Court of Appeals

IN THE LAST RESORT.

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Between JOHN BYARD, Appellant. and GEORGE B. TURRELL, Appellee.	On Appeal. Appellee's Brief.

I. The defence of usury was not set up in the answer specifically, stating distinctly the terms of the usurious agreement—

Opinion of the Vice-Chancellor.

Taylor v. Morris, 7 C. E. G. 612.

Tyler on Usury, 458.

Statement of the Case, p.p. 2 & 3.

II. Nor sustained by the evidence, because the mortgage in suit "was passed away and came first into legal

operation in the State of New York, and in contemplation of law therefore was made in this latter jurisdiction."—

Testimony page 22, lines 30 to 32.

Campbell vs. Nicholls, 4 Vroom 81.

Where also it was payable at the office of Coudert Bros., and where the negotiation was conducted, and the laws of New York should therefore be both pleaded—

Cotheal vs. Blydenberg, 1 Hals, Ch. 631 & 18—

and proved—

Campion vs. Kille, 2 McCarter 476.

Uhler vs. Semple, 5 C. E. Green, 293—

whereas usury should be proved beyond a reasonable doubt.—

Conover vs. VanMeter, 3 C. E. Green 487.

III. The time of payment was not and could not be extended by parol at the time the mortgage was made—

1 Green on Ev., Sec. 275.

IV. Appellee relied solely upon the affidavit of appellant, when he bought the mortgage, and is entitled to the face of the bond and interest by estoppel—

Campbell vs. Nicholls, ubi sup—

Knowledge of the alleged usury is brought home to Wood, the broker, only, and the proof of his agency for the Coudert Bros. consists solely of his own two detached declarations—

Testimony, p. 9, line 1,

" p. 13, lines 8 to 10—

which is a 'petitio principii,' since the only reason for admitting his declarations at all, is the existence of such agency—

1 Green on Ev., Sec. 177.

Faulkner vs. Whittaker, 3 Green 440—

and which declarations are utterly at variance with the rest of his testimony and the facts in the case.

The appellee and his counsel were entirely innocent and ignorant in this matter and took every possible precaution against the deceit practised upon them, and to impair their security in the slightest degree is to damage seriously the business interests of the community.

T. D. HODGES,

Counsel of Appellee.

COURT OF APPEALS IN THE LAST RESORT, &c.

Between JOHN BYARD, *Appellant,* *and* GEORGE B. TURRELL, *Appellee.*	*On Appeal, &c.,* *Case.*

This suit was brought to foreclose a mortgage for $8000, made and executed by John Byard, the above-named appellant, and wife, to John C. Benson, all of the City of Paterson, County of Passaic and State of New Jersey. The said mortgage was dated February 6th, 1871, and payable, according to its written terms, at the expiration of one year from date, with interest at the rate of seven per cent. per annum. The land and premises covered by the said mortgage are situate in the said City of Paterson. The said mortgage was acknowledged in due form of law by the said John Byard and wife before John Avison, a Commissioner of Deeds in and for said County and State, and duly recorded February 13, 1871, in the Clerk's office of said County. The said mortgage and accompanying bond were assigned by the said John C. Benson to Fausto Mora, February 11, 1871, and by the said Fausto Mora to George B. Turrell, the above-named appellee, May 31, 1872. $560 for one year's interest on the said mortgage was paid by the said John Byard as the same be-

came due. This suit was brought by the said George B. Turrell. Bill to forclose filed June 22d, 1872. Answer filed in time by the said John Byard. Replication filed Sept. 22d, 1872. Cause noticed for hearing before the Chancellor February 24th, 1873, and referred to the Vice Chancellor by whom it was afterwards heard.

The following are the parts of the answer which contain the defence now relied upon:

And this defendant further answering says, that the said
10 bond and mortgage were executed and delivered to the said John C. Benson for no consideration whatsoever from the said John C. Benson, but for the express purpose of its immediate assignment by the said John C. Benson to Fausto Mora in the complainant's said bill named, in pursuance of an arrangement, understanding and agreement between this defendant and the said Fausto Mora; and that the only consideration for the said bond and mortgage was paid to this defendant by the said Fausto Mora; but this defendant denies that the principal sum mentioned in the said bond or
20 obligation, with large arrears of interest, or any interest whatsoever, is due and owing to the complainant, and affirms that a large portion of said principal sum, to wit, the sum of eight hundred dollars, constituted, and was included in the said principal sum as, a premium, and in excess of interest allowed by law, for the loan of the remainder of the said principal sum to this defendant by the said Fausto Mora, all of which matters and things the complainant had full knowledge at the time of and before the assignment of the said bond and mortgage to the complainant in the complain-
30 ant's said bill alleged, and that therefore the complainant is not entitled to recover the said sum of eight hundred dollars, nor any part thereof, nor any interest whatsoever upon the said remainder of the said principal sum.

And this defendant further answering says, that he paid a large sum of money, to wit, the sum of one hundred and fifty dollars for attorney's fees, commissions and search of title of the premises in the complainant's said bill mentioned, at the time of and for the negotiation of the said loan, in addition to the premium aforesaid; and that he has also paid a large sum. to wit, the sum of five hundred and sixty dollars to the said Fausto Mora, for one year's interest upon the said principal sum, in addition to the said premium and the said sum of one hundred and fifty dollars; and 10 he claims that he is entitled to have deducted from the said remainder of the said principal sum, the sum of five hundred and sixty dollars paid for interest as aforesaid.

And this defendant further answering says, that at the time of the negotiation of the said loan, it was expressly understood and agreed between him, the said defendant, and the said Fausto Mora, that the said bond and mortgage though made and executed for one year only, according to their written terms, should be allowed to run for the term of three years at least; and that without such agreement 20 and understanding, this defendant would never have completed and accepted the said loan, as the said Fausto Mora well knew; which understanding and agreement was well known to the complainant at the time of and before the said alleged assignment of the said bond and mortgage to the complainant; wherefore this defendant claims that this suit cannot be by the complainant maintained.

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

Between GEORGE B. TURRELL, *Complainant,* *and* JOHN BYARD, *Defendant.*	*On Bill to Forclose.*

The above entitled cause is hereby referred to the Vice
10 Chancellor, who is requested to hear the same, and advise the Chancellor what decree and order to make thereon.

A. O. ZABRISKIE, C.

The testimony in this case is printed by itself. The exhibits were not printed with the testimony, and the following are the only ones it is deemed necessary to have printed now.

Exhibit C, 5, on part of Complainants.

COUNTY OF PASSAIC,
CITY OF PATERSON. } ss.

20 JOHN BYARD of said city being duly sworn says that he is one of the mortgagors named in a certain mortgage bearing date the sixth day of February, one thousand eight hundred and seventy-one, made and executed by John Byard and Mary I., his wife, to John C. Benson to secure the payment of eight thousand dollars and interest, and is the owner in

fee of the premises therein described, that said mortgage is a second lien upon said premises, the first being a mortgage for eighteen thousand dollars held by The Washington Life Insurance Company of New York; that there are no other mortgages or other liens upon said premises; that the said mortgage is a valid and subsisting lien upon the said premises to the full extent thereof, with interest thereon from the date thereof; that no part of the principal has been paid, and that there are no offsets or defenses to or against the same or any part thereof, or any equities latent 10 or apparent whereby, or by means whereof the said mortgage can or may be in any manner or way impaired or affected; that there are no judgments against this deponent that are not fully paid, or any judgments unsatisfied of record, except such as are returned on the search against deponent for said Washington Life Insurance Company.

JOHN BYARD.

Sworn to before me this 11th day of February, 1871.

JOHN SANDFORD, 20

Commissioner of Deeds.

Exhibit D, 1, on part of Defendant.

No. 8675. Paterson, N. J., Feb. 11, 1871.

[2 ct. stamp.]

FIRST NATIONAL BANK.

Pay to the order of S. S. ~~Ward~~ Wood, Jr., one hundred and fifty dollars,

In full for fees and searching title, and lawyers fees, for loan of $800.

$150. 30

JOHN BYARD.

This check is indorsed by S. S. ~~Ward~~ Wood, Jr.

TURRELL, vs. BYARD, et als.	*Opinion.*

Mr. T. D. HODGES, *for Complainant.*

Mr. G. S. HILTON, *for Defendant.*

The Vice Chancellor:

The mortgage sought to be foreclosed in this suit, was made by John Byard and wife to John C. Benson, and by Benson assigned to Fausto Mora, and by Mora assigned to
10 Turrell the complainant. It is dated February 1, 1871, and is for $8,000. The answer is by Byard. 6

It appears from the evidence that $7,200 was the whole sum advanced for principal, and my opinion is that under the pleadings and proofs, the complainant is entitled to a decree for the amount advanced with interest and costs.

The defendant's counsel relied at the argument upon the defense of usury; but this defence cannot be maintained, for the reason that it is not sufficiently set up in the answer. The allegations of the answer respecting it, are as
20 follows, viz: that the said bond and mortgage were executed and delivered to the said John C. Benson, for no consideration whatever from the said John C. Benson, but for the express purpose of its immediate assignment by the said J. C. B. to Fausto Mora in complainant's said bill named in pursuance of an arrangement, undertaking and agreement between this defendant and the said Fausto Mora, and that the only consideration for the said bond and mortgage was paid to this defendant by the said Fausto Mora; but this defendant denies that the principal sum mentioned in the

"understanding" in answer.

said bond or obligation with large arrears of interest, or any interest whatsoever, is due and owing to the complainant, and affirms that a large portion of said principal sum, to wit, the sum of $800, constituted and was included in the said principal sum as a premium, and in excess of interest allowed by law for the loan of the remainder of the said principal unto this defendant by the said Fausto Mora."

In setting up a defence of usury in a suit in Chancery, the defendant must in his answer as in a plea of usury in an action at law, set out the particular facts and circum- 10 stances of the supposed usurious agreement, that the Court may see that the agreement was in violation of the statute.

Taylor *vs.* Morris, 7 C. E. G. 612.

He must in his answer, set up the usury specifically, stating distinctly and correctly the terms of the usurious agreement and the amount of the usurious premium. Tyler on Usury, 458. In the 34th chapter of the last named work, many of the cases illustrating the strictness with which this rule is applied, are cited and compared. 20

There is no allegation in the present case of any corrupt or usurious agreement whatever. If any could be inferred, the terms of the agreement would still be wanting.

I shall advise a decree as above.

IN CHANCERY OF NEW JERSEY.

Between GEORGE B. TURRELL, *Complainant,* *and* JOHN BYARD, *et. als.* *Defendants.*	*Decree.*

The cause coming on to be heard before the Vice Chancellor (to whom the same had been duly referred) upon bill, answer replication and proofs in the presence of Thorndike D. Hodges, solicitor of the complainant, and George S. Hilton, solicitor of the defendants, John Byard the complainant's bill having been taken as confessed against Mary J. Byard one of the defendants, and the pleadings and proofs having been read, and the arguments thereon heard and considered, and the Vice Chancellor being of opinion that under the pleadings and proof the defence of usury, attempted to be set up by the defendant, cannot be maintained, but that the mortgage of the complainant was at the date and delivery thereof a good and valid security for the principal sum of seven thousand two hundred dollars, and that the said complainant is entitled now to be paid said principal sum, with interest at the rate of seven per cent. per annum from the date of said mortgage, less the sum of five hundred and sixty dollars heretofore paid for interest, which sum so as aforesaid remaining due and unpaid is found upon computation to be seven thousand seven hundred and seventy-four dollars for principal and interest due on said mortgages on the date hereof, and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid, and the

Vice Chancellor having advised that a decree should be made accordingly.

It is thereupon on this sixth day of May in the year of our Lord ane thousand eight hundred and seventy-three, by Theodore Runyon, Chancellor of the State of Jersey, ordered, adjudged and decreed, and the said Chancellor doth by virtue of the power and authority of this court, hereby order, adjudge and decree that the said mortgaged premises be sold to raise and satisfy the said sum due to said complainant, that is to say, seven thousand, seven hundred and sev- 10 ty-four dollars, together with lawful interest thereon, to be computed from the date of this decree, with the complainant's costs to be taxed, and a counsel fee of twenty dollars, and that a writ of fieri facias do issue for that purpose out of this court directed to the sheriff of the county of Passaic, commanding him to make sale according to law, of the said mortgaged premises, and out of the money arising from such sale, he pay to the complainant or to his solicitor said debt, interest and costs.

And in case more money should be raised by the said sale 20 than shall be suffieient to answer said payment, that such surplus be brought into this court to abide the further order of the court, unless otherwise previously disposed of by the order of this court, and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

And it it is further ordered, adjudged and decreed, that the said defendants stand absolutely debarred and foreclosed of and from all equity of redemption of in and to the said mortgaged premises when sold as aforesaid by virtue of this 30 decree.

THEODORE RUNYON, C.

I advise the Chancellor to sign the above decree, May 6, 1873.

AMZI DODD, V. C.

A true Copy, H. S. Little, Cl'k.

IN CHANCERY OF NEW JERSEY.

Between GEORGE B. TURRELL, *Complainant,* *and* JOHN BYARD, *et. ux.* *Defendants.*	*On bill, &c Appeal.*

JOHN BYARD, above named, hereby appeals from the final decree made in this court in the above stated cause, the
10 same being complained of as erroneous wherein or whereby it decrees the payment of any interest upon any part of the consideration money mentioned in the mortgage which this suit was brought to foreclose; or any part of the said consideration money under these proceedings.

GEO. S. HILTON,
Sol. for and of Counsel with John Byard.

Dated May 3d, 1873.

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

20 GEO. S. HILTON,
Of Counsel with John Byard.

COURT OF APPEALS IN THE LAST RESORT, &c.

Between JOHN BYARD, *Appellant,* *and* GEORGE B. TURRELL, *Appellee.*	*On bill, &c.,* *Petition of Appeal.*

To the Honorable the Court of Appeals in the last resort in all causes of law: The humble petition of John Byard, the appellant in the above stated cause, respectfully shows, 10 that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery by his honor, Theodore Runyon, Chancellor of New Jersey, bearing date the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-three, wherein the said George B. Turrell was complainant and the said John Byard and his wife were defendants, in this respect, to wit: that the said decree adjudges that there is due on the mortgage of the appellant in the pleadings in the cause mentioned the sum of seven thousand two hundred dollars, with interest there- 20 on from the date of said mortgage, at the rate of seven per cent. per annum, less the sum of five hundred and sixty dollars paid for interest. And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the said interest is not due, the same being forfeited by usury in the said mortgage, and the said seven thousand two hundred dollars, or any part thereof, is not due according to the terms of the agreement under which the said mortgage was made. Your petitioner therefore 30

prays, that the decree of the said Chancellor may be, in the particulars aforesaid, 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.

GEO. S. HILTON,
Sol. of and of Counsel with Appellant.

Dated June 17th, 1873.

COURT OF APPEALS IN THE LAST RESORT.

Between 10 JOHN BYARD, *Appellant.* *and* GEORGE B. TURRELL, *Appellee.*	*On Bill, &c.* *Respondent's Answer to Petn. of Appeal.*

This respondent, saving and reserving to himself, all and all manner of advantage of exception to the manifold insufficiencies, in the said petition, for answer thereunto saith, that he will aver and prove the final decree in the above cause to be true, sufficient and correct in law, both in the particulars in
20 the said petition set forth, and in all other particulars, without that, that any other matter or thing whatsoever, in the said petition contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied is untrue. All which matters and things this respondent is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

T. D. HODGES,
Respondent's Sol.

POINTS.

The following are the points relied on by the appellant:

First.—That the defence of usury was sufficiently set up in the answer, and established by the evidence.

Second.—That no recovery can be made in this suit on account of an understanding and agreement, at the time the mortgage was made, that it could run for at least three years.

The following are the points relied on by the appellee:

First.—That the defence of usury was not sufficiently set up in the answer, or established by the evidence. 10

Second.—That the time of payment was not and could not be extended by parol "at the time the mortgage was made."

Third.—That appellee relied solely upon the affidavit of appellant, when he bought the mortgage, and is entitled to the face of the bond and interest, by estoppel.

COURT OF APPEALS IN THE LAST RESORT, &c.

Between JOHN BYARD, *Appellant,* *and* GEORGE B. TURRELL, *Appellee.*	*On Appeal, &c.,* *Appellant's Brief.*

The first question arising in this case is, whether the defense of usury is sufficiently set up in the answer. In the case of Taylor vs. Morris, 7 C. E. G., it was held that, in setting up a defense of usury in a suit in chancery, the defendant must, in his answer, as in a plea of usury in an action at law, set out the particular facts and circumstances of the supposed usurious agreement, that the court may see that the agreement was in violation of the statute. The court did not say that *all* the particular facts and circumstances of the supposed usurious agreement must be set out; nor could such have been its intention. If such were the law, the memory of man would seldom enable him to maintain the defense, and the statute could, in a vast majority of cases, be thus effectually evaded. It is evident from the cases cited by the court upon this point, that the decision cannot bear such a construction. In Curtis vs. Mastin, 11 Paige, 15, nearly the same language will be found. That decision was based on Comyn on Usury, 203, and New Orleans G. L. & B. Co. vs. Dudley, 8 Paige 492. The former says, "The usurious contract must be precisely set out;" in the latter, the court held that the defendant must "set up the corrupt agreement distinctly, stating in substance the terms of the usurious agreement." The case in 8 Paige above was also cited by the court in Taylor vs. Morris. The only other case there cited upon this point, was the N. J. Patent Tanning Co. vs. Turner, 1 McCarter, 326, where the Chancellor held that "the corrupt agreement must be distinctly set out." It is clear that there is a limitation to the setting out of particular facts and circumstances mentioned in Taylor vs. Morris. Where is the line to be drawn? Ev-

idently when the object of the requirement is attained. What is that object? Simply, according to Taylor vs. Morris, to show the court that the agreement was in violation of the statute. The alleged usury in this case consisted in the exaction of the borrower by the lender, of a premium of $800 for the loan of $7,200, both together making up the mortgage for $8000. These things are distinctly and precisely set out in the answer. If they are true, they constitute a plain violation of the statute. What further state-
10 ment can be required according to Taylor vs, Morris? The terms of the contract clearly appear from the answer. They were the insertion of $800 bonus or premium into the mortgage, and the payment of legal interest besides, for the loan. It is true the answer does not set forth that the lender corruptly agreed with the borrower, &c. But this is only a matter of form. Without it, the substance of the contract is distinctly stated, which is sufficient according to the case in 8 Paige above referred to. In Taylor vs. Morris, time and place were mentioned as requisite in the statement in that
20 case. But the allegation of usury there referred to, related to some notes for which the mortgage under foreclosure was substituted, the dates or the place of making of which did not appear in the answer or the pleadings. In this case, the time of the making of the loan appears from the date of the bond and mortgage, the execution of which is admitted in the answer. And according to Campion vs. Kille, 2 McCarter 476, the court is to infer that the contract was made in this State, no other place being mentioned.

As Turrell, the complainant, appears from the evidence
30 to be an innocent assignee of the bond and mortgage, the next question is, whether the defense of usury can be maintained against him. It seems clear from the statute that it can. Nixon's Digest, 439:12. All cases of suits at law or in equity are ~~intended~~. See also, Tyler on usury, 386, 3 Parsons on Contracts, 117, 3 C. E. Gr., 484.

The loan was negotiated through one Samuel S. Wood, pr. Testimony, 5:1 and 2, and the contract made at Paterson, N. J., 6:26 to 28. This Mr. Wood was a life insurance and loan agent, 8:18 to 21. He says he acted in the matter as the
40 agent of the Coudert Brothers, 9:1 and 2. The Coudert Brothers were the counsel of Mr. Mora, the actual lender, 5:10 to 12; 16:36, and put our a considerable money for him, 14:9 and 10.

The bond and mortgage were made to Benson for the purpose of being assigned; Testimony, 4:23 and 24; 9:30 to

10:6; 20:20 to 21:20. Wood's statement that the mortgage was to be made to some one to whom Byard owed money denied by Byard, 18:15 to 20. It does not matter which is right, as it is evident from the testimony that the bond and mortgage was so made as a cover to a usurious transaction. According to the statements of both Byard and Benson, referred to above, the bond and mortgage were made for the purpose not only of being assigned, but of being assigned to Mora This understanding of the matter at the time, cannot be out-weighed by the pretensions of Wood, 8:25 and 26. 10 It is evident that Wood's memory was confused upon this point to say the least. He said at first that he knew from whom the money came by seeing the name on the assignment, 8:26 to 28; 10:21 to 24. He soon after admitted that the directions for that very assignment were made through him, 10:9 to 11, and then hastened to say that it was when he received those directions that he first knew from whom the money came, 10:27 to 29. Surely such testimoney can have no weight when contradicted by both Byard and Benson. 20

All the consideration for the bond and mortgage was $7,200, which came from Mora, either directly or through the Coudert Brothers, 5:8 to 10, 12 and 13. Wood admits the bonus, 9:7 to 9. Byard says Wood told him the $800 went to Mora, 5:13 to 16. Mora did not remember whether he got the whole of it or not, 14:7 and 8; 35 to 38. But he must have got the whole of it as Byard paid both the agent and the lawyer, 5:17 to 19; 17:14 to 8:2. See Exhibit D 1 on part of defendant, on page 5 of case. See what Wood says about the check, 12:13 to 34. 30

It is no doubt legal to sell and buy mortgages at less than par; but the first owner must pay full amount. 3 Parsons on contracts, page 144. Equally so when parties deal through agent. Same reference. When made without consideration to be assigned same principles apply. Same, page 145. Besides, Mora had full knowledge of the transaction when he took the mortgage, 18:28 to 31; 13:16 to 28; 14:1 to 3. For Mora's testimony as to his knowledge of what Wood had to do about the matter, see 15:21 to 35; 16:15 to 19. Mora's testimony upon this point is not to be re- 40 lied upon, because he was uncertain about the matter, and is contradicted upon other points by Wood. Compare 14:19 and 20, 16:22 and 23, with 9:8 to 18, and 28. It is perfectly clear, at least, that Mora did not suppose himself to be purchasing of a holder, and that he had knowledge to the con-

trary, both actual and implied from the circumstances of the case, either of which would sustain the defence of usury against him. 3 Parsons on contracts, page 145. Then it is admitted that his counsel and agents, the Coudert Brothers, who, it is claimed, acted in his behalf, had full knowledge and chief direction of the transaction, 8:31; 10:9 to 11; 13:8 to 10, 31 to 33, and he must be bound by their action, whether he was acquainted with the particulars of the transaction or not.

10 An affidavit by Byard is offered in evidence by the complaint, and marked exhibit C, 5, on part of complaint. See page 4 of case. It is claimed that by this affidavit Byard is estopped from setting up the defense of usury. All that Byard knew of the contents of this affidavit when it was made was what was told him, and he did not know that there was anything in it guarding against defenses to the mortgage, 6:29 to 33; 7:5 to 15; 8:2 to 4. Not contradicted by Wood, 11:33 to 34. Even if the contents of such an affidavit is known to the deponent, an assignee cannot take 20 advantage of it unless he takes the assignment on the faith of the representations therein contained. Diercks vs. Kennedy, 1 C. E. Gr., 212 and 213. Mora does not pretend to have done so, 14:15 and 16. Neither does Turrell, 2:25 to 30. There is no evidence that either of them knew of the existence of the affidavit before they became respectively the holders of the mortgage The representations and recommendations of the Coudert Brothers could not have been based upon it as they were acquainted with the facts and knew they were not, so far as the matter of defenses was 30 concerned, as therein stated.

As to the agreement and understanding that the mortgage should run for more than one year, see testimony 5:20 to 33; 18:3 to 6; 21:20 to 28; 11:11 and 12. It seems plain that Byard was induced to accept the loan and give the mortgage for one year, upon the representation that it might run two, three or more years, with the design of getting more money out of him for the continuance of the loan, 6:1 to 18. Such being the case, the transaction is so far tinctured with fraud that a court of equity must be able to go 40 behind the written instrument and see that no injustice is done, whether it could or could not do so without such fraudulent element

GEO. S. HILTON,
Counsel with Appellant.

In Chancery of New Jersey.

Between
GEORGE B. TURRELL,
Complainant,
and
JOHN BYARD, *et. ux.*,
Defendant.

Examination of witnesses, &c., in the above entitled cause, on the part of the complainant, taken before me, Isaac Romaine, a Master and Examiner of said Court, at my office, 10 No. 111 Washington street, Jersey City, on Thursday, November 7th, 1872, at ten o'clock in the forenoon, in presence of T. D. Hodges, counsel for complainant, and George S. Hilton, counsel for defendants, pursuant to notice, service of which was duly acknowledged.

Whereupon the examination was adjourned to Tuesday, November 12th, 1872, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed, in the presence of the counsel of the respective parties. 20

Counsel for complainant offers in evidence, a bond made by John Byard to John C. Benson, dated February 1st, 1871, for $8,000, which is marked (*Exhibit C.*, 1.) for complainant. 6

Also offers in evidence, a mortgage of same date, made by John Byard and wife to John C. Benson, which is marked *Exhibit C*, 2. on part of complainant.

Also offers in evidence, an assignment of the bond and mortgage above described, dated February 11th, 1872, made by John C. Benson to Fausto Mora, which is marked *Exhibit C*, 3, on part of complainant.

Also in evidence, an assignment of the bond and mortgage above described, made by Fausto Mora to George B. Turrell, dated May, 31st, 1872, which is marked *Exhibit C*, 4, on part of complainant.

THORNDIKE D. HODGES, a witness produced on the part of
10 the complainant, being duly sworn on his oath, saith:

I am familiar with the handwriting of John Byard, by reason of correspondence that I have conducted with him.

Witness being shown a paper, purporting to be an affidavit sworn to February 11th, 1871, says the signature to that affidavit is John Byard's.

Said paper is offered in evidence, and marked *Exhibit C*, 5, on part of complainant.

Counsel for defendant objects to the testimony and the offering of the Exhibit.

T. D. HODGES.

20 Taken, sworn to and subscribed, this)
12th day of November, A. D., -
1872, at Jersey City, before me,)

ISAAC ROMAINE, Master in Chancery.

GEORGE B. TURRELL, a witness produced on the part of the complainant, being duly sworn, on his oath, saith:

I am the complainant in this suit; the mortgage in dispute came into my possession by the advice of Coudert Brothers, of 49 Wall street, New York City; they frequently make investment for me, and made this one, as is usual for
30 them to do; I took it entirely upon their recommendation; I had no negotiations with the parties, and never saw any

of them; I paid them for the mortgage by giving my check to Coudert Brothers, and I suppose they gave their check.

I did not know of any agreement between Fausto Mora and Mr. Byard, that the mortgage, though written for one year, should run for three years.

I did not know that either Mr. Benson or Mr. Mora had advanced a less sum than that expressed in the mortgage, and I had no intimation of it.

I did not know of any false representation from Mr. Mora or Mr. Byard, as to the length of time the mortgage was to run, which was held out to Mr. Byard, as an inducement for the acceptance of the loan. 10

I did not conspire with Mr. Mora for the purpose of extorting money from Mr. Byard; I never saw Mr. Mora.

The assignment of the mortgage to me was in good faith and value.

And being cross-examined, he says:

I cannot tell how much I paid for this mortgage; I could tell by reference to my check-book; until such reference, I cannot tell how much I paid for the mortgage. 20

I think I did not pay the face value of the mortgage, with interest upon it, up to the time I took it.

I cannot tell you how much discount I got on it; it was a smaller discount than I have many times offered me on mortgages. I frequently purchase bonds and mortgages, and loan money on bond and mortgage; that is my business; being out of business, I employ my capital in making investments.

GEO. B. TURRELL.

30

Taken, sworn to and subscribed, this 12th day of November, A.D., 1872, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

Whereupon the testimony, on the part of the complainant, was declared closed.

IN CHANCERY OF NEW JERSEY.

Between
GEORGE B. TURRELL,
Complainant,
and
JOHN BYARD, *et. ux.*,
Defendant.

Examination of witnesses, &c, in the above entitled cause, on the part of the defendant, taken before me, Isaac Romaine, a Master and Examiner of said Court, at my office, No. 111 Washington street, Jersey City, on Monday, December 9th, 1872, at ten o'clock in the forenoon, in the presence of George S. Hilton, counsel for defendant, and T. D. Hodges, counsel for complainant, pursuant to notice.

JOHN BYARD, a witness produced on the part of the defendant, being duly sworn, on his oath, saith:

I am one of the defendants in the above cause.

My wife and I executed a mortgage to John Benson, in February, 1871; the consideration named in that mortgage was $8,000; I did not receive any consideration whatever from John C. Benson; that mortgage was not executed to John C. Benson with the expectation of receiving any consideration from him; that mortgage was executed to John C. Benson for the purpose of giving it to F. Mora.

(Objected to by complainant's counsel.)

That mortgage was assigned to F. Mora.

At about that time I obtained a loan from Mr. Mora.

The loan from Mr. Mora to me was negotiated through an agent; this agent was Samuel S. Wood, Jr.; this mortgage was assigned to Mr. Mora, as security for a loan.

I was instructed by the agent, after he found the party with the money, to make a mortgage to some friend of mine; the mortgage was made and assigned in pursuance of such instructions. Mr. Mora was the party who was to give the money; at the time I was so informed by the agent; I received only $7,200 from Mr. Mora, through Mr. Wood, or the the Coudert Brothers, I forgot which. Coudert Brothers 10 were counsellors at law, who acted for Mr. Mora; Mr. Wood took me to them as the counsel of Mr. Mora. That $7,200 was all the consideration I received for that mortgage; Mr. Wood told me he had to give the $800 to Mr. Mora; Mr. Wood told me the money could not be got for less than ten per cent. bonus; he said he did not get a cent for it.

I paid Mr. Wood for his services besides the $800; I gave him a check for $150 for his and the lawyer's fees; I understood that included both.

The mortgage was made for one year, but Mr. Wood stated 20 to me that the mortgage could stand as long as the interest was paid; I objected to a one year mortgage; I wanted the mortgage for three years, and Mr. Wood told me the usual custom was to make a mortgage for a year, and that it could stand for two or three years, as long as the interest was paid; that the parties were not particular; there would be no danger about having this called in.

I refused to make a mortgage and take the loan for a year, if the money was to be called in within that time.

I would not have made the mortgage or taken the loan if 30 I had supposed the money would be called in within the year; I have paid interest—one year's interest—on that mortgage.

The latter questions objected to by counsel for complainant.

The mortgage had run one year before a demand was made on me for the principal; I received a demand for the principal; it was a few days before the year was up; about ten days before; the last six months' interest was demanded with the principal. I paid the interest semi-annually; two instalments of interest, of six months each, were paid.

After the interest was paid I told Mr. Wood it was very singular, that the principal was not to be called for; that that mortgage was to stand for two or three years, and I
10 was not prepared to meet it. We had considerable conversation with Mr. Wood, pro and con, about the matter, and finally he said if I would give him $800 premium, besides the interest, he would let it stand another year, I told him I could not afford to pay that rate of interest; according to our agreement the mortgage was not due yet.

Conversation objected to, by counsel for complainant.

Mr. Wood did not deny that the agreement was, that the mortgage was to run three years; but he said the principal was in immediate need of the money; that was before he
20 agreed to take the $800; he finally agreed to take $750 for the extension of the mortgage. The notice to me to pay principal was received from the Coudert Brothers. I paid the interest to the Coudert Brothers. The conversation I have given was had with Mr. Wood, and the negotiations had with him.

The contract for this loan, and the bond and mortgage for the security of this loan, was made at Paterson, N. J.; the contract was made with Mr. Wood.

At the time of making the bond and mortgage I signed
30 an affidavit; I did not read the affidavit before I signed it; nobody read it to me; I was told what the nature of it was; the substance of it, as I was informed, was, that there were no judgments against me.

Mr. Wood had, previous to that time, negotiated another loan for me on the same property. A search, as to the title

of the property, was made when that first loan was negotiated; I don't know if any search was made on the second negotiation of the loan; I paid for it; there was only ten days elapsed between the two.

Every mortgage I have given to Insurance Companies or others, has had an affidavit accompanying it; it is an ordinary custom.

I supposed that the affidavit was intended to guard against judgments obtained between the completion of the search and the making of the loan. 10

Objected to by complainant's counsel.

I did not know there was anything in the affidavit guarding against defences by me, against the mortgage made by me to Benson, and by him assigned to Mora; I did not make more than one affidavit in this case.

I did not, to my recollection, have any correspondence with Mr. Hodges, yet I might have received a letter from him; I am not certain if I ever wrote to him. I received a letter from some person at Elizabeth; his name I don't remember, and I don't recollect if I replied to it or not. 20

And being cross-examined, he says:

Witness being shown a letter, dated June 29th, 1872, directed to T. D. Hodges, says that letter is in my handwriting, and was sent by me to Mr. Hodges.

Said letter is offered in evidence, and is *marked C*, 6, on part of complainant.

Witness being shown Exhibit C, 5, says the signature thereto is in my handwriting.

Evidence, as to Exhibit C, 5, objected to by counsel for defendants. 30

My expectations and understandings were only based on my conversations with Mr. Wood.

Mr Wood told me that this affidavit was an ordinary affidavit against judgments and mortgages.

And being again examined, in chief, he says:

In my direct examination I intended to say that the affidavit was intended to cover judgments and mortgages, I wish to have it corrected, in that respect.

JOHN BYARD.

Taken, sworn to and subscribed, this 8th day of December, A. D., 1872, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

Whereupon the examination was adjourned to Friday, December 27th, 1872, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

SAMUEL S. WOOD Jr., a witness produced on the part of the defendants, being duly sworn, on his oath, saith:

I live at Bergen Point, N. J.; I am temporarily in New York.

I am a life insurance and loan agent. In February, 1871, I was at the Westminster Hotel part of the month; my residence was at Bergen Point; it is there all the time; I was engaged in the same business there.

At about that time I negotiated a loan for John Byard; I negotiated two loans for him.

I think the last one of the two loans was $8,000; I obtained that money from Coudert Brothers; at the time I negotiated the loan I did not know whose money it was; at the time the loan was completed I knew from whom the money came, by seeing the name on the mortgage from Mr. Byard to Mr. Mora.

I don't remember where I was when I saw this name on the mortgage. Coudert Brothers gave me authority to ne-

gotiate the loan; I acted as the agent of the Coudert Brothers in the matter. Mr. Byard made application to me for this $8,000.

At the time I made the application I was at my office; my office was at 155 Broadway, New York City.

No person came with Mr. Byard to the office when he made application.

It was the early part of the year 1871 when the application was made; I am not positive what month it was; when Mr. Byard made application for the loan I told him I 10 thought I could get it for him; I did not tell him positively, at first, that I could get it for him.

I told him on what terms I thought I could get it for him; I think the terms were ten per cent. I gave a positive answer to Byard's application in a few days; when I gave him an answer it was for this money that I did get for him. To the best of my recollection I got it for him at ten per cent.; the ten per cent. was to be taken from the $8,000; I think, in addition to this, Mr. Byard gave me $100. I cannot tell what became of this ten per cent. 20

I was not told by the parties who authorized me to negotiate the loan, or any one else, what was to become of the ten per cent., nor what did become of it.

I don't remember if I got any part of that ten per cent.

There may have been something more to me than the $100; now I can't remember; I can't remember if the money passed through my hands when it went to Mr. Byard. When I gave my answer to Mr. Byard he did not immediately accept the terms of the loan; it was a few days before he did so. I gave him directions about making out the bond 30 and mortgage.

I asked him if he had business dealings with any one in Paterson, and to whom he owed money, and to whom he owed money at that time, and from whom he frequently obtained money; he said there was a Mr. Benson, and I suggested making the mortgage to him, and that I would sell

it for Mr. Benson; and he said he would consult Mr. Benson, and let me know; when I next saw him he said Mr. Benson thought it was a high price to pay, but that he would pay it, and have the matter closed as soon as possible. The bond and mortgage were made out to Mr. Benson, according to my suggestions.

The mortgage was not, at that time, assigned to any one; the bond and mortgage was assigned very soon after; I could not say how many days. Coudert Brothers gave direc-
10 tions as to who the assignment should be made, &c.; they gave the directions through me. I had a talk with Mr. Benson myself about this matter; I went to Paterson two or three times myself to see about the matter.

I think Mr. Byard gave me $100, in addition to the ten per cent.; that $100 went to myself.

When I told Mr. Byard about the ten per cent. to be paid for the loan, there was something said, but in a general way, about something additional to myself.

I cannot remember, whether I did or not, tell Mr. Byard
20 that nothing was coming to me out of the $800.

I mean to say that I saw the name of Mr. Mora on the assignment; I included the bond, mortgage and assignment in one.

Witness being shown Exhibit C, 3, says I presume that is the paper on which I saw the name of Mr. Mora; I made no specific examination of the paper.

I did not know from whom this money was to come to Mr. Byard, until the Coudert Brothers told me to whom the assignment was to be made.

30 I went to Paterson to have the conversation with Mr. Benson about it, because it was the business way to do it.

I think I saw Mr. Benson in New York before I went to Paterson to see him.

And being cross-examined, he says:

I did not, as agent for Fausto Mora, ask Mr. Benson to take a mortgage from Mr. Byard.

Question objected to.

I do not remember anything, in my conversations with him, that could bear that construction.

Question objected to.

I did not tell Mr. Benson that there was something more than legal interest in this matter, and that he must take the mortgage to legalize the matter, or something like that.

Question objected to, as being leading.

I did not tell Mr. Byard I had to give the $800 to Mr. Mora. 10

I don't remember what was said about the mortgage standing longer than a year, or that anything was said.

When the mortgage became due, about a year after the conversation I have named, Mr. Byard and I had several conversations about it; the idea was that I was to negotiate for the further continuance of the loan.

I told him that I would see the Coudert's. Mr. Byard expressed surprise at its being called in; I told him I thought it was to be paid when it became due. I saw the Condert Brothers; they told me it could not be negotiated at that 20 time; this was at the second interview; I saw Mr. Byard again afterwards; in the meantime I had seen Mr. Coudert, who told me that Mr. Mora was much annoyed and inconvenienced by not receiving the money; and Mr. Byard told me, at this interview, to see what I could do, but I told him that the Coudert's wanted it paid at once, and wrote Mr. Byard to that effect; that is all that took place at that time. There was something said to Mr. Byard about getting the money again on the same terms, or renewing the loan; this conversation was with the Coudert Brothers, also; 30 I understood, from the Coudert's, that they would try and get some one else to take it.

I remember there was an affidavit, that is all; I don't remember that I told him what its contents were.

Witness being shown Exhibit C, 3, says I do not recognize any of the handwriting in that paper.

And being again examined, in chief:

I told Mr. Byard, as far as I can remember now, that the whole of the $800 went to the Coudert's.

I can say, positively, that I did not tell him that the $800 was to go to the principal; I think it was in my office where I told him that.

I can't say how that matter about where the $800 was to go to was mentioned; I could'nt say whether the matter was mentioned before or after the loan was completed; I
10 have no idea how it happened to be mentioned, and when.

I do a great deal of this business: loaning money on first mortgage, very little on second mortgage.

Witness being shown a check, dated Paterson, N. J., February 11th, 1871, drawn to the order of S. S. Wood, Jr., for $150, signed by John Byard, says that check was paid to me.

Said check is offered in evidence, and is marked *Exhibit D*, 1, on part of defendant.

I think that was paid to me for my services; I can't say
20 positively whether that was paid to me for my services; I do not remember of ever having seen the memorandum at the bottom of the check before.

I do not remember that Mr. Byard paid me any thing besides that $150.

I am not sure that he did not pay me any more; I think he did not.

I could'nt say whether this check was handed to me personally by Mr. Byard, or sent to me by mail.

When a check is given to me with a memoranda at the
30 bottom, I should be very likely to read it, and see what it is; if a check was given to me, with a memoranda at the bottom, stating facts which were not true, I wouldn't be likely to take it; I should ask for a new one, if my attention was called particularly to it.

Mr. Byard said he understood, from me, that the loan

could remain longer; that was why he expressed surprise that the loan should be called in.

When I first told Mr. Byard that I could get the $8,000, I told him that I was to get it from the Couderts.

I did not tell him anything about it, whether the Coudert's were principals or agents; I could not say if the Coudert Brothers acted as agents for Mr. Mora in this matter.

So far as I can remember, in my negotiations with Mr. Byard, I conformed strictly with my instructions from Coudert Brothers. 10

I don't think I should have told Mr. Byard that the mortgage could stand for more than a year, though made for one year, unless Coudert Brothers had told me so.

SAMUEL S. WOOD, Jr.

Taken, sworn to and subscribed, this 27th day of December, A. D., 1872, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery,

Whereupon the examination was adjourned to Friday, January 10th, 1872, at ten o'clock in the forenoon, at the 20 same place.

At which time and place the examination was resumed, in the presence of the counsel of the respective parties.

Fausto Mora, a witness produced on the part of the defendant, being duly sworn on his oath, says:

I bought a mortgage about two years ago, on Paterson property, of John Byard; I don't know who I got the assignment of the mortgage from.

I never saw the bond, mortgage or assignment, not that I remember, at least; I think the amount of the bond was 30 $8,000. Messrs. Coudert Brothers did the business for me, in buying this mortgage; they kept possession of the bond and mortgage until I sold it.

The Coudert Brothers knew that I had money to invest; they told me about the bond and mortgage that was offered to them; that was this bond and mortgage of Mr. Byard's; it was shortly before I bought it that they spoke to me about it; I can't recollect how long a time intervened between the offer and the purchase; it didn't take long; it might be a day. I don't remember what discount I bought the mortgage at; it was either eight or ten per cent. I think I gave them the $8,000, minus the eight or ten per cent. Coudert
10 Brothers put out considerable money for me; they make all the arrangements, keep all the papers, and simply send me a memorandum, telling me how much to draw my check for. I don't know, of my own knowledge, whether they had the bond and mortgage when they spoke to me about it, or whether they obtained it afterwards. I took this mortgage on the representation of Coudert Brothers entirely. I do not remember how much I drew my check for at that time.

I don't think there was more than a day intervened be-
20 tween the time the offer was made and the time I bought the mortgage. They knew, some time before the purchase was made, that I had the money to loan; I was buying mortgages then from them all the time; I had mentioned to them, before this mortgage was purchased, that I would buy mortgages; I did not tell them to what amount; I bought other mortgages from them about the same time. When I invest in bond and mortgage I buy mortgages; I do not take original ones. At the time I bought this mortgage I had no knowledge of the time it was to run; I think it had
30 about eleven months to run; I can't remember exactly; I was not told anything about the date of the mortgage.

This was one of several investments I made through the Coudert Brothers, at about that time; from five to fifteen days may have elapsed between the loans.

I don't know whether the whole of the discount came to me; I don't think I got less than eight per cent on that mortgage, clear from all charges and attorney's fees.

I think the Coudert Brothers do a very large business; I generally buy my mortgages through the Coudert Brothers, but not always; if I have any searches to make I have them to make them.

I have no interest in this bond and mortgage now; I disposed of it; I thought it was'nt going to be paid, and it would entail me in a lawsuit, and I did'nt want a lawsuit; I thought there would be a lawsuit about it when I found it was'nt paid, and I heard that Mr. Byard had threatened he would'nt pay it; I did not hear him talk about usury at 10 the time I sold the mortgage, or anything about a bonus.

I saw Mr. Byard myself, about paying it; he did not tell me why he wouldn't pay it, unless he may have said he hadn't the means; he wanted an extension, I think; I never saw a letter that Mr. Byard wrote to Mr. Wood at about the time the year was up; Mr. Wood did not tell the contents of it, that I remember of.

I saw Mr. Byard after the mortgage was due, and he said he hadn't the means; he did not hint at any defence; he only said he was going to try and pay it. 20

I don't know what Mr. Wood had to do with the matter; I have no knowledge of the correspondence between him and Mr. Wood; I know they had a correspondence, because Mr. Wood told me so. I requested Mr. Wood to try and have the mortgage paid immediately; I think he told me that he had written to Mr. Byard; I spoke to Mr. Wood about it, because when the mortgage was not paid, Mr. Coudert told me that Mr. Wood was the broker who sold me the mortgage through Mr. Coudert; I do not think I knew he was the broker at the time I purchased the mortgage; I do 30 not remember it; I cannot recollect positively; I knew he was the broker before I went to him to get it paid; I may have known it four or five months before; Coudert Brothers told me so; I met him at Coudert Brothers; there are three brothers in the firm of Coudert Brothers. Charles Coudert, one of the brothers, told me about the mortgage; I was at

Coudert's office when he spoke to me abont the mortgage.

I can't remember, now, what he said to me when he spoke to me about the mortgage.

Question objected to by complainant's counsel.

The substance of it was, that he was offered that mortgage for sale, and whether it would suit me.

Objected to by complainant's counsel.

He described the mortgage by giving me the amount, and saying it was on Paterson property; he said the property
10 was market property.

Conversation objected to.

I don't remember what I said just at that time; I suppose I asked for valuation and a description of the property; they did not tell me who had offered the property to them.

I don't think I knew that Mr. Wood had anything to do with it; I am quite certain I did not.

I am quite sure, but I would not like to state positively, that I did not know then that Mr. Wood had anything to do with it, it is so long ago.

20 I think I bought the mortgage the day I was in Coudert's office, or the next day, I am not sure which.

I am perfectly sure it was not more than a day after the mortgage was offered, that I bought it.

My buying it of them consists in saying I will buy it.

I must have given my check at once after buying the mortgage, that is, as soon as I was satisfied about the searches. I don't remember when I gave the check, but I did not give it until my counsel was satisfied with the searches; I think it was very soon after they first spoke to
30 me that I gave them my check.

I feel quite sure that I did not have any interview with Mr. Wood before the mortgage was bought; I am positive about it; I don't think I had an interview with Mr. Wood before I gave the check; I feel quite positive that I did not know Mr. Wood at that time.

The Coudert brothers are my counsel in all legal matters.

I reside at 155 East Sixty-second street, New York City. I have no particular business.

And being cross-examined, he says:

The check was drawn to the Coudert Brothers.

FAUSTO MORA.

Taken, sworn to and subscribed, this 10th day of January, A. D., 1873, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

JOHN BYARD, a witness heretofore produced, on the part 10 of the defendant, being recalled, says:

Witness being shown Exhibits C, 1, and C, 2, says those are the papers I executed to John C. Benson.

It has been my practice, up to within about a year, when I gave checks, to make a memorandum on them, to show what they were given for, and to make a receipt.

Objected to by counsel for complainants.

I recollect of making that memorandum on my check of $150 to Mr. Wood, marked Exhibit D, 1.

Mr. Wood said that the lawyer's fees were $150 for making 20 the papers and looking over the searches, and I gave him the check; he told me to make it payable to his order, and he would pay the Coudert Brothers his check; he offered me a receipt; I told him I made all my checks receipts; he said all right; I think I gave him the check personally.

Objected to by complainant's counsel

I made the check according to what Mr. Wood told me the check was for; he told me that was to go to the Coudert Brothers. To use his own words, he said he didn't get a cent out of it; he said if I had a mind to, I could make 30 him a present of $25 or $50; I don't know whether I sent it to him or not; I think I did. He had made so much in

negotiating the former loan that he would not charge anything for his services in getting the $8,000 loan.

I am positive that Mr. Wood told me that mortgage could stand for a longer time than one year; he said, to use his own words, the mortgage can stand for two or three years, or as long as the interest is paid.

Mr. Wood told me that Mr. Mora required the full ten per cent. and I would have to pay the lawyer's fees, that he would not charge him anything for his services, but that if
10 I was a mind to, I could make him a little present when I got easy. I am positive that after a demand was made for the principal, Wood told me the mortgage could stand by paying another bonus.

Mr. Wood did not ask me at about the time the loan was concluded, to whom I owed money; he asked me if I had a friend to whom I could make the mortgage. I never owed Mr. Benson anything; on the contrary, he owes me $80 for brick, in the extension of his house; I did not tell Mr. Wood that I owed Mr. Benson anything; the question was
20 not asked.

The money I received from the Coudert Brothers was all the consideration I received for that mortgage.

I met Mr. Mora at the office of Condert Brothers, after a demand was made for the principal; I did not tell him anything about my defences to this suit. I told Mr. Mora I understood that the mortgage was to stand two or three years, or as long as the principal was paid; I told him that was the condition I took the mortgage on. During the negotiations, in conversation with Mr. Wood, he told me he
30 had seen Mr. Mora; he said he had seen him with reference to the loan.

And being cross-examined, he says:

There is no family connection between Mr. Benson and myself.

I use the premises in question for the manufacture of silks.

Mr. Benson is an old silk manufacturer; he has retired from the business.

I have consulted with him in regard to the business, but only as a neighbor.

He has no pecuniary interest in my factory. I started the silk business in the latter part of August, 1872.

The title to this property stands in the name of the "Paterson Silk Manufacturing Company."

Objected to by defendant's counsel.

Mr. Benson has no stock in that company. 10

JOHN BYARD.

Taken, sworn to and subscribed, this 10th day of January, A. D., 1873, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

Whereupon the testimony, on the part of the defendants, was declared closed.

IN CHANCERY OF NEW JERSEY.

Between GEORGE B. TURRELL, *Complainant.* *and* JOHN BYARD, *et. ux.*, *Defendants.*	*On Bill, &c.*

Deposition of a witness, taken before James Van Blarcom, a Master and Examiner in Chancery, in the above stated
10 cause, at the house of John C. Benson, in the City of Paterson, on the 20th day of December, A. D., 1872, in the presence and by the consent of T. D. Hodges, Esq., Solicitor of Complainant, and George S. Hilton, Esq., Solicitor of Defendants.

And it was agreed by said Solicitors that the deposition should be read and used upon the hearing and argument of said cause, subject to all legal objections therein noted.

JAMES VAN BLARCOM,
Master and Examiner in Chancery.

20 JOHN C. BENSON, a witness produced on the part of the defendant, being first duly sworn, deposes and says:

Exhibits C, 1, and C, 2, in the above cause, and heretofore offered in evidence, being shown to witness, he says:

These papers were executed to me.

I did not pay any consideration for them.

Q.—State the object for which they were executed to you?

Objected to by complainant's counsel.

A.—It was to enable Mr. Byard to receive that amount of money, and to legalize the proceeding.

I did assign that bond and mortgage to Fausto Mora.

Exhibit C, 3, shown to witness, he says:

That is the assignment; that is my signature.

I received no consideration whatever for that assignment.

Q.—State whether or not, when you took that bond and mortgage, you did so with the intention of assigning them to said Fausto Mora?

Objected to by complainant's counsel.

A.—I did so.

The agent of Fausto Mora—Mr. Wood—requested me to take the bond aud mortgage, and assign it to Mr. Mora. 10

Mr. Byard, at that time, was engaged in negotiating a loan with Mr. Wood, as agent of Mr. Mora.

I understood that the papers were executed to me by Mr. Byard, and by me to Mr. Mora to secure this loan.

I understood that the papers were so executed, and not directly from Mr. Byard to Mr. Mora, to legalize the transaction, as there was some compensation beyond legal interest.

I was told by Mr. Wood that such was the case. 20

The agreement between the parties for the loan was made here, in my house, in Paterson.

There was no definite time agreed upon for the loan to run, but was to depend upon Mr. Byard's paying up the interest promptly.

There was not anything said about its running for only one year—but was to run for Mr. Byard's convenience.

And being cross-examined, witness continues:

I had three or four interviews with Mr. Wood, in reference to this transaction. 30

The first was in New York City, in the office of the Washington Life Insurance Company.

The first was at or near the time of the execution of these documents. I mean that I met Mr. Wood in New York City on matters out of which this negotiation originated.

Mr. Wood came here, to my house, the same evening, and he said he had a friend that would furnish $8,000.

I don't think Mr. Byard was here the first evening, or if he was, he was not here at the first commencement of the conversation.

Nothing was then decided upon' and I think he came up the next day.

Mr. Wood, I think, did not, at that interview, say anything about other terms.

10 I think the second interview took place the next day, in the evening, in my house here.

Mr. Byard was present a part of the evening, at that interview.

Mr. Wood proposed that the Insurance Company would furnish $18,000, and this friend of his would furnish $8,000.

I asked what the conditions were?

He wanted a bonus on the $8,000; he did mention some amount, to which I objected.

I think he went over and got Mr. Byard.

20 After Mr. Byard got here Mr. Wood made his propositions to Mr. Byard.

Mr. Wood proposed to throw off $500 out of the bonus on the $8,000, and $900 off of the other loan.

Mr. Byard and he then concluded that they would close the matter; they had other conversation, and I don't know what it was. They left together; the transaction was still open when they left; what they did after they left here I don't know.

The third interview was in New York, and I think the 30 same parties were present; Mr. Byard was there at the office of the Insurance Company of which I have above spoken.

I went down simply to pass over those papers, and to receive the money; I did do so.

I don't recollect the conversation.

I passed the papers and received the money.

I knew that I received the right sum, as that was regulated between him and Mr. Byard.

I think the check was drawn to my order; not certain.

I don't know whether I saw Mr. Mora or not; they were all strangers to me.

What I meant by legalizing the transaction, is, Mr. Wood stated to me it was necessary to have a third party, in consequence of an extra interest.

I had no other reason for stating that the object of the transaction was to legalize their proceedings outside of what Mr. Wood said. 10

The reason why I said Mr. Wood was agent for Mr. Mora was, that he stated that he had a friend who had the money, and he got it from him to loan.

And being again examined in chief, says:

What I did in this I acted for Mr. Byard.

Mr. Byard had been trying to effect a loan of $25,000, and it terminated in a loan from the Washington Life Insurance Company to him of $18,000, and one of $8,000 from Mr. Mora. 20

Both were effected through Mr. Wood, and about the same time.

I am not right sure that the money on both loans was obtained at the same time.

I went only once down there after money; on reflection, I am of opinion the money was not obtained all at one time.

The largest sum was obtained first; that was the time I went and obtained the money.

And being again cross-examined, witness continues:

Q.—Is not all you know of this transaction, apart from what Mr. Byard has told you, derived from a single interview with Mr. Wood in this room? 30

A.—No, sir; he was here, I think, three times, as I have

stated; we had, at least, two conversations here, and I met him in New York.

I derived all my knowledge of this matter in two or three interviews here and in New York.

I had two interviews with him in New York; the first in connection with the $25,000 loan, and the other with this—the $8,000.

I went down after the check after the last interview here.

And being again examined, again in chief, he answers:

10 It seems to me, after turning it over in my mind, that I had another interview with Mr. Wood after obtaining the larger loan; the other loan was supplementary to the larger one, and was completed afterwards.

J. C. BENSON,

Sworn and subscribed before me, this 20th day of December, 1872,

JAMES VAN BLARCOM,
Master in Chancery, of N. J.