

In Chancery of New Jersey.

To his Honor, THEODORE RUNYON, Chancellor of the State of New Jersey :

Humbly complaining, showeth unto your Honor, your oratrix, Laura S. Dodd, of the City of Newark in the county of Essex, and State of New Jersey, that she is the widow of Bethuel Dodd, late of the said City of Newark; and that prior to the twenty-third day of October, one thousand eight hundred and sixty-eight, she was seized in fee simple in her own right of the house and lot of land, situate in the City of Newark (then the township of Woodside), in the county of Essex, and described as follows: beginning at a point on the westerly side of Belleville avenue, fifty feet south of Carteret street, and running thence along said avenue southerly fifty feet; thence at right angles to said avenue westerly, one hundred and fifty feet; thence in a northerly direction and parallel with said avenue fifty feet; and thence in an easterly direction and parallel with Carteret street, one hundred and fifty feet to the place of beginning. 10

Being lots twenty-two (22) and twenty-three (23), on a map of property of Parker & Keasbey, made by W. L. Thompson, in 1866. 20

And your oratrix further shows that the said house and lot were at that time subject to two mortgages thereon, one for twenty-five hundred dollars, held by Mary L. Miller, and another for about eight hundred dollars, held by Anthony Q. Keasbey, and the interest upon said mortgages not having been paid in consequence of the ill-health, and failure in business of your oratrix's late husband, a bill was filed by the said Mary L. Miller to foreclose her said mortgage, and a decree obtained on the fifth of August, eighteen hundred and sixty-eight, for a sale of the said premises to satisfy 30

the amount due on the said two mortgages, being in all—including costs and interest—about thirty-five hundred dollars.

And your oratrix further shows that the said house and lot were, at that time, at least worth nearly double the amount of said encumbrances thereon; and your oratrix was exceedingly anxious to save the said premises from being sold, and to raise a sufficient sum of money to pay off the said encumbrances and to enable her to hold the said property.

- 10 And your oratrix further shows, that as the time approached for a sale of the said property, John P. Wakeman, of the City of Newark, who is the brother-in-law of your oratrix, and who took much interest in her affairs, represented to your oratrix that it was desirable for her that the sale of said premises should be allowed to go on, and that he, the said John P. Wakeman, should bid in the property at such sale and hold the title thereof in trust for your oratrix, so that in case a purchaser should be found therefor, there would be no difficulty in making a title to the same, nor any
- 20 difficulty which might arise from the conduct of the said Bethuel Dodd, who at that time had fallen into a dissipated course of living; and that the said John P. Wakeman offered and agreed that he would attend the sale of said premises, and buy the same, paying off the said incumbrances and holding the said premises until the same could be disposed of as before mentioned for the benefit of your oratrix, so that she might be enabled to realize for her own use, whatever could be obtained for said premises, over and above the encumbrances; and that in pursuance of such agreement,
- 30 the said John P. Wakeman attended at said sale and purchased the premises, paying to the Sheriff the sum of thirty-five hundred and seventy dollars, which was the full amount of all the encumbrances upon said premises, including interests, costs, taxes and Sheriff's fees, and thereupon received a deed from the Sheriff for the said house and lot, which deed was dated on the twenty-third day of October, one thousand eight hundred and sixty-eight, and recorded on the thirty-first of October, in the same year, in Book A 14, page 568.

- And your oratrix further shows that she was informed by
- 40 the said Wakeman of said purchase, and that he held the

same for her benefit in pursuance of the arrangement above mentioned, and that afterwards, on the first day of March, one thousand eight hundred and sixty-nine, the said John P. Wakeman sold the premises to one John H. Hall for the sum of sixty-five hundred dollars, being nearly three thousand dollars more than he had paid for the same as aforesaid; which conveyance to said John H. Hall is recorded in Book F 14 of Deeds, page 525.

And your oratrix further shows that after the said sale the said John P. Wakeman made no account to your oratrix 10 of the moneys so received by him for her use, and has never since that time paid her anything on account of the same, except one hundred and forty-five dollars on three several occasions; that since that time her husband has departed this life, and she has been much absent from the City of Newark attending to the affairs of her family, and supposed that as soon as he was distinctly required so to do, the said John P. Wakeman would account for the moneys so received, and execute the trust so undertaken by him; but that upon applying to him so to do, the said John P. Wakeman repudiated his 20 obligation to make such account, and refused to give your oratrix any satisfaction whatever; and your oratrix is informed and believes that the said John P. Wakeman claims that he bought the said premises for himself, and was under no obligation to account for the same to your oratrix; and your oratrix says that if such claim is made it is a gross fraud upon your oratrix, because the purchase of said premises at Sheriff's sale was made at the suggestion of the said John P. Wakeman himself, for the benefit of your oratrix, and that if he had not made such arrangement your 30 oratrix would have found some other friend to purchase said property for her, or would have raised the money upon said premises to pay off all of said encumbrances.

And your oratrix further shows that she has frequently applied to the said John P. Wakeman, and requested him to pay over said moneys so received for her in trust, and well hoped that he would have complied with such request, but that he has wholly refused so to do.

In consideration whereof, and forasmuch as your oratrix is without remedy in the premises by the strict rules of the 40

common law, and can only have relief in a Court of Equity, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said John P. Wakeman may without his oath answer all and singular the premises, and that an account may be taken of the amount of money received by him on the sale of said premises, over and above the amount paid out by him at said Sheriff's sale, with interest, and that he may be decreed to pay over to your
 10 oratrix such excess after deducting his reasonable expenses in the premises; and that your oratrix may have such other and further relief in the premises as to your Honor shall seem meet.

May it please your Honor, the premises considered, to grant unto your oratrix the State's most gracious writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said John P. Wakeman, therein and thereby commanding him, on a certain day, and under a certain penalty therein to be expressed, personally to be and
 20 appear before your Honor, in this Honorable Court, then and there to answer the premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your oratrix will ever pray, &c.

PARKER & KEASBEY,
Sol's and of Counsel for Compl't.

In Chancery of New Jersey.

The Answer of John P. Wakeman, defendant, to the bill of complaint of Laura S. Dodd, complainant.

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

That he admits it to be true that the defendant is the widow of Bethuel Dodd, late of the City of Newark, and that prior to the twenty-third day of October, one thousand eight hundred and sixty-eight, was seized in fee simple in her own right of the house and lot of land in the said bill of complaint described. 10

And this defendant, further answering, says that he admits it to be true that the said house and lot of land were, at the time in said bill of complaint mentioned, encumbered by two mortgages; one held by Mary L. Miller for twenty-five hundred dollars, and the other for about eight hundred dollars, held by Anthony Q. Keasbey, but whether or not the interest upon said mortgages remained unpaid in consequence of the ill health and failures in business of the said complainant's late husband, or from any other cause, this defendant has no information, except from said bill of complaint, and thereof cannot answer thereto. 20

But this defendant admits it to be true that a decree for the sale of said house and land was obtained, but at what time, or by whom, or for the foreclosure of which of said mortgages, this defendant has no information, save from said bill of complaint, and he therefore leaves the said complainant to make such proof thereof as she may deem necessary. 30

But he does admit that the amount due, including interest and costs on said two mortgages, amounted to about thirty-five hundred dollars.

And this defendant, further answering, says that the said house and land at the time in said bill of complaint mentioned, was not worth nearly double the amount of the encumbrances thereon; that at that time it was not worth more than forty-five hundred dollars.

And this defendant, further answering, says that he is the
 10 brother-in-law of the complainant, and the complainant being inexperienced in matters of business, and never having been compelled to transact any business for herself, and at and for a long time prior to the time of the sale of said house and land under the said decree, she being in great distress on account of her family difficulties, this defendant did, as he has for many years past, take much interest in her affairs.

But this defendant denies he ever represented to the said complainant that it was desirable for her that the sale of said premises should be allowed to go on, and that this
 20 defendant would bid in the property at such sale and hold the title thereof in trust for the said complainant, so that in case a purchaser should be found therefor there would be no difficulty which might arise from the conduct of the said Bethuel Dodd.

And he also denies that he ever offered or agreed that he would attend the sale of said premises, and buy the same, paying off the said encumbrances, and holding the said premises until the same could be disposed of for the benefit of the said complainant, so that she might be able to realize
 30 for her own use whatever would be obtained for said premises over and above the encumbrances.

And this defendant, further answering, says it is true that he did attend said sale, and purchased the said premises, and paid to the Sheriff therefor the sum of thirty five hundred and seventy dollars, which sum he believes, although he has no knowledge upon the subject, was the amount of all the encumbrances upon said premises, including interests, costs, taxes and Sheriff's fees, and that he received from the said Sheriff a deed for said house and lot, bearing date on the day
 40 and year in said bill of complaint mentioned, which deed was recorded as in said bill mentioned.

But this defendant denies that he purchased said premises or took said deed in any manner in trust for or on account of or for the use of the said defendant.

And this defendant, further answering, denies that the said complainant was ever informed by this defendant or any person for him, that he held the said premises for the benefit of said complainant, in pursuance of the arrangement in said bill alleged to have been made between the said complainant and this defendant, or in pursuance of any arrangement between them whatever.

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And this defendant, further answering, admits that it is true that he sold said premises to John H. Hall for the sum of six thousand and five hundred dollars, which conveyance is recorded as in said bill stated.

But this defendant says that the said sale to said Hall was made a considerable time after this defendant bought said property, and after real estate had greatly enhanced in value, and that the price he obtained for said premises from said Hall was owing entirely to easy terms upon which said property was sold to said Hall.

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And this defendant, further answering, says that the said complainant and this defendant, in her behalf, made strenuous efforts to induce some of the complainant's friends to protect the said premises for her and cause it to bring at the said Sheriff's sale the amount of money which the said complainant had paid on said premises, over and above the said mortgage, but they all invariably refused to do so.

That this defendant attended the said sale of said premises by the said Sheriff, but not for the purpose of purchasing the same for the benefit of, or for the use of the said complainant, nor for the purpose of purchasing it at all; and that when this defendant saw that the property was about to be sold for about the amount of the encumbrances, interest thereon and costs, he made a bid on said property and the same was cried off to him.

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That he bought said property for himself and on his own account, and is under no obligation whatever to account to the said complainant for the same or any part thereof.

That he has always treated said premises as his own, and always denied to the said complainant that he was in any

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manner liable to account to her for, or in respect to said premises; and this defendant denies that he ever paid to said complainant the sum of one hundred and forty dollars on account of said premises, or any other sum or sums of money whatever, on account of said premises.

And this defendant denies all and all manner of combination and conspiracy, with which by the said bill he is charged, without this, there is any other matter or thing, material or proper, to make answer unto and not herein or hereby
10 well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges, in this behalf most wrongfully sustained.

LEONARD & COULT,
Solicitors and of Counsel for Defendant.

In Chancery of New Jersey.

<p style="text-align: center;"><i>Between</i> LAURA S. DODD, <i>Complainant,</i> <i>and</i> JOHN P. WAKEMAN, <i>Defendant.</i></p>	}	<i>On Bill, &c.</i>
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Examination, etc., of witnesses in the above stated cause, taken before me at my office in Broad street, in the City of Newark, on Monday, the 29th day of December, A. D. 1873, in the presence of PARKER & KEASBEY, solicitors of the complainant, and LEONARD & COULT, solicitors of the defendant, on notice on the part of the complainant, due service whereof was acknowledged on the part of the defendant, and continued by adjournments as noted hereinafter.

WILLIAM PATERSON,
Master in Chancery of N. J. 20

MRS. LAURA S. DODD, the complainant, being called and examined, says:

Q Where do you reside ?

A 68 Park place.

Q Are you the widow of Bethuel Dodd ?

A I am.

Q At what time did he die ?

A It is two years on the 4th of May. He died on the 4th of May, 1872.

Q Did you own a house and lot in Woodside, prior to 30 October, 1868 ?

A I did, sir.

Q The house referred to in the bill of complaint, on the western side of Belleville avenue ?

A The same.

Q Was that house mortgaged at that time ?

A Yes, sir.

Q Were the mortgages being foreclosed prior to that time ?

A Yes, sir.

(It is admitted that the writ in the foreclosure suit was issued October 20th, 1868, and that the sale was October 23d, 1868, and that the amount paid by the Sheriff for the two mortgages, was \$3,512.15. Mr. Wakeman purchased it for that amount, besides Sheriff's fees.)

Q What connection are you to Mr. Wakeman ?

A Sister-in-law.

Q Had you any conversation or negotiation with him as to this property, before the Sheriff's sale ?

A I did.

Q What arrangement, if any, was made between you
20 about it ?

A I asked Mr. Wakeman what arrangement could be made. He said he would be at the sale and have it understood he was buying it in for my benefit; and that was the inducement for my having it sold.

Q Did you attend the sale or have any one attend it for you besides Mr. Wakeman ?

A No, sir.

Q Did you ask for any adjournment of the sale ?

A No, sir; I did not, because I thought it was an in-
30 ducement for me to have it sold, because he had promised to buy it in for my benefit.

Q How many times did you speak to him about it, to your recollection, before the sale ?

A Well, perhaps once before the sale.

Q After the sale, how did you find out that he had bought it ?

A When he returned from the sale he said it was understood he was buying it in for my benefit, and for that reason there were no bidders against him.

40 *Q* Since that time, has he ever made any arrangement

with you in regard to the property—as to giving you your interest in it. I mean has he ever paid you anything?

A He gave me once \$100 on account, the 9th of November.

Q Do you know he has sold the property?

A Yes; he sold it to John Hall.

Q Was your conduct, with reference to that sale, influenced by the arrangement made with Mr. Wakeman, and if so, how?

A It was, altogether. 10

Q I mean to ask what course you would have taken but for that?

A I should, of course, made other arrangements—looked about me—had the sale put off.

Q Did you make any efforts otherwise after making this arrangement with Mr. Wakeman?

A No, sir; no effort after that.

Q Did you apply to the Sheriff or to me for any adjournment of the sale?

A No, sir; I did not. 20

Q Do you know what the property was sold for to John Hall?

A \$6,000, I believe.

Q Had you talked with Mr. Wakeman before this mortgage was foreclosed, at all, about the property, and how the title of it should be arranged?

A I did.

Q What was the substance of that conversation?

A I asked him if it could be in my name—he said if it was that my husband might influence me to pass it over, a 30 portion of it, to him.

Q Did he suggest any remedy for that—any plan?

A He said he would hold it in trust for me until such time as I should need it.

Q Where did you live at that time?

A I was staying at Mr. Wakeman's house.

Q How were you staying there?

A I went up for a month or two, and at his suggestion remained longer.

Q How long were you there altogether? 40

A Perhaps three months at the farthest—I am not positive, exactly.

Q Did the sale occur during these three months?

A In that time.

Q Did he speak of the sale on the day it took place?

A He did.

Q Have you requested him to make arrangements to give you your interests in the proceeds of the property since—I ask you if you had tried to get him to settle it?

10 *A* Yes, sir.

Cross-examined :

Q You were staying at Mr. Wakeman's at that time?

A Yes, sir.

Q How long had you been there before the sale?

A It might have been a month before the sale; I don't remember so many years back.

Q Did that sale occur during the fore part of the three months—did it occur in the first, second or third month?

A I think about the third month, as near as I can remember.

20 *Q* Who comprised Mr. Wakeman's family at that time?

A My mother and myself, the servant, himself and his wife.

Q Had these proceedings in foreclosure been commenced before you went there?

A No, sir; they had not.

Q I mean had proceedings been commenced to foreclose these mortgages before you went there?

A Yes, sir; I was thinking of the sale.

30 *Q* Had you made any effort or application to any person before you went there to raise you any money or to buy this property—had you made any arrangement in regard to it at all?

A Yes, sir; I had talked the matter over. I had arranged with my brother-in-law, but for business reasons he wasn't prepared to do anything about it.

Q What brother-in-law?

A Mr. Dennis Osborn.

Q What arrangement had you made with him in regard to it?

A I merely asked him if he could attend to it, and he said for business reasons he could not do it.

Q When was that?

A Just before the sale—at the time I was at Mr. Wakeman's.

Q How long before the sale was this?

A Well, this was perhaps three or four weeks before the sale. 10

Q Before or after your conversation with Mr. Wakeman about it?

A That was before.

Q What did you request Mr. Osborn to do?

A I merely asked him to pay off a portion of the indebtedness, and he was not able to do it at that time.

Q In what way? Do you recollect making any suggestion how to pay it?

A I don't remember exactly the words of the conversation. 20

Q You do not recollect the plan you suggested to him—what you wanted him for?

A I do not.

Q Who was present when you had your conversation with Mr. Wakeman?

A No one but myself and Mr. Wakeman.

Q Where were you?

A In the dining-room of the house on Mount Pleasant avenue.

Q Did you speak to him or he to you about it first? 30

A I spoke to him.

Q Can you now just give us the conversation that occurred?

A I asked him, in case of a sale, how the property would be arranged. I wanted it for my benefit, and I said in case of a sale how would it be arranged, and he said he would be at the sale and buy it in for my benefit.

Q That was the whole conversation?

A Pretty much; yes, sir.

Q And all the conversation you had with him on that subject prior to the sale?

A At that time.

Q At any other time?

A I may have talked to him about it; I cannot remember the exact conversation; I had conversations with him about it in just that way.

Q That comprised all the conversation between you and Mr. Wakeman about it prior to the sale?

10 *A* Yes, sir.

Q Can't you tell us how long before the sale occurred that conversation took place—as near as you can recollect?

A It might have been a week or two before the sale?

Q Was that the first conversation you had—the one you speak of in the dining-room, was that the first conversation you had with Mr. Wakeman on that subject, as near as you recollect?

A Yes, sir; it was.

20 *Q* If I recollect you correctly, you said you had some conversation with him about it after he returned from the sale. Is that the same day the sale took place?

A Yes, sir; towards the evening of the day the sale took place.

Q Where was that?

A That was in the dining-room also.

Q Who was present at that last conversation?

A I don't remember that any one was.

30 *Q* Do you know whether you and Mr. Wakeman were alone?

A We were alone; yes, sir.

Q Will you state to us exactly what that conversation was—the conversation you had with Mr. Wakeman after his return from the sale?

A I asked him what had been arranged. He said it was understood that he was buying it in for my benefit, and for that reason there were no bidders against him.

Q Did he tell you when he went away that it was so understood?

40 *A* I don't remember as to that.

Q Then you had no further conversation with him, as I understand, while he was there, on that subject?

A I believe not.

Q How long after the sale did you remain at Mr. Wakeman's house?

A It might have been a month or two; so long back I have forgotten.

Q Nothing further was said during all that time about this sale, so far as you recollect?

A It may have been talked over; do not remember any further conversation; I don't recollect what the conversation was.

Q At any of the conversations that you have mentioned that you had with Mr. Wakeman, or any other that you have not mentioned, was there any other person present than yourself and him?

A No, sir; there was not. At these two conversations I have spoken about there was no one present but him and myself.

Q At these two conversations?

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A Yes, sir.

Q Or any other?

A I cannot tell that; I know there were other conversations, but what they were I cannot remember, except the two.

Q After you left Mr. Wakeman's house where did you go?

A I went to the Park House.

Q And after that time when did you first or ever speak to Mr. Wakeman about this conveyance to him?

A I cannot remember exactly how soon after I had a conversation with him.

Q Did you have any conversations after that time with him about it; after you left his house did you ever speak to him about this conveyance made to him of this property?

A Yes, sir. I since asked him if the papers were made out in my name. He said they were not, but all would be right in the future.

Q Can you tell us when that conversation occurred?

A I cannot tell you; I don't remember exactly the date.

Q Or where it was?

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A No, sir; cannot tell that, either.

Q At his house, or at some other place?

A I cannot tell; I don't remember where the conversation was at all.

Q In the presence of any person?

A That I don't remember.

Q How do you remember that such a remark was made?

If you do not remember when it was made, where it was made or who was present, nothing except the remark itself,

10 how do you remember the remark was made?

A I remember the remark distinctly but do not remember the time or place where it was made. I remember it as if it was yesterday the remark was made.

Q Was it before or after the death of your husband?

A Some time before.

Q You asked him the question, whether the papers had been made out in your name?

A I did ask that question.

Q Did you suppose the conveyance had been taken in
20 your name?

A I did not know why it shouldn't be, as he bought it in for my benefit. I supposed, as a matter of course, it was in my name.

Q You had never suggested to him or arranged with him for the payment of any money, had you?

A I had rents from the property.

Q I asked you whether you had arranged, prior to that time, with Mr. Wakeman for the payment of any money on account of that property?

30 *A* I had money from Mr. Wakeman on account.

Q You say here, in answer to a question, that you asked Mr. Wakeman whether the papers might be in your name. Now I ask you whether, prior to that time, you had ever arranged with him for the payment of any money on account of that property?

A No.

Q Did you then suppose that that was to be a gift to you from Mr. Wakeman?

A I took him at his word; he said he would buy it in for
40 my benefit, and I supposed it would be so.

Q And you supposed he would make you a gift of it?

A I supposed it was my right; the property was very valuable. I expected, of course, he would give me what was over and above the mortgage.

Q Did you expect that he would take a deed for the property in your name and make the property over to you without any arrangement on your part to secure, or to secure to pay, the purchase money he had paid for it?

A I supposed he would do as he agreed to.

Q Did he ever agree to do that? 10

A Yes, sir; he did.

Q He had agreed with you before that time to buy that property in at this sale and give you a deed for it without you making any arrangement to secure him the purchase money?

A I didn't say he would give a deed for it; he said he would buy it in for my benefit so that I would have it.

Q What did you mean when you said the papers; didn't you mean the deed?

A I meant the deed. 20

Q Then I ask you again, did you expect that he would have the papers made out in your name without any arrangement made on your part to secure him for it or pay the purchase money?

A I supposed, of course, if he bought it for my benefit the papers would be made out in my name.

Q How was Mr. Wakeman to get his money; you supposed that was the arrangement, did you?

A Yes, sir; I thought it was by right mine, since it was my property. 30

Q Did you have any further or other conversation except the one you have mentioned here, after the purchase of the property, before the commencement of this suit? After this conversation you now speak of, in which you say you asked him if the papers were made out in your name up to the time of the commencement of this suit, you had no further conversation with him on this subject?

A I don't remember that I did.

Q Did you know that Mr. Wakeman, before that sale, endeavored to find somebody who would purchase the prop- 40 erty or aid you in any way?

A I did not know that he did.

Q Did you request him to?

A Not that I remember; I don't remember that I did.

Re-examined:

Q You said that it was arranged that Mr. Wakeman should buy it in and hold it for your benefit?

A It was.

Q Did you know what papers were necessary or proper for him to make in order to carry out that arrangement? Did
10 you have any knowledge of what they were—what the proper papers should be? Do you know the legal manner in which it was to be arranged, what papers were to be drawn? You expected it was in your name, I ask you now whether you knew as to what papers were necessary in order to carry out the understanding you had with him?

A I know nothing about the arrangement of the affair; I didn't know how it was to be put.

Q After the sale, did Mr. Wakeman ever come and request you to make any arrangement for the repayment of the
20 money he had paid to the Sheriff?

A No.

Q Did he ever tell you how much he had obtained for the property over and above what he had paid to the Sheriff? Did he ever tell you about that?

A I think he said \$2,500.

Q Did he ever offer to settle or arrange that surplus which he had over and above what he paid out for your benefit, in any way; did he ever propose any arrangement for it?

30 *A* He said at one time I could have the interest of it and let the principal stand.

Q Did you get that letter? (Counsel hands witness letter.) And whose handwriting is it?

A My brother's, Frederick Sherman; I received that March 3d, 1869.

Q (Counsel produces another letter.) Do you know that handwriting?

A The same.

Q That is the next day—speaks of John receiving the

letter you wrote him. Did you write Mr. Wakeman a letter in answer to that?

A Yes, sir.

Q You were asked if you expected Mr. Wakeman to make you a present of that money he paid out on the property—did you expect him to give you any more than the value of the property, over and above the amount he had paid out?

A No, sir; of course not.

Q Can you remember so as to recall at this late date all the talks that you have had on the subject of this property? You remember two or three, but can you undertake to give all that you have said to him at different times? 10

A It has been an understanding between us for years as to this property, that I should eventually have it in my time of need.

Re-cross-examined:

Q At the time you were at Mr. Wakeman's, was there some difficulty existing between you and your husband—did you live together at that time? 20

A I cannot say there was a difficulty—I was merely visiting there.

Q During that time, was any effort made for you, or by you, to procure a divorce from your husband?

A There was family conversation about it, I believe; my husband was unfortunate; that has nothing to do with this case, I believe.

Q I ask you whether about that time you were not having an effort made, or making an effort to procure a divorce from your husband? 30

A In families, matters are talked over without coming to any particular point.

Q You afterwards went back to live with him?

A I did, sir; I was only there about three months, at Mr. Wakeman's house. I went with him to the Park House.

Q Did you go immediately to the Park House from Mr. Wakeman's house?

A I went to 63 Park Place a week or two, and afterwards went to the Park House. 40

Q After you left Wakeman's house how long after was it you visited him again—I mean after this visit you speak of?

A I have forgotten the exact time.

Q Was it not a year or more—two or three?

A It might have been a year; I cannot remember the time, exactly.

Q Might it not have been longer than that, two or three years?

A I don't remember the exact time.

10 *Q* Didn't you leave there quite abruptly?

A I mentioned the fact to Mr. Wakeman and his wife before I left. I mentioned both to him and his wife that I was going to leave; I don't think that it was abrupt—I don't think that was very sudden. No, sir; I did not.

Q How long before you did leave did you make up your mind to go?

A I don't remember.

Q You say it had been understood between you and Mr. Wakeman that finally and in your time of need he would
20 give back whatever he got from this property over and above what he paid off; when and how did that understanding arise, if it arose in any other way that you have stated?

A It has been understood for years, sir.

Q I mean did it arise from any conversation had between yourself and Mr. Wakeman, different from what you have already stated here?

A We have had conversations together in relation to it, but I do not remember what they were, exactly, now.

LAURA S. DODD.

30 DANIEL HALSEY, a witness on part of complainant, being examined, says:

Q Did you live in Woodside in 1868?

A Yes, sir.

Q Did you own property on Belleville avenue?

A No, sir; I owned property on Lincoln avenue—Carteret street and Lincoln avenue. I knew the property of Mrs. Dodd's in October, 1868, and March, '69.

Q What was it fairly worth, do you think, in October, 1868?

A Mr. Dodd asked me \$6,500 for it.

Q It was held in October, '68, for that sum; in your opinion was there any great difference in its value between October, '68, and March, '69?

A I should think not, sir.

Q Were you thinking of buying it?

A Yes, sir—I took quite a fancy to it. I went up there with my brother-in-law and looked at it, and then looked at Mr. Morrison's place on the opposite corner and liked that better. I bought Morrison's for \$6,800.

Cross-examined :

Q You say Mr. Dodd's place was offered to you for \$6,500; you didn't buy it?

A No, sir. Mr. Morrison offered me his for \$6,800, and I thought there was more money in it, 50 feet more front.

Q There was a constant rise in real estate about that time, through 1868 and 1869?

A I don't know as there was. I think it was in 1870 land took the greatest rise, from '70 to some six months back. I don't think really in 1869 there was.

Q What is that property worth now?

A I have no idea, sir—left Woodside in 1870 and moved back into the city.

Q Were you there at the time of the Sheriff's sale?

A No, sir. I knew nothing about the Sheriff's sale until a few days ago. I knew the property was sold to Mr. Hall, but I knew of no litigation until a few days ago.

Q You say you took a fancy to the property? 30

A Yes, sir. My brother and I looked at it and then looked at Mr. Morrison's, and discussed the matter, and liked this property of Morrison's better.

DANIEL HALSEY.

JOHN I. BRIGGS, a witness on part of complainant, being examined, says:

Q Are you a builder and architect?

A Yes, sir.

Q Were you familiar with Woodside property in 1868?

A Yes, sir.

Q Did you build the house that Mrs. Dodd owned?

A I did.

Q Did you know that property well?

A Very well indeed.

Q What, in your opinion, was it worth in October, 1868?

A I should say \$6,500.

Q It was sold in March, 1869, for \$6,500—was there any
10 very material change in property during that winter?

A No, sir; not in that vicinity.

Q Did you ever have any talk with Mr. Wakeman about
the situation of this property?

A Yes, sir; I had several talks with him at that time.

Q Did you have any talk with him prior to the sale?

A I had.

Q What did he say?

A We were speaking relative to the sale—it was about
to take place—Sheriff's sale.

20 *Q* What was the substance of what he said then?

A The substance of what he said was that he was going
to buy it for Mrs. Dodd's benefit; the exact words I have
lost the recollection of.

Q Do you know whether he did buy it?

A Yes, sir; not from any knowledge; I don't know from
having seen him buy it—but from general information; he
told me he had bought it.

Q Did he have any other conversation with you after the
sale?

30 *A* We have had frequent conversations after the sale.

Q What was their general purport?

A I have no recollection of more than one relative to the
sale. That was to the effect that Mr. Wakeman had bought
the property for Mrs. Dodd; that was the general under-
standing there—everybody so understood it. That house
was always a favorite of mine, and I would have been at
the sale if I hadn't known it was sold for Mrs. Dodd's
benefit.

Q It was sold for \$3,570; would you have allowed it to
40 go for that money under any other circumstances?

A No, sir; I would have bought it for \$6,000—that is my recollection now. In the discussion my partner and myself had about it at that time, we concluded we would take it at \$6,000 as an investment, a speculation.

Cross-examined :

Q What was your business at that time, Mr. Briggs?

A Building and selling houses—improving Woodside property.

Q Was that your occupation at that time?

A It was the only thing I was at. 10

Q Who was your partner?

A Mr. Morrison.

Q Where was your place of business?

A At Woodside.

Q Where did Mr. Wakeman reside then?

A I think Mr. Wakeman was living on Mt. Pleasant avenue at that time.

Q In the city of Newark?

A Yes, sir.

Q Where did you see him prior to the sale? 20

A It was a common thing for me to meet Mr. Wakeman.

Q Where did you see him prior to this sale, when the conversation occurred between you and he which you speak of in your testimony?

A My recollection of it is that it was on the old Bloomfield road; but it was a common thing for me to meet him and have such conversations—and have conversations as to property. This conversation, I think, was on the old Bloomfield road.

Q In what way did that conversation come about; can you tell us? 30

A I wanted to get at the facts of the case as to whether that property was sold for Mrs. Dodd's benefit or not—as we had generally heard it so—commonly so understood it. And I proposed to be at the sale for the purpose of buying, until I had got such facts.

Q Then I understand you to say that you went there to find out whether it was true, as you had heard, that he was going to buy it for Mrs. Dodd's benefit?

A No, sir; I brought that about in conversation—I asked him that question.

Q You cannot tell where that conversation occurred?

A Either on Bloomfield road or on Broad street along by Harvey's nursery. There was no one present but Mr. Wakeman and myself. The conversation took place a short time before the sale, during the advertisement. I cannot tell how long before.

Q What was your object in asking Mr. Wakeman that
10 question?

A My object was information of course. I should have been a bidder against Mr. Wakeman if he hadn't been going to bid for Mrs. Dodd. Mr. Wakeman told me that himself.

Q Prior to that time who told you so?

A It was generally understood.

Q I asked you who understood it?

A I have no definite person in my mind; it was generally understood—everybody so understood it—it seemed so; being in my line of business, perhaps I was the only one, but I
20 doubt that very much.

Q You cannot recollect the name of one person who said anything to you on that subject except Mr. Wakeman.

A It was a common conversation between my partner and I.

Q I ask you if you can recollect any person?

A Definitely, no, sir; I cannot name any one person.

Q After the sale you say you spoke to Mr. Wakeman, and he spoke to you about it?

A We had a conversation again.

Q Where did that occur?
30

A I have spoken of two conversations, one which occurred on the Bloomfield road, and one near Harvey's nursery; it was at one of these I had the conversation with him after the sale; which was first and which was last I cannot tell.

Q Who broached that conversation?

A It was a conversation principally about the Bloomfield Horse Car Railroad, in which Mr. Wakeman thought of taking some interest; and Mr. Wakeman owned a piece of
40 property on the Bloomfield road opposite to which I was im-

proving; we had a conversation about that, and in the conversation I spoke myself about this Dodd property.

Q What did you say about it?

A I brought on a conversation relative to the property, when Mr. Wakeman told me he had bought it; the exact words I cannot give.

Q What was the object in talking about the Dodd property?

A The same as my previous conversation; I was in quest of information. 10

Q What was the object of your information?

A Well, I suppose I might as well tell you: When I first heard that Mrs. Dodd's property was going to be sold for Mrs. Dodd's benefit, and that Mr. Wakeman was going to buy it in for her benefit, I concluded that she would never see it again, and that was the motive that prompted me to ask this question. I before asked if that was the fact of Mr. Wakeman; he told me it was, he was going to buy it; and afterwards learned from him that it was a fact, that he had bought it. 20

Q And your object in making that inquiry was that you didn't believe that Mr. Wakeman would ever give her back the property, and you wanted to prepare yourself as a witness in the case?

A No, sir; sympathy for Mrs. Dodd, that was my motive.

Q Why did you sympathize with her at that time?

A I knew her very well; she was a neighbor.

Q Did you think she was getting in a bad state with Mr. Wakeman? 30

A I did.

Q If Mr. Wakeman bought the property in her name, and said he did—did you think that was a bad thing?

A I did.

Q Did you at that time confer with Mrs. Dodd about the matter?

A No, sir; I never at that time spoke to her about it; never until about six weeks ago, perhaps.

Q Since the commencement of this suit?

A Yes, sir. 40

Q Did you talk to any of her friends about it at that time?

A No, sir.

Q When did you first communicate your intelligence?

A About six weeks ago, to Mrs. Sherman. She first applied to me for information relative to the matter, knowing that I lived there and should know, and I then told her that I had been very much surprised heretofore that I had not been called on, and that I hadn't heard of some difficulty
10 about it. I am wrong in saying I was surprised because I hadn't been called on; I mean I was surprised that I hadn't heard of the case before; I presumed, of course, so long a time had elapsed that it had been amicably settled, and that my first impressions were wrong.

Q You mean to say that you had anticipated some difficulty, and not having heard of any for so long a time, you concluded your conjectures were wrong?

A Yes, sir.

Q And you told her you were surprised that you hadn't
20 been called on sooner?

A I told her I was surprised that I hadn't heard of difficulty about it before this.

Q How did she happen to come to you for testimony in this cause?

A Mrs. Sherman came to ask me relative to a conversation she had had, I presume, wishing to fix in her own mind the evidence she expected to give here, not knowing that I knew anything about the case; she came to me and said to me, Mr. Briggs, we had a conversation once about Mrs. Dodd's
30 house, you know the price I was going to give for it; will you tell me what the conversation was at that time; I expect to have to give evidence and I want to charge my mind with the facts as to the price I was to give.

Q That is all that was said?

A That was the opening of the conversation.

Q Then did you go on and volunteer this statement you made here to-day, to her?

A Yes, sir.

Q At the time you had this conversation with Wakeman
40 and he made this statement to you, you did not communicate them to any one?

A No, sir; I never communicated them; never mentioned the subject until Mrs. Sherman called on me some six weeks ago.

Q Will you give me the conversation exactly that you had with Mr. Wakeman?

A I cannot give you the whole conversation.

Q I want you to give me the language as nearly as you recollect, which he used in these conversations.

A The first one relative to his purchasing the house, I can give you nothing only the knowledge, or the fact that he did communicate to me that he was going to buy the house; I cannot recollect the words he used, it is too long ago.

Q The second conversation, do you recollect the words he used?

A No, sir; but I do recollect, as I first stated, that that conversation was held relative to Bloomfield Horse Car project.

Q That ain't the question; I mean the language he used with regard to this property?

A No, sir; I do not.

Q You went to him at a certain time—(interrupted.)

A No, sir; I did not go to him.

Q You commenced this conversation in relation to the house, the second time because you wanted to draw from him the admission that he bought this property for the benefit of Mrs. Dodd?

A No, sir; you put it too strong; these were my own convictions as a business man, and I wanted to see how it would come out.

Q What were your convictions?

A Those I have already stated; that it was unfortunate that Mrs. Dodd should have to sell the place for her benefit, and Mr. Wakeman should have to buy it for her benefit.

Q Unfortunate for Mr. Wakeman or Mrs. Dodd?

A Unfortunate for Mrs. Dodd.

Q Why did you come to that conclusion?

A If not pertinent to the subject, I would not like to say; I always have reasons why I come to conclusions, and I don't think it has anything to do with this case.

Q After you got that information from him you did not

20

30

40

communicate it to any one, and only happened to communicate it to Mrs. Sherman because she called on you in relation to a conversation you had had with her in regard to the value of the house ?

A Yes, sir.

Q You wanted to buy the house at the time of the sale ?

A I would have bought it; we were in the habit of dealing in Woodside property.

Q Any money on hand at that time, to buy ?

10 *A* No, sir; not my own, that is my recollection of it.

Q Any means of purchasing at cash sale at that time ?

A Mr. Keasbey was spoken to about the purchasing of that house; I am not positive as to where the money was coming from; the money matter was not in my line of business, but with my partner; we would have had the money to buy the house at \$6,000.

Q Did you have the money at that time ?

A That I cannot answer.

Q You understood that the sale was Sheriff's sale, and
20 that the property would be sold for cash ?

A I have no recollection of that; we could have bought it in and fulfilled any agreement we made at that time, to buy it; we could have bought it and paid for it; circumstances were such at that time that we could have done it.

Q Did you ever have any dealings with Mr. Wakeman; any business transactions with Mr. Wakeman ?

A One only, I think.

Q What was that ?

A I made specifications for him for a row of houses on
30 Ogden street.

Q Was that before or after this transaction ?

A Afterwards.

Q Prior to that time you had no business connections with him then ?

A Not direct; what we would call business connection; he was owning a piece of property opposite to one I was improving, but we had no business transaction.

Q What time was it your partner left here; where did he live at that time ?

40 *A* He left Woodside to go to South America, in '70, I think, or '71; he left here to go to California in '71.

- Q* Was he here at that time ?
A Yes, sir.
Q How long after did he remain here ?
A About two years.
Q Where did he reside ?
A In Woodside.
Q Up to what time ?
A He resided in Woodside up to 1870.

JOHN I. BRIGGS.

Examination adjourned until Friday evening, January 2d, 10
 1874, at 8 o'clock, when the same was adjourned by agree-
 ment of parties until Saturday, 3d January, 1874, at 10
 o'clock, A. M.

Saturday, 3d January, 1874—This examination was con-
 tinued at this time, pursuant to agreement, in the presence
 of the same persons as before, when the following depositions
 were taken :

GEORGE F. DODD, being duly sworn, deposes and says, on
 the part of the complainant :

I live in Newark ; I am brother-in-law of complainant ; 20
 Bethuel Dodd was my brother ; I know the property in
 Woodside formerly owned by Mrs. Dodd, and at the time
 she owned it ; I was informed in 1868 this property was
 subject to mortgages that were being foreclosed ; after the
 Sheriff's sale I had a conversation with Mr. Wakeman about
 the property—this was after he had sold the property—this
 was in front of his residence on Mount Pleasant avenue ;
 Mr. Wakeman said to me he should pay to Mrs. Dodd, at
 the proper time, her proportion of the proceeds of that prop-
 erty ; I think he started the conversation on this subject. 30

Q 1. In this conversation or any other, did Mr. Wake-
 man say anything claiming to hold the property as his own ?
 (Objected to.)

A The whole tenor of the conversation was to the op-
 posite effect ; that is, he held the property in trust for Mrs.
 Dodd.

Cross-examined :

I had a conversation with Mr. Wakeman ; it was in the vicinity of four years ago ; I could not say definitely how long after the sale, as so long a time has elapsed ; I could not locate the time within a few months ; I think it was in the summer succeeding the year in which Mr. Wakeman sold the property, while I was out riding ; it was on or in front of his property on Mount Pleasant avenue ; I think he commenced the conversation ; he said he should pay to Mrs. 10 Dodd, at the proper time, her proportion of the proceeds of the sale of the Woodside property ; this was before the death of her husband ; I do not remember where she was living at that time ; I think the conversation was between his front door and the sidewalk ; I had been riding with my brother Edward ; we stopped in front of Mr. Wakeman's house ; I went to see him on some other subject ; after the conversation I got in the carriage and repeated this part of the conversation to my brother ; I think this subject was broached by Mr. Wakeman himself at that time, by making 20 the statement that I have already testified to.

Q 2. You say you called to see Mr. Wakeman about another matter, and saw him in front of his residence, and there he made the remark you have testified to about Mrs. Dodd and the property in question ; was there anything said by Mr. Wakeman or by you in regard to this matter, except what you have testified to ?

A Not to the best of my recollection ; my brother at that time was waiting for me in his carriage ; I do not remember my making any inquiry of Mr. Wakeman at that time about 30 this property ; I think the conversation with Mr. Wakeman was in 1870 ; I could not locate the month definitely ; my impression is it was in the warm weather, as I rode a great deal in that season of the year ; I have given the language of Mr. Wakeman as nearly as I can, not having made a memorandum of it at the moment ; I have not a recollection of the language sufficiently distinct to repeat it as he used it, but the substance is as I have testified.

GEORGE F. DODD.

DENNIS OSBORN, being duly sworn on the part of the complainant, deposes and says :

I live in Newark ; I am brother-in-law to complainant ; I am one of the firm of Camp & Osborn ; I understood Mrs. Dodd owned a house and lot in Woodside, afterwards sold by Mr. Wakeman in 1869 ; before the sale by the Sheriff, I understood it was to be sold under the mortgages ; I had a conversation with Mr. Wakeman before the sale about the purchase of the property ; I was at his house two or three times, one of the occasions before the sale, I think ; he signified his willingness to purchase the property of Mrs. Dodd, and at the same time asked me why I did not do it ; I named one fact, it was this : the firm of which I am a member was sued for some \$40,000 or \$50,000, and I did not care to increase my troubles ; I know that Mr. Wakeman afterwards did buy the property ; I had several conversations with Mr. Wakeman after the sale ; I was always sent by Mrs. Dodd ; in all of them he acknowledged and admitted that he held this property for Mrs. Dodd ; on one occasion I was sent by Mrs. and Mr. Dodd, for Mr. Dodd's use and benefit, to get \$1,000 ; he, that is, Wakeman, almost decided to give it to me, telling me the next night to come for a decided answer ; I went, and he said no ; I want further to say, I never made any note or memoranda of date, as I looked on the property in his keeping as safe ; Mr. Wakeman was as near to her as I was—always took an interest in her, a family interest—nothing of that sort would be expensive to him.

I had conversations with defendant after he had sold the property ; I told him Mrs. Dodd wanted it put in the proper business shape ; I suggested he might die ; in answer he stated that he had or would make a provision in his will for this case ; either he stated the sum to be between \$3,000 and \$4,000, or spoke of that being about the right amount, or in answer to my question, I do not recollect which.

Cross examined :

I do not remember how long it was before the Sheriff's sale that I conversed with Mr. Wakeman ; I was sent to him by Mrs. Dodd ; I do not recollect where Mrs. Dodd then was.

Q 3. I understood you to say Mrs. Dodd sent you to see Mr. Wakeman, and I ask you where she was when she made that request?

A I do not recollect.

Q 4. Do you recollect that you did see her before that interview with Mr. Wakeman?

A I do not recollect that particular point, but I was always sent by her to see Mr. Wakeman.

Q 5. I understand, then, you do not recollect whether
10 you saw Mrs. Dodd before you went to Mr. Wakeman?

A I must have seen her.

Q 6. Do you recollect you did see her?

A I was always sent by Mrs. Dodd.

Q 7. Do you recollect that you saw Mrs. Dodd prior to the interview you had with Mr. Wakeman, before the sale of the property, and that she requested you to see Mr. Wakeman about it?

A. If you mean to ask me to recollect the exact particulars of the interview with Mrs. Dodd, I cannot give them,
20 but I can say I always was sent by Mrs. Dodd.

Q 8. Then that is all the answer you have to give?

A Yes. I should say I did not have more than one interview with Mr. Wakeman before the sale—that was in his house on Mount Pleasant avenue.

Q 9. Was any present at that interview except yourself and Mr. Wakeman?

A I think Mrs. Wakeman was at some of them; I do not recollect whether she was present at this particular interview; I think no other person was present; I have a general
30 belief that my brother George went up with me on one occasion, and still I may be wrong.

Q 10. Will you state as nearly as you can recollect, the conversation you had with Mr. Wakeman prior to the sale, what he said and what you said?

A The substance of that I have stated before, which the Master will repeat here as the answer to this question: "He signified his willingness to purchase the property for Mrs. Dodd, and at the same time asked why I did not do it; I named one fact, it was this: The firm of which I am a
40 member was sued for some \$40,000 or \$50,000, and I

did not care to increase my trouble." He was willing to do it to save it for Mrs. Dodd so that she might have the benefit of it in time of need ; that was the effect.

It was after he bought the property I called upon Mr. Wakeman for the \$1,000 ; I can say only, generally, that it was from three months to two years ; I took no dates ; made no memorandas ; not supposing myself but what Mr. Wakeman would give her her own ; he is a rich man, and she a poor woman ; I have always said and believed that Mr. Wakeman would pay Mrs. Dodd. 10

Q 11. Was any person with you when you went to Mr. Wakeman for the \$1,000 ?

A Possibly my brother George ; I think he went with me once, it may have been on this occasion.

In all the interviews at his house I do not recollect of any one being present but Mrs. Wakeman and my brother George ; I have seen Mr. Wakeman at other times than those mentioned, on this subject.

Q 12. Can you give the particulars of any other interview ? 20

A Only as I have stated in my previous testimony.

I do not think Mr. Wakeman gave any reason for not paying the \$1,000 to Mr. and Mrs. Dodd ; I think my brother, Mr. Dodd, needed the money to make some payment on his property, some real estate he had held for years, taxes or interest, or something of that sort.

Q 13. When was it you asked Mr. Wakeman to put this property in legal shape ?

A One occasion was the summer of 1872 ; I recollect because my brother died in May, and this was shortly after 30 his death.

Q 14. Was there not at or about that time a proposition to raise a fund for the benefit of Mrs. Dodd ?

A There may have been a hundred,—I never heard of one.

Q 15. Was not it proposed that she should receive the benefit of her husband's interest in some real property to which he was entitled ?

A I am administrator of my brother's property, and so soon as collections are made she will receive her full share, 40

both personal and real; I have said that most likely I would give her my share of her husband's estate, he leaving no will.

I did not tell Mr. Wakeman, soon after the death of Mr. Dodd, that Mrs. Dodd would have some \$10,000 or \$12,000 of his estate; I may have said his estate amounted to that, but there are six heirs.

DENNIS OSBORN.

FREDERICK G. SCRIBA, being duly sworn on the part of the
10 complainant, deposes and says :

I live in Newark; the complainant is my sister-in-law; I know defendant, and understood that he bought the property of Mrs. Dodd at Woodside, at Sheriff's sale in 1868.

In the summer of 1872 I spent an evening in the house of defendant, and on that occasion Mr. Wakeman introduced the subject by saying, in substance, that I had animadverted upon his action in relation to the Woodside property of Mrs. Dodd, or its proceeds; I replied in the same way, without wishing to meddle in the matter, to the effect that I thought
20 it his duty to place on record, in some manner, some evidence of her interest, in order that in case of his death her right would be clear, and she would have no trouble in the matter. Mr. Wakeman said if he had done so Mr. Dodd, the husband of complainant, in some manner would have obtained control of the property, or of the avails or some part of it; that he had provided for the contingency of his death by making Mrs. Dodd a beneficiary in his will. I said that by the death of Mr. Dodd all such fear was removed, and I thought it would be wise and proper to have something on record,
30 so that her mind might be at ease. Later in the evening Mr. Wakeman wished to show me a copy of the part of his will by which the interest of Mrs. Dodd was protected in case of his death. I told him I would take his word for that, as his communication was entirely gratuitous and not sought for by me, and it would be uncourteous for me to require such showing. I want to give the reason why this matter is impressed upon my mind: Mr. Wakeman, a man of reputed wealth, is said to have adopted a young lad of the

name of Frederick Salter, as his son, whom he is bringing up kindly with all the appliances of wealth and luxury ; knowing something of law, I suggested to Mr. Wakeman that it was his duty to make a proper provision for the lad, so that he should have his rights as his son.

FRED. G. SCRIBA.

No cross-examination of the witness.

The counsel for complainant here rests.

WILLIAM PATTERSON, *Examiner.*

Examination of witnesses, &c., taken before me in the 10
cause aforesaid, at my office aforesaid, on Monday, 2d of
February, 1874, in the presence of the same persons and
parties as before, on notice on the part of the defendant, due
service whereof was acknowledged on the part of the com-
plainant, and continued by adjournment at different days, as
noted hereinafter.

WILLIAM PATERSON, *Examiner.*

JOHN P. WAKEMAN, being duly sworn, saith for defendant :

Q How long before the purchase of this property had
you been acquainted with Mrs. Dodd, the complainant? 20

A In 1843—42 or 3—I first knew her; she was about
eight years old—eight or nine years old.

Q Will you state what relations there were existing be-
tween you—between you and her—from that time down to
her marriage?

A She was a sister of my wife; before and after our
marriage she was frequently with us.

Q What were your relations; intimate and friendly?

A Yes, sir.

Q Did you in any way assist her, in any pecuniary sense, 30
during that time, down and prior to her marriage?

A Oh, yes, frequently; after the death of her father she
made it her home at our house; lived at our house and was
married from our house.

Q You knew her husband?

A Yes, sir.

Q Do you know what his habits were at the time, and before the time of the transfer and sale of this property?

Q I knew his habits for a long time before; they lived with us after they were married for a while, before they lived on Mount Pleasant avenue, in our neighborhood; he afterwards bought a house there and lived there some ten or twelve years.

Q What were the habits of her husband with relation to his temperance?

10 *A* He was very intemperate; while they lived there on the avenue we were frequently sent for at all times of the night to come over and assist her and protect her; I have gone and my wife has gone; I have gone with my man frequently, in order to assist in keeping him from injuring himself or her and her family.

Q Do you know whether that caused any estrangement between them or any temporary separation?

A It did—yes.

20 *Q* Will you state under what circumstances; I understand she came to your house?

A Previous to that—to her coming to my house—they had sold their house on Mount Pleasant avenue, and lived down town somewhere, and then bought the house at Woodside, and I do not know how long they lived there; but he got a great deal worse up there and she could not live with him any longer; she sent for me and told me so; and that she had not anything to eat, no fire or fuel, that she was in great distress and trouble; I gave her some money at that time; she said she wanted some things immediately; and a
30 day or two after that, one evening about nine o'clock, she came down to my house and said she could not stay with him any longer.

Q What time was that, Mr. Wakeman, that she came to your house under these circumstances?

A That was in 1868—I think the latter part of August.

Q Will you state how long she remained at your place?

A She remained there till about Christmas.

Q Will you state what took place between you and her, if anything, in reference to her future course—what she
40 posed to do?

A After she had been at our house for some time, after talking to her mother and her sisters, she made up her mind to try to get a divorce from her husband, and the family consulted together and then consulted me about it; I was rather opposed to her taking that course, but finally she thought it was best, and I told her that I would endeavor to assist her in her wish, and went with her and my wife several trips to different places to get evidence, where she said she could get evidence of facts that would give her that divorce.

[Objected to as immaterial to the question.]

10

I consulted a lawyer in New York at her request about how she could get a divorce, and where she could get it best, and her sister and my wife consulted a lawyer in the city here on that subject.

Q At that time did you know that the property in Woodside was advertised for sale?

A I believe I learned it—I don't know at what time—about that time; yes, sir.

Q From whom?

A I really do not know; I rather think from Mrs. Dodd. 20

Q Was anything said by her in regard to that property, or was any suggestion made as to how the expense of these proceedings would be borne?

A The house was advertised for sale; she wanted to go to New Orleans; she wanted some money to go on with and conduct this divorce, and she wanted the house sold before she went; she wanted to go as soon as she could; the house was to be sold in October, and she consulted me about that, and wanted to know what course was best to pursue to have the house sold in order to get the money; she supposed, and 30 I supposed the house would bring more than the encumbrances, because they had been offered a good price for it, and I supposed it would be sold for a sufficient sum to pay what she paid on it (she and her husband), and that would enable her to do what she wanted to; I told her if the sale was not postponed it would probably be sold the day it was advertised; if there was no postponement at the sale by a third party it would be sold at that time; and I told her that if she wished to have it sold without any postponement she had better notify the parties not to postpone it, if Mr. Dodd 40

should want it postponed; as she didn't want it postponed she might notify Mr. Keasbey or whoever had it, not to have the sale postponed, but to have it sold at that time; she wanted me to see him about it; so I went, at her request, to Mr. Keasbey and asked not to have it postponed, and he said if Mrs. Dodd wants it sold at that time without any postponement, she must write me a note or come and see me; I told Mrs. Dodd and she wanted me to write a note for her; I told her I would rather she would do that part of the business herself, and I think she wrote Mr. Keasbey the note herself and read it to me; before Mrs. Dodd came to my house Mr. Dodd wanted to sell the house; in June; he said he had an offer for it and he came to see me about it, and he said that Mrs. Dodd declined to sign the deed; she demanded half that would be made on the property; if he would give her half she would sign the deed; he objected to that; in July Mr. Dodd came to see me also; he wanted me to see Mrs. Dodd and get her to sign the deed, because he wanted the money, and wanted to sell the house; I saw Mrs. Dodd, and she said she would sign the deed if she could have half of the profit on the house; they couldn't agree upon it, and the house was not sold; in July he came to me and said he had had an offer for the house, and Mrs. Dodd had agreed to sign a deed if he gave her \$500; the house was not sold; Mr. Halsey, with whom he was talking about the house, didn't buy it, so the sale was not made; I supposed when the house was to be sold at auction that it would bring her enough to enable her to do what she wished to, and so did she.

30 Q That there would be a margin in the property?

A Yes; on account of the offers they had had for the house; I have letters giving me the dates of these things; about the sale of the house and the \$500 she had agreed to accept.

Q I understood you to say that that was not consummated?

A That sale was not consummated.

Q Will you tell us what transpired between the time that you had the interview with Mr. Keasbey in relation to

the property and Mrs. Dodd's stay at your house, how long after your seeing Mr. Keasbey was it before the sale?

A But a short time I think before the sale.

Q Prior to the sale had you made any arrangement with her or any person to buy the property?

A I had not; no.

Q Had you expected to buy it at all, yourself?

A I had not, no; hadn't the slightest idea about it.

Q Will you state how you came to be the purchaser of the property at all? 10

A The morning of the sale I was in doubt about going down at all; I told my folks I didn't know whether I would go or not, and I don't know whether I went to New York and came back or how it happened, but I went down to the sale, and the property was put up at auction by the Sheriff to several bidders, and the bidding seemed to be nearly stopped when I began to bid, and it was knocked down to me; I think I bid \$5 or \$10 over the previous bid and it was knocked down to me; I was expecting to bring more money, and on the spur of the moment, without any previous calculation whatever in my own mind or with anybody, I bought the property. 20

Q On the morning of the day of that sale had you had any conversation with Mrs. Dodd?

A We were talking at the breakfast table about the sale of the house on that day.

Q What, as you recollect it, was the conversation you had then?

A I really don't remember about the conversation that morning further than that it was the day of the sale; I don't remember any particular conversation further than that it was talked over at the table. 30

Q At that time and after the sale, was there anything further done about the divorce—after the sale?

A Yes.

Q What?

A We were making inquiries and trying to collect evidence sufficient to give her the divorce; after I bought the property on the day of the sale I came home, and when I came into the house and told my folks I had bought it I as- 40

tonished them as much as I had myself when I bought it; I told them I had bought the house myself, and there would not be any quarreling about it hereafter: I told Mrs. Dodd and my wife and her mother and my mother.

Q At that time was there no intimation or expectation, so far as you could learn, after your interview with Mrs. Dodd, that she would come back to live with her husband again?

A Not at that time; I did not know that she had any
10 intention; it was understood that she would proceed, and go to New Orleans as soon as possible; as soon as she could get the evidence she wanted to get, that she would go to New Orleans and remain there and get a divorce.

Q After that was there anything said about the expense of the proceedings and how they would be borne?

A I proposed to assist her in getting that divorce as far as money was concerned; she thought she would go to New Orleans, and would not be at too much expense there, because she would be with her brother-in-law, and the expense
20 would not be very great; she had a ticket sent to her for her passage by her brother-in-law there, and he expected her, and wrote several letters, stating that he was disappointed at her not coming earlier, sooner,

Q After the purchase of the property, as you have stated, did you have any conversation with Mrs. Dodd in relation to it—in relation to the property, the disposition of the property; in relation to the title of the property or your holding the property?

A No conversation about it; no question came up at all
30 about it, further than if she could get the divorce as she expected; if she could take some boarders and live in the house, I was willing that she should do so.

Q Was there any arrangement of that kind talked of?

A Yes, sir; there was some talk of some of these children of the brother-in-law in New Orleans coming to live with her, and trying to pay expenses in that way, if possible, independent of her friends, in case she got this divorce.

Q Did you at that time give Mrs. Dodd to understand in any way that you had bought the property in trust for her
40 as her trustee?

A No, sir.

Q What was, Mr. Wakeman, your idea and intention in regard to it—in regard to the property at that time?

A At that time, separated as she was from her husband, my intention was to benefit her in some way at my pleasure, and when she needed help—as she was situated then she had no one to call upon, no one to go to for assistance. and was living with me, and I was feeding her and clothing her—and I expected that I might benefit her in this way at my pleasure, and when she went back to her husband of course 10 that altered the whole thing; and from the time she went back to her husband up to his death of course she had nothing or got nothing from me; after his death—I went immediately after I heard of his death to the room of their boarding house, and met Mrs. Dodd at the door, and she burst out into tears, and said she was glad to see me, and that she hoped I would forgive her for what she had done.

Q Will you state how she came to leave your house?

A That was unaccountable to me; she left without giving us any notice at all; I was in the habit of going to New 20 York every day; I came home that night, and she was gone; she left no word, didn't tell any of my family as I heard of; they supposed she would be back that day; she did not come back that night or at all, but went to live with her husband again.

Q After that time and after the death of her husband, what further did you do for her, if anything?

A After the death of her husband she made up her mind that for the benefit of her health she would go to New Orleans; she said it had cost a great deal of money for the 30 funeral, &c., and that she had not any ready money; that her husband's brother had paid out a good deal and declined to assist her to the extent that she wished, and wanted to know if I would let her have some money, and I did, and she went to New Orleans the next day.

Q Did she make any demand as a right, at that time, for this money that she asked of you?

A No; I don't think she intended that she had any right, further than I told her I would assist her if she would call upon me.

Q Did you have any further communication with her in regard to that; after that did she come to you again at any time, after her return from New Orleans?

A She was at our house once or twice after she returned from New Orleans. About the time she was going to New Orleans—just before—I met Dennis Osborn and asked him about his brother's estate, how it was left; how it was in regard to Mrs. Dodd; her husband's estate, I mean. And he said that Mrs. Dodd would have about \$10,000; and also told Mrs. Sherman so. (Objected to.) I said if we could make Mrs. Dodd independent by putting this fund in some shape so she would have an income from it, I would contribute myself out of what I had made out of this property, so that we could make her self-sustaining, self-supporting, so that she might not wish to marry again.

Q Was it or not your intention to aid Mrs. Dodd in the circumstances in which she was placed before she went back to live with her husband, and also after his death?

A It was my intention to aid her of course, and to assist her when she was in trouble and needed my assistance; I so expressed myself, that she might call upon me for any assistance when she needed it.

Q Did she at any time make any demand upon you as a matter of right, growing out of the purchase of this property, that you should pay her any money?

A No, sir; not as a right; I do not think she ever did?

Q Did you ever pay anything to her by way of rent?

A No, sir.

Q Was anything ever asked of you in that way—in the way of rent?

A No, sir; not to my knowledge.

Q Did she ever collect the rent?

A Not to my knowledge.

Q Did she ever claim, so far as you know, to have any right to the property?

A No, sir; only as I saw fit to do with it.

Q Did you express at that time your intention to her, to give her the property itself?

A No, sir.

40 Q But only to aid her under certain circumstances?

A Under certain circumstances I was willing to assist her; if she was going to be separated from her husband I wanted to make some provision for her; I didn't want her to marry; I wanted her to think that she needn't marry to support herself; I wanted her to be self-sustaining; I didn't want her to believe that she had to marry to support herself, and I so expressed myself to all her relations, and that I was willing to assist her for that purpose.

Q Mr. George F. Dodd says that shortly after the sale, he had a conversation with you in relation to the sale of the property in front of your residence on Mount Pleasant avenue, in which conversation you said that at the proper time you would pay Mrs. Dodd the proportion of the proceeds of that property?

A That was all under certain circumstances—certain conditions; if I had such a talk with him I don't remember; it appears to me I had some such talk, but I don't remember what it was; I meant in case she was not living with her husband, as she was at that time; if she was going to New Orleans and wanted any assistance, I was willing to aid her.

Q Mr. Dennis Osborn says in his examination that before the sale he had a conversation with you with relation to the purchase of this property?

A Where does he say this conversation took place?

Q At your house.

A He was mistaken about that; there was no conversation at my house; I called upon him at his store; I called upon him to know if he would, with his brothers' assistance in buying that house, in case it did not sell for as much as they paid for it; and he could not give me an answer at that time and told me I should call again; and he said his brothers declined to have anything more to do with it, and, to use his own words, he said he would see the house and his brothers in hell before he would have anything to do with it; that was the only conversation before the sale.

Q Did he call on you in relation to any money for Mrs. Dodd at any time?

A He and his brother called one evening at my house after the sale and stated that they had \$800 in the house; they had paid \$800 when they bought it, and wanted to

know if I would not assist him to pay some money on his factory, and I told him I would take the matter into consideration; and they were both very (seemed to me) angry about something, and when he came again, I told him that I could not do it.

Q You had a conversation with Mr. Scriba?

A I had, at my house.

Q How did that come about, Mr. Wakeman?

A About the way he stated, I think; the subject came up about this property, and under certain conditions—certain circumstances—I was willing Mrs. Dodd should have the benefit of this property, subject to my control, of course, in every way and shape.

Q Had you at that time made some provisions for her in your will?

A I had; also to other members of her family, in case of her death—her mother and other sister that lost her husband in the war.

Q Do you know a man by the name of John I. Briggs?

20 *A* Yes, sir; I know such a man.

Q Did you ever have any conversation with him in relation to this property that you bought at Sheriff's sale?

A Not to my knowledge.

Q He says that you spoke to him once about it before the sale of this property took place?

A Before the sale of this property took place I do not think I knew the man by sight even.

Q When was your first transaction with him in a business way?

30 *A* About a year after. The first thing I knew of Mr. Briggs was at that time; I knew there was such a man but I didn't know him by sight at the time of the sale of this property; he afterwards drew this specification for a house I wanted to build; and he spoke of having a conversation with me on the Bloomfield road, in front of my property; at that time I didn't own that property; the date of the deed for that property was the 28th of August, 1869, and this sale was in 1868; and the date of this specification, which was the first knowledge I had of Briggs personally, was
40 the 25th of October, 1869, a year afterwards; up to the

time that house was sold I don't think I knew Briggs by sight, and I certainly had no conversation with him about it, to my recollection.

Q Up to that time had you ever had any conversation about it?

A I never spoke one word to him about that house to my knowledge.

Q Mrs. Dodd says that you at one time gave her \$100 on account; on what account?

A That is the \$100 I suppose that I gave her when she 10 went to New Orleans, that I spoke of before.

Cross-examined :

Q At the time of the sale of this house by the Sheriff, Mrs. Dodd was at your house in trouble, wasn't she?

A She was at my house.

Q And you had frequent conversations with her about her troubles and her affairs, did you not?

A It was talked over at the table among the family.

Q And also about the sale of this house?

A Yes, it was spoken of generally at the table. 20

Q You say you were both sure it would bring more than the mortgages at the sale?

A We supposed it would.

Q Had you formed an idea as to how much more it ought to bring than the encumbrances?

A I had not.

Q She was expecting money from that source to enable her to go to New Orleans?

A Yes, sir; and I expected she would get it from that source also. 30

Q And it was for that reason she was anxious to have it sold on the first day without adjournment?

A Yes, sir.

Q Did you see her letter to me requesting that it should be sold at once?

A I think I did; I won't be sure about that.

Q Did you come to me and ask that it should be sold the first day?

A I told you what she directed me—I think it was that.

Q You requested me that there should be no adjournment the first day?

A Yes, sir; the day it was advertised for; I don't know whether it was the first or second.

Q And then I said that if you wanted that sale not to be adjourned I must have Mrs. Dodd's consent to that?

A Yes, sir.

Q Then did she give her consent that it should be sold the first day, in accordance with what I had stated?

10 A I think so, that is in accordance with my recollection.

Q I attended the sale on the first day, when it was sold, did I not?

A I think not.

Q Who did attend from my office?

A I don't remember.

Q Did anybody?

A Yes, sir; I think so.

Q Did you and I figure out the amount of the two mortgages?

20 A No, sir.

Q Who was present at the sale, to the best of your recollection, at the Sheriff's office?

A I don't remember.

Q Can you name any one that was there?

A No, I don't think I can; it was a place I very seldom went to.

Q The ordinary crowd of a Sheriff's office?

A Yes, sir.

30 Q No one that you know had any particular concern in this property, was there?

A Not that I knew of; I knew that it was said that there were several who wished to buy the property, but not knowing them I don't know whether they were there or not; I had heard of Mr. Halsey, but I did not know him at that time, and didn't know whether he was there or not.

Q You bid just about the amount of the mortgages and expenses?

40 A I don't remember the amount of the mortgages and expenses; I bid five or ten dollars over the bidders that bid previous to my bidding.

Q There is the Sheriff's statement, do you remember seeing that?

A No, sir; I don't remember seeing that.

Q There is the amount you paid, \$3,570?

A I don't remember that.

Q The deed shows that?

A Probably it does, I don't remember the exact amount.

Q You had been taking a great deal of trouble, had you not, for Mrs. Dodd, about this matter—felt an interest in it, 10 didn't you?

A Of course I did.

Q You say in your answer that you had made numerous strenuous efforts on her behalf, to induce her friends to protect the property for her and cause it to bring more at the Sheriff's sale than the mortgages?

A I had spoken to Mr. Osborn about it and to her brother also.

Q And you had failed to get that—you say in your answer that all failed, "invariably refused" is the expression; 20 is that true?

A I think so, so far as I remember.

Q Was it your sincere desire to get some persons to go to the sale so as to make it bring more, as you say in your answer?

A Most decidedly.

Q You were very anxious, as you say, for her benefit?

A Reasonably so; yes, sir.

Q Being anxious on that subject—desirous of saving all you could for Mrs. Dodd, knowing that she expected the 30 property to yield her at that sale money enough to provide for her wants, and asking, as you did, that it should be sold the first day, will you be kind enough to explain why it was that you, when you found that there was nobody else to bid any more for the property than the amount of the mortgages, did not ask for an adjournment, but simply bought the property on your own account, and claimed it for your own use, depriving Mrs. Dodd of it?

A I had no power to adjourn or to ask for an adjournment.

Q Did you ask for an adjournment; did you ask the Sheriff to adjourn so that it might bring more?

A I don't remember anything about it; I didn't suppose that I had any business with that question.

Q I ask you again whether you did or not?

A I don't remember it.

Q You say in your answer that you bought that property on that day for yourself and on your own account; is that true?

10 *A* That is true.

Q Did you buy it simply because you thought it cheap, as you would any other property at any other Sheriff's sale?

A I suppose I did; I never bought any property at any Sheriff's sale before.

Q At any auction sale?

A Yes, sir.

Q You consider that you bought solely for yourself without any obligation whatever to account to Mrs. Dodd for your purchase?

20 *A* Yes, sir.

Q What did you say to her when you went home?

A I said I had bought the property and that there would not be any more disputing about it now.

Q Any more quarreling, you said?

A Or quarreling; that is about the same thing

Q What else did you say on the subject of the property to Mrs. Dodd, if anything?

A I do not remember.

Q Did you ever afterwards make her any further explanations about the purchase of the property by yourself?

30 *A* No.

Q Can you remember ever, from that time to this, having given her any further information on the subject of your purchase than you have already stated?

A I don't think I remember anything else, sir.

Q Did you explain to her that she was now entirely deprived of any interest in the property because it had not brought any more than the mortgages?

A I don't think I made any explanation about it, sir.

40 *Q* Did you not come to me prior to that sale and explain

to me that you wished to have that property sold as early as possible, so as to free it from the control of her husband and have it bought in for the benefit of Mrs. Dodd?

A No, sir; not to my knowledge; I don't remember anything of the sort.

Q What explanation on the subject of the property did you make to me when you came?

A That Mrs. Dodd wanted the property sold because she wanted to go away, I think; something of that kind; I told you the facts of the case, whatever they were; I believe 10 that was it.

Q Do you say that you did not explain to me that it was desirable for Mrs. Dodd, in the situation of her domestic affairs, that that property should be sold rather than have the mortgages paid off or arranged in order that the property might be out of the control of her husband, or words to that effect?

A No, sir; I never did.

Q Did you speak to me about her husband and his situation? 20

A I think I told you that she wanted to leave him.

Q Did you explain to me that he was a man of bad habits, and that there was likely to be difficulty about the property, the amount of it?

A I don't think I did; I think I spoke about her wishing a divorce; that she wanted to go away to New Orleans.

Q You did go that far into her affairs, that she wanted to leave her husband, wanted to get a divorce, and wanted to go to New Orleans?

A I think I gave you that information. 30

Q You were acting on her behalf?

A I went down for her with that message.

Adjourned till Monday, February 2d, 1874, at 3:30 P. M.

Cross-examination of Mr. WAKEMAN continued, Monday, February 2, 1874, at 3:30 P. M. Cross-examined by Mr. Keasbey.

Q Was not the note written by Mrs. Dodd about the sale, written to the Sheriff, and not to me?

A I think not, sir.

Q You think it was written to me?

A I think so.

Q Did you carry it?

A I do not remember carrying it.

Q How many interviews do you remember having with me before the sale, on the subject?

A I don't remember but one.

Q Who did you see at the Sheriff's office on the day of
10 the sale that you can remember, besides the Sheriff's officers?

A I don't remember.

Q Did you speak to anybody about this property?

A I don't remember about that.

Q Have you any recollection of speaking to any one there, in reference to purchasing the property?

A I think I spoke—I don't know but I spoke to some one there that represented your establishment.

Q Did you speak to any one, except some one representing
20 my office, any outsiders?

A I do not remember any one else.

Q When you went back did you tell Mrs. Dodd how much you had bought the property for?

A I think I spoke of it as I came in to the family; yes, I think I did.

Q That you had bought it for just the amount of the mortgages?

A No; I don't know as I knew just the amount of the mortgages.

Q Did you tell them what you had bought the property
30 in for?

A I don't remember that I did; probably I did.

Q What did Mrs. Dodd say when you told her that, if you did tell her?

A I don't remember.

Q Did she ever make any complaint about it, about your buying it in for just the amount of the mortgages?

A I don't remember any complaint.

Q Did she express any dissatisfaction at all on hearing
40 that you had bought it in for \$3,750?

A She was disappointed at the amount the property brought, as we all were.

Q What did she say to express her disappointment?

A I cannot remember.

Q If you cannot remember whether you told her or not what the property brought, how can you remember that she was disappointed that it brought so little?

A Very well, indeed; because we expected the property to bring what they paid for it, or about—that it would bring more than it did—and I must of course have said something 10 about it when I came home, but I do not know what I said about it; most likely I told what it brought, but I don't remember.

Q What was it she gave for the property?

A I think they paid something like \$800 on the property, when they bought it; that is I heard so; I think she told me so.

Q You all expected, when you went to the sale, I understand, that it would bring what she gave for it, at any rate?

A We supposed it would bring something more than the 20 encumbrances.

Q Did you stop and tell Mr. Frederick Sherman what was the result of the sale, at his house?

A No, sir.

Q On that day, or near that time?

A No, sir; I saw him every day; I wouldn't have to stop at his house to see him; he was keeping my books.

Q Did you not stop in your carriage at his house, call him out and tell him the result of the sale?

A Not to my knowledge. 30

Q Did you not tell him you bought it in for the amount of the encumbrances, because there was no one else there to bid against you?

A I have no such recollection at all.

Q How long did you continue to own that property?

A I think until the next March—the following March.

Q Did you then sell it?

A I sold it.

Q For how much?

A I think it was \$6,500, less the expenses in the affair. 40

Q Then you made about \$3,000 on the property in about four months, did you ?

A You can make that figure out of it yourself; I have not figured it; you have what I bought it at and what I sold it at; I suppose that will give you the figures.

Q Did you ask Mrs. Dodd's consent to your selling the property ?

A There was something said about her wishing to live in the house, and I think I asked some questions about that ;
10 I think I did.

Q Did you inform her that you had an offer to sell the property ?

A I don't remember about that.

Q Did you ask her if she had any objections to your selling it at that price ?

A I do not remember about that; I think not.

Q Did you inform her of the sale when it was made ?

A I do not think I did.

Q Then having acted for her in the manner you have
20 stated, did you treat the property as your own, and sell it as your own, without any consultation with her ?

A I did; she was not with us when the property was sold, as she was when I bought it; I had no reason to consult her.

Q When you found the property was not going to bring any more than it did, did you ask the representative of the attorney of the complainant to delay the sale ?

A I do not remember that I did.

Q Were you in business with Mr. Dodd, once ?

30 *A* I was.

Q What kind of business ?

A Fancy business, in Newark and New York; manufactured it in Newark and sold it in New York.

Q How long did it continue ?

A Three or four years, I think.

Q When did it end ?

A I do not remember the date; I think the business commenced about '48 or '49, '48 I guess, and continued about three years.

Q When Mr. and Mrs. Dodd lived in your house together did they pay their board ?

A They did ; yes, sir ; I think so ; I won't be sure about that.

Q When Mrs. Dodd come there in 1868 did she come as a visitor at your house, to your family ?

A She came there because she said she had no other place to come to ; whether to call it a visit, or for the purpose of making it her home, or to accomplish purposes for which she wanted to come, I don't know ; I don't know what to call it ; she staid till about Christmas ; I think she paid no board then.

Q Is Mrs. Wakeman her sister ?

A Yes, sir.

Q Did you and Mrs. Wakeman at one time live with Mrs. Dodd in her house ?

A We did ; we boarded there when I was building my house.

Q When was that ?

A That was in '56. 20

Q Was Mrs. Wakeman very ill ?

A She was.

Q With what disease ?

A Small pox,

Q Did her sister take care of her ?

A Her mother took care of her.

Q Didn't her sister take care of her, too ?

A I suppose she did ; her mother was there ; we all took care of her ; we came there to stay a few days, and my wife was taken sick there. 30

Q How long did you stay ?

A Till she got well enough to leave ; I do not remember how long.

Q Have you ever explained to Mrs. Dodd the amount you made on this property, or ever had any negotiation with her concerning it ?

A I will answer the first part of that question first ; I think I have told her what was made on the property ; I have told her family so ; I think I have told her so ; I don't know as I have told her so except in the family—before the family when she has been with us. 40

Re-examined :

Q You have said that Mrs. Dodd is a sister of your wife ; she has another sister living at your house ?

A Yes, sir ; she has.

Q What other near relative ?

A Her mother lives with me.

Q How long have the sister and mother lived with you ?

A The mother has lived with me—I do not remember—
10 this last time some five years, as near as I can remember.

Q And the sister how long ?

A I don't know ; off and on for a year or two ; she has a son that she goes to stay with sometimes, but she makes it home at our house.

Examination adjourned till Monday, February 9, at 3:30 P. M.

Examination continued, February 9th, 1874.

MRS. MARIA WAKEMAN, being duly sworn, says :

Q You are the wife of John P. Wakeman ?

20 *A* Yes.

Q Are you related to the complainant ?

A Sister.

Q Did you know her situation and circumstances prior to the death of her husband ?

A I did.

Q What was the condition of Mrs. Dodd and her family prior to the time she came to live with you ; I understand from the testimony of Mr. Wakeman that she was there for a while ?

30 *A* She came to our house while I was in the country ; she had found it impossible to live up there alone ; she was unprotected a great part of the time ; she had made up her mind to make some change ; she had an idea of going away in the early part of the season, but she could not seem to get away ; she abandoned that for the idea of getting a divorce ; she thought that she would like to go away, and have matters settled so that she could have a permanent arrangement.

Q What led her to that view ?

A She had no protection from her husband ; he did not attend to her wants at all.

Q What were his habits ?

A His habits were very intemperate ; he was not reliable a week at a time.

Q Do you recollect when she came to your house ?

A I will state before that, that she was in very ill health ; it was impossible for her to remain there long without attention from some of the family ; that she could not always get ; 10 we were separated ; her house was some little distance.

Q Do you recollect when she came to your house ?

A I was not at home ; I was in Saratoga when she came to our house ; I found her there when I came back ; we knew that she needed immediate attention ; her brain was suffering from the trouble she was having ; she was having nervous turns, and it was necessary that something should be positively done for her at that time.

Q Do you know that she made up her mind to procure a divorce from her husband ? 20

A She had ; the matter had been thought of some time before she came to our house.

Q While she was there did she take any steps in that direction ?

A She did ; she wished to have us do all we could to assist her in the matter, and Mr. Wakeman assisted her in going about with her ; she went to some places alone herself ; she started to go, and I suppose she did.

Q Did you hear anything said about the property which she owned at Woodside, at that time ? 30

A There was talk about it ; different conversations ; she wanted the house sold ; she did not live there ; she did not care for the house at all ; didn't care to live there, and her idea was to have the house sold if possible ; she wanted the matter finished ; wanted it settled ; she wanted her mind relieved.

Q Did you have conversations with her on the subject ?

A The conversation was general, always, about the house, about the sale of the house.

Q In the family, between you and her and your husband ? 40

A Yes, all of my family ; that is, my immediate family ; her sister was with us during that time ; some of the time she stayed with Mrs. Dodd—visited her.

Q What idea, if any, was there about the property being sold ?

A The idea was, as understood by all of us, that she wanted the property sold ; wanted to get something from it if she could ; if there was any overplus she wanted to get it.

Q Was there any arrangement made prior to the sale,
10 that your husband should buy the property at the sale ?

A Not at all ; no arrangement made of any kind for his buying the property, except as he stated himself ; he tried to get others to go in with him to buy it at the time ; he spoke of getting her brothers to join with him and buy it and try and assist her that way ; but there was no arrangement to buy it for her at all ; that is, for him to buy it.

Q Were you present at the conversation which took place at the table on the morning of the sale ?

A I was ; I remember distinctly the morning of the sale ;
20 Mrs. Dodd remarked that that was the day of the sale ; we all remembered it when it came up ; we had not thought a great deal of it ; and Mr. Wakeman remarked that it was a possible thing he might come out from New York ; he wasn't sure ; didn't know but it was a possible thing he might come out ; we all of course felt anxious to see how it would sell, and when he came he said, I have bought the house and now it is mine ; there won't be any more trouble about the house, for I have bought it and it is mine.

Q You said that Mrs. Dodd was anxious, if there was any
30 surplus money, to have it ; for what purpose ?

A Of course she wanted all there was over ; wanted to use it for divorce purposes ; for the purpose of going to New Orleans ; she had talked of going to New Orleans, but still she wasn't prepared to go ; she was destitute of everything ; she wanted it for that purpose ; I suppose she didn't care to be entirely dependent on Mr. Wakeman.

Q Do you know whether Mr. Wakeman provided her with anything at the time, either money or clothing ?

A Oh, he did ; he provided her with clothes ; provided
40 her with two or three dresses, I believe, and the making of

them; whatever was needed at that time she was provided with.

Q During the time she remained at your house did you hear anything said by her or your husband in relation to the house he had purchased, in relation to his holding it or anything of that kind; I want to know whether you heard during the time she remained at your house, anything said by her to your husband or by him to her in relation to the manner in which he held the property, (did she claim that he had purchased the property for her?) 10

[That part of the question enclosed in parentheses objected to.]

A Not at all.

(Witness being instructed to answer the question without any reference to the part enclosed in parentheses, says:)

A I heard no conversation relative to her having the house as her own at all; very little conversation about the house; her idea was to get a divorce and be free and get away; that was the principal idea.

Q Did you ever hear your husband express an intention of aiding her, or assisting her in her condition at that time? 20

A He did, of course, expect to assist and aid her so long as she was away from her husband; was willing to do so.

Q How long was she at your house?

A From some time in August until December. Some weeks before she left I found that she was receiving notes or communications from her husband, through our coachman.

Mr. Keasbey—Was that a very unusual thing?

Witness—Under those circumstances it was very unusual, placing Mr. Wakeman and all our family in a very unpleasant position, as we had begun steps to free her from her husband. We thought it was a very unpardonable thing. 30

Q Under what circumstances did she leave your house?

A After she had, I believe—I am sure—met her husband many times—I know that I spoke to our man about it, reprov'd him for carrying messages—she went down town and came back in a few days, saying she was going to pass the holidays down town; she never returned; didn't enter our house in three years, I think, and gave no reason for it; we 40

were living on Mount Pleasant avenue ; it might have been a longer time than that.

Q Did you have any conversation with Mrs. Dodd after she left the house ?

A I called on her a week or two afterwards, when she was at Mrs. Scriba's, when she was intending to go away, while she was staying there—while we thought she was on a visit there ; she wanted to go to New Orleans ; she was then preparing to go to New Orleans, and I took her some little
10 things she needed, and I said to her I thought it was wrong for her to go away without acknowledging what Mr. Wakeman had done in this matter about the divorce ; she left us, you understand ; the matter seemed to be broken off entirely, or seemed to stand still ; I said that I thought it was wrong for her to go away ; that she had better stay until the matter was settled in some shape ; I did not tell Mr. Wakeman when she was receiving communications from her husband, I thought it would lessen his interest in her ; but afterwards I told him ; when we found that she had made up her mind to
20 live with her husband I told him.

Q After that did you have any conversations with her in relation to the house, or did you hear any conversation about the house after she left in which she took part, or at which she was present, in relation to the house that Mr. Wakeman purchased ?

A I don't remember anything particular ; I may have heard them, but I cannot call to mind just at this moment.

Q Was your sister, prior to her marriage, at your house ?

A. Yes ; she lived with us after my father's death, and in
30 fact, before that she was a great deal with us ; she was married from our house.

No cross-examination :

MARY LAYTON, being duly sworn, says :

Q You are acquainted with the parties to this suit ?

A Yes, sir.

Q Are you related to them in any way ?

A Mrs. Dodd is my sister.

Q Do you know about Mrs. Dodd's leaving the house at Woodside, where she was residing with her husband, and going to Mr. Wakeman's?

A I called upon Mrs. Dodd and found her alone.

Q When was that?

A It was three or four days previous to her leaving the house in Woodside; I found Mrs. Dodd alone and feeling very miserably; she was not well and generally discouraged; during my stay she spoke very decidedly of going to New Orleans or going away; it was then her intention to make a visit South, and had been for some time, and as we were conversing together I made this remark: That I saw in the paper that her house was for sale, which I was surprised at; I knew nothing of her circumstances, and she said: Oh, yes; it has been advertised some little time. I expressed my regret that such was the case; and she said she felt quite indifferent, that she had lived there so much alone; and I asked her if she could find some one who could buy it and relieve her; she said she did not know of any one; she had made application and had been refused; I do not know as it is important for me to say who it was; no one particular was spoken of except this individual; and she said as she lived there in adverse circumstances in consequence of many things connected with the family, that she was perfectly willing that the house should be sold, and would like to get away from all of the trouble and leave the place; we were speaking of our conversations; one day Mr. Wakeman came along and stopped at the house, and Mrs. Dodd told him how she felt and how she was situated, and after she had related to Mr. Wakeman her situation, and how she felt, he said: Well, Laura, you can come to our house and make it your home until you make such arrangements as you choose in your affairs. I had occasion to go down that afternoon on business and didn't return that night, but intended to have done so if it had been possible, not wishing to leave Mrs. Dodd, for our sympathies were very much interested in her condition; she found that she would be alone that night and went down in the evening to Mr. Wakeman's; left the house at Woodside; that was her manner of leaving; I next saw her at Mr. Wakeman's.

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Q What conversation did you have with her there ?

A Her conversation was about her affairs; the main conversation we had bearing in that case was this; this was previous to the house being sold; it was given in a private manner to me that there was an effort being made; I said, Laura, I thought you were going to New Orleans, and came up to say good-bye to you; she said, I was going, but John is assisting me to get a divorce and I cannot, of course, leave now at this time; as it was a matter private with Mr. Wakeman's family and with her, I said nothing about it; I don't know as any one else was spoken to about it; I afterwards had conversations with Mrs. Dodd at Mr. Wakeman's.

Q What was said ?

A One occurred after Mr. Wakeman had bought the house; she says, Mary, John has bought the house, and then spoke of various measures in the family relative to its use.

Q What did she speak of as having been proposed ?

A She said that she could use the house, and take any one in with her that she chose; any one agreeable and proper, to assist her in the expense of the house, and thereby become independent of her friends; it was her desire to do so.

Q Was anything said about particular persons that she could take in ?

A Something said about Mrs. Ludwickson's children from the South; but I think there was no decided arrangement about it; but I know I made this remark to her; I said: if you don't succeed in paying expenses, you know that as John has bought the house, if you don't pay the rent it won't make any difference; that was all the conversation; I cannot tell it exactly; it occurred some time since; that was the conversation that he wouldn't press her; that he would likely give her the use of the house; we knew that he had bought it himself.

Q Did you see her after she left there—did you have any subsequent conversation or any other conversation with her relative to the house while she was at Mr. Wakeman's ?

A I do not remember anything special—nothing decided—because her future, of course, could not be determined, and she could not tell what she could do; every one

was intrested in her—all her brothers—Mr. Wakeman seemed to be the one she most relied on; as she had made it her home at his house previously he was the one she looked to more especially; the day that Mrs. Dodd left she walked down with me to the house—I called on her, and she said if you will wait I will go down with you; I think she had the intention of taking dinner at Mr. Scriba's; whether it was Christmas dinner or Thanksgiving I really cannot tell; we walked down together, and as we conversed on the way we met Mr. Dodd, her husband; he spoke to Mrs. Dodd, and I did 10 not know previous to that that Mrs. Dodd had seen him since she left Woodside; however, he made this request, he said: Laura—I do not know that he mentioned the name, he may have done so—I have been talking to some one about renting the house at Woodside, and should I have the opportunity I do not wish you to say that the house is Mr. Wakeman's; and as we came down together, after leaving Mr. Dodd, I said, Laura you will not lend yourself to anything of that kind? she said, no; I afterwards had conversations—frequent conversations—with Mrs. Dodd, as we were always 20 interested with everything appertaining to her; we chatted together, but nothing special that I think will have a bearing in this case was said, except this, with reference to this same thing I have referred to in this walk: Mrs. Dodd told me that her furniture was in the house; I think some of it, and I don't know but all of it was there, and she went up with Mr. Dodd to see Mr. Whitehead about it—the man that hired the house, I think his name is Whitehead—and it seemed that during the conversation with Mr. Whitehead he offered her the rent of the house, and she said: I cannot take the 30 rent of this house for the house belongs to Mr. Wakeman.

Q Did she tell you who was present at this interview?

A She didn't tell me; I didn't ask her; she went up with Mr. Dodd, and this is the conversation.

Q You say that you had frequent interviews and conversations with her; in any of these interviews and conversations, did you learn from her in any way that she had any interest in this house after the sale, did she claim to have any?

A I did not know that she had anything to do with it; 40

it did not strike me in that way ; in any of our conversations there was no conversation of that kind, that she had any ownership in that house.

Q Do you know whether Mr. Wakeman tendered himself during any time she was there, or afterwards, as willing to assist her ?

A No, sir; only that he has always said he was willing and always had been ; I cannot say, because I heard no conversation of that kind at Mr. Wakeman's previous to her
10 leaving.

Cross-examined :

Q You say you were all very much interested for your sister at the time this house was under foreclosure, because she was in trouble ?

A Yes, sir.

Q On whom did she rely principally for advice and assistance ; the assistance and advice that a sound man could give at that time ?

A I do not know, sir, who she advised with ; I should
20 say, my opinion would be, without exact knowledge of what she had done or what she might do, that Mr. Wakeman was the most suitable person, as he had been her guardian since my father's death.

Q Was it not true, then, as you said before, that she looked to him especially for advice and counsel in all her matters ?

A I do not know ; I cannot answer that truly ; she might have asked other persons ; Mr. Osborn she has advised with.

30 *Q* Did you not say in your chief examination that she looked to him specially at that time ?

A I should suppose he was the most proper person ; I should suppose that she did, without knowing that she did.

Q Did you suppose at that time that her house was under foreclosure ?

A All I know of it was what I saw in the paper, the Sheriff's advertisement ; I did not hear the family talk of it previous to the sale.

Q Had you any talk, or did you hear any among the members of the family about the sale before it took place?

A I cannot tell you.

Q Were you present at the house on the day of the sale?

A No, sir.

Q Did you find out on the day of the sale, or afterwards, whether the house brought anything above the mortgage?

A I never asked the question, and was not inquisitive in the matter; I knew nothing of it. 10

Q When did you first learn that Mr. Wakeman had bought the house?

A In my casual call upon Mrs. Dodd, at his house.

Q How long after?

A I could not tell you, sir.

Q Can you give me any idea at all?

A It could not have been a very long time; I cannot tell you, sir.

Q It was within a few weeks after the sale?

A Probably it was. 20

Q Did you learn that Mr. Wakeman sold the house for a profit of \$3,000?

A I heard that he sold the house for a profit.

Q When was it that you talked with Mrs. Dodd about the rent of the house and about her occupying the house; was that after the sale?

A At the same conversation—previous conversation that I referred to.

Q Why did you tell her that since Mr. Wakeman had bought the house, she needn't trouble herself about the rent? 30

A Because I knew it was bought with the idea of sustaining her in that way; if she chose to use it he had the power of giving her that benefit.

Q You knew that it was bought with the intention of sustaining her out of the profits?

A I knew nothing about the profits.

Q Sustaining her?

A In any way that it seemed best.

Q Did you then believe, or do you now believe, that Mr. Wakeman, who was almost her guardian, to whom she looked 40

especially for advice and counsel, and whom she relied upon the most to act for her interest, had bought the house as a private speculation to make as much out of it as he could?

A I never supposed that Mr. Wakeman had bought the house as a private speculation; I had no view of the matter; I asked no question about dollars and cents.

Q Do you believe now that he bought the house as a private speculation to make what he could out of it for himself?

10 *A* No, sir. (Objected to.)

Q Did you know that Mr. Wakeman sent Mrs. Dodd \$100 on one occasion?

A I knew that the morning that Mrs. Dodd went to New Orleans, she received \$100 from Mr. Wakeman; I was in her room and saw it.

Q Who brought the \$100?

A I cannot tell you, sir.

Q Did you tell her to send her a receipt for it?

A If she looked at it in any business light, I told her
20 she had better send a receipt for it; if he looked at it as a gift she had better not mind it; I cannot tell you just the words I told her.

Q I ask you now if you remember the conversation between yourself and Mrs. Sherman, at 203 Hight street, about the property?

A No; I do not, and never had any that was satisfactory.

Q Had you any unsatisfactory conversation with her?

A Not with her; I had none that I know of that had any bearing on this point; I have heard Mrs. Sherman make
30 assertions about this thing, but paid no attention to them whatever.

Q Had you a conversation about this receipt in which you said Mrs. Dodd had signed no receipt, and that John had her now where he wanted her?

A I never made such a remark in my life; that is a vile slander.

Re-examined:

Q You said in answer to a question that Mr. Keasbey put to you, that you did not believe that Mr. Wakeman, in

buying the property, intended to make a private speculation of it; what did you believe was his intention in regard to it?

(Objected to.)

A I had but one view in regard to it—as to the buying of that house—that Mr. Wakeman had bought that house because he wanted to have a place for Mrs. Dodd, provided she wanted to go to housekeeping after certain events occurred, which they were trying to bring about, and that would give her the opportunity they all desired. 10

Q What was the event you speak of?

A I suppose it was as you all understood, that she was trying to get advice from her husband.

MARY LAYTON.

Adjourned to Monday, the 16th of February, 3:30 P. M.

Examination continued Monday, February 16, 1874, and Mr. JOHN P. WAKEMAN recalled:

Q I believe I did ask you, but I would like to have you state again who constituted your family at the time Mrs. Dodd was at your house? 20

A My mother, Mary Wakeman, Julia Sherman, my wife's mother, my wife and myself.

Q Either of them deceased since then?

A My mother is deceased.

Q Died when?

A Three years ago last November; my wife's mother, Mrs. Sherman, is still living.

Q What is her age?

A She is 86.

Q What is her health—feeble in health? 30

A Very feeble.

Q Is she able to go out and come to examination here?

A I think not.

Cross-examined:

Q Was Mr. Frederick Sherman in your employ at the time you bought this house?

A I think he was—yes, I know he was.

Q What connection was he of Mrs. Dodd's?

A He was Mrs. Dodd's brother.

Q Did he not request you on her behalf to make some arrangement about this property after you bought it?

A No, sir.

Q Did you at one time write in his presence a letter respecting this property to Mrs. Dodd, to be carried to her by him?

10 A Not to my knowledge.

Q Did you dictate to him a letter concerning Mrs. Dodd's interest in this property?

A No, sir.

Q To be taken to her by him?

A No, sir.

Q Did you have any negotiation with Mr. Sherman respecting Mrs. Dodd's claim on this property, or respecting the disposition of the property on your part?

A No.

20 Q When did Mr. Sherman die?

A This last summer.

Complainant called

MRS. SHERMAN, who being sworn, says:

Q Where did you live at the time the Woodside house was sold by the Sheriff?

A Woodside, New Jersey.

Q Do you remember seeing Mr. Wakeman shortly after that sale—do you remember him stopping at your house?

A Mr. Wakeman stopped at my door, or at the door of
30 my house, and called for Mr. Sherman; said that he wished to speak to him. Mrs. Dodd was in the carriage at the time, and I went to speak to her; he had some conversation about matters of business, as he had left the store early that morning to attend the sale; he told Mr. Sherman that he had bought the house.

Q What house?

A The Dodd house, for the amount of the indebtedness

and costs. Mr. Sherman asked him how it was, and he said there were no bidders there against him.

Q Do you remember seeing a copy of a letter written by Mr. Wakeman in the hands of your husband?

A I do.

Q State the circumstances under which you saw that copy.

A Mr. Dodd was making trouble with Mr. Wakeman about the property after the purchase, and Mr. Wakeman told Mr. Sherman to quiet Mr. Dodd and Mrs. Dodd; he wrote this letter, and Mr. Sherman copied it; he brought them both home and showed them to me, the one he wrote and the one Mr. Wakeman wrote, and a copy of the one Mr. Sherman sent; Mr. Sherman sent the letter; Mr. Sherman indited one letter and Mr. Wakeman indited the other, and out of the two they made up the one that Mr. Sherman sent. 10

Q What was the purport of the letter Mr. Wakeman wrote that you saw?

A Proposing to transfer the property, the papers, and all that he held to Mr. Sherman to hold in trust for Mrs. Dodd. 20

Q Did you see that letter in Mr. Wakeman's handwriting?

A I did; it was written in pencil, and Mr. Wakeman thought Mr. Sherman destroyed it (because he told me) before he left the office, and I wanted him to give it to me, but he wouldn't do it; and he threw it in the fire, because he always thought Mr. Wakeman would pay her, and nobody else did.

Q You say, out of both these letters you saw in Mr. Sherman's hands, he proposed another letter, which he actually sent to Mrs. Dodd; is that the letter which he prepared and sent? (Counsel produces letter.) 30

A It is; I have seen it before; that letter was sent through the mail.

[Letter of March 3, 1869, marked Exhibit A, on the part of the complainant.]

(The testimony of Mrs. Sherman, so far as it relates to any conversations had with her husband, Mr. Sherman, and so far as it relates to any conversations that she had with 40

any person other than Mr. Wakeman, and the exhibit offered on the part of the complainant, is objected to as incompetent.)

Cross-examined:

Q The letter which you say was written to Mrs. Dodd was written by your husband?

A It was.

Q Where?

A At Mr. Wakeman's office, in New York.

10 Q How do you know that your husband wrote the letter at Mr. Wakeman's office?

A He brought the copies home to me and showed them to me.

Q How do you know that he wrote the letter at Mr. Wakeman's office?

A The letter is evidence for itself.

Q Then you were not present?

A I was not present when the letter was written; I would swear to my husband's handwriting; he brought
20 these letters home and showed them to me and wanted to know which was the best, the one he wrote or the one John wrote.

Q You were not present at any conversation between your husband and Mr. Wakeman?

A Yes, sir; I was.

Q And heard a conversation between your husband and Mr. Wakeman about this matter?

A Yes, sir.

Q I mean in relation to this letter?

30 A Not in relation to that letter.

Q And all you know about it is what you heard from your husband?

A No; from every member of the family, from Mrs. Dodd, from Mrs. Layton and from her mother.

Q Mrs. Dodd, Mrs. Layton and her mother have all told you about this letter?

A No, sir; about the property I am talking about.

Q When did you have this conversation in relation to the letter that you speak about with your husband?

A In my own house, sir, at Woodside, after he came home from the city.

Q Where was Mr. Wakeman's place of business at that time?

A On Broadway, almost opposite the New York Life Insurance Company; he was book-keeper at that time with Mr. Wakeman.

Q Did you have any conversation with Mr. Wakeman in regard to this letter at all?

A No, sir. 10

Q You say you saw a memoranda, or a copy of a letter which Mr. Wakeman had written?

A I saw a letter which Mr. Wakeman wrote, to be copied by Mr. Sherman and sent to Mrs. Dodd.

Q How do you know that Mr. Wakeman wrote the letter?

A I saw it.

Q Are you acquainted with Mr. Wakeman's handwriting?

A I am; I can produce two letters in his handwriting 20 now.

Q Where is the letter that he wrote now?

A Mr. Sherman destroyed it; I wanted to keep it; he merely brought it home to show me.

Q You say, Mrs. Sherman, that out of the two letters, the letter which your husband prepared and the letter which Mr. Wakeman prepared, another letter was framed and sent to Mrs. Dodd; did you see your husband write a third letter?

A I saw a copy of it. 30

Q Did you see him write a third letter?

A I did not see it, but I saw a copy of it.

Q Did you know that he did write it except that he said he did?

A Yes, sir; for the letter is in existence yet; I know he wrote it.

Q I want to know how you know that he prepared a third letter from the two?

A He brought them home to me and asked me what I thought of them—John's letter and his letter; there was 40

only a word or two difference between them, the purport was the same, and he asked me if I did not think his was the best; he had a very excellent opinion of Mr. Wakeman and of his business ability.

CHARLOTTE M. SHERMAN.

[Adjourned till Friday, the 20th February, at 3:30 P. M.]

Friday, 20th February, 1874. The parties met pursuant to adjournment.

JOHN P. WAKEMAN, being *re-examined*, is asked :

10 Q Look at Exhibit A for complainant, a letter from Frederick A. Sherman to Mrs. Laura Dodd; did you ever see that letter before it was shown here?

A No; I did not.

Q Had you any knowledge of it when written?

A None, whatever.

Q Did you ever authorize Mr. Sherman to write any letter or make any statement to Mrs. Dodd in relation to this property?

A None.

20 Q Did you give any draft of a letter, or memoranda of a letter to be prepared and sent to Mrs. Dodd in relation to this matter?

A No; I never did.

Cross-examined:

Q Did you get a letter from Mrs. Dodd on the day after this is dated in regard to this transaction?

A I do not remember any such letter.

Q Did not you hand such a letter to Mr. Sherman on 4th of March, 1869, and tell him you would have nothing
30 further to do with it?

A I have no recollection of such a letter, or of its composition.

Q Was Mr. Sherman then in your employ?

A I think he was.

Q Do I understand you to say you had no conversations or negotiations with him in regard to this property?

A I think not.

Q Was Mr. Sherman a man of good character?

A I think he was.

Q Was he accustomed to speak the truth?

A I think he was.

Q Was he your book-keeper?

A He was.

Q Would you know his hand-writing?

A I think I should.

Being shown Exhibit B for complainant, the witness 10
says: That is his handwriting.

[The questions in regard to the character of Mr. Sherman put to this witness, and also with regard to Exhibit A, so far as the same are intended to be made evidence in the cause, is objected to by the counsel for the defendant.]

Q Looking at Exhibit B for complainant, written by your book-keeper in New York, 4th March, 1869, does it recall to your recollection the fact stated in it, "John handed me the letter you wrote him to-day, and requested me to say he would have nothing further to do with the 20
matter?"

[Counsel for defendant objects to this question, because it is an attempt to introduce evidence entirely incompetent and not a cross-examination.]

A I do not remember anything about the letter at all, what it means.

The examination here was declared to be closed by the parties.

WILLIAM PATERSON,

Master and Examiner.

30

20th February, 1874.

E X H I B I T S .

EXHIBIT A, ON THE PART OF THE COMPLAINANT.

NEW YORK, March 3, 1869.

MRS. LAURA DODD,

Care of Camp & Osborn, Newark, N. J. :

DEAR SISTER—By the time you receive this all John P. Wakeman's interest in the bond and mortgage on the Woodside house will be transferred to me, and after my paying
 10 him the balance due him, I shall keep the residue for the purpose for which it was originally intended and for no other.

Your Brother,

FRED'K A. SHERMAN.

EXHIBIT B, FOR COMPLAINANT.

NEW YORK, March 4, 1869.

DEAR SISTER :

John handed me the letter you wrote him to-day, and requested me to say that he would have nothing further to
 20 do with the matter. As I wrote yesterday, I have control of the mortgage, and you know I have no money to advance anybody.

Your Brother,

F. A. SHERMAN.

In Chancery of New Jersey.

<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0;">LAURA S. DODD,</p> <p style="margin: 0;"><i>Complainant,</i></p> <p style="margin: 0; text-align: center;"><i>and</i></p> <p style="margin: 0;">JOHN P. WAKEMAN,</p> <p style="margin: 0;"><i>Defendant.</i></p>	}	<p style="margin: 0;"><i>Opinion.</i></p>
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FINAL HEARING ON BILL, ANSWER, AND PROOFS. 10

Mr. A. Q. KEASBEY, for complainant.

Mr. JOSEPH COULT, for defendant.

VICE CHANCELLOR:

The complainant bases her right to relief on a parol contract, made by the defendant, whereby he agreed to purchase at Sheriff's sale, certain mortgaged premises belonging to the complainant and then advertised for sale, hold the same in trust for her until they could be re-sold for their value, and pay her whatever might be realized over and above the sum paid by him. It is alleged the defendant, 20 pursuant to this contract, purchased the premises for a sum just sufficient to satisfy the decree and costs, and re-sold them within less than five months, at an advance of \$2,930, (having paid \$3,570, and re-sold for \$6,500,) and now refuses to pay anything.

I think the rule may be considered settled in this State, that a parol contract to purchase land at Sheriff sale for the benefit of the defendant in execution, and that he shall be entitled to the advance realized on a re-sale of it, or that he

shall have a conveyance of it on reimbursing the purchaser, will be enforced in equity, even if free from fraud, unless the statute of frauds is properly invoked, by pleading to nullify the contract. *Combs vs. Little*, 3 Green's Ch., 310; *Marlatt vs. Warwick and Smith*, 3 C. E. Green, 109; *S. C., on appeal*, 4 C. E. Green, 441; *Merritt vs. Brown*, 6 C. E. Green, 404. And even in a case where the purchaser seeks the protection of the statute of frauds, if it clearly appears he has made use of such contract, or any other contrivance, 10 to obtain the property sold under execution for an inadequate price, or to the oppression of the defendant, a court of equity, in the exercise of its legitimate functions, must grant relief. *Merritt vs. Brown, supra*; *Walker vs. Hill's Exrs.*, 7 C. E. Green, 519.

The defendant puts himself simply upon a denial of the contract, and does not seek the protection of the statute of frauds.

At the time it is alleged the contract was made, the complainant was a member of the defendant's family. She is 20 his sister-in-law, had resided in his family before her marriage, was married at his house, and had now returned there on separating from her husband, in consequence of his cruel treatment and grossly intemperate habits. Her husband is now dead.

The defendant is a person of wealth and large experience in business. He professed to be deeply interested in the complainant, and sincerely desirous of helping her in her misfortune; she trusted him implicitly, and seems to have made his counsel her law. Under his advice, she resolved 30 to apply for a divorce, and he and she had made journeys together in search of evidence against her husband. While he was in this position of power and influence over her, she applied to him for counsel as to what she had best do respecting the sale of her property by the Sheriff. He expressed the opinion that it would be sold for a sum sufficient to pay the mortgages, and to repay what she had paid on its purchase, and advised her to have the sale made on the day advertised without adjournment; he says, at her request, he requested the solicitor having the foreclosure suit in charge, 40 to sell on the day advertised without postponement; but he

refused to promise to do so, unless requested by the complainant in person or in writing.

The defendant further says, the complainant on being informed of what the solicitor wanted, requested him to write a note to the solicitor, but that he replied he would rather she would attend to that part of the business. She thereupon wrote a note, read it to him, and it was taken or sent to the solicitor. This, the defendant says, embraces everything preceding the sale, except it was mentioned at the table on the morning of the day of sale, that the sale was to be made that day; that he had made no arrangement with any one to buy the property, nor, indeed, had he the slightest expectation of doing so himself; in fact, when he left home in the morning, he was in doubt whether he would attend the sale, though he had made no arrangement for anyone else to do so to protect the interests of the complainant. He did, however, attend, found no one there willing to pay more than the encumbrances; and without seeking, or even suggesting a delay, bid off the property for a sum just sufficient to satisfy the decree and costs. On his return home, he told his family he had purchased, but does not remember that he gave any information as to what he had bid, or that the complainant sought any.

This is the defendant's history of his purchase. Conceding it to be fair and truthful, a clear case of trust and confidence is made out, such as no tribunal of justice can permit him to abuse or betray to his own gain and another's injury. On his own showing, he undertook the management of this sale for the complainant under an implied promise at least, that he would guard her and protect her interests. Common fairness will not allow him to break it, that he may despoil her for his own enrichment. She gave the direction to sell, unconditionally, on the day first advertised, by his advice, under a trustful belief he was advising her for her benefit, and that she could safely follow it without danger or injury at least from him. Whether his counsel was given with or without a fraudulent purpose, when he voluntarily assumed the character of guide and protector, the law made it his duty to deal fairly with her, and to insure her safety, subordinated his rights to hers. There can be no doubt, under

the facts as he states them, that he was her agent in this transaction. It is familiar law, founded in wisdom and sound policy, that any advantage gained by an agent, whether it is the fruit of performance or violation of duty, belongs to his principal. *Story on Agency*, § 207, 211. An agent or trustee, undertaking a special business for another, cannot on the subject of that trust, act for his own benefit to the injury of his principal. *Parkist vs. Alexander*, 1 Johns., Ch. 396; *Condit vs. Blackwell*, 7 C. E. Green, 10 486; *Story's Eq. Juris.*, § 315; *Story on Agency*, § 200.

The question, whether or not the defendant purchased the mortgaged premises pursuant to the contract alleged in the bill, is, in my judgment, free from all difficulty. I think the evidence clearly shows such a contract was made, and that the defendant has made it the means of obtaining title to the mortgaged premises for little more than half their value. The complainant distinctly and positively swears such a contract was made. Another witness, who intended to attend the Sheriff's sale to purchase, unless it was to be 20 purchased for the complainant, declares, a short time before the sale he inquired of the defendant whether he intended to purchase for the benefit of the complainant, and on receiving his assurance he did, abandoned the purpose of attending the sale. After the sale, this witness swears, the defendant, in answer to a direct inquiry whether he had purchased the property for the complainant, stated he had. To three other witnesses, in different conversations with each, in terms more or less explicit, the defendant admitted he had made the purchase for the complainant, and after the 30 re-sale by him, that he held the advance realized over the purchase money paid by him for her. In reply to suggestions from two of them, that he ought to execute a writing manifesting her right in case of his death, he answered he had already provided for such a contingency by his will, and offered to show it to one of them to satisfy him her rights were properly secured.

The case of the complainant receives strong corroboration from the admissions of the defendant, that he advised her to give direction that the sale should be made, without ad- 40 journalment, regardless of what was bid, and that on disclos-

ing the fact he was the purchaser, no information was given or sought as to what he had paid, or if he gave such information that no explanation was asked as to how it happened he consented to become the purchaser, at a price so far below its admitted value, without the slightest effort on his part to procure an adjournment or a better bid. It is incredible to me that this defendant could have procured the positive direction of the complainant for a sale, under any circumstances, on the day first advertised, regardless of the sum bid, but if it was a step in a plan to purchase the property for the complainant, it would then seem to be natural and reasonable. 10

I am fully satisfied the defendant made the contract alleged in the bill, and that he used it to defraud and despoil the complainant.

The complainant is entitled to the profit made on the resale of the mortgaged premises, and her costs in this action. I will advise accordingly.

should be made on the day first advertised, without adjournment, and thereby procured the sale thereof to be made to himself on the day first advertised for a grossly inadequate price, and just sufficient to pay the mortgage debts and costs, and that under the facts proved by the act and operation of law the said lands and premises were conveyed to and held by said defendant in trust for the said complainant.

It is thereupon, on this sixteenth day of August, eighteen hundred and seventy-five, ordered, adjudged and decreed, that the said defendant did purchase the said premises as the trustee and agent of the said complainant, and did receive the said profit on the sale thereof for the use of the complainant, and that said defendant do, within ten days after demand therefor, pay to the said complainant the said sum of twenty-eight hundred forty-one dollars eighty-eight cents, received by him as profit on the sale of said lands, together with interest thereon from the said first day of March, eighteen hundred and sixty-nine, and also the costs of this suit to be taxed. 10

And it is further ordered and adjudged and decreed, that 20 in default of such payment, the said complainant do have execution for the same.

I respectfully advise the foregoing decree.

(Signed),

A. F. VAN FLEET, V. C.



