.—No, sir.

Q.—Did you not say on all the other trials that you got no receipt for the costs on the civil suits? A.—I do not know what I said.

Q.—And you said on the other suit, did you not, that you paid more than that bill of costs which you have produced here now? A.—I do not know.

Q.—You do not know whether you said that or not?
A.—No, sir.

Q.—Did you pay more? A.—I do not think I would pay any more than that—costs.

Q.—Did you say you did not pay more, and when you were asked you could not say whether you paid as much again as that or not—did you swear to that? A.—I do not know.

Q.—Well, do you know that you did pay any more than that bill of costs? A.—Well, I had to pay my lawyers, I suppose. 10

Q.—Do you know how much more you paid? A.—No; I do not.

Q.—When you went to work for yourself, in 1874, you took a wagon away from your father's? A.—He gave me a wagon.

Q.—That is not what I ask you. I ask you if you took a wagon away? A.—No, sir; he gave me a wagon—gave me a wagon and harness.

Q.—Will you answer my question—whether you took a wagon with you when you went to work? A.—No, sir; only what he gave me. 20

Q.—You took one, did you? A.—Yes, sir.

Q.—What kind of a wagon was it? A.—A buggy.

Q.—It was a one-horse wagon, was it? A.—No, sir.

Q.—You said it was a buggy? A.—Yes, sir.

Q.—Was it a two-horse buggy or a one-horse? A.—A one-horse buggy.

Q.—What? A.—He had it made larger—bigger than any other wagon, so that he could sit in it; he had it made to his own order, and a bigger wagon. 30

Q.—I want to know whether it was a one-horse or a two-horse wagon? A.—You could drive one or two, as you pleased.

Q.—Was it one-seated or two? A.—It was one-seated.

Q.—A one-seated buggy wagon? A.—Yes, sir.

Q.—And you could drive one or two horses? A.—Yes, sir; he drove two horses to it.

Q.—With a top to it? A.—Yes, sir. 04

Q.—How much did it cost? A.—I do not know.

Q.—How much was it worth? A.—I do not know what he gave for it; it was half worn out when I took it; it had been used about four years; he got it made in 1870, and in 1874 I took it away.

Q.—It was a pretty good wagon, was it not? A.—Yes; about half worn out; he drove it four years, and I drove it—together—we had it together.

Q.—You both used it? A.—Yes, sir; he had it
10 made for his own use.

Q.—You had a wagon that a horse ran away with?
A.—I never had.

Q.—Were not you and Polhemus both in a wagon?

A.—Lots of times, but never had a horse run away with us.

Q.—You went together a good deal? A.—Yes, sir.

Q.—He was a pretty wild fellow, too? A.—No, sir.

Q.—You were a very straight fellow, and never even
20 laughed when you was a young man? A.—I was like other young men, but was never anything great at all.

Q.—Did you ever have a horse run away with you?

A.—Not while I was a young man; no, sir; not to a buggy, at any time; I had a horse run away at different times on a farm, but never did any damage.

Q.—But in a wagon—did a horse ever run away with you in a wagon? A.—No, sir; never got away from me.

Q.—But did he ever run while you were in the wagon?

A.—No, sir; not to do any damage of any kind.

Q.—Never did; never broke your wagon? A.—
30 No, sir.

Q.—Did you have another wagon that the horse ran away with and broke up? A.—No, sir.

Q.—And then you got this other wagon of your father when you went to keeping house? A.—No, sir; I got a wagon—

Q.—Just answer that question? A.—No, sir; I will give it to you straight.

Q.—Just answer that; yes, or no? A.—No, sir.

Q.—You never did? A.—No, sir; we had another
40 wagon, but I never had a horse run away with any wagon

Q.—I asked you if he did not give you another wagon and—
A.—We always used the wagons and harness and everything together; that is the way we used them.

Q.—But did he not give you another wagon for your own use, as a young man, and that wagon you broke up by a horse running away with it?
A.—No, sir.

Q.—And when you went to keep house you had to take this wagon, and this he sold you?
A.—He never gave me any wagon at all in his life, only this one wagon.

Q.—When you went keeping house did you take a two-horse wagon?
A.—No, sir.

Q.—Did you not have a two-horse wagon?
A.—I did.

Q.—Where did you get it?
A.—At my father-in-law's vendue.

Q.—Who paid for that?
A.—My wife,

Q.—She paid for a good deal, did she not?
A.—She was the only one had any money.

Q.—Did she have a good deal of money?
A.—She had some money.

Q.—How much?

[Objected to. Objection sustained.]

Q.—Did you not have a two-horse wagon when you went to keeping house?
A.—No, sir; I only had one.

Q.—And that your wife paid for?
A.—Yes, sir.

Q.—How much was that?
A.—I have forgotten; it was in a note drawn up for that and the rest of the stuff.

Q.—Did you not have a horse that you got that had his leg broken?
A.—Only one horse; that is all I ever had from my father.

Q.—Did he get hurt?
A.—Yes, sir.

Q.—How was that?
A.—He ran away at German-town and came down to my place.

Q.—You did have a horse that ran away, then?

A.—You asked me if I had a horse which ran away with a buggy, and I said no.

Q.—What did this run away with? A.—A farm wagon.

Q.—Were you in the wagon? A.—No, sir; a hired man.

Q.—Did he break his leg? A.—Yes, sir.

Q.—What was that horse worth? A.—A hundred, or a hundred and fifty dollars; I guess that horse was nine or ten years old.

Q.—How many horses had you when you went farming? A.—Three horses.

Q.—How many did your father let you have? A.—One; two horses came from this one that broke his leg.

Q.—Did he get you another one in place of it? A.—No, sir.

Q.—How did you get another one? A.—I bought one up at town from a fellow.

Q.—Somebody said the horse was worth \$200; was he worth that? A.—He might have been when we first got him; we had him five or six years.

20 Q.—How old was he? A.—Ten or eleven years.

Q.—Did you not say before he was nine or ten? A.—I do not know; somewhere about that.

Q.—That horse, you say, you got of your father? A.—Yes, sir.

Q.—When you went to keeping house? A.—Yes, sir.

Q.—Did you not say on your former examination that you owned four or five horses? A.—No, sir.

Q.—Are you sure of that? A.—Yes, sir.

Q.—And you said some of the horses came from Nelson
30 son Pidcock? A.—This was one of the horses.

Q.—You had a pair of horses which came from Nelson Pidcock? A.—No, sir.

Q.—You traded for a pair of horses? A.—My father traded a bay mare for a pair of brown horses, and he gave me one and the other he kept; I had Mr. Melick's colt to make the other team; I broke him that year.

Q.—What year did you go out West? A.—I do not know whether it was 1870 or 1871; one of those years; 1871, I think.

Q.—How far did you go West? A.—Illinois—Iowa.

Q.—Did you go to St. Louis? A.—Yes, sir; I was there at the World's Fair that year.

Q.—How much money did you have? A.—I hadn't any money.

Q.—Did you take any money with you at all? A.—No, sir.

Q.—Not a bit? A.—No, sir.

Q.—Did you not swear you had \$25? A.—Well, I might have had that amount of money. 10

Q.—Did you swear to that? A.—I say I might have had that much.

Q.—Did you swear to that? A.—I cannot say.

Q.—You do not know whether you did or not? A.—No, sir.

Q.—Who furnished you with it if you did have it; where did you get it? A.—I guess father gave it to me if I had it.

Q.—Did he not give you more than that? A.—No, sir.

Q.—What did you do out West? A.—I worked some 20 on the farm; I earned \$20 from Mr. Trimmer, doing work.

Q.—Did you not swear before you bought horses out there? A.—Trimmer and I bought some horses; I never bought any; we went and bought two horses at Jerseyville and took them to St. Louis, and made \$150 on the purchase, and Trimmer gave me half the money, \$75.

Q.—You did not buy any horses? A.—No, sir.

Q.—Did you not swear before that you bought horses? 30 A.—Well, I went over with Trimmer when he bought them.

Q.—Did you not swear before that you bought them? A.—I do not know that I did.

Q.—Did you get any money out West? A.—No, sir.

Q.—And all you had was the \$25 you got of your father? A.—Yes, sir.

Q.—If you did get it; you are not sure whether you did get any? A.—He sent me \$25 to come home; he wrote to me several times to come home; at last I wrote 40

to him and told him if he would send me \$25 I would come home.

Q.—He gave you that? A.—Yes, sir.

Q.—Did he give you \$25 to go with? A.—Yes, sir; I think so.

Q.—That makes \$50? A.—Yes, sir; but I never got a dollar from anyone in the West; nobody; only to come home and take the mill, he said; he said he had got married.

10 Q.—Did not your father send you some money out there? A.—No, sir.

Q.—You went to Nebraska, did you not, from Illinois? A.—Yes, sir.

Q.—Did you not get money from your father to go out there? A.—No, sir.

Q.—How did you get there? A.—I went along with a cousin of mine.

Q.—He paid your fare, did he? A.—Part of the way.

Q.—Who paid the balance? A.—I paid the balance
20 with my own money.

Q.—Where did you get that? A.—I sold horses; we sold five or six horses in St. Louis that Fall and Winter.

Q.—You got a gold watch, did you not, before you started? A.—No, sir; I had a silver watch when I went away, which my grandfather bought me when I was a boy.

Q.—You have had a gold watch? A.—No, sir.

Q.—Did you never have one? A.—No, sir.

30 Q.—Did you not get a gold watch at Benedict's in New York? A.—No, sir; I have owned a gold watch, but did not get it at Benedict's.

Q.—You say you owned a gold watch? A.—Yes, sir; but I bought it in St. Louis.

Q.—You have a gold watch now? A.—No, sir.

Q.—When did you get that gold watch and chain in St. Louis? A.—At the time I was there.

Q.—How much did you pay for it? A.—I think it was seventy or eighty dollars for the watch at that time.

Q.—Where did you get the money to pay for that with? A.—I made it out West.

Q.—In what way? A.—Out West; as I say I worked one month on the farm and got \$20 with the corn and wood.

Q.—And you gave about \$75 for the watch? A.—I do not know what I did give; somewhere in that neighborhood.

Q.—Have you the watch yet? A.—No, sir.

Q.—What did you do with it? A.—It got lost. 10

Q.—When? A.—Last Winter, down at Trenton; some Republican picked it out of my pocket.

Q.—Where was that? A.—In the State House.

Q.—You had it when you were sworn before? A.—Yes, sir.

Q.—How were you then; you were a little—were you all right then, or on a little frolic? A.—No, sir; I had not been in Trenton twenty minutes, I don't suppose, before the watch was taken out of my pocket.

Q.—Did you not draw a draft out West on Mr. Klein 20 for a hundred dollars? A.—Never.

Q.—You say there never was any statement agreed on between you and your father as to what should go into the account at all? A.—Never.

Q.—Did you not talk about it in the mill? A.—No, sir.

Q.—At no time? A.—Never.

Q.—You did not talk about it before you went down to Mr. Voorhees's? A.—No, sir; only that I was sued for \$3,000, and he told me— 30

Q.—Never mind that, just answer the question. You and he did not talk there in the mill and go over the statement as to what you had had of him and say, "Now, what will go in the mortgage"? A.—No, sir.

Q.—You did not say so at all? A.—Never at all about anything like that.

Q.—Not a word? A.—No, sir; not a word about any such transaction; only this, he said, says he—

Q.—Never mind; I do not ask you that; there never was any conversation in the mill on the subject? A.— 40

No, sir; I never had any conversation about the mortgage at all in the mill.

Q.—Not a word? A.—No, sir.

By the Court.—I understand you to say that this mortgage was made without consideration, and that it was made for the purpose of preventing Klein Melick from collecting the judgment that he subsequently recovered against you? A.—Yes, sir.

10 Q.—And that this mortgage was made at your father's suggestion? A.—Yes, sir.

Q.—Do you remember how long before the agreement, that was lately found in Mr. Newton Voorhees's office, was made, it was that the mortgage was executed, how long a time elapsed between the two? A.—Some little time after the agreement was made.

Q.—The agreement was made some little time after the mortgage was made, do you mean? A.—Yes, sir.

Q.—How did that agreement come to be made? A.—
20 I told him I wanted some paper to show it when we settled this judgment, so that he could give me back the mortgage, whatever was done; if they got a judgment against me this mortgage was to be null and void, after the judgment--- [Interrupted.]

Q.—How is that? A.—The mortgage was to pay this judgment; this mortgage was given so that if we could get a settlement with Klein Melick—he sued me for three thousand dollars—and he said, “He will take all your property away from you,” and he was to have this
30 paper written so that he should give me back the mortgage after the judgment was settled.

Q.—Was all that agreed on before the mortgage was made? A.—No, sir; not until afterwards.

Q.—Was anything said about buying the Klein Melick judgment when he was talking about making this mortgage? A.—Yes, sir.

Q.—What? A.—He said he would settle the Klein Melick judgment as cheap as he could.

Q.—Then what was to become of that mortgage?
40 A.—I was to pay that judgment.

Q.—Was this agreed upon before the mortgage was made, that he should settle the Klein Melick judgment?

A.—That was settled that day coming down here.

Q.—Why was not the paper made at the same time the mortgage was? A.—It was not thought about at that time; I had not given it a thought at that time; but when I went home my wife said, "You will have trouble with your father before you get that mortgage out of his hands, and you had better have that fixed the next time you go to Flemington."

14

Q.—How near did you live to your father at that time?

A.—About a mile; half a mile across, and a good big mile around the road.

Q.—Did you go over to see him about making this paper? A.—No, sir; the mortgage?

Q.—No; after the mortgage? A.—Well, I talked to him different times about that paper in his hands, and he said he would fix that any time when we went down to Flemington, and some day we would go down.

Q.—Did you go down specially to make this agreement? A.—I think he had some business at the bank, he generally had some, and I came down with him.

20

Q.—How did you happen to go down with him? A.—He came after me.

Q.—Did you tell him why you wanted the paper?

A.—Yes, sir; because, if he died or anything, he would have this claim against me.

Q.—When you got down to Mr. Newton Voorhees's office, was anything said about why this paper was made?

A.—I don't think there was, only on these grounds: that he was to settle this judgment as soon as he could, and return the mortgage to me.

30

Q.—Why was not the paper given to you when it was executed? A.—Mr. Voorhees had a lot of my other papers at that time in his possession, and he was my attorney at that time too.

Q.—And the only object of making this paper then was that you did not feel safe to have your father hold this mortgage? A.—That is it.

40

Q.—And you wanted something to protect you? A.—
That is it.

Q.—And you were so anxious to have something to
protect you that you had this paper drawn up? A.—
Yes, sir.

Q.—At your wife's suggestion as well as your own?
A.—At my wife's suggestion; that is, she gave me the
first thought about it.

Q.—Did you tell your wife afterwards about it? A.—
10 Yes, sir; when I came home she told me I would have
trouble with my father before the mortgage was out of
the way.

Q.—Did you tell her about the paper when it was
made, right away? A.—Yes, sir.

Q.—Was your wife a witness on the first trial? A.—
I think she was.

Q.—Did she mention anything about the paper being
made? A.—I don't think she did; Mr. Voorhees had
laid this paper away and could not find it.

20 Q.—Did you ask him for it? A.—Yes, sir.

Q.—Before the first trial? A.—Yes, sir.

Q.—You are sure about that? A.—Yes, sir; I went
to him and wanted all the papers he had.

Q.—Did you mention this particular paper to him?
A.—Yes, sir; and he said he could not find it.

Q.—You are certain about that? A.—Yes, sir; he
could not find it; he had mislaid it somewhere and could
not find it.

Q.—You knew on that first trial that that was a
30 very important paper? A.—That that paper was in
existence, yes, sir.

Q.—You knew it was a very important paper to you?
A.—Yes, sir.

Q.—And it would have a great effect on the result of
that case? A.—Yes, sir.

Q.—How is it that you did not mention the fact of that
paper being in existence and being made? A.—Mr.
Voorhees said he thought we could get along without it.

Q.—Mr. Voorhees was not your lawyer? A.—No,
40 sir; Mr. Bergen was, and Mr. Fluck.

Q.—Do you mean that both Mr. Bergen and Mr. Fluck knew that that paper was in existence at that time?

A.—I don't think they did; I don't think they did, because I never told them; I told Mr. Bergen, I think, at the time, that Mr. Voorhees had a paper.

Mr. Bergen.—I am willing to state what my knowledge was about it, to give the Court all the light there is about it.

16

Q.—That paper which has been offered in evidence is a very important paper, and I want to know why, if the existence of that paper was known at the first trial, it was not produced by the defendants or its existence suggested. Now I understand you to say that you did know and remember of the existence of that paper at the time of the first trial?

A.—Yes, sir.

Q.—I do not understand whether you communicated the fact of its existence to Mr. Fluck and Mr. Bergen?

A.—I think I did to Mr. Bergen, but I do not think I did to Mr. Fluck; I told Mr. Bergen at different times that Mr. Voorhees had some more of my papers, if he could find them, and he should write to Mr. Voorhees and tell him he wanted him to send all the papers that belonged to me to him. 20

Q.—Did you have any conversation with Mr. Voorhees at about the time of the first trial as to the existence of this paper?

A.—Yes, sir; he told me that he had the paper, but he mislaid it somewhere and could not find it, and he said he thought I could get along without it. 30

Q.—I am speaking now of Mr. J. Newton Voorhees?

A.—That is it.

Q.—Did you hear what he testified to the other day on that subject?

A.—No, sir.

Q.—Were you not here? A.—I think I heard some of his evidence.

Q.—Why did you not mention the fact of the existence of this paper to your counsel, to Mr. Fluck, if you knew it was in existence, or had been made?

A.—Well, it had been made, but he said he had lost it and 40

could not find it; he was doing some business for father, and I kind of thought at that time that my father had got him to do away with this paper.

Q.—You say you had this paper made to protect yourself against your father? A.—Yes, sir.

Q.—That you were not willing that he should hold that mortgage unless you had a paper to show how he held it? A.—Yes, sir.

Q.—Having taken the trouble to have that paper made,
 10 when your father brought this suit against you to enforce that very mortgage, you, remembering the existence of that paper, neglected to tell Mr. Fluck that your father and yourself had ever executed such a paper? A.—I think Mr. Fluck knew about it, but I do not know whether he did or not.

The Court.—The statement of the witness is a very great surprise to me. It is a contradiction of Mr. John N. Voorhees's testimony, as I remember; he testified on
 20 the first trial, on cross-examination, that he told everything he remembered as to the transaction; as far as his memory served him the transaction was closed when the mortgage was executed, and that he had no further conversation with either of the parties in reference to it, and nothing further was done about it. Now, the defendant says that at the time of the first trial he went to see Mr. John N. Voorhees about this paper, remembering it was then in existence, and that Mr. Voorhees then told
 30 him that he did not think it was important, and that he could get along very well without it. How a lawyer could give anybody such advice is rather strange to me, or how Mr. Fluck, if he had known of the existence of the paper, which the witness said at one time he did not, and then afterwards said he did, could have gone to trial without mentioning it, is certainly very strange.

Mr. Bergen.—I can explain my connection with it without any trouble.

40 The Court.—I judge from what the witness states you

had no knowledge of its existence at that time. You were not in the case at that time, were you?

Mr. Bergen.—I came in a short time before the trial.

The Court.—Perhaps you ought to be afforded an opportunity of saying what you wish to on the subject, either on the witness stand or otherwise.

Mr. Shipman.—He could not tell what passed between 10 him and his client; that would be privileged.

The Court.—I suppose he is entitled to if he wishes to.

Mr. Bergen.—I will say that I want the Court to have all the light there is in the case. Mr. Tunis Melick has always claimed from the very first time I saw him that there was— [Interrupted.]

Mr. Shipman.—Now, that won't do.

20

Mr. Bergen.—Well, I am ready to make a statement if there is no objection to it.

Mr. Shipman.—We want to get at the facts, but we want legal evidence. Mr. Tunis D. Melick has sworn that he paid the costs of the suit with the proceeds from the pigs and sheep. On page 66 of his former testimony he said it was \$200; then he was asked: "Q.—Did you raise all the money yourself to pay for it? A.—Yes, sir; 30 me and my wife. Q.—Didn't your father give you any money? A.—Not a dollar. Q.—Where did you get the money? A.—I was farming the Farley farm, and sold a great deal of hay. Q.—You were not on the Farley farm? A.—Yes, sir; the first year I moved on the Huyler farm I farmed the Farley farm." He said, furthermore, that he got all the money from his wife to pay the \$85, and on page 62 he was asked: "Q.—Where did you get the money? A.—Part of my wife, and part of lambs" —part from the lambs he sold. On page 61 he said his 40

father gave him \$50 to go out West with ; he says : "He did not give me any money to go out ; I guess he gave me \$50 ; I saw a young man who wanted to go West that Summer, and wanted me to go West with him, and I did, and I guess father gave me \$50 ; that is all." And he says he didn't buy any horses there in St. Louis.

Mr. Bergen.—It this your evidence, Mr. Shipman ?

10 Mr. Shipman.—No ; I am only reading what contradicts him.

PETER W. MELICK, recalled.

Mr. Shipman.—Did your son ever give you \$76, or \$85, or any sum of money to pay on the Sutton note ? A.—He never gave me any money to pay on the Sutton note.

The Court.—What was the total amount of the Sutton
20 note ? A.—About \$150—between \$140 and \$150 ; I bought a colt ; the wagon, as near as my recollection goes, was about \$86.

TESTIMONY CLOSED.

EXHIBIT A.

To all to whom these Presents shall or may Concern.—Greeting:

Know ye, that I, Peter W. Melick of the Township of Tewksbury, in the County of Hunterdon, and State of New Jersey, for and in consideration of the sum of six hundred and five dollars, lawful money of the United States of America, to me in hand paid by Tunis D. Melick 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 Tunis D. Melick, his heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, each party to pay his own cost, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, execution, claims and demands whatsoever, in law or in equity, which against the said Tunis D. Melick I ever had, now have, or which I, 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. I also agree to indemnify the said Tunis D. Melick against any loss, or from being called upon to pay anything on account of the bond or mortgage, which I have assigned to Fisher Pidcock, as I am to look to the land for the payment of the said bond and mortgage.

In witness whereof, I have hereunto set my hand and seal the twenty-third day of December, in the year of our Lord one thousand eight hundred and eighty-four.

PETER W. MELICK.

Signed, sealed and delivered in the presence of

H. M. GASTON.

EXHIBIT AGREEMENT FOR DEFENDANTS, JULY 28, 1887.

"It is agreed that the mortgage this day executed by Tunis D. Melick to Peter W. Melick for twelve hundred dollars shall be returned to him at any time he shall demand the same, on his being repaid the judgment which Kline Melick has, and which judgment Peter W. Melick is to settle, if possible. If Peter W. Melick does not pay such judgment, then the mortgage is to be considered null and void.

"(Signed) PETER W. MELICK,

"(Signed) TUNIS D. MELICK."

APOLLO PRINT, Belvidere, New Jersey.

N. J. COURT OF ERRORS AND APPEALS.

Between

FISHER PIDCOCK,
Appellee,

and

TUNIS D. MELICK & WIFE,
Appellants.

} Points.

1st. This bill is filed for a strict foreclosure of a mortgage given by the defendant, Tunis D. Melick, to Peter W. Melick, his father. The mortgage on its back imports a good and valuable consideration, and upon proof of its execution the complainant is entitled to recover, and the whole burden of proof is on the defendants to impeach it, and they must satisfy the Court by truth worthy and satisfactory evidence which clearly preponderates the complainant's evidence that the mortgage was given without consideration, otherwise the complainant is entitled to a decree, and they have failed to do so here.

2d. The defendants' evidence in this case consists of

the testimony of Tunis D. Mellick, one of the defendant, and a certain paper a copy of which he undertakes to produce, but both are inconsistent with the circumstances of the case and so contradictory and untruthful and so conflicting with the other reliable evidence that they fail utterly to cast even a doubt on the validity of the mortgage.

3d. The complainant's evidence, consisting of the evidence of Peter W. Melick, A. C. Hulsizer and others and the exhibit found on the 137th page of the book, shows so clearly a good consideration for the mortgage that the defendants are estopped from denying it.

4th. The defendants set up that the mortgage was given simply as a voluntary mortgage for the purpose of cheating one Kline Melick out of an anticipated claim which he was attempting to prosecute against Tunis D. Melick for being bitten by Melick's the defendant's dog. If it was given for that the Court will not help Tunis D. Melick any. As between him and Peter W. Melick the mortgage is perfectly good. Revision, page 446, sect. 12. For the same reason it is good against the judgment now set up by the wife and assigned to her by James J. Bergen. Let us look for a moment where this judgement came from. This Tunis D. Melick does not pretend that this mortgage was given for any purpose but to prevent Kline Melick taking the land by his judgment. The section of the statute to which reference has already been made provides that the mortgage shall be good except "only against these persons, their executors, administrators or assignees whose actions, debts, damages or demands are or may be hindered or defeated by such covinors or fraudulent devices or practices." Against every body else the mortgage is valid and binding.

Now let us trace this mortgage and this claim on which this judgment obtained by Bergen is founded and see what pretence there is to say this mortgrge was given to hinder the recovery of this claim.

This mortgage was given on the 20th day of April,

1878, and was at once recorded. On the 15th day of May, 1878, the said Tunis D. Melick conveyed all his interest in these same premises covered by this very mortgage for a nominal sum to Sarah Ann Studdiford, his mother-in-law, in trust for his children, the grandchildren of this trustee.

Now these notes on which Mr. Bergen, the attorney of Mr. Melick, obtained this judgment originally belonged to this same lady, Mrs. Studdiford. They were given the one March 6, 1872, the others in April 1873. They had long since been outlawed. She had taken this land as trustee encumbered by this very mortgage and had died without making the slightest effort to collect her debt. After her death Calvin Carle her administrator, made a bogus indorsement of \$5.00 on the notes which was signed by Tunis D. Melick, nor a cent of money paid on it, but left until he settled finally with Mr. Melick in July, 1883, when he took the \$5.00 and the receipt and interest of the notes amounting to \$500 or \$600, out of her share. She was under no obligations whatever to pay her husband's debts. She knew when she paid them all about this mortgage. She laid still till the mortgage was foreclosed against her children and an effort was made to turn her and husband out of the possession of the land which had been sold under the former foreclosure and she forsooth by her counsel brings a suit in his own name against the husband in the Hunterdon County Circuit Court and on the 6th day of April, A. D. 1886, this same attorney obtained a judgment against this Tunis D. Melick for \$1,361.93, assigned it the same day to his client, Mr. Tunis D. Melick, and now she comes in by this same counsel and cries fraud! fraud! against her father-in-law, and sets forward her husband and her son to blacken his character and to try to prevent him from collecting his honest mortgage. She does not dare to go upon the stand herself and say that she was not a participant in all this matter and fraud if there was any. If any fraud at all it must be apparent to the court that it is all to be found in the attempt of these parties to

cheat a kind and indulgent father out of his just claim and destroy his good name in the bargain.

This woman did not become the creditor of this husband till long after this mortgage obtained. She knew all about it. Can she set up fraud? Absurd to believe it.

Next. This very same defence was set up by the children of this Tunis D. Melick acting under his direction, the same answers were put in and are interposed in this case. The same evidence substantially was offered, and Vice Chancellor Van Fleet, before whom the case was tried, at once decided in favor of the validity of the mortgage and no appeal was taken from it and I submit this Court will follow that decision.

Notice that the other judgment she claims under cannot be set up, it was forever disposed of in the former suit. Peter W. Melick, its then holder, was made a defendant. The decree expressly covered it and it cannot be tried over here, nor can she set it up.

Notice Tunis D. Melick's evidence, page 4 to 9, 109 to 136. He put it on the ground that it was to cheat Kline Melick, and Peter W. Melick afterward paid that very judgment when obtained and took an assignment of it.

Notice Ennit Melick 61 to 65, 83 to 93. Absurd; no reliance can be placed on such evidence. Horkenberry 106. Has no application.

Notice its character. Notice the paper on page 138 of the book. The extraordinary character. Notice John N. Voorhees 27 to 30 to 35, 48, 102. Was there ever such a paper as that? Good for nothing if there was. No consideration.

Notice testimony of complainant. 1st, mortgage imports valuable consideration. 2nd, testimony of Peter W. Melick, page 71, fair and candid and gives all the circumstances. He had had a wayward son and was taking care of him, and now he is repaying him. 3rd, notice testimony of William N. Sire, page 71, Samuel Sutton, page 136, A. C. Hulsizer, pages 105 and 106, Exhibit A, page 137. Notice how we got it.

Drawn and witnessed by defendant's counsel—in his hands all the time, called out by our notice executed the 23rd day of December, 1884.

Same day Tunis executed release to his father. Same day and same place Peter W. Mellick assigned judgment to Mrs. Mellick.

She cognizant of all keeps away from the stand. What escape is there from it? None. The advising master is right. This is a wicked son seeking for his own gain to injure a faithful and indulgent father, and this court will never sustain him. Quite true it is that this father can well say with King Lear, "How sharper than a serpent's tooth it is to have a thankless child."

J. G. SHIPMAN,
Of Counsel with Complainant and Appellee.



Clerk

In Chancery of New Jersey.

Between	}	
FISHER PIDCOCK,		
Complainant,		Bill to Foreclose.
and		
TUNIS D. MELICK, et al.		
Defendants.		

To the Hon. Theodore Runyon, Chancellor of the State of New Jersey:

Humbly complaining, shows unto your Honor, your orator, Fisher Pidcock, of the Township of Readington, in the County of Hunterdon, and State of New Jersey, that on or about the twentieth day of April, in the year one thousand eight hundred and seventy-eight, one Tunis D. Melick, of the Township of Tewksbury, in the County of Hunterdon, and State of New Jersey, became and was justly indebted unto one Peter W. Melick in the sum of twelve hundred dollars; and being so indebted, the said Tunis D. Melick, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto the said Peter W. Melick, a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of twenty-four hundred dollars, lawful money of the United States, with a condition thereunder written, that if the said Tunis D. Melick, his heirs, executors or adminis-

trators, should well and truly pay, or cause to be paid, unto the said Peter W. Melick, his heirs, executors, administrators or assigns, the just and full sum of twelve-hundred dollars, lawful money aforesaid, on the first day of April then next ensuing the date thereof, with interest for the same, at seven per cent. per annum, payable without any fraud or other delay, then the said obligation should be void; otherwise to remain in full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said Tunis D. Melick, in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered unto the said Peter W. Melick a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Tunis D. Melick, of the Township of Tewksbury, County of Hunterdon, and State of New Jersey, of the first part, to Peter W. Melick, of the Township of Tewksbury, in the County of Hunterdon, and State of New Jersey, of the second part; whereby the said party of the first part did grant, bargain, sell, alien, convey and confirm unto the said party of the second part, his heirs and assigns, *all* "those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the Township of Tewksbury, in the County of Hunterdon, and State of New Jersey, bounded and described as follows: Beginning at a maple tree in the corner of Amos Crater and Peter Eick and running thence a southeasterly course to a stake and stones leading to the mansion house on the farm of the said Peter W. Melick, and running thence a northeasterly course by lands of said Peter W. Melick to stake and stones near a small brook; thence a northwesterly course to stake and stones in Amos Crater's line, and thence by his line to the place of beginning, containing five acres, more or less, being the same premises now occupied by Matthias Apgar. The second tract is a wood lot, beginning at a stone heap in Amos Crater's line, running a northwesterly course to a stake and stones

in line of Peter W. Melick; thence easterly to a stake and stones in Peter W. Melick's line, and thence southerly by east to a stake and stones in Amos Crater's line; thence to the beginning, containing five acres of land, more or less. Both of said lots are the same premises devised by the last will and testament of Tunis Melick, deceased, to said Tunis D. Melick, as by said last will and testament will fully appear."

Together with all and singular the tenements, hereditaments and appurtenances, reversions, remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part therein; to have and to hold the said granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and to their own proper use, benefit and behoof forever; provided always, that if the said party of the first part thereto, his heirs, executors or administrators, should well and truly pay, or cause to be paid, unto the said Peter W. Melick, or his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond, with the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted, should cease, determine and be void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Tunis D. Melick before John N. Voorhees, Esq., one of the Masters of the Court of Chancery of the State of New Jersey, on the 20th day of April, in the year A. D. 1878, and duly recorded in the office of the Clerk in and for the County of Hunterdon, in Book 48 of Mortgages, page 367, on the twentieth day of April, in the year one thousand eight hundred and seventy-eight, as by the several certificates, indorsed on the said indenture of mortgage, more fully appears, and to which your orator begs leave to refer, if it be necessary so to do.

And your orator further shows unto your Honor that on or about the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and eighty-four, the said Peter W. Melick, by his deed, did assign, transfer and set over unto your orator, Fisher Pidcock, all his right, title and interest in and to the said bond and mortgage, and the money due, and to grow due thereon, for the consideration in the said deed of assignment named, and to which your orator begs leave to refer, if it becomes necessary so to do.

And your orator further shows unto your Honor that on or about the fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight, the said Tunis D. Melick, by writing, under his hand and seal, did grant, bargain, sell and convey all his right, title and interest in and to the above lands in your orator's said mortgages described, to one Sarah Ann Studdiford, in trust, nevertheless, for the children of Tunis D. Melick, Clarence and Caroline Melick, as tenants in common, in equal shares and proportions. But your orator charges and insists that said deed was made and executed subsequent to the making and execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon said premises is subsequent to the lien of your orator's said mortgage.

And your orator further shows unto your Honor that on or about the day of , A. D. eighteen hundred and eighty- , the said Sarah Ann Studiford departed this life.

And your orator further shows unto your Honor that the said deed to said Sarah Ann Studiford is in the words and figures following, viz:

This indenture, made this fifteenth day of May, in the year of our Lord one thousand eight hundred and seventy-eight, between Tunis D. Melick, of the Township of Tewksbury, County of Hunterdon, and State of New Jersey, of the first part, and Sarah Ann Studiford, of Branchville, Somerset County, State aforesaid, witnesseth that for and in consideration of the sum of one dollar to him in hand paid by said party of the second part, before the

sealing and delivery of these presents, the receipt whereof the party of the first part doth hereby acknowledge, have granted, bargained, sold, delivered, released, confirmed and conveyed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, in trust, nevertheless, for my two children, Clarence and Caroline, for their use and benefit, and their heirs, as tenants in common, in equal shares and proportions, all that certain interest or remainder devised by my grandfather, Tunis Melick, by his last will and testament to me with life estate to my father, Peter W. Melick, in and to all that certain homestead farm and other lands in said will set out, reference to said will, being had, the location of the same as well as the description thereof will fully appear, it being intended by this indenture to convey the same, subject only to such charges and encumbrances only as by said last will and testament are set out therein, it being the object of the said party of the first part to convey all his right, title and interest therein, with the appurtenances, to have and to hold the aforesaid premises, with the appurtenances, unto the party of the second part, in trust, as aforesaid, for the said Clarence and Caroline Melick, their heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year above written.

TUNIS D. MELICK. [L. s.]

Signed, sealed and delivered in the presence of

JOHN N. VOORHEES.

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

Be it remembered, that on the fifteenth day of May, eighteen hundred and seventy-eight, before me, a Master in Chancery of the State of New Jersey, personally appeared Tunis D. Melick, who, I am satisfied, is the grantor in the within deed of conveyance named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same

as his voluntary acts and deed for the uses and purposes therein expressed.

JOHN N. VOORHEES,
Master in Chancery of New Jersey.

As by reference to a certain copy of said deed now in the possession of your orator will more fully appear.

And your orator further shows unto your Honor that on or about the nineteenth day of August, in the year of our Lord one thousand eight hundred and eighty-four, your orator filed a bill to foreclose his said mortgage, making all the persons parties who had any interest in said mortgaged premises, according to the construction put upon the above deed by your orator's solicitor.

And your orator further shows that two of the defendants named in the said foreclosure proceedings, Clarence and Caroline Melick, the cestus que trusts under said deed, filed answers to said bill, and that by consent of the solicitors the hearing of the cause was referred to Vice Chancellor Van Fleet.

And your orator further shows that said cause was set down to be heard on the second day of October, in the year of our Lord one thousand eight hundred and eighty-five, before the said Vice Chancellor Van Fleet, at Newark, and that then and there a decree was made against all of the defendants in said cause to the complainant for the sale of the said mortgaged premises.

And your orator further shows that under and by virtue of said decree an execution was issued out of this court and directed to the Sheriff of the County of Hunterdon, commanding him to make sale of said premises according to law.

And your orator further shows unto your Honor that the said Sheriff, in pursuance of said execution, did make sale of the said lands on the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and eighty-six, to your orator, Fisher Pidcock, the complainant in said cause; said sale being confirmed, a deed was delivered and afterwards recorded.

And your orator further shows that as such purchaser

he demanded the possession of said premises from the said Tunis D. Melick, and possession thereof was refused.

And your orator further shows that on the day of , in the year of our Lord one thousand eight hundred and eighty-six, he filed a petition for a writ of assistance against the said Tunis D. Melick, he having come into the actual possession of said premises after the filing of said bill, and that said Tunis D. Melick, by his solicitor, James J. Bergen, filed an answer to said petition, asking that said writ be denied and said petition dismissed.

And your orator further shows that the hearing of said petition and answer thereto was referred to Vice Chancellor Bird, who, in pursuance of said reference, heard the same at Plainfield on the ninth day of April, A. D. eighteen hundred and eighty-six.

And your orator further shows that on the twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-six, the said Vice Chancellor Bird filed his conclusions refusing to grant the writ of assistance, because it was held by him, the said Vice Chancellor Bird, that there being no words of inheritance in the deed of trust to Sarah Ann Studiford, she took only a life estate in said lands, and that upon her death, although the estate granted to Clarence and Caroline Melick, the cestus que trusts, did contain words of inheritance, the interest of Tunis D. Melick, the grantor, devolved upon him again.

And your orator further shows that Tunis D. Melick was not made a party to said foreclosure proceedings, because, by the construction put by the counsel of your orator upon said deed, he was not thought to be either a proper or necessary party.

And your orator further shows unto your Honor that on or about the sixth day of April, in the year of our Lord one thousand eight hundred and eighty-six, one James J. Bergen, the solicitor of Tunis D. Melick, recovered a judgment by default in the Hunterdon Circuit Court against the said Tunis D. Melick for the

sum of one thousand two hundred and sixty-one dollars and ninety-three cents, or some other sum.

And your orator further shows unto your Honor that on the same day last above mentioned, the said James J. Bergen assigned, transferred and set over all his right, title and interest in and to the said judgment unto Sarah M. Melick, wife of Tunis D. Melick, and by virtue of the said judgment and the assignment thereof to her, the said Sarah M. Melick claims to have some lien upon or interest in the said mortgaged premises, but your orator charges and insists that the said judgment was obtained subsequently to the executing and recording of your orator's said mortgage and with full knowledge thereof, and if a lien at all upon said mortgaged premises, is subsequent to the lien of your orator's said mortgages and the decree aforesaid.

And your orator further shows unto your Honor that at the time of the making and execution of your orator's said mortgage, lot No. 2, as described in said mortgage and above set forth, contained a valuable growth of hickory, white oak, black oak, rock oak and chestnut timber, and that immediately after the said Tunis D. Melick came into the actual possession of the premises, and your orator had obtained a decree in the above mentioned foreclosure proceedings, the said Tunis D. Melick commenced to waste, spoil and destroy the same and to injure and defeat your orator in the collection of the amount due on his said mortgage by cutting and selling the wood and timber off said wood lot ; and that he has continued thus to waste, spoil and destroy said wood lands up to and until the present time, and that he is continuing to cut and remove from said lands whatever timber of value there is upon the same, until he has divested said timber lands of a large amount of valuable white oak, hickory, black oak, rock oak and chestnut timber that was upon the same, and the time of the making and execution of your orator's said mortgage, thereby greatly depreciating the value of said timber lands and injuring your orator in the collection of his said mortgage or the amount due thereon.

And your orator further shows unto your Honor that he has been informed, and verily believes it to be true, that the said Tunis D. Melick, unless restrained by the injunction of this Court, intends to cut all the valuable timber yet upon said wood lot.

And your orator further shows unto your Honor that he has frequently, and in a friendly manner, applied to the said Tunis D. Melick and requested him not to interfere with your orator's rights and interests, and to desist and refrain from cutting said timbers and trees, as in equity and good conscience he ought to have done, but which he wholly neglects and refuses to do, to the manifest wrong and injury of your orator in the collection of his said mortgage.

And your orator further shows that the whole of the principal money, mentioned in and secured by the said bond and mortgage, with interest thereon from the date thereof, still remains due and unpaid to your orator, as found by the said decree, and also the costs and expenses of the foreclosure proceedings above referred to, whereby the said mortgage and the estate thereby granted have become absolute in your orator and his heirs.

And your orator further shows that the said Tunis D. Melick and Sarah M. Melick, since the execution of your orator's said mortgage, have possessed and enjoyed, and do still possess and enjoy, the said mortgaged premises, and have always received and still receive the rents, issues and profits thereof, and that the said premises are a scanty security for the payment of the said principal and interest money so due to your orator, as aforesaid; and that he; or some other person or persons for him, has frequently, and in a friendly manner, applied to the defendants, hereinafter named, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest money so due to your orator on his said bond and mortgage, and your orator well hoped that they would have complied with such reasonable request, as in justice and equity they ought to have done.

In tender consideration whereof, and for as much as

your orator has not a complete remedy in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged premises without the aid of this Honorable Court, where matters of this nature are particularly cognizable and relievable: To the end, therefore, that the said defendants, Tunis D. Melick and Sarah M. Melick, may, without oath, true, full and perfect answers make to all and singular the premises, as if here repeated, and they thereto particularly interrogated; and that the said Tunis D. Melick and Sarah M. Melick may discover, and in manner aforesaid set forth, whether there is or are any other, and what, encumbrances upon or affecting the said mortgaged premises, and, if so, in whom the same is or are vested, and whether the same is or are not subsequent to your orator's said mortgage, or how otherwise; and that an account may be taken, by and under the direction of this Honorable Court, of what is due and owing to your orator, for principal and interest on his said mortgage.

And that the said Tunis D. Melick may be decreed to pay to your orator what may be found to be due to him, on taking the said account, together with his costs of the suit, by a short day, to be appointed by this Honorable Court for that purpose, or in default thereof, that the said Tunis D. Melick, and all persons claiming by, for or under him, may be absolutely debarred and foreclosed of and from all equity of redemption in or to the said mortgaged premises and every part thereof, and that he may deliver up to your orator all deeds, papers or writings in his custody or power relating to or concerning the said mortgaged premises, or any part thereof, and that, in the meantime, the said Tunis D. Melick and Sarah M. Melick may be enjoined from committing any waste, spoil or destruction of the said mortgaged premises, and also from removing from said lands any timber, logs or wood cut thereon and now lying thereon.

And that your orator may have such further and other relief in the premises as to your Honor may seem meet, and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered to

grant unto your orator not only a writ or writs of subpoena issuing out of and under seal of this Honorable Court, to be directed to the said Tunis D. Melick and Sarah M. Melick, therein and thereby commanding them and each of them, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience ; but also the State's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Tunis D. Melick and Sarah M. Melick, their and each of their workmen, servants and agents, therein and thereby commanding them, under the penalty that may fall thereon, that they and every one of them do absolutely desist and refrain from felling or cutting, selling, taking away or removing any trees or timber, wood or logs, from said lands.

And your orator, as in duty bound, will ever pray, etc.

A. C. HULSIZER,

Solicitor for, and

J. L. CONNETT,

of Counsel with, Complainant.

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

Fisher Pidcock, the above named complainant, being duly sworn according to law, on his oath saith, that he has heard the above bill of complaint read, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters that are therein stated to be on his information or belief, and as to those matters he believes it to be true ; and this deponent further says that at the time of the making and execution of deponent's said mortgage, lot No. 2, as described in deponent's said mortgage and in the above bill set forth, contained a valuable growth of hickory, white oak, black oak, rock oak and chestnut timber, and that immediately

after the said Tunis D. Melick came into the actual possession of the premises, and after this deponent had obtained a decree in the foreclosure proceedings above referred to, the said Tunis D. Melick commenced to waste, spoil and destroy the same, and to injure and defeat this deponent in the collection of the amount due on his said mortgage by cutting and selling the wood and timber off said wood lot; and that he has continued thus to waste, spoil and destroy said wood lands up to and until the present time, and that he is continuing to cut and remove from said lands whatever timber of value there is upon the same, until he has divested said timber lands of a large amount of the valuable white oak, hickory, black oak, rock oak and chestnut timber that was upon the same at the time of the making and execution of deponent's said mortgage, thereby greatly depreciating the value of said lands and injuring this deponent in the collection of his said mortgage or the amount due thereon.

And this deponent further saith that he has been informed, and verily believes it to be true, that the said Tunis D. Melick, unless restrained by the injunction of this Court, intends to cut all the valuable timber yet upon said wood lot; and that the premises are a scanty security for the money due upon this deponent's mortgage; and that he believes the said Tunis D. Melick to be insolvent, and though personally liable therefor, is unable to pay any excess of that debt above the proceeds of the sale of the mortgaged premises.

FISHER PIDCOCK.

Sworn and subscribed this 29th day of September, A. D. 1886, before me.

R. S. KUHL,

Master in Chancery of N. J.

A true copy.

ALLAN McDERMOTT, Clerk.

In Chancery of New Jersey.

Between	}	
FISHER PIDCOCK,		
Complainant,		On Bill, etc..
and		
TUNIS D. MELICK, et al.		
Defendants.		

ANSWER OF TUNIS D. MELICK.

The answer of Tunis D. Melick, one of the defendants named in the above stated cause.

This defendant, answering, shows :

First. He denies that on or about the twentieth day of April, eighteen hundred and seventy-eight, he was indebted to one Peter W. Melick in the sum of twelve hundred dollars, as is untruly set forth in the bill of complaint.

Second. That he neither admits nor denies the making, execution, delivery and recording of the mortgage mentioned in the bill of complaint, nor the making, execution or delivery of the bond mentioned in said bill, to secure which, it is alleged, the said mortgage was given, neither said mortgage or bond being now in this defendant's possession, and he therefore leaves the complainant to make such proof as he may be advised is material and necessary or proper for him to do.

Third. This defendant does admit that on or about the time mentioned in the bill of complaint, he was induced by Peter W. Melick, his father, and in consequence of such inducement did execute and deliver to said Peter W. Melick a bond and mortgage for the sum of twelve

hundred dollars, but that the same was wholly without consideration; that about that date this defendant was engaged in defending himself against a claim then in litigation, which he feared he might not be able successfully to resist, and in order to prevent the collection of a judgment, if one should be recovered against him, his father, the said Peter W. Melick, advised that he should make the mortgage aforesaid, that the judgment creditor might be hindered and delayed in the collection of his said debt. This defendant accepted said advice and executed the said mortgage in pursuance thereof and without consideration.

Fourth. That it may be true that the said Peter W. Melick attempted to assign said mortgage to the complainant, but this defendant charges that the complainant paid no consideration for the said mortgage, and has no real interest in the same, having repeatedly admitted that he was acting as complainant for the convenience of said Peter W. Melick. But if he was or is the real owner, he took the same with the full knowledge of the fraudulent character thereof.

Fifth. That he denied that he ever conveyed or attempted to convey the mortgaged premises to Sarah Ann Studdiford, as is untruly set forth in the bill of complaint, and charges that the trust deed set forth in the bill of complaint does not warrant the charge, as made in said bill.

Sixth. That this defendant has no personal knowledge of the different proceedings taken to foreclose this mortgage, as set forth in the bill of complaint, but he does admit that the said mortgage was attempted to be foreclosed; that such proceedings were had therein; that the complainant became the purchaser of some interest, pretended or otherwise, in said mortgaged premises, at Sheriff's sale, and paid therefor the sum of seven hundred dollars, by giving the Sheriff of Hunterdon county a receipt for that amount, on account of his decree in said cause. And this defendant insists that the complainant should be required to credit on said mortgage the said amount.

Seventh. The defendant admits the recovery of a judgment against him by James J. Bergen, and the subsequent assignment of the same to Sarah M. Melick, as is set forth in the bill of complaint, but denies that he has wasted, spoiled or destroyed any valuable growth of hickory, white oak, black oak, rock oak and chestnut timber on lot No. 2, as is untruly set forth in the bill of complaint; that he cut a few sticks of timber that were decaying, and used the most of it for firewood, the best part of the logs, in a few instances, being taken to the saw mill and converted into planks.

And this defendant prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

GASTON & BERGEN,

Sol's for and of counsel with deft, T. D. Melick.

In Chancery of New Jersey.

Between	}	On Bill, Etc.
FISHER PIDCOCK,		
Complainant,		
and		
TUNIS D. MELICK, et al.		
Defendants.		

The answer of Sarah M. Melick. who answers the bill of complainant filed in the above stated cause by virtue of an order entered in said cause, permitting her to answer separate from her husband, the said Tunis D. Melick.

This defendant, answering, denies the making and delivery of the complainant's bond and mortgage by Tunis D. Melick for the consideration set out in the bill of complaint. That if such a bond and mortgage was executed, as in said bill alleged, this defendant has never seen it. That she has been informed by her husband, Tunis D. Melick, that about the time alleged in said bill to be the date of said bond and mortgage he did execute and deliver a bond conditioned for the payment of twelve hundred dollars and a mortgage on the lands set out in the bill of complaint, to secure the payment of said bond, but that said bond and mortgage was given without any consideration. And this defendant charges the fact to be that if any such bond and mortgage are in existence they were voluntary, and given without consideration, and the said mortgage is void as to the judgments held by this defendant, as hereinafter set out, and should be postponed in order of payment to the said judgments of defendant.

That it may be true as set out in the bill of complaint

that on the 24th day of July, 1884, Peter W. Melick assigned the said bond and mortgage to the complainant, but of this she has no knowledge except that obtained from the bill of complaint, and therefore she neither admits nor denies the same, but leaves the complainant to make such proof thereof as he may be advised is material and proper for him to do; but this defendant charges that if the complainant has such an assignment, it was given and accepted without consideration, and with full knowledge of the fraudulent nature of said bond and mortgage.

And this defendant, further answering, admits that the said Tunis D. Melick did make, execute and deliver to said Sarah Ann Studdiford the deed of trust set forth in the bill of complaint, but she denies that said deed conveyed, or intended to convey, the lands embraced in the mortgage set out in the bill of complaint.

And this defendant, further answering, admits that the complainant undertook to foreclose said mortgage, making Caroline and Clarence Melick parties defendant, and that said Caroline and Clarence, by their next friend, filed answers to the bill of complaint, but that this defendant was not a party to said suit, nor were her rights adjudged upon. That she admits it to be true that the interests of said Caroline and Clarence, in said lands, were sold by the Sheriff of the County of Hunterdon, as set out in the bill of complaint, and she shows that the same sold for seven hundred dollars, and charges that that sum should be credited on the complainant's decree.

And this defendant, further answering, admits that the complainant undertook to get a writ of assistance, as set out in the bill of complaint, and that the Court denied his application, but she denies that said Tunis D. Melick came into the possession of the property after the commencement of the foreclosure proceedings, as is untrue set forth in the bill of complaint.

And this defendant, further answering, says that she admits it to be true that she is the holder, by assignment, of the judgment recovered by James J. Bergen against the said Tunis D. Melick, as set forth in the bill of com-

plaint, but she denies that it is a subsequent lien on the mortgaged premises to that of complainant's mortgage, but on the contrary charges that said mortgage was without consideration, and is fraudulent and void, as to the creditors of said Tunis D. Melick.

And this defendant, further answering, denies that the whole of the principal money mentioned in said bond and mortgage, together with large arrears of interest, remains due and unpaid, but charges that the same should be reduced by the amount realized at the previous sale thereof, as set out above, and in the bill of complaint.

And this defendant, further answering, shows that she is the owner, by assignment from Peter W. Melick, of a certain judgment recovered against Tunis D. Melick in the Supreme Court of the State of New Jersey, on the 4th day of June, 1878, by one Peter K. Melick, for the sum of \$348.06 damages and costs; that this judgment still remains due and unpaid to the full extent of principal and interest. And this defendant charges that it was to defeat and prevent the collection of the claim upon which this judgment was based, that the said mortgage of the complainant was given without consideration as aforesaid, and if said mortgage is held to be an encumbrance on the lands mortgaged, it is subsequent to the two judgments of this defendant hereinbefore set out.

And this defendant, by way of cross-bill exhibited against the complainant, says: That she is the wife of Tunis D. Melick, who is a son of Peter W. Melick, all residing in Hunterdon County, in this State; that she is possessed of considerable property, which she inherited from her father and mother, and still holds the same in her own name as her separate property, and that the same is in nowise under the control of her said husband.

That having paid a considerable sum of money for the use and benefit of her husband, for which she held his notes and checks, she, under the direction and advice of her counsel, caused to be obtained the judgment set out in the bill of complaint. That to obtain this judgment

she made a settlement with her said husband on the 27th day of March, 1886, and took from him two notes, one for \$594, which represented two other notes held by her against her said husband, one dated April 28, 1873, for \$150, and interest from April 1, 1877, and the other dated March 6, 1872, for \$233.20, with interest from April 1, 1876, except a payment made April 1, 1882, of five dollars. The other note was for \$641.64, which represented divers notes and checks of the said Tunis D. Melick, all of which bear date since the pretended giving of complainant's said mortgage. That after these two notes were given she indorsed them to the said James J. Bergen, in trust, upon the understanding that he would procure a judgment upon them, and then assign said judgment to this defendant, which understanding was afterwards carried out and the judgment assigned to her, as set out in the bill of complaint.

That in the year 1878 her said husband was prosecuted in a civil suit, by one Peter K. Melick, for damages alleged to have been suffered by him from the bite of a dog then kept by her said husband. This suit was brought in the Supreme Court of this State, and was tried at the Somerset Circuit Court at the April term, 1878. That on the 25th day of April, 1878, the jury empanelled to try said cause rendered their verdict against her husband for \$250; that a judgment was entered thereon at the next term of said said Supreme Court, to wit: on June 4, 1878, for the damages aforesaid and \$98.56 costs of suit; that between the date of the rendering of said verdict and the entry of said judgment, the said Tunis D. Melick, at the instigation and under the direction of his said father, Peter W. Melick, and without consideration, but for the purpose of hindering and delaying the creditors of the said Tunis D. Melick, and particularly the said Peter K. Melick, in the collection of their debts, executed and delivered, as this defendant is informed, the bond and mortgage set out in the bill of complaint.

That this last mentioned judgment was afterwards assigned by the plaintiff therein to Clark & Schomp, who in turn assigned it to Peter W. Melick, and by his deed

of assignment, dated the 23d day of December, A. D. 1884, the said Peter W. Melick sold and assigned said judgment to this defendant, who now holds the same, as the owner thereof; that the same is wholly due and unpaid, and is a lien on the mortgaged premises, as set out in the bill of complaint.

And this defendant further shows that of the judgment first above set out, and which is mentioned in the bill of complaint, the sum of \$594 was for a debt due from said Tunis D. Melick long previous to the making, execution and delivery of complainant's mortgage, and that the judgment last above set out was entered upon the verdict of a jury rendered before the said mortgage was given.

And this defendant charges that the mortgage set out in the bill of complaint was given without any consideration being paid by said Peter W. Melick to said Tunis D. Melick, but that they agreed and combined together, the one to accept and the other to give said mortgage for the express purpose of hindering and delaying the creditors of said Tunis D. Melick in the collection of their debts, and particularly to prevent the collection of the judgment recovered by Peter K. Melick, and now owned by this defendant, no interest ever having been paid or demanded on the mortgage.

And this defendant further shows that she is informed and believes, and charges the fact to be, that the complainant does not hold said mortgage, as a bone fide purchaser, for a valuable consideration; that he has never paid any consideration therefor to the said Peter W. Melick, and has no real interest therein, and is acting only as the agent of the said Peter W. Melick, who is the real party in interest as complainant in this cause; that the complainant has never claimed to have any interest in said mortgage, but on the contrary has repeatedly said that he had none, and was acting for the convenience of said Peter W. Melick, who has paid all the costs and expenses of the previous litigation in regard to said mortgage.

And this defendant further shows that when the complainant accepted the assignment of said mortgage he

had full knowledge of the fraudulent nature of the said mortgage.

This defendant, therefore, prays that the complainant may answer and set forth under oath what interest, if any, he has in the bond and mortgage set out in the bill of complaint; what consideration he paid, if any, and to whom; and whether, when the said mortgage was assigned to him, he did not know that said Peter W. Melick anticipated some trouble in regard to its collection, and whether it was not put in his hands for the express purpose of foreclosure, and for no other. And whether he did not then know that the mortgagor claimed that it was without consideration, and given to hinder and delay his creditors in the collection of their debts. And whether he then examined said mortgage to ascertain whether any interest had been paid thereon, and if so, whether any interest had been paid. And whether he has not repeatedly stated that he had no interest in the mortgage, or in the proceedings to foreclose it, and refused to pay any of the expenses attending the same, and whether said expenses were not paid by said Peter W. Melick, and what the understanding was between himself and the said Peter W. Melick, at the time of the assignment, or afterwards, in regard to the terms upon which he held said mortgage. State fully and particularly.

And that the said mortgage may be decreed to be fraudulent and void as to the two judgments held by this defendant, and that they may be decreed to be an encumbrance upon the mortgaged lands prior to the complainant's mortgage, and entitled to be first paid out of the proceeds of the sale thereof.

And this defendant will ever pray, etc.

GASTON & BERGEN,
Sol's for def't, Sarah M. Melick.

In Chancery of New Jersey.

Between	}	On Bill, Etc.
FISHER PIDCOCK,		
Complainant,		
and		
TUNIS D. MELICK, et al.		
Defendants.		

The complainant joins issue on so much of the defendant's answer as is not in the nature of a cross-bill, and as to that part of said answer which is in the nature of a cross-bill, he says that he admits that the defendant, Sarah M. Melick, is the wife of Tunis D. Melick, who is the son of Peter D. Melick, and that they all reside in the County of Hunterdon, in this State. Whether she is worth considerable property, which she inherited from her father, this complainant has no knowledge; therefore, neither admits nor denies it.

And further says whether the said defendant, Sarah M. Melick, has paid considerable money for the use and benefit of her husband; whether she held his notes and checks for the same; whether she made a settlement with her said husband, as is set forth in said cross-answer, and took two notes, one for \$594 and another for \$641.64; how they were made up; whether they were indorsed to James J. Bergen, with the understanding that he would procure a judgment upon them, he has no knowledge; therefore, denies the same.

And further says, that he admits that the said James J. Bergen did procure a judgment, as stated in said cross-answer, and did assign the same to the said Sarah M. Melick. But whether there was any consideration for

said judgment this complainant does not know; and admits that the said Tunis D. Melick was prosecuted, as set out in said cross-answer, and that a judgment was entered against him, but denies that between the dates of the rendering of said verdict and entry of judgment, the said Peter W. Melick induced the said Tunis D. Melick to give the said bond and mortgage without consideration, for the purpose of hindering and delaying the creditors of the said Tunis D. Melick, or any particular one of them, in the collection of their debts, but insists that the said bond and mortgage was given to secure to the said Peter W. Melick the said sum of twelve hundred dollars, as set forth in said bill.

And further says, he admits that the said last mentioned judgment was assigned by the plaintiff, Peter K. Melick, to Clark & Schomp, who assigned it to Peter W. Melick, who, by deed of assignment on the twenty-third day of December, A. D. eighteen hundred and eighty-four, and after the commencement of the former foreclosure proceedings, did assign said judgment to the said Sarah M. Melick. Whether she still holds the same this *defendant* has no knowledge, but denies that said judgment is a lien upon said mortgaged premises, and says that by a decree in the former proceedings, to foreclose this said mortgage, the said judgment was foreclosed of all equity of redemption in said mortgaged premises.

And further says, whether the said judgment obtained by James J. Bergen, against Tunis D. Melick, was for a debt due from said Tunis D. Melick long before the making, execution and delivery of complainant's mortgage, he has no knowledge, and therefore neither admits nor denies the truth thereof; but does deny that said mortgage was given after the verdict of the jury was rendered against said Tunis D. Melick.

And further says, he denies that said mortgage, set out in said bill of complaint, was given without any consideration being paid by said Peter W. Melick, and denies that they agreed and combined together, the one to accept and the other to give said mortgage for the express purpose of hindering and delaying the creditors of

said Tunis D. Melick, or any particular one of them, in the collection of their debts, but insists that said mortgage was given for a valuable consideration, and that the items of indebtedness which made up said consideration were acknowledged and agreed to by said Tunis D. Melick, and that they were moneys paid by said Peter W. Melick to divers persons, at divers times, before the giving of said mortgage, at the request and solicitation of said Tunis D. Melick, viz: between two and three hundred dollars to settle a suit for an assault and battery, upon which there was an indictment and conviction; between one hundred and fifty and two hundred dollars to settle some trouble he was in at Liberty Corner; between one hundred and fifty and two hundred dollars to settle some trouble he was in at or near Elizabeth or Newark; about one hundred dollars for goods which he bought at Samuel Sutton's vendue; fifty dollars to some person in Hackettstown for a sleigh, which Tunis had bought; two hundred dollars for the value of a horse which Tunis took from his stable while he was away, and broke his leg; two hundred dollars collected by the said Tunis when he went West; one hundred dollars paid a draft he drew at Henry on a brother-in-law; paid for one set of double harness, one hundred and five dollars; paid two hundred dollars for a new wagon bought of him.

And this complainant, in further answering the said cross matter, says he denies that he does not hold the said mortgage as a bona fide purchase, and insists that the arrangement was made between the said Peter W. Melick and the said complainant; that he, the said complainant, was to take an absolute assignment of said mortgage and foreclose the same and apply the proceeds to the payment of certain notes which he had indorsed for said Peter W. Melick's accommodation, and says that the said Peter W. Melick was to pay all the costs of said foreclosure.

And this complainant, in further answering the said cross matter, says that at the time said mortgage was assigned to him he did not know that said Peter W. Melick anticipated any trouble in regard to its collec-

tion, and says that he did not anticipate any, and that it was put in his hands to collect and apply the proceeds to the payment of certain promissory notes upon which this complainant was indorser ; and that he did not know that said mortgagor, Tunis D. Melick, claimed that it was without consideration, and given to hinder and delay his creditors in the collection of their debts, and that he did not examine said mortgage to ascertain whether any interest had been paid.

And this complainant prays to be hence dismissed as to the said cross matter, with his reasonable costs and charges in this behalf most wrongfully sustained.

A. C. HULSIZER,
Sol. for Complainant.









