VANCE & STILES' LAW PRESS, MORRISTOWN, N. J.

In Chancery of New Jersey.

Between
FREDERICK W. WALKER,
Complainant,
and
ANTHONY JOHN HILL, JOHN D. VAN BUREN, GEORGE WALKER, AUGUSTUS W. CUTLER, DAVID H. MCALPINE and others, *Defendants.*

On Bill for Relief, &c.

VANATTA & DE MOTT, *Solicitors for Complainant;*

ALFRED MILLS, *Solicitor of* Anthony John Hill, John D. Van Buren and George Walker, *Defendants;*

THEODORE LITTLE, *Solicitor of* David H. McAlpine, *Defendant;*

AUGUSTUS W. CUTLER, *Deft. Solicitor pro se.*

IN CHANCERY OF NEW JERSEY.

To the Honorable ABRAHAM O. ZABRISKIE, *Chancellor of the State of New Jersey:*

Humbly complaining shows unto your Honor your orator Frederick W. Walker of Morristown, in the County of Morris and State of New Jersey, that on the first day of April, eighteen hundred and fifty-seven, and for a considerable period before and after that date, your orator was lawfully seized and possessed of about three hundred and forty acres of land, situate in the Township of Hanover, in the said County of Morris, on the road leading from Morristown to Parsippany, on which land were numerous, large, costly and valuable buildings, consisting of a large, costly, valuable mansion, large barns and sheds and numerous outbuildings, useful and ornamental. The said Real Estate was valued at and was worth the sum of fifty thousand dollars.

In addition to the said Real Estate, your orator owned and had in possession on said Real Estate, a large amount of personal property, consisting of your orator's Library of about fifteen hundred volumes of rare, well selected and costly works, worth not less than eight thousand dollars.

A large quantity of costly and valuable household furniture, useful and ornamental, live-stock, carriages, and farming and gardening implements. The whole of said personal property amounting in value to not less than seventeen thousand dollars. That at that time a portion of the said premises were encumbered by a mortgage given to Maria Walker by Henry A. Walker, a former owner of the premises included in the said mortgage, bearing date the twenty-eighth day of October, eighteen hundred and fifty-one, given to secure the payment of five thousand dollars in one year, with interest.

That at the same time first above mentioned, the same premises, two hundred and eighty-one 88-100 acres, included in the mortgage hereinbefore mentioned, were encumbered with a certain other mortgage given by your orator to one James C. Atwater, to secure the payment of five thousand three hundred and fifty dollars with interest, bearing date the twenty-fifth day of September, eighteen hundred and fifty-five. The same premises included in the two mortgages hereinbefore mentioned, at the same time were encumbered with a certain other mortgage to secure the payment of eleven thousand dollars with interest, made by your orator to his brother, George Walker, bearing date the eighteenth day of October, eighteen hundred and fifty-five.

And your orator further shows that on or about the third day of April, eighteen hundred and fifty-seven, in order to pay off and discharge certain debts which your orator owed to persons in and about Morristown, your orator borrowed of his brother-in-law, Anthony John Hill, of the city of New York, the sum of two thousand dollars, as a security for which your orator voluntarily gave to said Hill a promissory note, and a special warrant of attorney to confess judgment, upon which a judgment by confession in the Circuit Court of the County of Morris was rendered on the third day of April, eighteen hundred and fifty-seven, against your orator and in favor of said Hill for the sum of two thousand dollars damages, and twenty-six dollars and seventy-two cents costs; an execution was immediately issued upon said judgment, and by virtue thereof your orator's said real and personal estate was levied upon.

And your orator further shows that afterwards and on or about the thirteenth day of November, eighteen hundred and fifty-seven, your orator became further indebted to the said Anthony John Hill in the sum of sixteen hundred and fifty-one dollars and sixty cents, for which your orator on the day and year last mentioned in the Circuit Court of the County of Morris, voluntarily confessed a judgment in favor of said Hill for the last-named sum of damages, and twenty-one dollars and

thirty-four cents of costs. That an execution was issued upon this last mentioned judgment, and by virtue thereof your orator's said real and personal estate was levied upon.

And your orator further shows that he has been informed and believes to be true that on or about the thirtieth day of May, in the year eighteen hundred and sixty-one, two judgments were recovered against your orator in the Circuit Court of the County of Morris—one in favor of Richard Bohan for five hundred and forty-five dollars and twelve cents damages, and thirty-three dollars and sixteen cents costs, and the other one in favor of William Liddy, for the sum of four hundred and ninety-one dollars and thirty-six cents damages, and thirty-three dollars and seventy-two cents costs. That upon both of said judgments executions were issued, and by virtue thereof levies were made upon the said real and personal estate of your orator.

And your orator further shows that he has been informed and believes, and charges it to be true, that the said Richard Bohan heretofore (your orator does not know when) assigned his said judgment to Augustus W. Cutler, Esq., of Morristown, another brother-in-law of your orator, who now is the owner thereof. And your orator has been informed that said Cutler claims also to have purchased from said William Liddy his said Liddy's judgment, and your orator charges that said Cutler is now the owner of said judgment.

And your orator further shows unto your Honor that on or about the twenty-sixth day of October, eighteen hundred and fifty-seven, your orator executed and delivered to the said Augustus W. Cutler a mortgage to secure said Cutler against loss, by reason of his having indorsed for your orator, and from loss by reason of indorsements he might thereafter make for the accommodation of your orator. That this mortgage includes the tract of two hundred eighty-one 88-100 acres, hereinbefore mentioned, and in addition thereto six other lots of land in said last mentioned mortgage, particularly described, containing in the aggregate fifty-eight acres and

forty-five-hundredths of an acre, adjoining the said two hundred and eighty-one 88-100 acre lot, which last mentioned mortgage was duly acknowledged, and an abstract of said last mentioned mortgage was immediately thereafter recorded in the record of mortgages in and for the said County of Morris, in Book C, 2, pages 557, &c., to which record, or the said mortgage, your orator prays leave to refer, if necessary, for a particular description of the said mortgaged premises.

And your orator further shows unto your Honor, that he has been informed that heretofore (the precise time being unknown to your orator) the said Augustus W. Cutler assigned the said last mentioned mortgage to the said Anthony John Hill as collateral security for some indebtedness owing by said Cutler to said Hill, the amount of which your orator does not know, and that said Hill still holds the said mortgage.

And your orator further shows that as between said Cutler and your orator, there is due and owing on the last mentioned mortgage about thirty-three hundred dollars, principal and interest.

And your orator further shows that when he confessed the said judgment to said Hill, first hereinbefore mentioned, there was no lien or incumbrance whatever upon your orator's said personal property, and when he confessed the second judgment to said Hill, hereinbefore mentioned, there was no lien upon your orator's said personal property except the said judgment first hereinbefore mentioned.

And your orator further shows, that having become security for some merchants in the city of New York, who, in the year 1857, and about that time, failed, and rendered your orator liable for large sums of money for which he had received no consideration. In consequence thereof your orator became, and for a considerable time continued to be embarrassed in his pecuniary and financial affairs; but the liabilities last mentioned have all been taken up and cancelled.

The said Anthony John Hill was and is the owner of a large and valuable estate, real and personal, in the city

of New York and elsewhere, and being made secure, as he was by the judgments and levies aforesaid, for what your orator was indebted to him, he was willing to allow your orator time in which to pay said judgments; alias and pluries executions were issued upon the said judgments of said Hill, and were levied upon the said real and personal property of your orator; and your orator remained in possession thereof, but no sale thereof was made until on or about the second day of May, 1862, when your orator's said personal property was sold under the said judgments and executions of the said Hill, by the Sheriff of the County of Morris, and all of it was purchased by the said Anthony John Hill for the use and benefit of your orator, except a few articles, the total amount of which was only one hundred and twenty-three dollars.

And your orator further shows, that the said personal property, including your orator's library, was worth at least seventeen thousand dollars; but the sale thereof by the Sheriff only amounted to three thousand and eighty-nine 72-100 dollars, (less than the amount due upon the judgments of the said Hill, but more than enough to pay the first of said judgments; said Hill's bids at said sale amounted to the sum of two thousand nine hundred and sixty-six 72-100 dollars).

And your orator further shows, that the said sale was but slightly attended, and it was generally understood said Hill was bidding in said personal property for the use and benefit of your orator, and because he was doing so your orator permitted it to be sold at the very low prices at which it was struck off; and after it was so struck off, the same (that is, all that had been struck off to the said Hill,) remained in possession of your orator as before.

And your orator further shows unto your Honor, that on or about the twenty-fifth day of August, in the year eighteen hundred and sixty-two, by virtue of the execution hereinbefore mentioned and other executions, the said farm of your orator, consisting of two hundred eighty-one 88-100 acres, with all the buildings and im-

provements thereon, was sold by the Sheriff of the County of Morris to the said Anthony John Hill for the sum of twenty dollars.

And your orator further shows and charges that the said Hill, at said last mentioned sale, bought said land use and for the benefit of your orator; that as late Sheriff of Morris County, William H. Anderson made a deed of said last mentioned land to said Hill, dated 2d February, 1863, and recorded 1863, in Book G, 6, page 508.

And your orator further shows, that on or about the twenty-fourth day of November, 1862, by virtue of the executions hereinbefore mentioned, and other executions, (the said Anthony John Hill's two executions, hereinbefore mentioned, being the first judgment liens upon your orator's land,) Samuel Van Ness, a late Sheriff of the County of Morris, sold two of the outlots of your orator, both included in the said mortgage made by your orator, to the said Cutler, one containing five acres and fifty hundredths of an acre, and the other, five acres and twenty-one hundredths of an acre, for the price of twenty-two dollars. That the said Anthony John Hill purchased the two lots last mentioned at the sale last stated, and made the purchase for the use and benefit of your orator. That in pursuance of said sale, said Van Ness made a Sheriff's Deed to said Hill for the two lots last named, dated December the first, 1862, which was recorded on the 28th of December, 1863, in Book G, 6, page 361.

And your orator further shows unto your Honor that two other lots of the said out-lands of your orator—one a lot of fifteen acres, and the other of six 35-100 acres, by virtue of the executions aforesaid, were sold by Samuel Van Ness, the then late Sheriff of the County of Morris, on or about the second day of February, 1863, and at that sale the said lands were purchased by the said Anthony John Hill in trust for the use and benefit of your orator, at and for the sum of twelve dollars; that the said late Sheriff of Morris County, Samuel Van Ness, Esq., made a deed to said Hill of the two lots last

mentioned, dated February 16th, 1863, acknowledged 24th March, 1863, and recorded 28th of December, 1863, in Book G, 6, page 370, &c.

And your orator further shows, that after the said sales of land had been made, and the deeds therefor given by the late Sheriff of the County of Morris to said Hill, as aforesaid, your orator still continued in possession of the said land as before.

And your orator further shows, that heretofore (the exact time not being known to your orator,) the said James C. Atwater filed his bill to foreclose his mortgage hereinbefore mentioned, and such proceedings were had in said suit; that afterwards, and on or about the fifth day of April, eighteen hundred and sixty four, a decree of sale and foreclosure was made in the said cause, in and by which decree, it appears that there was due to the said Atwater, on his said mortgage, the sum of eight thousand four hundred and eighteen dollars and eighty-one cents, and two hundred and five dollars and eighty-five cents costs.

By the same decree it appears that there was due to the said Maria Walker, on her said mortgage, the sum of seven thousand four hundred and forty-seven dollars and three cents, besides twenty-seven dollars and forty-eight cents costs. Also that there was then due to the said George Walker, on his said mortgage, the sum of sixteen thousand five hundred and thirty-four dollars and eighty-three cents, besides thirty dollars and forty-six cents of costs, and that all of said sums bore interest from the ninth day of March, eighteen hundred and sixty-four.

And your orator further shows unto your Honor, that very soon after the said decree was affirmed in the Court of Errors and Appeals of this State, the said decree and the said mortgage of said Atwater were purchased by and assigned to the said George Walker, your orator's brother, and the same continued to be held and owned by said George Walker until he released your orator therefrom, as hereinafter shown.

And your orator further shows unto your Honor that

afterwards, and on or about the twelfth day of September, eighteen hundred and sixty-four, by virtue of a writ of Fieri Facias, issued on the said decree, the Sheriff of the County of Morris sold the said tract of two hundred and eighty-one 88-100 acres, and the same was bid off by the said Anthony John Hill for the sum of nineteen thousand nine hundred and ninety-nine dollars, (that being the first and only bid,) and that purchase was made by said Hill for the use and benefit of your orator. A bid of five dollars, or of fifty thousand dollars, would have had the same result.

And your orator further shows, that said Hill paid no money on the said purchase last mentioned, nor was any deed ever received by him for said premises, nor was any deed therefor delivered by the said Sheriff of the County of Morris until in the month of September 1866, when a deed, made by the Sheriff of the County of Morris to the said Hill, was delivered to some one who professed to be acting for said Hill, and in his name.

And your orator further shows, that he continued to reside upon the said lands (although much of the time absent on business in the West, and elsewhere, being the Government contractor for timber, which he procured in Ohio,) until the pretended sale of said premises to one Daniel H. McAlpine, hereinafter mentioned.

And your orator further shows that said Hill for many years last past has been a widower and childless, (his wife, your orator's sister, having died many years since). And about the month of July, eighteen hundred and sixty-three, the said Hill, although retaining his rooms in the city of New York, began to stay part of the time upon the said farm and premises of your orator, especially when your orator was absent on his business in Ohio, and continued to do so at times from that time until about the winter of eighteen hundred and sixty-five—six.

And your orator shows that during this period the said Anthony John Hill was subject to deep fits of despondency and hypochondria, sometimes so severe as seriously to affect his mind and judgment, and to render him incompetent to transact business; nevertheless,

your orator did not suppose that he would do anything dishonest or fraudulent, or attempt to dispose of your orator's property without his consent, and therefore, as well as because it was then inconvenient for your orator to pay the incumbrances on said property, your orator allowed the said trust to remain in the hands of the said Hill. And who, during all that time, kept his rooms in the city of New York, and was there a considerable part of the time, and claimed that his residence was in the city of New York.

And your orator further shows, that for more than two years before September, eighteen hundred sixty-six, the said lands and real estate were offered for sale by your orator; and your orator requested Augustus W. Cutler, Esq., to sell the same; and your orator's price for said farm of two hundred eighty-one 88-100 acres, excluding the said outlands, and excluding all the said personal property, was fifty thousand dollars, and the lowest price your orator ever offered to sell the said Homestead premises for, was forty-five thousand dollars.

And your orator further shows, that said Hill also joined in said efforts to sell, and he also authorized and requested said Cutler to sell the same; and your orator further shows and charges it to be true, that the understanding between your orator and said Hill was that said Hill held all of said property, real and personal, for the use and benefit of your orator, and that the only interest said Hill had or was to have therein was to be reimbursed the money which he had lent to or paid for your orator, and that in case said property should be sold, said Hill should be reimbursed the amount due to him upon his two judgments, hereinbefore mentioned, out of the proceeds of the sale, and that the residue of the proceeds of the sale or sales should go to your orator, or his other creditors.

That said Cutler was the brother-in-law of your orator, he having married your orator's half-sister, who was also the half-sister of the former wife of the said Hill, and said Cutler was the attorney of your orator, and also of said Hill, and the sale of said property was con-

fided to said Cutler, both by your orator and said Hill, because he was the mutual friend and attorney of both parties, and because said Cutler knew and understood, and would take care of the rights of your orator, as well as those of said Hill, in selling said property and disposing of the proceeds.

And your orator further shows and charges the truth to be, that the clear understanding between your orator and said Hill was, when said Hill purchased said personal property, and also when he purchased said real estate, that he would hold the same merely as security for your orator's indebtedness to him ; and when your orator should pay that indebtedness said Hill should have no further interest in any of said property, but that then the same should go to the use and benefit of your orator, and his other creditors, and such was the intention of the said Hill.

And your orator further saith and charges, that his indebtedness to said Hill consisted of the two judgments recovered by the said Hill against your orator, hereinbefore mentioned, and nothing more, and that said Hill never paid off any of the incumbrances upon the said property except such as were paid by the proceeds of the sale to said McAlpine, hereinafter mentioned.

And your orator further shows that he never would have consented that said Hill should purchase all the said real and personal estate at the prices he did, nor would your orator have permitted him so to do, had it not been understood between your orator and the said Hill that your orator had the right to and could redeem said property upon paying to said Hill what your orator justly owed to him, said Hill.

And your orator further shows and charges that he can prove by written evidence, signed by said Hill, or for him and by his authority, that he, the said Hill, held the title to said real and personal estate, for the use and benefit of your orator ; and your orator further charges, that said Hill has frequently declared that he held said property as a Trustee, and was but a Trustee of and for said property.

And your orator further shows and charges, that the reason why the said Anthony John Hill did not take a deed of conveyance from Garret Demott, Esq., Sheriff of the County of Morris, for the said Homestead farm, immediately after the sale thereof, under the writ of Fieri Facias from this Honorable Court, on the decree obtained by said Atwater, hereinbefore mentioned, nor until said farm was sold to said McAlpine, as hereinafter mentioned, was because said Hill had bid off said farm for the benefit of your orator; said Hill had not paid any money on said purchase, and did not want to do so, and he omitted taking the deed from the Sheriff for the purpose of having said premises sold by your orator, or said Cutler, and with the proceeds of such sale to pay what was necessary to be paid on said sale, and after paying said Hill what was due to him on said judgment, to devote the rest to your orator or his use.

And your orator further states and avers, that his motive in having said property purchased and held by said Hill was not to defraud, defeat, hinder or delay the creditors of your orator, but to save the property from being sacrificed below its value, and to enable your orator to sell the same for its fair value and to the best advantage, and apply the sum to the payment of the incumbrances thereon, and your orator's debts, and by that means emancipate himself from debt entirely, or as far as possible; and it was with this view, and for this purpose, that the said lands and real estate were placed in the charge of the said Augustus W. Cutler by your orator and said Hill, to be sold, and it was distinctly understood that said lands and premises should not be sold without the consent and approbation of your orator; and said Cutler received his instructions as to the sale of the said property from both said Hill and your orator, but principally your orator.

That in the early part of the year eighteen hundred and sixty-six the health of said Hill was impaired, and that, for the purpose of benefiting his health, said Hill, in the month of June, eighteen hundred and sixty-six, went to the Island of Bermuda, where he has ever since

remained, and as your orator has been informed and believes, said Hill still remains in Bermuda.

And your orator further shows, that it is alleged by the defendants hereinafter named that before said Hill departed for Bermuda, and on or about the twenty-seventh day of the month of April, 1866, that he, the said Hill, executed and delivered to one John Dash Van Buren, of the city of New York, an alleged power of attorney authorizing said Van Buren to sell and convey any and all lands owned by said Hill in the United States of America; to lease and demise any of said Hill's lands in the United States; to draw checks against his deposits in banks, and to indorse for collection or deposit any and all drafts, bills of exchange, or checks, and to sue for and recover all moneys due and to become due to said Hill; to collect, assign and satisfy bonds and mortgages outstanding in his name; to sell stocks of any corporation of the United States, or any state or municipality. But said alleged power of attorney does not give or pretend to give, or confer any power to sell, assign or transfer any goods or chattels belonging to said Hill, or claimed by him.

And your orator further shows and charges, that when said Hill signed and pretended to acknowledge the said pretended power of attorney, and before that time, he, the said Anthony John Hill was, and ever since has been, and still is of unsound mind, by means whereof said Hill was incapable of making said power of attorney, and ever since has been, and now is, incapable of ratifying any acts done, or pretended to be done, under or by virtue of the said power of attorney.

And your orator further shows, that after said alleged power of attorney was made and delivered, and after said Hill was gone to and was in Bermuda, and as late as the 16th of June, 1866, said Hill still recognized said Cutler as the person having the sale of said lands of your orator, and caused a letter to be written to said Cutler, giving him directions about the sale of said lands, which letter in no way intimated or indicated that said Van

Buren had or would have anything to do with the said lands or the sale thereof.

And your orator further shows, that when said Hill went to Bermuda, as aforesaid, he had not received any deed from Garret DeMott, Esq., Sheriff of Morris County, for the land so as aforesaid sold by said DeMott under the aforesaid decree of sale and foreclosure, nor did said Hill then expect, intend or desire to receive any deed therefor, but he wished and expected that the deed to be made in consummation of the last mentioned sale would and should be made to George Walker, your orator's brother, and in accordance with that understanding of said Hill the said Anthony John Hill made, or said Van Buren alleged that said Hill had made, an arrangement with the said George Walker and with the said Maria Walker, who is your orator's stepmother, that said Garret DeMott should make the deed in consummation of the last mentioned sale, to George Walker, and that said George Walker should give the said Maria Walker a mortgage of the said premises, to secure to her the amount due to the said Maria Walker upon the said decree, and the interest thereon, and as late as the sixteenth of August, 1866, the said John Dash Van Buren applied to said Augustus W. Cutler to prepare a mortgage of the said last mentioned premises, from said George Walker to the said Maria Walker, to secure the moneys so as aforesaid due to her; that said George Walker might take the title for said lands and premises; at the same time said Van Buren informed said Cutler that said Hill had informed him, said Van Buren, that he, said Cutler, could take in his charge, if he would, at once, the books and library furniture of your orator, so as aforesaid sold by the said Sheriff to the said Hill, at the same time saying that said books and library furniture were not to be sold by him (said Hill) in any event.

And your orator further shows, that after the sixteenth of August, 1866, and before the fifth day of September, 1866, whilst said Hill was in Bermuda, and whilst your orator was absent in the State of Ohio, without the knowledge or consent of your orator—without the

knowledge or consent, and without any consultation with said Cutler, and as your orator believes and charges, without the knowledge of the said Hill—the said John Dash Van Buren, pretending to act as the attorney-in-fact of said Hill, entered into a contract with one Daniel H. McAlpine, of the city of New York, by which, in the name of the said Hill, he agreed, for the price of twenty-eight thousand dollars, to convey to said McAlpine the said homestead farm of two hundred and eighty-one and a half acres of land, and all the goods and chattels and personal property in the buildings thereon, and on said land, and used thereon, excepting only the library aforesaid and library furniture.

And your orator further shows, that the property, real and personal, bargained and sold by the said agreement, was well worth at least the sum of fifty-three thousand dollars, and could and would, as your orator believes, have brought that sum had it been judiciously and properly sold.

And your orator further shows, that after the said contract of sale was made, and before any conveyance of said property was made, and before the said McAlpine had paid any of the purchase money, or if any, but very little of it, your orator gave, and caused notice to be given, and said McAlpine and said Van Buren were informed and knew that your orator was opposed to making said sale.

And your orator charges, that said McAlpine and said Van Buren had notice and information, and knew that said Hill held said property in trust, for the use and benefit of your orator, and that your orator had an interest in the said property, and your orator, for the reasons aforesaid, objected to and protested against the said sale, and against making any conveyance or transfer of the said property, real or personal.

And your orator further shows and charges it to be true, that said Cutler, before the said property was conveyed to said McAlpine, and before he had paid any considerable part of the said purchase money, objected to and protested against the consummation of said

sale, and notified said Van Buren and said McAlpine that your orator had rights and interests in the said property, real and personal, which said sale, if consummated, would sacrifice, and that the consummation of said sale would be inequitable and unjust to your orator, and your orator expressly charges that said McAlpine, before he received any conveyance of the said real or personal property, and before he paid the purchase money, or any of it, had notice and knew that your orator had rights in said property, real and personal, and that your orator claimed that said Hill was but a Trustee of said property for your orator, and that said Hill had never in reality paid anything for any of said property, and that your orator was entitled to the whole of said property, after paying the judgments of the said Hill, for his own use, and the use and benefit of your orator's creditors.

And your orator further shows that said Van Buren and McAlpine, or one of them, on or about the fifth day of September, eighteen hundred and sixty-six, induced the said Garret DeMott to deliver to said Van Buren, in the city of New York, where he had no right or power, the said Deed, so as aforesaid made by said DeMott, as Sheriff aforesaid, to said Hill, dated September 19th, 1864, and from the money furnished by the said McAlpine, in payment of the said twenty-eight thousand dollars of purchase money, said Van Buren and McAlpine, or one of them, paid to said DeMott the sum of eight thousand five hundred and ninety 56-100 dollars, being the amount due the said Maria Walker for principal, interest and costs on the said decree. The said Van Buren, as attorney-in-fact of said George Walker, gave a receipt to said DeMott for the sum of nine thousand nine hundred and eleven dollars and seventy-two cents, as in full for the principal and interest and costs due said George Walker on the said decree, in favor of James C. Atwater, which had been assigned by said Atwater to said George Walker ; and the said Van Buren, as attorney-in-fact of said George Walker, also gave a receipt to said DeMott, on the said decree, in favor of George

Walker, for three thousand eight hundred and forty-nine dollars and ninety-four cents. What disposition said Van Buren made of the money, so as aforesaid receipted for and in the name of George Walker, your orator does not know.

And your orator further states and shows, that then sufficient moneys remained in the hands of the said Van Buren out of the said sum of twenty-eight thousand dollars so received of the said McAlpine, as aforesaid, to fully pay up the two before mentioned judgments obtained by said Hill against your orator, principal and interest and costs.

And your orator further shows, that by deed of conveyance bearing date the fifth day of September, 1866, purporting to be made by said Hill to said McAlpine, said Van Buren, in the name of said Hill, undertook, and purported to convey to said McAlpine in fee simple, the said Homestead farm of two hundred eighty-one 88-100 acres, and at or about the same time sold and delivered the said McAlpine all of the said goods, chattels and personal property of your orator, except said library and library furniture, and all for the said price of twenty-eight thousand dollars.

And your orator further shows that in making the said sale to the said McAlpine the said Van Buren urged forward the said transaction with great haste and precipitation, for the purpose, as your orator believes and charges, of preventing its coming to the knowledge of your orator and so being stopped by him—your orator at that time being absent in Ohio, as before mentioned, but being expected soon to return.

And your orator shows that the haste of said Van Buren was so great that he gave the said McAlpine only two days to give his answer to said purchase, and to raise the money therefor, and from the same cause induced the Sheriff to go to New York to execute the said Deed to said Hill.

And your orator shows, that the said price of twenty-eight thousand dollars, paid by said McAlpine, was grossly inadequate—he, the said McAlpine himself,

holding the said Homestead farm, the real estate alone, at fifty thousand dollars, and having declared he would not take that sum therefor.

And your orator shows, that all these circumstances (without any actual notice or knowledge of your orator's rights, and of the trust upon which the said property was held by said Hill, although your orator charges that said McAlpine had such notice and knowledge,) were sufficient to put the said McAlpine upon his guard, and upon inquiry as to the trusts upon which said property was held, and as to your orator's equities therein.

And your orator shows that the said McAlpine, before getting any conveyance for said property, admitted and declared that he did not rely upon the title to said property, but on the said Hill ; that he had inquired about Mr. Hill's responsibility, and heard that he was very responsible, and that he relied upon Mr. Hill, or words to that effect, thus showing and proving that he was sufficiently notified and informed to put him on his guard in reference to said title and the equities thereto, attaching as aforesaid.

And your orator further shows and charges, that the said Van Buren, by virtue of the said power of attorney, or otherwise, had no power or semblance of power, or authority from said Hill to sell the said goods, chattels, and personal property, or any part thereof, and that inasmuch as said Hill held said property, real and personal, so far as he had any legal title thereto, as a Trustee for the use and benefit of your orator, he, the said Hill, could not transfer, or delegate any power to said Van Buren, to convey or dispose of any of said property without the consent of your orator, nor otherwise than for the use and benefit of your orator.

And your orator further charges, that said Anthony John Hill did not know of the said sale and conveyance by said Van Buren in the name of the said Hill, to said McAlpine, and did not consent thereto, and owing to his unsoundness of mind was incapable of conveying said property, or any of it, and was also incapable of assent-

ing to, or ratifying the said conveyance and transfer, so made as aforesaid, to said McAlpine, and that said McAlpine was aware of, and had notice of, said Hill's unsoundness of mind, and incapacity and unfitness for the transaction of business.

And your orator further shows, that soon after the aforesaid conveyance to said McAlpine, said McAlpine took possession of the real and personal property, so as aforesaid conveyed to him, and he has ever since had possession thereof. That your orator's said library and library furniture have remained in the mansion-house on said Homestead farm, and have been in the use of said McAlpine, although, so far as your orator knows, said McAlpine has not claimed to own the same.

And your orator further shows, that he has been informed and believes, and charges it to be true, that the said John Dash Van Buren intends soon to remove the said books composing your orator's library, and the said library furniture to the city of New York, and to entirely deprive your orator of the use thereof, and to convert the same to his own use, or to the use of some other person besides your orator, and that said Van Buren has declared his purpose to be to remove said books and library furniture to New York this Fall.

And your orator further shows, that he is not now indebted to the said George Walker, and that by release, duly executed by the said George Walker under his hand and seal, bearing date the twenty-first day of March, eighteen hundred and sixty-seven, the said George Walker did remise, release, and forever discharge your orator, his heirs, executors, and administrators, of and from all, and all manner of actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, decrees, extents, executions, claims and demands whatsoever, in Law or in Equity, which against your orator he ever had, then had, or which he might have against your orator's heirs, executors, or administrators hereafter could, should or might

have, for, upon, or by reason of any matter, cause, or thing whatsoever, from the beginning of the World to the day of the date of the said release, as by reference to the said release now in the possession of your orator, ready to be produced and proved, as this Honorable Court shall direct, and to which your orator prays leave to refer, will more fully and at large appear.

And your orator further shows, that the only mortgages remaining in any way chargeable against said lands and premises, or any part thereof, is the said mortgage of Maria Walker, and the said mortgage so as aforesaid made by your orator to said Augustus W. Cutler.

And your orator further shows, the only judgments recovered against your orator in the State of New Jersey, which are, or can be any lien upon the said real or personal property, are the said judgments recovered against your orator by the said Hill, the one recovered by Richard Bohan, and the one recovered by William Liddy.

And your orator further charges, that the said sale and conveyance of real and personal estate, so as aforesaid made to said Daniel H. McAlpine, should be set aside as illegal and fraudulent and void, and the said property, real and personal, should be sold fairly, judiciously, and to the best advantage, under the order and direction of this Honorable Court, and from the proceeds of such sale, all the valid liens and incumbrances upon said property, real and personal, should be paid, and the residue, if any, should be paid to your orator.

And your orator further shows, that about sixty acres of your orator's said lands, worth about five thousand dollars, were not conveyed to the said McAlpine, but are still held by the said Hill by virtue of the Sheriff's deed aforesaid, and that said Hill still holds the said judgments recovered by him open against your orator, and also the said mortgage given by your orator to said Cutler, and which said Cutler assigned to said Hill as collateral security, and is now actually seeking and threatening to enforce the said judgments and claims against your orator.

And your orator further shows, that said McAlpine

should be charged with the rents and profits, or fair value for the use of the said premises since he has been in the possession thereof, and said Hill should come to an account with your orator as to what is due, if anything, upon his said judgment, and also upon the said mortgage assigned to him by said Cutler, and also fully to account for all the said personal property. And your orator well hoped that the said Anthony John Hill, John Dash Van Buren, and Daniel H. McAlpine would have desisted and refrained from selling and conveying the said real and personal property to said McAlpine, and would have permitted the said property to be sold fairly and to the best advantage for the benefit of the creditors of your orator, and for your orator, but now so it is, may it please your Honor, that the said defendants, combining and confederating with divers other persons, at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted in this, his Bill of Complaint, with apt and proper words to charge them as defendants hereto, to injure and aggrieve your orator in the premises, not only refuse to convey the said property to your orator, or to dispose of the same to the use of your orator's creditors—and your orator in any way to use or dispose of said property for the use and benefit of your orator, pursuant to the trusts upon which said Hill purchased and held said premises—but on the contrary they make divers false pretences and allegations, derogatory and adverse to your orator's rights in the premises.

All of which actings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises by the strict rules of the Common Law, and without the assistance of this Honorable Court, where matters of this nature are particularly cognizable and relievable. To the end therefore that the said defendants and their confederates, when discovered, may, without oath or affirmation (which is hereby waived), full, true, perfect and dis-

tinct answer make to all and every the matters aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interrogated, paragraph by paragraph, and that the said Anthony John Hill may be declared and decreed to have held the said real and personal property in trust for the use and benefit of your orator, with a lien thereon in favor of said Hill, to the extent of the amount due, if anything, upon the two judgments recovered by said Hill against your orator, and of the amount due from your orator on the said mortgage given by your orator to said Cutler, and that the said Daniel H. McAlpine holds the real and personal property, so as aforesaid conveyed to him upon, and subject to, the same trust, and that it may be decreed and declared that your orator is entitled to redeem all of the said real and personal property ; that the liens thereon by mortgage and judgments, and the amount of every of them may be ascertained, and that the said real and personal property, if necessary, may be sold (reserving the library and library furniture to the last) under the order and direction of this Honorable Court, and from the proceeds of the sale, all legal and equitable liens thereon may be paid and satisfied, and the residue thereof may be paid to your orator, and that said sale and conveyance to said McAlpine may be declared and decreed to be inequitable, illegal, fraudulent, and set aside and for nothing holden.

And that the said John Dash Van Buren, Daniel H. McAlpine, and Anthony John Hill, and each of them and their and each of their attorneys, agents and servants may be injoined and restrained from selling said property, or any of it, and from removing the said personal property, or any of it, and particularly the said library and library furniture, from the said premises or the said County of Morris, and that an account may be taken of the rents and profits, and fair value of the use of said real and personal property for all the time that said McAlpine has had and shall have the use thereof, and that said McAlpine may be charged therewith, and that said defendants, and every of them, may be restrain-

ed and injoined from committing or suffering any waste, injury or damage to any of the said property, real or personal.

And that your orator may have such other and further relief as the nature and circumstances of his case may require, and may be agreeable to equity and good conscience. May it please your Honor, the premises considered, to grant unto your orator not only the State's Writ of Injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Anthony John Hill, John Dash Van Buren, and Daniel H. McAlpine, their and each of their attorneys, counsellors, agents, and servants, injoining them and each of them from selling any of the said real or personal property, and from removing any of said personal property from the said Homestead farm, or from the County of Morris, but also the State's Writ of Subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said Anthony John Hill, John Dash Van Buren, Daniel H. McAlpine, and Augustus W. Cutler, commanding them and each of them, on a certain day and under a certain penalty, to personally be and appear in this Honorable Court, then and there to answer the premises, and to stand to, abide and perform such orders and decrees in the premises as to your Honor shall seem meet, and shall be agreeable to equity and good conscience. And your orator, as in duty bound, will ever pray, &c.

VANATTA & DEMOTT, *Solicitors.*
JACOB VANATTA,
Of Counsel with Complainants.
JOSEPH P. BRADLEY,
Of Counsel with Complainants.

New Jersey,
Morris County, ss.

Frederick W. Walker, the complainant named in the foregoing Bill, being duly sworn, on his oath saith that he has read the foregoing Bill of Complaint and is acquainted with the contents thereof, and that the facts, matters and things stated in said Bill, so far as they relate to the acts and deeds of him, the said deponent, are true ; and so far as they relate to the acts and deeds of any other person or persons he believes them to be true. Deponent further saith that the statements of said Bill that Anthony John Hill, one of the defendants named in said Bill, purchased and held in trust for the use and benefit of him, the said deponent, as stated in said Bill, the property, personal and real, which is mentioned in said Bill as having been purchased at Sheriff's sale by said Hill, are true. That said property was sold—except the library and library furniture—by said John Dash Van Buren, to Daniel H. McAlpine, without the consent, and against the will of this deponent.

And deponent further saith, that he knows that it is the purpose and intention of said Van Buren to remove the said library and library furniture, during the present Autumn, from the said County of Morris to the city of New York, against the will, and without the consent of this deponent. Deponent further saith, that last Spring he received a letter from said Hill, signed with the name of said Anthony John Hill, and in the handwriting of a nephew of said Hill, who is in the habit of writing letters for said Anthony John Hill, in which letter said Hill stated that unless deponent would pay said Hill twenty-five hundred dollars in a short, seasonable time, he, said Hill, would have said library removed and taken away ; and deponent is satisfied that preparations are now being made to remove said library and library furniture to New York.

Deponent further saith, that a large portion of the books in said library are not only costly and valuable, but are very rare and difficult to replace, and many of them cannot be replaced in the United States, and that no damages for the conversion of said books likely to be awarded in a Court of Law would be an adequate compensation for the loss of said books.

FREDERICK W. WALKER.

Sworn and subscribed before me at Morristown, N. J., November 1st, 1867.

JOHN S. DEHART, *M. C. C.*

A true copy.

B. GUMMERE, *Clerk.*

STATE OF NEW JERSEY.

IN THE COURT OF CHANCERY.

ANTHONY JOHN HILL
ads.
FREDERICK W. WALKER. } *Answer of Defendant.*

This Respondent, saving and reserving to himself all the benefit of exception to the manifold errors and misstatements of the Bill of Complaint, in answer thereto, or so much thereof as he is advised it is necessary for him explicitly to answer, answering, states:

That the several deeds, mortgages, judgments, and other legal and judicial documents mentioned in complainant's Bill, together with the several debts owed by complainant, and sales of property made and ordered in consequence of such indebtedness, as stated in complainant's Bill, are all correctly described and set forth, so far as Respondent is advised.

That it is true that complainant was justly indebted to Respondent in the sums, and at the times mentioned in said Bill; and it is further true that complainant's property was sold as stated in this Bill, and that Respondent made the several purchases of said property, real and personal, at the times described in said Bill, but not as Trustee, or in anywise for the benefit of the complainant. When the real estate was sold under a decree of foreclosure, Respondent bid in the same, as he understood and intended, for the benefit of George Walker, the principal creditor, who was then absent from the country, and Respondent so advised George Walker at the time.

In reply to the extravagant estimates of the value of

the property thus sold and bought in, as charged in complainant's Bill, this Respondent deems it sufficient to state that the property was held for resale, as George Walker wanted it sold, as well as Respondent, and the highest price offered for the property within a period of years was twenty-five thousand dollars, and this offer was for the house and farm, and all the personal property, such as live-stock, tools, and furniture of all kinds. The property was finally, and after a long time, sold at twenty-eight thousand dollars, including all the personal property except the library. This Respondent solemnly avers upon his oath that he never purchased the said property, real or personal, or any part thereof, in trust or in confidence, express or implied, for the benefit of complainant, or for any other person for him; no proposition of this nature was ever intimated to this Respondent; no such thought ever entered into his mind. And Respondent solemnly affirms that all the charges made in complainant's Bill to the effect that Respondent was acting in the purchases aforesaid in any confidential, fiduciary character for complainant's benefit, are utterly false and groundless.

Respondent further affirms that the said property was sold for the purpose of having settlements made, and debts paid. No further advancements of pecuniary aid were made by either Respondent or by George Walker, to enable complainant to continue longer in possession of said property, because complainant seemed unable to improve his circumstances; instead of growing better, these circumstances seemed to grow worse, and there was no reasonable prospect of complainant ever being able to disembarrass himself, and as complainant was much of his time absent in the West, while the farm and personal effects required constant attention, it was evident that the holding on to the property by complainant tended only to involve him more and more. It is quite apparent, from complainant's own statement, so made in his Bill, that his habit was to contract debt after debt, year after year, and pay nothing, not even the interest which accrued; and it was because the prospect

of complainant's being able to disembarrass himself seemed to be quite hopeless that sales were made. No member of complainant's family, either connexion or relation, desired to do him harm. Had there been what appeared a reasonable probability of complainant's being able, by the aid of more loans, to pay off his debts and redeem his property, that aid would have been readily furnished.

Respondent can appeal with confidence and with sincere pleasure, to the record of thirty years past, to show with what continued and uninterrupted kindness he has treated the family, including complainant, with which he, Respondent, stood connected by marriage. It is true that the personal property of complainant was sold at a low price. One reason of this was, the live-stock was in exceeding bad condition, for want of proper care and attention. Complainant either had not or did not provide the means for purchasing food for the horses and cattle. Respondent had previously found it necessary to advance funds to purchase oats and hay to save the said live-stock from perishing.

Respondent further answering states, that when he bid in the house and farm, at the sale to foreclose mortgages, he meant to make the purchase for and in the name of George Walker, the principal creditor, who was then absent from the country; that he, Respondent, did not know at the time that the bid had been put down to him in his name; on learning this fact Respondent stated to Mr. Cutler, his attorney on that occasion, that the bidding was for George Walker, to correct which mistake Mr. Cutler proposed or suggested that the matter could be explained on the Books by adding the words Attorney for George Walker after Respondent's name, but Respondent believes no change was ever made on the books, which made it necessary for the deeds on the resale to be made in Respondent's name. Respondent further answering states, that after the purchase of the said real estate at the sale of foreclosure as aforesaid, he is not aware that complainant ever pretended to have any interest in, or claim to, said property in any way whatsoever. It is

true that respondent still kept his rooms in the city for business convenience, but that he resided most of his time on the property referred to in the Bill. It is further true that the Walker family, including complainant, occasionally visited him at the farm, and respondent ever felt disposed to treat them hospitably and kindly, but respondent never had the remotest intimation that complainant meant to set up any claim to said property, or any interest in it in law or equity. Indeed, respondent is constrained to believe, and so far as he was an actor in the matter he personally knows, that all complainant's pretension to equitable rights in the premises was an afterthought, and the Bill, in this case, was simply an effort to extort money. Respondent regrets exceedingly to be obliged to make statements on this record disparaging to complainant, but in defense of his own honor and integrity of character, he is compelled to state that complainant, desperate in fortune, and desperate in morals, recklessly and wickedly set up these claims to equitable rights, and then made demands on respondent, threatening a law-suit, and threatening bloody vengeance if these most fraudulent and intolerable demands were not complied with. Respondent has been informed that similar violent, lawless and wicked demands (and threats) were made by complainant on George Walker, in consequence of which, George Walker, to get rid of such murderous rancor and strife in the person of a brother, as respondent is informed, executed the releases of which complainant speaks in his Bill. Respondent further states that after the purchase of the house and farm aforesaid the complainant was not treated harshly, nor like a stranger; he was not turned out of the premises in a summary manner, but in a brotherly spirit complainant was allowed his own time to vacate and to make other arrangements. It is true there was a delay of about two years between the time of purchase and the execution of the deed for the real estate referred to. The reason is obvious: George Walker, for whom the purchase was intended to be made, was absent from the country, and respondent waited to consult him, and to ascertain what

disposition should be made of the property. When advised of all the facts, George Walker wanted the property sold, as he did not desire to advance any more money, which would have been necessary (had he kept the property) to discharge the outstanding encumbrances. In reply to complainant's statement that respondent had fits of depression, that he was of unsound mind, and the like, respondent deems it sufficient to observe that generally through life, and up to this time, he has managed his private affairs and pecuniary interests with tolerable success, and he has not found it necessary to call in the advice and assistance of Frederick W. Walker, the complainant.

It is true that respondent instructed Mr. Cutler to resell the land, but not for the benefit of complainant, but for George Walker, and to pay off the several mortgages and other encumbrances.

It is true that respondent gave to John Dash Van Buren, Esq., of the city of New York, a general power of attorney for business purposes, before respondent left New York for Bermuda, but respondent cannot see what that fact has to do with this case. Respondent may have also instructed Mr. Cutler, both verbally and in writing, to resell the land. Respondent wanted it resold, as did also George Walker, and Mr. Cutler was an agent for the sale of real estate, but respondent did not empower Mr. Cutler to make titles—having constituted Mr. Van Buren his attorney-in-fact, with power to represent respondent for all such purposes. Respondent avers that it is utterly false that any advantage was sought or taken of his (complainant's) absence in the West, to resell the land, for complainant well knew that respondent held the land for resale. I had done so for a long time. It is true that respondent apprehending that the books and library furniture, if sold on the farm, would sell for little or would bring an inadequate price, and therefore he declined to have them sold with the other personal property. And it is further true that respondent was willing that Mr. and Mrs. Cutler should have charge of the library furniture and books, and that

complainant might have a common use of them if he behaved himself properly, and respondent may have instructed Mr. Van Buren, his attorney-in-fact, accordingly, but respondent denies, most solemnly, that complainant had any right, either in law or equity, to the use of said books.

Respondent solemnly denies that he owes complainant one dollar, either in fact or in conscience, in law or in equity, and having fully answered, he prays to be hence dismissed with his reasonable costs and charges, in this behalf, most wrongfully sustained.

A. J. HILL.

Consulate of the United States of America,
BERMUDA, 28 Jan., 1868.

I, the undersigned, Consul of the U. S. America for Bermuda, do hereby certify that on the day of the date hereof, before me personally appeared Anthony John Hill, the defendant in a suit in Equity (as is said) now pending in the State of New Jersey, in the United States of America, in which Frederick W. Walker is complainant, and made oath and subscribed to the annexed and foregoing instrument of writing, or Answer in Equity. And the said deponent further declares that he is fully conversant with the contents of the annexed paper, or Answer in Equity, and that so far as the same were represented as his own acts and deeds, he knows to be true, and that so far as the same were represented as the acts and doings of others, he believes them to be true.

L. S.

Given under my hand and seal of office, date aforesaid.

C. M. ALLEN,
U. S. Consul.

A true copy.

B. GUMMERE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

Between
FREDERICK W. WALKER,
Complainant,
and
ANTHONY JOHN HILL, JOHN D. VAN BUREN, and others,
Defendants.

On Bill, &c.

The answer of JOHN D. VAN BUREN, *one of the Defendants.*

This defendant now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, answers and says: This defendant admits that the said complainant was, at the time claimed by him in his said bill, seized and possessed of the land in the township of Hanover, therein named, with its appurtenances, and also of a library of valuable books, and household furniture, live-stock, carriages and farming and gardening implements, the exact value of which this defendant does not know and cannot state, but he denies that either said lands or said personal property were worth the amount which in said bill the complainant claims them to have been worth.

And this defendant, further answering, admits that the several mortgages, of the dates and amounts set forth in said bill, were given upon portions of said real estate as in said bill set forth, and that the judgments in said bill set forth were recovered and entered against the said complainant at the several times, and of the several amounts, and in favor of the several plaintiffs, as alleged in said bill, and that executions were issued thereon, as is therein alleged.

And this defendant, in further answering, says that he does not know, and cannot state, whether or not, as stated in said bill, the said judgments recoved by Bohan and Liddy against the complainant, were assigned as stated in said bill.

And this defendant admits that a mortgage, such as is alleged in complainant's bill, was given by said complainant to Augustus W. Cutler, and assigned by him, Cutler, to Anthony John Hill, as collateral security for some indebtedness owing by said Cutler to said Hill; but the amount due on said mortgage, as between said complainant and said Cutler, this defendant cannot state, except that there is a paper attached to said mortgage purporting to be signed by said Cutler and said complainant, dated April 2, 1866, which states that the amount due thereon is three thousand and thirteen dollars and thirty-seven cents; nor can this defendant now state the exact amount of land embraced in it over and above the land embraced in the said mortgage to Atwater.

And this defendant further answering says, he does not know, and cannot state, whether or not at the time the judgments set forth in said bill, as confessed by said complainant to said Hill, were confessed, there was no other legal lien on the complainant's personal property; this defendant supposes there was not; and this defendant admits that the complainant, in 1857, and for years afterwards, was in greatly embarrassed circumstances; but whether his liabilities, incurred from "having become security for some merchants in the city of New York," have been taken up and cancelled, this defendant does not know and cannot state.

And this defendant admits that alias and pluries executions were issued upon the said judgments of said Hill, and that under the executions issued upon said judgments and upon other judgments against the complainant, the personal property of the said complainant on said lands was advertised and sold, and a large portion thereof was bought by said Hill, but what amount was

paid for said personal property by said Hill, this defendant does not know, and cannot state.

And this defendant further states, that he is informed and believes, and charges that at the time of said sale there were executions in the Sheriff's hands upon other judgments recovered in the Morris Circuit Court against said complainant to a large amount, besides those named in said complainant's bill. And this defendant denies that the said personal property, or any of it, was purchased by the said Anthony John Hill for the use and benefit of the complainant.

And this defendant admits that the personal property sold by the Sheriff, at the sale referred to in said bill, under executions against said defendants, brought the amount named in said bill, or about that amount, but this defendant denies that the said personal property was worth seventeen thousand dollars, as stated in said bill, or anything near that amount.

And this defendant further answering states, that he is informed and believes, and he so charges the fact to be, that said sale was fairly made in public by the Sheriff of Morris County, or his deputy ; that a large attendance of persons and bidders were present, and that whatever property was bought by Anthony John Hill was taken by him into possession, and that said personal property remained in possession of said Hill until he sold the same, or otherwise parted with possession thereof, as is hereinafter stated, and this defendant denies that said Hill bid in said personal property for the complainant, or authorized any such understanding.

And this defendant further answering admits, that at or about the time charged in said bill, the farm and lands of said complainant subject to the mortgages and other encumbrances thereon, were sold and conveyed under judgment executions to the said Anthony J. Hill, as in said bill stated. But this defendant denies that said Hill bought said farm or lands, or any part thereof, for the use or benefit of said complainant ; and this defendant admits the recovering of the decree on the Atwater mortgage to be essentially as set forth in said bill, and

that said decree was assigned by said Atwater to George Walker, and that on or about the time stated in said bill the lands covered by said Atwater mortgage were sold under *fi. fa.* issued upon said decree, and bid off by said Anthony J. Hill for the sum of nineteen thousand nine hundred and ninety-nine dollars.

And this defendant states that he is informed and believes, and he charges, that the assignment of said decree was taken by said Hill in the name of, and for the benefit of, said George Walker, said Hill advancing the money at that time for said George; that at the sale said Hill was attended by Augustus W. Cutler, Esq., and that when a bid for $19,999 was made, said Cutler publicly remarked, in the presence of said Hill and the other parties then in attendance, that any one could have the property who would bid one dollar more; and this defendant denies that said bid was made on said property bid off or purchased by said Hill for the use or benefit of the complainant.

And these defendants admit that no deed was delivered or money paid on said purchase until the fifth day of September, 1866, when the deed was delivered to this defendant, the attorney-in-fact of Anthony J. Hill, in the city of New York, as is hereinafter stated.

And these defendants deny that the said farm was the residence of said complainant up to the time of the sale to McAlpine, except as the said Hill permitted the said complainant, out of kindness and charity towards him, to come there and stay when he was in the East. And this defendant states that after the first purchase of said farm by siad Hill, and his said purchase of said personal property, the said lands and personal property were in possession of said Hill; the farm was carried on by said Hill; the laborers paid, repairs made, and taxes paid, and other acts of ownership performed by said Hill; that said Hill made the farm his principal residence, and not the city of New York, (while he generally had rooms in New York city,) and one summer he, said Hill, rented it to Daniel Lord, Esq., of the city of New York, as a country-seat.

And this defendant admits that said Hill was a widower and childless, and that his relationship by marriage to said complainant and said Cutler is as stated in said bill, and this defendant denies that the mind of said Hill, during the time named in said bill, was seriously affected, or that he was incompetent to transact business.

And this defendant further answering says, that he does not know, nor does he deem it material, what price said complainant may have asked for said farm; that said complainant had no authority from said Hill to sell the same.

And this defendant, further answering, denies that there was an understanding, as alleged in said bill, between said complainant and said Hill, that said Hill held all or any part of said property, real or personal, for the use and benefit of said complainant, or that he declared he was trustee for said complainant, or that the only interest said Hill had or was to have therein was to be reimbursed the money which he had lent to said complainant, or that after his being reimbursed out of the proceeds of sale, that the residue of such proceeds should go to the complainant, or his other creditors.

And this defendant admits that said Cutler was, in recovering said judgments, and in some other matters, the attorney-at-law of said Hill, and says that said Cutler is also a real estate agent, and as such offers his services to the public for the sale of real estate, but further says that said Cutler, in the matter of the sale of said real estate, had at any time merely power to offer the same for sale, as any other real estate agent would have when requested so to do. And this defendant denies that, as charged in said bill, there was any understanding between said complainant and said Hill, when said Hill purchased either said personal property or said real estate, that he would hold the same merely as security for the complainant's indebtedness to him, and that when such indebtedness was paid said property should go to the use and benefit of the complainant and his other creditors, or that said Hill had any such intention.

And this defendant further says, that as he is informed and believes, and so charges the fact to be, the said complainant is indebted to said Hill to the amount of several thousand dollars not included in said judgments confessed by said complainant to said Hill, for moneys loaned to said complainant by said Hill at different times, and interest thereon. And this defendant denies that there was any agreement or understanding between said complainant and said Hill, that said complainant had the right to redeem said property upon paying to said Hill what said complainant justly owed to said Hill. And this defendant denies that the reason why said Sheriff's deed was not sooner given to said Hill was because said Hill had bid off said farm for the benefit of said complainant, and that he intended to have said premises sold for the benefit of said complainant. And this defendant further says, that said Hill was very intimate with, and had formerly been the partner in business of, the said George Walker, and that he bid off said farm and purchased the same for the benefit of George Walker, who then resided, and still resides, in the West Indies ; that for George Walker he made to Maria Walker some payments of interest upon her mortgage, after the said sale under the Atwater decree. And this defendant denies that said Hill made any agreement, or gave any charge or instructions that said lands should not be sold without the consent and approbation of said complainant. And this defendant admits that on or about the time stated in said bill, said Hill went to the Island of Bermuda, hoping to improve his impaired health, and continued to reside there up to the time of his death.

And this defendant admits that before his departure for Bermuda, said Hill gave to this defendant his power of attorney in writing, with full power to sell real estate, &c., as by said power, now in the possession of this defendant and to which he prays leave to refer, will more fully appear. And this defendant further says, that he had full power as attorney-in-fact of said Hill to sell and dispose of his personal property. And this defendant denies that at the time of making said power of at-

torney, or at any other time, said Hill was of unsound mind, or incapable of making said power, or ratifying any acts made thereunder.

And this defendant, further answering says, that this defendant, in pursuance of the understanding with which said Hill had bid off said premises, and in pursuance of the request of Mr. Hill, applied to Sheriff De Mott, of Morris County, to make out the Sheriff's Deed in the name of George Walker, as grantee; that said Sheriff, through his deputy, Wm. W. Fairchild, refused to do so because the bid was signed by Mr. Hill, and that therefore the deed was made out to Mr. Hill.

And this defendant further answering, admits that at one time Mr. Hill proposed putting said library and library furniture in charge of said Cutler, at his, said Cutler's house, for safe keeping, and that this defendant spoke of such plan to said Cutler, but this defendant does not remember whether or not he told said Cutler that said books and library furniture were not to be sold by him (said Hill), in any event.

And this defendant further answering admits, that on or about the twenty-first day of August, eighteen hundred and sixty-six, this defendant, as the attorney-in-fact of the said Hill, entered into an agreement to sell to Daniel H. McAlpine, for $28,000, said farm of 281 1-2 acres, with the personal property thereon, except the library and library furniture, and except also some hay and some other articles which this defendant had been informed did not belong to said Hill.

And this defendant denies that said property, so sold, was worth at least the sum of fifty-three thousand dollars, as charged in said bill, and this defendant does not think that any amount of "judicious and proper" care or attention would have made it realize that sum. And this defendant admits that he made such contract without consulting either Mr. Cutler or the complainant; that he did not consult said complainant because he, this defendant, did not know that said complainant had, or pretended to have, any interest in said property, and this defendant does not now believe that he has, or has had,

since said Sheriff's sales, any interest therein. And this defendant further says, that before, and at the time, said contract was made, he was at said farm with said McAlpine and said Cutler; that said Cutler was present when the contract of sale was drawn up by this defendant; that he made no objections to said sale, nor did he state, nor in any way intimate that said complainant had any rights or interest in said farm or personal property. And this defendant further says, that the price thus obtained for said property was the highest that had been offered, after numerous attempts by Mr. Hill and by himself to sell said property, and that in compliance with the instructions of said Hill and said George Walker, he sold the same. And this defendant says that said sale, both of the real and personal property, was afterwards ratified by said Hill, and by said George Walker.

And this defendant further answering says, that the first intimation he ever had that any interest was claimed by said complainant in said premises, was a notice of *lis pendens*, seen by this defendant about the thirtieth day of August, 1866, which notice is as follows:

IN CHANCERY OF NEW JERSEY.

"FREDERICK W. WALKER,
Complainant,
and
"ANTHONY J. HILL, GEORGE
"WALKER, MARIA WALKER,
"GARRET DEMOTT, *Sheriff*,
"*&c.*, AUGUSTUS W. CUT-
"LER, JOHN D. VAN BUREN,
"and JOSEPH DUNDERDALE,
Defendants.

"Notice is hereby given to all whom it may concern, "that the bill in the above stated cause against the "above named defendants is for the purpose of compel- "ling all and each of the above named defendants, their

"confederates and assistants, from selling, transferring, "conveying, entering upon, or in any way intermeddling "or interfering in any manner with any or all the fol- "lowing described property, lands, tenements, and real "estate, and for such further and other relief as may be "equitable and just, which premises are described in said "bill as follows, to-wit: Situate, lying and being in "Littleton, in the township of Hanover," &c., &c., (containing 281 97-100 acres, and giving place of record of deeds for said land,) which notice purported to be signed by "David A. Hayes, Sol. of Compl't," and was filed and recorded in the Morris County Clerk's office on the 30th August, 1866.

And this defendant says that immediately upon seeing such notice, he sent through his counsel to the Clerk of the Court of Chancery, at Trenton, for a copy of said bill, and was informed that no such bill had been filed; that after that, and several times before said sale to said McAlpine was completed by the delivery of the deed, he had similar enquiry made through his counsel of said Clerk for said bill, and found that none had been filed, and from this fact, as well as from all the other circumstances, this defendant had just cause to believe and did believe that said complainant had no claim upon said premises, and that the filing of said notice was a mere attempt to blackmail said Anthony J. Hill. And this defendant says that afterwards, at the request of Anthony J. Hill, whom this defendant had informed of said notice, he, through his counsel, took such proceedings; that on the second day of April, 1867, said notice was, by the Court of Common Pleas of Morris County, ordered to be stricken from the files because no such bill had ever been filed, and because such notice had been improvidently filed.

And this defendant further says, that the copy of said notice of *lis pendens* which he saw was either sent to him through the mail anonymously, or it was seen at the office of Joseph Dunderdale, in New York city, to whom it had been sent by Walker, but this defendant does not at this time recollect which.

And this defendant further says, that on the fifth day of September, 1866, and after this defendant had made full enquiry, and ascertained that no such bill as is referred to in said notice of *lis pendens* had been filed, he received on behalf of, and as the attorney-in-fact of, said Anthony J. Hill, from William W. Fairchild, the Deputy-Sheriff of Morris County, who was acting for and on behalf of Garret DeMott, Sheriff, a deed for said 281 88-100 acres, and paid the purchase-money in said deed named, with interest thereon from the 19th day of April, 1864; that said deed was delivered to the defendant in the city of New York; that said McAlpine was not present at the delivery of said deed, and knew nothing of it so far as this defendant is aware, and did not furnish any of the money which, as stated in said bill, was paid at that time. And this defendant says, that he had a power of attorney, in writing, from George Walker, and that as attorney-in-fact of said George Walker he receipted to said Sheriff for the amount due to said George Walker as assignee of the Atwater decree, and for the balance that was due to said George Walker under said decree upon his own mortgage, being the amounts or about the amounts stated in said bill.

And this defendant says, that a deed for said property from said Hill to said McAlpine was duly executed and delivered by defendant, as attorney-in-fact of said Hill, to said McAlpine on the 15th September, 1866; that of the twenty-eight thousand dollars paid by said McAlpine upon his said purchase, twenty-five hundred dollars only was retained by said Hill for the personal property conveyed, and the balance after paying the amount due under said decree to said Maria Walker, for her mortgage and costs which had been paid as aforesaid to the Sheriff on the 5th Sept., was paid or accounted for to said George Walker, and that no part of said moneys was appropriated or could be appropriated by said Hill towards paying the balance due him from said complainant upon his said judgments, or upon the other indebtedness of the said complainant to said Hill.

And this defendant denies that in making said sale to

said McAlpine this defendant urged forward said transaction with haste or precipitation for the purpose named in said bill, or for any other purpose whatever, or that he gave said McAlpine only two days "to give his answer to said purchase, and to raise the money therefor, or that he from the same cause induced the Sheriff to go to New York to execute the said deed to said Hill."

This defendant denies that said price of twenty-eight thousand dollars, paid by said McAlpine, was "grossly inadequate," and does not know what said McAlpine holds said property at, or asks for the same. And this defendant does not know when the fact of said complainant's making any claim on said property became known to said McAlpine, nor does he know, nor has he heard, of (except in complainant's bill) any declaration or admission such as is charged in said bill, being made by said McAlpine before the delivery of the deed to him, in reference to the title of, or to the responsibility of said Hill.

And this defendant says that immediately upon said sale he notified said Hill thereof, who ratified and approved the same, and he denies that said Hill was then of unsound mind and incapable of making sale of said premises or ratifying the sale made for him by this defendant.

And this defendant admits that shortly after said sale said McAlpine took possession of said premises and property, and that said library and library furniture remain on said premises in possession of said McAlpine; that it was left there for convenience sake.

And this defendant says that some time after said sale said Anthony J. Hill, who was an old and dear friend of this defendant, presented said library and furniture to this defendant, and that this defendant intended to remove the same to the city of New York, where this defendant resides, and would have done so had it not been for the injnnction issued by the Chancellor in this case.

And this defendant further answering says, that as to the release claimed by said bill to have been given to said complainant by said George Walker, he only knows

as he is informed by said bill, and by what he has heard indirectly from said George Walker, but this defendant respectfully insists that whether such release has or not been given, it does not affect the sale under said Atwater decree, or the title acquired thereunder.

This defendant does not know how many judgments against said complainant are now open and unpaid, but knows there is a balance due from said complainant on the judgments confessed by him to said Hill.

And this defendant respectfully insists that the legal title to that part of the lands which were not conveyed to said McAlpine was in said Hill, and is now in his heirs and devisees, and that the question relative to the mortgage thereon assigned by said Cutler to said Hill, is one between him or his representatives and said Cutler, and not said complainant.

And this defendant denies all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays that a decree may be made dissolving the injunction issued in this cause, and that this defendant may be hence dismissed with his reasonable costs, in this behalf most unlawfully sustained.

ALFRED MILLS,

Sol. for, and of Counsel with JOHN D. VAN BUREN, *Deft.*

State of New York,
City and County of New York: } *ss.*

John D. Van Buren, the above named defendant, being duly sworn, on his oath says, that the matters and

things set forth in the above answer, so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

JOHN D. VAN BUREN.

Sworn and subscribed this 29th day of August, 1868, *before me*,

FRED. B. VAN VLECK,

L. S.

A Commissioner for the State of New Jersey.

A true copy.

B. GUMMERE, *Clerk.*

The Answer of GEORGE WALKER, *one of the Defendants, to the Bill of Complaint of* FREDERICK W. WALKER, *Complainant.*

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantange of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto and unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, answers and says: That at the date of the mortgage referred to in said bill, said Frederick W. Walker was indebted to him in the amount of the mortgage given to him as stated in said bill by said Frederick, and that afterwards, in or about the times stated in said bill, said decree recovered by said Atwater against the complainant was assigned to this defendant by said Atwater; that at the time of the sale of said premises named in said bill under the Atwater decree, the amount of said mortgage so given to this defendant, and the amount decreed therein to said Atwater with interest and costs, were due to this defendant from said complainant; that said property was bid in by said Anthony J. Hill for this defendant, under the authority of this defendant to protect him for greater loss; that said Hill had formerly been the partner of this defendant, and as this defendant lived in the West Indies he relied upon said Hill to protect his interests at said sale; that the assignment of the Atwater decree was made to this defendant, and thus made that this defendant might protect himself in his subsequent lien upon said premises; that said farm was bought for this defendant, at the sale under said Atwater decree, for the sum of nineteen thousand nine hundred and ninety-nine dollars; that no part of the purchase money was paid at the time of the

sale, because Maria Walker, who had the only lien prior to the Atwater mortgage, did not want her money at that time, and was content to have it remain second on said property, and the balance of said purchase money was coming to this defendant ; that this defendant paid through the said Hill interest to the said Maria Walker, at times, upon her said mortgage ; that this defendant allowed and desired said Hill to remain upon said farm until the same could be sold, said Hill paying the taxes and expenses of keeping the same ; that at the time said farm was sold by said Van Buren to said defendant, David H. McAlpine, the said John D. Van Buren had full power from this defendant to sell the same, and was instructed by this defendant to sell it ; that the purchase money received by said Van Buren upon the sale to said McAlpine was, with the consent of this defendant, applied first, to the payment of said Maria Walker's mortgage and costs ; next, to the payment of twenty-five hundred dollars to said Hill, for the estimated value of the personal property belonging to said Hill, included in said sale, and the balance was duly paid over to this defendant, less a small balance due to said Hill from this defendant on general account.

And this defendant says that he never had any arrangement or understanding with either said Hill or said complainant, that said farm should be purchased for the benefit of said complainant, or held in trust for his use, and this defendant had no knowledge of any such arrangement made between said Hill and said complainant, and never consented to any such arrangement, and denies that any was made ; and this defendant says he had such purchase made to protect himself, as far as possible, from loss upon the advance made by him to the complainant. And this defendant further says that sometime after the purchase of said farm by him, the said complainant applied to this defendant to release him from all further claims against him, the said complainant ; that this defendant believed that in purchasing said farm he had obtained all he could from said complainant upon his indebtedness to this defendant, and

wishing to oblige said complainant, he released him from all further indebtedness to him ; that said release in no way affected said purchase of said farm by this defendant, and was granted to said complainant at his earnest and repeated requests, and in the hope that he might be induced to do better than he had been doing.

And this defendant furthering answering admits, that at the time claimed in said bill, before the giving of the mortgage named in said bill, the said complainant was seized and possessed of the real estate named therein, and also of the furniture and other personal property thereon, but this defendant denies that either said real estate or said personal property were worth the amount claimed in said bill. And this defendant further answering says, that he believes the priorities, amounts, and dates of, and parties to, the several mortgages and judgments set forth in said bill are correctly set forth therein, but the particulars thereof, and the fact of the assignment of some of said judgments and the Cutler mortgage, this defendant is not informed of, except by said bill, and this defendant prays that said complainant may make such proof thereof as may be necessary in this cause. And this defendant admits that the complainant, in the year 1857 and long afterwards, was in greatly embarrassed circumstances, but how much of his indebtedness said complainant has since had cancelled this defendant does not know, and leaves the complainant, if the matter is of any importance in this cause, to make such proof thereof as under the rules and practice of the Court may be necessary.

And this defendant does not know, and cannot state under what execution the personal property of the complainant was sold, nor what price it brought, nor who was present at the sale, but this defendant denies that said personal property, or any part thereof, was bought by said Hill for the use or benefit of said complainant, or held by him after such sale in any way in trust for said complainant.

And this defendant has been informed and admits that at or about the time stated in said bill, the sale to

said Hill was made of the farm under common law judgment excecution; the amount paid this defendant does not know, but this defendant denies that said Hill then, or at any other time, bought said farm for the benefit or use of said complainant.

And this defendant further answering says, that he denies that at the sale under the Atwater decree said farm was bid off or purchased by said Hill in any way for the use or benefit of said complainant, or that the same was held after said sale in trust for said complainant. And this defendant further answering says, that after said sale under said decree this defendant, as above stated, allowed said farm to remain in the possession of said Hill, but denies that said complainant had possession thereof.

And this defendant denies all secret trusts or any other kind of trust or understanding claimed in said bill to have been entered into between said complainant and said Hill in reference to the holding of said farm by said Hill for the use or benefit of said complainant, and claims that any such trust or understanding (if any existed) was without the knowledge of the defendant, and a fraud upon him.

And this defendant charges that said complainant well knew that said farm had been bid off at the sale under the Atwater decree by said Hill for this defendant, and denies that said complainant had any interest in said farm after said sale, or any control over or interest in a subsequent sale of said farm.

And this defendant admits that he is informed and believes it to be true, that before his departure to Bermuda said Hill gave to said Van Buren a full power of attorney, but the extent and wording thereof this defendant is not informed of, and he prays that, if material, they may be duly proved.

And this defendant denies that at the time stated in said bill, or at any other time, said Hill was of unsound mind or incapable of transacting business, or ratifying any acts that might be done in his behalf.

And this defendant supposed that said Sheriff's deed

would have been made to this defendant instead of to Mr. Hill, but this defendant was at the time of the giving of said Sheriff's deed and is now a resident of the West Indies, and was not in this State, and does not know the details as to the giving of said deed, except as he is informed by said bill and by the answers filed in this cause, nor does he know in any other way as to Mr. Hill's proposal to take care of, or his disposition of the library.

And this defendant further answering admits that on or about the time stated in said bill said farm of 281½ acres, with the personal property therein (except the library and the library furniture, and a few other articles) were sold to David H. McAlpine for $28,000, and says that said sale was made by said Van Buren, who had a power of attorney in writing from this defendant and was authorized to make such sale; that the proceeds of said sale were disposed of as herein above stated; that this defendant had requested said Van Buren to make sale of said farm, and was very desirous of having the same sold and realizing upon it; that this defendant had made previous attempts to have said farm sold, and that the price thus obtained from said McAlpine was the highest offer he had been able to obtain; that this defendant accepted and confirmed said sale.

And this defendant denies that said farm and said personal property, so sold, were worth the sum of fifty-three thousand dollars, as charged in said bill, or that the sum of $28,000 was grossly inadequate.

And this defendant denies that said complainant, at the time of said sale to McAlpine, had any interest in said farm, and this defendant did not know that said complainant pretended to have any, and as to the knowledge had by said Hill or said McAlpine of any claim to said farm by said complainant, this defendant is informed only by the bill and answers filed in this cause, and if proof of the same is material, this defendant prays that said complainant may duly make it.

And this defendant further answering respectfully submits to this Honorable Court, that if the statements

made in said complainant's bill are true, they show that the said complainant was conspiring with said Hill to keep the property of him, the said complainant, from his creditors, and that his acts were a fraud in fact and in law upon this defendant and the other creditors, and that the complainant is not entitled to any relief in this Honorable Court. And this defendant denies all unlawful combination and confederacy, in said bill charged, without this—that any other matter or thing material for this defendant to make answer unto, and herein or hereby well and sufficiently answered, confessed, or avoided, traversed, or denied, is true to the knowledge or belief of this defendant.

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

ALFRED MILLS,
Sol. of, and of Counsel for GEORGE WALKER, *Deft.*

A true copy.
B. GUMMERE, *Clerk.*

The Answer of DAVID H. McALPINE, *one of the Defendants to the Bill of Complaint of* FREDERICK W. WALKER, *Complainant.*

This defendant, in the complainant's bill called Daniel H. McAlpine, now and at all times hereafter reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said Bill of Complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says: That for many years prior to the purchase of the real estate mentioned in the complainant's bill, as hereinafter stated, he had been a resident of, and engaged in business in, the city of New York. That during the summer of eighteen hundred and sixty-six he boarded with his family near Morristown, County of Morris, in the State of New Jersey, and in the month of August of that year, as near as he can recollect, his attention was called to an advertisement offering said real estate for sale; that said advertisement, according to his recollection, was in the New York *Times*, and described the property as situate at Littleton, in said County of Morris; that soon after seeing said advertisement he went to said farm and examined it, and was informed by the person in charge of the house that Augustus W. Cutler, of Morristown, had the farm for sale, and that one Thomas V. Johnson, who lived very near to said farm, had something to do with the sale of it, and was to bring some other persons to examine it the next day; that he immediately went and saw said Johnson—whose business was negotiating sales of real estate—and, learning from him that he had authority to sell the farm, or that he knew what the farm could be bought for, and who had the selling of it, this

defendant entered into negotiation, through said Johnson, with the person in the city of New York (then unknown to this defendant), who acted as agent or attorney for Anthony J. Hill, the owner, for the purchase of said farm. In the course of said negotiation this defendant learned, according to his recollection, from said Thomas V. Johnson that said farm belonged to one Anthony J. Hill, who was out of the country; that one John D. Van Buren, of the city of New York, was agent for said Hill, and had charge of selling said farm, and that the same was to be sold for cash, and could be bought for twenty-eight thousand dollars, with the personal property on the farm and in the house, excepting, however, the library. This defendant further answering saith, that after a second and more careful examination of the property, he met the said Johnson at his office in the city of New York, and agreed to buy said property, real and personal, for the sum of twenty-eight thousand dollars in cash, and went with said Johnson to meet said John D. Van Buren, the agent of said Anthony J. Hill, for the purpose of entering into a written agreement for said purchase; that in drawing said agreement this defendant learned that some part of the personal property on said farm did not belong to said Hill, and declined to sign the agreement until such property as did not belong to said Hill was particularly designated, so that there might be no cause of dispute thereafter, and that said John D. Van Buren thereupon agreed to meet this defendant the next day on said premises and there cause such property as did not belong to said Anthony J. Hill to be pointed out to this defendant; and as part of said personal property, according to this defendant's recollection, was said to belong to Augustus W. Cutler, a brother-in-law of said Anthony J. Hill, or because said Cutler had had some care or oversight of said property, said Van Buren requested this defendant to carry a letter from him to said Cutler, requesting him, as this defendant understood, to meet said Van Buren and this defendant on said premises the then next day. And this defendant further saith, that he went to said farm next

day and there met said Thomas V. Johnson and said Augustus W. Cutler, and before said Van Buren arrived this defendant and said Cutler went through the house and through the outbuildings, and said Cutler pointed out to this defendant such articles as he said did not belong to said Anthony J. Hill; that said Cutler was informed by this defendant that he had agreed with said John D. Van Buren, as agent of said Anthony J. Hill, for the purchase of said farm and personal property, except the library, but was not informed what price this defendant was to pay until said Van Buren came and the agreement was reduced to writing. That before said Van Buren came, and after this defendant had distinctly informed said Cutler that he had agreed to buy said property, real and personal, from the agent of said Anthony J. Hill, and that said Van Buren was coming there that day to enter into the agreement for the sale, said Cutler distinctly and emphatically assured this defendant that the title to said real estate was perfect in said Hill, saying, according to this defendant's recollection, that he knew all about the title, and that there was no better title in the County of Morris; that so far from said Cutler's saying or in any way intimating that said complainant had any interest whatsoever in said property, or that said Hill's title was not perfect, or that said Hill only held said property in trust for the complainant, and could not give a good title without the consent of the complainant, as charged in the complainant's bill, this defendant has no recollection of having heard the name of the complainant, who was then, and is still, an entire stranger to him, mentioned by said Cutler or any one else, but said Cutler told this defendant that he had been acting as agent of said Anthony J. Hill in relation to said property, and then had an offer for the purchase of a part of said farm, but inasmuch as said Hill had given said John D. Van Buren power to sell the same he should not interfere; that he himself had thought of buying the farm, but his wife did not wish to go there and live.

And this defendant further answering saith, that be-

fore the agreement for the purchase of said property was signed by this defendant, said Augustus W. Cutler, as this defendant has already stated, pointed out such property as he said the said Anthony J. Hill did not own, and, according to this defendant's recollection, among other things said Cutler stated that the hay in a certain barn belonged to one Blanchard; that the buckwheat upon a certain lot was put in on shares by one Shelly, and said Hill only owned a part of it. That a part of the meadow was under lease to one John Bates, and another lot was rented to one Righter, and some few articles of personal property belonged to him, the said Cutler, but no intimation of any kind was given to this defendant by said Cutler, or any one else, that said complainant had any right to, or interest in the said property, either real or personal. And this defendant further saith, that the parties were all strangers to him, and inasmuch as said Cutler had been asked to meet this defendant on the premises for the express purpose of showing to this defendant what property did not belong to said Hill, this defendant relied on his statements implicitly, and in his presence said Van Buren, as agent of said Hill, drew up the written agreement by which said Hill agreed to sell to this defendant, and this defendant agreed to buy, the said farm mentioned in the complainant's bill, containing two hundred and eighty-one acres, in said agreement described as being the same land which was sold by the Sheriff under a decree, in the suit of Atwater against Walker and others, to said Anthony J. Hill; this defendant, by said written agreement, agreeing to pay for said farm and personal property the sum of twenty-eight thousand dollars in cash, that is to say, twenty-eight hundred dollars on the signing of the agreement, and the balance on the fifteenth day of September then next ensuing.

And this defendant further shows, that by said written agreement it was further provided that the title to be conveyed to this defendant by said Hill should be a good one, and free from incumbrances, and the deed should be a warranty deed, with full covenants, and that

it should be delivered to this defendant in the city of New York, on the said fifteenth day of September; that by said written agreement said Anthony J. Hill also agreed to sell, and did sell, to this defendant all the said personal property on said premises and in said dwelling-house which belonged to him, except the library and the furniture of the library room; and by said agreement this defendant was also bound to pay to said Thomas V. Johnson such commission as he might be entitled to for making said sale, and that said agreement was then and there, on the said twenty-first day of August, eighteen hundred and sixty-six, signed by said John D. Van Buren, as agent for said Anthony J. Hill, in the presence of said Augustus W. Cutler, who, as this defendant believes and insists, knew all the contents of the same, and said agreement was delivered by said Van Buren to this defendant, and this defendant then and there paid to said Van Buren, as agent of said Hill, the said sum of twenty-eight hundred dollars, in part payment of said purchase money.

And this defendant further answering saith, that having entered into said agreement, as above mentioned, he employed Theodore Little, of Morristown, as his counsel to examine the title to said farm and to ascertain whether the said title was good and free from incumbrances, and that before the said fifteenth day of September aforesaid, his said counsel advised him that in his opinion the title of said Hill was good, and that said Hill had purchased the property first, under certain judgments in the courts of law, and afterwards, under a sale upon a decree of foreclosure which, as he thought, extinguished such incumbrances as appeared by the records to have been upon said premises; and this defendant, relying on said advice of his counsel, attended at the place appointed in the city of New York, for the delivery of the deed, on the said fifteenth day of September, received the said deed, and paid to said Van Buren, as agent for said Hill, the sum of twenty-five thousand and two hundred dollars, the balance of the purchase money which he had agreed to pay said Hill, and also

paid to said Thomas V. Johnson, according to said agreement, the sum of seven hundred dollars for his commissions.

And this defendant further answering saith, that the judgments and mortgages referred to by his counsel, under which the said property had been sold to said Hill, he understood and admits to have been the same mentioned in the complainant's bill, and he admits that at some time during said negotiation, but in what way, or by whom, he does not know, he learned that the complainant, the brother-in-law of said Anthony J. Hill, had formerly owned the said real estate, and that it was sold under judgments against him, as above mentioned, and was bought by said Hill. But this defendant denies that either said Van Buren or said Cutler, or any one else, ever gave this defendant any notice, or that he knew or had any reason to believe, before the said deed was delivered to him and the purchase money fully paid by him, that said Walker had, or claimed to have, any interest in, or title to, said real or personal property, or any portion of it, or that said Hill's title to the same was not perfect and absolute, or that he held the title in trust for said Walker, but this defendant made said contract of purchase, and completed the same by receiving his deed and paying the purchase money in good faith, and without any notice or knowledge or belief or suspicion of any claim on the part of the complainant, fully believing that said Anthony J. Hill was seized in fee in in his own right of said real estate, as he claimed to be.

And this defendant further answering saith, that he has stated already all that he knows about the previous ownership, by said complainant, of said property, real and personal, except what he may have learned from the complainant's bill ; and this defendant has no knowledge or information except as derived from the complainant's bill as to the time when the said personal property was sold by the Sheriff, or what its value was when so sold, or whether many persons or few attended or bid at such sale, or what the sale amounted to, or whether it was understood by the persons present that said Hill, in pur-

chasing the said property purchased it for the use and benefit of the complainant, or whether said Hill purchased all or only a part of said personal property, or whether, after such purchase, any part of the property bought by said Hill was permitted to remain in the complainant's possession, or whether, after the sale of said real estate, the complainant was permitted by said Hill to remain or to reside on said premises until the said sale to this defendant, or for any length of time, or whether said complainant, after such sale, tried to sell the same again, as the complainant has alleged in his Bill of Complaint, and humbly prays that the complainant, if said matters are relied on by him, may make such proof thereof as he may be able and as may be required by the rules and practice of this Honorable Court.

And this defendant in further answering saith, that while he has already admitted that before said sale was completed he learned that the said lands had been purchased by said Hill at a Sheriff's sale, upon judgments, and also on a decree of foreclosure against said complainant, he did not know, nor had he any information as to the amount paid or agreed to be paid by said Hill, or as to the time when said Hill received his deed from the Sheriff, but this defendant ascertained by an examination of the Records of Deeds in this County of Morris, that the first deed to said Hill, made by William H. Anderson, Esq., Sheriff, was dated on or about the second day of February, eighteen hundred and sixty-three, and was recorded on the same day, and that the sale by said Sheriff had taken place on the twenty-fifth day of August preceding, as stated by the complainant's bill; and this defendant also learned and admits, that the deed made to Anthony J. Hill under the sale under the decree of foreclosure in the suit of Atwater against the complainant and others, was dated on or about the nineteenth day of September, eighteen hundred and sixty-four, but this defendant does not know when said last mentioned deed was delivered by the Sheriff to said Hill, nor whether there was any such delay in the delivery of the deed as is alleged in the complainant's bill, and if

there was such delay this defendant has no knowledge or information as to the cause of such delay.

And this defendant further answering saith, that he utterly denies that he or any other person, to his knowledge, ever asked or induced the Sheriff of said County of Morris to bring the deed for the property bought by said Hill, as aforesaid, and afterwards sold to this defendant, to the city of New York, for delivery, or to deliver the same to said John D. Van Buren, as agent of said Hill, in the city of New York, or that said deed was so delivered in the said city of New York, so far as this defendant knows or has ever heard, or that this defendant paid to the said Sheriff any part of the purchase money which he had agreed to pay for said property, but he insists, and so the truth is, that all of said purchase money was paid by him to said John D. Van Buren, as agent of said Hill, and is as hereinbefore particularly stated.

And this defendant further answering saith, he has no knowledge or information, and does not believe that the said sale was urged forward by said Van Buren in any unusual manner, or that said Van Buren refused to give this defendant more than two days in which to make up his mind as to said purchase and to raise the purchase money, as is alleged in complainant's bill, but on the contrary this defendant had all the time he desired, being himself anxious to close the purchase as speedily as he could, so that he could get possession of the property and make his arrangements for improving it before he would be compelled to return to the city of New York for the winter, and accordingly the contract of purchase was made on the twenty-first day of August, and the sale was completed by the delivery of the deed and payment of the purchase money on the fifteenth day of September, as hereinbefore stated.

And this defendant further answering saith, that he has no knowledge or information as to what said Anthony J. Hill paid or agreed to pay for said property, either real or personal, or as to any thing that took place at the sale thereof by the Sheriff, this defendant

not having been present at either of said sales, and never having heard of the matters set forth in said bill as having occurred at such sales, except in reading said bill, nor has this defendant any knowledge or information whether after such sale said complainant continued to live on said premises, but he admits that during the negotiation in reference to said purchase he learned from some of the parties that said Anthony J. Hill was then living in the Island of Bermuda for his health, but this defendant denies that he was ever told, or ever heard in any way or from any person, till he saw it in the complainant's bill, that said Anthony J. Hill was then, or ever had been, incompetent to transact business from any cause, or that he ever was, or had been, subject to fits of despondency or hypochondria, and this defendant respectfully submits that the allegations of the complainant's bill in that regard are utterly inconsistent with other allegations or pretences of said bill.

And this defendant further saith, that he knows nothing about the judgments which had been recovered against the complainant, or the mortgage given by him on said property, as mentioned in his Bill of Complaint, or of the amount due thereon, or who owned or controlled them, except as hereinbefore stated—that his counsel told him such judgments and mortgages were found of Record, and were satisfied by the said Sheriff's sales, or at least that they were no longer liens on said property purchased by this defendant, but whether said judgments and mortgages are correctly stated in the complainant's bill, or whether he has truly stated who were entitled to the moneys due or paid thereon, this defendant has no knowledge, and respectfully insists that the allegations of said bill in respect thereto, even if true, can in no way affect the right and title of this defendant under the deed of said Anthony J. Hill; and this defendant admits that when he bought said property, real and personal, of said Anthony J. Hill, he thought it well worth all that he agreed to pay for it, and that the price he agreed to pay was comparatively a low price, and this defendant was induced, in part, by such consid-

eration, in agreeing to buy the said property, to pay the purchase money in cash; and this defendant admits that a year after said purchase, and after he had spent large amounts of money in its improvements, and made his arrangements to occupy it as a residence, he did say he would not sell it for fifty thousand dollars, but he said at the same time he did not believe it could be sold for such a price, or that it was worth that amount.

And this defendant further answering saith, that as soon as he received his deed he commenced improvements upon said farm, and has continued such improvements until the present time, and that before the commencement of this suit he had expended at least ten thousand dollars upon the same; that he has reason to believe and does believe and insist that said complainant knew of the sale of said property to this defendant at or very soon after the said sale was consummated, and that he knew this defendant was expending large sums of money on said property, relying on the validity of the title received from said Hill, and yet said complainant never notified this defendant that he made any claim to said lands or personal property, nor did he take any measure to enforce any such claim until more than a year after said sale was completed by the delivery of the deed to this defendant, and the payment of the whole purchase money by him, but acquiesced in the acts of this defendant, and in the said large expenditures by him; and this defendant respectfully insists that the complainant is thereby debarred from questioning the title of this defendant under said deed.

And this defendant further answering saith, that when he received the deed for said property, as hereinbefore stated, and paid the purchase money, he believed the title which it conveyed to him to be a perfectly clear and valid title, and made his expenditures in that belief. And he denies that he ever said that he had enquired as to said Anthony J. Hill's responsibility and was satisfied with it, and did not rely on the title under said deed but on said Hill's personal responsibility, as is untruly alleged in the complainant's bill.

And this defendant further answering admits, that the power of Attorney, made by said Hill to said Van Buren, does not in its terms authorize said Van Buren to sell said Hill's personal property, but said Van Buren did sell the same to this defendant and received payment therefor, and said Hill, as this defendant insists, adopted, approved and sanctioned said sale, and so far as this defendant knows, has never expressed any dissatisfaction therewith, and this defendant submits that the complainant cannot bring the validity of such sale into question.

And this defendant further answering saith, that the library in the said dwelling-house was expressly excepted from the property sold to this defendant, and was not sold to him, but this defendant verbally agreed to permit the said library to remain in said house for an indefinite time, to be taken away, however, whenever this defendant so requested, and the said Hill also having the right to remove the same at his own pleasure and without asking any permission of this defendant; and this defendant never has claimed any right to said library or right to control its disposition by said Hill, nor has this defendant removed, or threatened to remove, the same, nor has he any right to prevent its removal by said Hill or his agents; and this defendant respectfully asks that the said library may be placed under the care of some person appointed by this Honorable Court, and may be removed out of said dwelling-house, and this defendant relieved from all care of, and responsibility for, its safe keeping.

And this defendant respectfully insists, that there is no cause in law or in equity why the title made to him by said Anthony J. Hill, for the said property mentioned in the Complainant's bill, and particularly described in this defendant's deed, shall be declared invalid, or is in any way interfered with by this Honorable Court, but that said deed, and the title of this defendant under the same, should be held and adjudged valid as against the claims of the said complainant.

And this defendant denies all unlawful combination

and confederacy, in said bill charged, without this—that any other matter or thing material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs, in this suit most wrongfully sustained.

THEO. LITTLE,

Sol. and of Counsel with Defendant, D. H. McALPINE.

MORRIS COUNTY, ss:

David H. McAlpine, the above named defendant, being duly sworn, on his oath saith: That the matters and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true.

D. H. McALPINE,

Sworn and subscribed before me, this 18th day of January, A. D. 1868.

ALFRED MILLS,

Master in Chancery.

A true copy.

B. GUMMERE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK W. WALKER,
Complainant,

and

ANTHONY J. HILL, *et als.*
Defendants.

On Bill, &c.

The Answer of AUGUSTUS W. CUTLER, *one of the Defendants to the Bill of Complaint of* FREDERICK W. WALKER, *Complainant.*

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage to the many errors and insufficiencies in the complainant's said Bill of Complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says: That he admits the entry of the several judgments against the said Frederick W. Walker, and the giving of the several mortgages by the said Frederick W. Walker at the times and of the purport mentioned and referred to in the complainant's bill.

And this defendant further admits, that the said Frederick W. Walker executed a mortgage to this defendant of the purport and effect as is in the complainant's said bill mentioned and set forth.

And this defendant further answering says, that the said Anthony J. Hill became the purchaser of the said lots of land, as mentioned and described in the complainant's said bill, and for a nominal consideration, under the *Fieri Facias* issued out of the several Courts

upon judgments obtained against the said Frederick W. Walker, and subject to the several mortgages referred to in said bill.

And this defendant further answering says, that afterwards, James C. Atwater, one of the mortgagees referred to in said bill, desired that the mortgage he held should be paid, and threatened that unless the same was paid he would take proceedings to collect the same. And the complainant, Frederick W. Walker, insisting that he had a good and legal defence to said mortgage, and that the same was not a lien upon the said real estate, and desired that the threatened suit should be defended, but the said Anthony J. Hill refused to defend the said suit (except to file an answer), furnish any money to defend the same, or give it any personal attention, alleging that it was of no advantage to him, and that it must be defended by the parties who were to be benefited by such defence. And that the said Atwater commenced the foreclosure of the said mortgage in the Court of Chancery of New Jersey, when the same was defended by the said Frederick W. Walker and the subsequent mortgagees, and the same was afterwards appealed to the Court of Appeals, but the said Anthony J. Hill did not pay any of the expenses of the said defence, counsel fees nor printing, but compelled the said complainant and subsequent creditors to pay the same.

And this defendant further answering says, that after the decree of the Court of Chancery was confirmed by the Court of Appeals, it was, upon consultation with the said complainant, Anthony J. Hill, and this defendant, deemed advisable for the interest of all parties concerned that George Walker should advance the moneys due upon the Atwater decree and take an assignment of the same, and that afterwards the land embraced in the said mortgage should be sold under the *Fi. Fa.*, and bid off by the said Anthony J. Hill, and the property then be sold at private sale to the best advantage, in order that George Walker, this defendant, and the other creditors should be enabled to receive the moneys due upon their respective mortgages and claims ; that this

defendant was selected to make sale of the same, and, real estate being much inquired after, it was deemed best to have the property advertised, and bid off by the said Anthony J. Hill. And this defendant further says, that the same was advertised and bid off as is stated in the complainant's said bill, by the said Anthony J. Hill, and in pursuance of such arrangement.

And this defendant further answering says, that in accordance with such arrangement this defendant undertook the sale of said farm, and advertised the same; the price that was agreed upon at which the same should be held was forty-five thousand dollars, but this defendant was at liberty to sell the same at forty thousand dollars, being the farm of two hundred and eighty-two acres, and described in the mortgage of the said James C. Atwater; but in this arrangement the said Anthony J. Hill was not to pay any of the expenses of the advertisements of the said farm, and although the same was advertised in New York in slips and in papers, yet the said Anthony J. Hill did not pay the same.

And this defendant further answering says, that having application to purchase the farm in sections, deemed it advisable to divide the same into three parts, and of which intention he advised both the said complainant and the said Anthony J. Hill, and asked their concurrence, and while this was under advisement this defendant received a written proposal for the purchase of the farm for thirty-five thousand dollars, of which proposition this defendant advised the said Anthony J. Hill, but the said Anthony J. Hill refused to give his assent to such sale, by reason of the inadequacy of the price.

And this defendant further answering says, that afterwards the said Anthony J. Hill went to the Bermuda Islands on account of his health, this defendant still endeavoring to sell the said farm, and ignorant of the fact that any different arrangement had been made or that any sale would be made, without advising with this defendant, until this defendant, by a letter received from one John D. Van Buren, was requested to meet him on the farm the next day, (the letter having

been received through the post-office, and post-marked at Morristown,) and that in accordance with such request this defendant went to said farm and there met Thomas V. Johnson and the said Daniel H. McAlpine, when this defendant learned for the first time that the said McAlpine had agreed to buy the said farm in the city of New York the day before, but this defendant was not informed at what price, or upon what terms, but this defendant in conversation with the said McAlpine, informed him that he had sent a written proposition to the said Anthony J. Hill, from a purchaser at thirty-five thousand dollars, but the said Hill refused to accept it. And the said Johnson informed the said McAlpine that he had offered the said Hill forty thousand dollars for the said farm, but the said Hill refused to accept it, saying that he would not take less than forty-two thousand and five hundred dollars.

And these defendants further answering say, that afterwards, but on the same day, the said Van Buren, accompanied by Joseph Dunderdale, an agent and confidential attorney of the said Hill, came to the said farm, when this defendant was introduced to the said Van Buren by the said Dunderdale, this defendant having been acquainted with said Dunderdale for a long time, when the said Van Buren, McAlpine and Johnson entered into conversation, and this defendant and the said Dunderdale remained out together; and this defendant was informed by the said Dunderdale that the place of two hundred and eighty-two acres had been sold with all the stock and furniture (excepting the library and library furniture), and farming utensils, wagons, &c., for the sum of twenty-eight thousand dollars; that this defendant expressed great surprise at such a sale, and referred to the offer that had been made, when the said Dunderdale informed this defendant that the sale had been made and consummated in New York the day previous; that the agreement had been drawn, and that the meeting upon the farm was merely to have pointed out such property as had been left upon the farm (by the consent of this defendant), this defendant having had the man-

agement of the same, and had sold a portion of the grass and allowed some of the parties the privilege of putting the hay in some of the barns that were empty.

And this defendant further says, that afterwards he remonstrated with the said Van Buren, and informed him that the said Walker would never consent to said sale; that the said property was amply sufficient to pay all the claims, together with the mortgage of the defendant, and informed the said Van Buren and McAlpine that he would telegraph the said Walker, which this defendant did; and the said Walker returned shortly after and filed the *lis pendens*, as stated in the complainant's bill, and of which the said McAlpine and the said Van Buren had notice before the delivery of the deed.

And this defendant further answering says, that after the execution of the said mortgage to this defendant by the said complainant, as aforesaid, and after the sales so as aforesaid made by virtue of the executions issued under the judgments recovered, as aforesaid, against the said Frederick W. Walker, this defendant made loans of and from the said Anthony J. Hill, and prior to the said Anthony J. Hill's sailing for the Bermudas, he, the said Hill, sent up from the city of New York requesting this defendant to assign to him the said mortgage, and in accordance with such request, this defendant did make an assignment of such mortgage to the said Anthony J. Hill as collateral to the indebtedness of this defendant to him, and sent it to him in the city of New York; and the said Anthony J. Hill still holds the same.

And this defendant further answering says, that he has become the assignee of the judgments, as stated in the complainant's said bill.

And this defendant further answering says, that the farm and personal property purchased by the said Daniel H. McAlpine was well worth fifty thousand dollars, and would have brought that amount at public sale.

And this defendant denies all unlawful combination and confederacy, in said bill charged, without that—that any other matter or thing material for this defendant to

make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays that a decree may be made by this Honorable Court setting aside the sale to the said Daniel H. McAlpine, and directing that the said property may be sold at public sale, under the direction of this Honorable Court, and that the said Anthony J. Hill and Daniel H. McAlpine be decreed to account for the rents, issues, and profits of the said property since they have been in possession, and out of the moneys thence arising that this defendant may be paid the full amount of the principal and interest money due upon the said mortgage (after deducting out the money so due by this defendant to the said Anthony J. Hill), also the moneys due upon the said judgments, with all reasonable costs and charges in this behalf sustained, and that this defendant may have such further and other relief as may be agreeable to equity and good conscience.

AUGUSTUS W. CUTLER,

Sol. pro se.

NEW JERSEY,
MORRIS COUNTY, } *ss.*

Augustus W. Cutler, being duly sworn, deposeth and saith, that the facts, matters and things set forth in the within answer, so far as they relate to the acts of this deponent, are true, and so far as they relate to the acts of others, he believes them to be true.

AUGUSTUS W. CUTLER.

Sworn and subscribed before me, May 6, 1869.

ISAAC BIRD, *J. P.*

A true copy.

B. GUMMERE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK W. WALKER,
Complainant,

and

DAVID H. MCALPINE, *et als.*
Defendants.

On Bill, &c.

DEPOSITIONS.

Examination of witnesses in the above stated case taken before Samuel S. Halsey, one of the Masters and Examiners in the Court of Chancery of New Jersey, at his office in Morristown, Morris County, New Jersey, pursuant to notice, on Friday, the fourteenth day of May, in the year of our Lord, one thousand eight hundred and sixty-nine, in the presence of Frederick A. DeMott, Esq., one of the Solicitors of Complainant, and of Theodore Little, Esq., Solicitor for, and of Counsel with, David H. McAlpine, one of the defendants.

Mr. Little, solicitor and of counsel with said defendant, objects to the taking of any testimony at this time, as the same is not taken within the time required by law, or the rules of this Honorable Court.

Gordon Burnham, a witness, called and sworn on the part of complainant, deposes and says:

I live at Morris Plains, about three miles from Littleton; I believe I know the premises formerly occupied by Mr. Walker, and lately sold to Mr. McAlpine; I have known them partially for more than forty years.

Mr. Silas Condict was in possession of this property when I first knew it. I married Mr. Silas Condict's daughter. I know what was known as the old Silas Condict farm ; I would not be certain whether that laid on both sides of the road or not ; I believe I know the part of that farm that was sold to Mr. Walker ; I believe that the part sold to Mr. Walker contained the whole of the old Condict farm, and other lands besides. Silas B. Condict sold to Walker about 300 acres ; I could not tell whether the part on the west side of the road sold to Walker was a large tract or a small one.

Q. What was a fair valuation of the land lying east of the Parsippany road, irrespective of buildings, in September, 1866 ?

Objected to by Mr. Little.

A. I should think that that farm at that time ought to have been worth in the neighborhood of $100 per acre. Some of the land was good, some indifferent. When I speak of its being worth $100 per acre, I mean taking it as a whole ; as a farm it was an excellent farm —a valuable one. Mr. Walker built a good deal of stone fence upon the farm while he was on it ; I am unable to say to what extent.

All this evidence objected to, while being given, as irrelevant, and as having nothing to do with the case or the issue whatever.

In 1866 there was upon the farm a dwelling-house, barns, and other out-buildings. The dwelling-house was a two-story one, with an attic and an addition. I believe Mr. Walker built the dwelling-house new ; Mr. Condict built the kitchen part ; I should think at the time the house was built it would cost about $10,000, although it is a mere matter of guess-work. I should think the house was not worth any less than that in September, 1866. I have not examined the buildings, and cannot say whether it was worth any more or not. All kinds of property, in 1866, sold for a greatly enhanced value. I cannot tell you how many barns there were on the property at this time ; Mr. Walker added to the barns that were there when Mr. Condict owned

it, and made them so that they were very roomy; I should call them good after Mr. Walker had fixed them; upon the barns and outbuildings I would not attempt a valuation; I never was there but once. I am called here very unexpectedly, and I want to say that I have not examined the property for several years, and am not as able to fix a valuation upon the building as if I had gone and examined it. If I should give any valuation of the barns and outbuildings, I should say that it would cost to build them not less than $4,000 or $5,000. In this estimate I speak of the barns and outbuildings connected with the farming department; the horse stables were connected with the barns, and were very roomy; if I recollect aright there were stalls for some fifty horses.

Q. Taking the property as it stood in September, 1866—considering the value of the land, together with all the buildings, fences, and stone walls—what was its fair value at that time?

A. I should estimate the property at that time to be worth from $35,000 to $40,000; I form my judgment from my knowledge of the property, and judging from what other property in the vicinity was worth.

Cross-examined by Mr. Little.

I understood that this property was sold by the Sheriff; after it was sold by the Sheriff, and before it was sold to McAlpine, it was in the market for sale for some four years.

GORDON BURNHAM.

Sworn and subscribed this 14th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,
M. C. C.

George Vail, a witness, called and sworn on the part of Complainant, deposes and says:

I live at Speedwell, near Morristown, and always

have lived there. I know of the property at Littleton formerly owned by Mr. Walker, and lately sold to Mr. McAlpine; I have a general knowledge of the contour of lands in that vicinity, but not of its valuation. I have only seen this property by passing by the dwelling, and on the lower side; I know of it because my father owned a farm adjoining it on the same side of the road. I passed the buildings while they were being erected, and, from the road, I thought very highly of them, and that they were being built with a good deal of care; they were extensive and large buildings, and were built in the best manner for wooden buildings. These buildings were a dwelling-house close to the road, and barns further off from the road.

All this evidence objected to, while being given, as irrelevant.

I suppose that house could have been built in 1852 or 1853 for $10,000. In September, 1866, in my opinion, it was worth no less than that. If that building cost $10,000 in 1852, it could not have been built for $18,000 in 1866. In September, 1866, from an outside view, the building looked in very good condition; it had not apparently deteriorated in 1866, except the ordinary wear and tear; Mr. Walker kept it in good condition. I have never examined the barns to know how many there were; they were numerous and large. With my limited knowledge of the barns, any valuation I might set upon them would be merely an opinion; I should say they were worth from $5,000 to $8,000 in 1866; I have never made an examination of the interior fittings, and much depends on that. I always considered the farm a well arranged farm. The best farmers in the country have always lived upon that farm; it always attracted my attention as I was passing; there were fruit trees upon it, and they appeared to be choice fruit. After Mr. Walker came there the garden was enlarged; graperies were planted in large numbers. It was the best improved residence in that section.

Q. What valuation would you fix upon the land per acre in September, 1866, without regard to buildings?

A. My answer must be general and without any detailed acquaintance with the property ; I think one hundred dollars per acre, and taking the property as it stood at that time—land, buildings, &c.,—I would fix its valuation in the neighborhood of $40,000.

Cross-examination by Mr. Little.

I do not know of any sales of property in that neighborhood since 1866, but I know the holders of property there have advanced in their prices ; there has been no sale anywheres in this neighborhood that I know of, either of 200 acres or 300 acres, at $100 per acre.

Re-direct examination by Mr. DeMott.

I have not heard of the sale of the Herring farm or of the Benedict farm lying on the Parsippany road.

GEO. VAIL.

Sworn and subscribed this 14th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,

M. C. C.

Byron Sherman, a witness, called and sworn on the part of complainant, deposes and says :

I reside at New York and spend a portion of each year here ; I am here at irregular seasons during the year. During the ten years since I built my house here I have lived here on an average about five months each year. I married a daughter of Gordon Burnham, the witness a short time ago sworn in this cause. I know of the house on the premises in dispute in this cause, and have always supposed that the land about it belonged to it. I have probably known it about 16 years. I can't tell who lived upon it when I first knew it ; I can't tell whether the house standing there now was built at that time. I have observed the buildings on these premises

several times. I remember that there is a large white frame house on the premises, and a plenty of barns in the vicinity; they struck me as being in very good order. I should think it would cost, in September, 1866, at least $20,000 to erect the buildings on that farm. I do not know how many acres the farm consists of; I have noticed so much of the land of the farm as I could see from the road in passing; I have noticed in the summer season, when it was bearing crops—particularly the hay crop—and it seemed to me to be a good farm; my estimate of the land would be $100 per acre.

Cross-examined.

I have known of no farm of two hundred or three hundred acres being sold for $100 per acre.

BYRON SHERMAN.

Sworn and subscribed this 14th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Silas B. Condict, a witness, called and sworn on the part of complainant, deposes and says:

I know of the premises in dispute in this cause. I was born there; it was my father's homestead. The land sold to Mr. Walker was a part of my father's homestead. My father's name was Silas Condict. I contracted with Henry Walker to sell the land, and I agreed to sell 300 acres. I measured the land on the east side of the road and found there was not 300 acres, and I added on some other lands to make out the 300 acres. The lands so added on were on the west side of the road, and adjoining the road leading from Dover to Littleton. There was 282 acres on the east side, and the balance, to make out 300, was on the other side of the road. This lot, so added to make up the 300

acres, is entirely disconnected with the main tract lying on the east side of the road. I think I sold to Mr. Walker in October, 1851. I had always lived on this property up to this time ; after I left there I moved on the opposite side of the road to the old homestead, and built there, and lived there till 1857. After Mr. Walker became the owner of this property, he built a very good dwelling-house on it ; the large part of the house he built entirely new ; I think he took the old house frame and put it into a wood-shed. I had built, before selling to Mr. Walker, on the premises, an extension adjoining the old building which Walker took down ; it embraced a dining-room, a kitchen, a sleeping-room, and three or four bedrooms overhead ; it was a frame building, two stories high. I should think the extension I built was twenty-five feet by thirty feet on the ground. Mr. Walker left this extension and tore down the old part where my father lived, and built a house in its stead of about thirty-five feet by forty-five feet, adjoining the extension I had put there.

At that time building was cheap. As I was interested at that time in building my own house I became familiar with the cost of building Mr. Walker's. I think it cost either $6,000 or $6,500. Mr. Walker bought the material and bought it very cheap, and let the carpenter have the benefit of it. This embraced simply the house and not the fences or barns. Mr. Walker added on to the barns I left there a considerable. I left a considerable number of barns there ; they were in the shape of an L. It appears to me that I had accommodations in my barns to stall about forty head of cattle. Mr. Walker added to the barns largely, more than I thought there was any need of. He built separate horse stables anew—some he built entirely new, and some were not. He built a large new barn at the end of the old one, and of the same width as the one I left, and underneath were stables for cattle. In addition to this, Mr. Walker built two detached sheds—not large buildings, but for stabling, and storing hay ; and besides this he erected stalls under the old still-house.

The quality of the land on this farm varied. Taking it on the whole, as a farm, it was a very good farm; for this country I always thought it was a very productive farm, fully up to the average of the best. The fences were always kept up, and the hedges cleaned. Mr. Walker set out a very fine orchard in the rear of the house of apples and pears, mostly pears. He enlarged the garden, and had a very fine garden in front of the house. There was a great many grapes in the garden, and some pears; and there were some very beautiful flowers in front. While Mr. Walker owned it it was kept in first rate repair. It was a well-built, large, fine house, built of the very best material, and one of the best built houses I ever saw. That house with the extension, in 1866, was worth from $12,000 to $15,000.

I was not very familiar with the outbuildings when they were sold, and I have not examined them since. They are not first-class buildings, and yet you could not put them there for less than $10,000. I don't think that land would be dear at $100 per acre in 1866. That would be a full valuation; I mean for the land without the buildings at that time.

I could not tell what Mr. Walker expended for stone walls, arbors, &c.; I should think about five thousand dollars.

Cross-examined by Mr. Little.

I heard that the property was sold by the Sheriff at the time it was sold. I understood that Mr. Hill bought it, and he afterwards lived there and made some improvements. The property, before McAlpine bought it, was in the market for sale from the death of Henry A. Walker, which was in 1855 or 1856, up to the time McAlpine did buy it.

SILAS B. CONDICT.

Sworn and subscribed this 14th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

MONDAY MORNING, May 24th, 1869. *Examination of witnesses continued pursuant to notice, at the office of* SAMUEL S. HALSEY, *in Morristown, N. J.*

Isaac A. Canfield, a witness, called and sworn on the part of complainant, deposes and says :

I reside at Speedwell, near Morristown, about two and a half miles from the farm lately sold to David H. McAlpine, and formerly belonging to Frederick W. Walker. I know the premises in controversy in this suit, and have known them for thirty years. I remember the time the property was sold to Mr. Walker, I think it was in 1852 or 1853. The property formerly belonged to Silas B. Condict. All the improvements, principally, both with reference to the buildings and the land, have been made since Walker bought it, although the land was being improved by Mr. Condict. When Mr. Condict owned it the farm was considered one of the best in that whole section of country, and Condict was considered one of the best farmers. He always attended to his own farming ; he left the farm in a high state of cultivation, to the best of my recollection. After Mr. Walker bought it he put a good deal of manure on the farm, and took a great many stones off. He built a good deal of stone fence, and put the fences all over the place in good condition.

He built a new dwelling-house, and I think most all the barns were principally made new. The buildings he put on were large. His dwelling-house was built as a first-class building, done in the best manner. Barns and stables were built as generally farmers do build such buildings—to have them useful. The buildings were put up some time after Mr. Walker bought it.

I should judge the house, when it was built, would cost $10,000. While Mr. Walker was there the house was kept in very good condition.

I should judge that all the outbuildings would cost when they were put up about $9,000 or $10,000 ; they are very large and can accommodate 150 head of cattle. The buildings have not decreased in value since

they were built, excepting the ordinary wear and tear of wooden buildings.

In 1866 it would have cost to have erected that dwelling-house from $15,000 to $16,000.

Q. Was that building in 1866 worth $15,000 after deducting the natural wear and tear from the time of its erection up to that time?

A. In my opinion it was.

In September, 1866, I should think the outbuildings, taking into consideration the natural wear and tear from the time they were built, would be worth about $9,000 or $10,000.

I should judge, in September, 1866, the farm or land alone, without the buildings, was worth one hundred dollars per acre for farming purposes. I don't know of a better grazing farm anywheres, outside of Troy.

Cross-examined by Mr. Little.

I understand that there is about 282 acres in the farm, and it was worth one hundred dollars per acre. I was not present when the farm was sold by the Sheriff to Anthony J. Hill. I don't know that there was any difference in the valuation of the farm in 1862 and 1866. As far as the land is concerned, I suppose it was being improved by cultivation from 1860 to 1866.

Q. When you speak of the farm's being worth fifty-three thousand dollars in 1866, do you speak of its intrinsic, or its market value?

A. I understand the market value of anything to be what it will fetch if placed in the market, and I mean to say that I considered this farm worth that money, or that this was its market value.

Q. Has property of that character, and of the value you place upon that land, had a ready sale in this region during the last ten years?

A. I don't know of any property of that kind that has been in the market for sale.

Q. Was not this property in the market for several years before it was sold to McAlpine?

A. Yes ; I can't tell positively how many years. I don't know.

ISAAC A. CANFIELD.

Sworn and subscribed this 24th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,
Master in Chancery of New Jersey.

Henry Boughton, a witness, called and sworn on the part of complainant, deposes and says :

I live at Littleton. I am sixty-five years old. I live on lands that adjoin the Walker farm. I have been intimately acquainted with the place eleven or twelve years, and have known it longer. I knew it when Mr. Condict owned it, and when Mr. Walker bought it. When Mr. Walker bought it I was called there to help take an account of the stock.

When Walker bought it a part of the land was of very good quality, and part of it was not so good. It was considered a first-class farm, and when Mr. Walker bought it there was about three hundred acres in it ; he added more to it after he bought it. Mr. Walker, after he bought it, improved the land a good deal. Mr. Walker placed on the farm, after he bought it, a great many valuable and choice fruit trees. He enlarged the gardens and greatly improved them ; he built arbors and trellises for the vines to run up on ; he built a dwelling-house and a good many outbuildings. The buildings he put up were large. When the house was built it was built in the best manner, and the lumber was choice lumber, brought from Albany. I heard the mechanic who built it say that it was as good a house as he ever built.

I don't know what the house was worth in 1866.

I always thought the land that Mr. McAlpine bought was worth from thirty thousand dollars to thirty-five thousand dollars.

Friend Johnson, who owns land on the opposite side of the road, says he has been offered $400 per acre for his land. There was some land sold in this neighborhood at auction the other day for about $300 per acre. When I say that this farm was worth from $30,000 to $35,000, I mean that it would be worth that to me.

The whole farm, in the Fall of 1866, was worth $100 per acre, without any buildings.

The land of the Walker farm—part of it—is very good, as good as any in the country, and some of it is not very good.

I ask $600 per acre for my farm, and I consider a part of the Walker farm is as good as mine.

Cross-examined by Mr. Little.

When Mr. Hill bought this farm I suppose I knew of it. The farm was in the market for sale from the time Mr. Hill bought it up to the time it was sold to McAlpine. It was offered to me by Mr. Hill; I think he asked me about $40,000; I think he would have taken less for it though; I was not willing to give it. I should think it was a year, perhaps more, before McAlpine bought it, that it was offered to me. Before Mr. Hill went there at all he offered to sell the farm to me. I should think it would make some difference whether the sale was for all cash or only part cash.

I don't know of any farms in that neighborhood of the size of 200 or 300 acres being sold at $100 per acre.

Re-direct examination by Mr. DeMott.

Mr. Johnson's farm I sold a few years ago for $300 per acre. There are 100 acres in the Johnson farm. Mr. Benedict sold a hundred acres of his land without any buildings for $100 per acre.

The Hyller place contains one hundred and eleven acres, and I bid for it eleven thousand dollars; Judge Cobb bid it up above me, and it was adjourned on his bid. I would not give a dollar for the buildings on the place. The Hyller place and Benedict farm are on the

same road that the Walker farm is, but much farther from Morristown.

Second cross-examination.

When I sold the Johnson farm I sold it for part cash and part in a deed for other lands. The Johnson place is on the opposite side of the road from the Walker farm.

HENRY BOUGHTON.

Sworn and subscribed this 24th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,
M. C. C.

Joseph Lovell Canfield, a witness, called and sworn on the part of the complainant, deposes and says :

I reside in Morristown ; I formerly resided at Morris Plains until about a year ago. I was born there and always lived there. I know the Walker place at Littleton. I have known it for more than twenty years. I knew it when Mr. Condict owned it. When Mr. Walker bought it I heard that there was about three hundred acres. I always heard that it was a good farm. The Walker place is about a mile and a half or three-quarters from the Morris Plains depot. I have taken some interest in the values of real estate in and about Morris Plains, having had property to sell there. Real estate in that vicinity would sell for a much higher price in 1866 than it would before the war.

There is a large dwelling-house and a number of outbuildings on the Walker place.

At the time it was built I heard that Mr. Walker was building a very nice house, and it has the appearance of being a well-built house.

I should judge the house was built about fifteen years ago. It has been kept in very good condition and repair

since it was built. It has not decreased at all except by the natural wear and tear.

A new building of the size of that, in the fall of 1866, I should judge would cost $16,000 or $17,000. I should judge that house, as it stood there in the Fall of 1866, would be worth about $13,000.

The outbuildings cover a good deal of ground, with barns above, and stables and places for horses underneath, and I should say those buildings were worth, in 1866, about $8,000 to $9,000; and the land, irrespective of any buildings, was worth one hundred and twenty-five dollars per acre. At the time of this sale to McAlpine I made a remark that I thought it was sold for just one-half what it was worth. Mr. Walker put upon the place after he purchased it a great many fruit trees, arbors, gardens, and stone fences, and made the place a very handsome country residence.

Cross-examined by Mr. Little.

I have land to sell on Morris Plains; have sold some lately.

I do not know of any farm of 200 or 300 acres being sold at any price within the last ten years. I have not heard of any property's changing hands of the amount of $20,000 or $30,000 within the last ten years in that neighborhood. Was not at the Sheriff's sale when Hill bought it. The first I knew that the property was in the market for sale was two or three months before McAlpine bought it, when Thomas V. Johnson told me he had it for sale. He told me it could be bought for $40,000; I told him I thought it was very cheap.

I am thirty-five years old.

J. LOVELL CANFIELD.

Sworn and subscribed this 24th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,

M. C. C.

Examination of witnesses adjourned to Friday morning, May 28th, 1869, by consent, at the same place.

FRIDAY MORNING, May 28th, 1869. *Examination of witnesses continued in the presence of* Mr. DeMott, Mr. Little *not appearing, but consenting to the taking of evidence in his absence.*

SAMUEL S. HALSEY.
M. C. C.

John Boyd Headley, a witness, called and sworn on the part of complainant, deposes and says:

I reside at Whatnung Place, near Morristown, in Morris Township, about four miles from Littleton. I am United States Revenue Collector for the Fourth District of New Jersey. I know the Walker place at Littleton bought by David H. McAlpine, and have known it for the past ten or twelve years. I have been through the house and through the barns on the premises. The dwelling-house is a large frame house, and is a well-built house, in a good state of repair. I saw this house in the Summer of 1866. I should think in 1866 it would have cost about $15,000 to have built such a house. I went through the stables and barns; they were large buildings, put up like ordinary buildings of the kind in the country; they were very roomy and capable of accommodating a large amount of stock and hay. I should think, in September, 1866, the outbuildings were worth $9,000. I recollect of going through the garden in the Summer of 1866. There was a great deal of fruit in it—grapes, berries, pears, &c. There were two gardens, one in the front and one in the rear, and both were very large. I saw very extensive arbors and trellises.

I always supposed from what I saw of the farm that it was well fenced and well stocked, and in a first rate condition. I own a farm of four hundred acres or over where I live. I should think this farm of Mr. Walker's

was a very good grazing farm or grass farm. I have frequently heard it spoken of as being one of the best grazing farms in the country.

I should think the farm, in 1866, irrespective of the buildings, was worth one hundred dollars per acre, for farming acres. The farm lies along the road, about a mile and a half from the Morris Plains depot, and the road to it is a very good one.

I consider the whole property, if I wanted to go and live on it, worth fifty thousand dollars. I don't think the land can be bought, and the buildings put there, for fifty thousand dollars.

By the Master, at the request of Mr. Little who was absent from this examination :

I have frequently heard there were about two hundred and eighty-eight acres in the farm. I do not know, except by hearsay, that this farm was sold at Sheriff's sale. I don't know when Mr. Hill bought. I know the property was in the market for sale for some considerable time before McAlpine bought it. My impression is that Mr. Cutler, who had the farm for sale, said that the real estate, without the personal property, could be bought for $35,000.

Q. Do you know of any farm's being sold during the last ten or fifteen years, within the same distance from Morristown as the Walker farm, or anywheres in the vicinity of the Walker farm, of 200 or 300 acres in size, for one hundred dollars per acre ?

A. No sir ; I don't know of any farm of that size being sold at that price.

J. BOYD HEADLEY.

Sworn and subscribed this 28th day of May, A. D. 1869, before me.

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Andrew B. Cobb, a witness, called and sworn on the part of complainant, deposes and says :

I live at Parsippany. I am acquainted with the Walker place, now in the possession of McAlpine, near Littleton, and I have known for thirty years. I knew it when the father of Silas B. Condict owned it. I recollect the time Mr. Condict sold it to Mr. Walker. I always esteemed it a very good farm, and particularly after the addition made to it by old Mr. Condict, prior to the possession of it by Silas B. Condict.

Mr. Walker, after he purchased the property, built the dwelling-house and added very considerably to the barns and buildings connected with the stables. The house built by him was a very large house, and was very well built. I have been in the house several times since Walker has lived there. The barns and outbuildings are large and commodious, and substantially built, and with room sufficient to house, perhaps, a hundred head of cattle.

In September, 1866, it would cost to have built a house as good as that then all of $10,000. I am not so familiar with the barns and outbuildings ; they are extensive, but I don't know so much about them. The farm was well fenced with posts and rails, and stone walls. I own several farms in Morris County, and two or three farms at Parsippany, about three miles from the Walker farm.

I have always esteemed the Walker farm as valuable property.

I should think, in September, 1866, that farm was worth, without any buildings on it, at least one hundred dollars per acre for farming purposes. The property was very well watered, and divided into different descriptions of land necessary for a farm. Mr. Walker made extensive gardens and erected extensive arbors.

By the Master at the request of Mr. Little.

I do not know when Hill bought the property. I do

not know of its being sold at Sheriff's sale. I do not recollect of the property's being in the market for sale after Hill bought it. Don't know what Mr. Hill asked for it.

Q. Do you know of any farm's being sold for $100 per acre anywhere in that vicinity of the size of 200 or 300 acres ?

A. No, not of that size. I know of a farm's being exposed in that vicinity for public sale with no buildings worth anything at all upon it, for which there was bid over one hundred dollars per acre, and the heirs refused to take it. I speak of the Hiller farm. It is situated on the same road the Walker farm is on, and is a mile and three-quarters beyond the Walker farm from the depot.

Re-direct examination by Mr. DeMott.

The Hiller farm is east of the Walker place, and the Morris Plains depot is west of the Walker farm. I should think the quality of the land of the Hiller farm as valuable as that of the Walker farm.

I know of the sale of one hundred acres off of the Benedict farm, which lies to the east of the Hiller farm on the same road. It was sold to Isaac L. Condict, for $100 per acre, and there were no buildings on it except a small dwelling-house and carriage-house, and a barn and cow-house.

On the Hiller place, when it was offered for sale, there was a very old, dilapitated dwelling-house, thought to be dangerous to live in, and since abandoned. The buildings on the place were of no value. The barn had fallen down.

ANDREW B. COBB.

Sworn and subscribed this 28th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

John Henry Johnson, a witness, called and sworn on the part of complainant, deposes and says :

I am forty-eight years old. I live at Littleton, and have a farm there which joins the Walker place. I have known the Walker property ever since I have known anything. I was born near there. There are about two hundred and eighty acres in the farm. I recollect when Mr. Walker bought it. He tore down the house and built a new one in its place.

I consider that the land in the Walker farm, without any buildings, in September, 1866, was worth at least one hundred dollars per acre. If selections were made from the farm they would be worth more. I mean that the average value of the land per acre is at least one hundred dollars per acre, or was in September, 1866.

I know nothing about the barns, fences, or improvements put there by Mr. Walker.

By the Master.

I don't know when the farm was sold to Hill. Don't know how long it was in the market for sale.

Don't know of any farm of 200 or 300 acres being sold for $100 per acre. There has not been any farms of that size sold about there. I heard of the price asked for the Walker farm before it was sold, but have forgotten now what was asked for it.

Re-direct examination.

I heard of the sale to McAlpine about the time the sale took place. I understood the price to be $28,000 for the farm and the personal property, except the library and library furniture. I considered the property very cheap at that, cheap as dirt. I was surprised at the low price at which it was sold.

JOHN HENRY JOHNSON.

Sworn and subscribed this 28th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY, *M. C. C.*

Frederick G. Burnham, a witness, called and sworn on the part of complainant, deposes and says :

I reside at Morris Plains, near Morristown. I have known the Walker place at Littleton ever since I have known anything. It was my grandfather's homestead. I remember when Mr. Walker bought the premises. I have not been on the premises since Walker bought it, but I have been by there a number of times since. I am the son of Gordon Burnham, and grandson of Silas Condict.

I know, in a general way, what improvements Mr. Walker made. He tore down the old house and built a new one in its place, and I understood he added very extensively to the barns, and built fences at considerable expense, as my recollection goes. He improved the garden very extensively.

I should think the dwelling-house as it stood when the property was sold, in September, 1866, was worth from $9,000 to $12,000, judging from the exterior. The barns and outbuildings are about four hundred feet from the road, and can be seen from it. I can't tell what the barns were worth.

I should say that the whole real estate and buildings and improvements, without personal property, at the time McAlpine bought it, was worth from $40,000 to $50,000.

By the Master.

I don't know when Mr. Hill bought the property at Sheriff's sale.

This property was in the market for sale for some time before McAlpine bought it.

I do not know of any farms of the size of 200 or 300 acres being sold in that neighborhood for $100 per acre.

I know of none, nor have there been any such sales. It is always difficult of course to sell a large place.

FRED'K G. BURNHAM.

Sworn and subscribed this 28th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,
M. C. C.

Examination of witnesses in the above case adjourned to Saturday morning, ten o'clock, by consent.

SATURDAY MORNING, May 29th, 1869. *Examination of witnesses continued, pursuant to adjournment.*

Albert H. Stanburrough, a witness, called and sworn on the part of complainant, deposes and says :

I live at Morristown, and have resided there for the past twenty years. I was formerly County Clerk of this County for ten years. I know the farm at Littleton recently known as the Walker place, recently bought by Mr. McAlpine, and have known it for thirty years. I knew the farm, when owned by Mr. Condict, as a great grazing farm, and one producing a great deal of hay and stock, and it was considered one of the best farms in that section of country. I knew it when Mr. Walker bought it. He, Mr. Walker, came to the Clerk's office to search the titles. I was County Clerk at the time. Walker put the large dwelling-house there ; it was built in the best manner, and of the best material. The barns were large and numerous, built as country barns generally are. I have been on these premises several times. In 1865 or 1866 Mr. Edward A. Stevens' agent came to me and asked me about the property, and told me he could get it for forty-five thousand dollars. I told him it was very cheap at that, and he thought so too.

In September, 1866, I should think this farm of about 282 acres would bring for farming purposes one hundred dollars per acre, without any buildings on it.

In 1866 I consider that forty-five thousand dollars

was a cheap price for this property. I mean the real estate alone.

By the Master.

I don't know when this property was sold to Hill. I was not at the sale. I knew the title to be in Hill before McAlpine bought it. I understood about three years ago that the property was for sale when Mr. Stevens was about buying it.

I think Mr. Hill asked forty-five thousand dollars for it.

I don't know of any farm of the size of 200 or 300 acres being sold in this neighborhood for $100 per acre. None of that size have been sold to my knowledge.

A. H. STANBURROUGH.

Sworn and subscribed this 29th day of May, A. D. 1869, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Examination adjourned to Tuesday morning, June 1st, 1869.

TUESDAY MORNING, June 1st, 1869. *Examination of witnesses continued pursuant to adjournment.*

Richard V. W. Fairchild, a witness, called and sworn on the part of complainant, deposes and says:

I am a physician, and reside at Parsippany. I know the Walker place now in the possession of Mr. McAlpine. I live about two miles from it. I have known the Walker place for forty years. I understand that the farm contains 282 acres. I know there is a house and several barns and outbuildings on it. The house is a very handsome house; it is a frame building.

It is a very elegantly and substantially built house. I should call it a large house. It is a two-story double house, with a large kitchen adjoining and attached to it.

I should suppose the house was worth, in the Fall of 1866, from $12,000 to $15,000, as near as I can judge. It is a very handsomely finished house. I do not know how many barns there are; they are numerous; I have never been in them, and have only seen them from the road. They appeared from the road to be large and numerous. I could not give any estimate of what those barns cost, or were worth in 1866. I have never built any such barns. I could not tell how many there are, nor their size. Some of the soil of that farm is very good. Taking the farm as a whole I should call it a very fine farm.

Mr. Walker, after he got the farm, built the barns and some fences, &c. He beautified the place a good deal; he set out ornamental trees. I don't know whether he set out many fruit trees. I have been in the house and on the farm frequently.

In September, 1866, I should take the farm, as a whole in one sense, to be worth what it would fetch, that is, about one hundred dollars an acre, in my judgment. Land in that neighborhood sells for one hundred dollars per acre, and over.

I mean to say that the land, without the buildings, in 1866, was worth one hundred dollars per acre.

Cross-examined.

Q. When were you last over the farm?

A. I can hardly tell, so as to go over it. I have been along some parts of it, as you go along the road. It is bounded, or a good deal of it is bounded, by two roads; over these I have passed pretty nearly every day. I suppose I have been over nearly the whole farm, that is, nearly all of it. I could not say where all the land lays.

Once I went over it when Silas Condict owned it, I don't remember how long ago. I have never been over it on the premises since that. I used to hunt over it

then. I am unable to tell how much of it is arable or tillable land. I don't know the proportions. I do not know how much of it is woodland. I have understood about thirty or forty acres of it is low pasture-land. I have only heard so ; I might as well say I don't know that.

I don't know that the land, without the buildings, is worth any more now than it was in 1866, any more than the natural increase in value ; I don't know how much that is. I am not owner enough of property to tell.

Q. You make the property worth by your estimate, in 1866, forty-three thousand dollars, besides the value of the barns or outbuildings. Do you mean to say that that was the fair market value of the place at that time in cash ?

A. I should think that that was too high myself.

Q. What was the fair market value of the whole place as it then stood, September, 1866, in your opinion, in cash ?

A. To take the place as a whole, as it then stood, I should think it was worth $40,000. I am only making up my mind by what other places about there were held at, and that I get from hearsay.

Q. If I understand you then, you do not put the value upon this property from any actual sales prior to that time, but from prices you understood to be asked for other property in the neighborhood ?

A. Yes.

Q. What tract of land of 280 acres, or thereabouts, had you known to be sold in that neighborhood for $100 per acre, prior to 1866 ?

A. None ; I never knew of any.

I don't know of any sales, prior to 1866, in that neighborhood, of one hundred acres of land, for $100 per acre cash. I did not know this property was in the market for sale prior to Mr. McAlpine's purchasing it.

Re-direct examination.

Q. You say in your cross-examination that you never

knew of any tract of land of 280 acres being sold in that neighborhood for $100 per acre prior to 1866 ; do you know of any tracts of land in that neighborhood of that size, or thereabouts ?

A. None, without it be Wm. M. Shelley's, and I don't know the size of his farm.

I know of sales of land in that neighborhood prior to 1866, but I don't know what they brought.

I meant when I said in my cross-examination that I did not know of any sales of one hundred acres for $100 per acre cash, that I don't know what they sold for. I know that the Hiller farm, which is a mile and a half from the Walker place, and to the east of it, was exposed for sale at public auction. It contains one hundred and nine acres, and has no buildings on it. Ten thousand dollars was the highest virtual bid for it. It was bid in at a higher bid by one of the heirs of Jacob Hiller. It was offered for sale in order to make a division of the estate among the heirs. I know the land sold by Prof. Benedict to Isaac L. Condict. The Benedict farm lies, in part, on the same road as the Walker farm, but the part that Condict bought does not. The part Condict bought lies east of the Hiller farm, about one hundred rods distant.

This was sold, one hundred acres, for $10,000. There were no buildings on it except a barn.

Second cross-examination.

The Hiller farm was exposed for sale in August, 1868, and the Benedict farm was sold about the same time. All property has advanced largely in this vicinity during the last three years.

R. V. W. FAIRCHILD.

Sworn and subscribed this first day of June, A. D. 1869, before me,

SAMUEL S. HALSEY.

M. C. C.

Thomas O. Smith, a witness, called and sworn on the part of complainant, deposes and says :

I live in the village of Troy, near Parsippany. I am a farmer, and own a farm at Troy. I know the Walker place now owned by Mr. McAlpine. I live about four miles from the Walker place, and have lived there all my life, forty-four years.

I understand the size of the Walker farm to be about 280 acres. I always considered it a very fine farm. There is a very fine dwelling-house on it, and a great number of barns and stables ; more than there is on any farm in the County, and more than I thought necessary.

There was not much difference between the cost of building in 1866, and now ; it is about the same thing. My judgment is that that house could not be built in 1866, or now, for less than twenty thousand dollars.

It would cost about $10,000, in 1866, to build the barns and stables ; I judge from my own building at that time.

Taking the farm altogether, some of the land was very valuable, and some not so much so. I should think the whole farm, in 1866, without the buildings, was worth $100 per acre.

It is adapted far a grazing farm or a grain farm.

Cross-examined.

To the best of my knowledge I should think about one-half of the farm was tillable land. I have not been over the farm for the last fifteen or sixteen years, since Mr. Condict owned it. I have rode by it, and been to the house frequently.

Q. You make the value of the property, in 1866, about fifty-eight thousand dollars ; do you mean that that was its fair cash market value at that time ?

A. That seems rather high ; but taking the cost of the buildings and the worth of the land, it was well worth the money. We never expect to get the value of the buildings when we sell a farm.

Q. Do you mean, then, that in your opinion that property, if sold at public sale for cash, would have brought fifty-eight thousand dollars in 1866 ?

A. I don't believe it would.

Q. How much would it have brought at a public sale for cash in 1866 ?

A. I think the farm would have brought from forty-five thousand dollars to fifty thousand dollars.

Q. Was property worth $30,000, or $40,000, or $50,000, in that neighborhood, very saleable, prior to 1866, for cash ?

A. I think it was. I know of no such sales. In 1866 my brother bought the farm where I now live, containing 160 acres, and paid seventeen thousand and some hundred dollars for it, and I paid him the same.

I don't know as I can mention any sales of from $30,000, $40,000, or $50,000 in this region, in or prior to 1866. Farms have been sold in that proportion. To the best of my recollection Walker paid Condict some $30,000 for the property when he bought it, but this is only hearsay.

THOS. O. SMITH.

Sworn and subscribed this 1st day of June, A. D. 1869, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Examination adjourned to Wednesday morning, June 2d, 1869.

WEDNESDAY MORNING, ten o'clock. *Examination continued in presence of Counsel.*

George H. Looker, a witness, called and sworn on the part of complainant, deposes and says .

I was born in 1824. I live at Littleton. I am a farmer. I own the farm on which I live at Littleton ; it

contains about eighty-five acres ; and I have possession of other lands besides. I have lived at Littleton since 1840.

I know the McAlpine place, and have known it since 1840. I think there is about two hundred and eighty acres in the farm McAlpine bought. Take it as an average farm it is as good as the average, and perhaps better.

Since Mr. Walker has been the owner of it he has built a new dwelling-house, and one or two new barns, and some cow-houses. I helped raise one barn there. One of his barns I think was one hundred feet long. The old barns he repaired, and painted them all one color. I live about a half a mile from the dwelling-house, and about 200 yards from one corner of the farm. The dwelling-house erected by Mr. Walker was a large double house with kitchen attached. It was a two-story house with an attic. I was there while the building was being built ; it was built of good material, and the work was well done.

From what I know about building I should not think the dwelling-house could be built, in September, 1866, for less than $12,000 or $15,000. The price of building materials in 1866 was about as it is now, and the price is esteemed high now. In September, 1866, I should think the outbuildings were worth from eight to ten thousand dollars. Mr. Walker built a great deal of stone fence, and ditched it a great deal. He spent a great deal of money in fixing the gardens and grounds, and gravelling the walks. He spent a good deal of money there, and he set out a great many choice fruit trees and grape arbors, and grape vines. He put out a considerable many ornamental trees around the garden, which was large, containing, I should think, an acre and a half, and also about the house.

In 1866 the land without the buildings I should think would be worth from eighty to one hundred dollars per acre. I should think it would be low at eighty dollars. At the present time the farms along that road, from the depot up, are worth two hundred dollars per acre, and some are worth a good deal more. The Walker farm is

a little over a mile from the depot ; the house is a mile and a quarter from the depot. The Walker place is well divided up into pasture, meadow, and tillable land, and there are nice building sites on it.

In 1866 that place was worth more than $100 per acre for building sites ; my former estimate was simply for farming purposes. It is worth a great deal more for building sites.

There was some land sold there the other day adjoining this farm at auction, by Collins to McAlpine, consisting of three acres adjoining this, and four acres comprising an outlot. It was all sold together, seven acres. The whole sold in a lump brought twenty-two hundred dollars.

Cross-examined.

This sale of the Collins' property was about a month ago. There was a kind of a house on the property sold, so that an Irishman lived in it. The land adjoins this farm of McAlpine's. The road divides it.

Q. You said that this land was worth a great deal more than one hundred dollars per acre for building purposes ; how much is it worth for building purposes at the present time ?

A. A part of it is not fit for building purposes. I think the whole two hundred and eighty acres, if cut up into building lots, would bring two hundred dollars per acre.

I should think for building purposes it was worth about fifty dollars less in 1866. I refer to the land without reference to the buildings.

Q. Then in your opinion the present value of the property as it stands there is $80,000 ?

A. That is, if it could be sold for building purposes.

Q. How many new buildings have been erected between Morris Plains depot and Dr. Stephen Fairchild's, on the road to Parsippany, within the last five years ?

A. There has not been any entirely new ; some have

been remodelled and built over. Dr. Fairchild's house is two miles beyond the Walker house on the road to Parsippany.

Q. How many new dwellings within five years past have been erected on any of the branches from the road leading from Morris Plains depot eastward, within four miles of the depot ?

A. I could not answer ; I think there might be a dozen, perhaps twenty ; it is quite a big range of country.

Q. Mention such of them as you remember.

A. Solomon Hull, a man by the name of Halsey, a man by the name of Till, another one at Malapardis. The people owning these houses go to both the Morristown and Morris Plains depot. It is nearer for them to go to Morris Plains. John Bates has built a house ; I think William Smith has built a house within five years ; Benjamin Syre has built a house ; I have built a house. There are a considerable more houses in that range of country. It would take me some time to think them all up. Tompkins has built a house on the road to Whippany ; there is one also building at Harrisonville. Then there are a number of houses which have been made new except the frames.

Four miles from the depot would carry us to Parsippany, about to Denville, beyond Halseytown, and would embrace one-half of Monroe, and to Whippany, and not quite to Troy.

Q. How many farms on the road from the Morris Plains depot to Parsippany, within the last five years, have been sold within your knowledge ?

A. I think five, small and large.

The Hiller farm is the largest, except the McAlpine farm, and has about one hundred acres ; Collins' property is another. Benedict's farm was sold about a year ago. The DeMott farm was sold to Condict two or three years ago.

And in the neigbborhood, within two miles of Morris Plains depot, there have been sold the Corwin farm on the Denville road, and the Hinchman farm next to it ; and John Bates has bought a farm of about 100 acres.

At Morris Plains depot it is an open farm country.

Q. Between Morris Plains depot and Parsippany how many of what are called gentlemen's country residences are there?

A. I believe there are only two, one at the depot, and one in Littleton—Rowe's, kept for renting. I don't know as I understand what you mean.

Re-direct examination by Mr. DeMott.

Thomas V. Johnson's place is just across the road from the Walker farm; I should call it an elegant country residence. He does business in New York, and goes to the Morris Plains depot to take the cars.

G. H. LOOKER.

Sworn and subscribed this 2nd day of June, A. D. 1869, before me,

SAMUEL S. HALSEY.

M. C. C.

Henry Boughton, recalled, deposes and says:

Mr. Little objects to the swearing of this witness on the ground that he has been already examined, and his testimony closed.

I have been examined once before in this cause.

Q. You stated in your prior examination that you asked six hundred dollars per acre for your farm, and that your lands adjoin the Walker farm; do you mean to say that your farm is worth that for farming purposes?

A. I mean that so much of my farm as lies next to the Walker farm is worth that to live on, and farm too. It is worth that to me because I think I can get it, and I won't sell it without. That part of it that lies next

to the Walker farm I have got in a very nice state of cultivation, and I think it is well worth that. It consists of twenty or twenty-five acres, and there are a good many things to be considered ; a good many buildings are on it ; the buildings are all on that piece of land, or about all ; there is another house.

Q. You stated in your former examination that the Walker farm in the Fall of 1866, was worth $100 per acre without any buildings ; do you consider it worth that for farming purposes, and has it any other value ?

A. I told you I thought the farm was worth from $30,000 to $35,000.

I know something of the value of land about Littleton.

I would think that one hundred acres of the Walker farm lying along the road, in 1866, was worth $200 per acre. I don't know so much about the balance of the farm. I think the balance is worth fifty dollars per acre ; perhaps it is worth more.

I consider the place worth these prices for farming purposes.

I should think the hundred acres I have spoken of would be worth more to divide it up into building-lots.

Q. How much, in your opinion, could be realized from this one hundred acres by cutting it up into building-lots ?

Objected to.

A. By cutting it up into lots to suit purchasers I think it would fetch four hundred dollars per acre. I have no doubt it would, and take all the buildings off.

There is a road on two sides of the farm, one is the Parsippany road, and the other goes to Halseytown. The hundred acres I have spoken of fronts on the Parsippany road, some of it fronts on the other road. There could be some building sites made on the Halseytown road but they are not so nice.

There have been no sales of land lately in Littleton, except the little piece sold by Collins to McAlpine. The land sold lies opposite the Walker farm, about 3 acres, and the balance, four and a half acres, lies on another

road. It was sold at Public sale, at auction. I believe it fetched twenty-two hundred dollars.

H. BOUGHTON.

Sworn and subscribed this 2nd day of June, A. D. 1869, before me,

SAMUEL S. HALSEY,

M. C. C.

Wednesday noon at 12 M., Examination adjourned to 5 o'clock P. M. of the same day, by the Master.

Mr. Little protests against such adjournment.

WEDNESDAY AFTERNOON, five o'clock. *Examination of witnesses continued in presence of both Counsel.*

J. Elliot Condict, a witness, called and sworn on the part of complainant, deposes and says:

I am the son of Silas B. Condict, and reside in Morris Township. I was born in Littleton, Morris County, on the place conveyed by my father to Mr. Walker, and now in the possession of Mr. McAlpine. I am thirty-five years old. I recollect the time the farm was sold to Mr. Walker by my father; it was in October, 1851.

After Mr. Walker became the owner he moved off the old part of the old homestead, and built a new house in its place, changed the location of the barns, and added several buildings to them. He built an addition to the kitchen—more properly a woodshed—covering the old well. The fencing and ditching were done in my absence. There were a great many fences and ditches made, and roads were built connecting the farm buildings with the low meadows. There were great improvements made in the garden in the way of fruit trees and graperies, and the garden was very much enlarged.

I was on the premises on the Fourth of July, 1866. I walked over the farm merely to visit the old place. I

went over the entire farm, and through the house on the first story.

I have no knowledge of how the house is built, except from its appearance. I should judge it to be a well-built house, substantially built, not elegantly. It is a good sized house.

I should judge that it would cost to put such a house there, in 1866, not less than $12,000. I am the owner of a tract of land near Morristown, of about one hundred and forty-eight acres, three-fourths of it purchased in 1866, and I am building a residence upon it now myself. The price of building materials is higher now I should judge than in 1866. All the outbuildings, including the wagon-house, barns, and stables, in September, 1866, were worth fifteen thousand dollars. The barns were large and numerous.

There was a new part to the old homestead that Mr. Walker did not tear down, and I did not include this in my estimate of $12,000 of the worth of the house in 1866.

This part was built about twenty-five years ago, is a story and a half high, and was worth in 1866 about $2,500. We used always to talk of this farm as of about three hundred acres.

As a dairy and hay farm it was of the finest quality.

Q. What was the farm worth per acre in 1866, irrespective of the buildings ?

A. I should divide it. I should call two hundred acres of the land, without any improvements, worth one hundred dollars an acre ; I should call one hundred acres at seventy dollars an acre. The land is worth these prices for farming purposes.

You could pick out very beautiful building sites upon it. It is a mile and a half from the depot at Morris Plains.

J. ELLIOT CONDICT.

Sworn and subscribed this 2d day of June, A. D. 1869, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Examination of witnesses adjourned at 5 1-2 o'clock, P. M., by consent of Counsel, to Saturday morning, June 5th, 1869, at ten o'clock, at my office.

Saturday Morning, June 5th, 1869.—The parties appeared with their Counsel, and the examination of witnesses was adjourned, at the request of complainant's Counsel, to Friday, June 11th, at ten o'clock, A. M.

Friday Morning, June 11th, 1869.—The parties appeared by their Counsel, pursuant to adjournment, and by consent, at the request of Counsel for Complainant, the examination of witnesses was postponed until Monday, the 21st day of June, inst.

Monday Morning, June 21st, 1869.—Examination of witnesses continued in the presence of Jacob Vanatta, Solicitor of Complainant, Theo. Little, Solicitor of David H. McAlpine, and Alfred Mills, Solicitor of A. J. Hill and Mr. Van Buren, and other defendants.

William W. Fairchild, a witness, called and sworn on the part of F. W. Walker, deposes and says :

I reside in Morristown. I am an auctioneer and commission merchant. I was Sheriff of the County of Morris from 1852 to 1855. I was Deputy-Sheriff under Garret DeMott from 1861 to 1864. I have sold a great deal of real estate in the County of Morris during the last twenty years. I have known the Walker farm for the past forty years. I have never been over the whole of the farm. Those portions of it that I have been over I should think would be worth, in 1866, from one hund-

red dollars to two hundred dollars per acre, the way land sells here. I put this estimate without the buildings, for agricultural purposes.

The buildings I should not think could be put there in 1866, short of $20,000. They were worth that in my judgment at that time. There were a large amount of buildings there. In 1866, the buildings were in very good condition. I assisted in the sale of the personal property on that place on May 2d, 1862. I was acting as Deputy under Sheriff DeMott, Sheriff Anderson having a prior levy, and Sheriff Van Ness having also a prior levy ; DeMott had levies also. I was the auctioneer, and sold all the property. The sale was made at the house and on the premises, I mean Walker's house. The furniture, when I sold it, was all through the house ; we went from room to room.

The property was sold as it stood in its place in each room. The furniture was in its place in each room ; carpets were down and beds were made up. The furniture was good, a great portion of it. The kitchen ware was more or less used, as was also the attic furniture ; excepting that that was in the attic and kitchen, there was a large quantity of furniture that was good. I have a catalogue of it in the order in which it was sold in the book now in my hands. This was Sheriff DeMott's sale-book. I have examined a copy of that catalogue of the sale, and have compared it with the sale book. The copy is correct, and I hold it now in my hands.

This copy offered in evidence by Mr. Vanatta, and marked by the Master *Exhibit A*, on part of complainant.

Witness says this shows who bought the property, and the prices which it brought.

The following persons were present at that sale: Sheriff Van Ness, Sheriff Anderson, Sheriff DeMott, Anthony J. Hill, F. W. Walker, Mr. Little, A. W. Cutler, George E. Righter and Wm. Liddy, Mr. Cobb,

James Fay, Silas B. Condict and his wife, and there were a number of others there. The sale commenced about ten or eleven o'clock in the morning. It got through about three o'clock in the afternoon, might have been a little after.

We got through after the usual hour for dinner. We had dinner after the sale at the house ; the dinner was ready about the time the sale closed. I think that Mr. Walker came out and invited us to dinner after the sale ; he invited us all generally. Mr. Hill was there. I don't know that he said anything particularly about the dinner. Mr. Cutler made the bids for the property that was struck off to Anthony J. Hill. The other persons at the sale did not compete much with Mr. Cutler in bidding.

Some few things at the barn were sold out and out, other than that there was no competition. The reason why there was so little competition was that it was rather understood that it was a friendly sale, that is the way I understood it. It was understood, and I supposed, that Mr. Hill's judgment would cover the property. I am only giving my own understanding about it. I did not hear any remark, pro or con, by any one outside.

Q. Do you remember any remarks being made by persons at the sale by persons who had bid some, that it was useless to compete then because it was evident that Mr. Cutler was going to buy the whole thing, or words to that effect ?

Objected to by Mr. Mills.

A. I think I did. I heard a remark made there to that effect. Mr. Little made a remark of that kind. It was something like this—that there was no use bidding, for he supposed Mr. Cutler was going to buy the whole thing.

The personal property did not bring its value at this sale, not all of it. With the exception of a few articles that were sold, the balance of the personal property, including books, furniture, stock, farming and agricultural implements, did not bring more than one-quarter its value.

There was no money paid the Sheriff for the property struck off to Mr. Hill. I received from other parties on account of property not sold to Hill, one hundred and twenty-three dollars. This money was paid to Sheriff Anderson, Sheriff Van Ness, and Sheriff DeMott, and the balance Mr. Cutler receipted for.

I think there was a bill of sale made out to Mr. Hill of the property. I really do not know whether there was one made out in this case or not; I think there was. I sold for Sheriff Anderson, who had the first levy, and if there was a bill of sale made out he must have made it.

The property after the sale was left there. I sold eighty yards of carpet in the parlor; I think it was a Brussels carpet. I did not examine it minutely, but it was a good carpet. I took part in the sale of Walker's real estate under the Atwater execution. I was acting as Deputy-Sheriff for Garret DeMott. Mr. A. W. Cutler first came to the Sheriff's office to speak about the execution.

Q. State what he said about it?

Objected to by Mr. Little, on the part of Mr. McAlpine, and also by Mr. Mills.

A. He wanted the Sheriff to sell the property not by the regular fee, not by percentage.

The sheriff would not do it. He and Mr. Cutler had some words. The sheriff wanted to know of him why he wanted business done at a less rate than other lawyers had their business done.

Mr. Little objects to all conversation of the sheriff.

Mr. Cutler remarked that he was not obliged to sell it. Then Mr. DeMott remarked that perhaps somebody else will sell it. Then Mr. Cutler said he would take the execution back to his office. I don't know certainly whether he had the execution there or not. The sheriff left Mr. Cutler and me in the office together. Before the sheriff went out of the office Cutler had said to him that he would give him twenty-five dollars for making the sale, and the sheriff said he would not do it.

Q. State what Mr. Cutler said to you after Mr. DeMott left the office.

Objected to.

A. The first thing he said was, Garry is a little huffy about this matter. Then he wanted to make a contract with me about it. We did not make a bargain that day. In that conversation he gave me a reason why he did not want to pay the legal fees. I can't exactly state it now. He said the sale was to get the property into Mr. Hill's hands. It was not to be a bona fide sale.

Q. Did he make any remark like this, that the sale was to be merely a formal one, all among themselves?

Objected to.

A. Yes, a formal sale. It might have been three or four weeks before Mr. Cutler next saw me about the sale.

Q. State what occurred then.

Objected to.

A. In the next interview he asked me if we had made up our minds what we would do it for. I told him fifty dollars and he to pay the costs of advertising and printing. We then went on and did it.

Mr. Cutler left the execution with me.

DeMott, after the first interview, would have nothing more to do with it, but told me that whatever bargain I chose to make I could do so.

Q. Why did you agree to take fifty dollars sheriff's fees?

Objected to.

A. Because Mr. Cutler stated that it was to be a formal sale. Mr. Mills did not to my recollection see me afterwards about proceeding on that execution. I acted for the sheriff in the sale of that real estate. I was the auctioneer. It took place in Morristown, at the hotel of Jacob O. Drake, September 12, 1864. Mr. Cutler and Mr. Hill were present at the sale; I think Mr. Little was there. There were not many there. Sheriff DeMott was there. I can't recollect who all were there.

I only had one bid for the property. Mr. Cutler bid that; it was for $19,999. I think there were remarks

made about the bid by persons present. They said one-half the amount would have answered.

This testimony objected to, while being given, by Mr. Mills.

Mr. Hill signed the conditions of sale. There was no money paid that day on that sale. No check or note was given ; nothing was said about money. The sheriff's fees were charged to Mr. Cutler in his caption fees, $50, and the costs of advertising. The conditions of sale required ten per cent. to be paid on the signing of the bid.

The reason why we did not require the percentage to be paid in cash was, Mr. Cutler requested the sheriff to let the matter rest where it was for the present. It rested that way for nearly two years.

Mr. Little objects to all evidence of directions of Mr. Cutler with reference to the sale.

It was closed up with the sheriff on the fifth day of September, 1866. Prior to that day there had been nothing paid on that bid made by Mr. Hill.

We waited so long without delivering the deed, or re-selling the property because we were awaiting Mr. Cutler's instructions. Mr. Mills first saw me about closing it up in the Fall of 1866. He inquired about the deed, if it was ready, I think, stating that there were parties here about buying, or had bought. He asked me to come up to his office and see about getting the deed executed, and get the matter closed up.

Mr. Little objects to all testimony relating to conversations with Mr. Mills.

I had the sheriff's deed in my possession at that time. I do not know whether it had been previously signed and acknowledged by Sheriff DeMott or not. I think I went to Sheriff DeMott to get him to sign this deed and close the matter up. DeMott moved away from Morristown in the Fall of 1864. As soon as he went out of office he moved directly away to his home, and all the books and papers relating to his office were left in my possession, and I closed up his business for him.

I went to Mr. Mills' office at his request. I found

two gentlemen there ; one was Mr. Van Buren, and I don't know who the other one was. The other gentleman took part in the conversation while I was there. He seemed to be interested in the business. He and Mr. Van Buren were asking the price of farms ; I gave them my opinion.

That gentleman with Mr. Van Buren was trying to get at the value of farms and land in Morris County. Then they asked me what I thought the Walker farm was worth. I told them that a portion of the farm was worth one hundred dollars per acre, and that that land along the road was worth two hundred dollars per acre for agricultural purposes.

I took it from the conversation that the gentleman with Mr. Van Buren wanted to buy the farm. Mr. Mills stated that Mr. Van Buren had a power of attorney to settle up this business, and wanted me to go to New York with him, and take the deed and docket along, for the purpose of delivering the deed, and then they were to receipt this docket for the amount of the purchase money. I went to New York in pursuance of that arrangement. Sheriff DeMott did not go with me. I don't think Sheriff DeMott knew I was going. It was not long after I had the interview at Mills' office before I went to New York. I went to New York on the fifth of September, 1866. Before I went to New York Mr. Walker came to see me ; Mr. Walker served a notice on me.

Q. Did he say anything to you ?

Objected to.

A. He did. He served the notice in the ordinary way, and said he was going to stop these proceedings.

Q. Did he tell you whether he was opposed to these proceedings or not ?

Objected to.

A. I think he did.

Twelve-and-a-half o'clock, M. Examination of Mr. Fairchild adjourned to Wednesday morning, June 23d, 1869, at ten o'clock, by consent.

Wednesday Morning.—Examination adjourned to Thursday morning, June 24th, 1869.

Thursday Morning, June 24th, 1869.—Examination of Mr. Fairchild resumed in presence of Messrs. Vanatta, Little, and Mills.

Q. What proceedings do you refer to ?

A. The selling of the farm.

I have looked diligently for the paper Mr. Walker served on me, and I can not find it. I showed it to Mr. Mills and to Mr. Vanatta, to let them know the nature of it, and after that I mislaid it and cannot now find it. I think I showed the paper to Mr. Mills and Mr. Vanatta the very next morning after it was served on me.

I looked, on Tuesday morning last, my desk over for that paper, and could not find it.

Being shown paper, which I have marked *Exhibit B*, on part of complainant, Counsel asks :

Q. Was the paper served on you similar to the one now shown you in its contents ?

A. Yes, I think it was.

The counsel for Mr. McAlpine objects to the admission of this paper in evidence.

The paper Mr. Walker served on me I read over two or three times after he had served it.

Q. When you showed the paper to Mr. Mills did you tell him that Mr. Walker was opposed to your delivering the sheriff's deed ?

Objected to.

A. I think I did, sir.

When I went to New York on the fifth of September, 1866, Mr. Mills went with me. I think we went direct to Wall street. I think we did the business in Mr. Weeks' office, in Wall street. Mr. John D. Van Buren was there, and Mr. Mills, and some person or persons

officiating there as clerk whom I did not know. I had the sheriff's deed with me. I gave the deed over to Mr. Van Buren at that office in Wall street.

Q. Just state how the purchase money was paid.

A. I received the amount of the bid for the real estate by receipts on the docket, and a check.

I got Mr. Van Buren's check for $8,559.11. This amount was to be paid into Court for Maria Walker.

I got the decree for the complainant receipted with interest to that date, amounting to $9,911.72. It was receipted—"George Walker, *Assignee, by* John D. Van Buren, *Att'y in Fact.*"

Then I got a receipt for $3,849.94; that was receipted on account of the decree of George Walker, signed, "George Walker, *by* John D. Van Buren, *Att'y in Fact.*"

Then I got the costs and interest thereon of Maria Walker, amounting to $31.45.

Mr. Van Buren paid me for my services in going down. I think he paid me $15 or $20, and the cost of the deed also in addition to what he paid me for my services.

These receipts were signed on the sheriff's docket. I took the docket and the sale book with me.

In the month of April, 1869, I sold eight (8) acres of land near the Walker place. It was the Collins' property.

Three acres of it was property lying just across the road from the Walker farm. The rest of it lay on the road to Denville, about half a mile from the other lot. On the three acres was a house and barn by the roadside. The buildings were a good deal dilapidated, and were not of any value without a great deal of expense to put them in a tenantable order. They were old buildings. I was the auctioneer who sold the property. The whole eight acres brought twenty-two hundred dollars. Mr. David H. McAlpine bought it. I was never on the lot on the road leading from Littleton to Denville, and can't say what kind of a lot it was. Both lots were sold together.

The reason why I took the notice which Mr. Walker

served on me to Mr. Vanatta was, I thought it was something like an injunction, and I took it there to get his advice, to see if it was safe to deliver the deed after the service of that notice. Mr. Vanatta was the counsel of Sheriff DeMott.

Q. On the day you went to Mr. Mills' office to see Mr. Van Buren and the other gentlemen who met there, where did those gentlemen go to, if you know, and if so, state how you know?

A. They said there in our conversation that they were going to the Walker place that day.

My recollection is that Mr. Mills was going with them, or preparing to go with them. They said they were going up to see the Walker farm.

I charged the regular sheriff's costs in the sale of the personal property.

Cross-examined by Mr. Little.

At the time of the sale of the Collins property Mr. Collins and his family lived in the house on the three acres. Collins' family is an Irish family. There was a barn, or cow-house, and the buildings stood right along the roadside. I know that Collins had lived there for twenty years. There were many persons present at the sale. I sold the personal property at the same time. I think there were three persons besides Mr. McAlpine who bid on the real estate, viz: Mr. Looker, Mr. Boughton, and a stranger whom I did not know. I have had a good deal of experience in the sale of property, both real and personal.

Q. Do you consider that the price which a three, or five, or eight acre lot will bring, is a fair test of what a tract of two or three hundred acres will bring when sold by the acre, in the same neighborhood?

A. Perhaps a small tract might bring a little more. I don't think the buildings on the Collins tract advanced the value of the property at the sale any.

I was never on the five acre tract, and don't know how valuable it is.

Some of the Walker property—that along the road—is worth as much as the Collins property. It is worth not quite so much take it all through. I do not count Mr. Walker's farm all alike, taking it all through.

Q. What do you mean by taking it all through?

A. I mean by this, where there are three hundred acres of land, and rolling, low, and high land together, I should then make an average of that, putting it all together, different from a three acre lot, which is all high ground, and is a garden spot.

I should think about twenty-five or thirty acres of the Walker farm is as high as the Collins property. It runs up to the Shelley lane, and there is more than that of high ground. I should think there were near one hundred acres. I should think that one hundred acres was worth as much as the Collins lot, put to the same purpose. I don't think the Collins property brought any more than it was worth.

Q. Then I understand you that one hundred acres of the Walker place is worth two hundred and seventy-five dollars per acre without the buildings, at the lowest?

A. It is worth two hundred dollars per acre for any purpose you have a mind to put it to, to run a railroad through, or any purpose. The locality enhances the value of the property; I mean the situation of the place. It is a beautiful country through there; it is high and dry.

I think there are perhaps two or three thousand acres of land lying along the road between the Littleton depot and Parsippany, lying as high as the Walker farm, equally eligible as it.

I can't tell exactly the number of tracts of land of one hundred acres and upwards which have been sold at over one hundred dollars per acre.

Q. Can you point out one within five miles of Morristown?

A. I can't recollect now, sir.

The demand for property within the last three years has largely increased in and around Morristown. The prices of land have largely increased above what they

were before in all this region. Farming land in the neighborhood of Morristown has increased in value during the last three years. It has been increasing this last five years.

Some of the prices of products are as high now as they were three years ago, some are lower. There has been a great demand for farming land during the last three years.

Q. Do you know of any farm about here of one hundred acres or upwards that pays an interest on two hundred dollars per acre ?

A. I can't say that I do know the fact. There are plenty of farms capable of doing it if properly managed.

Q. Where was the copy of the inventory contained in *Exhibit A*, made out ?

A. The first two pages are in the handwriting of A. W. Cutler. The two judgments on the first two pages were all that we had.

Sheriff Anderson and Sheriff Van Ness were present at the sale of personal property. They had executions.

I think I recollect how Mr. Little came to make the remark he did at the sale, and which I have repeated in my principal examination. It was in the library. Some person remarked what those books were worth as they were sold, and I think they referred to Mr. Little. Mr. Little remarked that they were very valuable, and he did not think they were bringing more than half-price, or something to that effect. I remarked to Mr. Little why he did not purchase those library books, and I think his answer was something like this, that he supposed that Cutler would buy them all in any how.

Q. Was the remark that I made that I supposed Mr. Cutler was going to bid them in, or was it that no person could buy because the whole case of books were sold together ?

A. That was added to it, I think.

I followed Mr. Cutler's instructions in regard to the sale.

I understood, at the time of the sale of the real es-

tate, that it was only a formal sale. It was so explained to me. I advertised it under the James C. Atwater foreclosure. A. W. Cutler was the solicitor of Maria Walker.

When Mr. Cutler bid, at the sale of the real estate, $19,999, some remark was made, as I have stated in my principal examination. Mr. Cutler, in answer to that remark said, Now let any other man bid a dollar if he dare, or make another bid.

Q. Did he not say that if any other man would bid a dollar more he could have the property?

A. I think he did, or something to that effect. The sale had been regularly advertised for fully two months.

I cannot tell who the gentleman was in Mr. Mills' office at the time I saw Mr. Van Buren was there. Mr. Walker has since asked me if it was not Mr. McAlpine. I did not tell him it was Mr. McAlpine. I can't say who it was. I believed it to be one of the parties negotiating for the place. I can't say who it was.

I showed the notice Mr. Walker served upon me to Mr. Mills because I had been called to deliver the deed, and I did not know the nature of it. I called on Mr. Mills first because he was concerned in the matter. He said, as near as I can remember, that that would not affect the delivery of that deed to these parties in New York, and added that Mr. Walker had applied for an injunction, and that they had ruled it out of Court, or turned it out of Court, or something of the kind.

Q. Did not Mr. Mills, after you showed him that notice, bring you a letter from the clerk, showing that no bill had been filed, and therefore the notice was good for nothing, and did he not show you that letter before the deed was delivered?

A. He said the notice was not good for anything, and it does seem to me that the letter was shown to me a day or two after I showed the notice to Mr. Vanatta. I think I showed Mr. Mills the notice the next day after Mr. Walker served it upon me.

Q. Did not Mr. Mills, after you showed him the notice, say he would write to the clerk and find out about it?

A. He might have said so. I don't know. I can't say.

Q. Did you show the notice to Mr. Vanatta before or after Mr. Mills had shown you that letter from the clerk?

A. I went to Mr. Mills' first with the notice, and about the same time, either the same day or evening, I went to Mr. Vanatta with it.

The reason why I went to Mr. Vanatta was, it was a pretty important matter, and as Mr. Vanatta was counsel for the sheriff, he, Mr. Mills, told me I had better consult Mr. Vanatta about it.

I don't recollect of Mr. Mills' showing me a telegram from the clerk the day before we went to New York to deliver the deed, stating that no bill had been filed. He showed me the letter, but I don't recollect the telegram.

Q. What advice did Mr. Vanatta give you?

Objected to.

A. He said it would not interfere with our delivering the deed, or make us liable, if done before there was an injunction served, or until an injunction was served.

Examination adjourned to Thursday afternoon, at 2 1-2 o'clock.

Thursday Afternoon.—Examination adjourned, by consent, to Saturday Morning, June 26th, 1869.

Saturday Morning, June 26th, 1869.—The cross-examination of Mr. Fairchild by Mr. Mills was commenced.

I don't think Mr. Walker, when he served the paper on me, said that there was an injunction; he said it was a lis pendens.

Mr. Walker said that those parties named in the notice were trying to wrong him out of his property, get-

ting it of him, or something like that, and that he had recently returned from the West, and that this had been going on in his absence, and that he did not know anything about it till he returned. I think the next that he said was that I had better not deliver that deed, and he was going to take steps—I don't know whether he named by injunction or this proceeding—to stop it.

Very shortly after I got the paper I called upon Mr. Mills more for information and advice, and to understand it. I might have asked Mr. Mills if that paper was not an injunction. I thought it was so myself. There was something said between me and Walker when he served the paper, about an injunction, but what it was I can't now say. I don't think I told Mr. Mills that Walker said that paper was an injunction.

I rather think Mr. Mills told me it was not an injunction, and that he would write to Trenton and get a copy of the bill referred to in that paper. I think Mr. Mills afterwards showed me a letter from the clerk, stating that there had been no bill filed. He did show me a letter of that purport. I think that letter was shown to me just after Mr. Mills received it. I think he read the letter to me. I never read the letter. I took Mr. Mills' reading of it.

Letter being shown witness, which I have marked *Exhibit No.* 1, on part of Mr. Van Buren and others.

The admissibility of this letter objected to by Mr. Vanatta, as it appears that witness has no knowledge of the paper.

Q. Look at that paper and see whether, to the best of your recollection, it was the letter I read to you or showed to you at the time you have spoken of?

A. I cannot answer that, to be certain; you produced the letter to that effect.

I recollect something about a telegram respecting this business, but I can't tell exactly what it was. I think Mr. Mills showed me a telegram respecting this business.

I think that at the time of Mr. Van Buren's being at

Mr. Mills' office the matter was talked of of my going to New York and meeting Mr. Van Buren there, as it would be more convenient to him, and as I was going to Trenton I could go to Trenton and stop at New York on the way. I did go to Trenton the same day the deed was delivered. I started from home prepared to go to Trenton. I had to go to Trenton any way. When Mr. Van Buren was here the matter of my going to Trenton was talked of, and of doing business all under one.

The extra fees that were paid me by Mr. Van Buren on that day were what I charged him for services and expenses. I think the contract in reference to fees was made when he was here. When he was here the question was asked what I would go down to New York and deliver the deed for. I think I told him I would charge him nothing more than what would be a fair compensation for my time and expenses. Then Mr. Mills, Mr. Van Buren and I talked of what a fair compensation would be, and to the best of my recollection we decided what the fee should be. I don't think this conversation took place at Mr. Weeks' office ; it seems to me it was here.

I think when I showed you the paper that Walker had served on me, I went to see you to ask whether it would be safe for me to deliver the deed according to the arrangements made at Mr. Mills' office. That was my object.

After you had shown me the paper you advised me to go and consult with Sheriff DeMott's counsel about it.

I think when we were at Mr. Mills' office, when Mr. Van Buren was there, that something like this was said in reference to going to the farm : either Mr. Mills said we are going to the farm, or they are going to the farm.

I have a faint recollection that Mr. Van Buren asked me to make out the deed to George Walker, and of my telling him that as the bid was signed by Hill, the deed would have to be made to him.

I have no recollection of receiving a letter from Mr. Van Buren asking me to make the deed to George Walker, before he came.

The expenses of the sale of the farm under the *fi. fa.* were to be borne by Mr. Cutler.

Outside of the contract of fifty dollars they amounted to twenty-one dollars and ninety-two cents, made up as follows: Levy, $1.12; Advertising, $3.50; Sale, $1; Statement, $1; Printer's fee, $15.30. These were paid by Mr. Cutler.

I have been over so much of the farm as is around and about the buildings. I went along the brow of the hill down to the meadow.

I went along the road, and in back from the road from Morris Shelley's to Littleton, as far as the farm runs. I sold the hay crop and the wheat. I should think what I went over was about one-third of the farm nearly. I have sold the grass crop, and the wheat crop, and the rye crop. I sold them all at the same time. I have been to the place a great many times, to the dwelling-house, and about the premises.

Re-direct examination by Mr. Vanatta.

Mr. Cutler employed me to sell that hay and grass and grain.

Being shown a paper, which I have marked *Exhibit C*, on part of complainant, witness says:

This is a copy of the proceedings of the sale of that real estate, copied from Sheriff DeMott's docket. I have compared it with the docket; it is a correct copy. The copies of the receipts on it are correct copies of the receipts on the docket for moneys mentioned by me as having been gotten in New York.

Second cross-examination by Mr. Mills.

The body of each receipt on the docket is in the handwriting of Mr. Mills, drawn by him at my request, at the time the money was paid and the transaction closed.

The first two pages of *Exhibit A* are in Cutler's hand-

writing, and the balance of the Exhibit, I presume, is in the hand-writing of Mr. F. W. Walker.

The sale of grass was made during DeMott's term of office.

Q. You have stated that Mr. Mills added that Mr. Walker had applied for an injunction, and that they had ruled it out of Court, or turned it out of Court, or something of the kind; was not what Mr. Mills stated to you this, that the Court had ordered that the notice of *lis pendens* be struck from the files because no bill had been filed by Mr. Walker?

A. There was a conversation between Mr. Mills and myself that the proceedings that Mr. Walker had taken at Trenton were overruled, or ruled out; whether that was an injunction or lis pendens, I can't say anything about it.

This remark was made the before the delivery of the deed, I think. I can't tell whether it was before or after Mr. Mills showed me the letter from the clerk showing that no bill had been filed. I never heard anything more about it after that deed was delivered until this examination.

Q. Did you not call me into your office one day, months after the deed was delivered, and ask me whether Walker had begun his suit, and did I not then tell you that the notice had been struck from the files?

A. I don't remember that at all; my recollection on that point is very indistinct.

WM. W. FAIRCHILD.

Sworn and subscribed this 26th day of June, A. D. 1869, before me,

SAMUEL S. HALSEY,

M. C. C.

Thursday Afternoon.—Examination continued pursuant to adjournment.

Garret DeMott, a witness, called and sworn on the part of complainant, deposes and says :

I live at Parsippany. I am a farmer, and own a farm, which is about seven and three-quarter miles from Morristown. I know the Walker place, and have always known it ever since I have travelled between Parsippauy and Morristown.

The land sold by me as sheriff in 1864, under the Atwater execution being the Walker place, in 1866 was composed some very good land, and some very poor. I should consider it worth one hundred dollars per acre irrespective of buildings. I should think the house and fixtures, in 1866, would be worth $15,000 ; I don't think you could put it there for that. There are a great quantity of buildings there. The barns, in 1866, were worth $10,000 at least, I should think. I was sheriff of the County of Morris from November, 1861, to November, 1864. While sheriff I made a sale at Frederick W. Walker's place. Mr. Fairchild was the auctioneer. The sale took place May 2d, 1862. I don't remember now all that were present. Mr. Walker, Mr. Hill, Mr. Cutler, Sheriff Van Ness, Mr. Little, George E. Righter, John A. Cobb, Silas B. Condict and wife, and Morris Shelley, were there.

We commenced the sale in the morning at ten o'clock, and we got through in the neighborhood of three o'clock. We took a lunch with us. We were invited to stay to dinner there. I think Mr. Walker invited us to stay to dinner. I did not think the property produced its value at that sale. By looking over the list here I don't think it brought its value. I considered the furniture very good. It was what I call pretty expensive furniture, that in the big part of the house. That in the kitchen and in the bedroom over the kitchen, of course was not so good.

There was very little competition at the sale.

Q. Why was that, as you understood at the time ? I mean did you see any cause at the sale itself why there was no competition, and if so, state what it was ?

Objected to by Mr. Little.

A. I think when we first began to sell in the house there was some competition, but towards the latter part of the sale there was no competition at all. After we got to the barn, and out of the house, there was more. Some of the parties there said it was no use of their bidding; that Mr. Cutler was going to buy everything. I remember about Mrs. Condict's making some bids there; some one asked her why she did not bid. She said there was no use, as Mr. Cutler would buy everything, and she and Mr. Condict left the premises. We sold the furniture as it stood in the different rooms. I don't think any of it was handled over. We delivered some things after the sale; a yoke of oxen, cow, a cart, an oil barrel, and bitting tackle, and bog plow. That is all I think we delivered. The rest was left where we sold it. I can't swear positively that we made any bill of sale of the property sold to Mr. Hill. I rather think we did. I think Mr. Fairchild's son wrote it. I can't say that I have any distinct recollection of making any bill of sale in this case. That sale was made under the direction of Mr. Cutler. I had the execution of Atwater, in the foreclosure matter, against the Walker estate. Mr. Cutler first communicated with me about it. The first time he saw us he came the office and said he wanted us to sell that Walker property under a mortgage; and he said he wanted to make a bargain about the fees, and he asked me what I would do it for. I told him I would not do it for anything less than the legal fees. Then I said to him, How is this, Gus, you always want to make a special bargain in regard to fees. He had tried that on once before in reference to the Benedict property. I then said, I won't do any such thing. I was a little out of patience. I said, We are not asked by any other lawyer in town to do such things. I don't think we had the execution in our hands at the time. I think I walked out of the office, and left him and Fairchild in the office. He assigned no reason to me for wishing me to take less fees. He did not say why it was necessary the property should be sold. I think he did say, "Then I won't have it sold." I had no further direct communi-

cation with Mr. Cutler before the sale about it. I was present when the land was sold. It was sold on the twelfth day of September, 1864. Mr. Cutler and Mr. Hill were at the sale, and Mr. Little was there. There might have been more there but I don't recollect now. There was only one bid made, and that was by Mr. Cutler. Mr. Anthony J. Hill signed the conditions of sale.

The conditions of sale required a payment of ten per cent. to be made on that day. Nothing was paid. I don't know what is the reason it was not paid. We generally exact the ten per cent. I made out a deed, don't recollect the date.

By the conditions I see the deed was to be delivered by the nineteenth. Neither was the deed taken, nor was any money paid me while I remained in office. The deed remained in Mr. Fairchild's hands. When I went out of office I left all the books and papers in Mr. Fairchild's hands. I told Fairchild when I left town not to deliver the deeds in his hands until he got his money. I gave him general directions as to all deeds in his hands.

I cannot account for the fact that we kept the deed and did not receive the purchase money for so long, in any other way than this: there were no fees coming out of it, and so long as we held the deed we thought we were all right.

I think I acknowledged the deed before I moved away from town.

I did not know anything of Fairchild's delivering that deed before it was delivered. I did not hear or know anything of his agreeing with Mr. Mills to go down to New York and deliver that deed until after it was all over. I think it was but a short time after, however, before Mr. Fairchild told me the Walker property had been sold, and he had been down to New York to deliver the deed.

Upon the direct testimony being read over to the witness he said, After Mr. Cutler said "Then I won't have it sold," I said to him, If we don't sell it then somebody else will. Cutler made no reply to this.

Cross-examined by Mr. Mills.

The sale of personal property at the farm was a fair, four-square sale, made in the ordinary way. It was regularly advertised. I took no steps to prevent the property's bringing its full price. I know of no steps being taken by my deputy, or any one else, to prevent the property's bringing its full value. I did not, either at the sale, or at any time after, ever think that the sale was any other than a square, fair sale.

I had very little to do with the sale; it was made under Sheriff Anderson's levy. I called off the articles from the levy-book, and Sheriff Fairchild sold them. Mr. Cutler bid on the articles at the barn, as well as at the house. Mr. and Mrs. Condict left the sale when we were selling in the parlor, and they did not return. I did not see any reason for the remark made by Mrs. Condict that there was no use bidding, as Mr. Cutler would buy everything, except the fact that Mr. Cutler did bid on everything.

There was no haste made in selling so as to prevent any one from bidding. Everything was put up fair as I saw, and time was given every one to bid. We have had sales where the articles brought more than they did at that sale. It is very seldom that you see articles sold at a sheriff's sale which bring their value.

The articles sold then sold as well as articles ordinarily do at sheriff's sale. The conversation I had with Cutler in reference to the reduction of fees under the fi. fa. in Chancery was at our office. I could not say how long it was before the sale. Mr. Fairchild was my deputy, and received a regular salary. I had nothing to do with the arrangement made by Mr. Fairchild with Mr. Cutler as to the fees. After it was done he told me, and I agreed to it. After the bid of $19,999 at the sale I think Mr. Cutler said, There is a chance for some one to bid a dollar; and I think some one said, If we were to bid a dollar you would not let us have it. I did not hear Mr. Cutler make any answer at all to that. The bid was kept open, and an opportunity afforded for peo-

ple to bid. I do not recollect of any remark being made at the time that $20,000 would buy the property. I don't recollect whether there were many present at the sale or not. I think the sale took place in the house, in the bar-room. There is where we usually made them. We considered that sale a fair, bona fide sale.

When I left Morristown I gave Sheriff Fairchild the deed, with full power to deliver it upon receiving the purchase money.

In the sale of farms, as a general thing, the buildings, and particularly expensive ones, do not realize what they cost.

Re-direct examination by Mr. Vanatta.

Q. When that personal property was sold, for whose benefit, as you supposed, was Mr. Cutler buying it in?

Objected to by Mr. Little and Mr. Mills.

A. I supposed he was buying it for Anthony J. Hill. Mr. Hill did not request me to deliver any property; I never was asked to deliver any property except what we did deliver. I was not back in the house after I sold the personal property, and before I sold the real estate, between 1862 and 1864, except once when I was coming from Parsippany with my wife, and there came up a thunder-storm, and we took shelter there. Mr. Lord lived there then. I noticed the same furniture in the parlors then as when I sold.

GARRET DEMOTT.

Sworn and subscribed this 24th day of June, A. D. 1869, before me,

SAMUEL S. HALSEY,

Master in Chancery of New Jersey.

Philip B. Vanderbilt, a witness, called and sworn on the part of complainant, deposes and says:

I reside at Duchess County, in the State of New York. I knew Anthony John Hill in his lifetime. I know Frederick W. Walker, and have known him for about fifteen years. I was at the Walker place near Littleton when Mr. Hill was there. It was on the last day of December, 1865. I arrived there on that day. I remained there two nights and one day. I arrived in the evening and stayed until the morning after breakfast of January 2d. Mr. Frederick W. Walker was there at the time.

Q. Did Mr. Hill have a conversation with you while you were there about the real and personal property at that place, and if so, state that conversation?

Objected to on part of Mr. McAlpine.

A. The conversation in the first place took place in reference to a pair of horses I had sold Mr. Walker. There was an unsettled account between me and Mr. Walker about those horses. This brought about the conversation. I asked Mr. Hill if he owned those horses—if he had bought them in at the sheriff's sale. He said that that pair of horses were sold previous to the sheriff's sale, at another sale that Mr. Walker had had. I told Mr. Hill that I expected that he owned the horses which made me ask him the question. He said he did not pretend to own anything that was there. He was holding that property, he said, for Mr. Walker, in trust; and he said Mr. Walker had just arrived; had been home only a few days, and he had not had any conversation with him yet about taking the property back; that he was in hopes he would, and that he felt as though he was losing his eye-sight, going to be blind, and he wanted to leave. That was all I recollect of what he said. I made no reply whatever, because it did not interest me at all. He told me of the property's being sold at sheriff's sale. There were two sales, he said, of the personal and real; he had them bid in, and held them in trust for Mr. F. W. Walker; that he was staying there doing business for Mr. Walker, and that he would settle with me for my horses if Mr. Walker did not. Mr. Walker settled it himself, and that ended

it. I think the conversation took place the first evening that I arrived there. Mr. Walker was not present at the conversation; he had gone to bed. I knew Mr. Hill for seven or eight years before that; I had met him a number of times.

Cross-examined by Mr. Mills.

I live in the old town of Fishkill, and have lived there for thirty years past. I keep a hotel, and have a farm with it. I have been in the hotel business just ten years. Before that I had always been a farmer, and lived in the same town, about two miles from where I do now. I have done a great deal of business for Mr. Walker, and when he was on his farm I bought a great deal of stock for him—breeding mares, horses, and cows. I bought fifty cows at one time for him, and fetched them over here. I went to Mr. Walker's to get a settlement with Walker for a pair of horses. This account was paid the first of July, 1866. He came up to my house and settled it.

I was not at the Walker farm between the second of January and July, 1866. I was at the farm once after that, in the month of July, 1866. Between the second of January and July 1st, 1866, I had no communication with Mr. Hill in reference to the settlement for the horses, or to Mr. Walker's unsettled account with me.

Mr. Hill was not there in July, 1866. He was in Bermuda. I never saw him after January 2d, 1866.

What I wanted to know of Mr. Hill was, whether he owned those horses. That brought the conversation around.

I could not tell whether Mr. Walker was in very good credit at that time or not. He had been off to the war. I had not seen him for two years, but had had several letters from him during the time.

I sold the horses to Walker in 1861, up at my place. I made no memorandum of the conversation with Hill at the time. That was the last time I ever saw him. It has always remained fresh in my mind. He said he was in

hopes Fred—he was home then—would stay home and take charge of the property, as he, Mr. Hill, was losing his eyesight. He was then almost blind. He did not say anything about Fred's buying the property back.

Q. You say the conversation did not interest you; how do you happen to recollect the exact words after an interval of four years?

A. I say it did not interest me. I did not ask him any questions, nor pry into it. He told me of his own accord.

I had met Mr. Hill several times previous.

Q. Were you at all intimate with Mr. Hill?

A. I knew him well, but then we never had any business between us. I never sold him anything. I was intimately acquainted with him. I never sold him anything.

Q. Did you not just now say that you were not intimate with him?

A. I did not mean that, if I did.

Q. You have stated that Mr. Hill said to you that he felt he was losing his eyesight, and wanted to leave—to leave what place?

A. He wanted to leave there, he said, and go South. I supposed he meant the farm.

I first mentioned this conversation to Mr. Walker about three weeks ago, in New York. I had not spoken of it from the time it took place up to three weeks ago.

Cross-examined by Mr. Little.

I did not meet Mr. Walker in New York by appointment, I ran across him. The balance he owed me when I went to the farm was $400.

Mr. Hill's first name was Anthony. I don't know whether he had a middle letter or a middle name.

Q. How did you become intimately acquainted with Mr. Hill?

A. I met him at Mr. Walker's, when I and my wife were there, some seven, eight, or ten years ago. We stayed there a week, and he was there. We were visit-

ing Mr. Walker. I think it was nine years ago; that was the first time I ever met him. He and I had a good many chats together. He was a very friendly, clever sort of a person. He asked me to call in at the Astor House and take dinner with him any time I was down. I did call in to see him twice. I did not dine with him either time, I could not stay. Those were the only times I saw him till I saw him in 1865. I never had any business transactions with him.

He said three or four times that he was holding the property in trust for Fred.

Q. Would it lead you to doubt whether you correctly remembered his language if Mr. Hill should swear that he was not holding the property in trust?

A. I should still remember what he told me. I would have no doubt about that.

I was talking about the horses when the conversation was brought around. He used the expression that he held the property, real and personal, in trust. He did not say for what purpose he was holding the property in trust for Fred. I did not inquire nor pry into the matter.

He did not say, and I did not inquire, what the difficulty was in his giving the property up to Fred. I asked him no questions. I saw Mr. Walker while I was there. I did not say anything to Walker about the debt. I was there two nights and one day. Mr. Walker did not say anything to me about the debt, nor I to him. Hill said he would pay it, and I thought I was all safe enough. I had Walker's note

Mr. Hill said he stayed there to help Mr. Walker, or Fred. I don't recollect that he said he was doing business for Walker. He said he was staying there to help him; I think that was the expression.

Second cross-examination by Mr. Mills.

I arrived at Mr. Hill's house about sundown, on the evening of Dec. 31st, 1866, and we had supper and sat around the fire till nine o'clock; and Mr. Walker said, I

am going to bed. Hill and I sat up till about ten o'clock. Between nine and ten o'clock we had this conversation. He did not say he was paying Walker's debts. It was a note that I held against Walker. The note was dated June, 1861, due at four months at the bank. I got it discounted where I live, and took it up when it became due. Nothing had ever been paid till he settled up the whole.

PHILIP B. VANDERBILT.

Sworn and subscribed this 24th day of June, A. D. 1869, before me,

SAMUEL S. HALSEY.

M. C. C.

Saturday Morning, June 26th, 1869. Examination of witnesses continued pursuant to adjournment, after the examination of Mr. Fairchild was closed.

Frederick W. Walker, a witness, called and sworn on behalf of himself, deposes and says :

Counsel for defendant, Mr. Mills, objects to the swearing of this witness, before he was sworn, because he is incompetent under the statute.

I knew Anthony John Hill in his lifetime ; he was my brother-in-law. My sister, his wife, died many years since in England. Mr. Hill never married again ; he died a widower and childless. He was a gentleman of considerable fortune, or was always so reputed ; he was rich, and a ready-money man.

Mr. Mills here objects to all testimony from this witness affecting Anthony John Hill, or his representatives.

He and I were always on intimate terms. I became the individual owner of the estate at Littleton in 1854; it had previously been owned by Henry A. Walker, my brother. He and I agreed to go there and live. He died in the Spring of 1854. Henry A. Walker and I were both bachelors. After the death of Henry A. Walker I was always in possession of the property at Littleton, or supposed I was, till September, 1866, when McAlpine got into possession of it. Mr. Hill, occasionally after 1862, spent portions of his time at the Walker place, at Littleton. Prior to that he visited me occasionally. There was very little of Mr. Hill's time spent at Littleton till after the riots in New York, during the war. He ran over in terror from them. I should think, speaking roughly, he spent about one-half of his time at Littleton, after 1863.

After the sale of the personal property, in 1862, I let the property to J. Couper Lord, and I put the farm part in the care of A. W. Cutler. Mr. Lord stayed there till about the first day of December, 1862. During the most of that period I was in Ohio. I then came down and took possession of the property, and Mr. Hill came over to see me occasionally. I wanted him to take charge of the property for me. More than half the time I was absent myself, either in Ohio or Washington. Hill agreed to go there and attend to the property.

Lord did not have the property after 1862. I only let it to him for a few months, because I was going to be gone. It became necessary to have some one look after the property, and Mr. Hill promised he would do so. I was an agent for the United States Government in procuring timber and lumber, and after the war broke out I was compelled to be absent a great deal of my time in procuring supplies. I had been the agent of the Government before the war. I made an understanding with Mr. Hill that he was to look to that farm during my absence. I could not tell when Mr. Hill was there, but I have reason to believe he was not there more than one-half of his time.

After 1862 Mr. Hill claimed his residence in New York, as I understood it; he kept his rooms there.

In 1866 the old farm, bought of Silas B. Condict, contained about two hundred and eighty-two acres. It fronted on the road leading from Whippany to Parsippany, with about three-quarters of a mile front, as near as I can judge. It also bounded on the Halseytown road, till it reached Shelley's on the north, and then the tract ran back about three-quarters of a mile, containing two hundred and eighty-two acres. It was well divided into upland and lowland, fine table-land. I should think at least one hundred and fifty acres, flat land, fine and dry. The balance was permanent meadows, used for mowing and some for pasturage; it had a great many stone walls on it and good fences, put up by us. I must have spent nearly five thousand dollars in building stone fences. The uplands were mostly laid down in English hay (timothy and clover).

We, my brother and I—I did most of the business—built a large wooden frame house 35 x 45 feet, with piazzas on both sides fifty feet; the eaves of the house projected and we ran the piazzas out fifty feet, and nine feet in width. The house had a large cellar under the whole, and was built with two stories and an attic. The house was built of the best possible materials, and in the best manner. The house was built as well as it could be. In addition to the house we built, there was a building not torn down, in excellent condition, of two stories, with an attic and cellar under the whole, which had been built by Silas B. Condict.

We also built the building called the wood-house, which covered the wells and privies, which was about 30 feet square. I also built a very large cistern outside, and an ice-house, an ash-house, and a tool-house, and a shed sixty feet long to put wagons in. I also built an immense amount of paling fence in the best manner around both gardens. The front garden contained about an acre and a half, and the rear garden contained two acres. I set out in those gardens an immense number of pear trees and cherry trees of every kind I could pro-

cure, quinces, and some peaches. I built three covered grape-racks, or arbors, about 1,000 feet in length in all. They were double racks. I also built a great many gravel walks, a great many hundred feet in length, by digging deep and putting in stones and covering them with gravel. I set out a great many shade trees, and I made a blind drain all around the house down to the brook; dug it deep and filled it with round stone. I had a splendid garden; I set out every kind of shrubbery and flowers that I could find. I had every variety of grape that I could get hold of.

The barns:—The first front barn was ninety odd feet in length; it was an L. Then it ran two hundred feet, then running from that was a cattle-shed, so as to make three sides of a parallelogram. These stood on a side bank, one side of which was stoned up in the best possible manner in a side bank (so as to make stables down stairs), with stalls below for cattle and horses. The front, ninety-feet-stable, was a double one, with stalls each way and a road in the middle. Next, on the south side of the road to the barn-yard, were two horse-barns about 20 x 38, built into the side bank, with stables down stairs; below these was an ox-barn. These all cover a square, and there was a lane leading down to the river.

In the centre of the barn-yard was a manure-pit, stoned up on three sides; it was twenty-five feet wide, and a hundred feet long, and four and a-half feet deep, with a road leading down into it, and room to turn around. Then, separated by a stone wall which would drain liquids, was another pit ten feet deep, 25 x 35 feet, capable of holding liquid manure.

These barns would not hold all my hay.

I have kept fifty horses in my barns over Winter from New York, and at the same time I kept sixty-two cows; at the same time all my young horses and cattle, stock and breeding mares, and oxen. I kept a great deal of stock there. I have had to stack my hay outdoors, and after keeping my stock all winter have had hay to sell in the Spring. As I fed out my produce on the land, I

saved all the manure to myself, and the farm, as long as I continued to hold it, was continually growing better. I sold nothing off of the farm that I could help, except milk and stock. The manure was spread out on the place.

I have been offered for one hundred acres of the farm, about splitting the front in two, and running back, taking in about half the front on the road to Parsippany, two hundred dollars per acre. This was prior to 1861. This included no buildings, and included some of the best and some of the poorest land on the farm. The lowest estimate of the actual value of the real estate which I have spoken of in my testimony, in September, 1866, is sixty thousand dollars.

The house and out-houses were built in 1852-1853.

The dwelling-house, including cistern, &c. cost $10,000. It would have cost double that in 1866. The whole buildings and improvements must have cost $20,000. This does not include the buildings that were on the property when I bought it. In 1866 these buildings were in excellent condition, preservation and repair.

I never let any thing run down. The roof of the house leaked a little, caused by the contraction and expansion of the tin roof by the cold weather. The tin was good.

The whole, buildings, barns, and improvements, were worth, in 1866, $30,000. They could not have been put there for that.

There was a very large amount of personal property on the premises in 1866, consisting first, furniture in the house. The house was exceedingly well filled with house furniture.

Secondly, agricultural implements of all descriptions, horse-powers and fixtures, wagons, carts, tools of every description. There was a large quantity of live stock, horses, cows, oxen, live-stock, breeding mares, &c. Then there were crops in the ground and on the ground.

Next to this, in the house, was a large library, of about eighteen hundred and fifty books, contained in ten cases.

The library and library furniture was worth $8,000. I don't think that $10,000 would duplicate that library. Many of the books were imported books, some of them exceedingly rare and old; foreign books and classical works. There was no trash in the whole concern. There was not such another private library in the whole country.

The value of the personal property outside of the library was worth, in my judgment, the sum of eight thousand dollars.

Q. While there did you become indebted to Anthony John Hill, and if so, to what amount?

Objected to, as irrelevant, by Mr. Little.

A. I did. In the Spring of 1857 I borrowed two thousand dollars of him; in November, 1857, I borrowed $1,650 more of him. I used this money to pay off the debts I had in Morris County. He never asked me for any security. I gave him, voluntarily, a confession of judgment for each of those sums about those dates, and let an execution be issued on each one, and levies made. Levies were made on property which I had then in 1857, and these things were kept along on alias and pluries executions for about five years. Mr. Hill did not want his money, and he told me I could have it just as long as it would do me any good. In the Spring of 1862 I found it would be necessary for me to be absent a great deal on government business. Mr. Hill and I had a talk over the matter.

This testimony concerning the conversation of Mr. Hill and Walker, in the absence of Mr. McAlpine, objected to by Mr. Little, while being given.

And the agreement we entered into was that we would not have these executions or *fi. fa.'s* dangling along, but that we would have the property sold under it, and that he would bid on it, or cause it to be bid in at the lowest possible sum, at whatever sum, more or less, he agreed to bid it in, without reference to his executions, and to hold it in trust for me till I got ready to pay him the sum bid by him, whether it was more or less.

Accordingly, on the second day of May, 1862, after advertising it, and after one adjournment, he did so bid in the personal property at sheriff's sale, and so held it in trust forever afterwards. I was present when the sheriff made the sale of the personal property. It was all done under my direction. Some few articles were bid in by other persons. Excepting these few articles, seven or eight in number, Mr. Cutler bid in all the rest of the articles. There was an old yoke of oxen, a poor cow, and a troublesome steer, that we did not want, and I directed them to be sold, no matter what they brought. These were among the few articles sold that Cutler did not bid in, and constituted the main articles that were actually sold. I remember Hill's finding fault with Cutler for not bidding everything in. He said he had agreed to bid it all in.

All the property remained in my possession after the sale. About the fifteenth or twentieth of June, 1862, I let the house, garden, and furniture to J. Couper Lord. I wanted some one to stay there. Mr. Lord stayed there till Fall, near December. I went back then and took possession of the premises again. Mr. Hill did not stay there. I could not get him to stay there and look after things, until the riots. He would come over, and go right back again to New York. I was there in September, 1863, and Hill was there, and I was there in December, 1863, and Hill came there.

In this previous agreement that I had with Hill in the Spring of 1862, he agreed to bid off the personal estate and the real estate, and hold it for me, subject to the incumbrances, using his judgments and all others, for that purpose.

Mr. Mills and Mr. Little object to all testimony proving a trust in the real estate unless it is in writing.

Accordingly, there were several sales of real estate under his judgments made during the years 1862 and 1863, at none of which I was present, and the property was bid in at very small sums.

In September, 1863, while I was on my road to Washington, I stopped at Littleton, at the farm. Mr. Hill

requested me to find some other person and let him transfer his trusteeship of real and personal property to him, whoever he might be. In December, 1863, he made the same request to me then. He said he did not know but he might come in collision with some of my creditors, and he did not wish it. He made the same request in September and December, 1863. He said he did not wish his money, and I might have it as long as I wanted it. I pacified him, and quieted him, and told him I did not know of any other person I was willing to trust so well as himself; that we had always known each other. Things continued in this shape till 1864. In 1864 there were some decrees on foreclosure, under the name of Atwater; the effect of a sale under such decrees of Atwater would have been to oust him of any title he had by sale under the judgments. George Walker took an assignment of this decree. He was then living in West Indies. He went out to West Indies in the Fall of 1862, and has remained there till April, 1869. Mr. Hill, I suppose, was acting some for him in that respect. We, Anthony J. Hill and myself, had a consultation in the matter in the Spring of 1864. I asked him to take an assignment of it in the name of George Walker, and he advanced the money and did so. That I could pay that money myself that season, if he needed it. I was doing a very large business for the government, and had a great deal of money, and was using a great deal of money. I wanted him to sell under the decree for certain purposes of my own, and requested him to bid the property in for the Maria Walker and Atwater decrees if he could, and leave the George Walker debt out, for it was most abundantly secured, as he was well aware, on property in another state, four times its value. Mr. H. said he did not want to sell; he thought the matter stood well enough as it was, and he did not want to bother with it.

I forced that sale and brought about that sale under that decree. The property was advertised under it. I wrote letters in May 26th, 1864, (I think was the date,) to Mr. Cutler and to Mr. Hill, to have the property sold.

Mr. Little objected to the evidence contained in these letters.

Mr. Mills also objects.

Previous to this, before I went away, Mr. Hill said if the property had to be sold he would bid it in and hold it, the same as at the other sale. The sale went on and the property was sold. I was not at the sale.

I returned about the first of December, 1864, and saw Mr. Hill at the farm, where he was staying. Hill told me that Cutler had made a bid on that property in September, but he said he would not go any further in the matter; that he should never take any deed, or pay any money; that the bid would answer my purposes just as well as though he took a deed. He said he would have to pay the whole of the money if he took the deed, and that he was not going to pay out any more money. The thirty-six hundred and fifty dollars which he had let me have I might have as long as I liked, but he would not pay out any more money.

George Walker could not have known anything about that sale at the time it took place, in my judgment.

Q. In your communication with Mr. Hill, prior to its being made, and after it was made, did he represent or intimate that he was going to act, or had acted, in behalf of, or on account of, George Walker?

A. He never did, but on the contrary, in February, 1865, when he had one of his freaks, he abused me outrageously for not staying there and taking care of my farm, and putting him to the trouble of doing it.

Mr. Hill used to have tantrums about once every three months. Things went along as usual, excepting that when in these tantrums he abused me for not taking care of my property.

In February, 1865, he abused me in one of these tantrums for not staying and taking care of my farm.

Q. After the sale under the Atwater decree, was there anything said about making sale of the property, and if so, state what was said and done about it?

Objected to by Mr. Little as entirely irrelevant.

A. We agreed, Hill and I, that the property should be placed in the hands of Augustus W. Cutler for sale. The price fixed, we agreed upon, at $50,000 for the two hundred and eighty-two acres without the personal property, and we agreed to take forty-five thousand dollars, and it should not be sold for less than that; and it never was offered less than that with my knowledge or consent, previous to 1866. I think it was in 1865 we were offered $40,000, for the two hundred and eighty-two acres, in money. The offer came from Thomas V. Johnson, but was for another party, and twice we were offered thirty-five thousand dollars for it, to all of which offers Mr. Hill said he was entirely opposed; that we ought not to entertain them; that we ought not to sell for that, as the property was worth a great deal more.

In the event of the sale the proceeds were to be applied towards all the incumbrances on the property and all my debts.

The incumbrances to be paid were, in the first place, a mortgage to Maria Walker for about $5,000, and interest on the same, owned by her. Next, a mortgage to James C. Atwater, of about $5,300, and interest and costs on the same, owned by George Walker. Next, a mortgage to George Walker of $11,000 and interest. Next, a mortgage to A. W. Cutler, settled upon as about $3,000 and the interest. Next, Hill's judgments and interest. Next, any lawful judgments or claims against me in Morris County, or New Jersey. If, after paying these, there was any excess, it was to be paid to me. That was the nature of the trust.

In 1866, before Hill went to Bermuda—A. W. Cutler's mortgage being an open mortgage—I remember well in January, Hill wanted me to settle on what was due Cutler, and then have the mortgage assigned to him.

Some time afterward, as soon as it was convenient, Cutler and I did get together, and settle upon the amount due on that mortgage, and he did assign it to Anthony J. Hill in the Spring of 1866.

Q. What was Mr. Hill's physical and mental condition in 1865 and 1866?

Objected to.

A. At times it was not very good. For more than twenty years Mr. Hill has been subject to fits of hypochondria. They were increasing, as he grew older, in frequency and in violence. When he was under the influence of them I never considered him of sound mind. He was then of unsound mind, and not fit to transact any business. Mr. Hill was getting advanced in life, between sixty and seventy—nearer seventy than sixty. His faculties had begun to fail him. He was getting deaf, and getting blind; his memory failed him; he had a great deal of trouble with his eyes.

In February, 1866, contrary to my most earnest advice and request, he had an operation performed on his eyes, which affected him very much indeed; he had several operations and tinkerings with his eyes after that, in 1866. He became horridly nervous; his mind was exceedingly unsettled; he became imbecile, and no better than a small child, and that was his situation in the month of April, 1866; his memory seemed to be gone; he would repeat over a thing many times and forget that he had said anything about it. I thought that if they did not get him out of the room he would go crazy, he was so nervous, and in such a state. He would state a thing and then deny that he had ever said it; he wanted to get up to Cutler's house—got a notion in his head—and so we got him up there and moved him about, and thought it did do him some good; we moved him back again. It was absolutely necessary to give him air and exercise, and he concluded to go out to Bermuda. We thought a sea voyage would do him good; he was expected to be gone three or four months. His condition of mind during the whole month of April, 1866, was unsound, not fit to transact any business.

Examination adjourned until Friday Morning, July 2d, 1869, at ten o'clock.

Friday Morning, July 2d, 1869.—Examination of Frederick W. Walker continued by Mr. Vanatta.

Q. You have spoken of Mr. Hill's condition of mind, and of his having spells of hypochondria ; can you mention any acts or conduct incident to that state of mind ?

Objected to by Mr. Little and Mr. Mills.

A. I have known him to change his mind twelve times in a day. He used to dress himself up in old clothes, get the worst old hat in the County of Morris ; he would think he was going to the poor-house, going to be poor ; he seemed to be in some terror all the time ; he seemed to be in dread of poverty ; he seemed to be in dread of disease of some kind ; cholera was one of his diseases he was afraid of. I found him one morning filling up my manure pit with loads of stone, with men and carts ; he was making a regular business of it. I asked him what the matter was, and he said the cholera was coming ; that we would all get the cholera. At several times he would get up there with his old clothes on, and insist that all business must be stopped by all hands ; that I must do no business ; that the country was ruined—everything was gone to pot, and the only thing that could be done was to sit right still.

Another singularity of his was, that he had got twelve or thirteen full-grown cats ; he used to feed them at the table, and two or three dogs. When he was at New York one day, in the evening I put seven of his cats into a box and carried them down on the south side of Morristown, and let them all out. I knew they would have to pass through the town before they could get back.

He would offer things cheap to people, for a great deal less than they were worth, and when they took him up he would not let them have them. He did a great many curious things ; I could not begin to tell all that he did. He was insane.

The undercurrent of his natural tendencies were all good ; he was a kind-hearted man.

I had perfect confidence in his integrity, as much so as anybody in the world.

Q. You spoke of Mr. Cutler's being selected by you and Mr. Hill as one who should dispose of the property; under whose direction and control was Mr. Cutler to do the business; state the understanding, and what was subsequently done?

Objected to.

A. It was placed in his hands by Mr. Hill and myself, and the property could not be sold without my consent, unless at the prices stated.

The asking price was $50,000 for the old farm of two hundred and eighty-two acres, the real estate. It could not be sold less than $45,000 without my consent.

After it was placed in Mr. Cutler's hands he offered it for sale—advertised it.

Mr. Hill had several offers for the property when I was there; he was offered more than $40,000, (I think, the price we asked,) if we would take some real estate in New York. I went over to look at the real estate. The real estate was good property, but it had a quit-rent on it, and we did not like the property. I objected to it myself. Afterwards the party sold his property, and sold it well, and he offered him, though Thomas V. Johnson, $40,000. This was for the old farm, the real estate alone.

All this testimony in reference to offers of sale through Mr. Johnson objected to.

Mr. Hill told me he was offered $40,000 for the premises, and it was not enough.

This testimony objected to.

I had a letter from Mr. Hill, I think in the latter part of 1865. I have looked for the letter and cannot find it. It was addressed to me in Ohio.

All testimony in reference to contents of this letter objected to.

The letter stated that he had been offered $35,000 for the property, but that the sum was not enough. Another offer had been made him a short time before, but he would not entertain the offer. The true reason why no

sale was made of that property was, (it was not that the property could not be sold, but) that Hill interfered with it, and by his freaks broke it up, and frequently insulted the people that made offers to purchase, or who would come there for the purpose.

I was on the place and lived there just as usual, and as I had done before, from September, 1864, to September, 1866. I got Mr. Hill to look after the farm, I was gone so much. I could never tell when I was going to be gone, or going to be there. He collected the receipts of the farm, and paid all the help. He was to have kept an account of the whole matter, and did somewhere. In the Spring of 1866 I sent down my foreman from Ohio, with seventeen horses belonging to me individually, with his wife and two children, and two hired men, and they occupied the premises till July, 1866, when I came down myself. I disposed, at that time, of my individual property, my horses, and put the farm in the hands of Cutler, and went back to Ohio to look after the crops. I was exceedingly busy about government business. I never could tell when I was going to be here, and when not

Mr. Hill was then in Bermuda, and in such feeble health that his services were no longer available, and he had not been for several months. He had had his eyes operated upon in New York previously.

The first notice or knowledge I had of any sale of the property was a telegram, received in Ohio, in the very last days of August, 1866, addressed to me at Elmore, afterwards re-telegraphed to Toledo. I was at neither place at the time ; I was in the woods, and did not get it immediately. It was dated August 22d, at Morristown.

This telegram offered in evidence, which I have marked *Exhibit D*, on part of complainant.

On the 23d day of August, this was sent up to Toledo. I can't tell where I got it. Some one came to me as I was coming out of the woods, and said there was a telegram for me.

As soon as I got the telegram I came immediately down to Morristown, N. J. I think I arrived here as late as the 28th or 29th. I learned that Mr. Van Buren had thrust some one into the property up there; that the purchase-money had not been paid, nor any deed delivered. I went immediately down to Newark to see Mr. Bradley. He was absent at some watering-place, and Mr. Ranney was unwell. My object was to file a bill against these parties. From there I went over to David Hays. I found that it was necessary, before we could file a bill, to get a great many papers and facts together in regard to it.

A *lis pendens* was drawn immediately. I came up to Morristown from Newark on the 30th day of August, 1866, and filed the *lis pendens* in the Clerk's Office of Morris County, at Morristown. I made a true and perfect copy of the *lis pendens*. I took that copy and went down to Wm. W. Fairchild, at his house in Morristown, and saw him there, and gave him that copy. I forbid his delivering any sheriff deed, and especially any sheriff deed made in the Atwater case to Anthony J. Hill, John D. Van Buren, or any one else.

Exhibit B is a true copy of the paper I served on Fairchild. I told Mr. Fairchild that I was preparing the papers for an injunction, and would have it in a few days. The next morning I went down to New York, and I gave Joseph Dunderdale, who used to be an old clerk of Hill's, a copy of the paper, and directed him to go and serve it upon Mr. Van Buren, which he did. Fairchild told me he would not deliver the deed.

This testimony objected to.

The reason why I did not name Mr. David H. McAlpine in the notice was, that I did not know his name; I was not sure of it, and did not know where to find him. The parties were out of the State.

Mr. Van Buren came up and went back like a scintillating star, leaving a track of light behind him. He then kept out of the State. I had no means of ascertaining what was going on. The parties kept out of the State, and did their business out of the State. I first

learned that McAlpine was the purchaser here in this village. I cannot state the date. It was not till after I got my *lis pendens* filed ; it might have been about the fifth of September. I cannot state the date, and have no means of knowing.

At that time I did not know what McAlpine's business was, nor where he resided. I knew he was a New Yorker. I spent the most of my time trying to get a bill.

The old farm of two hundred and eighty-two acres —being the same that McAlpine now occupies—was sold under Hill's judgments, I think in August, 1862, for the sum of $20. It was sold according to a previous agreement between me and Hill, and bid in by Hill in trust for me, for the sum of $20, by Mr. Cutler for Hill. But Hill never paid any money. He never paid any money on anything that ever I knew at any time. In the Atwater foreclosure Hill refused to bear any part of the expenses, or for counsel. I applied to him at various times for help, and for him to do so. He said the matter did not interest him, and he would not pay a cent.

There were some other lands besides the two hundred and eighty-two acres. He agreed to have the whole of them sold, and I suppose they were all sold ; there was about sixty acres altogether. The value of the lands besides the 282 acres, in 1866, and the value to-day, would not be less than $6,000. The Shelley meadow of 33 acres is worth $100 per acre to-day. The piece of woods and the meadow adjoining, making about eleven acres, is worth at least $100 per acre. The other meadow I think is called the Howell meadow, containing fifteen acres, and is worth fifty dollars per acre. Mr. Hill agreed to have all these sold and bid them in and hold them in trust for me. The record will show what he did do.

Q. You speak of Mr. Hill's having bid in the 281 1-2 acres and the outlands in trust for you ; what were you to pay him upon his giving up the trust and surrendering the property to you, or in other words, had you a right to redeem, and if so, on what terms ?

Objected to.

All evidence of a trust created by any agreement not in writing, objected to.

A. By paying the two judgments of April, 1857, and November, 1857, amounting to about $3,650 and the interest. He held other security likewise for that money at the time, which was ample.

I obtained a release from George Walker. That is it.

(Paper produced and marked by me Exhibit E. on part of complainant.)

This paper objected to as irrelevant.

Witness says, the witnesses to this paper live in the Island of St. Croix. I don't know the hand-writing of either of the witnesses. I know George Walker's hand-writing; this is his signature, and the figures "21" and "7", and the word "March" are also in his hand-writing.

Q. Have your other debts been disposed of?

Objected to.

A. My New York debts have been settled up. I have spent my time during the past ten years in endeavoring to pay my debts, and have succeeded pretty well. I have paid my New Jersey debts pretty nearly. I owe Cutler something, who is the Assignee of some judgments. I owe Cutler on the open mortgage and note given to him and which he assigned to Hill. Hill took a particular fancy to have that mortgage.

Q. Do you know whether Mr. Hill, at or before the making of this sale by Van Buren to McAlpine, knew of it, and if so, state your knowledge or information of it?

Objected to.

A. I am well satisfied he had no knowledge whatever of the matter or any direction of the matter, but my information and belief is founded on information derived from others.

Examination adjourned to Friday afternoon, July 2, 1869, at 2 1-2 o'clock.

Friday afternoon, 2 1-2 o'clock—examination of Mr. Walker continued.

Q. In a previous part of your examination you said that in July, 1866, you disposed of your individual property ; what do you mean by that expression ?

A. I mean the seventeen horses which I brought from Ohio.

Being shown a letter dated May 26, 1864, which was produced by Mr. Mills on notice. Is that the letter you spoke of in your prior examination as having been written by you to Mr. Hill. ?

A. Yes, sir.

This letter offered in evidence by complainant, and marked by me Exhibit F.

This Exhibit objected to.

Cross Examined by Mr. Mills.

Mr. Hill had the title to two houses and a lot in the City of New York as other security for his claims which is worth to-day, and which is now in his hands or posession or of his executors, $10,000, and which is now renting for $800 or $900 per annum, and he or his executors have collected the rent for the last twelve years and kept it. This property I caused to be conveyed to him by another trustee who held it as such about, and at the time of the first loan of $2000, in April, 1857.

Q. Did he hold that as security for those loans he made you ?

A. I suppose he did. He held the property and made the loan, and he must have held it as security ; he never gave it back to me ; I never asked him for it. No declaration was made in writing of this trust. He made a verbal declaration to Mr. McHary who conveyed it to him. There was no special declaration of trust in writing made by Mr. Hill of this Littleton farm that I am aware of. I borrowed of Mr. Hill $2000, for which I gave him a confession of judgment and $1,650 as before stated. There were several other sums of money, I think in all $1,500 advanced by Mr. Hill to me for George Walker, and charged to George Walker by Mr. Hill in his account.

Q. Did Mr. Hill loan you any other moneys than the sums of which you have spoken, and for which you confessed judgments ?

A. I think he did ; I think about the year 1862 or 1863 he loaned me various sums to the amount of about $1,500 which I paid him when I drew my money for government lumber. It was intended to be borrowed money, and was borrowed money. George Walker had about $1,500 of him. I had several other smaller sums of him which I generally paid out of my government lumber.

Q. No other sums since those judgments were confessed than those you have stated ?

A. I think I had about $1,500 or $2,000. George Walker had $1,500. I remember at one time of borrowing $2,800 of him for a few days and repaying it.— I think he had $1,500 of mine in his hands of government lumber money. I think this was in 1863. I have named all the permanent loans I have had of Mr. Hill since the confession of those judgments. All the account I kept with him was a cash account. He had $1,500 of me, and I borrowed several sums of him. I think Mr. Hill's books will show.

Q. You have stated that you spent spent most of your time for the past ten years in efforts in settling up your debts. You were defendant in a suit of foreclosure of a mortgage upon the Walker farm brought by Jas. C. Atwater ?

A. I was.

Q. You were sworn as a witness in that case and gave your testimony under oath, did you not ?

A. Yes. I gave my evidence under oath if I gave it at all. I did give evidence in that case as a witness. I presume I swore to the answer put in in that case ; I don't recollect. The defense set up in that case was usury.

Q. You attempted to get rid of a debt of $5,200 by setting up in defense that $200 or $300 more than legal interest had been taken ?

Objected to as irrelevant.

A. I set up usury because it was grossly usurious.

Q. Question repeated.

A. Three hundred and fifty dollars usury had been taken for a very short loan, and the defense of usury goes to the extinguishment of the debt. The debt was $5,000. I was a lawyer twenty years ago in full practice, and practiced law for a good many years—I don't recollect how many.

Q. Exhibit B. being shown to witness—this notice refers to a bill filed in the cause stated in the notice.—Was any such bill filed at the time that notice was served ?

A. There was no bill filed, but I intended to file one in good faith.

Q. Was there any bill filed in the Court of Chancery of this State by you against the defendants named in this suit until the bill filed in this suit ?

A. None. I filed my *lis pendens* intending to file a bill immediately, but I could not get my papers together.—The object was to get knowledge home to all the parties of my rights, and that I was about to file a bill.

Q. Why did you not state in the notice that you filed, the object of your notice correctly, instead of stating it incorrectly ?

A. It is only partly stated. I should have filed my bill for a great deal more than is stated in that notice, and obtained an injunction. I believe I know the meaning of the word *lis pendens*. It means "pending strife." I took the notice to the office myself. David A. Hays' name is at the bottom of the notice. He authorized me to file it immediately ; he knew that I was coming straight here to file that *lis pendens*.

Q. Did he know that you were going to file it before the bill was filed ?

A. He must have known it. He knew I was going to file it that day. He knew we could not get the bill ready. I could not get the materials ; I told him I was going to file it that day ; I did not tell him anything further about it. That is the only written paper I served on Fairchild. After I came back from Ohio on the receipt of the telegram, I did not go to the farm at Littleton ; I heard from Cutler that Van Buren had put some one

in possession of the farm. As soon as I returned from the west I went immediately to Cutler's house and saw him there. I think I did hear that a New Yorker was in possession of the farm; he told me that some fellow in New York was the purchaser and had got into possession of the farm; I don't think he told me his name.

Q. Had you come on from Ohio in response to this telegram, Exhibit D, and yet did you not ask Mr. Cutler the name of the man to whom Mr. Van Buren had sold the farm?

A. I think it is very likely I did ask him; I don't say that I did not. I know I had trouble to find out who he was, and didn't find out.

Q. If you did ask Mr. Cutler the name of the purchaser, did he refuse to tell you?

A. I have no recollection that he refused to tell me; I suppose he gave me all the information he had.

Q. Did not Mr. Cutler tell you that he was with Mr. Van Buren on the farm at the time it was sold?

A. No, he did not. He said that after the sale had been made, they sent for him to go up and point out some hay that had been cut on shares; that he went up there and told the parties that he would not have anything to do with the transaction.

I had no reason to think that Mr. Cutler at the time kept back anything about the property.

Q. You stated that the reason why the property was not sold was because Hill by his freaks interfered with it and broke it up, and frequently insulted the people that made offers to purchase. State, if you please, what people, who made offers to purchase, were insulted by Mr. Hill?

A. He grossly insulted Thomas V. Johnson in my presence. He insulted Henry Boughten, an old man, by his temper and mode of speaking; and I have heard of a number of others.

Q. When did Thomes V. Johnson make an offer to purchase the farm that was broken up by Mr. Hill's insulting him?

A. In the year 1865. I was present, and Mr. Johnson and Mr. Hill. I think it was the same year that he insulted Mr. Boughton, treating him as though he had not a shilling in his pocket.

The name of my farmer was Lester A. Herman. I suppose him to be at Benton, Ottawa Co., Ohio. He has been with me a great many years. In July, 1866, he returned to Ohio with his family, and I came to the farm. I did not stay there but a part of the time ; part of the time I stayed at Cutler's, and part of the time in New York. I can't say that I made my home while here any more at Cutler's house than I did at the farm. The horses were sold in different places. Vanderbelt, the witness sworn here, came down here at my special solicitation from Duchess County to assist me in selling the horses. I never, to my recollection, offered to buy from Mr. Hill any of the personal property that was sold at the sheriff's sale in 1862, because he never owned it.

Q. Would you have offered to buy it if you were the owner of the property and not he ?

A. No. I don't recollect of ever offering to buy anything of Mr. Hill.

Q. If it should turn out that you have offered to buy from Mr. Hill portions of that personal property on the farm which was sold by the sheriff and bid in by Mr. Hill in 1862, it would shake your confidence in your personal recollection that that personal property was bid off by Mr. Hill for your benefit, would it not ?

A. Not in the smallest degree.

Q. Can you give any reason why you should want to buy any part of that personal property of Hr. Hill after his purchase at the sheriff's sale ?

A. No ; I cannot give any reason.

Paper being shown witness dated Elmore, Ottawa Co., Ohio, Saturday night, April 23, 1864.

Please state in whose handwriting this is.

This paper offered in evidence on the part of Mr. Van Buren and others, and marked by me Exhibit No. 2.

A. This letter is in my handwriting ; I can explain it thoroughly : I let the property in 1862 to J. Couper Lord ; I don't know whether there was any lease or not. I made the bargain with him and he paid me the rent personally. The renting was made in June, 1862.

Mr. Hill went by the name of Anthony John Hill ; I guess he signed his name A. J. Hill oftener than any other way.

There was no bargain made by which I was to pay Mr. Hill anything for taking care of the farm for me. I never had a settlement with A. J. Hill ; he proposed his willingness to help me, and I always believed he would help me. My understanding was that he did it wholly to help me.

My impression is that up to the 1st of May, 1866, I was in Ohio, and here and at Washington once each month. On the 1st of May I went to Ohio and stayed until July. In March or April I was with Hill at Cutler's. He insisted upon my going to Cutler's with him. I don't think Mr. Hill managed his own business at that time ; I don't know that he attempted to manage his business, but if he did it did not amount to anything for he changed his mind so many times. He told me repeatedly that he was not able to manage his own business. In 1865 was the time when he hadso many cats and dogs ; I think the time I boxed the cats and let them out was in Dec. 1865. Then he had a baker's dozen ; I took seven and left six ; I believe he was raising cats before 1865 ; I think there was a less number in 1864 than in 1865.

Q. From your perfect confidence in Mr. Hill's integrity, you would think that any statements made by him when he was in his sane mind, would be worthy of confidence, would you not ?

A. I always relied upon Mr. Hill's statements and intentions when he was in sound mind, and I always thought they were worthy of credit.

Q. Did you consider it an evidence of insanity in Mr. Hill to say to you during the war that the country had all gone to pot ?

A. I considered it evidence of great weakness and unsoundness of mind. I have not frequently used such expressions in the time of the war either verbally or in writing.

I did not see Mr. Hill after the first of May, 1866. I believe he left for Bermuda May 20th, 1866. After the purchase of the farm in 1862, Mr. Hill paid the taxes and insurance out of the proceeds of the farm. That is what he said he would do, and I believe he did. That was the agreement.

I have been on the meadow of fifteen acres which I valued at $50 per acre ; it never was used, so far as I know, as a meadow for mowing ; it was used for pasturage.

Three hundred acres, in 1851, was bought of Silas B. Condict in its then condition for $50 per acre, and I paid that for it for Henry A. Walker ; I paid that for the Shelley meadow ; the two hundred and eighty-two acres cost the same.

The buildings were built, the house part, in 1852 and 1853 ; the barn in 1854 and 1855 ; all the buildings and improvements were put there prior to 1860. The estimates I have given of the costs of the buildings on the property are from my recollection.

Mr. Mills at this point was called away and the cross-examination was continued by Mr. Little.

Cross-examined by Mr. Little.

The fruit trees and shrubs I set out were set out from 1854 to 1859. The buildings were all erected before 1860.

Q. When was the furniture bought which was in the house when it was sold to Mr. McAlpine ?

A. Between 1853 and 1860.

Q. What was your object in forcing the sale of the property in 1862 by the sheriff ?

A. I had reference to the sale of 1864. I did not so state that I forced the sale of 1862. The object of the sale of 1862 was to place it in safe hands so that I could go and do the government business as a true patriot, in time of great necessity to the country, and that my prop-

erty might not be sacrificed by anything that might turn up in my absence, and that I might go and make some money to pay my debts, all of which I did.

Q. Why was not your property safe in your own hands ?

A. Because I could not be here to attend to it, and because I was security for some men in New York who were behaving very dishonestly, and who were perfectly able to pay their own debts.

Q. Were there not several judgments against you in this county besides the judgments of Anthony J. Hill at that time ?

A. My impression is that there were not over two small judgments, which are out of the way now, and were then in the hands of Cutler.

Q. Were not the following judgments then standing against you unpaid ? viz :

Cor. V. Freeman *vs.* Walker,	Oct. 24, 1859,	$	162 54
Geo. J. S. Thompson "	" 4, 1858,	10,	756 00
Benj. O. Canfield "	" 12, 1858,		600 00
Francis Lindsley "	" 5, 1858,		506 00
Richard Bowen "	May 30, 1861,		578 00
William Leddy "	" 30, 1861,		533 00
Joseph W. Mount "	Oct. 20, 1858,		461 00

A. The only two judgments standing out against me unpaid, (I don't know whether the others were satisfied on the record or not) were those of William Leddy and Richard Bowen. They were all assigned to George J. S. Thompson, but they had no legal life in 1861, except those of Leddy and Bowen ; they had all been settled. Mr. Cutler was my Attorney at that time. I could not say whether Mr. Cutler knew that these judgments were paid at that time or not. I settled with George Thompson, May 1, 1869, and was out of debt to him ; we had dealings subsequently.

I think I have given both the intrinsic and market value of my farm in 1866 in my testimony. I don't think the farm was offered for sale until we put it in Cutler's hands in 1864.

I don't think we offered it publicly for sale before we put it in Cutler's hands.

The object of forcing the sale under the Atwater decree was so that George Walker's debt might rest on other property. There was a contest about the Olmstead farm in Ohio, and George Walker held the title to it; he held the title in trust for me, and has it now, on the record the title is in mine now.

Q. What then was your object in having this property freed from George Walker's judgment?

A. So that he might be very abundantly secured. I I don't know that he was any worse secured by releasing this farm from the judgment. It benefited me.

Q. How did it benefit you?

A. I wanted him as a party to a suit on an old fraudulent mortgage which was prior to my title to land in Ohio. I made the deed to George Walker for the land in Ohio. It was made in February, 1859, long before the decree obtained here in the Atwater case, but after the mortgage was executed upon which the decree was founded. I suppose Mr. Cutler has always been my counsel up to this suit.

I believe I have stated all the purposes for which I wanted Hill to sell the property at Littleton by the sheriff under his judgments. I have no distinct recollection of inquiring of Mr. Cutler the name of the person who wanted to purchase this farm in 1866. My object was to stop these persons from conveying. I did not inquire of Mr. Dunderdale, the name of the purchaser. I did not try to see Mr. Van Buren to try to find the name of the purchaser. I don't recollect that Mr. Cutler told me that the sale was effected through Mr. Thomas V. Johnson. I was told that the person who had agreed to purchase had been put in possession of the farm. I did not go to the farm to give the purchaser notice, or to find out who bought the farm. I was trying to get my bill filed.

I presume I made inquiry of Cutler for the name of the purchaser if I made it of anyone. The fellow was represented to be a New Yorker. I don't recollect of in-

quiring of Mr. Cutler who the purchaser was. I recollect of asking William W. Fairchild.

Mr. Vanatta drew the bill for me in this case.

Examination of Mr. Walker adjourned to Saturday morning at ten o'clock, by consent.

Saturday morning, July 3, 1869. Examination of witnesses continued pursuant to adjournment in the presence of Messrs. Vanatta, Littl- and Mills.

Cross Examination by Mr. Mills continued.

Q. Here page in blank book being shown to witness, which page is headed "statement of the cost of farm buildings and garden at Littleton, Jan. 1, 1860." Please tell me in whose handwriting that page is ?

A. This is my handwriting.

This page offered in evidence, which I have marked Exhibit No. 3 on part of Mr. Van Buren and others.

Q. Another page in the same blank book headed :

" Dr. Purchase Account. Cr.

being shown witness—is the writing on that page, or any portion of it, in your handwriting ?

A. None of it is in my handwriting. I don't know whose handwriting it is. I don't think it is in Henry A. Walker's handwriting ; it may be, but it don't look like his general handwriting.

This page also offered in evidence which I have marked Exhibit No. 4, on part of Mr. Van Buren and others.

I think the judgments which, as I have said were assigned to George J. S. Thompson, were paid before May, 1859. They may have been assigned to Thompson in the winter of 1859, and if so they were paid by the year 1862. I am sure that these judgments were all paid before the sale by the sheriff in 1862. This was done to

Thompson before May, 1862. I don't know that Cutler was cognizant of the fact.

I think the examination in the Atwater case was taken before Lyman A. Chandler. I was sworn as a witness in that case for the defendants.

Q. Did you not say in that examination that the land embraced in the description of the Atwater mortgage had been sold by execution and purchased by Anthony J. Hill ?

A. I presume so ; the papers show that ; my bill shows it.

Q. Did you state at that time that you had any interest in the land ?

A. I have no recollection.

Q. Did you state that Mr. Anthony John Hill held it in trust for you ?

A. I have no recollection. I do not recollect what was testified to there.

Q. Did you not give in reply to this question : " Have you any interest in the question whether this mortgage is declared usurious or not" (referring to the Atwater mortgage) the following answer : A. " I have not, in the least." ?

A. I can't tell. I have no means of knowing, for I kept no copies of the testimony.

Q. Can you not answer that question in any other way than by referring to the testimony itself ?

A. I have no recollection of what was testified to there, for I have kept no memorandums ; it was a good while ago.

Q. If you did at that time state that you had no interest in the question whether the Atwater mortgage was declared usurious or not, was that testimony true or false ?

A. I have never willingly or knowingly testified falsely. If I had had no interest or feeling, I should not have defended the suit ; I mean to the Atwater mortgage ; I had to defend that suit at my own expense.

Q. Did you not state in that examination before Mr. Chandler that you put in the defense at the request of your creditors, and did you not name Geo. J. S. Thompson as one of the creditors who so requested you ?

A. George J. S. Thompson died in 1862, in November, and if I stated that George Thompson desired me to defend the suit, then he did. If I said that I put in the defense at the request of my creditors, then I did; I have no distinct recollection on the subject; it may be possible that I said so because it was so.

I know a man by the name of Vanvleck; He used to be a banker in New York. I think he had a black horse and a bay horse on the farm; I think he sent me some horses to keep on the farm: I think he is living; his name was J. T. Vanvleck.

Redirect Examination by Mr. Vanatta. Being shown Exhibit No. 2.

Q. State what explanation you have to make to that letter?

A. I wished to use in George Walker's business a horse power with the ordinary fixtures, and at the farm I thought these could be spared; at least they could get along without them, and I wanted Mr. Hill to ship them up to Ohio; and I wrote this letter to have him do so; and if they were used for George Walker, I had George Walker's funds; they ought to be paid for by him. But I never had any answer to that letter. Mr. Hill never shipped any of the things that were written about in the letter, and when I next saw him he alleged as a reason why he did not ship them that if he went to shipping things off to Ohio, off the farm to us, he might get into some trouble with my creditors.

Q. Prior to 1867, who was the nearest neighbor to your place, the Walker place?

A. Silas B. Condict lived directly opposite and Thomas V. Johnson succeeded him. To the best of my recollection Thomas V. Johnson lived there in 1863; He has lived there a great many years; I think he lived there in 1859 and 1860. He was always on friendly terms with Mr. Hill and myself.

The book shown me by Mr. Mills, containing Exhibits 3 and 4, seems to have been a blank book; I should not

think it contained a full statement of the expenditures on the farm.

Q. Don't you know it didn't ?

A. Yes, I know it did not. It appears to be a rough estimate in some way of something. The trees and shrubbery stated there must fall greatly short of what they cost. The ditching and building of stone walls must be greatly short. I should think it was not more than one-third of what had been expended. It appears to have been some rough estimate got up for some purpose.

Q. Has property, since the date of that estimate, appreciated in value, and if so to what extent ?

A. It has at least doubled in value ; materials, labor and everything of that kind has at least doubled, and had in 1866.

Cross Examined by Mr. Little.

Q. You say you wished to use the horse power and fixtures in George Walker's business. At what place or on what farm did you expect to use them ?

A. At Olmstead, Ohio, on the farm on which I have said he held the title in trust for me. George Walker was then supposed to be at St. Croix. Mr. Harmon pretended to drive on the farm at Olmstead under my directions and those of George Walker. George Walker was there in 1859.

FRED'K W. WALKER.

Sworn and subscribed this 3d day of July, A. D. 1869, before me,

SAMUEL S. HALSEY.
M. C. C.

Wednesday morning, July 8, 1869.—Examination continued before Edmund D. Halsey, Master in Chancery of New Jersey, by consent.

Thomas V. Johnson, a witness called and sworn on part of Complainant, deposes and says :

I live at Littleton, nearly opposite the Walker place on the other side of the road. I have lived there about twelve years. In 1866 I acted as a broker in the sale of the Walker place ; I made the sale to Mr. McAlpine.— I think I introduced the matter of the sale first myself to Mr. Joseph Dunderdale in New York. I said to him that I had seen in the papers the Walker farm was advertised for sale, and reference was made to him. I asked him the price ; he replied, the price was thirty thousand dollars cash, including personal property. I then asked him how long a time he would give me to sell it in ; he said he could not give any refusal for any particular length of time. I replied that I would not take parties up there unless he would give me some definite time within which I might sell it. He then asked me how much time I wanted. I told him I ought to have at least a week or ten days. He then told me that he had refused to give any time to any of the parties who had applied to him, but that if I wished to take parties up there immediately, he would give me until the next day at twelve o'clock. At this stage of it I said to Mr. Dunderdale I had a gentleman in New York, or some parties who I thought would purchase the property. I saw the party in New York who I thought would purchase it, but he could not go up immediately to look at the property. Then I spoke to one or two other parties to go up, but found I could not get them to go up that night in time to reply to Mr. Dunderdale. Mr. Dunderdale remarked to me that they could pay no commissions, that whatever I charged for my services must be paid by the party purchasing. He said his price was thirty thousand dollars cash, including the personal property, but they were open to an offer less

than that. I asked him whether twenty-five thousand dollars would purchase the property, and he replied, no. I then left him with the understanding that I was to report to him the next morning at twelve o'clock. This all occurred at the first interview with Mr. Dunderdale. I could find no one to go out with me from New York to look at the property that evening. I came out that evening from New York and went immediately over to the Walker house to see how the property looked, and tell Catharine (the woman there in charge) that I might bring there the next day some parties to look at the property.— Then I went home to my house. Soon after I got to my house Mr. McAlpine (Mr. David H. McAlpine) called and asked if my name was Johnson. I said it was. He told me he had been over to see the Walker house, and learned there from Catharine Young, who was in charge, that the place was in my hands for sale. He then asked the price, and I told him thirty thousand cash would purchase the property, provided he gave me an answer that night. Then I told him I had the refusal of it only till twelve o'clock the next day, that after that I could not say what I could do. He then asked if the time could be extended a few days. I told him I could not tell, but would make the application. I told him he would have to pay me my commissions of two and a half per cent. on thirty thousand dollars when I first named the price to him. I told him whoever purchased it would have to pay commissions as the seller would not pay any. I agreed with Mr. McAlpine to go to New York the next morning and make an effort to get the time extended for a day or two. He, in the meantime, was to examine the property ; my son was to go with him and show it to him. He wanted me to get as much time as I could, so that he could examine the property ; and I was to proceed to New York the next morning, and if I failed I was to telegraph to him or my son the next morning. Mr. McAlpine said to me in this first interview "if it could be bought for twenty-five thousand dollars I should be inclined to purchase it," or that twenty-five thousand was about his figure, or something to that effect. I replied

to him I was satisfied that that would not purchase it. I then replied to him that the property was cheap enough at the price they asked ; for I had once offered them forty thousand dollars for the property without the personal property, but it was declined.

I went to New York the next day and saw Mr. Dunderdale and got the time extended one or two days ; am not certain which ; think it was on Saturday and I got the time extended till Monday. On Monday or on the last day, I went down to New York with Mr. McAlpine. Then he told me to offer him twenty-eight thousand dollars. He asked my advice what to offer. I replied to him twenty-eight thousand dollars and not less ; and I left him and went alone to Mr. Dunderdale's office according to appointment and met him at his office. Mr. McAlpine had authorized me to offer him twenty-eight thousand dollars ; I made him the offer. He told me to call in one hour or thereabouts and he would have Mr. Van Buren there when he would give me a reply. I went back at the appointed time and made him a written proposition to pay him ten per cent. on that day and ninety per cent. on delivery of the deed, allowing reasonable time for the examination of title, and the proposition was accepted, and an hour appointed to carry it out. The appointment was made at the office of Foster & Weeks, at two o'clock that afternoon, when the ten per cent. was to be paid and the papers signed. I went then and reported what I done to Mr. McAlpine and requested him to meet me and them there at the hour appointed. We met according to appointment with Mr. McAlpine's lawyer. The papers were drawn up and read, but Mr. McAlpine declined to sign them or to make a payment till there could be some further understanding about the agreement then made ; what he objected to in the agreement was that portion which referred to Mr. Hill's rights in the personal property,—they declining to alter it to suit Mr. McAlpine. They adjourned to meet the next day at the Walker house in Littleton, which they did.—The objection raised by Mr. McAlpine was the words in the agreement which said they sold all Mr. Hill's right

and title to the personal property, as there might be some personal property which did not belong to Mr. Hill. Reference was made to the library for one. That was excepted in the agreement. That was not the objection raised, however, by Mr. McAlpine. His objection was to the language, the words : " the property belonging to Mr. Hill," which they only sold. The library was excepted because it belonged to Mr. Walker ; I may be wrong, but I believe that was the reason. It was excepted because it was not Mr. Hill's, at any rate.

Q. What other personal property was spoken of at that time as not belonging to Mr. Hill, or as being doubtful as to ownership ?

A. Reference was made to some hay ; then I think reference was made to some of Mr. Hill's clothing. Mr. Van Buren also remarked that there might be property there belonging to others, which he knew nothing about and which should be excepted.

The agreement was not signed the day we met in New York. The next day Mr. McAlpine, Mr. Cutler, myself, Mr. Dunderdale and Mr. Van Buren, met at the farm house. Mr. Van Buren had said in New York that he wanted Mr. Cutler to be there so that he could point out what property did belong to other persons than Mr. Hill. Mr. Van Buren was to invite him ; that is the way he came there. These matters were all talked over in presence of Mr. Cutler, Mr. McAlpine and myself, and the agreement was signed there. Mr. Dunderdale and Mr. Van Buren were there. The check of Mr. McAlpine was given then for the twenty-eight hundred dollars. That is all that I had to do with it excepting getting my commissions. I went to the farm that day in company with Mr. McAlpine. I don't know whether we went there together, or whether we met there ; I rather think we met there. Mr. Cutler arrived next after Mr. McAlpine and myself. He remained there until Mr. Dunderdale and Mr. Van Buren arrived. I think we all went away together pretty much ; we were there almost all day.

Q. State what Mr. Cutler said to or in the presence of Mr. McAlpine about the sale on that occasion, and

particularly what he said before Van Buren and Dunderdale arrived ?

Objected to by Mr. Mills.

A. Mr. Cutler seemed to complain of their selling the property so cheap ; that was the principal thing. He said he was interested in it. There was a good deal of conversation some four or five hours before Mr. Van Buren and Mr. Dunderdale arrived. They missed the first train and did not get there till almost night, between three and four o'clock.

Q. What did Mr. Cutler say about the price on that occasion ?

Objected to by Mr. Mills.

A. He said it was worth a good deal more than it had sold for.

Q. Did he state what offers had previously been made for it and declined ? if so, state them.

Objected to by Mr. Mills.

A. I think he did ; he referred, I think, to the offer I had made for a party, and some others which I do not recollect.

Q. Did not Mr. Cutler say in substance and effect that in his opinion the proposed sale was wrong, and that he was opposed to it and did not want it made ?

Objected to by Mr. Mills and Mr. Little.

A. I think that was about the idea he conveyed.

Q. What was said about Mr. Frederick W. Walker on that occasion ?

Objected to.

A. Allusion was made to Mr. Walker several times during this talk. I do not know what you refer to.

Q. What allusion was made to Mr. Walker—what was said about him ?

Objected to.

A. Allusion was made to the cost of the property to Walker, to his valuation of it, &c. ; the offers he had had for it, and something of that kind. I don't think I can specify anything more particularly what passed.

Q. What was said as to where Mr. Frederick W. Walker then was ?

Objected to.

A. I understood that he was out West ; where, I do not know. I don't think it was specified where he was, except that he was out West.

Q. Did Mr. Cutler, on that occasion, say in effect or in substance that Frederick W. Walker would be dissatisfied with that sale ; that he did not think he would submit to it ?

Objected to.

A. I don't think that was said in presence of Mr. McAlpine. He said that to me on that occasion.

Q. Did he say why he thought Walker would not submit to it ? if so, state what he said.

Objected to.

A. I don't know as I can give any particular answer to that question. He complained generally of selling the property at that price as a sacrifice and as unnecessary. He blamed me for negotiating the sale. Perhaps he did not blame me personally, but he spoke of the parties hastening the matter through unnecessarily, and at a sacrifice.

Q. Did you and Mr. McAlpine talk together about Mr. Cutler's dissatisfaction on that occasion ?

Objected to.

A. There was some talk about it ; yes, sir.

Q. What did Mr. McAlpine say about Mr. Cutler's dissatisfaction ?

Objected to.

A. He remarked to me that he thought Mr. Cutler would like to break up the sale. I remember of our speaking on the subject, and Mr. McAlpine speaking of his rather interfering. I cannot remember all that was said. It is some three years ago now. I cannot give the date of the meeting at Littleton. It was in the latter part of August, 1866 ; I cannot give the date exactly.

Q. After the agreement was signed at Littleton, what did Mr. McAlpine say about the examination of the title ?

Objected to.

A. He said he was going to have it examined. The

date was fixed for passing the deeds then. He asked me who he had better get, that he was a stranger here. I told him Mr. Little had done some business for me, and that he would do it as well as anybody. I rather think I gave him a letter to Mr. Little. I was present when the deed was delivered ; it was done in the office of Foster & Weeks in Wall Street where the agreement was drawn up. A lawyer of Mr. Van Buren, (I do not know his name, the same who drew up the agreement) Mr. Van Buren, Mr. Dunderdale, Mr. McAlpine, one of the firm of Foster & Weeks, Mr. Little and myself ; some of the clerks were there.

Q. Was anything said about a paper which had been served upon Sheriff Fairchild there that day ?

A. I think not. I did not see anything paid ; I saw some checks pass, that was all. There was a check given for my commission, and a check given to Mr. Van Buren, but I did not examine it. Mr. McAlpine paid my commissions on that occasion ; two and a half per cent. on twenty-eight thousand dollars. I did not receive any compensation in that matter for my services, except what Mr. McAlpine paid me.

My first interview with Mr. McAlpine lasted, I suppose, some ten or fifteen minutes ; it was not long. I think Mr. McAlpine and I rode in the same seat when we went to New York a few days afterwards ; our conversation pretty much all the time was about the Walker property.

Q. Did you give him the history of Henry A. Walker and Frederick W. Walker so far as connected with that property ?

Objected to.

A. We talked generally on the subject ; nothing particular as I know ; we talked of how Mr. Walker came into possession of the property. I do not recollect of talking of Anthony John Hill, though I think it is likely his name was brought in in connection with it. I think allusion was made to his being a relative, but I do not recollect of mentioning him particularly. I think Augustus W. Cutler was talked about in that connection.

Q. What was said about Mr. Cutler ?

Objected to by Mr. Mills and Mr. Little.

A. I do not recollect saying anything particular about Mr. Cutler or any one else. I recollect speaking about the family, and where the property came from.

Q. Did you say anything to him about Mr. Frederick W. Walker having been involved in debt ?

Objected to.

A. I think Mr. Walker, in connection with his difficulties was talked of; I recollect of speaking to him about him, but it may not have been at that particular time. I think it was talked of between me and him before he got his deed. I think we talked over generally the foreclosure, judgment and sale ; we were talking about the title—how Mr. Hill became the purchaser.

Q. Did you tell Mr. McAlpine that Walker continued in possession after the sale, or that he still continued to live there ?

Objected to.

A. I have no recollection of telling him that he still continued in possession, but we did talk of Mr. Walker being there with Mr. Hill, and of his making it a home there.

Q. What was said about Hill's holding it for Mr. Walker's benefit ?

Objected to.

A. I don't know as anything passed between Mr. McAlpine and myself on that point, although there may have been. It was three years ago. I remember talking to him generally about Mr. Walker and Mr. Hill.—I heard about the time the sale took place that the property had been sold at sheriff's sale. I did not know, as I did not go to the records to see ; I knew Mr. Walker made the place a stopping place after the sale. He came there frequently, sometimes stayed some days.

Q. Did you not know or suppose that Mr. Anthony J. J. Hill had bought the property in and held it in trust for Mr. Walker ?

Objected to by Mr. Mills and Mr. Little.

A. That was my supposition in the matter ; I knew nothing.

Q. Had Frederick W. Walker, previous to 1866, told you anything which led you to that supposition?

Objected to by Mr. Mills and Mr. Little.

A. I had frequently talked with Mr. Walker in reference to his difficulties, and that was the supposition I gathered.

I have known Mr. Anthony J. Hill for three to five years before Mr. McAlpine bought the property. The time when he (Mr. Hill) became interested in the property was the time I first became acquainted with him. I have no way of fixing dates, but it was some years previous to this sale to McAlpine, when he began to stay at the farm. I recollect his coming up there and staying for months at a time, and taking charge of the farm, but I have no way of fixing dates. I remember the draft riots in New York, and I remember now his coming up at that time. I remember it was when there was cholera in New York.

Q. Did he take any charge of the farm previous to the summer when the draft riots occurred?

A. I can't fix the dates definitely; I remember of his being there for two or three years most of the time. remember his being there the summer of the riots, for I recollect his being taken sick there.

Q. During the latter part of the time he spent at the farm, did he manifest any peculiarities, and if so state them?

Objected to by Mr. Little.

A. Mr. Hill was quite unwell; seemed to be in a feeble state of health—was nearly blind; that is about the answer I would make to that question.

Q. What opinion did you form as to his business capacity at that time?

Objected to by Mr. Mills and Mr. Little.

A. I don't think he was as vigorous in his mind at that time, perhaps, as he was at an earlier day.

Q. Did he seem to have any apprehensions of any evils to himself which you could not discover or appreciate, and if so, state them?

Objected to.

A. He seemed to be in feeble health, and his mind did not seem to act with that vigor with which he had acted before—more childlike ; I don't know how to express it ; I think there was a want of vigor of mind ; I don't thlnk his mind acted so freely as in the earlier days when he first came there—seemed to be sluggish ; I think that about expresses my idea of it. Think his health was poor, and he was rather desponding ; his body was feeble.

Q. Prior to the year 1866, did you have anything to do with efforts to sell the Walker farm, if so, state them from their beginning to their close ?

Examination adjourned until 3 P. M., same day, at which time examination resumed—Mr. Johnson answering the last question.

A. In 1865 I was talking with Mr. Hill at his place, and he remarked that he would like to sell the Walker place. I then asked him the price. I think it was forty-five thousand dollars the price he named. It was about that and I think that was it. He asked me whether I thought I could sell it. I told him I thought it could be sold, but that I did not believe it would bring forty-five thousand then. He asked me then what I thought it would bring. I remarked that I thought it would it bring about forty thousand dollars. He said he wanted to sell it for cash. I remarked that I did not think I could get a purchaser for cash at that price, but I would try. He remarked to me "see what you can do." I went then to see some parties who I supposed would purchase if the price could be agreed upon, and proposed to them the sale of the property. One of the parties said they would buy the property at forty thousand dollars, rovided Mr. Hill would take a house and lot in New York and one in Brooklyn as half payment at a fixed valuation. I reported the proposition to Mr. Hill—exchange of these two houses and cash for the balance for the property. Mr. Hill had entertained it so far as to say he would go and look at the property. I think Mr. Walker was present at one of these interviews. Mr.

Hill went down to New York and examined the property as he told me, or part of it ; I do not know as he examined it all ; he went to see one of the houses he told me, and reported to me that he concluded, on the whole, that he would not make the exchange.

Q. Do you know whether Mr. Walker went to see those houses, and if so, state what you know ?

Objected to.

A. I don't know that he went, but I have understood that he went for Mr. Hill.

Q. Did Mr. Hill tell you what Mr. Walker said about the houses, and if so state what he said ?

A. If he did I don't remember now. I remember this, however, that Mr. Walker replied to me in the presence of Mr. Hill, that he had not said that he would take a certain price for it. I am not certain whether it was forty or forty-five thousand dollars.

Q. Was this offer which you had to exchange New York and Brooklyn property and cash for the Walker property, for forty or forty-five thousand dollars ?

A. Forty thousand dollars, but it did not include the personal property. It was the farm of two hundred and eighty-one or two acres. It did not include the out land.

Then Mr. Hill asked me what was my opinion of the cash value of this property. I replied to him that I thought it was worth in money about the valuation which the parties had put upon it ; that if he was willing to take property in part payment for his farm, that he could realize about forty thousand dollars for his property, for the parties had told me, who wished to make the exchange, that they could sell it for cash for about the price they proposed to put it to him. Mr. Hill then replied, let them sell the property for cash, and I will make it a cash transaction. I went to the parties in New York and represented to them what his (Hill's) conclusion was, and they authorized me to offer him the cash—said they would sell the property, provided they could borrow twenty thousand dollars on the Walker farm, which loan they authorized me to negotiate. I reported this back to Mr. Hill. I found I could get the loan.

I reported to Mr. Hill that the parties could sell their property and authorized me to offer forty thousand dollars cash. In place of taking the property the whole thing was to be clean cash. Mr. Hill replied if they will give forty-two thousand five hundred dollars they can have the property. I bade him good morning, and that was the end of it.

That offer of forty thousand dollars did not include any personal property. This offer was made in April or May, 1865, along in the early part of that year.

Q. When you first talked with Mr. Dunderdale about this property, what, if anything, did you say about the price you could get for it if you had reasonable time to make sale ?

Objected to.

A. I told Mr. Dunderdale that I regarded the property very cheap at that price, and that if he would give me reasonable time I could get him a great deal more money for it.

Q. Did you tell him about your having had this offer of forty thousand dollars ?

A. I think I did not.

Q. At or about the time Mr. McAlpine got the deed for the farm, what, if anything, did he say about Mr. Hill being responsible, or he being safe if there was any trouble about the title ?

Objected to.

A. He said he had a warrantee deed, and Mr. Hill's estate was good in case of any trouble about the title. He asked me about it, and I told him by all means to get a warrantee deed.

Q. When and where did that conversation occur ?

Objected to.

A. It occurred at one of the interviews between Mr. McAlpine, Mr. Dunderdale, Mr. Van Buren and myself; there may have been others present. I am not certain whether it was in New York or in New Jersey ; we had two interviews. Mr. Van Buren objected to giving a warrantee deed and Mr. McAlpine insisted upon it. I advised him to get a warrantee deed. I did not know

that there was any question about the title at that time, only that it was safest to get a warrantee deed, and if they objected seriously without some tangible reason, I would insist upon it.

Q. Before your commissions were paid, did you hear anything about Mr. Frederick W. Walker having served a paper on Sheriff Fairchild, or having made some fuss about the sale ?

Objected to.

A. I heard such reports but knew nothing of the facts myself.

Q. Do you remember from whom you heard those reports ?

A. I do not know as I can tell that either ; I think Mr. Cutler told me—am not certain. It was a pretty current report at that time.

Cross Examined by Mr. Mills.

I cannot tell why objection was made by Mr. Van Buren to giving a warrantee deed ; he objected, but did not press his objection. There was perhaps some ten minutes conversation about warrantee deeds. It was one of the questions which Mr. Van Buren urged with pretty considerable earnestness. It was raised during the progress of making out the agreement. Mr. McAlpine insisted pretty strongly upon having a warrantee deed, and finally after considerable argument Mr. Van Buren yielded.—One of the reasons he gave was this, that he did not wish to involve Mr. Hill's estate about it, because it all might be settled from the records.

The parties who offered the houses in New York and Brooklyn in exchange were acting for Mrs. Mary B. Wood, of Brooklyn.

Q. Who were the parties who negotiated with you upon the subject ?

A. Freeman Wood.

Q. All your conferences, were they with Mr. Wood ?

A. They were, in regard to this exchange.

Q. Where was the property in New York situated which he he offered to exchange ?

A. Corner of 23d Street and 10th Avenue—northeast corner ; the property in Brooklyn was in Bergen Street, near Clinton Street ; one was valued at thirteen thousand, and the Brooklyn at six thousand. I talked with Mrs. Wood about it ; Mrs. Mary B. Wood was the wife of Freeman Wood, and he formerly lived at Rockaway in this County—lived there for a number of years. I told Mr. Hill where to go and who the party was. This negotiation was pending, I should think, two or three months —may be longer. The interviews with Mr. Hill took place here at his house and on his farm. I have not been doing anything for the last two years, but at that time I was negotiating sales of real estate on my own account and for others. I do not know that know that Mr. Wood ever came to see Mr. Hill about it. I conducted all the negotiations except the interview between Mr. Hill and Mrs. Wood. I think no written proposition was made by Mr. Hill as to what he would take. I think I gave Mr. Hill a memorandum of how the trade might be made. I made arrangements to raise the twenty thousand dollars of Mr. Lewis C. Grovier, of Newark. I made personal and not a written application. Mr. Grovier did not look at the property—he made some inquiries ; I told him what it was to be sold for and all about it. He knew the farm by reputation. I stated to him about its value. He knew its location ; he had been to my house right opposite. I never knew why Mr. Hill refused the offer of forty thousand dollars cash ; I never asked him his reason ; he gave no reason. I do not remember whether I reported the offer to him in the house or in the garden or on the farm. I reported it to him in this shape : I said to Mr. Hill, the parties could sell their property for cash and had concluded to do so, and that they would turn over that money and purchase the property according to the proposition made to them. In reply to that he said if they were willing to make it forty-two thousand five hundred cash, they could have it. I bade him good morning, and left him. I think I have told all that occurred at the last interview ; it did not last three minutes ; I felt insulted and left.

Q. Have you given the words of the last interview between yourself and Mr. Hill ?

A. As near as I can remember, the exact words.

Q. How long was it from the time the subject was first broached to Mr. Hill did you have this last conversation with him ; was it six months. ?

A. I think not. I think it more likely it was three months, though it might not have been more than two months and a half.

I think no one was by at the last interview ; Mr. Walker was by at one of the interviews, but not at this one. My recollection at present is that the party on the other side was to pay commission ; my impression is that Mr. Hill refused to pay any. The way I came to go and see Mr. Dunderdale was because I happened to see the advertisement in the New York *Times*. My object in going was to get a chance to sell the farm and make my commission, don't think I said anything to him about it ; he knew I was operating in real estate. It was then Mr. Dunderdale refused to pay any commissions. I did not offer him twenty-five thousand dollars for the property ; I did not make him any offer at all. That evening when I went to the Walker farm I intended to bring parties from New York to look at the farm the following day. I did not know Mr. McAlpine at that time ; the first I knew of him was when he called that evening at my house to see me ; I can't remember whether I went over with Mr. McAlpine to the farm that evening—am inclined to believe I did not ; I went there at another time. Mr. McAlpine did not make any other offers except as I have stated ; there may have been intermediate offers talked about between the twenty-five and twenty-eight thousand. I advised him to offer twenty-eight thousand for it, if he wanted the property. He asked me what I thought it could be bought for, and I said I would not advise offering less than twenty-eight thousand dollars if he wanted the property. I said I thought that would get him the property. I don't know as the title entered into my calculations as I supposed he would not take it without the title was good. I had no

idea but what the title was perfect at that time. I presume the agreement which was drawn up in Foster & Weeks' office was the same which was executed.— I think Mr. Van Buren brought it with him ; that is my recollection of it. Mr. Dunderdale stated that the library and library furniture did not go in, and I excepted it in my proposition ; my recollection was this : that Mr. Dunderdale remarked to me that we cannot sell the library ; I said very well, we'll except that from the movable property. Then the question was raised with regard to the library furniture, cases, chairs, and that was finally excepted. Mr. Van Buren replied that that ought to go with the library. I think that when I had the interview with Mr. Dunderdale only the library was excepted, but the question with regard to the furniture did not come up till Mr. McAlpine was present. At the first interview before I saw Mr. McAlpine, I think the library was excepted, and that it was repeated at the second interview the next day. I don't think that on my first interview with Mr. McAlpine, the library was spoken of, though it may have been. Mr. Dunderdale's office was, I think, in William St., near Maiden Lane. It might have been in Nassau Street but I think it was in William Street.

Cross Examined by Mr. Little.

Mr. McAlpine was an entire stranger to me at the time of our first interview. I don't think he told me that day how he learned the property was for sale ; think he did not tell me that Mrs. McAlpine had seen it advertised in the *Times* ; since then he has told me. He said that Catharine Young had told him that I had something to do with the sale of it. I think the only purpose of coming out here was to point out the personal property which did not go with the sale and belonged to Mr. Hill. I went to the farm that day because it was so understood that we were all to meet there. It was about ten o'clock when Mr. McAlpine, Mr. Cutler and myself met at the house. There was something said, I

think Mr. Cutler said, that if he had known it could have been bought at these figures, he would have bought it. I do not know to whom it was said, whether to me or to all of us, whether we were all together or not. I told Mr. Cutler what the farm was sold for that day before the agreement was signed.

Q. While you and Mr. McAlpine and Mr. Cutler were waiting for the other parties, was or was not the title of the farm spoken of, and did not Mr. Cutler remark that the title was as good as any in the County, or words to that effect?

A. The title of the property was discussed or spoken of, and I heard no objections to the title being made. It was understood that it was good. I think Mr. Cutler spoke of it; I think Mr. McAlpine asked me, and I told him it was all right as far as I knew. I wanted to make the sale, of course.

Q. Did you not yourself, in the presence of Mr. McAlpine, and for the purpose of inducing Mr. McAlpine to purchase, ask Mr. Cutler if the title was not all right, or assure Mr. McAlpine that it was good?

A. I did not make any assurance at all.

Q. Did you not in that connection tell Mr. McAlpine that you believed or supposed the title to be all right?

A. As I remarked, I supposed the title was all right; I told Mr. McAlpine I supposed it was all right. I conveyed the impression to him that it was all right.

Q. Who did point out the things which did not belong to Mr. Hill?

A. Mr. Dunderdale, Mr. McAlpine, Mr. Van Buren, Mr. Cutler and myself went around; we went up stairs, into the library, out to the barn, &c., with Mr. Dunderdale and the others. Mr. Dunderdale and Mr. Van Buren pointed out the things up stairs with Mr. Cutler, and I think Catharine Young; they went out to the barn without me.

There were fields which had been put out on shares; the only one I knew was a buckwheat field put out to Mr. Shelley. I think Mr. McAlpine and Mr. Cutler talked over this matter together.

Q. Before Mr. Dunderdale and Mr. Van Buren came, did Mr. Cutler tell you and Mr. McAlpine that there were certain things there that did not belong to Mr. Hill?

A. I think he did; I don't remember whether the articles were mentioned before Mr. Dunderdale and Mr. Van Buren came; I recollect their speaking of the buckwheat field, and some hay in the barn; some of these things were spoken of in New York, but they did not know exactly what they were.

Q. You used the expression: Mr. Johnson—in reference to the interview on the farm—"that's all I had to do with it except to receive my commissions." What did you mean by that?

A. I meant that you all should know that that was all I knew about it; that that was the end of the conversation I was asked to give the details of.

Q. Did you and Mr. Cutler have any private interview that day before the contract was signed?

A. Yes; we had several separate interviews.

Q In one of these, or at some time during the day, you told him the sale was made for twenty-eight thousand dollars; will you state as nearly as you can all that Mr. Cutler said in reference to the sale, after you told him about the sale, in his own words?

A. He complained that the property was sold too low and that he could not understand why it was, and wanted to know why there was such a haste in the matter; wanted to know what I had to do with it; said he could get fifty thousand dollars for the property; said it was a strange movement in Mr. Dunderdale and Mr. Van Buren to sell it. There was a good deal of like conversation; it would be difficult for me to tell all that he said. He deprecated the sale. I told him how I was interested. He asked me how I met Mr. McAlpine, and told him all I knew about it; that was about the substance of our conversation.

Q. If there is anything else which Mr. Cutler said, which you recollect in regard to the sale, please state it.

A. I think that is about the substance.

Q. Did he not say that he had been agent for Mr. Hill, but as Mr. Hill had put the matter in Mr. Van Buren's hands he would not interfere, or words to that effect ?

A. He said he had been agent for the property ; I don't remember his using that language ; he may have said that very thing, but I don't remember.

The witness suggesting that he was too unwell to proceed, and requesting an adjournment, counsel consented to an adjournment until Monday morning at nine o'clock.

Monday Morning, July 12, 1869, examination resumed pursuant to adjournment.

Q. In the sale of this farm whom did you represent ?

Objected to as a matter of law, facts being stated by Mr. Vanatta.

A. I don't know what answer to make to this question; I have given you the facts.

Q. State the conversation between you and Mr. McAlpine, the night he came to your house first, as nearly as you can ?

A. Mr. McAlpine came to my house and inquired if my name was Johnson, and if I had the property opposite in my hands for sale. Then I stated to him my connection with it ; that I had the refusal of it for one day at thirty thousand dollars, and I would sell him the property at that price, provided he would pay me my commissions of 2 1-2 per cent. on that price. He then replied that he would like to have an opportunity to examine the farm. He asked whether the time could not be extended in which the refusal was had of the property. I told him I would make the effort to do so. He was to come and go with my son and examine the property the next day. I was to go to New York and get the extension if I could ; if not, I was to telegraph to him or to my son, I don't remember which. There was a good deal of general conversation, but I have given you the main facts. There was a good deal said of the value of the property.

I stated to Mr. McAlpine that I thought the property very cheap, for a good deal more money I had been offered for it a short time previously; that I did not think the property would be in the market long at that price. There was a good deal of general conversation as to the farm as to how much was upland, &c., and as to the condition of the farm—the condition of the fences. There was a good deal else said, but I dont know as I could detail them. I remember one thing; he asked me if I thought twenty-five thousand dollars would buy the property— that that was about his figures for it. I replied I did not think that, in my judgment, it could be bought at that price. Then he asked me what I thought was the lowest figure that would buy it. I replied that I thought twenty-eight thousand dollars would purchase the property. Mr. Van Buren did not know that I was a real estate agent, for I never knew him before. Mr. Dunderdale knew that I was operating a little in real estate; I had only a passing acquaintance with Mr. Dunderdale; I was introduced by Mr. Hill to him as his friend; I used often to take letters between them, from one to the other; they had no post-office then at Littleton; I had an office at that time in New York; I think I had one there at the time of the sale to Mr. McAlpine; I went to New York usually about five times in a week at that time.

Q. Which party, the seller or the purchaser, usually pays the commissions in the sale of real estate?

Objected to by Mr. Vanatta.

A. Usually the seller, but according to agreement.

Q. Why was a special bargain made that Mr. McAlpine should pay the commissions in this case?

Objected to by Mr. Vanatta.

A. The proposition from Mr. Dunderdale was to sell the property for thirty thousand dollars net, and he replied if any commissions were paid they were to be paid by the purchaser.

Q. From the time you saw Mr. McAlpine at your house in the evening did you see him again till you saw him in the cars going down to New York?

A. My present recollection is that I did not see him

New Jersey State Library

till Monday morning, though I might have done so.

Q. Had you informed him in any way until you met him in the cars that you had obtained an extension of the time?

A. I think not.

Q. State as fully as you can the conversation which you had with Mr. McAlpine on the way to New York in the cars?

A. We talked generally about the farm and the prospect of being able to purchase it, the value of it, the probability of other persons coming in to purchase. Mr. Bates' name I think was mentioned; I mentioned Mr. Bates' name, and told him that Mr. Bates had been trying to purchase the property. I told him that, as he was in the cars, I thought it probable he was going down to purchase the property that morning. I think I told Mr. McAlpine that Mr. Edwin Stevens, of Hoboken, had once agreed to purchase the property, and that there were several parties that I thought would be glad to purchase it at the price named. It was agreed between Mr. McAlpine and myself that I should proceed to Mr. Dunderdale's office and ascertain the lowest price it could be purchased for, and if it could be bought for twenty-eight thousand dollars including the personal property, he authorized me to make the purchase. There was some other general conversation in reference to my commissions. Mr. McAlpine remarked to me he did not exactly like that I was not interested in getting down the price; that my commissions were greater for the higher price. I remarked to him that it would make no difference; that I would buy the property under his direction as cheap as I could. There was a good deal of other general conversation.

Q. Have you stated as nearly as you can recollect all the conversation between you at that time with respect to the farm? if not, please state it.

A. That is as near as I can remember it, though there may have been a good many other things if my attention was called to it.

If anything was said between you as to the title of

the farm, state that conversation as fully as you can?

A. I do not remember now of any conversation at that time on that subject, though there may have been. There was at other times.

Q. If anything was said between you about Mr. Frederick W. Walker at that time, state it as fully as you can recollect it.

A. I have no recollection of his name being mentioned at that interview, though it may have been.

Q. Did you at that time, or at any other, give to Mr. McAlpine a history of the title to the farm as far as you knew it?

A. I think I did at the interview at the Walker House. I have no recollection of doing so in the cars, though I may have done so.

Q. For what purpose did you give him that history of the title as you understood it?

A. I suppose it was such information as he desired, and we were talking generally about the property, the value, title, &c., and I gave him such information as I had.

Q. In all the conversations you had with Mr. McAlpine in regard to this farm, or the title to it, were your statements truthful or not as you believed at the time?

Objected to as immaterial and irrelevant.

A. I don't think that that is a fair or honorable question.

Q. Did you at any time conceal from Mr. McAlpine any defect in the title to this farm which you either knew or suspected to exist?

A. I did not.

Q. You had no interest except your commissions in the sale of this farm?

A. None whatever.

Q. Would you then have permitted Mr. McAlpine to have taken the title at that price and paid the twenty-eight thousand dollars purchase money, if you had been informed of anything before he took the title, which led you to suspect that the title was defective, without telling him?

Objected to as immaterial and irrelevant by Mr. Vanatta.

A. In answer—I should have felt it my duty to have informed him of any defect in the title if I knew it; my duty should have been to inform him, and that I should have done. I received my commissions on the day the deed was delivered in New York.

Q. The day you went down with Mr. McAlpine and he authorized you to offer $28,000 for the farm, and you did so and the offer was accepted, and you communicated that acceptance to Mr. McAlpine—what else, if anything, did you do with reference to the sale from that time until the deed was delivered and you received your commissions?

Objected to as assuming an acceptance when in point of fact there was none.

A. I went to see Mr. Dunderdale at his office and met with him and Mr. Van Buren, and made a proposition to him in writing, which was $28,000 in cash, ten per cent. to be paid that day and ninety per cent. as soon thereafter as the property could be searched. That was to include the two hundred and eighty odd acres of land and all the personal property belonging to Mr. Hill, excepting, however, the library. I then went to meet Mr. McAlpine and reported to him what I had done, and that I had agreed to meet there Mr. Dunderdale and Mr. Van Buren at the office of Weeks & Foster in Wall street, at two o'clock that day, at which time the ten per cent. was to be paid and the agreement drawn up and signed. We met there at the appointed hour with one of the partners of Weeks & Co., Mr. Van Buren, Mr. Dunderdale, Mr. McAlpine, Mr. McAlpine's lawyer, (I do not know his name) and myself. After the agreement was drawn up, Mr. McAlpine, or Mr. McAlpine's lawyer, objected to the words in the agreement, "the property belonging to Mr. Hill," the personal property—and after some general conversation it was mutually agreed to meet at the Walker farm the next day on the arrival of the morning train, at which time the parties to the agreement and myself were to meet at the house to see what property belonged to Mr.

Hill. Mr. Van Buren agreed to invite Mr. Cutler from Morristown to be present, as he was better acquainted with the personal property and that they would look it over together. We met there the next morning—Mr. Cutler, Mr. McAlpine and myself—and remained there several hours looking at the property ; talking about the value of the property, the sale and so on, up to about three o'clock. Not seeing Mr. Dunderdale and Mr. Van Buren we were about to leave when they (Mr. Dunderdale and Mr. Van Buren) drove up. Then we all went around with Mr. Van Buren, Mr. Dunderdale, Mr. Cutler and Catharine, and examined the property. The agreement was signed and the check was given for the twenty-eight hundred dollars and a day was fixed for the delivery of the deed ; I don't remember what day it was; it was about thirty days. On the day fixed for the delivery of the deed I met with them at the office of Weeks & Foster, at which time I understood that the balance of the twenty-eight thousand dollars was paid ; I saw them pass checks, and I received my commissions. I have not gone into all the details, but I have given what occurred to me. I think the written proposition I made to Mr. Dunderdale was left with Mr. Van Buren and was given to their lawyer. I gave them (Mr. Van Buren and Mr. Dunderdale) Mr. McAlpine's name, for I gave them his card ; up to that time I had giwen no one's name.

Q. The day you met at the farm did you do anything towards effecting the sale ?

A. I don't think I did anything except go about with them.

Q. Did you not go there expecting to get your commissions in case the bargain was entered into.

A. I did. I asked them to pay my commissions that day. The contract was read over at some time during that interview ; the whole company were present when it was read I think—Mr. Dunderdale, Mr. Van Buren, Mr. Cutler, Mr. McAlpine and myself ; they were all present standing about the table or in the room. I claimed that my commissions were due when the agreement was signed ; Mr. McAlpine asked me to draw up

a check for the ten per cent., and I did so ; the commissions were not paid ; the matter was talked of ; I said I thought they were due, but Mr. McAlpine thought otherwise and I waived it ; I thought that the agreement which was signed, was the one written in New York, but I may have been mistaken about this ; the delivery of the deed was put off because Mr. McAlpine said he wanted time enough to examine the title ; this, I think was said in New York, though it might have been said out here too.

Q. What did Mr. Cutler do, as far as you remember, which led Mr. McAlpine to say that he thought Mr. Cutler would like to break up or interfere with the sale ?

A. He got Mr. Dunderdale one side and talked pretty loud and earnestly to him, as though he was opposed to the transaction ; It seemed to be a long interview and very earnest, and from what he had said before the arrival of Mr. Dunderdale, to us—myself and Mr. McAl-Alpine—he gathered this ; I did myself.

Q. What had he said to you and Mr. McAlpine which led you to think so ?

A. One thing he said was that he would like to have bought the property himself at that price, and that he could have gotten a good deal more money for it if he had known it had been for sale ; that he was interested in it in some way—a mortgage, or something of the kind; he named, I think, the price he could get for it, fifty or sixty thousand dollars ; he said he would have been glad to have sold out his other property here and bought that. I think he told me he had a mortgage on a part of it, and that there was an indebtedness due him in the form of a mortgage or judgment, due him, amounting to about ten thousand dollars. I believe Mr. McAlpine took possession of the property immediately after the contract—moved in with his family, and continued to live there through the Fall. There was a lease to be made out ; I think Mr. McAlpine was there almost every day from the time he took possession, after the contract, till the deed was delivered. During the conversation at the farm, I think some such remark was made that the title was as

good as any in the county; I did not make it; I cannot exactly say when it was made. I remember that a conversation occurred at some time, and that it was said that the title was, or could be made, all right. My recollection is, that Mr. Cutler was in and out after Mr. Van Buren and Mr. Dunderdale came; it was probably very near an hour while they were examining the property, drawing the checks, signing the agreement, &c., and during this time Mr. Van Buren, Mr. McAlpine and myself, I think, were seated at the table, and Mr. Dunderdale and Mr. Cutler were in and out; they were talking a good deal with each other. I don't know whether Mr. Van Buren or Mr. Dunderdale knew anything about the title; I don't know whether they lived in New York at the time; I know Mr. Cutler is a lawyer; I have seen his advertisement as a real estate agent; I never have had any dealings with him as such.

Q. Who, of all the parties you have mentioned in connection with this sale, was most familiar with the title to this property? Mr. Dunderdale, Mr. Van Buren, Mr. Cutler, Mr. McAlpine and yourself?

A. I have no personal knowledge on the subject, but I suppose that Mr. Cutler and Mr. Van Buren would probably know most about it.

Redirect examination by Mr. Vanatta.

Q. What objection did Mr. McAlpine make to paying the commissions on the day the agreement was signed?

A. He made several objections—one, that it was not usual to demand the commissions on the day of signing the agreement; another was, that he might not get a title to the property—that it might fall through for some cause, and that he would be paying commissions without getting the property. I think these were the principal reasons. I think the matter was referred to Mr. Cutler, as a lawyer, and he seemed to think that Mr. McAlpine was right.

Q. Before this interview at the Walker farm, when Mr. Cutler and Mr. McAlpine were present, you had

heard, had you not? that the farm had been sold by the Sheriff in a proceeding in foreclosure?

A. Yes sir.

Q. On that occasion was there anything said about there having been no deed made, or delivered by the Sheriff in consummation of that foreclosure sale?

Objected to by Mr. Mills.

A. I have no recollection of anything being said on the subject; I have no recollection of anything passing on that point at these interviews before the sale, before the papers were executed.

Q. Before the deed was delivered did you hear that Hill had had no deed from the Sheriff in consummation of the foreclosure sale, at the time Mr. Van Buren made the agreement with Mr. McAlpine?

Objected to by both Mr. Mills and Mr. Little as immaterial, irrelevant and hearsay.

A. I cannot say whether it was before or after the deed was delivered or not; there was such a report, but I cannot tell who told me.

THOS. V. JOHNSON.

Sworn and subscribed this 12th day of July, A. D. 1869, before me,

EDMUND D. HALSEY,
M. C. C.

Saturday morning, July 17, 1869—Examination resumed before Edmund D. Halsey, Master in Chancery of New Jersey, at his office in Morristown, New Jersey, by consent.

Watie Annie Gleason, a witness, called and sworn on part of complainant, deposes and says :

I reside in New York city, No. 107 West-Twelfth street ; I knew Anthony John Hill in his life time since I was three years old ; I knew him intimately. I have known Frederick W. Walker over twenty years ; I have visited at the Walker farm ; I spent a Summer there with my husband, and niece and servant ; I think it was the second year after Mr. Walker built his house. I saw Mr. Hill very often in the last three or four years of his life ; always when he was in town he came to see me when it was possible. He said I was in the relation of a child to him almost ; he always called me his child ; he always addressed me as "my child." I remember his staying on his farm at Littleton ; he brought things into me from his dairy, &c. I should think he stayed on his farm (in reading over the testimony to the witness, she says—"He did not say *his* farm ; he said *the* farm ; I did not say that he said *his* farm") about three years. I often had conversation with him as to why he was staying out here.

Q. State what you said to Mr. Hill and what Mr. Hill said to you on that subject?

Objected to by Mr. Little and Mr. Mills as incompetent.

A. I can state the substance, which was : "Why are you staying in New Jersey, Mr. Hill?" "Fred. has put his place in trust to me—I bid it in for him to keep until such time as he chooses to take it back into his possession"—or something to that effect. I said, "why did you do this, Mr. Hill?" He says, "to keep it for Fred." I think those were his words. He said, "I have been offered thirty-five thousand dollars for the place, and

that is not enough." He said, "*we* have been offered;" *we*, is what he said; I know he said "we," because he said he was out there taking care of it for Fred. Another day he came in and said they were offered forty thousand for the place. He says it is not enough; I expect the place is worth sixty thousand. Fred. will not sell it under.

The above evidence was objected to by Mr. Mills.

Q. Did he more than once tell you why he was staying out at the farm? Did he give more than one reason why he was staying out there?

A. Yes, I think he did; it was a healthy place; it was good for his eyes to be out there; it was good for his health, and it helped Fred. He went to Bermuda on the 20th day of May, 1866; he left New York that day; I think it was 1866; my husband died in 1864. During the Spring and Winter preceding his going I saw him often; his health then was wretched—as far as his nervous organization was concerned; I think he could see but very little; his eyes were nearly out; I think he had but one operation performed so far as my recollection is concerned; this, I think, was in February, 1866; the operation did not improve his eye-sight; he was quite blind after that.

Q. What was the condition of his mind in March and April 1866?

Objected to by Mr. Mills and Mr. Little.

A. Exceedingly unsettled.

Q. Just state in what way that unsettled state of mind exhibited itself?

Objected to.

A. By his variable moods, his inconsistent remarks.

Q. How was his memory?

A. Very poor; he did not seem to remember ten minutes what he had said previously in regard to certain things.

Q. State in what way these defects of memory exhibited themselves. Give us some illustrations.

A. Things pertaining to my own interests impressed themselves more particularly. I had always been ac-

customed to ask his advice all my life. Having some money of my husband in the Bank of the Republic, in Boston—the checks were not indorsed, and in order to get them I was obliged to take out letters of administration; Mr. Hill said he would be my security on my administration bond; he took the Assistant Surrogate to my rooms with two or three other gentlemen, and said he would go my security. Shortly after he came for me to go to the Astor House, and said that they were all to come there; the Assistant Surrogate I think came alone there; the three were at my rooms; they accompanied me to the Surrogate's office, and the papers were made out and I think that he signed his name—if not, he had the pen in his hand to do it—and he changed his mind and said, "I will not have my name to these papers—I will not do it." "And why?" said I. "Because, my child," said he, "I have no real estate in New York, and I cannot do it." "Then you have sold your houses, of which you wanted me to take one?" I think he said, "I never had any." Then I knew he was crazy, or thought he was; that no honorable gentleman, like himself, would make a remark like that.

Q. During the last three months preceding his going to Bermuda did these defects in memory exhibit themselves frequently or seldom?

A. Very frequently.

Q. Could you correct his memory by repeating to him what he had done or said on a previous occasion?

A. I called his attention to his inconsistencies—his telling me to do one thing at one time, and the next minute saying he never said it.

Q. Did you discover any change in his manners shortly before he left for Bermuda, and if so, state in what respect?

Objected to by Mr. Little.

A. After his eyes were operated upon there was a change in his manner; his mind was very feeble, almost imbecile. I found he was more nervous, his manner more inconsistent, his mind was weaker than it was before;

he did not pay that regard to persons in his presence which he formerly did.

Q. Give us some instances indicating this.

A. He had a little cup in which he used to expectorate in, and if this did not happen to be at hand, he would blow it out all over those near him—which of course he would not do if he was in his right mind.

Q. Did he have anything like delusions, or belief in things which did not exist, and if so, state what false imaginations he would talk about ?

A. He imagined he was very poor ; that he was going to the poor-house ; that he could not do as much for me as he had been accustomed to do ; he gave me less since I was a widow than he did when my husband was alive. It was an hallucination, for he had plenty of money ; I I supposed he had.

Q. Shortly before he left for Bermuda, did he say anything as to his ability to attend to his business or yours, and if so, state what he said on that subject ?

A. He stated to me that he was utterly incapable to give me advice as he had formerly done, because his mind was in such an unsettled or unhinged state that he could not attend to his own.

Examined by Mr. Little.

Q. Previous to the time you have spoken of last, and up to that time, had you been in the habit of consulting with Mr. Hill about your business ?

A. Yes sir, always.

Q. Up to that time had he had charge of various matters of business for you ?

A. He had been accustomed to give me advice—yes.

Q. How long before he went to Bermuda was that conversation in which he said he could no longer advise you as to your affairs ?

A. I could not say exactly, but it was within the year. It was very near the time he had his eyes operated upon, but whether before or after, I could not say.

Q. Who attended to Mr. Hill's business up to the time of this conversation ?

A. Mr. Van Buren, Mr. Dunderdale ; I know these two. I think he attended to a considerable part of his business himself ; not after he had his eyes operated upon or shortly before ; I do not think he did ; I supposed him a man of considerable property, both real and personal ; I always understood so ; I never heard of any guardian being appointed to take charge of his business. His nephew, Augustus Hill, was here some time with him and his business went through him to Mr. Van Buren, I suppose ; it was in 1865, I cannot tell the date, when Mr. Hill was so vacillating as to my bond ; my husband died in November, 1864, and it was some months after ; I cannot tell what time in the year it was. My maiden name was Sleeper ; I was not related to Mr. Hill ; he stood my god-father ; my husband was not related to him in any way ; he had a strong esteem and regard for my husband. It was in the Fall or Winter of 1865 that he said he had bought the farm in for Fred. for the first time, I think ; it was in the Fall of 1865, or Winter of 1866 ; it was after my husband died. We had so many conversations about it that it is hard for me to say when the first time was.

Q. Did he say that Fred. had put the farm in his possession to keep in trust for him ?

A. Yes.

Q. To keep it from whom ?—did he say ?

A. I will state what Mr. Hill said. He said, Fred. is in some trouble, and I want to keep the farm for him until such time as they can sell it to advantage, to prevent its being sacrificed—something to that effect. I don't think he used the words, to keep it from Mr. Walker's creditors; he said, keep it until it could be sold to advantage, or something like that.

Q. Did you, or not, understand that the object was to keep it from Mr. Walker's creditors from what Mr. Hill said ?

Objected to by Mr. Vanatta.

A. From what Mr. Hill said I considered that Mr.

Hill was to keep it till it could be sold to the best advantage for the benefit of his creditors.

Question repeated, and added to as follows :—So that Mr. Walker's creditors could not sell it ?

A. I suppose that was the idea—to keep it in trust.

Q. Why could not Mr. Walker keep it himself ?

Objected to.

A. He had business matters in other portions of the county, and could not remain there.

Q. How frequently did Mr. Hill tell you that he was holding the property in trust, or was keeping it for Mr. Walker ?

A. On several occasions.

Q. At how late a period before he went to Bermuda did he tell you that ?

A. It was about the time that letters of administration were taken out, and after that time. He did not tell me that shortly before he left ; at least I think it was before his eyes were operated upon ; it might have been after. I had no doubt at the time he told me that he understood what he was saying ; he told me so frequently. Mr. Fred. Walker has not been to see me at all with regard to this matter ; I told him myself of certain instances and am sorry that I did so as I had no idea of being examined. I have been very intimate with all the family. I think it was a couple of months ago that I told Mr. Walker, at my rooms in New York. Mr. Hill never told me that he bought the property for Mr. George Walker; never even mentioned his name with regard to it.

Cross Examined by Mr. Mills.

Q. What is your age ?

A. Forty.

Q. Do you keep house at 107 West-Twelfth street ?

A. No sir. Dr. Launsberry keeps the house, and I have rooms there. My husband's name was John T. Gleason ; we were married in 1840, I think, in Maine ; he died November 10th, 1864 ; I lived with him during all the time of our married life, and up to the time of

his death. I am not engaged in any business now. I am supported by what my husband left and on what I receive from my connexions. I have lived so far on what my husband left.

How much did your husband leave you ?

Objected to by Mr. Vanatta.

A. I really cannot tell you, as there was considerable in bank, and I had some by me. I had considerable silver, and that I sold. I took out letters of administration on my husband's estate. The estate I received from my husband was more than one thousand dollars ; there was that in checks on the Bank of the Republic.

Q. Did it amount to more than one thousand dollars which you received from your husband, and if so, how much ?

Objected to by Mr. Vanatta.

A. I could not say. Mr. Hill had considerable money in his hands which my husband, who was a Deputy Collector of the port of Port Royal, had sent him, and which he paid me before he left. I had a number of things, it is impossible to give them all.

Q. Did you put out at interest all which you received from your husband's estate ?

Objected to by Mr. Vanatta.

A. All that I took out letters of administration for.

Q. In what way was that placed at interest ?

Objected to by Mr. Vanatta.

A. It was placed in the hands of a personal friend of mine by the name of William H. Winder, and he paid me seven per cent. interest for it.

Q. Can you give me no farther information than you have done as to the amount received by you from your husband's estate ?

A. Yes sir, I have a great many resources which I could give you. I had his salary. It was about three thousand dollars that I received altogether. I had property in real estate which has brought me in nothing as yet. I have lived at my present rooms since a year ago the 5th of last May.

Q. Can you tell me what rent you pay ?

Objected to by Mr. Vanatta.

A. Fifty-five dollars a month for three rooms, and I let my furniture to the Doctor, which nearly equals the rent. I had a house full of furniture. I lived at No. 19 St. Mark's place, at the house of Mr. Watson, before I rented where I am; I had a room there; I think I went there in September, 1867, and left there the following May. Before that time I had rented a house of a Mrs. Lewis, corner of Sixteenth street and Irving place, who lives there still. I rented part of the house to Mr. Putnam, the publisher; I was there one year; I had taken the house in the Spring, and rented to Mr. Putnam in the September following I think, at one hundred and eighty dollars a month. My furniture has made my living since my husband died nearly. I lived previously to my going to Irving place in St. Mark's place, at the at the house No. 29. I went from St. Mark's place to Ninth street; I went from Ninth street to Irving place, and from there I took a room in St. Mark's place; I lived three times in St. Marks place. Mr. Hill lived in the Winter and Spring of 1866 in Second avenue, at Dr. Burmenhausen's; he lived there nine years; I think that he always had rooms there, and paid for them. I saw him sometimes every other day—sometimes twice a week, and sometimes not for a week, after his eyes were operated upon; it pained me so much to see him, or I should have seen him still oftener; I should have gone every day, he was so nervous; he came to see me sometimes with Mr. Augustus Hill. I could not fix the time when Mr. Hill first spoke to me about the farm; it was after my husband died, I think; it did not impress itself upon me, because he spoke of it so often.

The witness here said:—I wish to state that Mr. Hill and Mr. Augustus Hill saw me at all the places I have named, and were in the habit of calling upon me there.

Redirect.

My husband was Deputy Collector at Bangor, Maine, and

was induced by Mr. Hill to come to New York and put in his funds into a business which failed. At the time of his death he was a Revenue Collector at Hilton Head, South Carolina. I made eighty dollars a month in my underletting my lease to Mr. Putnam. While Mr. Hill was staying out here at the farm, he retained his rooms in New York in Second avenue, I think it was 96—I won't be positive. I leased the house at one hundred dollars a month, and I rented it at one hundred and eighty. The profit was from September till the May following.

W. A. GLEASON.

Sworn and subscribed before me, this 17th day of July, 1869.

EDMUND D. HALSEY,
M. C. C.

Augustus W. Cutler, a witness, called and sworn on the part of complainant, deposes and says:

The swearing of this witness was objected to by Mr. Mills and Mr. Little.

My acquaintance with Mr. Anthony John Hill began, I think, in the year 1854; I don't think I met Mr. Hill after 1854 until the sale of Mr. Walker's personal property. I entered judgments, as an attorney, against Mr. Walker in favor of Mr. Hill frequently.

Q. Did you have any communication with Mr. Hill in relation to the entry of those judgments, at or near the time they were entered?

A. I think that both the notes on which the judgments were entered were sent to me, and that I prepared the papers and returned them to Mr. Hill to be sworn to; Mr. Hill sent the notes to me; I think that each of the notes were handed to me by Mr. Walker—Frederick W. Walker,; I think the first note, of about $2,000, was

handed to me by Mr. Walker, with a letter from Mr. Hill stating that he wanted judgment entered up ; I have no recollection of Mr. Hill's being present when I drew the affidavits upon which the judgments were entered ; I dont think he was ; I think the affidavits were drawn by me and sent to Mr. Hill by mail, and he returned them to me sworn to. I don't recollect when the sale of Mr. Walker's personal property under those judgments was made ; I recollect of being there when it was made.

Q. Who directed the Sheriff to advertise that personal property and have it sold ?

A. I did, I suppose.

Q. Who requested or directed you to give those orders ?

A. Mr. Walker.

Q. Did you have any directions from, or communications with Anthony John Hill in relation to the sale of that personal property, prior to the day on which the sale took place ?

A. I have no recollection of any communication with Mr. Hill. I think all the arrangements of the sale were made with Mr. Walker, who would see Mr. Hill and he would send me word through Walker, as I understood Walker to say. Mr. Hill was present at the sale ; he knew of the sale, in what way I cannot now recall. He came up on the morning of the sale. I understood he was to be there at the sale.

Q. What orders did you receive in relation to the sale on that day ?

Objected to.

A. My orders were to bid everything in. Those orders were given at the house after Mr. Hill came up. My impressions are, that Mr. Walker, Mr. Hill and Mr. Dunderdale were present at the time. All the personal property was sold. The library at that time was a very valuable private library ; according to my recollection there were some thirteen hundred volumes in the library —and some of the works were rare ; I should think you might put the library down at $4,000 or $5,000 ; I have no idea that it could be replaced for that money. The

furniture about the house was most of it the old-fashioned —had been expensive, and was not injured by use. There was an immense quantity of personal property about the barns, stables and out buildings—I mean wagons, farming utensils, horses, cows. I should think the personal property outside of the library furniture brought twenty-five per cent. of their value ; some of the things undoubtedly brought their value ; I am now speaking of the aggregate. I don't remember that any money was paid for what articles that were struck off to Mr. Hill on that occasion ; I don't know that there was any receipt given the Sheriff upon the executions, or upon the Sheriff's docket, for what was struck off to Mr. Hill at the sale ; I don't recollect of any bill of sale being made out and delivered by the Sheriff to anybody for the goods struck off to Mr. Hill. There was a sale of Mr. Walker's real estate afterwards, under executions from law courts. I can't tell by whose direction the lands of Mr. Walker were sold under those executions ; I presume by Mr. Hill's ; I have no recollection of it. I don't recollect whether Mr. Walker had anything to say about making the sale under those executions ; I don't think that anything was done without Mr. Walker's being advised and talked to about it ; when those lands were sold under those law executions, my recollection is that I did the bidding. I don't think that Mr. Hill was present at any of the sales at under the common law executions of real estate excepting that of two lots on the west side of the road leading from Morris Plains to Parsippany. Mr. Hill did not reside at the Walker farm at Littleton prior to the sale of the personal property. I think J. Couper Lord occupied the dwelling house at Littleton during the Summer next after the sale of the personal property. I think the sale took place in the Spring of the year, and Mr. Lord occupied it during the Summer.

Q. Did the furniture that was sold at the Sheriff's sale remain there, and was it used by Mr. Lord ?

A. Yes. Mr. Lord rented of Mr. Walker—Frederick W. Walker ; Mr. Walker received the rent ; I think that

Mr. Lord paid $600 rent—that is my impression ; he had the house and furniture, and stable room for his carriage horses. I have seen Mr. Anthony John Hill write, and am acquainted with his hand-writing. [Paper writing, being letter of A. J. Hill to F. W. Walker, dated March 24, 1863, shown witness marked by me Exhibit G, on part of complainant,] witness says : This paper is in the hand-writing of Mr. Hill, signature and all.

Q. After 1862 and prior to 1866 did you have anything to do with the Walker place in the way of getting money from it, and expending money on it ?

A. Yes. One Summer the grass was sold off of the place by me—it seems to me it was in 1862—and in the Summer of 1866 I sold some of the grass, and had some of the grass and grain cut and put in the barns. What makes me think I had it cut in 1862, is, that there was no one there to look after the place, and Mr. Lord was in the house. There was a sale of stock made after the Sheriff's sale—of horses, and I think there were some cattle sold ; I recollect Mr. Hill was at the sale ; I don't recollect how the advertisements were gotten out ; Wm. W. Fairchild was the auctioneer. [Paper writing, purporting to be a letter dated March 7, 1865, which I have marked Exhibit H, on part of complainant,] witness says : This letter is signed by Anthony John Hill.

Q. What account is referred to near the close of that letter ?

A. I suppose it is the account of the sales off of the farm. I remember the Atwater foreclosure case; I think everything in the way of expenses of that suit that were paid, was paid by Mr. Walker—unless it be the costs that were taxed on the answers of George Walker and Mr. Hill ; the costs of taking the evidence before the Master were paid, if paid at all, by Mr. Walker.

Q. What, if anything, did Mr. Hill say about defraying the expenses of that suit ?

Objected to.

A. Mr. Hill refused to pay any of the expenses of it.

Q. What reason did he assign for not doing it ?

Objected to.

A. That he had no actual interest in the thing, and was unwilling to do so, and would not be responsible for the defense.

Q. What did he say as to whose duty it was to be at the expense of defending it?

Objected to.

A. I don't know that I can say about that—that I recollect about it; my impression is, that he thought I ought to defend it as much as any one, inasmuch as I had the last lien, but I don't recollect of his saying much about it.

Q. Was there any proposition to compromise that suit upon the Atwater mortgage, and if there was, what did Mr. Hill say about it?

Objected to.

A. I know there was some talk in reference to a compromise, and a conversation was had with Mr. Hill to advance the money; he refused to do it.

Q. What reason did he assign, or base his refusal upon?

A. That it was of no interest to him. I think it was fifty per cent. of the mortgage he was asked to advance to effect the settlement. I was present when the property was sold under a decree in the Atwater case.

Q. Who directed that property to be advertised and sold under that decree?

Objected to.

A. I got a letter from Mr. Walker desiring it to be sold, and I saw Mr. Hill; he said he had received a letter, and to have it sold. [The letter received by witness from Mr. Walker, dated May 26, 1864, offered in evidence, and by me marked Exhibit I, on part of complainant,] witness says: This is the letter I received from Walker.

The introduction of this Exhibit objected to.

At the time the property was sold under the foreclosure, I had a mortgage covering those premises. At the time of the sale under the foreclosure, I suppose I might say there was $5,000 due me on my mortgage.

Q. What was the object of making that foreclosure sale?

Objected to.

A. The object was to have the title so fixed as to make conveyances when opportunities occurred, for sale of the property; I was present at the sale; no one bid for the property except me; I did not bid but once; my impression is that Mr. Hill signed the conditions of sale himself.

Q. Would you have let the property be sold on that occasion to anybody else except Mr. Hill or yourself?

Objected to.

A. Not unless it brought a sufficient amount to cover the incumbrances; I refer to a mortgage of Mr. Walker —the Atwater mortgage which was assigned to George Walker—the George Walker mortgage and my own; there were some judgments, I don't recall now what they were.

Q. Did you regard Mr. Hill's judgments at that time as an incumbrance upon the property?

Objected to.

A. I don't think they were referred to.

Q. At the time that property was struck off to Mr. Hill, did you understand, or suppose that Mr. Hill had purchased that property to hold for his own use?

Objected to.

A. The understanding was that Mr. Hill was to take the title to that property and hold it for the benefit of the mortgagers.

Q. How were the mortgagers to be benefitted by his holding it?

Objected to.

A. The property was to be re-sold, and from the proceeds of that sale the mortgagees were to have their pay.

Q. Was that understanding arrived at in the presence of Frederick W. Walker, or talked of in his presence prior to the sale's being made?

Objected to.

A. Yes.

Q. What did Mr. Walker say to that in the way of assent or dissent?

Objected to.

A. The agreement was that the property should be held (I refer to the real estate) at $45,000, but might be sold for $40,000, which was assented to by all parties.

Q. What was to be done with the $40,000, or $45,000 for which the property was to be sold?

Objected to.

A. It was to pay off the mortgages.

Q. What was to become of Mr. Hill's judgments, and the other judgments?

Objected to.

A. I don't recollect anything being said in reference to the other judgments.

Q. What I want to get at was, whether the proceeds of the sale were to be applied in paying the incumbrances upon the property in the order of their legal priority, or whether they were to be applied exclusively to the mortgages?

Objected to.

A. It was supposed that $40,000 would cover the mortgages, and it was understood if we could get a bid for $40,000 we should sell the place. I have no recollection in reference to the other incumbrances.

Q. Did you understand that by that Sheriff's sale the lien of your mortgage upon the premises was extinguished?

Objected to.

A. It was not intended that my mortgage should be extinguished.

Q. Was that property struck off to George Walker, or was the intent at that time to have George Walker take the property, or take the Sheriff's deed for the property?

Objected to.

A. I did not hear George Walker's name mentioned in that connection. George Walker was at that time at Santa Cruz. If the deed had been taken in his name there would have been no facilities for having him execute conveyances.

Q. At that time what, if anything, did Mr. Hill say

about taking the property and paying the incumbrances out of his own pocket?

Objected to.

A. Mr. Hill did not want the property; he said he would not take the property and pay the incumbrances; I think there was no money paid at that Sheriff's sale.

Q. What, if anything, was said about having the deed delivered, about that time?

Objected to.

A. I don't recollect of anything's being said about the delivery of the deed at that time.

Q. After that Sheriff's sale what, if anything, was said about selling the property again?

A. It was arranged to leave the property with me for sale, and to sell it.

Q. With whom was that arrangement made?

A. Both Mr. Hill knew of it, and Mr. Walker knew of it; both knew of it, and it was talked over with me before and after the sale.

Q. What were you to sell?

A. I never had any authority to sell anything except the real estate; I was not to offer the personal property for sale at all; I was authorized to sell at $40,000—I was to hold it at $45,000, but if I could get $40,000 I was authorized by both the parties to sell it; $40,000 was the minimum price. I never was authorized or requested by Anthony J. Hill to take a less sum than $40,000; I advertised the property; Mr. Hill did not want to be at any of the expenses of advertising or selling the property; I did get an offer for it; I recollect one offer of $35,000, of which I advised Mr. Hill and he refused to have it sold; then there were negotiations with Mr. Stevens of Hoboken, based on a proposition of purchase of $40,000; it seems to me it was in the Winter of the latter part of 1865, or in the early part of 1866, that I got the offer of $35,000; it was before Mr. Hill went to Bermuda; he went to Bermuda in the Spring of 1866; this offer was for the two hundred and eighty-one acres, covered by the Atwater mortgage; Mr. Hill would not allow me to accept that offer. The real estate, that 281 acres, in

August, 1866, was worth $40,000, and there was money in it at that price ; I regard that as a price that a man could buy that property for and make money out of it ; there was a fair margin in it at that price. The personal property in 1866, exclusive of the library and library furniture was worth as much as it was in 1862, I should say from $6,000 to $8,000.

Q. When Mr. Hill went to Bermuda did he withdraw, or revoke the previous arrangement which had existed with reference to the sale of the real estate so far as you knew, or had any notice ?

A. He did not, for after he arrived at Bermuda he wrote me pressing me to consummate the sales.

Q. When, and how, did you first hear about the property's being actually sold ?

A. I received a letter from Mr. Dunderdale asking me to meet him at the farm the next day—he and Mr. Van Buren ; I went up in the morning at the Morris Plains depot ; I met Mr. Thomas V. Johnson's carriage ; his son, Mahlon, was there waiting for the train ; he said he was waiting for Mr. Van Buren and a party from New York, and that the Walker place had been sold ; I asked the price ; he said he did not know ; I did not then know, and had not then heard the price ; I went on up to the farm and met Mr. Thomas V. Johnson, and was there introduced by him to Mr. McAlpine. I did not learn of the price at which that property had been sold until after Mr. Dunderdale came up from New York ; Mr. Dunderdale first told me of the price ; Mr. Dunderdale and Mr. Van Buren missed the morning train, and at that time we had a noon train, and I think they got up there about one o'clock ; I got there, I should think, about ten o'clock—somewhere in that neighborhood.

All this answer objected to while being given.

Q. What were you doing there from the time you got there until Mr. Dunderdale and Mr. Van Buren arrived ?

A. We were talking, and waiting for them. There was something said about the value of the property ; I said that Mr. Hill had refused an offer of $35,000 for the place before he went to Bermuda, and Thomas V.

Johnson replied—Yes, I know that is so, for I afterwards offered Mr. Hill $40,000 in cash for it; he would not take it; he wanted $42,500. We were all three on the piazza talking together, myself, Mr. Johnson and Mr. McAlpine.

Q. Before Mr. Dunderdale arrived did Mr. McAlpine ask you anything about the history or title of the property, and if so, state what you told him on that subject?

A. It was asked either by Mr. Johnson or Mr. McAlpine in reference to the title to the property, and I gave him the history of it from the time of the purchase of it by Henry A. Walker of Silas B. Condict; I gave him a history of the whole title of the property as I knew it; I told him of the sale of the property under the Atwater decree. I have no doubt I told him that no deed had been delivered under the Atwater sale.

Q. Did you at that time have any suspicion that Mr. McAlpine was about to buy that real and personal property for $28,000?

A. I did not know what price he was going to buy it for. When Mr. Van Buren and Mr. Dunderdale arrived I was introduced to Mr. Van Buren; I never had seen him before; Mr. Dunderdale I knew very well, and shortly afterwards Dunderdale and I took a walk out in the garden, and I inquired of him in reference to the sale of the farm; he said it had been sold on the day before with all the furniture and personal property, excepting the library and library furniture, for $28,000; I complained.

All this testimony objected to.

And told him that he knew that Mr. Hill would not allow me to sell the farm alone for $35,000; he said it could not be helped, that Mr. Van Buren was the attorney and had the power, and had sold, and the papers would have been signed in New York the day before, excepting that there was some question about some property in the barns; afterwards I was sent for to come up to the house; Mr. Dunderdale went up with me, and I was asked in reference to his outlands and the buck-

wheat crop ; one portion of the outlands had been rented to Mr. Bates, and another portion of them had been rented to a Mr. Righter, and Mr. Shelley had put in a piece of ground on shares in buckwheat, and in one of the barns hay had been stored which one of the purchasers at the grass vendue had cut and stored. These exceptions I told them about, and sometime afterwards the agreement was signed by the parties there.

Q. About the time you were telling them about those crops, did you say anything to anybody about how Mr. Walker would regard the sale, and if so, state where you said it, who you said it to, and what it was ?

Objected to.

A. I told Mr. Dunderdale before we came up to the house that Mr. Walker would not submit to the sale, and after coming up to the house the conversation was continued between Mr. Dunderdale and Thomas V. Johnson and myself on the piazza, and I complained to Mr. Johnson that he knew of these other offers of thirty-five thousand dollars, and forty thousand dollars, and that it was unfair to Mr. Walker, and that Mr. Walker would never allow the deed to be passed.

Q. Where was Mr. McAlpine at that time ?

A. Mr. McAlpine and Mr. Van Buren were in the library.

Q. Where were you and Johnson and Dunderdale with reference to the library ?

A. We were on the piazza.

Q With reference to the library ?

Objected to as leading.

A. I could not fix the location.

Q. This dissatisfaction of yours, was it expressed in whispers or pretty loudly and openly ?

Objected to.

A. It was not in whispers—I suppose it was in my ordinary tone of voice.

Q. Did you say anything to Mr. Van Buren about Mr. Walker's objections, and if so, when, and where, and what ?

Objected to.

A. After Mr. McAlpine went away—I think he had gone—I stated to Mr. Van Buren the arrangement between Mr. Walker and Mr. Hill and myself, and that I should write Mr. Walker and telegraph him ; that Mr. Walker would not submit to that sale, and as Mr. Mills had been acting for Mr. Hill in some matters, I suggested to him that he had better see Mr. Mills, and I invited him and Dunderdale to come and take dinner with me the next day—and they did, and said to me that they had had an interview with Mr. Mills before they came—and I informed them that I had telegraphed to Mr. Walker and had likewise written him a letter. Prior to Mr. Hill's going to Bermuda I was owing Mr. Hill some money, and Mr. Frederick W. Walker came up from New York one day and stated that Mr. Hill would like to have the assignment of this mortgage which I held against Mr. Walker.

All conversation between Walker and witness objected to.

I said to Mr. Walker that as the mortgage was a collateral mortgage, or rather given to secure endorsements I had made, there should be an acknowledgment of the amount that was due on the mortgage ; an endorsement was made, and I made an assignment over to Mr. Hill, and gave the papers to Mr. Walker, who gave them to Mr. Hill, as Mr. Hill told me afterwards he had done. I had always known Mr. Dunderdale as the confidential agent of Mr. Hill ever since 1862 ; Mr. Dunderdale did his correspondence.

Examination adjourned to Thursday morning July 29th, 1869, at 9 1-2 o'clock.

Thursday morning, July 29th, 1869.—Examination continued.

Cross-examination by Mr. Little.

I had no acquaintance with Mr. McAlpine until the sale of the farm; I don't think I had ever seen him until the day I met him at the farm with Thomas V. Johnson. There were other judgments against Mr. Walker at the time of the sale of the personal property at the farm besides those of Mr. Hill; my impression is there was a judgment in favor of a man by the name of Thompson, and one in favor of Voorhees Freeman, and some others, I can't say in whose favor; it seems to me that Thompson's judgment was for $8,000 or $10,000—somewhere in that neighberhood; I was the attorney for Mr. Thompson in entering up that judgment; I don't recollect how much Freeman's judgment was for; I know that B. O. Canfield had a judgment against Walker, but whether at that time or not I can't say; Mr. Lindsley had a judgment against Walker; Richard Bohan had a judgment against Walker, but whether at that time or not, I can't say; there was a judgment in favor of William Leddy, but when it was recovered I can't say; also a judgment in favor of Joseph W. Mount. These judgments were all subsequent to Mr. Hill's two judgments. All these judgments, including Mr. Hill's, were subsequent to the Atwater, George Walker, Maria Walker and Cutler mortgages. The George Thompson judgment has been paid, or rather I would say it has been ordered to be satisfied of record by the Court. I should think that order was made about two years ago. The William Leddy judgment and the Richard Bohan judgment were assigned to me; they were assigned to me after the sale of the personal property of Mr. Walker; they were assigned to me in 1867 or in 1868; I think that I paid twenty-five or thirty cents on the dollar for them. The B. O. Canfield judgment was not assigned to me; my impression is that I paid for the Canfield judgment and the Mount and Lindsley judg-

ments fifty cents on the dollar; they were assigned, I think, to George A. S. Thompson; I don't remember when that payment and assignment was made; if I should speak from recollection, I should say it was subsequent to the sale of the personal property, but I don't recollect; it must have been before I took the assignment of the Bowen and Leddy judgments. George Thompson was no relation of Mr. Walker's that I ever heard of; he was a merchant in New York; when I first knew him I think he was a wholesale grocer; I don't know whether he furnished the money to pay for the judgments, or whether Walker did; my impression is that I had Thompson's check or draft; I was attorney for Mr. Hill in recovering those judgments.

Q. What was the object of the sale of the personal property under those judgments?

A. My impression is that there were these subsequent judgments, and it became necessary to have the title of this personal property out of Mr. Walker; I don't know what that necessity was, unless it be the subsequent judgments. The sale was conducted in the ordinary way of a Sheriff's sale; the property was knocked off to the highest bidder; every one of my bids were knocked down to A. J. Hill; I bid in his name; I don't know whether I made any entry in my docket of the amount of the sale or not; I am not in the habit of making such entries unless I receive the money from the Sheriff and take the receipt of the plaintiff on my docket. It was the intention of that sale to vest the title in Mr. Hill so that it could not be reached by other executions; I have no recollection of ever taking any papers from the Sheriff to show that Mr. Hill was the owner of the property.

Q. If you had taken such papers, do you think you could have forgotten it?

A. No, I should think not.

Q. Without some such evidence how could Mr. Hill have protected himself from Mr. Walker, or his creditors?

A. I don't know, unless he could have gotten it some other time.

Q. Is it not usual where there is a large amount of pro-

perty purchased at Sheriff's sale to take a bill of sale from the Sheriff?

Objected to.

A. I believe it is the practice.

Q. What reason had you for neglecting to do so in this case?

A. I have no recollection about the matter one way or the other; I can't give any reason why I did not take one, if I did not take one. I had a running account with Mr. Hill up to the time he went to Bermuda. The first account I think I had with Mr. Hill was after the sale of the personal property, and before the sale of the real estate; there was a sale of stock made on the place; horses and cows were sold; I think that was the commencement; then, subsequently, there was a sale of grass; then, after that again, another sale of grass. The account entirely related to the farm. The defendant's costs in the Atwater case have not been paid; the counsel fees I learn from Mr. Bradley have been paid. My impression is that the talk of compromise in the Atwater case was after the suit commenced; I can't say whether it was before or after the examination of witnesses commenced. I should think the amount of the Maria Walker mortgage, at the time of the sale, was $7,000, or $8,000; it was originally five thousand dollars, and there was a large amount of interest due. The George Walker mortgage at the time of the foreclosure was, I should think, $16,000, or $17,000. I should say the Atwater mortgage was some $7,000, or $8,000. I don't recollect exactly the amount of mine—I should say some $5,000; my mortgage covered other lands besides those purchased by Mr. McAlpine, some sixty acres, which lies adjoining this McAlpine property.

Q. Who made the offer to you of $35,000 for that property?

A. It was a written proposition from Thomas V. Johnson; I think that that offer was one-half cash and one-half bond and mortgage at one year; I don't know who he was acting for; I advertised the farm in our county papers, and in New York, and in slips; I was acting as

a real estate agent at that time, and so subscribed the advertisement. I have the letter which Mr. Dunderdale wrote me asking me to meet him at the farm.

Q. Before Mr. Van Buren and Mr. Dunderdale arrived that day, what were you and Mr. Johnson and Mr. McAlpine doing—what were you engaged in?

A. Talking and waiting. I have no recollection of walking over the farm; we were talking about property, and the farm—trying to entertain one another; during the time I was there that day, the title to the farm was talked over; it was talked of by all of us; I think Thomas V. Johnson first introduced the question, or asked me about the title, and I went on and gave a history of the title.

Q. Did you not that day say, in the presence of Mr. McAlpine and Thomas V. Johnson, that you knew all about the title to that farm, and that there was no better title in the county, or words to that effect?

A. No, I have no recollection of making use of that language, or words to that effect.

Q. What did you say to them in reference to the title?

I think I gave to them the history of the title from the time of the purchase of Silas B. Condict. I was called into the room that day where Mr. McAlpine and Mr. Van Buren were; I don't know who called me in; I think I was in the room twice—first, to state in reference to who had any interest in the real estate, leases, &c.; and subsequently I was appealed to to decide the question of commissions—Thomas V. Johnson insisting that he was entitled to his commissions, and it was objected that he was not entitled to them until the purchaser got his deed. I think I told him he was not entitled to them till the purchaser got his deed; I don't recollect that the agreement for the purchase of the property between Mr. Van Buren and Mr. McAlpine was signed there in my presence; I don't recollect that it was read over in my presence; I learned the fact there that day when the deed was to be delivered; I think something was said there that day that the title was to be examined, and Mr. Little was to examine it. I don't know how soon after the sale Mr.

McAlpine took possession of the property ; I suppose he took possession as soon as he got his deed—I don't know it of my own knowledge. I did not read the bill of Mr. Walker in this case before it was filed, nor was it read to me.

Q. Did you ever since the sale say to Mr. McAlpine that Mr. Walker did not blame him, or could not blame him for this purchase, or anything to that effect ?

A. I have no recollection of any such conversation ; in fact I have no recollection of only one or two interviews with Mr. McAlpine since the sale, and that was with reference to the library.

Q. Have you not made that remark to other persons, that Mr. Walker had no right to blame Mr. McAlpine, and did not blame him ?

A. I don't recall any instance ; I think each of these conversations with Mr. McAlpine were in the street ; I don't recall any instance of my having a conversation with him in the cars ; I never sent any one to Mr. McAlpine with a proposition to settle this matter ; I don't know of anybody's being sent ; I heard that the heirs of Mr. Hill had sent to Mr. McAlpine, but I only know by hearsay ; it seems to me that I heard it from Augustus Hill that the heirs of Mr. Hill had been to Mr. McAlpine and endeavored to settle this matter. I suppose that Mr. Hill holds the lands embraced in my mortgage and not included in the sale to Mr. McAlpine. I have had interviews with Mr. Dunderdale since the sale of the farm, in reference to the sale of the farm. I have tried to keep out of this controversy with Mr. Walker, and Mr. Hill, and Mr. McAlpine.

Q. Have you had any correspondence, or interviews with Mr. Dunderdale in reference to this suit since it has been commenced, or with Mr. Van Buren either ?

A. I don't remember of any.

Q. Did you not propose to Mr. Hill in his lifetime, or to Mr. Van Buren, or to Mr. Dunderdale as his agent, that Mr. Hill should not defend this suit at all ?

A. Yes, I think I did ; I think it was to Mr. Dunderdale. and that Mr. McAlpine be repaid his purchase

money; my impression is that it was written; I don't recollect when that letter was written; I can't tell whether it was before or after the bringing of this suit.

Paper shown witness.

Q. Look at that letter and see if it is in your handwriting?

A. I believe it is. [This paper offered in evidence which I have marked Exhibit M 1, on the part of Mr. McAlpine,] witness says: This is the letter I referred to. I have avoided this controversy as far as I could.

[Paper writing, being a letter of Mr. Dunderdale to Mr. Cutler, dated August 19, 1866, which I have marked Exhibit M 2, on part of Mr. McAlpine, being shown witness,] witness says: I received that letter.

Cross-examination by Mr. Mills.

I think the affidavits in the judgments in the cases of Hill against Walker, were drawn in my office and sent to Mr. Hill in New York. The taxed costs in each of the suits were paid by Mr. Hill; I am positive about the first one, and I think the other was too.

Q. You have stated, as I understand, that all your communications with reference to the personal property on the farm, before its sale by the Sheriff, were made with Mr. F. W. Walker—is that so?

A. I stated that I have no recollection of seeing Mr. Hill prior to the day of sale since 1854; I have no doubt I communicated with Mr. Hill in reference to the sale—either by letter or through Mr. Walker. The personal property in the Spring of 1862 was in good order; my impression is that the stock was in good order; I don't recollect particularly about the stock on the farm—I mean the horses and cattle on the farm; I suppose that Mr. F. W. Walker provided for the stock prior to the sale, in the Spring of 1862; I can't tell you where he was in the Spring of 1862, whether he was at the farm or not. It was a favorable time to sell stock in the Spring of 1862; it was not as to furniture, but as regards stock it was; there was a demand for stock in the

Spring of 1862, and this stock was then in a condition to bring a good price. William W. Fairchild was the auctioneer and sold the stock at that time. I am under the impression that the property was advertised by Anderson as Sheriff, but sold by Fairchild as auctioneer.

Q. After the confession of the two judgments to Mr. Hill, and up to the time of the sale, you were acting as the attorney of Anthony John Hill, were you not?

A. I was the attorney of record, and was in fact the attorney of both, and so considered myself and was treated.

Q. Was you not considered and treated by Mr. Hill at that time as his attorney?

A. I was. I don't know whether there was a written lease to Mr. Lord in the Summer of 1862 or not; I don't remember when the leasing was made; I don't know by whom it was made—I suppose by Mr. Walker. It seems to me that at one time Mr. Lord paid me some money, and if so, I accounted for it to Mr. Walker—but I am not positive that I did receive any rent; I don't recollect of receiving any communication in writing from Mr. Lord in reference to the farm. [A letter dated Littleton, Oct. 11, 1862, signed J. Couper Lord, which I have marked Exhibit No. 5, on part of Mr. Van Buren and others, being shown witness,] he says: The first page is in the hand-writing, I take it, of J. Couper Lord; the second is in my writing, addressed to Mr. Hill. I don't recollect when the sale of the farm under the executions at common law took place, or under whom, or where it was—or who was present—or whether Mr. Hill was there or not; I think I was present—I have no doubt of it.

Q. Did you at the time of the sale of the two hundred and eighty-one acre tract, in 1862, understand that Mr. Hill bought it as trustee for Frederick W. Walker?

A. I have no recollection of having any conversation with Mr. Hill about his purchasing it as trustee, or of his being at the sale; he bought it subject to the incumbrances.

Q. Last question repeated.

A. My understanding is that Mr. Hill bought it as a a friend—as a friend of Mr. Walker and the family.

Q. That was your understanding, was it, at the time of the sale in August, 1862?

A. Yes.

Q. It was then your understanding that Frederick W. Walker, after the sale in 1862, had an interest in that farm?

A. That is a legal question.

Q. Was, or was not, that your understanding?

A. I suppose this, that Mr. Walker's interest in the farm was sold to Mr. Hill subject to the incumbrances upon it.

Q. If Mr. Hill purchased that farm in August, 1862, for the benefit of Frederick W. Walker, had not F. W. Walker an interest in it after that purchase?

A. That is a legal question again; I have no further answer to make to that question. In the Atwater suit I paid the witness fees and the Master's fees from time to time as the suit progressed; I furnished the money; I never have charged those expenditures to any one; I paid them myself, and have never been repaid. I think that Mr. Hill paid the costs of filing his answer, $34.46; I think I charged that to Mr. Hill in his account. I don't know that Atwater agreed to take fifty per cent., or any other amount in compromise of his claim; I don't know of any offer being made to him of fifty per cent, or any other amount in settlement of his claim; I I made no such offer. I think I paid the plaintiff, or plaintiff's attorney, in the settlement of the judgments at law, and took the assignments to Mr. Thompson; I was acting for Mr. Thompson.

Q. Were your negotiations for the settlement of the judgments at law made at the request of F. W. Walker?

A. Mr. Walker knew about them, though they were done, I suppose, at the request of Thompson.

Q. Were you not, in that matter, acting under the instructions and at the request of Walker, and did you not buy up the judgments as cheaply as you could?

A. I speak from recollection; I think I ascertained

for what the judgments could be purchased—could be got. I informed Mr. Walker, and then I received directions from Mr. Thompson with the money to take the assignments of the judgments. I got them as cheaply as I could I suppose. The sale under the Atwater decree was made, I think, at Drake's Hotel ; I do not recollect the time. The understanding in reference to the farm was from conversations before and after the sale under the Atwater decree, with Mr. Hill and Mr. Walker. On the day of sale I do not recall any conversations ; I recollect Mr. Hill being there—do not recollect whether he rode down with me or not.

Q. If the object of that sale was merely to have the title fixed, why did you bid nineteen thousand nine hundred and ninety-nine dollars ?

A. I cannot say, excepting that Mr. Walker wanted the property to be bid in for an amount covering the Atwater and Mrs. Walker decree.

Q. Was that amount needed to cover what was due under the decree to Maria Walker and James C. Atwater ?

A. It was more than sufficient ; why that amount was bid I cannot tell you.

Q. You say that you would not have let the property be sold at that time for less than the amount of all the mortgages ; under whose directions did you come to that determination ?

A. That was the understanding.

Q. Were you ready to bid up to the full amount of the mortgages, and then, if the property were struck off to you, pay the incumbrances prior to your own ?

A. Mrs. Walker was willing that her mortgage should remain upon the property ; Mr. Hill represented George Walker both as assignee and mortgagee, and I represented my mortgage. Mr. Hill agreed that the property might be sold subject to the George Walker mortgage and get the pay by subsequent sale.

Q. In case you had bid off the property at the full amount of all the mortgages, would you not have assumed

the payment of the Maria Walker mortgage, the Atwater mortgage, and the George Walker mortgage ?

A. The arrangement was not that I should bid it off, but that Mr. Hill should.

Q. When was that arrangement made with Mr. Hill, and at whose request was it made ?

A. There were several interviews between Mr. Hill, Mr. Frederick Walker and myself before the sale, and we were all satisfied that that farm, if judiciously sold, could pay off these mortgages ; I cannot tell the time—we had repeated interviews.

Q. Was that arrangement, or any part of it, put in writing ?

A. Not to my knowledge. I knew that Mr. Hill had paid the money, for I held the assignment of the Atwater decree for George Walker, and was present on behalf of Mr. Hill when the assignment was delivered and the money paid.

Q. Was it not understood at the time of the sale under the Atwater decree in 1864, that Mr. Hill was purchasing the property for George Walker, and did you not tell Mr. Hill at the time of that sale, and afterwards write to him that the bid could be changed on the Sheriff's book by adding the words, "attorney for George Walker ?"

A. I recollect of no such conversation before, or at the time of the sale—but afterwards, and I think sometime afterwards—I cannot tell the time when, Mr. Hill either spoke to me or wrote to me in reference to having the bid made to George Walker—and whether I wrote to Mr. Hill or not I do not recollect. I do recollect speaking to the Sheriff about it, and of his saying that so long a time had elapsed that he could not do it, or would not do it.

Q. This farm was advertised by you for sale as a real estate agent in a long list of other pieces of real estate, which as real estate agent you had for sale, was it not ?

A. It was.

The cross-examination of Mr. Cutler was here ad-

journed until to-morrow morning at nine o'clock, at which time the same was resumed as follows :

The sales of the farm in 1862 and 1863, under the common law executions, were made by the Sheriff under my directions I presume ; I suppose advertised by my directions. The costs of sale under the Atwater decrees, made in 1864, were paid by I do not know who—do not recollect my charging them to Anthony J. Hill, and my sending him a bill for them ; I do not recollect what they amounted to.

Q. Did you not charge Mr. Hill one hundred dollars and seventy-five cents in your account against him as the costs of that sale ?

A. I do not recollect ; I think it probable. The night of the sale to McAlpine, Mr. Van Buren and Mr. Dunderdale I think stayed at the house on the farm—at least that was the arrangement when I left ; the day after they came and took dinner with me ; I think there was no one else but our family there besides them at dinner ; the conversation with them took place at my house.

Q. Please state exactly what you told them in reference to any interest F. W. Walker had in the farm ?

A. The conversation was lengthy and I could only give the substance of it. I told them that I had written Mr. Walker and telegraphed him, or would do so, and that I did not believe that Mr. Walker would submit to this sale—that the property had been sold much below its value, and it would leave Mr. Walker liable upon the mortgages.

Q. Did you state anything else to them, or either of them, on the subject ?

A. I recollect telling them of the different offers which had been made, and the whole matter was talked over.

Q. Why did you tell them to consult me ? Had I ever had anything to do about the farm for Mr. Hill at that time ?

A. No, not as I know of. Mr. Mills had been acting for Mr. Hill in reference to some property on Courtlandt street, in Morristown ; there was no other reason ; I

rather liked Mr. Mills and so gave him the preference.

Q. Did Mr. Walker send some horses to the farm in 1865 or 1866 ?

A. He did in 1866—before Mr. Hill went to Bermuda. There were several of them, one immense pair of black horses among them. In February, 1867, I went to Bermuda, but I did not go on behalf of Mr. Walker ; I went in order to get an amicable arrangement of these matters if I could. I stayed there about two weeks at Mr. Hill's house.

Q. Yesterday in your principle examination, you referred to a letter which you received from Mr. Hill after he went to Bermuda, in the Spring of 1866, in which he pressed the sale of the farm. Have you that letter?

A. This is that letter. [Witness here produced a letter from Mr. A. J. Hill, dated June 15, 1866, and which I have marked Exhibit No. 7, on part of defendants represented by Mr. Mills.]

Q. You acted as solicitor for Mr. Walker and the other defendants in the Atwater foreclosure case and conducted the examination of the witnesses on the part of the defendants before the Master in that case, did you not ?

A. I was, and did conduct the examination.

[Letter dated March 24, 1862, purporting to be addressed by Augustus W. Cutler to Anthony J. Hill, being shown witness, Mr. Walker objecting to its introduction and to the question,]

Q. Is that letter in your hand-writing ?

A. It is ; it was sent by me to Mr. Hill.

[This letter I have marked Exhibit 8, on part of Mr. Van Buren and others, defendants.]

The indorsement is in the hand-writing of Mr. Hill I think.

[Another letter from Augustus W. Cutler to Anthony J. Hill, dated March 24, 1862, being shown witness.]

Q. Is that letter one sent by you to Mr. Hill, and is the indorsement in his hand-writing ?

A. It is.

[This letter marked Exhibit 9, on part of Mr. Van Buren and others, defendants.]

[Another letter, dated June 9, 1862, from Augustus W. Cutler to Anthony J. Hill, being shown witness,] he says: That is in my hand-writing, and the indorsement is in the hand-writing of Mr. Hill.

[This letter marked Exhibit 10, on part of Mr. Van Buren and others, defendants.]

[Another letter, from Augustus W. Cutler to Anthony J. Hill, dated March 9, 1863, being shown witness,] he says: It is in my hand-writing and sent by me to Mr. Hill, and the indorsement is in Mr. Hill's hand-writing.

[This letter is marked Exhibit 11, on part of Mr. Van Buren and others, defendants.]

[A paper, without date, endorsed, "Bermuda, A. W. Cutler—memoranda of hay and oats used by F. W. Walker's horses at Littleton Farm last year," and which I have marked Exhibit 12, on part of Mr. Van Buren and others, defendants, being shown witness,] he says: That is a letter written by me at the island of Bermuda, and given by me to Mr. Hill personally. The indorsement above given is in Mr. Hill's hand-writing.

Q. After the farm was sold to Mr. Hill in 1862, who paid the taxes and the repairs upon the place, and the other expenses which were made there?

A. I think Mr. Hill.

[Letter from Augustus W. Cutler to Anthony J. Hill, dated April 7, 1862, which I have marked Exhibit 13, on part of Mr. Van Buren and others, defendants, being shown witness,] he says: It is in my hand-writing. The household furniture sold at the sale, and afterwards sold to Mr. McAlpine, was there in 1853. I knew of nothing previous to that.

AUGUSTUS W. CUTLER.

Sworn and subscribed before me, this 13th day of July, 1869.

SAMUEL S. HALSEY.

M. C. C.

William H. Anderson, a witness, called and sworn on part of coplainant, deposes and says :

I was Sheriff of the county of Morris from 1855 to 1858—November 1855 to November 1858. While I held the office of Sheriff I received executions against Frederick W. Walker in favor of Anthony J. Hill. I think there was one in favor of George J. S. Thompson. I had several executions. I made levies upon Mr. Walker's property ; I levied on the personal property ; I did not remove it from the premises. I did not make sale of it while I was in office ; I have my sale book here ; the conditions of sale of the personal property are dated May 2, 1862 ; I was present at the sale ; William W. Fairchild was the auctioneer ; ex-Sheriff Vanness was at the the sale, and Sheriff De Mott also ; I had the oldest levies on most of the property; the sale of the most of the personal property was made under my executions—or the executions in my hands ; I did not get much money at the sale ; it was somewhere in the neighborhood of $20 or $30 ; I did not get enough to pay my fees and costs. The most of the personal property was struck off to Mr. Hill ; a few articles were struck off to other individuals ; I think I never made any bill of sale of the personal property that was struck off to Mr. Hill ; I don't remember that I ever was asked to make one ; I did not get any receipts on the executions ; I have never seen any ; if I had got any receipt it would be on my docket ; if I had had a loose receipt it would have been fastened in my docket ; I delivered none of the property. The property in the house, when I sold it, was where it was when I levied on it.

Cross-examinened by Mr. Mills.

Mr. Fairchild was my auctioneer at the sale ; he did the selling and delivered the goods. I think the articles that were sold were entered in pencil marks ; Mr. Fairchild's son was the clerk at the sale, and afterwards it was drawn off in ink ; I can't say how many copies were

drawn off in ink ; the one on my book in ink is all I have now, and is all the one I ever had I guess.

[Paper being shown witness, which I have marked Exhibit 6, on part of Mr. Van Buren and others,] witness says : I don't know whether I ever saw this or not ; the total amount of sales at the bottom of this paper, "$3,089.72," and the amount of cash received, "$123," correspond with my book ; this sale was made openly, and in the ordinary way that sales are made, as far as I saw, and was advertised in the usual way, and I meant that it should be in every respect a fair and honorable sale. There was some personal property there which was not there when I made my levies, which the other Sheriffs had levied upon. Mr. A. J. Hill was there. The sale occupied pretty nearly all day ; we might have got through a while before night ; it took a good while to sell so much property ; the reason why I took no receipt was, I suppose, that Fairchild and De Mott were to settle the matters, and it took some time to settle it up, and Cutler was a long winded fellow ; it laid along and was neglected after a while.

Redirect examination by Mr. Vanatta.

I advertised the real estate for sale, and sold it the twenty-fifth day of August, 1862. Mr. Cutler signed the conditions of sale, "Anthony J. Hill, per Augustus W. Cutler, att'y;" this sale was made at Drake's Hotel, Morristown, N. J.

Q. You say that Wm. W. Fairchild was the auctioneer who sold and delivered the property ; what do you mean by delivering the property ?

A. There was some property that was bought by other individuals besides Mr. Hill, and he took the pay for it, or most of it.

W. H. ANDERSON.

Sworn and subscribed this 29th day of July, A. D. 1869, before me,

SAMUEL S. HALSEY,
M. C. C.

Counsel for Complainant offered in evidence the following papers marked by me Exhibits in this cause:

A certified copy of a deed made by Samuel Van Ness, Sheriff, to Anthony J. Hill, dated December 1, 1862. Recorded December 28, 1863, which I have marked Exhibit J.

Also, a certified copy of a deed from William H. Anderson, late Sheriff, to Anthony J. Hill, dated February 7, 1863, and recorded on that day, which I have marked Exhibit K.

Also, a certified copy of a deed from Samuel Van Ness, late Sheriff to Anthony J. Hill, dated February 16, 1863, recorded December 28, 1863, which I have marked Exhibit L.

Also, a certified copy of a deed from Garret De Mott, Sheriff to Anthony J. Hill, dated September 19, 1864, recorded September 6, 1866, which I have marked Exhibit M.

Friday morning, August 27th, 1869.—Examination noticed to be had, but adjourned by consent to Tuesday morning, August 31, 1869.

Tuesday morning, August 31st, 1869.—Parties met pursuant to adjournment.

David H. McAlpine, a witness, called and sworn on the part of himself, deposes and says:

I live at Littleton on the farm heretofore known as the Walker farm. In 1866, somewhere between the fifteenth and twenty-sixth day of August, my attention was first called to the Walker farm; I was boarding at that time

at Elias C. Roy's, near Morristown ; my residence at that time was in New York, and I was doing business there ; my attention was first called to this Walker farm by an advertisement in the New York "Times ;" my wife first called my attention to it ; the advertisement stated that there was a farm for sale near Littleton ; my wife and I went to the farm ; we found a maiden lady named Catharine Young in charge of the dwelling house; at that time I had never seen nor heard of Thomas V. Johnson ; Catharine Young stated to us that Mr. Johnson was going to bring a couple of gentlemen there the next day, and that he, Johnson, lived right across the way ; I went and saw Johnson that afternoon ; it was between three and four o'clock when we drove over there; we saw Mr. Johnson ; I asked him if he had the farm on the opposite of the road for sale ; he said he had the refusal of it until 12 o'clock the next day, and that he had a couple of gentlemen from Brooklyn (I think he said) who were coming the next day to look at it. I asked him if the place could be bought, and what the price was. He said the place could be bought for $28,000 cash, and by paying him two and-a-half per cent. commission, and nothing less would buy the place. I asked him for the privilege of coming to look at the place the next day ; he said he could not give any privilege as he only had the refusal of it until the next day ; he said he was going to New York the following morning, and would probably see these parties who were coming to look at it ; unless there was a probability of my taking the place, and if there was a probability of my taking the place he would try and get the refusal of it extended to give me time to look at the place. The understanding was that he was to go to New York to try and get the refusal extended, and in the meantime I was to go with his son to look at the place, and if he could not get the time extended he was to telegraph to his son. I went over the following morning to the farm, and walked around the farm and through various lots, and I think through the buildings also, with Johnson's son. We received no telegram from Mr. Johnson, and I consequently left word with Mr.

Johnson's son to have his father meet me on the eight o'clock train going into New York on the following Monday morning. I met Mr. Johnson the following Monday morning on the cars, and we went into New York together; I am quite certain it was on a Monday morning, but I may be mistaken as to the day; he was very anxious to close the thing up; he said if I did not take it there were others who stood ready to take it; he said he was apprehensive that there was a party on the train we were on, going into New York to purchase the place; he said this person was Mr. John Bates. Johnson was very anxious to have me close the thing immediately; I endeavored to get more time out of him in order that I might examine farther; he said that unless I took the place that day the probability was that I would lose it—that unless I took it that hour even, that he thought the chances were I would lose it; I declined closing at his terms; I told him to go and see the parties, and I authorized him to offer them twenty-five thousand dollars cash. He came back and stated that $28,000 was the lowest price the place could be bought for, and that I had till one o'clock to accept it, and that the two and-a-half per cent. commission was to be paid by the purchaser; I told him I would give him an answer at one o'clock, because I wanted to go up to my factory and see how the finances were; I returned and met Mr. Johnson on the corner of Broadway and Murray or Warren streets, in New York; we then started to go down to Weeks & Foster's office, at 58 Wall street; I told him I would take the property, and as we went down to the office of Weeks & Foster, I stopped and took my lawyer to have the agreement drawn; I took blank checks with me to be filled up; we met at the office of Weeks & Foster Messrs. Van Buren and Dunderdale; the written contract was not made that day; they commenced to write the contract and did not finish it; there were certain conditions in it that I refused to comply with; they wished to state in the contract that I was to purchase all the property, except what did not belong to Mr. Hill; I refused to consent to this unless they would identify the articles; they referred to

the personal property ; the library and library furniture were not intended to be included in the sale. When I first talked with Mr. Johnson, it was expressly stated by him that the library and library furniture were not to be embraced in the sale—but all other personal property, it was understood, was to be that was on the premises. The written agreement was not completed in New York that day ; there was an arrangement made by which we were all to meet on the farm, on the following morning, between ten and eleven o'clock—Mr. Van Buren, Mr. Dunderdale, and myself and Mr. Cutler. A letter was written by one of the gentlemen to Mr. Cutler to meet us on the farm the following morning, and I brought it out —and I gave a boy, who was riding on the hind part of the stage, a quarter to go and deliver the letter to him ; I had no acquaintance with Cutler at the time ; I never had seen him but once up to that time to my knowledge, and never had spoken to him ; I understood the object of Mr. Cutler's meeting us at the farm was to point out and identify the property that belonged to Mr. Hill ; I went to the farm the next day according to appointment, and met Mr. Cutler and Mr. Johnson there ; I think I got there about ten o'clock ; Mr. Dunderdale and Mr. Van Buren got there about two or three o'clock ; they missed the morning train and came up on the eleven o'clock train ; before these gentlemen arrived, if I recollect aright, we walked through the building and around the grounds ; Mr. Cutler pointed out the articles of property which he said did not belong to Mr. Hill.

Q. Before Mr. Dunderdale and Mr. Van Buren came, did, or did you not tell Mr. Cutler that you had agreed to buy the property ?

A. Either Mr. Johnson or I did ; I don't know that I did personally ; the price was not mentioned by me before they came.

Q. What, if anything, was said by Mr. Cutler about the title to the property before Mr. Van Buren and Mr. Dunderdale came ?

A. Mr. Cutler said that he had had the selling of the property, but Mr. Van Buren was Mr. Hill's commercial

agent, and that Mr. Hill had given him, Mr. Van Buren, charge of it, and he would not interfere. That was about the substance of it.

Q. Did Mr. Cutler at any time on that day say to you, or in any way give you to understand, that Frederick W. Walker had any interest in that property?

Objected to as leading.

A. None whatever.

Q. Did he say to you, or give you in any way to understand, that Mr. Hill's title was not a perfect title, or that he had not a right to sell the property?

Objected to as leading.

A. Nothing of the kind; he gave no intimation that there was any doubt as to the title.

Q. Did he say anything of his own knowledge of the title to the farm, and if so, what?

A. He said that there was not a better title in the county —that he was a lawyer and knew all abou tit; that is the first I knew he was a lawyer; and he said he had had a great deal to do with searching titles, and that he knew the titles to most of the farms in the county.

Q. Did he say anything of having himself thought of buying the property, and if so, what?

A. He said that he had thought of buying the property, but Mrs. Cutler, or his wife, (I don't recollect which he said) objected to coming up there to live. The contract for the sale was entered into that day; John D. Van Buren drew it. Prior to this transaction I had never seen nor heard of either Mr. Van Buren, Mr. Dunderdale, Mr. Walker, or Mr. Hill; I never saw Mr. Hill; I never saw Mr. Walker until I saw him in this room during the taking of this testimony.

[Paper shown witness, which I have marked Exhibit M 3, on part of Mr. McAlpine,] witness says: This is the paper Van Buren drew and signed, and Mr. Dunderdale witnessed it at the time; the indorsement in Mr. Little's hand-writing was put on the day the deed was delivered; this agreement was read over in the presence of Mr. Johnson and Mr. Cutler before it was signed; Mr. Cutler and Mr. Dunderdale were walking around,

and I called them in to hear it read ; on that day I made a payment of ten per cent. ($2,800) on the purchase money ; Cutler was present when I paid it ; I paid it by check. Mr. Johnson presented me a blank check for his commissions to sign ; I refused to sign the check on the ground that I was to give so much ($28,000) for the property and the commissions, and if I did not get the property there was no commissions—because they were to be a part of the purchase money. The parties were all strangers to me, and I was not willing to give a check until I knew whether the agreement was consummated. There was a little talk between Mr. Johnson and me, and the matter was referred to Mr. Cutler, and he decided that the position I took was right. I inquired of Mr. Johnson as to good lawyers in Morristown ; he referred me to Mr. Little, and at the place where I was boarding I was also referred to him. I employed him to examine the title ; he reported to me a good title ; acting upon that I took my deed, and paid the purchase money on the 15th of September.

Q. Did Mr. Cutler tell you the day the contract was made, or at any other time, that no deed had ever been delivered to Mr. Hill for this farm ?

A. No sir ; I first learned it from my counsel, Mr. Little. I did not take any measures, or have anything to do with procuring the deed from Mr. Hill or his agent. I did not ask the Sheriff to take the deed to New York and deliver it to Mr. Van Buren ; I did not know who the Sheriff was. I did not know that the Sheriff's deed was delivered in New York, nor where it was delivered, nor anything about it any further than the report I got from Mr. Little. I presume I paid Johnson his commissions on the day I got my deed. I had never heard anything about the sale of the real or personal property of Fred. W. Walker except what I learned in searching the title. I took possession of the farm after the agreement was signed, and before I took the deed, under a lease ; I have continued in possession ever since. I moved my family there before I got my deed.

Q. Did you make any improvements, or lay out

any money about the place during the next year?

Objected to.

A. I did. I think I laid out in the neighborhood of $6,000 or $8,000.

Q. In what condition did you find the property as to needing repairs when you went there?

Objected to.

A. It was very much out of repair—some portions of the property.

Q. State what portions were out of repair?

Objected to.

A. I put a new roof on a portion of the barn, and a new tin roof on the house; and the gates and fences were out of repair very much. The fact is I had three or four carpenters there to work nearly the whole year; I put new sills under the barn, and a new girder. These repairs were necessary to be done. One of the buildings had strained apart and was settling down, and would have fallen before this if it had not been fixed.

Q. During this negotiation you learned, I suppose, that Mr. Frederick W. Walker had at one time owned the property?

A. I learned that before I got my deed.

Q. At any time before you received your deed and paid the purchase money in full, did Mr. Cutler, or any one else, ever intimate to you in any way that Mr. Hill held this title in trust for Frederick W. Walker?

Objected to as leading.

A. He did not—no one did; I never heard anything of the kind to my knowledge.

Q. Did you have any such suspicion, or any suspicion, that Mr. Hill's title was not a perfect title?

Objected to.

A. No.

Q. Were you or not advised by counsel that in his opinion Mr. Hill's title was a perfect one? and did you or not believe him, and act upon his advice?

Objected to as leading.

A. I did, of course; that is what I have counsel for.

Q. Up to the time that this suit was brought, did Mr. Walker ever notify you in any way that he had any claim upon the property ?

A. Never, up to the time I got notice from the Sheriff, about fifteen months afterwards. I received a paper about the same time from Mr. Vanatta.

Q. Did Mr. Cutler in the conversation at the farm on the day of the sale complain to you, or in your hearing, that they were selling the farm too cheap ?

A. He did not complain to me, nor in my hearing ; he did not say to me, nor in my hearing, that he had any interest in that farm.

Q. Did he state what offers had been made for the farm prior to that time and declined ?

A. I have no recollection of his stating any offers except the one he had in his pocket ; that is the only offer I recollect of his saying anything about.

Q. Did he say to you that day, or in your hearing, that the sale was wrong, or that he did not want it to be made, or that he was opposed to it, or make any objection to it ?

A. He made no objections ; he said he would not interfere with Mr. Hill's arrangements with Mr. Van Buren, his commercial agent. Mr. Cutler has said to me that Mr. Walker did not blame me in this matter ; at various times he has come and taken a seat with me in the cars, as we were going to New York, and he asked me the first time he met me after I had taken possession of the place, how I liked the farm, and subsequently, I think at one time he said Fred. was awful mad at Mr. Hill, but they couldn't and didn't blame me.

Q. Did you, either before receiving your deed or since that time, say to any one that you had inquired about Mr. Hill's responsibility, and that you had learned that he was a very responsible man, and that you did not rely upon the title to the property, but upon Mr. Hill's responsibility, or anything to that effect ?

A. I did not. [Paper shown witness, which I have marked Exhibit M 4, on part of Mr. McAlpine,] witness says : This was the deed which I received for the property.

Cross-examination by Mr. Vanatta.

This agreement, Exhibit No. 2, was read over to me and in my hearing before I signed it.

Q. You then knew that the property had been put up to sale under the Atwater foreclosure ?

A. I knew nothing personally, only what was stated in the agreement.

Q. State, if you please, all that you can recollect as to the facts which Mr. Cutler stated on the day that that agreement was signed relative to the title to the Walker farm—that is, what persons he mentioned as having previously owned it, and what he said as to how it had passed from one owner to another ?

A. I never heard Mr. Cutler say anything about the title to the farm as to who had owned it. I have no recollection of his stating who had owned the property, as he has stated in his evidence here. Nothing of the kind ever passed in my hearing that I recollect of, further than what I have stated.

Q. Did not you ask Mr. Johnson, nor Mr. Cutler, nor Mr. Van Buren, nor Mr. Dunderdale, why that place was called the Walker farm ?

A. No sir, I have no recollection of asking that question. I did not know at that time that the place was called the Walker farm that I recollect of ; I don't know when I first heard it called the Walker farm ; it may have been so advertised, or it may have been called the Walker farm at that time, but I have no recollection of it, because I went on to it so suddenly.

Q. Did you not think at the time that they were crowding up the sale with great haste and very sharply ?

A. Yes ; I thought they were crowding it up with a good deal of haste.

Q. Did you try to find out from Mr. Dunderdale or Mr. Van Buren why a longer and more reasonable time could not be accorded you to enable you to make fuller examinations and give the matter more consideration ?

A. This haste I speak of was on the part of Mr. John-

son. I had not seen Mr. Van Buren or Mr. Dunderdale up to this time.

Q. Question repeated.

A. I did not try to find out from them because I supposed Mr. Johnson to be their agent, and I only had up to such a time to close it, and at that time I went there to close it. I declined to sign the agreement on that day and that gave me further time, and when we met on the farm there was no question or difference in dispute except the title to certain personal property, and that was to be decided on that day.

Q. The agreement would have been signed at No. 58 Wall street, on the day you first met Mr. Van Buren and Mr. Dunderdale, had not there been some uncertainty as to what personal property was to be delivered, would it not?

A. I presume it would.

Q. And the only occasion for coming out to the farm was to identify certain personal property?

A. That was the only reason.

Q. Did not the haste with which the consummation with which this sale was pressed excite your curiosity?

A. Not at all; I am used to such things—that is, when men want to sell property for cash. I supposed it had to be closed up at a certain time, and it did not excite my curiosity.

Q. Did you understand at the time that the parties selling the property were cramped for money, and were under the necessity of realizing the money at an early day by selling that property for cash?

A. I understood that there were instructions given to close the property out at those figures at the earliest opportunity.

Q. Did you understand that a pressing need for money had prompted those instructions?

A. No sir; I did not understand anything beyond what the other question answered.

Q. How soon after Exhibit No. 2 was signed did you instruct Mr. Little to investigate the title?

A. Immediately, I think ; either on that day or the following morning. That is my way of doing business. I have no recollection as to dates, but I know that it is one of the things I would not leave.

Q. How soon after that did you first have any communication with, or from him, about the title ?

A. I can only speak from memory ; I think probably sometime in the first part of September—about the 5th or 8th of September I think.

Q. Did he furnish you an abstract of title in writing ?

A. My impression is he did, with the deed ; I think I have one, although I could not swear positively to it. If I have that abstract it is now in New York with my other papers. All those things I deposit there in a safe, and don't charge my memory with them any farther.

Q. Did he furnish you with a written opinion or statement as to that title ?

A. I have no recollection of any. I think I had a conversation with Mr. Little about this title before the abstract was delivered to me. My recollection is that I had a conversation with him about the title between the fifth and tenth of September ; it may have been earlier.

Q. Did you learn from him that he had discovered that Anthony J. Hill had no deed for the property at the time the agreement was made ?

A. I think he told me that his deed was not on record; that is my recollection.

Q. Did he tell you what was going to be done to get it on record, or whether anything was going to be done to get the deed on record ?

A. My recollection is that the Sheriff, or whoever had sold the property, had not delivered the deed, or that the deed was not on record ; I don't recollect exactly. Mr. Little said the deed was not on record. I did not know who had the deed.

Q. Did you not ask Mr. Little why it was that there was no deed to Hill on record, and what the explanation of that was, and where the deed was ?

A. I have no recollection of asking him that.

Q. Did Mr. Little tell you that Frederick W. Walker had filed a lis pendens, or some other queer paper, up in the Clerk's office ?

A. He said he had a notice of something of that kind, but on examination he found no such paper filed ; that is my recollection of it—some paper, I don't know what it was.

Q. Did he not tell you that he found a lis pendens filed in the Clerk's office of the county of Morris, but that upon inquiry he found no bill filed in the Court of Chancery ?

A. No sir ; I have no recollection of his saying anything to me about the Court of Chancery.

Q. Did he show you any letter, or any telegram, as his authority for stating that no such paper had been filed ?

A. I won't say about his showing me ; I think he either showed me or told me that he had a telegram from Trenton that there was no such paper on file ; that, I think, was the day we passed the title, although I am not positive as to that.

Adjourned to *Tuesday afternoon, August* 31*st*, 1869, at 2 1-2 o'clock.

Tuesday afternoon, August 31*st*, 1869.—Cross-examination of Mr. McAlpine continued by Mr. Vanatta.

Q. How many interviews did you have with Mr. Little between the 21st of August, 1866, and the 15th of September, 1866 ?

A. I could not say as to that, but I think probably I had three or four—that is, I had seen him three or four times, and spoke to him in reference to this matter ; the first time I spoke to him I do not recollect what he said in reference to this matter.

Q. What did he say about that notice that Walker is said to have filed ?

A. I don't know that he said anything beyond what I have stated; I have no recollection of his saying anything beyond what I have stated.

Q. Did he inform you why he had got that letter, or telegram, from Trenton. What had led him to get that?

A. I believe I stated that I did not know that he received it, but that he showed me it, or said he had got it. I have no recollection of his saying why he had got it.

Q. Did you understand that Mr. Little had got that letter, or telegram, in response to an inquiry, or whether it was a thing that had dropped in on him unasked and unexpected, accidentally?

A. My impression is, and was, that he had that information; how he got it, I can't tell.

Q. Did you not understand from Mr. Little that he had seen something from the Clerk's office, here in Morris county, which, in his judgment, made it necessary to inquire whether there was not a paper on file in Trenton, and that the letter, or telegram, was in response to that inquiry?

A. I can't say that I understood that it was from anything that he had seen in the Clerk's office.

Q. Did you not understand that the inquiry at Trenton had been induced by something Fred. W. Walker had been doing, or attempting to do, here in Morristown, in relation to that Walker farm?

A. Something of that kind was my impression.

Q. Didn't you ask Mr. Little why he had not gone to Fred. Walker for information about that matter instead of sending way off to Trenton?

A. No sir.

Q. Before you took that deed on the fifteenth of September, was not there a conversation between you and Mr. Little as to whether or no Fred. W. Walker had, or had not, commenced a suit in the Court of Chancery against Anthony John Hill and others, in relation to that Walker farm and the property on it?

A. I have no recollection of any.

Q. On or before the fifteenth of September, 1866, did not Mr. Little tell you that Fred. W. Walker had not filed a bill in the Court of Chancery against Anthony J. Hill, and to assure you that he was not mistaken, refer you to the letter, or telegram, already mentioned ?

A. I have no recollection of anything being said about the Court of Chancery, or any case in this Court of Chancery.

Q. To what did you understand that letter, or telegram, to refer—in other words, what pertinence had it to the business Mr. Little had in charge of for you ?

A. That information did not come to me in the first place from Mr. Little about any notice, if my memory serves me correct ; Mr. Dunderdale informed me that Mr. Walker had been to him with a paper, and that it was a black-mail operation ; that is my recollection of where I first heard this ; Mr. Dunderdale did not show me the paper, nor did Mr. Van Buren ; I don't know that he said that Walker had served it on him and Mr. Van Buren ; he said Mr. Walker was there to see him personally ; he did not say that Mr. Walker had served the paper, or how he got the paper ; I could not say when this was.

Q. Did he say why he thought it was a black-mailing operation ?

A. He said he knew Fred., and knew all about him, and that is about the substance of it.

Q. What did he say Fred. was demanding and asking ?

A. To be released from some judgments, or claims, held against him by other parties, and want to get some money out of it.

Q. Did he say that Fred. was trying to interfere with the sale hoping to get some money out of it ?

A. I drew that inference, from what was said.

Q. Did he say that Fred. was trying to break up the sale, or wanted to ?

A. I can't say that he did ; I have no recollection of his saying it.

Q. As you understood him then, he asserted that Fred.

wanted to levy black-mail by endeavoring to break up and prevent the consummation of this sale, did he?

A. No, that was not the idea; what he wanted, as was stated to me, was to get released from some other claims that were held against him, and that if Mr. George Walker would release him from a claim he had against him there would be no trouble about the title. (I can't tell just what time this information was given me.)

Q. What did he say Frederick W. Walker was threatening to do in order to induce, or compel them to accede to his demands, or requests?

A. He did not say he threatened to do anything, or made any threats—he merely said, Fred. was a troublesome fellow.

Q. Did he not say that Frederick W. Walker had served that notice to induce or compel the giving of the releases he wanted—and was not that what he called the black-mail operation?

A. No sir; I did not so understand it.

Q. Be good enough to tell us what the black-mail operation was. What had Walker done, or threatened to do, that he characterized as a black-mail operation?

A. I can't say; I don't know what the dealings were between Dunderdale and Walker; I merely said it was a remark he made; I don't know why he made it. I had little or no acquaintance with Mr. Dunderdale, and I did not ask him to go into any long explanation.

Q. Did you tell Mr. Little that Mr. Dunderdale had told you about Walker's having been there with a notice, and that he, Dunderdale, thought it was a black-mail operation?

A. I did not say that Mr. Walker had given Dunderdale a notice; I said that Mr. Walker had been there to see him; I don't know how he got the notice—whether he got it before or afterwards. I presume I told Mr. Little as near as I could recollect the conversation which took place between Dunderdale and myself.

Q. At that time did Mr Little say whether he had yet examined the records in Morris county or not?

A. I have no recollection of anything being said about the record.

Q. Did he say that he or Mr. Mills had written, or would write, to ascertain whether there was anything in that matter that Dunderdale had been telling you about?

A. I have no recollection of anything of that kind.

Q. Why did Mr. Little show you, or tell you about that letter, or telegram, on the 15th of September? What had previously occurred to lead him to refer to that letter, or telegram, on that occasion?

A. I don't know anything further than what I have already stated.

Q. Did you not understand at the time that that was information bearing on a matter which had previously been discussed between you and Mr. Little in connection with this title?

A. I had had very little to say to Mr. Little with reference to the whole matter; after I gave him the papers I left it with him, not knowing anything about these matters of searching titles, law, &c., and left the whole matter with him and had very little to say about it.

Q. Question repeated.

A. We had never had any discussion as I know of; I left the matter in his hands; I did not understand that it was in reference to some discussion we had had.

Q. Did you not understand that it related to a matter about which there had been some talk previously between you and Mr. Little?

A. Yes. I understood, of course, that it related to something we had spoken about.

Q. Now the matter which had previously been spoken about between you and Mr. Little was whether, or not, Frederick W. Walker had commenced a suit that might affect the title to the Walker farm, was it not?

A. I may appear very ignorant in answering that question, being a novice somewhat in these things, and never having had any litigation of any kind; I did not suppose that this was the commencement of a suit.

Q. Question repeated.

A. I did not so understand it. I took possession of the Walker place by virtue of a lease in writing ; I think that lease was made in Mr. Mills' office ; I am not positive ; I think it was made the same, or the next day after the agreement was signed ; the object was to get possession and take care of the personal property ; I am not positive whether or not I have that lease in my possession ; if I have, it is in New York. I took possession of the place within a week from the time the contract was signed ; I was boarding here, and was about going down to the sea shore, and instead of going there I moved up on the place, and remained there till the last of November ; my family commenced to reside there within a week after the agreement was made.

Q. I observe that the deed made in Mr. Hill's name by Mr. Van Buren to you is dated and acknowledged on the fifth day of September, and the stamps cancelled on that day. Why was that done so long before the delivery of the deed ?

A. That I can't answer ; I did not know it was on the fifth till now.

Q. Did Van Buren and Dunderdale ask you to accept the deed and pay the money before the fifteenth ?

A. No sir ; I have no recollection of it ; they did not, to my knowledge, inform me before the fifteenth that the deed was ready.

Q. Did you have any talk with Mr. John D. Van Buren about Mr. Walker's notice of lis pendens, or threat, or talk of a suit ?

A. I don't think I saw Mr. Van Buren from the day I took the lease, which I believe was on the day after the contract was signed, until the day I took the deed—and I had no talk with him.

Q. What did Mr. Van Buren say about Mr. Frederick W. Walker's notice on the day the deed was delivered ?

A. I don't recollect of ever having any conversation with Mr. Van Buren with reference to Mr. Walker.

Q. How often did you talk with Mr. Dunderdale on this subject ?

A. Very seldom. I don't remember of ever talking to him with reference to this subject, except that once ; I only saw him two or three times.

Q. Before Mr. Frederick W. Walker commenced the present Chancery suit, did you not on several occasions speak about Walker's Chancery suit to the purport that you thought it would not amount to much, or that it had died out, or in some other way allude to a suit that Walker was supposed to have threatened to institute ?

A. I have no recollection of having had any such talks about Mr. Walker, or about his suit dying out—never having seen Mr. Walker.

Q. Between the twenty-first of August and the fifteenth of September, 1866, did you not on several occasions talk about Walker's suit, or Walker's claim to that Walker farm ?

A. When you say talk about it, I say no ; he had no suit or claim then.

Q. During the period indicated in the last question, was not Walker's suit, or Walker's claim to that property, several times talked about in your presence and hearing ?

A. I have no recollection of hearing anything about any suit of Mr. Walker's until fifteen months after I had been in possession of the property.

Q. Before the fifteenth of September, 1866, and after the twenty-first of August, 1866, was it not talked of in your presence and hearing that Walker wanted to, and was trying to prevent the completion of the sale of that farm to you, and in those conversations did you not participate and talk about his efforts at black-mailing ?

A. No sir ; I have no recollection of anything of the kind.

Q. You said that on the day you met Mr. Cutler at the farm, Mr. Cutler spoke about an offer he had in his pocket. What offer was that—whose was it, and what amount ?

A. He said he had a telegram in his pocket offering him $30,000 for the one hundred acres lying front with all the buildings, but as Mr. Hill had given the matter

to Mr. Van Buren, his commercial agent, he would not interfere ; I have no recollection of Mr. Cutler's speaking to me of his mortgage that day in my presence ; he may have done so ; he spoke subsequently of having a mortgage upon land that my deed did not cover.. I put a new roof upon the main building ; I patched it up and tried for nearly a year to keep it tight, and finally was obliged to put a new roof on ; Mr. Searing put the roof on ; I put a roof on the main barn fronting the road—on 150 feet of it—the principal part of it, but not the whole of it. The building that was strained apart we call the cider house : we use the upper part for making cider, and in the lower part is stalls ; it is a building 35x40.

Q. Will you produce here the abstract of title and certificate, or opinion of Mr. Little, to be offered in evidence ?

A. I will under the advice of counsel, if I can find it.

Redirect by Mr. Little.

When I agreed to buy the property, Catharine Young was living on the property—and there was a man there who was taking care of some stock that belonged to Mr. Cutler. I don't know when the deed to me was executed, except as appears upon the paper itself.

Q. You said that Mr. Cutler, on the day of the sale, stated that he had an offer of $30,000 for a part of the farm—was that stated before, or after, Dunderdale and Van Buren came ?

A. Before ; that is my impression.

DAVID H. McALPINE.

Sworn and subscribed this 31st day of August, A. D., 1869, *before me*,

SAMUEL S. HALSEY,
M. C. C.

After the taking of the foregoing depositions, on three different occasions I was attended by Messrs. Mills and Little, who were ready to proceed with the examination

of witnesses, pursuant to adjournment. The examination on each day, was adjourned on account of the absence of Mr. Vanatta, who had professional engagements elsewhere.

SAMUEL S. HALSEY.
M. C. C.

IN CHANCERY OF NEW JERSEY.

Between
FREDERICK W. WALKER,
Complainant,
and
DAVID H. MCALPINE, et als.,
Defendants.
} *On Bill, &c., Depositions.*

Examination of witnesses in the above stated case, taken at Taylor's Hotel, in Jersey City, on Saturday, the sixth day of November, A. D., 1869, before SAMUEL S. HALSEY, a Master in the Court of Chancery of said State, pursuant to notice, in the presence of JACOB VANATTA and ALFRED MILLS.

Examination adjourned by consent to *Monday morning, November 8th*, 1869, at the same place, at 9 1-2 o'clock, A. M.

Monday morning, November 8th, 1869.—Examination of witnesses continued pursuant to adjournment.

Charles Brueninghausen, a witness, called and sworn on behalf of John D. Van Buren, deposes and says:

I am a physician, and reside at forty-six Lexington avenue. I have been practicing medicine since 1830; I have practiced in New York since 1844; I knew Anthony

John Hill; I first became acquainted with him in 1852, in New York; he had a temporary residence in my house for about eight or nine years before he left New York; he left New York, I believe, in May, 1866, to go to Bermuda; I took him on board the ship; during that time he was not much sick, but when he was sick I ordered things for him, and prescribed for him; he was not much sick until he was operated upon for a cataract; up to that time he had no other physician besides me—so far as I know. There were two operraions for the cataract; one was at my house on the twenty-sixth day of October, 1865, by Dr. Agnew, of New York; Dr. Altoph and myself were present; I am not quite sure that Dr. Altoph was present at this time; he was present at one time. The second operation was on the tenth of March, 1866, at my house, performed by the same physician; I was present at that time, and I am positive Dr. Altoph was present too; no other operation was performed before he went to Bermuda. After the second operation, Dr. Agnew attempted to remove something from his eye, but failed; this was after the shortly second operation. During the time he was at my house I was in the habit of seeing him very often; during the times he was sick he took his meals at our house; his meals were sent up to him. I saw him almost every two or three days while he was at my house, and during his sickness I saw him every day. I think during the time that I knew him he was always well in his intellect.

Q. During the time you knew him was his mental capacity ever impaired so as to render him unfit to transact any business?

A. Never. I think, particularly in business transactions, his judgment and memory were very sharp. He went from time to time to Morristown, to the farm near Morristown, and stayed sometimes a longer, and sometimes a shorter time. I was there once with him, and know the place; I cannot tell when I was there; I saw a Mrs. Gleason come to my house in New York when Mr. Hill was there.

Q. Did you ever hear Mr. Hill, while staying at your house, speak of Mrs. Gleason's coming there, and if so, state what he said ?

Objected to.

A. She visited him often—I believe too often, so that he gave the order not to admit her any more. This order was given during the time he was suffering from his eyes ; I cannot fix the time ; I cannot tell how long it was before he left for Bermuda ; I don't think I saw Mrs. Gleason at my house shortly before his leaving ; his order not to admit her was not given shortly before his leaving ; at the time the order was given, she was not at my house at that time. He was annoyed by visits at that time, and he did not want to see her, and perhaps others too, but particularly not her ; I don't know whether he saw her after that order was given or not, but my belief is, she never returned there afterwards. In the latter part of December, 1865, Mr. Hill was at our house ; I am sure I saw him on the 29th of December, 1865 ; I have a memorandum of it ; I charged him with something on my book ; I charged him for a visit on the 29th of December ; on the thirtieth of December, 1865, it was very stormy, and my daughter came home from Philadelphia, and Mr. Hill was very much annoyed because my youngest son let her come alone. Mr. Augustus Hill took her out of the carriage ; I think the thirtieth day of December, 1865, was on Saturday ; my daughter arrived home in the afternoon, and my son came home in the morning of the same day ; I don't recollect what time it was in the afternoon that my daughter came home ; I think it was an impossibility for Mr. Hill to go into the country at that time on that day. I recollect another instance ; I think he intended to go some days before, and he bought a dress for a servant at Morristown, but he did not go, and afterwards he made a present of the dress to some one else. He never went out at that time alone, but always with one, or the other, of his nephews. We had the pleasure of seeing his nephews twice, or three times, on the first of January ; they called upon us.

Cross-examined by Mr. Vanatta.

My house, in which Mr. Hill occupied apartments, was No. 95 Second avenue ; I lived there nine or ten years ; I believe I removed from there in 1867 ; I believe it was in the Fall that I removed from there ; I believe it was in the Fall of 1866, instead of 1867, that I removed from this house in Second avenue ; Mr. Hill came to live with us in that house the day we moved into it ; Mr. Hill occupied the second floor—the floor over the parlor ; he had the whole of that floor, consisting of three rooms ; he hired those apartments of me ; he hired them by the month ; Mr. Hill did not furnish the rooms, except something about his bed, his mattrass ; I furnished the rooms ; those apartments were kept for the use of Mr. Hill until he went to Bermuda ; he paid for them from the time he went there until he went to Bermuda ; he paid me fifty dollars a month for the use of the rooms; from time to time, we furnished him with meals ; he was often absent ; when he was sick, and during his operation being performed, we furnished himmeals ; it was a long period.

Q. Did you supply him with meals at any other time than when he was sick ?

A. Not regularly ; generally when he resided for some days at a time at our house, we supplied him with meals—I mean that he generally got his meals at our house.

Q. Was his board paid for by the week, or month, or meal ?

A. Sometimes by the meal, and sometimes by the month ; I would never charge him when he was not there.

Q. When he was in health, and staying in the rooms at your house, what, if anything, brought you into communication with him so as to see and converse with him ?

A. If I was at leisure, and knew that he was alone, I often visited him.

Q. How many times prior to his sailing for Bermuda

in May, 1866, did he have his baggage sent to the vessel, and then taken back again to your house ?

A. I am not aware of that.

Q. Are you not aware of the fact that before the day on which he sailed, on two or three different occasions he he had his baggage sent and put aboard the vessel for Bermuda, and after it got there he changed his mind and had it removed from shipboard, and had it sent back to his quarters in the city ?

A. Not that I know of.

Q. Did you not hear of that at, or shortly before, the time he sailed ?

Objected to.

A. I don't recollect.

Q. Did he ever have attacks of what is called hypochondria ?

A. What we generally call hypochondria—no. He was very much alarmed when the war broke out—every one was—and I believe he had investigated many things which were at stake, and he thought he was going to lose much, perhaps all, but I never saw him when his mind was impaired ; you might call it a nervous agitation, or excitement, that ailed him.

Q. Did he not frequently express a fear, or belief, that he was impoverished, or soon would be impoverished ?

A. I don't think to the full extent of impoverished.

Q. In periods when he was under that nervous excitement, did he not at times dress himself in old and dilapidated clothing ?

Objected to.

A. Not that I am aware of ; not so that it attracted my attention.

Q. Tell us what symptoms accompanied those periods of nervous agitation, or excitement,—tell us how he talked and acted ?

A. He generally spoke of the war, and more than he ever would have done before—the consequences which might occur by it—the anxiety of losing by the same ; this he repeated very often, and it affected at least his digestive organs, and in consequence of that the nervous

action of the brain in as far as it excited the convolute of the nerves, which have their principal seat in the brain—but this was only temporary, and not affecting his intellect.

Q. Was he stopping at his apartments in your house when the draft riots occurred in New York, in July, 1863 ?

A. I really don't know ; I believe at the time they occurred he was over the panic—because I am quite sure he never spoke any more, or showed any fear, of the gloomy effects of the war ; to my surprise, he was quite sensitive and even courageous. I am not quite certain whether he stayed at my house in Second avenue during the Summer of 1863, immediately following those riots ; he may have done so, and he may not. I had so much to do with my own affairs that I cannot really say whether he stayed at my house or not, during the months of July, August, September and October, of 1863.

.Q What year was it recently that fears were entertained of having cholera in New York as an epidemic— was it in 1863–4, or 1865 ?

A. I don't know—don't recollect ; I don't think lately we have had great fears of that.

Q. Did Mr. Hill since, or in 1863, have any fears or apprehensions of the cholera ?

A. Not that I know of. Mr. Hill was generally, in the Summer, at the farm—not continually, but generally; I cannot state the particular times that he was there always ; I don't know whether he was out there to stay before the Summer of 1863 ; I don't know when he bought the farm. I prescribed for him before this operation was performed on his eyes but seldom, once or twice in a year—that is to say, when he would be sick for a day or two, or some days. The book on which the charge of December 29th, 1865, is made against Mr. Hill, is in my possession at my house ; it is a book of about the size of an ordinary foolscap sheet, and about the same shape ; I believe I last examined that entry this morning ; I forgot it the other day when I was here, and so I looked at it this morning. When I was summoned to appear here

as a witness, I must know of course about what I would be questioned, and then I looked at the book and made this memorandum of the entry.

Q. How do you fix the date of your daughter's return from Philadelphia?

A. On the twenty-ninth of December there was a ball at Philadelphia to which she was invited, and I told her to return by the first of January, and she came back on Saturday, on the 30th; I fix the date of that ball because I know it was that date. I was invited to the ball; I don't know whether the invitation was printed or written; I have not seen the invitation that was sent to me within three years.

Q. Then for the date of that ball you rely entirely upon your memory?

A. I rely not only on my own memory, but on a conversation I had with my whole family, who knew of it too, and they posted me up on it—sharpened my memory; I was invited to a ball in Philadelphia for several years; I had that invitation before the year 1865, and after that year; the invitation extended to my whole family; I belonged to a society there, and they generally invited us all; this particular ball I don't know what it was given in honor of.

Q. You said that Mr. Hill gave orders not to admit Mrs. Gleason—to whom did he give those orders?

A. I don't recollect that I was present when he gave the orders; I think I was, but I am positive that the order was given to the family; I am positive that the order was given, because it was repeated in the family that Mrs. Gleason was not to be admitted any more. During the years 1865 and 1866, I was practicing as a physician, and I was away from my own house in the pursuit of my profession a good deal of the time; the servant attended on the door to admit visitors to Mr. Hill, or if she was engaged one of my daughters did.

Redirect examination by Mr. Mills.

I am a Prussian by birth; I was thirty-five years old when I came to this country; I can't answer whether

Mr. Hill was an American citizen or not ; I think he was born in Bermuda. He had lived here so long that I supposed he was a citizen. I never saw him vote.

Q. Where did Mr. Hill's nephew, Anthony Hill, stay in New York while he was waiting upon his uncle ? Where did he make it his home ?

A. In the hotel—I believe it was the St. Dennis—and partly at my house during the nights during the operations. The name of my youngest son is Edward Washington. Anthony Hill, the nephew of Mr. Hill, stayed at my house during the nights during the operations, and afterwards during the treatment following the operations.

Q. In your cross-examinations you remarked that Mr. Hill had investigated many things which he thought were at stake—to what did you refer—to money investments ?

A. Of course—to all his general business transactions.

Second Cross-examination.

Q. Are you sure that Mr. Hill's nephew, Anthony Hill, was with Mr. Hill during thsoe operations, or during the treatment following the operations ?

A. To my recollection he was there, but when, or how long, I don't know ; his nephew, Augustus, was there too, sometimes.

CHARLES BRUENINGHAUSEN.

Sworn and subscribed this 8th day of November, A. D., 1869, *before me,*

SAMUEL S. HALSEY,
M. C. C.

Edward W. Brueninghausen, a witness, called and sworn on the part of defendants, deposes and says :

I am twenty-five years old, and am the son of the witness last sworn. In the Fall of 1865 and Winter of

1866, my father lived at 95 Second avenue ; he left there in the Fall of 1866 ; in the Fall of 1865 I was living at No. 95 Second avenue ; I was in the war, and returned from the war in the latter part of September, 1865, and lived at 95 Second avenue until the second day of January, 1866 ; I was not married at this time ; before I went to the war I lived with my father at 95 Second avenue ; I went to the war in August, 1862, and returned in September, 1865 ; I served my three years ; off and on, during that time, I returned occasionally home ; Anthony John Hill furnished me my whole outfit when I went to the war ; I have known Mr. Hill since 1852, when I first saw him, but not very well until in 1856 or 1857, when he came to live with us ; after I returned to my father's house in September, 1865, and while I remained there I saw Mr. Hill frequently ; after I left my father's house, and until Mr. Hill went to Bermuda, I saw Mr. Hill occasionally. During the time I knew Mr. Hill in this way, I should judge that Mr. Hill's mental condition was as good and sound as any man's ; I suppose his memory and judgment were good, but I can't recollect now of any instance whereby I could say one way or the other ; I always supposed it to be good ; I always thought him fit and capable of transacting all his business, and never saw anything to lead me to believe his mind was impaired. On December 30th, 1865, Mr. Hill was at 95 Second avenue ; the principal reason why I locate him there at that time is, I was at a ball, or party, at Philadelphia ; this was given by my intended wife at that time, on Friday, the 29th day of December, 1865 ; I was there at the ball and my sister was there with me at the ball ; she, at the time, had a very sore foot ; and I had to come to the city of New York on the thirtieth of December to fulfill an engagement, which was to meet a gentleman that I was to meet on that between twelve and one o'clock, December 30th, 1865. This engagement was to make arrangements with a person who was going in business with me, or to buy a business. In order to fulfill this engagement I had to leave Philadelphia at eight o'clock in the morning, and

I desired that my sister should go with me, but as she had different things to arrange yet, and said she could not get ready, I went alone, and my sister took the eleven o'clock train from Philadelphia all alone. When she arrived home, Mr. Augustus Hill helped her out of the carriage, she being very lame in consequence of her sore foot. That same evening Mr. Anthony J. Hill sent for my sister, having heard, I presume, from Mr. Augustus Hill that she was sick ; I dont know whether he sent for her, but, at any rate, she saw him, and he was surprised that I did not come home with her. On Saturday, December 30th, I got home to my father's house at five o'clock ; I did not see Mr. Hill that Saturday night, but I heard from my sister ; I am positive I saw him on Monday, January 1st, 1866, and I think I saw him on Sunday ; I saw him on the morning of January 1st, 1866, I could not say positively as to the hour ; I recollect I told him on the first of January that I was going in business and had made arrangements, when he told me that the only way to get along was to put my own shoulders to the wheel in business ; he also found fault with me then for allowing my sister to go home alone on such a stormy, disagreeable day as the 30th of December ; I was married on the second day of May, 1867 ; I went in business on the second day of January, 1866. I recollect that orders were given to each one in our family not to admit Mrs. Gleason if she called to see Mr. Hill ; I recollect of seeing her once there positively ; I don't know whether I opened the door for her or not ; I think I did; I couldn't say positively when this was, but think it was between September, 1865, and January, 1866 ; she desired to see Mr. Hill, and the servant girl went up to ask Mr. Hill whether he would see her ; the answer I do not know, but I know she did not see him then ; I am not sure, but I think I have seen her there several times ; I don't know positively, but I think I saw her there after I came home in September, 1865, beside the occasion I have spoken of, and after that occasion ; I never saw her admitted to Mr. Hill on any of these occasions. During the Fall of 1865, and up to January, 1866, I

was not in business, and spent most of my time at father's house; I was very often in Mr. Hill's room; while in there I would converse about different things—go and see him and make a friendly visit; I have read for him, but not very often; I never advised with him about money matters; on this occasion I have spoken of as being in Philadelphia, I went on the Wednesday to Philadelphia previous to the Saturday on which I came home; I am pretty sure that when I went to Philadelphia Mr. Hill was at 95 Second avenue.

Cross-examination by Mr. Vanatta.

My impression is that I saw Mr. Hill a day or two before I went to Philadelphia; my impression is he was there in fact I am pretty certain, the names of the parties with whom I made the contract on December 30th, 1865, were P. H. Humphreys and J. W. Smith; one of these is the one I went in business with, viz., Mr. Humphreys, and we bought Mr. Smith out; Mr. Smith's place of business at that time was Hempstead, Long Island; I have not been in business at the same place ever since; I commenced the business at Hempstead, which we bought of Mr. Smith, and continued there till the latter part of 1867; after I commenced business at Hempstead, I stopped boarding at father's, but I had a room there and when I came to the city I stopped there; while in the military service I can say positively that I was home four or five times; in the latter part of December, 1864, I was down in Alabama, between Stevenson and Huntsville, in Alabama; I guess I was there on the first of January, 1865; on the last of December, 1863, I was in the Tennessee Valley, near Lookout Mountain, in the beginning of January, 1864. I came home veteranized and re-enliated. This was in the latter part of December, 1863, or early part 1864. I have attended several balls in Philadelphia. I attended one in February, 1866, and one in February, 1867. I am not sure of these dates. My sister was not at that ball in 1866. I was not there at a ball in 1865 prior to December. To my knowledge, I can't recollect

that I was there at a ball in 1864. I saw Mr. Hill January 1, 1866, at his apartments in my father's house, No. 95 Second avenue. I called on him all alone, to the best of my knowledge. That was my first New Year's call. On Saturday, December 30th, 1865, it stormed very hard; it was a heavy snow.

Q. Did you hear Mr. Anthony J. Hill give orders to not admit Mrs. Gleason to an interview with him?

A. I can't recollect that I have heard the order from him personally.

Q. Did you not understand that the order was to exclude all callers for the time being from Mr. Hill, unless it was his physicians or attendants?

A. It may be so, but I am positive that the name of Mrs. Gleason was mentioned.

Q. Did you ever hear a word of disagreement, or dispute, pass between Mrs. Gleason and Mr. Hill?

A. I never was present when Mrs. Gleason had an interview with Mr. Hill.

Q. You mentioned that Mrs. Gleason had called to see Mr. Hill on occasions other than the one when you said you knew she did not get an audience with him, and with regard to those occasions you said that you did not see her admitted to an interview with Mr. Hill—do you know that she did not have an interview with Mr. Hill on those occasions?

A. Not to my knowledge. I don't think she did. I do not know that she did not. I never saw her admitted.

Q. Did you ever know her to be refused admission except on the one occasion you have mentioned?

A. I can't answer that question any more than I have the previous ones.

Q. Did you ever hear her ask to see Mr. Hill, and hear her told that Mr. Hill refused to see her?

A. Yes. This was at the time I have referred to when she asked to see him, and she was waiting in the hall. I think I was in the room and she was waiting either in the hall or room, when she was told that she could not see Mr. Hill and she went away.

Q. You stated in your principal examination that on that occasion you did not hear, or did not know, what answer the servant brought back, but that all you knew was that she went away—was that correct or not?

A. It is. I was not in Mr. Hill's room when the servant came in with the message from Mrs. Gleason that she desired to see him.

Redirect examination.

The persons who came to see Mr. Hill rang at the front door bell of the house; the servant girl generally attended that door, but if she was busy my mother, or sisters, or any one who was at hand, did. We only had one servant girl at that time, and the family consisted at that time of father, mother, my two sisters, myself and an aunt. The ball given in December, 1865, at Philadelphia, was given after my engagement, and in honor of it and of my return home from the war. I became engaged to be married on, or about February 22d, 1864. The ball was given after I left the army.

Upon reading the testimony over to the witness he says:

When the servant girl went up to Mr. Hill's room to see if Mr. Hill would see Mrs. Gleason, I did not hear what Mr. Hill said to her; I only heard what the servant told Mrs. Gleason when she came back.

E. W. BRUENINGHAUSEN.

Sworn and subscribed this 8th day of November, A. D., 1869, *before me,*

SAMUEL S. HALSEY.

M. C. C.

Examination adjourned to *Monday afternoon*, at 2 1-2 o'clock.

Monday afternoon, November 8th, 1869.—Examination of witnesses continued.

Anthony B. Hill, a witness, called and sworn on the part of defendants, deposes and says :

I am a nephew of Anthony J. Hill, and a son of his sister. My father was his second or third cousin. I live on the Island of Bermuda. I lived with Anthony John Hill from September 1st, 1865, to February 8th, 1866—part of the time at the farm at Littleton, and part of the time in the city of New York. I lived at the farm with him from the first of September till the last of October—and after that, at No. 95 Second avenue, at Dr. Brueninghausen's house, in New York city. I arrived in this country on the first of September, 1865, and found my uncle out on the farm ; he was living at that time on the farm. He went in to New York in the last of October ; I did not go in with him ; I was not with him when the first operation was performed on him ; I was on the farm. I went into New York the day after that operation was performed, and from that time I stayed at 95 Second avenue, and some days (two or three in the week) I went out on the farm. On the eighth of February, 1866, I left for Bermuda. Mr. Hill did not go out to the farm from the first of September, 1865, to the eighth of February, 1866 ; Mr. Hill did not go out to the farm, but remained in the city. When I stayed at 95 Second avenue, I stayed in Mr. Hill's apartments ; I slept there in a different room from the one Mr. Hill slept in, but adjoining it ; my brother, Augustus Hill, stayed there with me ; he was there from the middle of October, 1865, with him, and came out to Bermuda with him in the latter part of May, 1866 ; my brother is now in Santa Cruz, in business there ; my brother and I waited on Mr. Hill after the performance of the first operation ; he had a nurse too, but I don't recollect his name ; during the

time I was with him I never went to any other place, except to the farm, and when I was not at the farm I was at 95 Second avenue ; I took my meals at the St. Dennis Hotel most of the time, and sometimes with him ; I saw Mrs. Gleason there once during the time I was with him; I never saw her there but once ; this was three or four weeks after the first operation ; after going to Bermuda February 8th, 1866, I remained there till October, 1867, when I came here again and stayed three months ; I was at my own place in Bermuda when my uncle came to Bermuda in May, 1866; he came to my place, and passed the rest of his life there, and died the seventh of February, 1868, at my house ; I was with him when he died—from May, 1866, up to the time he died, with the exception of the three months I was in this country, I was with him ; the three months I was here in, were October, November and December, 1867 ; I arrived out in Bermuda January 2d, 1868 ; Mr. Hill took his meals at our table, in Bermuda.

Q. What was the condition of Mr. Hill's mind during the latter portion of his life ?

A. He was always perfect ; he was never out of his mind, nor incapable of transacting business, but was always capable ; he retained his mind and faculties up to the last moment of his life ; he did not do any business ; he had letters written for him ; he was blind ; he dictated them ; I wrote several for him, and my sister wrote for him ; he was blind when he arrived in Bermuda, and had been ever since the operation ; Mr. Hill was born in Bermuda ; I never knew him there ; he had never lived with me until he came out in May, 1866 ; I knew Mr. Hill here in 1852 and 1860, and transacted business with him ; when I went out to the farm in the Fall of 1865 and Winter of 1866, I went out by Mr. Hill's direction, te direct the men who were at work there ; I have paid men's wages there ; he furnished me with the money. I have talked with him about the farm every time I would come back from there. I talked with him about the farm when I was at the farm in September and October, 1865.

Q. Did you ever hear him say that he held that farm in trust for Frederick W. Walker ?

Objected to.

A. No, I never did.

Q. Nor anything to that effect ?

Objected to.

A. No.

ANTHONY B. HILL.

Sworn and subscribed this 8th day of November, A. D., 1869, *before me*,

SAMUEL S. HALSEY,
M. C. C.

George Walker, a witness, called and sworn on the part of defendants, deposes and says :

I am a brother of the complainant. I live at St. Croix, in the West Indies. I went there first in 1846, and stayed there till 1855, and went out again in 1862, and have lived there ever since. I am a sugar planter and merchant there. I have known Anthony John Hill since 1835 ; I saw him last in 1862 when I went to St. Croix ; I had correspondence with him almost up to the time of his death ; I know the farm at Littleton, in Morris county, which is in dispute in this case ; the first I knew of it my brother Henry bought it of a Mr. Condict. At my brother Henry's death the farm fell to me; I was his executor and sole heir under his will ; I deeded it to my brother Frederick, the complainant.

Q. State how you came to deed it to him ?

Objected to as immaterial and irrelevant.

A. I deeded it to him as coming from my brother Henry, he having informed me that it was Henry's intention to deed it to him before he died ; no consideration was paid to me by Frederick for it ; there was a mortgage on it at that time given to Mr. Condict ; I paid this mortgage ; the mortgage mentioned in the bill and answer in this cause given by Frederick W. Walker to

me, was for a loan of $11,000 I made him in 1855; this was money loaned; the loan was made in New York, and secured by a mortgage on the farm, and was to have been next to the mortgage given to Mrs. Walker, my step-mother.

Q. What was it in fact?

Objected to.

A. It was in fact after another mortgage which I did not know anything about. This other mortgage was given to Mr. Atwater.

Q. Did you have any examination of the records made before you took your mortgage?

Objected to.

A. No, I did not. A decree was obtained in the Atwater mortgage; he sued for it and recovered; that decree was assigned to me; I paid between eight and nine thousand dollars for it; this $8,000 or $9,000 represented the Atwater mortgage which I had to pay to clear it off before my mortgage; Mr. Anthony John Hill paid it for me out of my money.

Q. Was the farm sold under that decree, and if so, who bought it?

Objected to as not within knowledge of witness.

A. It was sold under that decree and bought by Mr. Hill for me. I was informed of the purchase by Mr. Hill immediately after it was done, by letter sent to me at St. Croix by mail; the letter was dictated by Mr. Hill—it was not in his hand-writing, but was signed by him. My mortgage at that time was the third mortgage on the farm. At that time none of the principal or interest on that mortgage had been paid me.

Q. Did you give any instructions as to the sale of that farm, and if so what, to whom, and in what way?

Objected to.

If these directions were in writing, counsel objects to parol proof of them.

A. I did. I wrote frequently to Mr. Hill and to Mr. Van Buren to sell the farm whenever it could be done; I sent those instructions in no other way than by letter; the reason why I wished to sell it was, it was bringing me in

nothing, and likely to run me in debt, and I wanted to get out of it. Mr. Hill was my attorney when he was here, and afterwards Mr. Van Buren, to transact my business here.

[Paper shown witness, which I have marked Exhibit No. 14 on part of defendants. (The introduction of this Exhibit objected to by Mr. Vanatta as not stamped.) This paper is a power of attorney to Mr. Van Buren, dated St. Croix, July 12th, 1866;] witness says: This is in my hand-writing and the signature is mine; it was sent to Mr. John D. Van Buren; when the farm was sold to Mr. McAlpine I was advised of the fact by Mr. Van Buren and by Mr. Hill also.

Q. Were you satisfied with that sale?

Objected to.

A. I was satisfied he had done the best he could, although it is a low price as things have since turned. After paying Mrs. Walker's mortgage and interest, I realized something over $14,000; this amount was left for me after paying the Maria Walker mortgage and interest and Mr. Hill's proportion of the personal property. My own mortgage, with what I paid on the Atwater decree and interest, amounted to about $27,000—for which I got $14,000 out of the sale to McAlpine; that balance, nor any part of it, has never been paid to me, nor to any one for me, either in money or in any other shape.

[Exhibit E, on part of complainant, being shown witness,] he was asked:

At whose request did you execute that paper?

A. At my brother Frederick's.

Q. Why did you execute it when he was still owing you some $13,000 on the bond and mortgage given by him to you?

Objected to.

A. I never expected to get it, and I thought if the release would do him any good he was welcome to it.

Q. Did that release have any relation to, or was it internded in any wise to affect any sale of the farm previously made?

Objected to.

A. Such an idea never entered my head at the time, if it had, I should not have given the release. It was actually executed on the twenty-first of March, 1867, th day it bears date.

Q. Did you ever have any arrangement, or understanding, with either Anthony John Hill, or the complainant, that the farm should be purchased for the benefit of the complainant, or held in trust for his use ?

Objected to as irrelevant.

A. I did not.

Q. Did you ever know of any such arrangement being made between Anthony J. Hill and the complainant, or ever consent to any such arrangement ?

Objected to.

A. I did not.

Q. What was the inducement that led you to purchase the farm ? What object had you to gain ?

A. Merely to protect myself, and save what I could.

Q. Why was the bid made and the deed taken in Mr. Hill's name ?

A. So he could the more easily give title to it when it was sold, I being out of the country.

Cross-examination by Mr. Vanatta.

Q. At, or about the time that release, Exhibit E, was executed, was there any money deposited, or placed to your credit, and if so, what amount, and where ?

A. Yes. He paid me $1,700 for odds and ends that he owed me besides this ; he deposited it with the house of Aymar & Co., to my credit, and sent me their receipt for it; he sent me out the release first; I declined to sign it unless he would pay me these little odds and ends, which amounted to $1,700 ; he paid this, and then I sent him the release.

Q. You say that Mr. Hill wrote you after the sale under the Atwater decree—about how long after the sale did he write you ?

A. I suppose it was by the first vessel going out ; sometimes these vessels are two or three weeks apart ;

I sent the original letter to Bermuda to Mr. Hill before his death ; where it is now, I don't know ; it might have been in the latter part of 1867 I think, when I sent it to him. When I transmitted the power of attorney, No. 13, to Mr. Van Buren, I wrote him a letter with it ; at the time I transmitted this power of attorney I did not know that the Sheriff had never made any deed to Mr. Hill. Mr. Hill wrote me that he had taken the deed in his own name, and therefore I supposed that there was no deed in my name. Mr. Hill wrote me that he had bought the property in in his own name; I don't know that he said he had taken a deed—and this was before I sent the power of attorney. I was not in the United States from the year 1862 till last April.

Q. Did you instruct Mr. Van Buren to mix up the sale of what you called your real estate with a mass of personal property belonging to somebody else, and make a lumping sale of the two together ?

A. I only instructed him to sell the farm.

Q. Before he sold the farm to Mr. McAlpine, had you come to any understanding with Mr. Anthony J. Hill as to how much should be allowed for the personal property in the event of the farm and the personal property being sold for one round sum ?

A. I did not ; I left that to him, or his attorney.

Q. When, by whom, and in what way, was the amount to be allowed Mr. Hill for the personal property out of the McAlpine purchase money, arrived at, or agreed upon?

A I suppose it was calculated and divided by Mr. Van Buren, who was acting for both of us. I was not consulted about that apportionment before it was actually made. I was quite willing to leave it to Mr. Van Buren, or Mr. Hill. Mr. Van Buren transmitted to me my share of the proceeds of that sale ; he deposited to my credit with Messrs. Aymar & Co.—the time, I don't exactly remember. I never executed any deed or release to Mr. McAlpine for that farm.

Q. Did you ever send to Mr. Van Buren any instructions, or directions, about selling the farm at Littleton prior to your sending him that power of attorney ?

A. Yes, I have; I can't tell how long before; I think before Mr. Hill left New York I wrote him to try and get it sold; I mean before Mr. Hill left for Bermuda the last time; Mr. Hill was blind at the time and could not do much out doors, and Mr. Van Buren was acting for him. I did not write to Mr. Van Buren until I learned that Mr. Hill was getting incapacitated for doing business; I learned that Mr. Hill was getting blind and could not do much.

Redirect examination.

[Letter dated June 8th, 1866, marked by me Exhibit No. 15 on part of defendants, shown witness,] he says: It is in my hand-writing and is correct, and was sent at the time it bears date. The $1,700 paid me by complainant had no connection with, and formed no part of the mortgage and bond; it was for money lent him by me at different times. I never knew of any higher offer made for the farm than that made by McAlpine; I never heard before the bill was filed in this cause that the complainant claimed that Anthony J. Hill held the farm in trust for him. The release had been sent out to me some months before I signed it—I don't remember exactly; in November, 1867, an earthquake wave carried off most of my old letters and papers out of my office at St. Croix—most of the letters filed away were lost. The letter my brother wrote me accompanying this release was washed away by this earthquake wave.

Second Cross-examination.

Q. If in the Summer of 1866 you had known that shortly before that time $40,000 had been offered for the Littleton farm, exclusive of any personal property, would you have consented to selling that farm and all the personal property to David H. McAlpine for $28,000?

A. If some one had been green enough not to have accepted an offer of forty thousand dollars, I

should have written them to try and get another offer and to take it.

Question repeated.

I never was aware that such an offer had been made, and consequently I couldn't say what I would have done.

Q. My question is this, whether you can give any reason, or whether there was then any reason, to induce you to sell for $25,500, a piece of real estate worth $40,000, except the simple fact that you were not aware that that price had been offered for it, or that it would command that price in the market?

Objected to, because the fact is that no such price has been offered.

A. I kept continually writing them to sell the farm for the most that could be got for it. I would have preferred $40,000 to the $25,000.

GEORGE WALKER.

Sworn and subscribed this 8th day of November, A. D., 1869, *before me*,

SAMUEL S. HALSEY.
M. C. C.

Examination adjourned by consent to *Wednesday morning, November 10th*, 1869.

Wednesday morning, November 10th, 1869.—Examination of witnesses on the part of the defendant, Van Buren, continued, pursuant to adjournment.

Joseph Dunderdale, a witness, called and sworn on the part of Mr. Van Buren, deposes and says:

I have known Anthony John Hill since 1851. Until Mr. Hill became troubled with his eyes he transacted his

own business, excepting his real estate business.. His real estate business I managed for him from 1851—I mean his real estate situated in the city of New York, and some in Brooklyn. In 1863 and 1864 he began to be troubled about his eyes so that I had to write for him at that time, and his eye-sight gradually became worse, so that I had to do all his writing for him, drew all his checks, &c. My relations of this kind continued with him up to the time he left for Bermuda in the latter part of May, 1866. Up to that time, during the Winter and Spring before he left, I was in the habit of seeing him almost every day before he left, excepting Sundays; from the time he was confined to the house up to the time of his leaving, I saw him almost every day; this was after he left the farm and came to New York to be operated upon for his eyes; I think this was in October, 1865. In the latter part of December, 1865, Mr. Hill was at 95 Second avenue—I recollect it perfectly well; Mr. Hill requested me to keep a memorandum of any expense I might be at in coming up there to his house—charging him with my car fare, as I lived down on Long Island and I had to come up expressly for him, and I used to make those charges every week at the end of the week, and those charges embraced those periods from the twenty-fifth of December of 1865 up to the time he left; I bought a little ledger, I remember, at the time, on purpose to put down a particular account in; those charges indicate that he was in the last week of December, 1865, and the first week in January, 1866, at 95 Second avenue, New York. I generally went to see Mr. Hill from the twenty-fifth of December, 1865, up to the time he sailed for Bermuda, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon. I began to write regularly for him about the twenty-fifth of December, 1865—I mean by writing regularly at that time, was during the periods of operations on his eyes—for he had several of them—but I wrote for years for him before that. From October, 1865, until Mr. Hill left for Bermuda, I never saw Mrs. Gleason at the house, or in company with Mr. Hill. During that time he had to remain in the house almost

all the time, excepting taking a walk with his nephew, Augustus, for exercise. I was out at Mr. Hill's farm near Morristown; the first time I was out there, was in company with Mr. George Walker and Mr. Hill, and that was in the Fall before Mr. George Walker went to the West Indies—I don't know the date exactly; I was there at a sale of horses and neat cattle; this sale that I allude to, Mr. George Walker was present at, and took place the Fall before he went to the West Indies. Mr. Hill went to reside on the farm I think the Spring following, and his residence from that time was at the farm; I was frequently at the farm after that; I went at Mr. Hill's request; the business I generally went for was, I wrote chiefly for Mr. Hill, arranged his papers, and when he was absent from the farm I superintended the men and took care of the place.

Q. During all the time you were at the farm, who exercised acts of ownership there?

A. Mr. Hill.

Q. The sale of the Walker farm took place on the twelfth of September, 1864, under the Atwater decree—do you know of Mr. Hill's writing to George Walker about that sale, and if so, when was it, as near as you can tell, and did he write by his own hand, or by an amanuensis?

A. I wrote a letter to Mr. George Walker for Mr. Hill, informing Mr. George Walker that the farm had been sold, and that he (Mr. Hill) purchased it for him (Mr. George Walker); I wrote him a few days after the sale, under Mr. Hill's direction.

Mr. Vanatta objects to any evidence as to the contents of this letter before any of the contents were stated, and while the same was being given.

I do not know where that letter is. This letter was written at the farm.

Q. Did you have a conversation with Mr. Hill about the farm, and if so, how often?

Objected to as irrelevant.

A. Frequently.

Q. Did you ever hear him say that he held it in

trust for Frederick W. Walker, or any thing to that effect?

Objected to.

A. I never did.

Q. Did you ever know of an offer of $35,000, or $40,000, being made for that farm prior to its sale to McAlpine?

A. There was an offer made for the farm, or an offer of trade, by a Mr. Wood, of some leasehold property in New York, which fell through. There was an offer made, I think, by Mr. Stevens of Hoboken, through his agent.

Q. Do you know the value of the property offered by Mr. Wood in trade, which property was refused?

A. I do not. I believe there was an offer made by Mr. Stevens, through his agent, of $25,000 for the farm, furniture, library, and it fell through. Mr. Van Buren would not take it. Stevens dropped it. I know of no other cash offer. I believe that Mr. Bates made an offer at one time; I remember of hearing a conversation between Mr. Hill and him about an offer he had made, but there was very little money to be paid and Mr. Hill would not take it. These are all the offers I have ever heard about, with the exception of the sale to McAlpine.

Q. Up to the time of Mr. Hill's departure for Bermuda, what was his mental capacity to transact business?

A. Perfect.

Q. Was his mind at any time before he left for Bermuda impaired?

A. Not at all; his memory was excellent, and his judgment on business matters was excellent also. Mr. Van Buren said the farm must be sold; that was in August, I think, of 1866, and authorized me to advertise the property—which I did, in three or four papers in New York. Many persons came to see me about it, but the price was too high. At last Mr. T. V. Johnson called and said he thought he had a customer, and wanted the refusal for sometime—about a week I think. I told him I could not give him it, for I might miss a

purchaser by doing so. He came again, and I gave him the refusal for a day or so. I told him that the farm must be sold for all cash, and he came and made me an offer of, I think, $25,000, which I refused. The price I named was $30,000 for the farm, and farming utensils, and furniture, with the exception of the library and all the furniture in the library room. Then Mr. Johnson came again, and told me that he would give me $28,000 cash, and that was the best he could do. I told him, before I could give him a decided answer I must see Mr. Van Buren, the executor. I saw Mr. Van Buren the same day that Johnson saw me, and told him of the offer; I think this offer was written—and Mr. Van Buren concluded to accept it. I notified Mr. Johnson accordingly, and he then gave me the name of his customer, which was Mr. David H. McAlpine.

Q. Did Mr. Johnson tell you when he was talking with you about the property, at the time you named a price for it, that he regarded the property very cheap at that price, and that if you would give him reasonable time he could get you a great deal more money for it, or anything to that effect?

A. He did not. There was a conversation between Mr. Johnson, myself and Mr. Van Buren, in which the price that we were getting for the farm was talked of; Johnson said to Van Buren that it was a capital sale for all cash, but that if we could give him more time he might perhaps get two thousand dollars more than $28,000—but he thought that we should have to leave a good portion on mortgage. That is the only conversation I had with Johnson in reference to the price we were getting for the sale of the farm. This conversation took place in my brother's store in Nassau street, in New York. This conversation was just after the conclusion of the sale and the acceptance of Johnson's offer. In order to show that these meetings were not purely accidental, I would state that I had my desk in my brother's store. I advertised the farm from there.

I believe the next step after I informed Mr. Johnson that his offer of $28,000 was accepted, Mr. Van Buren

and myself arranged to meet Mr. McAlpine, Johnson and Mr. Cutler, the latter to whom I wrote a letter telling him that we were coming out and would like him to meet us at the farm, as there was some property in the barn consisting of oats and hay, and I believe some corn in the crib, which belonged to parties whom Mr. Cutler knew and he could it point out to Mr. McAlpine, and it was not included in the sale. Mr. Van Buren and myself went out to Morristown and up to the farm ; we missed one train and had to take a later train, but arrived at the farm at about one o'clock, and found these gentlemen (Messrs. McAlpine, Cutler and Johnson,) waiting for us. They had been over the farm—Cutler had been showing them over the farm and pointing out those things in the barn that did not go in the sale, when we all went into the library. A contract was drawn out, I believe, by Mr. Van Buren, and Mr. McAlpine gave Mr. Van Buren a check for $2,800, being the amount to be paid down to bind the bargain.

Q. Was anything said at that time with reference to the title to the farm? and if so, by whom?

A. I think Mr. Cutler said that the title was one of the best in New Jersey, and that he knew all about it ; that was in the library, I think, in the presence of me and Mr. Van Buren, and I think Mr. McAlpine and Mr. Johnson were there too ; the contract was read over aloud before it was signed ; I had had no conversation with Mr. Cutler before that, that day, about the sale of the farm ; we went right into the library as soon as we got there and brought the matter to a close—as we were late, we were hurried. I think that we had some idea of going back to New York that same evening ; Mr. Cutler wanted Mr. Van Buren and myself to go and stay at his house that night, but we concluded to stay at the farm ; so we stayed there that night ; Mr. Van Buren and myself promised to dine with Mr. Cutler the following day.

Q. That day at the farm, did Mr. Cutler tell you that you knew that Mr. Hill would not allow him (Cutler) to sell the farm alone for $35,000, and did you reply to that,

that it could not be helped—that Mr. Van Buren was the attorney and had the power, and had sold ?

A. I have no recollection of any such conversation ; I did not walk on the farm with Mr. Cutler before the agreement was drawn that day ; I did not walk on the farm at all that day ; I did not even go in the barn ; I have no recollection of walking in the garden with Mr. Cutler ; I had no conversation with Mr. Cutler in regard to this sale at all ; Mr. Cutler did not tell me that day at the farm that Mr. Walker would not submit to the sale ; I did not hear Mr. Cutler advise Mr. Van Buren to come and see Mr. Mills in reference to the sale ; I remained with Mr. Van Buren at the farm that night ; I did not hear Mr. Cutler tell Mr. Van Buren that day that he should write or telegraph to Mr. Walker ; after the transaction was closed Mr. Cutler remained at the farm till well on towards dusk, or evening, and we promised to go and dine with him next day ; we did dine with Mr. Cutler the next day at his house ; I don't remember that at that time I told Mr. Cutler I had had an interview with Mr. Mills before I came to his house ; I did not on the day of our being at the farm hear Mr. Cutler say that Frederick W. Walker had any claim to that farm, or any interest in it.

Q. State what was said, if anything, in reference to that matter by Mr. Cutler on the day you dined with him, in your hearing ?

A. Previous to dinner Mr. Cutler, Mr. Van Buren and myself, and Mrs. Cutler, were in the library, on the left hand side of the hall of Cutler's house, and the conversation turned on the sale of the farm ; Mr. Cutler told Mr. Van Buren that he should have to write to Mr. Frederick Walker and tell him what had transpired as to the sale of the farm, as Mr. Walker claimed to have an interest in it ; Mr. Van Buren replied—why did you not mention this to me before the contract was signed ? I do not remember Mr. Cutler's reply ; dinner was announced and we went in to dinner; that was the end of that business, I believe.

Q. Did Mr. Cutler state any of the particulars of Mr. Walker's claim ?

A. I don't remember that he did ; I have stated everything as far as my memory serves me as to what occurred at Mr. Cutler's house with reference to this matter. I was not present at the time the deed was delivered to Mr. McAlpine ; I was present at Messrs. Weeks and Foster's office one day, but I think it was about some postponement ; I think I was at Messrs. Weeks & Foster's office one day when Mr. Van Buren and McAlpine were there before we went out to the farm ; I think Mr. Little was there too.

Q. Did you hear anything said about a warranty deed being given by Mr. Hill at any time before the delivery of the deed to McAlpine ?

A. I think I did ; Mr. Van Buren expected to give a quit claim deed, but waived the matter—Mr. McAlpine desiring a warranty deed ; I did not hear any contest or dispute about it ; I think there was no dispute at all about any of the transactions ; there was some kind of a dispute at the farm with Johnson about his commissions —that is all the dispute there was ; that was between McAlpine and him. Mr. Hill sailed for Bermuda, I think, on the 20th of May, 1866 ; it was on a Sunday ; I accompanied him to the vessel, and Augustus Hill, his nephew, also.

Cross-examined by Mr. Vanatta.

Q. Mr. Hill did not get off the first time he sent his baggage to the vessel, did he ?

A. No sir.

Q. How many times did he send his baggage to the vessel prior to the day on which he sailed ?

A. I think only once ; I don't know how long that was before the day on which he did sail ; I suppose this was a day or so before he sailed ; I never knew that it was taken back from the vessel to his house ; I do not remember that any baggage was placed on board the vessel the day he sailed ; I don't think there was any baggage in the carriage that we went down in ; I think his baggage was placed on board the vessel the day before

he sailed; I think Mr. Augustus Hill, his nephew, attended to getting his baggage from his rooms to the vessel.

Q. Did Mr. Anthony John Hill have periods of melancholy, or depression, or low spirits, in the latter portion of his life?

A. I never knew him to be so, excepting at the time he had those operations performed on his eyes, and that made him a little nervous sometimes.

Q. Did he have any fears of having his fortune lost, or impaired, in consequence of the war?

A. I never heard him express himself in that way at all. At the time of the New York draft riots, in 1863, I think Mr. Hill was out at the farm.

Q. Why do you think so?

A. Merely from memory—I have no reason; I don't know how long prior to those riots he went out to the farm; I think in the Summer of 1862 Mr. Hill lived at the Astor House, but I am not sure; he might have been living at the Stevens House; I think I am astray about that; he might have been at Mendham; he owned a place there; I can't state the time of his leaving that place at Mendham; I remember of his selling it, and to whom he sold it; he sold it to a Mr. Lambert; I think it is more than ten years ago since he sold that Mendham place; I think, I could not swear positively, where he was residing in 1862; after he sold that farm at Mendham he resided at the Stevens House, or Astor House.

Q. You spoke of having got a book in December, 1865, in which to make memorandums of when you went to see Mr. Hill, or of your expenses in going to see him—where is that book now?

A. At my house. The book in which I kept my expenses was a little book of my own—which I had had for several years. The book to which I referred as having purchased for Mr. Hill was a cheap ledger in which to draw off two or three particular accounts of persons with whom Mr. Hill had business in New York that were in a snarl, and we thought we should have to draw them off from the beginning, debit and credit, in this book—but the

book was never used ; this is the book I purchased in Dec., 1865 ; I can't tell where that book is now ; I presume it is among Mr. Hill's things ; it was put among them when he went away ; there was never any entry made in it. I live at Bay Ridge, Long Island, and did live there in 1865 and 1866.

Q. How much of the time did you stay out at Littleton ?

A. I was out at the Littleton farm at various times ; I could not positively give you what proportion of my time, because there was nothing regular about it ; I was there sometimes one or two days, and then would not be there again for a couple of weeks—and I have spent as long as two weeks there at a time with Mr. Hill, but was always a guest of Mr. Hill's ; I went out there by his invitation, and considered myself his guest. I was not in the employ of Mr. Hill, or received any pay from him, excepting my commissions for managing his real estate, and collecting his rents in New York ; I was not out at Littleton in 1863 ; I never was on the Littleton farm until the sale at auction of the stock, horses, &c., when Mr. George Walker was present before he went to the West Indies.

Q. Were you at the farm at Littleton in 1864 ? and if so, how often ?

A. If the auction sale was in 1864, I was then there, and at the auction sale.

Q. Can you make any further answer to that question ?

A. No sir ; I am pretty sure I was not there till early in the Spring of 1865.

[Being shown a letter, which I have marked Exhibit N, on part of complainant, from Anthony John Hill to Augustus W. Cutler, dated January 8th, 1866,]

Q. Is this letter in your hand-writing ?

A. That is my letter ; it is in my hand-writing for Mr. Hill ; I presume that letter was sent to Mr. Cutler ; I remember that letter—it was written at No. 95 Second avenue.

Q. You say you advertised the farm for sale in

August, 1866, and that then many persons came to see you about it, but the price was too high—what price did you name to those persons ?

A. Thirty thousand dollars. This was understood to include everything except the library and the furniture contained in the library room—and I think there was nothing said about any crops. Cutler had charge of the farm, or had something to do with it.

Q. Who fixed the $30,000 as the asking price ?

A. Mr. Van Buren named the price, cash ; I don't know whether Mr. Van Buren at that time had ever seen the farm at Littleton.

Q. Why was the purchase money of the farm to be all paid in cash at, or before, the delivery of the deed—or why was not a portion of it allowed to remain on mortgage, if you know ?

A. As far as I understood, Mr. George Walker wanted his money and desired that the thing should be closed up ; I don't know why Mr. George Walker wanted his money at that particular time.

Q. Is there any serious difficulty in getting a good mortgage cashed in New York ?

A. There has been.

Q. Was there at that time ?

A. I should think so.

Q. At that very time, and ever since, were there not insurance companies, and other companies having large amounts of money in New York and in Newark, who employed agents to solicit loans for them on mortgaged securities on lands in New Jersey ?

A. As far as my experience went, a New Jersey mortgage could not be negotiated in New York at all, and as to New York mortgages people preferred putting their monies into Government securities, as a general thing ; and the business became so miserable that the negotiators of mortgages retired from the field.

Question repeated.

A. Not to my knowledge.

Q. After Mr. Johnson's offer of $28,000 for the property had been accepted, was there an agreement for the

sale of the property drawn up in New York before you and Mr. Van Buren went out to the farm ?

A. I think there was some writing to that effect ; I think that the writing, or proposition to purchase, came from Mr. McAlpine, through Johnson, before the matter was entertained at all ; I was very particular, as the proposition to purchase came through Mr. T. V. Johnson.

Q. What I refer to, is this—whether after Johnson's offer of $28,000 was accepted, Mr. John D. Van Buren, before you and he went out to the farm, did not draw up an agreement of sale from Anthony J. Hill to David H. McAlpine, and submit it to Mr. McAlpine for his signature, and he declined to sign it until the excepted personal property was more definitely ascertained ?

A. I have no distinct recollection on that point.

Q. Was the coming out to the farm by you and Mr. Van Buren in consequence of suggestions made by Mr. McAlpine, or was it at Mr. Van Buren's instance, or yours ?

A. I think we went out to the farm at the suggestion of Mr. McAlpine to have such items pointed out by Mr. Cutler as were not to be included in the sale—the crops in the barn, belonging to sundry individuals who had purchased them through Mr. Cutler, and he had to point them out ; and Mr. Cutler, I think, had pointed those articles out when we arrived at the farm.

Q. Was there any other reason for not signing the contract in New York, except that suggestion of Mr. McAlpine that he would like to have the excepted personal property definitely ascertained before the contract was signed, and if there was, what was it ?

A. I know of no reason unless it might be that. I think I was present at the office of Weeks & Foster when the deed was delivered to McAlpine, and the balance of the purchase money was paid. I think I was not present when the Sheriff's deed to Mr. Hill was delivered in New York and the Sheriff settled with ; I have no recollection of it.

Q. On the day you and Mr. Van Buren dined with Mr. Cutler, were you and he in Morristown on that day ?

A. Yes sir; I think we were at Mr. Mills' office; I saw Mr. Fairchild there that day. I think Mr. Van Buren and myself went to find Mr. Fairchild at his house; he was not at home; we returned to Mr. Mills' office, and after being there some time, Mr. Fairchild came in, having learned at his house that we had been there, as he stated. I think Mr. Van Buren wanted to see Mr. Fairchild something about the papers relative to the farm; I don't know what papers they were any further than that. I do not remember that any arrangement was made with Mr. Fairchild that day to meet Mr. Van Buren in New York; I did not know Mr. Fairchild, or anything about him at that time; I did not know anything about his acting for the late Sheriff at that time; I only remember that one interview with Mr. Fairchild at Morristown, at which I was present. I have known Frederick W. Walker for three or four years; I knew him before this sale was made to McAlpine—for sometime before.

Q. Between the time the contract was signed at the Littleton farm by Mr. McAlpine and Mr. Van Buren, and the time the deed was delivered to McAlpine, did you see Frederick W. Walker, and if so, when?

A. I think I saw Mr. Walker in New York; I think it was at my brother's store in Nassau street—I cannot give the date of this; Mr. Walker left a paper with me on that occasion, addressed to me; it was an order, or something of that kind, or an injunction signed by some lawyer in Newark, ordering me not to move anything from the farm. Walker did not say anything about my showing that paper to Van Buren; it was a paper to me. I showed Mr. John D. Van Buren this paper sometime after I received it; I can't say how long it was after I received it; I think it was at the store; I think it was not on the same day Walker delivered it to me; I think it was sometime after. I did not see Mr. Van Buren every day—sometimes three or four weeks would elapse before I would see him.

Q. You told Mr. David H. McAlpine that Mr. Walker had served that paper on you, did you not?

A. I think I did ; I think it was at my brother's store; he used to come in there occasionally to see me ; I don't remember whether I made that communication to Mr. McAlpine on the day I received the paper or not ; I think not ; Mr. McAlpine did not come in there very often.

Q. Did you show that paper Mr. Walker left with you to Mr. McAlpine ?

A. I do not remember ; my impression is that I told Mr. McAlpine that I had such an order served on me ; I may have showed it to him—I don't remember.

Q. Did you have any reason for not showing it to him, and if so, what was it ?

A. No sir.

Q. Why did you mention it to Mr. McAlpine ?

A. I think Mr. McAlpine came in and asked me if I had received any papers—but I do not say that I did show him the paper, for I do not remember doing it.

Q. Did he tell you who had told him that you had received a paper, or why he supposed you might have received a paper, or who he supposed that paper had emanated from ?

A. I have no distinct recollection whatever about it. The paper served on me I considered useless ; I had nothing to do with it.

Q. Did Mr. McAlpine ask you to let him see the paper you told him you had received ?

A. I have no recollection that he did.

Q. State what you said to him about that paper ?

A. I have no recollection of what I said to him, or that I said anything to him about the paper.

Q. Did you not tell him that Frederick W. Walker had been to you with a paper, and served it on you ?

A. I have no recollection of ever saying so to him.

Q. A few minutes ago you stated that you did tell Mr. McAlpine that Walker had served a paper on you—now what I want, is, the language in which you made the communication, as nearly as you can state it.

A. If I did show the paper to Mr. McAlpine, of

which I have no distinct recollection, I have no remembrance of the conversation.

Q. State the substance of it to the best of your ability?

A. I cannot state the substance of it, for I have no remembrance of it.

Q. Mr. David H. McAlpine testified in this cause in these words: "Mr. Dunderdale informed me that Mr. Walker had been to him with a paper, and that it was a black-mail operation." Is that statement true or not?

A. I cannot answer, for I have no recollection whatever of the conversation with Mr. McAlpine.

Q. If you did so say to Mr. McAlpine, what did you mean by saying that it was a black-mail operation?

A. I have no recollection of the conversation whatever.

Q. Question repeated.

A. That is the only answer I could make.

Q. How long is it since you have wholly forgotten that conversation?

A. I cannot state how long ago, for I do not recollect any conversation.

Q. Did you on that occasion say to Mr. McAlpine that you knew Fred. and knew all about him, and that he wanted to be released from some judgments, or claims, held against him by other parties, and wanted to get some money out of it?

A. I have no recollection of the conversation with McAlpine at all.

Q. Do you think that you said that, or anything like it on that occasion?

A. I do not remember any conversation had with McAlpine, and therefore have no thoughts on the matter.

Q. As a general thing, is your memory good, or very defective?

A. My memory, as to matters of importance, I flatter myself is pretty fair.

Q. Did you not esteem this sale to McAlpine as a matter of some importance?

A. I should think it was, as to Mr. George Walker's interest in the matter.

Q. At the time you told Mr. McAlpine that Frederick W. Walker had served a paper, or notice, on you, did not you and Mr. McAlpine have a conversation as to whether Walker's claim need interfere with his taking the title, and in which you so shaped your discourse as to induce Mr. McAlpine to believe that he need not be deterred from taking the title by Walker's claim ?

A. I do not remember of having had such a conversation with Mr. McAlpine.

Q. Do you mean to convey the impression that David H. McAlpine took the trouble to ask you whether you had been served with a paper, or notice, relative to the property he had bargained for, or that you took the trouble to inform Mr. McAlpine that you had received such a paper, and that yet no conversation passed between you and McAlpine in relation to the claim set up by that notice ?

A. As to conveying impressions, truthful ones are the only ones I wish to convey ; as to the notice, I looked at it as a piece of blank paper, and considered it worth about as much to me.

Q. Did you express that estimate of the paper to Mr. McAlpine ?

A. I have no recollection of my expressions to Mr. McAlpine.

Q. Do you believe now that when you told Mr. McAlpine that Walker had served that paper on you, that a conversation did not take place between you and Mr. McAlpine in respect to the claim set up in that paper ?

A. I believe it is possible that a conversation may have taken place, but what it was I have no recollection whatever.

Q. When you told Mr. Van Buren that that paper had been served on you, did you and he have a conversation about the claim set up in that paper ?

A. I do not remember of having any conversation with him at the time about the paper.

Q. At, or soon after, the time Mr. Walker served that paper on you, did you think that he wanted to get some money out of the transaction, or that he wanted to get

released from any claims as a condition precedent to the consummation of the sale ?

A. I do not remember what my impressions were ; I did not bother my head about it.

Q. Did you know at that time that Anthony J. Hill had two judgments against Frederick W. Walker ?

A. I did not. I had heard of Mr. Hill's having some claims against Mr. Walker—but I had never heard anything about two judgments. I think I knew at the time this paper was served what mortgages there were on this property.

Q. You had ascertained what liens there were on the property, had you not, prior to that time ?

A. I had heard that there were mortgages on the farm.

Q. Did you have a statement of the liens upon the property ?

A. No sir.

Q. You said that Mr. Cutler said the title was one of the best in New Jersey—what led to that remark ?

A. Some conversation that ensued between Mr. McAlpine, and Johnson, and Cutler—it was a casual remark of Mr. Cutler's ; I cannot say who had asked Mr. Cutler about the title ; I think it is likely I had a conversation with Mr. Cutler at the farm that day ; Mr. Cutler very politely asked me to dine with him the next day, and I accepted the invitation. I do not remember any other conversation. I should suppose that Mr. Cutler remained at the farm after we got there from two to three hours. I do not remember of Mr. Cutler's asking what price McAlpine was to pay ; I cannot say that he did not ask.

Q. Can you say that he did not express a disappointment at the smallness of the price ?

A. I do not remember of his expressing himself in that way.

[Being shown Exhibit B, in this cause,]

Q. Please read that paper and say whether its contents are similar to the contents of the paper Mr. Walker served upon you ?

A. I suppose it is; I did not read the paper served on me; I looked at the heading and put it in the pigeon hole. The paper served on me I guess is now burned up; I burnt it up just after my brother's death, in December, 1867.

Redirect examination by Mr. Mills.

Q. At the time of the sale of the stock, which took place as you say, the first time you were at the farm—who acted as auctioneer?

A. I don't know what the man's name was; it was a little short man with a red face—a jolly little fellow, who dined with us. After that sale, I think it was in the following Spring, that Mr. Hill went to live there, and I went out there with him, and I think Mr. Hill and I walked out from Morris Plains to the place; it was very bad walking—slushy. I was at the farm both before and after it was sold under the Atwater decree.

Q. How lately before the foreclosure sale took place were you there?

A. I cannot give any definite time; I can't remember how soon after the foreclosure sale it was that I was at the farm. I think the letter to George Walker after the foreclosure sale was written at my office in Nassau street. I met Mr. Fairchild only once at the office of Mr. Mills; at that time I remember asking Mr. Fairchild what he thought of the sale that had been made, understanding that he was a man well posted up as to the value of property about Morristown, and Mr. Fairchild said he thought we had made a very good sale considering it was all for cash, and compared it with the value of property that had been sold recently about. I did this for my own satisfaction. Augustus Hill last went to St. Croix more than six months ago.

Second Cross-examination by Mr. Vanatta.

Q. What sales of property did Sheriff Fairchild mention in comparison with this sale?

A. I cannot remember the particular properties; they were all strange to me—but he did name several.

JOSEPH DUNDERDALE.

Sworn and subscribed this 10th day of November, A. D., 1869, *before me*,

SAMUEL S. HALSEY.

M. C. C.

IN CHANCERY OF NEW JERSEY.

Between
FREDERICK W. WALKER,
Complainant,
and
DAVID H. MCALPINE, et als.,
Defendants.

Examination of witnesses, in the above stated cause, taken by consent, at Taylor's Hotel in Jersey City, on *Saturday, the 10th day of December, A. D.*, 1869.

John D. Van Buren, a witness, called and sworn on the part of himself, deposes and says :

Examined by Mr. Mills.

I am fifty-eight years old ; I reside in New York city; I am one of the defendants in this cause ; I am sole acting executor of Anthony John Hill, deceased. I was acquainted with Mr. Hill for over thirty years ; for most of that time, after the first two or three years, I was very intimate with him. For twelve or fifteen years I was in close mercantile business relations with him, he being in the West Indies, and I doing business in New York for him. He was in the habit of spending every Summer, however, in this country. Our social relations were very intimate—he was a very old friend of my wife's family. Over six years ago I used to see him always as coming in from Jersey into New York, when I would see him in New York ; I always supposed him to be living in New Jersey during the latter part of his life, until he took

rooms in New York. During the latter part of the war I saw him very rarely—then, when I did see him, he was living in New Jersey and managing the farm. The Winter before he left he was confined to his rooms in New York under the care of an oculist—at his rooms at Dr. Brueninghausen's. He left for Bermuda in the latter part of April, or in the first of May; I do not know when he got those rooms; my impression is that up to 1863, or 1864, he stayed at the Astor House when he was in town. After some time, in November, prior to his going to Bermuda, I was at his rooms almost every day up to the time he left; I conversed with him upon business matters and other subjects; he was quite equal to the management of all his own affairs; he had always been a shrewd business man, and I found him quite as shrewd as ever. Of course I first called upon him when I heard of his affliction, in the capacity of a friend; I found him almost totally blind; he had just undergone an operation, I think in the month of October, for a cataract. After that he had inflammation in the eye, which occasioned him a great deal of suffering. Sometime, I think in the month of December, he asked me to come and assist Mr. Dunderdale in making up his accounts; Mr. Dunderdale was writing up his books for him, and would occasionally get into some matters that he did not understand,—would get into difficulty: in such cases we always referred to Mr. Hill for explanations, and found his memory perfectly accurate as to all his previous transactions. That was at the time of his acutest suffering, after the operation and after the actual inflammation; this was after he got out of his bed, and was obliged to remain for some weeks in a dark room—his acutest suffering was at this time. During none of this time did I see any evidence of impaired, or unsound mind; he was exceedingly nervous, but not so nervous as I have been myself more than once from disease.

The last time I saw him was on board the vessel in which he sailed for Bermuda; I accompanied him from his house to the vessel; his nephew, John Augustus Hill, went out with him. I think Mr. Dunderdale was down

at the vessel to see him off, and Mr. Dunderdale's brother, who is dead now.

Some six weeks before he left he asked me to take charge of all his affairs ; I think he sent word to me first through my father-in-law, who was also an old friend of his, asking me to do so—and he then asked me himself a day or two afterwards ; I hesitated and partially declined at first ; he was very urgent, however ; his nephew, John Augustus Hill, also urged me to do it ; my father-in-law, who was Mr. Hill's oldest friend in this country, also urged it—and I agreed to take it. He then instructed his lawyers to prepare a full power of attorney, which he delivered to me and which I accepted. Mr. Weeks, in New York, has that power of attorney ; it is on record in Morris county, and in the Register's office in New York city. When I accepted this power of attorney I had become somewhat familiar with Mr. Hill's affairs before that, from his books and Mr. Hill's explanations —but he did explain to me the full state of his affairs, and gave me instructions of certain things he wished done, certain stocks he wished sold.

Q. Did you ever hear him say, or intimate, that he held the Walker farm at Littleton in trust for Frederick W. Walker, or for his benefit, in any respect—or that he held any personal property upon that farm in trust for, or for the benefit of F. W. Walker ?

Objected to as leading and illegal.

A. No. Previous to my having charge of his business under this power of attorney, Mr. Hill told me that he hoped to be able to sell the farm to Mr. Stevens. He was worrying constantly about the farm, in consequence of his inability to go out personally and look after it. He asked me, finally, to see Mr. Shippen, Mr. Stevens' agent. After considerable conversation with him, I told him I would do it if he would fix a price. He finally authorized me to offer it to Mr. Stevens at $25,000—I think it was $25,000, it was some price not far from that—provided he would decide at once ; I then wrote to Mr. Shippen to that effect. At Mr. Shippen's request, I then saw Mr. Stevens himself. Mr. Stevens objected to

the price, unless it included everything that was on the farm—furniture, books, implements. Mr. Stevens had not then himself seen the farm; his agent had. I declined to include those things in my offer; Mr. Stevens insisted, however, that he would not take the farm even at that price unless it included everything, and seemed to think that Mr. Hill would be induced to let all the things go in with the farm rather than not sell. He was aware of Mr. Hill's condition of health. I told him I was not authorized to make any change, and it was left in that way; and Mr. Stevens was to go out and see the farm, and then communicate with me. I am not sure but that my offer did include the farming utensils; I made no memorandum in writing; the offer was contained in a note to Mr. Shippen, and I have written to him for it and he can't find it—but I am quite clear that the difference between Mr. Stevens and me was his demand that all the personal property in the house should be included. He knew from his agent that the library was there. Before I received any answer from Mr. Stevens, or Mr. Shippen, I ascertained in conversation with Mr. Hill that Mr. George Walker was interested in the farm, in fact that he had bought it as the agent of Mr. George Walker, and for him. I knew the intimate relations of Mr. George Walker and Mr. Hill as former partners in business; I knew that they had each other's powers of attorney generally, and that Mr. Hill acted for Mr. George Walker with as much prudence in his affairs as he acted for himself; nevertheless, I told Mr. Hill that I should at once withdraw the offer made to Mr. Stevens. I wrote to Mr. Shippen the same day, withdrawing my offer and giving that as a reason, that I had understood there was another person interested in the farm, or something of that kind—I gave some such reason as to why I wished to withdraw my offer. I received a note from Mr. Shippen in answer,

[This testimony objected to by Mr. Vanatta.]

stating that when he received my note he was on the point of writing me declining my offer; I have not that note of Mr. Shippen's; I have looked for it, and have not

some of which remained on the premises ; I think there was a certain part of the hay that was taken in on shares by some party, and the share had not yet been delivered to the party.

Mr. McAlpine and I, and Johnson, met at Weeks & Foster's office, in Wall street ; the business was not closed there ; Mr. McAlpine expressed himself ready to buy the farm, but wanted to know about the produce ; he wanted to ascertain how much of it belonged to Mr. Hill, and how much of it to other parties, and we agreed to meet at the farm the next day. I sent word out to Mr. Cutler that we should be at the farm the next day, and requesting him to go with us. Mr. Dunderdale and I missed the first train. When we got out to the farm by the second train, we found Mr. Cutler, Mr. McAlpine, and Mr. Johnson there already. Mr. McAlpine and Mr. Cutler had been walking about the farm, and continued to do so for a while after we got there—Mr. Cutler showing him about the place. Mr. Cutler went with Mr. McAlpine to show him what part of this produce went with the farm and what did not. On their return to the house, Mr. McAlpine expressed himself satisfied on that point, and we at once proceeded to draw up the agreement. The agreement was signed on the spot, and Mr. McAlpine gave me his check for the first money that was to be paid, and the parties all left except Mr. Dunderdale and myself, and we remained over night and slept there. The agreement to convey was executed in duplicate on the spot, and the money paid over.

[Paper writing, dated August 21st, 1866, signed D. H. McAlpine, which I have marked Exhibit No. 16, on part of Mr. Van Buren and others, shown witness,] he says :

This is the agreement that was executed by Mr. McAlpine at that time ; it was executed in duplicate ; the body of it is in my hand-writing ; it was drawn up by

A. Yes ; I think I received one power of atterney from him before this ; I know I received two. The first one was informally executed, so that it could not go upon our records ; I gave one power to the Sheriff of Morris county (Sheriff Fairchild) on the taking of the Sheriff's deed, and at the time I signed a receipt to the Sheriff for the money that was coming to George Walker. He has not returned that to me. I authorized Mr. Dunderdale to advertise the farm for sale and to offer it, and he brought me in communication with a Mr. Johnson, who said he had a purchaser for it, and wanted a refusal of the farm at a certain price, for some long period of several weeks, or something of that sort ; I named the price, at which it was sold afterwards, $28,000 ; his first price named was $25,000. I finally agreed to take $28,000, but declined to give him so long a refusal, and held myself bound only for three or four days, and told him I would consider myself bound for no longer period than that. When I say that the first price named was $25,000, I mean that he talked as if his principal would give that. I think the price Mr. Dunderdale and I asked when talking with Johnson was $30,000 ; there was the usual interchange, and we finally fixed upon $28,000. The difference between Johnson and us then was, having the long refusal. I was, of course, unwilling to give a refusal to a broker, because it might interfere with other offers. Mr. McAlpine accepted it, and the thing was carried out.

The sale included all the farming implements, all the furniture in the house, except the furniture in the library room, and except the books ; it included all the stock on the farm ; no, I am not sure of that—I think it included all the stock that was there. It included all the farm implements, oats, hay, grain and produce of the farm that was there ; I can't tell what stock was on the farm;

me on the spot. I do not remember while at the farm of having any conversation with Mr. Cutler about the farm, of any moment.

Q. Did you, on the day you were at the Walker farm, hear Cutler make any complaint about the sale of the farm?

A. None whatever.

Q. Did you hear him say, or in any way intimate, that day at the farm, that Frederick W. Walker had any interest in the farm, or any property on it?

A. No.

Q. That day at the Walker farm did Mr. Cutler state to you any arrangement between Frederick W. Walker, Mr. Hill and himself, about the Walker farm, or any personal property upon it, and that he should write to Mr. Walker and telegraph him—that Mr. Walker would not submit to that sale, or anything to that effect?

A. Nothing of the kind.

Q. Did he state to you that as Mr. Mills had been acting for Mr. Hill in some matters, you had better see Mr. Mills, or anything to that effect?

A. He did not. At the farm that day, Mr. Cutler was in the room when I began drawing the agreement—knew that it was an agreement, for I asked him and others to furnish me with paper to write the agreement. He was in and out during the whole time the papers were being signed—sometimes in, and sometimes out; I recollect this the more distinctly because the moment the agreement was signed Johnson claimed his brokerage of McAlpine, and McAlpine consulted both Mr. Cutler and myself about the propriety of the claim for immediate payment of the brokerage. Mr. Cutler's demeanor on the farm on that day was one of entire good nature, and doing with alacrity everything that he could to show McAlpine about the place and give him information. My impression is that McAlpine and Cutler went away very nearly together; I don't recollect whether they came in the same team, or separate teams.

I next saw Mr. Cutler, the next day at his own house, at about two o'clock. Mr. Cutler before leaving the

farm that day invited Mr. Dunderdale and me to take dinner with him on the following day. Mr. Dunderdale knew Mrs. Cutler, and I had had some acquaintance with her, and upon consultation we finally concluded to wait over a train and accept the invitation. The day we dined with him, which was the next day, while seated at dinner, Mrs. Cutler and Mrs. Maria Walker being present, Mr. Cutler said to me—You will never have a chance to sign that deed ; I have telegraphed to Fred, and he will be here before the time is up. I said to him—If you knew there was anything wrong about the sale of the farm, why did you not tell me yesterday before I signed the agreement ? He answered—No matter, Fred. will be here to speak for himself, (or something of that sort.) I then told him that if Mr. Frederick Walker had any claim in that farm I should do nothing to prevent him getting his dues. He answered, oh yes you will ; you will do any thing for your client, just as I would. I told him no, I should do no more for Mr. Hill than I should do for myself, and that I certainly would not wrong Mr. Walker if I knew it. Mrs. Cutler then spoke and said, Mr. Van Buren is right ; and that closed the conversation. As I did not think that a proper place for talking business, I of course made no further allusion to the subject.

Q. Did Mr. Cutler that day say to you that the property had been sold much below its value, and it would leave Mr. Walker liable upon the mortgages ?

A. I don't remember that he said anything more than what I have detailed above, but I have some recollection at some time of his saying it ; whether it was on the way to the train, or not, or where it was, I don't know ; and of my saying that neither Mr. Hill, nor Mr. George Walker would ever oppress Mr. Fred. W. Walker—my impression is that nothing was said at the dinner but what I have detailed above. I thought the conversation was annoying the ladies, and I endeavored to close it. About that matter of the mortgages and Mr. Walker's liability, I don't think that Mr. Cutler ever said that to me, but that sometime after the sale was closed some

third party told me that Mr. Cutler had said that to him, and that is the way I have got it on my mind.

Q. Did you have any further communication with Mr. Cutler before this sale was closed ?

A. No direct communication.

Q. On the day you were at the farm, did you hear Mr. Cutler say anything about the title to the farm ?

A. He told Mr. McAlpine that it was a good title, in my presence. After we took dinner at Mr. Cutler's, we had just time to reach the railroad station for New York and we went to New York that afternoon.

[Exhibit 17, purporting to be lease from Hill to McAlpine, dated August 22d, 1866, shown witness, and marked by me Exhibit 17, on part of Van Buren and others,] he says :

I think that lease was drawn and executed at Morristown at Mr. Mills' office the day after the sale of the farm ; it was signed by me and Mr. McAlpine ; Mr. McApine took possession under that lease and continued in possession.

At the time we met at Weeks & Foster's office, I said to Mr. McAlpine, I suppose you will want nothing but a quit claim deed. He answered no, he would insist upon a warranty deed with full covenants ; and I laughed and said, of course you must have your way. It was treated in a trifling manner on both sides.

[Exhibit No. 15 being shown witness,] he says :

I received that letter from George Walker ; I communicated with the Sheriff of Morris county in reference to a Sheriff's deed for this farm ; I think I first saw the Deputy Sheriff at Mr. Mills' office ; I don't recollect whether I saw him, or wrote to him first ; I think I communicated with the Sheriff of Morris county asking him to change the bid from Mr. Hill to Mr. George Walker, and telling him that the farm was actually purchased for George Walker.

[This testimony objected to by Mr. Vanatta.]

I have not the letters I wrote, and kept no copies of them. This must have been before I saw the Deputy Sheriff. The first letter I wrote the Sheriff was to ask

him to give me a statement of the facts as they resided on his book. This is his reply.

[This letter, marked by me Exhibit 18, on part of Mr. Van Buren and others, offered in evidence.]

Then I wrote him asking him to substitute the name of George Walker, before receiving a reply to the first letter. To that second letter this is the reply.

[This letter offered in evidence, and by me marked Exhibit No. 19, on part of Mr. Van Buren and others.]

The Sheriff's deed in this case was delivered at Weeks & Foster's office in New York; it was on the fifth of September, 1866; it was delivered by his deputy, Mr. Fairchild; I had made the arrangement with Mr. Fairchild, the deputy, at Mr. Mills' office, I think the day after the contract was signed at the farm.

Q. Who proposed, or suggested, the delivery of the deed in New York?

A. I did, for my own convenience, as I resided in New York. I think there was no objection made by Mr. Fairchild; I think he said he would have to go to Trenton to deposit some of the money into Court, and that it would not be much inconvenience for him to come around by New York. At the time the Sheriff's deed was taken, the money was paid by me, and my receipts upon the Sheriff's docket show the transaction; the money was paid by me as attorney of Mr. Hill; the receipts in the Sheriff's docket were made at the time in Weeks & Foster's office, and it was all closed up on the spot. The purchase money was furnished me by Mr. Hill; the checks show that they were drawn by me as attorney of Mr. Hill upon his banker.

[Two checks, dated September 5th, 1866, signed Anthony J. Hill, by J. D. Van Buren as attorney—one for $8,559 11-100, and the other for $31 45-100—offered in evidence, and marked by me Exhibits Nos. 20 and 21, respectively,] witness says:

These are the checks I gave. Mr. McAlpine did not furnish any part of this money; I had no communication with him with reference to the delivery of the Sheriff's deed. The deed to Mr. McAlpine was delivered

subsequently ; I think it was on the day the contract called for ; I do not remember of any delay.

Q. Did you receive notice of a lis pendens in this cause, and if so, how did you get it ?

A. I think Mr. Dunderdale exhibited a notice to me at his office, which he had received enclosed in a letter to him. It was sometime intermediate between the signing of the contract of sale and the delivery of the deed. I think I sent that notice to Mr. Mills ; at any rate, I sent him notice of the notice. I directed Mr. Mills to ascertain what bill had been filed, and to let me know. If I remember right the notice stated that a bill had been filed; I received notice from Mr. Mills that no bill had been filed.

[Exhibit No. 1 shown witness,] he says :

I think this letter was sent me by Mr. Mills, or at all events the substance of it was. I understood from Mr. Mills that up to the last moment of the delivery of the deed to McAlpine, Mr. Mills had telegraphed to the clerk, and had received an answer from him that no bill had been filed ; this was told me just previous to the delivery of the deed to McAlpine. Besides sending to Mr. Mills the day that I first saw the notice of lis pendens in Mr. Dunderdale's hands, I wrote to the Solicitor, whose name was attached to the lis pendens asking him to send me a copy of the bill : receiving no answer, I wrote him again : receiving no answer, I wrote him a third time, either by myself or Mr. Dunderdale, and received no answer to either of the letters ; I afterwards asked Mr. Mills to take proceedings to have the notice stricken from the files.

Q. Before the sale to McAlpine was completed, did you have any conversation with Thomas V. Johnson as to the price that could be obtained for the farm, if more time was given for selling it, if it was not a cash sale ?

Objected to.

A. Mr. Johnson volunteered to say to me that the sale was a good one, the price as full as could be obtained for cash—that possibly we might have obtained $30,000 if we had given time for part of the purchase money, but

then we would have to wait to find a purchaser. He did not mean that McAlpine would give any more; that $30,000 was the utmost we could hope to obtain for it under any circumstances, and that it was a great deal better for us to make this sale than to wait longer with the farm under no one's care and going to ruin.

Q. Were you at Morristown after August 22d, 1866, and before the delivery of the deed to McAlpine on September 15th, 1866?

A. I think not. I think I had no communication with Sheriff Fairchild, except through Mr. Mills, between the day I met him at Mr. Mills' office when he agreed to come to New York and deliver the deed, and the day he came to New York to deliver the deed.

Q. To whom does the library on the Walker farm belong?

A. To me. After Mr. McAlpine had been in possession of the property for some time, he proposed to me that he, McAlpine, should buy the library of Mr. Hill, and offered $2,500 cash, which I communicated to Mr. Hill, and Mr. Hill declined. Mr. McAlpine afterwards renewed the offer, and said that it was no longer convenient for him to keep it and take care of it—that he was about painting his house, and would like to paint that room at the same time, and would like either to own the books or have them removed. Mr. Hill again declined the offer, but said that perhaps Mr. McAlpine would come up to $3,000, and expressed some annoyance about the trouble the library gave him. Then subsequently asked me if I would not accept the library as a gift from him. I did not at first, but after one or two letters on the subject I wrote him that I would accept, and I did accept it; at which he wrote me that he was very much pleased. The moment Mr. Hill died I wrote to Mr. George Walker, telling him of this gift, but saying that as it was a collection of books by his brother, who was dead, I would very gladly turn it over to him, which he declined, and begged me to keep it.

All this testimony objected to by Mr. Vanatta while being given.

Q. At the time you were in my office with Mr. Fairchild, was anything said by him with reference to the sale of the farm, and if so, state what it was?

Objected to.

A. I think Mr. Fairchild gave it as his opinion that $100 per acre, including the buildings, was a very full value of the farm.

Q. Did you ever meet Mrs. Gleason at Mr. Hill's apartments during the last Winter and Spring of his being in New York?

A. No sir. Sometimes when I went to see Mr. Hill I would stay four, five, or six hours, seldom less than two; we would get engaged in the accounts, and I would sometimes remain there all day.

Q. Did you ever receive from Mr. Hill any pecuniary pay for your services to him?

A. None whatever. I have never received any compensation for attending to his business. I let him know when I accepted the power of attorney that I would not take charge of the business for pay; I was very unwilling to accept it.

Cross-examined by Mr. Vanatta.

I think my visit to the Walker farm on the twenty-first of August, 1866, the day the agreement was signed, was my first visit; I don't think I had ever been in the house, or on the property, prior to that day; I had been at Morristown before that day, but it was many years ago. I don't remember that I ever had any personal communication with William W. Fairchild, the Deputy Sheriff, before that day.

My employment at Albany during the war began on the twenty-eighth of May, 1863, and ended on the thirty-first of December, 1864. I resided at Albany. My residence at Albany ceased May 1st, 1865, and was then in Orange county, New York, during the Summer; on the 1st of November of that year I moved to to the city of New York, and my place of residence was distant from Mr. Hill's less than a half of a mile and a little over

a quarter. I lived in Broadway between Tenth and Eleventh streets.

I had no usual hours in the day for calling on Mr. Hill; I called at such hours in the day as was most convenient for me; sometimes at ten o'clock in the morning—sometimes at three o'clock in the afternoon—sometimes in the evening—sometimes twice a day.

Mr. Dunderdale did the posting of the books I have spoken of at Mr. Hill's rooms. He would begin that work sometimes at ten, and sometimes at about eleven o'clock in the morning, and quit about dark, or just so as to give him time to get to Brooklyn by dark.

During that Fall, Winter and Spring, I did not see Frederick W. Walker at Mr. Hill's room. During that period I never saw Augustus W. Cutler there; I do not say that Mr. Walker and Mr. Cutler were not there during that time—on the contrary, I heard they were there once.

Q. During that time did not Mr. Hill spend several weeks at Mr. Cutler's house, at Morristown?

Not to my knowledge, and he could not well have done it without my knowledge. His nephew, who was in attendance on him, I saw every day nearly; he was either at my own room or I at his house. His two nephews, John Augustus Hill and Anthony B. Hill, were in attendance upon their uncle, Anthony J. Hill. John Augustus had lodgings at the St. Dennis Hotel, directly opposite my house, and I was in the habit of seeing him either at my house, or at Mr. Hill's, almost every day. Mr. Hill went out to Mr. Cutler's for about a week in the Spring; during the Winter he was unfit to travel. His first operation on his eye was in October, and his second, after the first of January. It must have been as late as March, probably, when Mr. Hill went out to Mr. Cutler's—it was during mild weather, but at what time precisely I can't tell; my impression is that he went out after one of his nephews left him in the Spring to go to Bermuda, that he and John Augustus went out to Cutler's.

Anthony John Hill and Mrs. Gleason were acquainted;

I know that they were acquainted twenty years ago; they were acquainted when he lived at Mendham; that is the first time I ever saw Mrs. Gleason. I do not think I learned from Mr. Hill that he was acquainted with Mrs. Gleason before he went to Mendham; about that time is the first I ever saw her; I may possibly have seen her at the Astor House before; I don't know how he should ever have occasion to tell me that he was acquainted with her; I am sure now that he never mentioned Mrs. Gleason's name to me until after he went to Mendham. Mr. Hill did not introduce Mrs. Gleason into respectable society in New York to my knowledge; I have not known of Mrs. Gleason's being invited to respectable families at the instance of Mr. Hill. She did not visit or call at my house; Mr. Hill never said anything about her doing so; he would not have dared to, for he had been warned by my father-in-law to break off his association with her, as disreputable and disgracing him; I know this, because my father-in-law told me; I know further, that the impression among all the acquaintances of Mr. Hill with whom I was acquainted was, that Mrs. Gleason was a person of disreputable character.

Q. Did you ever have any connection with Mr. Hill's Morris county, or New Jersey business prior to November 1st, 1865—I mean as agent, or attorney?

A. No. I had the interview with Mr. Stevens before I became the agent of Mr. Hill; it was some months before he went away; it may have been in December, 1865, or as late as February, 1866; it was sometime during the Winter; I think now it was quite as late as February, for Mr Hill had begun to walk out, and he did not do that until the fine weather came on. I never had but one personal interview with Mr. Stevens on the subject; I think this matter of the interview with Mr. Stevens may have been even later than that, because Mr. Stevens remarked that he wanted to get into the country to avoid the cholera; it was during the time Mr. Walker had some horses on the farm.

Q. You spoke of having written to Mr. George Walker after you learned he had some interest in the farm—

is this letter, marked Exhibit No. 15, a reply to the letter of yours ?

A. No. This is a letter in reply to one of mine asking him to confirm what he had said about the farm's being bought for him, in brief form, to be handed, if necessary, to the Sheriff.

Q. Where is the letter which you received from George Walker in answer to the first letter you wrote to him in relation to that farm, or his interest in it.

A. I may possibly have it ; I do not have it here at present ; I think I did not keep any copy of any of the letters I wrote to him on the subject.

I first became acquainted with David H. McAlpine after he bought the farm ; my first interview with him in relation to that purchase was at Weeks & Foster's office ; it is possible that I may have seen him a day or two before at Dunderdale's office. The day I first saw him at Weeks & Foster's was the day before we went up to Morristown.

Q. Was there an agreement for the sale by Mr. Hill, and of the purchase by Mr. McAlpine, of the farm in question drawn up, in whole, or in part, in Messrs. Weeks & Foster's office on that occasion, and if so, who drew it ?

A. I don't think that there was any drawn up ; the reason is, we had not come to any agreement ; Mr. McAlpine was not ready to sign. This matter of the produce on the farm—the personal property—remained to be settled. He wanted to inspect that, and see what he was going to have. Substantially, verbally, all the other terms of the contract were agreed upon ; the price was agreed upon.

Q. Was there any other reason for coming out to the farm except to let Mr. McAlpine see what part of the farm produce would be included in the purchase ?

A. None that I know of.

Q. If you could have, specifically and satisfactorily, defined that farm produce to McAlpine, would you have signed an agreement to convey on that first meeting at Weeks & Foster's ?

A. I have no doubt I should ; Mr. McAlpine objected to doing anything that would get him into any sort of trouble over there about this personal property, either with Mr. Cutler, or any one else ; then Mr. Weeks suggested that we adjourn it till the next day, when I could draw the agreement myself on the spot. I sent word to Mr. Cutler to meet me at the farm, by Mr. Dunderdale —that is, I told him to write to Cutler ; and I also may have sent word by Mr. Johnson, who passed right by his door.

The next morning, after signing the agreement, after breakfast and strolling about the farm a little, we went to Morristown to Mr. Mills' office. On the day before, Mr. McAlpine had agreed to meet me there to sign the lease, I think. I do not know which arrived at Mr. Mills' office on that day first, Mr. McAlpine or I ; my impression is, Mr. McAlpine arrived first. I don't remember whether the lease was drawn up after I got to Mr. Mills office or before ; the lease was drawn under my instructions given either then, or before. I got to Mr. Mills' office somewhere between ten and twelve o'clock ; we left there in time to go to Cutler's to dinner ; we took a little stroll about Morristown ; I forget at what hour Cutler dined, whether at one or two o'clock. I saw Mr. Fairchild at Mr. Mills' office there that day ; I am not sure that I saw Mr. McAlpine there at all that day ; it was not necessary that I should see him, only that I should execute the lease ; I am not sure that I saw McAlpine sign that lease ; I think I did not so testify this forenoon ; I have no recollection of how the lease was signed, but I do have of the agreement, which was the important document ; I may have taken that lease to New York with me that day, and I may not ; I have no recollection of it.

I think Mr. Dunderdale and I went down to Mr. Fairchild's house that day after him ; we rang the bell ; he was not in, and we left word with his wife for him to come up to Mr. Mills' office.

Mr. McAlpine told me before that, that he intended to have his title searched before this, and who his lawyer

was, viz., Mr. Little. I do not know whether Mr. McAlpine told me that Mr. Little was his lawyer before that agreement was signed, or not.

After the twenty-second of August I next saw Mr. McAlpine at Mr. Dunderdale's office, by chance, once or twice, between the signing of the contract and the signing of the deed.

Q. On those occasions, or either of them, what did you say to him, or he to you, about Frederick W. Walker's lis pendens ?

A. I told him that I had seen it, and that I had sent to get information about it, and had found there was no bill filed, and believed it was a bogus affair. He said nothing about, except I suppose, that his lawyer would look after it, or something of the kind. My interviews were very short with him—just as he was going to the cars ; I don't remember that he said whether his lawyer had written, or told him about it. I think I was not present the day when Mr. Dunderdale showed Mr. McAlpine the notice of lis pendens, or told him about it.

Q. Did Mr. McAlpine ask you what you knew, or what you supposed Mr. Walker's claim was founded on ?

A. No.

Q. What opinion did you express to McAlpine about the notice and Walker's claim ?

A. That I believed it to be a bogus affair, and that he had no claim, giving as a reason for it that I had written to Mr. Walker's solicitor for a copy of the bill, and could not get it, and could not get even an answer to my letters.

Q. Did you say anything to Mr. McAlpine about its being a black-mailing operation of Mr. Walker's, or anything equivalent to it ?

A. I did not ; but another person in my presence did —either Mr. Forbes Dunderdale, who is now dead, or his brother, Mr. Joseph Dunderdale—to Mr. McAlpine; even that might have been said after McAlpine went away, by one brother to the other.

Q. What reason did Mr. Dunderdale give for calling it a black-mail operation ? State fully what he

said as to what he thought Walker was aiming, or driving at ?

A. I don't think he gave any reason ; I think it was Mr. Forbes Dunderdale ; I think he said that it was probable it was Walker's object to force Mr. Hill to release him from certain moneys Hill had advanced him. Forbes Dunderdale expressed himself as being familiar with the fact that Hill was in the habit of advancing money to Walker.

Q. Did you, or Mr. Dunderdale, express the opinion that Walker would be disappointed if he could not bring that thing to bear, or let it succeed ?

A. I don't remember that Mr. Dunderdale did ; I did not, any further than that I said I believed it to be a bogus claim.

Q. Did you, or Mr. Dunderdale, or Mr. McAlpine, suggest whether it would not be prudent for some of you to go and see Fred. Walker, and see what his claims were ?

A. No ; I did not discuss or encourage a discussion of the matter, but I thought it a matter best left to the lawyers.

Q. Was Mr. Mills present at Weeks & Foster's office on the day the deed was delivered to McAlpine ?

A. That I don't remember ; Mr. Weeks was my counsel as well as Mr. Mills'; I am not sure that Mr. Mills was there ; I have no recollection of his being present on that occasion.

Q. You stated on your principal examination, that immediately before you delivered the deed to McAlpine, you received a message from Mr. Mills to the effect that up to that time Walker had filed no bill—who delivered that message ?

A. That I don't remember ; it may have been in writing.

Q. Whether in writing, or verbal, was it not communicated to you, or delivered to you, by Mr. Little, in the presence of Mr. McAlpine, or otherwise ?

A. That I can't remember ; I only know I had the message direct from Mr. Mills.

Q. You were shown two Exhibits Nos. 21 and 22, being two checks, one for $8,559 11-100, and the other for $31 45-100—at, or shortly before the time of drawing those checks, did you deposit any funds with Mr. Hill's banker for the purpose of paying those checks, and if so, for about what amount ?

A. None specially for that purpose. I was receiving Mr. Hill's rents, dividends, interest money, and remittances for his account from the West Indies, and all these were deposited as fast as received, with these same bankers, being the only Bank account he kept, and during that whole summer the amount of cash to his credit averaged more than the amount of these checks.

Q. Prior to drawing these checks, had McAlpine's check been deposited to Mr. Hill's credit ?

A. Mr. McAlpine's check was deposited the day after it was received. No money was borrowed temporarily to meet those checks.

Redirect examination.

In 1863 and 1864, when I resided at Albany, I was Paymaster General of the State of New York, engaged in paying bounties to the troops of the State of New York.

My present position is that of Private Secretary to the Governor of the State of New York. My duties when Paymaster General of New York State brought me to New York, and through New York to Washington, very frequently.

Q. Was it on the 21st, or 22d of August, that you met Mr. Fairchild at my office ?

A. I think it was the day after the agreement was signed ; I have an impression, however, that at one time when I was at your office, that he was called in from the street as he was passing ; It may have been the same day, however. Irecollect that I stopped at your office on the day I came up from New York with Mr. Dunderdale ; I stopped and

consulted Mr. Mills as to the form of agreement which I should draw up, in case the farm was sold; I don't remember whether I saw Mr. Mills on the 22d of August, or his clerk.

My impression is that I saw Mr. Fairchild at Mr. Mills' office the first time I called there; I think I saw Fairchild the next day at Mr. Mills' office; I remember distinctly going to his house; I don't know which day it was I went after him; I am very sure I had his opinion on the farm before it was sold, so that I must have seen him on the 21st.

My impression is that Mr. Hill wrote to Mr. George Walker asking him to confirm, in a letter to me, what he had written in a letter to him, and that this letter, Exhibit No. 16, was written to me in consequence of it.

I do not mean to say that the offer of Mr. Stevens was withdrawn by me against the wish of Mr. Hill; he assented to it, and was very willing to have the offer withdrawn, for although he had been very angry all Winter at Mr. Frederick Walker's horses being on the farm and eating up his oats, when it came to a prospect of a sale, he was not willing to have those horses turned into the street, and he did not wish, as he said, to incur the displeasure of any of the Walker family.

JNO. D. VAN BUREN.

Sworn and subscribed this 11th day of December, A. D., 1869, *before me*,

SAMUEL S. HALSEY.

M. C. C.

[Counsel for Mr. Van Bured offered in evidence a certified copy of the deposition of Frederick W. Walker, in the case of James C. Atwater, complainant, and Frederick W. Walker et als., defendants marked filed November 13th, 1862, which I have marked Exhibit No. 22, on the part of Mr. Van Buren et als., defendants; and counsel

further gives notice that on the argument of the cause, that he will use the original depositions now on file in the office of the Court of Chancery.]

To all of which Mr. Vanatta objects.

Francis R. Atno, a witness, called and sworn on the part of Mr. Van Buren et als., defendants, deposes and says :

I reside at Morristown, and have for some years been a clerk in the office of Mr. Alfred Mills.

[Exhibit No. 17, on the part of defendants, being shown witness,] he says :

I am the subscribing witness to this paper ; it was executed by Mr. Van Buren and Mr. McAlpine together, in Mr. Mills' office, in my presence and I signed it as a witness at their request ; Mr. Mills was absent from home on that day, and was not present at the signing.

[Exhibit No. 1, on the part of Van Buren et als., shown witness,] he says :

The face of this paper is in the hand-writing of Mr. Mills, and the indorsement on the back, signed "B. Gummere," is in Barker Gummere's hand-writing. I am acquainted with William W. Fairchild's hand-writing.

[Being shown Exhibits Nos. 18 and 19,] he says :

These Exhibits are both in his hand-writing—I mean the bodies of the papers.

FRANCIS R. ATNO.

Sworn and subscribed this 24th day of December, A. D., 1869, *before me*,

SAMUEL S. HALSEY,
M. C. C.

[Mr. Mills here offered in evidence a certified copy of the order to strike the notice of lis pendens from the files, which I have marked Exhibit No. 23, on the part of Mr. Van Buren et als., defendants ;]

[Also, a certified copy of the power of attorney from Anthony J. Hill to John D. Van Buren, dated , and recorded , which I have marked Exibit No. 24, on part of defendants.]

IN CHANCERY OF NEW JERSEY.

Between
FREDERICK W. WALKER,
Complainant,
and
DAVID H. McALPINE
et als., Defendants.

Monday Morning, March 14th, 1870, the further examination of witnesses on the part of complainant was to have been continued by arrangement between Counsel. Owing to the absence of Mr. Vanatta, counsel of complainant, the Master adjourned the examination of witnesses until Tuesday Morning, March 15th, 1870, at his office in Morristown, at ten o'clock, A. M., the counsel for defendants neither objecting nor consenting thereto.

Tuesday morning, March 15, 1870. Examination of witnesses on the part of Mr. Walker, complainant, continued in the presence of all the counsel— Mr. Vanatta, Mr. Mills, and Mr. Little.

Philip H. Vanderbilt, a witness re-called and sworn, on the part of complainant, deposes and says :

Q. When you were examined in this cause before you spoke about having been at the Mansion House, on the Walker farm, on the first, or in the early part of January, 1866, and having then and there seen Mr. Anthony John Hill. Please state whether after further examination you find that date to be correct or incorrect?

A. It was incorrect, it was the year 1865. It was the first day of the year 1865, instead of the first day of the year 1866.

Mr. Walker wrote me some three or four or five weeks after I was here in this suit, that they showed that Mr. Hill was not over here in 1866, on that day. Then I looked for a letter that Mr. Walker had written to me from Toledo, but I could not find that letter. Then I turned to my cash book and I found when I had made the entry on the fifth day of January, 1865; then I found that I had made the entry of my expenses from my house till the time I got back from New York; it was footed and the total amount was some $18 or $20. That is all I have to show me that I was wrong in the date. I had not examined my cash book before my other examination, nor until I had got this letter from Mr. Walker.

Cross-Examined by Mr. Mills.

I was at the farm on July 6th, 1866; Mr. Cutler took me up there.

Q. How long was it between the time you had this conversation and the time you were last there?

A. It must have been something over a year, considerably.

Mr. Hill said the horses that I had sold to Mr. Walker were not on the farm at the time I had this conversation with Mr. Hill. He said he did not know what had become of them. I have not with me the cash book I referred to in my principal examination. It is the cash-book I have had for the last ten years, ever since I opened my house. I did not bring the book with me, because I

did not think it would be of any particular use. I have not a copy of the entry in my book here with me. I made no copy of that entry from the book.

I came to Morristown by the ten o'clock train this morning. I was not here yesterday. I did not leave home till two o'clock yesterday, and stayed in New York last night. I have seen a copy of my examination in this case since it was taken. Saw it at Mr. Cutler's. It must be four weeks to-day or to-morrow since I was there. I left home Feby. 14th last, and arrived at Cutler's the same day. Mr. Walker showed it to me. Mr. Walker wrote to me to come over here on some business between us. We talked of this suit, and I told him about the entry I had made in my cash book. That book is home now at my place in Poughkeepsie. I saw that book last, yesterday morning, at my place. I made some entries in it.

Re-direct examination by Mr. Vanatta.

I still live where I did when I was examined before in this cause.

PHILIP H. VANDERBILT.

Sworn and subscribed this 15th day of March, A. D. 1870.

Before me,

SAMUEL S. HALSEY,
Master in Chancery of New Jersey.

Frederick W. Walker, a witness, recalled and sworn on the part of himself, deposes and says:

In the first part of the month of December, 1865, I was in Ohio, and along in the middle of the month I came down to New York, and New Jersey. I remained in New York and New Jersey until April, with the exception of going to Washington, about the first of March. During that period my time was spent partly on the farm and partly in New York. I spent a good deal of my time in the city of New York. I saw Mr. Anthony John

Hill often during the months of December, 1865, and January, 1866. I saw him at No. 95 Second avenue, New York. He came out with me to the farm in December, 1865. He came out to the farm with me in January, 1866. I came from Ohio about the twelfth of December, 1865, and Mr. Hill came out to the farm with me some time between that date and Christmas following. I could not distinctly recollect what time in January he came out. Somewhere about the middle I think. My impression is he came out twice in January. I recollect of helping him cross the streets. He was not in very bad condition. On the fourth or fifth of April, 1866, I brought Mr. Hill over to Cutler's house at his request. In a day or two afterwards I left for the West to attend a district court. I returned shortly afterward sometime in April, about the middle or shortly after, from Ohio, and towards the first of May I left again for the West to be gone two or three months. I found Mr Hill at Mr. Cutler's house when I came back in April. Mr. Hill remained at Mr. Cutler's while I did, and when I went back to Ohio towards the first of May, I left him there; after I got back to Ohio, the horses came down to the farm from Ohio.

During the winter of 1866, when I was in New York, I called at Mr. Hill's boarding place nearly every day. I presume I called upon him as often or oftener than any one else. He was then staying at Dr. Brueninghausen's house, where he had been for the past nine years. Females always admitted me to the house. Never any male person during that period. I did not see old Brueninghausen from the time I came down from the West till I went away in May, at Hill's room. I wish to state that I visited Hill always from ten o'clock in the morning to two o'clock in the afternoon. That was my time of visiting him. I never saw Brueninghausen's son at all until I saw him before the Master giving testimony. During all that period I never saw John D. Van Buren there. I was never denied admission to the house, or to Hill's room.

Q. What do you know, if anything, as to Mr. Hill's willingness or unwillingness to see Mrs. Gleason?

A. I know that there was no person whom he was more glad to see, as long as he was in this country, than this same Mrs. Gleason. I know also that if he had had any unwillingness at any time to see her he would have expressed it to me if to anybody. I remember of Philip Vanderbilt being at the farm in the winter time when Mr. Hill was there. I know he was there on New Year's day, 1865. He came there to see me. I know that he and Mr. Hill had a great deal of conversation and were very cozy together. At that time Mr. Hill was talking of going to Santa Cruz and not to Bermuda. He thought a sea voyage always did him good, but after the operation on his eyes, and his nephews came on here, they persuaded him to go to Bermuda where his sister and some of his nephews were. In January, 1865, Mr. Hill could see very well with one eye. And he could always see a great deal better with one eye than he could with the other. The cataract was only on one eye, and it sympathized some with the other. I recollect very well at that time, that very New Year's day, of his showing Vanderbilt of his holding his hands first one and then the other up to his eye and telling him what he could see.

What was Hill's condition, mental and physical, in April, 1866, when you saw him at Cutler's?

Objected to—as not rebutting and as having been already examined about.

A. Very feeble and very childish in his conduct and actions—he was feeble in frame and childish in actions and conduct.

Q. Did you ever say to Mr. Cutler or to any one else that you did not blame Mr. McAlpine in respect to the purchase of the farm and personal property?

A. I never said so to Mr. Cutler or to any other person at no time—on the contrary, I considered him as a mere shark acting with his eyes open.

I never heard that Mr. John D. Van Buren was Mr.

Anthony John Hill's commercial agent at any time. I never knew him as such.

Q. Mr. John D. Van Buren charges in his testimony that Mrs. Gleason was not a woman of reputable character. What can you say of her in that respect, if anything?

A. Her character and conduct and reputation is and always has been as good as that of any lady within my knowledge.

I have understood from one of them, that she was introduced into Mr. Van Buren's family by Mr. Hill himself—I know that Mr. Hill told me that since Mrs. Gleason had been a widow, and was low spirited, that he had taken pity on her, and had taken her to Mr. Van Buren's house—of my own knowledge I know nothing—but I know this, that Mr. Van Buren in old times was always jealous of her influence with Mr. Hill. He is a a wonderfully jealous, malicious, self-important little man, and likes to meddle with other people's business.

Cross-Examined by Mr. Mills.

I do not know that my recollection of Mr. Hill's whereabouts in the winter of 1865-1866 is any different now from what it was when I was examined before.

Q. You had the same facilities for information on this matter that you have now, had you not?

A. I had the same facilities if I had exercised them.

Q. And you have no new light upon that subject now, have you?

A. I looked over my memorandum books to see where I had been, and what I was doing during the winter. I did that here in Morristown since the former evidence has been taken in this case. I looked them over within the last two months.

I was present at the examination of Philip Vanderbilt in this case in June last. I don't know that I made any suggestions to my counsel during his examinations except that I gave him probably a memorandum of what

I wished to prove by him, as is usual in such cases. I never gave him a memorandum of dates.

Q. You were present at the examination of Charles Brueninghausen and Edward W. Brueninghausen, Anthony B. Hill and Joseph Dunderdale, in this case, were you not?

A. I was, but I was so unwell that I was hardly able to sit up, as is well known to all of you.

I could not state definitely what day in December, 1865, Mr. Hill went out to the farm, nor what day he went back, for I did not change my mind with the date. I could not state definitely what day in January, 1866, he came out, or what day he went back, for I made no memorandum of it. I recollect distinctly helping him across the street.

I did not keep a diary of such kind of movements at that time. Nor any memorandum book of such kind of movements at that time. No one else does.

FRED'K. W. WALKER

Sworn and subscribed this 15th day of March, A. D. 1870,

Before me,

SAM'L. S. HALSEY, M. C. C.

Augustus W. Cutler, a witness, called and sworn on the part of complainant, deposes and says:—I never entered up more than two confessed judgments in favor of Anthony John Hill, against Frederick W. Walker. I think one was for about two thousand dollars, and the other about sixteen hundred dollars. Besides the consideration of those two judgments, I do not know of any moneys advanced or paid by Mr. Hill, to or for Mr. Walker. I have no recollection of ever saying to Mr. McAlpine that Mr. Van Buren was Mr. Hill's commercial agent. I never knew or heard that Mr. Van Buren was Mr. Hill's commercial agent.

Q. Did you consent or refuse to have anything to do with the sale in question in this cause which Van Buren made to McAlpine?

Objected to because the witness has been fully examined upon all this subject before.

A. I had nothing to do with it at all.

Q. Was the written agreement for the sale of the property read over in your presence at the farm at Littleton, or elsewhere, before it was signed ?

Same objection.

A. It was not.

Q. Did you ever tell David H. McAlpine that Frederick W. Walker did not blame him, McAlpine, for having purchased the property, or for his part in the transaction ?

Same objection.

A. No, I have no recollection of any conversation with Mr. McAlpine in reference to it ; I have no recollection of any conversation with Mr. McAlpine in reference to this matter excepting twice, and that was in reference to the library.

Q. Did you in the presence of McAlpine, Dunderdale, or Van Buren, or of any of them, state that the title to this property was as good as any in Morris County, or words to that effect ?

Same objection.

A. I have no recollection of any conversation with these parties, with reference to the title to this farm, after Dunderdale and Van Buren came there, but I did state to McAlpine the history of the title in the presence of Johnson, before they came, giving him a full history of the title, but I have no recollection of making use of any such expression.

Q. Before the contract was signed, and on the day it was signed, did you or not tell Joseph Dunderdale that Frederick W. Walker would not put up with or consent to the sale ?

A. I did.

I do not think I saw the contract for the sale of the farm signed, when it was signed by Mr. McAlpine and Mr. Van Buren.

AUG'S. W. CUTLER.

Sworn and subscribed this 15th day of March, A. D. 1870,

Before me,

SAMUEL S. HALSEY, M. C. C.

Examination of witnesses adjourned to Tuesday afternoon, March 15th, 1870, at three o'clock.

Tuesday afternoon, March 15th, 1870, three o'clock, P. M., examination continued pursuant to adjournment.

William W. Fairchild, a witness, recalled and re-sworn on part of complainant, deposes and says :

Q. Did you tell Joseph Dunderdale or anybody else that the sale of the Walker property at Littleton, real and personal, for $28,000, was a good sale ?

A. I never knew that the personal estate was included in the sale of the real estate, until the examination has been going on.

Q. Did you tell Mr. Dunderdale or anybody else, that the sale of the real estate for $28,000 was a good sale ?

A. I don't know Mr. Dunderdale at all. I don't remember of any such conversation with any of those gentlemen at Mr. Mills' office, or in New York, or any where else.

Q. Did you ever think that a sale of that property for $28,000 at that time, 1866, was a good sale ?

A. Well, I don't know as I ever knew at that time what it did bring. I will give my best recollection of what took place at that time. Those gentlemen in Mr. Mills' office, and in the presence of Mr. Mills also, said they were going up to buy that farm, or had bought it. And they were going there that day. I don't remember of any amounts being spoken of, as to what they were to give for it, nor anything about it. It did not concern me. Those gentlemen asked me what farms sold for about here. I told them they ranged from one to two hundred dollars per acre. Then they asked me what that Walker farm was worth. I think that is the next thing as near as I can get at it. I told them the same as I did in regard to others, that I considered a portion

of that farm worth from one to two hundred dollars per acre. That was about the end of the conversation.

Cross-examined by Mr. Little.

It is not usual in this neighborhood to sell farms for all cash. The terms have usually been half cash and half bond and mortgage from one to three years.

Q. What difference do you think it would make in the price realized in the sale of that Walker property, whether it was sold for cash, or upon the usual terms?

A. It would depend upon the circumstances of the parties. I could not tell what difference it would make. I think those gentlemen told me they were going up to the farm to look at it and buy it.

Cross-examined by Mr. Mills.

Q. Your recollection about that conversation in my office and what preceded and followed it is very much mixed, is it not?

A. The conversation that took place there is as I have stated it as near as can be.

Q. In your previous examination in this case you had forgotten all about these two letters, exhibits Nos. 18 and 19 in this case, had you not?

A. I wrote those letters. I don't know what I said about them before. I don't know whether I had forgotten about them or not. They were written at the time they were dated.

WM. W. FAIRCHILD.

Sworn and subscribed this 15*th day of March, A. D.* 1870.

Before me,

SAMUEL S. HALSEY,
Master in Chancery of New Jersey.

Thomas V. Johnson, a witness called and sworn on the part of complainant, deposes and says:

Q. At the time David H. McAlpine first called upon you at Littleton, and the first time you saw him, did you then tell him that the Walker farm and personal property on it (excepting the library and library furniture) could be bought for $28,000?

A. I stated in my previous examination my answer to this very fully, and an answer now of yes or no, would not convey the whole truth. I would have to go into an explanation of matters, as I did before, to give the truth fully. The facts are these: I told Mr. McAlpine that the farm could be bought, including the personal property, (excepting the library and library furniture,) for $30,000.

Q. Did you, on that occasion, offer it to him for $28,000?

A. I did not. I had no authority to offer it to him or anybody else for less than $30,000.

Q. Did you ever go to Joseph Dunderdale, on behalf of McAlpine, and offer $25,000 cash for the property?

A. I did.

Q. What occurred then?

(Objected to.)

Mr. Little further objects to the examination of this witness upon anything as to what he has been examined before. Witness continues: I asked Mr. Dunderdale what was the lowest he would take for the property, and he invited me to make a proposition. I think I named $27,000 as about the figures Mr. McAlpine would give. Then he asked me to make a proposition in writing. I think he advised me to increase that to $28,000. Then I made the proposition in that form, $28,000.

Q. Did you ever state to Joseph Dunderdale, or to anybody else, that selling at $28,000 was a good sale of the Walker farm and personal property, sold to McAlpine?

A. My recollection is, that I stated to him that I thought the property cheap at $28,000, and I have no recollection of stating that it was a good sale at $28,000.

THO'S. V. JOHNSON.

Sworn and subscribed this 19*th day of March, A. D.*, 1870,

Before me,

SAMUEL S. HALSEY,
Master in Chancery of New Jersey.

The Counsel for all parties here declared the testimony in this case closed.

SAMUEL S. HALSEY,
Master in Chancery of New Jersey.

EXHIBITS ON PART OF COMPLAINANT.

EXHIBIT No. 1.

ANTHONY J. HILL,
vs.
FREDERICK W. WALKER. } *In Case.*

1857, April 3, damages,	$2,000 00
Costs, - - -	26 72
Interest to May 2, 1862,	619 10
Alias, - - -	3 00
Pluries, - - -	3 00
Second do., - -	3 00
This writ, - - -	3 00
Sheriff's fees, - -	44 20
Total, - - -	$2,702 02

ANTHONY J. HILL,
vs.
FREDERICK W. WALKER. } *In Case.*

1857, November 13, -	$1,651 60
Costs, - - -	21 34
Interest, - - -	447 95
Costs of writ, - -	3 00
Alias, - - - -	3 00
Pluries, - - -	3 00
Second do., - - -	3 00
This writ, - -	3 00
Sheriff's fees, - - -	11 02
Total, - -	$2,146 91

GEORGE J. S. THOMPSON,
vs.
FREDERICK W. WALKER.

October 5, 1858, - -	$10,729 57
Costs, - - -	26 72
Interest, - - -	2,301 84
Costs of writ, - -	3 00
Pluries, - - -	3 00
Socond do., - -	3 00
This writ, - - -	3 00
Sheriff's fees - -	67 42
Total, - - -	$13,137 55

LIBRARY.

1. Mahogany book case	Hill	$41	00	
2. 220 volumes in case next chimney	"	60	00	
4. 228 volumes next the door	"	205	00	
3. Mahogany book case next do.	"	65	00	
5. Mahogany book case next do.	"	65	00	
6. 231 volumes	"	45	00	
7. Mahogany book case	"	35	00	
8. 194 volumes, French	"	45	00	10
9. Mahogany book case	"	55	00	
10. 182 volumes travels	"	25	00	
11. Mahogany book case double	"	85	00	
12. 237 volumes, American	"	145	00	
		$871	00	

LIBRARY FURNITURE.

13. 1 mahogany desk	Hill	$45	00	20
14. 1 arm chair, close back	"	26	00	
15. 3 red plush chairs, $2 25	"	6	75	
16. 1 mahogany clock	"	13	00	
17. 1 barometer	"	3	00	
18. 3 busts	"	4	00	
19. 1 backgammon board	"	2	25	
20. 2 mantel lamps	"	2	00	
21. 3 vases	"	1	20	
22. 1 carpet, 35 y'ds, 75 cts per y'd	"	26	25	
23. 1 baize	"	6	00	30
24. 1 fire-board	"		40	
		$135	85	

LARGE ROOM—PARLOR.

25. 1 square mahogany centre table	A. J. Hill	5	50	
26. 1 round " " "	"	4	00	
27. 1 marble top " "	"	6	00	
28. 1 mahogany sofa	"	12	00	40

29.	1 mahogany sofa	"	6 00
30.	3 arm chairs, $3 50	"	10 50
31.	2 rocking " 4 00	"	8 00
			$84 65
32.	9 parlor chairs, $1 50	A. J. Hill	$13 50
33.	2 painted china vases	"	1 25
34.	3 alabaster ornaments	"	6 00
35.	2 glass "	"	50
36.	2 marble shelves	"	3 00
37.	1 carpet, 80 yards, 30 cts.	"	24 00
38.	1 globe lamp	"	1 00
39.	FIRST FLOOR HALL.		
40.			
41.	1 oil cloth	A. J. Hill	5 50
42.	1 hat stand	"	3 00
43.	6 walnut arm chairs, at 75 cts.	"	4 50
44.	3 rugs	"	50
45.	1 stair carpet, rods, mats and scraper	"	11 00
46.	1 hall lamp	"	1 05
			$74 80
47.	1 mahogany table (extension)	A. J. Hill	$16 50
48.	1 " sofa	"	7 50
49.	1 pier table and looking glass	"	10 00
50.	1 mahogany side board	"	7 00
51.	7 " chairs	"	5 25
52.	1 globe lamp	"	50
53.	3 flower vases	"	1 80
54.	2 plated candle sticks	"	50
55.	1 carpet, 41 yards, at 40 cts.	"	16 40
56.	1 baize	"	1 00
57.	1 fire-board	"	25
			$66 70

CROCKERY, GLASS, ETC.

58. 1 set French white dining set,
59. 1 soup turreen,
60. 9 soup plates,
61. 3 pitchers,
62. 7 fruit dishes,
63. 2 salad "
64. 2 pickle "
65. 2 butter "
66. 4 covered "
67. 4 gravy "
68. 2 butter boats,
69. 1 blanc mange,
70. 1 fish platter,
71. 9 meat "
72. 41 dinner plates,
73. 44 breakfast "
74. 23 tea "

10

The lot, A. J. Hill, $10 00 20

TEA SET.

75. 1 sugar bowl,
76. 15 cups and saucers, A. J. Hill $1 00

$11 00

COFFEE SET.

30

77. 1 pot,
78. 1 sugar,
79. 1 cream,
80. 10 coffee cups and saucers, A. J. Hill $1 00
81. 1 gilt china tea set, " 3 50

GLASS.

	82. 5 decanters,		
	83. 2 goblets,		
	84. 2 glass dishes,		
	85. 4 " "		
	86. 3 " sundries,		
	87. 2 " salts,		
	88. 8 " tumblers,		
10	89. 1 dozen lemonades,		
	90. 1 " wine glasses,		
	91. 1-2 dozen champagne do.,		
		A. J. Hill	$7 50

92 KNIVES, FORKS, AND SPOONS, ETC.

	93. 1 dozen white handle knives and forks		50
	94. 8 plated tea spoons	A. J. Hill	$2 00
	95. 8 " table "	"	2 00
20			$16 50

	96. 3 carving knives and forks,	A. J. Hill	50
	97. 4 tea trays	"	1 50
	98. 2 small trays	"	25
	99. 1 tea canister	"	25
	100. 1 tea caddy	"	05
	101. 1 lemon squeezer	"	05
	102. 1 coffee pot	"	35
30	103.		

THE HALL—SECOND FLOOR.

	104. The hall carpet	A. J. Hill	$3 50
	105. 1 stair carpet, rods, &c.	"	3 00
	106.		

SECOND FLOOR—FRONT ROOM, OR GUSS'S ROOM.

	107. 1 case books, 300	A. J. Hill	$26 00
	108. 1 mahogany bureau and glass	"	12 00
40	109. 1 " bedstead and bedding	"	21 00

110.	1 mahogany sofa	A. J. Hill	$5	00	
111.	4 " chairs	"	2	00	
112.	1 " wash-stand and rack	"	4	00	
			$79	45	
113.	1 chamber set	A. J. Hill	$3	00	
114.	1 mahogany stand	"		50	
115.	1 broken statue and stand	"	1	00	
116.	3 flower vases	"		75	10
117.	1 stove fire-board and poker	"	6	00	
118.	1 carpet, 27 yd's, at 30 cts.	"	8	10	

BACK ROOM OF SAME.

119.	1 mahogany bedstead and bedding,	A. J. Hill	$15	50	
120.	1 mahogany wash-stand and rack	"	3	50	
121.	1 chamber crockery	"	2	00	
122.	1 mahogany bureau	"	2	50	20
123.	3 mahogany chairs	"	1	80	
			$44	65	
124.	1 pier table	A. J. Hill	$5	50	
125.	1 looking glass	"	2	75	
126.	1 mantle glass	"	2	50	
127.	1 little portable glass	"		35	
128.	2 mantel vases	"	1	00	
129.	1 book and case, and books	"	17	00	30
130.	1 fire-board	"		25	
131.	1 carpet, 30 yd's, at 25 cts.	"	7	50	
			$36	85	

SECOND FLOOR—HALL BED ROOM.

132.	1 enameled bedstead and bedding		
133.	1 " bureau		
134.	1 " wash-stand		40

135.	2 enameled chairs	A. J. Hill	$20 00
136.	chamber set		
137.	1 carpet, 6 yd's, at 25 cts.		1 50

FRONT ROOM—GEORGE'S ROOM.

138.	1 black walnut bedstead and bedding,		
139.	1 " " bureau,		
140.	1 " " wash-stand and rack,		
141.	chamber crockery		2 50
142.	1 mahogany rocking chair		3 00
143.	1 " table		2 25
144.	4 light chairs	A. J. Hill	$42 50
			$74 00
145.	1 carpet, 32 y'ds, at 25 cts.	A. J. Hill	8 00

BACK ROOM TO THIS.

146.	1 mahogany bedstead and bedding,	A. J. Hill	$22 00
147.	1 marble top table		7 00
148.	1 wash-stand and rack		6 00
149.	chamber crockery		2 50
150.	3 mahogany chairs, at $1		3 00
151.	1 " bureau		13 00
152.	1 carpet, 28 y'ds, at 35 cts.		9 80
			$71 30

COVERLIDS, BLANKETS, NAPKINS, &C.

153.	9 pair linen sheets, at $2 25	A. J. Hill	$20 25
154.	3 " cotton	"	70
155.	7 " large linen pillow cases, 30 cts.	"	2 10
156.	6 " small " " " 30 cts.	"	1 80
157.	6 " large cotton " " "		72
158.	6 " small " " " "		

159. 23 napkins	A. J. Hill	$1 50	
160. 4 new table cloths, at $2 30	"	9 20	
161. 3 old " " $1 10	"	3 30	
162. 30 towels	"	70	
		$40 27	

163. 6 good white quilts,
164. 3 old " " 10
165. 10 blankets,
166. 2 comforters,
167. 1 feather bed,
168. 1 " "
169. 1 " "
170. 1 " "
171. 1 straw "
172. 1 pair feather pillows,
173. 1 " " "
174. 1 " " " 20
175. 1 " " "
176. 1 " " "
177. 1 " " "
178. 1 single "
179. 1 feather bolsters.

Sold to A. J. Hill on the bedsteads.

THIRD FLOOR—F. W. W.

30

180. 1 curled maple bedstead and bedding,	A. J. Hill	$16 00	
181. 1 wardrobe, do.	"	7 00	
182. 1 centre table	"	1 00	
183 1 wash-stand and rack	"	6 00	
184. 4 chairs, at 30 cts.	"	1 20	
185. Chamber crockery	"	2 00	
186. 1 cabinet, &c, little table	"	1 50	
187. 1 carpet, 32 y'ds, at 35 cts.	"	11 20	
188. 1 gun, duck	"	5 00	40

189.	1 gun, double barreled	A. J. Hill	$8 00
			$58 90
190.	1 gun, single,	A. J. Hill	$12 50
191.	1 artillery sword	"	40
192.	4 pictures	"	1 50

BACK ROOM.

193.	1 mahogany bedstead and bead	"	20 00
194.	1 " " wash-stand and rack	"	3 00
195.	Chamber crockery	"	1 00
196.	1 mahogany wardrobe	"	12 00
197.	1 book case and 75 books	"	8 50
198.	1 looking glass	"	2 50
199.	1 " " gilt	"	2 75
			$64 15
200.	2 mahogany chairs, at $1	A. J. Hill	$2 00
201.	2 arm chairs	"	1 60
202.	1 Boston rocking chair	"	50
203.	2 pictures	"	50
204.	1 carpet, 30 y'ds, at 55 cts.	"	16 50

THIRD FLOOR—FRONT ROOM.

205.	1 black walnut bedstead and bedding,	A. J. Hill	$20 00
206.	1 black walnut wardrobe	"	4 00
207.	1 " " bureau and glass	"	8 00
208.	1 mahogany " "	"	2 00
209.	1 book case and 40 books	"	4 50
210.	1 mahogany washstand	"	1 30
211.	1 oil cloth	"	8 50
212.	1 rug	"	60
213.	3 black walnut chairs	"	1 50

THIRD FLOOR HALL.

214. 1 carpet, 27 y'ds, at 25 cts.	A. J. Hill	$9	45
215. 1 secretary	"	4	50

GARRET.

216. 1 stove pipe and fixtures,	A. J. Hill	$2	00
217. Fireboard, screen, and hand frame	"	1	00
218. 1 bird cage	"		12 10
		$27	67
219. 1 rug	Theo. Little	$1	20
220. 1 sick chair	A. J. Hill	3	00
221. 1 chest old paper, (not sold.)			
222.			
223. Lot old curtains			25

BACK BUILDING AND KITCHEN ROOM. 20

224. 1 mahogany table,	A. J. Hill	$3	50
225. 1 " stand			70
226. 1 " rocking chair		2	50
227. 1 " " "		2	25
228. 1 " clock		1	50
229. 1 map New Jersey			50
		$15	40
			30
230. 1 map United States		$1	00
231. 1 " Europe			80
232. 1 " State of New York		1	20
233. 1 " Morris county		1	00
234. 1 small looking glass			25
235. 1 lamp			12
236. 1 candle stick			10
237. 1 thermometer		1	10
238. 1 scraper			15
239. 1 drum stove and pipe		3	60 40

240.	Shovel, tongs, and wood box		25
			$9 47

TOOLS.

241.	2 hand saws, 4 augers, 2 hammers, 2 wood saws	A. J. Hill	$5 75
242.	1 pruning saw, screw driver, 1 stand screen.		

LITTLE ROOM.

243.	1 writing desk	A. J. Hill	$4 50
244.	1 portable bath and fixtures	"	1 00
245.	1 roll wire	"	70
246.	3 tea trays	"	10
247.	———		
248.	Oil cloth	"	80
			$13 85

KITCHEN.

249.	1 leaf table	A. J. Hill	$ 50
250.	1 kitchen table	"	50
251.	1 little old sideboard	"	80
252.	1 tin churn	"	1 00
253.	1 looking glass	"	12
254.	3 old chairs	"	25
255.	10 tin pans, at 7 cts.	"	70
256.	2 tin pails	"	40
257.	1 wooden pail	"	10
			$4 37
258.	1 wash tub	"	
259.	1 " "	"	
260.	1 " " at 60 cts.	"	1 80
261.	Oil cans, &c.		30

40 262. 1 lantern		$ 12	
263. Pots and jars		1 00	
264. Metal lamps		25	
265. Glass "		15	
266. Brass candle sticks		10	
267. 1 pair steelyards		25	
268. 1 " scales and weights		1 10	
269. Dippers and scoops		30	
270. 1 wash board		20	
271. 1 clothes horse		50	10
272. 1 step ladder		50	
		$6 57	
273. ———			
274. 1 coal sieve	A. J. Hill	$ 12	
275. 1 portable furnace	"	10 00	
276. 2 coal scuttles	"	25	
277. Furniture to kitchen range	"	70	
278. 1 grid iron	"		20
279. 1 frying pan	"	25	
280. 1 lot wooden measures	"	75	
281. 5 old brass cocks	"	50	
282. The kitchen crockery	"	2 00	
283. Sad-irons	"	20	
284. 1 coffee mill	"	12	
		$14 89	
285. Kitchen knives, &c.	"	50	30

CARRIAGES, WAGONS, HARNESS, &C.

286. 1 double rockaway carriage	A. J. Hill	$40 00	
287. 1 " carriage harness	"	10 00	
288. 1 single buggie wagon	"	10 00	
289. 1 " " harness	"	5 00	
290. 1 light common wagon	"	15 00	
291. 1 one-horse cart	"	10 00	
292. 1 " " harness	"	10	50 40

293.	1 ox cart, (purchased for Cobb)		$5 00
294.	1 farm wagon and body	A. J. Hill	11 00
295.	1 " " "	"	10 00
			$127 00
296.	1 broken wagon	"	
297.	1 " "	"	4 00
298.	1 double sleigh	"	3 00
299.	1 pair bob sleds	"	5 00
300.	1 single sleigh		3 00
301.	1 set double team harness,		
302.	1 " " " "	at $8	16 00
303.	1 " " " "		4 00
304.	1 " " " "		8 00
305.	1 wood rigging		25
306.	1 hay "		2 00
307.	1 " "	A. J. Hill	25
308.	1 coal body	"	50
			$46 00
309.	1 saddle	"	7 50
310.	1 "	"	3 50
311.	1 side saddle	"	4 25
312.	1 set bitting tackle,	S. B. Condict	4 00
313.	1 lot old hardware	A. J. Hill	3 25
314.	1 set whiffle trees,	"	
315.	1 " " "	"	
316.	1 " " "	"	
317.	1 " " "	"	
318.	1 " " "	"	
319.	1 " " " (3 sets only sold)	"	2 25
			$24 75
320.	1 ox chain,	A. J. Hill	
321.	1 " "	"	
322.	1 " "	"	

323.	1 binding chain	A. J. Hill	$1	00
324.	1 " "	"		
325.	4 hog gambles	"		25
326.	1 clevis	"		50
327.	2 ox nose baskets	"		12
328	Lot of halter chains and bridles	"	2	00
329	Lot of leather and fly nets	"	1	25
330.	" cotton "	"	1	25
			$6	37 10

FARMING UTENSILS.

331.	1 horse power with thresher	A. J. Hill	$25	00
332.	1 corn sheller	"	2	00
333.	1 wood cutter	"	7	00
334.	1 hay cutter	"	11	00
335.	1 fanning mill	"	4	00
336.	1 bog plow,	M. Shelly	5	00
337.	1 subsoil plow	A. J. Hill	2	00 20
338.	1 plow, No. 1	"	1	25
339.	1 " " 2	"		25
340.	1 " " 3	"	2	75
341.	1 " " 4	"	3	25
342.	1 " " 5	"		25
343.	1 " " 6	"	1	00
			$64	75

344.	1 cultivator	"	1	50 30
345.	1 scraper	"	1	50
346.	1 harrow, large	"	2	00
347.	1 " small	"	1	25
348.	1 stone boat	"		25
349.	1 mowing machine	"	10	00
350.	1 hand barrow	"	1	50
351.	1 grindstone	"	1	00
352.	1 " small	"	1	00
353.	1 hand drill	"	1	00
354.	1 garden engine	"	1	00 40

355.	1 crow-bar,	A. J. Hill	
356.	1 "	"	$1 00
357.	1 "	"	1 00
358.	1 hand corn sheller	"	1 00
			$24 00
359.	1 iron pump	"	50
360.	50 bags	"	2 10
361.	1 threshing flail	A. J. Hill	12
362.	1 hoe,	"	
363.	1 "	"	
364.	1 "	"	
365.	1 "	"	40
366.	1 "	"	25
367.	1 rake,	A. J. Hill	
368.	1 "	"	
369.	1 "	"	
370.	1 "	"	
371.	1 "	"	75
372.	1 pitchfork.	A. J. Hill	
373.	1 "	"	
374.	1 "		
375.	1 "		25
376.	1 shovel and spade,		
377.	1 "		
378.	1 "		
379.	1 "		
380.	1 "		
381.	1 "		
382.	1 "		
383.	1 "	A. J. Hill	40
384.	1 dung fork		
385.	1 " "		12
386.	A lot of the same broken and out of order	"	35
387.	1 brush scythe,		
388.	1 " "	"	36
389.	1 grub hoe		60
390.	1 axe		

391.	1 axe	A. J. Hill	60	
392.	1 pick axe,			
393.	1 " "	"	30	
			$2	63
394.	1 scythe stick,			
395.	1 "			
396.	1 "			
397.	1 "			10
398.	1 "			
399.	1 "	"	$1	50
400.	1 grain cradle,			
401.	1 " " at 2 10	"	4	20
402.	———			
403.	———			
404.	1 coal rake		25	
405.	2 iron path rakes	A. J. Hill	12	
406.	2 garden rakes	"	60	
407.	1 bayonet hoe	"	12	20
408.	1 stove and pipe,			
409.	1 " "			
410.	1 " "	"	1	00
411.	1 old shower bath	"	25	
412.	Lot of old iron	"	2	12
413.	4 milk cans, 1 62 1-2 each	"	6	50
414.	10 tin pans	"	1	00
415.	5 coolers	A. J. Hill		
416.	5 "	"		
417.	5 "	"		30
418.	5 "	"		
419.	5 "	"		
420.	5 "	"		
421.	5 "	"		
422.	5 "	"		
423.	5 "	"		
424.	5 " at 14 cts.	"	7	00
425.	3 wooden butter tubs,	"		
426.	3 " " "	"		
427.	3 " " "	"		40

428.	3 wooden butter tubs, at 10 cts.,	A. J. Hill	$1 20
429.	3 old demijohns	"	10
430.	2 oil hogsheads,	(Cobb purchased)	50
431.	2 rum "	A. J. Hill	25
432.	5 pork or beef barrels	"	1 00
433.	4 oil "	"	1 50
434.	5 dry "	"	50
			$12 05

435.	1 feed bin,	"	
436.	1 " "	"	
437.	1 " "	"	
438.	1 " "	"	
439.	1 " "	"	
440.	1 " " at 1 60	A. J. Hill	$9 60
441.	1 lot manure		
442.	1 " "	"	40 00

LIVE STOCK.

443.	1 bay mare named Kate,	A. J. Hill	5 00
444.	1 " " " Suse	"	55 00
445.	1 sorrel " " Virginia	"	40 00
446.	1 " " " Duroc	"	25 00
447.	1 one year old colt	"	20 00
448.	1 one year old colt, dead.		
449.	1 two year old colt, choice	"	52 50
450.	1 " "	"	30 00
451.	1 " "	"	30 00
452.	1 " "	"	20 00
			$377 10

453.	1		
454.	1		
455.	1 horse team	A. J. Hill	$50 00
456.	1 mare	"	26 00

457.	1 Ayrshire bull, (belongs to Cutler.)			
458.	1 yoke oxen and yoke,	Wm. Leddy	$78 00	
459.	1 milch cow, crumpled horn,	A. J. Hill	10 00	
460.	1 " red cow	"	14 00	
461.	1 " pie colored	"	22 50	
462.	1 " little cow	"	20 00	
463.	1 " big red	"	16 00	
464.	1 " broad horns	"	7 00	
465.	1 yearling heifer	"	5 00	10
			$253 50	
466.	1 yearling heifer 1 bull.	"	5 00	
467.	1 two year old heifer, white	A. J. Hill	12 00	
468.	1 two year old, white face	"	13 00	
469	1 two year old, red	G. E. Righter	13 00	
470	1 two year old, brindle		12 00	
471.	1 two year old brindle heifer	A. J. Hill	10 00	20
472.	1 sow		8 00	

POULTRY.

473.	28 fowls	A. J. Hill	8 40	
			$86 40	
474.	4 turkeys	"	4 00	30
475.	2 drakes or ducks	"	50	
476.	1 peacock, (not sold)	"		

GRAIN GROWING.

477.	10 acres rye growing,	A. J. Hill	$30 00	
478.	8 acres wheat "	"	30 00	
479.	500 bushels charcoal	"	10 00	
480.	Lot of wood	"	2 00	
481.	1 four year old colt	"	65 00	40

482.	Lot old barrels and boxes	A. J. Hill	$ 1 50
483.	Contents kitchen garret	"	3 00
484.	Ladder	"	25
			$146 25
485.	Oil cloth		5 00
486.	Old do.		1 00

ROOMS OVER KITCHEN.

487.	1 bed and bedding,	A. J. Hill	3 00
488.	Carpet on floor		50
489.	Wash stand		25
490.	1 chair		25

BACK ROOM, DO.

491.	1 bedstead and bedding		2 00
492.	1 " "		1 50
493.	2 chairs		10
494.	Carpet on hall		50
495.	Bath room carpet		50

BED ROOM.

496.	1 cot and bedding		2 00
497.	1 bedstead		70
498.	2 wash stands		70
499.	Carpet		05

STORE ROOM.

500	Scales	A. J. Hill	20
501.	1 pair candle sticks	"	70
502.	5 lot old lamps	"	20
			$19 15
503.	Lot of old crockery	"	25

504. Lot of tinware	A. J. Hill	$ 60	
505. Flour barrels		50	
506. 1 truck,	A. J. Hill	1 00	
507. 1 beam scale	"	1 00	
508. 2 dung forks, with handles	"	90	
509. 2 hay forks		70	
510. Old lead pipe		50	
511. Oil barrels		1 00	
512 Lot of holed posts		7 00	10
513. 2 buck saws		50	
		$40 95	

Cash from Cobb, - - - -	$5 50
" " Righter - - - -	13 00
" " Leddy - - - -	78 00

RECAPITULATION,

OF SALE OF FREDERICK W. WALKER'S personal property, sold at Sheriff's sale, May 2d, 1862, on the premises :

1st Page,		$871 00
2d	"	262 05
3d	"	77 70
4th	"	95 95
5th	"	155 50
6th	"	111 57
7th	"	170 95
8th	"	52 54
9th	"	24 79
10th	"	187 89
11th	"	95 87
12th	"	27 62
13th	"	20 39
14th	"	389 15
15th	"	486 15
16th	"	60 10
Whole amount of sale		$3,089 72
Anthony J. Hill's bill	$2,966 72	
Cash received	123 00	
		$3,089 72

The above is correct as being compared with the vendue on sale book.

WM. W. FAIRCHILD.

IN CHANCERY OF NEW JERSEY.

EXHIBIT B.

FREDERICK W. WALKER,
Complainant,
and
ANTHONY J. HILL,
GEORGE WALKER,
MARIA WALKER,
GARRETT DEMOTT,
Sheriff, &c.,
AUGUSTUS W. CUTLER,
JOHN D. VAN BUREN, and
JOSEPH DUNDERDALE,
Defendants.

On Bill, &c.

Notice of Lis Pendens, &c.

Notice is hereby given to all to whom it may concern: That the bill in the above stated cause, against the above named defendants, is for the purpose of compelling all, and each of the above named defendants, their confederates, agents, and assistance, from selling, transferring, conveying, entering upon, or in any wise meddling or interfering with, in any manner, with any and all the following described property, lands, tenements and real

estate, and for such further and other relief as may be equitable and just—which premises are described in said bill as follows, to-wit.: Situate, lying and being in Littleton, in the township of Hanover, in the county of Morris and State of New Jersey ; bounded northerly by the Halsey Town road and lands of William M. Shelly and lands now, or formerly, of Mahlon Johnson and to Quinby and Jared Howell; easterly by land now, or formerly, owned by D. Y. Wheeler, and by now, or formerly, belonged to the estate of William Shelly, deceased ; southerly by lands now or formerly, owned by Mahlon Johnson, and and by lands formerly owned by Betsey Gard and now owned by one Bouten; westerly, by the road leading from Littleton corner to Parsippany—said lands being known as the Walker Farm, and containing 281 97-100 acres of land, more or less, and being the same premises conveyed by Silas B. Condict to Henry A. Walker by deed bearing date the 21st day of October, A. D., 1851, and recorded in office of the Clerk of Morris County October 24th, 1851, in record of deeds, Liber X 4, in folio, 98, 99, 100 and 101.

DAVID A. HAYES,
Sol. of Complainant.

STATE OF NEW JERSEY, }
Morris County, ss. } I, WILLIAM MCCARTY, Clerk of the county of Morris, do hereby certify that the foregoing is a true copy of the notice of lis pendens filed and recorded in the Morris county Clerk's office August 30th, 1866.

In testimony whereof I have hereunto set my hand and affixed the seal of said county at Morristown, this thirty-first day of August, A. D. 1866.

[L. S.]

WM. McCARTY.
Clerk.

5 U. S. 5
5 INTER.REV'UE. 5 CTS.
5 FOR'N EXC'GE. 5

IN CHANCERY OF NEW JERSEY.

EXHIBIT C.

Between

JAMES C. ATWATER, *Complainant*,

and

FREDERICK W. WALKER, et als., *Defendant.*

Fi Fa for sale of mortg'd premises.

Ret'nable to October Term, 1864.

ALFRED MILLS, *Solicitor.*

September 5th, 1866, returned to Chancery, with statement annexed, and check for Maria Walker. Decree in full, $8,559 11-100 :

SHERIFF'S FEES, &C.

Levy,	$1 12
Adv'm.,	3 50
Sale,	1 00
Statement,	1 00
Per cent.,	122 49
Printer,	15 30
	$144 41 40

Levy costs of Maria Walker, - - - $27 48
Interest from April 6th, 1864, to September 5th, 1866, 2 years and 5 months, - 3 97

$31 45

[Signed.]

Received payment of these costs, $31 45-100.

AUG. W. CUTLER,
Solicitor for Maria Walker.

Amount to be paid in Court, - - $7,447 03
Interest from March 9th, 1684, to September, 5th, 1866, 2 years 6 months, less 4 days, 1,112 08

$8,559 11

The surplus money to be paid into Court; Sheriff's fees charged to A. W. Cutler—on caption book, folio 193.

Decree for complainant, - - $8,418 81
Interest from March 9th, 1864, to September 5th, 1866, 2 years 6 months and 4 days, 1,257 21
Costs taxed at - - - - 205 85
Interest from April 5th, 1864, to September 5th, 1866, 2 years and 5 months, - 29 85

$9,911 72

$9,911 72-100.

Received September 5th, 1866, from Garrett DeMott, late Sheriff, nine thousand nine hundred and eleven seventy-two one-hundredths dollars in payment of Atwater mortgage, costs, and interest.

GEORGE WALKER, *Assignee*,
by Jno. D. Van Buren, *Att'y in fact.*

U.S. IN. R'V STAMP. 5 CENTS.

Decree for George Walker, - -	$16,534 83
Interest from March 9, 1864, to	
Costs taxed at - - - -	30 46
Interest from April 5, 1864, to	

$3,849 94-100.

Received September 5th, 1866, from Garrett DeMott, late Sheriff, three thousand eight hundred and forty-nine ninety-four one hundredths dollars upon the George Walker mortgage.

GEORGE WALKER,
by Jno. D. Van Buren, *Att'y in fact.*

U.S.IN.R'V STAMP. 5 CENTS.

IN CHANCERY OF NEW JERSEY.

Between

JAMES C. ATWATER, *Complainant,*

and

FREDERICK W. WALKER, et als., *Defendant.*

Fi Fa for sale of mortg'd premises.

Ret'nable to October Term, 1864.

ALFRED MILLS, *Solicitor.*

No. 148.

MORRISTOWN, N. J., Sept. 26th, 1866.

IRON BANK:

Pay to Barker Gummere, Clerk of Chancery, Trenton, N. J., order, eight thousand five hundred and fifty-nine eleven one-hundredth dollars in full for decree and interest, due Sept. 5th, 1866, for

Maria Walker, ordered to be paid into Court in the above stated case.

GARRETT DEMOTT, *former Sheriff.*
by Wm. W. Fairchild, *former Deputy.*

$5,559.11.

U.S.IN.R'V STAMP. 5 CENTS.

$8,559.11.

Endorsed, Barker Gummere, Clerk in Chancery:

"Pay the order of O. L. Baldwin, Esq., Cashier,
"THOS. F. STRYKER, *Cashier.*"

"Pay to the Nat. Iron Bank, or order for collection,
"O. L. BALDWIN."

IN CHANCERY OF NEW JERSEY.

Between
JAMES C. ATWATER, *Complainant,*
and
FREDERICK W. WALKER *Defendant.*

Fi Fa for sale of mortgaged premises.

Received September 26th, 1866, of Garret DeMott, late Sheriff of Morris, eight thousand five hundred and fifty-nine eleven one-hundredths dollars, paid into Court as amount of decree in above cause in favor of Maria Walker.

BARKER GUMMERE,
Clerk in Chancery.

5 U. S. 5
FIVE INTER. REV'UE. CTS.
5 FOR'N EXC'GE. 5

IN CHANCERY OF NEW JERSEY.

EXHIBIT D.

Between

FREDERICK W. WALKER.
Complainant.

and

DAVID H. MCALPINE, et als.,
Defendants.

On Bill, &c.

MORRISTOWN, N. J., dated 22d.
Received August 23d, 1866, 11:20, A. M.

To F. W. WALKER,

Oliver House :—

Van Buren sold farm and personal property for twenty-eight thousand ($28,000) dollars to-day.

AUG. W. CUTLER,

Forwarded from Elmore August 23d, 1866.

IN CHANCERY OF NEW JERSEY.

Exhibit E.

Between

Frederick W. Walker.
Complainant.

and

David H. McAlpine, et als.,
Defendants.

On Bill, &c.

To all to whom these Presents shall come or may concern, Greeting :

Know Ye—

That I, George Walker, of the Island of St Croix, West Indies, for and in consideration of the sum of one dollar, lawful money of the United States to me in hand paid by Frederick W. Walker of Morristown, in the State of New Jersey, United States of America, have remised, released and forever discharged, and by these Presents do for his heirs, executors and administrators, remise, release and forever discharge the said Frederick W. Walker, his heirs, executors and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money,

accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, Judgments, decrees, extents, executions, claims and demands whatsoever, in law or in equity, which against Frederick W Walker I ever had, now have, or which I may have against his heirs, executors or administrators, hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these Presents.

In Witness whereof, I have hereunto set my hand and seal the 21st day of March, one thousand eight hundred and sixty-seven.

GEO. WALKER. [SEAL.]

Sealed and delivered in the presence of

ALEX. STEVENS,

WILLIAM MOORE.

U.S.IN.R'V STAMP. 5 CENTS.

CONSULATE OF THE UNITED STATES OF AMERICA, AT FREDERIKSTED, St. Croix, D. W. I.

Be it remembered, That on the twenty-first day of March, A. D., eighteen hundred and sixty-seven, before me, William F. Moore, U. S. Consular Agent, personally appeared George Walker, who I am satisfied is the person who signed and executed the foregoing instrument, and who is the person mentioned therein, and to whom I made known the contents thereof, and he acknowledged to me that he signed and sealed and delivered the same, as his voluntary act and deed for the purposes therein expressed.

CONSULAR SEAL OF THE U. S. A. AT ST. CROIX.

Given under my hand and seal of this Consulate, the day and year above written,

WM. F. MOORE,

U. S. Consular Agent.

IN CHANCERY OF NEW JERSEY.

EXHIBIT F.

Between

FREDERICK W. WALKER.
Complainant,

and

DAVID H. MCALPINE, et als.,
Defendants.

On Bill &c.

NEW YORK, May 26, 1864.

DEAR SIR:

It becomes necessary, now, that the Old Farm of 281 acres, on which Maria Walker's, and Atwater's, and George Walker's mortgages are liens, be sold without delay under the general foreclosure of all, and bid in at the lowest possible price. I know of no hindrance now, and the matter must be attended to and closed up before September. Before September.

The $700 which was to be sent us at Elmore, we shall need having made engagements which we must meet. Our business is going right ahead. I shall ship no lum-

ber from Toledo till after June 7. Immediately after I shall begin and keep it up steadily till the close of navigation.

Freights on the Canal have now fallen and are still going down. I could ship now, but must attend the Court in Ottawa county, June 6. After that I am at liberty and freights are low.

There will be no trials, for the attorneys have been drafted on the 100 days' men. Courts in Ohio pass all causes.

You yesterday addressed me in a very ungentlemanly manner, and, uncalled for. I know my own business better than any body else, and where I am wanted most, and shall come and go without consulting any body. I am fifty-five years old this day, and will not allow myself to be treated like a boy or a nigger. You make yourself ridiculous, and not me. I pay no attention to it, as the matter is becoming chronic.

Yours truly,

FRED. W. WALKER.

To A. J. HILL, Esq.,
New York.

IN CHANCERY OF NEW JERSEY.

EXHIBIT G.

Between

FREDERICK W. WALKER.
Complainant,

and

DAVID H. MCALPINE, et als.,
Defendants.

On Bill &c.

NEW YORK, March 24, '63.

F. W. WALKER, ESQ.,

Dear Sir:

Your letter of the 19th inst. rec'd yesterday. I will enclose you the bonds by express to leave here on the 1st April, to the care of F T. Barney, Esq. Sandusky, as per request.

There has been no decision yet in Atwater's case I had no answer from Lord. Bates may take the low meadows at $400, and Luker the Shelley Meadows, $150; they are to give me an answer. Bates wants up to the brook. Shall I take less, if they will not give this price?

I still continue to go the Farm on Friday and stay over until Monday or Tuesday—all goes right there. The weather has been cold, with considerable snow all this month. As soon as they can get to work, will have all the outside fences put in order. I bought two good cows for $60—will calve about the 1st April. I bought the mules at $180; if they do not answer on the Farm will send to Geo. in the Fall.

Yours, &c.,

A. J. HILL.

IN CHANCERY OF NEW JERSEY.

EXHIBIT H.

Between

FREDERICK W. WALKER. *Complainant.*

and

DAVID H. MCALPINE, et als., *Defendants.*

On Bill, &c.

AUGUSTUS W. CUTLER, ESQ.,

1862.	To Anth'y J. Hill,		*Dr.*	
October 6.	To cash lent - -	$435 00		
	Interest to March 6, '65 -	63 07		
			$498 07	
October 24.	To cash lent -	$2,000 00		
	Interest to April 27, '64 -	180 00		
		$2,180 00		
April 27, 64.	By cash - -	2,000 00		
			$180 00	
1863.				
September 9.	To cash lent -	$1,000 00		
	Interest to March 9, '65 -	75 00		
			$1,075 00	
			$1,753 07	30

NEW YORK, March 7, 1865.

A. W. CUTLER, ESQ.,

Dear Sir:

Above is a statement of 3 notes of yours, if convenient you will oblige me with a check for the amount; you will also oblige by sending my ac't, as I want in a few days to have an operation on my eyes, and I cannot do so until I get all my acc'ts closed up. Without your ac't I am unable to settle up with Mr Fred. W. Walker, and he goes next week to Ohio.

Yours truly,

ANTH'Y JOHN HILL.

IN CHANCERY OF NEW JERSEY.

EXHIBIT I.

Between

FREDERICK W. WALKER.
Complainant.

and

DAVID H. MCALPINE, et als.,
Defendants.

On Bill, &c.

NEW YORK, May 26, 1864.

DEAR SIR:

It becomes necessary now, that the old farm of 281 acres, on which Maria Walker's, Atwater's, George Walker's, &c., &c., mortgages are liens, be sold under the general foreclosure, and bid in at the lowest possible price and not go over the two mortgages of Maria Walker and Atwater's, now in Hill's hands, if it can be avoided; and it is necessary that this be all closed up before September 1. I have written Mr. Hill to that effect. The matter must be attended to.

The great difficulty I have in this world is that everybody knows so more than I do, that I can get nothing done as I wish it.

I wrote Mr. Hill expressly to-day on the subject—the matter must be closed up.

The Thompson statement, which I wrote for, and which was in your safe, and which seems to be lost, is much needed.

That paper and the exemplified copy of his judgment and his affidavit thereto, make out a case against him, and he is paid, with his receipt, which I have. That paper is in your safe, unless you have pulled it out with other papers and lost it.

I leave for Ohio to-morrow, and have no time to go to Jersey.

Yours, &c.,

F. W. WALKER.

To A. W. CUTLER, ESQ.,
Morristown, N. J.

ABSTRACT

OF

EXHIBIT J.

ON PART OF COMPLAINANT.

SAMUEL VAN NESS, *late Sheriff,* to ANTHONY J. HILL.	*Sheriff's Deed—dated December 1st, 1862.* *Ack'g'd December 1st, 1862.* *Recorded December 28th, 1863.* *Liber G, 6, pages 361, &c.* *Consideration,* $22 00.

The deed recites the following executions:

Morris Circuit Court.

ANTHONY J. HILL,
vs. *In Case.*
FREDERICK W. WALKER.

Execution dated May 8th, 1861, for the sum of $5,026 92, the damages and costs of a judgment recovered April 3d, 1867.

Recorded Book D of executions, page 184, &c.

Morris Circuit Court.

GEORGE J. S. THOMPSON, *vs.* FREDERICK W. WALKER. } *In Case.*

Execution dated May 8th, 1861, for the sum of $10,756 29, the damages and costs of a judgment recovered October 5th, 1858.

Recorded Book D of executions, page 182, &c.

Morris Circuit Court.

JESEPH W. MOUNT, *vs.* FREDERICK W. WALKER. } *In Case.*

Execution dated May 13th, 1861, for the sum of $461 52, the damages and costs of a judgment recovered Ootober 20th, 1858.

Recorded Book D of executions, page 186, &c.

Morris Circuit Court.

BENJAMIN O. CANFIELD, *vs.* FREDERICK W. WALKER. } *In Case.*

Execution dated May 13th, 1861, for the sum of $600 74, the damages and costs of a judgment recovered October 12. 1858.

Recorded Book D of executions, page 187, &c.

Morris Circuit Court.

FRANCIS LINDSLEY,
vs.
FREDERICK W. WALKER. } *In Case.*

Execution dated May 13th, 1861, for the sum of $506 15, the damages and costs of a judgment recovered October 5th, 1858.

Recorded Book D of executions, page 188, &c.

Morris Circuit Court.

RICHARD BOHAN,
vs.
FREDERICK W. WALKER. } *In Case.*

Execution dated May 30th, 1861, for the sum of $578 28, the damages and costs of a judgment recovered May 30th, 1861.

Recorded Book D of executions, page 196, &c.

Morris Circuit Court.

WILLIAM LIDDY,
vs.
FREDERICK W. WALKER. } *In Case.*

Execution dated May 30th, 1861, for the sum of $525 08, the damages and costs of a judgment recovered May 30, 1861.

Recorded Book D of executions, page 196, &c.

The deed embraces the following tracts of land, situate in Hanover township, Morris county : " 1st tract—Be- "ginning at the second corner of a lot of five acres and " forty-one hundredths of an acre, formerly sold by Jona- "than Baker to one Abraham Osborne, and running thence "the several metes and bounds thereof to the beginning "—containing 5 1-2 acres of land more or less."

2d tract—"Beginning at a post and heap of stones for "a corner of land, formerly belonging to Silas Condict, "on the easterly side of a large pin-oak tree in the east- "ward line of the lot of pasture land of Isaac Quinby, "and runs thence with said Silas Condict's line, the "several metes and bounds thereof to the beginning— "containing 5 acres and 21-100 of an acre more or "less—"

" Being the same tracts described in a quit claim deed "from George Walker to Frederick W. Walker, dated "April 26, 1854"—and recorded in Morris county Clerk's ffioce, Liber E 5, pages 484, &c.

EXHIBITS ON PART OF DEFENDANTS.

EXHIBIT No. 1.

IN CHANCERY OF NEW JERSEY

Between	
FREDERICK W. WALKER. *Complainant.*	
and	*On Bill, &c.*
DAVID H. MCALPINE, et als., *Defendants.*	

MORRISTOWN, Aug. 31, '66.

B. GUMMERE, ESQ.:

My Dear Sir :—Notice of lis pendens has just been filed in our Clerk's office by D. A. Hays, Sol'r, in case of Frederick Walker *vs.* Anthony J. Hill and others.

Please inform me whether bill has been filed, and if so, send me copy at once.

I telegraphed to-day for copy. A sale of the property, which is valuable, is pending, and I should be glad to hear about this bill. Yours truly,

ALFRED MILLS.

Dear Sir :—No such bill has yet been filed—when filed, I will send a copy. Yours truly,

B. GUMMERE.

ALFRED MILLS, Esq. *September* 1, 1866.

IN CHANCERY OF NEW JERSEY.

EXHIBIT No. 2.

IN CHANCERY OF NEW JERSEY

Between

FREDERICK W. WALKER. *Complainant,*

and

DAVID H. MCALPINE, et als., *Defendants.*

On Bill, &c.

ELMORE, Ottawa county, Ohio, Saturday night, April 23, 1864

Dear Sir :

The mill is running well ; we are making now 250,000 feet of lumber monthly, or two large schooner cargoes every month.

We cut 75,000 feet the six working days this week, ending to-night.

We want those machines you have in the barn home up here badly, viz.:

The horse-power,
" hay cutter,
" wood cutter,
" Virginia corn sheller,
" thresher and cleaner.

You use them very little, we should use them a great deal. We must economise labor.

These tools cost new as follows :

Horse power, hay cutter, corn sheller, wood cutter, together, I bought of Mayer in 1854, (10 years ago,) and paid $290 ; I paid for thresher and cleaner $112—making $402, new.

I will give $300 for the lot, payable September 1, cash, (when lumber is in market,) for George Walker—that is, if you think you can spare them. We need them badly —they would save so much labor. They would have to be taken apart some, well packed, and nothing left out— no little tools that belong ; (the corn sheller has a hopper.) I will pay all expense of good packing and freight to New York, to be marked, George Walker, Elmore, Ottawa county, Ohio, care of Cleveland and Toledo Railroad, Toledo, to be shipped by water to Toledo, Ohio, by river, canal and lake, to Toledo—put on board some return boat for Buffalo.

I want another rubber belt, 35 feet long, 12 in. wide, 4 ply. It will cost $50, to be paid for out of the $1,500 coming May 1 : to be given to United States Express, 82 Broadway, just below Wall street, marked, George Walker, Elmore, Ottawa Co., Ohio.

I want a grain mill to grind grain, instead of sending to mill and getting cheated, and losing so much time, to put down stairs in my saw mill with a belt. I have any amount of steam power.

Sanford's will do, if it is larger than the advertisement I sent. I want sumething. I can do all my own work. I expect this will cost something, but it will save me much time and money.

I send printed advertisement (save the paper); I would like something considerably larger if it can be had, that will grind a good deal more. Pay the money for it—deduct this from the $1,500, same as the belt.

Ship the mill with the horse power and machines by water altogether.

(The horse-power and machines are used at a distance from the mill : we can't use steam power in the woods and barns.)

We must make machines take the place of men.

We shall drive business whilst the price of lumber is up. For one month the weather has been very rainy and muddy. Yours truly,

F. W. WALKER.

The money, after taking out the pay of the belts and the grist mill, is to be sent to me at Elmore, Ottawa county, Ohio, in legal tender bills, 5s, 10s, and 20s—package given to United States Express, 82 Broadway.

IN CHANCERY OF NEW JERSEY.

EXHIBIT No. 3.

Between

FREDERICK W. WALKER. *Complainant,*

and

DAVID H. MCALPINE, et als., *Defendants.*

On Bill, &c.

Statement of the Cost of Farm, Buildings, and Garden at Littleton, Jan'y 1, 1860.

1851, Oct. 21.	281.97	acres, of S. B. Condict, at $50 -	$14,097 50
1852, Aug. 26.	5.50	acres, Samuel Howell woodlot, at $50	275 00
1853, May 2.	5.25	acres, Isaac Quinby meadow between wood lots, -	100 00
1854, Jnue 13.	30.00	acres, S. B. Condict, Shelly meadows, at $50 - -	1,500 00
1856, Jan. 22.	14.00	acres, Howell estate,	275 00
	336.72	acres.	$16,247 50

Cost of Buildings and Materials.

The new house, fixtures, wood house, &c.,	$6,554	54	
Jo. Mount's first bill, building new barns, fixing other barns, making fences, -	543	97	
Materials, lumber, hardware, nails, &c., blacksmithing, painters' bills, &c., not over - - - -	500	00	
Mount's second work, labor, - -	400	00	
Lumber, nails, hardware, - -	785	00	10
Lumber from Newark, - - -	400	00	
Mason work, barns, - - -	100	00	
Making the manure pits, in all, - -	200	00	
Painter's work, paints, oil, &c., -	590	00	
Painting house, 1859, - - -	100	00	
Fixing roof, cement, paint - -	63	00	
	$10,236	51	
Paid for trees, shrubbery, vines and all,			20
everything after going over all bills, &c.,	$1,000	00	
Work and labor done on garden, - -	1,000	00	
	$2,000	00	
Paid for ditching at various times, not over 600 rods, at 25 cts. - - -	$150	00	
Paid making stone wall, in all at most,	1,200	00	
	$1,350	00	30
Total - - - -	$29,834	01	

Jan. 1, 1860.

New Jersey State Library

Exhibit No. 4.

IN CHANCERY OF NEW JERSEY

PURCHASE ACCOUNT.

	1851.	*Dr.*
	October 22. Cost of 303.23 acres of land, bought of Silas B Condict, at $50 per acre - - -	$15,161 50
	1852.	
	September 4. F. W. Walker per cash paid Sam'l Howell for 5 1-2 acres of woodland, at $50 per acre -	275 00
	Searching records, $40 ; survey and map of farm, $35 50 - -	75 50
	1853.	
	May 7. Cash paid Isaac Quinby for 5 25-100 acres of land - -	100 00
	Recording S. Howell's deeds and searching records - - -	4 00
	October 31. Stock and crop, and for lumber, nails, lime, painting, and for repairs to outbuildings and barns, and carpenter's and mason's labor -	865 00
		$16,481 00
	1853	*Cr.*
	May 1. By 1 10-100 acres of ground sold Silas B. Condict - -	$55 00

Exhibit No. 5.

IN CHANCERY OF NEW JERSEY.

Littleton, Oct. 11, 1862.

Mr. A. W. Cutler:

Dear Sir:—Mr. Walker drew my attention this morning to the fact that I had paid only $125 for last quarter's rent, and that I am consequently still in debt $25. This I will send you from New York next week.

In order to avoid trouble with the place this Winter, as I cannot of course occupy it, I will, if you are willing, turn over the place to you now, and pay up the rent in advance for the remainder of my term.

Please let me know if this will be acceptable to you.

Very truly yours,

J. COUPER LORD.

Oct. 13, 1862.

Anthony J. Hill, Esq.:

Dear Sir:—I am in receipt of enclosed letter from J. Couper Lord this A. M. Mr. Lord proposes to pay the rent and leave the place Wednesday P. M. 3 o'clock. I sent him word to see me to-morrow P. M. It will be necessary to put some one in the house at once. I postponed the interview until I could write you.

Yours,

AUG. W. CUTLER,
Morristown, N. J.

Exhibit No. 6.

IN CHANCERY OF NEW JERSEY.

[Statement of sale of personal property.]

Exhibit No. 7.

IN CHANCERY OF NEW JERSEY.

Bermuda, June 15, 1866.

A. W. Cutler, Esq.:

Dear Sir :—I arrived here on the 29th ult. My passage out was longer and more unpleasant than usual at this season of the year. Since I have been here the weather has beeen cool and pleasant, and my health has been improving. I sleep much better, and my appetite is good ; so I hope soon to be able to give a better account of myself. Do me the favor to tell this to Mrs. Walker and Mrs. Cutler, and I hope they and the children are all well, and that your health has improved.

Have you been able to do anything with the farm—have you had any offer for it ?

Mr. Forbs Dunderdale wrote me by this vessel that Mr. Thomas V. Johnson had been in his store to inquire for me—said he could obtain $35,000 for the farm at any time, half cash and balance at 7 per cent. (bond and mortgage.) Would it not be well to see him and know what he will do, as the farm ought to be sold. It cannot stand in its present state ; the buildings are liable to be unroofed or blown down at any moment, and trespasses, harm and robberies committed all the time. What has Mr. Fred. Walker done with his horses ? Has he been down yet, and has he disposed of them ? It was very wrong and very unfortunate that he should have sent them there at the time he did. I hope he has sold them at a good price and has removed them ere this, as no one would purchase the farm while they are there.

Did you let the upper part of the farm ? if so, who to, and how much did you get for it ?

Is Cath'rn still in the house ? is she contented and well—she continue to stay and take care of the place.

Please write me all the particulars about the farm, as I feel very anxious about it.

Ask Frederick when he comes down to write me about his business. I hope he will be able to carry out all his views as he expected the last time I saw him.

Did the man paint the roof of the house on the farm, and is it now tight and good ?

Direct your letter to A. J. Hill, Bermuda, and inclose it to, or leave it with Mr. Forbs Dunderdale, 63 Nassau street, N. Y., and he will forward it to me.

Yours very truly,

A. J. HILL.

J. H. H.

EXHIBIT NO. 8.

IN CHANCERY OF NEW JERSEY.

March 24, 1862.

ANTHONY J. HILL, ESQ.:

Dear Sir :—Learning that the stock upon Mr. Walker's farm, and upon which you have a levy, was in a bad way, and I went there and found 19 horses, 13 cows and 2 oxen, and not 200 pounds of hay—no corn or grain of any kind. Horses poor and some on the lift.

Hay must be had, and grain, or this stock will starve.

My own opinion is that it will take six weeks to put them in condition for sale, and will take two hundred to two hundred and fifty dollars.

As this inures to your benefit, I have deemed it proper to call your attention.

Mr. Walker has rented the house and garden, this Spring.

The stock, &c., must be sold, and it ought to be put in condition.

Atwater has foreclosed his mortgage. I have prepared answers for all the defendants, yourself included.

Yours very respectfully,

AUG. W. CUTLER.

I suppose it impossible for Mr. Walker to advance any money for hay, and I am in no condition to do it.

I wish you would come up yourself.

Exhibit No. 9.

IN CHANCERY OF NEW JERSEY.

March 24, 1862.

Anthony J. Hill, Esq.:

Dear Sir :—I wrote you yesterday in reference to the stock on Fred's place, and upon which you have a levy.

I sent them some hay yesterday—enough to keep them until Wednesday, (to-morrow,) and then they will be out again.

The property was worth last Fall, at least $2,500, but sold to-day—it would not bring $1,000.

Some of the horses when down are so poor they can't rise without assistance.

They require hay and feed to carry them four weeks, to get them in condition fit to sell, will take

15 tons hay, - - - - -	$210 00
2 tons feed, - - - - -	60 00

The cows are in good condition now and would sell to good advantage. Can't you come up and take an observation.

Yours,

AUG. W. CUTLER.

Morristown, N. J.

EXHIBIT NO. 10.

IN CHANCERY OF NEW JERSEY.

June 9, 1862.

ANTHONY J. HILL, ESQ.:

Dear Sir :—I am sorry I did not see you at Morristown.

It is important that I should have some definite instructions in reference to the stock.

It is a continual source of expense to me, building of fences, &c.

And you can see the importance of my desiring an understanding.

Yours,

AUG. W. CUTLER.

EXHIBIT NO. 11.

IN CHANCERY OF NEW JERSEY.

March 9, 1863.

ANTHONY J. HILL, ESQ.:

Dear Sir :—Mr. Fairchild (our real estate agent) called to see me to-day in reference to the farm, and desired to know if you would sell, and the price. He says he is inquiring for a New York man. I think it is Mr. Lord, but don't know.

He would like an answer this week.

I wanted to refer the purchaser direct to you, but Fairchild wants to make a commission out of the purchaser.

Yours,

AUG. W. CUTLER.

Exhibit No. 12.

IN CHANCERY OF NEW JERSEY.

A. J. Hill, Esq.:

Dear Sir :—The following is an acc't of the hay furnished the horses sent by F. W. Walker to the farm in 1866 :

Hay, estimated at 9 tons - - -	$108 00
Oats, 61 bushels, at 60 cts. - - -	36 60
Corn, 120 " in ear, at 50 cts. -	60 00
	$204 60

In reply to the interrogatory, whether I ever heard you say that you had bought the farm and personal property for the benefit of F. W. Walker, I answer, no !

Yours,

AUG. W. CUTLER.

Endorsed as follows : Bermuda.

A. W. CUTLER.

Memorandum of corn and oats used by Mr. F. W. Walker's horses at Littleton farm last year.

Exhibit No. 13.

IN CHANCERY OF NEW JERSEY.

April 7, 1862.

Anthony J. Hill, Esq.:

Dear Sir :—I am doubtful what course to pursue, not hearing from you.

I have taken the responsibility of furnishing hay, &c., for the stock covered by your levy since I wrote you.

All the stock is covered by your levy but five horses.

It has cost me already about eighty dollars. As this stock is for your benefit, I think you should give to it your personal attention.

The quicker a sale the better for all concerned. I wish you would come up.

Yours very respectfully,

AUG. W. CUTLER.

Exhibit No. 14.

IN CHANCERY OF NEW JERSEY.

[Revenue Stamp.]

I, Geo. Walker, now of St. Croix, do hereby constitute and appoint John D. Van Buren, of New York, as my attorney in the United States of America, with full power to sign my name, to sell and convey real estate, or to mortgage the same, and in general to transact my business for me, with the same power I would myself possess if present.

GEO. WALKER.

Witnesses:

J. Augustus Hill,

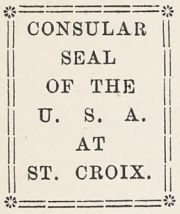
Barny B. Beech.

St. Croix, July 12, 1866.

Consulate of the United States of America,
Port of Frederiksted, St. Croix, D. W. I.

On this twelfth day of July, A D., 1866, before me, the undersigned, U. S. Consular Agent for the Port of Frederiksted, St. Croix, personally appeared George Walkər, known to me to be the person described in, and

who executed the foregoing power of attorney, and acknowledged the same to be his act and deed, and declared that he had executed the same freely and voluntarily to the uses and for the purposes therein mentioned.



Given under my hand and the seal of this Consulate, the day and year above written,

WM. F. MOORE,

U. S. Consular Agent.

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Exhibit No. 15.

IN CHANCERY OF NEW JERSEY.

St. Croix, June 8, 1866.

John D. Van Buren, Esq.:

Dear Sir:—The farm at Littleton that was sold at sheriff's sale, and bought in by Mr. Anthony J. Hill for
30 me. Will you please have the title given in my name, and oblige,

Yours truly,

GEO. WALKER.

Exhibit No. 16.

IN CHANCERY OF NEW JERSEY.

Anthony J. Hill agrees to sell and convey to D. H. McAlpine, and said McAlpine agrees to purchase the farm and real estate at Littleton, known as the Walker farm, being two hundred and eighty-one acres, more or less—being the same land in quantity and description as was sold under decree, by the Sheriff, in the suit of Atwater *vs.* Walker and others, to said Hill—for the price, or consideration, of twenty-eight thousand dollars, to be paid as follows, viz.:—Twenty-eight hundred dollars on the execution of this agreement, and the balance of twenty-five thousand and two hundred dollars on the 15th day of September, 1866.

The title is to be a good title in fee simple, free from encumbrance, and is to be conveyed by a warranty deed with full covenants.

The deed is to be delivered and the purchase money paid at the office of Weeks and Foster, No. 52 Wall St., in the city of New York, on said fifteenth day of September at 12, M.

It is understood that all the furniture in the dwelling house, on the premiscs, (except the books and the furniture of the library room), and also all the farm tools and implements on said premises, including vehicles, and that as to the crops, both gathered and in the ground, the said McAlpine takes precisely Mr. Hill's place—there being one field of buckwheat planted on equal shares by Morris Shelley, two pasture lots rented for the season to Bates and to Righter, and a quantity of hay belonging to

Jacob Blanchard in the barn on south side of the barn-yard.

Whatever commission Thomas V. Johnson is entitled to, on the transaction, is to be paid by the said McAlpine.

Dated 21st August, 1866.

D. H. McALPINE.

Witness :

JOSEPH DUNDERDALE.

EXHIBIT No. 17.

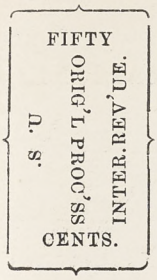
IN CHANCERY OF NEW JERSEY.

In consideration of the sum of one dollar, I, Anthony J. Hill, let the premises known as the Walker farm, situate at Littleton in the township of Hanover, in the county of Morris, and State of New Jersey, to David H. McAlpine—To have and to hold from the date hereof to the fifteeenth day of September, eighteen hundred and sixty-six.

And I, the said David H. McAlpine, agree to pay to said Anthony J. Hill, or his attorney, on the execution of this lease, the said rent of one dollar, and that at the end of said term I will peaceably and quietly deliver the said premises to the said Hill, his attorney or assigns.

And I take possession of said premises and am to hold the same under and by the virtue of this lease, and not

in any way, or by any claim under a written contract of sale for said premises made with me by said Hill, bearing date 21st August, A. D., 1866.



Dated, August 22, 1866.

ANTHONY J. HILL,
by
JOHN D. VAN BUREN,
his Att'y.

Witness :
FRANK R. ATNO.

D. H. MCALPIN.

EXHIBIT No. 18.

IN CHANCERY OF NEW JERSEY.

Morristown, N. J., June 27th, 1866.

Respected Sir :

In relation to your favor of 22d inst., and concerning decree, &c., wherein Atwater, complainant, *vs.* F. W. Walker, et als., defendants—the property was duly advertised and sold at Sheriff's sale, and struck off to Anthony John Hill for nineteen thousand nine hundred and ninety-nine dollars, by A. W. Cutler, Esq. A deed was made immediately by request of Mr. Cutler; but it has never been called for.

There has never been any of the purchase money paid in to the Sheriff by any one of the parties, except the Sheriff 's fees, which was paid by Mr. A. W. Cutler, Esq.

I called on Mr. Alfred Mills yesterday, who is solicitor in the matter for Atwater, and he informed me that after the sale sometime, the decree, as it stood, was assigned to George Walker, and the amount of his, Atwater, decree, paid in full by Anthony John Hill to Mr. Alfred Mills, Sol. The property was sold on the 12th day of September last past.

N. B.—I have had no credits on my docket for any purchase money, and the deed remains ready, and uncalled for —and there the matter stands, from the commencement to the present time ; and I should be very glad to get my docket rec'pt'd up at the earliest convenience.

Respectfully yours,

GARRET DEMOTT,
former Sheriff.
per
WM. W. FAIRCHILD,
former Deputy.

EXHIBIT NO. 19.

IN CHANCERY OF NEW JERSEY.

Morristown, N. J., July 9th, 1866.

JOHN D. VAN BUREN :

Respected Sir :—

Annexed is statement of decree, costs, and interest, up to September 12th, 1864—date of sale—and nothing paid but Sheriff's fees. You wrote to me June 29th last, to substitute the name of George Walker in the place of John Anthony Hill.

I, myself, could not do that without the consent of Mr. Hill, or his attorney, Mr. A. W. Cutler.

N. B.—I am anxious to have my docket settled up at the earliest convenience, and I think it would be better to advertise and make a 2d sale, and a new deed, and close the matter up.

Mr. Hill, I understand, is now in Bermuda, and it will be some time before he will come North perhaps.

Yours respectfully,

GARRET DEMOTT,

Sheriff.

per

WM. W. FAIRCHILD,

Deputy.

Between

JAMES C. ATWATER,

Complainant,

and

FREDERICK W. WALKER, et als, *Defendants.*

Fi Fa, &c.

Ret'nable to October Term, 1864.

ALFRED MILLS, *Solicitor.*

Levy costs for Maria Walker -	$27 48	
Interest from April 6th, 1864, to September 12th, 1864 -	74	
		$28 22 30
Amount to be paid in court -	$7,447 03	
Interest from March 9th, 1864, to September 12th, 1864 -	228 56	
		7,675 59
Decree for complainant - -	$8,418 81	
Interest from March 9th, 1864, to September 12th, 1864 -	260 98	
		8,679 79 40

Costs taxed at - - -	205 85	
Interest from April 5th, 1864, to September 12th, 1864 -	12 44	
		218 29
Decree for Geo. Walker - -	16,534 83	
Interest from March 9th, 1864, to September 12th, 1864 -	512 66	
Costs taxed at - - -	30 46	
Interest from April 5th, 1864, to September 12th, 1864 -	84	
		17,078 79
		$33,680 68
Sheriff's fees - - - -		213 62
Sum total - - -		$33,894 30

Exhibit No. 20.

IN CHANCERY OF NEW JERSEY.

New York, September 5, 1866.

No.————

John J. Sisco & Son,

Bankers :

Pay to Garret DeMott, late Sheriff, or order, eight thousand five hundred and fifty-nine 11-100 dollars.

ANTHONY J. HILL,
by
John D. Van Buren,
his Att'y.

[Rev. stamp.]

$8,559 11-100.

Exhibit No. 21.

IN CHANCERY OF NEW JERSEY.

New York, September 5, 1866.

No.————

John J. Sisco & Son,

Bankers :

Pay to Garret DeMott, late Sheriff, or order, thirty-one 45-100 dollars.

ANTHONY J. HILL,
by
John D. Van Buren,
his Att'y.

[Rev. stamp.]

$31 45-100.

Exhibit No. 22.

In Chancery of New Jersey.

Between

James C. Atwater,
Complainant,

and

Frederick W. Walker, et als.,
Defendants.

Deposition of Frederick W. Walker taken in his own behalf September, 1862, before L. A. Chandler, Esq., Master, &c.

EXTRACTS:

Page 24.

Ques. At whose request was this defence of usury put in?

Ans. At the request of all the creditors.

Ques. Please mention them by name.

Objected to by Mr. Cutler.

Ans. George J. S. Thompson, A. W. Cutler, George Walker, and I think Hill said something about it, but won't be certain.

Page 12.

Ques. (by Mr. Cutler.) Examine Exhibit A 2, on the part of the complainant, and say whether the land embraced in the description has been sold by execution?

Objected to by Mr. Mills.

Ans. It has been.

Ques. Who was the purchaser?

Ans. Anthony John Hill, of New York city.

Ques. Have you any interest in the question, whether this mortgage is declared usurious or not ?

Objected to by Mr. Mills.

Ans. I have not, in the least.

Exhibit No. 23.

IN CHANCERY OF NEW JERSEY.

In the matter of notice of lis pendens filed in the office of the Clerk of the Court of Common Pleas of the county of Morris, on the 30th day of August, 1866, and recorded in the book labeled "Chancery Notice," pages 96, 97, and 98, signed by David A. Hays, Esq., as solicitor of complainant, in what purported to be the following cause, viz.:

In Chancery of New Jersey.

Between

Frederick W. Walker,
Complainant,

and

Anthony J. Hill,
George Walker,
Maria Walker,
Garret DeMott,
Sheriff, &c.,
Augustus W. Cutler,
John D. Van Buren, and
Joseph Dunderdale,
Defendants.

It appearing to this Court that due notice has been given by the attorney of Anthony J. Hill to David A.

Hays, Esq., solicitor of the said Frederick W. Walker, that he would apply to this court on this second day of April instant, at ten o'clock in the forenoon for an order to strike from the files of the Clerk of this court the notice above referred to, (which notice was copied in full in said notice so given to David A. Hays, Esq.,) on the ground that no such bill in the Court of Chancery of New Jersey, as is referred to in said notice of lis pendens, had been filed at the time of filing said notice, or has been filed since that time, and that no such cause in the Court of Chancery, as is referred to in said notice of lis pendens, was ever commenced, and that said notice was improvidently filed.

And it now appearing to this court by the written statement of the said David A. Hays, Esq., duly proved before this court, and bearing date the 25th day of March, 1867, that said notice of lis pendens was filed by mistake, that no bill has been filed pursuant to it, that it is of no validity, and consenting that the necessary order be made by this court to have the same taken from the files.

It is therefore on this second day of April, 1867, ordered and directed that said notice of lis pendens be stricken from the files of the Clerk of this court as improperly and improvidently filed, and that a copy of this order be entered in the book in which said notice of lis pendens is recorded.

On motion of ALFRED MILLS,
Attorney of ANTHONY J. HILL.

STATE OF NEW JERSEY, }
Morris county, s.s. } I, RICHARD SPEER, Clerk of the county of Morris, do hereby certify the foregoing to be a true copy of the record of the above stated order as the same remains of record in my office in book of Chancery Notice, pages 103 and 104.

In testimony whereof I have hereunto set my hand and affixed the seal of said county at
[L. S.] Morristown, this thirteenth day of December, A. D., 1869.

[Rev. stamp.] RICHARD SPEER, *Clerk*.

Exhibit No. 24.

IN CHANCERY OF NEW JERSEY.

Anthony J. Hill to John Dash Van Buren. } *Know all men by these presents*, That I, Anthony John Hill, of —— ——, have made, constituted and appointed, and by these presents do make, constitute and appoint John Dash Van Buren, of the city of New York, my true and lawful attorney for me, and in my uame, place and stead, to sell and convey any and all lands owned by me in the United States of America, and good and sufficient deed of conveyance therefor in my name to sign, seal, acknowledge and deliver, with the usual covenants and warranty, as my said attorney may think proper; Also, to lease and demise any lands belonging to me in said United States for any term, or terms, of years, and at any annual rent my said attorney shall deem meet, and to sign, seal, acknowledge and deliver, good and valid instruments therefor in my name, with any covenants, conditions and provisos he may think best; Also, to draw checks against my deposit in bank, and to endorse for sale, collection, or deposit any and all drafts, bills of exchange, or checks to my order; Also, to ask, demand, sue for, and recover, all moneys due and to become due to me, and to collect, assign, and satisfy bonds and mortgages standing in my name, and to release part of the mortgaged premises; Also, to call any party, or parties, or any attorney in fact to account, and compel them to deliver any property of mine to said John Dash Van Buren; Also, to sell and transfer any and all stocks

of any corporation standing in my name, and to collect dividends and claims, to sell and transfer all or any bonds, stocks, Treasury notes, or other evidences of indebtedness of the United States, or any State therein, or of any municipal corporation, or county in said United States, and to collect dividends thereon; Also, to collect any policy of insurance or any amount due, or that may become due, from any Insurance Company by reason of loss under any policy of insurance in my name, or for my benefit, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might, or could do, if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney, or his substitute, shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal the twenty-seventh day of April, in the year one thousand eight hundred and sixty-six.

[Rev. stamp $1.] A. J. HILL. [L. S.]

Sealed and delivered
[Stamp 50 cts.] in the presence of
[Stamp 25 cts.] J. Augustus Hill,
[Stamp 25 cts.] F. R. Van Buren.

United States of America,
City and county of New York. } Be it known that on the twenty-seventh of April, 1866, before me, F. R. Van Buren, a public notary in and for the State of New York duly commissioned and sworn, dwelling in the city of New York, personally came, A. J. Hill to me known to be the person described in, and who executed [L.S.] the foregoing letter of attorney, and acknowledged to me that he executed the same. In testimony whereof I have hereunto subscribed my name

and affixed my seal of office the day and year last above written.

F. R. VAN BUREN,
Notary Public.

STATE OF NEW YORK,
City and county of New York, s.s } I, WILLIAM C. CONNER, Clerk of the city and county of New York, and also Clerk of the Supreme Court for the said city and county, the same being a Court of Record, do hereby certify that F. R. Van Buren, whose name is inscribed to the certificate of the proof, or acknowledgement, of the annexed instrument, and therein written, was at the time of taking such proof, or acknowledgement, a Notary Public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and further, that I am well acquainted with the hand-writing of said Notary and verily believe that the signature to the said certificate of proof, or acknowledgement, is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand
[Rev. stamp.] and affixed the seal of the said court and
[L. S.] county the 28th day of April, 1866.

WM. C. CONNER,
Clerk.

STATE OF NEW YORK,
City and county of New York, s.s. } *Be it Known*, That on the twenty-seventy day of April, 1866, before me, F. R. Van Buren, a Notary Public of the State of New York, in the city of New York, duly commissioned and sworn, personally appeared Anthony J. Hill, a resident of the State of New York, who I am satisfied is the person named in, and who had executed the foregoing

instrument, and I having first made known the contents thereof to him, he acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

In witness whereof I have hereto set my hand and [L. S.] notarial seal this 27th day of April, 1866.

F. R. VAN BUREN,
Notary Public.

STATE OF NEW YORK,
City and County of New York, ss. | I, WILLIAM C. CONNER, Clerk of the city and county of New York, and also Clerk of the Supreme Court for the said city and county, the same being a Court of record, do hereby certify that F. R. Van Buren, whose name is inscribed to the certificate of the proof, or acknowledgement, of the annexed instrument, and therein written, was at the time of taking such proof, or acknowledgement, a Notary Public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same; and further, that I am well acquainted with the hand-writing of such Notary and verily believe that the signature to the said certificate of proof, or acknowledgement, is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand [Rev. stamp.] and seal of the said court and county [L. S.] the 23d day of August, 1866.

WM. C. CONNER,
Clerk.

STATE OF NEW YORK,
City and County of New York, s.s. } Be it remembered, That on this seventeenth day of September,

A. D., eighteen hundred and sixty-six, before me, Charles Nettleton, a commissioner duly appointed to take the acknowledgement and proof of deeds of lands in the State of New Jersey, personally appeared Frank R. Van Buren, one of the subscribers, witness to the foregoing deed, or letter of Attorney, who being duly sworn by me according to law, on his oath saith, that he was present and saw Anthony J. Hill sign, seal, and deliver the said instrument, and at the some time heard him acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed, and that before said acknowledgement tne contents of said instrument were made known to said Anthony J. Hill.

FRANK R. VAN BUREN.

Sworn and subscribed before me, the day and year above written, as witness my hand and official seal.

[L. S.]

CHARLES NETTLETON,

Commissioner for New Jersey in New York.

Received and recorded September 18th, 1866.

WM. McCARTY,

Clerk.

STATE OF NEW JERSEY, }
Morris county, ss. } I, RICHARD SPEER, Clerk of the county of Morris, do hereby certify the foregoing to be a true copy of the record of the above stated instrument as the same remains of record in my office in Book W 6, of deeds, page 459, &c.

[Rev. stamp.]

In testimony whereof I have hereunto set my hand and affixed the seal of said county at Morristown, this twenty-fourth day of December, A. D., 1869.

[L. S.]

RICHARD SPEER,

Clerk.

EXHIBITS ON THE PART OF DAVID H. McALPIN AND OTHERS, DEFENDANTS.

EXHIBIT M 1.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK W. WALKER,
Complainant,

and

DAVID H. McALPINE, et als.,
Defendants.

February 2, 1868.

JOS. DUNDERDALE, ESQ.:

Dear Sir :—As you are aware I have refused to have anything to do with this unpleasant business, brought about by the foolishness of Van Buren, and no one can regret more than myself the circumstances attending the whole case, commencing with Van Buren giving away the property, and ending as it has in a family law suit.

Whether the sale was made by order of Mr. Hill, or George Walker, or any one else, I think McAlpine has never yet succeeded in inducing Mr. Hill to make any recognition of the sale, except so far as simply saying that Van Buren was his agent, and of course he (Hill) would be bound by his acts.

Now Mr. Hill complained that he was compelled to give a warranty deed, and that he had received no money from the transaction; and I suppose he is under the impression that he would be liable to all damages that might accrue to McAlpine, if the suit went against him.

If such is his opinion, he is in error—he would be only liable for the consideration money paid by McAlpine.

Now Mr. Walker, I understand, (for I have not read the bill,) claims a resale. Supposing that Mr. Hill does not defend, or put in any answer, and a resale is ordered, is not Mr. Hill in a better position? The property will bring infinitely more than McAlpin paid; McAlpin will thus be enabled to receive back his money, and Mr. Hill receive what Mr. Walker owes him. Is not Mr. Hill infinitely a gainer? and is any injustice done to McAlpine?

I write this to you knowing, as I do, you are the confidential agent of Mr. Hill, for you to think about—and if you think well of it, to make such suggestion to Mr. Hill, and let Walker and McAlpin fight it out, and Mr. Hill and myself stand back and see the fight.

Yours,

AUG. W. CUTLER.

Exhibit M 2.

IN CHANCERY OF NEW JERSEY.

Mr. Cutler:

Dear Sir:—Mr. Van Buren and myself are coming out to-morrow morning for the purpose of going out to the farm, and would be very glad for you to meet us, so as to point out such property as hay, oats, straw, &c., that may belong to Mr. Hill.

Don't fail to meet us, as it is important. We shall come out in the half-past 8 o'clock train.

Yours truly,

J. DUNDERDALE.

Monday, August 19th, 1866.

Exhibit M 3.

IN CHANCERY OF NEW JERSEY.

Anthony J. Hill agrees to sell and convey to D. H. McAlpin, and said McAlpin agrees to purchase, the farm and real estate at Littleton, known as the Walker farm, being two hundred and eighty-one acres, more or less: being the same land in quantity and description as was sold under decree by the Sheriff, in the suits of Atwater *vs.* Walker and others, to said Hill—

For the price, or consideration, of twenty-eight thousand dollars, to be paid as follows, viz.:—Twenty-eight hundred dollars on the execution of this agreement, and the balance of twenty-five thousand and two hundred dollars on the 15th day of September, 1866.

The title is to be a good title in fee simple, free from encumbrance, and is to be conveyed by a warrantee deed with full covenants.

The deed is to be delivered, and the purchase money paid, at the office of Weeks and Foster, No. 58 Wall street, in the city of New York, on said 15th day of September, at 12 M.

It is understood that all the furniture in the dwelling house on the premises, (except the books and the furniture of the library room,) and also all the farm tools and implements on said premises, including vehicles; and that as to the crops, both gathered and in the ground, the said McAlpin takes precisely Mr. Hr. Hill's place: there being one field of buckwheat planted on equal shares by Morris Shelley, two pasture lots rented for the season to Bates and to Righter, and a quantity of hay belonging to Jacob Blanchard in the barn on south side of the

barn yard. Whatever commission Thomas V. Johnson is entitled to on the transaction, is to be paid by the said McAlpine.

Dated 21st August, 1866.

The twenty-eight hundred dollars payable on the exe-
[Rev. stamp.] cution of this agreement, I have received
[Rev. stamp.] this 21st August, 1866.
[Rev. stamp.] ANTHONY J. HILL.
by
JNO. D. VAN BUREN,
his Att'y.

Witness:
JOS. DUNDERDALE.

It is understood that this agreement for sale of the personal property on said farm, includes all the farming utensils, wagons, &c., which belong to said farm, and have been used with it, whether the same were on the premises at the time of the execution of the within contract or not.

Dated September 15th, 1866.

ANTHONY J. HILL,
by
JNO. D. VAN BUREN,
his Att'y.

Exhibit M 4.

IN CHANCERY OF NEW JERSEY.

10

[This was the deed from Anthony J. Hill to David H. McAlpine for the farm in question, dated September 5th, 1866—acknowledged the same day, and recorded September 17th, 1866.]

ADDITIONAL EXHIBITS ON PART OF COMPLAINANT.

ABSTRACT OF

EXHIBIT K.

ON PART OF COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

WM. H. ANDERSON, late Sheriff, to ANTHONY J. HILL.

Sheriff's Deed—dated February 2d, 1863.

Ack'g'd February 2d, 1863.

Consideration, $20 00.

Recorded February 2, 1863, Book , page .

Date of Sheriff's sale, August 5, 1862.

The deed recites the following executions :

MORRIS CIRCUIT COURT.

Anthony J. Hill, vs. Frederick W. Walker. } In Case.

Execution dated November 13, 1857, for $1,672 94, the damages and costs of a certain judgment, recovered November 13, 1857.

Recorded Book C of Executions, page 534.

MORRIS CIRCUIT COURT.

George J. S. Thompson, vs. Frederick W. Walker. } In Case.

Execution dated October 5th, 1858, for the sum of $10,756 29, the damages and costs of a judgment recovered October 5th, 1858.

Execution recorded in Book C of Circuit Court Executions, page .

MORRIS CIRCUIT COURT.

Francis Lindsley,
vs.
Frederick W. Walker. } In Case.

Execution dated October 5th, 1858, for the sum of $506 15, the damages and costs of a judgment recovered October 5th, 1858.

Execution recorded Liber C of Circuit court Executions, page 647.

MORRIS CIRCUIT COURT.

Joseph W. Mount,
vs.
Frederick W. Walker. } In Case.

Execution dated October 27th, 1858, for the sum of $461 52, the damages and costs of a judgment recovered October 20th, 1858.

Execution recorded in Book C of Circuit court Executions, page 648.

The deed embraces the following tract of land:

Situate in Hanover township, Morris county, "Bounded on the north by the Halseytown road, and on the "east by Robert and William Shelley and others, and on "the south by Henry Boughton and Mahlon Johnson "and others, and on the west by the road that leads from "Morristown to Parsippany, containing 300 acres more "or less, more particularly described in a mortgage from "Frederick W. Walker to Augustus W. Cutler, dated "October 20th, 1859." Recorded in Morris county Clerk's office, in Liber C 2 of Mortgages, page 579, &c.

ABSTRACT

OF

EXHIBIT L.

ON PART OF COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

SAMUEL VAN NESS, *late Sheriff*, to ANTHONY J. HILL, } *Sheriff's Deed—dated February 16th*, 1863. *Ack'ged March 24th*, 1863. *Consideration*, $12 00.

Recorded December 28, 1863, G 6 of Deeds for Morris county, page 370, &c.

Date of Sheriff's sale, February 2, 1863.

The deed recites the following executions:

MORRIS CIRCUITC OURT.

Anthony J. Hill, *vs.* *Frederick W. Walker.* } In Case.

Execution dated May 8, 1861, for $2,026 72, the damages and costs of a certain judgment recovered April 3, 1857.

Execution recorded Book D of Executions, page 184.

MORRIS CIRCUIT COURT.

George J. S. Thompson, *vs.* *Frederick W. Walker.* } In Case.

Execution dated May 8, 1861, for the sum of $10,756 29, the damages and costs of a judgment recovered October 5, 1858.

Execution recorded in Morris county Clerk's Office, in Book D of Circuit court Executions, page 182.

MORRIS CIRCUIT COURT.

Joseph W. Mount,
vs.
Frederick W. Walker. } In Case.

Execution dated May 13, 1861, for the sum of $461 52, the damages and costs of a certain judgment, recovered October 20, 1858.

Execution recorded in Liber D of Circuit court Executions, page 186, &c.

MORRIS CIRCUIT COURT.

Benjamin O. Canfield,
vs.
Frederick W. Walker. } In Case.

Execution dated May 13, 1861, for the sum of $600 74, the damages and costs of a judgment recovered 12th October, 1858.

Execution recorded in Book D of Circuit Executions, page 187.

MORRIS CIRCUIT COURT.

Francis Lindsley,
vs.
Frederick W. Walker. } In Case.

Execution dated May 13, 1861, for the sum of $506 15, the damages and costs of a certain judgment recovered on the 5th of October, 1858.

Execution recorded in Liber D of Circuit court executions, page 188.

MORRIS CIRCUIT COURT.

RichardBohan,
vs.
Frederick W. Walker. } In Case.

Execution dated May 30, 1861, for the sum of $578 28- the damages and costs of a judgment recovered May 30, 1861.

Execution recorded Liber D of Morris Circuit Execu, tions, page 196.

MORRIS CIRCUIT COURT.

William Liddy,
vs.
Frederick W. Walker. } In Case.

Execution dated May 30, 1861, for $525 08, the damages and costs of a judgment recovered May 30, 1861.

Recorded Book D of Circuit court Executions, page 195.

MORRIS CIRCUIT COURT.

Cornelius V. Freeman,
vs.
Frederick W. Walker. } In Case.

Dated November 5, 1859, for $162 54, the damages and costs of a judgment recovered October 24, 1859.

Recorded C of Executions, page 779.

The deed embraces the following tracts of land:

Situate in Hanover township, Morris county. "1st "tract lies adjoining lands formerly owned by Alfred "Johnson and now belonging to Cornelius Collins, be- "ginning at the south westerly corner of the before men- "tioned land as formerly belonging to the said Alfred "Johnson, thence the several metes and bounds thereof "to the beginning, containing 15 acres of land." 2d tract "Beginning in the middle of the turnpike "road leading from Littleton to Dover, at the line of "William D. Tuttle and known as the Mahlon Stacy "line, thence the several metes and bounds thereof to the "beginning, containing six acres and 35-100 of an acre." Same tracts conveyed by George W. Walker to Frederick W. Walker, by quitclaim deed dated April 26, 1854, recorded in Morris county Record of Deeds, Book E, pages 484, &c.

ABSTRACT

OF

EXHIBIT M.

ON PART OF COMPLAINANT.

IN CHANCERY OF NEW JERSEY.

GARRET DEMOTT, *Sheriff*, to ANTHONY J. HILL.

Sheriff's Deed—dated Septe'ber 19, 1864.
Ack'g'd September 19, 1864.
Consideration, $19,999 00.
Recorded Sept. 6. 1866, *Book* W 6, *page* 404.

The deed embraces the following tract of land:

Situate in Hanover township, Morris county—beginning at the junction of the Halseytown road with the Littleton and Parsippany roads at corner of the estate of Elijah D. Tompkins, formerly Lewis Baker—thence, &c., containing 281 acres and 88-100 of an acre, according to a survey made by Robt. K. Tuttle, October 17th, 1851.

The deed recites that the above lands were sold by virtue of a decree made on the 5th day of April, 1864, in a certain cause in Chancery, wherein James C. Atwater was complainant, and Frederick W. Walker, George W. Walker, Maria Walker, Augustus W. Cutler, Anthony J. Hill, Cornelius V. Freeman, George J. S. Thompson, Benjamin O. Canfield, Francis Lindsley, Richard Bohan, William Liddy, and Joseph W. Mount, were defendants.

Date of Sheriff's sale, Sept. 12, 1864.

Exhibit N.

New York, Jan. 8, 1866.

Aug. W. Cutler, Esq.:

Dear Sir :—Your note of the 6th inst. has just been received, telling me that a party wishes to know if I will accept $35,000 "cash" for the Littleton farm. This I presume means the farm of 282 acres as per deed and map from Mr. Condict. The price is less than what I have held it at by $5,000, but if you think that more cannot be got, I authorize you to sell it for the $35,000 cash, for the farm only ; but when do they wish to have possession ? As I do not see how I can give it to them before the first of May, unless they will purchase the furniture, the cattle, the hay, and farming utensils, and any other personal property (with the exception of the books) that I may have there.

I would like, should I sell the farm, to move to Morristown, or near by. Can you procure me a good house there, and if so, at what rate per year ?

I should like to have an early reply, as Dr. Agnew, my oculist, recommends me to run down to St. Croix, or Bermuda, for a month or six weeks.

Yours truly,

A. J. HILL,

per

J. DUNDERDALE.

LIST OF CATTLE.

7 milch cows.
1 Alderny bull, 3 years old—fine breed.
4 young steers.
2 fine yearlings, (heifers.)
I pair of fine oxen, 6 years old.
1 pair horses.
1 pair mules.
About 100 tons hay, with 20 tons straw.

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In Chancery of New Jersey.

In Chancery, October Term, 1870.

Walker
v.
Hill & *al.*

This cause was argued upon final hearing on the pleadings and proofs.

Mr. Vanatta and Mr. Williamson,

For Complainant.

Mr. C. Parker and Mills,

For Hill's Executors.

Mr. T. Little,

For McAlpine.

The Chancellor:

The complainant alleges that certain real and personal property in the county of Morris was held by the defendant, Hill, in trust for him. That the defendant Van Buren, by a power of attorney procured from Hill, when Hill was of unsound mind, and incapacitated for the transaction of business, sold the real and personal estate—except the library, to the defendant McAlpine, who had notice of the trust, for a grossly inadequate price. The complainant asks that Hill be declared to have held the property in trust for him, with a lien thereon, for the amount due on two judgments re- 10

covered by him against Walker; and that McAlpine may be declared to hold the part conveyed him subject to the same trust, and that the complainant be allowed to redeem, and that the property, if necessary, be sold, and after the payment of the liens thereon, the residue of the proceeds of sale may be paid to the complainant, and that the sale to McAlpine may be declared illegal and fraudulent, and set aside. It contains, also, the general prayer for relief.

The trust is stated in the bill to have arisen from these facts. The complainant, in April, 1857, confessed a judgment to Hill for $2,026, and in November following, another for $1,621. His real property was subject to three mortgages prior to the first judgment, amounting to $21,300, besides interest, and to another mortgage to A. W. Cutler for $3,000, given in October, 1857.

In 1862 Walker became embarrassed; he had become security for New York merchants who had failed in 1857, and left him liable for large sums, without consideration to him. That Hill was wealthy and willing to allow time and no sale had been made until May 2, 1862, when all the personal property was sold under Hill's judgments and executions thereon, by the Sheriff, and the whole, with the exception of a few articles amounting to $123, was purchased by Hill. The personal property sold was worth $17,000, but the sale amounted to only $3,089.23-100ths. The understanding between Hill and the complainant when he purchased the personal property was that he would hold the same as security for the complainant's indebtedness to him. That when complainant should pay that indebtedness, then the same should go to the use and benefit of the complainant and his other creditors, and that such was the intention of Hill. It was generally understood that Hill was bidding in the personal property for the use of the complainant, and because he was doing so the complainant permitted it to be sold at such low prices.

On the 26th August, 1862, by virtue of these executions of Hill, and other executions, the Sheriff sold the farm of 282 acres to Hill for $20, and within a few months after this four other tracts containing about 42 acres were sold by the Sheriff, under these executions, to Hill for the sum of $34.

One Atwater, who held a mortgage on the property in a foreclosure suit, obtained a decree to sell the real estate for the amounts due on his mortgage, and two mortgages held by defendants in the suit. The amount due on these three mortgages, for debt and costs, was $3,261.71-100ths., with interest from March 9, 1864. On the 12th of September, 1864, when this sum with the interest and Sheriff's fees amounted to nearly $34,000, the Sheriff sold the real estate to Hill for $19,999, and conveyed it by deed executed shortly after the sale, but not delivered until two years afterwards.

All these, purchase, the bill alleges, were made under the same understanding as that on the sale of the personal property—that is to say—that Hill would hold the property merely as security for complainant's indebtedness to him.

The answer of the defendant, Hill, entirely denies all the allegations of the bill, as to his purchase of this property, or any part of it, in trust for Walker, or that there was any agreement or understanding for that purpose. On the contrary, he avers that the purchase at the foreclosure sale was made by him as agent of, and for the benefit of his brother-in-law, George Walker, to whom, as holder of the third mortgage, one-half of the money directed to be made by the decree was directed to be paid, and who, before the sale, had, through Hill, as his agent, purchased the Atwater mortgage, and was thus entitled to about three-fourths of the decre.

That he intended to have made the purchase in the name of G. Walker, and applied to the Sherriff to allow him to add the words, "agent for George Walker" to his name, so that the deed might be made to George Walker. That the property when sold to McAlpine was sold at the request, and for the benefit of George Walker, for whom he had purchased it, and all the proceeds paid to him, except $2,500, the value of the personal property, and the amount due to Maria Walker on the second mortgage. This answer is sworn to, although the bill prays for an answer without oath; the oath was legal, as it was proper and necessary to render the answer of use on a motion to dissolve the injunction. But it is of no value and cannot be used as evidence

on the hearing of the case. In considering the question whether the allegations on which the trust is founded are sufficiently proved, I shall first assume that the complainant is a competent witness, and consider the value of his testimony. Hill died after filing his answer, after his executors were made parties, and before either of them had been sworn as witnesses, the complainant was sworn, being at the time objected to as incompetent by the defendants.

The complainant is the only witness who testifies to any agreement or understanding between him and Hill prior to the sales—that Hill would buy in the property for his benefit, and this part of the case rests entirely upon his testimony. The complainant labors under peculiar disadvantages; he is admitted by a statute derogatory of the common law and of well established rules of evidence and which expressly declares that his interest may be shown to affect his credit. By asking for answers without oath he excludes the oath of the defendant Hill—admitted to be a man of character and respectability, who had been a generous friend, the only person who seems to have had any knowledge of the transaction besides himself. Hill now being dead the testimony of the complainani is against the policy of the statutes legalizing such evidence which only intended to admit the evidence of one party where the other could be produced to contradict or confirm him, it being intended to avoid the opportunity and temptation to perjury weighing on a party who is testifying to a private bargain between himself and his dead adversary.

The fact that this adversary in his sworn answer has denied the whole charge, cannot be used to discredit him any more than to contradict his testimony, but it calls upon the court to give grave attention to his evidence.

I have no doubt, from the whole case, that Mr. Hill intended to bid in the property at all the sales and to dispose of it to pay the creditors of Walker, including himself, his brother-in-law, George Walker and the incumbrances which were prior to his own judgments, and George Walker's mortgage, and that he did not intend or expect to make any profit for himself by purchasing it, and I have little doubt but that before these sales he said that he intended to bid in

the property. But this is not the question here, it is whether he made any agreement with the complainant that he would bid it in and hold it in trust for him, or him and his creditors, after the amounts of his bid or of his own claims against the complainant was repaid. Any declaration after the sale by Hill, that he bought in trust for Walker or his creditors, or that he held it in trust for him and his creditors would clearly be insufficient under the statute of frauds or by any construction ever yet given to it, to create or to prove a trust, it must arise from an agreement entered into before the sale, and acted upon at the sale. Walker testifies that in the Spring of 1862, he and Mr. Hill had a talk over the matter and they agreed that they would have the property sold under the executions, and that he would bid on it or cause it to be bid in at the lowest possible sum, at whatever sum more or less he agreed to bid it in without reference to his executions, and to hold it in trust for me till I got ready to pay him the sum bid by him whether it was more or less, and again, "In this previous agreement that I had with Hill in the spring of 1862, he agreed to bid off the personal estate and the real estate and hold it for me subject to the incumbrances, using his judgments and all others for that purpose."

Walker urged the sale under the Atwater foreclosure which took place August 25th, 1864, when he was out of the State, and he wanted Hill to buy it for the amount due on first two mortgages, leaving George Walker's mortgage out. He testifies, "previous to this, before I went away, Mr. Hill said if the property had to be sold he would bid it in and hold it the same as at the other sale." Again, when asked asked what he was to pay Hill on surrendering the trust, he says: "The two judgments of April, 1857, and of November, 1857, amounting to $3,650 and the interest."

This is all the evidence of Walker on the subject; it is very meagre and unsatisfactory for so important a matter as this. He gives neither time, place, or circumstance to these agreements. He does not give, or attempt to give the language in which they were made.

This testimony does not agree with the allegations in the bill, nor does the story first told by him in his testimony

that Hill should buy it in and hold it until Walker paid the amount of his bid, agree with the last story, that he should pay the amount of his two judgments. These variations are not merely verbal—they are substantial. These statements are utterly inconsistent with his testimony in this Atwater case, in September, 1862, after the sale in August, 1862, in which he states that he had no interest in the question, whether the Atwater mortgage was void for usuary. He testified to a falsehood there or now.

The letter of Hill to Walker in which he asks whether he shall sell the low meadows for $400, and the Shelley meadows for $150, do not support Walker's claim. It does not appear that either of these meadows were part of the tracts bought by Hill. It would seem from the papers in evidence rather, that they were part of the 60 acres owned by Walker outside of the farm, and the four tracts conveyed to Hill, and included in the Cutler mortgage which was afterwards assigned to Hill.

Cutler was, throughout, the agent and attorney of Walker who was his brother-in-law—Hill's wife, who had been dead for years, was the sister of Walker and of Cutler's wife, and Cutler was the attorney, or agent of Hill. Cutler was the person who bid off all the personal property for Hill, and who bid off the farm at both the Sheriff sales, and who, as agent for Walker, urged on the first sale, and who was written to by Walker to insist upon the foreclosure sale; yet Cutler seems to have no knowledge of any such agreement as insisted on by Walker. It seems hardly possible that there should have been such an agreement without his having knowledge of it from one or both, or that he should not have been present when the agreement was made. His letter to Hill, in 1866, when in Bermuda, denying that he ever heard Hill say that he had bought in trust for Walker, is inconsistent with his having heard any such agreement; else it would be rank hypocracy in both him and Hill.

The only part of Cutler's testimony that refers to any understanding or agreement between Walker and Hill regarding this purchase, is where he is speaking of the foreclosure sale he is asked whether he understood or supposed that Hill purchased for his own use. He answers, "that the under-

standing was that Hill was to take the title for the benefit of the mortgagees." To the question whether that understanding was arrived at in Walker's presence, or talked of in his presence prior to the sale, his answer is a simple "*yes*," which would be true if Hill had spoken of it to the mortgagees, or a stranger, in Walker's presence. When asked whether Walker assented or dissented, he avoided answering. These answers of Cutler show both that he knew of no agreement between Walker and Hill, and that he did know what Hill's object was in making a purchase, and that it was known to Walker; it was simply to protect the mortgagees. Cutler was the attorney, agent and friend of Walker; he was opposed to the sale made through Van Buren to McAlpine; it was made by summarily displacing Cutler from the agency given to him; Cutler was in the neighborhood, knew the property, and was so related to Hill and George Walker that he was entitled to their confidence. The sale was entrusted to Van Buren, who knew nothing of the property or its value, and who hastily made an improvident sale for a price several thousands of dollars less than Cutler could have obtained. Cutler naturally—I would almost say properly—was opposed to this sale, and the case shows that he did everything which he could do with propriety to put a stop to it. Had he known of any understanding or agreement of Hill with Walker, such as is claimed by the latter, he would have been willing when thus plainly asked, to have disclosed it fully and truthfully. More than this, if he had known of any such agreement or trust, in any way, so that he believed it, he could not, with common honesty have been silent on the day when the contract was made and signed almost in his presence, and much to his dissatisfaction. He would not have said, as several witnesses testify, that the title was as good as any in the county. He would naturally have told the truth, and said, "the title is held by Hill in trust for F. W. Walker, without whose consent Hill cannot sell, and I know Walker will not consent at that price." Both had commissioned him to sell, but at a much higher price, such an explanation would have effected what Cutler had at heart; it would have stopped this sale. But Cutler was truthful, and would not invent

such a fiction. From Cutler's evidence, and his conduct, I am convinced that he knew of no such agreement or understanding with Hill as that claimed by the complainant, and from his relation to these parties, and to the whole transaction between them, I am convinced that such an agreement could not have existed without his knowing it.

In my view, the evidence of Walker is not supported by Vanderbelt and Mrs. Gleason. The admission by Hill that he held that property in trust for Walker, or that he bid it in to keep it for him until he should be out of trouble to prevent it being sacrificed, might, if believed, be well held to refer to what his own object or intention was in buying it in; it shews no agreement with Walker, binding him to buy it, or to hold it for him. But the testimony of both these witnesses strikes me unfavorably. Vanderbelt's story of confidential disclosure, as well as his accidental meeting with Walker, three weeks before his testimony was needed is highly improbable, without regard to his mistakes as to dates. The allegation as to Mrs. Gleason's character and her relations with Hill, are not proved, and can have no weight against her credibility; but the whole manner of her testimony, as well as her statements with regard to Hill's incapacity destroy her credibility. They strike me as two procurable witnessesses of the kind which the statute of frauds was intended to suppress. There was no call at either sale for such a bargain as that contended for, nor is there proof of any sacrifice at either sale, so far as regards Walker. The mortgagee on the farm at the sale of 1862 amounted to about $28,000 and although the proof shews that in 1866 or 1869 the farm was worth $40,000, it was the opinion of witnesses who did not know of the sale of any like farm in that vicinity at that price and none of whom testify as to its value in 1862, at that time all values were depressed by the war commenced one year before, and when the large increase in prices of real estate in all localities had not yet taken place. At that time, $28,000 was, no doubt, a much larger price for this farm than $40,000 in the high prices of 1866 and 1869. There is no proof and I do not believe that this farm was then worth $30, subject to the encumbrances. There may have been some sacrifice as to

the personal property. But the live stock was much depreciated, in bad condition, nearly starved to death; the furniture was old and old fashioned, and such as does not bring high prices on sale by auction or otherwise. The sale was well attended; few others, besides Hill bought, because he bid at higher prices than others were disposed to give, and they knew, or supposed that the amount of his debt made it his interest to buy at any price; there is no proof of any impression that he was buying for Walker. The books may have sold below their value; but books in a library of this kind never bring, and are seldom worth their estimated value.

At the time of the foreclosure sale George Walker owned the decree, and the first mortgage, and also the third mortgage, on which there was then due over $25,000; Hill was his attorney and agent in these very matters and attended the sale as such. There was due to Maria Walker on the second mortgage about $8,000; in all about $34,000. This was, as I judge, about the value of the property at that time, if it was worth $40,000 three years later; there is no proof of its value in 1864. Hill, if acting as the agent of George, had no right to buy the property at that sale for himself, or any one else than George, at a price less than such as would secure the claim of George. Like a solicitor attending for his client, he would be held a trustee for his principle, and any written, or properly declared trust for any other, would be held subject to this first trust for his principal. I am satisfied, from the proof that Hill intended to purchase, and actually did purchase for George Walker at the foreclosure sale, and not for the complainant.

Again, if I am mistaken in my view of the evidence of Walker, I am of opinion that he was not a competent witness, and as there is no testimony but his, as to any agreement before the sales, upon which his purchases were made, his case must fail without his testimony.

At common law he was clearly incompetent, and the statute of 1859, which permits a party to be sworn, expressly provides that a party shall not be sworn when the opposite party is sued in a representative capacity—a very wise and proper provision, as this very case exemplifies. When 10

Walker was sworn Hill was dead, and his executors were defendants. Incompetency at the time when he was sworn is the test of the admissibility of his testimony, as was held in this Court, and the Court of Errors, in the case of Marlatt *v.* Warwick & Smith, 3, C. E. Green, 108; 4, Ib., 439, and he cannot be admitted under the provision of the act of 1855, to disprove the responsive allegations in the answer, because here these allegations are no evidence, and therefore need not be disproved, or his testimony, at most could be admitted to do away with the effect of such responsive allegations as proof, leaving the burden of proving his case upon the complainant. It has been held and must be taken as the established doctrine of this Court, that if the plaintiff in execution make an agreement with the defendant that he will buy the property at Sheriff sale, and hold it for his benefit, and takes advantage of such an agreement to buy in the property at prices lower than otherwise he could have done, he will be taken to hold in trust for the defendant who will be allowed to redeem. Combs *v.* Little, 3 Green, Ch., 310; Marlatt *v.* Warwick, 3, C. E. Green, 108; S. C., in Error, 4 Ib., 443; Merritt *v.* Brown, Ib., 286; S. C., in Error, Nov. Term, 1869. In this last case the opinion of the Court of Errors, delivered by the Chief Justice, shews the danger of extending any farther the doctrine of raising trusts by parol agreements in derogation of the wise and wholesome provision of the statute of frauds. It declares in effect that no mere parol agreement to purchase for the benefit of the defendant in execution will be carried into effect by a Court of Equity unless it is accompanied by circumstances of fraud or has been made use of by the purchaser to obtain the property for an inadequate consideration, or to oppress the defendant and in such cases to overcome the protection of the statute, the fraud or malafides should be proved by the clearest and most complete evidence. This is a most salutory and proper limitation of the doctrine not inconsistent with the former decisions, and necessary to save the provisions of the statute of frauds as to parol trustee and to make bidders at Sheriff sales secure. Without this limitation any defendant, who, after the death of a purchaser would testify that he promised before the

sale to buy for him, or who could get one witness to testify with him to the fact in the life of a purchaser, could convert the purchaser into a trustee and take from him the property when it had increased in value. In this case if we admit Walker as a competent witness and believe all that he has testified to, there is no proof of fraud in Hill, or that he has made use of the agreement to procure the property at inadequate prices, or to the oppression of Walker, or that he has done anything that at all savors of fraud or oppression. The mere non-performance of a beneficial parol agreement is not a fraud which will induce a Court of Equity to compel performance, or else every mere parol contract for the sale of a farm or a chattel worth thirty dollars would be enforced in Equity on the ground of fraud. Walker's case as shewn by his evidence, is the case of a naked parol contract now become beneficial for him to have performed; this the Court of Errors has declared he is not entitled to have enforced by a Court of Equity.

Hill has not pleaded or set up the statute of frauds in his answer as a defence. But this is not necessary when the answer denies the existence of any contract or agreement as the answer of Hill does most fully. The settled doctrine of the courts is that if the answer admits a contract without stating that it was not in writing and setting up the statute of frauds, that the statute connot be used as a defence. The admission will be held to be of a legal contract, that it is a written one, and no proof need be offered of it. But if the pleading or answer denied the existence of *any* agreement, the plaintiff will be obliged to prove one, and he must prove a legal agreement which in cases within the statute of frauds is a written one: Brown on Statute of Frauds, §511; Buttermere *v.* Hayes, 5, M. & W., 456; Johnson *v.* Dodgson, 2, Ib., 653; Leaf *v.* Tuton, 10, Ib., 398; Eastwood *v.* Kenyon, 11, Ad. & Ell., 438; Cozine *v.* Graham, 2 Paige, 181; Ontario Bank *v.* Root, 3, Ib., 478; Vanpell *v.* Woodward, 2, Sandf. Ch., 143. And on the other hand if the agreement to buy and hold in trust for Walker had been clearly proved I am satisfied from the allegations in the bill and the evidence of Walker, and of Cutler, his attorney, that the object of Walker in having his property sold and procuring Hill to

purchase it, was to hinder and delay his creditors and have it secured for himself against their claims. Walker states his embarrassments by debts contracted as surety in his bill preparatory to stating the confession of judgments to Hill, and his arrangements with him about the purchases, and in his evidence he says that the object of the sale of 1862 was to place his property in safe hands, so that he might go away and do his government business like a true patriot, and that his property might not be sacrificed by anything that might occur in his absence.

Mr. Cutler says as to this sale of 1862: "My impression is that there were these subsequent judgments, and it became necessary to have the title of the personal property out of Mr. Walker. It was the intention of that sale to vest the title in Mr. Hill, so that it could not be reached by other executors." If this was the object of making the sale which was not necessary for the security of Hill, before effected by his levies, and the sale of property far exceeding in value the amount of his claims was made to effect that object with the understanding that Hill should hold for Walker, it is a clear case of fraud against creditors, and Walker can have no relief in this court.

In the agreement it was contended that the delivery of the Sheriff's deed on the foreclosure sale after the Sheriff was out of office, and at a place out of the State, and after the lapse of so long a time after the sale; that the sale should be presumed to be abandoned, made the delivery illegal and void; and that the sale of the personal property without a bill of sale, and without actual payment or delivery rendered the sale of the personal property void. These issues are not raised by the bill that states the sale of the personal, and the sale and conveyance of the real property, by the Sheriff as actual existing sales, and conveyances, and asks relief against them by declaring the property so conveyed to be held in trust. If these were proper grounds for relief in Equity there are no facts stated in the bill on which such relief could be founded. There is no specific prayer for such relief; the only prayer besides the prayer for injunction and general relief is that Hill and McAlpine may be declared to hold the property in trust for the complainant.

Relief can be given under the general prayer only, when such relief is warranted by facts positively and clearly set forth in the bill, No facts stated in the bill if the bill was expressly admitted to be true in all things would warrant this relief. This is conclusive against these matters.

The view I have taken of the case will make it unnecessary for me to consider whether McAlpine, who was a *bona fide* purchaser for value, had sufficient notice of Walker's claim to put him on inquiry as to it, or can in any way be affected by the trust for him.

The bill must be dismissed with costs, as to all the defendants.

FINAL DECREE.

In Chancery of New Jersey.

Between
Frederick W. Walker,
Complainant,
and
Anthony B. Hill and al., Executors &c., of Anthony J. Hill, Deceased, and others,
Defendants.
} *Final decree.*

This cause coming on to be heard before the Chancellor, in the presence of Jacob Vanatta, of counsel with the complainant, and of the counsel of the defendants, the executors of Anthony J. Hill, deceased, John D. Van Buren, George Walker, David H. McAlpine and Augustus W. Cutler; and the pleadings having been read and the arguments of counsel heard and considered, and the Chancellor being of the opinion that the complainant is not entitled to the relief prayed in his bill of complaint.

It is on this first day of November, A. D. eighteen hundred and seventy, ordered, adjudged and decreed, that the complainants bill of complaint be and the same is hereby dismissed out of this court. and that the said complainant within thirty days after service upon his solicitors of a copy of this decree, and of copies of the taxed bills of the costs in this suit of the defendants, the executors of Anthony J. Hill, deceased, John D. Van Buren, George Walker, David H. McAlpine and Augustus W. Cutler, respectively, do pay to the respective solicitors of said defendants, the amounts of their respective taxed costs in this suit.

A. O. Zabriskie, Chancellor.

A true copy.
B. Gummere, Clerk.

APPEAL.

In Chancery of New Jersey.

Between
Frederick W. Walker,
Complainant,
and
Anthony John Hill's Executors,
David H. McAlpine, et als.,
Defendants.

On Bill, &c.

Appeal.

The complainant, Frederick W. Walker, appeals from the final decree made in this court, in the above stated cause, and from every part of said decree to the Court of Errors and Appeals.

Dated, November 22, 1870.

Vanatta & DeMott,
Sols., and of Counsel with compl't.

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

Jacob Vanatta, of Counsel. 10

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
FREDERICK W. WALKER,
Complainant.
and
ANTHONY J. HILL'S EXECUTORS, JOHN D. VAN BUREN, DAVID H. MCALPINE AND AUGUSTUS W. CUTLER,
Defendants.

ON BILL, &c.

Petition of Appeal.

To the Honorable the Court of Errors and Appeals, in the last resort in all causes at law or Equity.

The humble petition of Frederick W. Walker, the appellant in the above stated cause respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Abraham O.Zabriskie, Chancellor of the State of New Jersey, bearing date, the first day of November, in the year eighteen hundred and seventy, wherein your petitioner were complainant and the said Executors of Anthony J. Hill, John D. Van Buren, David H. McAlpine and Augustus W. Cutler were defendants, in this respect, to wit: that the said decree adjudges that the complainant is not entitled to the relief prayed for in his bill of complaint, and your petitioner humbly appeals from said decree, and from every part of the same, upon the ground that the same is erroneous, for that the said complainant is entitled to the relief prayed for in his said bill of complaint.

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

Dated November 22d, 1870.

VANATTA & DEMOTT,
Sols. of Complainant.

JACOB VANATTA,
Of Counsel.

New Jersey Court of Errors and Appeals.

FREDERICK W. WALKER,
Appellant,
and
ANTHONY J. HILL'S
Executors, et als
Appellees.

On Appeal from final Decree.

POINTS FOR THE APPELLANT.

I. The bill in this case is based upon the facts that Hill, the Plaintiff in execution, made an agreement with Walker, the Defendant in execution, that he, Hill, at the sales of Walker's property, personal and real, to be made by the Sheriff of Morris County, by virtue of several executions against Walker in favor of Hill and other persons, would purchase the property, and hold and dispose of it for Walker's benefit, subject to a lien in favor of Hill, to be paid what Walker owed him, and what he had to pay out ; and that in

consequence of such an agreement Hill purchased the property at prices very far below its true value, and for much less than he could have done if such an agreement had not been made.

II. Such an agreement, so executed, made Hill a mortgagee or trustee, and entitled Walker to redeem the property upon paying Hill what was owing to him from Walker, or to have the property fairly and properly sold, and the proceeds applied to paying Walker's debts which were liens on the property in question.

Combs vs. Little. 3 *Green's Ch.* 310.
Marlatt vs. Warwick. 3 *C. E. Green*, 108.
S. C. 4 *C. E. Green*, 443.
DeCamp vs. Crane. *Ibd.* 166.
Van Keuren vs. McLaughlin. *Ibd.* 187.

III. Such an agreement may be verbal and may be proved by parol evidence, and the existence of such an agreement at the time of, and before the sale may be proved by circumstances, like any other material fact.

IV. The material facts of the case are sufficiently proved without the evidence of the Complainant.

V. The Complainant *when he was sworn* and examined was a competent witness against all of the Defendants, except the executors of Attorney J. Hill, as executors.

VI. The evidence of the Complainant is *now* competent as against the executors of Hill, because they waived their objection to his evidence and legalized it by voluntarily becoming witnesses and giving their evidence for the defence.

Anonymous. 15 *Vesey*, 174.
Willan vs. Willan. 19 *Vesey*, 590.

VII. As to the personal property, McAlpine can only have such and no better title than his vendor had, and as to that, the plea of a *bona fide* purchase without notice cannot be set up.

2d leading cases in equity. 85 (*3d edition*).

McCombie vs. Davis. 6 *East*, 538.

Everitt vs. Saltus. 15 *Wendell*, 475.

Cogill vs. Hartford and New Haven R. R. Co. 3 *Gray*, 545.

VIII. McAlpine had notice before he took the deed for the real estate, and before he paid the purchase money, of Walker's claims to and rights in the property.

He received that notice himself. His agent and broker, Thomas V. Johnson, who made the purchase for McAlpine, knew and also received notice of Walker's claims and rights.

The knowledge of the agent is the knowledge of the principal and notice to the agent is notice to the principal.

Sugden on Vendors and Purchasers, Chap. 17, *pages* 278.

Jackson vs. Sharp. 9 *Johnson*, 163.

IX. The agreement in question was not intended to, nor could it hinder, delay, defeat, or injure the creditors of Walker, but was for their benefit.

N. J. COURT OF ERRORS AND APPEALS.

ANTHONY JOHN HILL'S Executors, and others,
Appellees,
and
FREDERICK W. WALKER,
Appellant.

On appeal by Complainant from decree of Chancellor.

POINTS.

First : The trust alleged in Complainant's bill, is wholly denied by the Defendants, and is not proved by the Complainant.

Second : The attempt to prove the trust by parol necessarily fails, for

1st. The statute of frauds requires such trust to be in writing.

2d. Complainant shows nothing which will enable this Court to enforce a parole contract in derogation of the statute.

Merritt vs. Brown, 6, C. E. Green 403 & 404.

3d. If the proofs show any trust, it was in fraud of creditors, and therefore cannot be enforced in a Court of Equity.

Third : The only witness who attempts to prove the trust directly is the Complainant, who is an incompetent witness. See act approved March 18, 1859, Nix. Dig., page 1044, Sec. 34.

Fourth : Augustus W. Cutler, a witness, called to corroborate Complainant, is, by the same statute, an incompetent witness.

Fifth : The testimony presented by Complainant is irrelevant, vague and contradictory, and in some material respects shown to be untrue.

Sixth : The Defendant, McAlpine, had no notice of the alleged trust.

Seventh : By his neglect and delay, Complainant is estopped from setting up any trust against McAlpine.

Eighth : The unavoidable effect of a decree for Complainant, if according to the prayer of his bill, will be to defraud his creditors, and especially George Walker, who, after acquiring and relying on his ownership of the farm in question, gave, at the urgent solicitation of Complainant, a general release to him of all indebtedness.

A Court of Equity will not aid the commission of such a fraud.

ALFRED MILLS,
Sol'r of Anthony John Hill's Executors, and others.

Nicholson, Printer, Trenton, N. J.

N. J. Court of Errors and Appeals.

On appeal from the Chancellor's decree dismissing the complainant's bill in the following cause:

In Chancery of New Jersey.

Between
FREDERICK W. WALKER,
Complainant.
and
ANTHONY JOHN HILL'S Executors, DAVID H. McALPINE, GEORGE WALKER, et als.,
Defendants.

The complainant is now appellant. The defendants are now appellees.

As a matter of convenience, the parties will be referred to as complainant and defendants.

The complainant charges, in his bill, that the defendant, Anthony John Hill, at sales made by the sheriff of Morris county, under executions in which the complainant was party defendant, purchased and held all of the property, personal and real, described in the bill, for the use and benefit of the complainant, "and that the only interest said Hill had or was to have therein, was to be reimbursed the money which he had lent to or paid for" the complainant: (See printed case, pages 10 and 11.) 10

New Jersey State Library

That said property (except the library and library furniture) was sold by Van Buren, Hill's attorney in fact, in August, 1866, to defendant, McAlpine, for $28,000.

That such price was grossly inadequate.

That McAlpine had notice of the trust before he purchased.

That Hill was of "unsound mind, by reason whereof" he was incapable of giving authority to Van Buren to sell, and was "incapable of assenting to, or ratifying the said conveyance and transfer" to McAlpine: (See page 13, line 27, and page 36, and post.

That the only mortgages in any way chargeable against the real estate are those given to Augustus W. Cutler and Maria Walker, and the only judgments, Hill's, Bohan's and Liddy's: (Page 20, line 8.)

And PRAYS—

That the sale and deed to McAlpine may be held fraudulent and set aside, and that said Hill may be decreed to have held the property, real and personal, in trust for complainant, and that complainant may redeem, on paying the amounts due on those mortgages and judgments which he admits to be liens.

I remark—

FIRSTLY.

There is no written evidence in the cause to prove the trust alleged. The letter, *Exhibit G*, (page 34 of exhibits) refers to lands which are not part of the farm sold to McAlpine, are not covered by any of the sheriff's deeds to Hill, and in which the complainant still had the equity of redemption.

SECONDLY.

The trust alleged is sought to be proved *by parol.*

Without attempting to analyze the late decisions of this court and of the Court of Chancery, or to define the exact point to which they are and should be confined, it is sufficient here to say that, under their most liberal construction the complainant in this cause is bound to clearly prove that before the land was sold to Hill, he agreed with complainant

New Jersey State Library

to buy, and at the sale did, in pursuance of that agreement, buy and hold the lands upon the trust alleged.

The only witness who attempts to prove this, is the complainant himself who—

1. Is incompetent as a witness under the statute of 1859.

Marlatt v. *Warwick and Smith*, 3 *C. E. Green* 108; *Ib.*, 4 *C. E. Green* 443.

2. Is vague, general, and uncertain in his testimony,

3. Tells different stories on the subject of the trust. in different parts of his testimony.

4. Shows that it was his object in creating the trust to defraud his creditors, and, therefore, puts himself out of the pale of a court of equity.

See page 153, line 37, to line 10, page 154.

5. Shows that he is now trying to defraud his brother, George Walker, who had loaned to the complainant a large amount of money on the farm which McAlpine afterwards bought, for whose benefit Hill bought the farm, by whose orders Van Buren sold, and who, at the solicitations of the complainant made after such sale, executed to him a general release, without an idea of its affecting his (George's) right to the farm and its proceeds.

See pages 20, 258, and 259.

6. Is evidently a soldier of fortune. At one time a practicing lawyer, then a lumberman, next a "true patriot," who, scarred all over with mortgages and judgments, shows his patriotism by sallying forth "in time of great necessity to the country," to get government contracts and make money to pay his debts. (See page 153, line 39, *et post.*) Who, like many other great men, is unappreciated by his own generation. Hear his touching lament when in writing to his brother-in-law, he says. "The great difficulty that I have in this world is that everybody knows so much more than I do, that I can get nothing done as I wish it."

See page 36 of exhibits, line 38.

7. Testifies now under oath to what he denied under oath in 1862, and swore then to what he now denies.

See exhibit 22, page 64 of exhibits.

The court cannot now give credence to his story without first determining that he committed perjury in 1862.

Is it not a mockery of justice for such a man to ask that deeds may be wiped out, and titles upset on his own testimony?

THIRDLY.

The witnesses relative to the trust, whose testimony the complainant offers to corroborate his own, are—

1st. Philip B. Vanderbilt, an inn-keeper and horse-trader, who lives at Fishkill, on the banks of the Hudson. Mr. Vanderbilt deduces a trust from a casual horse talk he had at the farm with Mr. Hill, on the 31st day of December, 1865.

His statement, if true, is consistent with one of the statements of complainant himself, *i. e.* that Hill held the property in fraud of complainant's creditors. If true, it does not necessarily support the allegation of the bill. That it is not true is shown, not only by its inherent improbability, but also by the fact that, as shown by several witnesses, at the time of the alleged conversation, Hill was not at the farm, but was sick in New York. When upon the stand in June, 1869, Vanderbilt pertinaciously lashed his story fast to the 31st of December, 1865, but when the defendants show that if his time were true his story could not be, he drifts back into 1864, with a facility that does credit to the elasticity of his conscience, if not to his facts.

2d. Watie Annie Gleason. This lady with an uncertain reputation, (page 296, lines 11, &c.) is very certain in her testimony, and gives the distinction between "he" and "we" with a gusto that shows the interest *she* has in the case. She passes on the question of insanity in a way that would surprise Dr. Buttolph, and in her widow's cruise has appropriately brought up under the complainant's broad pennant, on which is inscribed "Perjury in 1862."

But what is the pith of her testimony? It is, that the complainant was fraudulently attempting, through Mr. Hill, to keep his farm away from his creditors. Page 191, line 29.

3d. Augustus W. Cutler, esq. Mr. Cutler, when on the stand, states, as to the personal property, that his "impression is, that there were these subsequent judgments, and it became necessary to have the title of this personal property out of Mr. Walker. * * * It was the intention of that sale to vest the title in Mr. Hill, so that it could not be reached by other executions." See page 208, line 17.

If this impression is correct, the complainant cannot ask here to be relieved from that sale.

Mr. Cutler thinks the stock on the farm did not bring enough at the sale in the spring of 1862, and that it was then in a condition to bring a good price. See page 213, line 1.

He thinks the stock and other personal property did not bring over one fourth of their value.

These impressions and thoughts are inconsistent with Mr. Cutler's ideas in the spring of 1862, as they are developed in his letters, *Exhibits No.* 8, *No.* 9, *No.* 10, and *No.* 13.

The furniture, etc. in the house were old, and had been in use for many years, and the live stock were so poor that when they laid down they could not rise without assistance. (*Exhibit No.* 9.) Is not the complainant's talk about their great value absurd? I doubt whether the horses would have brought more in Paris in 1871, than they did in Morris county in 1862.

Now as to the real property:

Mr. Cutler says, that at the sheriff's sale of the farm in 1864, the understanding was, that Mr. Hill was to take the title and hold it for "the benefit of the mortgagees." Page 200, line 20.

If that is so, the complainant's allegation of the trust, in the bill, is untrue.

In a letter, without date (*Exhibit No.* 12), but showing on its face that it was written *after* 1866, Mr. Cutler says to Anthony John Hill, "In reply to the interrogatory, whether I ever heard you say that you had bought the farm and personal property for the benefit of F. W. Walker, I answer, No."

Again, at the time of the sale to McAlpine, Cutler stood

by and was professionally consulted, and never intimated that the property was held by Hill in trust for complainant.

Lastly. Cutler is a defendant in this cause, who has put in an answer on his own behalf. Is it ungracious for us to ask whether he is a competent witness against Hill's executors?

FOURTHLY.

The fact that the trust alleged in the bill did not exist, must be inferred from the fact that Mr. Cutler, the brother-in-law, attorney, and legal adviser of both complainant and Hill, was not cognizant of it. Called a witness, he does not bear witness, *lucus a non lucendo.*

FIFTHLY.

No more honorable man than Anthony John Hill ever lived. The complainant knew and felt this, and so he and Mrs. Gleason tried to prove *insanity.* Any one looking over the printed case can see how ignominiously they failed. In the words of the old adage, "*Ridiculus mus,*" etc.

SIXTHLY.

As to the allegations of value:

Cutler says that at the sale to Hill in 1864, the agreement was that the farm should be sold again if they could get a bid of $40,000. (See page 201, line 19.)

Suppose it had been then sold by Hill for $40,000, would the complainant have realized anything from such sale?

It was at that time encumbered for at least $42,341.54. (See *Schedule B* hereto annexed.)

In September, 1866, the time of the sale to McAlpine, it would have been encumbered for about $45,000. (See *Schedule B.*)

And in November, 1867, when the bill in this cause was filed it would have been encumbered for nearly $50,000.

The court would never set aside the sale of 1866, without recognizing George Walker's rights as mortgagee to their full extent. Does the complainant ask that the sale of 1866 to McAlpine be set aside? *Cui bono?*

The best commentary that I can make on the testimony of the respectable gentlemen, who, as witnesses, in 1870,

refer back their ideas of the very recent rise of real estate in Morris county, to previous years, is a *fact* furnished in this case by the complainant, who has proved himself a veritable Gradgrind.

Exhibit No. 3, page 46 of Exhibits, is a copy of an account made by the complainant, in his own handwriting, in a book that was fortunately left in the library.

It shows that the cost of the farm was,	$14,097 50	
Cost of all the buildings and materials, and fixtures,	10,236 51	10
	$24,334 01	

Thus the whole cost of the farm and improvements (not including, of course, ditching and other annual work on a farm) is not $24,500.

Where more than its full cost is realized in sale of his farm by a "gentleman farmer," it is doing pretty well.

SEVENTHLY.

Complainant gave no notice of the trust to McAlpine.

Mr. Cutler, complainant's attorney, stood by and allowed McAlpine to purchase.

Complainant came on, as he would have us understand, to Morristown, from Ohio, to stop the sale. Does he go to McAlpine and give him notice of the trust? He does not go near him, although McAlpine is living on the premises.

But complainant files in the clerk's office of Morris county a notice of the pendency of a suit which was not pending; which notice was six months afterwards stricken from the files of the office by order of the court.

Afterwards he lies quietly by for more than a year and lets McAlpine go on with his improvements on the farm and then he commences this suit.

If it was his intention to give McAlpine notice he successfully devised a way how "not to do it," which may hereafter be used as a precedent in the circumlocution office.

If he had had any rights as against McAlpine, he has slept over them too long to assert them now.

March 14, 1871.

ALFRED MILLS,

Solicitor of Executors of Anthony John Hill et als.

SCHEDULE A.

Sept. 12, 1864.

Amount due on Atwater decree,		$8,679 79
Costs taxed to Atwater suit,		218 29
Due to Maria Walker on her mort.,		7,675 59
Her costs and interest thereon,		28 22
Due Geo. Walker on his mortgage,		17,078 79
Sheriff's fees,		213 62
Page 61 of Exhibits,		$33,894 30
Page 199 of testimony—due on Cutler mortgage,		5,000 00
Hill's judgments to time of sale of personal property, *Exhibit No.* 1,	$4,848 93	
Amount sale,	3,089 72	
Bal. due May 2, 1862,	$1,859 21	
Int. to Sept. 12, 1864,	263 38	
		2,122 59
Bohan & Liddy judgments, (*Exhibit J,*) recovered May 30, '61,	$1,106 33	
Int.,	218 32	
		1,324 65
		$42,341 54

SCHEDULE B.

Sept. 5, 1866.

Amounts due on the Atwater decree and on Maria Walker mortgage, (see *Exhibit C,*)	$18,646 69
On Geo. Walker mortgage,	19,047 49
Take Cutler's mortgage at what appears to be due thereon in 1867,	3,300 00
Hill judgments,	2,343 52
Bohan & Liddy judgments,	1,237 79
	$44,575 49

SCHEDULE C.

Judgment and mortgage liens on Frederick W. Walker's property in Morris county, at the time of the sale of personal property, on 2d May, 1862.

A. J. Hill *v.* F. W. Walker.		
Judgment of April 3d, 1857, damages, interest, and costs,		$2,702 02
A. J. Hill *v.* F. W. Walker.		
Judgment of November 13th, 1857, damages, interest, and costs,		2,146.91
George J. S. Thompson *v.* F. W. Walker.		
Judgment of October 5th, 1858, damages, interest, and costs,		13,137 55
		$17,986 48
See Exhibit No. 1, page 1, of Exhibits,		
Francis Lindsley *v.* F. W. Walker.		
Judgment of October 5th, 1858, damages and costs,	$506 15	
Joseph W. Mount *v.* F. W. Walker.		
Judgment of October 20th, 1858, damages and costs,	461 52	
B. O. Canfield *v.* F. W. Walker.		
Judgment of October 12th, 1858, damages and costs,	600 74	
Richard Bohan *v.* F. W. Walker.		
Judgment of May 30th, 1861, damages and costs,	578 28	
William Liddy *v.* F. W. Walker.		
Judgment of May 30th, 1861, damages and costs,	525 08	
C. V. Freeman *v.* F. W. Walker.		
Judgment of October 24th, 1859, damages and costs,	162 54	
		$2,834 31
Average interest, say,		255 08
		$21,075 87
On the three mortgages held by Maria Walker, Atwater, and George Walker there was due at this time, over		28,500 00
Cutler mortgage,		5,000 00
Total,		$44,575 87

In Chancery of New Jersey.

In Chancery, October Term, 1870.

Walker
v.
Hill & *al.*

This cause was argued upon final hearing on the pleadings and proofs.

Mr. Vanatta and Mr. Williamson,

For Complainant.

Mr. C. Parker and Mills,

For Hill's Executors.

Mr. T. Little,

For McAlpine.

The Chancellor:

The complainant alleges that certain real and personal property in the county of Morris was held by the defendant, Hill, in trust for him. That the defendant Van Buren, by a power of attorney procured from Hill, when Hill was of unsound mind, and incapacitated for the transaction of business, sold the real and personal estate—except the library, to the defendant McAlpine, who had notice of the trust, for a grossly inadequate price. The complainant asks that Hill be declared to have held the property in trust for him, with a lien thereon, for the amount due on two judgments re- 10

covered by him against Walker; and that McAlpine may be declared to hold the part conveyed him subject to the same trust, and that the complainant be allowed to redeem, and that the property, if necessary, be sold, and after the payment of the liens thereon, the residue of the proceeds of sale may be paid to the complainant, and that the sale to McAlpine may be declared illegal and fraudulent, and set aside. It contains, also, the general prayer for relief.

The trust is stated in the bill to have arisen from these facts. The complainant, in April, 1857, confessed a judgment to Hill for $2,026, and in November following, another for $1,621. His real property was subject to three mortgages prior to the first judgment, amounting to $21,300, besides interest, and to another mortgage to A. W. Cutler for $3,000, given in October, 1857.

In 1862 Walker became embarrassed; he had become security for New York merchants who had failed in 1857, and left him liable for large sums, without consideration to him. That Hill was wealthy and willing to allow time and no sale had been made until May 2, 1862, when all the personal property was sold under Hill's judgments and executions thereon, by the Sheriff, and the whole, with the exception of a few articles amounting to $123, was purchased by Hill. The personal property sold was worth $17,000, but the sale amounted to only $3,089.23-100ths. The understanding between Hill and the complainant when he purchased the personal property was that he would hold the same as security for the complainant's indebtedness to him. That when complainant should pay that indebtedness, then the same should go to the use and benefit of the complainant and his other creditors, and that such was the intention of Hill. It was generally understood that Hill was bidding in the personal property for the use of the complainant, and because he was doing so the complainant permitted it to be sold at such low prices.

On the 26th August, 1862, by virtue of these executions of Hill, and other executions, the Sheriff sold the farm of 282 acres to Hill for $20, and within a few months after this four other tracts containing about 42 acres were sold by the Sheriff, under these executions, to Hill for the sum of $34.

One Atwater, who held a mortgage on the property in a foreclosure suit, obtained a decree to sell the real estate for the amounts due on his mortgage, and two mortgages held by defendants in the suit. The amount due on these three mortgages, for debt and costs, was $3,261.71-100ths., with interest from March 9, 1864. On the 12th of September, 1864, when this sum with the interest and Sheriff's fees amounted to nearly $34,000, the Sheriff sold the real estate to Hill for $19,999, and conveyed it by deed executed shortly after the sale, but not delivered until two years afterwards.

All these, purchase, the bill alleges, were made under the same understanding as that on the sale of the personal property—that is to say—that Hill would hold the property merely as security for complainant's indebtedness to him.

The answer of the defendant, Hill, entirely denies all the allegations of the bill, as to his purchase of this property, or any part of it, in trust for Walker, or that there was any agreement or understanding for that purpose. On the contrary, he avers that the purchase at the foreclosure sale was made by him as agent of, and for the benefit of his brother-in-law, George Walker, to whom, as holder of the third mortgage, one-half of the money directed to be made by the decree was directed to be paid, and who, before the sale, had, through Hill, as his agent, purchased the Atwater mortgage, and was thus entitled to about three-fourths of the decre.

That he intended to have made the purchase in the name of G. Walker, and applied to the Sherriff to allow him to add the words, "agent for George Walker" to his name, so that the deed might be made to George Walker. That the property when sold to McAlpine was sold at the request, and for the benefit of George Walker, for whom he had purchased it, and all the proceeds paid to him, except $2,500, the value of the personal property, and the amount due to Maria Walker on the second mortgage. This answer is sworn to, although the bill prays for an answer without oath; the oath was legal, as it was proper and necessary to render the answer of use on a motion to dissolve the injunction. But it is of no value and cannot be used as evidence

on the hearing of the case. In considering the question whether the allegations on which the trust is founded are sufficiently proved, I shall first assume that the complainant is a competent witness, and consider the value of his testimony. Hill died after filing his answer, after his executors were made parties, and before either of them had been sworn as witnesses, the complainant was sworn, being at the time objected to as incompetent by the defendants.

The complainant is the only witness who testifies to any agreement or understanding between him and Hill prior to the sales—that Hill would buy in the property for his benefit, and this part of the case rests entirely upon his testimony. The complainant labors under peculiar disadvantages; he is admitted by a statute derogatory of the common law and of well established rules of evidence and which expressly declares that his interest may be shown to affect his credit. By asking for answers without oath he excludes the oath of the defendant Hill—admitted to be a man of character and respectability, who had been a generous friend, the only person who seems to have had any knowledge of the transaction besides himself. Hill now being dead the testimony of the complainani is against the policy of the statutes legalizing such evidence which only intended to admit the evidence of one party where the other could be produced to contradict or confirm him, it being intended to avoid the opportunity and temptation to perjury weighing on a party who is testifying to a private bargain between himself and his dead adversary.

The fact that this adversary in his sworn answer has denied the whole charge, cannot be used to discredit him any more than to contradict his testimony, but it calls upon the court to give grave attention to his evidence.

I have no doubt, from the whole case, that Mr. Hill intended to bid in the property at all the sales and to dispose of it to pay the creditors of Walker, including himself, his brother-in-law, George Walker and the incumbrances which were prior to his own judgments, and George Walker's mortgage, and that he did not intend or expect to make any profit for himself by purchasing it, and I have little doubt but that before these sales he said that he intended to bid in

the property. But this is not the question here, it is whether he made any agreement with the complainant that he would bid it in and hold it in trust for him, or him and his creditors, after the amounts of his bid or of his own claims against the complainant was repaid. Any declaration after the sale by Hill, that he bought in trust for Walker or his creditors, or that he held it in trust for him and his creditors would clearly be insufficient under the statute of frauds or by any construction ever yet given to it, to create or to prove a trust, it must arise from an agreement entered into before the sale, and acted upon at the sale. Walker testifies that in the Spring of 1862, he and Mr. Hill had a talk over the matter and they agreed that they would have the property sold under the executions, and that he would bid on it or cause it to be bid in at the lowest possible sum, at whatever sum more or less he agreed to bid it in without reference to his executions, and to hold it in trust for me till I got ready to pay him the sum bid by him whether it was more or less, and again, "In this previous agreement that I had with Hill in the spring of 1862, he agreed to bid off the personal estate and the real estate and hold it for me subject to the incumbrances, using his judgments and all others for that purpose."

Walker urged the sale under the Atwater foreclosure which took place August 25th, 1864, when he was out of the State, and he wanted Hill to buy it for the amount due on first two mortgages, leaving George Walker's mortgage out. He testifies, "previous to this, before I went away, Mr. Hill said if the property had to be sold he would bid it in and hold it the same as at the other sale." Again, when asked asked what he was to pay Hill on surrendering the trust, he says: "The two judgments of April, 1857, and of November, 1857, amounting to $3,650 and the interest."

This is all the evidence of Walker on the subject; it is very meagre and unsatisfactory for so important a matter as this. He gives neither time, place, or circumstance to these agreements. He does not give, or attempt to give the language in which they were made.

This testimony does not agree with the allegations in the bill, nor does the story first told by him in his testimony

that Hill should buy it in and hold it until Walker paid the amount of his bid, agree with the last story, that he should pay the amount of his two judgments. These variations are not merely verbal—they are substantial. These statements are utterly inconsistent with his testimony in this Atwater case, in September, 1862, after the sale in August, 1862, in which he states that he had no interest in the question, whether the Atwater mortgage was void for usuary. He testified to a falsehood there or now.

The letter of Hill to Walker in which he asks whether he shall sell the low meadows for $400, and the Shelley meadows for $150, do not support Walker's claim. It does not appear that either of these meadows were part of the tracts bought by Hill. It would seem from the papers in evidence rather, that they were part of the 60 acres owned by Walker outside of the farm, and the four tracts conveyed to Hill, and included in the Cutler mortgage which was afterwards assigned to Hill.

Cutler was, throughout, the agent and attorney of Walker who was his brother-in-law—Hill's wife, who had been dead for years, was the sister of Walker and of Cutler's wife, and Cutler was the attorney, or agent of Hill. Cutler was the person who bid off all the personal property for Hill, and who bid off the farm at both the Sheriff sales, and who, as agent for Walker, urged on the first sale, and who was written to by Walker to insist upon the foreclosure sale; yet Cutler seems to have no knowledge of any such agreement as insisted on by Walker. It seems hardly possible that there should have been such an agreement without his having knowledge of it from one or both, or that he should not have been present when the agreement was made. His letter to Hill, in 1866, when in Bermuda, denying that he ever heard Hill say that he had bought in trust for Walker, is inconsistent with his having heard any such agreement; else it would be rank hypocracy in both him and Hill.

The only part of Cutler's testimony that refers to any understanding or agreement between Walker and Hill regarding this purchase, is where he is speaking of the foreclosure sale he is asked whether he understood or supposed that Hill purchased for his own use. He answers, "that the under-

standing was that Hill was to take the title for the benefit of the mortgagees." To the question whether that understanding was arrived at in Walker's presence, or talked of in his presence prior to the sale, his answer is a simple "*yes*," which would be true if Hill had spoken of it to the mortgagees, or a stranger, in Walker's presence. When asked whether Walker assented or dissented, he avoided answering. These answers of Cutler show both that he knew of no agreement between Walker and Hill, and that he did know what Hill's object was in making a purchase, and that it was known to Walker; it was simply to protect the mortgagees. Cutler was the attorney, agent and friend of Walker; he was opposed to the sale made through Van Buren to McAlpine; it was made by summarily displacing Cutler from the agency given to him; Cutler was in the neighborhood, knew the property, and was so related to Hill and George Walker that he was entitled to their confidence. The sale was entrusted to Van Buren, who knew nothing of the property or its value, and who hastily made an improvident sale for a price several thousands of dollars less than Cutler could have obtained. Cutler naturally—I would almost say properly—was opposed to this sale, and the case shows that he did everything which he could do with propriety to put a stop to it. Had he known of any understanding or agreement of Hill with Walker, such as is claimed by the latter, he would have been willing when thus plainly asked, to have disclosed it fully and truthfully. More than this, if he had known of any such agreement or trust, in any way, so that he believed it, he could not, with common honesty have been silent on the day when the contract was made and signed almost in his presence, and much to his dissatisfaction. He would not have said, as several witnesses testify, that the title was as good as any in the county. He would naturally have told the truth, and said, "the title is held by Hill in trust for F. W. Walker, without whose consent Hill cannot sell, and I know Walker will not consent at that price." Both had commissioned him to sell, but at a much higher price, such an explanation would have effected what Cutler had at heart; it would have stopped this sale. But Cutler was truthful, and would not invent

such a fiction. From Cutler's evidence, and his conduct, I am convinced that he knew of no such agreement or understanding with Hill as that claimed by the complainant, and from his relation to these parties, and to the whole transaction between them, I am convinced that such an agreement could not have existed without his knowing it.

In my view, the evidence of Walker is not supported by Vanderbelt and Mrs. Gleason. The admission by Hill that he held that property in trust for Walker, or that he bid it in to keep it for him until he should be out of trouble to prevent it being sacrificed, might, if believed, be well held to refer to what his own object or intention was in buying it in; it shews no agreement with Walker, binding him to buy it, or to hold it for him. But the testimony of both these witnesses strikes me unfavorably. Vanderbelt's story of confidential disclosure, as well as his accidental meeting with Walker, three weeks before his testimony was needed is highly improbable, without regard to his mistakes as to dates. The allegation as to Mrs. Gleason's character and her relations with Hill, are not proved, and can have no weight against her credibility; but the whole manner of her testimony, as well as her statements with regard to Hill's incapacity destroy her credibility. They strike me as two procurable witnessesses of the kind which the statute of frauds was intended to suppress. There was no call at either sale for such a bargain as that contended for, nor is there proof of any sacrifice at either sale, so far as regards Walker. The mortgagee on the farm at the sale of 1862 amounted to about $28,000 and although the proof shews that in 1866 or 1869 the farm was worth $40,000, it was the opinion of witnesses who did not know of the sale of any like farm in that vicinity at that price and none of whom testify as to its value in 1862, at that time all values were depressed by the war commenced one year before, and when the large increase in prices of real estate in all localities had not yet taken place. At that time, $28,000 was, no doubt, a much larger price for this farm than $40,000 in the high prices of 1866 and 1869. There is no proof and I do not believe that this farm was then worth $30, subject to the encumbrances. There may have been some sacrifice as to

the personal property. But the live stock was much depreciated, in bad condition, nearly starved to death; the furniture was old and old fashioned, and such as does not bring high prices on sale by auction or otherwise. The sale was well attended; few others, besides Hill bought, because he bid at higher prices than others were disposed to give, and they knew, or supposed that the amount of his debt made it his interest to buy at any price; there is no proof of any impression that he was buying for Walker. The books may have sold below their value; but books in a library of this kind never bring, and are seldom worth their estimated value.

At the time of the foreclosure sale George Walker owned the decree, and the first mortgage, and also the third mortgage, on which there was then due over $25,000; Hill was his attorney and agent in these very matters and attended the sale as such. There was due to Maria Walker on the second mortgage about $8,000; in all about $34,000. This was, as I judge, about the value of the property at that time, if it was worth $40,000 three years later; there is no proof of its value in 1864. Hill, if acting as the agent of George, had no right to buy the property at that sale for himself, or any one else than George, at a price less than such as would secure the claim of George. Like a solicitor attending for his client, he would be held a trustee for his principle, and any written, or properly declared trust for any other, would be held subject to this first trust for his principal. I am satisfied, from the proof that Hill intended to purchase, and actually did purchase for George Walker at the foreclosure sale, and not for the complainant.

Again, if I am mistaken in my view of the evidence of Walker, I am of opinion that he was not a competent witness, and as there is no testimony but his, as to any agreement before the sales, upon which his purchases were made, his case must fail without his testimony.

At common law he was clearly incompetent, and the statute of 1859, which permits a party to be sworn, expressly provides that a party shall not be sworn when the opposite party is sued in a representative capacity—a very wise and proper provision, as this very case exemplifies. When 10

Walker was sworn Hill was dead, and his executors were defendants. Incompetency at the time when he was sworn is the test of the admissibility of his testimony, as was held in this Court, and the Court of Errors, in the case of Marlatt *v.* Warwick & Smith, 3, C. E. Green, 108; 4, Ib., 439, and he cannot be admitted under the provision of the act of 1855, to disprove the responsive allegations in the answer, because here these allegations are no evidence, and therefore need not be disproved, or his testimony, at most could be admitted to do away with the effect of such responsive allegations as proof, leaving the burden of proving his case upon the complainant. It has been held and must be taken as the established doctrine of this Court, that if the plaintiff in execution make an agreement with the defendant that he will buy the property at Sheriff sale, and hold it for his benefit, and takes advantage of such an agreement to buy in the property at prices lower than otherwise he could have done, he will be taken to hold in trust for the defendant who will be allowed to redeem. Combs *v.* Little, 3 Green, Ch., 310; Marlatt *v.* Warwick, 3, C. E. Green, 108; S. C., in Error, 4 Ib., 443; Merritt *v.* Brown, Ib., 286; S. C., in Error, Nov. Term, 1869. In this last case the opinion of the Court of Errors, delivered by the Chief Justice, shews the danger of extending any farther the doctrine of raising trusts by parol agreements in derogation of the wise and wholesome provision of the statute of frauds. It declares in effect that no mere parol agreement to purchase for the benefit of the defendant in execution will be carried into effect by a Court of Equity unless it is accompanied by circumstances of fraud or has been made use of by the purchaser to obtain the property for an inadequate consideration, or to oppress the defendant and in such cases to overcome the protection of the statute, the fraud or malafides should be proved by the clearest and most complete evidence. This is a most salutory and proper limitation of the doctrine not inconsistent with the former decisions, and necessary to save the provisions of the statute of frauds as to parol trustee and to make bidders at Sheriff sales secure. Without this limitation any defendant, who, after the death of a purchaser would testify that he promised before the

sale to buy for him, or who could get one witness to testify with him to the fact in the life of a purchaser, could convert the purchaser into a trustee and take from him the property when it had increased in value. In this case if we admit Walker as a competent witness and believe all that he has testified to, there is no proof of fraud in Hill, or that he has made use of the agreement to procure the property at inadequate prices, or to the oppression of Walker, or that he has done anything that at all savors of fraud or oppression. The mere non-performance of a beneficial parol agreement is not a fraud which will induce a Court of Equity to compel performance, or else every mere parol contract for the sale of a farm or a chattel worth thirty dollars would be enforced in Equity on the ground of fraud. Walker's case as shewn by his evidence, is the case of a naked parol contract now become beneficial for him to have performed; this the Court of Errors has declared he is not entitled to have enforced by a Court of Equity.

Hill has not pleaded or set up the statute of frauds in his answer as a defence. But this is not necessary when the answer denies the existence of any contract or agreement as the answer of Hill does most fully. The settled doctrine of the courts is that if the answer admits a contract without stating that it was not in writing and setting up the statute of frauds, that the statute connot be used as a defence. The admission will be held to be of a legal contract, that it is a written one, and no proof need be offered of it. But if the pleading or answer denied the existence of *any* agreement, the plaintiff will be obliged to prove one, and he must prove a legal agreement which in cases within the statute of frauds is a written one: Brown on Statute of Frauds, §511; Buttermere *v.* Hayes, 5, M. & W., 456; Johnson *v.* Dodgson, 2, Ib., 653; Leaf *v.* Tuton, 10, Ib., 398; Eastwood *v.* Kenyon, 11, Ad. & Ell., 438; Cozine *v.* Graham, 2 Paige, 181; Ontario Bank *v.* Root, 3, Ib., 478; Vanpell *v.* Woodward, 2, Sandf. Ch., 143. And on the other hand if the agreement to buy and hold in trust for Walker had been clearly proved I am satisfied from the allegations in the bill and the evidence of Walker, and of Cutler, his attorney, that the object of Walker in having his property sold and procuring Hill to

purchase it, was to hinder and delay his creditors and have it secured for himself against their claims. Walker states his embarrassments by debts contracted as surety in his bill preparatory to stating the confession of judgments to Hill, and his arrangements with him about the purchases, and in his evidence he says that the object of the sale of 1862 was to place his property in safe hands, so that he might go away and do his government business like a true patriot, and that his property might not be sacrificed by anything that might occur in his absence.

Mr. Cutler says as to this sale of 1862: "My impression is that there were these subsequent judgments, and it became necessary to have the title of the personal property out of Mr. Walker. It was the intention of that sale to vest the title in Mr. Hill, so that it could not be reached by other executors." If this was the object of making the sale which was not necessary for the security of Hill, before effected by his levies, and the sale of property far exceeding in value the amount of his claims was made to effect that object with the understanding that Hill should hold for Walker, it is a clear case of fraud against creditors, and Walker can have no relief in this court.

In the agreement it was contended that the delivery of the Sheriff's deed on the foreclosure sale after the Sheriff was out of office, and at a place out of the State, and after the lapse of so long a time after the sale; that the sale should be presumed to be abandoned, made the delivery illegal and void; and that the sale of the personal property without a bill of sale, and without actual payment or delivery rendered the sale of the personal property void. These issues are not raised by the bill that states the sale of the personal, and the sale and conveyance of the real property, by the Sheriff as actual existing sales, and conveyances, and asks relief against them by declaring the property so conveyed to be held in trust. If these were proper grounds for relief in Equity there are no facts stated in the bill on which such relief could be founded. There is no specific prayer for such relief; the only prayer besides the prayer for injunction and general relief is that Hill and McAlpine may be declared to hold the property in trust for the complainant.

Relief can be given under the general prayer only, wh en such relief is warranted by facts positively and clearly set forth in the bill, No facts stated in the bill if the bill was expressly admitted to be true in all things would warrant this relief. This is conclusive against these matters.

The view I have taken of the case will make it unnecessary for me to consider whether McAlpine, who was a *bona fide* purchaser for value, had sufficient notice of Walker's claim to put him on inquiry as to it, or can in any way be affected by the trust for him.

The bill must be dismissed with costs, as to all the defendants.

FINAL DECREE.

In Chancery of New Jersey.

Between
Frederick W. Walker,
Complainant,
and
Anthony B. Hill and al., Executors &c., of Anthony J. Hill, Deceased, and others,
Defendants.

Final decree.

This cause coming on to be heard before the Chancellor, in the presence of Jacob Vanatta, of counsel with the complainant, and of the counsel of the defendants, the executors of Anthony J. Hill, deceased, John D. Van Buren, George Walker, David H. McAlpine and Augustus W. Cutler; and the pleadings having been read and the arguments of counsel heard and considered, and the Chancellor being of the opinion that the complainant is not entitled to the relief prayed in his bill of complaint.

It is on this first day of November, A. D. eighteen hundred and seventy, ordered, adjudged and decreed, that the complainants bill of complaint be and the same is hereby dismissed out of this court. and that the said complainant within thirty days after service upon his solicitors of a copy of this decree, and of copies of the taxed bills of the costs in this suit of the defendants, the executors of Anthony J. Hill, deceased, John D. Van Buren, George Walker, David H. McAlpine and Augustus W. Cutler, respectively, do pay to the respective solicitors of said defendants, the amounts of their respective taxed costs in this suit.

A. O. Zabriskie, Chancellor.

A true copy.
B. Gummere, Clerk.

APPEAL.

In Chancery of New Jersey.

Between
Frederick W. Walker,
Complainant,
and
Anthony John Hill's Executors,
David H. McAlpine, et als.,
Defendants.

On Bill, &c.

Appeal.

The complainant, Frederick W. Walker, appeals from the final decree made in this court, in the above stated cause, and from every part of said decree to the Court of Errors and Appeals.

Dated, November 22, 1870.

Vanatta & DeMott,
Sols., and of Counsel with compl't.

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

Jacob Vanatta, of Counsel.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
FREDERICK W. WALKER,
Complainant.
and
ANTHONY J. HILL'S EXECUTORS, JOHN D. VAN BUREN, DAVID H. MCALPINE AND AUGUSTUS W. CUTLER,
Defendants.

ON BILL, &c.

Petition of Appeal.

To the Honorable the Court of Errors and Appeals, in the last resort in all causes at law or Equity.

The humble petition of Frederick W. Walker, the appellant in the above stated cause respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Abraham O. Zabriskie, Chancellor of the State of New Jersey, bearing date, the first day of November, in the year eighteen hundred and seventy, wherein your petitioner were complainant and the said Executors of Anthony J. Hill, John D. Van Buren, David H. McAlpine and Augustus W. Cutler were defendants, in this respect, to wit: that the said decree adjudges that the complainant is not entitled to the relief prayed for in his bill of complaint, and your petitioner humbly appeals from said decree, and from every part of the same, upon the ground that the same is erroneous, for that the said complainant is entitled to the relief prayed for in his said bill of complaint.

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

Dated November 22d, 1870.

VANATTA & DEMOTT,
Sols. of Complainant.

JACOB VANATTA,
Of Counsel.

Murphy & Bechtel, Printers, Trenton.

N. J. COURT OF ERRORS AND APPEALS.

Anthony John Hill, David H. McAlpine, and others, Appellees,

and

Frederick W. Walker, Appellant.

POINTS relied on by counsel for the defendant, David H. McAlpine.

First. There never was such an agreement by Anthony J. Hill to purchase complainant's property at the sheriff's sale and hold it in trust for him, as is claimed.

The only witness who swears to such an agreement is the complainant himself, who is an incompetent witness, and his evidence is also discredited.

Such an agreement could not have existed without the knowledge of Augustus W. Cutler, the agent and attorney of both the complainant and A. J. Hill.

The statements of the alleged agreement by the complainant in his bill and in his evidence, are so varied, uncertain, and indefinite, as to raise a violent presumption that it was never made.

Second. The agreement, if made, was only in parol, and was void under the statute of frauds.

Third. The declared object and purpose of the agreement was to delay and hinder the creditors of Walker

in the collection of their debts, and it was, therefore, contrary to the policy of the law and void.

Fourth. The case clearly shows that the property has been disposed of and used in the precise manner in which it was understood and intended it should be used when purchased by Hill.

Fifth. The defendant, McAlpine, is a bona fide purchaser for a valuable consideration, and without notice of the alleged trust between complainant and A. J. Hill.

He purchased in the presence and with the full knowledge of complainant's agent and attorney.

The conduct of the complainant after being notified of the sale, was a clear acquiescence in it, and should estop him from asserting any rights inconsistent with the title of the purchaser.

Murphy & Bechtel, Printers, Trenton, N. J.

N. J. COURT OF ERRORS AND APPEALS.

Anthony John Hill, David H. McAlpine and al., Appellees,
and
Frederick W. Walker, Appellant.
} On Bill, &c.

BRIEF on part of Defendant, D. H. McAlpine.

The property in controversy consists of 281 89-100 acres of land in the county of Morris, and certain personal property, all of which was sold to McAlpine by Anthony John Hill, by his agent, John D. Van Buren, on the 21st of August, 1866, the deed being executed and delivered on the 15th September, 1866.

Prior to 1862, the property belonged to the complainant. On the 2d of May, 1862, the personal property was sold by the sheriff of Morris county at public vendue, and bought by Mr. Hill.

On the 25th of August, 1862, the real estate was also sold by said sheriff under executions at law against complainant and bought by Mr. Hill, subject, however, to three mortgages.

1. Held by Maria Walker, dated October 28th, 1851, for $3000.
2. Held by James C. Atwater, dated September 25th, 1855, for $5350.
3. Held by Augustus W. Cutler, dated October 26th, 1857, to secure endorsements, &c.

On the 5th of April, 1864, Atwater obtained a decree

of foreclosure, and on the 12th of September, 1864, the real estate was sold by the sheriff and bid off by Mr. Hill for $19,999.

Complainants' bill, page 2, 4, 6 and 7.

The property was advertised for sale, and in August, 1866, McAlpine, a stranger to all the parties, saw the advertisement, examined the property, and agreed with the attorney of Mr. Hill to buy the real and personal property for $28,700, cash.

On the 15th of August, 1866, Van Buren, the attorney of Hill, Augustus W. Cutler, the attorney and brother-in-law of Walker, and McAlpine, met at the farm and entered into the contract for the purchase, and McA. paid $2800.

On the 15th of September, 1866, he received his deed and paid the balance of the purchase money.

He was put in possession of the property on the day the contract was signed, and during the year after his purchase, he expended in repairs some $6000 to $8000.

Page 228, line 2.

The complainant's bill was filed in November, 1867, and in it he claims that Hill was not the owner of the property, but held it under a serect trust for the complainant, with no power of sale without his consent—charges that McAlpine had notice, actual and constructive, of the trust hereby purchased, and asks for a decree that the trust may be executed, the property sold, the liens paid, and the balance of proceeds of sale paid over to complainant.

In other words, he claims that although the property was twice sold by the sheriff, once under common law judgments, and once under foreclosure, there never was really any sale—the proceedings were a sham—and were only used to *place the property beyond the reach of his creditors.*

First. The complainant does not prove any agreement by Hill to buy the property and hold it in trust for him. Such agreement is denied by the answer.

The agreement set up in the bill is one alleged to have been made *before* the sheriff's sale.

Bill, page 11, line 5–15.

The whole scope of the bill and of the case attempted to be made by complainant is, that Hill purchased under an *express parol agreement to hold in trust for him.*

The indefinite and uncertain language used by complainant in stating the alleged agreement, tend to disprove its existence.

On page 6 of bill, line 10–15.
" 7 " " 1–15.
" 9 " " 5–10.

He alleges simply that Hill bought the property for his use and benefit.

At one time he says the agreement was, Hill was to *re-sell the property*, pay his own judgments, and that the residue should go to him (complainant), or to his other creditors.

Bill, page 10, line 20–35.

At another time, he alleges Hill was merely to hold the property *as security*, with a right on his *part to redeem.*

Bill, page 11, line 10–15.
" " 25–30.

When examined, he claims that Hill agreed to buy the property at the *lowest sum and hold it in trust* for him *until he got ready* to pay him *the sum bid by him*, whether it was more or less.

Page 135, line 30–40.

Again: he swears that Hill agreed to bid off the personal and real estate and *hold it for him, subject to the encumbrances.*

Page 136, line 28–33.

Again: Hill agreed to bid it in (at the Atwater sale), and hold it the same as at the other sale.

Again: he swears the property *was to be re-sold*, and the *encumbrances paid*—mentioning them—and *the balance* paid to him.
Page 139. line 15—30

These variations of so important an agreement are material, and coming from the party claiming the right to enforce it, raise a suspicion at least that no *agreement* ever was made.

They at least show the alleged agreement to have been so indefinite and uncertain that the court cannot enforce it.

It may be of vital importance to the purchaser to know whether the alleged trust in Hill contemplated a re-sale of the property by him, or whether such sale was prohibited.

The attempt being to charge the estate of a deceased man with such a trust, the court will require the terms of the trust to be very distinctly and definitely proved.

Complainant is the only witness who swears to *any* agreement by Hill prior to the sheriff's sale.

He is incompetent under the act of 1859.

At the time he was examined, Mr. Hill was dead, and his executors had been substituted as defendants.

Marlatt v. Warwick & Smith, 3 C. E. Green 108.
" " " 4 " 444.
Opinion of Chancellor in this case, p. 9 and 10.

If competent, his evidence is unreliable.

He cannot state the agreement twice in same words.

He himself being the witness, there could not have been such a trust, for he swore, in *September*, 1862, after purchase by Hill, that *he had no interest* in the property.
Exhibit 22, page LXIV.

Again: no such agreement could have been made without the knowledge of Mr. Cutler, who was then acting as attorney for Hill and for Walker also.

Walker claims that Cutler knew his interest in the property.

Bill p. 10, line 35–40.
" 11, " 1–5.

Mr Cutler not friendly to McAlpine, and if he knew of such trust would have stated it.

See Exhibit M 1, page LXXII.

Neither in his answer in this case nor in his evidence will he say that Walker had any interest in the property.

Answer, page 64. 28—40
See his evidence, page 197, lines 15–23.
" " 200, " 20–40.
" " 201, " 1–22.
" " 214, " 1–17.
" " 215, " 30–40.
" " 216, " 1–10.
See also page 219, line 10–20.
Exhibit 12, page LIV.

The improbability of Mr. Hill's making such an agreement as is claimed in August, 1864, may be inferred from the language addressed by Walker to him in May.

Exhibit F, page XXXII.

The evidence of Messrs. Gleason and Vanderbilt is utterly unreliable and more than suspicious in its character.

The latter was proved to be in error, and came back on the stand and admitted it.

If admitted they would not prove an agreement prior to the sheriff's sale, nor indeed *any agreement at all.*

Loose declarations or admissions of this kind are received with reluctance, and are so easily fabricated that they never receive much weight, and should have

none where the party alleged to have made them is dead.

Botsford v. Burr, 2 Johns. Ch. R. 412.
Steere v. Steere, 5 " " 1.
Lench v. Lench, 10 Vesey R. 517.

If the evidence should lead to a suspicion or even a belief that there was *some understanding* between Hill and Walker in relation to the future disposition of the property, it does not prove *any agreement*, much less charge the property in Hill's hands *with a trust* which this court can enforce.

Second. If any trust was ever created it was by parol, and is void under the statute of frauds.

Lemon v. Whitley, 4 Russ. R. 423.
Rathbun v. Rathbun, 6 Barb. 105, 107,
Bartlett v. Pickersgill, 1 Eden. R. 515.
Cases cited in Chancellor's opinion—
Merrit & Brown, 6 C. E. Green 401.

The latter case seems fully and expressly to rule this case.

Third. The complainant admits that the object of the alleged trust was to conceal his property from certain of his creditors; or, as *he says, to keep it from being sacrificed.*

His bill clearly and distinctly declares this.
Page 12, line 20—30.
He swears to the same.
Page 153, lines 35—40.
" 154, " 5—10.
Mr. Gleason swears to the same.
Page 191, line 30—40.
Mr. Cutler swears to it also.
Page 208, line 18—22.

This was a fraud. Not only so, complainant swears he caused the property to be sold for his own purposes, and it was sold, under the judgment of Thompson, for

$10,729, obtained in 1858, when in fact that judgment had been previously paid.

Page 154, line 15—25.
" 156 " 30—40.

The evidence shows property sold under that judgment.

Exhibits K and L, page LXXVII.
" I, page 2 of Exhibits.

So, also, he swears that the judgments of Mount & Lindsly had been paid before sale. They were behind Thompson's large judgment, and he bought them for fifty cents on the dollar.

Page 207, line 38–40.
" 208.

Under cover of this Thompson judgment, Cutler, also the attorney of Walker, bought the judgments of Liddy & Bohan for twenty-five or thirty cents on the dollar.

Page 207. line 32–38

Such was the design and such the result of this alleged secret trust—a *design and a result which the law pronounces fraudulent*—and therefore a court of equity will not enforce it.

Lewin on Trusts, 23, 178.
Cook v. Eaton, 16 Barb. R. 448.
Prosens v. McIntyre, 5 Barb. R. 425, 434.

The case of Legget v. Dubois, 5 Paige Ch. R. 114, was a much stronger one for complainant than the present case, for the trust was acknowledged, and the declaration of trust was in writing.

Baldwin v. Campfield, 4 Halst. Ch. R. 891.
Andrews v. Farnham, 2 Stockt. R. 91, 95.
Eyre v. Eyre, 4 C. E. Green's R. 42.
Marlatt v. Warwick and al., 4 C. E. Green's R. 562.

Fourth. If the case shows any understanding or agreement in reference to the purchase and disposition of the property by Mr. Hill, it was that it was to be re-sold, and the proceeds used to pay the mortgages and Hill's judgments.

This is Cutler's evidence, p. 200 and 201.

Such also is complainant's evidence, p. 139.

This understanding appears to have been voluntary on the part of Hill, and to have been made after the purchase. See question, p. 138, line 36–40, and answer on p. 139.

It did not, therefore, affect the property in Hill's hands and *as it contemplated a re-sale cannot bind the property* in the hands of the purchaser *even if he knew of it.*

But in fact the property was re-sold and the proceeds appropriated to pay the encumbrances.

Mr. Walker's mortgage was paid.

The Atwater mortgage was paid.

George Walker received on his mortgage $3849.

Exhibit C, pages XXVI and XXVII.

The Cutler mortgage was assigned to Hill, and of course if the agreement was that the encumbrances should be paid by the property, was extinguished by the sale.

So also George Walker's mortgage, as he consented to the sale to McA., was extinguished, and besides, he, after the sale, gave complainant a release of all debts.

Page 259, 15–30.
Exhibit E, XXX.
Bill, p. 19—line 30–40.

So that even if the property was sold far below its value, complainant could not complain.

Debts against him were extinguished by it to the amount of $~~35,559~~, besides the Cutler mortgage of $~~5000~~.

43.000
3 000
46.000

3.000

Page 259, 15–30.
" 199, 33.
" 206, 20.
" 259, 15–30.

Thus the case is proved to be utterly devoid of any fraud or injustice on the part of Mr. Hill.

Fifth. If there was any trust which affected the property in the hands of Hill, McAlpine is a bona fide

purchaser, for valuable consideration, without notice of the trust.

Actual notice is charged to have been given to McAlpine by Mr. Cutler, the agent and attorney of complainant, at the time of the sale.

Page 15, line 35—40.

This charge is not only *not proved*, but *it is proved* that Mr. Cutler was present at the sale; was advised with about the title; *did not give notice of* any interest on part of complainant, *but declared the title to be good;* saw *the contract of sale drawn and signed, and* $2800 *of the purchase money paid.*

Thomas V. Johnson's evidence, page 163, line 19–30.
" " " 177, " 1–20.
" " " 183, " 1–15.
" " " 184, " 10–32.
A. W. Cutler's evidence, " 203, " 16–40.
" " " 204, " 10–20.
" " " 210, " 20–36.

By the last reference it appears that Mr. Cutler was asked "to state *who had any interest in the real estate, leases? &c.*"

Part of the property was rented on shares.

Page 205, line 1–10.

McAlpine's evidence, pages 225, 226, 228, 229.
Dunderdale's evidence, page 268, line 1–30.
Van Buren's " " 287, " 10–30.
" " 288, " ———
" " 290, " 5–10.

Complainant claims that McAlpine had constructive notice of the trust.

1st. Because Walker was in possession.

Walker was in Ohio.

Possession to be of any avail as notice must be *actual, open, unequivocal, exclusive.*

Occasional acts of ownership are not sufficient.

See cases cited 2 Amer. Lead. Cas. in Eq., 165, 166, 167.

Holmes v. Stout, 2 Green's Ch. R. 494.
2 Stockt. 419.

Such possession would have defeated the avowed object of the trust, which was concealment of Walker's interest.

2d. They say notice was given to Johnson, and he was McAlpine's agent.

Notice to a recognized agent is sufficient, but it must have been given in the same transaction.

Johnson was not agent of McAlpine, nor was any notice of the alleged trust given him.

McAlpine saw the farm advertised, and on inquiry at the farm learned that Johnson had the selling of it—called on him—submitted an offer to the agent of Mr. Hill, which was accepted.

Johnson's evidence, pages 160, 161, 162.
McAlpine's evidence, pages 223, 224.

Even the commissions were paid as part of the purchase money.

Page 161, line 25–30.
Exhibit M 3, page LXXV.

If any notice was given to Johnson it was given by Cutler; none other is pretended. That is found on page 205, line 10–22.

Johnson did not understand Cutler as claiming any interest or right in Walker which clogged the title.

Pages 181 and 182.

Was it intended to prevent the sale? If so, why was was not the notice given by Cutler to McAlpine?

If he did not intend to notify McAlpine of the claim, can it operate as notice?

Mr. Cutler does not pretend that he tried in any way to prevent or delay the sale, or that he gave McAlpine notice of the trust, either personally or through Johnson.

3d. Again, they say that Walker gave notice of his claims by filing his notice of *lis pendens*.

On the 21st of August the contract of sale was signed,

and instructions given to counsel next day to examine the title.

On the 30th of August this pretended notice was filed.

The notice was filed contrary to law—no bill was filed until more than a year after. If it was proved that McAlpine or his counsel saw it, it would be of no avail.

4 Kent's Com. 174.
Sug. on Vend. & Pur. 290, 9th Ed.
Hill on Trustees 511.
Story's Eq. Juris. § 404.
Cases cited 2 Amer. Lead. Cas. in Eq. 178.

There is no evidence that the notice was seen by purchaser or counsel. Presumption that a party saw a paper relates only to such as are lawfully on file.

If McAlpine or his counsel saw the notice it only referred them to the statement of complainant in his bill. It only put him on inquiry.

Application was made to the Clerk in Chancery, and no bill was on file.

See page 292.
Exhibit I, page XLIII.

It was not necessary for either McAlpine or his counsel to apply again for a copy of the bill.

The law never requires a party to do a ~~migratory~~ nugatory act.

The notice was, as Van Buren said, "a bogus affair."

Again: Walker was notified by Mr. Cutler of the sale, and returned to Morristown on the 28th or 29th of August, seventeen days before delivery of the deed.

He and Cutler, his attorney, both knew McAlpine was on the farm, and that his counsel was in Morristown; no attempt was made to find or give notice of his claim to either of them.

Page 144, lines 1–10.
" " " 30–35.
" 145 " 5–10.
" 150 " 4–

Walker, by his agent and attorney, Cutler, was present at the sale, assented to it, did not attempt to prevent it, or to assert any right in himself, but proclaimed the title undoubted..

Walker himself stood quietly by and permitted the deed to be delivered and the purchase money paid, without any fair or honest attempt to notify the purchaser of the claim he now makes.

If the purchaser is required to act in good faith, so is the claimant; and having *wilfully refrained* from asserting his rights when such assertion could have protected the purchaser, he will be held to have acquiesced in the sale. He cannot rely on any *constructive or implied* notice of his claim.

He should be estopped from setting up any claim inconsistent with the title which he knew the purchaser supposed he was getting.

Again: he delayed to assert his claim for more than a year, and permitted the purchaser to expend from $6000 to $8000 in repairs.

Page 228, line 1–5.

The same promptness is required in asserting his right as in case of specific performance. The delay in this case is unexplained.

Van Doren v. Robinson, 1 C. E. Green 262.

Merrit v. Brown, 6 C. E. Green