VIII whose opinion is reported in Kline v. 7 Stew. Eq. —

L. S. HYER, Printer, 119 and 121 Main St., Rahway, N. J.

Mr. G. R. Lindsay for appellant

New Jersey Court of Errors and Appeals.

MILLER KLINE, Complainant, and HAMPTON CUTTER, Defendant. — *On Appeal from the Chancellor. On Bill for Relief.*

Dates of the transaction as alleged in the bill:

1869, August 10th—Hewitt was the owner of the premises in question.

1869, August 23d—Hewitt mortgages the premises to Garret Berrv for $3,000, who afterwards assigned the same to Hampton Cutter, the defendent in this suit.

1869, August 11th—Alleged date of the first item in Ayres, Lufbery & Co.'s lien claim.

1870, August 10th—Ayres, Lufbery & Co. filed a mechanic's lien against the premises in question. 10

1870, October 31st—Ayres, Lufbery & Co. enter a judgment upon this lien in the minutes of the Union County Circuit Court for $677.

1870, October 31st—Alleged General and Special *fi. fa.* issued no sale was made under this *fi. fa.*

1871, April 15th—Ayres, Lufbery & Co. alleged to have assigned their judgment to Miller Kline, the complainant, who never enforced the fi. fa. against the property. 20

1873, March 18th—Cutter by Berry & Lupton, his solicitors, files his bill to foreclose his $3,000 mortgage, making Ayres, Lufbery & Co. parties because they had recovered only a *general judgment* against Hewitt,

and Miller Kline, a defendant, because he held a subsequent mortgage upon the property in question.

1873, July 22d—Cutter gets a decree pro. con. in his foreclosure with a reference to a Master, and also the amount due to any and all defendants who held encumbrances.

1873, August 15th—Date of Master's report.

1873, December 15th—Report filed.

10 1874, January 17th—Final decree and issue of fi. fa. in the foreclosure.

1874, May 13th—Day fixed for the sale by the sheriff, and from time to time adjourned until

1874, September 15th—On which day the premises were sold to Cutter for $1,105.

1874, December 24th—Cutter records the sheriff s deed, and has been in the possession of the property ever since.

1878, July 19th—On this day Cutter is ruled to show cause on a petition filed in Chancery a short time previously, why the decree should not be set aside or opened, and the matter of priorities re-adjusted so as to give Kline priority by reason of his alleged lien judgment.

20

1878, July 19th—Motion was denied by the Chancellor on the ground that the Court of Chancery had no right to correct the records of the Circuit changing the general judgment of the record into a general and special judgment.

30

Afterwards a motion was made before his honor, Judge Van Syckle, to have the record of the general judgment recovered by Ayres, Lufbery & Co. against Hewitt, corrected so that the same should be a general and special judg-

ment, which motion was, Sept. 21st, 1878, denied by His Honor, Judge Van Syckle, because of the lapse of time, and that it would unsettle priorities already adjudicated upon.

In the proceeding in foreclosure by Cutter, Kline having been made a party defendant only because he held a second mortgage upon the property and served with a ticket stating that fact, was put upon his notice and was bound to answer, setting up any other equities if he had them. 10

VANDERVEER v. HOLCOMB, 2 C E Green 87.

AMES v. N. J. FRANKLINITE CO., 1 Beas. 66.

EMERY v. DOWNING, 2 " 59.

Upon the lien claim which was filed by Ayres, Lufbery & Co, there never was made any endorsement thereon of the time of issuing the summons. Cutter or his solicitors in making search for encumbrances, in order to properly foreclose the mortgage, undoubtedly found the lien of record, but in examining the same to ascertain whether the same had been prosecuted, find no notice of the issuing of a summons en- 20 dorsed upon the lien claim This is an irregularity which might have been corrected before judgment, but after judgment and when the rights of other parties as encumbrancers, either by mortgage or judgment have intervened, it is not amendable.

The practice and proceedure under the lien act must be strictly pursued as respects rights of third persons at least.

JAMES v. VAN HORN, 10th Vrm. 353.

In James v Van Horn, just cited, the amendment allowing the endorsement to be made was at the trial of the cause.

See also VREELAND v. BOYLE, 8 Vrm. 346. 30

In the suit brought by Ayres, Lufbery & Co. to foreclose their lien Cutter was entitled to notice, he was a proper party

to the lien suit as the owner of the *legal estate*, a sale under the special fi. fa. would have only conveyed such estate which Hewitt had in the premises.

~~Lien act~~ Rev. 673, § 23. JACOBUS v. MUT. BEN. LIFE INS. CO., 12th, C. E. Green, 615, per Dixon J.

A court of equity will not correct an error, even in a deed or other instrument, where such error was such which by reasonable diligence the party praying correction could have ascertained. Hence when Kline took an assignment of this lien judgment he took only the transcript as entered in the
10 minutes of the cout. It was his duty to have examined the record and learned whether the lien was regular, whether every step taken was in accordance with the statute, and whether the title proposed to be assigned to him was without flaw. If a judgment were entered in the minutes of the court, which had been entered without the issuing of a summons, or the summons had been served by another person than the sheriff and afterwards assigned, would this court or a court of equity give force and effect to such judgment, even though value had been
20 paid for it?

GRAHAM v. BERRYMAN, 4 C. E. Green, 29.
WALDRON v. LITSON, 2d McCarter, 126.

When Kline is summoned before the Master, to whom the matters in the Cutter foreclosure had been referred, he appears with his second mortgage and proves that, he is then said to have produced the transcript of the mechanic's lien judgment as entered in the court minutes, and the general and special writ of fi. fa., which the bill alleges had been issued to and placed in the hands of the sheriff of Union county, and claims
30 in his bill that upon the production of these documents before the Master, he was entitled to priority over the Cutter mortgage.

The Master is called upon to ascertain and report the truth of the allegation of the bill, and notwithstanding this alleged production of the judgment, the assignment and the fi. fa., the Master reported the Cutter mortgage a first lien, and as subsequent liens the general judgment recovered by Ayres, Lufbery & Co., in their order, and Miller Kline second mortgage in its order.

I submit that the Master was correct in his so reporting, and that the bill states the priorities as they occur. Kline was not entitled to prove anything and everything which he saw 10 proper to produce, unless he had answered the bill setting up different equities from those which the bill conceded to him. By answering he would have given Cutter an apportunity to contest his pretensions, and if his lien judgment was defective he might have then by a timely application to the circuit have, perhaps, had it then corrected.

He cannot come into this court at this late day, after Cutter has long enjoyed his title and after the court of Chancery has adjudicated upon these priorities and ask for extraordinary relief, especially when the Circuit Court has refused to 20 correct this so-called lien judgment. Kline was fully notified by Cutter s bill of what was claimed, he received notice of his position as claimed by Cutter. "He was called upon," as is said by Justice Dixon in Jacobus v. Life Insurance Co., 12th, C. E. Green, 623, "to intervene for the defence of his rights for that the court which holds in its actual custody the thing to be disposed of is about to determine concerning that very thing." Kline's only right to priority over Cutter's mortgage is based upon this alleged lien judgment. The records of the Union Circuit show only a general judgment which A. L. & Co. 30 recovered against Hewitt. A. L. & Co. were made parties to the Cutter foreclosure only because they held a general judgment. This judgment then is the record by which all parties are bound. The entry in the minutes of a general and special judgment is not the judgment, it is only a memorandum of what is going on in court, it has no other force than that of a notice, until the record shall have been made up, and by that

all parties concerned are bound by the record as it is until such record is vacated or corrected by the court in which such judgment was obtained.

It was not competent for the Master to receive proof of anything except such matters as were stated in the bill.

If Kline had sold the premises under the special fi. fa. he could only have sold the estate which Hewitt had in the property at the time of the alleged lien judgment. If the court should pronounce this lien judgment sound and give priority to it, 10 still it can only give Kline such priority as against Cutter's mortgage (Cutter not being a party defendant to the lien proceeding) as to allow him to sell the equity of redemption which Hewitt had at the time of the proceeding upon the lien claim.

JACOBUS v. MUT. BEN. LIFE INS. CO., 12 C. E. Green, 627, per Dixon J.

EDWARDS v. DERRICKSON, 5 Dutcher, 468.

ROBINS v. BUNN, 5 Vr., 322.

But I submit that the whole case made out by the complainant's bill shows laches and culpable negligence, which, after 20 this lapse of time, do not entitle Kline to a standing in court.

On the 15th of April, 1871, Kline claims to have become the owner of the general and special judgment alleged to have been recovered by Ayres, Lufbery & Co. by an assignment from them; he never took any steps to enforce this judgment, but on the 13th day of November, 1869, took a second mortgage upon the premises in question from Hewitt, with full notice by the record of the existence of the Cutter mortgage. So matters rested until Cutter files his bill to foreclose his mortgage, making Kline a party because, as alleged in his bill, he held a second 30 mortgage. He is summoned to appear before the Master, and produces his mortgage, together with his alleged transcript from the minutes of the Union Circuit and the general and special fi. fia., (which shows that he must have had personal possession of that writ by some means unexplained.). The

report of the Master is not made until August 15th, 1873, and is not filed until December 15th, 1873, and the final decree is not made until January 17th, 1874.

During all that interval there is no inquiry made of the Master or the complainant's solicitors as to how the report fixed his priorities, so that if they were not what he supposed them, he might have excepted to the report. After execution is issued in this foreclosure, and regularly advertised by the sheriff, an interval of four months, he takes no pains to inform himself of the day of sale by sending to the sheriff for infor- 10 mation, or taking a Union county paper, but by his bill states that he did not attend the sale and did not hear of it until *long after* Cutter had obtained his deed, when he (no date fixed) applied to the sheriff for his money, which he supposed he was entitled to, as the proceeds of the sale, when, for the first time, he learned that the sheriff, by writ of fi. fa., was directed to pay Cutter first.

An interval of over four years now elapses before anything is done to correct the alleged error.

In the meantime (but no date fixed) Mr. Lupton, who 20 was Cutter's solicitor in the foreclosure, appears to have applied to Cutter to convey this property to Kline, or pay Kline s alleged prior lien. This must have been after Kline had made the discovery at the sheriff's office ; certainly it did not take Cutter four years to consult counsel as to this proposition and take advice as to his rights.

Mr. Lupton, in his affidavit, says : " That as soon as the same was known to deponent's said firm the knowledge of the same was communicated to the said Hampton Cutter." If this lien judgment was offered in evidence and the general and 30 special fi. fa. thereon, why did he not know it when the Master was making his report?

On July 19th, 1878, the first proceeding is taken by petition in the court of Chancery to have the sale set aside, the decree opened and priorities re adjusted, which the Chancellor refused to do, on the ground that he has no power to correct the judgment of the Circuit Court so as to make a special

judgment out of it, and relegates the matter to the Circuit Court for correction before he can allow the prayer of the petition.

A motion is made before the Circuit Court to correct this alleged error in the judgment, which is for prudential reasons denied.

This bill is then filed, setting up the same facts as alleged in the petition.

In the meantime, and during all these years of delay, Cutter supposing that he has a complete and undisputed title to the property as against the world, puts improvements upon the property, and pays taxes and water rates upon it.

If this title is not perfect then there is scarcely a title made by operation of law that will stand the test.

Kline, by his own negligence, even if his lien judgment was in every respect regular, and unimpeachable as such, has put himself in such a position with reference to Cutter's rights as to stand debarred of all rights before this court.

CARPENTER v. MUCHMORE, 2 McCart., 123.
PARKHURST v. STOREY, 3 Stock., 233.
SMITH v. DUNCAN, 1 C. E Gr., 240.
HAGGERTY v. McCANNA, 10 C. E. Gr., 48.
DILLET v. KIMBALL, 10 C. E. Gr., 66.
VOORHEES v. MURPHY, 11 C. E. Gr., 434.
COOPER v. GALBRAITH, 4 Zab., 219.
MILLER v. HILD, 3 Stock., 25.
GRAHAM v. BERRYMAN, 4 C. E. Gr., 29.

G. R. LINDSAY,
Counsel with Appellant.

(Messrs Vail and Ward for respondent)

In Court of Errors and Appeals.

Between HAMPTON CUTTER, *Appellant,* and MILLER KLINE, *Appellee.*	*In Appeal from the Chancellor.*

POINTS OF APPELLEE.

The appellee asks to be relieved from consequences of a mistake,

Relief will be given unless equity forbids.

> Story's Equity, sec. 163.
> Loss vs. Obry, 7 C. E. G., 52.
> (Cited by Chancellor.)

In this case the equities are all with the appellee.

The appellee offers to place the appellant in the same position he held before property was sold.

II.

The proceedings in the lien claim prior to the entry of the judgment cannot be inquired into in this action.

Judgments cannot be attacked in collateral proceedings.

III.

Even if proceedings could be inquired into, the error can be amended.

James vs. Van Horn, 10 Vr., 353.

None but the builder can object to the error. 10

Idem.

It cannot be urged in this case that appellant took his mortgage relying on the mistake in the legal proceedings to set aside lien claim, for the mortgage was given nearly a year before summons was issued.

See case, page 10. 20

IV.

The ~~appellee~~ respondent has not forfeited his claim through laches.

As soon as mistake was discovered he made earnest efforts to have it corrected.

See case pp. 15 and 16. 30

VAIL & WARD,

Counsel for Appellee.

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[illegible] was in every respect regular, and unimpeachable as such, has [illegible] as to stand debarred of all rights [illegible].

Carpenter v. [illegible]

Parkhurst v. Storey, 3 Stock., 233.

20 Smith v. Duncan, [illegible]

Haggerty v. McCanna, 10 C. E. Gr. [illegible]

Dillet v. Kimball, 10 C. E. Gr., 66.

Voorhees v. Murphy, [illegible]

Couper v. Galbraith, 4 Zab., 319.

G[illegible]

G. R. LINDSAY,
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VAIL & WARD,

Counsel for Appellee.

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L. S. HYER, Printer, 119 and 121 Main St., Rahway, N. J.

New Jersey Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

To the HONORABLE THEODORE RUNYON, *Chancellor of the State of New Jersey.*

Humbly complaining, showeth unto your Honor, your orator, Miller Kline, of the county of Hunterdon and State of New Jersey.

That on the tenth day of August, in the year eighteen hundren and sixty-nine, one John T. Hewitt was the owner of certain lands and premises in the city of Rahway, in the county of Union, in this state, described as follows : 10

Beginning at a point on the northerly side of Clinton street, fifty-two feet, more or less, in an easterly direction from the point where the easterly line of Georgia street intersects the northerly line of Clinton street ; thence running in a northerly direction on a line of lands of Mr. Orgie one hundred feet to lands of Andrew J. Ritter, and at right angles with Clinton street ; thence in an easterly direction and along lands of said Ritter, and parallel with said Clinton street twenty-five feet to other lands of said John T. Hewitt ; thence southerly in a line at right angles with said Clinton street, and along said 20 other lands of said Hewitt, one hundred feet to the said northerly line of said Clinton street ; thence along the said line in a westerly direction twenty-five feet to the place of beginning ; being a lot twenty-five feet in front and rear, in width, by one hundred feet in depth

That as such owner the said John T. Hewitt afterwards became indebted to John R. Ayres, John H. Lufberry, and Thomas M. Martin, partners trading under the firm and name of Ayres, Lufberry & Co., for lumber and materials furnished and delivered to said John T. Hewitt by the said firm of Ayres, 30 Lufberry & Co. for the erection and construction of a certain building upon the said above described premises.

That afterwards to wit : on the tenth day of August, in the year A. D. eighteen hundred and seventy, the said John R.

Ayres, John H. Lufberry, and Thomas M. Martin, under and by virtue of an act of the Legislature entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building," filed a mechanic's lien in the office of the Clerk of the county of Union, against the premises above described, and against the building erected thereon.

That at the time of the filing of the said bill the said John T. Hewitt was still the owner of the said premises.

10 That in the said lien claim the said John T. Hewitt was described as the builder and the owner of the said premises.

That in the bill of particulars contained in said lien claim, the date of the first item of the materials furnished to the said Hewitt was the eleventh day of August, in the year eighteen hundred and sixty-nine, as will more fully appear by an inspection of the said lien claim now on file in the Clerk's office of Union county, and to which, for greater certainty, your orator begs leave to refer; that on the tenth day of August, eighteen hundred and seventy, a summons was issued out of the Circuit 20 Court of Union county, upon the said lien claim according to law.

That afterwards, to wit: on the thirty-first day of October, A. D. eighteen hundred and seventy, judgment was duly entered upon said lien claim in the book of minutes of the said Circuit Court by the said plaintiffs, against the said defendant, for the sum of six hundred and seventy-seven dollars damages and costs.

That the said judgment was entered as general against the said defendant, and "special" as against the property 30 mentioned and described in said lien claim.

That on the said thirty-first day of October, eighteen hundred and seventy, the date of the entry of said judgment, a certain "special" writ of fiera facias was issued out of the said Circuit Court of the county of Union, commanding the Sheriff of said county to make the amount of said judgment together with the execution fees of the said Sheriff out of the buildings and the land mentioned and described in said lien claim and said judgment

That on the fifteenth day of April, A. D. eighteen hun-40 dren and seventy-one, the said John R. Ayres, John H. Lufbery and Thomas M. Martin, the said plaintiffs, assigned by a deed of assignment under their hands and seals, dated on that day, the said judgment unto your orator.

That your orator is still the owner of said judgment, and
that no part of the same has ever been paid or satisfied unto
your orator.

And your orator further shows, that on the twenty-third
day of August, A. D. eighteen hundred and sixty-nine, the
said John T. Hewitt and Mary, his wife, by writing under their
hands and seals, mortgaged the said lands and premises men-
tioned and described in said lien claim, and the judgment en-
tered thereon to one Garret Berry, to secure the payment of
three-thousand dollars in one year from the date thereof with 10
interest at and after the rate of seven per cent. per annum;
that said mortgage was duly acknowledged by the said John
T. Hewitt and Mary, his wife, and afterwards, to wit: on the
twenty seventh day of August, A. D. eighteen hundred and
sixty-nine, was duly registered in the Clerk's office of the county
of Union; that the said Garret Berry afterwards assigned said
bond and mortgage to one Hampton Cutter.

Your orator further shows, that on the eighteenth day of
March, in the year eighteen hundred and seventy-three, the
said Hampton Cutter filed a bill in this court for the purpose 20
of foreclosing his said mortgage; that your orator was made a
party defendant to said bill; that upon the twenty-second day
of July in the year eighteen hundred and seventy-three the
said Hampton Cutter obtained a decree pro confesso against
all of the defendants on said bill, and a reference was made to
a Master to ascertain and report the amount due to the said
complainant, and also the amount due to any or all of the
defendants who hold encumbrances upon or against the prem-
ises mentioned and described in said bill, of the said complain-
ant; that your orator was duly summoned before said Master 30
and appeared before him in person and produced before the
said Master a certified copy of the said lien claim and the
judgment entered thereon in the book of minutes of the said
Circuit Court of Union county, together with a certified copy
of the special writ of fiera facias issued upon said judgment,
and the deeds of assignment of the said judgment from the
said John R. Ayers, John H. Lufberry and Thomas M. Martin,
partners, &c., to your orator.

Your orator further shows that said complainant also pro-
duced and proved before said Master his bond and mortgage 40
and assignment on his said bill mentioned.

Your orator further shows, that an inspection of the lien
claim and judgment produced and proved by your orator before

the said Master, and a like inspection of the bond and mortgage shows that the judgment of your orator was a prior lien upon said premises to the mortgage of the said complainant, and was entitled to priority of payment by virtue and authority of the said act of the legislature, under which said lien claim was filed.

Your orator further shows, that although said judgment was duly entered in the book of minutes of the said Circuit Court in strict accordance with the directions and requirements
10 of said act of the legislature, so as to make the said Judgment a prior lien and encumbrance upon said described premises to any mortgage, judgment or other lien that might be placed upon said premises subsequent to the date of the furnishing of any of the materials mentioned and set forth in the bill of particulars, attached to and forming a part of the said lien claim (and to which record for greater certainty your orator begs leave to refer) yet the Clerk of the said county of Union, in enterlng the said judgment from the said book of minutes into the proper record book of judgments of said Circuit
20 Court for said county, entered the same only as a general judgment against the said John T. Hewitt, so that it would appear from an examination and inspection only of said book of judgments, that said judgment became a lien and encumbrance upon said premises only from and after the date of the entry of said judgment.

Your orator further shows that at the time of the assignment of the said judgment by the said John Lufberry and Thomas M. Martin to your orator, the said judgment had not been entered and recorded by the said Clerk of Union county
30 from the said book of minutes of the said Circuit Court to the said record book of judgments, and that your orator had been able to inspect only the entry in the said book of minutes, and that no subsequent inspection and examination of the record of said judgment was made by your orator, except at the time and under the circumstances hereinafter set forth, and that your orator had no knowledge or information of the mistake of the said Clerk in the entering of said judgment in the record books of judgment, until after the sale of the said premises under and by virtue of a decree of foreclosure upon the said
40 mortgage of the said Cutter, as hereinafter mentioned.

And yonr orator further shows, that after the proving of the lien claim and the said judgment before the said Master, your orator believing that the said report of the Master would

give to the said judgment priority over the mortgage of the
said Hampton Cutter, and that a final decree would be entered
upon said report directing that the said premises should be
sold, and that out of the proceeds of the said sale your orator
should be first paid the amount of the said judgment, and that
the said mortgage should be secondly paid, no inspection or
examination of the said report, or of the final decree entered
thereon was made by your order or by any one for your orator
or on his behalf.

And your orator further shows, that afterwards the said 10
Master made his report to this court, that said report was dated
the fifteenth day of August, A. D. eighteen hundred and
seventy-three, and was filed on or about the fifteenth day of
December in said year.

And your orator further shows, that the said Master re-
ported that the said mortgage of the said complainant was
made and executed and also registered prior to the registry of
the mortgage, and of the obtaining of the judgments held by
the various defendants in the complainants' said bill of com-
plaint named, and was entitled to priority of payment, and 20
that the said judgment so obtained by the said John R. Ayres
and others and assigned to your orator was entitled to be
secondly paid.

And your orator further shows, that upon the filing of the
said Master's report a final decree was entered thereon against
all of said defendants in said bill mentioned, that said decree
was entered on or about the seventeenth day of January, A.
D. eighteen hundred and seventy-four, and that thereupon a
writ of fieri facias was issued out of this court directed to the
Sheriff of the county of Union commanding him to make sale 30
of the lands and premises therein described, and out of the
proceeds thereof, to pay in the first place to the said Complain-
ant, the amount due upon his said mortgage, with interest and
costs, and in the second place to pay to orator, the amount due
upon his said judgment, all of which will more fully appear by
reference to the Master's Report, Final Decree and writ of fieri
facias now on the files of this court, and to which your orator
prays leave to refer.

And your orator further shows, that by virtue of the pow-
er and direction of the said writ of fieri facias, the said Sheriff 40
of the said county of Union, duly advertised the said property
for sale on the thirteenth day of May, A. D. eighteen hundred
and seventy-four, at the Court House in the city of Elizabeth,

at the hour of two o'clock in the afternoon, and that said sale was from that date, from time to time, publicly adjourned by the said Sheriff, until the sixteenth day of September in said year, at which term, and at the place aforesaid, the said Sheriff did offer the said property for sale, and the said Hampton Cutter offering the sum of eleven hundred and five dollars, and no one bidding as much or more, the said premises were struck off and sold to the said Hampton Cutter, and that a deed of convey ance of said premises was afterwards made by the said Sheriff

10 to the said Hampton Cutter, and that the said deed was duly recorded in the Clerk's Office, of the county of Union, on the twenty-fourth day of September, A. D. eighteen hundred and seventy-four, in book ninety-two of deeds for said county, on pages 572, &c., as by reference thereto, will more fully appear.

Your orator further shows, that the price bid by the said Hampton Cutter for said premises, was insufficient to pay and satisfy the amount, which the said Sheriff was commanded to pay to the said complainant upon his said mortgage, and further shows, that the said complainant, upon receiving his

20 said deed from the said Sheriff, entered into the full and unin_ terrupted use and enjoyment of the said premises, and has con_ tinued in the full use and enjoyment of the said premises to the present time, and has taken all of the rents and profits and issues thereof, and applied them to his own use.

And your orator further shows, that your orator did not attend the sale of the said premises, and did not hear of the said sale of the premises to the said Hampton Cutter, until long af ter the said Hampton Cutter had obtained his deed from the said Sheriff, and placed the same on record and that upon hear-

30 ing of said sale, upon application to the Sheriff for the amount of said judgment,

Your orator learned, for the first time, that the said Sheriff was by the said writ of fieri facias, commanded to pay the said complainant before making payment to your orator.

And your orator further shows, that after hearing of the said sale, your orator, frequently by himself and his solicitors, applied to the said Hampton Cutter, and requested him either to pay unto your orator, the amount due on said judgment out of the amount paid by said Cutter for said premises, at the said

40 sale by the said Sheriff, or else to convey the said premises to your orator, your orator offering upon his part, to pay to the said Hampton Cutter, the full amount of money paid by him to the Sheriff, for the costs and Sheriff's fees, with lawful inter-

est thereon, together with all taxes, assessments and expenses, that the said Cutter might have paid for, and on account of said premises, upon the said Cutter accounting to your orator for all the rents, issues and profits which the said Cutter might have received from said premises.

And your orator well hoped that the said Hampton Cutter would have complied with such reasonable requests of your orator, as in equity and good conscience, he ought to have done.

But now, so it is, may it please your Honor, that the said 10 Hampton Cutter, combining and confederating with divers persons, at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted herein, with apt words to charge them as parties defendants hereto, and contriving how to injure and aggrieve your orator in the premises, absolutely refuses to comply with the reasonable requests, the said Hampton Cutter pretending that the said judgment of your orator was only a general judgment against the said John T. Hewitt, and was only a lien and encumbrance upon the lands and real estate of the said John T. Hewitt, 20 from the date of the signing of the said judgment in the Circuit Court of Union county, and that the said judgment was a lien and encumbrance upon the said premises, subsequent to the lien and encumbrances of the mortgage of the said Hampton Cutter, whereas your orator charges the contrary to be true, and that the said judgment by virtue of the authority, and previous of the said act of the legislature, entitled an "Act to secure to mechanics and others payment for their labor and materials in erecting any building," from and after the signing thereof became, and remained a lien and encumbrance upon 30 said lands and the buildings erected thereon, from and after the said eleventh day of August, in the year eighteen hundred and seventy-nine.

All which actings, doings, and pretences of the said defendant, are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator.

In tender consideration whereof, and for as much as your orator is without adequate remedy in the premises by the strict rules of the common law, and can only obtain relief in this honorable court, where matters of this nature are properly 40 cognizable and relievable.

To the end, therefore, that the said Hampton Cutter and his confederates, when discovered, may to the best and utmost

of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid without oath and as fully and particularly as if the same were here repeated, and they and each of them distinctly interrogated thereto, and that the said Hampton Cutter may be decreed to pay to your orator out of and from the proceeds of the said sale the full amount of your orator's said judgment, with lawful interest thereon, or that the said Hampton Cutter may be decreed to convey to your orator the 10 said premises upon your orators paying and satisfying to said Cutter the full amount of the expenditures made by him for costs, Sheriff's fees, taxes, assessments, repairs, or for any other purpose whatever, upon said premises, the said Cutter accounting to your orator for all the rents, issues and profits of said premises from the date of the purchase of the same by the said Cutter to the present time.

And that your orator may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

20 May it please your Honor, the premises considered to grant unto your orator, the State's Writ of Subpœna, issuing out of and under the seal of this Honorable Court, to be directed to said Hampton Cutter, commanding him by a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein, as to your Honor shall seem meet, and shall be agreeable to equity and good conscience. And your orator, as in duty 30 bound, will ever pray, &c.

Vail & Ward,
Sols. of Complt.

B. A. Vail, of Counsel.
A true copy—G. S. Duryee, Clerk.

IN CHANCERY OF NEW JERSEY.

Miller Kline,
Complainant,
and
Hampton Cuttr,
40 Defendant.
} *On Bill, &c.*

The answer of Hampton Cutter, the defendant in the above stated cause, to the complainant's bill of complaint:

This defendant, now, and at all times, saving and reserving unto himself all and all manner of advantage of exception to the many errors, untruths, uncertainties, and other imperfections in the said bill of complaint contained for answer thereunto, or unto so much thereof as this defendant is advised is material for him to make answer unto, he answers and says—

That he admits, that the said John T. Hewitt, on the day and year specified in the bill of complaint, was the owner of the lands and premises as set forth in the bill of complaint.

And this defendant further answering says, that he has no 10 knowledge or information, sufficient to form a belief, whether on the day and year alleged in said bill of complaint the said John T. Hewitt became indebted to the said firm of Ayres, Lufberry & Company, for lumber and material, for the construction of the building upon the said premises, and he therefore leaves the said complainant to make such proof of such fact as he may be advised is necessary, proper, and material to be made, and to this Court meet and proper.

And this defendant further answering admits, that on the day and year, as alleged in the said bill of complaint, the said 20 firm of Ayres, Lufberry & Company, filed in the office of the Clerk of the county of Union, a document purporting to be a mechanics' lien, for material furnished pursuant to the said entitled act as quoted in complainant's bill, but whether the said materials were furnished for the building upon the premises now owned by this defendant, defendant leaves complainant to make such proof of as he may deem important and necessary, and as to this Court shall be deemed meet and proper.

And this defendant says, that he has no knowledge or information sufficient to form a belief, whether on the tenth day 30 of August, one thousand eight hundred and sixty-nine, as alleged in the bill, or at any time thereafter, a summons was issued upon the said pretended lien claim, for that there is no endorsement by the Clerk upon such lien claim of any time of issuing a summons thereon, as by law the same was required to be.

And this defendant further answering admits, that on the thirty-first day of October, one thousand eight hundred and seventy, the said firm of Ayres, Lufberry & Company recovered in the Union County Circuit Court a judgment against the said 40 John T. Hewitt, for the sum specified in the bill of complaint, but he denies that the said judgment so entered against the said Hewitt was both a general and special judgment as al-

leged in said bill, for that the record of said judgment shows no such fact. And this defendant denies all knowledge of what may be contained in the book of minutes of the Circuit Court of the county of Union, concerning said judgment, for that the final record of said judgment is not a judgment both general and special, but only a general judgment, recovered on the day and year aforesaid by the said firm of Ayres, Lufberry & Company against the said John T. Hewitt for the sum aforesaid.

10 And the defendant further answering says, that he has no knowledge or information as to whether as alleged in the bill of complaint a general and spec al writ of fieri facias was issued out of the Circuit Court of the county of Union, at the time specified in the complainant's bill or at any other time, or whether on the day and year as alleged in the said bill, the said firm of Ayres, Lufberry & Company assigned the said judgment to the complainant, or whether complainant is still the owner by assignment of the said judgment, and he therefore leaves the complainant to make such proof of such alleged

20 facts as he may deem advisable, and as to this Court may seem meet and proper.

And this defendant admits, that on the day and year set forth in the complainant's bill, the said John T. Hewitt and Mary, his wife, mortgaged the said lands and premises to Garret Berry, to secure the sum of three thousand dollars in one year from the said date, and that the said mortgage was on the twenty-seventh day of August, one thousand eight hundred and sixty-nine, registered in the office of the Clerk of the county of Union and afterwards assigned by the said Garret Berry to this

30 defendant.

And this defendant admits that on the day and year set forth in the complainant's bill, he filed by Messrs. Berry and Lupton, his solicitors, his bill in this Honorable Court for the foreclosure of his said mortgage, in which bill this defendant alleges that the said Miller Kline was made a party defendant because he held a second mortgage upon the said premises, and not by virtue of his being the owner of the aforesaid alleged mechanics' lien judgment claimed in complainant's said bill, and that at the said time that this defendant filed his said bill to foreclose his said mortgage, the said firm of Ayres,

40 Lufberry & Company, whom complainant claims are his assignors of said alleged lien judgment, were made parties defendant to the said suit, because as alleged in said bill they

had recovered a general judgment against the said John T. Hewitt.

And this defendant admits that at the time set forth in complainant's said bill he obtained a decree pro confesso against all the defendants named in his said foreclosure bill, and that thereupon a reference was made to a Master to ascertain and report the amount due to this defendant, as complainant in said bill, and also the amount due to any and all the defedants who he'd encumbrances upon or against the premises mentioned and described in this defendant's said bill 10 of complaint, and to ascertain and report the priorities of the complainant, and the said several defendants who were parties to said proceeding in foreclosure, and that the said Master in reporting to this Court such priorities reported them according as they were shown and alleged to exist in defendant's said bill.

And this defendant further answering admits, that the complainant was summoned to appear before the Master to whom by the interlocutory decree in defendant's said proceeding in foreclosure the matters and things in said foreclosure were re- 20 ferred, but this defendant is unable to say what proof of said alleged claim complainant produced before said Master, and if such matter is important, this defendant leaves complainant to make such proof thereof, as he shall be advised is necessary and important, and which, to this Court may seem meet and proper.

And this defendant denies that the said pretended lien claim, which the complainant pretends to hold, has any priority over the mortgage, which this defendant held upon the said premises, and which, as aforesaid, he foreclosed. 30

And this defendant further answering denies that the Clerk of the county of Union, made or committed any error or mistake in making up the final record of the said judgment recovered as aforesaid by the said firm of Ayres, Lufberry & Company against the said John T. Hewitt, and this defendant further denies that at the time of the pretended assignment of the said judgment to complainant, that the said judgment had not been entered of record by the Clerk of the county of Union, in the record book, as alleged in complainant's bill of complaint. 40

And this defendant further answering admits that the said Master to whom the matters and things contained in his said bill to foreclose his said mortgage were referred, reported upon

the priorities of the several parties to defendant's said bill to foreclose, in the manner set forth in complainat's said bill, which several findings of the said Master, this defendant avers and maintains were, in all things correct by dates and records, and that no error or mistake was made in the matter of said Master's report, as to priorities and the rights of all the parties to the said bill of foreclosure.

And this defendant further answering admits that after the filing of said Master's report, such subsequent proceedings were
10 had, that afterwards, and on the day set forth in complainant's bill, the Sheriff of the county of Union, struck off and sold to this defendant, the premises aforesaid, for the sum aforesaid, and delivered to this defendant, a deed for the said premises, dated as aforesaid, and recorded in the Union county Clerk's office, in the book and page aforesaid, and that ever since the delivery of the said deed to this defendant, this defendant has has had and enjoyed the possession of the said premises, and has been in receipt of the rents, issues, and profits of said premises, as he lawfully might.

20 And this defendant further answering alleges that some time in July, eighteen hundred and seventy-eight, (the precise time not being known to defendant), the said complainant filed a petition in this Court, setting forth the same state of facts as he now sets forth in his bill of complaint, praying that the said final decree in defendant's foreclosure proceedings might be opened, and the enrollment thereof set aside, and that the report by the said Master might be corrected, and complainant's judgment might be decreed to be a first lien upon the said premises, and that this defendant might be decreed, either to
30 pay unto complainant, out of the amount bid by him at the said sale, or else to convey to complainant, the premises in question, &c., and that thereupon, such proceedings were had before his Honor, the Chancellor, upon such petition, and the affidavits thereto annexed, that the Chancellor refused to grant the relief asked for by the said petition, on the ground, that the Court of Chancery had no power to correct the judgment of the Circuit Court and make the same general and special when the record showed the said judgment only to be a general judgment, and thereupon afterwards, and some time in the
40 month of July, eighteen hundred and seventy-eight, as near as defendant can remember, a motion was made before his Honor Bennett Van Syckle, the Circuit Judge of the county of Union, to have the said record corrected so as to make the record

thereof both general and special, which motion was for prudential reasons denied

And this defendant further answering 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, and hereby well and sufficiently answered, confessed, or avoided, traversed, or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays to be dis- 10 charged with his costs in this suit, most wrongfully sustained.

G. R. LINDSAY,
Sols. for Counsel for Deft.

The complainant files the usual replication.

IN CHANCERY OF NEW JERSEY.

MILLER KLINE, Complainant, and HAMPTON CUTTER, Defendant. } *On Bill for Relief.* 20

STATEMENT OF FACTS.

That John T. Hewitt was the owner of the premises as set forth in said bill.

That John T. Hewitt became indebted to Ayres, Lufberry & Co., as alleged in said bill. 30

That Ayres, Lufberry & Co. filed a mechanics' lien, as alleged in said bill, and that at the time of filing the lien claim and issuing summons thereon, Hewitt was still the owner of said premises.

That the date of the first item in the bill of particulars in said lien claim is correctly stated in said bill.

That afterwards a general and special judgment was entered on said lien claim as alleged in said bill.

That upon the entry of the judgment, a writ of fieri facias, both general and special, was issued as alleged in said bill 40

That Ayres, Lufberry & Co. afterwards assigned said judgment to complainant as alleged in said bill, and that said assignment was never recorded.

That Hewitt mortgaged premises in question to one Garret Berry, to secure the payment of three thousand dollars, and that Berry assigned the mortgage to the defendant.

That Cutter filed a bill to foreclose said mortgage, making complainants a party as set forth in said bill, that no answer was filed by Kline to said bill.

That a decree pro confesso was entered thereon, a reference made to a Master, and complainant was summoned to appear before him, and that report of said Master was dated
10 and filed, and stated priorities as set forth in said bill.

That complainant proved before said Master the judgment as entered in Circut Court minutes, and the special writ of fieri facias issued thereon, and also the bond and mortgage held by said complainant.

That upon the filing of the report of the Master, a writ of fieri facias was issued to the Sheriff of the county of Union, that the property was duly advertised for sale, and that sale was regularly adjourned from time to time, until the fifteenth day of September, eighteen hundred und seventy-four, when it
20 was struck off and sold to the said defendant for eleven hundred and five dollars, and that afterwards a deed was made to defendant, which said deed was afterwards recorded in book 92 of Deeds for Union county, page 512, &c.

That the said defendant, after receiving his said deed, entered into the possession of said premises, and has received all the rents, issues, and profits to the present time, and that he is still the owner of said premises.

That complainant did not attend the Sheriff s sale or hear of sale, until mentioned in said bill.

30 That this complainant afterwards filed a petition in said cause, praying that said decree might be opened, the enrollment set aside and the Master's report corrected, but that the relief was denied until the Circuit Court should amend and correct the said judgment.

That afterwards application to amend and correct the said judgment was made to the said Circuit Court, and the motion was denied, upon the ground that the proper relief was in Chancery.

We agree to above statement.

40 VAIL & WARD.
Sol'rs of Compl'nt.

I agree to the foregoing as the facts of the case.

G. R. LINDSAY,
Def't of Sol'r.

IN CHANCERY OF NEW JERSEY.

Between
MILLER KLINE,
Complainant, and } *On Bill, &c.*
HAMPTON CUTTER,
Defendant.

STATE OF NEW JERSEY, } ss.
COUNTY OF UNION, } Leslie Lupton, of full age, being duly sworn, according to law, on his oath, saith :

That he was, in the year eighteen hundred and seventy-three, the junior member of the firm of Berry & Lupton, the solicitors of record in the foreclosure of the mortgage in the above entitled cause mentioned, as held at the said time by the said Hampton Cutter; that this deponent continued as such junior partner of said firm until in the month of November, in the year eighteen hundred and seventy-seven.

That the mistake in the report of the Master, to whom the said suit of the foreclosure of the said mortgage was referred, and in the final decree thereon, and in the writ of fieri facias thereon, and particularly complained of by the said Miller Kline in this bill in this cause was unknown to and undiscovered by this deponent, and he verily believes his said partner, until after the sale of the said mortgaged premises upon the said writ of fi ri facias therein, and the recording of the deed of the said Hampton Cutter therefor.

That as soon as the same was known to deponent's said firm, the knowledge thereof was communicated to the said Hampton Cutter.

That deponent in communicating the said information of the said mistake to the said Hampton Cutter, informed the said Cutter that the said mistake could be corrected by the payment by the said Cutter of the judgment held by the said Miller Kline, and taking in assignment or release thereof, which the said Kline had agreed to receive and execute, or that the said Kline would put him, the said Cutter, in the position he stood of right on the sale of the said premises, and their purchase by him, the said Cutter, reimbursing the said Cutter, his proper disbursements on the said premises, on his, the said Cutter's accounting for the rents, issues and profits thereof, since his said purchase, and possession thereof, which said offers of the said Miller Kline were true in fact.

That at the said time of communicating such knowledge of said mistake and said offer of said Kline to said Cutter, de-

ponent informed the said Cutter of deponent's belief in the right of the said Kline to such equitable relief.

That the proposition was at the said time discussed at some length, and that on the end of such discussion, the said Cutter desired some time for consideration and determination.

That after some lapse of time the said Cutter was asked by deponent if he had come to any decision or conclusion, and was told that he had not yet made up his mind, but would soon, and would let deponent know.

10 That hearing nothing, deponent again asked the said Cutter, who told him he would attend to the matter in one way or another, that deponent communicated the said information of said Cutter's intention, and which deponent verily believed to be true in fact, to the said Kline.

That the said Cutter never intimated to this deponent at any of the said interviews, any intention of a denial of the right of the said Kline to the relief he now seeks in this cause, nor did this deponent suspect any such intention, but believed and so told the said Kline that the said Cutter would, as he had 20 said, attend to the said matter in one way or another, and that deponent continued to believe that the said Cutter would settle the said matter to the satisfaction of the said Kline, until a short time prior to the presentation of the petition to the said Kline to this Court, when deponent learned that the said Cutter had retained Gilbert R. Lindsay, Junior, Esquire, as his Counsel, therein, and refused to settle the said matter in any way with the said Kline, and that deponent thereupon, immediately informed the said Kline that the said Cutter had retained Counsel and had refused to settle.

30 Sworn and Subscribed this 28th day of July, A. D. 1881, before me } LESLIE LUPTON.
C. D. WARD, M. C. C.

A true copy—G. S. DURYEE, Clerk.

OCTOBER TERM, 1881.

MILLER KLINE,
v.
HAMPTON CUTTER.

40 Bill for Relief. On final hearing, on pleadings and statement of facts agreed upon, and proofs.

Mr. B. A. VAIL, for Complainant.

Mr. G. R. LINDSAY, for Defendant.

The Chancellor: The complainant's claim for relief, rests on the following circumstances: On the 11th of August, 1869, John T. Hewitt was the owner of certain real estate in Rahway. On that day he began to contract a debt with Ayres, Lufberry & Company, for which a lien could be maintained on that property, under the mechanics' lien law. On the 23d of that month he gave a mortgage on the property for $3,000, and interest, to Garret Berry, who subsequently assigned it to Hampton Cutter, the defendant in this suit. On the 10th of August, 1870, Ayres, Lufberry & Company filed a lien claim 10 for the debt above mentioned, and on the same day issued a summons thereon. On the 31st of the same month, a general and special judgment against Hewitt, as builder and owner, was ordered in the suit, for $677, damages and costs, and entered in the minutes of the Court, accordingly, and on the same day a special and general fieri facias was issued. On the 15th of April, 1871, Ayres, Lufberry & Company, assigned the judgment to Miller Kline, the complainant. On the 18th of March, 1873, Cutter filed his bill in this Court to foreclose his mortgage, making Kline a party defendant thereto on account of a mortgage 20 he held on the premises, but not on account of his judgment, with respect to which Ayres, Lufberry & Company were made defendants; the complainant's assignment thereof, not being then on record. The ticket served on Ayres, Lufberry & Company, stated that they were made parties, because they had recovered a judgment against Hewitt; but according to the bill, they had recovered two, the judgment in question and another. The defendant, by his bill in the foreclosure suit, claimed priority over both judgments. Such claim was, however, by a merely formal allegation that his mortgage was entitled to priority over all the 30 other incumbrances. Kline did not answer, and a decree, pro comfesso, with an order of reference, was taken July 22d, 1873. Kline proved before the Master, the judgment, as entered in the minutes of the Court and the fieri facias, both of which were special as well as general. The Clerk of the Circuit Court, in making up the record of the judgment had, however, by mistake, (but Kline was not aware of the fact), recorded it as a general judgment only, and the Master, therefore, reported that the defendant's mortgage was entitled to priority over it. A final decree was entered accordingly, and on the execution 40 issued thereon, the property was sold on the 16th of September, 1874, to Cutter, for $1,105 Kline did not discover the fact that his judgment had been postponed to the mortgage

until he applied to the Sheriff for payment out of the proceeds of the sale of the mortgaged premises of the amount due him on the judgment. The fact that it was merely through the mistake of the Clerk that Cutter's mortgage had obtained priority over Kline's judgment, was soon communicated to Cutter, and in behalf of Kline, he was requested to convey the property to the latter, who offered to do all that equity required in the premises. Cutter held the matter under consideration for a long time, and when approached on the subject
10 from time to time promised to give the matter his attention, but did not deny Kline's right to relief. After the sale Kline applied to this Court for relief by petition in the foreclosure suit, and on a suggestion from the Court made thereupon, made application to the Circuit Court to correct the judgment. That application was denied, on the ground that equity was the proper forum. On the 16th of January, 1880, the bill in this cause was filed. That the complainant is entitled to relief unless he has forfeited his claim to it by his laches is extremely clear. Through a mistake, (of which as before stated, the
20 complainant had no knowledge) made by the Clerk of the Circuit Court in entering the judgment, the Master in the foreclosure suit, reported adversely to the complainant, postponing his judgment to the defendant's mortgage. The complainant not being aware of the error of the Clerk presumed that due precedence had been accorded to his claim and rested secure. The defendant thus obtained an advantage over him, to which in equity, he was not entitled, and which he ought not to be permitted to retain. The Court will correct the mistake in the complainant's judgment by relieving him as far as practicable
30 consistently with equity from the consequences of it. Story's Eq. Jur. §166, Loss V. Obry, 7 C. E. Gr. 52. The defendant's Counsel insists, however, that there was a fatal error in the proceedings in the lien claim which debars the complainant from such relief, and that is the omission of the Clerk of the Circuit Court to endorse on the lien claim the date of the issuing of the summons. The error is amendable. James V. Van Horn, 10 Vr. 353. The defendant will not suffer unjustly, if the amendment be made. He took his mortgage subject to the lien claim. He took it only a few days after the first
40 item of the lien claim was contracted, and almost a year before the suit on the lien claim was brought. Nor does the complainant appear to have forfeited his claim to the aid of this Court by laches. He seems to have endeavored for a long

time to obtain relief by an arrangement so as to render suit unnecessary, and only to have come to this Court when he found that he was unable to obtain relief otherwise; again, the defendant's situation with reference to the property does not appear to have changed since the sale. The complainant's debt will be decreed to be a lien upon the property, and unless the defendant shall choose to pay it without sale, the property will be sold to pay the defendant, in the first place, the Sheriff's execution fees of the foreclosure suit, and in the next place to the complainant, the amount due to him on his judgment, after 10 applying to those fees and the judgment, any money which may be found due from the defendant for rents and profits of the property, since the sale, (for which the defendant must account), and in the next place the amount due the defendant on his mortgage. In view of the fact that it is only from the complainant's want of attention to the record of his judgment, that this suit became necessary, no costs of this suit, will be awarded to him; but none will be given against him.

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IN CHANCERY OF NEW JERSEY.

Between
MILLER KLINE,
Complainant, and
HAMPTON CUTTER,
Defendant.

} *On Bill. Final Decree.*

This cause coming on to he heard at the last regular term of the Court of Chancery, in the presence of Vail & Ward, of Counsel, with the complainant, and Gilbert R. Lindsay, Esq., 30 of Counsel, with the defendant, and the pleadings, statements of facts agreed upon and proofs having been read and the arguments of the respective Counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court, that the judgment of the said complainant was obtained under, and by virtue of the provisions of the mechanics' lien law, and was a prior lien to the mortgage of the said defendant upon the premises in said bill mentioned, that said judgment was properly entered in the minutes of the said Circuit Court of the 40 county of Union, as a general and special judgment, and that a general and special writ of fieri facias was issued thereon, that the Clerk of said Circuit Court, in making up the record of the

judgment by a mistake recorded it as a general judgment only, that upon the foreclosure of the defendant's said mortgage, the Master to whom reference was made, by reason of said mistake, reported that the defendant's said mortgage was a prior lien to the judgment of the complainant, that upon the filing of the Master's report, a final decree was entered, and a writ of fieri facias issued, directing a sale of said property, that by said decree the judgment of this complainant, was postponed to the mortgage of
10 the defendant, that a sale of the said premises was made under said writ of fieri facias, and the property sold to the defendant in this suit, for a sum greater than the amount due this complainant upon his said judgment, that afterwards a deed was executed and delivered to the said defendant, and that he is still the owner of said premises, that the mistake of the Clerk of the Union Circuit Court, in making up the record of said judgment, was unknown to said complainant until after the sale of the said premises by the Sheriff of Union county, and the delivery of the deed to this defendant, that thereupon, request
20 was made to the defendant on the behalf of this complainant, for a conveyance of the property to this complainant, who offered to do all that equity required in the premises, that the defendant promised to consider the matter, but never denied the complainants right to relief, and it appearing that the complainant is entitled to relief in the premises,

It is hereby, on this 17th day of October, 1881, by the Hon. Theo. Runyon, Chancellor of the State of N. J., ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth hereby order, ad-
30 judge and decree, that the complainant's debt is a lien upon the said property and it is further ordered, that unless the said defendant shall within ten days after service upon him, of a copy of this decree, pay to the said complainant or his solicitor, the amount due to him upon his judgment in the case referred to, a writ of fieri facias shall be issued out of this Court, directed to the Sheriff of the county of Union, commanding him to make sale of the premises, and out of the proceeds thereof, pay in the first place to the said defendant the Sheriff's execution fees of the said foreclosure suit, and in the next place to
40 the complainant the amount due to him on his said judgment, and in the next place unto the said defendant the amount due on his said mortgage.

And it is further ordered that the said defendant shall ac-

count for the rents and profits of the said premises since the sale under his said decree of foreclosure, and that the amount of said rents and profits shall be applied to the payment of the said Sheriff's execution fees, and the said judgment of the complainant, and for the purpose of said accounting the said complainant may at any time apply to the Court for a reference to a Master.

And it is further ordered that no costs will be allowed to either of the parties to this suit.

THEODORE RUNYON, C. 10

IN CHANCERY OF NEW JERSEY.

Between
HAMPTON CUTTER,
Defendant, and
MILLER KLINE,
Complainant.
} *On Bill. Appeal.*

The defendant, Hampton Cutter, hereby appeals from so much of the final decree made in this cause as decrees, that the defendant pay to the complainant the amount of his pretended lien judgment as being prior to defendant's mortgage, or that the premises described in the bill be resold for that purpose, and also for the reason that the said complainant was in laches at the time of filing his bill in this cause, and was not entitled to the relief prayed in his bill as granted by said decree, to the Court of Appeals in last resort in all cases of law and equity. 20

Dated October 28, 1881. G. R. LINDSAY,
Solr. of Deft.

I advise that this is a good cause for appeal in the above stated cause.

G. R. LINDSAY, 30
of Counsel with Deft.

COURT OF APPEALS IN THE LAST RESORT IN ALL CASES OF LAW AND EQUITY.

Between
HAMPTON CUTTER,
Appellant, and
MILLER KLINE,
Appellee.
} *On Bill.*
Petition of Appeal.

To the Honorable, the Court of Appeals, in the Last Resort in all cases of Law and Equity: 40

The petition of Hampton Cutter, the appellant in the

above stated cause, respectfully shows that your petitioner is aggrieved by a final decree made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the seventeenth day of October, 1881, in a cause, wherein the said Miller Kline was complainant, and your petitioner was defendant, in this respect to wit: that in, and by said decree, it is ordered that said Hampton Cutter shall pay to the said Kline the amount of a judgment which the said Court of Chancery has decreed to be a judgment under the
10 mechanics' lien act, and entitled to priority over said Cutter's mortgage, under and by virtue of which said Cutter is now the owner, and in possession of certain lands and tenements in the city of Rahway, described in said Kline's bill of complaint in this cause, and that in default of such payment, that said premises shall be sold to satisfy the said alleged judgment, giving the said judgment priority over the mortgage of the said petitioner. And your petitioner appeals from that part of the decree of the Chancellor, which decrees as aforesaid, and upon the ground, that the same is erroneous for that, the record
20 of the Circuit Court of the county of Union shows no such record of a mechanics' lien judgment, but only a general judgment, subsequent in point of time to the mortgage of your petitioner, and that the Chancellor, in decreeing that said judgment was both general and special, and entitled to priority over petitioner's mortgage, has exceeded the jurisdiction of said Court by correcting and amending the judgment of said Circuit Court, and in establishing that which does not appear by the record of said Circuit Court.

And your petitioner further shows that the said Kline was
30 in laches at the time of filing his bill in this cause, and was not entitled to the relief ordered by said decree.

Your petitioner therefore prays that the said decree of the Chancellor may be reversed, set aside, and for nothing holden, and that your petitioner may have such other relief in the premises as shall seem proper.

G. R. LINDSAY,
Solicitor and of Counsel with Appellant.

Dated November 1st, 1881.

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