Court of Errors and Appeals.

Between JOSEPH A. STOY, Appellant, and EMMA J. STOY, Respondent.	BRIEF OF APPELLANT.

This cause arises under an appeal from the Court of Chancery on the foreclosure of a mortgage made by Joseph A. Stoy and his then wife, Emma J. Stoy, on lands of Joseph A. Stoy, in Delaware township, Camden county, to Stella B. Lilly, dated March 29th, 1883, to secure the payment of a bond of like date for five thousand dollars, made by Joseph A. Stoy to Stella B. Lilly and by her at the same time assigned to said Emma J. Stoy, the then wife of Joseph A. Stoy; on which Emma J. Stoy, of her own moneys, advanced one thousand dollars. The balance, or four thousand dollars thereof, is claimed to be a gift. Under the conclusions of Vice Chancellor Bird, filed in said cause, the final decree was entered

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therein on the twenty-first day of August, 1885, for the whole amount of said mortgage, with interest thereon from its date.

(1.) It is claimed that a mortgage is only good for the amount advanced thereon, and in this case for but one thousand dollars without interest.

(2.) That the balance, or four thousand dollars thereof, was a bonus claimed for the loan of the one thousand dollars.

(3.) That no gift was intended or undertaken to be made.

(4.) That if a gift was undertaken to be made of the four thousand dollars, it cannot be enforced by virtue of a mortgage on the lands of the donor in a suit against him, he resisting the same.

It is clear from the bill, answer and the evidence of all the witnesses, that Mrs. Stoy advanced on this mortgage the sum of one thousand dollars, and no more; therefore, if that is the only consideration, and that is all that was claimed, she would be entitled to receive that amount, with interest. But if she claims the four thousand dollars, the balance thereof, as a consideration for the loan of the one thousand dollars, then the mortgage would be usurious and she would be only entitled to the sum of one thousand dollars, without interest or costs. See her testimony, page 18. "He (Mr. Stoy) asked me if I would "give him one thousand dollars, a mortgage I had on "my brother's farm. He said he was in debt and would "like to pay his debts off, and I told him it was dreadful "to be in debt so soon after his father's death, and if it "continued in that way it would all be gone soon, and "I said unless he gave me something for the mortgage I "would not give it to him. And I then proposed that "he should give me a deed of the farm, and he said he

"would not, and it was his own proposition to give me a "mortgage for five thousand dollars; so I said I would "take it. Then he asked me—told me to stop and see "Mr. Jenkins and have it done in a lawful manner, and "I went and saw Mr. Jenkins and he said it would be "necessary to have a third party. Then he and I, that "is Mr. Stoy, talked it over and we decided on Mrs. "Lilly. He was perfectly willing and so was I."

This is Mrs. Stoy's own version of how the mortgage for five thousand dollars came to be given for the one thousand dollars actually loaned, and does it not show conclusively that the true consideration of the same was the one thousand dollars, and that in order to get the one thousand dollars of which he was in need to pay his debts, he was forced to make her a mortgage of five thousand dollars.

On page 22 she (Mrs. Stoy) says, in answer to this question. "Would you let him (Mr. Stoy) have the one "thousand dollars just for a one thousand dollar mortgage "on the property?

"Ans. No, sir; I would not."

Then does this not show that the mortgage of five thousand dollars was forced out of him, in order to get the one thousand dollars in money?

Page 28, Mr. Stoy: "Ques. Why was the mortgage "made for the five thousand dollars?

"Ans. Because I knew it was only good for a thou-"sand.

"Ques. Did you want to borrow this one thousand "dollars?

"Ans. Yes, sir.

"Ques. She agreed to let you have it?

"Ans. Yes, sir.

"Ques. What was her first condition?

"Ans. She wanted me to give her a deed for the "property first.

" Ques. That you refused to do?

" Ans. Yes, sir.

" Ques. Then what did she want?

" Ans. Then she said, if you will give me a five thou-
" sand dollar mortgage I will let you have the money.

" Ques. Did you do that?

10 " Ans. Yes, sir.

" Ques. Why did you sign a mortgage for five thou-
" sand dollars when you got only $1,000?"

" Ans. I knew it was only good for a $1,000.

The above is the version of Mr. Stoy as to the making of the mortgage, and it shows he was in need of $1,000; that his wife had the money and would not let him have it unless he either gave her a deed for his property or a mortgage on it for $5,000. Now as she claims the whole of the mortgage, then that portion ($4,000) for which there was no consideration can only be claimed as pay or bonus for the $1,000 actually loaned, which would be
20 usurious, and make her liable to all the penalties incurred by those exacting usury for the loan of money.

It must also be remembered that from the testimony of Mr. and Mrs. Stoy must be gleaned that which constituted the original agreement for the loan of the $1000, and the making of the mortgage $5000, for that was all done before any one was spoken to about it. The testimony of all the other witnesses covers conversations had with either the appellant or respondent after they, by themselves, had made the arrangement for the loan and the making of the mortgage, and no matter what they, or either of them, subsequently said, their original agree-
30 ment would not be altered or changed thereby.

Is it not evident from their testimony that Mrs. Stoy intended to get $5,000 from the $1,000 advanced, and that Mr. Stoy intended to give a $5,000 mortgage and become responsible for but $1,000, the amount he received; in other words, they mutually undertook to deceive

each other—she to defraud him out of $4,000; he to get the $1,000 she had, and give her security for that amount and no more. He wanted the one thousand dollars to pay his debts, and wished to secure it to her. She had the one thousand dollars and proposed to loan it to him if he would pay back five dollars for each dollar loaned.

Gifts are voluntary donations; they are not bought or sold. The instant an article or thing changes hands for a price or consideration it loses all the elements of a gift.

Was this mortgage, or any portion of it, a gift by Mr. Stoy to Mrs. Stoy? 10

We have heard Mr. and Mrs. Stoy's version of how the mortgage came to be given.

Mr. Stoy was in debt to the amount of about one thousand dollars. Mrs. Stoy had one thousand dollars, and he wanted it to pay his debts with. She refused to let him have it until he complied with certain conditions and requirements of her's. The condition she required was, that he should give her a mortgage for five thousand dollars, and she would then loan him the one thousand dollars. Then from their own version does it not appear that the question of a gift never entered into the agreement at all, but that it was a simple agreement that he would give her a mortgage for five thousand dollars if she would loan him the one thousand dollars. Now all other testimony was subsequent to their agreement, and should be considered in its chronological order, and first in order after their agreement is that of Mr. Jenkins, found on page 12, in which he says, "he (Mr. Stoy) came "to my house, No. 321 Penn street, some weeks before "the execution of this bond and mortgage, in the after- "noon—I presume between four and five o'clock. He "met me in my parlor and he told me that he was going "to give his wife a mortgage on his property for five "thousand dollars as a present or gift, and he asked me "if it could be done. I told him I thought it could

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"through a third party, if he knew anybody he could "trust, provided he had no creditors. He told me who "the third party would be, and asked me to draw the "papers. I did so, and at the time they were executed I "went to his place and had them executed."

On page 14, he (Mr. Stoy) says: "Ques. At the time of "the execution of the papers, what conversation took 10 "place between you and the parties with reference to the "nature of this transaction?

"Ans. It was understood it was a gift to Mrs. Stoy, and "there stated, as I stated to Mrs. Lilly. It was there stated "in the presence of Mr. and Mrs. Stoy and Mrs. Lilly. I "told her that Mr. Stoy had intended to give his wife "this gift of a five thousand dollar mortgage on his prop-"erty. The mortgage was made to her with the under-"standing that she should assign it to Mrs. Emma Stoy. "She (Mrs. Lilly) said she understood it so, and was "willing to assign it.

"Ques. What did Joseph A. Stoy say with reference to 20 "that—with reference to your statement that this five "thousand dollar mortgage was a gift?

"Ans. I don't know that he said anything, but he did not deny it."

It would therefore appear by his testimony that Mr. Stoy, subsequent to the agreement with this wife as to the five thousand dollar mortgage, called on Mr. Jenkins to have the papers drawn, and then and there undertook to detail to him what the mortgage was to be given for, and stated that the whole mortgage of five thousand dollars was a gift by himself to his wife. This we know is not true, from the statement of Mr. Stoy and Mrs. Stoy. He 30 must have had some reason for making this statement to Mr. Jenkins, and the only reason he could have had was to deceive him in reference to the actual agreement between himself and his wife, for he does not seem to have told Mr. Jenkins that he was to have received a cent

from his wife, but proposed to make him believe that it was an act of generosity on his part to his wife, and not to let Mr. Jenkins know that he was borrowing any money from her. He acted like the majority of men in money transactions with their wives, wishing to make it appear that he was the obligor rather than the obligee; that he was the one providing money for his wife rather than that she was providing money for him with which to pay his debts.

At the time of the execution of the papers, when Mr. Jenkins said Mr. Stoy is making a present of this five thousand dollar mortgage, Mr. Stoy didn't deny it because that would have been a flat contradiction of the statements made to Mr. Jenkins when he was ordered to draw the papers, and he must have intended to have kept Mr. Jenkins in profound ignorance as to the real agreement between himself and his wife, so no matter what transpired or was said by Mr. Stoy to Mr. Jenkins, or what Mr. Jenkins said in reference to the matter, in the presence of Mr. Stoy and others, it did not alter the original agreement between the parties, which was to loan one thousand dollars and receive therefor a five thousand dollar mortgage.

On page 24, Mrs. Lilly says, in answer to a question by the Court, at the execution of the papers, that Mr. Jenkins stated—"He said that Mr. Stoy was going to "make his wife a present of this five thousand dollar "mortgage for one thousand dollars, on his farm, and in "order to make it lawful it would require a third party, "and that they both requested me to be that third party."

In other words, at the execution of the papers, it was stated and known by all the parties that a mortgage of five thousand dollars was to be given and but one thousand dollars received on it—it was but a reiteration by Mr. Jenkins of what he had learned in reference to the transaction from Mr. Stoy's statement, at the time the

papers were ordered to be drawn, and formed no part of the original agreement between Mr. and Mrs. Stoy.

Page 29, Joseph A. Stoy says:

"Ques. Did you give her (Mrs. Stoy) this five thousand "dollars as a marriage gift?

"Ans. No, sir; there was no marriage gift ever mentioned. The first I heard of it was here to-day.

"Ques. Did you give it to her as a marriage gift, or as "a present?

10 "Ans. No, sir."

Page 32, Mrs. Ludlam:

"In reference to giving this mortgage, in answer to

"Ques. What did she (Mrs. Stoy) tell you in reference "to the mortgage?

"Ans. I asked her if she had a five thousand dollar "mortgage on my brother's farm, and she said yes. I "asked her how she came to get it? She said I let him "have one thousand dollars. I said, how came you to "get a five thousand dollar mortgage out of him? She

20 "said, I would not let him have my one thousand dollars "until he gave me a five thousand dollar mortgage in-"stead of the legitimate amount. She said, I did it for "the best. I did it to save our home, so that the Doc. "could not put any more encumbrance on the property."

On page 35 Mrs. Lennox, on being interrogated as to what Mrs. Stoy said in reference to the mortgage, says:

"Ans. Yes, sir, they separated in October. This was "in September she (Mrs. Stoy) told me that they were "about to separate. I asked her why, and she said they

30 "could not get along together; that she did not care; "that she had the best of him, she thought; that she "had got a five thousand dollar mortgage for a one "thousand dollar—and she wanted him to give her a "deed for the farm, and that he would not do it.

"Ques. Did she say why she had the five thousand

"dollar mortgage? Why she came to take it for five
"thousand dollars?

"Ans. No. She said he was in debt and wanted
"money, and she would not give him her money until
"he gave her a five thousand dollar mortgage for one
"thousand dollars."

These conversations are not denied by Mrs. Stoy, although again called to the stand, but really admitted by her in her testimony on pages 37 and 38. Do not these conversations admit and show that the original 10 agreement, as stated by Mr. and Mrs. Stoy, was the true statement in reference to the making of the mortgage of $5,000 and the loaning of the $1,000, and that no gift was ever made or intended to have been made?

The bond is a plain bond in the ordinary form for the loan of money. The mortgage is in the same form, as is also the assignment, and they are exhibits in this cause. Now had they have intended it to be a gift, would it not have appeared some way in these papers? By the testimony it appears that Mr. and Mrs. Stoy were married on 20 October the twenty-eighth, one thousand eight hundred and seventy-four. Mr. Stoy's testimony, page 30, states, "that they lived very unpleasantly during their mar-
"riage life."

Mrs. Lennox (pages 36 and 37) also says, "their mar-
"riage life was unpleasant." The mortgage was made on the twenty-ninth of March, one thousand eight hundred and eighty-three. About six months after that date Mrs. Stoy left Mr. Stoy's house, and about six months after that Mrs. Stoy obtained her divorce. Is it 30 very probable that after living together for about nine years in an unhappy manner, that he should conceive at that stage of his married life the idea of making her a marriage gift, and that almost before the ink was dry from the drawing of the papers, that she should leave

his house; almost immediately thereafter that she should apply for and obtain a divorce from him? Does it not look on her part as the act of a designing person to take the advantage of another and defraud him out of the amount of said mortgage.

BERGEN & BERGEN,
Solicitors of Appellant.

Court of Errors and Appeals.

Between JOSEPH A. STOY, Appellant, and EMMA J. STOY, (NOW HOLMES,) Respondent.	APPEAL FROM CHANCERY. BILL OF COMPLAINANT.

BERGEN & BERGEN,
For Appellant. 10
CHARLES E. HENDRICKSON,
For Respondent.

BILL.

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

Your oratrix, Emma J. Stoy, of the township of Waterford, in the county of Camden and State of New Jersey, 20 complaining, shows:

That she was lawfully married to Joseph A. Stoy, of the township of Delaware, in said county, on the twenty-eighth day of October, one thousand eight hundred and seventy-four, and that the said Joseph A. Stoy, on or

about the twenty-ninth day of March, one thousand eight hundred and eighty-three, and while he was the lawful husband of your oratrix requested of her the loan of one thousand dollars of the money of your said oratrix, declaring to her that if she would let him have said sum of one thousand dollars, that he would not only give her a bond and mortgage to secure the same, but that he would give to her, your oratrix, his said wife, as a gift to and settlement upon her as his said
10 wife, the additional sum of four thousand dollars; that he would include said amount in said bond and mortgage, making the principal thereof the sum of five thousand dollars; that your oratrix and her said husband, Joseph A. Stoy, applied to counsel learned in the law to have said bond and mortgage security properly made by the said Joseph A. Stoy to your oratrix, and that said counsel thereupon advised that said bond and mortgage should be made and executed to some third
20 person, and that third person should thereupon assign over said bond and mortgage to your oratrix; that such course would be necessary, the marital relation rendering the legality of the bond and mortgage direct from the said Joseph A. Stoy to your oratrix at least questionable.

That thereupon your oratrix advanced the said sum of one thousand dollars to the said Joseph A. Stoy, her said husband, and thereupon the said Joseph A. Stoy, on the said twenty-ninth day of March, one thousand eight hundred and eighty-three, in pursuance of the said agreement with your oratrix, and being indebted to her in the sum of five thousand dollars in manner aforesaid,
30 by his bond, dated on that day, became bound to me, Estella B. Lilley, of the town of Newport, Cumberland county, in the said State, a sister of your oratrix, who had been selected by your oratrix and her said husband as the medium through whom the said mortgage estate

should be transferred to your oratrix, in the sum of ten thousand dollars, to be paid to her, her executors, administrators or assigns, with a condition thereunder written, that if the said Joseph A. Stoy should, within five years from the date thereof, pay to the said Estella B. Lilley, her executors, administrators or assigns, the said sum of five thousand dollars, with lawful interest on the same, payable semi-annually, then that bond should be void.

That in said bond it was declared to be agreed between the parties thereto, that if said interest, or any part thereof, should not be paid for the space of thirty days after the same should become due and payable, then the whole of the principal sum and interest due thereon should immediately become due and payable.

That to secure the payment of said sum of five thousand dollars, with interest, in pursuance of said agreement, the said Joseph A. Stoy and your oratrix, his wife, by a deed of mortgage bearing date on the same day as said bond, conveyed to said Estella B. Lilley, and her heirs and assigns forever, in fee simple, that tract or parcel of land and premises situate in the township of Delaware, county of Camden and State of New Jersey, bounded and described as follows, namely:

Beginning at a stone for a corner in the middle lines of the Whiskey and Stoy's landing roads, and extending thence (1) along the middle line of said Stoy's landing road, south fifteen degrees and forty minutes west twenty-eight chains and fifty-six links to a stone for a corner, being in line of lands of Theodore F. Stoy and corner to land of Adelaide L. Ludlam and Emma S. Lennox; thence (2) along the line of said Ludlam and Lennox south seventy-four degrees thirty-five minutes east, eighteen chains and forty-nine links to a stone for a corner; thence (3) still by the line of said Ludlam and Lennox south forty-six degrees and thirty-three minutes east

thirty-five chains and sixty-three links to a corner in the line of lands late of R. V. M. Cooper, deceased; thence (4) along said Cooper's land north forty-three degrees and ten minutes east twenty-seven chains and forty-three links to a stone by a red cedar tree corner to Moore and Cooper, in the middle line of the Whiskey road; thence (5) along the middle line of said Whiskey road north sixty-nine degrees west thirty chains and eighty-four links to a stone corner to Moore's; thence (6) along the
10 middle line of said Whiskey road north forty-five degrees west seven chains and sixty-three links to a stone for a corner; thence (7) still along the middle line of said Whiskey road north forty-five degrees and ten minutes west twenty-eight chains and seventy links to the place of beginning. Containing one hundred and twenty-one and fifty-seven hundredths acres of land. Being the same tract of land and premises which was conveyed by Amelia Stoy, Richard A. Ludlam and Adelaide L., his wife, Albert H. Lennox and Emma S., his wife, and Theodore F. Stoy and Ella C., his wife, to Joseph A. Stoy,
20 by deed bearing date March 15th, A. D. 1882, and recorded in the Register's office of Camden county, at Camden, in Book No. 104 of Deeds, page 361, &c.

That said mortgage contained a proviso that it should be void upon payment of said sum of five thousand dollars, with interest according to the condition of said bond.

That said mortgage contained an agreement of the same effect as that in said bond above set forth, that the whole of the principal should become due if any part of
30 the interest due remained unpaid for thirty days.

That said mortgage was, on the thirtieth day of March, eighteen hundred and eighty-three, recorded in the office of the Register of the county of Camden, in Book 32 of Mortgages, page 157, &c., the execution of the

same having been first duly acknowledged, and such acknowledgment certified thereon, as required by law.

That the said Estella B. Lilley, in pursuance of and for the purpose of giving effect to the said agreement between your oratrix and her said husband, did, on the same twenty-ninth day of March, eighteen hundred and eighty-three, assign said bond and mortgage, by writing, under her hand and seal, to your oratrix.

That said bond and mortgage and said assignment, to which your oratrix refers for certainty, are in her posses- 10 sion, ready to be produced and proved.

That the said Joseph A. Stoy, afterwards, to wit: on or about the twenty-fifth day of March, A. D. 1883, demised and to farm let the said mortgaged premises to one Cooper Browning, for the term of one year from the said twenty-fifth day of March, A. D. 1883, at a certain rental, the amount of which is to your oratrix unknown, and that the said Cooper Browning, on the day of said date, entered into possession of the said mortgaged premises, and still remains possessed thereof, taking the issues and 20 profits of the same, and thereby claims some estate in the said mortgaged premises, but your oratrix insists that such estate or interest was obtained after the execution and record of her said mortgage, and with full notice thereof, and is therefore subject to its priority.

That the said Joseph A. Stoy afterwards, on the sixteenth day of October, eighteen hundred and eighty-three, mortgaged said lands to Samuel A. Reeves and Joseph Franklin to secure the payment of the penal sum 30 of one thousand and six hundred dollars, conditioned to indemnify and save harmless the said Samuel A. Reeves and Joseph Franklin from a certain bond of even date therewith, which said Samuel A. Reeves and Joseph Franklin had signed with the said Joseph A. Stoy as his sureties to Theodore B. Gibbs, Sheriff, under a writ of *ne exeat* issued out of the Court of Chancery, under cer-

tain proceedings therein by your oratrix against the said Joseph A. Stoy, for a divorce from the bond of matrimony for the cause of adultery, which said mortgage was, on the nineteenth day of November, eighteen hundred and eighty-three, recorded in said Register's office, in Book 33 of Mortgages, page 89, &c.

That on the twenty-sixth day of May, eighteen hundred and eighty-four, your oratrix obtained a decree in the Court of Chancery of New Jersey of divorce from the bond of matrimony with the said Joseph A. Stoy, for the
10 cause of adultery aforesaid, and also for the payment of alimony by said Joseph A. Stoy to your oratrix, to the amount of three hundred and twelve dollars annually, in weekly installments of six dollars each, and also the taxed costs of ninety-three dollars and eighty cents and a counsel fee of fifty dollars, which said decree was filed in the Supreme Court of this State, on the twenty-first day of July, A. D. 1884, and has become a lien upon said mortgaged premises.

That said mortgage to Reeves and Franklin, and said decree of your oratrix, mentioned above, are uncancelled
20 and unsatisfied of record, and are claimed to be subsisting liens on said premises mortgaged to your oratrix; but your oratrix shows and insists that they were severally executed and recorded subsequent to the execution and recording and assigning of said mortgage to your oratrix, and the said mortgage is a prior lien on the premises therein mortgaged.

That your oratrix has been credibly informed and therefore avers, that the said Joseph A. Stoy has, since the making of said decree of divorce, intermarried with
30 one Lillie Tomlinson who thereby claims some inchoate right or interest of dower in said mortgaged premises, but your oratrix insists that if such right exists it is subsequent to the lien of your oratrix's said mortgage and decree and with full notice thereof, and subject to their

priority. That on the twenty-ninth day of September, eighteen hundred and eighty-four, four hundred and fifty dollars, being eighteen months interest on the principal sum of five thousand dollars, secured by said bond and mortgage given by Joseph A. Stoy to Estella B. Lilley, and by her assigned to your oratrix, became due, and that the same has not been paid, and has remained unpaid for more than thirty days after the same became due, and your oratrix has elected, and hereby elects, that the whole of said principal shall be due. 10

That the whole of said principal sum of five thousand dollars, with interest thereon from the date of the bond, is due and payable to your oratrix.

That said Estella B. Lilley has not, nor has your oratrix, ever had possession of said mortgaged premises, or received any of the rents or issues thereof.

That your oratrix has requested said Joseph A. Stoy and Lillie, his wife, to pay her said principal and interest so due on said bond and mortgage, with which request they have neglected and refused to comply.

In consideration whereof, and inasmuch as your oratrix is remediless in the premises in the courts of law, and can only have adequate relief in a court of equity, and to the end :— 20

1. That the defendants, and each of them, may answer upon their respective oaths or affirmations, according to the best of their respective knowledge, information and belief, all and singular the premises and each fact above stated.

2. That an account may be taken, under the direction of this Court, of the amount due upon your oratrix's said mortgage. 30

3. That the defendants, or some of them, may be decreed to pay unto your oratrix the amount so found due, with interest thereon, and your oratrix's costs on this suit, by a short day, to be appointed by this Court;

and that in default thereof, they, and each of them, do stand debarred and foreclosed of all equity of redemption in said mortgaged premises.

4. That said premises may be sold by the order of this Court, and out of the proceeds your oratrix may be paid the amount so found due upon her said mortgage, with interest thereon and her costs in this suit.

And that your oratrix may have such other relief as the nature of her case requires, and as may be agreeable
10 to equity.

May it please your Honor to grant unto your oratrix the State's writ of subpœna, issuing out of and under the seal of this Court, to be directed to the said Joseph A. Stoy and Lillie, his wife, and Samuel A. Reeves and Joseph Franklin, commanding them to appear before your Honor, in this Court, then and there to answer the premises and to stand to, abide by and perform such order and decree as your Honor shall make therein.

20 CHARLES E. HENDRICKSON,
Solicitor and of Counsel with Complainant.

A true copy.
G. S. DURYEE,
Clerk.

ANSWER OF JOSEPH A. STOY.

This defendant, Joseph A. Stoy, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said
30 bill of complaint contained, for answer thereunto, or unto so much thereof as he, this defendant, is advised it is material or necessary for him to make answer unto, answering says:

That he admits that the said Emma J. Stoy, complain-

ant, was lawfully married to this defendant on or about the twenty-eighth day of October, A. D. one thousand eight hundred and seventy-four, and so continued until the twenty-sixth day of May, eighteen hundred and eighty-four, when a decree of divorce from the bond of matrimony was granted by this honorable Court.

And he further admits, that on or about the twenty-ninth day of March, A. D. eighteen hundred and eighty-three, he borrowed of said complainant the sum of one thousand dollars, and the same was to be secured by a bond and mortgage upon certain real estate in said bill of complaint mentioned, and that the same was to be made and executed through the medium of a third party, to be mutually agreed upon; that the same was made and executed as in said bill of complaint mentioned; but this defendant denies that the consideration of said mortgage was the sum of five thousand dollars, or that he ever promised to give to said complainant a bonus of four thousand dollars in consideration of the loan of one thousand dollars, to be secured as aforesaid, or as a gift and marriage settlement upon her, the said complainant, as his said wife, or that he would include the said amount of four thousand dollars, or any other amount in said bond and mortgage, making the principal thereof the sum of five thousand dollars, as in said bill of complaint mentioned.

And this defendant, further answering, admits that there is due to the said complainant the principal money of one thousand dollars in the said bond and indenture of mortgage, together with an arrear of interest to this defendant unknown.

And this defendant denies that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which mat-

ters and things this defendant is ready to aver, maintain and prove, as this honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

BERGEN & BERGEN,
Solicitor of Defendant, Joseph A. Stoy.

STATE OF NEW JERSEY, }
CAMDEN COUNTY. } ss.

10 Joseph A. Stoy, the above named defendant, being duly sworn, on his oath saith, that the matters and things set forth in the above answer, so far as relates to his own acts are true, and so far as relates to the acts of others, he believes them to be true.

JOSEPH A. STOY.

Sworn and subscribed this day of
A. D. 1885.

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20 **REPLICATION.**

The complainant joins issue on the answer of defendant.

CHARLES E. HENDRICKSON,
Solicitor and of Counsel with Complainant.

DEPOSITIONS.

Transcript of short hand notes of testimony taken at
30 the hearing in the above cause, before his Honor Vice-Chancellor Bird, at the State House, in the city of Trenton, on Tuesday, the tenth day of March, A. D. 1885.

Present: Charles E. Hendrickson for the complainant, Martin V. Bergen for the defendants.

After opening the case Mr. Hendrickson called—

WILSON H. JENKINS, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith :

Direct examination by Mr. Hendrickson :

Ques. You are a member of the bar, counsellor at law, in the city of Camden and have been for a number of years ? 10

Ans. Yes, sir.

Ques. (Showing witness paper purporting to be a bond from Joseph A. Stoy to Stella B. Lilly, dated March 29th, 1883, and marked Exhibit A for complainant.) What is that paper, Mr. Jenkins ?

Ans. That is a bond that I drew.

Ques. Executed by whom ?

Ans. Executed by J. A. Stoy.

Ques. Witnessed by you ?

Ans. Yes, sir ; by myself.

Ques. Are those your signatures there as witness ? 20

Ans. Yes, sir.

Ques. Executed in your presence on the day it bears date ?

Ans. Executed on the day it bears date, in my presence, and it was read before it was executed.

Ques. (Paper shown to witness purporting to be a mortgage from Joseph A. Stoy and Emma J., his wife, to Stella B. Lilly of the same date, marked Exhibit B for the complainant ?) 30

Ans. That was also made by me and executed in my presence by J. A. Stoy and Emma J. Stoy, who was then his wife.

Ques. And you signed as the witness ?

Ans. Yes, sir ; this is my signature.

Ques. The acknowledgment was taken before you ?

Ans. Yes, sir; I took the acknowledgment at the same time when I witnessed it and it was executed. This was also read before it was executed.

Ques. In the presence of whom?

Ans. In the presence of Mr. Stoy and his wife.

Ques. (Paper shown witness purporting to be an assignment of the above bond and mortgage from Stella B. Lilly to Emma J. Stoy, dated the same day and marked Exhibit C on the part of the complainant.) Was that paper executed by Stella B. Lilly?

Ans. It was.

Ques. In your presence?

Ans. Yes, sir; witnessed by me and this is my signature.

Ques. And acknowledged before you?

Ans. And acknowledged before me. That was executed shortly after the bond and mortgage was executed.

Ques. Where were they executed?

Ans. At the house or farm of Mr. Stoy, Delaware township, Camden county.

Ques. Who were present at the time these three papers were executed?

Ans. Joseph A. Stoy and his wife, Emma J. Stoy, I think her name is, or was. Mr. and Mrs. Lilly, myself and there might have been one or two little children there. I think a child in the arms of its mother.

Ques. Who gave you the directions as to drawing this bond and mortgage?

Ans. Joseph A. Stoy.

Ques. When and where?

Ans. He came to my house, 321 Penn street, some weeks before the execution of this bond and mortgage, in the afternoon—I presume between four and five o'clock. I met him in my parlor and he told me that he was going to give his wife a mortgage on his property for five thousand dollars as a present or gift and he

asked me if it could be done. I told him I thought it could through a third party, if he knew anybody that he could trust—provided he had no creditors. He told me who the third party would be and asked me to draw the papers. I did so and at the time they were executed went to his place and had them executed.

Ques. Who did he tell you the third party would be?

Ans. Mr. Lilly and wife.

Ques. Did he give you any deed or other paper to get the description from?

Ans. Yes, sir; he gave me the deed of his property to get the description from. 10

Qus. Was any time or place fixed where they were to be executed?

By the Court: That is not material; he did execute them afterwards.

Ques. That was about a week before they were executed?

Ans. Yes, sir. 20

Ques. Had Mrs. Emma Stoy called upon you?

Ans. She called upon me some week or ten days previous to that, at my office—previous to the time Mr. Stoy called upon me and she said—(interrupted.)

Ques. I don't suppose that would be proper unless the defendant was there?

By Mr. Bergen: I would like to ask the Court a question. I understand that this witness was acting as counsel for these parties, and it seems to me it is hardly fair for him to tell what passed. 30

By the Court: I thought so once, but the Chancellor heard the same case over again and thought that I was wrong. I will let him go on and you will have the benefit of your objection.

Ques. Upon what business did she consult with you a week or so previous to this?

Ans. She wanted to know if her husband, "Doc," as she called him, could give her a mortgage for five thousand dollars as a present on his property. I told her that I thought that if she had any one she could trust in the matter, so that it could be made through a third party, it could be legally done, provided he had no creditors at the time.

10 Ques. At the time of the execution?

Ans. She said—— (interrupted.)

By the Court: I don't suppose you can put in what she said. I have allowed you to go so far and state what her business was on that occasion. I think that is as far as you can go. The Court cannot take into account what the parties say in their own behalf. The other side can cross-examine on that if they desire.

20 Ques. At the time of the execution of the papers what conversation took place between you and the parties with reference to the nature of this transaction?

Ans. It was understood that it was a gift to Mrs. Stoy, and there stated—as I stated to Mrs. Lilly—it was there stated in the presence of Mr. and Mrs. Stoy and Mrs. Lilly. I told her that Mr. Stoy had intended to give his wife this gift of a five thousand dollars mortgage on his property. The mortgage was made to her with the understanding that she should assign it to Mrs. Emma Stoy. She said she understood it so and was willing to assign it.

30 Ques. What did Joseph A. Stoy say with reference to that—with reference your statement that this five thousand dollar mortgage was a gift?

Ans. I don't know that he said anything, but he didn't deny it.

Ques. By the Court: He was present?

Ans. Yes, sir; and didn't object to it.

Ques. Were the papers executed after that statement of yours?

Ans. Yes, sir.

Ques. On that same occasion?

Ans. Yes, sir; immediately afterwards.

Ques. (Further direct.) After these papers were executed—the bond and mortgage and assignment, what was done with them? What was ordered to be done with them? 10

Ans. They were given into the possession of the proper parties, and Mrs. Stoy asked me to take them down to Camden. I said they ought to be recorded, and she asked me to take them down and have them recorded, and I took them down and got a receipt from the Register, and she came down to my office and got the receipt from me.

Ques. (By the Court.) Mrs. Stoy asked you to have them recorded? 20

Ans. Yes, sir.

Ques. Who paid you for the drawing of the papers and recording?

Ans. Mrs. Stoy.

Ques. Before or afterwards?

Ans. Afterwards.

Ques. (Further direct.) Did you see her get the bond and mortgage, or did she receive them from you?

Ans. She did not; I only gave the receipt. That is my recollection about that. I may be mistaken about that. 30

Ques. Do you remember how soon you delivered the papers at the office to be recorded?

Ans. The next day.

Ques. That is all.

Cross-examination.

By Mr. Bergen:

Ques. Who first came to see you about these papers?
Ans. Mrs. Stoy.
Ques. Whereabouts?
Ans. At my office.
Ques. Who was with her?
Ans. She came by herself.
10 Ques. That is the time she asked you about drawing this mortgage of five thousad dollars?
Ans. Yes, sir.
Ques. When did you next hear about it?
Ans. I think she came to the office once more to say that Mr. Stoy was coming to see me about the matter.
Ques. When Mr. Stoy did see you didn't he simply tell you to go on and draw these papers that his wife ordered?
Ans. No, sir; we had the conversation I related to you.
20 Ques. Was that at your house?
Ans. Yes, sir; I wanted to know what he wanted done.
Ques. At the house—you are certain that you had this conversation with him about giving the five thousand dollar mortgage?
Ans. Yes, sir.
Ques. And that was after the conversation you had with Mrs. Stoy. You are certain that you haven't the two conversations mixed?
30 Ans. I am certain about that because I wanted to find out from him what he was giving this five thousand dollar mortgage for, if it corresponded with his wife's statement.
Ques. How much money did he say he was to get from her?

Ans. That he was to get?

Ques. That he was to get from her?

Ans. I don't remember that he said any. She said, if you want it I will tell you what she said.

Ques. I want to know whether he said how much actual money he was to get from her?

Ans. I don't remember whether he said any.

Ques. Do you know whether he did get any actual money from her?

Ans. Only what he told me.

Ques. There was no money passed between them on the day the papers were executed? 10

Ans. None at all.

Ques. Who did you say brought the papers to you?

Ans. Mr. Stoy brought the deed to my house.

Ques. That afternoon?

Ans. Yes, sir.

After the witness left the stand, Mr. Bergen, by permission of the Court, asked the following question:

Ques. Did Mrs. Stoy tell you she was going to advance any money? 20

Ans. Mrs. Stoy said she was going to advance some money, but I have forgotten the amount.

Emma J. Stoy, a witness produced on the part of the aforesaid complainant, having been duly sworn according to law, deposeth and saith:

Direct examination. 30

By Mr. Hendrickson:

Ques. You were married to Joseph A. Stoy—do you remember the day and the year?

Ans. Yes, sir; the 28th of October, 1874.

Ques. Do you remember his giving you this bond and mortgage?

Ans. Yes, sir; I do.

Ques. Where were the papers executed, Mrs. Stoy?

Ans. In Camden—I don't understand the question.

Ques. Where were they signed?

Ans. At our home.

Ques. Who were present at the time this bond and mortgage and assignment were signed?

10 Ans. Mr. Stoy, Mr. and Mrs. Lilly and myself.

Ques. Joseph A. Stoy, your husband, and who else?

Ans. Yes, and Mr. Jenkins and Mr. and Mrs. Lilly.

Ques. Mrs. Lilly is you sister?

Ans. Yes, sir.

Ques. Do you remember whether the papers were read over before they were signed?

Ans. I remember very distinctly that they were.

Ques. Before they were signed?

20 Ans. Yes, sir.

Ques. Do you remember anything being said at the time about the matter?

Ans. No, sir; there was no objection or anything said; it was all understood before, and they were simply signed.

Ques. Did you have a conversation with your husband about this matter before the papers were drawn and signed?

Ans. Yes, sir.

By the Court:

30 Ques. Tell what it was?

Ans. He asked me if I would give him a thousand dollars—a mortgage that I had on my brother's farm. He said he was in debt and he would like to pay his debts off, and I told him that it was dreadful to be in debt

so soon after his father's death, and if it continued in that way it would all be gone soon, and I said unless he gave me something for the mortgage I would not give it to him. And I then proposed that he should give me a deed of the farm, and he said he would not, and it was his own proposition to give me a mortgage for five thousand dollars; so I said I would take it; then he asked me—told me to stop and see Mr. Jenkins and have it done in a lawful manner, and I went and saw Mr. Jenkins, and he said that it would be necessary to have a 10 third party; then he and I—that is Mr. Stoy—talked it over, and we decided on Mrs. Lilly. He was perfectly willing and so was I.

Ques. (Further direct) In that conversation he had with you about it, do you remember anything else that he said in that conversation?

Ans. Yes, sir; he said that in case he was to get into trouble, or anything should happen, then I would have that as my own, and with that and my life right in the property that I could get along very nicely. That is 20 exactly what he said.

Ques. You say you called on Mr. Jenkins, at your husband's suggestion?

Ans. Yes, sir.

Ques. And consulted him as to whether it could be done legally?

Ans. Yes, sir.

Ques. And did you report to your husband what Mr. Jenkins said?

Ans. Yes, sir. 30

Ques. And you say that you and he agreed upon Mrs. Lilly as the third party to whom the conveyance was to be made?

Ans. Yes, sir; he was just as willing to have her as I was; he didn't want his own family, he said, to know anything about it, so he preferred her.

Ques. How long was this conversation before the papers were finally executed; that is, about how long?

Ans. I couldn't say; it was not over five or six weeks though.

Ques. And after the papers were executed or signed, as you have stated, did you give any direction to Mr. Jenkins what to do with those papers?

Ans. No, he said the day they were signed there, in the presence of Mr. Stoy and my presence, that it is best
10 to have them recorded and he took them and I called for them at his office.

Ques. Did you at that time tell him you would call for the papers?

Ans. He asked who would call and Mr. Stoy said I would call.

Ques. And did you call for the papers?

Ans. Yes, sir; I did.

Ques. And did you get them?

Ans. Yes, sir.

Ques. And did you pay for the recording of the
20 papers?

Ans. Yes, sir.

Ques. What did you do with the bond and mortgage and assignment after you got them?

Ans. Took them home.

Ques. Have you had them since that time?

Ans. Until I gave them to you.

Ques. Until you gave them to me?

Ans. No, sir; I took them to my brother's before that, and then afterwards I gave them to you.

30 Ques. You recognize these as the papers—just look at them—Exhibits A, B and C?

Ans. Yes, sir; they are the papers.

Ques. Did you give him any money on yours?

Ans. Yes, sir; I gave him one hundred dollars—Mr. Stoy, do you mean?

Ques. Yes.

Ans. I gave him a hundred dollars and a check for nine hundred.

Ques. You gave him one hundred dollars when?

Ans. I can't say exactly when it was, but the check was given him on the 11th of April.

Ques. That was after the papers were executed?

Ans. Oh, yes.

Ques. And since these proceedings you have been divorced from your husband? 10

Ans. Yes, sir.

By the Court: I think that is admitted in the answer.

By Mr. Hendrickson: Yes, sir.

Ques. That is all.

Cross-examination.

By Mr. Bergen: 20

Ques. How much money did you say you actually gave Mr. Stoy on account of this mortgage?

Ans. One thousand dollars.

Ques. Do you remember when you gave that money?

Ans. No.

Ques. I mean as regards the date of the mortgage?

Ans. It was all after the execution.

Ques. It was given to him after the execution?

Ans. Yes, sir; the check was dated the 11th day of April, and the one hundred dollars, I couldn't tell when 30 I gave it to him, but it was after the papers were drawn.

Ques. You don't know whether you gave him the hundred dollars then or not?

By the Court: She stated that it was all afterwards.

Ans. It was all afterwards.

Ques. Would you let him have a thousand dollars just for a thousand dollar mortgage on the property?

Ans. No, sir; I would not.

The question is objected to as being improper.

By the Court: I don't think it has any force at all; she has already sworn that she refused to pay anything unless he gave her a deed for the farm and compromised
10 by his executing this mortgage.

Ques. Then you really let him have a thousand dollars and you got a five thousand dollar mortgage?

Ans. Yes, sir.

Ques. And that is all the money you ever gave him?

Ans. Yes, sir; on that mortgage.

By the Court: That is all they claim by the bill.

Ques. And this took place how long before you were divorced?

20 Ans. It took place in March.

Ques. You got your divorce in October?

Ans. In May a year.

By Mr. Hendrickson: May 26th, 1884.

By the witness: It was over a year.

Ques. You had always lived pleasantly with your husband up to that time?

30 (Objected to.)

By the witness: It is not necessary for me to answer, is it?

By Mr. Hendrickson: I think not.

By the Court: I don't know that that can help the case at all.

By Mr. Bergen: I propose to show that Mr. and Mrs. Stoy didn't live happily together and the theory of making her a present of four thousand dollars as a marriage gift ten years after the marriage is not a true one; that it was not done for that purpose.

By the Court: Of course this is not cross-examination, and if you intend to make that insistment it will have to be affirmatively done when you make out your defense. 10

Question withdrawn.

Ques. How did you pay this money to him?
Ans. In a check.
Ques. Both sums?
Ans. No, I gave him one hundred dollars in money, cash, and a check for nine hundred dollars.
Ques. At the same time? 20
Ans. No, sir.
Ques. Which did you give him first?
Ans. The money.
Ques. How long before you gave him the check?
Ans. I couldn't say.

Stella B. Lilly, a witness produced on the part of the aforesaid complainant, having been duly sworn, testified as follows: 30

Direct examination by Mr. Hendrickson.

Ques. Where do you reside?
Ans. East Creek.
Ques. Cumberland county?
Ans. No, sir; Cape May county.

Ques. You are a sister of Emma J. Stoy?

Ans. I am, sir.

Ques. Are you the person named in the assignment of the bond and mortgage in question?

Ans. Yes, sir.

Ques. Were you present with your husband at the time the papers were signed and acknowledged before Mr. Jenkins at Mr. Stoy's house?

Ans. I was.

10 Ques. Do you remember Mr. Jenkins speaking to you, and stated what those papers were, in the presence of the parties who were there?

Ans. I do.

Ques. Just state—tell this conversation?

By Mr. Bergen: I hardly think it is right to tell what Mr. Jenkins stated.

By the Court: In the presence of the parties, certainly.
20 If Mr. Stoy was present what Mr. Jenkins stated would bind him if he did not object to it so far as it would bind him under any other circumstances.

By the Witness:

He said that Mr. Stoy was going to make his wife a present of this five thousand dollar mortgage, for one thousand dollars on his farm, and in order to make it lawfully, it would require a third party, and that they both requested me to be that third party.

Ques. State whether you heard the papers read over
30 by Mr. Jenkins?

Ans. I did.

Ques. Before any of them were signed?

Ans. Yes, sir.

Qnes. And did you hear what was said about getting them recorded, and if so, what was it?

Ans. Yes, sir; Mrs. Stoy asked if it was necessary to have them recorded and he said that he would take charge of them and have them recorded for her.

Ques. That is all.

Cross-examination.

By Mr. Bergen:

Ques. You are married, are you not?

Ans. I am.

Ques. You were at the time you signed these papers? 10

Ans. Yes, sir.

Ques. That is all.

Re-direct.

Ques. What is your husband's name?

Ans. William A. Lilly.

William A. Lilly, a witness produced on the part of the aforesaid complainant, having been duly sworn 20 according to law, deposeth and saith:

Direct examination.

By Mr. Hendrickson:

Ques. Where do you reside?

Ans. East Creek, Cape May county, New Jersey.

Ques. You are a minister of the New Jersey Conference stationed there?

Ans. I am.

Ques. Were you at the house of Joseph A. Stoy on the 30 29th of March, 1883, when these papers were signed?

Ans. I was at the house, sir, but whether it was the 29th of March I couldn't say; I don't distinctly remember the date.

Ques. Do you remember it's being about that time?

Ans. Yes, sir.

Ques. In what part of the house were the papers executed?

Ans. In the dining-room.

Ques. Who were present at that time?

Ans. Mr. Jenkins—(interrupted.)

Ques. The attorney-at-law?

Ans. Yes, sir. Mr. and Mrs. Stoy and my wife and my little boy. I think the most of the time I was holding the boy in my arms; I remember he was just a little lad. I listened to the proceedings.

Ques. Will you state whether or not the bond and mortgage and the assignment were read over or not by Mr. Jenkins in the presence of the parties before they were signed?

Ans. They were, sir; I distinctly remember that.

Ques. Will you state what was said at that time by any of the parties present?

Ans. I don't know that I can give just an exact repetition of all that was said, but I remember Mr. Jenkins stating that Mr. Stoy was going to give his wife five thousand dollars, and that in order that it might lawfully be executed it would be necessary for a third party—to have them sign to a third party and then given over. I remember when Mrs. Lilly took the pen and was just about to sit down, she said "this is my death warrant." Then they were read so that we might distinctly understand the nature of the documents she was about to sign.

Ques. When Mr. Jenkins made these remarks was Mr. Stoy present?

Ans. Yes, sir.

Ques. And did he say anything or make any objection?

Ans. Not that I remember; no, sir.

Ques. Do you remember whether he made any objection or not?

Ans. I do not, sir.

By the Court: He signed the papers and that settles that part of it.

(Not cross-examined.)

The papers were then offered in evidence and the complainant rested.

JOSEPH A. STOY, a witness produced on his own behalf, being duly sworn according to law, deposeth and saith: 10

Direct examination.

By Mr. Bergen:

Ques. You are the answering defendant in this case?
Ans. Yes, sir.
Ques. And the late husband of Emma J. Stoy?
Ans. Yes, sir.
Ques. Do you remember executing a morgage on your property to her? 20
Ans. I do.
Ques. Was the mortgage executed about as has been related here by the witnesses, so far as the form is concerned?
Ans. Yes, sir.
Ques. Now, Mr. Stoy, will you please tell us how that mortgage came to be executed?

Complainant's counsel objected to any statements unless they were actual contemporaneous declarations. 30 That has been clearly determined in Lister versus Lister. He cannot give any secret intentions or motives.

Mr. Bergen: I mean as to the subject matter before us.

Ques. Did Mrs. Stoy loan you a thousand dollars?

Ans. Yes, sir.

Ques. When did she let you have that money? As you recollect, was any part of it given to you before the mortgage was executed?

Ans. Yes, sir.

Ques. How much?

Ans. One hundred dollars.

Ques. Had she any more money then?

Ans. Not at present, she hadn't.

10 Ques. Had she some coming to her that she could get?

Ans. Yes, sir.

Ques. Did you borrow it of her?

Ans. Yes, sir.

Ques. And got of her in all a thousand dollars?

Ans. Yes, sir.

Ques. Why was the mortgage made for five thousand dollars?

Ans. Because I knew it was only good for a thousand.

20

(Complainant's counsel objected on the ground that witness has no right to give reasons or arguments.)

The Court:

He can only give reasons founded upon the facts that take place; the fact itself must be the reason.

Ques. Did you want to borrow this thousand dollars?

Ans. Yes, sir.

Ques. She agreed to let you have it?

Ans. Yes, sir.

Ques. What was her first condition?

30 Ans. She wanted me to give her a deed for the property first.

Ques. That you refused to do?

Ans. Yes, sir.

Ques. Then what did she want?

Ans. Then she said if you will give me a five thousand dollar mortgage I will let you have this money?

Ques. Did you do that?

Ans. Yes, sir.

Ques. Why did you sign a mortgage for five thousand dollars when you got only one thousand?

The witness answered, "I knew it was only good for a $1,000" but upon motion of complainant's counsel, the Court ordered the answer to be stricken out.)

10

Mr. Bergen: Can't I prove by this witness that at the time he signed this mortgage he knew it was good only for the amount he got for it.

The Court: It don't make any difference what his secret understanding was.

Ques. Did you give her this five thousand dollars as a marriage gift?

Ans. No, sir; there was no marriage gift ever mentioned.

20

Ques. When did you first hear about the marriage gift?

Ans. The first I heard of it was here to-day.

Ques. Mr. Jenkins in his testimony stated that you came to his house and told him that you were going to give your wife this five thousand dollar mortgage as a present; do you remember that conversation?

Ans. No, sir; I don't.

Ques. Did you give it to her as a marriage gift or as a present.

30

(Objected to.)

Ans. No, sir.

The Court: He has a right to deny that.

Mr. Hendrickson : She simply stated what he said, now counsel asks him what his intentions were.

The Court: I will allow that ; he said he didn't give it to her as a gift at all.

Ques. You were married previous to this mortgage being given.

The Court: This is a mere matter of calculation.

10

Ques. During your married life did Mrs. and Mr. Stoy get along well together ?

Ans. Not very well.

Ques. Were there troubles between you all the time ?

Ans. Yes, sir.

Ques. And had been during most of your married life ?

Ans. Yes, sir.

20 Ques. You were living on this place on which this mortgage was given at the time it was given ?

Ans. Yes, sir.

Ques. How long after that mortgage was given was it before she left your house ?

Ans. After that mortgage was given ?

Ques. Yes.

Ans. Before she left my house ?

Ques. Yes.

Ans. I think it was about six months.

Complainant's counsel objects to this testimony.

30 The Court :

I don't see how that applies to this case.

(On motion of complainant's counsel the testimony objected to was ordered to be stricken out.)

Mr. Bergen:

All I want to show is that the parties were not living together amicably, and as soon as this mortgage was made she left his house. I think that is a fact in the case.

The Court:

You have shown that they didn't live peaceably together, and the pleadings also show a divorce. I don't see what more you can show; if you were to multiply it over and over again, you could not increase the intensity of it. 10

Ques. What is your recollection of what occurred at the house on the day the mortgage was executed?

Ans. I don't recollect, only Mrs. Lilly asked a question if this mortgage would interfere with her in any way and Mr. Jenkins said it would not, unless Mr. Stoy was in debt.

Ques. Were the papers read over there? 20

Ans. Yes, sir.

Ques. Did you hear any declaration there on the part of Mr. Jenkins of there being a present made on this five thousand dollar mortgage to her?

Ans. No, sir.

Ques. I think you stated that you didn't undertake to make her a present of five thousand dollars?

The Court: That has been expressly disposed of.

Ques. That is all. 30

Not cross-examined.

Mrs. Adelaide L. Ludlam, a witness produced on the part of the defendant, being duly sworn according to law, deposeth and saith:

Direct examination.

By Mr. Bergen:

Ques. Where do you reside?

Ans. Camden, New Jersey.

Ques. Do you know the parties here, the complainant and defendant?

Ans. Yes, sir; my brother and his former wife.

Ques. Joseph Stoy then is your brother?

10 Ans. Yes, sir.

Ques. And Emma Stoy was your brother's wife?

Ans. Yes, sir.

Ques. Did you ever have any conversation with Mrs. Stoy in reference to this mortgage?

Ans. Yes, sir; at two different times. The week before she left my brother and the very day she came down from seeing Mr. Hendrickson about getting her divorce.

Ques. What did she tell you in reference to the mortgage?

20 Ans. I asked her if she had a five thousand dollar mortgage on my brother's farm, and she said yes. I asked her how she came to get it; she said I let him have one thousand dollars. I said, "How came you to get a five thousand dollar mortgage out of him;" she said, "I would not let him have my thousand dollars until he gave me a five thousand dollar mortgage instead of the legitimate amount." She said, "I did it for the best, I did it to save our home, so that the "Doc" could not put any more encumbrance on the property."

30 Ques. When was this conversation?

Ans. The very week of her separation.

Ques. Do you remember what time?

Ans. It was in October, 1883.

Ques. The mortgage was given March 29th, 1883. Then when was the next conversation?

Ans. The very day she came down after filing her papers for her divorce.

Ques. What did she tell you in reference to the mortgage?

Ans. She told me that Mr. Hendrickson had told her that there was only a thousand dollars in it, and she said that he said if she got the mortgage in the spring and left him in the fall, it would look like blackmail. That is what she told me.

Ques. Is that all the conversation you had with her? 10

Ans. That is all.

Cross-examination.

By Mr. Hendrickson:

Ques. Where was the first conversation?

Ans. Three hundred and fifteen north Fourth st., second story, front room.

Ques. Who else was present?

Ans. She and myself. She came there in the evening 20 and stayed all night with me. It was the very week that she separated from my brother.

Ques. I didn't ask you all that. There was nobody else present?

Ans. Not at that time.

Ques. Have you given all the conversation just as it occurred between you and her on that matter. Do you pretend to give her words?

Ans. Well, it would be very difficult to give a conver- 30 sation which occurred in 1883 and now it is 1885. That was the purport and subject of it.

Ques. You made no memorandum of it?

Ans. I have a memoranda of the day she visited me.

Ques. No, but of the conversation.

Ans. No, sir; I depend upon my memory.

Ques. Is this the first time that you have spoken of it?

Ans. Yes, sir; because I never heard of it only a few days before.

Ques. I asked you if this is the first time you told it?

Ans. No, sir; I have often talked it over with my husband, Richard A. Ludlum.

Ques. When did you first talk it over with him?

Ans. That same week.

Ques. Who was present at the second conversation?

10 Ans. My husband, Richard A. Ludlam, was. I remember the occurrence distinctly. She came to my house in the morning.

Ques. Hold on, you told us that part of it before. In the first conversation, I understand you to say, that she said she did it for the best, to save the home, that "Doc" could not further encumber the property?

Ans. Yes, sir; those were her words.

Ques. What else did she say besides what you have

20 stated?

Ans. She stayed all night with me, and I don't remember what it was.

Ques. That is all.

Mrs. Emma S. Lennox, a witness produced on part of the defendant, being duly sworn according to law, deposeth and saith:

Direct examination.

By Mr. Bergen:

30 Ques. Where do you reside?

Ans. Camden, New Jersey.

Ques. Are you related to Joseph A. Stoy?

Ans. He is my brother.

Ques. Are you acquainted with Emma J. Stoy?

Ans. She was my brother's wife.

Ques. Did you ever have any conversation with her in reference to this mortgage?

Ans. I did; she came to my house and told me.

Ques. Do you remember when it was?

Ans. I think it was in September; I can't remember the day exactly of the month.

Ques. What year?

Ans. The year they separated.

Ques. Was that about the time that they separated?

Ans. Yes, sir; they separated in October; this was in September. She told me they were about to separate. I asked her why, and she said they could not get along together; that she didn't care; that she had the best of him she thought; that she had got a five thousand dollar mortgage for a thousand dollars, and she wanted him to give her a deed for the farm, and that he would not do it.

Ques. Did she say why she had the five thousand dollar mortgage, why she came to take it for five thousand dollars?

Ans. No, she said he was in debt and wanted money, and she would not give him her money until he gave her a five thousand dollar mortgage for one thousand.

Cross-examination.

By Mr. Hendrickson:

Ques. Who else was present?

Ans. I don't remember.

Ques. Where did this conversation take place?

Ans. In my bed room.

Ques. Have you given us all the conversation that you had with her?

Ans. All that I remember.

Ques. You made no note of it at the time?

Ans. No, sir; I did not.

Ques. That it is all?

Re-direct.

Ques. How had they got along so far as family matters were concerned during married life.

Mr. Hendrickson: One moment; does she speak from information?

10 Ans. They didn't seem to agree very well.
Ques. You were frequently at their house?
Ans. Yes, sir.
Ques. And she was frequently at your house?
Ans. Yes, sir; she told me of their affairs; she came to my house and told me by hours about their disturbances, and I have seen them at their own house.
Ques. Your information then is from actual knowledge and what she has told you.
Ans. Yes, sir; and what I have seen.
Ques. This was during the majority their married life?
20 Ans. Yes, sir.
Ques. That is all.

Defendant rests.

Emma J. Stoy, being recalled in her own behalf, testifies in rebuttal, as follows:

Direct examination.

By Mr. Hendrickson:

30 Ques. In your conversation with your husband about giving you a mortgage, who first suggested the amount of five thousand dollars?
Ans. He did.

Mr. Bergen:

That has all been gone over.

Mr. Hendrickson: That is all I propose to ask upon that. Your witnesses intimated that she demanded a certain amount; now she says that he first suggested the amount.

Ques. You heard the testimony of Mrs. Ludlum?

Ans. I did.

Ques. Were you at her house occasionally about the time of the filing of the petition for divorce?

Ans. Yes, sir; I was there when she names. 10

Ques. And what was your business in going there?

Ans. I just went there to stay all night; I hadn't any business—just a visit; she had repeatedly invited me and wanted to know why I didn't come oftener?

Ques. And you stayed all night?

Ans. Yes, sir.

Ques. Were your relations with her pleasant or otherwise?

Ans. Very pleasant indeed.

Ques. Did she ask you questions with reference to a mortgage that you held against the property? 20

Ans. Yes, sir.

Ques. What did she ask and what did you say?

Ans. She asked me if I had a mortgage; she said she didn't believe it. I told her that I had, and she wanted to know what I had it for, and I told her that he gave it to me, and I said very little about it, for I didn't consider that it was anything concerning her. She had often questioned me about it and about my family affairs, but I never said anything more than I could possibly help without being unladylike. 30

Ques. Was the amount of the mortgage mentioned between you?

Ans. Yes, sir.

Ques. And had you at that time taken counsel of me with reference to your relations with your husband?

Ans. Yes, sir; I had.

Ques. And had you received any caution with reference to talking about the matter from your counsel?

Ans. Yes, sir; I had.

Qnes. And did you or not decline talking with her about the particulars?

Ans. I declined talking with her about any of my affairs.

Ques. But there was nothing unpleasant between you?

Ans. Nothing that I know of; there was nothing on
10 my part and she always treated me the same; but I considered that she had nothing to do with my business, but she was very anxious to know.

Ques. On the other occasion she spoke of, did you say to her that I had told you that you must not claim more than a thousand dollars; that it would be considered blackmail?

Ans. I never said such a thing in my life to anybody, never. They had tried very hard to make me say it; they had even written me letters to that effect asking me if I would not.

20 Ques. Either of these witnesses?

Ans. Mrs. Ludlam wrote me a letter and said in this letter that if I chose he would pay me the thousand dollars and interest, and if I didn't want that, to go ahead and sue. I think I sent the letter to you.

Ques. With reference to Mrs. Lennox do you remember being at her house in September?

Ans. I don't remember exactly the day, but I know I went there quite frequently.

Ques. Do you remember having any conversation with
30 her about this mortgage?

Ans. Yes; think we were talking about it, but I said very little, simply answering in the most polite way I could.

Ques. What did you say, as far as you can remember, about it?

Ans. She said she was glad I had it; that is what she said.

Ques. She said she was glad you had it?

Ans. Yes, sir; that I deserved it, but she didn't believe that I could claim it.

Ques. What did you tell her?

Ans. I don't remember saying either yes or no, because I had been warned by you not to say anything.

Ques. That is all. 10

Cross-examination.

By Mr. Bergen:

Ques. Did you say that you had been warned by Mr. Hendrickson?

Ans. He told me not to talk my business affairs over with anybody, and I followed his directions as closely as possible.

Ques. That is all. 20

Complainants rest.

Rest all.

MASTER'S DEPOSITIONS.

Examination of a witness in the above stated cause taken before me, Franklin B. Levis, one of the Masters 30 of the Court of Chancery, at his office in Mount Holly, on Friday, the 14th day of August, A. D. 1885, at ten o'clock in the forenoon, in the presence of C. E. Hendrickson, of counsel for the complainant, and Martin V. Bergen, of counsel for the defendants, pursuant to notice

to that effect, as will appear by the summons hereto annexed.

CHARLES E. HENDRICKSON, a witness produced on the part of the complainant, being duly sworn according to law, on his oath saith:

I am the solicitor of the complainant in this cause, and am also solicitor of the complainant in the divorce suit under which the decree for alimony, counsel fee and costs were made, as filed in the Supreme Court, and have had charge of collecting the alimony under the divorce proceedings and paying it over to the complainant.

A certified copy of the above order for alimony, counsel fee and costs is here produced and marked Exhibit A, ex parte complainant.

A true copy of the certified copy of the final decree for divorce and alimony is here produced and marked Exhibit B, ex parte complainant, said final decree being filed May 26th, 1884.

A certificate of the Clerk of the Supreme Court, under date of October 27, 1884, showing abstract of decree from Chancery, showing as follows:

Amount decreed for alimony	$312 00
Costs	93 80
Counsel fee	50 00

and marked Exhibit C, ex parte complainant.

I have carefully computed the alimony, and find the following to be a correct statement of the alimony and costs and counsel fees, showing the credits for the moneys already paid.

Alimony from October 16, 1883, being date of decree *pendente lite* to May 26, 1884, date of final decree, 32 weeks, less 1 day, at $6 per week	$191 14
Complainant's costs on *pendente lite* order	14 08
Counsel fee on do	50 00

Alimony from May 21, 1884, to August 14, 1885, 63 weeks and 4 days, at $6 per week		$381 43
Complainant's costs on final decree		93 80
Counsel fee		50 00
		$780 45
Amount carried forward		$780 45
Taxed costs on attachment proceedings to collect		18 54
		$798 99

Cr.

By amount paid as follows:		
1883, Nov. 19, cash, for costs and counsel fee	$64 08	
1883, Nov. 19, cash, for alimony	24 00	
1883, Dec. 28, cash, for alimony	36 00	
1884, June 19, cash, for alimony	75 00	
1884, July 18, cash, for alimony	100 00	
1884, Sept. 27, cash, for alimony	150 00	
1884, Nov. 18, cash, for alimony	50 00	
1884, Dec. 23, cash, for alimony	35 00	
1885, May 12, cash, for alimony	50 00	
		584 08
Balance due		$214 91

This balance of $214.91 is now what is due and owing for alimony, counsel fee and costs up to this date, and is a lien upon the real estate of the defendant. I have sent frequent statements of this account to Bergen & Bergen, defendant's solicitors, and they have never disputed the correctness of the $35, which I have now credited December 23, 1884, and the only exceptions they took to the other side of the account was one of the fifty dollar counsel fees.

Being cross-examined.

So far as I know there has been no money paid to the complainant except through me, and as is credited in the above account. There was one payment made by Mrs. Ludlam, a sister of the defendant, of $36, December 28, 1883. I have never heard of any other payment being made by her to the complainant. I have had one counsel fee of $50 paid to me on the *pendente lite* order.

The complainant now writes to me under the name of
10 Emma J. Holmes, and I presume that is her name. She has written to me that she is now married again. She wrote to me that she was married on the 9th day of April, 1885, to a man by the name of Holmes and is living in New Orleans.

Being examined in chief.

The complainant has also written to me that she has had to borrow money and compelled to put him off for a year, and she has written to me over and over again to
20 try and get the back alimony to pay her debts, and is unable to pay the money she owes until she can get this *this* payment of $36 through Mr. Ludlam I was informed of by Bergen & Bergen ; they wrote to me to that effect, and this payment was reported to me by Mrs. Stoy as it was made. I sent a statement of this payment to Mr. Bergen and demanded further alimony, stating that no other had been paid, and the next statement they made to me was by check from Bergen & Bergen for $75, and they have never claimed credit for any other
30 money having been paid through Mrs. Ludlam, or any other persons excepting themselves as solicitors of the defendant. All the other credits I have testified to have come through checks from Bergen & Bergen, and all to me direct except the $100 which came through Mr. S.

Story v. Story.

1. A husband may make ~~a~~ to his wife, ~~through the~~ intervention of a third party, a mortgage on his lands, in consideration of a mortgage for a less amount assigned by her to him, which equity will sustain as a gift*,

2. ~~The~~ Alimony which accrues after the docketing of the decree allowing it in the Supreme Court, becomes a lien on the lands of the defendant as fast as it ~~accrues~~ becomes ~~due~~, due.

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M. A. A., who represented me in a short absence in the summer of 1884.

CHARLES E. HENDRICKSON.

Sworn and subscribed this 14th day of August, A. D. 1885, before me.

F. B. LEVIS,
M. C. C.

CONCLUSIONS OF VICE CHANCELLOR BIRD. 10

This bill was filed to foreclose a mortgage given by the defendant Stoy to Stella B. Lilly, dated March 29, 1883, to secure the payment of a bond for a like sum. At the time of the execution and delivery of this bond and mortgage, it was delivered to Stella B. Lilly. At the same time said Lilly executed an assignment of the said bond and mortgage and delivered them to the said complainant. The defendant, Stoy, resists the complainant in her attempt to recover the 20 amount due upon the said bond and mortgage. He says except for $1,000 and interest they are without consideration and usurious. Mrs. Stoy insists that the said bond and mortage above the said $1,000 was a gift to her by her husband. The question is, can it be considered a gift. I will state the principal facts.

Mr. Stoy called upon Mr. Jenkins, his counsel, and told him he was going to give his wife a mortgage on his property for $5,000 as a present or gift and asked him if 30 it could be done. Mr. Jenkins told him it could through a third party, provided he had no creditors. He then told Mr. Jenkins to draw the papers. He drew them, Stoy giving to Mr. Jenkins a deed containing a description of the property. About one week after this the papers were executed and delivered. Mrs. Lilly and Mr.

Jenkins meet Mr. Stoy and wife at Mr. Stoy's house. In the presence of all the parties Mr. Jenkins told Mrs. Lilly that Mr. Stoy intended to give his wife a $5,000 mortgage on his property. The mortgage was then made to Mrs. Lilly, with the understanding that she should assign it to Mrs. Stoy. Mrs. L. said she so understood it. Mr. S. was present during the conversation and immediately afterwards executed the bond and mortgage. Mrs. L. executed the assignment. All three of the papers were immediately delivered to Mrs. Stoy, 10 who handed them at the same time to Mr. Jenkins, requesting him to have the mortgage and assignment recorded. Mrs. S. paid for the recording.

Mrs. S. speaks of the origin and consummation of this transaction. Her language is, he asked me if I would give him a thousand dollars, a mortgage that I had on my brother's farm. He said he was in debt and it was right for him to pay his debts off and I told him it was dreadful to be in debt so soon after his father's 20 death, and if it continued in that way it would all be gone soon and I said unless he gave me something for the mortgage I would not give it to him. I then proposed that he should give a deed for the farm and he said he would not. It was his own proposition to give me a mortgage for $5,000. I told him I would take it. He told me to see Mr. Jenkins and have it done in a lawful manner. I went and saw Mr. Jenkins and he told me it would be necessary to have a third party. She says in that same interview that her husband said "In case he was to get into trouble or anything should happen them, I would have that as my own, and with that and my life 30 right in the property I could get along very nicely; that is exactly what he said."

Mrs. Ludlum, called by defendant, says that she asked Mrs. S. how she came to get a $5,000 mortgage of Mr. S., and that Mrs. S. said she would not let her husband

have her $1,000 until he gave her a $5,000 mortgage. She says that Mrs. S added, "I did it for the best, I did it to save our home, so that the 'Doc' could not put any more encumbrance on our property."

If this transaction was a gift the defense cannot prevail. Clearly it had all the solemnities of the most important contract. Mr. Jenkins, Mr. Lilly, Mrs. Lilly, and Mrs. Stoy understood that Mr. Stoy was making a gift of the bond and mortgage to his wife. Such gifts are universally upheld in the law. 10

That the Courts are disposed to uphold such transactions, see the case of Allan vs. Allan, 11 Vroom, 446, and the many cases there cited. I refer also to Lister vs. Lister, 8 Stew. Eq., 49, some of the features of which are quite similar to the case before me. In that case the Chancellor was sustained by the Court of last resort. See 10 Stew.

I think the complainant is entitled to the $5,000, and interest and costs. I will so advise. 20

ORDER OF REFERENCE.

This cause coming on to be heard at the last regular term of the Court of Chancery, held at the State House, in the city of Trenton, in the presence of Charles E. Hendrickson, of counsel with the complainant, and Martin V. Bergen, of counsel with the defendant Joseph A. Stoy, the complainant's bill having been heretofore taken as confessed against the other defendants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by her in her bill of complaint: 30

It is, on this twenty-eighth day of July, one thousand eight hundred and eighty-five, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree, that there is due to the said complainant, and she is entitled to upon her said bond and indenture of morgtage, dated March 9th, A. D. 1883, the principal money of five thousand dollars, with interest from the date thereof, and it is further ordered, that it be referred to Franklin B. Levis, Esquire, one of the Masters of this Court, to ascertain and report the amount due to the complainant upon her said mortgage as aforesaid, and also the amount due to her upon her decree in this Court for alimony and counsel fee upon their mortgages, and to Samuel A. Reeves and Joseph Franklin, and to report accordingly; and also to ascertain and report the order and priority of the said several mortgages and decree respectively, and whether they all embrace the same premises, and whether the said mortgaged premises should be sold together or in parcels, and if in parcels in what order; and that the said Master do make his report thereon with all convenient speed. And further equity is reserved until the coming of the said report.

THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C

MASTER'S REPORT.

Filed August 17, 1885.

In pursuance of an order of this Court, entered in the above cause, bearing date the twenty-eight day of July, in the year of our Lord one thousand eight hundred and eighty-five, I have been attended by the solicitor of

complainant and by the solicitor of the defendant Joseph A. Stoy, no person attending for the defendants, Joseph Franklin and Samuel A. Reeves, although duly summoned, as by due proof of service of summons hereto annexed appears, and in the presence of the parties attending me I have considered of the matters thereby referred to me, and the solicitor of the complainant produced before me the mortgage in her bill mentioned, bearing date the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and eighty-three, and made and executed by Joseph A. Stoy and Emma J., his wife, to Estella B. Lilley, and which said mortgage was duly acknowledged according to law by the said Joseph A. Stoy and wife and recorded as in the bill mentioned, as appears by endorsements thereon; and the said solicitor also produced before me an assignment of said bond and mortgage from Estella B. Lilley to the complainant, bearing date the twenty-ninth day of March, A. D. eighteen hundred and eighty-three, and acknowledged according to law, and recorded as therein mentioned; and the said solicitor also produced before me the bond intended to be secured by the aforesaid mortgage, and which bond, mortgage and assignment are marked Exhibits, D, E and F, on the part of the complainant; and I find that there is due to the complainant on her said mortgage, for principal and interest on this day, the sum of five thousand seven hundred and twelve dollars and fifty cents; and I certify and report that the schedule hereto annexed, marked No. 1, and making part of this my report, contains a statement and account of the principal and interest money due to the complainant on his said mortgage, to which for greater certainty I refer.

And I do further report, that the solicitor of the complainant produced before me a certified copy of the order for alimony, counsel fee and costs, made by this court, by me marked Exhibit A on part of complainant; also

a true copy of the certified copy of the final decree for divorce and alimony, by me marked Exhibit B, on part of the complainant; also a certificate of the Clerk of the Supreme Court, under date of October 27, 1884, showing abstract of decree from chancery, and by me marked Exhibit C, on part of the complainant. And I have taken the depositions of Charles E. Hendrickson, solicitor of the complainant, to prove the amount due for alimony, counsel fee and costs, and the account of which is particularly stated in his depositions accompanying
10 this report and making part thereof, and I find that there is due to the said complainant upon his divorce in this court, for alimony, counsel fee and costs on this day, a balance of two hundred and fourteen dollars and ninety-one cents ($214.91) as appears by said depositions and the statement thereon. And I do certify and report, that the mortgage to the said complainant was made and executed and recorded prior to the filing of the decree for alimony, counsel fee and costs in the Supreme Court, and is entitled to be first paid, and the balance due on the said decree is entitled to be secondly paid,
20 and that it is necessary and advisable that the whole of the mortgaged premises should be sold together to raise and pay the money so due to the complainant on his mortgage and decree aforesaid, together with the costs of this suit, all of which is submitted by

FRANKLIN B. LEVIS,
M. C. C.

SCHEDULE NO 1.

30 Bond bearing date March 29, 1883, made by Joseph A. Stoy to Estella B. Lilley, in the penal sum of $10,000, conditioned for the payment of $5,000 within five years from the date thereof, with lawful interest, and

Emma J. Story, respondent

assigned by Estella B. Lilley, to the complainant.....	$5,000
Interest from March 29th, 1883, to August 14th, 1885, two years, four months and fifteen days.....	$712 50
Amount due August 14th, 1885.....	$5,712 50

F. B. LEVIS,
M. C. C.

A true copy.
G. S. DURYEE, Clerk.

An appeal from a decree advised by V.C. Chancellor Bird, who filed the following conclusions:

10

Conclusions of Vice Chancellor Bird on Exceptions to Master's Report.

BIRD, V. C.: I think the exceptions should be overruled. The discussion was to the amount due upon the order and decree for alimony. It was urged that nothing could be allowed on the decree of this Court subsequent to the day of the docketing of such decree in the Supreme Court. This does not seem to me to be in reason. We allow interest, for example, on all decrees so docketed, not only that has accrued at the time of docketing, but also that accrues afterwards. Now the decree of the Court is that the defendant, or other party against whom it is made (in suits for divorce it may be against complainants) shall pay a certain sum per week, each and every week, which is just as definite or absolute as the accruing of interest, and I cannot imagine any reason why it should not become a lien as it accrues, as does interest. I shall so advise.

20

I am asked to advise a stay of execution during the pendency of the appeal in this case. I can see no sufficient reason for so doing. I think the complainant is entitled to the execution of the decree which the Court has awarded.

30

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Messrs. Bergen & Bergen, for appellants
Mr. C. E. Hendrickson, for respondent,

Per curiam. This decree unanimously affirmed for the reasons given by the

FINAL DECREE.

This cause coming on to be heard, in the presence of Charles E. Hendrickson, solicitor and of counsel with the complainant, a decree of this Court having been heretofore taken, after a hearing, against Joeeph A. Stoy, defendant, in favor of the complainant, granting her the relief sought and prayed for in her said bill, and the complainant's bill having been heretofore taken as confessed against Lillie Stoy, Joseph Franklin, Samuel A. Reeves and Cooper Browning, the other defendants; whereupon, and upon reading a report upon file, made by Franklin B. Levis, Esquire, one of the Masters of this Court, bearing date on the fourteenth day of August, in the year of our Lord one thousand eight hundred and eighty-five, from all which it appears that there was due to the complainant on the day of the making of the said report, for principal and interest on her mortgage, the sum of five thousand seven hundred and twelve dollars and fifty cents, and to the complainant on her decree of this Court, for alimony, counsel fee and costs, the sum of two hundred and fourteen dollars and ninety-one cents, and that the mortgage of complainant is first in registry and execution, and is entitled to priority of payment; and that the decree of complainant aforesaid is second in registry and record, and is entitled to be secondly paid; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary;

It is, thereupon, on this twenty-first day of August, in the year of our Lord one thousand eight hundred and eighty-five, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree, that the

said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant, that is to say, in the first place to pay and satisfy to the complainant the sum of five thousand seven hundred and twelve dollars and fifty cents, together with lawful interest thereon, to be computed from the fourteenth day of August, in the year of our Lord one thousand eight hundred and eighty-five, being the date of the Master's report, with the complainant's costs in this cause to be taxed; and in the second place to pay unto the complainant the sum of two hundred and fourteen dollars and ninety-one cents, together with lawful interest thereon as aforesaid, with her costs to be taxed, and to the complainant a counsel fee of twenty dollars, and that a writ of fieri facias do issue for that purpose out of this Court, directed to the Sheriff of the county of Camden, commanding him to make sale, according to law, of the said mortgaged premises, and that, out of the money arising from such sale, he pay to the complainant, or to her solicitor, her said debts, interests and costs; and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

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

THEODORE RUNYON, C.

A true copy, G. S. DURYEE, Clk.

APPEAL.

The defendant, Joseph A. Stoy, hereby appeals from the final decree made in this Court in the above stated cause, bearing date on the twenty-first day of August, A. D. eighteen hundred and eighty-five, or so much of said decree as declares that there is due upon the mortgage given by the said Joseph A. Stoy to Estella B. Lilley, and by her assigned to the complainant, as in the pleadings in this cause mentioned, the sum of five thousand dollars and interest, to wit: the sum of five thousand seven hundred and twelve dollars and fifty cents, and also so much of said decree as declares there is due to the complainant on her decree of this Court, for alimony, counsel fee and costs, the sum of two hundred and fourteen dollars and ninety-one cents to the Court of Errors and Appeals in the last resort in all causes.

BERGEN & BERGEN,
Solicitors of and of Counsel with defendants.

Dated October 30, A. D. 1885

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

MARTIN V. BERGEN,
Of Counsel with defendant.

PETITION OF APPEAL.

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

The humble petition of Joseph A. Stoy, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-first day of August, in the year of our Lord one thous-

and eight hundred and eighty-five, wherein the said Emma J. Stoy was complainant and your said petitioner and others were defendants, in this respect, to-wit: that the said decree adjudges that there is due the complainant for principal and interest on her mortgage the sum of five thousand seven hundred and twelve dollars and fifty cents, and that adjudges that there is due to the complainant on her decree of said Court, for alimony, counsel fee and costs, the sum of two hundred and fourteen dollars and ninety-one cents. 10

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said decree was in favor of the said complainant and against the said defendant, and also in this respect, to wit: that the said decree adjudges that there is due to the complainant on her said mortgage the sum of five thousand dollars and interest upon incompetent testimony, really without evidence; and also in this respect, to wit: that the said decree adjudges that there is due to 20 the complainant the sum of two hundred and fourteen dollars and ninety-one cents on her decree of the Court of Chancery, for alimony, counsel fee and costs, and made a judgment by virtue of being filed in the Supreme Court of judicature of the State of New Jersey, as the said judgment has been fully paid and satisfied.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to 30 this honorable Court shall seem meet.

BERGEN & BERGEN,
Solicitors and of Counsel with Appellant.

ANSWER TO PETITION OF APPEAL.

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

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the twenty-first day of August last past, made and entered in the Court of Chancery for the purposes mentioned in the said petition as is
10 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 she prays that the same may be affirmed, with costs to be adjudged to this respondent.

CHARLES E. HENDRICKSON,
Sol. and of Counsel with Respondent.

Filed December 26, 1885.