

COURT OF ERRORS AND APPEALS

Between
JAMES S. BARRON,
Appellant,
and
DANIEL VAN WINKLE,
Respondent.

Nos. 27, 28, 29. Appellant's Points.

The question of these cases is, which is the first lien (as between these mortgages), the mortgage to the appellant or the mortgages to the respondent?

Facts conceded or established—

April 1st, 1867, Blakiston conveyed to the Mount Rutherford Company a farm, subject to a

mortgage of same date, for \$91,000, made by him to Daniel Van Winkle.

In 1872 the company deeded to its shareholders, on surrender of their stock, the portions of said lands which remained unsold.

Under this arrangement, Blakiston was entitled, on surrender of his stock and payment of \$133.43, to a deed from the company for the lands described in the Barron mortgage.

His certificates of stock were held by Barron under pledge for moneys advanced.

Deeds from the company dated January 1st, 1872, were ready for delivery.

Blakiston, in December, 1872, executed to Barron a mortgage for \$14,000, to be delivered on surrender of the certificates and delivery of the deeds.

In August, 1873, Barron paid the \$133.43 and surrendered to the company the shares, and the deeds and his mortgage were thereupon delivered and simultaneously recorded.

In May, 1872, Van Winkle took from Blakiston the three mortgages in question on various parts of the lands described in the Barron mortgage, for \$240, \$400, and \$700, all dated January 1st, 1872, acknowledged May 21st, 1872, and recorded May 23d, 1872.

On May 23d, 1872, his \$91,000 mortgage was duly canceled of record.

Van Winkle never received or demanded any interest on these mortgages, and, on January 15th, 1875, he filed his bills to foreclose.

Barron's testimony was closed June 14th, 1876. On July 15th, 1881, Van Winkle examined Blakiston in Ohio.

I. Barron had no record notice.

II. Van Winkle can only precede him by proving *actual notice*.

Barron swears "*I had no idea of the existence of these mortgages when I took my mortgage, or of any claim against the property in my mortgage; nobody ever made a demand on me before the commencement of these suits for principal or interest of these mortgages.*" Page 44, lines 41, 42.

The attorney through whom Blakiston and Barron arranged their matter swears "The first knowledge I had of the complainant's mortgages I got from the copies of the bills filed in these causes; *till then I understood the mortgage of Mr. Barron to be the first and only lien on the property described in it.*" Page 47, lines 51, 52.

To establish notice, respondent offers Blakiston and himself.

Blakiston shows manifest bias towards respondent and ill-will towards Barron. All Blakiston swears to, if true, would only lead Barron to look out for the \$91,000 mortgage. He had told him of that

mortgage to Van Winkle, and never told him that that was canceled. Page 58, lines 83 to 85.

That Blakiston was not frank with Barron, shown page 45, line 46.

"Before you took your mortgage for \$14,000 did not Mr. Charles Blakiston tell you of his own and the company's transactions and agreements with Mr. Van Winkle, concerning the Mount Rutherford property?"

"No, sir; nothing particularly; my knowledge of his and Mr. Van Winkle's business was very limited; *I knew nothing about it, and he took pains that I should not know.*"

And on page 54, question 28, Blakiston, when asked—

"At whose instance and under what circumstances was that mortgage given by you to him?" says—

"Being in a failing condition, and anxious to pay Mr. Barron, the only very large creditor I had in business, I repeatedly urged him to take this mortgage to this end.

"What knowledge, if any, had he at that time of your resources and liabilities financially?"

"I think he supposed I was strong in resources with which to pay my debts."

See also page 60.

"Do you recollect of telling Mr. Barron that you had made a mortgage to Mr. Van Winkle for between \$1400 and \$1800?"

"I recollect distinctly many times telling Mr. Barron that if he would take the mortgage of that amount, \$14,000, on this property that it was

abundant security, as I only owed Mr. Van Winkle on this property as my part of the original mortgage, as I remember, about \$1400; that point in my memory is clear beyond any peradventure.

“Do you recollect ever telling him that you had made a new mortgage or mortgages to Mr. Van Winkle for that?”

“I do not recollect using these precise words at any one time, but I recollect keeping him informed from time to time of the existence of Mr. Van Winkle’s claim, its origin and its continuance, and the reason I recollect it especially is that I did it to prevent him in the future from claiming that I had deliberately perpetrated a fraud, and to guard against a thing like that I know I always pursue that course.

“You mean to say, then, that you have a very distinct recollection of the reason why you did it, but don’t recollect that you actually did do it?”

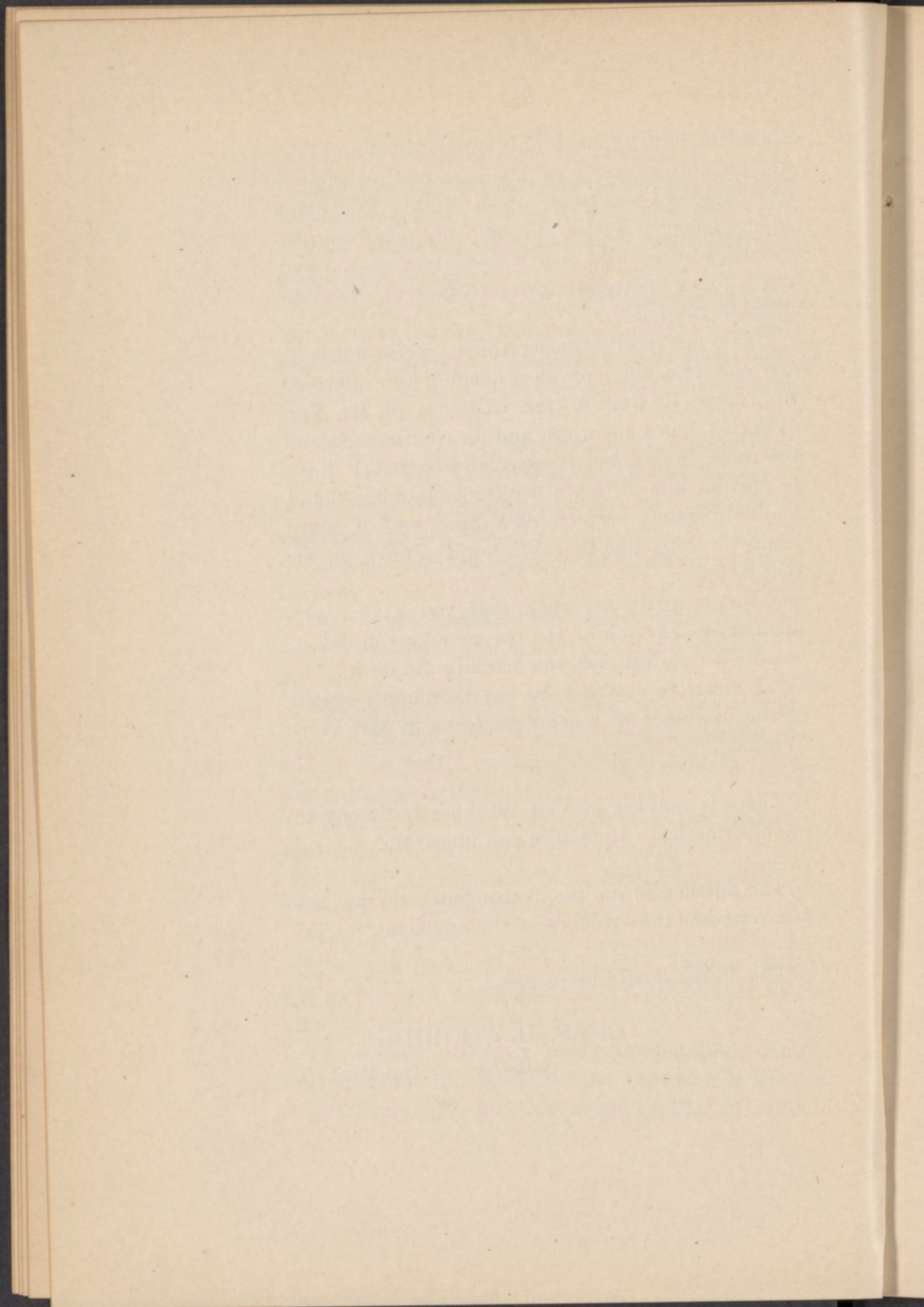
“I mean to say that he was thoroughly posted of the existence of a *prior mortgage* to Mr. Van-Winkle.”

There is nothing in Van Winkle’s testimony to establish notice. Indefinite and uncertain.

The burthen is on the respondent, and he has not overcome the evidence of the appellant.

The decree should be reversed.

CHAS. H. VOORHIS,
Solicitor of Appellant.



TO HIS HONOR THEODORE RUNYON, ESQUIRE, *Chancellor*
of the State of New Jersey :—

Humbly complaining, showeth unto your Honor your orator Daniel Van Winkle, of the township of Union, in the county of Bergen and State of New Jersey, that on or about the first day of January, in the year one thousand eight hundred and seventy-two, Charles Blakiston, of the said township of Union, in the county of Bergen and State of New Jersey, became and was justly indebted unto your orator in the sum of seven hundred dollars; and being so indebted, the said Charles Blakiston, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of fourteen hundred dollars, lawful money of the United States, with a condition thereunder written, that if the said Charles Blakiston, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator, his executors, administrators or assigns, the just and full sum of seven hundred dollars, lawful money aforesaid, on the first day of July which will be in the year one thousand eight hundred and seventy-four, and interest thereon, to be computed from the date thereof, at and after the rate of seven per cent. per annum, and to be paid half-yearly, then the said obligation to be void, otherwise to remain in full force

and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said Charles Blakiston, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Charles Blakiston of the first part, and your orator of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto your orator, said party of the second part, his heirs and assigns, all those eight certain lots, tracts or parcels of land and premises, situate, lying and being at Rutherford Park, in Union township, Bergen county, and State of New Jersey, known as lots Nos. 9, 27, 28, 52, 73, 138, 174, 176, according to a map, entitled "Map No. 3 of the Property of the Mount Rutherford Company, situated at Rutherford Park, Bergen county, N. J.," and filed in the Clerk's office of Bergen county, New Jersey, on the seventh day of March (1872), eighteen hundred and seventy-two, are bounded and described as follows: Lot number (9) nine may be described as follows: Beginning at a point in the northeasterly line of Glen road, distant two hundred feet (200) northwesterly from the northwesterly line of Orient Way; thence running (1) northeasterly at right angles to Glen road, one hundred and thirty-six feet and forty-three hundredths of a foot (136.43) thence (2) westerly and parallel with Park avenue, 176 feet and 77-100 of a foot (176.77) to Glen Road; thence (3) southeasterly along Glen road, 112 and 4-10 feet (112.4) to the place of beginning.

Lots numbers (27 and 28) 27 and 28 together may be described as follows: Beginning at a point in the westerly

line of "the Sweep," distant 123 feet (123) southerly from the southwesterly line of Spring Dell; thence running (1) westerly along the southerly line of lot number (26) 26, 175 feet (175) to Mountain Side Park; thence (2) southerly along the easterly side of said Park, 90 and 4-10 (90.4); thence (3) easterly along the northerly line of lot number (29) 29, 175 feet (175) to the westerly line of "the Sweep;" thence (4) along said line of "the Sweep," 150 feet (150) northerly to the point or place of beginning.

Lot number (52) 52 may be described as follows: Beginning at a point in the southeasterly line of Mountain Way, distant 107 and 5-10 feet (107.5) northeasterly from the northeasterly line of Highland Cross; thence running (1) southeasterly at right angles to Mountain Way, 125 feet (125); thence (2) northeasterly and parallel with Mountain Way, 125 feet (125); thence (3) northwesterly and parallel with the line first run, 125 feet to Mountain Way; thence (4) southwesterly along Mountain Way, fifty (50) feet to the point or place of beginning.

Lot No. (73) 73 may be described as follows: Beginning at the corner formed by the intersection of the northeasterly line of Highland Cross with the southeasterly line of Sylvan street; thence running (1) northeasterly along said line of Sylvan street, 45 and 2-10 feet (45.2); thence (2) southeasterly at right angles to Sylvan street, 142 feet and 78-100 of a foot (142.78); thence (3) southwesterly and parallel with Mountain Way, 66 feet and 85-100 of a foot (66.85) to Highland Cross; thence (4) northwesterly along Highland Cross, 150 and 6-10 feet (150.6) to the point or place of beginning.

Lot number (138) 138 may be described as follows: Beginning at a point in the northwesterly line of Feronia Way, distant 550 feet southwesterly from the southwesterly line of Passaic avenue; thence running (1) northwesterly

at right angles to Feronia Way, 140 feet; thence (2) southwesterly and parallel with Feronia Way, 50 feet; thence (3) southeasterly and parallel with the line first run, 140 feet to Feronia Way; thence (4) northeasterly along Feronia Way, 50 feet to the point or place of beginning.

Lot number (174) 174 may be described as follows: Beginning at a point in the northwesterly line of Spring street, distant 587 and 2-10 feet (587.2) southwesterly from the southwesterly line of Passaic avenue; thence running (1) northwesterly at right angles to Spring street, 100 feet; thence (2) southwesterly and parallel with Spring street, 50 feet; thence (3) southeasterly and parallel with the line first run, 100 feet to Spring street; thence (4) northeasterly along Spring street, 50 feet to the point or place of beginning.

Lot number (176) 176 may be described as follows: Beginning at a point in the northwesterly line of Spring street, distant 267 feet and 35-100 of a foot northeasterly from the northeasterly line of Highland Cross; thence running (1) northwesterly at right angles to Spring street, one hundred feet (100); thence (2) northeasterly and parallel with Spring street, 50 feet; thence (3) southeasterly and parallel with the line first run, 100 feet to Spring street; thence (4) southwesterly along Spring street, 50 feet to the point or place of beginning.

Being the same premises conveyed to the said Charles Blakiston by the Mount Rutherford Company, by deed dated January 1, 1872.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said inden-

ture of mortgage, and every part and parcel thereof, with the appurtenances: to have and to hold the therein above granted and described premises, with the appurtenances, unto your orator, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, his heirs, executors or administrators, should well and truly pay or cause to be paid unto your orator, or to his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Charles Blakiston, before Henry A. Baker, Esq., a commissioner of deeds in and for said county, and duly recorded in the office of the Clerk in and for the said county of Bergen in book F, 2 of mortgages, page 308, etc., on the twenty-third day of May, in the year one thousand eight hundred and seventy-two, as by the certificate of the Clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows, that Mary L. Blakiston, wife of the said Charles Blakiston, claims to have an inchoate right of dower in the said premises; but your orator charges that the aforesaid mortgage of your orator was given to secure a portion of the purchase money of the

said premises; and that if the said Mary L. Blakiston has any interest in the said premises, it is subject to the lien of your orator's said mortgage.

And your orator further shows, that on or about the 24th day of December, 1872, the said Charles Blakiston and Mary L., his wife, executed a mortgage on the same premises and on other premises of him, the said Charles Blakiston, unto one James S. Barrow, to secure the sum of \$14,000, or some other sum, by virtue of which said mortgage the said James S. Barrow claims to have a lien upon the premises mentioned and described in your orator's said mortgage; but your orator charges that the said mortgage to James S. Barrow was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and that if an incumbrance at all upon the said premises, is subsequent to the mortgage of your orator.

And your orator further shows, that afterwards, to wit, on or about the 4th day of June, 1873, the said Charles Blakiston and wife conveyed one of the lots or parcels of land mentioned in your orator's said mortgage, to wit, lot number 52, together with other lands of him, the said Charles Blakiston, unto one James Cameron; and that also by another deed of conveyance, of about the same date, the said Charles Blakiston and wife conveyed to the said James Cameron another of the lots or parcels of land mentioned in your orator's said mortgage, to wit, lot number 174, hereinbefore described, by virtue of which two conveyances the said James Cameron claims to have some interest in the premises mentioned in your orator's said mortgage. But your orator expressly charges that the said conveyances, and each of them, were made subsequent to and with full notice of your orator's said mortgage, and are subject to the lien thereof.

[COMMON CONCLUSION TO BILL.]

In Chancery of New Jersey.

BETWEEN

DANIEL VAN WINKLE,
Complainant,

AND

CHARLES BLAKISTON, *et al.,*
Defendants.

On Bill to Foreclose.

The answer of James S. Barrow, one of the defendants, to the bill of complaint of Daniel Van Winkle, complainant, in the above cause :—

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says that he has no knowledge as to whether or not the said Charles Blakiston was on or about the

first day of January, A. D. eighteen hundred and seventy-two, indebted to said complainant in the sum of seven hundred dollars, or any other sum, and has no knowledge as to whether or not the bond and mortgage set forth firstly in complainant's said bill were executed and delivered to said complainant by said Charles Blakiston. This defendant, further answering, says that he admits that said Charles Blakiston and Mary L., his wife, on or about the twenty-fourth day of December, eighteen hundred and seventy-two, did execute to this defendant a mortgage on the premises in said bill described, and other premises to secure the payment of fourteen thousand dollars, by virtue of which this defendant claims a lien upon the said premises. This defendant, further answering, says he is informed and believes that said complainant has a bond and mortgage for seven hundred dollars, as described in said bill, and that the same was acknowledged and recorded, or registered, at the times and in the manner set forth in said bill, but that he had no information in regard thereto until after the said fourteen thousand dollar mortgage was executed, delivered and recorded in the Clerk's office of the county of Bergen.

This defendant, further answering, says that said Charles Blakiston had no title to the said mortgaged premises till long after the first day of June, eighteen hundred and seventy-two; and this defendant therefore insists that if said complainant holds any such mortgage as is firstly set forth in his said bill, the same is no lien whatever upon the said premises as against the defendant.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or derived, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct;

and humbly prays that a decree may be made by this honorable court for the sale of the said land and premises in the foregoing indenture of mortgage mentioned and set forth in the complainant's bill; and out of the moneys thence arising that this defendant may be paid the full amount of the principal and interest moneys so due as aforesaid, with all reasonable costs and charges in this behalf sustained.

CHAS. H. VOORHIS,
Solicitor for and of Counsel with defendant
James S. Barrow.

NEW JERSEY, ss.:

JAMES S. BARROW, the above named defendant, being duly sworn on his oath, saith that the matters and things set forth in the above answer, so far as relate to his own acts, are true; and, so far as relate to the acts of others, he believes to be true.

JAMES S. BARROW.

Sworn and subscribed this 2d day of April, 1875, at Jersey City, before

WILLIAM W. SANDERSON,
Master in Chancery of N. J.

[REPLICATION IN USUAL FORM.]

TO HIS HONOR THEODORE RUNYON, ESQUIRE, *Chancellor
of the State of New Jersey*:—

Humbly complaining, showeth unto your Honor your orator Daniel Van Winkle, of the township of Union, in the county of Bergen and State of New Jersey, that on or about the first day of January, in the year one thousand eight hundred and seventy-two, one Charles Blakiston of the said township of Union, in the county of Bergen and State of New Jersey, became and was justly indebted unto your orator in the sum of four hundred dollars; and being so indebted, the said Charles Blakiston, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of eight hundred dollars, lawful money of the United States, with a condition thereunder written, that if the said Charles Blakiston, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator, his executors, administrators or assigns, the just and full sum of four hundred dollars, lawful money aforesaid, on the first day of July which will be in the year one thousand eight hundred and seventy-four, and interest thereon, to be computed from the date thereof, at and after the rate of seven per cent. per annum, and to be paid half-yearly, then the said obligation should be void, otherwise to remain in full

force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said Charles Blakiston, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Charles Blakiston of the first part, and your orator of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto your orator, said party of the second part, his heirs and assigns, all those four certain lots, tracts or parcels of land and premises, situate at Rutherford Park, in Union township, Bergen county, and State of New Jersey, known as lots Nos. 189, 288, 347, and part of lot 169, according to a map, entitled "Map No. 3 of the Property of the Mount Rutherford Park Company, situated at Rutherford Park, Bergen county, N. J.," and filed in the Clerk's office of Bergen county, New Jersey, on the seventh day of March (1872), eighteen hundred and seventy-two, are bounded and described as follows :

Lot number (189) one hundred and eighty-nine may be described as follows: Beginning at a point in the southeasterly line of Spring street, distant one hundred and eighty-three and four-tenths (183.4) feet southwesterly from the southwesterly line of Passaic avenue; thence running (1) southeasterly at right angles to Spring street, one hundred (100) feet; thence (2) southeasterly on a line at right angles to Meadow street, forty-seven and twenty-one hundredths of a foot (47.21) to Meadow street; thence (3) southerly along Meadow street, fifty (50) feet; thence (4) northwesterly at right angles to Meadow street, fifty-six and

seventy-two hundredths of a foot (56.72); thence (5) still northwesterly and parallel with the line first run, one hundred feet to Spring street; thence (6) northeasterly along Spring street, fifty feet to the point or place of beginning.

Lot number (288) two hundred and eighty-eight may be described as follows: Beginning at a point in the southeasterly line of Alpine Span, distant two hundred and eight feet and sixty-eight hundredths of a foot (208.68) northeasterly from the northeasterly line of Highland Cross; thence running (1) southwesterly at right angles to Alpine Span, one hundred and thirty feet; thence (2) northeasterly and parallel with Alpine Span, fifty feet; thence (3) northwesterly and parallel with the line first run, one hundred and thirty feet (130) to Alpine Span; thence (4) southwesterly along Alpine Span, fifty feet to the point or place of beginning.

Lot number (347) three hundred and forty-seven may be described as follows: Beginning at the corner formed by the intersection of the northeasterly line of Passaic avenue with the southeasterly line of Alpine Span; thence running (1) northeasterly along said line of Alpine Span, twenty-four feet and seventy-three hundredths of a foot (24.73); thence (2) southeasterly at right angles to Alpine Span, one hundred and thirty feet; thence (3) southwesterly and parallel with Alpine Span, thirty-nine feet and seventeen hundredths of a foot (39.17) to Passaic avenue; thence (4) northwesterly along Passaic avenue, one hundred and thirty feet and ninety-two hundredths of a foot (130.92) to the point or place of beginning.

Said part of lot (169) one hundred and sixty-nine may be described as follows: Beginning at a point in the northwesterly line of Spring street, distant three hundred and eighty-seven and two-tenths of a foot (387.2) southwesterly from the southwesterly line of Passaic avenue; thence running (1) northwesterly at right angles to Spring street, one

hundred feet; thence (2) northeasterly and parallel with Spring street, eighteen feet; thence (3) southeasterly and parallel with the line first run, one hundred feet to Spring street; thence (4) southwesterly along Spring street, eighty feet to the point or place of beginning.

Being the same premises conveyed to the said Charles Blakiston by the Mount Rutherford Company, by deed bearing date January 1, 1872.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances: to have and to hold the therein above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, his heirs, executors or administrators, should well and truly pay or cause to be paid unto your orator, or to his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Charles Blakiston,

before Henry A. Baker, Esq., a commissioner of deeds in and for said county of Bergen, and duly recorded in the office of the Clerk in and for the said county of Bergen in book F, 2 of mortgages, page 302, etc., on the twenty-third day of May, in the year one thousand eight hundred and seventy-two, as by the certificate of the Clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows, that Mary L. Blakiston, wife of the said Charles Blakiston, claims to have an inchoate right of dower in the said premises; but your orator charges that the aforesaid mortgage of your orator was given to secure a portion of the purchase money of the said premises; and that if the said Mary L. Blakiston has any interest in the said premises, it is subject to the lien of your orator's said mortgage.

And your orator further shows, that on or about the 24th day of December, 1872, the said Charles Blakiston and Mary L., his wife, executed a mortgage on the same premises and other premises of him, the said Charles Blakiston, unto one James S. Barrow, to secure the sum of \$14,000, or some other sum, by virtue of which said mortgage the said James S. Barrow claims to have some lien upon the premises mentioned and described in your orator's said mortgage; but your orator charges that the said mortgage to James S. Barrow was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and that if an incumbrance at all upon the said premises, is subsequent to the mortgage of your orator.

And your orator further shows, that afterwards, to wit, on or about the 4th day of June, 1873, the said Charles Blakiston and wife conveyed two of the lots or parcels of land mentioned in your orator's said mortgage, to wit, lots numbers 288 and 347, and other lands of him, the said Charles Blakiston, unto one James Cameron, by virtue of

which conveyance the said James Cameron claims to have some interest in the premises mentioned in your orator's said mortgage. But your orator expressly charges that the said conveyance was made subsequent to and with full knowledge of your orator's said mortgage, and is subject to the lien thereof.

And your orator further shows, that on or about the twenty-second day of September, 1871, as your orator has been informed and believes to be true, one Charles L. Hoffman recovered a judgment on a lien claim against one John Clarkson, builder, and The Mount Rutherford Company, owners, in the Bergen County Circuit Court, for the sum of two hundred and sixty-two dollars and fifty-eight cents, or some other sum, by virtue of which said judgment the said Charles L. Hoffman claims to have some lien upon the said premises mentioned in your orator's mortgage, or upon some part thereof.

[COMMON CONCLUSION TO BILL.]

In Chancery of New Jersey.

BETWEEN

DANIEL VAN WINKLE,
Complainant,

AND

CHARLES BLAKISTON, *et al.,*
Defendants.

On Bill to Foreclose.

The answer of James S. Barrow, one of the defendants, to the bill of complaint of Daniel Van Winkle, complainant, in the above cause:—

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says that he has no knowledge as to whether or not the said Charles Blakiston was on or about the

first day of January, A. D. eighteen hundred and seventy-two, indebted to said complainant in the sum of four hundred dollars, or any other sum, and has no knowledge as to whether or not the bond and mortgage set forth firstly in complainant's said bill were executed and delivered to said complainant by said Charles Blakiston. This defendant, further answering, says that he admits that said Charles Blakiston and Mary L., his wife, on or about the twenty-fourth day of December, eighteen hundred and seventy-two, did execute to this defendant a mortgage on the premises in said bill described, and other premises to secure the payment of fourteen thousand dollars, by virtue of which this defendant claims a lien upon the said premises. This defendant, further answering, says he is informed and believes that said complainant has a bond and mortgage for four hundred dollars, as described in said bill, and that the same was acknowledged and recorded, or registered, at the times and in the manner set forth in said bill, but that he had no information in regard thereto until after the said fourteen thousand dollar mortgage was executed, delivered and recorded in the Clerk's office of the county of Bergen.

This defendant, further answering, says that said Charles Blakiston had no title to the said mortgaged premises till long after the first day of June, eighteen hundred and seventy-two; and this defendant therefore insists that if said complainant holds any such mortgage as is firstly set forth in his said bill, the same is no lien whatever upon the said premises as against the defendant.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or derived, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct;

and humbly prays that a decree may be made by this honorable court for the sale of the said land and premises in the foregoing indenture of mortgage mentioned and set forth in the complainant's bill; and out of the moneys thence arising that this defendant may be paid the full amount of the principal and interest moneys so due as aforesaid, with all reasonable costs and charges in this behalf sustained.

CHAS. H. VOORHIS,
Solicitor for and of Counsel with defendant
James S. Barrow.

NEW JERSEY, ss.:

JAMES S. BARROW, the above named defendant, being duly sworn on his oath, saith that the matters and things set forth in the above answer, so far as relate to his own acts, are true; and, so far as relate to the acts of others, he believes them to be true.

JAMES S. BARROW.

Sworn and subscribed this 2d day of April, 1875, at Jersey City, before

WILLIAM W. SANDERSON,
Master in Chancery of N. J.

[REPLICATION IN USUAL FORM.]

TO HIS HONOR THEODORE RUNYON, ESQUIRE, *Chancellor
of the State of New Jersey*:—

Humbly complaining, showeth unto your Honor your orator Daniel Van Winkle, of the township of Union, in the county of Bergen and State of New Jersey, that on or about the first day of January, in the year one thousand eight hundred and seventy-two, one Charles Blakiston of the said township of Union, in the county of Bergen and State of New Jersey, became and was justly indebted unto your orator in the sum of two hundred and forty dollars; and being so indebted, the said Charles Blakiston, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of four hundred and eighty dollars, lawful money of the United States, with a condition thereunder written, that if the said Charles Blakiston, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator, his executors, administrators or assigns, the just and full sum of two hundred and forty dollars, lawful money aforesaid, on the first day of July which will be in the year one thousand eight hundred and seventy-four, and interest thereon, to be computed from the date thereof, at and after the rate of seven per cent. per annum, and to be paid half-yearly, then the said obligation should be void, otherwise to remain in full

force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said Charles Blakiston, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Charles Blakiston of the first part, and your orator of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto your orator, said party of the second part, his heirs and assigns, all the following described parcel of land and premises, situate, lying and being at Rutherford Park, in Union township, Bergen county, and State of New Jersey, bounded and described as follows :

Beginning at a corner of land of William N. Crane and Elias Vreeland, and running thence (1) along said Crane's lands south forty-three degrees west two chains and ninety-seven links to lands late of Garret Van Riper, deceased; thence [2] along the same south forty-seven degrees east six chains and twenty-three links to lands of John Yereance; thence [3] along the same north thirty-six degrees east three chains to land of said Elias Vreeland; thence [4] along the same north forty-seven degrees nine minutes west five chains and eighty-six links to the beginning, containing one acre and seventy-nine hundredths of an acre.

Being the same premises conveyed to the said Charles Blakiston by The Mount Rutherford Company, by deed dated January 1, 1872.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances: to have and to hold the therein above granted and described premises, with the appurtenances, unto your orator, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, his heirs, executors or administrators, should well and truly pay or cause to be paid unto your orator, his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Charles Blakiston, before Henry A. Baker, Esq., a commissioner of deeds in and for said county of Bergen, and duly recorded in the office of the Clerk in and for the said county of Bergen in book F, 2 of mortgages, page 305, etc., on the twenty-third day of May, in the year one thousand eight hundred and seventy-two, as by the certificate of the Clerk of the said county, endorsed on the said indenture of mortgage, more fully ap-

pears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows, that Mary L. Blakiston, wife of the said Charles Blakiston, claims to have an inchoate right of dower in the said premises; but your orator charges that the aforesaid mortgage was given to secure a portion of the purchase money of the said premises; and that if the said Mary L. Blakiston has any interest in the said premises, it is subject to the lien of your orator's said mortgage.

And your orator further shows, that on or about the 24th day of December, in the year 1872, the said Charles Blakiston and Mary L., his wife, executed a mortgage on the same premises and other premises of him, the said Charles Blakiston unto one James S. Barrow, to secure the payment of \$14,000, or some other sum, by virtue of which said mortgage the said James S. Barrow claims to have some lien upon the premises mentioned in your orator's said mortgage; but your orator charges that the said mortgage to James S. Barrow was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and that if an incumbrance at all upon the said premises, is subsequent to the mortgage of your orator.

[COMMON CONCLUSION TO BILL.]

In Chancery of New Jersey.

BETWEEN

DANIEL VAN WINKLE,
Complainant,

AND

CHARLES BLAKISTON, *et al.*,
Defendants.

On Bill to Foreclose.

The answer of James S. Barrow, one of the defendants, to the bill of complaint of Daniel Van Winkle, complainant, in the above cause:—

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says that he has no knowledge as to whether or not the said Charles Blakiston was on or about the

first day of January, A. D. eighteen hundred and seventy-two, indebted to said complainant in the sum of two hundred and forty dollars, or any other sum and has no knowledge as to whether or not the bond and mortgage set forth firstly in complainant's said bill were executed and delivered to said complainant by said Charles Blakiston. This defendant, further answering, says that he admits that said Charles Blakiston and Mary L., his wife, on or about the twenty-fourth day of December, eighteen hundred and seventy-two, did execute to this defendant a mortgage on the premises in said bill described, and other premises to secure the payment of fourteen thousand dollars, by virtue of which this defendant claims a lien upon the said premises. This defendant, further answering, says he is informed and believes that said complainant has a bond and mortgage for two hundred and forty dollars as described in said bill, and that the same was acknowledged and recorded, or registered, at the times and in the manner set forth in said bill, but that he had no information in regard thereto until after the said fourteen thousand dollar mortgage was executed, delivered and recorded in the Clerk's office of the county of Bergen.

This defendant, further answering, says that said Charles Blakiston had no title to the said mortgaged premises till long after the first day of June, eighteen hundred and seventy-two; and this defendant therefore insists that if said complainant holds any such mortgage as is firstly set forth in his said bill, the same is no lien whatever upon the said premises as against this defendant.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or derived, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct;

and humbly prays that a decree may be made by this honorable court for the sale of the said land and premises in the foregoing indenture of mortgage mentioned and set forth in the complainant's bill; and out of the moneys thence arising that this defendant may be paid the full amount of the principal and interest moneys so due as aforesaid, with all reasonable costs and charges in this behalf sustained.

CHAS. H. VOORHIS,
Solicitor for and of Counsel with defendant
James S. Barrow.

NEW JERSEY, ss.:

JAMES S. BARROW, the above named defendant, being duly sworn on his oath, saith that the matters and things set forth in the above answer, so far as relate to his own acts, are true; and, so far as relate to the acts of others, he believes them to be true.

JAMES S. BARROW.

Sworn and subscribed this 2d day of April, 1875, at Jersey City, before me,

WILLIAM W. SANDERSON,
Master in Chancery of N. J.

[REPLICATION IN USUAL FORM.]

IN CHANCERY.

BETWEEN

DANIEL VAN WINKKE,
Complainant,

AND

CHARLES BLAKISTON, *et als.,*
Defendants.

Examinations, &c.

(§700 Mt'ge.)

Examination of witnesses in the above stated cause, taken before the subscriber, a Master and Examiner in Chancery, at his office in Hackensack, on the fifteenth day of January, 1876, in the presence of Garret Ackerson, Jr., Solicitor of complainants, no one appearing for defendants, although notice of this examination was duly served on Chas. H. Voorhis, Esq., Solicitor of the defendant James S. Barrow, as by a copy of said notice produced before me, with his acknowledgement of service thereon endorsed, appears.

W. M. JOHNSON,

M. C. C.

At the request of complainant's solicitor, the examination is adjourned to Monday, January 24, 1876, at 10 a. m.

JANUARY 24, 1876.

Examination resumed.

HENRY A. BAKER, a witness produced and sworn on the part of the complainant, on his oath, saith :

I reside at Rutherford Park, Bergen County, New Jersey. I am acquainted with Charles Blakiston.

(A bond dated January 1, 1872, made by Charles Blakiston to Daniel Van Winkle, for the payment of \$700 on July 1, 1874, shown witness).

I am the subscribing witness to this bond; this is Charles Blakiston's signature, and I signed as witness at his request.

(Bond offered in evidence, and marked Exhibit A⁷⁰⁰ on part of complainant.)

(Mortgage dated January 1, 1872, made by Charles Blakiston to Daniel Van Winkle, to secure \$700, said mortgage being recorded in Bergen County Clerk's office in book F, 2 of mortgages, page 308, &c., being shown witness):

I am subscribing witness to this mortgage. Mr. Blakis-

ton acknowledged it before me on the 21st day of May,
1872.

(Mortgage offered in evidence, marked Exhibit
B⁷⁰⁰ *ex parte* complainant.)

HENRY A. BAKER.

Sworn and subscribed to before me this 24th day of
January, 1876.

W. M. JOHNSON,
Master in Chancery.

Complainant announces testimony on his part closed.

IN CHANCERY.

BETWEEN

DANIEL VAN WINKLE,
Complainant, { *Examination, &c.*

AND

CHARLES BLAKISTON, *et als.,*
Defendants. } (\$400 *Mf ge.*)

Examination of witnesses in the above stated cause, taken before the subscriber, a Master and Examiner in Chancery, at his office in Hackensack, on the fifteenth day of January, 1876, in the presence of Garret Ackerson, Jr., Solicitor of complainant, no one appearing for defendants, although notice of this examination was duly served on Chas. H. Voorhis, Esq., Solicitor of the defendant James S. Barrow, as by a copy of said notice produced before me, with his acknowledgement of service thereon endorsed, fully appears.

W. M. JOHNSON,
M. C. C.

JANUARY 15, 1876.

At the request of complainant's solicitor, the examination is adjourned to Monday, January 24, 1876, at 10 a. m.

JANUARY 24, 1876.

Examination resumed.

HENRY A. BAKER, a witness produced by complainant, being duly sworn on his oath, saith:

1 I reside at Rutherford Park, New Jersey. I am acquainted with Charles Blakiston.

(Bond dated January 1, 1872, made by Charles Blakiston to Daniel Van Winkle, for the payment of \$400 on July 1, 1874, shown witness):

I am the subscribing witness to this bond; this is Charles Blakiston's signature, and I signed as witness at his request.
2

(Bond offered in evidence, and marked Exhibit A⁴⁰⁰ on part of complainant.)

(Mortgage dated January 1, 1872, made by Charles Blakiston to Daniel Van Winkle, to secure \$400, recorded in Bergen County Clerk's office in book F, 2 of mortgages, page 302, &c., being shown witness):
3

I am also subscribing witness to this mortgage. Mr. Blakiston acknowledged it before me on the 21st day of May, 1872.

(Mortgage offered in evidence, marked Exhibit
B⁴⁰⁰ *ex parte* complainant.) 4

HENRY A. BAKER.

Sworn and subscribed to before me this 24th day of January, 1876.

W. M. JOHNSON,
Master in Chancery.

Complainant announces testimony on his part closed. 5

IN CHANCERY.

BETWEEN

DANIEL VAN WINKLE,
Complainant,

AND

CHARLES BLAKISTON, *et als.,*
Defendants.

Examinations, &c.
(§240 *Mt ge.*)

6 Examination of witnesses in the above stated cause, taken before the subscriber, a Master and Examiner in Chancery, at his office in Hackensack, on the fifteenth day of January, 1876, in the presence of Garret Ackerson, Jr., Solicitor of complainant, no one appearing for defendants, although notice of this examination was duly served on Charles H. Voorhis, Esq., Solicitor of the defendant James S. Barrow, as by a copy of said notice produced before me, with his acknowledgement of service thereon endorsed, appears.

7

W. M. JOHNSON,
M. C. C.

JANUARY 15, 1876.

At the request of complainant's solicitor, the examination is adjourned to Monday, January 24, 1876, at 10 a. m.

8

MONDAY, JANUARY 24, 1876.

Examination resumed pursuant to adjournment, in the presence of Garret Ackerson, Jr., Solicitor of complainant.

HENRY A. BAKER, a witness produced by complainant, on his oath, saith :

9

I reside at Rutherford Park, New Jersey. I am acquainted with Charles Blakiston.

(Bond dated January 1, 1872, made by Charles Blakiston to Daniel Van Winkle, for the payment of \$240 on July 1, 1874, shown witness).

I am the subscribing witness to this bond. This is Charles Blakiston's signature, and I signed as witness at his request. 10

(Mortgage dated January 1, 1872, made by Charles Blakiston to Daniel Van Winkle, to secure \$240, recorded in Bergen County Clerk's office in book F, 2 of mortgages, page 305, &c., being shown witness):

I am also subscribing witness to this mortgage. Mr. Blakiston acknowledged it before me on the 21st day of May, 1872.

(The bond and mortgage are offered in evidence, and marked Exhibits A²⁴⁰ and B²⁴⁰ respectively).

11

HENRY A. BAKER.

Sworn and subscribed to before me January 24th, 1876.

W. M. JOHNSON,
Master in Chancery.

Complainant announces testimony on his part closed.

12

Examination of witnesses in the above stated cause, taken in behalf of the defendant Jas. S. Barrow, in the presence of Chas. H. Voorhis, Solicitor of said defendant, and Garret Ackerson, Jr., Solicitor of complainant, at my office in Hackensack, May 31st, 1876.

13

W. M. JOHNSON,
M. C. C.

It is agreed by counsel that the evidence to be taken may be used in each of the three causes between the same parties.

GEORGE R. BLAKISTON, being duly sworn on his oath, saith :

I reside at Rutherford Park, Bergen county. I have resided there eight years. I was acquainted with the Mt. Rutherford Company ; it was a land company, organized for the purchase and sale of 100 acres of land at Rutherford Park. Charles Blakiston was a stockholder and member of the company. I attended a sale made by the company of their lands for the purpose of division. It took place in October, or the first of November, 1871. At that time a portion of their lands was sold or allotted to Charles Blakiston. I have the deeds which were given by the Mt. Rutherford Co. to Charles Blakiston for those lands, in pursuance of the sale.

(Deed from the Mount Rutherford Company to Charles Blakiston, dated January 1, 1872, for lots 189, 288, 347, and part of 169, offered in evidence and marked Exhibit No. 1.)

(Deed from same to same for lot containing 179-100 acres, offered and marked Exhibit No. 2.)

(Deed from same to same for lots 9, 27, 28, 52, 73, 138, 174 and 176, offered and marked Exhibit No 3.)

These are three of the deeds. There was one deed for lands not affected by the mortgages in controversy, made to D. B. Burtis for lot 35, and one deed for lot 179 to the same. These lots were allotted to Charles Blakiston, but conveyed to Burtis at Blakiston's request directly from the company.

I can't say when these deeds to Burtis were made ; they

were not delivered till about eighteen months after the sale—some time in the spring of 1873.

I do not know whether these three deeds offered in evidence were not delivered till that time.

Burtis conveyed one of his lots to Yereance some time during the summer of 1874. I made the deed myself.

17 It was necessary that Charles Blakiston should surrender his share of stocks to the company before he would be permitted to have his deeds for the lots awarded to him.

Q. Can you, by any fact that has come to your knowledge, tell whether or not these deeds here offered had been delivered to Charles Blakiston before January 1, 1873?

A. No.

The conveyances to Burtis were delayed in consequence of a bond of indemnity being demanded by the company for a share of stock that had been stolen, and replaced by another certificate issued by the company.

18 I do not know whether or not the Burtis deeds were delivered before or after the delivered of these deeds to Blakiston. I first saw these deeds after they had been recorded in the month of December, 1873.

(Complainant's counsel enters an objection to all the foregoing testimony relative to the Burtis deeds, said objection having been previously made, and is now noted after the close of the direct examination).

19

Cross-Examination :

The certificate that was stolen was for one share. I think the par value of the stock was \$1000; at the sale they represented over \$2000.

The deeds to Burtis would not represent the amount of one share.

I think the consideration of these deeds was \$2500, and, on reflection, I think the shares were upwards of \$3000 each. All of Charles Blakiston's deeds were delayed for the same cause. Charles Blakiston is at Columbus, Ohio. He has been West since November, 1874.

These mortgages to Van Winkle were given for the balance of an original mortgage given by Charles Blakiston to Van Winkle. Mr. Van Winkle originally sold the 100 20 acres of land to Charles Blakiston, who gave him a purchase money mortgage.

The property was afterwards sold by Charles Blakiston to the Mt. Rutherford Co., subject to this purchase money mortgage, which was assumed by them.

This mortgage had not been entirely paid off at the time of this sale or division of the property. It covered the lots described in these deeds, Exhibits 1, 2 and 3, and the Burtis lots; it still covered them at the time of the sale. It covered most of the lots which were sold at the time of the division. A few lots had been released. A large number 21 of lots were sold. I don't suppose one-tenth of them had been released.

Whatever was due on Van Winkle's mortgage was apportioned upon each lot after the sale, according to the amount each lot brought, and Mr. Van Winkle agreed to take mortgages from each of the purchasers, in the same proportion in the aggregate to the amount of his mortgage, which he delivered up to be cancelled. These three mortgages of Mr. Van Winkle's, now in process of foreclosure, were taken by him under this apportionment and under this ar- 22 rangement. They were taken for payment of the original mortgage.

Re-Direct :

I get this information given on my direct and cross-ex-

amination from my settlement with Mr. Van Winkle. I was also present at the sale, and heard there the arrangement under which the sale was made, and which was there announced. I was also present at the several meetings of the company where these arrangements were made. Mr. Van Winkle was a director of the company at the time of the closing. I think he knew when the deeds were made and when they were delivered.

23

Re-Cross Examined :

I was interested in my brother's business, and acted for him sometimes. I was an agent for the company about a year before the division of the lands, and suggested a plan for closing it up.

I don't think Charles had fulfilled his part to the company. There was a small balance claimed by the company, but the principal difficulty was about the bond of indemnity.

GEORGE R. BLAKISTON.

Sworn and subscribed to before me this 31st day of May, 1876.

W. M. JOHNSON,
M. C. C.

25

JUNE 2ND.

Examination resumed in the presence of the respective parties.

EDWARD J. LOVE, being duly sworn on his oath, saith :

26

I reside at Rutherford Park, in this county. I was secretary and treasurer of the Mt. Rutherford Company.

(Deeds shown witness, being Exhibits 1, 2 and 3, he says):

These deeds were delivered on the 20th day of August, 1873, to Charles Blakiston. I know this because the final payment was made to the Mt. Rutherford Co. at that date. 27 This was the final payment which had to be made to entitle him to his deeds. The amount of this payment was \$133 and some cents. It was paid at my office in the City of New York, by check.

I have here the check.

(Check produced by witness, and offered in evidence. Marked Exhibit 4).

(The offer of this check objected to by complainant, on the ground that it has no connection with the mortgages of Blakiston). 28

The company received the money for that check at the time the check was given. Mr. Barrow and Mr. Blakiston

were present. I filled out the check and Mr. Barrow signed it.

The payment of that amount of money and surrender of his certificates of stock was necessary to entitle Mr. Blakiston to his deeds.

The certificates of stock were surrendered at or previous to that time, I presume they were. I have no distinct recollection. The deeds were in my possession up to that time for delivery when the shares were surrendered and the cash paid.

(Objected to).

I held them as secretary and treasurer of the company for that purpose. I am positive these deeds were not delivered to Mr. Blakiston to that time, August 20, 1873.

30

Cross-Examined:

I was secretary and treasurer of the Mt. Rutherford Co. from 1871 or 1870 till the close of the company. I think part of the time I was only secretary or treasurer. I was secretary and treasurer when the company closed. I don't know when it closed. There was a notice of the closing published, but I don't know whether it announced that it was closed or was closing. I was paid a salary as secretary and treasurer part of the time. My salary ceased when the closing of the company was talked of. I can't fix the date; I presume it was in 1873, but I can't say positively. I do not know what constitutes the closing of the company.

I knew of these mortgages of Mr. Van Winkle that are in dispute. I don't remember the amounts. I know there were mortgages given to Van Winkle by Blakiston. The individual mortgages were given by the shareholders to

Van Winkle in place of the purchase money mortgage held by Van Winkle and assumed by the company, and these mortgages of Charles Blakiston were given under this arrangement, it being understood that the mortgage of Van Winkle was to be cancelled.

These three mortgages were made and delivered to Van Winkle at the same time that the deeds to Blakiston were executed. The deeds and mortgages were all executed at 32 about the same time, I presume.

Q. Did you not hand to Mr. Van Winkle these mortgages in dispute after they had been executed by Mr. Blakiston?

A. I do not know. I think I was present when they were handed to him. I think they were handed to him at the office of the company at Rutherford Park. That was on the day the company was to commence the delivery of the deeds.

There was a delay of six months, but I can't say where it occurred, whether after the deeds were executed or before.

I was not present with Mr. Van Winkle when he left the mortgage for record at the clerk's office. I was present when he cancelled his large mortgage.

When these individual mortgages were given to Mr. Van Winkle, he surrendered his large or original mortgage and cancelled it—he tore off the seals. And these smaller mortgages were given to him at the same time. This was done at the office of the company at Rutherford Park. At that time I had these three deeds of Blakiston in my possession, 34 and I kept them about a year and a half, I think, before I gave them up to Mr. Blakiston and until the time when that check was given. I don't remember who handed me the check. I think I gave the deeds to Mr. Blakiston.

If Mr. Van Winkle had not cancelled his mortgage, the company could not have given clear deeds to other purchasers, except to those already released.

Q. How many deeds was Charles Blakiston entitled to at the time Mr. Van Winkle cancelled his mortgage?

A. He was not entitled to any. I don't know how many lots he purchased. I don't think there were any more than these three deeds called for. I don't know that Mr. Barrow ever took a mortgage on these three lots. I did not know what the business transaction was between Mr. Barrow and Mr. Blakiston at the time the check was given. I
35 was acquainted with Mr. Barrow at that time. He told me of an arrangement he had with Mr. Blakiston.

He informed me of having loaned money to Mr. Blakiston, to enable him to purchase broom corn.

I think he did not mention the amount. I don't remember that he told me that he was going to take a mortgage to secure the loan. He told me he held Blakiston's shares of stock in the Mt. Rutherford Co. I think he told me that. This conversation was a month or two before the check was given. I think I knew at the time the check was
36 given that Mr. Barrow held Blakiston's stock. Mr. Barrow never inquired of me as to the mortgages on the property of the Mt. Rutherford Co.

EDWARD J. LOVE.

Sworn and subscribed to before me this second day of June, 1876.

W. M. JOHNSON,
M. C. C.

37 JAMES S. BARROW, being duly sworn according to law, on his oath, saith:

I reside in New York City. I have seen this check (Exhibit 4) before. The body of it is in the handwriting of Mr. Love, the last witness. I wrote the signature of the

makers. Mr. Blakiston came to the store. It was understood we were to go to the Mt. Rutherford Co's office, that is, to Mr. Love's, and give him this money and the shares of stock, and get the deed. I signed the check at Mr. Love's office, and delivered it to him; and also, at the same time, delivered the shares of stock of the Mt. Rutherford Co., and he gave me these three deeds. Mr. Blakiston was present. I paid this check for \$133.43 at Mr. Blakiston's request. My impression is that Mr. Love gave the deeds 38 to Blakiston, and then Blakiston gave them to me at the time the check was given. Mr. Love figured out the amount.

Q. You understood then and before, did you not, that to entitle Blakiston to his deeds it was necessary to surrender to Blakiston these shares of stock and to pay a small sum of money, still due from Blakiston to the company.

(Question objected to.)

A. I did.

39

After Mr. Blakiston gave me the deeds, I took them over to Jersey City and gave them to Mr. Voorhis, and told him to have them recorded. I had control and possession of these shares of stock of Mr. Blakiston. I held them as collateral for money that he owed me.

Blakiston offered me the mortgage for \$14,000 mentioned in the bill of complaint, as security for money loaned him and goods that he had bought. It was to include the debt for which the shares had been pledged to me. This mortgage was drawn before these deeds were delivered. 40 There was a delay about this money, and some trouble about a share of stock; and when this was settled I got the deeds from Mr. Love and took them to Judge Voorhis.

Q. After your mortgage was signed and acknowledged by Blakiston and wife, was it immediately delivered, or what was done with it?

A. It was given to Judge Voorhis.

Q. What understanding was there, if any, between you and Blakiston as to the time when your mortgage was to be delivered?

A. It was to be delivered when I got these deeds from Mr. Love, or from the company.

Q. When did you first learn of any other mortgage given 41 by Blakiston against any of the same property included in your mortgage?

A. When I received a notice of these suits.

(Notice offered in evidence, Exhibit No. 5.)

This is the notice I received.

I had no idea of the existence of these mortgages when I took my mortgage, or of any claim against the property in my mortgage.

42 Nobody ever made a demand on me before the commencement of these suits for principal or interest of these mortgages.

Cross-Examine 1:

I commenced loaning money and selling goods to Mr. Blakiston about 1868. He did business with us, made loans and payments. I don't know that the total amount of his 43 transactions with him were much more than the amount of the mortgage.

I held his Mt. Rutherford stock for more than a year before the mortgage was given to me. I held three shares; they were \$1000 each.

Q. Did you hold these shares of stock at the time of the sale of the Mt. Rutherford Co. among its members?

A. I don't know the date of this sale. I know I held

the shares a good while; my impression is I held them two years. I never had them transferred to my name on the books of the company. They were assigned to us by Charles Blakiston as security.

Q. Did you give the company notice that you held them?

A. I did to the officers of the company. I notified Mr. Love. I was notified of the meetings. I attended the meetings, and Mr. Blakiston was there, and he notified the officers that I was the owner of the stock. I think Mr. Van Winkle was present at one or two of the meetings. I think I attended about three meetings, but they were not regularly organized meetings; somebody was absent. At the second or third meeting it was arranged that Mr. Blakiston should go to Mr. Love's office at a certain time, deliver up the shares, pay the amount due, and get the deeds. ⁴⁴

This last meeting was held at Taylor's Hotel, Jersey City. I can't give the date. All the meetings that I attended were at the same place. I attended a meeting at Mr. McKibben's place in New York. I can't say whether this was before or after we met in Jersey City. ⁴⁵

My mortgage covers a great deal more land than that covered by Mr. Van Winkle's three mortgages.

Q. Did you not know at time before you took your mortgage of the fact that Mr. Van Winkle originally held a large mortgage upon the property described in these three deeds?

A. Of my own knowledge, I did not. I heard a great deal about Mr. Van Winkle's owning the property originally. I never heard any particulars about his mortgage or about his sale. ⁴⁶

Q. Before you took your mortgage for \$14,000, did not Mr. Charles Blakiston tell you of his own and the company's transactions and agreements with Mr. Van Winkle concerning the Mt. Rutherford property?

A. No, sir; nothing particularly. My knowledge of his

and Mr. Van Winkle's business was very limited. I know nothing about it, and he took pains that I should not know.

Q. Did not Mr. Blakiston tell you before he signed your mortgage that he had given Mr. Van Winkle mortgages upon the property described in these three deeds?

A. No, sir; he did not.

Q. Did not Mr. Van Winkle tell you of the fact of his holding mortgages upon the property described in these
47 three deeds?

A. No, sir; not till after I received this notice of these suits (Exhibit 5).

Q. Was not the matter of these mortgages of Mr. Van Winkle talked about and discussed at Mr. Ackerson's office at a meeting of Mr. Van Winkle, Mr. Blakiston, Judge Voorhis and yourself, about two years or more ago?

A. No, sir, not to my knowledge.

JAMES S. BARROW,

48 Sworn and subscribed to before me, June 2, 1876.

W. M. JOHNSON,

M. C. C.

JUNE 14, 1876.

Examination resumed.

49 CHARLES H. VOORHIS, being duly sworn on his oath, saith:

I was employed by Mr. Barrow as counsel to see whether the title was all right in the matter of his mortgage which was given to the defendant Barrow, referred to in the complainant's bill. It was stated at the time that Mr. Blakiston

did not yet have his 'deed, and could not get it from the company till certain shares of stock in the company, which had been pledged to Mr. Barrow as collateral, were surrendered to the company; and there was some dispute between Blakiston and the company with reference to a share that had been lost or stolen, as the mortgage from Blakiston to Barrow could not be given till Mr. Blakiston's deed had been delivered to him. At my suggestion the bond and mortgage were drawn and executed and acknowledged, and 50 left with me in my safe, together with the shares of stock which had been pledged to Barrow, on the understanding that the bond and mortgage was to be delivered as soon as the deed to Blakiston was delivered. After I had some correspondence with the company, the shares were sent over to the company, and these deeds which are in evidence were returned to me; and in pursuance of the understanding between Blakiston and Barrow, and the authority given to me by them, I deposited the mortgage and the three deeds in the county clerk's office of Bergen county for record, all on the 23d day of August, 1873. Being familiar with the 51 Mt. Rutherford title, and knowing the fact that the deeds from the company to Blakiston had not been delivered, I examined the record and deeds and mortgages against the Mt. Rutherford Company only down to the recording of these papers, and the first knowledge I had of the complainant's mortgages I got from the copies of the bills filed in these causes.

Till then I understood the mortgage of Mr. Barrow to be the first and only lien on the property described in it

52

Cross-Examined :

I have done business for the Mt. Rutherford Company. I was its counsel only in six suits. I think not its general

counsel. Those were not suits relative to title; they were on lien claims filed against a building they had put up on one of their lots.

I think I examined their title for some one who bought one of their lots early; by that I mean one of their first purchasers. I am not sure whether I examined it more than once. I knew nothing of their arrangements for a division
 53 of the property at the time of their sale to Blakiston, nor of the arrangement as to the way their shares should be divided. I knew of no arrangement made by them with Mr. Van Winkle for cancelling his mortgages. I searched against the Mount Rutherford Company from the time they took title down to the recording of these deeds to Blakiston.

These deeds were executed and acknowledged a long time prior to the time I recorded them.

I first learned from Blakiston that those deeds had not
 54 been delivered.

Q. From whom else?

A. I found the fact to be as he stated, in my correspondence with the company in regard to the delivery of them and the dispute as to the lost share. This correspondence was in writing with the company. I have not the letters received from the company on that subject, unless they are with my letters received for those years at Jersey City. I have not since this case commenced examined my correspondence in regard to it.

Q. Were you informed by the company, or did you know
 55 that the Mt. Rutherford Company, through its officers and under its directions, delivered to Mr. Van Winkle the three mortgages now under foreclosure in these three cases, as part payment of the purchase money mortgage held by him upon the property covered by those mortgages and other property, and that he (Van Winkle), in consideration of the receipt of those mortgages, together with other mortgages, and cash, delivered up his purchase money mortgage to be

cancelled of record, and that it was actually, upon presentation, by the company, or its agents, cancelled?

A. No.

Q. If such was the fact, the company withheld it in its correspondence with you, did it?

A. I can't say that; nothing passed between the company and myself with reference to that matter.

Q. At the time when Barrow employed you in the matter of which you have testified in your direct, you were only acting as the counsel of Barrow, were you, in this matter? 56

A. Yes, except what correspondence I had with the company in Blakiston's behalf as to the disputed or to the lost share.

Q. At that time you were also the counsel of Blakiston?

A. Only in that matter in reference to the lost share.

Q. Were you not at that time also the counsel of the Mt. Rutherford Company in the six lien claim suits you have mentioned? 57

A. I was while those suits were pending. I don't know when that was; they were pending in the Bergen Circuit, and were referred to W. S. Banta.

CHAS. H. VOORHIS.

Sworn and subscribed to before me this 14th day of June, 1876.

W. M. JOHNSON,
M. C. C. 58

Defendant's counsel here announces testimony on his part closed.

W. M. JOHNSON,
M. C. C.

Deposition of CHARLES BLAKISTON, a witness produced, sworn and examined in the above stated causes, this fifteenth day of July, 1881, at ten o'clock in the forenoon, at the office of D. C. Welling, No. 113 South High street, in the City of Columbus and State of Ohio, before Henry C. Moore, a Commissioner appointed by the order of the Court of Chancery of New Jersey, made in said cause, dated June 27th, 1881.

59

HENRY C. MOORE,
Commissioner.

CHARLES BLAKISTON, being duly sworn, according to law, on his oath despoth and saith.

(It is agreed by counsel that the evidence to be taken may be used in each of the three causes between the same parties.)

60

Present.—C. H. VOORHIS, solicitor for defendant; JAMES S. BARROW and D. C. WELLING, solicitors for complainant.

1. Q. State your name, age, residence and occupation?

A. Charles Blakiston, fifty-six years, Columbus, Ohio; occupation is baker.

2. Q. How long have you lived in Columbus?

A. Six and one-half years.

3. Q. Where did you previously reside?

61 A. In Bergen County, New Jersey.

4. Q. What business were you engaged in there?

A. I was engaged in business in New York; in broom corn and cracker baking.

5. Q. Where did you reside in 1867 and what was your business then?

A. Bergen County, New Jersey, my business was in broom corn, cracker baking and the purchase of land.

6. Q. Were you then acquainted with Daniel Van Winkle?

A. Yes.

7. Q. What business transaction, if any, did you have with him; and when was it?

A. I purchased by agreement in February of that year his farm at Boiling Springs, New Jersey, for which I agreed to pay one hundred thousand dollars in installments of about six or seven years. A few days after making this purchase by agreement I sold to a company called the Mt. Rutherford Company the above mentioned land for the same amount I paid for it, they assuming the agreement in all its bearings. The mortgage I recollect to be ninety-one thousand dollars.

8. Q. State if you remember the date of the deed from Mr. Van Winkle to yourself?

A. I cannot remember exactly, but I think it was between February and August of 1867. The record at Hackensack will show. 63

9. Q. What was the date of the mortgage you gave to Daniel Van Winkle for the balance of purchase money of said tract?

A. It must have been given at the same date as the deed. The records at Hackensack will show.

10. Q. What disposition was afterwards made of this tract?

A. The tract was divided into lots and offered for sale by the company and the lots were sold by the company up to January 1st, 1872. At that time the Mt. Rutherford Company voted to dissolve and divide the assets of the company among the stockholders in proportion to their stock. An arrangement had been made with Daniel Van Winkle whereby he was to take mortgages from the individual members of the company upon the lots remaining 64

unsold in said tract for the remainder that was due him on the original purchase money mortgage. That agreement as above mentioned was carried out, in due time with the exception of the mortgage to be given by Charles Blakiston. The delay in his case in executing the agreement with Mr. Van Winkle by giving him the personal mortgage for his share was occasioned by the stealing of one or more
 65 of the certificates of stock belonging to Charles Blakiston. And the consequent arranging for the loss of said stock certificates by the Mt. Rutherford company.

11. Q. State if you can when you executed and delivered the three mortgages in question in these suits to Mr. Van Winkle?

A. I think about May of 1872.

12. Q. What was the consideration passing from Mr. Van Winkle to you for those mortgages. Do you understand the question?

66 A. I understand the words but not their meaning. I received possession of my share of the land by giving my proportion of the original mortgage to Mr. Van Winkle.

13. Q. What became of Mr. Van Winkle's purchase money mortgage at the time of the allotment and distribution?

A. It was replaced by the individual mortgages. Charles Blakiston mortgage being a portion of the individual mortgages.

67 The further taking of this deposition is adjourned until two o'clock p. m.

H. C. MOORE,
Commissioner.

Examination resumed at two p. m., in the presence of the same parties.

14. Q. In your answer to question thirteen herein you

say: "Van Winkle purchase money mortgage was replaced by the individual mortgages." What then was done with that purchase money mortgage?

A. That purchase money mortgage was cancelled.

15. Q. State if you can when the arrangement of the distribution of the unsold lands of the said company was completed and when the deeds for the lots falling to you in said distribution were made out by said company? 68

A. That date is July 1st, 1872.

16. Q. State if you know when said deeds were executed by the company?

A. May the 21st, 1872.

17. Q. State if you can what became of said deeds at that time?

A. My deeds were retained by the secretary of the Mt. Rutherford Company.

18. Q. Under what conditions, if any, and for what purpose were they so retained? 69

A. Until I should pay dues that were at that time unpaid, and the dues were unpaid because the company had not issued certificate or certificates to replace those that had been stolen. When those certificates were replaced by the company the dues were paid and the deeds were issued to me.

19. Q. State for whom said secretary was holding those deeds during said time?

A. He was holding them for me, because it was necessary for me to deliver to the secretary my certificates of stock, and those I could not deliver until new ones were 70 delivered to me.

20. Q. Are you acquainted with James S. Barrow one of the defendants in these suits?

A. Yes, sir.

21. Q. Where were you acquainted with him and during what years?

A. In New York City, from 1857 and so on up to the present time.

22. Q. How intimately were you acquainted with him in New York City about the years 1868 up to about 1874?

A. I bought broom corn of him and sold it for him and borrowed money of him using shares of Mt. Rutherford stock as collateral. And I bought with his money about twenty thousand dollars worth of broom corn, profits to be
71 divided equally. And I placed before him the Mt. Rutherford Company's business to induce him to take stock and I was in almost daily communication with him seeing him almost daily for business purposes.

23. Q. State if you can the date of the mortgage given by you for fourteen thousand dollars to Mr. Barrow and when it was recorded?

A. As my recollection is refreshed. Dec. 22th, 1872, and was recorded August 22d, 1873.

24. Q. What was the consideration of the debt you gave
72 this mortgage to secure?

A. It was about fourteen thousand dollars.

25. Q. For what did you owe Mr. Barrow fourteen thousand dollars?

A. For broom corn.

26. Q. How long had you owed him this sum or any considerable part of it before you gave him the mortgage?

A. I think for about a year, a little over.

27. Q. Do you mean you owed him the entire sum for that time?

A. Made up to about that sum by the addition of inter-
73 est.

28. Q. At whose instance and under what circumstances was that mortgage given by you to him?

A. Being in a failing condition and anxious to pay Mr. Barrow, the only very large creditor I had in business, I repeatedly urged him to take this mortgage to this end.

29. Q. What knowledge, if any, had he at that time of your resources and liabilities financially?

A. I think he supposed I was strong in resources with which to pay my debts.

30 Q. What knowledge, if any, did he then have of the condition and value of the security you gave him in this mortgage?

A. For business purposes I had repeatedly explained to him the circumstances of the Mt. Rutherford Company of the existence of a prior mortgage held by Mr. Van Winkle, and he had frequently been over the lands on which this mortgage was given. The lands was then worth eighteen thousand dollars. There were mortgages on them held by Mr. Van Winkle of between as I recollect, fourteen and eighteen thousand dollars. And on this mortgage I afterwards paid to Mr. Barrow in various sums, and at various times, about five thousand dollars. 74

31. Q. Was it before or after you gave Mr. Barrow this mortgage you repeatedly informed him of the Van Winkle mortgage? 75

A. It was many times within six months prior to the giving of the Barrow mortgage that I informed Mr. Barrow of the Van Winkle mortgage. When requesting him to take from me either a deed of lands or a mortgage to secure to him the amount of money I owed him.

32. Q. State whether or not the real estate covered by the Barrow mortgage was the same as that covered by the Van Winkle mortgages?

A. Yes, sir.

33. Q. In your answer to question 30 herein you say: 76
“on this mortgage I afterwards paid about five thousand dollars.” Which mortgage did you mean?

A. The mortgage I gave to James S. Barrow.

Cross-examination :

1. Q. For business purposes you explained to Mr. Barrow the condition and resources of the Mt. Rutherford Company and to induce him to buy of the stock. You did not do that after January 1st, 1872, did you ?

A. I did that probably twenty-five times to explain the
77 value of the stock as collateral, at other times to induce him to buy stock and again to show him the strength of the mortgage, which I wished to give him to secure my indebtedness to him. All these explanations were full in regard to the Van Winkle mortgage up to the time at which he agreed to take and receive the mortgage from me.

2. Q. On this cross-examination have you been asked anything about this Van Winkle mortgage ?

A. No.

3. Q. Was it not unanimously agreed among the stock-
78 holders of the Mt. Rutherford Company of which Daniel Van Winkle was one that on January 1st, 1872, all the stock should be extinguished and the property of the company deed to them in lien thereof ?

A. No, sir.

4. Q. Was there ever such an agreement among the stockholders ?

A. There might have been an agreement to the effect that the stock should be delivered and canceled on that day or as soon thereafter as practicable, but I don't recollect
79 whether that was the case or not.

5. Q. Did Mr. Barrow ever buy or own any of the stock ?

A. I am not positive.

6. Q. How much of it did you own on Jany. 1st, 1872 ?

A. I think about sixteen or seventeen shares, but I don't recollect. It might have been more and it might have been less. Par value of the stock was one thousand dollars

per share, but they bought in land over three thousand dollars per share.

7. Q. In January, 1872, where were the certificates for your shares?

A. I cannot tell you. I believe Mr. Barrow held two or three of them and beyond those stolen from Mr. Cameron I can't positively tell. I lost all by mortgage and otherwise and therefore don't remember anything about it distinctly. 80

8. How did Mr. Barrow hold these three shares?

A. I think the shares Mr. Barrow held at the latter part of the existence of the company were as collateral for money due him on merchandize, but I cannot be certain.

9. Q. When were these three deeds which are marked Exhibits 1, 2, 3, W. M. Johnson, M. C. C., delivered?

A. I suppose in August. I can't tell you whether it was May, June, July or August of 1872.

10. Q. Where were they delivered?

A. Don't remember anything about it, I suppose at the office of the Mt. Rutherford Company, on Hudson street, N. Y. 81

11. Q. Were they not delivered there in the presence of yourself and James S. Barrow and at the same time the stock surrendered by Mr. Barrow and some money paid by him for you to the company by his check?

A. I do not remember Mr. Barrow ever being at the office of Mt. Rutherford Company with me to transact business and I think he never was. His check I might have used in a settlement of the company. Of that I am 82 not positive.

12. Q. Did you ever tell Mr. Barrow that Daniel Van Winkle held a mortgage against the property of Mt. Rutherford Company for ninety-one thousand dollars?

A. I expect I did as I explained all those matters to Mr. Barrow and each certificate of which he held several explained itself in that way.

13. Q. State what you mean?

A. I mean that that the payments as agreed with Mr. Van Winkle were printed on the back of each certificate of stock and upon each of these payments being made a corresponding entry was made upon the back of each certificate of stock.

14. Q. Now those unpaid payments were so secured by a mortgage to Mr. Van Winkle for ninety-one thousand dollars. Is that so?

A. Ninety-one thousand less each payment as it was made.

15. Q. When Van Winkle deeded you the property you afterwards sold to the Mt. Rutherford Company you made a mortgage to him of ninety-one thousand thereon. Did you not?

A. I believe so.

16. Q. And you deeded the property to that company subject to that mortgage?

A. Yes, sir.

17. Q. And you told Mr. Barrow of the existence of that mortgage?

A. Yes, sir.

18. Q. Did the company ever mortgage any of that property to Mr. Van Winkle?

A. Not that I know of.

19. Q. Did you ever inform Mr. Barrow that the ninety-one thousand dollar mortgage had been satisfied of record?

A. Not to my knowledge do I recollect of saying that to any one.

20. Q. Did you ever make any mortgage to Mr. Van Winkle on any portion of the Mt. Rutherford Company tract, which was included in the ninety-one thousand dollar mortgage?

A. I don't understand the question.

21. Q. Question repeated.

A. Yes, I did.

22. Q. Please state what and when ?

A. It was about Jany. that I signed the mortgage of 1872 for an amount from fourteen to eighteen hundred dollars.

23. Was it one or more mortgages ?

A. I do not recollect, but it was an amount to cover any portion of the unpaid part of the ninety.one thousand dollar mortgage?

24. Q. This mortgage or mortgages to him if you made 86 more than one you signed in Jany. 1872, I understand you to say ?

A. I think so, but I am not certain.

25. Q. What became of it or them after that time ?

A. I don't know anything about it.

26. Q. This was long before the delivery of the three Exhibits which I have shown you. Was it not ?

A. Those dates I do not recollect and I cannot fix them, it is impossible.

27. Q. Was not the check Exhibit 4, used to pay the 87 dues of which you have spoken ?

A. I have no recollection of it, don't see my name upon it, don't know nothing about it, don't remember anything about it.

28. Q. Were these dues ever paid by you or anybody else ?

A. All my dues were paid to the Mt. Rutherford Company by me.

29. Q. And before these three deeds were delivered ?

A. Before I received deeds from the Mt. Rutherford Company if by any other check or by any other paper re-88 presenting money than my own it was by my order and from my funds.

20. Q. Do you remember how much you paid upon the final settlement which entitled you to those deeds, where you paid, who were by, give us such of the facts as you recollect ?

A. I do not remember the amount, I cannot swear as to who were present, but if paid by Mr. Barrow it was paid out of my money.

31. Q. Do you recollect of telling Mr. Barrow that you had made a mortgage to Mr. Van Winkle for between fourteen and eighteen hundred dollars?

A. I recollect distinctly many times telling Mr. Barrow 89 that if he would take the mortgage of that amount, fourteen thousand dollars on this property that it was abundant security as I only owed Mr. Van Winkle on this property as my part of the original mortgage as I remember about fourteen hundred dollars. That point in my memory is clear beyond any peradventure.

32. Q. Do you recollect ever telling him that you had made a new mortgage or mortgages to Mr. Van Winkle for that?

A. I do not recollect using these precise words at any 90 one time, but I recollect keeping him informed from time to time of the existence of Mr. Van Winkle's claim, its origin and its continuance, and the reason I recollect it especially is that I did it to prevent him in the future from claiming that I had deliberately perpetrated a fraud. And to guard against a thing like that I know I always pursue that course.

33. Q. You mean to say then that you have a very distinct recollection of the reason why you did it, but don't recollect that you actually did do it?

A. I mean to say that he was thoroughly posted of the 91 existence of a prior mortgage to Mr. Van Winkle.

34. Q. Can you swear Mr. Blakiston that you ever informed Mr. Barrow that you had made to Mr. Van Winkle a new mortgage or mortgages on any part of the property included in the fourteen thousand dollar mortgage?

A. I can swear that I either had made the mortgage or was required to make a mortgage taking the place of any portion of the original mortgage on the self same property

on which I proposed to and did give Mr. Barrow a mortgage.

35. Q. Do you recollect telling him so?

A. Yes, sir; many times.

36. Q. Where was he when you told him the first time?

A. I suppose he was in his store as it was there I usually met him.

37. Q. What time of day was it?

92

A. I expect it was about noon, I sometimes stopped at his store in the morning, sometimes at noon, and very frequently called there at four o'clock in the afternoon.

38. Q. Can you recollect at which of these hours this first occasion of which you have spoken, who was present or any fact aside of your recollection of the fact?

A. I do not recollect the hour at any one time, nor who was present, but I remember that these conversations occurred only in the presence of his partner who is now dead. I believe that some of these conversations occurred in the hearing of Mr. Little, Mr. Barrow's bookkeeper. 93

39. Q. You do not pretend Mr. Blakiston that you can recollect the words which you used?

A. I recollect distinctly that Mr. Barrow was distinctly informed by me of Mr. Van Winkle's prior mortgage.

40. Q. Can you recollect the words which you used?

A. Yes, sir.

41. Q. Please state now the precise words that you recollect that you used to Mr. Barrow?

A. I recollect distinctly saying that there is only about, as I can remember, due on the eighteen thousand dollar property which I offer you, fourteen hundred dollars. 94

42. Q. Do you recollect any other words?

A. No, sir.

43. Q. Have you paid Mr. Van Vankle anything on account since Jany. 1872?

A. Not on that original mortgage, not one cent interest or principal.

44. Q. Do you remember the money transactions between yourself, Mr. Barrow and Mr. Van Winkle at Mr. Ackerson's office, on New Years day, 1873?

A. I have a faint recollection of one day in the winter being in Hackensack, I think with Mr. Barrow, and there my memory stops on the subject.

45. Q. Do you remember that on that occasion Mr. Barrow paid fourteen hundred dollars by his check to Mr. Van
95 Winkle?

A. No, sir; I do not remember any such thing though that might have occurred.

46. Q. Did you not on that occasion pay Mr. Van Winkle twelve hundred dollars or more?

A. I do not remember it.

47. Q. Have you not since you moved away from New Jersey dismissed from your recollection as far as possible all these matters?

A. I have made no effort to dismiss anything from my
96 recollection, I may have forgotten some circumstances but as far as I can judge, my memory is bright and sound.

Re-direct-examination:

1. Q. What circumstances, if any, during your residence in Ohio up to the present time have you tended to keep alive your recollection of the facts in relation to the giving by you of the mortgages to Mr. Van Winkle and the mort-
97 gage to Mr. Barrow in controversy in these suits?

A. 1.—A letter from Mr. Barrow in reference to his settling up of his claim of mortgage against my property one year after I came to Ohio.

2.—Letters from my son about the third year after I came to Ohio, claiming that Mr. Barrow claimed that I had never informed him of Mr. Van Winkle's prior mortgage. And

then again from Mr. Van Winkle's lawyer, questioning me about the subject of the claim of Mr. Barron, and several letters on the same subject I have received from time to time.

2. Q. Have you made any payment on principal or interest due Mr. Van Winkle on the mortgage you gave him on your portion of the Mt. Rutherford property since the giving of the same?

A. No, sir.

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3. Q. How many lots if you remember in the Mt. Rutherford property did you become the owner of at the time of the allotment and distribution of said property among the stockholders of the company?

A. I think about seventy.

Re-cross-examination :

1. Q. You answered the letter of Mr. Van Winkle's attorney promptly? 99

A. Yes, sir, promptly.

I certify this to be a correct copy of the deposition taken in the case of David Van Winkle, complainant, against Charles Blakiston *et al.*, defendants, in Chancery of the State of New Jersey.

HENRY C. MOORE,

Commissioner, as aforesaid.

Depositions taken in three causes as above entitled, on the part of the complainant, in pursuance of notice, in the presence of W. M. Johnson, representing complainant, and Charles H. Voorhis, soliciter of James S. Barrow, defendant, at my office in Hackensack, N. J., this twenty-fifth day of July, A. D. 1881, at 10.30 o'clock in the forenoon.

MILTON DEMAREST,

Master in Chancery, N. J.

SAMUEL TAYLOR, a witness on the part of the complainant, being duly sworn, says :

101

I am County Clerk of the county of Bergen, and this is liber M, 6 of deeds (offering books and referring to page 522). This shows record of deed of Daniel Van Winkle and wife to Charles Blakiston, dated April 1st, 1867, conveying land in the township of Union, recorded April 10, 1867.

(The foregoing record is offered in evidence, also the following record):

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This is liber N of mortgages for said county (offering books), page 144. Record of mortgage of Charles Blakiston to Daniel Van Winkle, dated April 1st, 1867, recorded April 6th, 1867, given to secure the payment of ninety-one thousand dollars.

Q. What entry, if any, appears of the cancellation of this mortgage?

A. It appears by an entry on the margin of the record as cancelled May 23, 1872.

(The solicitor of the complainant offers deed of Charles Blakiston to The Mount Rutherford Company, dated April 1st, 1867, recorded April 10th, 1867, in liber M, 6 of deeds, page 528, etc.) 103

SAMUEL TAYLOR.

Sworn and subscribed before me this 25th day of July, A. D. 1881.

MILTON DEMAREST,
Master in Chancery of N. J.

DANIEL VAN WINKLE, a witness in the above cause, being duly sworn, says: 104

I am the complainant in this case. I live at Saddle River township, Bergen county. I conveyed property in Union township in 1867 to Charles Blakiston, deed of which has been offered, and which is recorded in liber M, 6 of deeds, for Bergen county, page 522. The consideration of that conveyance was one hundred thousand dollars. The mortgage which has been referred to and recorded in liber N, page 144, given by Charles Blakiston to Daniel Van Winkle for ninety-one thousand dollars, was given to secure a part of the purchase money for the aforesaid conveyance. The deed which has been referred to from Charles Blakiston to The Mount Rutherford Co., liber M, 6, page 528, conveys the same property. The three mortgages under foreclosure in these cases, made by Charles Blakiston to Daniel Van Winkle, dated January 1st, 1872, cover a por- 105

tion of the property included in the purchase money mortgage of ninety-one thousand dollars.

The Mount Rutherford Co. was a stock company, to sell the land and make money on it. Charles Blakiston was a stockholder in that company. The company afterwards divided up, and allotted the land remaining unsold to the stockholders.

106 Q. Did Charles Blakiston receive any of those lots in this division?

A. Yes.

Q. At the time of this division was your purchase money mortgage paid off?

A. No, not all.

Q. About how much of the principal remained unpaid?

A. I don't know; over half was paid.

Q. What agreement was made between you and The Mount Rutherford Co. in regard to the settlement of this mortgage, at or about the time of this division?

107 A. They were to give me mortgages for the balance that was unpaid, in proportion to the stock. They was to give me new mortgages, and pay all expenses for to cancel the old mortgage, and these were in the place of the old mortgage.

Q. Who were to make new mortgages?

A. The company—the officers.

Q. In whose name were these mortgages to be given?

A. In the names of the parties who took the lots.

Q. Did the various parties who took lots give you mortgages under that arrangement?

108 A. No, none of them.

Q. Who did give you mortgages?

A. The company had all the business done; the transaction was between me and the company. The individuals who got the lots signed the mortgages, but I did not look to any of the individuals. I dealt with the company.

Q. Did Charles Blakiston, among others, make mortgages under this arrangement?

A. Yes, he did.

Q. Are these mortgages under foreclosure three of the mortgages which he made at that time?

A. Yes.

Q. Who gave them to you?

A. They were given to me by some person there; I cannot say who—one of the officers of the company, I think. 109

Q. Where was this?

A. This was in the office of the Mount Rutherford Co.

Q. Who were present?

A. The whole company; I don't know of one being absent.

Q. What was the occasion of this meeting?

A. To close up the business of the company.

Q. Were these mortgages given to you with others at this time?

A. Yes, there were others given to me at the same time.

Q. On receipt of these mortgages, did you give up your purchase money mortgage for cancellation? 110

A. Yes, I did.

Q. Did you come to the clerk's office with the person who brought that mortgage to be cancelled?

A. Yes.

Q. When did you bring your mortgages for record?

A. At the same time I brought the other to be cancelled.

Q. Do you know Mr. Barrow, one of the parties to this suit?

A. Yes. 111

Q. Since when?

A. I have known him since before the company closed up its business.

Q. Did Mr. Barrow know that you had any claim against the lots sold to Mr. Blakiston?

A. Yes, I think so.

Q. Did he know of your purchase money mortgage for ninety-one thousand dollars?

A. I have been in his office and talked about it.

Q. Did you ever talk with him about that mortgage before the company was wound up?

A. Yes.

112 Q. Did you ever talk with him about those mortgages which you took from Charles Blakiston?

A. After it was settled, after the division was made, we were talking about other things; he brought in about the mortgages, that I was safe, and I answered him yes. There might have been more conversation, but I cannot bring it in.

Q. What mortgages were you talking about?

A. We were not talking about any mortgages in particular, but only about claims which I had against the property.

113 Q. Why do you say then that he knew about those mortgages?

A. Well, he and Charles Blakiston were inside of the small gate in their office, and were talking, and I stood just outside; then when he came out he spoke to me, and said "that I was safe with my mortgages"—no, I won't say mortgages, it was claims or mortgages, I won't say which.

Q. What had they been talking about?

A. I did not hear it all, but they were talking something about my mortgages. I could now and then hear a word. I did not try to listen.

114 Q. Do you know when that was?

A. I cannot say the date; I am a poor hand to remember dates.

Q. What other conversation did you have with Farrow about those mortgages?

A. Well, I cannot remember that I had any more until years afterwards.

Q. Did you ever talk to him about his purchasing these mortgages of you ?

A. I remember of having three conversations with him since the last one referred to ; two were long before the foreclosure proceedings, and the other only a short time before.

Q. Were these mortgages talked about at any of these conversations? 115

A. I don't understand which conversation you mean.

Q. You say you had three conversations with him (Barrow); now what was talked about the mortgages at those conversations ?

A. I talked with him at Ackerson's office. I wanted to sell him my mortgages.

Q. Which mortgages ?

A. Those under foreclosure.

Q. What did he say about them ?

A. He said he would take them in consideration. 116

Q. Who was at Ackerson's office at that time ?

A. Mr. Barrow was there ; it strikes me that Voorhis was there, Mr. Ackerson and Mr. Blakiston.

Q. Was this conversation inside or out of the office ?

A. I don't remember, but I think it was outside.

Q. Did you have any other conversation with him about buying those mortgages ?

A. Yes, at his house in New York City.

Q. Mr. Barrow says in his testimony that he did not know of the existence of these mortgages until the commencement of these foreclosures ; is he correct ? 117

A. Why, no ; he knew all about it.

Q. Where does Charles Blakiston now live ?

A. He lives in Columbus, Ohio.

Q. Do you know whether the certificates of stock of the Mount Rutherford Company had printed or written on them any notice or statement of your purchase money mortgage ?

A. Yes, I think there were. The company made it as public as possible, so that any one could know.

Q. You have surrendered your certificates, have you not?

A. I have.

Q. And have none under your control?

A. No, I have none.

Q. Was Barrow familiar with the affairs of the company?

118 A. I think he was.

Q. Did he ever attend any of the meetings of the company?

A. I saw him at the meeting in Jersey City, at the time of the closing up.

Q. What was done at that meeting?

A. Well, it was the closing of the company. I cannot remember what was done. I can't say what was talked about.

119 Q. Was he (Barrow) present at the meeting when the mortgages were delivered?

A. I can not remember if he was or not.

Cross-Examination:

Q. Did you ever receive any interest on these three mortgages?

A. Not that I can remember.

Q. Did you ever demand any from any one?

120 A. I don't know whether I did or no, but it was in my mind that I did from Mr. Barrow.

Q. Did you ever demand any interest from Blakiston on these mortgages?

A. No, because he owed; not that I know of, because he was owing me notes which I wanted him to pay.

Q. Does he owe the notes still?

A. He owes two.

Re-Direct Examination :

Q. Charles Blakiston failed shortly after this division, did he not ?

A. Yes, but I cannot tell exactly how long after.

DANIEL VAN WINKLE.

Sworn and subscribed before me this 25th day of July, 1881
A. D. 1881.

MILTON DEMAREST,
Master in Chancery of N. J.

Complainant closes his testimony in rebuttal.

ABSTRACTS OF COMPLAINANT'S EXHIBITS.

EXHIBIT B—\$700.

CHARLES BLAKISTON } Mortgage for \$700.
 TO } Dated January 1, 1872.
DANIEL VAN WINKLE. } Acknowledged May 21, 1872.
 } Recorded May 23, 1872, book F, 2 mortgages
 } page 308, etc.

EXHIBIT B—\$400.

CHARLES BLAKISTON } Mortgage for \$400.
 TO } Dated January 1, 1872.
DANIEL VAN WINKLE. } Acknowledged May 21, 1872.
 } Recorded May 23, 1872, book F, 2, page
 } 302, etc.

EXHIBIT B—\$240.

CHARLES BLAKISTON } Mortgage for \$240.
 TO } Dated January 1, 1872.
DANIEL VAN WINKLE } Acknowledged May 21, 1872.
 } Recorded May 23, 1872, book F, 2, page 305.

EXHIBIT OF DEFENDANT, JAMES S. BARROW.

CHARLES BLAKISTON and MARY L.,
his wife

TO

JAMES S. BARROW.

Mtg. \$14,000.

Dated December 24th,
1872.

This indenture, made the twenty-fourth day of December, in the year one thousand eight hundred and seventy-two, between Charles Blakiston and Mary L. his wife, of Rutherford Park, in the township of Union, in the county of Bergen and State of New Jersey, of the first part, and James S. Barrow of the city, county and State of New York, of the second part. Whereas, the said Charles Blakiston is justly indebted to the said party of the first part in the sum of fourteen thousand dollars lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of twenty-eight thousand dollars lawful money, as aforesaid conditioned for the payment of the said first mentioned sum of fourteen thousand dollars lawful money, as aforesaid to the said party of the second part, his executors, administrators or assigns on demand, and interest thereon to be computed from the date hereof, at and after the rate of seven per cent. per annum, and to be paid semi-annually. Now this indenture witnesseth

that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever.

All those certain lots, pieces or parcels of land and premises situate, lying and being at Rutherford Park, in the township of Union, in the county of Bergen and State of New Jersey, and which on a certain map, entitled map No. 3 of the property of the Mount Rutherford Co., situated at Rutherford Park, Bergen Co., N. J., are known and distinguished as lots numbered three hundred and eighty-nine (389), two hundred and eighty-eight (288), nine (9), twenty-seven (27), twenty-eight (28), seventy-three (73), fifty-two (52), one hundred and thirty-eight (138), one hundred and seventy-four (174), one hundred and seventy-six (176), one hundred and eighty-nine (189), three hundred and forty-seven (347).

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part of, in and to the same, and every part and parcel thereof with the appurtenances, to have and to hold the above granted and described premises with the appurtenances unto the said party of the second part, his heirs and

assigns, to his their own proper use, benefit and behoof forever. Provided always and these presents are upon this express condition that if the said party of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon at the time and times, and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents and the estate hereby granted shall cease, determine, and be void. And the said Charles Blakiston for himself, his heirs, executors and administrators does covenant and agree to pay unto the said party of the second part, his executors, administrator or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond. And it is also agreed by and between the parties to these presents that the party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire by insurers, and in an amount approved by the said party of the second part, his executors, administrators, or assigns, and assign the policy and certificates thereof to the said party of the second part, and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for affecting the same shall be a lien on the said mortgaged premises added to the amount of the said bond or obligation and secured by these presents, payable on demand, with interest at the rate of seven per cent. per annum from the time of payment of such premium or premiums.

In witness whereof, the said party of the first part have hereunto set their hands and seals, the day and year first above written.

CHARLES BLAKISTON [L. s.]

MARY L. BLAKISTON. [L. s.]

Sealed and delivered in the presence of (note the interest clause cancelled before execution at to Charles Blakiston)

CHARLES H. VOORHSS,
ANDREW STEWART.

STATE OF NEW JERSEY, }
BERGEN COUNTY, } ss.:

Be it remembered, that on this 30th day of December, in the year one thousand eight hundred and seventy-two, before me, a commissioner of deeds in and for said county, personally appeared Charles Blakiston and Mary L., his wife, who I am satisfied are the grantors in the within indenture of mortgage named, and who executed the same, and I having first made known to them the contents thereof, they did thereupon severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed. And the said Mary L. Blakiston being by me privately examined, separate and apart from her said husband, did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, freely and without any fear, threats or compulsion of or from her said husband.

ANDREW STEWART,
Comm'r of Deeds, Bergen Co., N. J

Received in the office and recorded August 23, 1873, 1p.m.

THOS. W. DEMAREST, *Clerk.*

STATE OF NEW JERSEY, }
BERGEN COUNTY, } ss.:

I, Thomas W. Demarest, Clerk of said county and also Clerk of the Court of Common Pleas in and for said county, do hereby certify that the foregoing is a true copy of the original mortgage, as the same is recorded in my office in liber I, 2 of mortgages for said county, page 214, etc.

Witness my hand and the seal of said county and court, this 12th day of February, A. D. 1876.

THOS. W. DEMAREST, *Clerk.*

Interlocutory Decree.

[Filed January 19, 1882.]

This cause coming on to be heard upon the pleadings and proofs herein, in the presence of Garret Ackerson, Jr., of counsel with complainant, and Charles H. Voorhis, of counsel with the defendant, James S. Barron, and the pleadings and proofs having been read, and the arguments of counsel having been heard and considered, and the court being of the opinion that the mortgage of the complainant is the first lien upon the mortgaged premises in the bill of complaint described, and that the mortgage of the defendant, James S. Barron, is a lien subsequent to the lien of the complainant's mortgage, and that the complainant's mortgage should be first paid out of the proceeds of sale of said premises. 10

And it appearing that the said bill of complaint has been heretofore taken as confessed against all the other defendants:

It is thereupon, on this fourteenth day of January, eighteen hundred and eighty-two, ordered, adjudged, 20 and decreed that the mortgage of the complainant set forth in his said bill, dated January first, A. D. eighteen hundred and seventy-two, and made by Charles Blackiston to him, to secure the sum of four hundred dollars (\$400), with interest, is a valid and subsisting encumbrance upon the lands and premises in his said bill of complaint mentioned and described, prior to the lien thereon of the mortgage of the defendant, James S. Barron, and that the said complainant is entitled to be first paid out of the proceeds of the sale of said premises, 30 and that the mortgage of the said defendant, James S. Barron, is a subsequent lien thereon, and should be paid out of the proceeds of the sale of said premises, if any remaining after the payment of the complainant's said mortgage, interest and costs.

And it is further ordered that it be referred to Milton Demarest, Esq., one of the masters of this court, to ascertain and report the amount due to the complainant for principal and interest on his said mortgage, and also to inquire and report the amount due to the said defendant, James S. Barron, on his mortgage, and that said master do make his said report with all convenient speed.

And all further equity is reserved until the coming in
10 of said master's report.

THEODORE RUNYON, C.

Respectfully advised.

AMZI DODD,

Advisory Master.

Final Decree.

[Filed February 21, 1882.]

This cause coming on to be heard in the presence of Garret Ackerson, Jr., solicitor and of counsel with the complainant, the complainant's bill having been heretofore taken as confessed against the non-answering defendants, whereupon, and upon reading a report upon
20 file, made by Milton Demarest, Esq., one of the masters of this court, bearing date on the eighth day of February, in the year of our Lord one thousand eight hundred and eighty-two, from all which it appears that there was due to the complainant on the day of the making of the said report, for principal and interest on his mortgage, the sum of six hundred and eighty-two dollars and eighty-eight cents, and that the defendant, James S. Barron,
30 failed to appear before said master and produce his said mortgage, although duly summoned; and it having been

heretofore adjudged and decreed by the court that the mortgage of the complainant is first in registry and execution, and is entitled to priority of payment; and that the mortgage of the defendant, James S. Barron, is a subsequent lien, and is entitled to be paid after payment of the complainant's said mortgage, interest and costs; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary :

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It is thereupon, on this twenty-first day of February, in the year of our Lord one thousand eight hundred and eighty-two, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge and decree that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant; that is to say, in the first place to pay and satisfy to the complainant the sum of six hundred and eighty-two dollars and eighty-eight cents, together with lawful interest thereon, to be computed from the eighth day of February, in the year of our Lord one thousand eight hundred and eighty-two, being the date of the master's report, with the complainant's costs in this cause to be taxed, and to the complainant a counsel fee of ten dollars, and that a writ of *fiery facias* do issue for that purpose out of this court, directed to the sheriff of the county of Bergen, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale he pay to the complainant, or to his solicitor, his said debt, interest and costs; and in case more money should be raised by the said sale than shall be sufficient to answer such payment, that such surplus be brought into this court, to abide the further order of the court, unless otherwise

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previously disposed of by the order of this court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ.

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

THEODORE RUNYON, C.

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Appeal.

The defendant, James S. Barron, hereby appeals to the Court of Errors and Appeals in the last resort in all causes of law, from the whole of the final decree in above stated cause, bearing date the twenty-first day of February, in the year of our Lord one thousand eight hundred and eighty-two, and also from the interlocutory decree in said cause, which adjudges that the mortgage of the complainant, for four hundred dollars and interest, is a lien upon the mortgaged premises prior to the lien of the mortgage of this defendant, and is entitled to be first paid out of the proceeds of sale thereof.

Dated May 6th, 1882.

CHAS. H. VOORHIS,

Solicitor of and of Counsel with said Defendant.

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

CHAS. H. VOORHIS,

Of Counsel with said Defendant.

Petition of Appeal.

[Filed May 8, 1882.]

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

The petition of James S. Barron, the appellant in the above-stated cause, shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery of New Jersey, in a certain cause wherein Daniel Van Winkle is complainant, and Charles Blakiston and Mary L., his wife, James S. Barron and others 10 are defendants, under date of February twenty-first, eighteen hundred and eighty-two, and by an interlocutory decree in said cause, under date of January fourteenth, eighteen hundred and eighty-two, filed January nineteenth, eighteen hundred and eighty-two, in this respect, to wit, that it is thereby adjudged that the mortgage of said complainant for four hundred dollars and interest is a lien upon the mortgaged premises prior to the lien of the mortgage of this appellant, and is entitled to be first paid out of the proceeds of sale thereof, 20 whereas the said mortgage of appellant should have been adjudged to be the first lien, and entitled to be first paid out of said proceeds of sale. Your petitioner, therefore, prays that said decrees of the Chancellor may be reversed, set aside and for nothing holden; and that your petitioner may have such relief in the premises as the nature of the case requires.

Dated May 8th, 1882.

CHAS. H. VOORHIS,

Solicitor of and of Counsel with Appellant. 30

Answer to Petition of Appeal.

[Filed May 17, 1882.]

This respondent, not confessing all or any of the matters to be true, as in and by the said petition of appeal are mentioned and set forth, for answer thereunto, says that such decrees as are complained of were made by the Court of Chancery, as in the petition of appeal is mentioned and set forth, but, as to their date, substance and effect, this respondent humbly craves leave to refer
10 to said decrees when the same shall be produced. And this respondent is advised and insists that the said decrees are agreeable to equity and justice, and therefore asks that the same may be affirmed, with costs.

Dated May 30th, 1882.

G. ACKERSON, JR.,
Solicitor.

[NOTE.—Upon the \$700 mortgage and \$240 mortgage similar decrees and appeals and answers were filed.]

Opinion.

20 In the foreclosure suit of Van Winkle *v.* Blakiston and others, I think there should be a decree that the mortgage of the defendant Barron is a subsequent lien to the mortgages of the complainant. My conclusion is that the Barron mortgage was taken with actual notice of those previously executed to the complainant.

AMZI DODD, V. C.