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COURT OF ERRORS AND APPEALS

CHARLES H. MUIRHEID }
and WILLIAM H. MUIR- }
HEID, Appellants, } *On Appeal.*
and }
CHARLES E. SMITH, }
Respondent. }

Points of Appellants.

The bill in this cause was filed to set aside a deed made by Charles H. Muirheid to William H. Muirheid, for a farm in Hopewell township, Mercer county, to defraud the complainant.

This is denied in defendants' answer.

The facts, as we allege, sustain the answer.

Complainant alleges that the said deed was void on account of fraud.

There is no proof of fraud.

Fraud is defined to be "any act which is resorted to or employed by one person to obtain an illegal advantage over the other."

Fraud must be proved ; it cannot be presumed.

Clark et al. v. White, 12 Pet. 178.

Beatty v. Fishel, 100 Mass. 449.

In matter of Vanderveer's will, 5 C. E. Green 463.

Again we show that William paid the full value of the farm and personal property, which is conclusive upon the point of the good faith of the transaction, in the absence of all knowledge on his part to the contrary.

In order to render a conveyance void as a fraud upon creditors, it is necessary that the grantee have knowledge of and participate in the fraud of the grantor.

3 Wait's Actions and Defences 469.

Magniac v. Thompson, 7 Pet. U. S. 347.

Kline v. Horine, 47 Ill. 430.

Merchants' Bank v. Northrup, 7 C. E. Green 58.

Atwood v. Impson, 5 C. E. Green 151.

Hildreth v. Sands, 14 Johns. 493.

Bedell v. Chase, 34 N. Y. 386.

Wood v. Shaw, 29 Ill. 444.

But if this court be of opinion that the consideration, although a valuable one, was not a sufficient consideration for the farm conveyed, and that, therefore, the farm ought to be sold under the direction of the court, for the benefit of the creditors, it ought to be sold, not only subject to the mortgage held by Mrs. Rhodes, and the amount due William H. Muirheid on his \$2000 mortgage, as is ordered by the Chancellor's decree, but subject also to the amount due William for his services on the farm, under his agreement with Charles, as shown by the evidence in this cause.

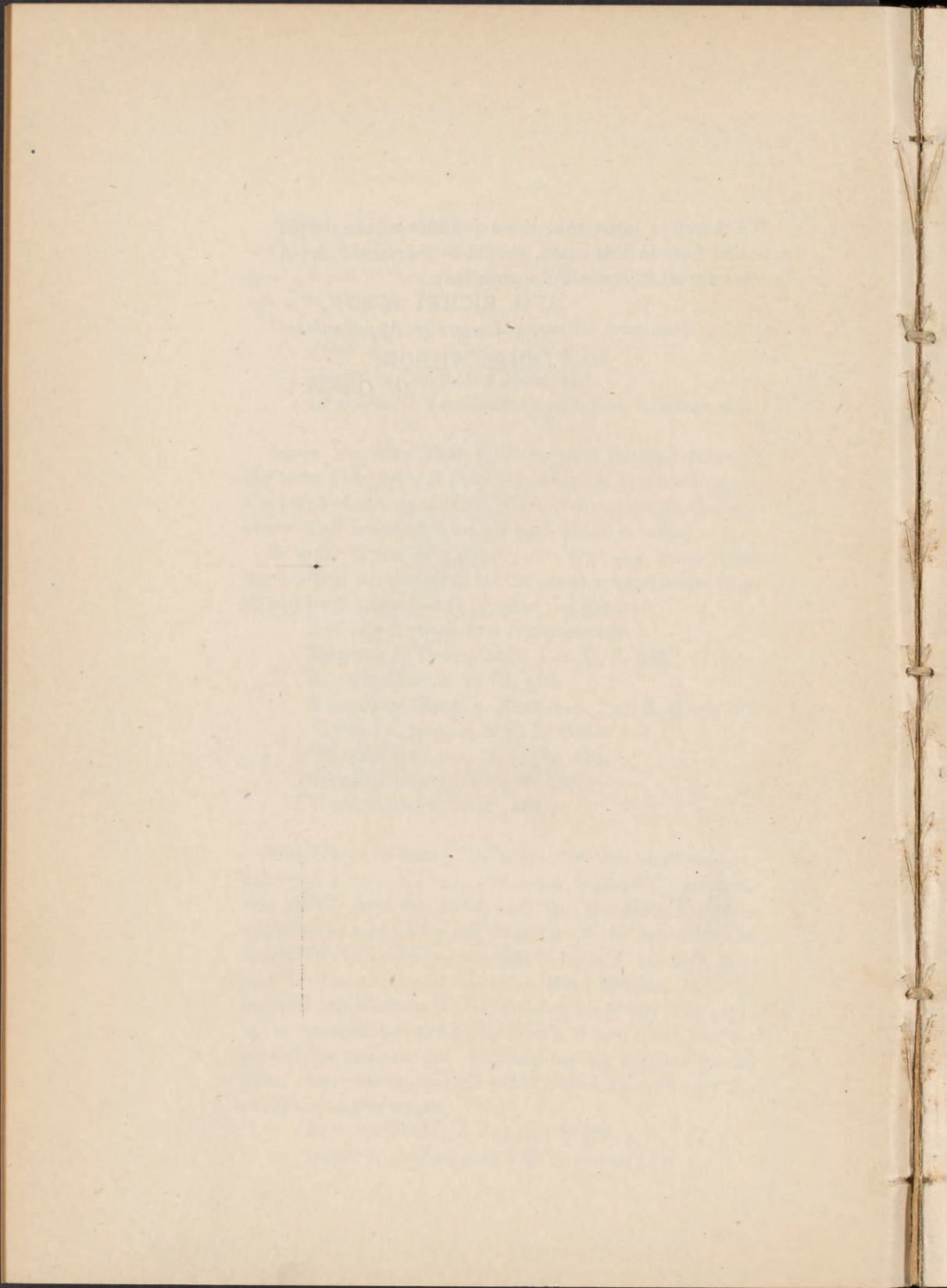
Boyd v. Dunlap, 1 Johns. Ch. 478.

Demarest v. Terhune, 3 C. E. Green 532.

We therefore insist that those portions of the decree appealed from in this cause, should be reversed, and a decree entered in favor of the appellants.

A. G. RICHEY & SON,
Solicitors of Appellants.

JAMES WILSON,
Of Counsel.



WM. S. SHARP, Printer, 21 West State street, Trenton, N. J.

COURT OF ERRORS AND APPEALS.

Between

CHARLES H. MUIRHEID
and WILLIAM H. MUIR-
HEID, Appellants,

and

CHARLES E. SMITH,
Respondent.

On Bill, &c.

On Appeal.

Brief of A. G. Richey.

The bill in this cause was filed on the 25th day of February, 1879, in the Court of Chancery, by Charles E. Smith, of the city of Philadelphia, Pa., against Charles H. Muirheid, of Philadelphia, William H. Muirheid, of Hopewell township, New Jersey, and others, charging, among other things, that the deed made by Charles H. Muirheid and wife, on the 16th day of March, 1877, to William H. Muirheid, for a farm situate in Hopewell township, Mer-

cer county, was made in order to defraud the complainant, Charles E. Smith.

The bill also charges that William H. Muirheid, another defendant, accepted the said deed for said farm, with full notice that it was executed and delivered to him with intent on the part of Charles to hinder and defraud the said complainant of his debts and demands &c., and that the said William H. Muirheid never in any way paid the said Charles H. Muirheid the purchase money expressed in the deed, or any part thereof. It also charges that the mortgage executed and delivered by the said William H. Muirheid to the said Charles, for the sum of \$12,000, and bearing date on the 3d day of April, 1877, covering the premises embraced in the foregoing deed, was accepted by the said Charles H. Muirheid to defraud his creditors, and that no valuable consideration was paid by the said Charles or received by the said William and his wife therefor.

And that Charles, further, in order to defraud his creditors, assigned the said mortgage to Mrs. Margaret E. Rhodes, of Philadelphia, who accepted the said mortgage with full notice of the aforesaid intent, &c.; and that the said Margaret paid no consideration for the assignment of the said mortgage to her.

The complainant in his bill asks that the defendants answer without oath or affirmation.

Answer of defendants filed June 10th, 1879.

The defendants all joined in the answer, and deny all fraudulent intent whatever.

On pages 8 and 9 of the answer, Charles denies that he was justly indebted to the complainant in March, 1877.

He says that the demand the complainant claimed to have

against him was illegal and unjust, and that he did not owe it, nor was he liable for it, or any part of it, and he was so advised by his counsel in Philadelphia, with whom he consulted.

Charles further admits in the answer that he owned the farm referred to in the bill, on the 16th of March, 1877, and for ten years prior thereto, which he sold and conveyed to the said William H. Muirheid.

That his father, John G. Muirheid, owned and occupied said farm at the time of his decease, in 1866; that his said father died intestate, leaving a widow and six children, and the children of a deceased daughter, him surviving; and that he, Charles, purchased the said farm of his brothers and sisters in 1867, at \$2000 for each share, as a home for his widowed mother and maiden sister, Sarah; and that he then agreed with his brother William to take charge of and work said farm, as a home for his mother, sister and himself. (See pages 12 and 13 of defendant's answer.)

He further states that he was desirous of keeping the said farm in the Muirheid family, and was then in hopes that William, at an early day, would be able to purchase the same.

That William, under an agreement with Charles, that he, Charles, would pay him for his labor, took charge of his mother and sister, and worked the farm from the year 1867 to 1877, when he purchased the same of Charles.

On pages 14 and 15 of the answer, the defendant, William H. Muirheid, denies that he took the deed for the said farm, with intent to defraud Charles' creditors, and says that he did not then know that Charles owed the complainant anything whatever, nor did he ever hear of it until after the commencement of this suit.

The answer of defendants on pages 17 and 18, states and shows how the mortgage taken from William, in part payment for the farm, on which \$6000 was due, was sold and assigned to Mrs. Margaret E. Rhodes.

The answer of the defendants meets all the charges in the bill, and denies all fraud whatever.

The counsel for the complainant in the hearing before the Chancellor, waived all objection to the \$6000 *mortgage*, which was given for part of the purchase money for said farm.

And the Chancellor, in his opinion, held that the mortgage was a valid lien or encumbrance upon said farm. And he also held that the mortgage for \$2000, held by William on the farm at the time he purchased it, was a valid lien thereon.

But we think that the Chancellor *erred in the conclusion* he came to, as to the character of the deed made by Charles to William, and as to the validity of *William's claim for ten years' labor for Charles.*

Look at the Chancellor's opinion (p. 50) and read from line 27.

We insist that the decree is not drawn in accordance with this *opinion.*

See page 53; read from *line 23.*

The mortgage for \$2000 was given up by William to Charles as part of the consideration of the purchase.

This \$2000 and the interest which has accrued thereon should have been provided for in the decree.

Suppose the farm is sold under this decree, what position does that leave *William's mortgage in?*

When the deed was delivered to him, his mortgage was satisfied and cancelled of record.

Let us now look at the points of the case in the same order in which complainant states them in his bill.

First. The complainant charges that the deed dated March

16th, 1877, made by Charles to William for the Muirheid farm, was made by Charles with the intent to defraud the complainant. *Where is the proof of this?*

The law is well settled that he who charges fraud must prove it. *Clark et al. v. White*, 12 Pet. 178.

Fraud is defined to be "any act which is resorted to or employed by one person to obtain an illegal advantage over another.

In *Beatty v. Fishel*, 100 Mass. 449, the court said:

It is an established rule of law that fraud is not to be presumed. The burthen of proving fraud is on the party alleging it.

In matter of Vanderveer's will, 5 C. E. Green, 463, (p. 471,) the Ordinary said: Fraud should not be inferred because we see it was possible, or even probable, but it should be shown by *positive proof*.

But I will not detain you with authorities on this point.

In 1877 complainant had a claim against Charles which Charles alleges he did not owe, and which he says he was advised, by his counsel, Smith could not recover. No suit was then commenced by Smith against Charles. The conveyance of the farm by Charles to William, in March, 1877, was made without any reference to the complainant or his claim. Look on page 11, at the bottom of the page, where Charles says in his answer that William was his youngest brother, and when he purchased the farm from the other heirs, he was desirous of keeping it in the Muirheid family, as it had long been the family homestead, and he was then in hopes that William would at an early day be able to purchase it. This was the cherished desire of Charles when he purchased the farm of the heirs in 1867.

See the testimony of William on page 4 , line 31, where he says, "I was twenty-five years old at the time of my father's death, and was then worth about \$1500; this Muirheid farm was the late homestead of my father, the home of my mother as long as she lived, and also the home of my sister Sarah."

On page 41, he says, "Charles' object in buying the farm of the heirs was to make it a home for his mother and sister." See page 41, line 5.

"Q. How soon after Charles bought the farm did he encourage you to purchase it of him, &c.?"

"A. Very soon; I could not tell exactly, but he frequently spoke to me about it; *he wanted me to make it mine.*"

We insist that this shows that for ten years, Charles had been encouraging William to purchase the said farm as soon as he felt able to do so.

The sale of the farm therefore in 1877, by Charles to William, was not a sudden or unexpected thing.

It was simply carrying out the previously formed plan and understanding had between the parties.

When the sale was made, William was then thirty-five years of age. His habits and character were well formed. In the meantime the old mother had died, and William had married, and it was now time, if ever, for him to purchase and become the owner of the farm.

But counsel of complainant argued that because William had, during that ten years, received no part of the pay for his services on the farm, *that his story was improbable.*

William says in his testimony, that he received the interest \$140 a year from Charles, as the annual interest on his mortgage against Charles of \$2000. And we say he left his wages for labor, to accumulate in the hands of Charles, as a payment on the farm, when the time arrived for him to purchase it.

It is difficult for those who are unacquainted with the Muirheid family, and who did not know Charles' devotion to his mother and sisters and brothers, to appreciate the confidence and affection which he and they exercised towards each other. They are highly esteemed by all who know them.

Charles' first desire was to have his mother spend the residue of her days with his unmarried sister, undisturbed, in the old homestead; that having been accomplished, he then desired that his promise to his youngest brother should be carried out, *by selling him the property.*

In the spring of 1877, the times had been, and were still, very bad; farm produce was exceedingly low and wages were high, and there was little or no demand for farm property.

In the settlement, however, between Charles and William, they fixed the price at \$10,000 for the farm, some stock, and a few half-worn farming utensils on the farm belonging to Charles, which, we insist, made the full value of the farm and stock.

Complainant took but little evidence in the cause, but what little he did take shows that the price agreed upon and paid by William was the fair value of the property.

Look at complainant's testimony; on page 19, Pierson Hunt says, "I lived in Hopewell township, near the Muirheid farm, and am well acquainted with it." On page 20, line 15, he says, "I should think that farm was worth about \$10,000; about \$45 to \$50 an acre." Line 28, he says, "If farms were set up for sale at that time (1877) you could not get a bid on them."

Alfred W. Smith, on page 21, says, "I was raised near the Muirheid farm—known it always; I should think \$50 per acre a good price for it."

William B. Blackwell says, "The present value of the Muirheid farm, as nearly as I can tell, is \$50 per acre, but it is guesswork, *what it would bring.*"

John M. Hoppock, another witness called by the complainant, pages 26, 27, in answer to the question what he values his own farm at, replied, "That is a hard question to answer these times." He further said he did not know much about the value of the Muirheid farm.

Levi B. Stout, page 28, line 27, in reply to the question as to what he would consider the fair market value of the Muirheid farm, if sold on the usual terms, part cash and part credit or mortgage, said, "As near as I know, it would range from \$40 to \$50 per acre."

All these five witnesses, as to the value of the property, were called by the complainant, and they valued the property from \$40 to \$50 per acre.

There were two hundred and seventeen acres; take \$40 as the price, that would make \$8,680 as the estimated value as put upon the property by some of the witnesses of the complainant.

Yet, some of them say that the times were so bad in 1877 that you could scarcely get a bid on a farm when offered for sale.

It is true that there were some half-worn farming utensils and stock, valued at about \$1000, included in the sale, and we submit that the sum of \$10,000, paid for the whole, was their full and fair value, and that the sale was therefore made upon a good consideration, and *bona fide* also.

Second. The complainant next charges in his bill, that William accepted the deed for the said farm, with notice that it was made and delivered to him with the intent on the part of Charles to defraud the complainant, and that William never in any way paid Charles the purchase money expressed in the deed, or any part of it. We say that there is no proof whatever to support this allegation. Look at the testimony given by William on his cross-examination, where he gives a full account of his

contract with Charles to work the farm, and take care of his mother and sister Sarah, &c. In line 23, he states that Charles agreed to pay him for his services; that he worked for Charles ten years, and in the settlement, as detailed on page 25, Charles allowed him \$200 a year only, making, for ten years, the sum of \$2000.

In the settlement, he was to pay for the farm, and Charles' personal property on it, the sum of \$10,000 which he paid as follows:

<i>First.</i> By surrendering the \$2000 mortgage which he held against Charles on the property	\$2,000
<i>Second.</i> By the amount allowed William for ten years' services and labor on the farm	2,000
<i>Third.</i> By the mortgage executed by him to Charles on the premises.....	6,000 \$10,000

Page 25, line 20, William, in his testimony, says:

The mortgage for \$6000 was assigned by Charles to Mrs. Margaret E. Rhodes, and he has paid the interest to her regularly ever since. Line 30 on the same page, William says:

"At the time I bought the farm of my brother Charles, in the spring of 1877, I did not know that there was such a man living as the complainant in this cause, nor did I know that my brother Charles was indebted to him, or that he was indebted to any one else, at the time I purchased the farm of my brother Charles."

In this view the amount of the consideration paid by William for the farm and personal property on the farm is *material*, when the good faith of the transaction is questioned.

This, we insist, shows that William paid a good and valuable consideration for the farm, and bought it *bona fide*, and had no knowledge whatever that Charles was indebted to Smith, or any one else.

The complainant saw proper to call William as their witness, and he testifies *to the consideration* of the purchase, to the satisfaction and surrender of his own mortgage against Charles for the \$2000, and that Charles owed him \$2000 for ten years' labor, and the original agreement to pay him.

And his testimony stands *uncontradicted*. Complainant is *bound by it*. There is no fairer witness than William.

Complainant rested his case without proving the facts charged in his bill.

Defendants did not call a single witness, as they felt that the complainant had made no case *against them*.

Again we say that in order to render a conveyance void as a fraud upon creditors, it is necessary that the grantee have knowledge of *and participate in the fraud of the grantor*.

See 3 Wait's Actions and Defences 469.

Magniac *v.* Thompson, 7 Pet. (U. S.) 347.

Magniac was a creditor of Thompson when he, Thompson, entered into a marriage settlement with Miss Stockton, in anticipation of marriage; in which settlement he conveyed certain property in trust for her use. Magniac, the plaintiff, was a creditor of Thompson, and he filed this bill to set aside the above conveyance as a fraud upon his, Thompson's, creditors. In the decision of the case the court held "That to make an ante-nuptial settlement void as a fraud upon the creditors, it is necessary that both parties should concur in, or have cognizance of the intended fraud."

If the settler alone intend the fraud, and the other party have no notice of it, he is not and cannot be affected by it.

Among creditors equally meritorious, a debtor may conscientiously prefer one to another, and it can make no difference that the preferred creditor is his own wife.

On page 393, Justice Story, in quoting from the judge's charge below, said: "To taint a transaction with fraud, both parties must concur in the illegal design; it is not enough to prove fraud in the debtor. He may lawfully sell his property with the direct intention of defrauding his creditors, or prefer one creditor to another; but unless the purchaser or preferred creditor receives the property with a fraudulent design, the contract is valid against other creditors or purchasers who may be injured by the transaction."

"In order to avoid this agreement, both the party giving and receiving must participate in the fraud."

Justice Story then said, "Nothing can be clearer, both upon principle and authority, that the doctrine to make an ante-nuptial settlement void as a fraud upon creditors, it is necessary that both parties should concur in, or have cognizance of the intended fraud. If the settler alone intend the fraud, and the other party is innocent of it, she is not, and cannot be affected by it."

See also *Kline v. Horine*, 47 Ill. 430.

In this case it was alleged that the assignment of a note was fraudulent for the purpose of hindering and defeating the creditors of the original holder. It was held that the assignee of the note must participate in the fraud in order that the assignment may be set aside.

Justice Walker said, on page 232 of this case:

"If Kline in good faith paid a valuable consideration for the note, he could not be affected by the fraudulent intention of the assignor. This is a well-recognized rule of law."

Wilson v. Lott, 5 Fla. 305.

The synopsis of the case is, fraud is not to be presumed, it must be proved; that is the general law as well in equity as at law.

This was a case where a bill was filed to set aside a conveyance on the ground of fraud.

On page 315 the judge in his opinion said: "It is sufficient in this case to say that there is nothing in the evidence to cast suspicion on Lott's answer."

The complainant is therefore in this attitude: he has appealed to the conscience of Lott in relation to the facts charged, and the complainant presents no proof to contradict his answers.

That is the situation of Smith in this case.

William and Charles deny all fraud in their answers.

Then complainant calls William as *a witness*, and he swears that in the spring of 1877, when he bought the farm of Charles, he did not know that Charles was indebted to the complainant, or to *any one else*.

And there the complainant's evidence closed. He had no proof to contradict William. In the language of the Florida case we say the complainant, having appealed to the conscience of William, *he is bound by it*.

This is conclusive on the question of the *bona fides* of the transactions.

We refer now to a case decided in our own state—Merchants' Bank *v.* Northrup, 7 C. E. Green 58.

The synopsis of this case is, *First*. "It is not sufficient to set aside a deed made by the grantor, when in failing circumstances, that his object was fraudulent. It must be shown that the grantee participated in that intent, or had knowledge of the object of the grantor, or of such facts as should have put him upon inquiry as to that object."

On page 62 of this case, the Chancellor said:

"But the mere fact of having heard of suspension or failure, or being sued, is not sufficient in all cases to make a sale fraudulent and a deed void. In bankrupt proceedings it is." Again he said: "There are many objects for which, when a debtor when pressed in failing circumstances, may legitimately sell or dispose of his real and personal property, or pay out his money, and such disposi-

tion or payment be valid, except so far as prohibited by the provisions of the bankrupt law, which are not in question here."

The deed in this case was *held not to be* fraudulent as against creditors.

Heldreth v. Lands, 14 Johns. Ch. 493.

On appeal from chancery, decree below was affirmed. Chief Justice Spencer, who delivered the opinion of the court, said that he did not consider the Chancellor as intending to say that it *was not necessary* that both parties should intend a fraud in order to set aside the deed, and then added as follows: "It seems to me that the statute for the prevention of frauds (which has been universally considered as an exposition of the common law) was intended to avoid deeds contrived and devised fraudulently for the delaying and defrauding of creditors in those cases only where both parties participated in the fraud." Page 498.

Knowledge by a purchaser that the seller is embarrassed and largely in debt, and if no one would buy his goods his creditors would get their debts out of them, will not affect the validity of the sale, provided the object in purchasing was not to delay or hinder creditors, but only to make a good bargain.

Atwood v. Impson, 5 C. E. Green 151.

The authorities go very far on this point. A sale at a fair valuation by a failing debtor to his creditors in payment of a subsisting and honest debt, which has not yet matured, is not fraudulent in respect to his other creditors.

See *Bedell et al. v. Chase*, 34 N. Y. 386.

Wood v. Shaw, 29 Ill. 444.

Libby v. Hood, 3 Mo. 206.

Seymour v. Nelson, 19 N. Y. 417.

See the testimony on page 24, commencing line 21. William said: "It was agreed that I should take charge of and superintend the farm, subject to his wishes and orders, upon his *agreeing to pay me for such services.*"

We repeat that in the purchase of the farm his labor for ten years at \$200 per year makes the sum.....	\$2,000
<i>This was very moderate.</i> His bond and mortgage on the farm against Charles was surrendered for.....	2,000
Then he gave a bond and mortgage on the farm for balance.....	6,000
<hr/>	
Making in all.....	\$10,000

This was paid in good faith.

William did not know there was such a man as Charles E. Smith.

He did not know that Charles owed a living being one dollar besides himself.

The consideration was ample.

The conveyance was *bona fide*.

The answer of Charles and the testimony of William stand uncontradicted by any one.

There was no fraud intended by any one.

The decree of the Chancellor is wrong.

It reflects unjustly on the character of Charles and William both.

The decree should be reversed.

has the testimony on page 27, commencing line 21.
William said I found myself in a peculiar state of
and excitement, a kind of light-headedness and
excitement upon the receipt of the letter.

The report of the purchase of the land is for
the sum of \$100,000.

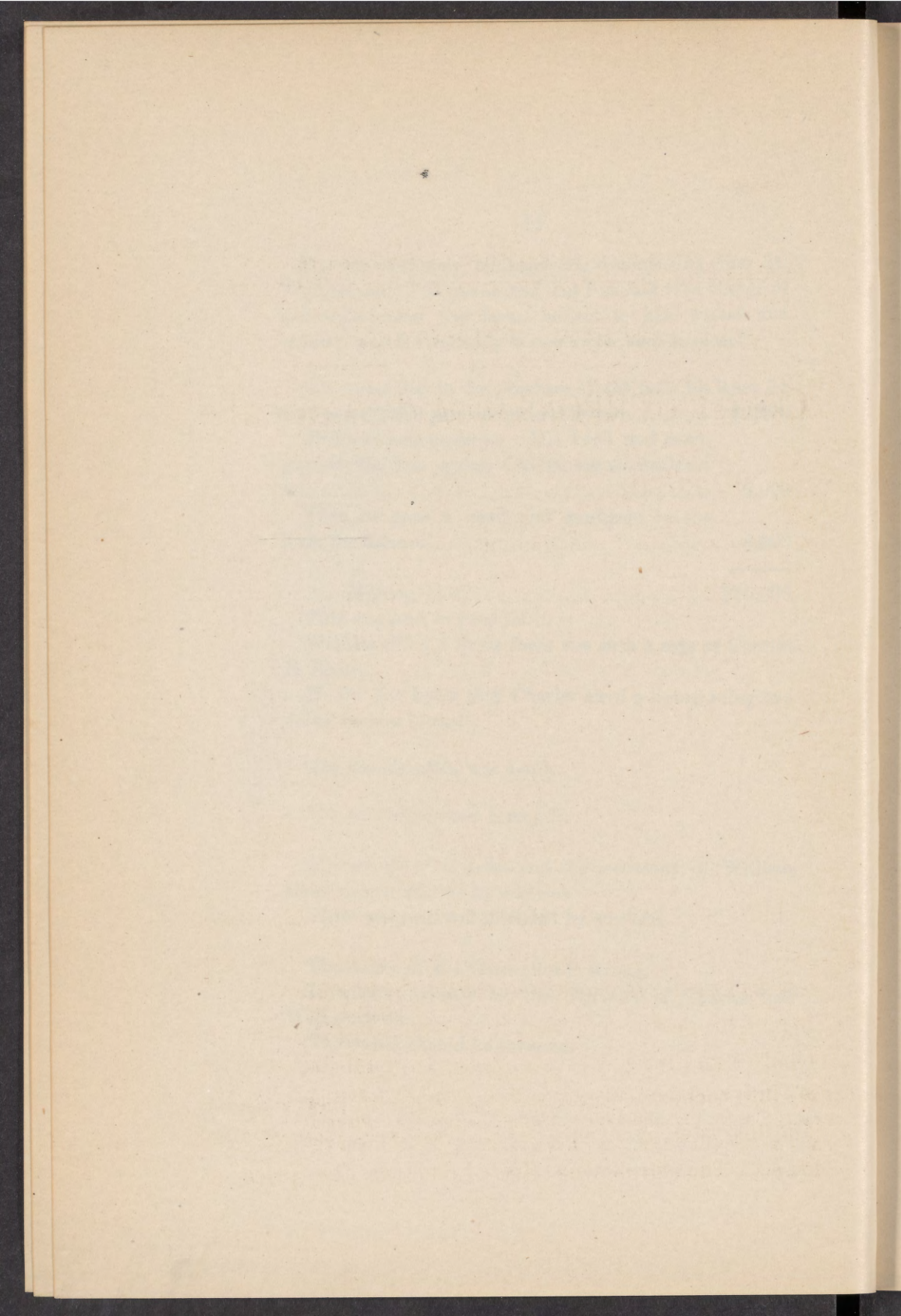
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NEW JERSEY
Court of Errors and Appeals.

MUIRHEID,

Appellant,

vs.

SMITH,

Appellee.

Brief.

Statement.

In 1866, Charles H. Muirheid bought the *homestead farm* in Hopewell, containing *two hundred and seventeen and twenty-four one hundredths acres*, lately belonging to his deceased father, from whom it descended to Charles and *seven other children*. He paid five of them \$2,000 each, and *gave a mortgage* to his brother *William* and his sister *Sarah* on the farm, securing them \$2,000 each. The farm was thus taken at the price of

\$16,000, and Charles bought it in order to provide a home for his mother, Sarah, and William. William was to manage the farm; Charles had the privilege of coming to the farm with his wife, her maid, his coachman and horses, and sometimes did so, staying six weeks at a time. (*Printed Case, page 24, lines 10-27; page 25, line 10.*)

From 1866 to March 19, 1877, the family lived on the farm, and its products went toward making improvements on the farm and supporting the family. William hired and paid all the work people, and marketed all the products, but kept no accounts whatever of the receipts and expenditures. (*Case, page 22, line 20 to line 26, page 23.*)

William says, that there was an agreement that Charles should pay him for his services, but no agreement as to amount or time of payment; that his services continued for 10 years, and that during that time Charles never paid him anything for his services. (*Case, page 23, lines 23-33.*)

In 1873, Charles H. Muirheid gave his promissory note to Charles E. Smith for \$30,000.00 to secure a loan of that amount; and on April 13, 1877, Smith brought suit against him to collect the balance due thereon. Muirheid litigated the suit vigorously, and it resulted on December 31, 1878, in a judgment for Smith in the Common Pleas of Philadelphia, for

\$18,870.00 of debt and \$16.60 costs. (*Exhibit A of complainant.*)

On *March 19, 1877*, about *three weeks before Smith began suit* against Charles, Charles conveyed to *William the farm*, and all the *live stock, farming utensils, furniture, and all manner of personal property on the farm*, for a nominal consideration of \$12,000.00. No other consideration was given than a mortgage for \$12,000.00, which was the pretended purchase money. (*Exhibit D of complainant, and Case, page 24, line 30 to bottom.*) At the time of this conveyance *no inventory or appraisement was made*, of the live stock or other personal property on the farm, and *William is unable*, he says, *to tell what amount of such property passed by the deed.* (*Case, page 29, line 23 to line 20, page 30.*) A rigorous examination (very unwillingly answered in an evasive and nearly monosyllabic manner) extracts the information that *the stock and farming implements amounted to at least \$1,200.00.* (*Case, pages 32-39.*)

William avers, that there was *no furniture* there belonging to Charles, but says, "furniture" was put in the deed *merely to cover every thing there was there.* (*Case, page 39, lines 24-35.*)

In *June, 1877*, and *about three months after* the above transaction, *Charles H. Muirheid indorsed* on the \$12,000 mortgage, *a credit of an alleged payment of \$6,000*, and *then sold the mortgage* to the defendant, *Rhoads*,

who says, by her answer, that she is a bona fide purchaser.

William accounts for this credit by saying, 1. That in June, 1877, about three months after the pretended sale, Charles, at his request, reduced the price of the farm, stock, &c., from \$12,000 to \$10,000, thus giving him \$2,000. (*Case, page 25, lines 3-12.*) He says, that he claimed the reduction because *the farm* would not bring more than \$10,000, but says nothing about the stock, &c., which he subsequently admits was worth \$1,200; so that by his own showing he holds \$11,200 worth of property for a nominal price of \$10,000—the actual sum the farm, two hundred and seventeen and twenty-four hundredths acres, would bring at a cash sale is \$50 per acre, equals \$10,862. (*Case, page 20, line 12 to bottom; page 21, line 6-25; page 22, line 8-14.*) And it is evident that the witnesses put a guardedly low valuation upon it. In this way the first item of the credit is accounted for. 2. The next item of \$2,000 was credited by Charles agreeing to allow William that sum for his services for 10 years on the farm. (*Case, page 25, line 12-13.*) This, William says, was the result of a settlement between them, but he admits that although for the whole 10 years he had sold all the products of the farm, and had paid from them only the cost of the table for the family, and had not in any way accounted for them, yet that at this alleged settlement no account was taken of his receipts and expenditures on

account thereof; but that his brother Charles *allowed* him \$2,000 *in a lump* for his services. The annual product of a farm of 217 acres, above the cost of the table, would be *at least* \$1,000 *per annum*. William does not pretend that *he* paid the annual *taxes*. Thus he must have, by the *settlement!!* received at least \$12,000, *besides his board*, for his services. (*Case, page 23.*) The *third* item of credit was \$2,000, for the *original purchase money of William's share*, and was a pure reduction of the price of the farm to that extent. It is not pretended that William cancelled the former mortgage held by him.

The bill charges that Charles H. Muirheid had no other property in this state or elsewhere, other than the farm and stock in question, and this averment is not denied in the answer.

We submit that *the relationship* of the parties, the *precedent debt* to and the *threatened suit* by Smith, the conveyance of *all* the debtor's property *without inventory or valuation*, the unusual *mortgage back for the whole purchase money*, are each and all *badges of fraud*, requiring *the clearest explanation* to support the transaction. And that William H. Muirheid, *the alleged vendee*, gives no satisfactory explanation; and that *Charles H. Muirheid*, the *debtor*, and *alleged vendor*, is *not produced as a witness*, is *fatal* to the transaction of *March 19, 1877*, the alleged sale of the farm and personal property.

We further submit, that the transactions of *June, 1877*, the giving of \$6,000 of alleged credits, upon the pretended mortgage debt, are additional badges of fraud, of the most suspicious character, and throw additional and grave imputations upon the precedent conveyance of *March 19, 1877*. We submit, that the *explanations* made by *William H. Muirheid* are unnatural and incredible; that they are mere *afterthoughts concocted to account for the credits*.

Badges of Fraud.

These *badges* are simply *prima facie evidences* of fraud—they are not conclusive, but require explanation—if *not satisfactorily explained, they become conclusive*. And the *concurrence of several badges* always makes a strong case.

Bump on Fraudulent Conveyances, page 78.

A.

Surrounding the conveyance of March 19, 1877, were the following badges of fraud:

1. *Expectation of a Suit.*

Charles H. Muirheid at that date owed the complainant some \$18,000, *which he knew would be sued out*,

and which was sued on April 13, 1877, *i. e.*, about three weeks after the conveyance. He also knew that the complainant could proceed against him by foreign attachment to recover this debt, and by levying a writ upon it, secure a large part of his claim. Under these circumstances, this conveyance in March, without *actual payment* of any consideration, is a badge of fraud. He owned this farm for 10 years—*no motive* appears for the sale—no proof that he *had tried to sell*, or had intended to sell—*no agent employed—no advertisement—*he sells *suddenly, just before suit*. It was a *sudden and secret* transaction.

Bump Fraud. Convey., page 81.

2. *Precedent Debt.*

The *precedent heavy debt* to Smith, yet *unpaid*, and the manifest interest of Muirheid to remove the fund out of reach, is a badge of fraud. The conveyance *did diminish*, nay *it* and the *subsequent transactions* of June, 1877, *extinguished* the fund.

Bump, page 80-81.

3. *Mortgage for entire consideration.*

Such a credit is *wholly unusual*—no prudent man sells in such way—a *fortiori*, when, as in this case, he *knows* the *vendee and mortgagor* to be a man of no means.

4. *The generality in the grant of the farm, farm stock, &c.*

The stock was *large and valuable*—no inventory or appraisal was made of it—yet the description was made in the *most sweeping and general* words—and the vendee himself says, *the intent* in so doing was *to cover everything*. (Case, page 20, line 30).

No *real buyer* would deal in this way.

Bump, pages 79–80.

5. *Close relationship.*

The vendor and vendee were not only BROTHERS, but were connected in *unusually close relations* as respected the farm, &c., conveyed. Their relations were *confidential*, to a high degree—the vendee alleges himself to have been a *non-accounting bailiff of the vendor*, for ten years.

Though not a badge of fraud, this *relationship and close connection strengthens* the other badges of fraud, and *requires a fuller and stricter explanation of them*.

Bump, pages 96–98 ;

Demarest v. Terhune, 3 C. E. G., 533, 534 ;

Randall v. Vroom, 3 Stew., 355.

6. *Omission of Vendor to testify.*

Charles H. Muirheid is *significantly absent*—he could explain how he came to sell so suddenly—what were the negotiations—*what the land was valued at*—*what the stock, &c., was valued at*—*how they arrived at the value of the land*—*how, without an appraisement, at the value of the stock.*

His absence is well nigh conclusive evidence of fraud.

Bump, page 95.

Explanation.

None is attempted. William H. Muirheid merely says, "I bought the farm; in March, 1877, he agreed to sell me the farm for \$12,000; he (Charles) sent the papers to William B. Muirheid, at Pennington, to be drawn; the deed was executed by Charles to me; he was living in Philadelphia; when the deed was returned from him executed, he sent it to William B. Muirheid, at Pennington; I went to Pennington and executed a mortgage to Charles for the whole amount of the purchase money, \$12,000." (*Case, page 6, line 20-30.*)

So, the explanation adds *additional badges* of fraud, *instead of removing those already noticed.* Here is a transaction *without a previous meeting* of the parties—and *without previous correspondence by letter.*

No antecedent negotiation, no *concilium*, no *consensus animi*.

The whole wears the aspect of having *originated* with Charles, and of having been *obediently concurred in* by William under Charles' direction.

The *impending suit* by Smith *explains Charles' activity*; and also the *modus operandi*.

When recalled, the *explanation* by William of the transaction *respecting the stock and personalty*, reveals further badges of fraud.

"Want of *preciseness as to amounts and values* excites suspicion, for the parties in a suspicious transaction, so recent, should be clear, accurate and specific in their testimony."

Bump, page 96.

William's testimony is unwilling, unprecise, monosyllabic. He equivocates about there being an inventory and appraisalment of the personalty comprised in the conveyance, says, there was an inventory made a short time before; it proves to have been made *at his father's death* eleven years before. He first professes *not to know what he bought*; it would take *some figuring*; couldn't remember just how much of every kind was on the farm; it was necessary tentatively to question him on every probable kind of stock, and when he tes-

tified as to the particular kind, he gave the shortest possible answers, and the least possible information.

The attitude of the witness was resistant, not explanatory; he volunteered no information. (Case, pages 29-39.)

He was *unprecise* as to the *farming implements*, as to *the hay*, and as to *corn and oats*; as to the poultry.

B.

But if the badges of fraud surrounding *the conveyance* of March 19, 1877, were numerous and unexplained, those surrounding the credits indorsed on the mortgage *three months later*, in *June, 1877*, are *incapable of explanation*, and are *absolute frauds*.

1. *Credit of alleged debt for labor.*

The large sum of \$2,000 was "allowed," so the mortgagor says, on a *final settlement* for *his labor on the farm for ten years*. During that ten years, he *received all the products* of the farm; he *says*, he *supplied the table of the family* thereout, and that he *made improvements* on the farm. There *is no account of what he received*, nor *what he paid out*, nor *was there any account on that subject at the settlement*.

Even if there had been a *valid agreement* by Charles to pay him for his services, *the entire absence of an*

account of his claim against Charles is fatal to the settlement.

Bump, page 92.

But *no agreement* is proved *in writing*, or with any such definiteness of terms in the alleged oral understanding as to make it of any avail—it is an *alleged oral agreement* made in 1867 (ten years before), that he should be *fully paid for his services—supported only by his own oath.* (*Case, page 24, line 20–24.*)

Such testimony, under the circumstances, is wholly insufficient.

There is no evidence that he rendered any service, except to *hire the hands, and sell the crops*, and as he was a *member of the family, and given a home on the farm*, there is *no legal presumption of employment for hire*, like the other members in their sphere; he did his part in his sphere.

Miller v. Sauerbier, 3 Stew., 73, 74.

This credit then was *a pure gift, wholly voluntary*, by Charles to William, made *in June, 1877, while Charles was indebted to complainant in \$18,000.00, to collect which debt suit had been begun on April 13, 1877.*

Such gift was fraudulent and void as to complainant.

Bump, page 288.

Clafin v. Mess, 3 Stew., 212.

2. *Credit of alleged reduction in price of farm.*

William avers, that on *March 19, 1877*, he bought *the farm and stock, &c.*, for *\$12,000*, and gave his *legal obligation to pay Charles that sum.*

If so, he *in June, 1877*, was *lawfully indebted to Charles in that sum*, and that sum was *a fund that belonged, in equity, to the complainant who was then a creditor of Charles.*

Charles could not *voluntarily release William from any part of that debt.*

The pretence is, that William had made *a bad bargain*, and had paid *too high a price for the farm, &c.* There is no pretence that Charles had overreached him.

The testimony shows that the farm was worth \$50 per acre, or \$10,862, and that the stock, &c., was worth \$1,200; being together \$12,062; which totally disproves the pretence of William, that he had paid too high a price.

But if he had paid too much, Charles had *a legal claim on him for the full price*, and he could not voluntarily abate the price to *\$10,000; that was a gift of \$2,000 from Charles to William, and was void as against complainant, to whom Charles then owed \$18,000.*

The Vendee is not a bona fide Purchaser.

William H. Muirheid *actually paid* no consideration at the time of the conveyance. There is no pretence that *at that time*, the pretended claim on his part for \$2,000 for services on the farm, formed any part of the consideration. The transaction was simply the conveyance of a farm worth \$11,000.00, and farm stock worth \$1,200 more, for a nominal consideration of \$12,000, and taking back a mortgage *on the farm alone*.

William protests that *he had no idea* that Charles *owed anything* either to complainant or anyone else, when this transaction took place. Is this credible? What other motive could he have conceived to have induced Charles to have entered into so unusual a transaction? Was he not put upon inquiry?

Subsequent payment does not cure fraud.

If the conveyance in *March*, 1877, was without valuable consideration and fraudulent by the statute, the subsequent effort in *June*, 1877, to make out a colorable consideration, could not in anywise purge the fraud or validate the antecedent conveyance. Even if the pretended subsequent payment of \$6,000, had been an *actual payment* of that sum, it could not give validity to a conveyance that was *originally fraudulent*.

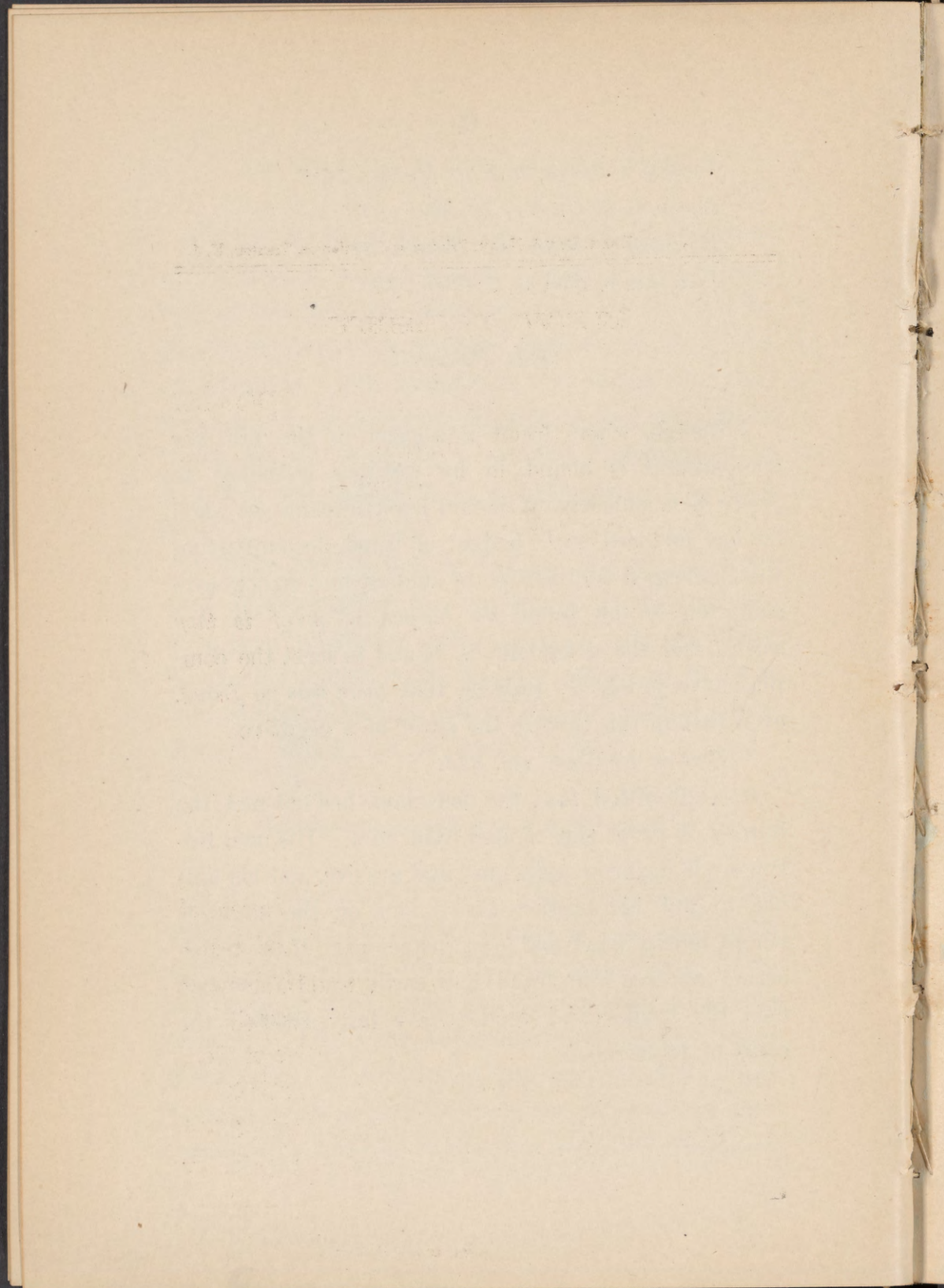
Poague v. Boyce, 6 J. J. Marsh., 70 ;
Lynde v. McGregor, 13 Allen, 213 ;
Hartman v. Diller, 62 Penna., 37 ;
Pettibone v. Stevens, 5 Conn., 19.

Onus Probandi.

Although, where fraud is alleged in the bill, the complainant is bound in his opening testimony to prove facts sufficient to sustain his averment, yet when he has adduced such badges of fraud, accompanying the challenged transaction, as amount to a strong presumption of the fraud, *the burden of proof is then shifted*, and the defendant is bound to meet the complainant's proofs, by proving that *there was no fraud*, even though this involve the proof of a negative.

Best on Evidence, sec. 321.

It is submitted, that the defendant has not met the burden of proof thus shifted upon him. His own testimony is insincere, reluctant, and evasive, and his failure to put his brother, the vendor, on the stand, is wholly unexplained, and most suspicious. If the transaction *was* free from fraud, how easily could these two men, the vendor and vendee, have fully satisfied the court of its fairness.



COURT OF ERRORS AND APPEALS

Between
CHARLES H. MUIRHEID
and WILLIAM H. MUIR-
HEID,
Appellants,
and
CHARLES E. SMITH,
Respondent. } *On bill, &c.*

Bill of Complaint.

[Filed February 25, 1879.]

*To his Honor Theodore Runyon, Chancellor of the State
of New Jersey :*

Humbly complaining, showeth unto your Honor, your orator, Charles E. Smith, of the city of Philadelphia, and State of Pennsylvania, for himself, and for such other creditors of Charles H. Muirheid, hereinafter mentioned, as shall join in this suit, that on or about the fifteenth day of March, anno domini eighteen hundred and 10
seventy-seven, one Charles H. Muirheid, of the city of Philadelphia, and State of Pennsylvania, was, and for a

long time previously had been, justly indebted to your orator, in the sum of about eighteen thousand dollars, upon a promissory note made by the said Muirheid to your orator, dated July tenth, one thousand eight hundred and seventy three, and payable twelve months after date, for the sum of thirty thousand dollars, and that at the date first above mentioned, your orator had been pressing the said Muirheid for payment of the said debt, and had informed him that, in default of payment there-
10 of, your orator would proceed at law against him for the collection of the same.

2. That the said Charles H. Muirheid refused to pay his said debt to your orator, and being informed of your orator's intention to proceed at law for the collection of the same, formed the purpose and intent of hindering, delaying and defrauding your orator in his proceedings for the collection of his said debt, and of concealing his property from your orator, and of so vesting the title to his real estate as to put it beyond the reach of any pro-
20 cess at law which your orator might be entitled to sue out against him in his proceedings at law for the collection of his said debt.

3. That the said Charles H. Muirheid was, on the said fifteenth day of March, eighteen hundred and seventy-seven, seized in fee of a valuable farm and lands, situate in the township of Hopewell, in the county of Mercer, and State of New Jersey, bounded and described as follows: All that certain tract or parcel of land situate in the township of Hopewell aforesaid, beginning at a stone
30 in the road, corner to lands late Amos L. Hart's; thence (1) along said road and the line between the counties of Mercer and Hunterdon, north, eighty-eight degrees and fifty minutes east, thirty-five chains and thirty-seven links, to a stone in said road, corner to lands of Theodore F. Titus; thence (2) with said Titus' lands, south, ten degrees and twenty-five minutes west, twenty-eight chains and ten links, to a corner near an elm tree; thence (3) with the same, south, thirty-seven degrees and

thirty-five minutes east, three chains and ten links, to a corner; thence (4) with the same, south, five degrees and twenty-eight minutes east, two chains and fifty-eight links, to a corner; thence (5) with the same, south, twenty degrees and thirty-five minutes west, three chains and fourteen links, to a corner; thence (6) with the same south, sixty-six degrees and thirty-five minutes east, fifty links, to a corner; thence (7) with the same south, fourteen degrees and ten minutes west, three chains and ten links, to a corner; thence (8) with the same, south, eight- 10
teen degrees and thirty-five minutes west, four chains and seventeen links, to a corner; thence (9) still with said Titus' lands, south, eleven and one-quarter degrees west, ten chains and seventy-five links, to a corner of Nathaniel Hart's lands; thence (10) with said Nathaniel Hart's lands south, eight and a half degrees west, eight chains and thirty-three links, to a corner of Charles Hart's land; thence (11) with said Charles Hart's land, south, six degrees and fifty seven minutes west, four chains and forty links, to a corner of said Charles Hart's lands, also a corner to lands 20
of Isaac Hart; thence (12) with said Isaac Hart's lands, south, fifty minutes east, three chains and sixty-eight links, to a stone for a corner; thence (13) with lands of the same, south, eighty-eight degrees and fifty minutes west, twelve chains, to a corner; thence (14) still with Isaac Hart's lands, south, thirty minutes west, seven chains and twenty-six links, to a stone for a corner, on the north side of the mountain road; thence (15) partly along said road, lands of Joseph Atwood, and lands of William Cook, Jr., south, eighty eight degrees and fifty 30
minutes west, twelve chains and eighty-six links, to a stone heap, for a corner in Alfred Hart's line; thence (16) with said Alfred Hart's lands, and lands late Amos L. Hart's, north, fifty minutes west, seventy-seven chains and seventeen links, to the place of beginning, containing two hundred and seventeen acres and twenty-four hundredths of an acre of land, more or less; and that, for the purpose of carrying into execution his intent

aforesaid, and to delay, hinder or defraud your orator of his lawful actions, suits, debts, and demands against him, the said Charles H. Muirheid and Elizabeth N. Muirheid, his wife, did, on the sixteenth day of March, anno domini eighteen hundred and seventy-seven, make and execute under their hands and seals, and acknowledge in due form of law, and deliver to one William H. Muirheid, of the township of Hopewell aforesaid, a deed of conveyance, bearing date the day and year last aforesaid, purporting
10 to convey to the said William the aforesaid lands, in fee simple, for the pretended consideration in the said deed expressed of twelve thousand dollars, and that the said William H. Muirheid accepted the said deed with full notice that it was executed and delivered to him with the intent to delay, hinder or defraud the creditors of the said Charles H. Muirheid of their just and lawful actions, suits, debts, accounts and demands, and that in fact the said William never, in any way, paid to the said Charles H. Muirheid, the purchase money expressed in
20 said deed, or any part thereof, or other valuable consideration therefor.

4. That at or shortly after the execution and delivery of the said deed of conveyance, the said William H. Muirheid and Elizabeth H., his wife, executed and delivered to the said Charles H. Muirheid a deed of mortgage bearing date the third day of April, anno domini eighteen hundred and seventy-seven, upon and comprising the lands conveyed by said deed, and hereinbefore described, purporting to secure the payment of the sum
30 of twelve thousand dollars, and interest; that the said mortgage was executed and delivered by the said William H. Muirheid and Elizabeth H., his wife, and was accepted by the said Charles H. Muirheid, in the further execution of the intent hereinbefore stated, to delay, hinder or defraud the creditors of the said Charles, and that no valuable consideration was paid by the said Charles, or received by the said William and Elizabeth H., his wife, therefor; and that the said Charles after-

wards pretended that the said William had paid to him, the said Charles, a part of the said mortgage debt, and had reduced the said debt to the sum of six thousand dollars; and that, on the ninth day of August, anno domini eighteen hundred and seventy seven, the said Charles H. Muirheid, in the further execution of his intent to delay, hinder and defraud his creditors hereinbefore stated, pretended to assign the said mortgage to Margaret E. Rhoades, wife of James E. Rhoades, of the city of Philadelphia aforesaid, who accepted the said mortgage with full notice of the aforesaid intent of the said Charles H. Muirheid, and with full notice that the said mortgage had been originally executed, and was then assigned to her in the execution of the said intent, and that in fact no *bona fide* consideration was paid by the said Margaret E. Rhoades, for the assignment of said mortgage. 10

5. That on the thirteenth day of April, anno domini eighteen hundred and seventy-seven, your orator commenced suit in the Court of Common Pleas, No. 2, for the county of Philadelphia and State of Pennsylvania, against the said Charles H. Muirheid, for the recovery of the aforesaid debt of eighteen thousand dollars, and that a writ of summons was issued therein, and that service thereof was duly acknowledged by the attorney of the said Charles H. Muirheid, who was thereto duly authorized, and that the said Charles, by his said attorney, appeared to the said writ and defended the said suit, and that such proceedings were therein had, that on the thirty-first day of December, anno domini eighteen hundred and seventy-eight, your orator recovered a final judgment in the said court against the said Charles H. Muirheid, for the sum of eighteen thousand eight hundred and seventy dollars and forty cents debt, and sixteen dollars and sixty cents costs, as by the record of said proceedings and judgment will appear, to which your orator refers. 30

6. That on the seventh day of February, anno domini eighteen hundred and seventy-nine, your orator com-

menced suit in the Supreme Court of the State of New Jersey to recover the amount due to your orator upon the said judgment, by way of foreign attachment against the said Charles H. Muirheid as a non resident debtor, and on the day and year last aforesaid, sued and caused to be issued out of said court in due form of law, a writ of attachment directed to the sheriff of the county of Mercer aforesaid, commanding him to attach the rights and credits, moneys and effects, lands and tenements of
10 the said Charles H. Muirheid in his county, so that he should be and appear in the said court on the fourteenth day of February then instant, to answer unto your orator in a plea that he render to him the sum of twenty thousand dollars, which he owed to and unjustly detained from him, which said writ your orator caused to be delivered on the same seventh day of February aforesaid, to the said sheriff of said county of Mercer, and that the said sheriff duly executed and returned the said writ of attachment before the return day thereof,
20 and by virtue thereof attached the lands and premises hereinbefore described as the lands and premises of the said Charles H. Muirheid, as by reference to the record of said proceedings will appear, to which your orator refers, by virtue whereof your orator, in his own behalf, and in behalf of such other of the creditors of the said Charles H. Muirheid as shall come in and make proof in due form of law of their claims against him in said attachment suit, acquired a valid and effectual equitable lien upon the said lands and premises.

30 7. That by reason of the aforesaid false and fraudulent deeds of conveyance and mortgage, your orator is unable to prosecute effectually his said suit at law by attachment against the said Charles H. Muirheid, or to enforce in said suit his aforesaid equitable lien upon the said lands; that the said Charles H. Muirheid has no other property in this state or elsewhere, to your orator's knowledge, from which he can enforce the satisfaction of his said debt,

and that your orator is remediless in the premises save by the aid of this court.

In tender consideration whereof, and to the end that the said Charles H. Muirheid, William H. Muirheid and Elizabeth H., his wife, Margaret E. Rhoades, and James E. Rhoades, her husband, may, without oath or affirmation, answer all and singular the premises and each fact above stated, and that the said deed of conveyance from the said Charles H. Muirheid and Elizabeth N., his wife, to the said William H. Muirheid, purporting to convey the aforesaid lands, may be declared to have been executed and delivered with the intent to hinder, delay and defraud the creditors of the said Charles H. Muirheid of their just and lawful action, suits, debts, accounts and demands, and especially to hinder, delay and defraud your orator of his aforesaid suit; and that, the said deed of mortgage, made and delivered by the said William H. Muirheid to the said Charles H. Muirheid, and by him assigned to the said Margaret E. Rhoades may be declared to have been executed, delivered and assigned with the same intent aforesaid, and that the said deed of conveyance, deed of mortgage and deed of assignment may be decreed to be fraudulent and void as against your orator, and any other creditor of the said Charles H. Muirheid coming in under said attachment, and that said deed of mortgage may be delivered up to be canceled, and that the said William H. Muirheid may be decreed to reconvey the said lands to the said Charles H. Muirheid, and that the lien of your orator's said attachment may be established upon the said lands, and that said lands may be sold for the payment and satisfaction of your orator's said lien, with his costs of this suit, and that your orator may have such other and further relief as the nature of the case may require.

May it please your Honor, the premises considered, to grant unto your orator a writ of subpœna, issuing out of and under the seal of this court, to be directed to the said Charles H. Muirheid, William H. Muirheid and Eliza-

beth H., his wife, Margaret E. Rhoades and James E. Rhoades her husband, commanding them on a certain day, and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this court, then and there to answer the premises in manner aforesaid, and to stand to, abide by, and perform such decree as your Honor shall make therein.

SAMUEL R. GUMMERE,
Solicitor of Complainants.

10

BARKER GUMMERE,
Of Counsel.

Answer.

[Filed June 10, 1880.]

The joint and several answer of Charles H. Muirheid, William H. Muirheid and Elizabeth H. Muirheid, his wife, Margaret E. Rhoades and James E. Rhoades, her husband, all of the defendants to the bill of complaint of Charles E. Smith, complainant.

20 These defendants, now and at all times hereafter, saving and reserving to themselves 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 these defendants are advised is material for them to make answer unto, this defendant, Charles H. Muirheid, answering for himself, says that it is not true, as in the complainant's bill is alleged, that this defendant, on or about the fifteenth day of March, anno domini eighteen hundred and seventy-seven, was, and 30 for a long time previously thereto had been, justly indebted to the complainant in the sum of about eighteen thousand dollars (\$18,000) upon a promissory note, made

by this defendant to the said complainant, of the date, and payable at the time, and for the sum in said bill mentioned; and on the contrary this defendant says that while the complainant had, or claimed to have, such note, and had, at or about the time first mentioned, asked this defendant to pay the amount claimed thereon, yet this defendant says that such claim was, as this defendant then believed, and still believes, both illegal and unjust, and that this defendant did not owe the same, or any part thereof, to the complainant, and this defendant 10 refused to pay the said claim, and stated to said complainant this defendant's grounds and reasons for such refusal.

And this defendant says that he advised with counsel learned in the law in regard to the said claim of said complainant, and, after stating to said counsel the facts and circumstances of the case, he was advised by said counsel that in his opinion the said claim was both illegal and unjust, and that complainant would not, in the opinion of said counsel, be able to obtain a judgment 20 against this defendant in case he should bring a suit against him upon said claim; that this defendant, relying upon the opinion of his counsel, which agreed with this defendant's own views, he did not believe, nor had he any fears or apprehension that said complainant would sue him on said claim, or that, if he did so, he would or could obtain judgment against him for the amount of said claim, or for any part thereof.

And this defendant further says that it is not true, as in the complainant's bill is most unjustly alleged, that 30 this defendant, being informed of said complainant's intention to proceed at law for the collection of said claim, formed the purpose and intent of hindering, delaying, and defrauding said complainant in his proceedings for the collection of said alleged debt and of concealing this defendant's property from the complainant, and of so vesting the title to his real estate as to put it beyond the reach of any process at law which said complainant

might be entitled to sue out against this defendant in his proceedings at law to collect said claim. And on the contrary, this defendant says that he never did, at any time, have or form any purpose or intent or desire, to hinder, delay, or defraud the complainant in any proceedings he might take for the collection of his said claim; and that this defendant never had any purpose, intent or desire of concealing his property from the said complainant, and of so vesting the title to his real estate
10 as to put it beyond the reach of the complainant on any process he might sue out against this defendant.

And this defendant further says that he never did, at any time, nor in any manner whatever, sell, convey, or otherwise dispose of, any of his real or personal property of any kind whatsoever, with intent or purpose to hinder or delay or defraud the complainant, or to place the same beyond the reach of complainant, in case he should sue this defendant on said claim; and further, that this defendant did not, as is before stated, believe that the
20 complainant could or would obtain a judgment against him on said claim for the whole or any part thereof.

And this defendant, in further answering, says that he admits that he was, on the fifteenth day of March, anno domini eighteen hundred and seventy-seven, and for about ten years previous thereto had been, seized in fee of all that certain farm and tract of land and premises, situate in the township of Hopewell, in the county of Mercer aforesaid, particularly bounded and described in complainant's bill of complaint; and this defendant
30 says that said farm was at one time the property of this defendant's father, John G. Muirheid, who died seized thereof on or about the nineteenth day of November, anno domini eighteen hundred and sixty-six, leaving him surviving his widow, Elizabeth H. Muirheid, and issue, seven children, to wit., this defendant, Charles H. Muirheid, Elizabeth H. Titus, wife of Samuel H. Titus, Alfred Muirheid, Sarah Muirheid, John G. Muirheid, Henry P. Muirheid, William H. Muirheid, (one of these defendants,) and Mary P. Ogden, the only child of

Charity G. Ogden, deceased, in whom the title to said farm descended as tenants in common, and afterwards, to wit, in the year eighteen hundred and sixty-seven, the said other children and heirs-at-law of the said John G. Muirhead, deceased, released and conveyed their respective interests and shares in the said farm and tract of land and premises, by sundry deeds of release and conveyance, to this defendant, Charles H. Muirheid, for the price or consideration of the sum of two thousand dollars, (\$2,000,) to be paid to each one for his or her respective share therein; the purchase money of the shares of the said Sarah Muirheid and William H. Muirheid (one of these defendants) was secured to be paid by this defendant, Charles H. Muirheid, by his making, executing and delivering to them a joint bond and mortgage, which bore date on the first day of May, anno domini eighteen hundred and sixty-seven, and was recorded on the twenty-first day of October, anno domini eighteen hundred and sixty seven, in Book S of Mortgages for said county, page 415, &c., conditioned for the payment of the sum of two thousand dollars (\$2000) to each one, with interest thereon from the date thereof, which said mortgage was given for the full amount of the purchase money of the shares of the said Sarah Muirheid and William H. Muirheid in said farm, and the interest which accrued on said mortgage was paid annually by this defendant, Charles H. Muirheid, to the said Sarah Muirheid and William H. Muirheid, on the two thousand dollars secured to each one thereby, which said mortgage remained a valid and subsisting lien and encumbrance on the said farm and lands until the sale and conveyance thereof by this defendant, Charles H. Muirheid, to the said William H. Muirheid, one of these defendants, as hereinafter mentioned.

And this defendant, Charles H. Muirheid, in further answering for himself, says that the said William H. Muirheid is a brother of this defendant, and was the youngest son of the said John Guild Muirheid, deceased, and when

this defendant purchased the said farm from the other heirs, he was desirous of keeping the same in the Muirheid family, as it had long been the family homestead, and this defendant was thus in hopes that the said William H. Muirheid, the youngest brother, would, at an early day, be able to purchase the same ; and it was then understood and agreed, by and between this defendant and the said William H. Muirheid, that he should remain on, take charge of, and superintend the said farm
10 for this defendant, as this defendant was then living in the city of Philadelphia, and could not give the said farm his personal attention, and the said William H. Muirheid thereupon did take charge of, superintend and manage said farm for this defendant, from the time of the purchase thereof by this defendant up to the time of the sale thereof by this defendant, as hereinafter mentioned. And some time in the winter of eighteen hundred and seventy-seven, this defendant, Charles H. Muirheid, being largely indebted to the said William H.
20 Muirheid, for work and labor on the said farm, and also owing to him the full sum of two thousand dollars, secured to him by the said bond and mortgage on the said lands hereinbefore mentioned, with the interest due thereon, proposed to and agreed with the said William H. Muirheid, to sell and convey to him the said homestead farm, for the price or sum of twelve thousand dollars, (\$12,000,) and in pursuance of such agreement, he authorized William B. Muirheid, a conveyancer at Pennington, New Jersey, to prepare a deed of conveyance
30 for said homestead farm, in due form of law, from him to the said William H. Muirheid, which said deed was in due time prepared by said scrivener, and forwarded to this defendant for execution, and thereupon this defendant and Elizabeth, his wife, who then resided in the city of Philadelphia, executed the same, in said city, on the nineteenth day of March, anno domini eighteen hundred and seventy-seven, before one William B. Robins, a commissioner for the State of New Jersey, which said

deed was then forwarded to the said scrivener, at Pennington aforesaid, with instructions to prepare a bond and mortgage on said lands for the said William H. Muirheid to execute to this defendant for the full amount of the purchase money therefor. And thereupon the said William B. Muirheid, the said scrivener, prepared the said bond and mortgage, bearing date on the second day of April, anno domini eighteen hundred and seventy-seven, for the full amount of the said purchase money named in the said deed; no settlement having then been made by and between this defendant, Charles H. Muirheid, and William H. Muirheid of their other matters. And these defendants William H. Muirheid and Elizabeth, his wife, in answering for themselves, say that they executed the said mortgage before the said scrivener, a master in chancery of New Jersey, at Pennington aforesaid, and left the same with the said scrivener, and the deed made by the said Charles H. Muirheid and wife, to the said William H. Muirheid, was delivered to him by the said scrivener. 10
20

And this defendant, William H. Muirheid, in answering for himself, says that at the time of the purchase of the said farm by the said Charles H. Muirheid of his other brothers and sisters, this defendant was then living on said farm with his sister, Sarah Muirheid, and it was then understood and agreed by and between this defendant and the said Charles H. Muirheid, that this defendant was to remain on, take charge of, superintend and manage the said farm for the said Charles H. Muirheid, for which he was to be fairly paid, and under this agreement, this defendant carried on and managed the said farm for the said Charles H. Muirheid, from the time he purchased the same of the other children, up to the time of the sale and conveyance thereof by the said Charles H. Muirheid to this defendant hereinbefore mentioned. 30

And these defendants, Charles H. Muirheid and William H. Muirheid, in furthering answering for themselves, say that shortly after the execution and delivery

of the said deed and the bond and mortgage lastly above mentioned, they made a settlement of their other matters, and in and by such settlement it was found that there was due to the said William H. Muirheid, from the said Charles H. Muirheid, a little over two thousand dollars (\$2000) on the said bond and mortgage given by the said Charles H. Muirheid, on said farm, on the first day of May, anno domini eighteen hundred and sixty seven, above mentioned, and that there was also due to the
10 said William H. Muirheid from Charles H. Muirheid the sum of two thousand dollars, (\$2000) for work and labor on the said farm, making together a little over four thousand dollars, (\$4000) and the depreciation and shrinkage in the value of farm land, generally, had been so great, that this defendant, William H. Muirheid, insisted that the said Charles H. Muirheid had placed a higher value on said farm, in the deed of conveyance made by him to the said William H. Muirheid, than it was worth, or would bring at a fair
20 sale in the market, and thereupon it was mutually agreed by and between them, that an allowance should be made by the said Charles H. Muirheid to the said William H. Muirheid, of two thousand dollars (\$2000), which, with the four thousand dollars (\$4000) due to the said William H. Muirheid from the said Charles H. Muirheid, as above mentioned, made the sum of six thousand dollars (\$6000), which was duly endorsed and receipted, as a payment on the said bond and mortgage, given as above mentioned, by the said William H. Muirheid to the said
30 Charles H. Muirheid, on the second day of April then last past, and the bond and mortgage originally given to the said defendant, William H. Muirheid and Sarah Muirheid, was surrendered to the said Charles H. Muirheid, who thereupon canceled the same of record.

And this defendant, William H. Muirheid, in answering for himself, says that it is not true, as in the complainant's bill of complaint is unjustly alleged, that he accepted the said deed for the said farm from the said Charles H. Muirheid, with the intent to delay, hinder

or defraud the creditors of the said Charles H. Muirheid of their just and lawful actions, suits, debts, accounts and demands. And on the contrary, this defendant says that at the time of the delivery of the said deed for said farm, by the said Charles H. Muirheid and wife to him, he did not know that the said Charles H. Muirheid owed the complainant anything whatever, nor did he hear anything of it until about the time of the commencement of this suit, nor did he at any time, in receiving the deed for said farm, or at any other time, 10 have or form any purpose or intent to delay, hinder or defraud the complainant, or the creditors of the said Charles H. Muirheid, of their just and lawful claims and demands.

And this defendant, William H. Muirheid, in further answering for himself, says that he did pay the purchase money for the said farm, so conveyed to him by the said Charles H. Muirheid as aforesaid, by executing and delivering the said bond and mortgage to the said Charles H. Muirheid as above mentioned, and this defendant 20 having, at the special instance and request of the said Charles H. Muirheid at the time of his purchase of said farm from the other heirs of John Guild Muirheid, deceased, agreed to remain on and manage said farm for the said Charles H. Muirheid from that time, and manage and work the same for him until the purchase thereof from him by this defendant, and a large amount was, among other things, then due this defendant for such work and labor on said farm, from the said Charles H. Muirheid, and no settlement was had or made by and 30 between them, until some weeks after the execution of said last mentioned mortgage, when this defendant produced the said joint bond and mortgage, given by the said Charles H. Muirheid to this defendant and his sister, Sarah Muirheid, and also ascertained that there was a balance of two thousand dollars ($\$2000$) due him on settlement for his work and superintendence on said farm, and the said farm having greatly depreciated in value,

and this defendant insisted that the said farm would not then bring over ten thousand dollars (\$10,000), at a fair private sale, an allowance of two thousand dollars (\$2000) was then agreed upon and made in such settlement by the said Charles H. Muirheid to this defendant, which, together with the amount above mentioned, made the said sum of six thousand dollars (\$6000), which sum was credited as a payment on this defendant's said bond and mortgage, on which bond and mortgage has been
10 paid and credited the said sum of six thousand dollars, in the manner hereinbefore set out, which reduced the principal sum due thereon to six thousand dollars (\$6000), and on which this defendant, William H. Muirheid, has regularly paid the interest to Mrs. Margaret E. Rhoades, semi-annually, to the first day of January, anno domini eighteen hundred and seventy-nine.

And this defendant, Charles H. Muirheid, in further answering, says that he had been for many years, and then was in the commission real estate business in
20 the city of Philadelphia, and in the summer of eighteen hundred and seventy-seven, while holding and owning the said bond and mortgage so given to him as aforesaid, by the said William H. Muirheid, on which there was six thousand dollars of principal still due, he wanted money in his real estate business, and he applied to Dr. James E. Rhoades of Germantown, Pennsylvania, to see if he would not like to purchase the said bond and mortgage, at the same time informing him that it was given to secure a part of the purchase money, and was a first
30 mortgage on the property described therein. The said Dr. James E. Rhoades, informed this defendant that his wife had some money which she would like to invest in a good mortgage; he also stated that he had some knowledge of the mortgaged premises, and if this defendant would procure and furnish to the attorney of the said Dr. James E. Rhoades an abstract of the title of the mortgaged premises, and searches to the satisfaction of the said attorney, he would then take the said bond and mortgage

for the said Margaret E. Rhoades, his wife, and thereupon this defendant had an abstract of title of the mortgaged premises prepared, and full searches made and submitted to the attorney of Dr. James E. Rhoades, and after they were carefully examined, Dr. Rhoades informed this defendant that he would take the said bond and mortgage, for his said wife, and afterward, this defendant, Charles H. Muirheid, sold, assigned, transferred, and set over the said bond and mortgage to the said Margaret E. Rhoades, by a deed or indenture of assignment 10 bearing date on the second day of July, anno domini eighteen hundred and seventy-seven, which said deed was duly acknowledged before Samuel L. Taylor, a commissioner for the State of New Jersey, residing in the State of Pennsylvania, on the thirteenth day of July last mentioned, and afterwards, to wit, on the fourth day of August, in the same year, this defendant delivered the said bond and mortgage and the assignment thereof, and the searches, abstract of title, and assignment of the policy of insurance on the buildings on the said mort- 20 gaged premises, to the said Dr. James E. Rhoades, for the said Margaret E. Rhoades, his wife, and received from him therefor, the sum of six thousand dollars (\$6000), the full amount remaining due thereon.

And these defendants, Margaret E. Rhoades and James E. Rhoades, her husband, in answering for themselves, say that during the summer of eighteen hundred and seventy-seven, application was made to them, by the said Charles H. Muirheid, to purchase the said bond and mortgage, given to him by the said William H. Muir- 30 heid, as above described, and after procuring an abstract of title of the mortgaged premises, and searches against encumbrances on the said lands, as hereinbefore recited in the answer of Charles H. Muirheid, one of the defendants, and the said abstract, searches, mortgage and other papers, having been carefully examined by the attorney of these defendants, who reported to them that he found all of them correct and satisfactory, and there-

upon these defendants decided to take the said bond and mortgage, which was duly assigned by the said Charles H. Muirheid to Margaret E. Rhoades, one of these defendants, by deed of assignment above mentioned, and on or about the first day of August, anno domini eighteen hundred and seventy-seven, they paid the sum of six thousand dollars (\$6000), to the said Charles H. Muirheid, for the said bond and mortgage, which was the full amount due thereon.

- 10 And these defendants, Margaret E. Rhoades and James E. Rhoades, in further answering for themselves say that it is not true, as in the complainant's bill is most unjustly alleged, that this defendant, Margaret E. Rhoades, accepted the said bond and mortgage with notice that the said Charles H. Muirheid intended to hinder, delay and defraud the complainant, and that said mortgage had been originally executed and was then assigned to this defendant, Margaret E. Rhoades, in execution of said intent, and that no consideration was paid by this defendant,
- 20 Margaret E. Rhoades, for the assignment thereof; and on the contrary these defendants say that they never had any notice whatever that the said Charles H. Muirheid, had in any way or manner, or intended in any way or manner to hinder, delay, or defraud the complainant or any of the other creditors of the said Charles H. Muirheid, nor that the said mortgage had been executed, or was then assigned to her in the execution of any such intent, and these defendants further say that before taking the assignment of the said bond and mortgage, they took all
- 30 the necessary and proper precautions to ascertain whether the said mortgage was a first, valid, and ample security for the amount due thereon, and had the papers thoroughly examined by counsel learned in the law, who gave these defendants the opinion that the mortgage was a good and valid security, and thereupon these defendants paid to the said Charles H. Muirheid the sum of six thousand dollars (\$6000), the full amount due on the said mortgage.

And these defendants, Charles H. Muirheid, William H. Muirheid and Elizabeth H. Muirheid, his wife, Margaret E. Rhoades and James E. Rhoades, her husband, deny all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing, material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, ¹⁰ maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

A. G. RICHEY & SON,
Solicitors and of Counsel with Defendants.

Depositions.

Examination of witnesses in a cause depending in the Court of Chancery of the State of New Jersey, wherein Charles E. Smith is complainant and Charles ²⁰ H. Muirheid and others are defendants, taken at number 16 West State street, in the city of Trenton, on the twenty-seventh day of January, in the year of our Lord one thousand eight hundred and eighty, before Hugh H. Hamill, one of the masters of the said court, in the presence of Barker Gummere, Esquire, solicitor and of counsel with the said complainant, and of A. G. Richey and James Wilson, Esquires, solicitors and of counsel with the said defendants.

Pierson B. Hunt, a witness produced on the part of ³⁰ the complainant, being duly sworn, deposes and says—
I live near Titusville, in Hopewell township, in the

county of Mercer; farming is my occupation; I am not a freeholder, but I live on property which belonged to my father, in which my mother has a life estate; I manage the farm; I have been a farmer six years last spring; I am acquainted with the farms in the immediate neighborhood, not very far around; I live about a mile and a half or two miles from the farm of William H. Muirheid, occupied by William H. Muirheid; I know where the farm is; do not go by it very frequently; I
 10 have never been in any of the buildings, but they look good; the fencing looks good, as far as I have seen it.

Q. What would be your judgment of the value per acre of that farm, at the present time, sold on the ordinary terms, part cash and part credit or mortgage?

A. I could answer that question better if I were going to buy; I don't know that I could set a valuation on that; do you mean at the present time? I should think about \$10,000 for the farm.

Q. I mean by the acre—how much per acre?

20 *A.* It would bring forty-five or fifty dollars per acre; it is a pretty large farm.

Q. You don't think it would bring more than that?

A. Well, I don't know.

Q. What do you think is the difference in its value now, and its value in March, 1877?

A. Well, land would not sell at all at that time.

Q. What do you mean—for cash?

A. I could not give any price; farms set up at that time I could not get a bid on; farms in the neighbor-
 30 hood were set up for sale and you could not get a bid at any price.

Q. Do you mean private or public sale?

A. I mean public sales.

Q. Would it make any difference in your estimate of the value of the farm if the whole purchase money were to be secured by mortgage?

A. It wouldn't to me.

PIERSON B. HUNT.

Sworn and subscribed this 27th day of January
A. D. 1880, before me.

HUGH H. HAMILL, *M. C.*

Alfred W. Smith, a witness produced on the part of
the complainant, being duly sworn, deposes and says—

I live in Hopewell township, Titusville, in this county;
I sell goods—am a store-keeper; I should judge I live
in the neighborhood of three miles from the farm of
William H. Muirheid—from the buildings; I have lived
where I now live five years; before that I lived near Har- 10
bourtown, within two miles of Mr. Muirheid's; I was
then a farmer; I have known the Muirheid farm always;
raised not far from it; I have frequently been on the
place; the character of the buildings is good, and the
fencing moderately good.

Q. What, in your opinion, from your knowledge of
the farm, is its value by the acre?

A. I should think \$50 per acre was a good price
for it to-day.

Q. What, in your judgment, was its value per acre 20
in March, 1877?

A. I don't know that I could change it; property, if
it did sell at all, brought about the same price.

Q. Would it make any difference if the whole pur-
chase money was secured by mortgage?

A. I should think not.

ALFRED W. SMITH.

Sworn and subscribed this 27th day of January, A. D.
1880, before me.

HUGH H. HAMILL, *M. C.* 30

William B. Blackwell, [a witness produced on the
part of the complainant, being duly sworn, deposes and
says—

I live about a mile from Titusville, in Hopewell town-
ship, about four miles from the Muirheid farm; have

been a farmer, but am a retired farmer ; I have known the Muirheid farm forty or fifty years ; I have been along by it and along the road through the farm frequently ; the road through the farm, I understand, is a farm road the public use.

Q. What in your opinion is the present value, per acre, of the Muirheid farm ?

A. As near as I can tell \$50 an acre is a fair value ; it is guesswork what a farm will bring ; if it were to come to a sale, it might bring twenty per cent. more and sometimes twenty per cent. less than one would imagine ; I shouldn't suppose there was any difference in the value now and the value in March, 1877 ; the dullest time, I think, was in 1878, when grain was so very low.

WILLIAM B. BLACKWELL.

Sworn and subscribed this 27th day of January, A. D. 1880, before me.

HUGH H. HAMILL, *M. C.*

William H. Muirheid, a witness produced on the part of the complainant, being duly sworn, deposes and says—

I am one of the defendants in this cause and a brother to Mr. Charles H. Muirheid ; I have lived on that farm since 1867, and worked it in his employment up to the time he conveyed it to me.

Q. What were the terms upon which your brother employed you ?

A. By agreeing that I should be fully paid for my services.

Q. Was there any other agreement between you during the term of your employment ?

A. No, sir.

Q. Did your brother make you any payments for your services during the term ?

A. No, sir.

Q. Did you live on the farm during the term ?

A. Yes, sir.]

Q. Who employed the help on the farm?

A. I did.

Q. Who paid them?

A. I did.

Q. Who marketed the products of the farm?

A. I did.

Q. What did you do with the receipts of sales?

A. They went toward making improvements on the farm. 10

Q. Entirely—all of them?

A. They went also toward supporting the family; the family were supported from the receipts of the farm.

Q. Do you mean entire support, including clothing?

A. No, sir.

Q. Do you mean merely the table?

A. Yes, sir.

Q. Were any accounts kept of the farm operations, receipts and expenditures?

A. No, sir. 20.

Q. Was any money ever paid at all to your brother during the term from the receipts of the farm?

A. Yes, sir.

Q. Was any account kept of that, or receipts taken of the payments?

A. No, sir.

Q. When did you have a final settlement with your brother?

A. I think the last one we had was in June, 1878.

Q. When was the next preceding settlement to that? 30

A. That was the first and only one we ever had.

Q. In that settlement did you go over the receipts and expenditures of the farm during the term?

A. No, sir.

Q. What did your brother in that settlement allow you for your services during the term?

A. \$2000.

Q. Was that an allowance in gross, in lump, or at a rate per year?

A. In lump.

Q. During the term of employment, did you receive any money or moneys from your brother.

A. No, sir.

On being cross-examined on the part of the defendants, witness saith—

My father's name was John G. Muirheid; he died in
10 November, 1866; the family at home was composed of
my mother, my sister Sarah, who was single, my brother
John, myself, and my brother John's wife; John and his
wife had not yet left home, but were expecting to; the
arrangement which then took place with my brother
Charles to avoid a public sale was as follows: Charles
agreed to pay each one \$2000 apiece for our interest in
our father's estate, real and personal, which we all agreed
to take; he arranged my share and Sarah's share by giv-
ing us a joint mortgage for \$2000, each, on the farm;
20 and then, in order to keep the family (my mother, sister
and self,) together, it was arranged that I should take
charge of and superintend the farm, subject to his wishes
and orders, upon his agreeing to pay me for such service;
Charles had the privilege of coming there whenever he
chose, and bringing with him his wife, wife's maid, coach-
man and horses, and sometimes a friend with his wife,
and staying six weeks at a time; this continued till
March, 1877, when I bought the farm; my mother had in
the meantime died, and I had also been married; in
30 March, 1877, he agreed to sell me the farm for \$12,000;
he sent the papers to William B. Muirheid, a scrivener
living in Pennington, in this county, to be drawn; the
deed was executed by Charles to me; he was and is liv-
ing in Philadelphia; when the deed was returned from
him executed he sent it to William B. Muirheid, at Pen-
nington; I went to Pennington and executed a mortgage
to Charles for the whole amount of the purchase money,

\$12,000; I then held a mortgage against Charles for \$2000 on the farm; I had had no settlement with Charles of our matters at that time; I think it was in June afterwards I met Charles and had a settlement with him—that is, in May or June, 1877; when I said a while ago, in my examination (in chief), that I had made a settlement with Charles in 1878, I misspake myself, I meant 1877; in that settlement I told Charles that I thought I had allowed him more for the farm than it would bring in the market at that time; I told him I didn't think it 10 would bring over \$10,000, whereupon he agreed to reduce the mortgage \$2000; then we had a settlement, and he agreed to allow me \$2000 for my ten years' service; then there was due me \$2000 on the mortgage which Charles gave me originally for my interest in the real and personal property of my father's estate; these three items amounted to the sum of \$6000, which he agreed to endorse on the mortgage which I had given him on the farm, which left \$600 due on the mortgage; he mentioned the fact to me that he wanted money, and 20 thought of assigning the mortgage to Mrs. Margaret E. Rhoads, of Germantown; she is the wife of Dr. Rhoads; I told him I had no objections; he assigned the mortgage to her, and the interest has been paid to her semi-annually regularly ever since; I paid the last interest to her on the mortgage in July, 1879, by sending her my check by my brother Charles; she sent me, by her attorney, Dr. Rhoads, a receipt for the interest, in a letter directed to me at Titusville; at the time I bought the farm of my brother Charles, in the spring of 1877, 30 I did not know there was such a man living as the complainant in this cause, nor did I know that my brother Charles was indebted to him, or that he was indebted to any one else, at the time I purchased the farm of my brother Charles; during the time I superintended the farm for my brother Charles, farm products, as a general thing, were very low, and the cost of labor was very high; there were living seven children of my father at

the time of his death, and one, Charity, had died, leaving one child, so that there were seven heirs of my father besides my brother Charles; after my father's death and Charles' purchase of the homestead property, Charles made it a home for his mother and single sister and me; my mother died in December, 1872; my single sister, Sarah, kept it as her home up to the time of my purchase of the property from my brother Charles, and since then I have given her a home there.

10

WILLIAM H. MUIRHEID.

Sworn and subscribed, this 27th day of January, A. D. 188), before me.

HUGH H. HAMILL, *M. C.*

I hereby certify that for the correct understanding of the above evidence, which was taken down in the form of question and answer, it was necessary, from the subject matter, to take down both question and answer; and that it was so determined by me.

HUGH H. HAMILL, *M. C.*

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- 20 Examination of witnesses in a cause depending in the Court of Chancery of the State of New Jersey, wherein Charles E. Smith is complainant, and Charles H. Muirheid and others are defendants, taken by consent of parties at No. 16 West State street, in the city of Trenton, on the sixteenth day of February, in the year of our Lord one thousand eight hundred and eighty, before Hugh H. Hamill, one of the masters of the said court, in the presence of Barker Gummere, Esquire, solicitor and of counsel with the said complainant, and of A. G. Richey, Esquire, and James Wilson, Esquire, solicitors and of counsel with the defendants.
- 30

John M. Hoppock, a witness produced on the part of the complainant, being duly sworn, deposes and says—
I reside at Titusville, Mercer county; I run a hotel at

Titusville; my brother and I own a farm there; the farm is about a mile this side of Titusville and about three and a half miles from the Muirheid farm; in my farm are ninety eight acres.

Q. At what do you value your farm per acre? [Question objected to by counsel for defendant, as improper.]

A. That is a hard question to answer at these times; we value it at much more than we can get for it at these times.

Q. When did you buy the farm? 10

A. Last February or March.

Q. What did you pay for it?

A. Thirty-five hundred dollars; that is what it was struck off to me for.

Q. Was it sold at public or sheriff sale?

A. Sold at sheriff sale.

Q. What would you be willing to take for that property to-day? [Objected to as improper by counsel for defendant.]

A. I have put on the property some \$2500; since I bought it, I put on the farm a new big barn, a new cow-house, and weather-boarded part of the house and painted the house on the outside; I put on manure, lime, a parcel of new fence, dug a cistern and put a pump in it.

Q. Then the farm was very much run down and the buildings in bad condition, when you bought?

A. Yes, there wasn't much of a barn on it, and I made up my mind to tear it down.

Q. It was in a bad condition, generally? 30

A. The barn was; it wasn't as big as I wanted it, anyhow; the house was in pretty good condition.

Q. Wasn't the land very much run down?

A. Well, no; we got as good crops off of it as my neighbors did.

Q. Do you know anything of the value of the Muirheid farm?

A. I don't; I don't know much about it.

Sworn and subscribed this 16th day of January, A. D. 1880, before me.

HUGH H. HAMILL, *M. C.*

Levi B. Stout, a witness produced on the part of the complainant, being duly sworn, deposes and says—

I reside in Mercer county, near Moore's station, in Hopewell township, about two miles and a half or three miles above Titusville; my occupation is farming; my farm is not less than four miles from the Muirheid farm.

10 Q. Are you acquainted with the Muirheid farm?

A. I am not much acquainted with the nature of the soil; I have frequently been by it; I never traveled over the farm of any account.

Q. Have you ever been on it at all?

A. Yes, sir; I have.

Q. More than once?

A. Yes, sir; I have.

Q. How many times, do you suppose?

A. I don't know whether I am hardly able to answer
20 that; I think I have been at the buildings three or four times, but have never gone over the land.

Q. Are you acquainted with the value of property in that vicinity?

A. I don't know if I am; I never have dealt in property except my own; only what I have heard of sales made.

Q. From what knowledge you have, what would you consider the fair market value of the Muirheid farm to be, if sold on the usual terms, part cash and part credit
30 or mortgage?

A. Well, how many acres are there in the farm?

[Counsel for complainant says—two hundred and seventeen acres.]

Witness says—That is a pretty hard question to answer; I would suppose, as near as my judgment would serve me, a farm of that size and take into consideration the quality of the land, as near as I know, would range

at from \$40 to \$50 an acre, as near an estimate as I as I could put on.

On being cross-examined on the part of the defendant, witness saith—

Q. You speak of the value of that farm now; will not farm land bring a better price now than it would some two or three years ago, when business was depressed and farm produce very low?

A. I suppose it ought to be worth something more 10 now than two or three years ago; but I don't know if there has been much change in price.

Q. As a general thing, will not farms of about one hundred acres, with suitable buildings on, bring a better price per acre than large farms of two hundred acres and over?

A. Yes, sir; I think they will; they sell more readily.

LEVI B. STOUT.

Sworn and subscribed this 16th day of February, A. D. 1880, before me.

HUGH H. HAMILL, *M. C.* 20

William H. Muirheid, a witness recalled on the part of the complainant, being duly sworn, deposes and says—

Q. By referring to the deed in evidence in this case from Charles H. Muirheid to yourself, I see that the live stock, farming utensils, furniture, and all manner of personal property on said farm was included in that sale; was there an inventory and appraisalment of the stock, personal property and articles above mentioned, at that time?

A. No, sir; there was a short time before that, but 30 not at that time.

Q. How long before?

A. In the fall of 1866.

Q. Have you that appraisalment now?

A. I think I have.

Q. Have you it with you ?

A. No, sir.

Q. For what purpose was it made at that time ?

A. It was made at the death of my father.

Q. Then there was no appraisement or inventory at the time of this purchase and sale ?

A. No, sir.

Q. Can you tell me what live stock, farming utensils, furniture, and personal property was on the farm at that
10 time belonging to Charles H. Muirheid, and passing to you by that deed ?

A. No, sir.

Q. Why not, sir ?

A. It would take some figuring.

Counsel says--We will give you all the time you want to figure.

Witness says—I could not tell exactly.

Counsel says—You must make an effort.

Q. I could not remember, exactly, just
20 how much of everything of that kind was on the farm at that time.

Q. How many horses have you on the farm now ?

A. Four.

Q. How many of those were on the farm at the time of that sale ?

A. I think three ; do you mean the number of horses belonging to Charles H. Muirheid ?

Q. Yes, how many belonging to him ?

A. One.

Q. Then you owned some personal property and live
30 stock on the farm at that time yourself ?

A. Yes, sir.

Q. Please state just what that was you owned there ?

A. I could not state exactly, from memory.

Q. Make an effort, and state as near as you can ?

A. I should think I owned two-thirds of the personal property at the time of that sale.

Q. Do you mean two-thirds of all the live stock,

household furniture, farming utensils, and all other personal property on the farm at that time ?

A. I do.

Q. State how you acquired that property ?

A. Bought it.

Q. When, and from whom ?

A. At different times, and from different persons.

Q. Was it all bought between the time of your father's death and the time of this sale ?

A. No, sir.

10

Q. How much of it did you own prior to your father's death ?

A. I think I owned two horses, two wagons, some harness, five head of cattle ; that was about all, of any value, I think.

Q. And those you took with you, when you assumed charge of the farm, did you ?

A. Yes, sir.

Q. Where did you acquire all the means to buy all the rest of the personal property, with the exception of 20 those articles named by you, that you owned at the time of the sale ?

A. From my father.

Q. How much money did you get from your father ?

A. I think, as near as I recollect, about \$1500 ; I can't say it all came from my father, for I made some of it myself, before my father's death ; if you want to know how, I can tell you.

Q. Was any of it bought by proceeds from the farm ?

A. No, sir.

30

Q. Are those two horses that you owned prior to your father's death among these four now on the farm ?

A. No, sir ; I would not give much for them if they were.

Q. Are those five head of cattle now on the farm ?

A. No, sir.

Q. Were they there at the time of this sale ?

A. No, sir.

Q. Were those two wagons there at the time of the sale?

A. No, sir.

Q. Now, you said that out of the four horses at present on the farm only one of them belonged to Charles H. Muirheid, and the other three were your own—were there any others there at that time that belonged to Charles H. Muirheid?

A. No, sir.

10 *Q.* What horse is that?

A. It is a brown horse.

Q. How long has it been on the farm?

A. Ten or eleven years, I should judge.

Q. Did your brother, Charles Muirheid, buy it at that time?

A. Yes, sir.

Q. Is there a white horse on the farm?

A. There is.

Q. Is that yours?

20 *A.* It is.

Q. Did you buy it?

A. I did not.

Q. How did you get it?

A. It was given me.

Q. Who gave it to you?

A. Mrs. Thomas H. Powers, of Philadelphia.

Q. Did your brother, Charles Muirheid, give you that horse?

A. I have just testified that he didn't.

30 *Q.* I want to get this down positively—will you swear that that white horse was not given as a present to your brother, Charles H. Muirheid, and by him sent up to that farm?

A. I will.

Q. What do you consider the value of that brown horse?

A. About \$100, I should think.

Q. How many cows are there on the farm at the present time?

A. Five.

Q. Were they there at the time of the sale?

A. I guess every one of them; I don't think there has been any change made in cows since then.

Q. Did they belong to your brother Charles at the time of that sale?

A. I think there was one I had a half interest in.

Q. Did it have a name, so that we can identify it? 10

A. Yes, sir.

Q. Give the name?

A. Test.

Q. Then the half interest in that cow, and the other four, belonged to your brother?

A. Yes, sir.

Q. Was there a bull on the place at that time, or more than one?

A. One bull.

Q. Did that belong to your brother? 20

A. Yes, sir.

Q. What was the name of that bull?

A. Had no name.

Q. Were the other four cows named which are now on the farm?

A. Yes, sir.

Q. Give the names?

A. The boys have names for them—Betsy, Honest, Jenny, and one I have no name for.

Q. Any calves there 30

A. Now?

Q. Yes, now.

A. Four.

Q. Are these thoroughbred Jersey cows or common, ordinary stock?

A. But one thoroughbred cow; the others are grades.

Q. Name the thoroughbred?

A. Test; she is a Guernsey.

Q. Were there any other cows there at the time of the sale which are not there now, which belonged to your brother, Charles H. Muirheid ?

A. Yes, sir; three.

Q. Will you name them ?

A. Belle and Clemmy; I forget the name of the third.

Q. These were thoroughbred Guernseys, were they not ?

10 *A.* No, sir; they were thoroughbred Jerseys.

Q. Belle was called La Belle Helene, wasn't she ?

A. Yes, sir.

Q. These three and the cow Test were four of those which were imported by your brother Charles, were they not ?

A. Yes, sir.

Q. And the other cows and the calves on the place are their issue, are they not ?

A. No, sir; we have but one left of the issue of any
20 of those.

Q. Which one is that ?

A. She is the one unknown (without a name) Alderney.

Q. Wasn't the bull on the place at that time the imported bull Hopewell ?

A. No, sir.

Q. Was it the bull imported by your brother ?

A. No, sir.

Q. Was it a common bull, or one of the finer breeds ?

30 *A.* It was a cross between Alderney and Guernsey.

Q. Out of the imported stock ?

A. Yes, sir.

Q. What has become of that bull ?

A. I sold him about three weeks ago to a butcher here
in Trenton.

Q. How much did you get for him ?

A. \$17.25.

Q. What has become of those three thoroughbred Jersey cows?

A. They were sold to Mr. Starr, of Connecticut.

Q. What price did you get for them?

A. \$275 for the three.

Q. What did you do with that money?

A. Paid my debts, I guess.

Q. Did you pay all or any part of it directly or indirectly to your brother, Charles H. Muirheid, or to any body else, for his use or benefit? 10

A. I think not.

Q. We shall have to ask you to be positive about it?

A. I can't be positive about what I don't know.

Q. Your memory is not impaired, is it?

A. Not that I am aware of.

Q. Not suffering from any brain trouble that would render it imperfect?

A. Not that I know of.

Q. I ask you to state positively what you did with that money? 20

A. As near as I can tell, I thought I paid my debts with it, and I still think so.

Q. Will you swear positively that none of it went directly or indirectly to Charles H. Muirheid, or to any one else, for his use or benefit?

A. I will; I am positive about that.

Q. What do you consider to be the value, each, of the five cows and the four calves now remaining upon the farm?

A. I don't think the five cows would bring \$40 apiece, 30 including Test; the other cows would bring more apiece than Test would now.

Q. The four calves?

A. Probably \$15 apiece; I paid \$7.50 apiece for them last fall.

Q. Then these calves were not out of the stock that belonged to your brother?

A. No, sir.

- Q.* Or any of their issue.
A. No, sir; not at all.
Q. There was an imported bull brought there at the same time with the cows imported by your brother?
A. Yes, sir.
Q. There at the time of the sale?
A. No, sir.
Q. Sold before?
A. Yes, sir.
10 *Q.* Any mules on the place?
A. One pair.
Q. Were they there at the time of the sale?
A. Yes, sir.
Q. Did they belong to your brother Charles?
A. Yes, sir.
Q. They were included in what you bought at that time?
A. Yes, sir.
Q. What do you consider them to be worth?
20 *A.* I should think \$200 a fair price for them.
Q. Isn't that a little low?
A. No, sir; they are old but fine looking; one especially old, and the other not young.
Q. Can you tell us something about the farming utensils on the farm, which belonged to your brother at the time of the sale?
A. Not definitely.
Q. We want to know if there were farming machines, mowers, rakes, threshers, horse powers, &c.?
30 *A.* The most of these I bought between father's death and the sale; the thresher was his.
Q. How long has the thresher been there?
A. I should think ten or eleven years, as near as I can tell.
Q. Do you know what it cost?
A. \$200, I think.
Q. What do you think it was worth at the time of the sale?

A. I suppose it was fully half-worn; I suppose it was worth no more than half what it was when new?

Q. About \$100?

A. It wouldn't bring more than that.

Q. Is there a horse-power connected with it?

A. Yes, sir.

Q. Do you know what that cost?

A. I guess with the machine that went with it, which was an old one, the cost was about \$160; the old machine which was used with this power was worn out; 10 it was purchased some twenty years ago; the power was used with the new machine purchased ten or eleven years ago.

Q. What was the value of the horse power at the time of the sale?

A. Not over \$25 or \$30.

Q. What other machines were there?

A. A reaper.

Q. What did that cost?

A. About \$200. 20

Q. Was it comparatively new?

A. Very old; sold it last week for \$6.

Q. Was that the only reaper?

A. The only one at that time; there was a mowing machine.

Q. What was its cost and its worth?

A. Cost about \$90; worth at the time of the sale probably \$20, not over that, as it was old.

Q. Serviceable yet?

A. Yes, sir. 30

Q. What else there?

A. A carriage.

Q. More than one?

A. Not that belonged to him?

Q. What kind of a one was it?

A. It was a Germantown; it was old; there were also two old farm wagons.

Q. What, at the time of the sale, was the value of the Germantown?

A. \$25 or \$30.

Q. The old farm wagons were worth how much?

A. Hard to tell; about \$5 or \$10 apiece; but worth more than that for a man to use.

Q. Did not Mr. Muirheid have other carriages up there which he used to drive around in when he came up to the farm?

10 *A.* No, sir; he didn't leave any there.

Q. How many carriages have you there now?

A. Three, including the Germantown, which belonged to my brother.

Q. Did your brother give you either of these?

A. No, sir.

Q. Bought them of outside parties did you?

A. Yes.

Q. Can you name anything else on the farm belonging to your brother at the time of the sale?

20 *A.* Plows, harrows, cultivators.

Q. How many plows belonged to your brother at the time of the sale?

A. I think but one plow.

Q. Value?

A. \$8 or \$10.

Q. What harrows that belonged to your brother?

A. One harrow, worth about \$8.

Q. Cultivators?

30 *A.* Not one, I think, which belonged to him at time of sale; there was a horse rake worth about \$5, and a lime spreader worth about \$20.

Q. Anything else?

A. A lot of poultry, probably \$30 or \$35 worth; that is all I think of.

Q. Any harness belonging to your brother?

A. No, sir.

Q. Any sheep?

A. None belonging to my brother.

- Q.* What in the way of crops, grain and the like?
A. About what there usually is at that season of the year.
- Q.* Give some idea of what and how much there was?
A. I don't think there was \$100 worth, all told.
- Q.* How much hay?
A. Four or five or six tons; worth \$7 or \$8 at that season.
- Q.* What else—corn?
A. The corn was sold before the sale in the fall, previous to the sale. 10
- Q.* Oats?
A. The oats were sold before the sale.
- Q.* Do you mean you had no corn or oats, but only that the majority of it was sold?
A. We keep a little for feed when we sell the crop.
- Q.* How much of each had you on hand?
A. Fifty bushels of corn probably; probably one hundred bushels of oats.
- Q.* What were they worth at that time? 20
A. Oats about twenty-four cents, and corn about thirty-eight cents.
- Q.* Any other crop on hand?
A. No, sir.
- Q.* Did the household furniture belong to your brother?
A. No, sir; I think not much of it.
- Q.* Why was it mentioned in the deed, then?
A. Why, sir, to cover everything that was there, I suppose.
- Q.* If it did not belong to your brother Charles, to whom did it belong? 30
A. It belonged to my mother, and afterwards to my sister; there might have been some things which belonged to my brother Charles; I don't wish to testify that nothing belonged to Charles.
- Q.* Did your father leave a will?
A. He died intestate.
- Q.* When Charles bought out the interest of his

brothers and sisters in the farm, did it include the household furniture?

A. All of it belonging to my father.

Q. It all belonged to him?

A. No, sir; it did not all belong to him.

Q. How much of it do you suppose did?

A. A small part of it; most belonged to my mother before his death.

10 *Q.* Was there a nursery on the farm at the time of the sale?

A. No, sir.

Q. Didn't you have several acres of young fruit trees set out as a nursery?

A. No, sir.

Q. Have you ever offered for sale all or any part of this farm since the time you purchased it?

A. I have.

Q. State how much, or what part, to whom, and for what price?

20 *A.* I think about two acres with a little house on it, a three-cornered lot, for \$500, and a half interest in a peach nursery, now on my farm, which was put out on shares by the man to whom I offered the lot.

Q. Did you or did you not consult your brother Charles as to whether you should make this sale or not?

A. I did not.

On being cross-examined on the part of the defendant, witness saith—

30 *Q.* What was your age, and what were you worth, at the time of your father's death?

A. I was twenty-five years of age, and I was worth about \$1500.

Q. Was the Muirheid farm—the late homestead of your father—the home of your mother as long as she survived your father, and also the home of your sister Sarah?

A. Yes, sir.

Q. Was that one object of your brother Charles, in buying the heirs' interest in it, to make it your mother's and sister's home?

A. Yes, sir.

Q. How soon after your brother Charles bought the farm, did he encourage you to purchase it of him—as soon as you felt able to do so?

A. Very soon, I could not tell exactly, but he frequently spoke to me about it, and said he wanted me to make it mine. 10

Q. What did you do with the horses and cows which you owned when Charles bought the farm?

A. One of them, I think, is still upon the farm; it is an old pony my father gave me, some thirty years old now, and not worth thirty cents; the other horse I used on the farm until I exchanged it for another; the cows, two were killed for beef; the other three I could not tell what became of them now—probably went in exchange for others put upon the farm; my mother survived my father some six or seven years. 20

Q. What were the circumstances of the giving of the white horse by Mrs. Powers to you?

A. Mrs. Powers is an old friend of our family; her father and mother were sheltered there when the yellow fever was raging in Philadelphia, many years ago, and they have never failed to do us an act of kindness when the opportunity arose; she had this horse, which she thought too wild for her use; she told Charles she wouldn't sell him, but I could take him up in the country, and if I found him useful to me, keep him; and if not, send him back to her, but not to sell him; I said I would take him and try him, and so wrote my brother Charles to send him up on the boat Edwin Forrest, and I would meet him in Trenton, which I did; I have found him very useful and have him still; on receipt of the horse, I wrote to Mrs. Powers a letter of thanks as sincere as I knew how to write, and she acknowledged the receipt of it from me; it is a good many years since my 30

brother Charles imported the thoroughbred cattle; the Jerseys were imported some thirteen or fourteen years ago; the Guernsey cattle that he imported, were imported eight or nine years ago.

On being re-examined in chief by counsel for compliant, witness saith—

Q. Has Mrs. Powers ever visited you at the farm?

A. She has been there frequently, but not since I have owned the farm; she was there in my father's time frequently, but never since.

Q. Have you ever visited her in Philadelphia?

A. Yes, sir; both at her city and country residence.

Q. Since your father's death?

A. About that time, but I think a little before, and frequently in my father's lifetime; but never since.

Q. You have never seen her from the time of your father's death, until, as you say, she made you a present of this horse?

A. I couldn't say I have never seen her since my father's death; I think the last time I visited her at her house, was somewhere about the time of my father's death.

Q. Have you ever seen her since that time that you saw her, about the time of your father's death?

A. I could not say whether I have or not.

Q. You would be apt to remember it, would you not?

A. Well, no; I might have seen her in the street; I might have forgotten; I think I have seen her in her carriage since.

Q. Have you ever had any correspondence with Mrs. Powers, with the exception of the one letter of thanks, which you say you wrote her?

A. No, sir; not personally; she corresponded with some of the family.

WILLIAM H. MUIRHEAD.

Sworn and subscribed this 16th day of February, A. D. 1880, before me.

HUGH H. HAMILL, *M. C.*

Richard H. Richardson, a witness produced on the part of the complainant, being duly sworn, deposes and says—

I live in the city of Trenton; I do not own a farm in Hopewell township, but in Hunterdon county, in the immediate vicinity of the Muirheid farm, just across the road from it; a public road runs between; the size of 10 my farm is about eighty acres; I purchased the farm in March, 1878, about two years ago; I paid \$8000 for the farm, including the growing grain and two Baltimore heaters in the house; I do not know whether this was ever a part of the original Muirheid farm; I bought it of John G. Muirheid, brother of William H. Muirheid; I have been told it was not a part of the original Muirheid farm; I have not sufficient knowledge to give a judgment of the value, per acre, of the Muirheid farm.

Q. Do you know whether it is the same character of 20 land as your own?

A. It is not as good as my own.

On being cross-examined by counsel for defendant, witness saith—

Q. What is your occupation, and what has it been for many years?

A. Clergyman, and has been all my life.

R. H. RICHARDSON.

Sworn and subscribed before me, this 16th day of February, A. D. 1880.

HUGH H. HAMILL, *M. C.* 30

Solicitor for complainant offered in evidence an exemplification of the record and proceedings of a judgment

recovered by Charles E. Smith against Charles H. Muirheid in the Court of Common Pleas, No. 2, of the county of Philadelphia, Penna., which is marked *Exhibit A, ex parte* complainant.

Said solicitor also offered in evidence a certified copy of a writ of attachment in the Supreme Court of New Jersey, in a suit by Charles E. Smith against Charles H. Muirheid, which I have marked *Exhibit B ex parte* complainant; and also a certificate of the judgment recovered in
10 said suit in attachment, which I have marked *Exhibit C ex parte* complainant.

Said solicitor also offered in evidence a certified copy of a deed from Charles H. Muirheid and wife to William H. Muirheid, dated March 16th, 1877, which is marked *Exhibit D ex parte* complainant.

I hereby certify that, for the correct understanding of the above evidence, which was taken down in the form of question and answer, it was necessary, from the subject matter, to take down both question and answer; and
20 that it was so determined by me.

HUGH H. HAMILL, M. C.

Opinion of Chancellor.

[Filed May 24, 1881.]

Bill for relief. On final hearing on pleadings and proofs.

Mr. B. Gummere, for complainant.

Mr. A. G. Richey and *Mr. J. Wilson*, for defendants.

THE CHANCELLOR.

This is a suit in aid of an attachment. The complainant recovered judgment against the defendant, Charles H. Muirheid in the Court of Common Pleas of Philadelphia, December 31st, 1878, for \$18,886.60 on a promissory note for \$30,000 and interest, given by the latter to the former July 10th, 1873, and payable twelve months from date. He issued a foreign attachment (the defendant in the judgment being a non-resident) out of the Supreme Court of this state, February 7th, 1879. By virtue thereof the property and estate of Charles H. Muirheid, in a farm of two hundred and seventeen and twenty-four hundredths acres, or thereabouts, in Hope-
well township, in Mercer county, was attached. Judgment was entered in the attachment December 9th, 1879, for \$19,780.99, besides costs. The object of this suit is to reach, in aid of the attachment, the interest of Charles H. Muirheid in that property, which, according to the allegations of the bill, was fraudulently, and with intent to hinder and delay the creditors of the grantor, conveyed by Charles H. Muirheid to his brother, the defendant, William H. Muirheid, by deed dated March 16th, 1877. The bill waives answer on oath. It appears from the evidence that the farm was owned by John G. Muirheid, the father of the parties to that deed (whose

homestead it was) up to his death, which occurred November, 1866. He left six children and the children of a deceased daughter. Soon after his father's death Charles purchased the interest of the other children and the children of his deceased sister in the real and personal estate, at \$2000 for each of the six shares. At the father's death, the family living on the farm consisted of the widow, a daughter named Sarah, and a son named John and his wife, and William. John and his wife, 10 however, soon moved away. For the price of the shares of Sarah and William, Charles gave to them together a mortgage on the farm. It was agreed between Charles and William at the time of the purchase that in order to keep the family together on the homestead, William should take charge of the property and cultivate and manage the farm. William says that for his service Charles was to compensate him fully, and that the superintendence and management of the property were to be subject and according to the wishes and directions of 20 Charles, and that Charles was to have the privilege (as William expresses it) of coming to the farm with his family whenever he chose. William says Charles availed himself of the privilege by coming with his wife, her maid, his coachman and horses, and sometimes bringing also a friend of his wife's, and they would stay six weeks at a time. This arrangement continued for ten years, up to March, 1877. The widow died, however, in 1872. In March, 1877, Charles agreed to sell the farm and his personal property there to William, 30 for \$12,000, and he caused a deed for them to be drawn accordingly, and also a mortgage to himself on the same property, for the \$12,000, the whole of the purchase money. The deed purported to convey the farm and "all the live-stock, farming utensils and furniture, including all manner of personal property on the farm." It was sent to him at Philadelphia, where he lived, to be executed, and he executed it accordingly. After was returned William executed the mortgage. In May

or June, 1877, Charles and William had what the latter calls a "settlement," in which William insisted that the price at which the property had been sold to him was too high, and more than it would bring in the market, and it was accordingly agreed between them that there should be a deduction of \$2000 from the price on that account; the amount to be credited on the mortgage. It was then also agreed that William was entitled to \$2000, or \$200 a year from Charles, for his compensation for the ten years' services he had rendered under the agreement for cultivating and managing the farm; that amount also to be paid by a like credit. It was also agreed that William should have allowance in the same way for the \$2000 secured to him by the mortgage given to him and Sarah by Charles, as before mentioned. The aggregate of these sums, \$6000, was then credited upon the mortgage of \$12,000. That mortgage was subsequently assigned to Margaret E. Rhoads, of Germantown, Pennsylvania, by whom it is now held. On the hearing, her title to it as a valid security was not questioned, but admitted.

That Charles H. Muirheid, when he made the conveyance to William, owed the complainant a large sum of money which he was unable to pay, is abundantly proved. It seems quite clear that he was anxious to put the property beyond the reach of his creditors. He made the conveyance only about three weeks before the complainant began suit against him in Philadelphia. He took a mortgage for the whole purchase money. He sold the property, real and personal, without inventory or appraisal. The personal property, consisting of live stock, farming utensils, grain, &c., appears to have been worth \$1200, at least. In this connection it may be added that the deed purports to convey furniture, when in fact Charles owned none there. The reason for that, according to William's statement, was that he might be sure to cover everything. The consideration of the deed, if not fixed by Charles himself alone, was agreed to by

William with so little consideration that the latter, in the settlement, successfully insisted upon a deduction of \$2000 from the price, on the ground that it was so much more than the property would bring in the market. The bill, as before stated, waives answer on oath, and the defendants have not seen fit to produce Charles as a witness. We have therefore no statement on oath, from him. William denies all fraud, and testifies that when he bought the property he not only did not know that

10 Charles owed the complainant anything, but did not know that he was indebted to anybody. It is urged in his behalf that in buying the property he was innocent of any design to defraud, and therefore is entitled to hold it against the complainant and all other creditors of Charles. And it is further insisted that inasmuch as it is not made to appear that Charles is insolvent, William cannot be disturbed in his title to the property by the complainant in this suit. As to the first point: a conveyance to be good against existing credit-

20 ors must be upon good consideration and *bona fide* also. It is not sufficient that it be upon good consideration or *bona fide*; it must be both, and if it be defective in either particular, although valid between the parties and their representatives, it is invalid as to existing creditors. *Sayer v. Fredericks*, 1 *C. E. Green* 205; *Randall v. Vroom*, 3 *Stew.* 353; *Story's Eq. Jur.*, § 353. In view of the circumstances it is difficult to believe that William had not, when the conveyance was made, any knowledge or understanding that there was a reason arising from or

30 connected with Charles' pecuniary embarrassments for the transfer which was apparently suddenly, if not hastily made, on the part of Charles; and it was certainly inconsiderately accepted on William's part. It is urged that such knowledge, on the part of the grantee, will not make a transfer fraudulent as against creditors, even though the grantor's design was fraudulent, and *MERCHANTS' BANK v. Northrop*, 7 *C. E. Green* 58, is cited as authority; but in that case it appears that a valuable consideration was paid and that the conveyance was *bona*

fide, and what was said by the court on the subject of knowledge, had express reference to a case where there was a *bona fide* conveyance for valuable consideration. In the case in hand, William had never sought to buy the property. The proposition to sell came from Charles, and it appears to have been acted upon at once, and on the transfer William gave Charles a mortgage for the whole of the purchase money, although as he says, Charles at the time owed him \$2000 on the mortgage given to him and Sarah by Charles, for purchase money, 10 and was indebted to him in a large sum for his services. There is further reason to conclude that the transfer was not *bona fide* on the part of William in the allowance of \$2000 made to him with respect to his services just referred to, as superintendent and manager of the farm. He testifies that he had, during those ten years, the entire products of the farm except what went for the supply of the table. He kept no account of them. He never rendered any account of his stewardship, and it does not appear that any was ever required of him. The 20 family, after the death of the mother in December, 1872, consisted of only himself and his wife and his sister Sarah. He never made any demand on Charles for compensation, and Charles never paid him anything on account of it. He had no written evidence of the agreement on which the claim was based. Even in the settlement of 1877 there was no account of his receipts or expenditures. On the allowance of \$2000 for services, no receipt or discharge was taken except, perhaps, in the endorsement of the credit, which is not before me. That allow- 30
ance on account of the consideration cannot be regarded as having been made *bona fide*. There is too much evidence of fraud in the transaction to permit the conveyance to stand as valid as against the complainant. As to the second point, that it does not appear that Charles is insolvent. The complainant comes, as before stated, into court to obtain its assistance in aid of the lien he has obtained under the attachment.

His bill is filed for the benefit of himself and such other creditors of Charles as shall join in this suit. It merely seeks to remove a fraudulent deed and mortgage out of the way of the attachment. It has repeatedly been decided that such a suit is maintainable. *Williams v. Michenor*, 3 *Stockt.* 520; *Robert v. Hodges*, 1 *C. E. Gr.* 299; *Curry v. Glass*, 10 *C. E. Gr.* 108. In *Williams v. Michenor* it was said, "The aid of this court is sought to disembarrass the title of the difficulties which the debtor has thrown around it for the purpose of defrauding his creditors. If the auditor should sell the property as the title now stands, with the defendant's interest in the property uncertain and a matter of controversy, and with claims upon it unadjusted, it is manifest the property must be sacrificed. This court can relieve the title of all such difficulties. It can adjust all claims upon the property and secure their payment. It can ascertain what interest the defendant has in the property and what portion of it ought legally and equitably to be sold under the attachment. It is for the benefit of all parties interested that this should be done before the property is sold. It can be done only by this court. This court alone can make the attachment of any real advantage to the creditors. Its aid is properly invoked to assist the complainants in their legal remedy." It is obvious that in such a suit as this it is a matter of no importance whether the debtor is insolvent or not. The complainant is entitled to the assistance of this court in aid of his legal remedy. The property should be sold subject not only to the amount due Mrs. Rhoads on the mortgage of \$12,000, but also to the money due William on the mortgage given to him and Sarah, and the proceeds applied to the payment of the judgment in attachment. By the answer it is said that there was a little over \$2000 due William on the latter mortgage at the settlement in 1877. It does not appear whether the claim of Sarah to \$2000 and interest under that mortgage has been in any way satisfied. She is not a party to this suit. By the

answer it is stated that on the settlement between William and Charles in 1877 that mortgage was produced and canceled of record. If she has any equity to be protected in the premises, she must be left to assert her right. As to the personal property, the attachment is not a lien upon it, and the bill being filed merely in aid of the lien of the attachment, there can be no relief granted in reference to that property. The complainant is entitled to costs.

Final Decree.

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[Filed December 8, 1881.]

This cause coming on to be heard on bill, answer, replication and proofs, before the Chancellor, in the presence of Barker Gummere, of counsel with the complainant, and of A. G. Richey and James Wilson, of counsel with the defendants, and the pleadings and proofs having been read and the arguments of counsel heard, and the court having taken time to consider the same; and the court being now of opinion that the complainant is entitled to relief, and it appearing that the said complainant on the seventh day of February, A. D. eighteen hundred and seventy-nine, caused a writ of attachment to be issued out of the Supreme Court of the State of New Jersey against the rights and credits, &c., and lands and tenements of the defendant, Charles H. Muirheid, and which said writ was duly levied upon the lands and premises set forth and described in the bill of complaint in this cause, and that the said complainant hath obtained judgment in said suit in attachment against the said defendant, Charles H. Muirheid, on the ninth day of December, A. D. eighteen hundred and seventy-nine, for the sum of nineteen thousand eight hundred and thirty-two dollars and eighty-nine cents of

debt and costs; and it also appearing that on the fifteenth day of March, A. D. eighteen hundred and seventy-seven, the said Charles H. Muirheid conveyed the said lands and premises in the said bill described to the defendant, William H. Muirheid, with the intent to delay, hinder or defraud the creditors of the said Charles H. Muirheid of their just and lawful actions, suits, accounts, debts and demands; and that the defendants, William H. Muirheid and Elizabeth H., his wife, with
10 the same fraudulent intent, executed and delivered to the said Charles H. Muirheid a mortgage upon the same lands and premises, to secure the sum of twelve thousand dollars, with interest, and that the same bears date the third day of April, A. D. eighteen hundred and seventy-seven, upon which mortgage, or the bond accompanying the same, the said Charles H. Muirheid endorsed and credited a pretended payment of six thousand dollars thereon, pretended to have been made by the said William H. Muirheid; and it also appearing that
20 on the ninth day of August, A. D. eighteen hundred and seventy-seven, the said defendant, Charles H. Muirheid, assigned the said mortgage to the defendant, Margaret E. Rhoades, for the actual consideration of six thousand dollars, and that she paid the said consideration without notice of the aforesaid fraudulent acts and intent of the said Charles H. Muirheid and William H. Muirheid:

It is thereupon, on this sixth day of December, A. D. eighteen hundred and eighty-one, by his Honor Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, “that the deed of conveyance made and delivered by Charles H. Muirheid and Elizabeth N., his wife, to William H. Muirheid, dated the sixteenth day of March, A. D. eighteen hundred and seventy-seven, and whereby they conveyed to the said William H. Muirheid, his heirs and assigns, the lands and premises described in the bill of complaint in this cause, is fraudulent and void as against the said complainant, and as against him be set aside and for
30

nothing holden," and that the said indenture of mortgage made and delivered by the said William H. Muirheid and Elizabeth H., his wife, to the said Charles H. Muirheid, dated the third day of April, A. D. eighteen hundred and seventy-seven, and assigned by the said Charles H. Muirheid to Margaret E. Rhoades, on the first day of August, A. D. eighteen hundred and seventy-seven, is a valid and subsisting lien upon the lands and premises described in the said bill of complaint, so far as to secure to the said Margaret E. Rhoades and her assigns, the principal sum of six thousand dollars, with legal interest thereon from the date of said assignment, or so much of said principal and interest as remains unpaid thereon; and that the judgment of the said complainant recovered by him in the Supreme Court of New Jersey, in foreign attachment, against the said defendant, Charles H. Muirheid, is a valid and subsisting lien upon the lands and premises set forth and described in the said bill of complaint, for the sum of nineteen thousand eight hundred and thirty-two dollars and eighty-nine cents, together with lawful interest thereon from the ninth day of December, A. D. eighteen hundred and seventy-nine, but subject to the prior lien thereon of the aforesaid mortgage assigned to the said Margaret E. Rhoades, for the amount aforesaid, and subject, also, to the lien of a mortgage debt to the said William H. Muirheid, or so much thereof as remains unpaid, upon a mortgage executed by the said Charles H. Muirheid to William H. Muirheid and others, in the year eighteen hundred and sixty-seven; and that the said complainant is entitled to have the said lands and premises in the bill of complaint described, sold to raise and satisfy to the said complainant the said sum of nineteen thousand eight hundred and thirty-two dollars and eighty-nine cents, together with lawful interest thereon from the ninth day of December, A. D. eighteen hundred and seventy-nine, and also his costs in this cause to be taxed; and that for that purpose a writ of *fiery facias* do issue

out of this court to the sheriff of the county of Mercer, commanding him to make sale according to law of the said lands and premises, and out of the proceeds arising from the sale thereof, to pay to the said complainant his said debt, interest and costs, and that he pay the surplus money, if any there be, to the clerk of this court, to abide the further order of this court.

THEODORE RUNYON, C.

Notice of Appeal.

- 10 The defendants, Charles H. Muirheid and William H. Muirheid, hereby appeal from the final decree made in this court in the above-stated cause, in the following respects, to wit, in that the said decree, among other things, adjudges that the deed of conveyance made and delivered by Charles H. Muirheid and Elizabeth, N. his wife, to William H. Muirheid, dated the sixteenth day of March, A. D. eighteen hundred and seventy-seven, and whereby they conveyed to the said William H. Muirheid, his heirs and assigns, the lands and premises described
- 20 in the bill of complaint in said cause, is fraudulent and void as against the said complainant, and as against him is set aside, and for nothing holden; and also, in that the said decree further adjudges that the judgment recovered by the said complainant in the New Jersey Supreme Court, in foreign attachment, against the said Charles H. Muirheid, is a valid and subsisting lien upon the lands and premises set forth and described in said bill of complaint for the sum of nineteen thousand eight hundred and thirty-two dollars and eighty-nine cents, to-
- 30 gether with interest thereon from the ninth day of December, A. D. eighteen hundred and seventy-nine, and

that the said complainant is entitled to have the said lands and premises in the bill of complaint described sold to raise and satisfy to the said complainant the said sum of money, with interest and his costs of suit to be taxed, to the Court of Errors and Appeals in the last resort in all causes.

Dated December 17th, 1881.

A. G. RICHEY & SON,
Solicitors of Defendants.
JAMES WILSON, 10
Of Counsel.

I conceive there is good ground of appeal in the above-stated cause.

JAMES WILSON,
Of Counsel with Defendants.

Service acknowledged, December 21st, 1881.

S. R. GUMMERE, *Solicitor.*

Petition of Appeal.

[Filed December 17, 1881.]

*To the Honorable the Court of Errors and Appeals in 20
the last resort in all causes.*

The humble petition of Charles H. Muirheid and William H. Muirheid, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of the State of New Jersey, bearing date on the sixth day of December, in the year of our Lord one thousand eight hundred and eighty-one, wherein the said Charles E.

Smith was complainant, and the said Charles H. Muirheid, William H. Muirheid and Elizabeth H., his wife; Margaret E. Rhoades and James E. Rhoades, her husband, were defendants, in this respect, to wit:

That the said decree, among other things, adjudges that the deed of conveyance made and delivered by Charles H. Muirheid and Elizabeth N., his wife, to William H. Muirheid, dated the sixteenth day of March, anno domini eighteen hundred and seventy-seven, and where-
10 by they conveyed to the said William H. Muirheid, his heirs and assigns, the lands and premises described in the bill of complaint in said cause, is fraudulent and void as against the said complainant, Charles E. Smith, and as against him is set aside and for nothing holden.

And that your petitioners find themselves aggrieved in this respect, to wit, in that the said decree further adjudges that the judgment of the said complainant, recovered by him in the Supreme Court of New Jersey, in foreign attachment against the said Charles H. Muirheid,
20 is a valid and subsisting lien upon the lands and premises set forth and described in the said bill of complaint, for the sum of nineteen thousand eight hundred and thirty-two dollars and eighty-nine cents, together with lawful interest thereon from the ninth day of December, anno domini eighteen hundred and seventy-nine; and that the said complainant is entitled to have the said lands and premises in the bill of complaint described sold to raise and satisfy to the said complainant the said last-mentioned sum, with interest thereon as aforesaid, and also his costs
30 in said cause to be taxed.

And your petitioners humbly appeal from those portions of the said final decree of the said Chancellor which decree as aforesaid, upon the ground that the same are erroneous, for that, as your petitioners allege, the said deed of conveyance, made and delivered by the said Charles H. Muirheid and Elizabeth N., his wife, to the said William H. Muirheid, dated on the sixteenth day of March, anno domini eighteen hundred and seventy-seven,

and whereby they conveyed to the said William H. Muirheid, his heirs and assigns, the lands and premises described in the bill of complaint in said cause, was, and is, not fraudulent and void as against the said Charles E. Smith, and should not be set aside and for nothing holden.

And that the said judgment of the said complainant, recovered by him in the New Jersey Supreme Court, in foreign attachment, against the said Charles H. Muirheid, is not a valid and subsisting lien upon the said lands and premises described in said bill, for the sum stated in said decree, with interest and costs, and that the said complainant is not entitled to have said lands and premises sold to raise and satisfy said sums of money. 10

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden.

And that your petitioners may have such other and further relief in the premises as to this honorable court may seem meet. 20

Dated December 17th, 1881.

A. G. RICHEY & SON,
Solicitors of Appellants.
J. WILSON,
Of Counsel.

Service acknowledged December 21st, 1881.

S. R. GUMMERE, *Solicitor.*

Answer to Petition of Appeal.

[Filed December 31, 1881.]

The answer of the above-named respondent to the petition of appeal of the above-named appellants. 30

The respondent, not acknowledging all or any of the matters which in the said petition of appeal are con-

tained, to be true, for answer thereto nevertheless, says and admits that a decree was on the sixth day of December last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed, with
 10 costs to be adjudged to this respondent.

December 31st, 1881.

BARKER GUMMERE,

Solicitor for and of Counsel with Respondent.

I, Henry C. Kelsey, secretary of state of the State of New Jersey, and *ex-officio* clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of the answer in the above-stated cause, as the same is taken from and compared with the original, filed December 31st, 1881,
 20 now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Trenton, this
 [L. S.] thirty-first day of December, A. D. 1881.

HENRY C. KELSEY,

Secretary of State.

COURT OF ERRORS AND APPEALS

Between

HORACE LIPPINCOTT,

Appellant,

The Appellee,

and

KATHARINE W. FITZGERALD et al.

Respondents.

POINTS MADE BY COMPLAINANT'S COUNSEL

The quality of the estate of Katharine M. Fenton in the estate set up in the joint answer must be determined by the answer itself as the defendants cannot claim any estate not set up. The defendant will be bound by the construction set up in the answer.

See 11 N. H. 275; 1 Mass. & N. H. 327; 1 Barb. Ch. 177; 20 N. H. 277.

II

The trust which proceeded from the testator was destroyed by the compliance of the trustee with the order of the beneficiary to invest the corpus of the trust fund in the firm—Terry on Tenth Street and 221; Walker & Bond, 108 West 110, Halsted & De Witt, 200; Brown & Bond, 12 C. E. 51, 201; Baker & Bond, 4 Mass. and W. 421, 422; Adams & Bond, 8 Ter. 303; Bond & Bond, 2 Barb. Ch. (N. Y.) 200.

See 20 N. H. 277; 1 Mass. & N. H. 327; 1 Barb. Ch. 177; 20 N. H. 277; 11 N. H. 275; 1 Mass. & N. H. 327; 1 Barb. Ch. 177; 20 N. H. 277.