

# In Chancery of New Jersey 1

---

Between MALISCENT HOYT,  
*Complainant,*  
*and*  
SALMON W. HOYT,  
*Defendant.*

} On Bill

---

To the Honorable THEODORE RUNYON, Chancellor  
of the State of New Jersey :

Humbly complaining shows unto your Honor your  
oratrix, Maliscent Hoyt, of Jersey City, that in the  
year of our Lord eighteen hundred and sixty-four, <sup>3</sup>  
and, up to the time of the making of the deed herein-  
after mentioned, she was seized of an estate in fee  
simple of certain premises lying on the northwesterly  
corner of Wayne and Grove streets in Jersey City,  
New Jersey, beginning at the northeasterly corner  
of said streets, and running thence northerly along  
Grove street forty feet ; thence easterly, parallel with  
Wayne street, sixty feet ; thence, southerly, parallel  
with Grove street, forty feet to Wayne street ; and <sup>4</sup>  
thence westerly along Wayne street sixty feet to the  
beginning. That your oratrix is, and since the Sum-  
mer of the year eighteen hundred and sixty-three,  
has been, a widow ; that she has three children, of  
whom Salmon W. Hoyt is the oldest son ; that he is

now about thirty-nine years of age ; that prior to the making of the deed hereinafter mentioned, the said Salmon frequently requested and urged your oratrix

5 to make a deed to him, which should convey to him an undivided half of the property above described, from and after the death of your oratrix, leaving to your oratrix the full enjoyment of the said premises, and of the rents, issues and profits of said premises, during her lifetime ; that after considerable reluctance and delay on the part of your oratrix, and urgency on the part of said Salmon, she consented to make such a conveyance to him, and he then said that

6 he would have such a deed prepared, to which your oratrix consented ; that shortly afterwards he took your oratrix to the house of one Ferdinand Lewis, a Commissioner of Deeds then residing in the neighborhood, but since deceased, who there produced a deed which he then and there informed your oratrix would, when executed by your oratrix, convey to her said son Salmon, after the death of your oratrix, an undivided half part of the premises hereinbefore

7 described ; that said Salmon was then present, and placing entire reliance on the integrity of her said son, she then executed and acknowledged the said deed and gave it to said Salmon ; that she never read said deed, and never (until within the last two or three months) had any information of its purport, except what she derived from said Lewis and her said son Salmon, and which was all to the effect that said deed conveyed to said Salmon only an estate to be enjoyed after the death of your oratrix.

8 Your oratrix further shows that she never received, nor did said Salmon ever give, any consideration for said deed ; that it was a purely voluntary conveyance, made from affection for her son, and with a view to the disposition of her property after her

death, and that she never had any purpose of thereby infringing on her title to said lands during her life, the income to be derived from which was almost her only reliance for her independent support ; that said Salmon was by no means poor or dependant upon your oratrix, but was and still is in business in New York City, from which he has adequate means. 9

Your oratrix further shows, that after the making of said deed, as before mentioned, and thence up to within a very short time, your oratrix has been in receipt of all the rents, issues and profits of said premises, without any claim or suggestion of any claim being made by said Salmon to any share thereof ; that although he has signed the leases which your oratrix has from time to time given for said premises, yet he has done so, as your oratrix always understood, because of his right in remainder to said lands, and has so always explained to your oratrix the necessity for his so doing, and has never intimated to your oratrix (until lately) any claim to any share of the rents of said premises. 10

Your oratrix further shows that said Salmon has never placed said deed on record, and that within two or three months last past he has claimed, and now claims, that the said deed conveys to him a present undivided half interest in said premises ; that he is now, and since the making of said deed has been, an equal owner with your oratrix in said premises, and that he is, and since said time has been, entitled to one-half of the rents and profits thereof. 11

And your oratrix further shows that the said Salmon has lately been interfering with the collection of the rents of said premises by your oratrix, by giving notice to the tenants thereof that they must pay one-half of the rents to him, and by threatening to sue said tenants for his equal share of said rents, by means of which your oratrix, in order to collect the 12

last month's rent, was obliged to and did give to said tenants bonds of indemnity against the claims of said Salmon.

13 And your oratrix further shows that she greatly fears that if (as claimed by said Salmon) the said deed be in form sufficient to convey to him an equal undivided share of her premises to be enjoyed at once, and if no measures be adopted to have said deed set aside during the life of your oratrix, then, if ever the said Salmon should permit your oratrix to collect the whole rents of said premises during her life, he would, after her death, make a claim against her estate for a share of said rents, when no means of resisting such a claim could be procured.

14 Your oratrix therefore charges and insists that if the said deed be in form (as claimed by the said Salmon) it was obtained from your oratrix by misrepresentations made to your oratrix by said Salmon and his agent, the said Lewis, through which misrepresentations your oratrix was deceived and defrauded, and that the said deed is therefore void, not  
 15 only so far as it purports to grant an estate during the life of your oratrix, but wholly and as to all the estate which it purports to grant; that since it was a deed of gift the said Salmon should not only by means of it not acquire that estate of which he intended to defraud your oratrix, but should also acquire no estate or right whatever; that as the discovery of the fraud before the execution of the deed would have prevented the execution thereof, so now, being  
 16 discovered afterwards, it should avoid such execution.

In tender consideration whereof, and inasmuch as your oratrix is remediless in the premises in the courts of law, and can have adequate relief only in this honorable court, and to the end

1. That the said Salmon W. Hoyt may, without oath, according to the best of his knowledge, information and belief, answer all and singular the premises.

17

2. That the said deed made by your oratrix to the said Salmon may be adjudged by the decree of this honorable court to be and to have been from the time of its execution absolutely and wholly void and of no effect; or, if it shall seem more equitable, that it may be adjudged by such decree to be and to have been from the time of its execution void and of no effect in so far as it purports to convey any estate during the life of your oratrix.

18

3. That the said Salmon W. Hoyt may be decreed to reconvey unto your oratrix such estate as he wrongfully holds or claims to hold under said deed.

4. That he may be restrained from conveying or in any way transferring or encumbering the lands described in said deed, and from collecting or attempting to collect any of the rents of said premises, and from in any way interfering with your oratrix in the collection of said rent, or with the tenants in occupying said premises.

19

5. That your oratrix may have such other relief as the nature of the case requires and as may be agreeable to equity.

20

May it please your Honor to grant unto your oratrix not only the State's gracious writ of injunction, issuing out of and under the seal of this honorable court, restraining the said Salmon W. Hoyt from conveying or in any way transferring or encumber-

ing the lands described in the deed made to him by your oratrix, and from collecting or attempting to collect any of the rent of said premises, and from in any way interfering with your oratrix in the collection of said rent, or with the tenants in occupying said premises, but also the State's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Salmon W. Hoyt, commanding him on a certain day, and under a certain penalty therein to be expressed, to be and 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 may be made herein.

22

DIXON &amp; COLLINS,

*Solicitors.*

JONATHAN DIXON,

*Of Counsel with Compl't.*

State of New Jersey, }  
 23 County of Hudson } *ss.*

Maliscent Hoyt being duly sworn, on her oath says : I am the complainant in above bill. Before the making of the deed in said bill mentioned, made by me to Salmon W. Hoyt, I was the owner in fee simple of the premises in said bill described, lying on the northeast corner of Grove and Wayne streets, Jersey City ; that deed was made in the year eight-  
 24 een hundred and sixty-four, as nearly as I can remember, about a year after the death of my husband, who died June 16th, A. D. 1863. Salmon is my oldest son, and is now about thirty-nine years of age. For a considerable time before I made said deed he urged me to give him one-half of the said

property, to be his after my death, leaving me in the full enjoyment and receipt of the rents during my life. After a while I consented to do this, and then he took me to the house of one Ferdinand Lewis, a Commissioner of Deeds, now deceased, who produced a deed which he informed me, in presence of Salmon, was intended to give Salmon one-half of this property after my death. Believing the deed to be of this purport, and not suspecting that Salmon would deceive me, I signed and acknowledged the deed, and it was given to Salmon. I did not read the deed or become acquainted with its contents except by what Salmon and Lewis told me. I received nothing for the deed. From that time until the present I have been in receipt of the whole rents of the place. He has never claimed to be entitled to any part of them until within a month or two. Within that time he has claimed that he is owner of one-half the property, and entitled to one-half the rent, and he has threatened the tenants with suit if they did not pay him half. I have been obliged to give the tenants a bond of indemnity against his claims, upon which they have paid the rent to me. Salmon has signed the leases with me, but I always understood he did that because if I should die he would be half owner of the property.

MALISCENT HOYT.

Subscribed and sworn to this }  
 June 29, 1874, before me. }

HENRY S. WHITE,

*Master in Chancery of New Jersey.* 28

## IN CHANCERY OF NEW JERSEY.

29

Between MALISCENT HOYT,  
*Complainant,*  
*and*  
 SALMON W. HOYT,  
*Defendant.*

} Answer of Defendant.

30

The answer of Salmon W. Hoyt, defendant, to the Bill of Complaint of Maliscent Hoyt, Complainant.

31 This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception to the many errors, uncertainties, and imperfections in the said Bill of Complaint, contained  
 thereof as this defendant is advised is material for him to make answer unto, answering says :

32 That he denies that the complainant, Maliscent Hoyt, in the year eighteen hundred and sixty-four, and up to the time of the making of the deed referred to in the first paragraph of the complainant's Bill of Complaint, was seized of an estate in fee simple of the premises described in said first paragraph of the said Bill of Complaint, but admits that the complainant is, and since the summer of the year eighteen hundred and sixty-three has been a widow, and that she has three children, of whom this defendant is the oldest son, and that he, this defendant, is now about the age of thirty-nine years.

And this defendant further answering, denies that prior to the making of the deed referred to in the first paragraph of the complainant's said Bill of Complaint, this defendant frequently requested and urged the said complainant to make a deed to him, this defendant, of the nature and purport as set forth in the first paragraph of the said Bill of Complaint, and also denies that after considerable reluctance and delay on the part of the said complainant, and urgency on the part of this defendant, she, the said complainant, consented to make such a conveyance to this defendant, and that he, this defendant, would have such a deed prepared, to which the said complainant consented.

33

34

And this defendant further answering, admits that he took the said complainant to the house of one Ferdinand Lewis, a Commissioner of Deeds then residing in the neighborhood, but since deceased, who there produced a deed in the presence of this defendant and said complainant, but denies that the said Ferdinand Lewis then and there informed the said defendant that said deed, when executed by the said complainant, would convey to her son Salmon (this defendant), after the death of the said complainant, an undivided half part of the premises described in the first paragraph of the complainant's said Bill of Complaint.

35

And this defendant further answering, admits that the said complainant, placing entire reliance in the integrity of this defendant, executed and acknowledged the said deed produced by said Lewis, and gave it to this defendant.

36

And this defendant further answering, admits that the said complainant never read said deed, but denies that she, the said complainant never, (until within the last two or three months) had any information of its

purport, except what she derived from said Lewis and this defendant.

37 And this defendant further answering, denies that the information derived by said complainant from said Lewis and this defendant of the purport of said deed, was all to the effect that said deed conveyed to this defendant only an estate to be enjoyed after the death of said complainant,

38 And this defendant further answering, admits that the said complainant did not receive, nor did this defendant ever give, any consideration for said deed to the said complainant, but denies that it was a purely voluntary conveyance, made from affection for this defendant, and with a view to the disposition of her property after her death, and denies that the said complainant never had any purpose of thereby infringing on her title to said lands during her life, the income to be derived from which was almost her, the said complainant's, only reliance for her independent support.

39 And this defendant further answering, admits that he was by no means poor or dependant on the said complainant, but was, and still is, in good business in New York City, from which he has adequate means.

40 And this defendant further answering, admits that after the making of said deed before mentioned, and thence up to within a very short time the said complainant has been in receipt of all the rents, issues and profits of said premises; but denies that she has so received said rents, issues and profits without any claim or suggestion being made by this defendant to any share thereof.

And this defendant, further answering, admits that he has signed the leases which were from time to time given for said premises, but denies that said leases were given by the said complainant, or that

this defendant signed said leases because of the right in remainder of this defendant to said lands; and this defendant answering denies that said complainant so understood it, and also denies that he has so always explained to the said complainant the necessity of his so doing. 41

And this defendant further answering, denies that he has never intimated to the said complainant (until lately) any claim to any share of the rents of said premises.

And this defendant further answering, denies that he has never placed said deed on record, but admits that *within two or three months previous to the filing of the said Bill of Complaint, he has claimed, and then claimed, that the said deed conveyed to him a present undivided half interest in said premises; that he is now, and since the making of the said deed has been, an equal owner with the said complainant in said premises, and that he is, and since said time has been, entitled to one-half of the rents and profits thereof.* 42

And this defendant further answering, admits that previous to the filing of the said Bill of Complaint, he did interfere with the collection of the rents by the said complainant, by giving notice to the tenants as set forth in said Bill of Complaint, and admits that he threatened to sue said tenants for his equal share of said rents, and that said complainant was obliged to and did give bonds of indemnity against the claims of this defendant. 43

And this defendant further answering, denies that the said deed was obtained from the said complainant by misrepresentations made to the complainant by this defendant and the said Lewis, or that said complainant was deceived and defrauded by means of any representation made by this defendant or said Lewis, or that said Lewis was an agent of this defendant. 44

And this defendant further answering, denies that said deed is void by reason of anything set forth in the complainant's said Bill of Complaint, or that said deed was a deed of gift.

45 And this defendant further answering, denies that he intended to defraud, or did defraud the said complainant of said premises, or that by reason of any act of his he should be deprived of any interest that he has or may have in said premises.

And the said defendant, as to the true circumstances relating to the subject matter of said Bill of Complaint, and in further response to said Bill of Complaint, says that his father, Nelson W. Hoyt,  
46 (now deceased) and this defendant, by deed bearing date on the twenty-fifth day of April, eighteen hundred and fifty-nine, recorded in the office of the Clerk of the County of Hudson, in the State of New Jersey, in book seventy-three of Deeds for said county, on page 69, &c., purchased the premises described in the first paragraph of the complainant's Bill of Complaint from one Barzillai W. Ryder and Hannah E., his wife, for the sum of nine thousand dollars, and thereby each became seized of equal interest therein.

47 And this defendant further answering, says that the said Nelson W. Hoyt and Maliscent his wife (the complainant), this defendant and Mary A., his wife, made, executed and delivered to the said Barzillai W. Ryder a bond and mortgage bearing even date with the deed last named, to secure the sum of four thousand dollars, with interest, being a part and parcel of the purchase money named in said deed, the  
48 balance of the purchase money having been paid by the said Nelson W. Hoyt and this defendant, each having paid one half thereof, the said mortgage having been recorded in the office of the Clerk of the County of Hudson, in Book Twenty of Mortgages for said County, on pages 805 and 806.

And this defendant further answering, says that he paid one half of all interest that became due on said bond and mortgage, and one half of the principal thereof, which said mortgage was cancelled of record on the fifth day of May, eighteen hundred and sixty-three. 49

And this defendant further answering, says that in the year eighteen hundred and sixty, Nelson W. Hoyt decided to go to New Orleans, and desired, before leaving for that place, to deed to his wife, Maliscent Hoyt (the complainant), his one equal undivided one-half of the premises described in said deed from Ryder, and in order to effect this end the said premises were conveyed by Nelson W. Hoyt and Maliscent his wife (the complainant) to this defendant, by deed bearing date on the seventeenth day of July, in the year eighteen hundred and sixty recorded in the office of the Clerk of the County of Hudson, in Liber eighty-two of deeds for said County, on pages 537, &c. 50

And this defendant further answering, says that after the execution of said deed, from Nelson W. Hoyt and Maliscent his wife (the complainant) to this defendant, this defendant called at the office of William Voorhees (now deceased), then an attorney-at-law of the State of New Jersey, having an office in Jersey City, New Jersey, and related to him the said circumstances of the transfer of the said premises from Nelson W. Hoyt and wife to this defendant, and requested him, the said Voorhees, to draw a deed, from this defendant to Maliscent Hoyt, for the undivided one-half of said premises described in said deed, from Nelson W. Hoyt and wife to this defendant; that the said Voorhees drew, or caused to be drawn, a certain deed bearing date on the thirtieth day of July, in the year eighteen hun- 51 52

dred and sixty, from Salmon W. Hoyt to Maliscent Hoyt, for the same premises, described in the said deed from Nelson W. Hoyt and wife to this defendant, which said deed was executed by this defendant, and recorded in the office of the Clerk of the County of Hudson aforesaid, in Liber eighty-two of deeds, pages 681, &c.

53 And this defendant further answering, says that he was a married man at the time of the execution of the deed from Salmon W. Hoyt to Maliscent Hoyt, above referred to, but that said Voorhees in drawing said deed neglected to make the wife of this defendant, who is still his lawful wife, a party thereto.

54 And this defendant further answering, says that the said Voorhees was a careless business man and greatly given to intemperate habits.

And this defendant further answering, says that said deed from this defendant to Maliscent Hoyt purports to convey the whole of the said premises to the said Maliscent Hoyt, which was an error made by said Voorhees and which was not discovered by this defendant, nor did this defendant have any knowledge of that fact till many years after the execution of said deed, when this defendant called upon the said complainant and informed her that Mr. Voorhees had made a mistake in drawing the said deed, having conveyed to her the whole of the premises instead of the undivided one-half part thereof, as he had been directed, and as was understood between Nelson W. Hoyt and this defendant, and requested the said complainant to execute and deliver a deed to this defendant conveying to him the undivided one-half of said premises, which the said complainant readily consented to without any persuasion or representations having been made to said complainant, except as herein stated.

And this defendant further answering, says that he believed that said deed from this defendant to said complainant conveyed to her the one, equal, undivided one-half part of said premises, and that he, this defendant, retained the other one, equal, undivided one-half part till he, this defendant, was otherwise informed as aforesaid. 57

And this defendant further answering, says that on or about the sixth day of March, eighteen hundred and sixty-seven, the said complainant and this defendant called at the residence of Ferdinand Lewis, a Commissioner of Deeds in and for Hudson County aforesaid, when and where the said Maliscent Hoyt (the complainant), executed and delivered to this defendant in consideration of this defendant having an equitable estate in the premises therein described, and other good and valuable consideration, a deed conveying to this defendant the equal, undivided one-half part of the premises described in the first paragraph of the complainant's Bill of Complaint, which deed bears date on the *first day of February*, in the year eighteen hundred and sixty-seven, and was recorded in the office of the Clerk of the County of Hudson aforesaid, on the *twenty-seventh day of January*, of the same year, in Liber 163 of Deeds, for said county, on pages 248 &c., and was drawn in accordance with the understanding had between said complainant and this defendant, and that said complainant knew at the time of the execution of said deed the estate that was thereby conveyed to this defendant. 58

And this defendant further answering, says that previous to the execution of the deed, last above referred to, the said Ferdinand Lewis carefully read the said deed to the said complainant and this defendant at the same time, and no representations of 59

60

any kind or description were made to the said complainant by said Lewis or this defendant, or by any other person in the presence of this defendant (who remained with the said complainant during her said stay at the residence of said Lewis), but that said complainant was satisfied to execute and deliver said deed, remarking, at the time of the delivery thereof, "It is only giving him (referring to this defendant) what belongs to him," or words to that effect.

And this defendant further answering, says that there was no understanding, express or implied, between this defendant and the said complainant before the execution of said deed from the said complainant to this defendant, or at any time since; that the said complainant should receive the rents, issues and profits of the said premises for having executed said deed, or any understanding, express or implied, between said complainant and this defendant; that said deed only conveyed an estate to be enjoyed by this defendant after the death of the said complainant or otherwise than as is recited in said deed; but said deed was executed and delivered by said complainant to this defendant because the interest thereby conveyed belonged to this defendant, and was demanded by him as of right, and which deed was executed and delivered voluntarily by said complainant to this defendant.

And this defendant further answering, says that neither the said complainant or any person for her or in her behalf, at the time of the execution of the said deed from this defendant to said complainant, bearing date on the thirtieth day of July, eighteen hundred and sixty, and hereinbefore referred to, or at any time prior or subsequent thereto, did not pay or give any consideration to this defendant for said

deed or the property therein described, and that said deed was at no time delivered to said complainant or to any person for her or in her behalf.

And the defendant further answering, says that his father, Nelson W. Hoyt, departed this life on or about the 16th day of June, eighteen hundred and sixty-three, to which time the said Nelson W. Hoyt and this defendant each received one-half of the rents, issues and income derived from the said premises described in the first paragraph of the complainant's said Bill of Complaint, and that each paid one-half of the costs, charges and expenses against said property, including one-half of all taxes, assessments and water rents against said property, from the time of the delivery of the said deed from Barzallai W. Ryder and wife to said Nelson W. Hoyt and this defendant, to the time of the death of said Nelson W. Hoyt. 65 66

And this defendant further answering, says that at the death of the said Nelson W. Hoyt, the said complainant became a widow, whose income, to the mind of this defendant, was insufficient for her proper support and the proper maintenance of her family, and having a true for the comfort and happiness of his mother, the said complainant, he, this defendant, allowed the said complainant, without any consideration, to collect and receive the rents of said premises so long as she continued housekeeping, and only during the will and option of this defendant, upon condition that she pay all the taxes and other charges which might come against said premises, and without losing his claim or right to the same should he at any time desire to collect and retain his own share of said rents. 67 68

And this defendant further answering, says that he has signed each written lease given for said premises as one of the lessors, since the delivery of said

deed from said Ryder hereinbefore referred to, and that the said complainant knew that he signed them as one of the lessors and for no other cause, and that the defendant never represented to said complainant  
 69 that he signed said lease for any other reason than that he was the owner of the undivided one-half of said premises.

And this defendant further answering, says that in the year eighteen hundred and sixty-eight, or eighteen hundred and sixty-nine, the said complainant disposed of the house in which she had resided from the time of her husband's death, and also disposed of the greater part of her furniture, and  
 70 went to live with one Sidney B. Bevans, her son-in-law, where she has since resided and at the present time resides.

And this defendant further answering, says that since the said complainant moved to the house of said Bevans, he, this defendant, has been desirous of receiving his share of the rent; of said premises and appropriating them to his own use, as he, this defendant, did not wish to longer aid in the support of  
 71 the said complainant till he deemed it necessary; that she, the said complainant, became careless in the use of the said rents from said premises, having loaned money to her said son-in-law, Sidney B. Bevans, who is an irresponsible person with an uncertain income if any, he being a cotton speculator who has been unfortunate in speculations for some time past; and further, that the said Sidney B. Bevans has in other  
 72 ways succeeded in obtaining money from the said complainant, a greater part of which is the share of this defendant in the rent of said premises, and of all this the said complainant has had notice from this defendant.

And this defendant further answering, says that

the annual rental of the premises described in the first paragraph of said bill of complaint is, and since the year eighteen hundred and sixty-eight has been, the sum of two thousand dollars, and previous to that time the annual rental was eighteen hundred 73 dollars, and that the fair value of the whole of said premises is the sum of twenty-five thousand dollars, which amount has been offered for said premises.

And this defendant further answering says, that the said complainant is about sixty years of age, in good health, with no person depending on her for maintenance or support.

And this defendant further answering, says that 74 the said complainant is the owner in fee simple of certain tracts of ground in Jersey City (in addition to her interest in the premises described in said Bill of Complaint) from which she receives an income, exclusive of the rent from the premises described in the first paragraph of said Bill of Complaint, and that she has an income from other sources which alone is ample for her support,

And this defendant further answering, says that 75 after the said complainant went to the house of said Sidney B. Bevans to live, that he, this defendant demanded of the tenants that they, the tenants of said premises, should pay him one-half of the rent of said premises, and of which demand he, this defendant, told said complainant, and also told said complainant that thereafter he would receive his own half of said rents for his own use, and that she should 76 no longer collect and receive for her own use, his share of said rents, when he learned for the first time from said complainant that she, the said complainant, claimed the power and right to collect and appropriate to her own use the whole of said rents so long as she lived.

77 And this defendant further answering, says that he has at all times since the purchase, as aforesaid, from Ryder, claimed the one undivided one-half of said premises, and one-half of the rents, issues and profits thereof, except such rent as he gave said complainant.

78 And this defendant further answering, says that he has in his possession the following deeds, mortgage and bond: The said deed from Barzillai W. Ryder and wife to Nelson W. Hoyt, bearing date on the twenty-fifth day of April, eighteen hundred and fifty-nine; the said deed from Nelson W. Hoyt and Maliscent, his wife, to Salmon W. Hoyt, bearing date on the seventeenth day of July, eighteen hundred and sixty; the said deed from Salmon W. Hoyt to Maliscent Hoyt bearing date on the thirtieth day of July, eighteen hundred and sixty; the said deed from Maliscent Hoyt to Salmon W. Hoyt, bearing date on the first day of February, eighteen hundred and sixty-seven; the said mortgage from Nelson W. Hoyt and Maliscent, his wife, to Barzillai W. Ryder, bearing date on 79 the twenty-fifth day of April, eighteen hundred and fifty-nine; and the said bond accompanying the same and therein referred to (which said deeds, bond and mortgage are the same as are herein before referred to), ready to be produced and proved as this court may direct, to which said bond, mortgage and deeds he, this defendant, prays leave to refer.

80 And this defendant further answering, denies that by reason of anything contained in the complainant's said Bill of Complaint that he should be disturbed in the possession and enjoyment of the estate that he now holds, whether legal or equitable, in said premises, or that the said complainant is entitled to any of the relief prayed for in said Bill of Complaint

without that, 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 matters and things this defendant is ready to aver, maintain and prove, as this court may direct, and he prays to be hence dismissed with his reasonable costs and charges by him in this behalf most wrongfully sustained. 81

WM. BRINKERHOFF,

*Solicitor for and of Counsel with Defendant.*

---

82

State of New Jersey, }  
 Hudson County, } ss.:

Salmon W. Hoyt, being duly sworn according to law, on his oath saith, that the matters and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others he believes them to be true.

SALMON W. HOYT. 83

---

Subscribed and sworn to before }  
 me this 15th day of September, }  
 A. D. 1874.

W. MUIRHEAD,  
*M. C. C.*

---

84

A true copy.

H. S. LITTLE,  
*Clerk.*

Replication in usual form.

85

## IN CHANCERY OF NEW JERSEY.

86	<p style="text-align: center;">Between MALISCENT HOYT, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">SALMON W. HOYT, <i>Defendant.</i></p>
----	---

87 Examination of witnesses, &c., in the above entitled cause on the part of the complainant, taken before me, Isaac Romaine, a Master and Examiner of said Court, at my office, No. 111 Washington Street, Jersey City, N. J., on Monday, February 1st, 1875, at four o'clock in the afternoon, in presence of Jonathan Dixon, Counsel for the Complainant, and William Brinkerhoff, Counsel for the Defendant.

MALISCENT HOYT, a witness produced on the part of the complainant, being duly sworn on her oath, saith:

88 I live at No. 262 Montgomery Street, Jersey City, with my daughter, Mrs. Bevans; I am a widow; my husband was Nelson W. Hoyt; he died eleven years ago the 16th of next June; he died at No. 217 Wayne Street; I have three children now living; Fanny Bevans is the oldest, Salmon W., the defendant, is the next, and John N. Hoyt is the youngest; I know the property on the northeast corner of Wayne and Grove streets, Jersey City; it consists of two stores fronting on Grove street, the side is on

Wayne; I don't know how wide it is on Grove street, I never thought of it; one of the stores is occupied as a grocery store, occupied by McCoy & Beemer; the other store is a barber shop and dwelling; I made a deed to Salmon of that property after my husband died; he (Salmon) coaxed me to give him a deed of one-half of the property after my death, and I supposed it was all right, that he wouldn't come back on me for it until after my death; my husband died in June and my daughter died the following December, and it was the following Summer or Fall that Salmon first spoke to me about giving him a deed for part of that property; Salmon used to come in my room after dinner, and he asked me if I wouldn't give him a deed for one-half the corner; I thought a great deal of him; he was my eldest son and I thought I would give him a deed for half of it, let him have it; he said it should be mine just the same as long as I lived every time he would speak of it; he spoke of it several times before I let him have it; but every time he spoke of it he said it should be mine just the same as long as I lived, and although I wanted him to have it I thought my other children would make such a time about it after my death, it worried me so much after I did it. 89 90 91

Nothing was said about getting the deed up; he got me to say that I would give him a deed for half of it, but he said it should be mine just the same as long as I lived.

After that he told me he had a deed made out; I didn't know who made it out until he got me to go around to the place; he came to me twice to go around and sign the deed; the first time I wouldn't go because, though I wanted him to have it, I thought my other children would feel hard toward me after my death; the second time he came for me to go I went. 92

He took me to Mr. Lewis' dwelling house, I don't know what street; I had never been to the place, and hadn't seen the man before; I had heard of him; it

was before Salmon went into business; I saw Mr. Lewis at the house, and Salmon, no one else.

93 When I got there he read the deed, and I said, "Salmon, why did you bring me to this place?" Salmon said the man owed him, so he got him to do the writing. I think Mr. Lewis had the deed when I went there; I don't know whether he read the whole deed over; I was so confused I couldn't tell three words in it; I was in such dreadful trouble, it was so short a time after losing my husband; I heard it and I didn't hear it; Mr. Lewis read it over, but I couldn't tell a word; I might have signed away my life just as well, I was so worried I didn't know what I was signing; I thought it was just  
94 as Salmon had told me; I don't think Salmon read it at Mr. Lewis', I think Mr. Lewis read it, and I signed it and went away; at the time I signed it *I thought it was a deed to Salmon for half the property, to have it after my death.*

95 I couldn't read writing; I could read it once, but I haven't read it for years; I can't tell whether the deed now shown me was signed by me only by my name; I can't tell if the name signed to it was written by me or not.

I never saw the deed after I signed it; I guess Mr. Lewis is now dead; I saw him once, a little while after that, at a festival; Salmon never gave me anything for that deed.

Before I signed the deed for Salmon I did not know anything about his having conveyed that place by mistake, or anything about a mistake; I never heard of it until afterwards.

96 I had the rents of this place before I made the deed to Salmon; I have had the rents all the time; I lived out of the rents; I have always had the rents since my husband's death.

A long time after I signed the deed, and not until last winter when I went to rent the store, I first heard that

Salmon claimed to own half the property during my life; he came and wanted to rent the store; I told him I couldn't let him have it because McCoy & Beemer had paid Coykendall, the former tenant, so much for the good will, and they had it just made up; and I told Salmon I couldn't let him have the store because I must let Beemer have it for another year; he wanted a lease of it but I would not lease it, but if he wanted it after Beemer had it that year I would rent it to him, but I must let Beemer have it another year. 97

Salmon said he would have it; I told him he couldn't have it; he said it was half his anyway; I said "Salmon, you know it isn't—you know it is mine as long as I live;" he says, "No it isn't;" that was the first I knew it wasn't in the deed just as they read it, and the way we talked about it—that it wasn't to be his until after my death. 98

Since my husband's death I have had no sources of income except the rents from this corner property, and keeping two, three or four boarders; I stopped keeping boarders when I broke up housekeeping; I broke up housekeeping seven years ago.

Salmon always got up the leases for the store and signed them; he never gave any reason for signing the leases; I didn't know it until lately; in fact I didn't know, but it must be so; Salmon drew up the lease for me for this corner; he did not collect the rents for me; I collected them myself. 99

He never claimed to be entitled to any of the rents until a year ago last June; I am sixty-one years old.

*And being cross-examined she says:*

My husband purchased this property and gave it to me; what he gave me he deeded direct to me; this corner he gave me; the deed to me is from my *husband direct*. 100

Q. About how long ago is it that your husband deeded this property to you?

A. I suppose it was between two and three years—perhaps three years—before his death.

101 *I don't know as Salmon ever owned this property;* I don't know anything about Salmon deeding this property to me.

If he had deeded this property to me I think I ought to have known it; the deed from my husband to me was delivered to me I suppose as soon as he fixed it; *I never had the deed; my husband told me he had deeded me the corner property and the deed was on record.*

102 My husband never delivered this deed to me; he said he had it and it was on record; he said he had deeded me the corner property and had put the deeds upon record himself; I don't remember how many deeds he said he had put on record; he used the word "deed;" he said he had deeded me the corner property and had put the deed upon record; he told me *this on his death-bed.*

I don't remember that Salmon delivered to me a deed for any part of that property; had he done so I think I should have remembered it.

103 I can't say that I ever accepted a deed from Salmon for a part of that property; I don't remember it; I do not know that he had any interest in it.

I can't remember that I ever recorded or caused to be recorded a deed from Salmon W. Hoyt to me for that property or any interest in it.

104 I can't tell anything about my husband's business; I can only say he gave the property to me; my husband told me he had given me the *whole property on the corner and put the deed on record; that is all I know about it;* I might have known what my husband's interest in this property was; I don't know that he ever told me; had he told me perhaps I would have known it.

My memory used to be pretty good; since my son has troubled me it is not so good; my memory now is as

good as it ever was, but I am nervous; I have not been out of the house for four weeks until now.

Q. Is your memory good?

A. About as good as usual.

105

Question repeated.

A. I say it is about as good as usual, only I am nervous.

Q. How is it generally?

A. About as usual with people when they get my age.

Q. How good is that?

A. About as good as mine; I suppose as good as persons aged 61.

106

Q. Do persons of your age usually have a good memory?

A. Well, about as good as mine.

Q. How good is your memory?

A. About as good as people's of 61 years old.

Q. How well do you remember passing events?

A. I suppose as well as people of my age.

Q. Can you recollect a period of ten years past?

A. I suppose I can as well as people of my age.

107

Q. Can you recollect for a period of one year past correctly?

A. Well, you will know yourself when you get that age, likely.

Q. Do you find that your memory is as strong and reliable as it was ten or fifteen years ago?

A. It was before I got in this trouble, I guess.

Q. Was it as strong two years ago as it was fifteen years ago?

A. I suppose it is as good as people of my age; I don't know how that is.

108

I don't suppose my memory is as good as it was a year ago, but I can remember a little yet.

The troubles to which I refer commenced about a year

ago or a little more—a month or two more—when I commenced to have trouble about the store.

I do, indeed, rely upon my memory, but I haven't got such a good memory as I had; I think I could remember a little better fifteen years ago than I can now.

I don't think there are any particular things I would be likely to forget sooner than others; when my husband deeded this property to me he was sick, and I said, "You ought to fix this property to me;" he said that was just what he had been thinking about, and he should do it before he went away again; he said, before he went South, "*I have deeded the property on the corner to you, and have placed the deeds on record;*" this was said word for word; I can't remember what year this was; it was two or three years before he died.

My husband attended to the property while he lived; he attended to his own business; I can't say if he collected the rents; he was a good business man and attended to his own business, and did it properly, too; I can't tell if he received the rents from the time he deeded the property to me until he died.

I had money whenever I wanted it; it ain't likely he would pay me the rents while I had a husband living; he never accounted to me for any rents, he did his own business and I attended to mine; I don't recollect that he said anything in my presence about the collection of the rents; I collected some of the rents in person, but not previous to the death of my husband; Nelson Coykendall, my tenant, always paid the taxes on the property while he was in the store; since that I paid it myself.

Nelson Coykendall occupied the store as tenant at the time of my husband's death; I don't know how long he had been there then.

I didn't pay the taxes before my husband's death; no one did it by my directions while my husband was living; I don't know how much tax was paid on that property previous to the death of my husband.

I have not been charged with any taxes, water rents and assessments on the property previous to the death of my husband that I know of.

I have always kept the taxes, assessments, and water rents on that property paid up from the rent of my store; I pay them myself individually since I have had the stores in strangers' hands, which is three or four years; I have paid the taxes, assessments and water rents myself for the past three or four years; no one has paid them for me since the store came out of strangers' hands; previous to three or four years ago the tenants paid the taxes, &c., and took it out of the rents; my brother, brother-in-law, and my nephew and half-brother were tenants; one of these paid it; my brother-in-law is Peter Hoyt, my half-brother is Beemer Coykendall, my nephew is Nelson Coykendall; I know they paid taxes because they told me they had, and they took it out of the rents.

I have told you all that I know about it; I don't know if this property was free from incumbrance; when my husband gave it to me, there was a mortgage of \$2,000 on it; I pay the interest on it; it is held by a person named Vreeland; I suppose that mortgage was on the property when my husband bought it; I have paid the interest on that mortgage since my husband's death; my brother and half-brother and nephews paid it while they were in the store, and Salmon has come and got it and paid it, but it always came out of me. Salmon paid up to last February, but it was paid out of my money.

I don't know if there was any other mortgage on this property at the time my husband deeded it to me.

The principal of the mortgage is \$2,000; I don't know anything about the mortgage before my husband's death; I only know of it since; I don't think Salmon told me this mortgage was on the property; I don't know that he came to my house and told me of it; I found out there was a mortgage on the property from paying the

interest; I don't think I got the information of the mortgage from Salmon.

Q. How much interest have you paid yearly on that mortgage?

117 A. I pay seven per cent.; I paid the interest to Salmon last February, but I don't know who holds the mortgage now.

I have not paid the principal of the \$2,000 mortgage; I pay the interest on it now; I don't think I have paid the principal of any mortgage; had I done so I would have remembered, unless he has paid it and taken it out of the rent, and I not know anything of it.

118 I don't know that anybody has presented me a written statement showing the amount collected and the amount paid out, and the balance.

If I had not the money to pay I would send to the store and ask them to pay it; I knew what the taxes were, and how much the water rents were when they told me.

119 My husband died June 16, 1864; my husband took care of the property when he was alive; I did not do any business like signing leases then; he did it; after the death of my husband I have signed leases; this man Salmon got them up for me; he always got up the leases and I suppose he signed them, but I did not know it until lately; he did as he liked about it; I am no scholar, and he could do as he liked with me.

I don't know now whether he ought to have joined in the leases; I don't know enough about business to know if he did wrong; I got the benefit of it.

120 My children never assisted me in my support; I took boarders and took care of myself; I never had a dollar from any of my children; I never asked for it.

I owned the house in which I lived that was incumbered for \$3,000.

It was sold at the sale for \$10,000 or \$11,000.

I didn't own any other property.

I don't know how much the store property was worth in 1867; I don't know if it was worth \$20,000; I don't know how much it was worth before times got dull; I suppose it was worth a little something; the house sold for \$10,000 or \$11,000; I suppose the store is worth twice as much. 121

I had no other means of support except from boarders and the store and my house, after I rented it; I rented it for \$1,200 a year; the store rented for \$1,500; now I have got it up higher; I get \$1,950 for the two stores; I have always loved all my children alike until this oldest son went back on me so; I did not think I was dealing fairly with my other children when I gave Salmon this property; it worried me dreadful. 122

Whereupon the examination was adjourned to Friday, February 5th, 1875, at three o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in the presence of the Counsel of the respective parties. 123

About the time I gave the deed to Salmon for the property in Wayne street, I owned it; I think, as near as I can remember, it was about three years before my husband's death that he deeded the property in Grove street to me; my husband was sick to his bed about ten days; he came from the South along the latter part of December, and died in the June following.

He was not sick previous to this for any length of time; I did not know anything about this property previous to the time he deeded it to me, except that he had it; I supposed it was his, of course; there was no arrangement made between me and Salmon by which he was to collect the rents; I knew the property was mine before his death; I supposed he attended to it. 124

Q. Did you claim that the rents were due you during the lifetime of your husband ?

A. I tell you again my husband attended to his own business ; I never thought of it ; I knew it was mine.

125 Q. Question repeated.

A. I tell you I can't say because my husband did his own business ; that is as far as I can tell you ; I will tell the truth just as the thing is.

My husband first told me that I had a deed to the whole property. *He said he had deeded the property to me, and put the deed on record, and that I was well provided for.*

I don't think any person ever told me that I held the  
126 entire property after the death of my husband ; I knew it was mine ; I never consulted any person in regard to this property except my son Salmon.

I never spoke to any person in regard to Salmon having made a mistake in conveying this property to me.

I never asked any person before I made this deed to Salmon if it wasn't right that I should make this deed to him.

I never asked any person if he did not think it right  
127 that I should convey half this property to Salmon ; I never told any person that I thought it right that I should convey half this property to Salmon.

Salmon never told me there was an error in the deed he executed in 1860 ; he never told me there was an error in it until after I gave him the deed to take effect after my death ; I never knew there was an error in the deed of 1860 until after I gave the deed to Salmon in 1867 ; I don't think there ever was any error in the  
128 deed ; it is just as my husband intended it should be.

Q. How do you know that ?

A. Because I know it.

Q. How do you know it ?

A. By hearing him talk what he was going to do for me before he did it ; that is the way I know it.

Q. Is that the only way you know it?

A. I know he intended to give it to me.

Q. Is that the only knowledge you have on the subject?

A. *He told me on his death bed that he had given me the property, and I don't know what I could take stronger than that.* 129

Q. Did you derive this information from any other source than your husband on his death bed?

A. He was sick with the rheumatism when I asked him to fix some property on me; he said he had been thinking of it a long time before.

Q. What time was it when you refer to, when he was sick with the rheumatism? 130

A. It was in the spring or summer before he went South; it was about three years before he died; I can't tell the year exactly.

Q. Give his precise words upon that subject at the time he had the rheumatism referred to?

A. He said that he had been thinking some time about fixing some property on me; he said I need not be worried, because he would fix me all right, as I had worked very hard; these were the precise words he used; that is all he said; in the fall before he went South he said, "*Millie, I have fixed you all right; I have given you a deed for the property on the corner, and the deed is on record;*" this was between two and three years before he died; I don't know as he went South more than once after that winter. 131

He spoke to me afterwards, and before he died, and each time he spoke of it, he said, "You are all fixed;" these were his exact words. 132

I recollect well the time I gave Salmon the deed for half the property; I can't tell you what time; it was the second year after my husband's death.

I saw Salmon every night before I signed the deed; he was in there every evening; he lived the second

133 door from me; I don't remember of seeing him the day before I signed the deed, but I think I saw him every night; he was neighborly at that time, and had been previous thereto; his coming so often was not an annoyance to me; Salmon and I talked several times about it; it didn't bother me, because I wanted him to have that property, but I felt worried because I thought my other children would think hard of me for it after my death; I don't know as there was any other annoyance than that.

Salmon did not ask me for this deed for a year before I signed it.

134 He asked me often, but I don't think it would consume a year in time; I don't think it was six months before I gave him the deed that he asked me for it; I can't tell how long it was, or whether three months, I was so much troubled at losing my husband and daughter; I didn't think this deed would be shown until after I was dead and in my grave.

135 Salmon asked me once to go and execute the deed; I did not go; he then asked me again and I went; he did not assign any reason for asking me to go; he said, "Ma, you ought to deed me half that corner;" he spoke about it several times before I did; then he said it was mine just the same as long as I lived.

Q. Did he assign any reason why you should convey it to him?

A. No, none at all; he wanted me to give it to him to take effect after my death.

Q. Did you ask him why he asked you to convey one-half the property to him?

136 A. I did not.

Q. Did he tell you where he was going to have you to execute the deed?

A. He said to Mr. Lewis', but I had never seen Mr. Lewis; he told me this while I was in the house; he came there and asked me to go, and he waited for me

to get ready and I did go; I knew I was going to Mr. Lewis'.

Q. Did Mr. Lewis read the deed falsely?

A. I understood him to say, and I thought it was in the deed, that it was to be mine for my lifetime. 137

Q. Did he read it so?

A. He read it so, and my son did not tell me it wasn't so until he came and read the deed, and it wasn't in that it was to be mine for my lifetime.

Q. Are you satisfied that Mr. Lewis read that this property was to remain yours during your lifetime, and after your death to be Salmon's, that is as to one-half, or words to that effect?

A. I supposed the deed was just as his and my contract was—that it was in the deed that it was to be mine just the same—and I had it in my mind that he read it in the deed just the same. 138

Q. Did he so read it?

A. He read it just as I understood it; I heard it and didn't hear it, I was so worried; I didn't know enough about a deed to know what ought to be in it.

Q. Did you hear him read it that way?

A. I thought he did read it so, and I thought it was in the deed so just as much as I thought he had a deed. 139

Q. Why are you not certain?

A. I did think it was so in the deed; I would have gone right after it and sworn it was in that way.

Q. Give us all the reasons why you believed it was in that way?

A. Because we had talked this (that is my son and I, and with no one else), and he said it was to be mine just the same as long as I lived when we talked about it; no other reason. 140

Q. What did Mr. Lewis read from that deed?

A. I can't remember, but I supposed that was in it; I didn't know enough about it to know what ought to be in it.

Q. Can you recollect one word or sentence that he read?

141 A. I can't put it together, but I know he read the half of the property was to be his, and I think, feeling as I did, I might just as well have signed off all I had and it would have been just the same; I felt that my children would, after my death, think hard of me for doing it, and I felt dreadful.

Q. What effect did that feeling have upon you?

142 A. It worried me, because I thought my other children would find it out and would feel hard towards me; I heard Mr. Lewis read the deed and I didn't hear him; I thought it was just as Salmon had told me it was to be, and I would trust him as soon as I would his bond.

Q. Then you relied more upon Salmon than you did on the reading of the deed?

A. Well, I heard it and I didn't hear it; I relied on what Salmon had told me, and I supposed it was to be mine as long as I lived.

Q. What do you mean by "I heard the deed read and didn't hear it?"

143 A. I was so nervous I thought I was wrong, but yet I wanted him to have it, but I thought I was wronging my other children.

Q. Is that what you meant by, "I heard the deed read, and didn't hear it?"

A. Yes, that is just what I meant; I thought it was to be just as we talked; I supposed he read the whole deed, but I didn't understand it; I didn't know how a deed should be to be right.

Q. Do I understand that you heard one portion read, and didn't hear another portion?

144 A. I suppose I heard it all; I was thinking.

Q. Were you thinking to that extent that you couldn't hear?

A. Oh, I heard now.

Q. What did you hear?

A. I don't remember a syllable to tell one word that he

read ; I suppose he read the whole of it ; after he stopped reading I supposed it was through.

Q. Why did you not read it yourself ?

A. I can't read writing ; I can read printing ; I used to be able to read writing when I was quite young ; since then I have had children to write for me. 145

Q. Since you were quite young have you been able to write or read writing ?

A. When I was thirteen years old I could write quite well ; I was married at seventeen ; since then I have not written nor read writing much.

Q. About how long ago is it that you ascertained you could not write nor read writing ? 146

A. It may be twenty years ; I have not tried much in twenty years ; I write my name ; *I used to write on a slate when we had the store* ; I think I would know my own signature.

[Witness being shown a paper says :]

I don't know if the signature to that paper is in my hand-writing ; it don't look as I used to write ; I see the name Hoyt there. 147

[Witness being shown another paper says :]

The signature, Millie Hoyt, to that paper is my signature, but it is not like I write now ; I can't tell you if Mr. Lewis read anything in the deed that was objectionable ; I was in such trouble then ; I don't remember as Salmon said anything at Mr. Lewis' when I signed the deed ; I might as well have signed away my life ; I would'nt have known it. 148

Q. Did Salmon, Mr. Lewis, and yourself remain in the room all the while without any one separating from the party ?

We all remained together while the deed was read, and while we were there; I went to Mr. Lewis' with Salmon; remained there with him, and went away with him, and a little way with him, he then went to New  
 149 York, and I went home; I don't remember that Salmon gave any instructions to Mr. Lewis while I was there; I was worried; they were laughing and joking, but I did not join them because I was so worried at the time; all the conversation at that interview was in a very moderate tone; I didn't suppose they were whispering; they were talking as if they were very well acquainted.

Q. Was there any levity at that time; were they fun-  
 ning?

150 A. They were laughing and talking; I don't remember there was any talk in an undertone; think that was the last time I saw the deed until he brought it to the house, and that was while I was living at Bevans'.

Q. Didn't you state that Salmon read the deed to you on the day of the execution of it after you left Mr. Lewis'?

151 A. No; I didn't say that; he never read it to me until he came around to Bevans' and read it to me; that was about a year ago; I was worried all the time, I suppose as much before as after I signed the deed; I was worried about my children; I thought when they come to find it out they would think hard of me; I suppose I was as nervous when I signed the deed as I am now; I am very nervous now; I have been sick; I am just about as nervous now as I was then.

152 Whereupon the examination was adjourned to Tuesday, February 9, 1875, at three o'clock in the afternoon, at the same place.

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

I am very nervous now ; I suppose I am about as nervous now as I was at the last examination.

I suppose I was about as nervous on the day I signed the deed as I am now, but not the same kind of nervousness. 153

I can't remember what Mr. Lewis said to me on that day I signed the deed.

Mr. Lewis talked, but I don't know what he said ; I recollect I signed the deed.

I don't recollect a word he said to me, either before or after I signed the deed, or to any other person.

I did not see the deed after that until a year ago. 154

I guess the boys paid the insurance on this property from the rent ; I know they got the insurance ; I had Mr. McCoy insure it the past year, but he paid the insurance out of the rent ; I don't know in whose name it was insured, as owner ; I had Nelsen Coykendall in the store, whom I had brought up from a boy fourteen years old ; he was like a son ; I have never asked in whose name it has been insured since 1860, and that is the reason I don't know. 155

*And being again examined, in chief she says :*

Salmon told me, after I had made this deed. I had better go and make a will, and leave the other half to John ; at that time I guess he was angry at Bevans, and he said he didn't want Bevans to have a cent of his father's property.

By John he meant my son John, his brother ; it was some time after the deed to him that he spoke of willing the other half to John ; I can't say how long after, but not long ; he asked me if I had fixed it, and I told him I had afterwards. 156

This man Lewis is dead ; I don't know how long he has been dead.

MILLIE HOYT.

157 Taken, sworn to, and subscribed  
this 9th day of February, A.  
D. 1875, at Jersey City, be-  
fore me.

ISAAC ROMAINE,  
*Master in Chancery.*

158

JOHN N. HOYT, a witness produced on the part of the complainant, being duly sworn, on his oath saith :

I live at No. 260 Montgomery Street, Jersey City, at present ; I am a son of the complainant ; I will be thirty years old to-morrow ; I have had a conversation with Salmon Hoyt, the defendant, in regard to the property on the corner of Wayne and Grove Streets ; after Salmon succeeded in having the deed made out giving him half the property, he told me to do all I could to have Ma sign a Will giving me the other half ; the reason he gave was because he didn't want Mr. Bevans to have one cent of his father's property ; I couldn't tell what he said about his deed, but it was said at the time the deed was signed, the deed giving him half of this property.

160 He did not say anything in that conversation about how long his mother was to have the property ; at least, I don't remember that he did ; he never said anything about a mistake in any former deed until lately ; in this conversation about the will, he did not say anything about a mistake in a former deed.

He did not say anything about his being entitled to

one-half the property independent of his mother's deed to him.

[Objected to as leading.]

161

This conversation to me, by him, was on the way from the house, in Wayne street, to the stores corner Grove and Wayne streets; he might have spoken of it in the store; the subject was spoken of numerous times; I don't remember where they were; these conversations were after he got the deed, or after the deed was signed; at least I think the conversations were while my mother was living in Wayne street, and after she moved to Mr. Bevans; it was after the Will was signed; at none of these conversations did Salmon speak of a mistake in a former deed, or that he was entitled to one-half of the property independent of his mother's deed; the first time I heard that Salmon claimed there was a mistake in a former deed, was before this suit was commenced, and about a year ago. 162

[Objected to as leading.]

163

I heard of it then because Salmon told me so; I don't recollect where it was he told me, but I think at Mr's stores, corner Wayne and Grove streets; in the latter part of December, 1874, he said in my presence that she should have it as long as she needed it; he meant Ma, and I suppose referred to the property; we were talking about this suit.

164

[Objected to as inadmissible.]

Q. In these conversations did you understand that the deed gave him the property at once or after his mother's death?

[Question objected to.]

165 I don't remember whether he said that the deed gave him the property at once or not until after his mother's death; I don't recollect that he ever spoke to me about it until after he got the deed; as far as I know my mother was getting the rents of the stores at that time, and she has been ever since.

[Objected to.]

166 I first heard of Salmon making any claim to the rents about a year ago; I may be mistaken about that; I don't know whether he ever made any claim to the rent or not; at the conversation at the house Mr. Bevans, Mrs. Bevans, and I were present; Salmon was there, and afterwards my mother came in; this was the time he brought the deed; it was at Bevans' house; the conversation was about a year ago, I should think, the first time.

Q. State that conversation as accurately as you can?

167 A. I cannot recollect the conversation; he brought the deeds to the house; I can't say whether the deeds now shown me are they; I cannot recollect what he said; I came in when Mr. Bevans was talking with him; I was not there at the commencement of the conversation.

I cannot recollect at the present time the conversation that took place between Salmon and mother at that time; I have been sick since that time.

168 *Being Cross-examined, he says:*

My mother has three children now living, Salmon, Fanny Bevans, wife of Sidney B. Bevans, and myself, John N.

The house No. 260 Montgomery street, where I live, belongs to Mrs. Bevans.

I am not a man of family ; I have a wife ; she is living with me at Mr. Bevans' ; my wife, my mother, and I, of my family, live there.

The deed from my mother to Salmon for one half of this property, as the deed says, was given in 1867 ; I ascertained that fact from the deed ; I first saw that deed here ; it is not the first time that I knew the deed recited it was given in 1867 ; I first knew it after the deed was signed ; I cannot give you a more definite time than that ; I think it was in 1868 that I first knew it had been given ; it was after the deed was signed that I had the conversation with Salmon ; I can't tell how long after ; I don't recollect the exact time ; it was during three years after the deed was signed.

It was before the will was made out ; I don't know when the will was made out ; I do not recollect whether that was the first conversation I had with Salmon about it ; all the conversations I have testified to, were after the deed was signed and before the will was made.

The reason Salmon gave why he wanted his mother to make her will for the other half of the property, was because he did not want Mr. Bevans to have a cent of his father's property ; I don't know whether that was the wish of my father before his death.

I don't recollect that in that same conversation, and as a part of the conversation, he gave any reason why he didn't want Mr. Bevans to have a cent of his father's property ; I don't recollect that he stated any reason ; I don't recollect that he stated any reason at any subsequent conversation stated in my testimony.

I have stated all I recollect of the first conversation ; I think Salmon stated the history of this transaction at the time he called at Mr. Bevans' house.

Salmon did not at any of these conversations referred to by me, speak of any other matter than I have stated, as far as I recollect ; I suppose I have, in one sense, been a confidant of Salmon ; in the sense in regard to this

property I suppose I have been ; I have told you all that he has told me in regard to that as far as I recollect ; I don't know that I have been a confidant in any other particular.

173 This suit was commenced during the last year, 1874; about the middle or latter part of the year.

When Salmon said to me that "his mother should have it as long as she needed it," I don't recollect that anything else was said in that connection ; I don't recollect of his making a proviso ; this was in answer to a question ; N. H. Coykendall asked the question ; I can't give you the precise words he used ; he said, "Salm, did you say that Aunt Millie could have it as long as she lived?" He did not say, "Yes, if she did not support Bevans' family" ; family wasn't mentioned, that I recollect.

He did not say, "Yes, if she didn't run Bevans' house."

The word "no" was used by Salmon in answer to the question of Coykendall "that she could have it as long as she lived" ; these are the precise words used on that occasion, as I recollect them.

I think the word "no" was used in answer to the question of Coykendall.

I know my mother received the rents of the store, because it was her income ; she used that money, or what she got of it.

JOHN N. HOYT.

176 Taken, sworn to, and subscribed,  
this 9th day of February, A.  
D. 1875, at Jersey City, be-  
fore me.

ISAAC ROMAINE,  
*Master in Chancery.*

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

I am the husband of the complainant's daughter. 177

I remember a conversation in my house with Salmon Hoyt about a year ago, in reference to this matter.

Q. State it, as nearly as you can ?

A. I think it was in January, 1874; about that time one evening Salmon came to my house and came up in the room where my wife, Mrs. Hoyt, my mother-in-law, John and his wife, and myself were sitting; he spent some time in talking to us all; he got up and spoke to me, and said he wanted to see me; we went down stairs in my back parlor; he said to me, "Now, Sid., I want to show you that I am right in claiming the rent to one-half these stores." 178

[Last clause objected to by defendant's counsel.]

We sat down at my desk, and he took out some deeds, three or four of them; I think the first deed he showed me was a deed made by Nelson W. Hoyt, and Maliscent, his wife, to Salmon W. Hoyt; the deed now shown me is that deed. 179

The next deed he showed me was a deed made by Maliscent Hoyt to Salmon W. Hoyt; the deed now shown me is that deed. 180

When I saw this deed I stopped looking further and examined it; I had been wanting to see it for some time, and that was the first opportunity I had; I commenced reading it, and read it through; I said to him, "Salm, the deed is different from what Ma and all the rest of

181        he thought it was ; it is a straight, regular deed” ; he said he knew it was a deed conveying him one-half the property ; “ Well,” I says, “ it is very different from what Ma understood it to be, and what it should be” ; he said, “ It don’t make any difference what Ma understands it to be ; it is as I intended to have it, and I mean to claim the property under this deed ; I was asking him how he came to have a deed drawn in that way and not in regular form ; I don’t recollect what he said, and while we were talking John came in the back parlor ; John had not been in more than a minute or two, before Mrs. Bevans came in ; she asked me what all the talk was about, and I said, “ Here is the deed to Salmon  
182        by his mother, without any consideration whatever.”

[All the foregoing testimony relating to the conversation between the witness and Salmon, and the conversation between Bevans and his wife, objected to by counsel for defendant.]

183        When I told her this she talked pretty loud, and I think called her mother down ; her mother came down immediately ; she told her mother what the deed was ; she said, “ Here is the deed you have given to Salmon ; it is not as you said it was, but it is one without conditions.

[Objected to.]

184        Then Mrs. Hoyt said, ‘ Salmon, can this be so ?’ I don’t remember his reply ; I think likely I answered myself, and said, “ here is the deed” ; I had it in my hand then ; she said that was not as he had told her before she signed it, and that he knew it, and that she wanted to go to Mr. Dixon’s office that night, and swear that that deed was not as Salmon had told her it was ; she didn’t want to wait till morning ; Salmon said if she did he

would swear the other way ; she repeated several times what she has said here, that Salmon had told her it was to be hers as long as she lived ; Salmon was present during the whole of that conversation.

Q. Do you remember if in that conversation he mentioned any error in a former deed ? 185

[Objected to as leading.]

A. He did not mention anything about an error at all. The discovery of the real purport of that deed prostrated her so that we had to send for her doctor, Lutkins.

186

Immediately after this interview at my house, Salmon Hoyt went to New Orleans ; he must have returned in February or March ; at this time the difficulties commenced in relation to renting the store, and the question came up to signing the leases ; the year before Salmon had signed with her, and the question came up whether he should sign with her, and it was late before the leases were executed ; Salmon notified the tenants that they should afterwards pay Mrs. Hoyt only half the rent, ; the tenants notified Mrs. Hoyt of this, and this resulted in so prostrating her that she came to me and asked me if I would assist her ; this was the first I had had anything to do in regard to that property ; I listened to what she told me, and went and got legal advice. 187

*And being cross-examined, he says :*

I was married to my present wife in June, 1856 ; for the last sixty days I have not spoken to Salmon, nor he to me ; previous to that time we were on friendly terms ; he visited me and I visited him ; we talked on business matters ; I will say here that at times Salmon would not speak to me ; I never have been unfriendly to 188

him ; when he got ready to speak we were friendly ; I have never felt any anger toward him ; from June, 1862, to July, 1865, I was most of the time in New Orleans, but whenever I was home here I was on friendly and  
 189 speaking terms with Salmon, and on business terms ; I visited him and took tea at his house ; during the whole of the year 1865 I was on speaking terms with him ; during 1866, from March to the end of that year, I was on speaking terms with him ; from January to March, 1866 I was in New Orleans ; during part of 1867 I was not on friendly terms with him ; I could not tell what part of the year ; I remember that during the spring of 1868, and all that year, from March to January, I was  
 190 friendly with him ; I recollect that because in the spring we were both members of the Third Ward Jackson Club, and in the fall I was elected to the Legislature, and consulted with him about my election.

From 1869 up to the present time we have been on friendly terms, at intervals.

In January, 1869, while I was in the Legislature, Mr. Hoyt and I had some disagreement about a local bill,  
 191 and we had a falling out, which continued through that year.

I don't think we were on friendly terms at all during the year 1870 ; he did not speak to me, nor I to him.

During 1871 we were friendly during the whole year ; we had business dealings of large amount.

During the years 1872, 1873, and 1874, we were together a great deal ; he used to come and take me riding at times ; in December, 1874, I first noticed that he  
 192 did not speak to me ; now I am friendly to him, and would do him a favor if I could ; he is not friendly toward me ; at least he don't appear to be.

Q. Hasn't there been a feeling of hostility existing between you for many years past ?

A. With the exceptions I have mentioned, there has not been ; at intervals there would be.

Whereupon the examination was adjourned to Monday, February 15th, 1875, at 3 o'clock in the afternoon, at the same place. 193

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

Dr. Lutkins was not sent for the night of the interview at my house, in 1874 ; it was afterwards ; I can't tell how many days ; that was the commencement of her troubles. 194

*And being again examined, in chief he says :*

I knew Ferdinand Lewis, a Commissioner of Deeds ; he is now dead ; he died some years ago ; I don't know what his habits were. 195

Q. Do you know whether he was a drinking man or not.

[Objected to.]

I couldn't tell of my own personal knowledge.

I don't know where he lived ; whether it was in the neighborhood of Mrs. Hoyt ; I could not tell except from hearsay. 196

Mrs. Hoyt kept house at 117 Wayne street until April 1st, 1869, when she moved to my house, and has lived there ever since.

*And being cross examined again, he says :*

197 Mrs. Hoyt has lived at my house as a boarder; she has paid her board every month at thirty-five dollars per month.

SIDNEY B. BEVANS.

Taken, sworn to and subscribed,  
this 15th day of February,  
A. D. 1875, at Jersey City,  
before me.

ISAAC ROMAINE,

*Master in Chancery.*

198

199

200

## IN CHANCERY OF NEW JERSEY.

---

Between MALISCENT HOYT,  
*Complainant,*  
*and*  
 SALMON W. HOYT,  
*Defendant.*

---

201

202

Examination of witnesses, &c, in the above entitled cause, on the part of the defendant, taken before me, Isaac Romaine, a Master and Examiner of said Court, at my office, No. 111 Washington street, Jersey City, N. J., on Monday, February 15th, 1875, at four o'clock in the afternoon, in presence of Jonathan Dixon, counsel for the complainant, and William Brinckerhof, counsel for the defendant.

203

SALMON W. HOYT, a witness produced on the part of the defendant, being duly sworn on his oath, saith:

I am the defendant in this suit; my father was Nelson W. Hoyt; he died in June, 1864.

Witness being shown a paper purporting to be a deed bearing date April 25th, 1859, says: That is a deed made by Barzillai W. Ryder and wife to Nelson W. Hoyt and Salmon W. Hoyt, for the property 192 and 194 Grove street, Jersey City, being the property in question in this suit.

204

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

I am the Salmon W. Hoyt named as one of the gran-

tees in that deed; the Nelson W. Hoyt named as the other grantee is my father.

This deed was delivered to my father and I by Ryder and wife. We were both together when we paid the  
205 money.

There was \$2,000 mortgage on the property when we bought it.

Witness being shown the deed, Exhibit D 1, says: The mortgage referred to in that deed is the one that was on the property when we bought it, and we bought it subject to that mortgage; it is still on the property.

My father and I paid \$9,000 for this property, that was the purchase price; we paid \$3,000 cash; we made up  
206 the balance of the purchase money by giving a bond and mortgage, agreeing to pay \$1,000 a year until it was paid off.

Witness being shown a bond, dated April 25th, 1859, made by Nelson W. Hoyt and Salmon W. Hoyt, to Barzillai W. Ryder, for \$4,000, says that is the bond.

Said bond is offered in evidence on the part of the defendant, and is marked Exhibit D 2. Being shown a  
207 paper, purporting to be a mortgage of same date, for same amount, and between same parties, witness says that is the mortgage.

Said mortgage is offered in evidence on the part of the defendant, and is marked Exhibit D 3.

That bond and mortgage were delivered to Mr. Ryder at about the time of their execution.

I think I paid the most of the \$4,000 balance to Mr. Ryder; I did the most of the business.

At the time the deed was passed, I paid to Mr. Ryder  
208 a check of \$2,800; I had, prior to that, paid him \$200 to bind the bargain; I paid that \$3,000, one-half with my money, and one-half with my father's money; it was paid by the firm's check, and one-half was charged to each of our individual accounts.

[Testimony of the witness as to what charges were made, objected to by counsel for complainant, because

the books of the account should be produced, to show what charges were made.]

Q. With whose money was that \$3,000 paid?

A. Half with mine, and half with N. W. Hoyts'.

209

The property out of the rents paid the interest on the \$2,000 and the \$4,000 mortgage; up to the time of my father's death, I paid the interest.

The interest was paid, one-half with my money and one-half with my father's money, up to the time of his death.

The \$4,000 mortgage has been paid; the last payment was made in 1863 or 1864, I am not certain which.

The principal of that mortgage was paid with my father's and my own money; each paid one-half when the payment became due, excepting the last time, I paid the whole of it. I paid the whole of it, because we had been putting up an awning around there, and there wasn't money enough, so I gave my individual note for it.

210

I paid one-half of the interest, and the \$3,000 cash paid on the purchase, and one-half of the \$4,000.

Witness being shown a paper purporting to be a check, dated April 30th, 1859, says that is a certified check for the \$2,800. I know Mr. Ryder's signature; I should think the signature on the back of the check is Mr. Ryder's; there can't be any doubt about it.

211

Said check is offered in evidence on the part of the defendant, and is marked Exhibit D 4.

Witness being shown another paper, says: I recognize that paper; it is a receipt from B. W. Ryder for interest. The signature to the receipt is in Mr. Ryder's own hand writing, and so is the whole receipt.

212

Said receipt is offered in evidence on the part of the defendant, and is marked Exhibit D 5.

Witness being shown another paper, says: That is a receipt for interest, it is in my hand writing, and is signed by Mr. Ryder, B. W. Ryder. Said receipt is offered in

evidence and is marked Exhibit D 6, on the part of defendant.

Witness being shown another paper, says: That is a receipt for \$1,000 and interest, which was due on the  
 213 \$4,000 mortgage, May 1st, 1861. It was paid June 29th, 1871. The receipt is in B. W. Ryder's hand-writing, and the signature thereto is his. Said receipt is offered in evidence, and is marked exhibit D 7, on part of defendant.

The reason that "duplicate" is marked on some of these receipts is because it is endorsed on the bond, but each receipt is an original paper.

Witness being shown another paper, says: That is a  
 214 receipt for interest; the receipt is in Mr. Ryder's hand-writing, and the signature thereto is his also.

Said receipt is offered in evidence, and is marked Exhibit D 8 on part of defendant.

Witness being shown another paper, says: That is a receipt for rent, written by B. W. Ryder and signed by him.

Said receipt is offered in evidence, and is marked Exhibit D 9 on part of defendant.

215 Being shown another paper purporting to be a note, witness says: That is a note for the last \$1,000 drawn by S. W. Hoyt, endorsed by Mr. Ryder, and paid. Same note is offered in evidence on the part of defendant, and is marked Exhibit D 10.

Witness being shown Exhibit D 2, says: In reference to the endorsements of payments thereon, those are correct, as far as I know; they are signed by Mr. Ryder; I have no doubt they are correct.

216 Witness being shown Exhibit D 3, says: The certificate of cancellation thereon is what it purports to be.

Whereupon the examination was adjourned to Friday, February 19th, 1875, at three o'clock in the afternoon at the same place.

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

Exhibit D 3 was canceled at the time therein stated. 217

Witness being shown a deed bearing date July 17th, 1860, says: That is a deed from Nelson W. Hoyt and Maliscent, his wife, to Salmon W. Hoyt.

Said deed is offered in evidence, and is marked Exhibit D 11, on part of defendant. The deed was made for the purpose of transferring the half that my father owned to my mother, in order to place the undivided one-half of the property in her. The deed was drawn at the instance of my father, by his directions to me, and *also* 218  
*to the counsel who drew it.*

The matter was talked over by my father and me before the deed was ordered to be drawn, in the presence of *Mr. Joel Hoyt*. It was the year the war broke out; my father stated that everything was going to pieces, and he anticipated going South the moment there was an opening. We usually went South during the winters, and the reason of his making the deed was because he was going South, and wanted my mother to hold the property. 219  
*The deed was drawn by William Voorhees*; my father gave instruction to *Mr. Voorhees* to draw this deed. I think I was with him when he gave these instructions to *Mr. Voorhees* to draw this deed. I never gave any instructions for the drawing of this deed, Exhibit D 11. I was present when my father executed the deed; it was executed before Nathaniel C. Slight; when the deed was executed, and after it had been given to me, I sent it to Hudson City for record. 220

I was to make a deed to my mother for the half interest he deeded to me; he suggested to make a deed direct to her, but I said that wouldn't do, and I suggested, and was the medium through whom the transfer was made to my mother for his interest, one-half.

The express understanding was this, that he and my

mother should convey the one-half of the property to me, and I was to convey the undivided one-half back to my mother. In furtherance of this arrangement, *I ordered William Voorhees*, an Attorney and Counsellor at  
 221 law of this State, to draw a deed to my mother for the one undivided one-half of the property from me to my mother; I think I took the original deed from Ryder to my father, and myself, I instructed him to draw a deed for the undivided one-half of the property described in the Ryder deed. I related to him the circumstances of the case, he having drawn the deed, Exhibit D 11, from my father and mother to me. It was talked over between my father and myself when the deed D 11 was made,  
 222 The circumstances were talked over in my presence, and he understood it. I am satisfied that I told him to draw it for the undivided one-half.

Witness being shown a paper purporting to be a deed dated July 30th, 1860, made by Salmon W. Hoyt to Maliscent Hoyt says: That is the deed he caused to be drawn; said deed is offered in evidence on the part of the defendant, and is marked Exhibit D 12 on part of defendant.

223 That is the deed that Voorhees drew; it differs from the instructions I gave, in that it is drawn for the whole, instead of the undivided one-half; it was not drawn according to the instructions from me to him.

I did not pay my father any money when the deed Exhibit D 11 was made to me; my mother did not pay me anything when the deed Exhibit D 12 was made; there was no consideration paid for either of the deeds Exhibits D 11 or D 12, when they were made.

224 I did not know of the error in drawing this deed Exhibit D 12 whereby the whole property had been conveyed, until *January*, 1867. When the deed Exhibit D 12 was signed by me, I sent it to the Clerk's office to be recorded. This deed, Exhibit D 12, was never delivered by me or any one in my behalf, to Maliscent Hoyt, or any one in her behalf. After it was recorded I took it

from the Court House ; it has ever since been in my safe, or in a tin box at my house ; it has always been in my possession until the commencement of these proceedings.

At the time I executed the deed to my mother I had a wife, and had had for two years previous ; she is still living. At the time of the execution of these deeds, William Voorhees lived in Sixth street, Jersey City, opposite where I lived ; we had lived opposite each other for, I think, fully a year. Voorhees' family visited our family ; I couldn't say if Voorhees knew I had a wife ; he didn't ask me ; I am satisfied he knew I had a wife ; he had every reason to know it, by reason of his living opposite me, and as close neighbors.

Voorhees was a man of intemperate habits from what I know ; his reputation was that he drank very much ; I knew him to speak to him when I saw him ; this was the only business he did for me.

I never had a conversation with my mother in relation to the making or execution of those two deeds, Exhibits D 11 and D 12, or the transfers of the property in 1860 ; the whole conversation was with my father ; the first conversation I had with my *mother* was in *December*, 1866, or *January*, 1867.

I first discovered there had been a mistake in the deed from myself to my mother, in conveying the whole of the property, instead of one-half, by reason of *Sydney B. Bevans*, or his agent, searching the records, and telling Mr. George McLaughlin that the whole of the property stood in his mother's name, and he told me ; George McLaughlin first told me of it. When I first heard it I went up to the County Clerk's office to investigate for myself ; I found it was so, by examining the records ; I wasn't satisfied with my own examination and got Jacob R. Wortendyke (since dead) to search the records ; he reported that the whole property stood in my mother's name ; he reported to me. I immediately went to my mother and asked for a deed to correct it, which she gave

me, after two or three applications. When I spoke to her the first time about it, she was as much surprised as I was. I told her that Bevans had discovered it was so, and that I wanted it corrected and righted, by giving me  
 229 a deed for the half that belonged to me, which she did on the second application. She said if I would have one fixed up she would sign it.

I explained to her how the mistake had occurred, that the lawyer in drawing the deed had made it, and had drawn it for the whole, instead of the one undivided half; she said, get a deed up and I will sign it.

On my first application to her for a deed for the undivided one-half part she objected, because she thought  
 230 I wanted a deed for the whole of it.

Before she signed the deed she consulted *Joel I. Hoyt* about it; she made no real excuse when I first asked her. I think it was on the second application when she found I did not want a deed for the whole of it; she made no particular objection at the first interview; it was a surprise to the whole of us. At this first interview we were at my mother's house in *Wayne street*; no one else was present; no one was present at the second interview  
 231 besides us. At this interview she asked me to have the deed drawn; I saw her again in a week or ten days; I saw her almost every night. It was in a week or ten days that I saw her in regard to this matter again; that was as soon as I could get the deed prepared; I think the deed was then ready.

Witness being shown a deed dated February 1st, 1867, says: That is a deed from Maliscent Hoyt to Salmon W. Hoyt, for an undivided one-half part of the premises in  
 232 question; I had no difficulty in getting her to sign that deed.

Said deed is offered in evidence on the part of the defendant, and is marked Exhibit D 13, on part of defendant.

Ferdinand Lewis drew that deed; he was a Justice of

the Peace and Conveyancer ; I gave him the instructions to draw the deed.

Whereupon the examination was adjourned to Monday, March 8th, 1875, at four o'clock in the afternoon, at the same place. 233

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

My mother and I went to Mr. Lewis together.

Witness being shown Exhibit D 13, says : That is the deed he drew ; no one went with my mother and me to have the deed executed, we were together ; it was to Clark Place, near Coles street, that we went, to his office ; we found Mr. Lewis there ; no one else. Mr. Lewis was present during the time I was there, and my mother ; no one else was present, I believe. Mr. Lewis and I were present when my mother executed the deed ; before the deed was executed by my mother it was read over by Mr. Lewis, word by word. Beside the reading of the deed no representation whatever was made by Mr. Lewis ; I made no representation there in presence of Mr. Lewis ; I had told my mother, before I went there, how the deed was to be drawn. I told her the deed gave me one-half of the property that was deeded to her, through mistake ; I stated to her, before I went to Mr. Lewis', that it was undivided one-half of the whole premises ; I did not tell her anything to the contrary ; I made no representations to her in regard to the deed drawn, or to be drawn other than I have stated here now. 234 235

We remained at Mr. Lewis' office from twenty minutes to half an hour. I have read that deed of 1867 from my mother to me ; the deed does not differ in any particular from the manner in which Mr. Lewis read it ; it is just as he read it. My mother said nothing in regard to the deed in the room. As she was coming out she 236

said she was only giving me my own ; she referred to the mistake that was made in the deed from me to her.

The mental and physical condition of my mother while she was at Mr. Lewis' was good ; by that I mean her  
 237 health was good, and I don't think she was any more nervous than I was, or any body else ; I was not then nervous ; I did not notice any nervousness on the part of my mother. After my mother had executed the deed I took it home with me, with the consent of my mother ; I withheld it from the record a short time, *by her request, I think for about a month.* Nothing at all was said about this deed taking effect on the death of my mother ; nothing was said by either me or my mother about this  
 238 deed taking effect on her death.

There were no conditions upon which that deed was made and given by my mother to me. The only inducement in my mother giving the deed to me was to give me what belonged to me.

There was no conversation between Mr. Lewis and me about this deed, in presence of my mother. I went to Mr. Lewis' to have the deed drawn, because he owed me about thirty dollars, I think.

When my father died in 1864, my mother's income was  
 239 not sufficient for her support ; *I consented to let her have* the whole income of the corner until I wanted it, by her paying the taxes, the water rents, and keeping it in repair ; my only object in doing so was for her support.

A year ago last January or February, I notified her that I wanted it, and I notified the tenants ; I saw my mother in person ; I did not give my mother any other rights or privileges except that she was to have the rents  
 240 at my option.

Up to the time of the death of my father, he and I both received the rents of that corner ; since that time, my mother has received them ; she has paid the taxes and assessments since the death of my father ; up to the time of the death of my father the property paid them ; they were paid from the rents of the prop-

erty; my father and I both paid them; no express or implied understanding has ever been had between my mother and I relative to the rents of this property, except that just mentioned by me. There has been no change made in that understanding between me 241 and my mother. At the time of the death of my father, my mother had no income except the rents of one-half of this corner. Her family at the time consisted of herself, and my brother and sister lived with her. At that time my brother was about eighteen or nineteen, and my sister was seventeen years old. She then had two besides herself dependent on her for support; those two were my brother and sister. My sister died soon after, think in December following; December, 1865; my 242 brother continued living with her until she broke up keeping house. At the time of my father's death, my mother was keeping house at No. 217 Wayne street; at that time my mother was not in any business. Her family consisted of herself, a servant girl, and, I think, she took Mr. Wilcox as a boarder soon after; I don't think there were any others added to the family afterwards. She did not enter into any business after 243 the death of my father; at the time of the death of my father she lived in my father's house; my mother had her third interest in that house, that is all; no other interest. That property was sold by order of the Court, I believe. After the death of my father she acquired no interest in that property, aside from her right of dower.

My mother kept house about five years after the death of my father, until April, 1869, when she broke up housekeeping she left the house No. 217; that she occupied from the death of my father until then; she has 244 been boarding since with her son-in-law, S. B. Bevans; she lives at the same place now; at the time I gave her notice that I wanted these rents, she lived at the house of S. B. Bevans. At the time of the death of my father these premises rented for about \$1,600 a year; since that time the most it has rented for is \$2,050 a year. The

value of the premises, taking them together, I consider worth \$25,000. This property has been assessed by the city for taxes in my name a part of the time, and a part of the time in the names of N. W. and S. W. Hoyt. I think it is now assessed in the name of Maliscent Hoyt and S. W. Hoyt. Since the death of my father there has been \$10,000 insurance, \$5,000 of it expired a year ago. I think, previous to the death of my father, it was insured. Since the death of my father the property has been insured in my name and the name of Maliscent Hoyt.

245  
246 Witness being sworn, a paper purporting to be a renewal of policy of insurance, says: That is a renewal of policy of insurance in the names of Nelson W. and Salmon W. Hoyt; I received it from the Hudson County Mutual Insurance Company at about the time of its date.

Said renewal of insurance offered in evidence, and is marked Exhibit D 14, on part of defendant.

247 Witness being shown another paper, says: That is a renewal of policy of insurance, given by the Hudson County Mutual Insurance Company in the names of N. W. and S. W. Hoyt to me in May, 1865.

Said renewal of insurance is offered in evidence on the part of the defendant, and is marked Exhibit D 15.

Witness being shown a paper purporting to be a policy of insurance, says: That is a policy of insurance issued by the Hudson County Mutual Insurance Company, of which Exhibit D 14 and D 15 are renewals. Said policy of insurance is offered in evidence on the part of the defendant, and is marked Exhibit D 16.

248 Witness being shown another paper, says: That is a policy of insurance made by the Aetna Insurance Company to Salmon W. and Maliscent Hoyt, issued October 15th, 1872. Said policy of insurance is offered in evidence, and is marked Exhibit 17, on part of defendant.

Witness being shown another paper, says: That is a renewal of Exhibit D 17. Said renewal is offered in

evidence on the part of the defendant, and is marked Exhibit D. 18.

Witness being shown another paper, says: This is a policy of insurance of the Hudson Insurance Company to S. W. and M. Hoyt, July 15th, 1871. 249

Said policy of insurance is offered in evidence, and is marked exhibit D 19, on part of defendant.

Witness being shown another paper, says: That is a premium note, given by me to the Hudson County Mutual Insurance Company at the time of the first renewal. Said paper is offered in evidence, and is marked Exhibit D 20, on part of defendant.

I got possession of it because it was never assessed. After I signed it I gave it to the Company, and on the expiration of the policy they gave back the note. 250

Whereupon the examination was adjourned to Monday, March 15th, 1875, at two o'clock in the afternoon, at the same place.

At which time and place the examination was resumed in the presence of the counsel of the respective parties. 251

Previous to the year 1867 I signed a three years' lease to Hoyt & Coykenall from 1864 to 1867. In 1864 I signed the lease alone. I was the party of the first part. I have not got this lease in my possession. I do not know of my own knowledge where it is. This was after the death of my father that I signed the lease. My mother made no objection to it.

In 1872 myself and my mother signed the lease. I never stated to my mother that the property would be hers as long as she lived. I never said to her that if she would give me a deed for one-half of the property it would be just the same as long as she lived. My mother did not say anything about her other children. In 1867, when she gave me this deed, she did not mention it. 252

Some month or six weeks after the execution of the deed, she wanted to give my brother John her half of that property, so that Mr. Bevans would not get any part of it; she so expressed herself; she and Bevans  
253 were bad friends.

Nothing was said by my mother in 1867 about the children in connection with the giving of the deed.

At the time of the execution of the deed of 1867 the condition of my mother's mind was good. There was no difference between her natural, physical and mental condition, when I spoke to her about giving this deed, and what it had been before.

254 The explanation I gave my mother of the mistake in the deed of 1860, was, I told her that the deed had been done wrongfully, and asked her to rectify it. She did not say that she had knowledge of that fact, but she was as much surprised at it as I was. She stated why she did not want me to put the deed upon record. She stated that it would make trouble with Mr. S. B. Bevans. She stated that he was searching the records, and was at that time a great deal of trouble in the family from his acts, and she did not want any more. This  
255 was before the deed from my mother. I don't know that she stated any other reason. There was no time specified how long I should hold the deed from record; that was a request. She had no knowledge whatever of my placing the deed upon the record, when I put it there, that I know of.

When she asked me to withhold the deed from record, I told her I would do so. There was no time fixed. I put  
256 it there to save myself, that is all I know of, for self-protection.

My mother and father executed a deed to me for two feet or two feet and a half of land on Wayne street, no other. The conditions or understandings had with my mother in regard to the giving of the deed of 1867, or before, or after, were, there were no conditions or understandings.

The only thing which prompted her to give me the deed was, to give me my own. The words she used were, I am only giving him his own.

I never said "Ma" you ought to give me a deed for half that corner. 257

I never told my mother to make a will and leave one-half of the property to John. I have never transacted any business with my brother John in reference to real estate.

I had no conversation with John in reference to the making or delivery of the deed in 1867. I heard the testimony of John. I remembered the testimony had at my house in presence of Coykendall and John, and referred to by him. 258

Coykendall at that conversation said to me, "Sam, Aunt Millie says you were to give her the use of that property as long as she lives." I told him it was not so; that he knew I gave it to her when she was keeping house to help run the house, and the conversation turned upon some other questions.

I don't think anything else was said in reference to this particular time. 259

At, before, or after the time of the execution of the deed in 1867, there was nothing said by me to my mother about her having the use of the property as long as she lived, except in 1864. There was nothing said by my mother to me.

In 1864, at the time of the death of my father, my mother had no income to live on. I told her she could have the whole income of the corner until I wanted it. At that time the whole rent was \$1,400 or \$1,500. I am certain I used the words, "until I wanted it," or needed it. 260

There was no money consideration whatever that induced me to have that feeling. It was only a feeling I had for my mother, that is all.

I was not to forfeit any right by this, except the right to collect the rents.

At the time of the execution of the deed from my father and mother to me, in 1860, my financial condition was such that I can say I was good for \$25,000. I mean by that over and above all my liabilities.

I did not place any property out of my hands at this time. I mean real property. The firm at that time was N. W. Hoyt & Co. We were making money. There was no prospect of a financial embarrassment of the firm or any member of it.

I have exercised the whole ownership of this property since it was deeded by mistake to my mother. I have leased it, repaired it, insured it, and paid the interest on the mortgages on it; everything except collect the rents since 1864.

I had no conversations with my mother about the real estate from 1864 to 1867. In 1864, at the death of my father, she said that the income of one-half of the corner wouldn't support her, and to quiet her and comfort her, I told her she might have my share of it if she wanted it.

I collected the rents of these premises up to 1864, and appropriated them to the use of my father and myself, one-half to each.

At, before, or after the time of the execution of the deed from me to my mother in 1860, there was no consideration whatever passed from her to me.

I made that deed to my mother, at the solicitation of my father. It was an arrangement by which we were to convey his undivided half of the property to my mother.

I did not have any conversation with my mother in regard to the execution of that deed, and no communication either written or verbal.

I don't believe my mother knew of our intention of executing that deed to her at all.

My mother has never reimbursed me for moneys expended in and about this property. She has given me

no money or consideration, or satisfaction for the money I have expended on the property.

Witness being shown a paper purporting to be a letter, says, that letter is in my father's handwriting; it is a letter written to me by my father from New Orleans, 265  
January 3, 1863; I received about the middle of the month.

Said letter is offered in evidence on the part of the defendant, and is marked exhibit D, 21.

[Counsel for complainant objects to the offering of said exhibit.]

Where he refers in that letter to having to pay Ryder in the spring, he meant, we would have to pay a mortgage which was on the premises in dispute. 266

Whereupon the examination was adjourned to Tuesday, March 16th, 1875, at 4 o'clock in the afternoon, at the same place.

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

It was a year ago last January that I went to my mother to notify her that I would thereafter collect my half of the rents, and it was then I notified her that she should no longer collect my half. I think it was the first of February, or the first of May, 1874, that I served on my mother a written demand for one-half of the rents. I think it was the first of May, I was in New Orleans in February. I never gave my mother any reason for signing the leases. I told my mother I was going to have my half of the rents from the first of May. I partly remember the testimony of Sidney B. Bevans, given in this case. At the conversation while my mother 268  
was present, all he said, I think was, that the deed he held in his hand was the deed of 1867. I said I knew it was correct, I couldn't help what he thought about it. Mr. Bevans did most of the talking. I do not recollect the words uttered by my mother, "can this be so." I

don't think she uttered those words. She said "Salmon, you have made all this trouble by exposing this deed," as near as I can recollect, I don't know as she said "all this trouble," she said "this trouble."

269 There is no doubt in my mind, as to what she said in regard to exposing the deed; she used those words.

My mother was not sick—she was not any more prostrate then than she is at this present time, I don't think she is prostrate at all now.

I am not on friendly terms with Mr. Bevans now, my friendship with him ceased in 1863. There have been intervals in which I have spoken to him. I would speak to him, and in 1872, he was very sick, we were not  
270 friendly; I sat up with him, after he recovered sufficiently I took him riding once in my phaeton. I think he has taken tea at my house once, and I at his house once, I think that was in 1872, after his recovery.

Previous to 1872, we were not on friendly terms at all, that is since 1863. From 1863 to the present time, we were on speaking terms most of the time; from 1863 to the present time, the business relations between us have been as follows: I disbursed some money for him to  
271 William Bumstead & Co., on his house.

There was no special difficulty in 1869 between Mr. Bevans and I, while he was in the Legislature. In the years 1872, 1873 and 1874, I think, three times, would cover the number of times I took him out riding, perhaps twice. Since 1863 to the present time he has spoken to me occasionally, when we met he was friendly to me as far as speaking went, outside of that I don't know that there was any friendship.

272 I don't know what the business dealings of large amounts were, that Mr. Bevans speaks of in his testimony; I never knew of any.

Witness being shown seventeen papers, says: Those are tax bills and, bills for water rents and sewerage taxes. Said papers are offered in evidence, and are marked Exhibits D 22, D 23, D 24, D 25, D 26, D 27, D 28, D 29,

D 30, D 31, D 32, D 33, D 34, D 35, D 36, D 37, and D 38, on part of defendant.

There was nothing secret in my allowing my mother to collect the rents until I wanted them; it was generally known in the family and by the tenants. 273

*And being cross-examined, he says:*

By the last expression "it was known," I mean the tenants knew it; Mr. Coykendall knew it, and I thought it was generally known in the family.

Mr. Peter H. Hoyt, of the firm of Hoyt & Coykendall knew it. I don't know positively that any other of the tenants knew it. I think Joel I. Hoyt knew it, too; he was not a tenant.

I know that Peter W. Hoyt and Nelson W. Coykendall 274 knew it, from their knowing the circumstances of the case; I know they knew the circumstances of the case, from hearing it talked over in the store by me. The circumstances of the case were talked over in the store by me in presence of Nelson Coykendall and Peter H. Hoyt, on several occasions, after the death of my father, and before the giving of the deed of 1867.

I can give you the substance of what I said about my mother's having all the rents of the property. I can't 275 give you the words; I said that her income was insufficient for her support, and I allowed her to collect all the rents "during my pleasure; I think I told them that "during my pleasure," or words to that effect. I cannot give the words; I don't think they might have been as long as she needed them for her support; I might have said as long as she was keeping house; I probably did; I am sure I did not say "as long as she needed it." I am quite sure of that. I don't think I might have said until I 276 needed it. I think it was as long as she was keeping house; that was the expression; I might possibly have said "until I needed it," in some of the conversations.

The exact arrangement I made with my mother in 1864, after my father died, was: she hadn't sufficient for her support; I told her if she would keep the whole

place clear, she could have the rents until I wanted them; keep the place clear, by paying taxes and keeping the place insured. I am sure my expression was not "until I needed them."

- 277 In my direct examination I used the words "until I needed them, or wanted them," because that was just what I meant, until I wanted them. I meant until I wanted them, but when you come to define the two words they have different meanings. By "want," I mean that any time I see fit to withdraw a gift I can do so. I only gave it during my pleasure. By "need," I should judge it means when I could not do without them—necessity—both meant during my pleasure; that she could have it
- 278 during my pleasure; that is what I meant by both words. In my arrangements with my mother I probably did not use both words. I am quite sure that I used the words, until I wanted them, because they are the most natural to my mind. I presume I had in my mind her wants, rather than mine.

[Question and answer objected to.]

- 279 If I had in my mind my mother's wants, it is not probable that I used the words as long as she wanted them or needed them. There was no real arrangement ever made; it was probably talked about during the course of a week or two.

I have a positive recollection of the words that were used in these talks. I cannot give you the whole of any one of those talks.

- 280 The subject was probably talked about half a dozen times during that week or two, probably not so many times. I think these matters were not talked over during that time in the presence of any person other than myself and mother.

I was not then living at home with my mother; I was married and keeping house.

At that time I was worth probably \$35,000 in property, over and above all my debts.

[Question and answer objected to.]

281

Q. How much do you think you are worth at the present time?

[Question objected to.]

A. From \$35,000 to \$100,000. I make this variation in my valuation because no one can tell what real estate is worth now. If the property should be sold under the hammer, it probably would not bring over \$35,000.

282

If I could sell my property at a price I would be willing to take for it. It would probably turn out to be worth \$125,000.

[Objected to.]

Q. Your property has then been increasing since 1860?

A. Yes, sir.

283

[Question and answer objected to.]

Q. Your circumstances are in no way straitened?

A. Tell me what that word straitened means, and I will tell you.

Q. You have the means of comfortable living?

[Question objected to.]

A. So far as I know it is hard scratching these times. 284

[Answer objected to by defendant.]

My attempts to get the half-rents of this property springs from a need on my part.

Q. Explain how?

A. I have not made any money during the last year of any account, and I think my mother does not need it for her support ; I need it more than she does.

Q. For what do you need it ?

285 A. I need it for my family.

Q. Have you not the means of support for your family outside of it ?

A. I probably have by sacrificing.

Q. Sacrificing what ?

A. Real estate. I probably have not the means of support for my family without these rents, and without sacrificing my real estate, if a man lives within his income.

286 Q. Why do you say probably not ; don't you know ?

A. I do not. I don't know what I have made in my business. I judge not from the way business is going.

I don't know what the expense of supporting my family is. I don't know that I have ever kept a record of it. I don't know what I made from my business in the year 1874, we have not balanced our books. Our year runs from April to April.

I don't know now what I made in my business from  
287. April 1873 to April 1874. I could tell if I had my books here.

[All the foregoing testimony objected to since the last objection.]

The \$20,000 to \$25,000 I was worth in 1860, consisted of real estate and cash ; I don't know as I could tell you exactly how much cash and how much real estate. I  
288 I lived, worth \$10,000, and the corner of Grove and Mercer, the store ; in 1860 that corner was worth \$8,000. I owned a lot adjacent to 221 Wayne street, worth \$1,500. I owned the corner of Varick and Wayne streets, with a building on it worth \$3,000. I owned what equity was in one-half of 192 and 194 Grove

street worth \$12,000. I owned some lots on Long Island, worth probably \$1,000. The cash I had in my business I don't know how much; enough to carry on my business. I think there was an encumbrance of \$3,000 on No. 221 Wayne street, and on the lot adjacent 289 an encumbrance of \$600, I think. The corner of Wayne and Varick was clear. I think there was \$3,000 on the corner of Mercer and Grove streets, and I think my equity in 192 and 194 Grove street was worth \$5,000.

At that time I had been in business about twelve years. I am now forty years old. I was born in 1835. I had been in business twelve to fourteen years. I had been in the grocery and butter business; in the grocery business first. I was in the grocery business alone when 290 I was eleven years old, and supported the family for three years that are now trying to beat me. I was in Samuel M. Hoffman's house, in Newark avenue, when I was twelve years old.

My father furnished me \$100 when I started. I conducted the business there then in my own name. I did not have a sign up at first, I could not afford it; I probably carried on business two or three years without a sign up; the first year I had no clerks; the second year I 291 think I had a partner, John D. Wood; it was the second or third year; the firm was Hoyt & Wood; Wood was about eighteen to twenty years old; I don't think Wood furnished me any capital.

He beat me out of what I had in about six months, and left me; I can't fix the time when he left me. My credit furnished me with capital with which to start again; I hadn't lost that. I then carried on business alone, probably for two or three years; not in 292 the same place, but across the way; I moved across the way about a year and a half after Wood left me, probably not so long as that. About a year and a half after Wood left me I hired N. B. Coykendall; up to that time I had a boy hired to carry out goods, except when Wood was with me. I attended to the business,

buying and selling, myself, except when my mother was in the store helping me; she did help me; no other member of the family, except my mother, attended the store at times; there was too much pride in them. My father  
 293 was running on a boat from Piermont to New York, in business outside of me; he was running butter. My father had met with a loss; what money he made was to make up a deficiency in money of which he had been robbed. I supported the family for two years, almost entirely. My father might have left \$10 or \$20 in the house at times; what my father left didn't pay for groceries or butcher's bills.

At that time my brother John was about four years  
 294 old; he was too young, I should say, to take care of the store. My remark as to the family having too much pride, referred only to Mrs. Bevans; she was two years older than me; she never attended the store to my knowledge; she was in and about the store; the only entrance to the house was through the store; Samuel M. Hoffman owned the house in which the store was kept; that store was not conducted in my fathers name or my mother's; my father did not take all the profits, or my mother; I  
 295 took what I wanted to spend without asking either of them; I controlled the business myself, and did what I liked with the proceeds; neither my father nor my mother gave me any other money to carry on the business than the \$100; my father gave me credit; I bought eggs and butter of him, for which I paid him; I think my father made arrangements for hiring the building in which the store was kept; I think he hired it.

While I kept the store across the street in Newark  
 296 avenue, the family lived over the store; the household moved across the way; my mother did not then also attend the store; Mr. Coykendall was with me. Before Coykendall came with me my mother would attend the store; I think I hired that building; I don't think we had a lease; we hired from month to month from William Hall. I paid the rent; there was one rent for

the whole house; I paid this rent out of the store monies; I carried on business alone, there, for about two years; up to that time I think I had had signs out; the sign was S. W. Hoyt; the firm of which Coykendall was a member was Hoyt & Coykendall; he was about two years older than I was. 297

[All the foregoing testimony objected to after the answer: "I had been in the grocery and butter business, in the grocery business first."]

I think Mr. Coykendall came in the firm in the neighborhood of 1850, when I was fifteen or sixteen years old. I continued in business with him, I think, about three or four years; we did not bring any capital in the business except labor. During this three years the family were still residing in the building; I am not sure if they remained there all the time; I think they did, though; during this time I lived home; Coykendall lived there in the house, also; he was a relative; he was a cousin; his parents were dead. 298

Whereupon the examination was adjourned to Thursday, April 1st, 1875, at 3 o'clock in the afternoon at the same place. 299

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

When I quit business with Coykendall, I went in the butter business in New York; that was in 1858.

Up to that time I was with Coykendall. In 1858 I went in business with my father and Joel I. Hoyt; I went into a business already established by my father; Joel and I each had an interest in the business—one-third each; I don't know how much I put in—all the money I had loose; I didn't put in all my capital; I had real estate in Jersey City I didn't put in; I can't tell how much I put in; I had been in the grocery busi- 300

ness and sold out to Coykendall; I don't know how much I sold out for; we were carrying a stock of about \$7,000; I got about \$4,000 for my share; we had not many debts; probably we had more on our books than  
301 we owed.

We did a commission business in New York which didn't require much capital; I don't know how much I put in; *when I had \$500* I put it in; there were no partnership papers; the firm name was N. W. Hoyt & Co.; the partnership continued until his death; I think the business was a money-making business; it didn't continue a commission business, we soon run it into purchasing in the country; it became that almost exclusively; we found it paid best; we did not necessarily  
302 require more capital. After the war broke out trade was active and we did not require much money.

I couldn't say if the partners contributed an equal amount of capital; we didn't consider that; sometimes the others would have the most, sometimes I would have the most.

[All the foregoing testimony objected to by counsel  
303 for defendant.]

When I bought this property in dispute I paid \$3,000 down; this was paid in two checks—N. W. Hoyt & Co.'s checks.

The \$4,000 mortgage which we gave when we bought the property was paid off by checks, my own checks, on the then Mechanics and Traders' Bank; I have not got the checks; I don't know where they are; I have not  
304 looked for them.

I collected the rents and deposited them to my own account; that is the way the mortgage was paid out of the income of the property; that is my impression that is the way it was done.

The interest on the \$4,000 mortgage was paid from the income of the property; the interest on the \$2,000

I paid up to three or four years ago out of my own pocket.

The interest on that \$2,000 was paid up to my father's death out of the income of the property. The taxes, assessments, water rents, and repairs, have been paid out of the income of the property since it was purchased. The insurance has once or twice during that time been paid by me from other sources. I cannot state which policies I have paid the premiums on. I think the *Ætna* was one. I think the first policy of that company was paid by me; I would not like to swear that all the others have been paid out of the income. 305

I cannot now specify any bills that I have paid out of my own pocket, except the *Ætna* policy of insurance, and the interest on the \$2,000 mortgage. I think the reason I paid this *Ætna* insurance policy out of my own pocket was, because I was getting other insurance, and paid it all at the same time. I wouldn't swear it was never repaid to me from the store, but I don't recollect that it was. 306

I don't know that I have had an opportunity of having it retained out of the income if I had made a charge of it. 307

I think it was paid during Coykendall's tenancy. He and I were not accustomed to retain these expenses out of the income before paying the net amounts to her. He used to pay some bills against the property; bills for repairs. He has paid taxes sometimes. I don't know as I frequently reported to him expenses I had incurred on the property, and have him retain it out of the rents. I don't know that I ever did. I think the last year or two he was there, I asked for, and got paid the interest on the \$2,000 mortgage. I think the six months interest was paid me not over twice, perhaps only once. I don't know that he, during that time, paid me other expenditures that I had disbursed. I don't remember it. 308

I was reimbursed for my expenditures on the property

in this way. Sometimes I collected the rents, took out my disbursements, and turned over the balance to Mr. Coykendall.

309 Sometimes I would pay them and never think of them again; that was when I was making money faster than I am now. I was not reimbursed for the Ætna policy, on the payment of the premium, because I suppose I never thought of it again.

I was not reimbursed for the payment of interest on the \$2,000, because I considered I was giving it to my mother for her support, and I didn't ask her for it.

310 I know that the \$3,000 mortgage was paid, one-half by me and the other half by my father, because one-half was charged to my own account and one-half to his; that is the way I know it.

That money is so charged on the check book of N. W. Hoyt & Co.; \$1,400 to each one on one check, and \$100 to each one on another check; this is the entry, and is posted from the check-book into the cash-book.

[All testimony as to the contents of checks objected to by counsel for defendant.]

311

It is posted from the check-book to the general cash account, and from there to the ledger to the individual accounts. The check-book, cash-book and ledger are at my house.

312 [Counsel for complainant here gives notice to the defendant and his solicitor to produce at the next meeting the check-book, cash-book and ledger here spoken of, and also to produce such other books as will show the dealings of Nelson W. Hoyt and Salmon Hoyt with the firm of N. W. Hoyt and Co.]

I believe I was with my father when he gave Mr. Voorhees instructions to draw Exhibit D 11; that was William Voorhees, a lawyer in Commercial Buildings.

My impression is these instructions were given to Mr. Voorhees in his office in Commercial Buildings.

Q. What were the instructions given?

A. I can give you the substance of them.

Q. What was the substance?

313

A. He told Mr. Voorhees to make a deed of the undivided one-half of the property in dispute to me. There was a great deal of talking. That was the substance of it.

I think the subject of transferring his one-half of his property was talked over between Mr. Voorhees and me and my father. Nothing was said as to how it should be done; that had been agreed upon before. We told Mr. Voorhees to transfer one-half of it to me, and then I should transfer it to my mother. There was nothing said, I think, as to how many deeds were necessary. 314

The talk with Mr. Voorhees the first time we went there was for him to draw a deed from my father to me, and another from me to my mother. We went there a second time. My recollection is that my father and I went there twice together.

Our object in going there the first time was to order the deed, and the object in going the second time was to get the deed. The conversation with Mr. Voorhees I have given you was on the first occasion, I think. I wouldn't like to say that it might have been a part of the conversation on the two visits. 315

I can give the substance of the conversation at the first visit, that was, he wanted a deed of the property drawn from himself to me; that was the only deed he left an order for.

I think at the first visit he told Mr. Voorhees he wanted to transfer his half of the property to his wife; I won't be positive. I couldn't explain why he did not at that first visit ask Mr. Voorhees to draw a deed from me to my mother. 316

I think I had the Ryder deed with me: I think that was left with Mr. Voorhees. I couldn't say if he told

Mr. Voorhees my mother's name. I don't recollect that at the first visit there was any appointment made as to the second visit. It was two or three days after the first visit that we made the second. I do not remember to  
 317 have seen Voorhees between the time of the first and second visit.

At the second visit we got the deed that was drawn, and Mr. Voorhees was told to draw another deed from me to my mother, for the undivided one-half. My father, I think, told him to do it; he was better acquainted with him than I was, yet I knew him very well.

The deed first ordered had been drawn before the second visit, and we got it at the second visit; we sent it to  
 318 Hudson City for record. I don't remember if it was before or after we got hold of the deed that the second deed was ordered.

At that time my father gave the deed to me, and Mr. Voorhees gave it to my father. It was executed when my father gave it to me; it may have been executed in Mr. Voorhees' office. One of the deeds I am positive we went out of Voorhees' office to have executed. I don't recollect if either was executed in Voorhees' office, one I  
 319 know was not, the other I don't know if it was or not. The one that was executed out of Voorhees' office, I don't know where it was executed; we had some difficulty in finding a Commissioner or Notary. My father and I went out to find one. I don't know if we went out of the building; it was the Commercial Building. The officer we found, I think, was Mr. Slight, but I don't know if it was my father or I who executed the deed before Mr. Slight. We went from Mr. Voorhees' office to find the officer; I couldn't say why we did not  
 320 execute the deed before Mr. Voorhees, but I know we went to another office.

I am not positive if on the second visit my father gave Mr. Voorhees my mother's name. I think he got her name from the Ryder deed; I don't know that it was a good while ago.

I don't know that there was anything said as to how long after the second visit the deed to my mother would be ready. The Ryder deed was still left with him; the deed from my father to me we brought away.

I couldn't say how long after that we went to execute the deed to my mother; it may have been a week after; my impression is I went alone to execute that deed; I couldn't say who I saw; I think I saw Mr. Voorhees; I executed the deed; I can't say if I executed it before him; I don't know if I went out of the office to execute it; I think I brought that deed away then; I either took or sent it up to Hudson City for record. 321

I think I had sent the deed to me for record, before I executed the deed to my mother I think I got the deeds from the Clerk's office after record, and put them among my papers. It was some time after; it might have been two or three years; I couldn't say how soon after I got the deeds; I sent them for record; I can't say if it was the same day. 322

At the second visit when Voorhees was ordered to draw the deed from me to my mother; I think we all joined in the conversation; I don't recollect anything I said to Mr. Voorhees. My father directed the deed from me to my mother to be drawn; I can't say that I gave any instructions as to drawing the deed from me to my mother; the directions were by my father; I remember his giving instructions to Voorhees to draw that deed; I think he used the expression, the "one undivided half;" he may not have used these words, but I think he did. 323

I don't recollect giving any instructions to Voorhees.

The conversation has never been out of my mind; that is, the conversation between Voorhees, my father and me. I remember of going over the conversation in my mind before the commencement of this suit. I think *it was in* 1866 that I went over in my mind these conversations. I remember now that in 1866 I tried to recollect the conversations that had transpired on these two occasions at Voorhees' office. 324

My recollection of the conversation then, agrees with my testimony as to the conversations to-day.

325 So far as I can remember, my recollection of these conversations has at all times agreed with my testimony as to the conversations to-day, so far as to the substance.

My recollection has always been that my father told Mr. Voorhees to draw a deed for the one undivided half.

The phrase "the undivided half," was used on both visits. Those words impressed themselves on my memory more clearly than any other words that day, because I knew he only owned one-half.

326

Whereupon the examination was adjourned to Thursday, April 8th, 1875, at ten o'clock in the forenoon, at the same place.

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

327 Before I went to Voorhees with my father to have the deed drawn, it was understood the object of my father was to have me make a deed to my mother.

I don't know why Mr. Voorhees was not instructed to draw the deed from me to my mother at the same time he was instructed to draw the deed from my father to me.

328 After Mr. Voorhees had been instructed to draw the deed from my father to me, I think we talked about his being instructed to draw the deed from me to my mother; it was the subject of conversation.

There was no appointment made between us as to going to Mr. Voorhees to give him instructions to draw the deed from me to my mother.

I don't know whether we went for the second deed together. I know we went together for the first deed,

but as to his going with me for the second deed, I am not clear at all.

I don't know that the order to draw the second deed was given when we went for the first deed. It was a subject of conversation. I can't say positively if the order was given. 329

My impression is, that I went to Voorhees to give him instructions about drawing the second deed, after the first deed was signed; I am not positive if my father was with me. When I went there to sign the second deed I do not think my father was with me.

It is my impression that Mr. Voorhees was in when I went to sign the second deed, but I wouldn't like to swear to it. We had some trouble in finding a commissioner, either at the signing of the first or second deed; I don't know which it was. I signed the second deed in Mr. Voorhees' office. I don't know whether he was present or not. 330

[Question and answer objected to by counsel for defendant, on the ground that the deed shows for itself.]

When I signed it I took it away, and sent it to the Clerk's office. I sent it there to have it put on record. I wanted to have it recorded because it wouldn't amount to anything unless I did, and to fulfill the agreement with my father. 331

I don't know that there was anything said to Mr. Voorhees about my being married at these interviews.

Q. At any of these interviews was Mr. Voorhees intoxicated?

A. Where do you draw the line. I think a man is intoxicated if he is under the influence of liquor. 332

Q. Did you think Mr. Voorhees was under the influence of liquor at any of these interviews?

A. Of that I have no remembrance; I don't recollect.

Q. Do you know how long after this he died.

A. No, sir. I thought the Clerk's office was the

proper place to go to find out if the title was in my mother's name.

333 I knew that the records contained only copies of the deeds; I don't know if I had the original deeds in my possession; I think it was in the County Clerk's office; I have no idea how long it was there; I do not recollect of getting it from there; my impression is I told Ferdinand Lewis to get it from there; I have no recollection if I told him to get both deeds; it might have been both and it might have been only one; he was running back and forth up there; I can't tell when that was; if I did I could tell when I got the deed.

334 It was soon after I got the information of the property all standing in my mother's name; I think it was after I went to examine the records myself; it was not before; I couldn't say if it was before I got Mr. Wortendyke to examine the records for me; that was all in so short a time I couldn't say; I think when I got that information I made a general search for papers to see where the mistake had been committed; I had known Ferdinand Lewis five or six years, may be longer; he was not a lawyer, that I am aware of.

335 I think for probably a year before he died he was intemperate at times; I couldn't say when he did; I couldn't say how long after this deed from my mother to me; he may have died in 1869, or it may have been later than that; at the time of his drawing the deed from my mother to me his habits were good, so far as I knew; I had not seen him intoxicated until a short time before he died; I don't know that he died from intemperance; I understood that he died in a fit; I don't know that it was a drunken fit.

336 Q. Don't you know it was the result of intoxication?

A. No, sir; I don't think it was, so far as I know the man.

I knew Mr. Wortendyke to be a careful and skillful lawyer; I didn't have him draw the deed from my mother to me because I had become acquainted with Mr.

Lewis, and he was poor and very competent for all work; I think he could have satisfied me that the title to the whole property was in my mother's name; I didn't employ him for that purpose, instead of Mr. Wortendyke, because I had loaned him some money, fifty dollars, and, thinking he was not a lawyer, I thought it safer to get a lawyer to make a search. 337

I did not think I could trust more to a lawyer's judgment of what a deed meant than to Mr. Lewis; I always thought he knew as much about a deed as a lawyer—that was my opinion of him.

I don't know why I didn't trust to Mr. Lewis's judgment as to the effect of the deed from my father to me, and of the deed from me to my mother; I can't tell what my motives were, it is so long ago. 338

Mr. Lewis paid me a portion of that fifty dollars he owed me; I can't say how much of it; I can only judge of what I thought his work was worth; he might have thought it was worth twenty five dollars more; he never repaid me anything in cash; he paid it in work he did for me.

The deed from my mother to me was executed in Mr. Lewis's house; There was no one present except Mr. Lewis, my mother, and myself. 339

Q. From the time you first spoke to your mother about this alleged mistake in the deed from you to her, up to the time when she signed the deed to you, was the subject of her continuing to receive all the rents of the place mentioned between you?

A. I don't know of any time when we spoke about it, but I used to be in there every night, and possibly the question might have been incidentally spoken about; I don't remember of any; I have no recollection of any conversation on that subject in the interval; I should judge it was in the neighborhood of a month from the time of my speaking of the mistake in the deed until my mother signed the deed to me. 340

I don't know that the subject was talked of during

that time to exceed two or three times; not the deed; I saw my mother almost every day; it wasn't talked of, because when I discovered the errors she told me to have it corrected and she would sign the deed;

341 I did not go to visit her for that purpose.

I think it was the first interview we had, that she told me to have the deed corrected, and she would sign it; it may have been the second, but my impression is it was the first.

She didn't, at any interview, object to give me a deed; she never made any objection to conveying me half of the property at that time, when she understood it; I mean that when I first spoke of it; she thought I wanted

342 a deed for the whole of it.

I can't give you the whole of the conversation between her and me at the first interview; I can give you the substance of it; the substance was; I told her that Mr. Bevans had been searching the records or an agent of his and had discovered and reported the same; that the title of No. 192 and 194 Grove street, was wholly in her; that I had gone to Hudson City and found, after examination, that the deed from me to her was drawn for the whole instead of the individed half, and that I wanted her to rectify it while she was alive; she seemed to be astonished and surprised, and wanted to know how it was done, and I explained it to her; she said she would do it; when I explained it to her, I told her that the deed from me to her was made out for the whole instead of one undivided one-half; I don't know that she said anything except that she was surprised; I think she said that can't be so; I told her I had searched the records and found it so; she said "have a deed drawn and I will sign it;" I don't remember anything more; that was my

344

object there, and that is all that transpired.

She never objected to give me a deed; one time she thought I wanted a deed for the whole; I don't know whether it was at the first or second interview that she thought that; I don't know that there was anything at

that first interview to indicate that she thought I wanted a deed for the whole of it.

\* Whereupon the examination was adjourned to Thursday, July 22d, 1875, at three o'clock in the afternoon, at the same place.

345

The partnership of N. W. Hoyt & Co. was formed, I think, in 1858.

I wouldn't like to swear that it was not in 1859; it is my impression that it was in 1858; my father had been in business at the same place prior to that time; I can't say how long; probably from three to seven years; the firm prior to the time I went in had been Hoyt & Wickham; Hoyt & Wilcox; Hoyt, Wilcox & Co., and Hoyt & Bevans.

346

I don't remember what amount of capital my father had in the business when I went in with him.

When I went in the firm, the name was N. W. Hoyt & Co., composed of my father, myself and Joel I. Hoyt.

Each partner had an equal one-third interest in the business; I couldn't say if each furnished one-third of the capital; I think they did, though; if one partner had more capital than the other he was paid interest on the excess.

347

When I first went in I put in some money, and so did Joel I. Hoyt; my father had the most money in before the year was out; our capital, most of it, consisted of good credit; we did a large business immediately after going in, that is, large for those times; we continued in business up to the time of my father's death, in June, 1864.

I should judge that in 1860, I was worth \$20,000 to \$25,000; I could'nt tell what I was worth in 1865.

348

My mother administered alone on the estate of my father.

My father died seized of the real estate No. 217 Wayne street, Jersey City, subject to a mortgage of \$3,000.

[All the foregoing testimony taken to-day, objected to by counsel for defendant as not a cross-examination.]

349 This property sold for \$10,550; he had conveyed the property on the corner of Grove and Wayne streets before that.

I don't know what my father's personal estate amounted to; the accounts of the administratrix, my mother, were objected to and the account not passed.

[Objected to by defendant's counsel.]

350 Counsel for complainant requested the witness to produce the day-book, cash-book, ledger and stub check-book, and also that he be allowed to have S. B. Bevans to inspect them.

Counsel for the defendant states that he is willing to produce the books, and will produce them, on Monday next, at four o'clock at his office, but declines to allow Mr. Bevans to examine the books.

351 Whereupon the examination was adjourned to Wednesday, July 29th, 1875, at two o'clock in the afternoon, at the same place.

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

352

The defendant produces the books demanded at the last examination.

*And being again examined in chief he says:*

353

William Voorhees drew the two deeds, Exhibits D 11 and D 12, and I appeared before William Voorhees.

My father instructed William Voorhees to draw the deed for the undivided half from my father to me in my presence; that was the first order he received from my father; it was probably a week or two weeks after that I instructed him to draw the deed from me to her; it was after the deed from my father to me was executed.

354

The understanding between my mother and me that she was to collect the rents until I wanted them was verbal; it was never reduced to writing; I want these rents now, and I did want them at the beginning of this suit; I gave her verbal notice of that last January a year ago, and in April following I gave her a written notice stating that I wanted my half of the rents, and I should claim and collect them from May 1st, 1874.

[Notice is given to counsel for complainant to produce the notice served on complainant.]

355

Notice to like effect was served on the tenants; I then needed and wanted the rents of one-half; I have since continued to need them.

My father or mother or any member of the family had any interest in the business; I started in Jersey City when I was thirteen years old.

My father or mother or any member of the family had any interest in the business before I went in partnership with my father in New York.

356

My father, when we started business in New York, had more money than either Joel Hoyt or I had, and we paid him interest on the excess; afterwards we made it up, and sometimes had more than he had; my father's

capital exceeded mine for two or three years, and each year we allowed him interest on the excess, and it would be charged against Joel and I; after that time the amounts would vary; sometimes he would have the  
 357 most and sometimes Joel and I, and then he allowed us interest; I think when we closed the business that Joel and I had more money in the business than my father.

Witness being shown Ledger A says:

This is the ledger of N. W. Hoyt & Co., commencing January, 1859; and referring to page 17 of the ledger, says the charge "February 2d, 1859, to cash \$100," was \$100 charged to N. W. Hoyt for his share of the first payment on account of this property; the charge April  
 358 30, 1859, same page, \$1,400, is a charge against N. W. Hoyt for his share of the second payment of the property in question.

Page 17 of the ledger is offered in evidence, and being shown page 153 of the same book title, Salmon W. Hoyt charge, "Feb. 3d, 1859, to cash, \$100," was a charge made against me for my one-half of the first payment of the property in question; the charge April 30th, same page, to cash, \$1,400, is a charge made against me for my half of the payment of the second instalment of the  
 359 property in question; this made up the cash payment of my father and myself in this property; the balance was made up by assuming a mortgage then on the property and giving the mortgage Exhibit D 3.

Page 153 of the ledger offered in evidence. Witness being shown cash book A says: This is the cash book of N. W. Hoyt & Co., commencing February, 1858; and being referred to page 171 of that book, to item February 3d, 1859, by N. W. Hoyt, \$100, says: That is the  
 360 charge against my father for his one-half of the first instalment of the purchase of the property in question.

The next succeeding item, Feb. 3d, by cash, N. W. Hoyt, \$100 is the charge against me for my one-half of the first instalment of purchase money. Said page offered in evidence.

Page 205 of the same book being shown witness, he

says: The item April 30, 1859, N. W. Hoyt, \$1,400 is a charge against N. W. Hoyt for his one-half of the second instalment of the purchase of the property in question. The item April 30th, 1859, S. W. Hoyt, \$1,400, is a charge against me for my one-half of the second instalment of the property in question. Said page is also offered in evidence. 361

These items and charges were placed in the cash book and ledger at the time; I believe it was the custom of our book-keeper at that time, Mr. Johnson, to write up and post his books every night before he went home; I never knew him to default in that; Johnson is reputed, and I believe him to be, dead, having been killed in the army in the year 1863. 362

My father was at home the whole year during 1859; the books were open and free to any member of the firm, and he used to look at them as much as anybody; it was a rule with him to look over and watch his own accounts.

I saw the entries in these books as they now appear at the time they were made, certainly within twenty-four hours; our balance sheet was struck every night, and our bank account balanced every night; these are the same books, unchanged and unaltered as they were in 1859. 363

Witness being shown a book of check stubs of the firm of N. W. Hoyt & Co., and his attention being called to check stub No. 556, for \$200, to B. W. Ryder, Feb. 3d, 1859, says: That was a check to pay the first payment on this property; \$100 of it was charged to N. W. Hoyt, and \$100 of it to Salmon W. Hoyt; the letters "N. W. H." refer to my father, and the letters "S. W. H." referring to myself. 364

SALMON W. HOYT.

Subscribed and sworn to, this }  
2d day September, 1875. }

ISAAC ROMAINE,

*Master in Chancery of N. J.*

365 This stub offered in evidence. Witness being shown check stub No. 678, for \$2,800, drawn April 30, 1859, to the order of B. W. Ryder, marked N. W. Hoyt, \$1,400; S. W. Hoyt, \$1,400, was for the second payment on the property in question, and is the check marked Exhibit D, 4.

These amounts were never credited back to me after being charged to me.

The last stub is also offered in evidence.

366 These stubs were made at the time the checks were drawn. At the time I went in my father's concern I had about \$5,000 in excess of the \$500 put in by me. My father put in the business, as capital, \$899; Joel I. Hoyt put in \$275 87; I put in \$500.

*And being cross examined, he says :*

Counsel for complainant offers in evidence pages 1, 2 and 3 of Ledger A.

367 Counsel for defendant objects to the offer, on the ground that it is not the proper time to offer, and that it is incompetent testimony.

The accounts on these pages, 1, 2 and 3, show the amount of money put in the partnership of N. W. Hoyt & Co., by my father, Joel I. Hoyt, and myself respectively, from February 1st, 1858, to January 31st, 1859.

368 I owned real estate at the time I went in this firm; it was on the corner of Wayne and Varick streets; there was a house on it.

[Objected to by counsel for defendant.]

I paid about \$3,000 for it; I also owned the property corner Mercer and Grove, which was sold for \$9,000.

[Objected to by counsel for defendant.]

I had also \$6,000 in cash and bills receivable; I did not put more money in the firm, because it was not required; I never bought any property of my father; I don't recollect what I paid for the property corner Grove and Mercer streets; the deed shows it, but I don't know if it is there stated correctly; I was in business with Coykendall for eight or ten years; we were in business on the property in question and on Newark Avenue. 369

---

IN CHANCERY OF NEW JERSEY. 370

Between MALISCENT HOYT,  
*Complainant,*

*and*

SALMON W. HOYT,  
*Défendant.*

*On Bill, &c.*

371

Before ISAAC ROMAINE, Esq., Master in Chancery,  
September 2, 1875.

*Continuation of testimony of Salmon W. Hoyt:*

Witness on being shown papers, says: Those are the notices I referred to in my testimony as having been served upon the tenants. They are a true copy. 372

Papers offered in evidence and marked Exhibits —

SALMON W. HOYT.

JOEL I. HOYT sworn on the part of the defendant, testifies as follows :

373 *Direct Examination by Mr. Brinkerhoff ;*

Q. Where do you reside ?

A. Jamestown, Chatauqua County, New York.

Q. How long have you resided there ?

A. About twenty years.

Q. Are you acquainted with Meliscent Hoyt, the plaintiff in this suit ?

A. I am.

374 Q. How long have you been acquainted with her ?

A. I should have to go back a good while—I guess about thirty-nine years—about as long as I can recollect it ; the first transaction was a spanking she threatened to give me with a whip.

Q. Were you acquainted with Nelson W. Hoyt, her husband, in his life time ?

A. Yes, sir.

Q. You knew of his death ?

375 A. Yes, sir.

Q. Present at his funeral ?

A. Yes, sir.

Q. How long had you known him previous to his death ?

A. I had known him ever since I was a little boy—since I was old enough to know anybody.

Q. What is your age ?

A. Forty six.

Q. About how old was he at the time of his death ?

376 A. My judgment is somewhere not far from fifty-three.

Q. Were you intimately acquainted with him ?

A. Yes, sir.

Q. You were related to him ?

A. Yes, sir.

Q. What relation were you to him ?

A. We are said to be half brothers.

Q. Do you believe that you are half brothers ?

A. I have no reason to doubt it.

Q. What business relation, if any, have you had with him ?

A. I was a partner with him in business, from the Spring of 1855 to the time of his death. 377

Q. In what business, and at what place ?

A. Butter and cheese, 187 Reade street, New York.

Q. Who else was connected with the business with you ?

A. From 1858, S. W. Hoyt was.

Q. Up to the time of the death of Nelson Hoyt ?

A. Yes, sir.

Q. Were your domestic relations pleasant with the Nelson Hoyt family during that time ? 378

A. All were, so far as I knew, with the exception of one son-in-law of his.

Q. Who was that ?

A. S. B. Bevans.

Q. With the exception of the feeling that existed between you and Bevans, the rest of the relation was very pleasant ?

A. As far as Mr. Bevans and I were concerned it was always smooth ; I understood you to say between the family and Mr. Bevans. 379

Q. To what extent were you a confidant of N. W. Hoyt, if a confidant, in his life time ?

A. He was the oldest one of the family, and we usually consulted together ; it was through him that I went into the butter and cheese business.

Q. Upon all great undertakings did you counsel together—those in which you were to take part ?

A. We did up till two or three years of his death. 380

Q. Did you at all, up to the time of his death ?

A. At different times ; but in regard to our business, S. W. and I did the most of our counselling together, although we always counselled with N. W. when he was around.

Q. Upon matters not pertaining to business did you counsel together ?

A. Yes, sir ; I think he seldom did anything outside without counselling, because I was also so familiar with all his transactions.

381 Q. Were you familiar with all his real estate transactions ?

A. I think I was from 1855.

Q. Were you, subsequent to the year 1855, generally familiar with his outside business transactions in real estate ?

A. I was for a number of years previous, because I was with him more or less all the time.

Q. Are you familiar with the location of the property corner of Wayne and Grove streets ? I refer to the northeast corner.

382 A. Yes, sir.

Q. Do you know from whom he purchased that ?

A. Yes, sir ; from one David W. Ryder, I think it was.

Q. Are you sure it was David ?

A. There was him and his son, I think ; the old man's name was David, and the son's name was James, I think.

A. Are you certain as to the name of the old gentleman ?

383 A. I would not be very positive, for the very reason I am not brushed up on this thing ; last Winter, when this thing was called in, I looked over the whole thing, and I remember his name was Ryder, and I think it was David.

Q. Did you ever see the deed ?

A. I don't know that I ever did, and don't know but I have ; I couldn't say positive.

384 [Witness being shown Exhibit D, is asked,]

Q. Do you recognize that as having seen it before ?

A. I see this is B. W. Ryder ; D. W. is a party with whom I have had a great many dealings with ; I

have seen this before when I come to see it; those are the two names, D. W. and B. W., and I have confounded them; I see this is B. W.

Q. Is that the deed which conveyed the property, to your recollection?

385

A. Yes, sir; this D. W. Ryder is a farmer in the country that I have had a great deal to do with; that is the way I got them mixed; I knew the old gentleman, and also his son.

Q. Do you know who owned this property at the time he bought it?

A. Yes, sir; B. W. Ryder.

Q. And that you gathered from conversation with whom?

386

A. From N. W. Hoyt.

Q. Any one else?

A. And S. W.

Q. Were you partners in trade, the three of you, at the time of this purchase?

A. Yes, sir.

Q. What do you know, of your own knowledge, of the circumstances connected with it?

A. He spoke to me—N. W. Hoyt—about buying the property; he said that they had talked of buying the property, and he thought it would be a good investment; I was talking of buying a piece of real estate in Chataqua County, and he said, "I don't want you to buy that now, but leave your money in the business and let Sam and I buy this other property, and after we get that paid for we will give you a chance to buy some real estate," and I done so.

387

Q. What greater interest, if any, do you understand that Salmon W. had over Nelson W. Hoyt?

388

A. They were jointly interested in this real estate.

Q. From whom did you understand that?

A. I understood it from both of them.

Q. In the year 1860 did Nelson Hoyt remain at home the whole year?

A. In 1860 my impression is that he was away a little

time, I think in New Orleans, and he was up with me a short time before his death; for a number of years he used to make short visits up there.

389 Q. What do you know, from conversations had with Nelson Hoyt, or with other persons, of the disposition, if any, that was made of an interest that he had in this property, corner of Grove and Wayne, to any person?

A. My impression is that there was nothing done about it until about 1862.

Q. Why do you say 1862?

390 A. I think after the war had begun he was quite out of health, and there was two younger children there to be brought up and clothed; he and I was talking the matter over, and he thought he was liable to be taken away most any time, as he was a great deal out of health and troubled with rheumatism very much, and he wanted to know what I thought of the idea of his deeding the property over to his wife—Ma, as he called her; I told him “I thought it would be a very good idea, for the reason that Sam has got a home, and Fanny,” says I, “they don’t need it, and in case you was called away she would have something to bring up and clothe the two children  
391 with and give her an income; you can’t make it over direct to her—you must make it over to S. W., and let him make it over to her.”

Q. To what do you refer—the whole of the property, or his interest in the property?

A. His half interest in the property.

Q. Was the half interest spoken of?

392 A. Yes, sir; because it was always understood that he and Sam owned it jointly, because at the time that they made the first purchase each of them paid alike on it—they made a payment of \$3,000.

Q. Who paid the \$3,000?

A. About the time of the purchase, somewhere not far from the 1st of February, in 1859, they paid \$100 apiece and it was charged to each of them upon the books, and they paid \$2,800 about the 1st of May, 1859, and \$1,400 was charged to each of them.

Q. Did N. W. Hoyt know of this?

A. Yes, sir; he was familiar with the books all the while.

Q. You never heard of any objection being made?

A. No, sir; all was satisfactory.

393

Q. What objection, if any, did he make to the deed being in the name of two of them?

A. Never heard the least word during his life time in regard to objections.

Q. You say this was in 1862, when this conversation was had between you and Nelson W. Hoyt about his deeding his undivided one-half interest to his wife?

A. Yes, sir.

Q. It may have been one year before? You are not certain?

394

A. *It was after the war had been in progress, and about the time he was contemplating going to New Orleans and starting a store there.*

Q. Do you know whether that was ever carried out—the conveyance from him of his one-half to any person?

A. After I made the suggestion that he should make the conveyance to S. W. and he make it back to Nelson's wife, he says, "All right—I will do it that way; says I, "It will look better, and be better."

395

Q. Did he or not ever say that he had done it?

A. He told me that he had.

Q. What did he tell you that he had done?

A. That he had made the one-half interest in the corner stores over to Sam and that Sam had made it over to "Ma," as he called her, which was a term that he always used in speaking of his wife.

396

Q. Could there be any mistake as to his stating that he had conveyed the one undivided half to his wife, through Salmon?

A. Not the least, because he never owned but one-half.

Q. You are satisfied he used the word "one-half"?

A. One-half or his interest.

Q. To your knowledge, did he ever exercise any control over the whole entire property?

A. Never to my knowledge; never assumed any such control.

397 Q. After the death of Mr. Hoyt, what were your relations in a social way with Mrs. Hoyt?

A. I have made it my home whenever I have been here since 1855—whenever I have been in the city, which was very often. After his death I went there the same previous to his death. I never paid any bills or expenses or anything of the kind; when he came to my house, he was free and welcome just the same.

398 Q. You were a frequent caller upon Mrs. Hoyt after the death of her husband?

A. Always made it my home when I was here.

Q. To whom did she look for counsel and advice after the death of her husband?

A. I think she relied chiefly upon her son S. W.; whenever I was here she always talked with me about matters.

Q. Did she talk or counsel with you—was it simply an open conversation, or did she ask your advice?

399 A. Oftentimes she asked me what she ought to do about this thing and the other.

Q. Did she or not apparently have confidence in your judgment?

A. She seemed to have.

Q. Let me call your attention to the year 1867. What conversation, if any, did you have in that year with her relative to this property corner of Grove and Wayne streets?

400 A. I won't say positive whether it was in 1867 or 1868 that I had a conversation with her in regard to that.

Q. Is there any way of fixing a time; have you any memoranda by which you can tell the time?

A. My memory is not first rate. [Refers to book.] I came to Jersey City, February 24, 1867, and stopped that night at Mrs. N. W. Hoyt's.

Q. When again were you there ?

A. At that time I remained with her evenings until the 14th of March, 1867 ; there was where I counted my home until March the fourteenth of the same year.

Q. You slept there each night ?

401

A. I think I did—that I counted my home.

Q. Do you recollect any conversations that you had with her in regard to this property in February, 1867 ?

A. It was either then or in 1868 ; it was the evening I arrived there. She says to me, that Mr. Bevans had been searching the record, and that the corner stores were all in her name, and I told her, says I, " I guess not." She says, " It is so, because he has been up and searched the records," and, she says, " Sam wants I should deed the one-half of it back to him ;" and I says to her, " I can't hardly believe that it is so ;" and she says, " Would it be right to deed it back ?" and, says I, " You know very well one-half belonged to him, and if it was done by mistake, it would be right to deed it back to him." I came there the 24th day of February, 1867 ; I think it was that time ; it might have been later. I was there from time to time.

402

Q. Who opened the subject, you or she ?

A. She commenced it.

403

Q. Did she or not state to you that she knew it before Bevans told her ?

A. She didn't know anything about it till Bevans had searched the records

Q. What did she say when you told her that she certainly should give Sam back his one-half ?

A. She said, " Sam wants me to deed it back ;" she said, " would it be right ?"

Q. Did she or not say that she would do it ?

A. I don't know whether she said she would or would not. I don't know what reply she made to it.

404

Q. Did she tell you or not how the error was made ?

A. She did not ; merely that it was so.

Q. Did she express her opinion as to the right of doing so at that time ?

A. I think she did; I think that she only supposed that one-half interest was deeded to her.

405 Q. You collected that from the conversation you had with her at that time?

A. Yes, sir.

Q. Did you have any conversation with her subsequent to that time upon the same subject?

A. Yes, sir.

Q. When?

A. I won't be sure whether it was that time or the next time that I came, she told me that she had deeded it back.

406 Q. When was the last time that you refer to?

A. I was there at that time till the 14th of March; my impression is that I wasn't there very soon again, although I came down quite often. I got here again on Saturday night, May 11th, 1867.

Q. That book to which you refer is what?

A. A little diary that I keep from year to year.

Q. Were those entries made at the time.

A. Yes, sir; those entries were made at the time.

407 I have little books of this kind that I can show for the last twenty years.

Q. In May, 1867, you were there again; was it then that she told you that she had conveyed the one-half to Sam?

A. I won't be certain whether it was before I left here this other time, in March, or whether it was when I came here in May. My impression is that it was done before I went away from here.

408 Q. Did you ask her, or did she voluntarily tell you about conveying back to Sam the one-half?

A. She told me herself, voluntarily.

Q. Did she state, with or without reservation, what kind of a conveyance it was?

A. She merely stated that she had deeded the one-half interest in it back that formerly belonged to him; she stated that.

Q. What did she state about retaining a life-right in that property in the deed given by her to Sam?

A. Never heard anything of that.

Q. When was it that you first heard of that, if you have heard of it at all? 409

A. I may have heard it through some conversation I have had; it might have been a little over a year ago; I don't know that I have ever heard it directly.

Q. What else did she say at that time besides that she had conveyed his one-half back to him?

A. Nothing in regard to this that I know of.

Q. Did you have any subsequent conversation with her in regard to this property. 410

A. I am under the impression I had from time to time whenever I was down here. I recollect I wrote her a letter one time, and suggested to her that she should save money to make repairs on the store.

Q. You counselled and advised her from time to time?

A. Yes, sir.

Q. Do you know when Bevans married Fannie Hoyt?

A. I think it was not far from June, 1856, I think.

Q. Then he became a relation of the family, did he? 411

A. Yes, sir.

Q. Have you had any conversation with him in regard to this matter.

A. I have; within the last few years.

Q. Anything in regard to the interest that Mrs. Hoyt and Salmon held in the property?

A. Yes, sir; he asked me about it in his own house.

Q. In whose presence?

A. I don't know that there was anybody by. 412

Q. Do you recollect the year that he spoke to you about it?

A. It was inside of the last three years.

Q. Was your interest in the business about equal to that of Sam and N. W. Hoyt?

A. Yes, sir.

Q. Have you any knowledge that Salmon has over-

drawn his account, or taken more money than justly belonged to him ?

413 A. Never knew it was done ; sometimes one would have more money in the concern than the others ; we generally settled up at the end of the year, and in case one had drawn more than the others it would be charged to him.

Q. Did the interest of any one exceed that of the others during the time of your partnership ?

A. No, sir ; there was not much difference. Sometimes one would have more money in the concern, and sometimes others.

414 Q. How much—what would be the average thousands of dollars, or hundreds ?

A. Sometimes it would be thousands, and sometimes hundreds ; the books would show.

Q. How much capital did you have in the business when you started ?

A. Didn't any of us have any very great amount.

Q. Or Nelson Hoyt, either ?

415 A. He hadn't any great amount of capital. He usually spent a great deal of money as he went along. Just after we commenced business in 1858 he told me he had made more money than he ever made before at any time.

Q. How much money had he made ?

A. I don't know ; we did a very nice business.

Q. How much greater was his capital, if any, in that business, than that of the other partners ?

A. I don't think it would exceed \$2,000 at the time we commenced.

416 Q. How long after that was it that the interest of you and Sam was as great as that of his ?

A. It was not but a few years after that. The books would show. I had nearly as much money as the both of them.

Q. Do you recollect how long after the business commenced was it that Salmon had paid up his capital to equal that of his father ?

A. It was not a great while.

Q. About how long—months or years?

A. I think in a year's time. The books will show better about that than I can recollect.

417

*Cross-examination by Mr. Linn :*

Q. When did your partnership with N. W. Hoyt commence?

A. I commenced with him in April, 1855—that is, in joint account.

Q. Where were you then residing?

A. In Jamestown, Chatauqua Co, New York. 418

Q. When did your connection with him as a partner terminate?

A. I think it terminated July 17, 1864, if my memory serves me right.

Q. You and he were in partnership when S. W. Hoyt was taken in as a third partner?

A. I was acting on joint account with Hoyt & Bevans previous to that. S. W. Hoyt wanted to come into the concern, and Bevans objected to it, and then they had a little trouble to know which I would operate with. I got private letters from both of them, and didn't answer any of them. I merely wrote them that I would be in New York in a short time, and didn't let them know when I was coming, but when I did come I went to N. W. Hoyt the first night and stayed there. He had written to me previous to this time that he would meet me in Elmira. I didn't meet him there, and he didn't know where I was until I got here, and then he wanted to know if I thought of going with Bevans and Marshall. They were going to start a house. Marshall was a book-keeper for Hoyt and Bevans at that time. I said to him that night: "You can rest assured that I won't go into anything to hurt you; I want you to settle your difficulties between yourselves." 419

Q. Then prior to the time when L. W. Hoyt went in-

420

to the firm the business had been carried on by Hoyt & Bevans?

A. Yes, sir.

421 Q. And you were a partner in that concern?

A. I was a partner in what stuff I purchased on joint account; nothing else. I had nothing to do with their transactions outside of my own purchases. I was not a full partner at all. I only had an interest in what I purchased from the Spring of 1855 to the Spring of 1858.

Q. In the spring of 1858 the firm of Hoyt & Bevans dissolved, and the firm then consisted of N. W. Hoyt, S. W. Hoyt, and yourself?

422 A. Yes, sir; that terminated July 1st, 1864, shortly after his death; he offered to sell out two or three years previous, and I told him he needn't do a hands turn, he was welcome to one-third the profits as long as he lived.

Q. Can you give us the language used by N. W. Hoyt when he spoke to you about conveying the property at the corner of Grove and Wayne streets; repeat it if you please, as near as you can, the language?

423 A. He asked me what I thought of the idea of his deeding his interest in the corner down there to Ma; that he had been thinking of doing it; that was at his own house that we had this conversation, and then it came up about the children, about his health being so poor, and that Fannie (that was Bevans' wife) had a nice home, and Sam had a nice home, and they wouldn't require it, and if Ma had it it would help her to clothe the children and would be an income to her in case he would be taken away; I said it would be a good idea, and, says I, "You would have to deed it to Sam and let  
424 him make it over to his mother;" he said, "I guess that would be better;" says I, "I know it would look better."

Q. Was that all that was said?

A. He told me that he would do it that way; afterwards I learned that he had done it; I learned it from him and from others.

Q. Now, you say that he spoke to you of his intention to convey his interest in that property to his wife; are you sure that he used the words "his interest," or "his half part," or did he simply speak of conveying the property to his wife, and you inferred that he meant his interest, 425 knowing that he only owned one-half?

A. He said his half interest in the store on the corner; it was always understood between the whole of us how it belonged and who owned it.

Q. Is your recollection now distinct so that you don't think you can be mistaken that he said to you this—that he wanted to convey his half interest in the stores to his wife?

A. I think it was in 1862 that he made such a remark 426 to me.

Q. I want to know whether your recollection is distinct as to the language used—whether he spoke of conveying the property to his wife inasmuch as he owned the one-half interest?

A. Yes, sir; he mentioned his one-half interest; he mentioned that expressly.

Q. Your recollection is distinct that he said "his one-half interest?"

A. Yes, sir. 427

Q. You didn't recollect that distinctly on your direct examination?

A. I recollect it very well.

Q. You said on your direct examination that he mentioned his one-half or his interest, you were not certain which; now do you recollect distinctly that he mentioned his half-interest in talking of it?

A. I think in the conversation he mentioned it both 328 ways, because we talked it over quite familiarly there.

Q. You said you were satisfied he used the words "one-half," or "his interest;" why are you satisfied that he used the words one-half, or his interest?

A. Because that was the language he used in speaking.

Q. What language did Mrs. Hoyt use when she told

you that she had conveyed the one-half interest to her son, S. W. Hoyt?

429 A. In the first place she told me that the corners was on record in her name; that Mr. Bevans had made a search of the records and she learned that it was so, and I told her "I guess not," and she said "It truly is," and she says "Sam wants I should deed it back to him," and she said "Would it be right?" and says I "If it was done through a mistake of course it would be."

Q. Did she say it had been done through a mistake?

A. I don't think that she did; I made that remark that it was done by a mistake.

430 Q. What language did Mrs. Hoyt use to you when she told you that she had conveyed to her son, S. W. Hoyt, one half of that property?

A. She used the language I have mentioned; it was after this that she said she had conveyed the one-half back to him again, and I would be of the impression that it was done before I left New York at that time.

Q. That, according to your recollection, is the language she used; she said that she had conveyed back to her son the one-half of that property?

A. She told me afterwards that she had.

431 Q. Did she use the words "one-half that formerly belonged to him?"

A. I don't think that she said "the one-half that formerly belonged to him;" I don't recollect that she put that in.

Q. Did she know, or did she ever tell you that she ever knew, that one-half did belong to him?

432 A. We have talked it over lots of times in her presence before her husband's death, and I think she always understood it that way; I had been in the house but a few moments before she told me that Bevans had been making a search and discovered that the whole of that property was in her name.

Q. That was in 1867?

A. I think it was in 1867.

Q. When have you seen Mrs. Hoyt?

A. I haven't seen her since the 1st of January, 1875; that was the last I think I seen her.

Q. Do you know who was employed to draw the deed from N. W. Hoyt to S. W. Hoyt, and from S. W. to his mother?

433

A. I do not, sir.

Q. You knew nothing about that at the time?

A. I heard it mentioned who they had to draw the papers, but I never made any minute of it; never put it down.

JOEL I. HOYT.

SEPTEMBER, 11, 1875.

434

The further hearing of testimony in the above cause was resumed before Isaac Romaine, Esq., Master in Chancery, as follows:

WILLIAM GOPSILL, called and sworn for defendant.

*Direct examination:*

By Mr. BRINKERHOFF.

435

Q. What is your business?

A. I am surveyor of the Hudson Insurance Company.

Q. How long have you held that position?

A. About 13 years.

Q. The name of the corporation now is the Hudson Insurance Company?

A. Yes, sir; formerly the Hudson County Mutual Insurance Company.

Q. The Hudson County Mutual Insurance Company was organized about when?

436

A. About 1842.

Q. And the Hudson County Mutual merged into the Hudson Co. about the year 1873?

A. No. 1872, I think—1872 or 1873, I forget which.

Q. Are you acquainted with the property of Maliscent Hoyt and Salmon W. Hoyt, northeast corner of Grove and Wayne streets—the two buildings?

A. Yes, sir.

437 Q. What connection, in a business relation, have you had in regard to those buildings as a Surveyor?

A. No connection further than surveying them.

Q. As Surveyor of the Insurance Company?

A. Yes, sir. They were surveyed before I was Surveyor. I think they were surveyed by Mr. Hopper.

Q. What year were these buildings first insured in the Hudson Insurance Company?

A. I cannot tell you. I left the memorandum with

438 you.

Q. In 1862 were these buildings insured in the Hudson Co. Mutual Insurance Co?

A. [Referring to memorandum.] Yes, sir.

Q. Is that the policy [Exhibit D 16], as evidence of insurance?

A. Yes, sir.

Q. It was then insured in the name of Nelson W. and Salmon W. Hoyt?

A. Yes, sir.

439 Q. Is it insured in the Hudson Insurance Co. now?

A. No, sir.

Q. When did it expire?

A. It terminated July 15, 1874. The policy was No. 26,663.

Q. [Showing witness paper.] Is that the policy to which you refer?

A. That is the policy, sir.

440 Q. Then from 1862 till July 15, 1874, these two buildings were insured in the Hudson Co. Mutual Insurance Co; the Hudson Insurance Co. being the same company?

A. Yes, sir.

Q. In whose name were they insured after the expiration of the policy, Ex. D 16?

A. Have you got the renewal running to 1871 ?

Q. [Handing it to witness.] How long did that policy run ?

A. That expired in 1862.

Q. Did they have a new policy, or was it simply certificates of renewal ? 441

A. Simply certificates of renewal.

Q. Until what time ?

A. Until 1871.

Q. What is the custom of noting changes in the title of policies of insurance ?

A. It is generally done in case of change of property.

Q. In what manner as to the policy—where do you note it ? 442

A. Merely the change of ownership on the face of the policy, as a general thing. If the policy is in the hands of the mortgagees we note it on the books.

Q. Then it is either noted on the books or upon the policy in case of change of title ?

A. Yes, sir.

Q. Was change of title noted upon the policy or books after the expiration of that policy of 1862 ?

A. Well, I have noticed no variations except when this was renewed. 443

Q. Except when what was renewed ?

A. This policy ran out in 1871, and the new policy, instead of being made in the names of Nelson W. and Salmon W., was made in the names of S. W. and M. Hoyt, that is according to our books. I think there was no change made in our books until the new policy was issued.

Q. You have noticed the books sufficiently to testify in regard to the matter ? 444

A. Yes. This is a true copy of the policy.

Q. Was there any other insurance in your company on this building ?

A. None that I know of. The only insurance I have on the books is \$3,000 on one building and \$2,000 on the other.

Q. Was there any change noted in the ownership of that policy after it was issued? [Referring to Ex. B 19.]

A. No change in the ownership of this policy. This  
445 is the same as the copy taken from the book—this is July 15, 1871, to 1874.

Q. Were you notified at any time of the change of ownership from Salmon to Millie Hoyt, of the interest of Salmon W. Hoyt?

A. Not according to our books.

Q. Have you any knowledge of any notice being given to the Company of the change of ownership of the undivided one-half of this property from Salmon to Millie  
446 Hoyt?

A. None.

Q. Are you, and have you been familiar with the affairs of the Hudson County Mutual Insurance Company and Hudson Insurance Company since 1860?

A. Yes.

Q. And had there been a change of that kind would you not have known it?

A. I might have not known of it.  
447

Q. Who probably would have known it?

A. The book-keepers would have known it and made a note of it on the book.

Q. It is the custom to note it on the book?

A. Always.

Q. Do you know of any instance where they have failed to do that?

A. No, sir. The thing might have occurred through  
448 mistake.

Q. Has your company any policy on those two buildings, or have your company had any policy on those two buildings in the name of Millie Hoyt alone as owner?

A. No. The only insurance is in the name of S. W. and M. Hoyt.

*Cross-Examination by Mr. Linn :*

Q. Do you know who procured these policies to be issued?

A. The original policy was done by old Mr. Hoyt. 449

Q. Who procured the policy in 1872?

A. I don't know.

Q. Or 1874?

A. I don't know. It was issued in 1871, and in these things we generally send out notices of the expiration to the parties interested, and they come and renew, and of course we renew them as dictated.

Q. Does it sometimes happen that persons take out policies of insurance upon property which they don't really own, the legal title to which does not stand in their names? 450

A. No; unless it would be done through mistake. We have not had such a thing done; those things occur sometimes.

Q. Doesn't it often happen that policies are permitted through mistake or neglect to remain in the name of the party to whom it was originally issued after a transfer of title? 451

A. Yes, those things occur.

*Re-direct Examination by Mr. Brinkerhoff :*

Q. When you say that the old man procured the policy—Ex. D 16—you refer then to Nelson W. Hoyt?

A. Yes, sir.

Q. And it was he who ordered the policy made in that way? 452

A. Yes, sir. I remember the circumstance, because the old gentleman remarked that it was devilish queer he could not make some parties in the Jersey City Insurance Company understand how he wanted the policy drawn, and he came to Gopsill (now present) and said he wanted the policy drawn, and they made it up together. Mr. Ryder formerly owned that property.

Q. And you recollect the circumstance of his ordering it?

A. Yes, sir.

Q. What part did Salmon W. Hoyt take in effecting  
453 the insurance. D 16.

A. I didn't see him there at all. It was done altogether by his father.

WILLIAM GOPSILL.

NELSON H. COYKENDALL, called and sworn for defend-  
454 ant.

*Direct Examination by Mr. Brinkerhoff :*

Q. You are the Nelson Coykendall referred to in the testimony of Salmon Hoyt?

A. Yes, sir.

Q. What relation are you to Salmon Hoyt?

A. Cousin.

Q. And to the mother?  
455

A. Nephew.

Q. And to the father, deceased?

A. Nephew.

Q. Own nephew?

A. Nephew by marriage.

Q. And you have known the family as long as you have any recollection, up to the present time?

A. Yes, sir.

Q. Where were you born?  
456

A. Sussex county, New Jersey.

Q. And left home when?

A. At the age of 14.

Q. That was about what year?

A. About 1853. I think somewhere along there.

Q. Were you then an orphan?

A. No, sir.

Q. For what purpose did you leave the County of Sussex ?

A. No particular purpose.

Q. Anything else besides finding some employment ?

A. Yes, sir ; that was the purpose. 457

Q. Where were you first engaged in business ?

A. Newark Avenue.

Q. In what kind of business ?

A. Grocery business.

Q. In what capacity ?

A. Clerk.

Q. For whom ?

A. Salmon W. Hoyt.

Q. Was it the northerly or southerly side of Newark Avenue, referred to by Mr. Hoyt ? 458

A. Southerly.

Q. And the Hoyt family lived up-stairs ?

A. Yes, sir.

Q. Did Salmon live there, too ?

A. Yes, sir.

Q. And you, also ?

A. Yes, sir.

Q. How many composed the family at that time ? 459

A. There was Mr. and Mrs. Hoyt and the four children ; I think there was.

Q. The eldest of whom was the wife of Mr. Bevans ?

A. Yes, sir ; the wife of Mr. Bevans.

Q. Do you know, of your own knowledge, who rented that building ?

A. I do not.

Q. Do you know, of your own knowledge, who paid for the provisions that went into the house for the use of the family ? 460

A. Mr. Salmon Hoyt paid for them out of the store ; Salmon Hoyt bought them.

Q. He furnished them to the family from his store ?

A. Yes, sir.

Q. What charge was made upon the books for them ?

A. I don't know as there was any charge.

Q. Did you deliver them ?

A. Sometimes.

Q. Did you charge them when you delivered them ?

A. No, sir.

461 Q. Did you receive any instruction in regard to that matter ?

A. I don't know as I did—no.

Q. How long did they continue in that store ?

A. After I came they was there about two years; I think it was two years—perhaps not so long ?

Q. What was the financial condition of Nelson W. Hoyt at that time ?

462 A. I don't know.

Q. Then from there you moved across the street, didn't you ?

A. Went from there corner Grove and Wayne; they were near where is called the Arcade now, before I came there.

Q. Were you connected with Salmon Hoyt, corner of Grove and Wayne, as a partner, or as clerk ?

A. I was connected with them there as partner.

463 Q. In what year ?

A. 1853 or 4—I don't recollect exactly.

Q. You continued as partner till when, in that place ?

A. 1854 or 55—that is the best of my recollection.

Q. It was the grocery business, wasn't it ?

A. Yes, sir.

Q. What became of the store then ?

A. I think I had it a year or two years, and then I sold out and was away from there two years.

Q. To whom did you sell ?

464 A. To Peter H. Hoyt and Albert B. Coykendall.

Q. What became of the interest of Salmon Hoyt at the time you took the concern alone ?

A. He drew out his interest.

Q. How much did you pay him for it ?

A. I paid him \$1,000 for his interest in the store.

Q. And what else ?

A. And for the goods I think our inventory was a little under \$2,000.

Q. How much did you pay him for the whole of his interest in that store, stock, fixtures, &c ?

A. I paid him \$1,000 for the good will, and I think there was \$2,000 or a trifle under ; we had a lot that we built a stable on, and he took that. 465

Q. After you purchased the interest of Salmon where did he go ?

A. He went to New York.

Q. Then you staid there till what year ?

A. 1855 or 6.

Q. From there where did you go ?

A. To New York. 466

Q. Did you return again to Jersey City ?

A. Yes, sir ; I lived in Jersey City all the while.

Q. Did you return to Jersey City and go in business ?

A. Yes, sir.

Q. Where did you go on your return ?

A. Corner of Grove and Wayne.

Q. What year was that ?

A. I think that was 1859 or 1860.

Q. Were you alone, or did you have a partner with you ? 467

A. I bought out one of the partners.

Q. Who was your partner from that time ?

A. I bought out Coykendall and Peter Hoyt, and I kept it for ten years.

Q. When did you give up business ?

A. Three years ago—a little over.

Q. Were you there at the time of the purchase of this property by Nelson W. and Salmon Hoyt ?

A. No, sir ; I was then in New York. 468

Q. And returned how soon after ?

A. I think about two years.

Q. What conversation, if any, did you have with Nelson Hoyt concerning his interest in that corner ?

A. A short time after they bought, he told me about him and Salmon buying the corner.

Q. What did he tell you about it?

A. I told him I thought it was a good investment; I don't know as we had any particular conversation upon that subject.

469 Q. Did you have any other conversations with him upon that subject?

A. Not to my recollection; he told me shortly after they bought it, about their buying it.

Q. To whom did you pay your rent for that property?

A. I paid the rent—I used to deal with them in New York and used to settle every two or three months.

Q. Who would receive it from you?

470 A. Mr. Salmon Hoyt; he generally took charge of the business, except the book-keeper took charge of the books.

Q. With whom would the settlement be made?

A. Perhaps with him or the book-keeper.

Q. Do you know?

A. Both of them.

Q. You know that of your own knowledge, do you?

A. Yes, sir.

Q. And how were the receipts signed—do you recollect?

471 A. I think the receipts were signed "N. W. Hoyt & Co." We had an account there, and we settled them in that way; I bought butter from them.

Q. From them as a firm?

A. Yes, sir.

Q. In which Salmon was a partner?

A. Yes, sir.

Q. Then you were indebted both ways?

472 A. I generally had accounts against them, and offset one against the other.

Q. Who paid taxes upon that property?

A. I paid taxes after the death of the old gentleman, and charged it to the account.

Q. After the death of the old gentleman, who paid the taxes, do you know?

A. Mr. Hoyt paid it.

Q. Which one ?

A. I couldn't say which one.

Q. Do you recollect the conversation to which John refers in his testimony; you were present during that testimony, page 153? 473

A. No, sir; I was not.

Q. Were you ever present at Sam's house while John was there ?

A. Yes.

Q. Do you recollect what was said upon the subject of this suit at that time ?

A. I says to Sam through that conversation, "Sam, your ma says she was to have that property as long as she lived, and have the use of it"; I says, "is that so?" 474  
He says "no."

Q. That was the reply of Sam ?

A. Yes; he says, "No, it ain't so."

Q. What conversation, if any, have you had with Mrs. Hoyt regarding this deed of 1867 ?

A. I have had several conversations with her about the deed.

Q. Give us the first one ?

A. In the conversation she said it was his doings; if 475  
he had said nothing about it, no one would have known that the property was hers until her death; no one would have known but that it belonged to him.

Q. When was that, before this suit was commenced, or after ?

A. I think it was before the commencement of the suit.

Q. What brought about that conversation ?

A. Well, I don't recollect what brought about that; 476  
it was notifying the tenants he should hold them for rent.

Q. It was then that she told you that if he had kept quiet about it that nobody would have known it until after her death ?

A. Yes.

Q. Anything else said ?

A. I don't recollect.

Q. Previous to the time of giving that notice, had you ever any conversation with Mrs. Hoyt upon this subject?

477 A. I had a conversation with her; she said that Sam was going to notify the tenants that he should hold them for one-half of the rent.

Q. Previous to that time had she spoken to you upon that subject?

A. I don't know as she had some two years ago, I think it was; Mrs. Hoyt was going to New Orleans, and before she went he had told her this.

Q. You don't recollect of anything else that she said, except what you have stated?

478 A. No.

*Cross-Examination by Mr. Linn:*

Q. What year was it that you came to Jersey City, and was a clerk on Newark Avenue?

A. I think it was 1848; somewhere about there.

Q. Twenty-seven years ago?

A. I was 13 or 14 when I came here.

479 Q. You are about the same age as Salmon W. Hoyt?

A. I believe I am a year older than Salmon.

Q. His father and mother lived in the same building with him?

A. Yes, sir.

Q. What kind of a store was kept there?

A. Grocery.

Q. Where was Nelson W. Hoyt engaged in business then?

480 A. 187 or 188, I think it is, Reade street, New York.

Q. So that you and Salmon, a couple of boys, were carrying on the store?

A. Yes, sir.

Q. What did Mrs. Hoyt do?

A. She used to help in the store.

Q. Did Mrs. Bevans or any of the other children assist in the store?

A. Yes sir ; she was in the store occasionally.

Q. Did she not assist considerably ?

A. Not in the store on the southerly side of the street so much ; I understood she did in the store near where the Arcade is now ; I was not there then. 481

Q. You were there assisting two years ?

A. I think it was two years or longer ; I am not positive, it has been so long ago.

Q. Do you recollect what salary you got ?

A. I got \$50 for a year.

Q. You lived there with the family ?

A. Yes, sir.

Q. All lived together, you and Mr. and Mrs. Hoyt and the children ?

A. Yes, sir. 482

Q. There was no distinction known ?

A. Oh, no, sir ; none.

Q. Why do you say that you thought Salmon W. Hoyt carried on that store—that it was his ?

A. He done the buying and took the money to pay bills ; the business was done in S. W. Hoyt's name.

Q. Do you know why ?

A. No, sir ; he said it was his business.

Q. Do you know that he furnished the supplies for the family ? 483

A. They took them from the store.

Q. No charge made for them at all ?

A. Not to my knowledge.

Q. You never saw any distinction made between any member of the family, or in the business any more than if S. W. Hoyt had been the proprietor, except that the son and family were there carrying it on ?

A. No, sir. 484

Q. Who bargained with you ?

A. I came down to New York and Nelson W. Hoyt asked me to come over and spend a week with them, and he asked me how I would like to stay there ; and Salmon asked me wouldn't I stay and work for them. There was no particular arrangement ; we all worked as

one family—as one concern ; uncle didn't take no interest in the business.

Q. Do you recollect what particular part, if any, Mrs. Hoyt took ?

485 A. Sometimes she would, perhaps, help me.

Q. Was not she a remarkably smart business woman, and took charge to a great extent ?

A. She would come in often when he was away.

Q. Wasn't she better qualified to take charge than a boy 12 years of age ?

A. I don't know ; he had been in the business some time.

Q. Do you know what amount of capital was invested in business in the grocery store ?

486 A. I don't recollect ; I think the first inventory that was taken when I was there was something over \$400 ; of course the money was made right here.

Q. Do you know who paid rent for the store and house ?

A. I do not.

Q. Do you know what rent was paid ?

A. I think it was \$225 ; I may be mistaken.

Q. Was that store closed when you left there, and the

487 business stopped when you moved away ?

A. I think other parties came in.

Q. Was that store sold out to somebody else ?

A. No, sir ; it was moved upon the other corner.

Q. On which corner ?

A. Corner of Grove and Wayne.

Q. Who carried on the business immediately succeeding that ?

A. I and Mr. —

488 Q. You united in buying out some parties there, and carried on the business yourself ?

A. Yes, sir ; we bought out some parties by the name of Phillips & Dodge.

Q. Was this business carried on at Newark Avenue at the same time ?

A. I guess it was for about a year.

Q. After this business was commenced on the corner of Grove and Wayne where did you spend your time?

A. In the Wayne street store.

Q. Where did Mr. — spend his time?

Here and in New York, buying.

489

Q. Who took more special charge of the Newark Avenue store during that period?

A. He took charge of that; I was in Grove street.

Q. And the family continued to live in the house in Newark Avenue?

A. I think they moved to Wayne street; I won't be certain.

Q. Do you recollect what you paid when you purchased this business on the corner of Grove and Wayne?

A. Paid, I think, \$400 for the lease four years' lease; we paid that for the lease; then there was the stock and fixtures besides.

Q. How much for the stock and fixtures?

A. I should think they were a little over \$1,000.

Q. Had you the money then to pay?

A. I had very little.

Q. You couldn't make it out of \$50 a year?

491

A. No, sir; Mr. Hoyt bought it.

Q. And you gave him your part?

A. Yes, sir.

Q. Then you continued business there on the corner of Grove and Wayne until you purchased him out?

A. Yes, sir.

Q. When you purchased his interest in the store did the firm owe any debts.

A. We owed very little; we paid those with the first money we got; we turned the thing over rapidly.

Y. You paid him \$1,000 for the good-will?

A. For the good-will and lease.

Q. And the inventory of your goods was about \$2,000?

A. Yes, sir.

Q. In payment of that you had a lot on which there was a stable which you gave him?

A. Yes, sir; and then we had money on the books; he took that also.

Q. So that he got his pay all right, that you owed him?

493 A. Not for a year or more.

Q. From time to time?

A. Yes, sir.

Q. When you bought him out where was he doing business?

A. I think he clerked it for a year for Hoyt & Bevans.

Q. Do you know what he got for his salary?

A. No, sir, I do not.

494 Q. Do you recollect the year it was when you bought him out?

A. 1854 or '55, I think; I don't recollect without referring.

Q. In what business was Nelson W. Hoyt when you were clerk in the Newark Avenue store?

A. Butter business.

Q. Was it an extensive business?

A. Yes, sir.

495 Q. He was extensively known in the country in the butter business?

A. He done mostly a commission business—done a large business.

Q. Sold a great deal of butter?

A. Yes, sir.

NELSON H. COYKENDALL.

JOHN B. PERRY called and sworn for plaintiff.

496 *Direct examination by Mr. Linn.*

Q. Where do you reside?

A. 221 Pavonia Avenue, Jersey City

Q. What is your business or profession?

A. Lawyer; I have been practicing since the 8th of December, 1859.

Q. Where do you practice—where is your office?

A. It is now at 234 Broadway, New York; has been for about a year past.

Q. Were you acquainted with Nelson W. Hoyt in his lifetime?

497

A. I was.

Q. Did you transact any business for him?

A. I did, both for him individually, and for his firm.

Q. Did you ever draw any deeds or have any deeds in your office drawn for him?

A. I did.

Q. About what time?

A. It was in June and July, 1860, according to the memorandum that was made at that time. 498

Q. Do you recollect what deeds they were; from whom and to whom?

A. They were two deeds, of which I have a distinct recollection, concerning the property corner of Wayne and Grove streets in this city; one deed was from Nelson W. Hoyt to the son Salmon W., the other from Salmon W. to the mother, Maliscent Hoyt.

[Showing witness papers marked Exhibits D 11 and D 12.] 499

Q. Did you ever see those deeds before?

A. I did.

Q. Are those the deeds you had drawn?

A. Those are the deeds.

Q. In whose handwriting are they?

A. They are in the handwriting of Alexander M. C. Smith. 500

Who was he?

A. About the time I was admitted he was a fellow-student in the same office with me; there was in the same office a managing clerk at the time; he, Mr. Smith, copied the deeds, I think; he was not admitted then, he was admitted shortly afterwards.

Q. What did Mr. Hoyt say to you in reference to these deeds? what instruction did he give you, N. W. Hoyt?

501 A. He came to my office at 33 Pine street, in the city of New York, about the 27th of June, 1860; he brought with him the deed of the property, the property being held jointly by him and the son, Salmon W.; it was the first time he came to my office as a client; he asked me for a private interview; I took him into one of the private rooms, and he there stated his whole case to me.

Q. State what he said to you?

502 A. He said that he desired a conveyance of this property made first by himself to his son S. W., then by his son S. W. to his wife Maliscent Hoyt; that his health had been bad for a long time; he had been South and was intending to go South again; that it had been his intention to build up the firm of N. W. Hoyt & Co., and leave what property he intended to leave in the firm to be used for the benefit of his family, but that by recent events he had changed his mind, and that he and Salmon W. had come to an agreement by which this specific property was to be made over to his wife to be enjoyed by her, and owned by her, and that  
503 was to be a substitute for a will; that he was then in negotiation with his son Salmon W. about it, and that Salmon had agreed to this arrangement; that they perfectly understood each other; that this property was to be made to the mother; and he directed me to examine the question as he apprehended difficulty unless the papers were drawn correctly.

Q. Did he leave any deed with you at the time?

504 A. Yes, sir; he left the deed with me at the time; these negotiations he was having with his son had not yet taken effect; his representation to me was that this particular property was his own; that he had paid for it with his own money; that in fact Salmon W. had no interest in it, but that its being held jointly had come about generally through movements by himself and his children to build up the firm, and that the deeds were not then to be signed until the closing of the negotiation;

he called afterwards, about the 6th of July, and had a further conversation with me on the same subject; the deeds were then being copied by Mr. Smith, and then he asked me how he should get them executed in Jersey City; I recommended several lawyers to him, and he said he would have them executed, one after the other as the negotiations progressed, and directed me to bring the deeds, when they were finished, to the store, and to meet him there precisely at 11 o'clock the next morning, and to say if I was approached by Salmon W. or any one, that he had met me on the street—not to tell any one that he had been to my office, and if Mr. Wilcox or any of the family approached me on the subject, to pretend indifference, and to act as if it was a matter of no great importance; the next morning at 11 o'clock I compared the papers with Mr. Smith, and took them to the store 187 Reade street, and delivered them to Mr. Hoyt in the presence of Salmon W.; they were in an envelop, and Salmon opened them and began reading them; Mr. Hoyt asked me what consideration had been named, as that had been an important question; I told him one dollar; Salmon W. looked up to me as if to say something, and I said I had an engagement to go out riding, and bid them good morning.

505

506

507

Q. With whom had you an engagement to go out riding?

A. With Miss Emma Louise Bevans and Miss Amy Fine; that day we took a drive to Clairmont and in Westchester county, New York; I got my livery rig from ex-sheriff Merseles.

Q. Who paid for drawing those deeds?

A. That I cannot remember positively; I think I was paid in cash; the charges on my books were for \$3 each deed, and on the 11th of August a chattel mortgage, all paid at one time; I judge so from my memorandum.

508

Q. You had no other conversation with Salmon W. Hoyt in regard to it?

A. I never had any conversation with Salmon W.

Hoyt in regard to those deeds prior to the commencement of this suit.

Q. You are satisfied that these are the deeds that were drawn?

509 A. I am satisfied of that.

Q. Where is Mr. Smith now?

A. That I don't know at present; he can be found easy enough; the last time I visited him he was living on Lexington Avenue; he is the son of the former chief of Police, M. C. Smith, and a relative of the hoseman A. M. C. Smith, either a cousin or a nephew.

*Cross-examination by Mr. Brinkerhoff:*

510

Q. What interest have you in this suit?

A. None at all.

Q. Are you attorney for Mrs. Hoyt in any other suit?

A. I am not.

Q. For Mr. Bevans?

A. I am not.

Q. Are you attorney for any person connected with the Hoyt family?

511

A. I am not; I have not been since Mr. Hoyt's death except in one suit which was not then closed.

Q. How was it that the Hoyts knew of your knowledge of the drawing of those deeds? how did they become acquainted with it?

512

A. I called on Mr. Bevans one Sunday evening to get his friendly advice about a matter I was prosecuting in New York; I wanted the opinion of several laymen not lawyers as to a certain matter, and I went to him with a view of getting his suggestion on that; he and I went to the house of another gentleman but we didn't find him; during the conversation which we had, he stated that this litigation was pending between Mrs. Hoyt and Salmon W. Hoyt, was the first intimation I had of it; I listened to his conversation, and then stated to him that I drew these deeds.

Q. Then you haven't any interest in this matter pecuniarily or hope of any?

A. None; no hope of any.

Q. Were you acquainted with Nelson Hoyt previous to the time that he called on you in regard to these deeds? 513

A. I was.

Q. How long have you been acquainted with him?

A. Not a great while—for some months.

Q. How did you become acquainted with him?

A. My first acquaintance with him began in this way: He sent for me; I was boarding in the spring of 1860, at 240 West 20th street, New York, with John Wilcox; Wilcox had some connection with Hoyt's firm, and he told me one morning that Hoyt wanted to see me down at the store 187 Reade street; I went there and he then stated that he wanted me to bring suit against some parties; he gave me the papers and I brought the suit. 514

Q. That was your first business transaction with him?

A. Yes, sir.

Q. When was the next transaction with him?

A. I had several business transactions with him of that kind; whenever he sent word by Wilcox I would either stop at his office on the way down in the morning or in the evening. 515

Q. It was then that he gave you the order for the drawing of the deed Ex. D 11?

A. Yes, sir.

Q. What part did Salmon W. Hoyt take in ordering the drawing of that deed?

A. None at all.

Q. What instructions, if any, did you receive from Salmon W. Hoyt for the deed Ex. D 12? 516

A. None at all.

Q. What conversation did you have with Salmon W. Hoyt, or with any person in his behalf acting for him, relative to the drawing of these deeds, or either of them?

A. None at all except what I have before stated.

Q. What message, if any, did you receive from Salmon W. Hoyt with regard to Exhibits D 11 and D 12?

A. I have no recollection of having received any.

517 Q. What conversation, if any, did you have previous to the time of delivering the deed to Nelson W. Hoyt with Salmon W. Hoyt in regard to these deeds?

A. I don't recollect having any.

Q. Did Salmon W. Hoyt call at your residence or any other place in regard to the drawing of these deeds?

A. I have no recollection of his having done so.

Q. Did you know Salmon W. Hoyt at that time?

A. Yes, sir.

518 Q. Why was it that you did not communicate with him in regard to this matter?

A. Because Salmon W. Hoyt had never give me any business.

Q. Had you not been instructed by N. W. Hoyt not to inform him?

A. I was instructed to act indifferently; I was not instructed to inform him.

Q. Didn't he tell you that it would be better that you should not?

519 A. He stated that in this way: That the matter was a subject of anxiety to him, and he didn't wish his children to know it?

Q. Give us the exact words he used when he ordered you to draw these deeds?

A. I can't give the exact words.

Q. Give them as near as you can?

520 A. That conversation was about three-quarters of an hour long; I can give you only the substance; he began by saying that he wished me to draw the deeds from the deeds he presented, laying the deeds on the table.

[Showing witness Exhibit D 1.]

Q. Was that the deed he presented?

A. I think that was the deed.

[Showing witness papers.]

Q. You are certain it was not that one ?

A. This deed is in my handwriting, and I see that it is a certified copy, that is a copy of the former deed. 521

Q. Go on with the rest of the conversation ?

He said that John C. Dimmock, now deceased, had been his lawyer, but that Dimmock had had so much business that whenever he went to see him he was turned off by his boys, could not see Dimmock, and he preferred to have a younger man to attend to the business directly intrusted to him ; he said his health had been bad, and he wanted to settle the whole matter, and he began by saying that he wished me to draw two deeds, one of this property to Salmon W., and one from Salmon W. back to his mother ; that he and Salmon had agreed on that, and the only question, so far as the deed was concerned, was as to the consideration ; he said his mind was anxious about other matters which he wished to speak to me about before the deeds passed ; he said that in former years he had intended to build up the firm, and when he died to leave whatever property he left in the firm ; that this deed of the Wayne street property—the property in question came 522

jointly to him and his son Salmon, by virtue of that feeling—the intention of building up the business so far as possible ; that it was his own property ; that his own money had paid for it ; that his children had no interest in it, but that it did form a part of the negotiations which were then pending between he and Salmon, and which negotiations had resulted only to that extent ; that these conveyances would be made to the mother, but not signed until that settlement, whatever it was, was effected, and he said the occasion of his desiring to make a conveyance instead of a will was, that the property had been drawn so much into the business of the firm that it would be of little use to make a will unless business matters changed ; I told him that the first question to be considered was whether he or the firm 524

was in debt, as the conveyance he proposed to make would be void as against creditors ; he stated to me that he was free of debt—or the firm was free of debt—that it was no attempt to get property out of the way of the hands of creditors ; he disabused my mind of that idea, and went on to state that there had been difficulty in his business, and that there was a rivalry among the children of a character which he didn't think was proper, and he didn't want to trust them any longer in regard to his wife ; he thought it was time to take steps to protect her ; I then approached him with the idea whether this negotiation between him and his son Salmon W. was a bargain that they were driving on these deeds ; he disabused my mind of that idea ; he said that the property was to go to the mother, be hers out and out ; that Salmon had no interest in it, and so acknowledged, and was perfectly willing to sign the deed ; these papers were to be kept back from signing until the negotiations were ended ; what they were, he said, he did not care about stating.

Q. Then he didn't state what the negotiations that were pending between him and Salmon ?

A. He didn't state ; the nature was this : That he desired to come to a settlement by which he could get sufficient property to protect his wife ; he carried the idea very clearly, in plain language, that it had been the ruling motive of the firm to drag his private business into the firm business, and he was determined to extract it, and the exact nature of the procedure would depend on the final settlement ; then I spoke to him about the question of consideration ; whether he was driving a close bargain with Salmon W. as this was a matter which might lead to future dispute, and he said so far as they were concerned they perfectly understood each other ; if there were any bargaining it was about other matters ; I told him under those circumstance the consideration ought to be, I thought, one dollar ; he disagreed on that with me, and thought it ought to be either the full value of the property or the interest of these parties, or a compromise consideration of less amount ; I told him the

character of the whole thing as he stated it to me, led me to think that one dollar was best; he requested me to talk with the gentleman under whom I read law about the thing if I had any doubts, and he would come in at a subsequent date and ascertain as he wanted to be certain that no after clap would come about these deeds. 529

Q. Then you drew the deeds?

A. I caused them to be drawn the next day or two. That conversation was very long and of that character.

Q. Did he give you any special instructions as to how to draw the deed, or did you take it upon yourself?

A. He gave me special instructions except as to the consideration, and that he left to me. 530

Q. What were the special instructions as to the mode in which the deed was to be drawn?

A. The deed was to be from him to Salmon, and from Salmon to the mother, without the sons wife knowing anything about it; he didn't wish Salmon W.'s wife to know anything about it.

Q. Then such conveyance as was made to Salmon W. by Nelson was not joined in by Maliscent Hoyt?

A. My recollection is that Maliscent did not join in 531 the first conveyance, and that she was left out. [Witness, upon referring to Ex. D 11, says: Maliscent Hoyt did join in the conveyance referred to.]

Q. Then such property as was deeded by Nelson W. Hoyt to Salmon W. Hoyt was conveyed to Maliscent Hoyt, his mother?

A. Precisely.

Q. Was that the expressed instruction and desire of Nelson W. Hoyt at the time he ordered the deed to be 532 drawn?

A. It was.

Q. Were there any other instructions as to the mode in which the deed was to be drawn?

A. The second day he called he requested particularly leave out the name of Salmon W.'s wife.

Q. Then, as I understand you, having given you the

deed, Ex. D 1, he instructed you to draw the deed from himself and wife to Salmon W. Hoyt, and that the same property conveyed by that deed should be conveyed by Salmon W. Hoyt, without his wife joining to Maliscent Hoyt?

533

A. Precisely.

Q. Can there be any doubt in your mind as to that?

A. I have no doubt.

Q. Can there be any doubt in your mind as to his giving any further instructions as to the grantors and the grantees in the deed, and whether other premises besides this was to be conveyed to be added to this property?

A. I am positive there was nothing besides this what he spoke to me about.

534

Q. Then there was no greater amount of property to be conveyed by Salmon to his mother than he received from his father by the deed, Ex. D 11; no other property was to be added?

A. No, sir. Salmon W. was to convey the whole of it.

Q. Were the instructions received by you from Nelson Hoyt ever communicated by you to Salmon?

A. They were not; never have been.

535

Q. Neither before nor after the execution of the deed?

A. No, sir.

Q. Did he ever ask you about the mode in which those deeds were to be drawn?

A. He has not.

Q. To your knowledge was he cognizant of the mode in which the deed was to be drawn, or the estate to be conveyed?

A. I have no knowledge of the kind.

536

Q. Was there any conversation in your presence between Salmon W. Hoyt and his father, or any person in regard to the estate to be conveyed by these deeds?

A. None; except when I delivered the deeds at the office, what I have already stated about that interview.

Q. Was there any person who acted in his behalf at any time relative to this transaction?

A. None.

Q. What was the state of the old gentleman's mind at that time?

A. Very clear.

Q. Was he agitated in the least?

A. Not in the least.

537

Q. Was he acting like one who was deceiving?

A. He was not.

Q. Were you sufficiently familiar with his frame of mind and general deportment, by comparison to know whether he at that time was acting different to what was his custom?

A. I think I was.

Q. Didn't he act in a manner as though he intended to deceive?

538

A. No, he did not.

Q. Then what was his idea of keeping from the wife of Salmon the fact of those conveyances?

A. He spoke in regard to her dower; he said it was to be very small any way; I told him I thought it was very questionable whether she could recover any dower over one dollar; that is my professional opinion now.

Q. Do you consider that the dower right of Salmon's wife in that property was only worth one dollar?

539

A. I consider it a cloud on the title, and something likely to give trouble.

Q. Do you consider under a — of dower she would receive nothing?

A. The probabilities are that she would receive a dower in the one-half.

Q. You were aware that Salmon's wife had a child born to him, and that therefore she had a right of dower?

A. I don't think I was aware she had a child.

540

Q. You didn't ask about it?

A. I didn't ask about it.

Q. You were conversing with him in regard to the dower, and you were giving your professional opinion as to the dower, and you didn't know whether she had a dower right?

A. I told him she had a dower right.

Q. How did you know, when you didn't know whether she had a child born?

A. It was not a matter of importance at all.

541 Q. How many times did Nelson Hoyt call upon you in regard to this matter before the deeds were passed?

A. Twice.

Q. Did he change any of the instructions given by him upon the first call?

A. He did not.

Q. When you had the deeds drawn was it then that he told you, that if Salmon saw you to say that he hadn't met you on the street?

A. I think that was the the first time.

542 Q. Then we understand that he told you that if you met Salmon on the street and he asked you about it, that you should tell him you hadn't met him, or in plain words he asked you to lie about it?

A. He did not.

Q. What would you call that?

A. I call that a common, every-day affair.

Q. Do you in your practice transact business in that manner, and call it a common, every-day affair?

543 A. It was one of those things that frequently occur.

[Question repeated.]

A. I do not.

Q. Do you consider that a falsehood?

Q. I do not.

544 Q. Then if you had met Salmon W. Hoyt, having previously met Nelson Hoyt on the street, and Salmon asked you if you had met Nelson on the street and you should tell him you had not, you would call that truth, would you?

A. Your whole question ought to be taken into consideration. It is not truth; that is the converse of the first proposition you stated.

Q. What is it?

A. He directed me to act indifferent.

Q. What is it?

A. It was what I stated in my direct examination—that he had anxiety.

545

[Question repeated.]

A. I would not call it truth if I did meet him on the street.

[Question repeated.]

A. I would, from the fact that I had met him on the street. 546

Q. Would you swear that it was the truth?

A. I should call that a lie, and it would be a lie.

Q. Why didn't you say so when I asked you first?

A. You did not ask that question.

Q. Then Mr. Hoyt asked you to tell a lie, did he?

A. He did not.

Q. You do not consider, then, that when Mr. Hoyt told you that if you met Salmon upon the street, and that Salmon should afterwards ask you if you had met Nelson on the street and you should tell him "No"—wouldn't that be asking you to tell a lie? 547

A. The question supposes that I had met him on the street.

Q. Didn't you swear that Nelson Hoyt told you that if you did meet Salmon upon the street, and that Salmon should ask you if you had met Nelson on the street, that you were to say no?

A. I don't think I did. 548

Q. Did he tell you whose money had paid for this property at the time of the purchase from B. W. Ryder?

A. He spoke generally that it was his own money.

Q. Give us his words if you can?

A. "This is my property—my money paid for it"—I can't give the exact words.

Q. Did he tell you that Salmon had paid nothing towards it?

A. He didn't say that.

Q. Did you infer that from what he did say?

549

A. I inferred that whatever Salmon had paid towards it was in a manner connected with the firm business; in such a manner that it was an inducement, and not what business men would call a payment of money.

Q. Did he tell you how much he had paid for the property?

A. No; I don't think that was talked about at all.

Q. Did he tell you the mode in which he had paid for the property?

550

A. I think he told me that it was got from Ryder—Ryder kept a flour store.

Q. Did he tell you as to any of the payments that had been made on account of the purchase and sale?

A. No, nothing of that kind.

Q. Did he tell you why he wanted the deed made to Sam particularly?

A. Only that he wanted to get that property into his wife's name.

551

Q. Did he speak as though he distrusted Sam?

A. He did not; he distrusted his wife's future.

Q. And not his son Salmon?

A. I think not.

Q. Did he say anything derogatory to the reputation or standing, or character of Salmon?

A. Nothing at all; every thing was kind.

Q. Did you then know the reputation of Salmon?

552

A. I had got acquainted.

Q. Did you know him?

A. I had known him several months.

Q. Was his reputation good?

A. It was.

Q. Is it good now?

A. So far as I know.

Q. You haven't heard anything against his reputation

except such thing as you would hear against Mr. Bevans?

A. Such things as I would ordinarily hear in a family litigation.

Q. Outside of this suit you have heard nothing 553  
against him.

A. Nothing at all.

Q. Did he at that time say that Salmon owed him money?

A. Not in that form.

Q. They were simply incidental matters?

A. Yes, sir; incidental matters.

Q. But the nature of those incidental matters he didn't acquaint you with, did he? 554

A. Except to this extent—and he said it was no interest to me to know further about it—that his own private means had been dragged too much into the business.

Q. Did he tell you why it was that it had been deeded jointly to him and Salmon, and not to him alone, when he had paid for the property?

A. He stated that he had always helped his children, but he led me to believe—

Q. What did he say to you? 555

A. He stated to me that that was his own property; his money paid for it, and Salmon's interest amounted to nothing; he said there were other things of the same character that had got mixed with it, and he wanted his wife protected in case of his death; and if he could get the settlement that he intended to get he wouldn't care whether it was satisfactory to himself or not, so long as it came within certain bounds and would make provision for his wife.

Q. Did he tell you the nature of the agreement between himself and Sam? 556

A. He did not.

Q. Have you any knowledge of it?

A. No further than what I have stated, that these conveyances had been agreed upon before, and were to be executed during the negotiations.

Q. What brought about that business that you haven't any knowledge of?

A. I know not.

557 Q. Now tell us what it was that he told you not to tell Salmon?

A. He did not tell me not to tell Salmon anything except that he had been at my office.

Q. Did he tell you that if Salmon had asked you if he, Nelson had been at the office to tell him, Salmon, that he, Nelson, hadn't been?

A. Yes; I think he told me that.

558 Q. Then we understand you that if Salmon asked you if his father had been at the office, and his father had been there, that you were to tell him that he hadn't been there?

A. He told me to act indifferently, and make it appear as if he had no anxiety about the subject.

Q. Was there anything else that he asked you to deceive Salmon in?

A. Nothing else.

559 Q. Did he tell you to send for Salmon or communicate with him in any way?

A. He did not; he told me to speak freely to Salmon if I met him except not to let him see that he was at all anxious about the negotiation.

Q. Did Salmon seem to confide in his father in this transaction?

A. I cannot say that I saw Salmon at all at any time during that whole matter until the day I delivered the deeds, and then he said nothing.

Q. Did Salmon take the deeds and read them?

560 A. He took them out of the envelop and opened them.

Q. Salmon didn't read the deed?

A. I didn't see him read the deed; he was opening it.

Q. Do you recollect what Salmon said at the time in regard to the deeds?

A. He said nothing.

Q. Did you say anything to him about the deeds, or did his father say anything to him about them?

A. No, sir; nothing.

Q. Did any other person say anything to Salmon in your presence about the deeds at that time? 561

A. No, sir.

Q. Did Salmon ever call upon you previous to the commencement of this suit in regard to the drawing of those deeds—these particular deeds?

A. I can't answer that except from recollection; he called upon me once to get a certified copy of a deed that he said had been lost after his father's death; I got that deed for him.

Q. Didn't Salmon call upon you night before last in regard to this matter? 562

A. He did.

Q. Didn't he come for the purpose of ascertaining who had drawn Exhibits D 11 and D 12?

A. I can't tell what purpose he came for.

Q. Didn't he ask you whether you had drawn those deeds?

A. He did.

Q. Didn't he tell you there was some doubts in his mind as to whether you had drawn the deeds or whether Mr. Voorhees had drawn the deeds? 563

[Question objected to by plaintiff's counsel.]

A. Yes, he did.

Q. Didn't he tell you that he had testified that Mr. Voorhees had drawn these deeds; that he had ordered deeds drawn by Mr. Voorhees, and that he supposed that the deeds he and his father had ordered to be drawn were the deeds that he had, or words to that effect? 564

A. He said a part of it.

Q. State what he did say in regard to this transaction?

A. He came to my house; we were on the second floor, in the library-room or library, and he opened the

conversation direct by saying that he came about this business; the first question he asked about it was: "How did Sid Bevans know you had anything to do with drawing those deeds?" I didn't say anything to that, and he went on talking and gave me a history of the whole thing, in which he said that he had been to Mr. Weart's office to find who drew these deeds, and I think he said he had been to Mr. Gilchrist's office—he mentioned the names of 3 or 4 lawyers; he said he had been testifying that they were drawn by Mr. Voorhees, and from recollection he supposed they had been, and then he asked me if I had drawn any deeds for him or his father; I told him my impression was I had; he asked if the deeds were in my writing; I told him it was very probable they were not, and then we agreed he should come to my office the next day, and I requested him to bring them up; he came the next day with the two deeds, D 11 and D 12; I took them and examined them over leisurely, and I told him that they were not in my handwriting; I drew out the register of my cases prior to 1865, and showed him the suits I had conducted for the firm, and how I then wrote; he said it was very clear they were not in my handwriting.

Q. Didn't he tell you that if they were that he wanted to correct his testimony?

A. He did.

Q. Didn't he say that if they were not in Mr. Voorhees handwriting that he wanted to make the correction, or words to that effect?

A. I am pretty sure that he didn't say that or words to that effect.

Q. Didn't he say that he was in doubt as to whether Mr. Voorhees had drawn the deeds or not?

A. Yes.

Q. Did he say when those doubts had arisen?

A. He did.

Q. When did he say that his suspicions were first aroused upon that point?

A. He didn't mention the date.

Q. About what time ?

A. I judge about the time that he first began to hear that some other lawyer had drawn it. He went to Mr. Weart's office and other places, and he said that he had heard that I had drawn them. 569

Q. He appeared anxious to correct his error ?

A. He appeared anxious to correct whatever error he had made.

Q. And then you informed him that you had not drawn them ?

A. I didn't inform him that ; I told him my impression was that I had drawn them ; those were the words I used.

Q. Didn't you tell him you had not drawn them ? 570

A. I didn't tell him any such thing.

Q. Didn't you convey that idea ?

A. He got that idea, probably, from not looking any further than my handwriting.

Q. Wasn't he anxious to know, so far as you could discern, as to whether the deeds were drawn by you or at your office ?

A. No.

Q. Were you not led to believe that he was in search of information as to who drew the deeds ? 571

A. I was not ; that is a matter of judgment.

Q. Did he ask you directly whether you had drawn the deeds ?

A. He asked me directly whether I had drawn any deeds for his father. I told him my impression was I had.

Q. Did he ask you if you had drawn the deeds in question ?

A. He did not. 572

Q. Didn't you tell him that you had drawn a deed for him or his father, and didn't you ask him for what property it was, and didn't he tell you the same property that you had drawn the deed for ?

A. He did ; whether I had drawn such a deed I couldn't recollect.

Q. Didn't you tell him that was the only deed you had drawn for him?

A. I didn't tell him that.

573 Q. Did you tell him you had drawn more than one deed for him?

A. The expression I used was some deeds.

Q. Weren't you reticent?

A. I thought we were both reticent upon some points.

Q. Weren't you reticent upon it?

A. If he had asked me I would have declined to answer.

574 Q. Would you have declined to answer if he was in search of information which would lead him to correct his testimony?

A. I should if it related to the question direct as to who drew those deeds.

Q. Were you asked by Mr. Bevans not to tell?

A. I was not.

Q. Were you asked by any person?

A. I was not.

Q. Were you asked by any person in behalf of the complainant?

575 A. I was not.

Q. Were you asked by any person not to tell who drew these deeds?

A. I was not.

Q. Was anything said by any person to you which would lead you to infer that the complainant, or persons interested for her or in her behalf, did not wish Salmon to know that you drew the deeds?

A. No.

576 Q. Why would you refuse to communicate with Salmon upon that point?

A. Because I suspected that he and Davis, if they ascertained the fact, might annoy me and endeavor to raise a conflict of testimony about conversation subsequent to the beginning of the suit.

Q. Did you know that Salmon had sworn in this case that Mr. Voorhees had drawn these deeds?

A. I had heard a general statement of it.

Q. From whom?

A. I had heard a statement from Mr. Bevans.

Q. Knowing that fact, and knowing that Salmon was 577  
then in doubt as to who had drawn the deeds, and he  
should ask you if you had drawn the deeds, do we now  
understand that you would refuse to give him the infor-  
mation?

A. Decidedly so, from the character of the man that  
he sent to me.

Q. Would you, if Mr. Hoyt himself came and asked  
you that question, and you knew he wanted to know it,  
for the purpose of correcting his testimony? 578

A. I should have declined to hold any conversation  
except in the presence of other parties.

Q. Why didn't you tell him plainly yesterday that  
you had drawn the deeds without being reticent, as you  
said you were?

A. I didn't think he wanted to know.

Q. Why did you think so?

A. Because I thought he did know it.

Q. What reason have you to believe that he did know 579  
it?

A. Because he was present when I delivered the deed?

Q. Is that the only reason you have?

A. He asked me to get a certified copy of that deed.

Q. Is that the only reason you have for knowing it?

A. It is the only reason I think of now.

Q. Isn't it possible for the man to forget, after a lapse  
of fifteen years, as to who drew a deed for him?

A. That is possible. 580

Q. Are there deeds that you have drawn within the  
past fifteen years that you couldn't call to mind now?

A. There are.

Q. Are there many?

A. Not many; for I didn't begin to draw deeds until  
about six or eight years ago.

Q. Are there deeds that you have drawn within six

or eight years that you have no recollection of, and that you cannot call to mind?

A. I couldn't just now. I think I could in the course of twenty-four hours.

581 Q. What would you refresh your mind from, your day book?

A. I would go to the party.

Q. How would you go the party if you didn't know for whom you drew the deeds?

A. That is the question here.

Q. Do you know for whom you have drawn deeds for the past years—all persons for whom you have drawn them, and can now call them to mind?

582 A. No.

[Recess.]

Q. Then you consider it possible for a man to forget for whom he draws deeds within a period of five or six years?

A. It depends upon circumstances, and what facts impresses the thing on his mind.

583 Q. You say that you thought that Salmon didn't want information that he asked, because he came to you to have a certified deed made?

A. That is one of the reasons.

Q. Did you assign any other reason when asked?

A. I did.

Q. What was it?

A. That at the time his father received the deeds from me he was present, and took the deeds himself and

584 Q. I believe that you said that he did not read it in your presence?

A. I have stated it correctly, that he opened the deeds, they were both together.

Q. That does not answer the question?

A. He unfolded them and was in the act of beginning to read.

[Question repeated.]

A. I stated that he was in the act of beginning to read.

Q. To your knowledge had he read any of the deeds when he passed the same over to his father, as stated by you in your testimony? 585

A. He certainly hadn't read two lines.

Q. And if he had, which two lines had he read?

A. I cannot form any idea.

Q. Just as likely to be the first two lines as the last two lines?

A. Yes, sir.

Q. Was it the inside or the outside of the deed? 586

A. Inside the first page of which deed, I am unable to

say.

Q. You said that this certified copy of the deed is in your handwriting, didn't you?

A. I did.

Q. That is the deed, is it. [Handing witness paper?]

A. That is the deed. [The deed is offered in evidence by defendant's counsel and marked "Ex. D."]

Q. And you say after the death of his father Salmon came to you and asked you for a certified copy of this deed? 587

A. I think so, let me see. [Examining paper.] No, that appears to be before.

Q. You wish to correct your statement in that respect?

A. No; I do not wish to correct it.

Q. Didn't you state that Salmon came to you after the death of his father and asked for a certified copy of the deed?

A. I did. 588

Q. And the deed that you now hold in your hand was the certified copy that you prepared?

A. I can't say whether this was the deed.

Q. Did you draw, or cause to be drawn, another deed which was certified to by the Clerk of Hudson County?

A. I think I caused to be certified a deed of some

property for Salmon Hoyt after his father's death, but of what property I am unable to state. It is possible I am mistaken, but I don't think I am.

589 Q. Then you are of the impression you had two certified copies of the deed for this property from Ryder?

A. My impression, from seeing this, is that I have procured certified copies for him on two different occasions ; of what property I cannot say.

Q. Then Salmon Hoyt did come to you after the death of his father and asked you to have a certified copy of the deed made ?

590 A. That is what I don't know. I am positive he came to me after his father's death and asked me to procure a certified copy ; I can't say as to this deed.

Q. How is it that your recollection is so good as to matters which occurred in 1860, and so imperfect as to other matters which occurred since ?

A. It is not imperfect as to other matters.

Q. Then your recollection of all matters relating to this conveyance is clear, is it ?

591 A. So far as the identical question of Mr. Hoyt's transactions with me concerning this property, his consultations with me, it is very distinctly impressed on my mind, for it was the first time any one came to my office in the distinctive capacity of a client ; I had read the law in regard to these questions before, and I had anticipated how I would act in such a case.

Q. What do you mean when you say such a case ?

A. I mean in such a case as I have stated here.

Q. What is there peculiar in the case.

592 A. It is peculiar in the respect that a man's property has become tangled and mixed ; that it is too much under the control of other people instead of his own control ; it really belonged to him, and he mistrusted the future of his wife and wants to save all that he can for her, before his death, from the wreck.

Q. That is the peculiar question you were interested in ?

Q. That is one of the peculiar questions I was interested in before I was admitted to the bar.

Q. Is there any one thing that you are better posted in than others?

A. Yes, sir.

593

Q. What is it—in which branch of your profession?

A. I think the question now before us is as good a question as any.

Q. How many like questions have you had of the same nature?

A. I have never had any exactly of the same nature; I have had many of an analagous character.

Q. Is there anything very difficult in that branch of the practice.

594

A. It is only a question of good advice and good judgment.

Q. Which you consider yourself well calculated to give?

A. I did at that time.

Q. Better then than now?

A. No.

Q. You consider that you have real good judgment in those matters?

595

A. Well, fair judgment.

Q. Have you a recollection of what suits you had from Mr. Hoyt before he gave you this business to transact for him?

A. Mr. Hoyt, outside of myself, was the first client I ever had.

Q. Then you individually never had transacted any business for him before receiving the orders for those deeds?

596

A. I had the suit of Nelson W. Hoyt against P. S. Lockwood which he had been consulting me about some time prior to that for \$955 on a promissory note.

Q. Did you cause suit to be brought upon that note.

A. I did.

Q. Did you recover the money?

- A. The matter was compromised without judgment.
- Q. What was the date of the commencement of that suit?
- A. I have it in my register July 10, 1860.
- 597 Q. Previous to that time had you any other business transactions with him?
- A. I had had transactions through him for his firm; he was the only party who instructed me in reference to the firm.
- Q. Who brought firm matters to you?
- A. He did individually; he sent for me as I have before stated.
- Q. When was that?
- 598 A. He intrusted his suit to me against H. Birdsell on the 8th of June, 1860.
- Q. Any previous to that time?
- A. That was the first suit that I have any entry of.
- Q. Did you know him previous to that time?
- A. I did.
- Q. How long had you known him?
- A. From about February, 1860; I should say.
- Q. Certainly not before that time?
- 599 A. Certainly not before.
- Q. Did you state before how you became acquainted with him?
- A. I did.
- Q. Did he have any other attorney besides you?
- A. He had John C. Dimmock as counsel, at least he so stated to me.
- Q. Then Dimmock was his counsel while you were his attorney?
- 600 A. No; as I stated before, he said that John C. Dimmock had been his counsel, and that laterly when he approached Dimmock on business, that Dimmock had so much connection with the courts that it was impossible for Dimmock to treat direct with him, and he wanted a younger man who would perform the duties individually which he instructed him to perform and not by clerk.

Q. Then he dropped Dimmock when he took you up?

A. Not directly; I think both were retained as counsel in some suits.

Q. How long did you continue as counsel for Nelson W. Hoyt? 601

A. The Birdsell suit was not closed until Hoyt's death.

Q. When was it commenced?

A. I think the papers were served on the 27th of June, 1860.

Q. Then between the time of the commencement of the Birdsell suit and the time of his death you had no other business transactions with him except that suit? 602

A. Yes; I had the Dorney suit, the Lockwood suit, and these deeds; also a chattel mortgage.

Q. No new matters were commenced after the Birdsell suit had been commenced?

A. The Birdsell suit was the first suit; the last suit was against Dorney.

Q. And the date of that?

A. May 14, 1861.

Q. Then was any other suit commenced or any business transacted by you for him between then to the time of his death? 603

A. That was May 14, 1861; I think not.

Q. Who did his law business after the commencement of the Dorney suit?

A. I don't know anything about it.

Q. Do you recollect what reason he assigned for leaving your office?

A. He never left my office; I never supposed he had a great deal of business. 604

Q. Don't you know why he left your office?

A. He never left my office.

Q. Then you consider you were his attorney up to the time of his death?

A. I don't know anything about it.

Q. Do you know of any reason that he assigned why

he didn't continue to go to your office with new business after the commencement of the Dorney suit?

A. I don't know anything about it.

Q. Didn't he ever express any dissatisfaction to you?

605 A. Never; Salmon W. Hoyt came there afterwards.

Q. I asked you about Nelson W. Hoyt?

A. No; he never expressed any dissatisfaction.

Q. And you have no knowledge why he ceased coming to your office?

A. No; I have only a belief.

Q. What is your belief?

A. My belief is he didn't have any business.

Q. That is the only reason you can assign?

606 A. Yes, except the suits that were then pending in the hands of Dimmock.

Q. Didn't he at one time threaten to take those out of your hands?

A. No such thing.

Q. Do you know Judge Davis?

A. I do.

Q. What have you to say as to his reputation?

A. Nothing.

607 Q. What is his reputation in the neighborhood in which he lives?

A. His reputation is that of a politician and lobbyist.

Q. What is his reputation as to honesty and fair dealing, truth and veracity?

A. I have heard it questioned.

Q. By whom?

A. By his brother aldermen.

Q. The name of the alderman?

A. Azariah Drake.

608 Q. Who else?

A. I can't recollect now.

Q. Do you know of anybody else?

A. Nobody else directly.

Q. What is his reputation as to fair dealing?

A. It is good so far as I have any knowledge.

Q. What is his reputation as to honesty generally?

A. That is a question I don't like to answer.

Q. Have you any doubt as to his honesty?

A. If you will state a case to me ———

Q. I have no case at all; I speak generally?

A. I think he is as honest as the average of men. 609

Q. Is he as honest as you are?

A. No, I don't think he is.

Q. Why do you consider Judge Davis less honest than yourself?

A. I know more of my own character than I do of his.

Q. And why do you doubt his honesty?

A. I don't know anything about it.

Q. Do you doubt the honesty of all men with whom you have had any dealings? 610

A. I am a pretty good reader of human character.

Q. Then you don't speak favorably of the honesty of Judge Davis, judging from his countenance?

A. I don't say anything about it?

Q. I ask you?

A. I have said nothing against his character.

[Question repeated.]

611

A. Well, physiognomy is not all there is of human nature.

Q. You stated a few moments ago that it was?

A. Physiognomy and human nature are two different things.

Q. What do you think of him, judging from human nature.

A. I think he is a pretty fair man—a man I am willing to deal with, anyway. 612

Q. Then you consider him a fair, upright man, do you?

A. Yes.

Q. Honest?

A. No.

- Q. Dishonest in what respect?  
 A. In no respect, particularly.  
 Q. But in all things?  
 A. A very shrewd man.  
 Q. Are all shrewd men dishonest?  
 613 A. They are very likely to entrap some men that don't know so much.  
 Q. Are you a shrewd man?  
 A. No.  
 Q. Do you know of any dishonest act performed by Judge Davis?  
 A. I do not.  
 Q. Then why do you say that he is not honest?  
 A. That is my judgment of his character.  
 614 Q. Then your judgment of his character is that he is a dishonest man?  
 A. No.  
 Q. Didn't you state that you considered him not honest?  
 I. A did  
 Q. Then how do you account for his being honest and dishonest at the same time, in almost the same breath?  
 A. great many men have double characters; some  
 615 have a dozen characters; I know a good many who have several characters.  
 Q. Then you believe he is a two-faced man?  
 A. No.  
 Q. What do you mean by double-faced character?  
 A. Carrying water on both shoulders.  
 Q. Politically or socially?  
 A. Anyway.  
 Q. Do you consider him dishonest because he is a  
 616 politician?  
 A. No.  
 A. That was the reason assigned by you a little while ago?  
 A. No; I said his character was that of a politician.  
 Q. You have been somewhat of a politician?  
 A. I used to be in politics.

Q. Wasn't you considerable of a politician in your district?

A. I didn't consider myself so.

Q. Wern't you considered so by others?

A. Possibly.

617

Q. Who was it that first came to you from Mr. Hoyt in regard to drawing the deeds?

A. All I know about it—

Q. I ask you who came first; wasn't it Judge Davis?

A. It was not.

Q. Did Judge Davis call upon you?

A. He did.

Q. When?

A. I forget the date.

618

Q. How long ago?

A. I forget the date; a few weeks ago.

Q. Certainly within a month?

A. About that time.

Q. And it was he that you referred to when you said that you wouldn't communicate in regard to these deeds because of the man that Hoyt had sent, or words to that effect?

A. I didn't know that Hoyt had sent him until he told me; there was nothing said between Mr. Davis and I; he came under disguise about another matter. 619

[Question repeated.]

A. He was the man.

Q. Didn't he tell you that he came from Mr. Hoyt's for the purpose of ascertaining whether you drew the deeds D 11 and D 12?

A. He did not.

620

Q. What did he state in regard to this suit, or matter relating to this suit?

A. He stated that Bevans and Hoyt were in a fight.

Q. What else?

A. He asked me if I knew anything about it; I told him that I had heard that the suit was going on. The

conversation, prior to that, had been on another subject; he said when he first came that he came for a particular purpose.

621 Q. I only want to know in regard to this?

A. He stated that he had papers belonging to Mr. Bevans; that he had Mr. Bevans' paper, and he came to inquire about his credit, and wanted to know confidentially how he stood; that was his business with me. I thought it was a lie. I was busy in the outer office, just closing the office, and just about going away. He was disposed to continue the conversation, when he begun to talk about this litigation it was very brief; I think a minute and a half altogether; I looked at my watch and told him I had to go up town, and he went off.

622 Q. Didn't he ask you whether you had drawn those deeds?

A. He did not: he didn't ask me any such thing; he put the words in my own mouth thus: "You have done business for the Hoyt's?" I told him I had; "You have had suits for them?" I told him I had. "Yes," he said, "drawn deeds for them?" I didn't answer.

623 Q. You didn't make any reply to that?

A. I did not.

Q. Didn't you tell him you had drawn no deeds for him?

A. I positively did not.

Q. Didn't you tell him you had drawn a deed for the property, corner of Grove and Wayne streets?

A. I did not.

Q. Didn't you tell him that you had not drawn it?

624 A. I did not tell him I had not drawn it; I made no answer.

Q. Then he didn't ask you anything about the drawing of deeds for that property?

A. He did not.

Q. The subject of deeds was not touched upon?

A. Except in the manner I have stated, and the question he put in my mouth, and which I didn't answer; I

looked at my watch and told him I must go, and he went off.

Q. What was your object in telling Salmon Hoyt to bring the deeds over in order to ascertain whether you drew those deeds? 625

A. He said he would bring the deeds, and I requested him to bring all the deeds; I thought some might possibly be in my handwriting.

Q. It was a matter of curiosity upon your part, was it?

A. Mr. Hoyt—

Q. Was it a matter of curiosity?

A. He was bent on one thing, and he got satisfaction on that, and he didn't go any further.

[Question repeated.]

626

A. Partly.

Q. Wasn't it wholly?

A. It was not.

Q. Then what was your other object?

A. My resolution was not to talk to him on the direct question; I declined to talk to him; I would decline to talk to any man engaged in litigation under similar circumstances.

Q. When was it that you first informed Mr. Bevans about your having drawn those deeds; do you recollect the date? 627

A. I think about February of this year.

Q. It was at the time you met him at the house?

A. It was the first time I ever knew there was any litigation.

Q. When did you see Mr. Bevans again about it?

A. I can't say; it was a few days after, I think?

Q. Did you see him in person? 628

A. I can't say whether it was a few days afterwards or a few months; I know it was some time afterwards.

Q. Did you communicate with him, or he with you?

A. Yes.

Q. When was your first communication?

A. I cannot recollect; it is since that time.

Defendant's counsel requests complainant's counsel to produce letters of Mr. Perry relating to this suit, which complainant refuses to do.

629

*Defendant's counsel:* Then we will issue a subpoena for them.

Q. How many letters did you write?

A. I think I wrote one.

Q. To whom was that addressed?

A. My recollection is, I may be wrong, that that was written in my office and handed to him.

630 Q. Handed to whom?

A. Bevans.

Q. And written to Bevans?

A. I think so.

Q. Did you ever write to Mrs. Hoyt?

A. I think not.

Q. Have you had any communications with Mrs. Hoyt on that subject?

A. I never spoke to her.

631 Q. Mr. Bevans is the only man you have had any conversation with in regard to this case?

A. I have spoken to Mr. Linn.

Q. You stated that Mr. Hoyt told you that there was a conflict of feeling in his family?

A. I don't think I used the word "conflict;" I think I used the word "rivalry."

Q. Do recollect what he said upon that subject?

632 A. He said he had been annoyed by his children entangling him in his business affairs and his individual property.

Q. What did he say about his son-in-law, Bevans?

A. His name was not mentioned; no name mentioned; he spoke generally about his children. At that time I had never seen any of his children except Salmon W.

Q. Did he at any subsequent or prior interview with you mention the name of any children ?

A. I think not.

633

*Re-direct examination by Mr. Linn :*

Q. How long have you been acquainted with Judge Davis ?

A. I think about fifteen years.

Q. Who is he—what is his business ?

A. He keeps a store up the Avenue, up Newark Avenue, and he is a justice of the peace ; has a little office in the rear of his store ; I have always been on friendly terms with him ; he was formerly a member of the Board of Aldermen ; he passes for a very fine man ; I have nothing against him ; he is not a Police Justice, I think he is a Civil Justice. 634

Q. He is considered a shrewd, gamey, wery politician ?

A. That is his character.

Q. Did he say to you who were the real parties in controversy in this suit ?

635

A. He spoke very familiarly in this way, that it was Salmon and Sid. fighting.

Q. Did he say anything about Mrs. Hoyt ?

A. He did not.

Q. Did you know who had commenced the suit ?

A. I can't say ; I think I did ; the mother began the suit.

Q. Did you understand that Mr. Bevans was a party to the legal proceedings ?

636

A. I did not ; I told Judge Davis at the time that I had heard that Mr. Brinkerhoff was on one side and Mr. Linn on the other, and that the suit was by the mother against the son.

Q. What did he say to that ?

A. He didn't say anything to that, but went on questioning me ; he was on a pumping expedition

Q. How long have you lived here in Jersey City?

A. I came here in December 1858; in 1859 and 1860 I resided indifferently between the Washington Hotel, in Hudson street, and 240 West Twentieth street, New York, a boarding house kept by John Wilcox, who had  
637 some connection in Hoyt's firm.

Q. And since that time you have lived in Jersey City?

A. I have lived commonly here since the Fall of 1860, and commonly, so far as legal domicil goes, always since I came from Sussex county.

Q. The question was put to you whether you was not a politician, or had not been so considered in the district—what district had you been in?

638 A. That is what was called the Third Assembly District; it is so called yet, I believe, in this city.

Q. You were a member of the legislature once?

A. I was a member in 1862 and 1863; I was elected in 1861, and reelected in 1862.

Q. And during all this time you were practicing law in New Jersey or New York?

A. In New York.

Q. Licensed in New York or in New Jersey?

639 A. Licensed in both States; I never practiced in this State; I was admitted in this State in 1864, I think.

JOHN B. PERRY.

SIDNEY B. BEVANS called and sworn for complainant.

*Direct examination by Mr. Linn:*

640 Q. When did you first receive any information in reference to the conveyance of the property in controversy made by Mrs Hoyt to her son Salmon?

A. I think the first intimation I got from that was from Jacob Weart.

Q. Can you tell the time when?

A. No, I could not; it must have been 1858 or 1859.

Q. Are you not mistaken as to the year '58 or '59?

A. Oh, Mrs. Hoyt to her son—no, I couldn't tell that?

Q. Did you ever have the record examined to ascertain the nature of that conveyance?

A. No, sir; I never had the record examined to ascertain the nature of that conveyance. You are speaking now of the conveyance by Mrs. Hoyt to her son of the undivided one-half of the property? 641

Q. Yes; did you have any conversation with George McLaughlin about that conveyance?

A. Never in my life.

Q. When did you first learn, and how, that that was an absolute conveyance of the undivided half of that property to him without any condition or limitation?

A. That I learned in the Winter of 1868 or '69—I think it was '69; it was after the old lady moved to my house. 642

Q. Do you recollect the interview that you had with Salmon W. Hoyt at your house when he produced that deed for the purpose of showing you that he was right in claiming title to the undivided half of that property?

A. I do.

Q. You had heard, then, before that several years, that she had conveyed the undivided half to him? 643

A. Yes, sir; I had heard that she had conveyed to him the undivided half.

Q. Did you hear her say that?

A. No; she claimed that the conveyance was to take effect only after her death.

Q. When did you first hear that she claimed that she had only conveyed it to him to take effect after her death?

A. After this controversy had commenced, and I heard her say that previous to 1869, that she had conveyed to Salmon the one-half of those stores, to take effect at her death, can I explain a little? In 1867 there was a controversy and dissatisfaction in regard to the settling of N. W. Hoyt's estate, and my counsel, Jacob Weart, said the only way we could find out about this matter would be at the court house, and he was employed by me to search for the inventory of Nelson W. Hoyt's personal 644

property. What we learned at that time was so imperfect that we searched again, and then I found by his searching that the deed which had been given by the old lady to her son, to take effect after her death, conveying one half of those stores, was a straight and perfect deed. That, I think, was about 1869. It was after we learned of the inventory filed by Mrs. Hoyt in regard to Mr. Hoyt's personal property.

Q. Did you say anything to her about it?

A. Never in my life to any one, at the positive advice of Mr. Weart; he explained at that time just what is now taking place.

646 [Objected to.]

Q. Do you recollect when your first conversation with Mrs. Hoyt was about this deed?

A. The first conversation I had with Mrs. Hoyt in regard to this was at the time that Salmon came there and claimed that he wanted to rent the store; that was in December, before this suit was commenced; the suit was commenced in April or May—somewhere along there.

Q. You understood that the deed from her to him was an absolute conveyance of an undivided half, but you never said anything about it?

A. Never, to any one, not even to my wife.

Q. Things were then going along smoothly and she was receiving the rents from the property, and it was entirely satisfactory to her, and seemed to be to him, and therefore nothing was said about it?

648 A. Not a word; every thing seemed to be satisfactory?

Q. The first time you heard of any difficulty was about the time he came there with the deeds?

A. Yes; he first made an application to her to rent him the store.

Q. (By defendant's counsel), Were you present when the application was made?

A. Yes; I also learned it from my conversation with Mr. Hoyt. She refused to let him have that store—this would be a year from last May—she told him that she had extended the lease that Mr. Coykendall had on those stores, in order that Mr. Coykendall might get a large bonus from Mr. McCoy; that Mr. McCoy had a promise as a tenant, and she could not consent to turn him out of the store so soon, and she would not consent to turn him out of the store. That was the conversation at my house; and then Salmon came to my house and took me riding, and told me on the way he was going to have the stores anyhow. I didn't intimate then that I knew anything about them. Shortly after that he came to my house; the old lady and my wife were there, and he took me out of the room and there showed me the deed. That was the first I knew that the deed was a perfect deed.

649

650

Q. Then from that time the controversy seriously commenced between him and her?

A. He went shortly after that to New Orleans, and was gone a month or two, and then when he came back she still insisted on letting the stores, and the controversy went on.

Q. Did you advise her or counsel her directly or indirectly to commence this suit?

651

A. Not in any way shape or manner—no way at all—had nothing to do with it. Then Salmon served a notice on the tenants not to pay the rent; that he would hold them responsible, and she went then to Mr. Dixon, and Mr. Dixon left some papers at my house to serve on Mrs. Greer, one of the tenants. Mrs. Hoyt was very sick at the time so that she didn't get out of her room for some time; she either came down to my room or sent for me to come to her room, and told me that there was a paper she wanted served on Mrs. Greer. My wife was with me at the time, and she seriously objected to my having anything to do with it; Mrs. Hoyt nearly cried about it, and said, "If I cannot have Sid with me who can I have?" Says I, "If you want that notice served I will do it," and from that time I have done what I

652

could. So far as commencing the suit was concerned I never advised her one way or the other; all of her talk and conversation was with Mr. Dixon, the lawyer. Once she told me she had received a letter from Salmon,  
 653 but she never showed me any of the papers—never asked me my opinion of the papers.

Q. Were you ever in business with Nelson W. Hoyt?

A. I was.

Q. When were, how long, and in what business?

A. From 1st February, 1855 to the 1st of February, 1858, at 187 Reade street, New York, in the butter and cheese business, country produce and commission business.

654 Q. Did you buy him out or did he buy you out when you dissolved?

A. We just simply separated; we dissolved on the 1st of February, 1858; we divided the assets; I moved two doors up the street.

Q. Do you know what amount of assets he had then?

A. Mr. Marshall, who had been our book-keeper and I settled up the business mostly, and as near as I can recollect, I haven't examined the books since 1861 or '62;  
 655 I paid Mr. Hoyt about \$7,000 in cash, as Mr. Hoyt's share of our business.

Q. During the time you were in partnership did Salmon W. Hoyt clerk for you?

A. Yes; one year, from February, 1857, to February, 1858; the last year.

Q. What salary did he get?

A. We paid him \$800.

656 Q. Did he desire to have an interest in that partnership that year?

A. Yes, sir; the Fall of 1856—about that time—previous to February, 1857, Salmon left the business in which he was with Coykendall, and there was a desire expressed by him and his father that he should come in business with us; I objected from the very commencement for the reason that neither of us had much money, that our business was such that we required capital, and

there was an understanding between Mr. Hoyt and myself that whenever Mr. Marshall got ready to become a partner he had a right to do so ; he had money, and for that reason I objected to Salmon Hoyt coming in ; finally I agreed to let him come in with \$2,000 capital ; and as a compromise we paid him a \$800 a year salary ; I paid that to satisfy the family, and because his father desired him to come there ; we had no particular use for him even at that time. 657

Q. Do you recollect about the time that Nelson W. Hoyt was about to convey, or have conveyed, this property to his wife—this property in Grove street ?

A. No, I can't say that I do. 658

Q. Do you recollect any conversation with him in reference to that—that he intended to do it about the time it was done ?

A. No, sir ; I don't recollect ; I can't state that I ever had any conversation in regard to his intentions ; the only conversation I had with him about it was after it had been done.

Q. When was that conversation ?

A. That conversation was on board the steamship Roanoke between New York and New Orleans, between the 25th of June, 1862, and the 5th of July, 1862 ; he and I was on the steamship going to New Orleans together. 659

Q. What did he say to you in reference to that matter then ?

A. He told me on our way down ; he and I was talking about our business, and he told me his business affairs ; what they had done, and then he told me what he had done for ma ; that he had had a settlement with Salmon, and that he had had the stores corner of Grove and Wayne conveyed to her in her name. 660

Q. Did he ever speak of having had the one-half or undivided interest conveyed ?

A. No, sir ; he never talked about the undivided half or his interest ; he told me that he had a settlement with

Salmon, and that he had got the property put in her name, and deeded to her.

Q. Did you ever hear him talk about it at any other time?

- 661 A. We arrived in New Orleans, and in July, 1862, he came back to New York, and in 1863 he was sick—quite sick—and I used to sit up with him at night till 12 o'clock; he was suffering with rheumatism, and he then talked about his affairs, and said that he felt satisfied that he had had a settlement with Salmon, and he thought he would settle some more property on his wife; at this time—in 1863—he was expressing considerable dissatisfaction with Joe Hoyt, the partner in Jamestown;
- 662 he said that Joe was drawing too many drafts—speculating too much, and keeping them short in New York.

[Defendant's counsel objects to the relation of any conversation between the witness and Nelson Hoyt, and he wished that we could fix a place for him in New York, he expressed a dissatisfaction with the manner in which the business was being carried on, and also in regard to Joe's drawing so many drafts.]

663

Q. After Nelson W. Hoyt died what means of support had Mrs. Hoyt, and what did she do, if anything, for a livelihood?

- A. Well, when he died she was living at 217 Wayne street, and keeping boarders; she was keeping boarders before he died, and she continued to keep boarders after he died until she moved to live with me; my wife boarded with her until I returned here in 1865, and then we all lived with her.
- 664

Q. What did you pay her?

A. For my wife alone \$50 a month, and when I was there \$100 a month; she had also as boarders a young man by the name of Wilcox, and a young man by the name of Bitt; Bitt was a clerk in their store when Hoyt

was in New Orleans, and Wilcox was a clerk in the Irving Bank; we lived there until May, 1866, and then we moved around to where we now live, and she continued to keep boarders in the same house until the 1st of May, 1868; then she came with me—it was either 1868 or 1869. 665

Q. She continued to live with you ever since?

A. Ever since, and lives there now; I don't think she came there until the Spring of 1869; when she came to live with me she rented her house for the first year at \$1,200 a year; the second year I think she only got \$1,100; I think she rented the house for three years before it was sold.

Q. In what way has she used her income? 666

A. I don't know; she has loaned money out; she loaned her son John some money.

Q. Was not he and his family a large expense to her through his sickness?

A. The money that she loaned John was not for his expenses; she loaned him money to start business.

Q. Do you know how much she lent him?

A. I am not sure; I think it was \$1,800; it might have been \$2,000; I know I went out to settle up the affairs for her, and I think we got a mortgage on his property to secure her debt for \$2,000; we took the mortgage in her name for the amount of money she loaned him, and she has since foreclosed the mortgage and got the property. 667

Q. What have been your relations to Salmon W. Hoyt, socially and in business, from 1862 to 1865?

A. From '62 to '65 I saw him but very little; in '65, when I came on here, our friendship was very good; during that year I loaned him, at different times, considerable money, and consulted him and visited him, and called down at his store, &c., and I had him to pay out for me to Mr. Bumsted \$4,000 of money on my house during my absence in New Orleans, which I had placed in his hands when I left; that was between April, 1865, and October or November, 1865; I am inclined to think the 668

money transactions between us at that time was pretty large; I think I bought considerable butter of him during that time, and when I was in New Orleans he bought \$2,000 or \$3,000 worth of coffee and shipped it to me on

669 joint account; I think under all the circumstances our friendship was mutual; so far as I was concerned it was, and I suppose it was on his part; then up to 1868 I don't recollect any disturbance of any importance during that time; from '65 to '68, and in the Spring of '68 we were friendly; I recollect the fact of our belonging to the same club—the Third Ward Club—and I became a candidate in the Fall, and he assisted in my election during the Fall of 1868; during the Winter of 1869 I think

670 he urged me in regard to business he wanted me to look after in the Legislature; in the year 1870 we were not very good friends; in 1868 I had loaned him money which he said he wanted to pay on some lots down in Bayonne—\$2,000—that was in November before I went South; he paid me that back sometime in January; then in 1869 I was in the Legislature, and in 1870 we had a little flare up in regard to some political local measure in Jersey City, and we had no more communication of

671 any kind, neither one of us speaking to each other until about 21st day of January, 1871; at about half-past 2 o'clock in the afternoon he walked into the store in my office 134 Pearl street; he recognized me, and Salmon says: "I want some money." "Well" says I, "how much money?" He says, "I want \$2,000," and unless I am terribly mistaken that was the first conversation that had passed between us in a year; that was in January, I gave him my check for \$2,000; I didn't ask him

672 when he wanted to pay it; shortly after that they sent me a note for \$2,000 payable sixty days after date; in March, about the time this note came due, his partner came over to my office and he says: "Don't you want to discount a note?" I says, "I don't want to discount anything." I says "If you have anything to sell I will buy it," and he handed me a note for \$2,000 from some parties in Ohio, and he said he wanted to sell me that

note; I says, "You will endorse it?" He says, "Certainly." I handed the note to my book-keeper, and I says, "What is the discount on that note?" He figured it up, and I added something to it, and I told him I would give him that amount for the note; finally he took it, and I gave him my check for the amount. 673

[The foregoing testimony is all objected to by defendant's counsel.]

Our friendship was renewed in that way, by his borrowing money.

Q. Is there any reason, as far as you know, why he should charge you with making this difficulty between himself and his mother? 674

A. There is nothing in the world except to shield himself before the public; his mother knows it and he knows it; he told me in October, 1872, that he believed that what he had charged me with sometime before that was not true; that he laid it to his sister, my wife; when he and I were in friendship he would talk friendly to me and refuse to talk to my wife, and I stopped driving past the house with my wife. 675

Q. Did you have any conversation with Salmon W. Hoyt in reference to the receipt of the rents of these stores by his mother, or in reference to parties to whom they were renting?

A. No; I don't know that I ever talked to Sam about her receiving the rents—no, I never heard of any difficulty; I understood she got her money, and that was all there was of it.

Q. Did he ever make any complaint to you about her renting them to one person and not another? 676

A. Yes, sir; he did.

Q. What did he say about that?

A. He said that he thought that ma was making a great mistake in letting her store to McCoy, because he didn't know anything about his business, and the cor

ner was running down ; that he wasn't fit to keep a grocery-store, and she ought to have somebody else there.

Q. When did he talk to you in that way ?

677 A. That conversation was had when we were driving in his buggy ; it was after the 2d of October, 1873, during the month of October, 1873.

Q. Did he claim then to have any interest in the renting of the stores himself ?

678 A. None whatever—never did—he always called them ma's stores ; he never claimed anything till he came there that night, or just a few days before that he told me he was going to hold those stores under his deed. I told Sam. about that time that I didn't believe he wanted to rent the stores himself, and he said he did. Then I told him I was satisfied that his mother wouldn't let him have it.

Q. He wanted to rent them himself ?

679 A. He claimed that he did—he told me that he would take them. At this time Hoyt was finding fault with Joe on the same ground that his father did ; it was very nice for Joe to be at Jamestown and keep drawing drafts and have him here selling butter to pay his drafts, and he was getting tired of it. He threatened then to dissolve the partnership with Joe, and I told him I didn't think he would do it ; that was the substance of the conversation.

OCTOBER 5th, 1875.

680 ALEXANDER M. C. SMITH, a witness, produced on the part of the complainant, being sworn, says :

I reside in Elizabeth, N. J., temporarily ; I am an Internal Revenue Agent ; I was at one time a student in the law office of Boyes & Cooper ; John B. Perry occupied the office ; that was in 1859 and 1860 ; their office was at 31 and 33 Pine street, New York.

Witness being shown the deeds marked Exhibits D 11 and D 12, says : These deeds are in my handwriting, that is the written part ; I know I copied them ; Mr. Perry directed me to draw them. They were drawn in the office in which I was a student, some time during the year 1860 ; Mr. Perry must have furnished me with the memorandum ; I don't know whether the deeds were compared with any other deeds or paper ; it was the habit of the office to compare all papers. 681

[Part of the answer objected to.]

Boyes & Cooper were practising lawyers, and Mr. Perry was in the office practicing ; I think that was the first business he had. 682

*And being cross-examined by Mr. Brinkerhoff :*

Q. Have you any recollection of the circumstances attending the drawing of these deeds ?

A. I have a recollection of drawing those deeds, and my impression is that Mr. Perry gave me the deeds to make out copies. I copied the deeds ; I think it must have been from old deeds ; I can't say what deeds they were, but I am sure they were deeds ; I can't say how many I drew for him ; I did not draw any deeds for the Hoyt's, except the two, to my remembrance, and these are they ? 683

A. I copied all the written parts of the deeds Exhibits D 11 and D 12, except the acknowledgment and the certificate of recording, and the date on the back. I could not tell you whether they were correct copies of other deeds ; I imagine they were ; I could not draw deeds when I was a student. I wish to be understood that I drew all the written parts of the deeds, with the exceptions I have named, and except the word "Thirtieth," in the first line, first page of D 12 ; of this there can be no mistake. 684

Q. Have you carefully compared every written word of the deeds to see if you copied them?

A. I have not.

685 [Counsel for defendant requests him to look and ascertain, except the words "Dower, right of dower," and the pronoun "his," on second page.]

Q. I have now read the written part of these two deeds, and with the exceptions made, they are in my handwriting?

686 A. I don't think I wish to make any other exceptions; the rest of them were copied, word for word, from some other deed. I am sure I copied the names of the grantors and grantees from the other deeds, and also their places of residence; I could not say as to the purchase money; I can't recollect as to that; I do not know from what deeds these two deeds were copied; I do not know who caused these deeds to be drawn; I can't say whether John B. Perry or any other attorney drew the deeds from which they were copied; I don't know what colored paper the deeds were written on; I would not recognize the deeds if I saw them, on account of lapse of time; my memory has been refreshed in regard to them; 687 John B. Perry showed me either one or two deeds; I think it was some time this summer, or during the present year, that John B. Perry showed me one or both deeds. He did not tell me he was employed in this case at the time he showed it to me; he did not try to get me to recollect something I could not recollect, when he talked to me about the matter.

688 The names in these deeds must have been spelled in the other deeds the same as in these, or I shouldn't have spelled them so; I can't be positive; I couldn't say if the names Nelson W. Hoyt and Maliscent Hoyt were named as grantors in the deed from which I copied this. When I said this deed was an exact copy from the other deeds, I ought to have qualified my answer by saying

that I drew it the same, except where I was directed by Mr. Perry to draw it different. I don't think I recollect anything more than I have told you; I don't know that I know Nelson Hoyt; I can't say that I have known Salmon W. Hoyt, not that I have any recollection of; I can't say that I have any recollection of Salmon W. Hoyt ever having been in the office of John B. Perry or Boyes & Cooper. I have always considered New York City my home; I left New York in April, 1874; I have not voted since that time; I have not registered my name at any polling place; I am a married man; my family are at Elizabeth. My business calls me away through New York and Missouri; I have been off and on in Ohio latterly; I came East this time to testify in this case, at the request of Mr. Perry and Mr. Bevans; there seemed to be a copartnership between them, both and requested me to come; Mr. Perry wrote first to me to come, and Mr. Bevans wrote afterwards.

689

690

Q. Was the letter written by Perry and Bevans in the name of the firm?

691

A. No, sir; nothing was the inducement for my coming on; I have not demanded, nor do I expect to demand, any thing for my services except what I would charge the U. S. Government for traveling the same distance. I don't know if Salmon W. Hoyt or Nelson Hoyt, or any of the Hoyt's requested these deeds to be drawn.

I made the remark as to the partnership without intending it as evidence; I don't know of any partnership between them; I meant they had wrote me to come; Mr. Perry wrote first. When Mr. Bevans wrote to me the first time he did not offer to pay my expenses; in the last letter he offered to pay my expenses. I was admitted as an attorney in New York City, but did not

692

practice, except drawing affidavits or something like that;  
I was too lazy to practice.

A. M. C. SMITH, Jr.

693

Taken, sworn to, and subscribed this }  
5th day of October, A. D. 1875, }  
at Jersey City, before me,

ISAAC ROMAINÉ,  
*Master in Chancery.*

694

DECEMBER 9th, 1875.

Before ISAAC ROMAINÉ, Esq., *Master in Chancery.*

SIDNEY B. BEVANS, being called and sworn, says:

*Cross-examination by Mr. Brinkerhoff:*

695 Q. Mr. Bevans, did you ever search the records of Hudson County in order to ascertain whether the Wayne street property had been placed in the name of Salmon W. Hoyt, or in the name of Mrs. Hoyt, the complainant?

A. I never did. You mean old Mrs. Hoyt.

Q. Yes?

A. No, sir; I never did.

Q. Did you ever search the records for any purpose relative to any property held by Salmon or by Mrs. Hoyt?

696 A. I never searched the records in reference to any property owned by Salmon previous to 1874.

Q. Have you since made or had a search made against the property of Salmon W. Hoyt?

A. Since 1874.

Q. Yes?

A. I had a search made.

Q. By whom?

A. By the Register.

Q. Where is that search?

A. It is in the hands of Mrs. Hoyt's counsel.

Q. Will you produce it?

A. He will, I suppose.

Q. Will you produce it?

697

A. It is in his hands. I say I had the property searched; we had the property searched in the year 1875, at the request of Mrs. Hoyt's counsel, and the result of that search was placed in the counsel's hands.

Q. You say that the search made since 1874 is in the hands of Mr. Linn.

A. It was placed in the hands of Mr. Linn, Mrs. Hoyt's counsel.

Q. Will you produce that search?

698

A. That is not for me to say.

Q. Answer the question; say yes or no?

A. I am willing to have it produced.

Q. Will you produce it?

A. I will produce it if Mr. Linn allows me.

Q. For what purpose was that search made?

A. It was made to ascertain whether the statement of Salmon W. Hoyt, before the Master in Chancery, was correct in regard to his property.

699

Q. In what respect did you find it different?

A. Different from his statement?

Q. Yes, sir?

A. I have a right to look at the memorandum, I suppose.

Q. Yes?

A. He testified that in 1860 he was worth about \$25,000, and then he was asked what it consisted of to make the amount of \$25,000, and he gave a list of his property; the valuation of his property that he owned.

700

Q. Wherein did you find that statement incorrect?

A. He testified that in 1860 he owned a house and lot, No. 221 Wayne street, worth \$10,000, and at that time there was no house there, it was a vacant lot; there was no house on that lot until 1863 or 1864, the latter part of 1863,

Q. When it was put on by whom on that lot in 1863?

A. The house was built by Bumsted & Co.

Q. For Salmon W. Hoyt?

A. I suppose so for him; in the latter part of 1863  
701 and the fore part of 1864 the house was put on that lot. I find that his property on the corner of Grove and Mercer street, which he valued at \$8,000, was sold in 1866 for \$5,000, and there was a mortgage on that of \$3,000.

Q. And this you ascertained simply from the deed?

A. I ascertained this from the search of deeds and records; from the records of the deeds and the record of the mortgage, and from the fact of Salmon Hoyt having told me himself that he sold it to John Morrow for \$5,000, and that John Morrow told me he bought it of  
702 Salmon Hoyt for \$5,000; in other words, Hoyt told me that he had sold it for \$5,000, and I ascertained that to be correct from John Morrow.

Q. Was there anything else incorrect in his statement?

A. So far as his property in 1860 was concerned that is about all—with the exception of a lot—I described that. Then he again made a statement of what he was worth in 1870, and he included in that the lot of property in Bayonne, which he bought of a lady, or some person  
703 by the name of Smith, for \$3,105, on which there was a mortgage of \$2,000.

Q. Do you know whether that mortgage was paid at that time?

A. When he bought the property?

Q. Do you know whether the mortgage was paid or not?

A. I am speaking now of 1869 and 1870.

Q. Do you know whether the mortgage was paid or not at any time?

A. The record will show.  
704

Q. I am asking you if you know yourself?

A. It was not paid at the time.

Q. How do you know that?

A. From Salmon's own statement. In the latter part of January, 1868, or 1869, or in 1863, I loaned him

the money, and he paid the difference between the \$3,105 and the mortgage of \$2,000.

Q. Do you know whether that mortgage has since been paid?

A. I don't know anything about that; I know at 705 that time it was not.

Q. You don't know that within one week after the purchase the mortgage was not paid?

A. I know it was not; Salmon took me down in a buggy in 1872, to show me the property (referring to memorandum).

Q. What memorandum is that you are looking at?

A. It is simply a memorandum of dates which I am looking at; he told me in 1872 that he owned that 706 property on the corner in Bayonne, with the exception of a \$2,000 mortgage.

Q. Is there any other discrepancy in regard to his statement?

A. Not that I know of.

Q. Do you know whether Salmon W. Hoyt was or was not worth at the time named \$25,000?

A. No, he was not; I know it from his own statement.

Q. Is that the only way you know it?

707

A. I know that, from the statement of affairs before he went into business with N. W. Hoyt—I know from the abstract taken from the books of N. W. Hoyt, and the profits at the end of the year—you are referring to 1860?

Q. Yes; George McLaughlin is dead, is he not?

A. Yes, sir.

Q. When did he die?

708

A. Old George McLaughlin died about a year ago, I think (he is dead.)

Q. When was it that you came to New York from Sussex County?

A. I arrived in New York from Port Jarvis—I lived there two years before coming to New York—on the 25th of January, 1855.

Q. With what means?

A. \$480; I then had \$20 sent to me, making \$500, on the 1st day of February, 1855.

709 Q. On reaching New York what did you do?

A. I entered into partnership, or agreed to enter into partnership with Nelson W. Hoyt, on the 1st day of February, 1865.

Q. What kind of business?

A. We called it the butter business; it was produce commission business.

Q. How much capital was in the business at that time?

710 A. \$500 a piece on the 1st day of February.

Q. You put in \$500?

A. I did.

Q. And you continued with him how long?

A. For three years exactly.

Q. And he put in \$500?

A. He did.

Q. During that time the capital in the business was increased to what amount?

711 A. About \$17,000.

Q. And you made it all in that business during the three years?

A. We did sir.

Q. It was a prosperous business?

A. To that extent it was.

Q. At the expiration of three years was any one added to the firm?

712 A. No, sir; at the expiration of the three years we dissolved.

Q. What business did you then go into?

A. I continued in the same business with our former bookkeeper, James Marshall.

Q. Where did you go to carry on the business?

A. 181 Reade Street.

Q. Next door to the old concern?

A. There was two doors between us—the number

may be incorrect—there was two doors between my old place of business and my new place.

Q. You went into business in opposition to the old gentleman?

A. In opposition to no one, sir; only on my own account.

713

Q. Did you not send out circulars stating that you were continuing the business under the name of Bevens & Marshall, and send those circulars to the customers of Nelson W. Hoyt?

A. The first firm was Hoyt & Bevens—no, sir; I did not send out circulars reading in that way.

Q. How did they read?

A. I know we never sent out circulars reading any such way.

Q. Didn't you send out circulars to your old customers to say that, you would continue the business under the name of Bevens & Marshall?

714

A. My recollection of the circular would be, that it stated that, having dissolved partnership with the firm of Hoyt & Bevens, I had this day formed a partnership with Mr. Marshall, where we should continue the business at No. so and so; that is my recollection of the circular.

Q. And those circulars were sent to the old customers of Hoyt & Bevens, were they not?

715

A. They were sent to whoever we saw fit to send them to; I have no doubt I sent them to all my customers; I had the principal part of the customers when I went into the business; about the only custom they had was from Joel I. Hoyt in Jamestown, Chatauque Co., N. Y.—the balance was made up by myself and a Mr. Baker.

Q. At that time a bad feeling existed between you and your father-in-law?

A. Not in the least degree.

716

Q. Didn't your father-in-law express a dissatisfaction at your going into business in opposition to him?

A. Never in his life—never to me; on the contrary he and I would advise together—we were only two docrs

apart, and we would see each other every day and advise together in regard to the price paid for butter.

Q. How much money did you draw from the firm of Hoyt & Bevans when you went out from the concern?

717 A. I drew about \$10,000, as near as I can recollect now.

Q. That was your profit for the three years?

A. Bevans & Marshall, the new firm, settled up the affairs of Hoyt & Bevans, and whenever we collected money I would take my proportion; what I realized from the late firm of Hoyt & Bevans was about \$10,000.

Q. After taking out your living expenses up to that time?

A. Up to that time; yes, sir.

Q. How much money had you drawn, about, each year?

A. I couldn't tell you that.

Q. About how much?

A. I wouldn't pretend to tell; I paid my living expenses, and that was all.

Q. That would be not less than three or four thousand dollars?

719 A. I never spent that.

Q. Two thousand dollars?

A. The first year I took out \$540.

Q. Did you ever resume business with N. W. Hoyt, after being connected with the firm of Bevans & Marshall?

A. No, sir.

Q. How long did you continue in the firm of Bevans & Marshall?

720 A. From the 1st of February, 1858, until some time in May or June, 1865.

Q. Then it was in 1858 that you dissolved with Nelson W. Hoyt?

A. The 1st day of February, 1858, our dissolution took effect.

Q. What was the cause of the dissolution?

A. A disposition on the part of Salmon W. Hoyt to become a member of the firm of Hoyt & Bevans.

Q. The old gentleman insisting that he should become a member?

A. The old gentleman was desirous that he should become a member of the firm in 1857, and I refused. 721

Q. And didn't you have any words with N. W. Hoyt at that time?

A. No, sir; we agreed to dissolve on the 29th of January 1857; I gave him until the next morning to decide, and after that he had a talk with me, and on the morning of the day before we were to dissolve he offered to compromise—if I would consent to take Salmon in as a clerk, at a salary of \$800. He being my father-in-law, and we being on good terms, I consented to the proposition. 722

Q. Do you know what means Salmon had in the year 1867 and 1868?

A. The difficulty about Salmon not coming into the business—the reason I wouldn't consent was because he hadn't money to put in.

Q. How much capital did your business require while you were in the firm of Hoyt & Bevans? 723

A. The business that we were in required all the money we could get, if it was \$100,000; the amount of business that we could do depended on our capital.

Q. While you were a member of the firm of Hoyt & Bevans where did you live?

A. For two years I lived with N. W. Hoyt; I boarded with him in Wayne street.

Q. The husband of the complainant?

A. Yes, sir.

Q. She was then keeping boarders? 724

A. She kept boarders; the first year I was unmarried, the second year I was married to his daughter.

Q. Did you pay board during the whole time that you were there?

A. I did, sir.

Q. Didn't she for a while support you and your wife and John Hoyt?

725 A. Never in her life; the first year, I paid Hoyt & Coykendall and got their receipt—that was before I was married—the next year I paid her.

Q. Havn't you always found Mrs. Hoyt a very prudent woman in the expenditure of money?

A. Mrs. Hoyt was a very good liver; she kept a very fine table—never extravagant in dress, but lived well—a good place to board.

Q. Was she extravagant?

726 A. My impressions are that under the circumstances which they were living in at that time, the first year I was with them, she was extravagant according to their means, because when I went with them they were worth but little.

Q. That is in 1855.

A. The year 1855.

Q. They were penniless?

A. They were worth but very little—had to borrow a part of that \$500, and they paid it back in the next six months.

727 Q. Did N. W. Hoyt become unfortunate in business and lose money?

A. Never to my knowledge—not during my partnership with him.

Q. How long did you continue to live with Mrs. Hoyt in Wyne Street?

728 A. I went there on the 25th day of January, 1855; I staid there—I was married in June, 1856, and I remained there until some time in 1857; I can't tell exactly.

Q. Where did you go then?

A. I wen then living on Jay Street with Mrs. James Wickham.

Q. And remained there how long?

A. I am inclined to think we remained there about a year.

Q. Then you went where?

A. I went to Mrs. Wickham's, I think, shortly after February, 1857—shortly after we dissolved; I went then to Carroll Place or Bleecker Street—no, I didn't go to Carroll Place; I went from Mrs. Wickham's to Beach Street, and lived with a lady by the name of Mrs. Bonham, and I lived there one year. 729

Q. And from there?

A. From there—she sold out her house and Mr. Bunker came there and we lived with him one year, and then left him and went to the corner of Varick and Laight, and staid there with Mrs. Oliver one year; then I went back to Bunkers and staid another year—part of a year rather; then I rented a furnished house in 25th Street and lived there until 1862, and in June, 1862, I left for New Orleans. 730

Q. Where did your family remain while you were at New Orleans in 1862 and 1863?

A. We left on the 25th of June; my wife remained in the house in 25th Street for some time, I can't exactly tell how long, then she gave up the house to Mrs. Marshall and she came to Jersey City to live with her mother.

Q. And continued to live there until when? 731

A. She lived in Wayne Street—she staid with her mother—went there in July and staid until about the 1st of October, 1862, and then came to New Orleans and joined me in October, 1862.

Q. When did you return from New Orleans with your wife?

A. My wife returned from New Orleans in the Spring of 1863, in April, and she again went to her mother and lived there until October, 1863; I came home in July and in October I returned again to New Orleans with her; she returned again from New Orleans about the 1st day of June, 1864—must have arrived here about the 11th of June, 1864; then she went to her mother's again in Wayne Street—that would be in June, 1864. 732

Q. How long did she remain with her mother?

A. She remained there from June, 1864, until April or May, 1866.

Q. Where did she go then?

733 A. She then moved to the house where we now live, 284 Montgomery street.

Q. How long after you moved to your present house was it that your mother-in-law came to live with you?

A. We moved there in April or May, 1864; Mrs. Hoyt came to live with us in the Spring of 1869, about the 1st of May, 1869.

Q. What induced her to go to live with you?

A. To save expense as I understood it.

Q. Did she so express herself at the time?

734 A. Yes; she got tired of living alone 'round there—she came to me and wanted to know what I would charge her for board; I said I wouldn't charge her anything.

Q. Was it not your wife that induced your mother-in-law to live with you? Didn't your wife send to her and invite her to come and live with her?

A. Never.

Q. Were you on friendly terms with her?

735 A. In 1869, very.

Q. Hadn't Mrs. Hoyt at that time accused you of abusing your wife?

A. Not that I remember of.

Q. Didn't Mrs. Hoyt come to your house to live to protect her daughter, your wife, from your abuse?

A. No, sir; it is a falshool from beginning to end, and the man who go it up knows it is so, and you know it is so.

736 Q. Didn't she so state at that time?

A. No, sir: she did not.

Q. Hadn't your wife at that time stated that you had abused her?

A. I don't think she did, I never heard it.

Q. Hadn't your wife sent word to some of your relatives that, it was necessary for some one to be there to protect her from your abuse?

A. No, sir; that is a falsehood, and there is only one man capable of uttering it in this country.

Q. Didn't you have any trouble while you were boarding at Wickham's with your wife?

A. I don't remember that I had.

737

Q. Did you have any trouble with Nelson W. Hoyt, your wife's father, relative to your abusing your wife while boarding at Wickham's?

A. Not according to my recollection; I never had.

Q. Didn't he accuse you at that time of maltreating your wife?

A. I don't remember that he did, and I don't believe he did, because we were on friendly terms.

Q. Didn't you have trouble with your wife at the time of boarding at Mrs. Bunker's?

738

A. Mr. Bunker's—I don't remember; she can tell you all about it.

Q. Do you know whether you had any trouble at that time?

A. I don't recollect it.

Q. While living at Mr. Bunker's did not Nelson W. Hoyt have trouble with you because of your abusing your wife?

739

A. I don't think that he did.

Q. Didn't he tell you at that time that information had been received by him that you had kicked her out of bed while you were living at Mr. Bunkers?

A. No, sir; he never told me that in his life.

Q. Didn't Mrs. Bunker go to Nelson W. Hoyt, in Reade street, and complain to him of your abusing your wife, and that he must come up and protect her?

A. I don't think he did; I never heard of it.

740

Q. Did not Nelson W. Hoyt, at the time you lived at Mr. Bunker's threaten to thrash you because of your wife?

A. Never in his life, nor none of the family threatened to thrash me.

Q. Didn't he threaten to thrash you if you did not desist from your abuse of your wife?

A. Never in his life ; nor none of the family.

Q. Have you any recollection of Nelson W. Hoyt speaking to you of abusing his daughter, your wife ?

741 A. No, sir, I don't recollect anything about it ; I don't believe it is so.

Q. Did you ever have any conversation with Mrs. Hoyt relative to your abuse of her daughter, your wife ?

A. When ?

Q. At any time ?

742 A. If I will be allowed to explain—if the counsel wants to go into that—I am perfectly willing to answer all those questions, and the answer in regard to that question would be this : That this man Salmon W. Hoyt, in 1866 or 1867—so my wife tells me—informed her—

[Objected to.]

Q. Did you have any trouble with Nelson W. Hoyt while you were in New Orleans ?

A. Never.

743 Q. Did you not complain of him to the military authorities as being a rebel ?

A. No, sir ; it is as false as hell, and nobody but a scoundrel would make such a report as that.

Q. Was he not arrested ?

A. He never was arrested.

Q. Never confined in the military prison ?

A. Never was confined in the military prison.

Q. He was never under arrest in New Orleans by the military ?

744 A. Never ; a man named Charles Schaun complained to Colonel French, Provost Marshal General in the Department of the Gulf, that Mr. Hoyt—Nelson W.—had used disloyal and seditious language against a loyal citizen, and Col. French asked him who his witnesses would be, and he told him it would be myself, his son-in-law ; On that statement Col. French sent his orderlies down to Mr. Hoyt's place, at the store of G. L. Dalston &

Son ; Mr. Hoyt at once sent word to me that he wanted to see me ; I was about three blocks below, in business, and I went up there ; he told me that two men from Col. French's office had been there, and that Col. French had sent for him ; I asked the orderly what he was arrested for, and they told me, and said that Mr. Hoyt would have to appear before Col. French ; Mr. Hoyt wanted me to go along with him, so I came along and walked up to the City Hall, about three blocks and a half, and on the way up I took the order out of the orderly's hands and read it ; when I got to the City Hall there was a large number of people in the waiting room to see Col. French, and I told Mr. Hoyt to remain there until I came down, I would go and see what the difficulty was, and fix it ; I think that must have been in July or August, right in the heat of summer ; Hoyt and the orderlies and I went from there directly across the street, to the Provost Marshal's headquarters, in a house owned by Mr. Whitehead, Cuthbert Bullis' father-in-law—as handsome a house as the one I now live in.

745

746

[Objected to.]

747

I went up and seen Col. French, and he showed me what Mr. Schaun had reported ; I said that is true, but there was a bad feeling between Mr. Schaun and Mr. Hoyt, and I would be responsible for Mr. Hoyt in the future ; he said, "if you will be responsible for Mr. Hoyt, that will do," and he wrote on the back of the order, "Dismissed until further notice." I went down to the Whiting House, and there in the parlor Mr. Hoyt sat smoking a cigar with the orderlies, talking and chatting ; that is the last of it.

748

Q. Did not Nelson W. Hoyt accuse you of being the party who brought about the arrest ?

A. Never ; he kept his account with me.

Q. Did you remain friendly with him after his arrest ?

A. Always until the day of his death ; he wrote me

letters from Jersey City ; the last letter he ever signed with his own hand he wrote to me.

- Q. Did he not accuse you of riding out with unchaste women in New Orleans ?
- 749 A. No, sir ; that is a story got up by Salmon Hoyt.
- Q. Do you know the firm of Davis & Schaun ?
- A. I do.
- Q. What was the standing of these gentlemen in New Orleans.
- A. Standing as to what ?
- Q. Responsibility in business circles generally ?
- A. Well, sir, at that time they were considered very well off—very heavy speculators.
- 750 Q. Was their reputation good as business men ?
- A. Yes, as business men.
- Q. Have you seen Mr. Schaun since you returned.
- A. Never but once.
- Q. When was that ?
- A. In 1870, I think it was.
- Q. Where did you see him ?
- A. I seen him then in John C. Dimmock's office.
- Q. Under waat circumstances did you see him in Dim-
- 751 mock's office ?
- A. That was immediately after the Demcratic convention when Salmon Hoyt got Wm. C. Traphagen and Startup to make a charge against me in the convention.
- Q. How do you know that Wm. C. Traphagen and Mr. Startup made accusations against you ?
- A. I am satisfied that he was one of the two that did it.
- Q. Did you ever have any conversation with Wm. C. Traphagen upon that subject ?
- 752 A. Nothing more than that, when I went there he wouldn't give me any information on that subject. Startup said he was one of the men who said I was the cause of my father-in-law being locked up in New Orleans.
- Q. This was an accusation made before the whole Democratic convention ?
- A. Yes, sir.

Q. Then you have no direct knowledge of any part that Salmon took in getting up any such accusation.

A. Nothing but general remarks of outside people who heard him talk.

Q. Do you know that Traphagen ever received any information from Salmon Hoyt upon that subject? 753

A. I can't say only from what Traphagen told me in regard to that; he told me that he afterwards found out that it was a cowardly piece of work to injure me in that way, and he was very sorry he had done it, and he wrote me a letter saying he was sorry.

Q. Was it not the common report in Jersey City that you were instrumental in procuring your father-in-law's arrest? 754

A. I didn't hear from anybody until I heard it from Mr. Startup.

Q. At the time that Schaun and you were in the office of Mr. Dimmock did you not produce an affidavit and ask him to swear to it?

A. I never did.

Q. Didn't you produce an affidavit and offer him some money if he would swear to it?

A. No, sir, I never did—I mean I did not offer him any consideration to sign it; there might have been an affidavit produced. 755

Q. Did you not offer to give him a consideration to sign it?

A. Nothing more perhaps than to pay his expenses, and he refused to sign it for his expenses. Mr. Dimmock told me that Schaun was inclined to make money—I had no conversation with Schaun in regard to this matter at all. Dimmock said that he was satisfied that Schaun wanted to make money out of it. 756

Q. Was not the affidavit for the purpose of satisfying your father-in-law that you did not cause his arrest, or was it not for the purpose of satisfying your wife or your mother-in-law upon that point?

A. No, sir, she never believed it, and Hoyt was dead.

Q. Then you were good friends with Mrs. Hoyt all the while?

A. Yes, sir.

Q. Have you been on unfriendly terms with her?

757 A. That may have been; some sharp snaps in consequence of what Salmon Hoyt told them—accusing me of running after other women.

Q. Were you not bad friends with Mrs. Hoyt at any time during the time from 1862 to 1869?

A. No, sir.

Q. Didn't you ever put Mrs. Hoyt out of your house?

A. No, sir.

Q. Didn't you ever order her out of the house?

758 A. I may have told her that I didn't want her to come there accusing me of things that Salmon Hoyt had reported.

Q. Was she not at that time a member of your family—in 1869—and was it not in 1869 that George McLaughlin said you were keeping a servant girl while you were a member of the Legislature in Trenton of the State Street House?

A. Salmon Hoyt reported it—the old lady said that Salmon Hoyt told her so.

759 Q. Didn't you accuse George McLaughlin of saying so?

A. She said that George McLaughlin told Salmon that; then I went to George McLaughlin and he said that the man who said that was a damned lying son of a bitch.

Q. Weren't you and George McLaughlin bad friends at the time of his death, from 1869?

A. Yes, I think we were not friendly.

Q. It was brought about by reason of this report?

A. No, sir, not a bit of it.

760 Q. Were you and Mrs. Hoyt bad friends at any time in 1869?

A. There might have been—there was a day or two at the time when there was troubles about other women.

Q. Didn't you order Mrs. Hoyt out of your house after she had become a member of your family?

A. I don't remember that I did.

Q. Didn't you ever put her out of your house?

A. Never.

Q. Didn't your wife ever order or put her out of the house?

A. I don't know anything about it—I don't know that she did. 761

Q. Wasn't Mrs. Hoyt put out of your house by either you or your wife, and wasn't she compelled to go to Salmon's house for protection?

A. Not to my knowledge—I don't believe it was so.

Q. And didn't Mrs. Hoyt come back to your house and say, that she would remain if you would conduct yourself properly?

A. Never to me.

Q. Didn't you promise Salmon to do better? 762

A. No, sir; I wouldn't promise anything to a man like him; I threatened to put him out of my house one night.

Q. Didn't Salmon Hoyt, while you were sick stay by you and care for you, night after night?

A. Never in his life; that is false.

Q. Didn't he remain with you during your sickness?

A. Never sat up with me and he never done anything for me—that is false; for a few days I don't remember 763

who was there, and he might have been there in the evenings to see how I was, that is possible; but he was never there to stay all night; I know he never did set up with me, except he would come in to see how I was, and never did anything for me; he has said he wished I was out of the way, although that was not the feeling at that time; a man that manufactured such lies as he has, would do anything.

Q. Does he owe you anything now?

A. He don't owe me anything now. 764

Q. You have borrowed money from him from time to time?

A. Not a dollar.

A. Never exchanged checks?

A. I exchanged checks with him once, when he owed me \$700, in October, 1873, and I did that for the pur-

pose of getting my money from him ; from 1863 to 1873 I lent him money.

Q. You borrowed money from Mrs. Hoyt?

765 A. I borrowed money from Mrs. Hoyt and paid her back?

Q. Do you owe her money now?

A. Not a cent ; I paid her everything I owed her ; so far as money is concerned I kept the Hoyts from bankruptcy.

Q. She is still boarding with you?

A. She is ; yes.

Q. She has no person depending on her for support?

766 A. She has her sons, John's wife and his wife's child, in consequence of Salmon W. Hoyt cheating them out of the estate—all the money that they should have from the father's estate.

Q. How much have you cheated the estate out of?

A. Not a cent.

Q. Because you had not an opportunity?

767 A. That is none of your business ; I never have had a cent of the estate money ; Salmon W. and Joel kept it all.

Q. Have you not some money that you collected from a judgment recovered where the Bank of Jersey City was a party to the suit?

A. That didn't belong to the estate ; that belonged to the old lady ; I paid her part of it back.

Q. How much was that?

A. I recovered \$2,500—that was the gross amount.

Q. How much have you paid back?

768 A. I owe her some small balance on that.

Q. About how much?

A. From \$300 to \$900 ; I probably owe her about \$700 or \$800 on that judgment—that judgment has never been settled because I was attending to some business for her out west.

Q. What business out west?

A. Some property she got thrown on her hands

through the trouble with loaning money to her son John.

Q. What relation has that property to the recovered judgment money?

A. Nothing; she can get it when she wants it; she has never asked me for it lately. 769

Q. Who owns the house in Wayne street now?

A. My wife always owned from the time it was bought.

Q. Did she buy it at the master's sale?

A. No; Thomas P. Decker bought it at the sheriff's sale; it was sold by the sheriff.

Q. It was a master's sale in partition?

A. It was a foreclosure by the sheriff. 770

Q. Did you not bid against Mrs. Hoyt at that sale?

A. I bid the property up to \$7,000 against Mrs. Hoyt.

Q. Mrs. Hoyt did bid at that sale?

A. She didn't bid at all; Jonathan Dixon did.

Q. He was her solicitor?

A. I suppose he was.

Q. To whom was it knocked down?

A. I bid the house up to \$7,000 or \$8,000, then Decker bid it up and it was knocked off at about \$10,000. 771

Q. Was Decker there at your instance?

A. He was; my wife was desirous of having something from her father's estate.

Q. How much was that property actually worth at the time of the sale?

A. I don't know.

Q. About how much?

A. I know Jonathan Dixon bid within \$50 of what Mr. Decker bought it at. 772

Q. It was knocked down to Mr. Decker for how much?

A. It was ten thousand some hundreds and fifty dollars—I think it was \$50 more than Jonathan Dixon bid.

- Q. It was not less than \$10,000?
- A. No, sir.
- Q. It was worth about \$12,000—not more than that?
- A. I think it was sold for all it was worth.
- 773 Q. How much mortgage was there on it?
- A. The \$10,000 included the mortgage, that would make it \$13,000—no, the amount bid, \$10,000, included all incumbrances—the amount it was knocked off at included all incumbrances.
- Q. From whom was that property purchased by Nelson W. Hoyt?
- A. That property came from the Bumsteads to Nelson W. Hoyt.
- 774 Q. What year was that—1850 something, was it not?
- A. It was about 1861 or 1862; I think Hoyt moved into it in the Spring of 1862.
- Q. Who owned it previous to that time?
- A. He moved into it when it was completed; Hoyt and Bumstead made an exchange in regard to some lots; Bumstead was building these houses and Hoyt owned a lot adjoining Bumstead, and Hoyt turned his house over for the house and lot—that was I think in 1862.
- 775 Q. Nelson W. Hoyt held the fee of that property during his lifetime?
- A. He did.
- Q. How much interest was paid on that mortgage at the time of the sale?
- A. The interest on \$3,000 would be \$210. That foreclosure was brought about at the instance of Salmon, in order that he might control it, and by having the house sold he set up a job to buy it in.
- 776 Q. Instead of you setting up a job to buy it yourself?
- A. Instead of that I went there and had it bought for my wife.
- Q. He had a right to bid at that sale?
- A. Well, I suppose so. Yes; I don't know. I am not a lawyer.
- Q. Did he bid at that sale?
- A. I don't remember.

Q. What is your present business ?

A. I am a cotton speculator ; all the business I have done since 1868 has been cotton speculation.

Q. Give the exact language of Nelson W. Hoyt when upon the steamer Roanoake, on the way to New Orleans, regarding this property ? 777

A. This property disputed between her and Salmon ?

Q. Simply state the conversation.

A. I have a right to explain. On the steamer Roanoake, going from New York to New Orleans, in June, 1862, Mr. Hoyt and I were talking about our private business, and I told him that I had made my will, and told him the provisions of my will, and told him what I had done for my wife, and how I had fixed my property ; at that time I was possessed of personal property, and he felt pleased to think that I had fixed it in that way. Then he told me what he had done for his wife. 778

Q. You must answer the question ; give the conversation ?

A. He said what he had done for his wife. He said, " Sid, you know that Salmon and Joel didn't put but little money in the store, and all the money we done business with for a while, most of it was my own ; I have effected a settlement with Salmon and got the store property in ma's name—deeded to ma in her own name." 779

Q. Those were his words ?

A. He had settled with Salmon and got the stores himself, and then had them conveyed to his wife for her support and her children.

Q. Those were his exact words ?

A. As near as I can recollect them.

Q. Is that all he said on that subject at that time. I mean upon the subject of that conveyance ? 780

A. He said he had a settlement with Salmon.

Q. Are you sure he used those words ?

A. He said he had a settlement with Salmon and had got the property himself, and then had deeded it in his wife's name, so that she could support herself and her son John and his daughter.

Q. Did he say that he had placed his property in the name of his wife?

A. He said he had a settlement with Salmon. He said, "Salmon and Joe didn't put but very little money in the business; all I've got in the world has been subject to the perils of our business; I've had a settlement with Salmon and got the property on the corner of Wayne street for myself, and had them put in ma's name to support herself and John and Emma."

Q. What did he say about the Wayne street property?

A. Nothing at that time.

Q. He owned it at that time?

782 A. He owned it at that time. I asked him when he had done this, and he said about two years ago.

Q. Did he say why the Wayne street property was not in his wife's name?

A. He did not.

Q. How is it that you didn't recollect this conversation in your direct testimony?

A. I was not asked.

783 Q. Did you not tell your counsel what you could swear to in the matter?

A. Very likely I did. I don't remember.

Q. You forgot this important point.

A. I did not; I always remembered it; some part of my testimony I kept back for this cross-examination.

Q. You intended to be cunning in the matter?

A. I knew from the character of your client; I kept all the most important points for you.

784 Q. You being satisfied that I knew your character, were you not satisfied that I should want to cross-examine you very closely?

A. Very likely; you had been my counsel for some time.

Q. And I probably knew your character well?

A. Probably that is the fact.

SIDNEY B. BEVANS.

[The counsel for the complainant having left the room, and leaving no person in charge representing the complainants but Mr. Bevans, and no witnesses being present on the part of the complainants at the closing of the cross-examination of Mr. Bevans, defendants' counsel gives him notice that he will be ready to proceed at 9 o'clock to-morrow morning.] 785

Adjourned to Friday, Dec. 10th, 1875.

DECEMBER 10, 1875.

JOHN B. PERRY recalled by complainant.

*Direct examination by Mr. Babbitt :*

786

Q. Were you acquainted with Wm. H. Voorhees, a former counsellor at law of this city?

A. I was during his lifetime, from about the 1st of 1855 until his death in November, 1867.

Q. Were you intimately acquainted with him?

A. From the summer of 1860 until his death, I was intimately acquainted with him.

787

Q. Can you state what his habits were with regard to temperance and sobriety, from the year 1859 until July, 1860?

A. He was a man of nervous temperament, sometimes a little brilliant, considerably ambitious, very industrious and attentive to business, and strictly temperate in his habits until the fall campaign of 1865—General Runyon's campaign; from that time forward until his death he was dissipated.

788

Q. Were you in the habit of recommending people to come to him with their business?

A. I was; I recommended people to come to him; I recommended Nelson W. Hoyt to come to him to make an acknowledgment of these deeds.

Q. The deeds spoken of?

A. Yes, sir, the deeds spoken of; the deeds of 1860

from the son to the wife; Voorhees was also in the habit of recommending his friends to me, and I did business for his family and relatives.

- 789 [Defendant's counsel objects to the previous question and answer, on the ground that it is new matter, and not proper at this stage of the case.]

*Cross-examination, by Mr. Rinckerhoff :*

- Q. From 1865 until the time of his death he was very intemperate ?
- 790 A. His intemperance sprang—
- Q. His connection with politics was the cause, was it not ?
- A. Well, politics added to it and aggravated it; his intemperate habits sprang from some disease, either constitutional or otherwise.
- Q. Was he not given to drink as early as 1859 ?
- A. My acquaintance with him began in the latter part of 1858; he would occasionally take a drink, but he was what you call a temperate man; he was a young man.
- 791 Q. Did he not in 1858, 1859, and 1860, often become intoxicated ?
- A. Not that I ever heard.
- Q. Might he not have been intoxicated without your knowing it ?
- A. Yes.
- Q. Was not his reputation during the years 1858, 1859, and 1860, up to the time of his death, that of a notorious drunkard ?
- 792 A. Just the contrary; he was very straightforword, and a first-class business man.
- Q. But after 1865 that was his reputation ?
- A. After 1865, I don't say he was a notorious drunkard.
- Q. Was he not generally under the influence of liquor after that time ?

A. I was with him in the fall of 1865; I took supper with him every night at Taylor's Hotel, and shortly after that was the commencement of his drinking badly; he was not a heavy drinker, his constitution would not stand it; after the fall of 1865, most of the time he was a drinker. 793

Q. Before that he would often become under the influence of liquor?

A. he was a politician.

Q. Was he not in the Lincoln campaign a very heavy drinking man?

A. No, sir; I am almost a tee-totaller, and I think I could drink five times as much as he could.

Q. Were you intimate in his family as late as 1860? 794

A. Not in his family.

Q. Did you visit his house socially, outside at his business?

A. Yes, sir.

Q. How frequently would you go there?

A. I suppose from about 1862, on the average 4 or 5 times a year.

Q. And remained each time how long?

A. An hour to three hours. 795

Q. Did you visit him on political matters?

A. No; social matters—friendly calls.

Q. How often did you meet him in business, on an average?

A. On an average once or twice a month. I gave him some cases and he gave me some.

Q. Was it not possible that he might become intoxicated without it being known to you?

A. That is possible. 796

JOHN B. PERRY.

---

NELSON S. HIBBLER, sworn for complainant.

*Direct examination by Mr. Babbitt :*

797 Q. Were you acquainted with Wm. H. Voorhees, a counsellor at law of this city ?

A. His name was Wm. Voorhees—I was.

Q. Were you in any way related to him ?

A. I was.

Q. In what way ?

A. He was a son-in-law of mine.

Q. What were his habits for sobriety and temperance in the latter part of 1859 to the latter part of 1860 ?

798 A. Wm. Voorhees was a man that I guess was about as temperate a man as is usually seen around Jersey City until 1865 ; he died in 1867, I believe. About a year or so before his death he got to drinking, and in the time of election he would often get out of the way, but prior to that I considered him a man that I could trust as much as any other lawyer in Jersey City to do my business.

Q. Did you trust him with your business ?

799 A. I did. But in the latter part of his life he got to drinking considerable, and it took him off—he couldn't stand it.

Q. Up to 1865 or 1866 he was sober ?

A. He died in 1867—say 1865—up to that time I would trust him as soon as any lawyer in Jersey City ; after then I had no confidence in him.

*Cross-examination by Mr. Brinckerhoff :*

800 Q. After 1865 he became quite a drinking man ; intemperate in his habits—that is, during the campaign referred to ?

A. Yes.

Q. And from that time to the time of his death he was given to intemperate habits ?

A. Occasionally ; he would often come home out of the

way, and stay out of the way several days prior to that.

Q. But previous to that not to the same extent?

A. Very seldom out of the way at all, without going out among a parcel of company, may be for a day or night.

801

Q. He was a very social man?

A. Yes.

Q. His social qualities were very great?

A. Yes.

Q. And previous to 1865, back 1856 or 1857, he would not be intoxicated except he went into social parties.

A. I don't know that he injured himself until the latter part of his life.

Q. Prior to 1865 he would be under the influence of liquor?

802

A. Might have seen him so, possibly; I wouldn't say positively.

Q. In 1858 was he not on a long and protracted spree?

A. I don't recollect that.

Q. Was it not in 1859 that he was off on a spree for several days?

A. I can't recollect; I don't remember anything except in the latter part of his life of his ever being on a spree.

803

Q. Don't you remember that on or about 1860, he was on a protracted spree?

A. I don't. I done business almost every day with him.

Q. Didn't his wife have a conversation with you relative to his intemperate habits somewhere about 1860?

A. I don't think his wife spoke about his habits in his life; never mentioned to me anything about it; she bore with him.

804

Q. What was the cause of his death?

A. Consumption.

Q. His death was hurried by the use of intoxicating liquors?

A. I should think so, in the latter part of his life?

Q. He was considerable of a politician during his life-

time.

A. Well, yes; he was considerable of a politician the latter part of his life.

805 Q. Was not the greater part of his time consumed in political matters?

A. I couldn't say about that; I know he used to meddle with politics considerable; and himself and me used to have considerable controversy together; he was on one side and I was on the other, that is, in the latter part of his life in the presidential election.

Q. Didn't he take an active part in the presidential campaign of 1860?

A. I couldn't tell you, I don't recollect.

806 Q. In the first Lincoln campaign?

A. I don't recollect about that; I think only during the war.

NELSON S. HIBBLER.

THOMAS D. DECKER sworn for complainant.

807 *Direct examination by Mr. Babbitt:*

Q. You are a resident of Jersey City?

A. I am.

Q. How long have you been so

A. Thirty-three years, with the exception of a short time I lived in Hoboken. I have been right here in the county thirty-three years this Fall; I came here in 1842.

808 Q. Were you acquainted with Wm. Voorhees, a counsellor of law in this city?

A. Very well.

Q. Did you have him transact all your law business, or the greater part of it?

A. Not all; he done a great deal of business off and on for me.

Q. For how many years?

A. I think all the time he was doing business, more or less, here in Jersey City. When I became acquainted with him he lived in the 1st Ward, and I lived in the 1st Ward and knew him and was in his office frequently until he died.

809

Q. What were his habits for temperance and sobriety during the latter part of 1859 and to the latter part of 1860?

A. I considered him a safe and good man to do business, as a lawyer. In 1858 he drew deeds for me and done particular business for me; the records will show that. I was in his office often; it used to be up here at 50 Montgomery street, and after that in this building; we used to meet in Gardner's grocery store, several of us, and take maybe, a social drink, just the same as any of us would; he was never a dissipated man until the latter part of his life; never looked upon him as such; we worked in politics together, though he was never much of a politician. He was elected as an Alderman the same as I was, and we would get him out to make a speech once in a while.

810

Q. About what time did he become intemperate?

A. That I couldn't be particular about. He done business for me as late as 1865; I think that was the last business he done for me; done right in this rear office, somewhere in this building. It was business betwixt Dr. Alcott and myself, and Mr. Hopkins and he drew the papers for me, and was very precise in drawing them; we had some controversy to settle up betwixt us, and only for Voorhees we should have got into difficulty.

811

*Cross-examination by Mr. Brinkerhoff:*

Q. He was simply a ward politician?

812

A. Nothing more or less than a ward politician.

Q. Did you ever see him under the influence of liquor as early as 1860?

A. I don't know that I did.

Q. He might have been?

A. He might; I don't know that he was. I was with him a great deal, and never saw him under the influence of liquor.

813

THOMAS B. DECKER,

SIDNEY B. BEVANS re-called.

*Direct examination by Mr. Babbitt:*

814 Q. You were asked yesterday in your cross-examination whether you had ever searched the records of Hudson county in order to ascertain if the Wayne street property had been placed in the name of Salmon W. Hoyt, or in the name of Mrs. Hoyt, the complainant.

A. I want to explain that. In my former testimony I stated that in searching the records for other purposes, we learned in 1869 that this property stood in Salmon's name; that is one-half of this property in controversy.

Q. Who did your searching?

815 A. Jacob Weart. We searched for other purposes and ascertained that fact.

Q. In your testimony yesterday you spoke of receiving, while in New Orleans, letters from Nelson W. Hoyt; have you those letters with you?

A. The letters from the old gentleman to me?

Q. Yes; to you or your wife?

816 A. I find I have got two letters from Mr. Hoyt, my father-in-law, sent to me and his daughter in New Orleans. One letter is dated New York, February 19th, 1864.

Q. That letter is in his handwriting?

A. Every word of it.

Q. And signed by him?

A. Yes.

Q. And received by you in New Orleans?

A. Received by me in New Orleans.

[The letter is offered in evidence, and marked for identification, "Ex. 1, J. C. M."]

[The letter is objected to by defendant's counsel.]

817

Q. What is the next letter ?

A. The next letter is dated Jersey City, March 31st, 1864, 70 days before he died. That was sent to me and his daughter at New Orleans, and we received it while we were there. It is in his handwriting and signed by him.

[The letter is offered in evidence and marked for identification "Ex. 2, J. C. M."]

818

[The letter is objected to by defendant's counsel.]

Q. You were examined yesterday in regard to your relations with the defendant in this case, whether they were friendly or otherwise. While you were in the Legislature did he apply to you to protect him in his official position, and to help him hold it ?

A. In 1869 or 1870 he was a Police Commissioner. 819  
Yes, I think he did.

Q. Do you know whether he did ?

A. Yes, I am quite sure he did ; that is, you mean he urged me to favor his bills or anything relating to his interest, and to protect him there where he was.

Q. Yes ?

A. Yes he did that.

Q. You testified yesterday that you had a search made, by request of the counsel of the complainant in this suit, by the Register of Hudson county ; is that the 820 search ? (Handing papers to witness.)

A. That is the search, sir.

[The search is offered in evidence and marked for identification "Ex. 3, J. C. M."]

Q. You were examined at some length yesterday with regard to your troubles with your wife; have you any explanations to make with regard to that subject?

821 A. If I would be allowed to explain my only answer to that is this, that the cowardly, base and false attack—personal attack could only be made by—

[Counsel for the defendant objects to any Buncombe speeches being given in this case.]

Q. Answer the question without making any further remarks?

822 A. No man living except Salmon Hoyt, who is guilty of worse offences than that.

*Cross-examination by Mr. Brinckerhoff:*

Q You know the signature of N. W. Hoyt?

A. I do.

Q. [Showing witness paper.] Do you know that to be his signature?

823 A. I know that is his signature.

[Counsel for the defendant offers the paper in evidence, and it is marked for identification "Ex. 4, J. C. M."]

SIDNEY B. BEVANS.

864 [At half-past 10 o'clock A. M., the testimony of Mr. Bevans being concluded, counsel for the defendant gives notice to the counsel of the complainant that he is ready to proceed with this cause the whole day, to which the counsel for the complainant answers that Mrs. Hoyt being sick he has no other witnesses ready, whereupon the counsel for the defendant

states that he will be ready to go on at 9 o'clock to-morrow morning.]

Adjourned to Saturday, Dec. 11th, 1875.

825

[Counsel for defendant was in attendance at 9 o'clock A. M. on Saturday, December 11th, 1875, to which time the examination had been adjourned, and remained in attendance until 9.40 o'clock, no person appearing for or in behalf of complainant, and no witnesses being present on her behalf, the examination was ordered to stand adjourned.]

826

DECEMBER 11, 1875.

MALISCENT HOYT, recalled.

*Direct examination by Mr. Linn :*

Q. Do you recollect the year when you came to Jersey City to live?

A. When I came to live here? I don't remember—a good while ago.

827

Q. As near as you can tell.

A. I don't know as I can remember.

Q. Where did you come from?

A. From Sussex County.

Q. Do you recollect how old your son Salmon was at that time?

A. He was fourteen years old when we moved to Jersey City; he was fourteen in February and we moved here in March.

828

Q. In what business was your husband engaged then?

A. In the butter business in New York.

Q. Did you carry on any business in Jersey City?

A. Yes, sir.

Q. What?

A. Milk and butter and cheese business.

Q. Who furnished the money with which that business in Jersey City was carried on?

A. I think it was carried on with my money.

829 Q. How much money had you of your own when you came here?

A. I had about \$900 and a little over when I came to Jersey City.

Q. Was that borrowed money?

A. Yes, sir.

Q. How had you obtained that money?

A. My husband gave it to me; he had sold out some things before we moved down.

830 Q. And the proceeds of that he gave to you?

A. Yes, sir.

Q. Who assisted you in carrying on this business in Jersey City?

A. Salmon—my husband furnished the butter, eggs and cheese, and we took dairy milk from Goshen—my son and me carried it on.

Q. What part did he do?

831 A. He would go and get the milk, and he would be in the store part of the time.

Q. When he was not in the store who was there?

A. I was in the store and my daughter, Mrs. Bevans; we made cheese and kept poultry to kill to order.

Q. What did Mrs. Bevans do?

A. Stand in the store and sell.

Q. Was she much of the time in the store?

A. Most of the time.

832 Q. Did she spend as much time about the business as your son?

Q. I don't know as she did quite as much as he did.

Q. Did he furnish any money?

A. I don't think he furnished any money—he hadn't a dollar; we took him right out of boarding school where he was in Middletown, into the store.

Q. Were there any books of account kept, or was it a cash business?

A. It was a cash business, I think—may be some trust in it.

Q. Of whom did you rent?

A. Of Mr. Hoffman.

833

Q. Who paid the rent?

A. I don't know whether my son or husband took our money and paid it, from the money of the store.

Q. Did you live in the same building where the store was?

A. Yes, we had six rooms—nice rooms, and then a room back of the store.

Q. And your husband and his family all lived together?

A. Yes, sir; he was in New York every day to his business, and came home nights; he never attended to anything in the store.

834

Q. Whose business was that, yours or your son's?

A. We made believe to encourage him—we told him he was doing so and so; I think it was ours; he was a boy of fourteen years old, you know.

Q. Did you have any other assistant while you were there?

A. Not the first or second year, then I think we had a man named John Wood.

Q. Did he bring any money there?

835

A. Very little.

Q. How long was he there?

A. I don't know whether he was there a year or not—a short time, I know.

Q. Did he take any money away?

A. He said he didn't; he said he lost it all.

Q. Was his name used in the business?

A. I don't know; I can't remember as to that; I suppose it must have been, because he was a partner?

836

Q. Was he a young man or a boy?

A. I should think 15 or 16, perhaps 18 or 19; he was older than Salmon, but he was a young fellow.

Q. Did you have any other assistant; was Mr. Coykendall there?

A. Not at that time ; not until after that.

Q. Your husband went and got Nelson Coykendall ?

837 A. Yes, sir ; we brought him up ; he was a little older than Salmon, and we clothed him the same as our son ; he was in the family at that time.

Q. That is the way he was paid ?

A. That is the way he was paid ; we clothed him and done for him. I don't know how long he worked for us.

Q. Did your husband have anything to do with the business by way of superintending and directing ?

838 A. He would advise us and send us butter and eggs and cheese, and all that ; he was always advising us, telling us to do so and so ; he was the head one about advising.

Q. Was any money made there in that business ?

A. Well, we made a nice living.

Q. Do you recollect when the business was sold out or closed there ?

A. It never was closed.

Q. What was done eventually ?

839 A. We bought where it is now, and moved it there.

Q. How was it then carried on—the same way ?

A. By my son and nephew ; my husband set him up as a partner, with the little he had made.

Q. Then your son Salmon and Coykendall took the business ?

A. Yes, sir.

Q. Then after that did you continue in the business ?

840 A. I didn't do anything with him then—had nothing to do with him after that.

Q. And your husband set them up in business there ?

A. Yes, sir.

Q. Then after your son and nephew commenced business, and were carrying on business on the corner of Grove and Wayne streets, you had nothing more to do with the business specially after that ?

A. No, sir.

Q. Up to that time had your son ever carried on any business himself?

A. Never.

Q. Do you recollect, Mrs. Hoyt, ever having any conversation with Joel I. Hoyt in reference to a conveyance of the one half of this property to your son? 841

A. Never, never; never spoke to me about it; I heard nothing about it until after I gave him the deed, and that was the next year; he never said a word about it.

Q. Did you consult him about it before you made the conveyance?

A. Never; I know I never did; there was nothing said only between my son and me; Joel said to me at one time, "You ought to sign that deed"; I said, "Joel, I don't feel like it"; that is all I ever said about it. 842

Q. When you and he were alone, staying at your house, he never consulted you with reference to that?

A. Never; he didn't stay there then; he used to stay there; it wasn't two years after my husband died, and I didn't think about consulting him; it was my son I always consulted.

Q. After your husband died, did you ever consult Joel I. Hoyt in reference to your business transactions? 843

A. Never; only my son, and nobody else; I thought that was all that was necessary.

Q. What have your social relations with Mr. Bevans and his family always been?

A. Very good; sometimes, if Mr. Bevans didn't do right, I gave him a little scolding.

Q. Has there ever been any unkind feeling existing between the two branches of the family?

A. Not but for a short time to once; sometimes there would be a little hardness about something. 844

Q. I don't mean a temporary dispute; has there been a settled unkind feeling?

A. Oh, no; a little unkind feeling, just like anybody might have sometimes, when we wouldn't feel very good towards each other; I never have had any trouble with him; I would give him a little scolding now and then,

that is all, when he deserved it, or when I saw anything wrong; I don't have occasion to do it very often.

845 Q. Did your son ever come to you and say to you that Mr. Bevans had searched the records for this property on the corner of Grove and Wayne streets, and found it to be in your name?

A. I have heard that, but not in a long time; I don't know who started that first.

Q. That was the first intimation that you had of it?

A. No, I had heard it before.

846 Q. When did you hear such a statement made—that he had found out that by searching the records—before or after you conveyed to your son?

A. It was after; I never heard anything of it before I gave him this deed.

Q. At the time you made this deed, or about that time, did you say to him that it was only giving him what belonged to him, or anything to that effect?

A. No, sir.

Q. Are you sure you didn't say anything to that effect?

847 A. I know I didn't.

Q. Did you request him not to put the deed on record?

A. I told him what an awful time it would make if the two children found out I had given him the property—that he was to have it after my death; that is the reason I told him I did not feel like signing the deed; he said they never would know it.

848 Q. Has Mr. Bevans influenced you in any way, directly or indirectly, in commencing these proceedings against your son?

A. No, sir.

Q. Has he been in any way the cause of your doing so?

A. No, sir; I got him to attend to it after Salmon went to serve the papers in regard to the rent not being paid; his wife wanted him not to have anything to do with it, but I got him to attend to it; he has never in-

fluenced me in any way to go on with anything ; Salmon commenced it himself.

Q Your son testified that when he first spoke to you about the mistake which he says was made in conveying the whole property to you, that you was as much surprised as he was ? 849

A. I never knew anything about it until after I gave him this deed.

Q. How many conversations did he have with you about it before you signed the deed ?

A. I don't know ; a dozen times, maybe ; he came there several times, and wanted me to sign it ; but I told him I didn't feel like going to sign it ; he wanted me to deed half of it to him ; I told him if he would stand up to me, and help to take care of the rest, as he was the oldest one, maybe I would. 850

Q. Did he tell you at that time that the lawyer who had drawn the deed to you had made a mistake in conveying the whole property to you ?

A. No, sir.

Q. Was anything of that kind said at all ?

A. No, sir.

Whereupon the cross-examination of Maliscent Hoyt 851 was adjourned to Wednesday, February 23d, 1876, by consent of counsel, at eleven o'clock in the forenoon.

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

*And being cross-examined, she says :*

852

I think it is 27 or 28 years ago, in March next, that I came to Jersey City to live. I was not engaged in any business before I came here ; I had never been in any business until I came to Jersey City ; my husband supported his family ; I never knew anything about it my-

self; I had no source of income when I came to Jersey City, except such as my husband gave me from time to time for domestic purposes. I did not own any real or personal property when I came to Jersey City; while  
 853 my husband was living I never pretended to own anything; I had between \$900 and \$1,000 in money when I came to Jersey City; my husband gave me that in cash altogether; I had it to use as I wanted, and some I used in fitting the store up; my husband had not failed at about this time, or previous to coming to Jersey City; my husband never failed; he had not been financially embarrassed; my husband always did plenty of business; he was making sufficient money from which to live; I  
 854 can't tell how much money I put in the store when I came to Jersey City; I used all my money in furnishing the store and paying rent; I know my husband used all the money for these purposes, because the bills came in and I gave him the money; I did not see the bills paid, but they were receipted.

Q. How do you know your husband used your money for store purposes?

A. He said he did; how would I know any different;  
 855 I can't say how much the stock in trade cost; my husband attended to that himself. The purchases were made in my husband's name; we did not have any book accounts; we sold for cash; we may have had one or two bills for a day or two; I don't know how much money we made, but I made my son Salmon believe we made a great deal, to encourage him, but I used my money in the business; my son was so young. I never made Salmon believe he was a partner;  
 856 we were making our living. My husband had his business in New York, and Salmon and I had the business in Jersey City, and I told Salmon that it was our business—his and mine—he was a little fellow. I told him that it was his business and mine to encourage him; he never did much; he was only a little fellow; I did the bulk of it, and my husband helped straighten up things at night for him, and to help him. We paid my husband

for the butter, chéese, and eggs he furnished for the store; I did not pay Salmon any salary. When we went into the second place on Newark Avenue, the business was carried on the same as before.

Q. He knew nothing contrary to what was done in the other store? 857

A. In the second store on Newark Avenue, Nelson Coykendall was employed by Salmon and I. The first business was conducted by Salmon and I; the second was not unlike it; I considered my husband was at the head of the whole of it; I don't remember if there was any name up at the second place, or in whose name the bill heads were made out, or in whose name the books were kept; I never troubled myself about that while my husband was living; I had a business husband; I was about the stores, in the stores, and was familiar with the business at that time; I did not pay any moneys out; Salmon and my husband paid out money. When Nelson Coykendall first came we did not pay him anything, we did afterwards. I suppose we must have laid up a little money after paying rent; I don't know how much. When we went out of the Newark Avenue stores, I don't know if Salmon had any money; he had lived with me; he was a boy; why wouldn't he be an honest good boy; Salmon was always an honest man until this business came on; up to the time when Salmon went into business with Nelson H. Coykendall, on the corner of Grove and Wayne streets; I knew of all Salmon's transactions in the Newark Avenue stores; all the surplus money from the business of the Newark Avenue stores, I suppose, went to live, and in the business there; my husband did not take it to New York. 858 859 860

Q. Did not Salmon take the surplus money?

A. I suppose he had to live; clothing and things like that in the family; he helped himself to money when he wanted it, without asking for it, and so did I; we made it and used it.

Q. Did you make any objections to his using the

money from the stores as he required it for his personal use ?

861 A. We were all one family ; he would take the money when he wanted it, and so would I ; we made it ; I helped, and used my money in the business.

Question repeated.

A. Why he never asked for it ; we would get him clothes, of course, and board him, and pay for it out of the store.

Question again repeated.

862 A. Never ; he had what he wanted ; we clothed Nelson Coykendall for the first year he was with us, I suppose ; I don't know anything about the clothes ; we boarded and clothed him for the first year. I never kept a bank account ; why should I ; I had a husband living to attend to such things ; I couldn't say if he kept a bank account ; I suppose he did, every business man does. I can't say whether Salmon took more money from the Newark Avenue stores than was necessary to buy his clothes ; we did not keep any account of the moneys drawn out of the store , we lived out of it ; Salmon and I were in business two or three years ; John 863 Wood was an employee of Salmon's and mine on the third year ; he wasn't there but a short time ; he hadn't a large amount of money ; I suppose he had a little money ; I can't say how little ; he may have been there a few months in one year ; when he, John Wood, went away, I don't know what he did with the money he put in the business ; I don't know whether he took it out or lost it ; most likely he lost it ; I couldn't say whether his interests were equal with Salmon's and mine ; I don't 864 know anything about it ; I don't know whether we paid him a salary in excess of his profits ; I don't remember whether he was fifteen or sixteen years of age at that time ; I couldn't say whether there was any money made in the business over and above our living ; after we left the Newark Avenue stores I can't say whether Salmon went for himself ; I don't know about that.

Q After you gave up the Newark Avenue stores were

you in any way acquainted with the business transactions of your son Salmon?

A. My son tended to it then; he looked after him.

Question repeated.

A. My husband, I tell you, attended to it then, nights and mornings. 865

Question again repeated.

A. I could not say; I knew that my husband did.

Q. What did your husband know about the business relations of Salmon?

[Question objected to as impertinent.]

A. Why, it was his father; he started him, and why shouldn't he attend to it. 866

[Question repeated.]

A. Well, he was the head and tail of it, and that's all that I can answer.

Q. What do you mean by the head and tail?

A. Commencement and end.

Q. What do you mean by commencement and end?

A. Well, don't boys want some one older; didn't he have his father to consult and advise with a boy like him. 867

Q. Then you mean by head and tail, commencement and end of the business, that he was simply the adviser and counsellor of his son Salmon, he being a boy of tender years?

A. I don't know how else to say it; I don't remember how long after we gave up the Newark Avenue business it was that Salmon and Nelson Coykendall went into business on the property in question; I don't remember if it was four years; I don't remember if it was within a year; I do not know what was done with the stock in trade of the Newark Avenue stores after we gave them up; I don't remember whether I received any money from the stores when they were closed up; I don't remember whether Nelson Coykendall had any money when the stores in Newark Avenue were closed. 868

I can't say what his interest was in these stores, whether quarter, third, or half; I don't remember how large my interest was in the firm of Hoyt & Coykendall.

- 869 Q. Were you a member of that firm?  
A. I never said I was.

Question repeated.

- A. I don't remember.  
Q. Do you recollect if your husband was?  
A. I can't answer for my husband.

- 870 Question repeated.

- A. I couldn't answer that; I don't know how much money my husband gave Salmon and Nelson Coykendall to go in business; I could not say whether he gave them any that is the Grove and Wayne street store; I do not remember whether my husband put any stock in the store or not; I couldn't say whether he assisted them with money to carry on the business after they had started; I could not say whether my husband set them up there in business or not; they never stopped business—just went on from one store to another; I suppose they moved all their goods from one store to another; Salmon and Nelson Coykendall always carried on the same business; they never had any firm name until my husband bought the store and put them in business on the corner of Wayne and Grove streets; I couldn't say whether the interest of either of them was greater in the Grove and Wayne street stores than in the Newark avenue stores.
- 871

- Q. To what extent did your husband put Salmon and Nelson in business corner Grove and Wayne streets?  
A. I couldn't remember; I have no recollection if to any extent he put them there; I don't know how; I don't know anything about it; I never heard there was
- 872

any mistake in the deed before I signed the deed to Salmon; Salmon didn't say anything to me about it.

Q. Didn't you swear on your direct examination that Salmon came to you and told you that there was a mistake in the deed from him to you? 873

A. I swore that I never knew anything about it.

Question repeated.

A. I have answered it there.

Question again repeated.

A. Didn't I answer it? 874

Question again repeated.

A. I don't think he ever told me there was a mistake until I deeded it to him; I never knew it.

Question again repeated.

875

A. That is my answer.

Question again repeated.

A. I have answered that question.

Question again repeated.

876

A. I have answered that question.

Question again repeated.

A. I have got nothing more to say; I have said all I am going to say.

Question again repeated.

A. I have answered all that I have got to say.

877 Question again repeated.

A. No.

Q. Did you swear that Joel Hoyt never spoke to you about making the conveyance to Salmon for the undivided one-half of this property?

A. I cannot tell; I never advised with Joel I. Hoyt about it, or on any business.

878 Q. Did Joel I. Hoyt ever speak a word to you in regard to the making, execution, or delivery of a deed from you to Salmon, for the one-half or any interest in the premises corner of Grove and Wayne streets, before the execution of the deed to Salmon, made in 1867?

A. He never knew anything about it; no one knew anything about it except Salmon and I; I didn't consult Joel Hoyt; he never spoke a word to me about it before the making of the deed of 1867; Joel Hoyt never spoke to me about making a deed to Salmon for the undivided one-half part.

879 Q. Didn't he tell you that you ought to sign that deed before the deed was signed?

880 A. He never said "that deed"; he said "that paper"; he never mentioned deed; it was a week or two weeks before I signed that deed that Joel said it; he didn't say what paper he referred to; he said "you ought to sign that paper." I had not been talking about any paper to him; I knew what paper he referred to; my son and me had been talking about it; I didn't know what paper Joel I referred to; he said I ought to sign "that paper." That's all he said; I said I did not feel like it.

Salmon was not present at this time; I didn't know what paper Joel referred to, except it was the one that Salmon had drawn up—the deed; I had not yet signed the deed.

I never had a conversation with Joel I. Hoyt about making a deed to Salmon upon any condition; not one

word did I say to Joel about it before this deed was signed; the deed of 1867; the deed in dispute.

I heard Joel Hoyt and Salmon talk about it afterwards; months afterwards; it was quite a long time after I signed the deed of 1867 that I heard there was a mistake in the deed of 1860; I don't know how long. 881

Witness says:

In my testimony of December 11, 1875, wherein it states, "Joel said to me at one time, 'You ought to sign that deed,'" I wish to have the word "deed" stricken out and the word "paper" substituted, because I said paper, and not deed.

MILLIE HOYT. 882

Taken, sworn to, and subscribed }  
 this 23d day of February, A. }  
 D. 1876, at Jersey City, be- }  
 fore me. }

ISAAC ROMAINE,  
*Master in Chancery.*

DECEMBER 13, 1875. 883

RACHEL A. ALLEN being duly sworn as a witness on the part of the complainant. deposeth and saith:

Q. Where do you live?

A. 338 Grove street.

Q. Jersey City?

A. Yes, sir.

Q. Were you acquainted with Nelson W. Hoyt in his life time?

A. Yes, sir. 884

Q. For how long a time before his death were you acquainted with him?

A. I should think ten or twelve years; I have known the family over twenty years.

Q. With what members of the family were you acquainted?

A. All of them.

Q. For twenty years?

885 A. All of the children; I knew Mrs. Bevans, John, Salmon, Emma, and Mrs. Hoyt; I should think that was all; I was with Emma the night she died; it was shortly after Mr. Hoyt's death when Emma died.

Q. Did you have a conversation with him previous to his death?

[Question objected to by counsel for the defendant.]

Q. Did you have a conversation with him previous to his death in relation to his property?

[Question objected to by counsel for the defendant.]

886 A. I did.

[Answer objected to by counsel for the defendant.]

Q. How long before his death?

A. Within one month.

Q. Will you detail that conversation, and state under what circumstances and where it occurred?

[Question objected to by counsel for the defendant.]

887 A. I was at his house; I was sitting in the room directly over the back parlor, and Mr. Hoyt came and seated himself in that room, to rest himself there; he seemed to be rather weary, and Mrs. Hoyt came in and brought some refreshment for him; then she made a remark that seemed to irritate him; she told him that Mrs. Joel had gone to New York to buy furniture; shortly after she went out of the room, and he addressed himself to me, saying, "Well, Mrs. Allen, I have had to do a great deal for my family—my father's family; a great deal for my step brothers and my step mother," and then went on  
888 talking about his family affairs. He said he had inconvenienced himself a great deal in doing what he had for them, and went on and talked pretty generally of his business, and after saying all that he did, I said, "Well, Mr. Hoyt, I think that you ought to provide for your wife, and not leave her dependent upon that firm," and he said, with a great deal of emphasis, "I have, Mrs.

Allen; I have settled them stores on Mrs. Hoyt, at the corner of Grove and Wayne; don't you think that is enough? They rent for \$1,200 a year"; says I, "I do, Mr. Hoyt."

Q. In what way did this conversation come about? 889

[The answer of the witness, so far as it may relate to conversations between Mr. Hoyt and Mrs. Allen, is objected to by defendant's counsel.]

A. It came about in consequence of his irritation; he was irritated because Mrs. Joel Hoyt had gone to New York to buy furniture; he told me that she had gone to buy elegant furniture, and she would draw the money from the store to pay for it; said he, "we need the money in the business,"—the butter store in New York. 890

Q. Do you know who were the members of the firm?

A. Mr. Joel Hoyt, I think, was one, then; Salmon Hoyt was one; I don't know whether Mr. Hoyt had withdrawn from the firm or not; this was shortly before he died; he may have withdrawn from the firm then; I really don't know.

891

*The witness being cross-examined by defendant's counsel, saith:*

Q. Do you know anything about the standing of the firm at that time?

A. No, sir.

Q. Do you know of your own knowledge who were members of the firm at that time?

A. Yes, sir; I knew that Salmon was a member. 892

Q. How do you know that?

A. I had been acquainted with the family for a long time.

Q. You know that only from hearsay?

A. I think I have seen Salmon and his father together talking about business.

Q. Is that all that you know about it?

A. Not all; I have been at his house.

Q. Tell us how you derived your knowledge in regard to the members of that firm?

A. Hearing Mr. Hoyt talk about it himself.

893 Q. Anything else?

A. I think from my son Charles, who has been there.

Q. Any other way?

A. And I heard Mrs. Hoyt talk about it.

Q. Any other way?

A. I have had business with the firm myself; they furnished me with some things from the store—flour and different things.

Q. Any other way?

894 A. I can't tell you readily now whether I knew anything further than that.

Q. If you knew more about it you could tell us more, could you not?

A. I don't think of any thing very readily now. Perhaps if you asked some particular question I could answer.

Q. Then your knowledge of the firm at the present time is derived only from such things as you have named?

895 A. I talked with Mr. Hoyt that day, I think, sufficiently to understand that he wasn't a member of the firm, and I knew that Mr. Bevans was a member.

Q. You were satisfied at that time that Mr. Hoyt was a member of the firm?

A. He may have withdrawn from the firm shortly before he died.

Q. Of your own knowledge you know nothing of who composed the members of that firm; what you say has been from hearsay?

896 Q. The conversation that was had between you and Mr. Hoyt at the time named is in the exact words given by you.

A. Yes, sir; I think so.

Q. Nothing added or taken from it?

A. I think I have not told every word he said; I have not related all in regard to that conversation that we had.

Q. In regard to the real estate, what did he say ?

A. That was about all that he said ; he had settled it on his wife.

Q. What interest did he say he had settled upon his wife ? 897

A. He merely mentioned those stores down at the corner, knowing that I knew where they were, because I lived right adjoining them.

Q. Did he say one or two stores ?

A. He said stores.

Q. Did he mention any particular interest in the stores ?

A. No, sir ; he said that he had settled them upon his wife.

Q. Did he speak to you about the Wayne street property ? 898

A. You mean the house in Wayne street ? Yes, he did.

Q. Did he tell you about that property being settled upon his wife at that time ?

A. No, sir ; he didn't say that ; he said the stores down at the corner.

Q. He didn't tell you in what manner he had done it ?

A. No, sir ; I didn't ask him any questions about that ; I merely listened to what he had to say. 899

Q. Are you a relative ?

A. No, sir.

Q. A neighbor ?

A. I was a neighbor once.

Q. A friend ?

A. Yes ; I'm a friend of the family.

Q. You were a confidential friend of his ? 900

A. A confidential friend of his wife and daughter ?

A. Had he spoken before that time in confidence with you regarding his business affairs ?

A. He used to talk with me about his business ; he told me he commenced with a mere trifle, and he had to learn the business as he went along.

Q. Did he talk with you generally about his business affairs ?

A. No, sir.

Q. Had he ever before that consulted with you in regard to business affairs ?

901 A. He had talked to me in a friendly way.

Q. Was he of a communicative nature ?

A. Yes, sir, I think he was.

Q. Do you know whether he talked with others as freely as he talked with you in regard to his private affairs ?

A. I couldn't say as to that.

Q. Did he speak of any other private affairs at that time ?

902 A. He spoke about his father's family's affairs ; he told me he had inconvenienced himself to assist his half-brothers.

Q. Did he ever tell you about his reverses in business ?

A. Yes, sir.

Q. There had been many losses, had there not ?

A. I think he had some difficulties that he mentioned in regard to failures.

903

[The questions of counsel and answers of the witness in the foregoing cross-examination are objected to by counsel of the complainant ]

*The witness being further examined by counsel for the complainant, saith :*

904 Q. Did Mr. Hoyt tell you where the stores were located ?

A. He didn't mention particularly ; he told me at the time he bought those stores, in his own house, at the corner of Wayne and Grove streets, of Mr. Ryder, and told me that he had paid for them, and that he had made a very good bargain.

Q. Were those the stores referred to in his conversation with you ?

A. Yes, sir.

*And being further cross-examined by defendant's counsel, witness saith :* 905

Q. Did he tell you that he had bought the property in his own name ?

A. He did not.

Q. He said that he had bought them of Mr. Ryder ?

A. Yes, sir.

Q. And that Mr. Ryder had conveyed them to him at the time of the purchase ? 906

A. Yes, sir.

Q. For how much money ?

A. I don't remember the sum that he paid for them ; he told me that he had not paid for them cash down.

Q. Did he say how he paid for them ?

A. He told me that he expected to be able to pay for hem.

Q. Did he say that he gave a bond and mortgage for a portion of it ? 907

[Objected to by complainant's counsel.]

A. I don't remember particularly that he said about the bond and mortgage ; he supposed I knew enough to know that.

Q. You were led to infer that he had given the bond and mortgage for the property ? 908

[Objected to by complainant's counsel.]

A. I suppose so.

Q. Did he tell you when he had purchased it from Mr. Ryder ; in what year was that ?

[Objected to by complainant's counsel.]

A. I couldn't fix that.

Q. Was that in the year 1869 ?

909 A. I couldn't remember exactly; I can't fix dates readily.

Q. You don't know the time he did purchase ?

A. I couldn't fix the time when he told me; I was in the habit of being at the house very often.

Q. He didn't tell you that there was anybody else connected with the purchase of the property ?

910 A. No, sir, he did not; he told me he had bought that property at the corner of Wayne street, of Mr. Ryder, and he knew that I knew that Mr. Ryder owned them, and he thought that he had made a very good bargain; that is about the sum of it.

RACHEL A. ALLEN.

[The questions of counsel and answers of the witness in the foregoing cross-examination, are objected to by counsel of the complainant.]

911 [Counsel for the defendant, at four o'clock and ten minutes, gives notice that he is ready to proceed with this cause during the balance of the day and the night.]

[Counsel for the complainant stated that they had no further evidence to offer, and that the defendant could commence and proceed with his evidence the rest of the afternoon, if he saw fit.]

912 [No other person appearing as a witness, the Master declared the examination adjourned.]

Examination of witnesses, &c., in the above entitled cause on the part of the defendant, taken before me, Isaac Romaine, a Master and Examiner of said

Court, at my office No. 111 Washington street, Jersey City, N. J., on Tuesday, March 2d, 1876, at 10 o'clock in the forenoon, in presence of William Brinkerhoff, Counsel for defendant, and John Linn, Counsel for complainant.

913

*Examination by Mr. Brinkerhoff:*

SALMON W. HOYT, a witness produced on part of the defendant, being recalled, says: [Witness being shown paper marked Exhibit 4. for identification, being letter from N. W. Hoyt to S. W. Hoyt, dated New Orleans, October 21st,] the signature to that letter is my father's. That letter was written by my father, and received by me, about the time it bears date, in 1862. The whole letter is in his handwriting.

914

Said letter is offered in evidence on the part of the defendant, and is marked Exhibit D. 22.

Witness being shown a lease bearing dated March 1st, 1870, made by Salmon W. Hoyt and Millie Hoyt, to N. H. Coykendall and L. D. Coykendall, says, that is one of the leases for the property in question.

915

Said lease is offered in evidence on part of the defendant, and is marked Exhibit D. 23.

Witness being shown a lease, dated March 1st, 1873, made by S. W. Hoyt and M. Hoyt to Mrs. Grain et al., says that is one of the leases of the property in question.

Said lease is offered in evidence on part of the defendant, and is marked Exhibit D 24.

916

The certificate of cancellation marked on Exhibit D 3, is of the date therein recited.

The bond Exhibit D 2, and mortgage Exhibit D 3 for defendants, were paid and satisfied May 5th, 1873.

Q. How much was paid on that day?

A. \$1,000 and interest ; I paid it by a check on the Mechanics' and Traders' Bank.

Q. With whose money did you pay it ?

A. My own money.

917

Q. For how much of that money was you satisfied by N. W. Hoyt ?

A. I was collecting the rents and got my money back ; I got one-half ; I charged my farther with one-half and charged myself with the other one-half ; the payment endorsed on Exhibit D 2, June 29th, 1861, was paid by me.

Q. With whose money was it paid ?

918

A. From the revenue derived from the corners ; the interest was paid in the same way ; I charged my father with one-half and myself with one-half.

Q. With his assent ?

A. Yes, he knew what was going on ; he knew it from talking with him ; I exhibited to him memorandums of how the accounts stood from time to time, and tax bills, &c.

919

I don't know where these memorandums are ; they contained amounts received and amounts disbursed ; after July, 1860, they were true accounts.

My father never made any objection to the accounts ; he has never made any demand for any part of the one-half of the money retained by me ; my mother has not made any demand for any of the rents received by me since July, 1860 ; she has not made any claim on me for any of the moneys received for rents of these premises, since July, 1860.

920

I collected the rents for this property after Ryder conveyed the property to me and my father ; from the time of that conveyance to me and my father, until July, 1860, I collected the rents, paid the disbursements, the interests, mortgages, taxes and repairs.

The balance over and above those disbursements, I divided between my father and myself ; this course was pursued at my father's solicitation and request ; no

change was made in this mode of receiving or disbursing subsequent or prior to July 17th and 30th, 1860; that mode continued until 1864, on the death of my father.

From the time of the conveyance to me and my father, by Rider, until the death of my father, I received one-half of the rents after paying the taxes, interest and repairs.

921

Q. What conversation, if any, did you have with your father prior to August 1st, 1860, which would lead you to infer that he had disposed of any interest in these premises?

[Question objected to because it calls for an inference or conclusion of the witness.]

922

A. I never had a thought, intimation, or a conversation to dispose of any interest in that corner.

Q. What conversation, if any, did you have with your father previous to August 1st, 1860, or subsequent thereto relative to the disposition or conveyance of any interest that you held or had held to the premises described in the complainant's bill of complaint?

923

A. The only conversation I had was in reference to the transfer of his half interest to my mother through me.

Question repeated.

A. In reference to my own interest I never had any conversation, but as to the interest that was conveyed to me by my father, I had a conversation.

924

Q. And that was what?

A. To convey one-half to my mother; the one-half that he had conveyed to me.

Q. Then the conveyance from your father and mother to you, Exhibit D 11, was to convey to you the undivided one-half of the premises, instead of the whole, as

therein it is purported to convey ?

A. Yes, sir.

925 Q. The fee at that time, July 17th, 1860, was in you and your father, was it not ? and before the execution of Exhibit D 11 ?

A. Yes, sir.

Q. And your interests were what ?

A. My father and I each owned one-half of the property in dispute ; I mean the property described in the complainant's bill of complaint.

Q. Then what was the only motive in the drawing and execution of Exhibit D 11 ?

926 A. It was to carry out an agreement with my father, of a transfer of an undivided one-half to my mother, and I receiving this deed D 11 ; for his undivided one-half interest in the premises was to be deeded by me to my mother ; and that was the sole object of Exhibit D 12.

Q. What other understanding or conversation was had by you with your father or by any person in behalf of either of you relative to the conveyance by either of you of any interest that either of you held in any of these lands, different from what you have already stated, or in addition thereto ?

927

A. None whatever.

Q. You stated in your direct examination that the deed intending to transfer one-half of this property to you, and also from you to your mother, referring therein to Exhibits D 11 and D 12, was drawn at the instance of your father, and by his direction, to you, and also to the counsel who drew it ?

928 A. I say so still.

Q. You also stated that the deed was drawn by William Voorhees. What have you to say as to that ?

A. I believed that William Voorhees drew that deed and I believe so still, notwithstanding the testimony of John B. Perry and Mr. Smith, because Mr. Perry told me he did not draw them.

Q. Who was it that you ordered to draw the deed from you to your mother?

A. William Voorhees. I ordered him to draw a deed for the interest my father had in the property, being the undivided one half from me to my mother. 929

Q. What knowledge had your father, as expressed by him, if any, of such instructions given by you to William Voorhees?

[Question objected to.]

A. He consented to it.

Q. What knowledge or intimation had you previous to the conclusion of your former testimony in this case, that William Voorhees did not draw Exhibits D 11 and D 12? 930

A. I had no intimation or knowledge.

Q. What conversation, if any, or writing, innuendo, sign, or other thing, was there, ever to give you such knowledge or information up to that time?

A. None whatever.

Q. Then you do not wish to correct your testimony heretofore given in this cause, relative to the instructions given by your father to William Voorhees relative to the drawing of the deeds to change the title of the undivided one-half of the property from your father to your mother? 931

A. No, sir.

Q. How often did you go with your father to Voorhees in relation to this matter?

A. Three or four times, as stated in my former testimony. 932

Q. You were present when your father directed William Voorhees to draw the deed from himself and wife to you for the undivided one-half, were you?

A. Yes, sir.

Q. Were you led to believe that William Voorhees did draw those two deeds, Exhibits D 11 and D 12?

[Question objected to.]

A. Yes, sir.

933 Q. What induced and induces you to believe that William Voorhees drew Exhibits D 11, D 12?

A. Because we went there to order them and the Ryder deed was left there; the original deed, by me, in the presence of my father, about the time of the date of these deeds and before they were executed.

Q. Any other reason than you have heretofore stated?

A. None, except the talk we had with Voorhees and the general conversation.

934 Q. Then it was understood between you and your father that Voorhees was to draw the deed, and your father so instructed Voorhees in your presence?

A. Yes, sir.

Q. And you in his presence?

A. Yes, sir.

Q. These understandings expressed or implied?

A. They were expressed at the time in presence of all of us.

935 Q. What claim, if any, has your mother or the estate made upon you for rents collected for these premises before or after the 5th day of September, 1860?

A. None whatever.

Q. What claim, if any, have either of them made to your knowledge?

A. None whatever.

936 Q. What consideration or satisfaction, of any kind or description, have you at any time received from your father or your mother, or from any person for them or in their behalf, or from any other person or corporation, or from any source for the execution of the deed Exhibit D 12?

A. I never received a cent, directly or indirectly, or any satisfaction in any way.

Q. What intended or promised consideration or satisfaction of any kind was made, intended or inferred for

the execution of the deed Exhibit D 12, or any part you took in it or connection you had with it or any matter or thing relating to or pertaining to the same?

A. There was no agreement, understanding, or thought of any agreement, understanding, consideration or satisfaction, except as I have stated. 937

[Question repeated.]

A. None whatever.

Q. Was Exhibit D 12 ever delivered by you or any person in your behalf to Maliscent Hoyt or any person in her behalf?

A. No, sir. 938

Q. What consideration, satisfaction or thing was given by you to your father for the conveyance Exhibit D 11, except as you have stated?

A. Nothing.

Q. What money was advanced by your father from his business or otherwise, or by any person for him, relating to this property, except as you have heretofore stated?

939

[Question objected to.]

A. None whatever. I know John B. Perry; he has not done any business for me that I know of in relation to this property.

Q. Are you aware or were you aware that he drew deeds, or caused to be drawn deeds Exhibits D 11 and D 12, except from his own testimony and that of his assistant, and the information received a few days before Perry gave his testimony? 940

A. No, sir.

Q. From whom did you first hear that Perry claimed to have drawn Exhibits D 11 and D 12?

A. From a friend of mine; I got the information in confidence, and I would rather not give her name. I

don't think it was longer than two weeks before Perry gave his testimony that I learned this after I closed my testimony. Upon receiving this intimation or information I went directly to see Mr. Perry, at his house.

941 Q. Did you see him there?

A. I did.

Q. What took place between you and Mr. Perry on that occasion?

A. I told him that I had had information that he was going on the stand to swear that he drew the deeds from my father, and from me to my mother, in 1860, for the property corner Grove and Wayne streets; that I had been sued by my mother at the instigation of S. B. Bevans; had already gone on the stand and had testified that those deeds were drawn by William Voorhees, and after hearing that he was going to swear on the stand that he drew them, I at once called on him to see if he was going to testify, as I wished to correct my testimony before leaving the stand, if he could satisfy me that he drew those deeds. He said that he had no recollection of drawing any papers for my father but one; that was a chattel mortgage on some cows; but if I would bring those deeds over to his office, in Broadway, the next day at two o'clock, he could tell very soon; that he had not been subpoenaed to give any evidence in this case. The next day I called on my counsel and got the deeds, Exhibits D 11 and D 12, took them to his office at 2 o'clock, or very near that time, showed them to him; he examined them, and said he never drew them, and they certainly were not in his handwriting. Afterwards I went to Mr. Gilchrist's office to ascertain if he had drawn any such deeds. I saw a clerk there; he said he knew nothing about it. I went to another lawyer, whom I believe to be Mr. Wortenlyke and a relative of Jacob R. Wortendyke, deceased; he said he hadn't any recollection of it. I also went to Mr. Wearts' office, but did not see him. I went to these places to verify my former convictions that Mr. Voorhees drew these deeds. This was before Perry testified. I asked Judge Davis to

go to Perry, after hearing it repeated that he was going on the stand to swear that he drew the deeds, to ask him if he was going on the stand to swear that he drew those deeds.

Q. What did Judge Davis report back to you? 945

[Question objected to on the ground that Judge Davis should be produced to prove what took place between Perry and himself.]

A. I can't answer word for word; the substance was that Perry said he had collected a few claims for old man Hoyt, but he had no recollection of having drawn any deeds for him. 946

Q. What was your purpose in sending Judge Davis?

A. I didn't believe he was going on the stand to swear that he had drawn the deeds, and I wanted to be satisfied of it.

Q. Are you satisfied that you heard about his claiming to have drawn the deeds before or after you had closed your testimony?

A. I think it was before I had finished; I had been on the stand; I think it was just previous to the last day of my examination, because I told him I wanted to correct my testimony if he could satisfy me that he had drawn the deeds. I saw Mr. Perry after he had given his direct testimony; I saw him at his office; I took him to task for swearing that he had drawn those deeds. He admitted that he had told me that he didn't draw them, that it was done by his clerk. He said that I would lose this case, but he could be of great service to me in the future. This is all the conversation in relation to this matter that took place; I have it down, word for word, in my diary; he invited me to call again and see him; he did not state for what purpose. 948

Q. Have you any knowledge how Perry came by the deed, if he had the deed, Exhibit D, 1, in the year 1860 or thereabouts?

A. If he ever had that deed, he must have got it from Voorhees, or my father, through Voorhees.

Q. Of your own knowledge do you know whether he ever had that deed?

949 A. No, sir.

Q. Have you any recollection of John B. Perry showing you either of these deeds, Exhibits D, 11 or D 12?

A. No, sir.

A. What settlement, if any, was ever had between you and your father, by reason of which the title or the respective interests of the lands in question formed a part thereof?

950 A. There never was a thought, word or act, in reference to a settlement between us, from the year 1858 to his death.

Q. What suggestion was made, or offered, or entertained by either you or your father, or any person in behalf of either of you, or agreement, understanding, or other thing, express or implied, by which your interest, as conveyed to you by Exhibit D 1, was to be made over to your mother, or to any other person, to be enjoyed by her or them?

951 A. It was never thought of.

Q. What was ever said to you by your father, or by any person in his behalf, by which you were to part with your interest as conveyed to you by the Ryder deed, Exhibit D, 1, in any manner or shape?

A. None, whatever.

Q. What intention, if any, have you ever had to part with such interest?

952 A. I bought it as an investment, and never had any idea of disposing of it in any way.

Q. What negotiation, or other act or conversation, was ever had between you and your father, or any other person acting in behalf of either or both of you, by which it was understood in any manner that you should part with such interest, or what arrangement was ever made, directly or indirectly, express or implied, directed to that end?

A. None, whatever—not even a thought.

Q. At what time did you or your father, or any person acting in behalf of either of you, ever perfectly or imperfectly understand each other that your interest in this property as shown by Exhibit D 1, was to be conveyed to your mother or any other person? 953

A. Never.

Q. How much greater was the interest of your father, or that of your mother, in the lands in question, than yours?

A. Not a mill.

Q. How much more money did your father pay or appropriate towards the purchase of this land than you? 954

A. Not a mill more.

Q. Then how much did you pay, and how much did he pay of the purchase money?

A. Each one-half of the interest, taxes and expenses incident to the property.

Q. In what way has he or your mother, or any other person, paid you for the one-half of all the moneys, or other sums of money paid by you, in the matter of these premises.

A. Never paid me a cent, nor ever tendered me any, nor expressed themselves obligated to pay the same. I never acquired an interest as shown in the Ryder deed in any other way than by paying my money. 955

Q. What understanding was ever had between your father and yourself, or by any person in behalf of either of you; that you were to hold the title to the undivided one-half for any purpose except as the absolute, unqualified, equitable and legal owner of the undivided one-half part thereof. 956

A. None whatever; my father and I continued in business together nearly six years; I managed, conducted, and controlled the business during the protracted absence of my father in New Orleans.

Q. To what extent did he express perfect confidence in you, if he expressed himself at all upon that point?

A. He never made any dissent to anything I did, but

seemed to be satisfied with everything I did.

Q. To what extent did he inspect the books and affairs of the firm, and of his private accounts relating to any transaction you had for him in his absence?

957 A. They were always open to his inspection, and he used to inspect them when he returned from his absence, look over the books from time to time as he desired; either I or the bookkeeper drew the checks, notes, &c., during the whole business; I usually did; I most generally signed the firm name to evidences of indebtedness; my father seldom did; I did it up to the time of his death.

Q. Taking it for granted that Perry drew, or caused to be drawn, Exhibits D 11 and D 12; what part did you take in giving instructions to Perry or any other person in or about his office in regard to the drawing of the same?

A. None whatever.

Q. What conversation, if any, did you have with John B. Perry in 1860 regarding the transfer to you of the interest your father had in the property?

A. None whatever.

959 Q. What conversation, if any, did you have with John B. Perry or any person in the presence of John B. Perry, before the commencement of this suit, regarding Exhibits D 11 and D 12, or the property described therein?

A. None.

Q. Were you present at any time when any conversation was had with John B. Perry, or in his presence regarding Exhibits D 11 and D 12, or the property therein described?

960 A. No, sir

Q. What part of your father's property was drawn in your business?

A. Never a dollar's worth; none of his property was.

Q. What, if anything was ever done, said, or contrived, by which any of your father's property was, or was to be dragged in the business?

A. Such things never occurred, or was thought of.

Q. What conversation, if any, did you ever have with your father in regard to the consideration to be inserted in Exhibits D 11 and D 12 ?

A. That was spoken about in Voorhees' office, and he said one dollar was as good a consideration as any. 961

Q. Was your wife ever asked to sign or be a party to Exhibit D 12.

A. No, sir ; she knew nothing about it.

Q. What other business transaction were you ever connected in with your father, except that of N. W. Hoyt & Co.

A. None other.

Q. Mr. Hoyt, do you wish to make a correction as to your real estate and financial ability, as testified to by you before ? 962

A. Yes, sir ; I wish to correct it in this particular ; I swore from memory entirely, that I owned No. 223 Wayne street in 1860 ; I was mistaken by two or three years ; I did not build it until 1863, and as to the value of the corner of Grove and Mercer street, I made a mistake of \$1,000 or \$2,000 ; the rest of my testimony is correct ; it is all from recollection ; I hold in my hand the memorandum of the conversation with John B. Perry, referred to in my testimony this morning, and as was written down by me ; it is correct, word for word, and is as follows : " Met John B. Perry Monday, September 27th, at Ferry ; he said he wanted to see me at his office ; I called at about 2½ o'clock, when he told me he could be of great service to me, and that his evidence would be indispensable to me ; nothing else of any importance was mentioned, except I told him I was right and must win." 963 964

[Counsel for defendant offers in evidence the page of the diary or memorandum book on which the above memorandum is written, which is marked Exhibit D 24.

Q. Do you know the legal effect of property being in-

sured in the name of a person, not the owner ?

A. I think I do.

Q. What is it ?

965 A. I think the policy would be void, that is my impression.

Q. How long have you known that ?

A. As long as I have known anything in business—  
twenty years.

Q. Who ordered the policy, Exhibit D 19 ?

A. I did.

Q. And you ordered it insured in those names ?

A. Yes, sir ; in the names of S. and M. Hoyt, myself  
and mother.

966 Q. What knowledge have you of any conversations had between your father and John B. Perry, except such as you may have derived from John B. Perry ?

A. None at all.

Q. What knowledge have you of anything that John John B. Perry claims he said in his testimony to him, except such as you may have gleaned from that testimony ?

967 A. Nothing ; I never heard of it before he testified to it.

Q. When was it that your father and you had an understanding, as sworn to by Perry, as having been said by your father to him, that this specific property was to be made over to your mother, to be enjoyed by her and owned by her, and that was to be a substitute for the will ?

A. Such a thing never was thought of by me, or whispered or spoken of by me to him.

968 Q. Is it true that your father was then in negotiation with you about it, and that you had agreed to this arrangement, and that you perfectly understood each other in that way ?

A. There is not a shadow of truth in it.

Q. The representations that Perry swears your father made to him, that this particular property was his own, that he had paid for it with his own money, that in fact

you had no interest in it, but that its being held jointly had come about generally by movements between himself and children to build up the firm; are they true or not?

A. I believe it to be false as hell, and made out of whole cloth, as my father, I believe to be a man of truth; I don't believe he ever made up such a story as that. 969

Q. If he did so represent to John B. Perry, was it the truth or a lie?

A. It was not the truth.

Q. Had he paid for the whole of this property with his own money?

A. No, sir.

Q. But had been paid for by the money of whom?

A. His and mine—one-half each. 970

Q. The money with which you paid your one-half of the purchase money to Ryder, the mortgage, bonds, and other expenses incidental to the property, whose money was it?

A. Mine.

Q. What interest had your father in it?

A. None whatever; I had made the money in business myself, and outside speculations and real estate.

Q. What had the children of your father to do with bringing about this purchase of this property by you and your father, and the making of the deed to you jointly? 971

A. Nothing.

Q. What relation did this purchase at any time have or bear to the firm of N. W. Hoyt & Co?

A. None.

Q. Then it was not purchased for the purpose of building up the firm?

A. No, sir; the Mr. Wilcox referred to in the testimony of Mr. Perry is John D. Wilcox, once a partner of my father, and afterwards a clerk, now dead; I don't know Mr. Smith, the clerk, or side partner of Mr. Perry; I never saw him. 972

Q. Do you recollect of Mr. Perry bringing these deeds, Exhibits D 11 and D 12, to the store?

A. I have no recollection of it; I think he never did.

If John B. Perry drew the deeds, I have no knowledge of who paid for them; the fact of Mr. Perry and Mr. Smith swearing that they drew the deeds, does not make me believe that they did.

973 Q. What was the sole purpose of your father, as expressed to you, of placing his undivided one-half of the property in your mother?

A. To place her in a position so she could live in case he should never return from New Orleans, where he was going.

Q. What negotiations, if any, were there pending between your father and you, in reference to a settlement of any kind?

974 A. None whatever.

Q. What difficulty had there been in your business at that time, or previous thereto; I mean the business of N. W. Hoyt & Co.?

A. None whatever; there is not the shadow of truth in that statement.

Q. Had there been any ruling motive of the firm to drag your father's property in any way in the business?

A. None whatever.

975 Q. Did you ever say to John B. Perry, "How did Sid. Bevans know that you had anything to do with drawing those deeds?"

A. I don't recollect of ever saying so.

Question repeated.

A. No, sir.

Q. Did John B. Perry tell you he was of the impression that he had drawn the deeds?

976 A. At the first and second interviews he said he had not drawn them; after he testified he said his clerk had drawn them.

Q. Did you ever request John B. Perry to get a certain copy of the Ryder deed—Exhibit D 1?

A. I have no knowledge of it.

Q. What induced you to join the firm of Hoyt & Bevans?

A. I did not join the firm; I never had any difficulty

with Mr. Bevans about any local political measure; I became bad friends with Mr. Bevans almost directly after the marriage; the reason of it was continued reports of his ill-treatment of his wife, who was my sister; my difficulty with him in 1863 and 1864 was on account of his having my father arrested in New Orleans, for using seditious language. 977

I have loaned Mr. Bevans money repeatedly, from 1869 to 1872; I guess he has borrowed equally as much from me as I have from him; I don't think I had any conversation with Mr. Bevans in regard to this corner before the commencement of this suit, excepting one night I had a conversation with him at his house; I took my papers and deeds there to convince him that I was right in the position I took; I did not apply to Mr. Bevans while he was in the Legislature to protect me in my official position, and help me to hold it; Mr. Bevans lies when he says so. 978

Whereupon the examination was adjourned to Friday, March 3d, 1876, at ten o'clock in the forenoon, at the same place. 979

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

I was acquainted with William Voorhees in his life time; I never heard his honesty questioned in Jersey City; he was an honest man; his only fault was his drinking; his reputation for honesty and fair dealing was good so far as I know. 980

My father and mother did not move from Sussex county, but from Orange county here; just before my father moved to Jersey City, he had been robbed in New York of a large amount of money; it was cut out of his coat; it was money given him by his father and brother-in-law, to pay off mortgages to a man named

Steele, in Bank street, New York, which necessitated his taking me from school when he came home, and coming here; that was the main reason of our moving to Jersey City.

981 Q. To your knowledge, did your mother have \$900 or \$1,000 in cash when she came here?

A. I never heard of it until her testimony was given here.

Q. Were you aware that she had any cash when she came here, or the first two years after she lived here?

A. No, sir.

Q. How much money did your mother use in fitting up either of the stores on Newark avenue?

982 A. I don't think she used any.

Q. Had she used any, would you have known it?

A. I think I should.

Q. Did she use any money in furnishing the store and paying rent?

A. I have no recollection of her using any.

Q. Who owned the store—whose business was it?

A. I owned the store; it was my business.

983 Q. Who paid for furnishing the store and stocking it, and the rent?

A. I did.

Q. What interest did your father or mother have in either of the Newark Avenue stores?

A. Pecuniary interest.

Q. Yes?

A. No pecuniary interest.

Q. What other interest, if any?

984 A. The only interest that either my father or mother had, was a desire to see their son succeed.

Q. How much money, if any, did your father use for this purpose?

A. He didn't use any money; the only help he gave me was his credit in New York; if I bought goods he would guarantee that I would pay for them; the stock in trade in the store didn't at any time exceed \$300 in either of the Newark Avenue stores; I might say that

when we moved from the last Newark Avenue store to Grove street we took \$400 worth of goods from it ; by "we" I mean Hoyt and Coykendall. The purchases and sales in the Newark Avenue stores were made in the name of S. W. Hoyt and Hoyt & Coykendall. Hoyt & Coykendall were S. W. Hoyt & N. H. Coykendall. When I speak of the Newark Avenue stores I do not mean that we kept two stores at one time, but moved from one to another. 985

Q. What purchases or sales, if any, were ever made in the name of your father or mother, or for or in their behalf, in either of the Newark Avenue stores, or the Grove street store ?

A. None. 986

Q. Was either your father or mother ever interested in business with you at any time except in the New York firm of N. W. Hoyt & Co., in which your father and Joel I. Hoyt were alone interested ?

A. None.

Q. Did you sell for cash alone in Jersey City, or did you give credit ?

A. We gave credit and kept books. 987

Q. Where are those books ?

A. I don't know ; I have looked for them in N. H. Coykendall's cellar, where Coykendall had a barrel of old books, which he sold some years ago.

Q. And you believe them to have been in that barrel, do you ?

A. Yes sir.

Q. To what extent did your mother share in the profits and losses of the business in Jersey City ? 988

A. None at all.

Q. When was it your mother told you it was your business and hers ?

A. I have no recollection whatever of any such conversation or talk.

Q. Who made the purchases ?

A. I did.

Q. Bills made out to you before your partnership with Coykendall?

A. Yes.

989 Q. In whose name were the customers' bills receipted?  
A. S. W. Hoyt, and Hoyt & Coykendall.

Q. And your mother hadn't any interest in the business of Hoyt and Coykendall?

A. No, sir.

Q. Have you any of the billheads of your old business?

A. No, sir; I don't think I ever had a printed bill head in Jersey City, unless it was in Newark Avenue, when Hoyt and Coykendall went together.

990 Q. To whom did the surplus money or profits alone go until you went in business with Nelson Coykendall?

A. To myself.

Q. And after you went in business with Coykendall to whom did they go?

A. To myself and N. H. Coykendall—they were divided.

Q. In what capacity did Nelson Coykendall first enter that store?

991 A. Under a small salary of \$50 dollars and his board per year, and not clothes.

Q. Did you keep a bank account while in business in Newark Avenue?

A. I believe I did the last year or two.

Q. In whose name?

A. Hoyt & Coykendall

Q. The Hoyt of that firm was yourself alone was it?

992 A. Yes, sir; S. W. Hoyt and N. H. Coykendall; I believe I kept a bank account myself before that, but I am not positive about it; I had a sign up, the name of it was Hoyt & Coykendall.

Q. How much money did John Wood put in the business when he became partner?

A. I can't say how much; my recollection is in the neighborhood of \$100. The firm then was composed of S. W. Hoyt & John Wood, and this was before Nelson

Coykendall became a member. My father did not start me in business to any extent on the corner of Grove and Wayne streets; that is, no financial help.

Q. Was he the head and tail, the commencement and end of that business, as expressed by your mother? 993

A. No sir.

Q. How much money did your father give you and Nelson Coykendall to go in the business?

A. None.

Q. What valuable thing did he give you to go in business, or to assist you in commencing business.

A. Nothing.

Q. What money or valuable thing did he give you to assist you in business? 994

A. He never gave me anything with the exception of the \$100 to start with.

Q. When and how often did your mother tell you that Joel I. Hoyt had spoken to her about giving you a deed for the undivided one-half of the property described in the bill of complaint?

A. Once, if not twice.

Q. What did she say?

A. She said that Joel had spoken to her about it, and told her she ought to do it. 995

Q. Was that before or after you told her that there was a mistake in the deed of 1860, that Joel I. told her this?

A. It was after.

Q. Then your mother was fully aware of the mistake in the deed from you to her in 1860, before she executed the deed of 1867, Exhibit D. 13?

A. Yes, sir; and she evinced surprise when I told her.

Q. Did she express surprise? 996

A. Yes, sir.

Q. If there were \$300 worth of stock in the Newark Avenue store, and your father gave you but \$100, how did you make up the \$300 worth of stock you say was in the store?

A. By credit in New York.

Q. Then there was no money put in that store except the \$100, and such money as you put in from the profits?

997 A. That is all; B. W. Ryder is dead; I have here the books of account of N. W. Hoyt & Co.

Q. Turn to the accounts of N. W. Hoyt, Ledger A, pages 1, 14, 15, 16, 17, 18, 19; Ledger B, pages 2, 248, 249, 174, 175, 52, 53, 451, and tell us if those are all the accounts of N. W. Hoyt in the firm of N. W. Hoyt & Co.?

A. Yes, sir, except during the last year he was in the firm.

998 These pages referred to in said ledger, are all offered in evidence on the part of the defendant.

Q. Do any of the accounts of N. W. Hoyt and N. W. Hoyt & Co., for the years 1859, 1860 or 1861 relate to, or bear any connection with the property corner of Grove and Wayne streets, except as you have heretofore stated?

A. No, sir.

999 Q. Do your books anywhere show that any of the moneys paid by you, on account of the purchase money, was in any way satisfied in whole or in part?

A. No.

Witness being shown a book, says, this is the cash book of N. W. Hoyt & Co., said book is offered in evidence on part of the defendant, and is marked Exhibit D. 26.

1000

N. W. Hoyt and Son was the same as N. W. Hoyt & Co., N. W. Hoyt & Son was a mistake by the printer.

Q. Show me your individual account in Ledger A, with N. W. Hoyt & Co.?

A. Pages 2, 46, 47, 153 in Ledger A.; pages 3, 54, 55, 316, 317 in Ledger B.

Those pages of accounts, in said ledgers, are offered in evidence on part of defendant.

There are no accounts of N. W. Hoyt & Co. as a 1001  
firm.

*And being cross examined, he says :*

Q. How long were you in business on Newark Avenue ?

A. I think about five years; the firm of Hoyt & Coykendall commenced while we were in business on Newark Avenue; I had the sign up Hoyt & Coykendall on 1002  
the Newark Avenue store.

Q. You have stated in your direct examination, that Mr. Bevans had borrowed from you as much as you had borrowed from him, can you state any specific amount so borrowed by him or any date when he so borrowed any sum from you, either you individually or from your firm ?

A. Me individually or from the firm? I cannot for the moment specify amounts or dates. 1003

Q. If such moneys were borrowed would not your own books, or the books of the firm show amounts and dates ?

A. Not necessarily; for instance, I loaned him my individual check and took his, dated a day or two ahead or the same day, charged my own check, his was protested, and I stopped mine at the bank.

Q. Give us the date of that transaction ?

A. I can't. 1004

Q. The year ?

A. I think it was 1872 or 1873; I can't say if I have that check; I presume I have; I will produce it if I have it; I don't know if I have a record of it; I think there were a number of such transactions; to the best of my knowledge there were.

Q. Was not the check, you say, you stopped the firm's check and not your own ?

1005 A. I believe it was ; I don't know the amount of the check ; I can't say if it was \$250 ; I don't remember ; I think there were a great many such transactions, to the best of my knowledge and belief ; I had a bookkeeper at one time named Black ; I know his handwriting.

[Witness being shown a paper, says, I should think that was his handwriting.]

Q. What is that paper ?

1006 [Question objected to by counsel for complainant.]

A. I should not now want to swear that is his handwriting after inspecting it.

Q. You said, at the close of your examination yesterday, that Mr. Bevans lied when he said that you applied to him to protect you in your official position while he was a member of the Assembly ; what did you mean by that ?

1007 A. I meant that I had no recollection or knowledge of ever applying to him to retain me in my official position ; I swore he lied, because I thought it was a lie ; I still think so.

Q. That is rather a harsh term to use ; are you not willing to modify it ?

A. No, sir.

Q. Then you still say that when Mr. Bevans made that statement he lied ?

1008 A. I believe he did.

Q. At the time that Mr. Bevans was in the Assembly you were a Police Commissioner, were you ?

A. Yes, sir.

Q. (Witness being shown a paper is asked) is that your handwriting ?

A. Yes, sir ; that is a letter addressed to S. B. Bevans,

Trenton, N. J.; I presume I sent that letter to Mr. Bevans; I wrote that letter in the interest of James W. Trask, Bayonne; [said letter is offered in evidence and is marked Exhibit C 6, for complainant.] Mr. Trask resided in the city of Bayonne, and was interested in the Bayonne charter, of which I speak. 1009

Q. What interest had Mr. Trask in the police bill, of which you make mention in your letter?

[Question objected to.]

A. None that I know of; I don't know whether that was the police bill of Jersey City or Bayonne; I presume it was the police bill of Jersey City which I was requested, as I was the instigator of nominating S. B. Bevans to the Legislature; belonging to the Jackson Club, parties would come to me and request me to write him, thinking I had some influence. 1010

Q. (Witness being shown another paper, is asked) is that your handwriting, and also that on the envelop?

A. Yes, sir; I presume that letter was sent by me to Mr. Bevans. 1011

[Said letter and envelop are offered in evidence, and together are marked Exhibit C 8, for complainant.]

Q. Wasn't that check you stopped the payment of for \$250, and given in payment of the balance due on the sum of \$700 loaned you by Mr. Bevans, October 3d, 1873.

A. I think not, as his check was under protest at the time. 1012

Q. Do you refer to the \$700 check?

A. I don't know the amount; I couldn't say; I will produce all checks for money loaned to Bevans by me; I will look them up.

*And being again examined in chief, he says:*

Q. It is not an unusual thing for S. B. Bevans to fail to meet his obligations, is it?

[Question objected to as impertinent.]

1013 A. No, sir.

Q. He is reported to have failed four times in the last year, is he not?

A. Repeatedly, I don't know how many times.

S. W. HOYT.

1014 Taken, sworn to and subscribed }  
this 3d day of March, A. D. }  
1876, At Jersey City, before }  
me }

ISAAC ROMAINÉ,  
*Master in Chancery.*

Whereupon the examination was adjourned to Wednesday, March 8th, 1876, at ten o'clock in the forenoon, at the same place.

1015

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

CHARLES M. SHONS, a witness produced on the part of the defendant, being duly sworn, on his oath saith:

1016 I was in business in New Orleans in the years 1862, 1863, and 1864; the firm name was Brock, Davis, & Shons; I knew Sidney B. Bevans.

Q. What complaint, if any, did Sidney B. Bevans make to you in 1862 or 1863, regarding his father-in-law, N. W. Hoyt?

[Question objected to, because irrelevant.]

A. To give you answer that you could comprehend, and that would cover the ground, would require some time, from the fact that General Butler had issued orders for the arrest of all disloyal persons; I have General Butler's orders, but not with me; Bevans made statements to me all on one point; he wanted his father-in-law arrested for disloyal utterances, and sent away to Ship Island; he so expressed himself to me repeatedly; Bevans wanted him sent away because his father-in-law was conducting a business similar to his; business which he (Bevans) could do if his father-in-law was away; the business was butter and cheese; he so expressed himself to me repeatedly; for a long time I paid no attention to it; I regarded it as fiercely contemptible, and after a long time the thing culminated in this: One Sunday morning Bevans came up to where he and we boarded; he came in our rooms all flushed up, and says, "What do you think old Hoyt says now?" He referred to his father-in-law, N. W. Hoyt; I knew where he had been; I was writing, and as he came in the door, I caught a part of what he said, and asked him to repeat it; he said, "Hoyt said to me, 'Well how is Shons getting along?'" to which Bevans replied, "Well, I guess very well; he has got 600 or 700 hogsheads of sugar, and 1,000 or 1,200 barrels of molasses on the levee, waiting shipment," and he (Hoyt) said, "I wish to God the rebels would come in here to-morrow, and gobble up every bit of it."

1017

1018

1019

That was the part I caught, and I asked him to repeat it; I was the Shons to whom Nelson W. Hoyt referred; I said to him, "Bevans, what do you say?" and he repeated it; I said to him, "Mr. Bevans, if Hoyt said that, I will call on you to-morrow morning, when Judge Bell's court opens, to swear to that"; He said, "Well, you call on me to swear to it, and I'll be damned if I don't."

1020

Bevans called on me the next morning, in a sorrowful way; I had had N. W. Hoyt arrested, and he was then in the Tombs; I had had him arrested for using disloyal sentiments, as stated to me by Bevans; I afterwards saw

Mr. Bevans in the office of John C. Dimmock, an attorney in New York; I met him there at the solicitation of Mr. Dimmock; this was several years after the arrest of Hoyt; when I got to Dimmock's office he said to me,  
 1021 "Do you know S. B. Bevans?" I said yes; he said, "You had some difficulty with him in New Orleans?" I said, "Not much; it wasn't my difficulty with Bevans."

Very soon after I went in Dimmock's office Mr. Bevans came; we went in Dimmock's private office, and he (Bevans) began a statement of what occurred in New Orleans, as he understood it; he went on and told me what might have taken place; he knew it was false all  
 1022 through, and when he got through I told him he was mistaken; that what he had stated was all false; the whole thing; he wanted me to write a document that would exonerate him from the whole thing of the arrest and imprisonment; he wanted me to write out a statement of the whole affair, and sign it, which would exonerate him, so he could have it published in the paper; he did not ask me to swear to it; I don't recollect whether or not he offered me money to make the statement;  
 1023 my expenses were paid by Mr. Dimmock.

---

[All the foregoing testimony objected to by counsel for the complainant, as irrelevant, and in no way rebutting evidence on the part of the complainant.]

*And being Cross-examined, he says:*  
 1024

Mr. Hoyt was under arrest over night and discharged next morning; Mr. Bevans was active in procuring his discharge.

*And being again examined in chief he says:*

Mr. Bevans stated that he wanted Mr. Hoyt released because he had woke up and discovered that he was the son-in-law of Mr. Hoyt, and it would raise the devil in his family.

C. M. SHONS.

1025

---

Taken, sworn to, and subscribed this }  
 8th day of March, A. D. 1875, }  
 at Jersey City, before me,

ISAAC ROMAINE,  
*Master in Chancery.*

1026

1027

1028

**EXHIBIT C 1.**

JERSEY CITY, May 29, '74

Messrs. GRAM and WM. CLARK, surety:

1029 You are hereby notified that I am part owner of the premises you hold under lease from S. W. and Millie Hoyt; and I further notify you that I shall look to you and hold you in law for one half the rent for same.

SALMON W. HOYT.

**EXHIBIT C 2.**

1030

JERSEY CITY, MAY 29, '74.

Messrs. MCCOY &amp; BEEMER:

You are hereby notified that I am *part owner* of the *premises* you occupy under your *lease*, and you are further notified that I shall look to you and hold you in *law* for *one-half* the rent, namely, Fifty Dollars per month (\$50).

SALMON W. HOYT.

1031

**EXHIBIT C. 3.**

## GRANTEE.

Nelson H. Coykendall to Salmon W. Hoyt.

Deed dated September 1, 1856. Recorded, October 6, 1857, Liber 61, page 748. Consideration, \$1,250.

1032 Conveys the equal undivided one half part of lot, in Jersey City, which on map of farm of Cornelius Van Vorst, deceased, is known as lot No. 1 in Block 60, 25 ft. by 100 feet, and fronting on the south side of Wayne street.

Barzilai W. Ryder and wife, to Nelson W. Hoyt  
and Salmon W. Hoyt.

Deed dated April 25, 1859. Recorded May 2, 1859,  
Liber 73, page 68. Consideration, \$9,000. 1033

Conveys lot in Jersey City aforesaid, on north-east  
corner of Grove and Wayne streets, 40 feet on Grove  
street and 60 feet on Wayne street.

---

John Lamb and wife to Salmon W. Hoyt.

Deed dated 14th May, 1859. Recorded 17th May, 1859,  
Liber 74, page 33. Consideration, \$1,600. 1034

Conveys lot in Jersey City aforesaid, which on said  
map of farm of Cornelius Van Vorst, is known as lot  
No. 2, in Block 60, 25 feet by 100 feet, and fronting on  
the southerly side of Wayne street.

---

Nelson W. Hoyt and wife, to Salmon W. Hoyt. 1035

Deed dated 17th July, 1860. Recorded 25th August,  
1860, Liber 82, page 537. Consideration, \$1.

Quit claims premises in Jersey City, on north-east  
corner of Grove and Wayne streets, 40 feet by 60 feet.

---

James H. Dandy and wife, to Salmon W. Hoyt. 1036

Deed dated May 4, 1860. Recorded December 9,  
1861, Liber 90, page 174. Consideration, \$3,500.

Conveys part of lot in Jersey City, which on said  
map of Cornelius Van Vorst, is known as part of 26,  
Block 36, on west line of Grove, 20 feet north of Mercer,

thence north 20 feet to Mercer, and 75 feet on Mercer,  
(north-west corner of Grove and Mercer).

1037

Same to same.

Deed dated May 4, 1860. Recorded March 13, 1862,  
Liber 90, page 620. Consideration, \$3,500.

Conveys same premises as above; given to correct description.

1838

Nelson W. Hoyt and wife, to Salmon W. Hoyt.

Deed dated May 4, 1863. Recorded May 11, 1863,  
Liber 100, page 198. Consideration, \$400.

1039 Conveys part of lot in Jersey City, which on the Van  
Vorst map aforesaid, is known part of lot 3 in Block 60,  
on south side of Wayne street, 50 feet east of Varick,  
thence east, 6 feet 3 inches by 100 feet.

John Lamb to Salmon W. Hoyt.

Deed dated 19th November, 1867. Recorded, 25th  
November, 1867, Liber 160, page 271.

1040 To correct deed of 28th February, 1853. Quit claims  
lot 1 in Block 60, Van Vorst map aforesaid.

Maliscent Hoyt, widow, to Salmon W. Hoyt.

Deed dated February 1st, 1867. Recorded January

28, 1868, Liber 163, page 248. Consideration, \$1.

Conveys the undivided one-half part of tract in Jersey City, on north-east corner of Grove and Wayne streets, 40 feet by 60 feet. 1041

---

William S. Gilbert and wife, Patrick Kiernan and wife, to Salmon W. Hoyt and Joel I. Hoyt.

Deed dated February 17, 1868. Recorded March 19, 1868, Liber 165, page 149. Consideration, \$21,153.

Conveys tract of land in the town of Bergen, near Jersey City, adjoining Cornelison and Oyster Creek, containing  $6\frac{42}{100}$  acres of salt meadow, at the base of Bergen Hill, south-westerly from the oakum factory. 1042

---

Julia F. Smith and Francis I., her husband, to Salmon W. Hoyt. 1043

Deed dated January 1, 1869. Recorded January 30, 1869, Liber 183, page 406. Consideration, \$3,105.

Conveys lot in Bayonne Township, on north corner of Chestnut Avenue and Avenue E, thence north-east along the north-west side of Avenue E, 100 feet by  $172\frac{1}{2}$  feet deep.

---

1044

#### GRANTOR.

Salmon W. Hoyt to Maliscent Hoyt.

Deed dated July 30, 1860. Recorded September 5, 1860, Liber 82, page 681. Consideration \$1.

Conveys lot on north-east corner of Grove and Wayne streets, Jersey City, 40 feet by 60 feet.

1045

Salmon W. Hoyt and Mary A., his wife, to John Morrow.

Deed dated 22d January, 1866. Recorded 25th January, 1866, Liber 126, page 610. Consideration, \$5,000.

1046 Conveys premises on north-west corner of Grove and Mercer street, Jersey City, 20 feet by 75 feet, part of lot 26 in Block 36, map of Cornelius Van Vorst.

Salmon W. Hoyt and wife, to John D. Fraser.

Deed dated February 12, 1866. Recorded February 13, 1866, Liber 129, page 278. Consideration \$10,000.

1047 Conveys parts of lots 1 and 2, Block 60, map of Cornelius Van Vorst, on the south line of Wayne street, Jersey City, 37 feet 6 inches east of Varick, thence east 18 feet inches by 100 feet.

Salmon W. Hoyt and wife, to Annie Dodd, wife of John W. Dodd.

1048 Deed dated 19th November, 1867. Recorded November 21, 1867, Liber 160, page 273. Consideration \$15,250.

Conveys part of lot 1, Block 60, Jersey City, map of Cornelius Van Vorst, on south-east corner of Varick and Wayne streets; 80 feet on Varick and 18 feet 9 inches on Wayne street.

Nelson W. Hoyt and wife, Salmon W. Hoyt and wife  
to Barzillai W. Ryder.

Mortgage \$4,000, dated April 25, 1859. Registered  
April 30, 1859, Liber 20, page 805. 1049

On north-east corner of Grove and Wayne streets,  
Jersey City, 40 feet by 60 feet.

\* Cancelled of record 5th May, 1863.

---

Salmon W. Hoyt to John Lamb.

Mortgage \$500, dated May 14, 1859. Registered May  
25, 1859, Liber 21, page 127. 1050

On lot 2, Block 60, Van Vorst's map, Jersey City,  
south side Wayne street, 25 feet by 100 feet.

Cancelled of record 16th June, 1860.

---

1051

Salmon W. Hoyt and wife, to James H. Dandy.

Mortgage \$3,000, dated 4th May, 1860. Registered  
18th November, 1861, Liber 26, page 11.

On part lot 26, Block 36, Van Vorst map, Jersey  
City, on south west corner Grove and Mercer.

Cancelled of record 18th May, 1865.

---

1052

Salmon W. Hoyt and wife to Jacob Lewis.

Mortgage \$5,000, dated July 8th, 1867. Registered  
July 27, 1867, Liber 45, page 272.

On premises on south east corner of Wayne and Va-

rick streets, Jersey City, 18 feet 9 inches on Wayne street and 80 feet on Varick street.

1053

---

Salmon W. Hoyt and wife, and Joel I. Hoyt, and wife, to William S. Gilbert.

Mortgage \$7,500, dated 12th February, 1868. Recorded March 18, 1868, Liber 51, page 101.

1054 On premises in the town of Bergen  $3\frac{2}{100}$  acres of salt meadow adjoining Cornelison and south-west of the Oakum factory, being the northeasterly half—part of the whole tract.

Cancelled of record 27th May, 1875.

---

Same parties to Patrick Kiernan.

1055 Mortgage \$7,500, dated 12th February, 1868. Recorded March 18, 1868, Liber 51, page 105.

On premises in Bergen township,  $3\frac{21}{100}$  acres of salt meadow south-west of the Oakum factory, being the south-west half—part of the whole tract.

---

Salmon W. Hoyt to Francis I. Smith.

1056 Mortgage \$2,000, dated January 1, 1869. Registered January 30, 1869, Liber 60, page 451.

On premises in the Township of Bayonne, north corner of Chestnut Avenue and Avenue E, 100 feet by  $172\frac{1}{2}$  feet.

Cancelled of record 21st March, 1872.

---

Salmon W. Hoyt and wife, to William P. Aben-  
dorth.

Mortgage \$10,000, dated December 18, 1869. Re-  
gistered December 29, 1869, Liber 70, page 630.

On premises in Jersey City, part of lots 1 and 2,  
Block 60, 18 feet 9 inches by 100 feet, and 20 feet off  
the rear of said lot 1. 1057

Cancelled of record 20th November, 1872.

---

REGISTER'S OFFICE,  
HUDSON COUNTY, N. J. }  
24th August, 1875. } 1058

I have searched the records of deeds and mort-  
gages in this office, in the name of Salmon W.  
Hoyt as Grantee, Grantor, and Mortgagor  
from the 1st of January, 1857, to 1st July,  
1870, and do not find anything, except as be-  
fore stated.



J. B. CLEVELAND,  
*Register.*  
per C. STEVENS.

1059

---

**EXHIBIT C 5.**

[On part of Complainant, and marked in  
testimony of S. B. Bevans, "Ex. 2 for  
identification. J. C. M. "]

JERSEY CITY, March 31, 1864.

1060

MY DEAR SON AND DAUGHTER :

I am home in my room, sick, but am some better to-  
day, and I thought I would improve the opportunity of  
writing to you, for I have been so for a long time that I  
could not write a word ; my hands have been in such a  
state that I could not hold a pen.

Now, Fanny, you nor Sid. does not know how much I want to see you once more, and that dear little Emma; how I wish she was here! I would ask her if she wanted to see Willie Hoyt, and I think I hear her say, "Yes."

1061 The dear little huzzy! Take good care of her. I think you say you are coming home by the river this summer. You will find it a very long road to travel.

Sid., I have got my horse home, and bought me a set of new harness and wagon. They cost 500 dollars. I have not rode behind them yet, but if my health will admit, I intend to travel with them this summer to Sharon and Saratoga, and take ma and Emma with me, and then come home and go through Sussex County, and if you come we would be glad of your company. I have two boils on my forehead, similar to little Emma's, and now I think I know how she suffered; poor little thing! Ma has just found some of her own blood kin in two cousins; their names is Decker, her father's sister's children, and they have been well brought up, and appear like a gentleman and lady. They have been here three or four days. They are from Delaware County, Ohio, and have been buying a stock of millinery and gents' furnishing goods. They have left for home to-day, and Emma has gone to the depot to see them off.

This from your affectionate father,

N. W. HOYT.

P. S.—Ma says kiss sweet little Emma for her, and do the same for me.

Yours,

N. W. H.

1064

### EXHIBIT C 6.

NEW YORK, Jan, 27th, 1869.

MR. S. B. BEVANS, Trenton, N. J.:

*Dear Sir*—Your letter, under date of Jan. 26th, at hand and noted. I trust you will advocate the Bayonne charter with all of your power, if you cannot get the

consolidation bill through, which will cover Bayonne. Watch the police bill, if any should be presented while I am gone.

Yours, very truly,

S. W. HOYT. 1065

---

**EXHIBIT C 7.**

[On part of Complainant, which is marked in Testimony of S. B. Bevans, as "Exhibit 1, for identification. J. C. M."]

NEW YORK, Feb'y 19th, 1864. 1066

MY DEAR SON AND DAUGHTER:

I have not been very well for the last month, but am better to-day. Have not heard from you or Sabrina in a long time; Ma thinks something is the matter with you that you do not write. I want to hear from little Emma B. When Salmon came home he said she was sick, and not hearing from you a word we have some fears that she is sick. Emma Hoyt goes to school every day, and is learning very fast, and is very fleshy and looks well. Ma says that Sabrina must come home in the Spring. I must close. 1067

Your Father,

N. W. HOYT.

---

**EXHIBIT C 8.**

1068

[Postmark] New York, March 4th, 10:30 A. M.

[Address] Mr. S. B. Bevans, Member of Assembly,  
Trenton, N. J.

MR. S. B. BEVANS, Trenton, N. J.:

NEW YORK, March 4, 1869.

Dear Sir: Your favor, under date of March 2d,

reached me last night. In regard to Mr. John Lee, I have nothing against him in the world, only the means used to *force* him on the force. The Recorder demanded his appointment, and after abusing me, left the commission because he could not bully it. Now, if Recorder  
 1069 Martendale and a lot of soreheads go to Trenton and get legislation for their own benefit, so be it. I can only say it will be no benefit to the party in Hudson County. As far as I am concerned, I don't care a pin about it, whether the bill is passed or not. I only say it is folly to throw a firebrand into the party, which will bring nothing but disaster in at least two of our Assembly districts. As regards the supposed saying of Alderman  
 1070 Gaffney, consider it all bosh. I believe it was only told you to influence you against the present board. I have carefully looked over the bill (new) and have failed to see any benefits in it. After summing it up, it amounts to one thing, and only one, and that is to legislate Prey and Hoyt out of the Commission. Gaffney goes out the first of May, and cannot be re-elected, as he will be a non-resident. Under the old bill the Mayor is a member of the board, and on looking over the whole thing I can-  
 1071 not see but one point in it: that is to get Prey and Hoyt out.

Yours truly,

S. W. HOYT.

1072

## DEFENDANT'S EXHIBITS.

1073

---

### EXHIBIT D 1.

Deed. Barzillai W. Ryder and wife to Nelson W. Hoyt and Salmon W. Hoyt, dated April 25th, 1859, recorded May 2d, 1859, in Liber 73 of deeds, for Hudson county, page 69, &c., for the same land and premises as is described in paragraph 1 of the complainant's bill of complaint.

1074

---

### EXHIBIT D 2.

Bond of Nelson W. Hoyt and Salmon W. Hoyt to Barzillai W. Ryder, dated April 25th, 1859, in the sum of \$4,000 (penal amount \$8,000), as part of the purchase money named in the deed, Exhibit D 1, with receipts thereon.

1075

---

### EXHIBIT D 3.

Mortgage. Nelson W. Hoyt and Salmon W. Hoyt to Barzillai W. Ryder, dated April 25th, 1859, recorded April 30th, 1859, in book 20 of mortgages for Hudson County, pages 805, &c., to secure the sum of \$4,000 (penal amount, \$8,000,) upon the property described in Exhibit D 1, being a purchase money mortgage, as is recited at the end of the description therein. This mortgage accompanies bond, Exhibit D 2, and upon which appears a receipt for the payment thereof, and also cer-

1076

tificate of cancellation of May 5th, 1863, signed by R. Gilchrist, Clerk.

1077

**EXHIBIT D 4.**

No. 678.                      NEW YORK, April 30th, 1859.  
 Merchants' Exchange Bank pay to the order of Bar-  
 zillai W. Ryder twenty-eight hundred dollars.  
 \$2,800.

1078

(Endorsed)

N. W. HOYT & CO.  
 B. W. RYDER.

**EXHIBIT D 5.**

Rec'd, New York, Nov. 8th, 1860, from N. W. Hoyt,  
 one hundred and five dollars, for six months' interest,  
 due 1st inst.

B. W. RYDER.

1079

**EXHIBIT D 6.**

NEW YORK, May 3, 1861.  
 Received from Messrs. N. W. and S. W. Hoyt, one  
 hundred and five dollars, in full for interest on a bond  
 and mortgage to May 1, '61.

1080

\$105.00

B. W. RYDER.

**EXHIBIT D 7.**

Received, Jersey City, June 29th, 1861, N. W. and S.

W. Hoyt, check for one thousand eleven  $\frac{3}{100}$  dollars, to be applied to their bond.

\$1,011  $\frac{34}{100}$

B. W. RYDER.

1081

---

**EXHIBIT D 8.**

Rec'd, Jersey City, Nov. 12th, 1862, from N. W. Hoyt, seventy dollars, for six months' interest, due 1st inst.

\$70.

B. W. RYDER.

1082

---

**EXHIBIT D 9.**

Rec'd, New York, Nov. 8th, 1861, from N. and S. W. Hoyt, seventy dollars, for six months' interest on their bond, due 1st inst.

\$70.

B. W. RYDER.

1083

---

**EXHIBIT D 10.**

1,000.00.

NEW YORK, January 2d, 1863.

Ninety days after date I promised to pay to the order of B. W. Ryder, Esq., ten hundred and  $\frac{0}{100}$  dollars, at Mechanics' and Traders' Bank, Jersey City, N. J. Value received.

1084

S. W. HOYT,  
366 South Fifth St.

B. W. RYDER.

**EXHIBIT D 11.**

1085 Deed. Nelson W. Hoyt and Maliscent, his wife, to Salmon W. Hoyt, dated July 17th, 1860, recorded August 25th, 1860, in Liber 82, page 537, &c., purporting to convey for the consideration of one dollar, the land and premises described in Exhibit D 1.

**EXHIBIT D 12.**

1086 Deed. Salmon W. Hoyt to Maliscent Hoyt, dated July 30th, 1860. Recorded September 5th, 1860, in Liber 82 of deeds, page 681, purporting to convey, for the consideration of one dollar, the land and premises described in Exhibit D 1.

**EXHIBIT D 13.**

0187

Deed. Maliscent Hoyt to Salmon W. Hoyt, dated February 1st, 1867. Recorded January 27th, 1868, in Liber 163 of deeds, pages 248, &c., conveying, for the consideration of one dollar, the one undivided half part of the land and premises described in Exhibit D 1.

1088

**EXHIBIT D 14.**

A receipt from the Hudson County Mutual Insurance Company, dated May 27th, 1862, to Nelson W. and Salmon W. Hoyt, for their promissory note for five hundred dollars, and twenty-five dollars in cash, for premium on five thousand dollars, insured under policy No. 6,902.

**EXHIBIT D 15.**

Receipt from the Hudson County Mutual Insurance Company, dated May 27th, 1865, to N. W. and S. W. Hoyt, for their promissory note for five hundred dollars, and twenty-five dollars in cash, for premium on five thousand dollars, insured under policy No. 6,902. 1089

**EXHIBIT D 16.**

Policy of insurance, No. 6,902, dated May 27th, 1859, 1090 issued by the Hudson County Mutual Insurance Company, of Jersey City, for \$5,000, to Nelson W. and Salmon W. Hoyt, as owners, and B. W. Ryder, as mortgagee, on the buildings erected on property described in Exhibit D 1.

**EXHIBIT D 17.**

1091

Policy of insurance issued by the Ætna Insurance Company, of Hartford, to Salmon W. and Maliscent Hoyt, dated October 16th, 1872, on the buildings erected on premises described in Exhibit D 1, said policy being numbered 62,247.

1092

**EXHIBIT D 18.**

Certificate of renewal of policy No. 62,247, issued by the Ætna Insurance Company.

**EXHIBIT D 19.**

1093 Policy of insurance, dated July 15th, 1871, issued by Hudson Insurance Company to S. W. and M. Hoyt, on buildings erected and described in Exhibit D 1.

---

**EXHIBIT D 20.**

1094 Assessment note, signed and given by S. W. Hoyt to the Hudson County Mutual Insurance Company, for the sum of \$5.00, under policy 6,902; issued by said company.

---

**EXHIBIT D 21.**

1095 A letter from N. W. Hoyt to S. W. Hoyt, dated January 3d, 1863.

---

**EXHIBITS D 22 AND 23.**

1096 Tax bills directed to N. W. Hoyt & Co. for the annual tax due in November, 1860 and 1862, on premises described in Exhibit D 1.

---

**EXHIBIT D 24.**

Bill for water rents on property described in Exhibit D 1, from May 1st, 1860, to May 1st, 1861, directed to N. W. and S. W. Hoyt.

**EXHIBIT D 25.**

Bill for annual tax, 1864, directed to S. W. Hoyt & Co., on premises described in Exhibit D 1.

1097

**EXHIBITS D 26, 27, 28 AND 29.**

Bills for water rents for the years 1865, 1866 and 1867, directed to S. W. Hoyt.

1098

**EXHIBITS D 30 AND 31.**

Bills for water rents for the years 1864 and 1865, on the premises described in Exhibit D 1, directed to N. W. and S. W. Hoyt.

1099

**EXHIBIT D 32.**

Bill for the annual tax due in November, 1861, on the land described in Exhibit D 1, directed to N. W. Hoyt & Co.

1100

**EXHIBITS D 33, 34, 35 AND 36.**

Bills for water rents for the years 1861, 1862, 1863 and 1864, on premises described in Exhibit D 1.

**EXHIBIT D 37.**

1101 Bill for tax due November, 1863, on premises described in Exhibit D 1.

---

**EXHIBIT D 38.**

1102 Letter dated New Orleans, October 21st, from N. W. Hoyt to S. W. Hoyt.

---

**EXHIBIT D 39.**

1103 Lease of part of the premises described in Exhibit D 1, dated March 1, 1870, given by Salmon W. Hoyt and Millie Hoyt, to Nelson H. Coykendall and Levi D. Coykendall.

---

**EXHIBIT D 40.**

1104 Lease of part of the premises described in Exhibit D 1, Dated March 1, 1873, given by S. W. and M. Hoyt to Mrs. Grain and William Clark.

---

All check stubs and leaves of books of account offered in evidence will be produced before the Chancellor upon the argument, as will also all other exhibits offered in evidence, not herein referred to.

le-

V.

D

d

r

l,

o

d

n

-

