

New Jersey Court of Errors and Appeals.

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Between

JOSEPH A. PORTER,

Appellant,

and

MARTIN V. BERGEN,

Respondent.

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NO. 25 ON THE LIST OF MARCH TERM, 1896.

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SUPPLEMENTAL BRIEF FOR RESPONDENT.

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1. The rule is the product of a condition of practice

and of society differing from ours. It was drawn from the practice prevailing in England, under 2 Geo., 2 C., 23, sec. 23. This statutory regulation was an active and potential element in English practice, since shortly after 1729, when it was enacted into law by Parliament. These taxed bills were not confined, in the words of the statute, to "fees, charges and disbursements in equity or at law," but other items were taxable. 1 Arch. Prac., \*34.

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20 Under this practice the attorney had special privileges provided for by this statute. If his bill was properly taxed and served upon his client, as directed by the statute, for a space of thirty days, he was entitled to summary proceedings against the client as for a contempt for the non-payment of his bill. As stated by Lord Loughborough, in *Newman vs. Payne*, 2 Ves. Jr., 199: "They [attorneys] are considered as officers of the court "and have several privileges as such; there are peculiar "summary proceedings both for and against them."

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at law. In this way the causes arose from which Chancellor Green drew the rule stated in *Brown vs. Bulkley*. In each of these cases the controlling question is whether the attorney's bill contains any excessive or exorbitant items of charge, and the relief, when granted, is, with concomitant stay, a reference to a Master to tax the bill, letting the security stand for so much as might be found to be due on the taxation.

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It will thus be seen that this note contains almost the exact language used in the rule complained of. The English cases quoted by Chancellor Green in support of this rule were all so decided after 1729. Proof vs. Hines, Cases Temp., Talbot III, was decided in 1735, but has no reference to 2 Geo., 2 C. 23, or to Attorneys. *Walmesley vs. Booth*, 2 Atk. 25, 27, decided by Lord Hardwicke in 1739 and 1741, and *Newman vs. Payne*, 2 Ves., Jr., 200, decided by Lord Loughborough in 1793. The other cases cited by Chancellor Green are founded on these same or cognate English cases. I find no cognate case prior to 1729. Indeed, in *Walmesley vs. Booth*, when first decided in 1739, at which time it is suggested the rule of the 30

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2. The implication which counsel desires to suggest is that the bond or other security for compensation to the attorney, which came into the cases, from which the rule now under discussion was drawn, represented transactions which, properly speaking, were not contracts in the full sense of the term. The charges had to be made by hard and fast rules, by statutory regulation or by customary regulation. 20 Under these circumstances of special privileges to the attorney, it followed as matter of course that charges irregular or exorbitant were prima facie fraudulent.

But the 12th section of our Practice Act, Rev. 850, which is borrowed from 2 Geo. 2, C, 23, gives to attorneys no special privileges for the collection of fees, charges and disbursements there dealt with, by summary proceedings or by anything further than by ordinary action at law. Furthermore, this 12th section has never, as in the English practice, become in our 30 practice an active or potential element. Attorneys fix their fees by agreement almost universally, by lump sums to cover services and expenses, and instead of attorneys not being allowed to deal with their clients as other people deal with each other, as held in *Newman vs. Payne*, attorneys are, it is submitted, as free to deal with their clients about their compensation as their clients are to deal with the clients of other attorneys.

The merger in New Jersey of the estate of attorney into that of counsel, preserving only the incidents of the larger estate (counsel), has led to a different practice. For, under the English practice, there must, I submit, have been a reference in *Schantz vs. Schenck*, *Hassell vs. Van Houten*, and *Strong vs. Mundy*; and under this practice, in *Schantz vs. Strong*, the motion ought to have been for a reference. While it is distinctly held in *Strong vs. Mundy* that the only applicability of the 12th section of the Practice Act is in case the attorney desires to bring an action. A reference to a Master to tax a bill under this section is, I venture to say, almost unheard of. For example, if in this case this Court should come to the conclusion that the decree below could not be supported, and that \$1,000 would be an excessive fee, the order would be a reference to tax the fees, charges and disbursements of the respondent. This practice would, we suggest, be novel in New Jersey and against a resort to it in this case, even if allowable in practice, we crave leave to submit to the attention of the Court this additional consideration.

On the hearing of this case it was suggested by one of the members of the Court to the counsel for the respondent, that counsel state distinctly what it was that was done to save the appellant from indictment. It will be remembered, as appears on pages 10, 11, of the answer, and page 35 of the testimony, that Porter had other moneys than the \$5,435.10, before referred to, on deposit at different banks. These moneys amounted to \$14,430.47, when finally paid, May 4, 1881, in full of the claim the city had against appellant —page 34, line 35.

Nothing appears in the testimony about Porter's salary as Treasurer or as to any claim of his therefor. But on page 34, line 33, it is stated that the payment of the \$14,430.47, while in full of the claim the city had

against him, was not "in full and in discharge of him as Treasurer," *i. e.*, it did not discharge Porter's claim as Treasurer against the city.

While it appears very clearly by the testimony that Porter's deficit was \$1,652.20, after the marshalling of all his available assets, there is nothing to show that this information was beyond the knowledge of Porter until he told Mr. Bergen about it at the St. Charles Hotel—page 29, lines 20 and 30. Of course it had been charged but it was denied. Mr. Bergen denied it to the Finance Committee (page 47) when he told them Porter had the money in his pocket, and he no doubt told the same thing to the bondholders whom he tried, as he states on page 30, line 10, not to let them know anything about it. No doubt, in this game of bluff the respondent was obliged to play with the bondholders and the other anxious and curious and incensed people who called on him about it, (page 6, line 22) he was obliged to say frequently, as he stated to the Finance Committee, that Porter had all this money in his pocket.

In this situation, the game having been played thus far successfully without disclosure to the time of the meeting of the Grand Jury, and the desire to save Porter's salary out of the wreck being also a material consideration, the city still had the semblance of a foundation for indictment for embezzlement, because of Porter's refusal to pay the balance until his salary was settled, and the inability of the City Auditor to find on deposit sufficient to make up the \$14,430.47.

May 4, 1881, page 33, line 35. "When we got to that shape of the transaction that we could not get clear of the indictment without paying the money," the case was settled, pages 34, 35, and the claim of the city paid in full. But the ability of Porter thus to pay the city in full without any rebate for his salary as

Treasurer, justified, to all appearances, Mr. Bergen's reiterated statement that Porter had all the city's money, and destroyed, while the information of this deficit remained in the sole possession of the respondent, any foundation upon which to base an indictment against Porter.

The respondent therefore staked his whole game for the salvation of the appellant upon this single cast of this single die; namely, that as the officers of the city, (page 34, lines 10 to 20,) were going to make complaint to the Grand Jury unless this money were paid, they perforce would not make it if it were paid and all evidence of a defalcation, which they supposed they had, snatched from their grasp. 10

This was all that Mr. Bergen could do for Porter and ended his service to him and completed his contract with him. If it had not been for Porter's unconscionable and unexplained laches in commencing his suit, the respondent would have been able to have given much more of the detail; but it is suggested, enough has been said to show how engrossing and continuous for three months the service was. 20

We submit, however, that under the suggested modification of the rule in *Brown vs. Bulkley*, the adequacy of the consideration paid by Mr. Bergen for the Lawrence street houses is not before the Court: That in the absence of all undue influence upon the appellant and in the presence of his full knowledge and intention to convey these houses as compensation for the difficult and successful services (*Stevens vs. Ellsworth*, (Iowa) 63 N. W. Rep., 683,) rendered to him, this Court will not investigate the subject matter or provisions of this contract, between attorney and client. 30

Again, it is not the quantity of work which the attorney does which entitles him to his compensation, but it is his success in the accomplishing for his client

the greatest possible good. By Mr. Bergen's management of this case the city was fully paid, Porter was honorably saved from indictment and conviction and the ignominious consequences to himself and family, and indeed from all exposure except what he has brought upon himself by this suit.

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The above supplemental brief has been served on Henry M. Snyder, Jr., counsel of the appellant in this case, with the following notice to him:

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ON APPEAL  
FROM FINAL  
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BRIEF OF DEFEN-  
DANT.

10

## CHRONOLOGICAL ORDER OF FACTS.

March 15, 1878, Joseph A. Porter, the complainant, became Treasurer of the city of Camden.

January 31—February 2, 1881, Porter was in difficulties as such Treasurer; a complaint had been lodged against him as a defaulter, and he was at the St. Charles Hotel, in Philadelphia, a fugitive from justice. By the advice of the defendant, Martin V. Bergen, Esquire, whom Porter sent for and then and there conferred with, Porter returned to Camden and gave bail, which Mr. Bergen procured for him, to answer before the next grand jury the charge preferred against him.

February 1, 1881, Porter assigned decree against Lawrence street houses to Bergen on account of fees.

February 3, 1881, Porter gave to Mr. Bergen a

bond for \$4,000.00 and secured the payment of it by a mortgage on real estate in Camden county, embracing all the estate of Porter, and also gave Mr. Bergen orders or drafts on persons owing moneys to Porter. This mortgage covered 432 and 434 Lawrence street, 425 and 538 Cooper street, in the city of Camden, and fifty-one acres of land in Waterford township. From the fifty-one acre tract nothing was ever realized, and it never appeared again in the case. Nos. 425 and 538  
 10 Cooper street were encumbered real estate. Against the Lawrence street houses there was a decree (controlled by Porter,) entered in a foreclosure case and an execution thereon for the sale of them in the hands of the Sheriff of Camden county, which was the same decree assigned by Porter to Mr. Bergen February 1, 1881.

February 8, 1881, Porter was removed from his office as Treasurer by the City Council of Camden.

20 March 19, 1881, Mr. Bergen had sold No. 538 Cooper street and had realized therefrom . . . . . \$1,787 57  
 And Ferry stock of Porter, and had realized thereon . . . . . 944 33  
 And had collected from James B. Dayton, Esq. . . . . 1,000 00

Making altogether . . . . . \$3,781 90

May 4, 1881, the Grand Jury had met. The portion of Porter's deficit, which Mr. Bergen was obliged to take care of, was the sum of . . . \$5,435 10

30 Mr. Bergen, as above stated, had in hand only . . . . . 3,781 90

There was a balance of . . . . . \$1,653 20 still to be made up by Mr. Bergen. For this Mr. Bergen held only under his mortgage, 425 Cooper street, encumbered by an overdue first mortgage, with interest in arrear, because the Lawrence street houses,

although in the mortgage of \$4,000, were, as the testimony shows, taken on account of fees. A series of negotiations had for some time been in progress, between Mr. Bergen, as the attorney of Porter, and the officers of the city of Camden, looking to a settlement of the city's claim against Porter. Mr. Bergen had in hand of Porter's money \$3,781.90 just received, and he was keeping that sum, and of his own moneys the additional \$1,653.20, necessary to pay Porter's defalcation, <sup>10</sup> in readiness to pay in settlement with the city. When Mr. Bergen was satisfied that no better terms for Porter could be obtained from the city than the immediate payment of \$5,435.00, and that a complaint to the Grand Jury would be the result of delay in the settlement, he paid to Porter a check for \$5,435.10, which Porter at once endorsed and delivered to the City Solicitor.

During the period from January 31 to May 4, 1881, Mr. Bergen had endeavored to obtain from the Chief <sup>20</sup> Justice of the Supreme Court a certiorari to take up the resolution of February 8th, 1881, by which Porter was removed from his office of Treasurer.

Affidavits were presented and a writ asked for but not allowed. Suit had also been begun in April, 1881, on Porter's bond, and therein Mr. Bergen was attorney for Porter. Mr. Bergen also appeared before the Finance Committee as attorney for Porter.

This constitutes the period during which the relationship of attorney and client existed between Mr. <sup>30</sup> Bergen and Porter, viz., from January 31, 1881, to May 4, 1881, practically a period of three months. So far as this case is concerned that relationship did not exist before January 31, 1881, and was not extended beyond May 4, 1881.

October 7, 1881, cash received by Mr. Bergen from Taylor avenue properties, \$535.

March 18, 1882, Sheriff's sale of Lawrence street properties, situate on the south side Lawrence street, forty feet west of Fifth street, and extending thence westward a front of twenty-four feet by a depth southward of that width of forty-five feet, for \$1,000, to the defendant, Martin Bergen, as appears by the deed, Exhibit D3.

April 8, 1882, Sheriff's deed of same.

10 August 21, 1882, Porter surrendered possession of and first rent collected by Mr. Bergen, of Lawrence street houses.

February 5, 1883, writ of assistance to remove Porter from 425 Cooper street obtained by Mr. Bergen.

April 7, 1884, No. 425 Cooper street sold and \$1,404.48 realized from sale.

May 8, 1884, balance due defendant, M. V. Bergen, \$116.61.

November 12, 1893, bill for account filed.

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## STATEMENT OF THE CASE.

The agreement touching the compensation Mr. Bergen was to receive in this matter was made early in his employment as attorney for Porter. It was talked about the first morning they met after Porter's return to Camden (page 50, line 36) and the deed which was subsequently taken was first spoken of when the arrangement of the \$4,000 mortgage was made (page 30 56, line 30). The assignment of the decree bears date February 1, 1881, and the \$4,000 mortgage was dated February 3, 1881, so that it thus appears that the agreement for the payment of fees was made at the beginning of Mr. Bergen's employment as Porter's attorney. The Lawrence street houses, although included in the \$4,000 mortgage, were never a part of the trust property held by

Mr. Bergen for Porter. The decree was assigned to Mr. Bergen for the purpose of paying fees to the extent of \$1,000, the extent to which those houses were to be taken (page 50, lines 15-18). Indeed, it is a fair question whether the arrangement for fees was not made before the actual employment of the defendant as the attorney of the complainant. It was at least made so early in the transaction that it was practically made before the attorney's employment. Certainly, until <sup>10</sup> the mortgage was given, Porter could have withdrawn from this arrangement if Mr. Bergen's terms, which were agreed upon by the assignment of the decree, were unsatisfactory to him.

This agreement as to the payment of fees was acquiesced in and agreed to over again by Porter in March, 1882, at the time the Lawrence street properties were deeded to Mr. Bergen, when he said to Porter that he would take the Lawrence street houses subject to what was against them as \$1,000 on account of his fee, and <sup>20</sup> Porter said that it was all right (page 60, line 30). The relationship of attorney and client had ceased May 4, 1881, when Porter's defalcation was settled for with the city.

Porter again acquiesced in the taking of the Lawrence street houses as Mr. Bergen's absolute property when he surrendered possession and gave up the rents in August, 1882. This was also long after the defendant and complainant had ceased to be attorney and client.

Porter continued to acquiesce in the possession and <sup>30</sup> ownership of these Lawrence street houses by Mr. Bergen until November 12, 1893, when he filed his bill of complaint.

Porter's demands for an accounting had no reference to the Lawrence street houses. His demands extended only to the Cooper street houses and such personal property as had been received by Mr. Bergen to the use

of Porter. The account appended to the answer was in exact accordance to Porter's demands, and there is nowhere any demand proved which applies to the Lawrence street houses or is not fully answered by that account. This account, showing Porter to be in debt to Mr. Bergen, justifies the refusal of Mr. Bergen to render an account. Porter's acquiescence in the holding of these houses by Mr. Bergen extends, therefore, from  
 10 April, 1882, the time of the Sheriff's deed of them to Mr. Bergen, until November 12, 1893, when he filed his bill of complaint.

#### SERVICES AS ATTORNEY.

Mr. Bergen's services as attorney consisted in appearing before the Finance Committee of the City Council of Camden; in acting as attorney for Porter in applying for certiorari to remove the resolution of February 8,  
 20 1881, by which Porter was removed from his office as Treasurer of Camden; in negotiating a settlement with the city; besides the general employment of keeping Porter from going to prison. This consisted of procuring bail for him on his return to Camden, and in doing the multitudinous things incident to his principal undertaking. From the time that Mr. Bergen met Porter in Philadelphia, it was a continual thing, (see page 61, line 18,) "it was one of those things that ran along all  
 30 "the time. There were twenty bondsmen, and every "one of them had to be quieted so as to keep Mr. Porter from being indicted. There were about a hundred people in to see me every day, and they had to "be quieted by every means possible to keep the matter of the indictment off.—page 61, lines 20-25.

The character of the service required was different from the defense of an indicted man on trial, and was much more delicate, diplomatic and extended. A

prisoner under indictment is tried and the trial disposed of in a day or two. This continual management ran through about three months. It was not of the fixed regular and perfunctory character adequate to the defense of a prisoner at the bar, but required original means and resources.

The service which Mr. Bergen rendered to Porter by standing in the breach and by advancing for him moneys to the extent of \$1,653.20, on the security of an encumbered house and lot, which afterwards realized only \$1,401.48, is yet to be referred to. The Taylor avenue property was not in Mr. Bergen's hands and the Lawrence street properties were, by agreement from the first, to be devoted to fees. The importance of preventing Porter's indictment seems, from what has already been said, to have been a recognized necessity. His chances of acquittal, in face of the \$1,600 deficit, after all the aid he had received, may be estimated. Therefore, the action of Mr. Bergen in supplementing what Porter was able to do towards settling with the city by his own funds, aside from any merit for the management of the property or for the earning of commissions therefor, had an important bearing in preventing Porter's indictment and conviction.

This action of Mr. Bergen in advancing \$1,653.20 was the one thing needful to the success of what he undertook and accomplished. For these services, and for the successful accomplishment of what was undertaken at the outset and performed at the conclusion, \$1,000 was an inadequate fee for a man of the standing of Mr. Porter to pay, especially when it is considered that without this service all this property and the Lawrence street houses would on forced sale have been swept away from him without satisfying the city's claim, and he be indicted and convicted to boot.

That the \$1,000 were insufficient to compensate Mr.

Bergen for his services further appears by the findings of the Vice Chancellors who heard the case below. At page 109, line 15, Vice Chancellor Pitney, to whom the case was referred after the death of Vice Chancellor Green, says: "The general reading of the order and the interlineation made in the proper handwriting of Vice Chancellor Green, compels me to the conclusion that he did not intend that the \$1,000 fixed for his services as counsel were intended to cover all his services."

#### VALUE OF LAWRENCE STREET HOUSES.

There is nothing in the case to show that these houses were worth over \$1,000. Two-story four-room houses on lots twelve feet by forty-five feet each, which together paid, according to the supplemental account on page 67, about \$100 a year, were not, unless their condition was unusually good, worth over \$1,000, and there is no proof to show the condition of these houses. Small properties are depended upon to pay a higher percentage than large houses. All that Porter says about it is, that he refused \$1,250 for one of the houses some years ago (page 23, line 8). This is not supported or corroborated, and, judging from the unreliable character of the rest of Porter's testimony and the indefiniteness of this, is entitled to very little weight. On page 58, line 10, Mr. Bergen says he would rather have had the \$1,000 than the houses.

By the final decree in the case, page 111, the Vice Chancellor finds the balance due the defendant to be \$928.78. There was \$1,000 against these houses in April, 1882, a small amount of commissions and a balance of \$116.61, as seen on page 18 in the account appended to the answer, and the result is, there is still due by the houses, after crediting all the income, nearly

\$1,000. This supports Mr. Bergen's idea that \$1,000 which is not subject to wear and tear was preferable to the houses, which have barely kept down the interest on a sum slightly above \$1,000 and suffered wear and tear in the meantime.

Furthermore, it was the agreement of the parties before the beginning and after the conclusion of the relationship of attorney and client, that the houses should go for fees to Mr. Bergen, for preventing Porter's indictment and conviction. In this view of the case, the value of the houses is not so material, because, so far as Porter was concerned, he was bestowing these houses and not any fixed sum, and bestowing them not as full remuneration at that, and he knew the houses thoroughly and dealt with Mr. Bergen on equal terms and not under the disadvantage of a relationship which either had not begun or had ceased. They formed no part of the subject matter of the suit but were taken absolutely on account of fees; the agreement touching them left nothing to be thereafter done, but was complete from the start and re-agreed to after the business was all transacted, by the subsequent Sheriff's sale and deed and the giving up of the rents of the houses to Mr. Bergen by Porter, and acquiesced in by Porter, from April, 1882, continuously until November 12, 1893, when the bill of complaint was filed. Porter's knowledge of these properties was undoubted. He had collected the rents for a number of years and was thoroughly acquainted with them. If he desired to devote them to obtaining for him a service which would prevent his indictment for transactions which he knew all about, when neither the service nor the transactions had any reference to the houses in question, the will founded upon that desire was perfectly free and devoid of any influence used by the defendant, and the result of the exercise of it should not be disturbed, especially after

the lapse of a dozen years, merely on the capricious desire of one of the parties to it.

10 The fairness and propriety of this bargain on Mr. Bergen's part are patent. The bargain will bear the closest scrutiny and investigation. The deed to the defendant was not obtained from Porter in the privacy of his attorney's office, but in the most public manner, by a Sheriff's sale, four times postponed, which had already been advertised two months, and which Porter

20 had the most ample opportunity then to bring in question without doing so, or even complaining about it. It is the best sort of evidence of Mr. Bergen's good faith that he has not conveyed away the properties and placed them out of Porter's reach.

The adequacy of the bargain in question has already been dealt with. It is further supported by the fact found by both of the Vice Chancellors, and referred to in the opinion of Vice Chancellor Pitney, printed on page 109, already quoted. Beside the service rendered

30 Mr. Bergen as attorney in his complicated dealings and heroic assistance in preventing Porter's indictment and consequent conviction, there was the collecting in of these moneys of Porter and the management, salvage and sale of the Cooper street houses. That the fee of \$1,000 was adequate to cover the services of Mr. Bergen as attorney he does not admit. That these same \$1,000 were inadequate to cover the defendant's services as attorney and likewise his commissions for the management of the property of Porter held by him in trust, both of the Vice Chancellors find. Whether these commissions for collections and the management of trust property are to be regarded as separate and distinct from the services of the defendant as attorney in the criminal matter, is immaterial in this stage of the case. This service as collector and trustee was necessarily incident to the wise and successful plan adopted by Mr. Bergen for Porter's salvation, and to whatever extent

they increase the value of Mr. Bergen's services above the \$1,000 already distinctly allowed, they should, it is submitted, reinforce the adequacy of the consideration received by Porter for the conveyance and delivery of possession to the defendant of the Lawrence street houses.

The adequacy of the consideration on which the defendant holds the Lawrence street houses is further supported by other circumstances. Before these transactions commenced Mr. Bergen had lent to Porter, as will appear on page 15, line 32, \$75 to pay tuition of his daughter; after the relationship of attorney and client had ceased, viz: in May, 1884, as will appear on page 18, line 13, the defendant lent to the complainant \$50 in cash. These sums being taken into the account appended to the answer, pages 15-18, show a balance due the defendant on that account of \$116.61. In the statements above made, no reference has been made to these two sums. They have been allowed by both the Vice Chancellors, and aside from showing that there is a balance due the defendant on the only account which the complainant ever had the right to ask or did ask from him, they make an addition to the amount due to the defendant, for the fees and commissions already adverted to, of \$116.61. The account would stand then about thus:

JOSEPH A. PORTER TO MARTIN V. BERGEN, DR.

On account criminal fee, as agreed to and allowed . . . . .	\$1,000 00	30
Commissions @ 5 per cent. on collections and sales to amount of \$9,529.33, as explained below . . . . .	476	47
Balance due defendant from account in answer . . . . .	116	61
Total . . . . .	\$1,593	08

The above sum of \$9,529.33 is explained thus:

Received from James B. Dayton . . . . .	\$1,000 00
“ “ sale West Jersey Ferry stock . . . . .	994 33
“ “ Taylor avenue property . . . . .	535 00
“ “ 538 Cooper street . . . . .	2,000 00
“ “ 425 Cooper street . . . . .	5,000 00
	\$9,529 33

10

It is claimed, therefore, that Mr. Bergen had due to him at the time he took the Sheriff's deed substantially \$1,600, and some of these items ought to bear interest to the time of that deed. Vice Chancellor Pitney, in his opinion, page 109, line 14, says that the \$1,000 ought to bear interest from May 4, 1881, when the settlement was made with the city. This would add \$55.67 additional. Now, the Lawrence street houses ought not, we submit, to be claimed to be worth this <sup>amount</sup> ~~sum~~. By referring to the defendant's

20

exceptions, page 105, where claim is made for the commissions and cash already referred to, the incomes of the Lawrence street houses have failed to keep down the interest on this amount. True, in this exception, some commissions are claimed for the value and collection of rents on the Lawrence street houses, which it is submitted ought to have been allowed by the Court of Chancery on the accounting which Mr. Bergen was ordered to make; at the same time interest

30

is computed in this exception on the \$1,000, not from the time from which the Vice Chancellor says it should have been computed, but from a time eleven months later; and interest is computed on the commissions, not from the time they were actually earned, but for about half of them from a time about three years later. Thus it will be seen that the increase due to commissions on Lawrence street value and rents, is about

41593.08  
55.67  
 41648.75

balanced by interest on moneys over-due, so that against the \$1,600 at which the defendant took the Lawrence street houses in April, 1882, the Lawrence street houses have been unable to sustain themselves, and have fallen behind over \$100. This is a bill filed for account. The action is analagous to the old common law action of account render—on the principles of that action, wherein under a general verdict the auditors investigate the whole thing, make proper charges and allow proper credits. Mr. Bergen ought to be allowed these two items of cash, showing a balance due him of \$116.61, to support, if necessary, (which we submit it is not,) the adequacy of the consideration on which he held the Lawrence street houses, because it would seem that with these loans in Porter's pocket, the fee received by the defendant would be by so much reduced. See

James vs. Brown, 1 Dallas, 339.

Newbold vs. Simms, 2 S. & R., 317.

1 Enc. of Law, 132, 133.

Scott vs. Lator's Ex'rs, 3 C. E. Gr., 301.

Robinson vs. Bland, 2 Burr, 1086.

Colster vs. Tulane, 4 Wash. C. C., 442.

#### LAW OF CASE.

“In this inquiry the jealousy with which the law  
 “views such a contract is ready to lend its aid in sup-  
 “port of perhaps trivial circumstances tending to bring  
 “the case within the rule. But the danger to which  
 “the client is exposed from the supposed influence  
 “which his attorney has over him is the reason on  
 “which it proceeds; and the inquiry is, whether he has  
 “or has not used it to his prejudice; and if it should  
 “appear that the client was as well, or better, advised  
 “than his attorney on all matters connected with the

“contract which, without disparagement to the pro-  
 “fession, does frequently happen, and has received a  
 “full and adequate price, where, I would ask, is the  
 “hardship or injustice of sustaining such a contract,  
 “although one of the parties should capriciously ask to  
 “be absolved from it? Surely there is none; and  
 “the rule never could have been intended to operate in  
 “such a case. This view of the subject is, I think,  
 “fully sustained by the reasoning of Lord Redesdale,  
 10 “in *Cane vs. Lord Allen*, 2 Dow. P. R., 289, where,  
 “in sustaining the judgment of the Court, he remarks  
 “that Cane, the attorney, took no advantage of the con-  
 “fidence placed in him by Lord Allen, or of any supe-  
 “rior knowledge of the value of the estate which he  
 “acquired as agent. And also, by that of Lord Eldon,  
 “who in the same case remarks that it would be incum-  
 “bent on the attorney to show that he had given the  
 “same disinterested advice that he would have done if  
 “the contract had been made with another party. In  
 20 “*Harris vs. Treemenheeve*, 15 Ves., 42, it is said  
 “that an attorney may purchase from his client, but  
 “to support such a purchase he must be able to prove  
 “that he paid the full amount that could have been  
 “obtained from any other person.”

Miles vs. Ervin, 1 McCords Ch., 524.

*16 Am. Dec. 623 p 626.*

The rule that the solicitor conducting the action can-  
 not purchase the subject matter of the suit did not  
 apply, as the assignment preceded the employment as  
 30 solicitor.

*Davis vs. Freetley*, 24 Q. B. Div., 519.

An agreement between client and attorney, made after  
 judgment recovered, that attorney shall have part of  
 judgment, is not void.

*Floyd vs. Goodwin*, 8 Yerger, 484.

*Hall vs. Hallet*, 1 Cox, 134.

*Simpson vs. Lamb*, 7 E. & B. 80, page 92.

Though purchase from client by attorney of subject matter while holding that relation is voidable by client, suit to avoid must be brought in reasonable time.

Lewis vs. Brown, (W. Va.) 14 S. E., 444.

*Elmore v Johnson (Ill.) 32 N. E. 413 p 419.*

In the absence of fraud or misconduct, lapse of time, for instance seven years after settlement of transactions between attorney and client, will operate as a bar to any summary interference. 10

6 Dowl. & R. 330, page 338. - *24 parts Shipden*  
*16 Eng. C. L. 261*

In *Plenderleath vs. Frazer*, 3 Ves. & Bea. 174, the solicitor delivered his bill December 7, 1811. The bill not being paid, the plaintiff gave his bond, dated February 15, 1812. Bond was assigned and action was brought on it and the money was paid under a judgment upon a verdict December 12, 1814. Motion was made for a reference to tax the bill. Lord Eldon said :

"Here a bond was given by the client ; an action 20  
brought on it ; a verdict obtained and the judgment entered up. In the course of all these proceedings the plaintiff never made an application to have the bill taxed. A party who will thus acquiesce and neglect repeated opportunities, has no right to complain." See also

*Longstaffe vs. Taylor*, 14 Ves. 262.

*Cooke vs. Setree*, 1 Ves. & Bea. 126.

An attorney may contract with his client for remuneration but "such contracts will be inspected with 30  
jealous vigilance by the courts on account of the delicacy of the relationship of the parties to them, and the most transparent candor and good faith is required on the part of the attorney in these dealings with his client."

*Schomp vs. Schenck*, 11 Vr., 195, page 200.

*Nassall v New Haven* 12 Stew. 105 p 110  
"There are two classes of contracts influenced by the

“relation of attorney and client. \* \* \* \* One is  
 “where the attorney deals either with his client or with  
 “others in relation to the property, which is the sub-  
 “ject matter of litigation. \* \* \* \* The other  
 “class is where the attorney takes from his client a  
 “bond or other security as compensation for his ser-  
 “vices.”

Brown vs. Bulkley, 1 McC., 451, page 457-8.

- 10 In Brown vs. Bulkley, supra, Chancellor Green proceeds to state that in the latter or second class of cases the burden will be thrown upon the attorney, in order to sustain the contract, of showing its perfect fairness, adequacy and propriety.

#### POINTS.

20 On the foregoing facts and law we claim to have established the following points :

#### I.

As showing that the parties dealt on equal footing and with equal advantages, we claim to have established the following points :

1. The agreement for compensation was made and the decree representing the property transferred on account of fee, before the relation of attorney and client existed.
- 30 2. The same contract was affirmed and again agreed to and the decree mentioned transmitted into a deed to the attorney after the relationship ceased.
3. The property transferred was not the subject matter of the suit.
4. No advantage was taken of the client by the attorney's superior knowledge and no information in the

mind of the attorney was suppressed or withheld from the client. The client was well acquainted with the property and the attorney was not.

5. The complainant freely and unequivocally delivered the houses as such, even if considered by him worth over \$1,000, as a payment on account of fees.

## II.

As showing that the services rendered by the attorney were an adequate consideration for the property received by him under the contract in question, we claim to have established the following points:

1. That the services rendered by the attorney, together with a small amount of cash advanced, were fairly worth over \$1,600.

2. That the property received by the attorney for payment of these services was not worth over one thousand dollars.

## III.

As showing the fairness and propriety of the contract, we claim to have established the following points:

1. That the client dealt freely and without any pressure or imposition.

2. That the attorney dealt openly and fairly and with greatest deliberation.

## IV.

As showing that the complainant's action, if he ever had any, is barred by laches, we claim to have established the following points:

1. That the possession and ownership of the property by the attorney has been long and repeatedly acquiesced in by the client.

2. That the burden of proof to show unfairness, impropriety or inadequacy was thus cast upon the client and that the client has adduced no such proof.

3. That no account has ever been demanded touching the property, about which the client has raised his dispute, until the filing of the bill.

## V.

10 As showing that the complainant's action is barred generally, we claim to have established the following points:

1. That as nothing was due to the complainant on the account demanded by him, the defendant was not obliged to state or render such an account.

Osborn vs. O'Reilly, 16 Stew., 647, page 654.

20 2. That the complainant, in conveying the properties by the Sheriff's deed to the defendant, after the relation of attorney and client had ceased, has estopped himself from seeking the relief which he now seeks against his own deed, except for fraud on the defendant's part, or mistake on his own part, or gross inadequacy of the consideration.

Every development in the case by way of reference, and which the accounts which the reference and which the exceptions to the Master's report under the reference have brought into the case, supports the ground taken on the argument to the Vice Chancellor that the  
30 complainant's case was without merit and that his bill should have been dismissed.

HERBERT A. DRAKE,  
Of Counsel with Defendant.

## VI.

As showing that the appellant's action is barred by the application which equity makes of the doctrine of laches, we claim to have established the following points:

1. Even if this were an express trust, which is not admitted, *cestui que trust* had notice of the hostile attitude of trustee a short time after settlement with the city was made, and more than eight years before the bill <sup>10</sup> was filed—page 55, line 10; page 58, line 10; page 26, line 20; page 83, line 10.

2. If the statute of limitations, which is not pleaded, has no application, the appellant's action is barred by equitable laches if not by analogy to the statute.

3. Appellant's bill should be dismissed because he failed specifically to set forth therein the reasons for his failure earlier to have brought his suit. <sup>20</sup>

Where the demand is not of a legal nature, but purely equitable, or where the bar of the statute is inapplicable, Courts of Equity have another rule, founded sometimes on the analogies of law, where analogy exists, and sometimes on its own inherent doctrine, not to entertain stale or antiquated demands, and not to encourage laches and negligence.

Story's Eq. Jur. §529.

As long as there is a continuing and subsisting trust acknowledged or acted on by the parties, the statute of limitations does not apply; but if the trustee denies the right of his *cestui que trust*, and the possession of the property becomes adverse, lapse of time from that period may constitute a bar to equity. <sup>30</sup>

Dean vs. Dean, 18 Stock., 425, page 429 and page 432.

- Kane vs. Bloodgood, 7 Johns. C. R., 89, page 125.  
 Dyer vs. Waters, 1 Dick., 484, page 485.  
 Lindsey vs. Dodd, 8 Dick., 68, page 84.

In matters of account, although not barred by the statute of limitations, either directly or by analogy, equity will not interfere after a considerable time, for considerations of public policy from the difficulty of doing justice, when the original transactions are ob-  
 10 scure by time, and evidence lost, and from the consciousness that the repose of titles and security of property are mainly promoted by the enforcement of the maxim:  
*Vigilantibus, non dormientibus, jura subveniunt.*

Story Eq. Jur., Supra., § 529.

Dyer vs. Waters, 1 Dick, 484, page 489.

Dyer vs. Riley, 6 Dick, 124, page 130.

Dean vs. Dean, 1 Stock., 425, page 430.

See especially Badger vs. Badger, 2 Wall., 87, page  
 92.

- 20 Marsh vs. Whitmore, 21 Wall., 178, page 185.

A Court of Equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept on his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence. Where these are wanting, the court is passive and does nothing.

- 30 Buckingham vs. Ludlam, 10 Stew., 137, page 147,  
 quoting,  
 Smith vs. Clay, 3 Bro. C. C., 639, note.

The party who appeals to the conscience of the Chancellor in support of a claim, where there has been laches in prosecuting it, or long acquiescence in assertion of adverse rights, should set forth in his bill

specifically what were the impediments to an earlier prosecution of his claim; how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance; and how and when he first came to a knowledge of the matters alleged in his bill. Otherwise the Chancellor may justly refuse to consider his case, on his own showing, without inquiring whether there is a demurrer or formal plea of the statute of limitations contained in the 10 answer.

Marsh vs. Whitmore, 21 Wall., 178, page 185.

Badger vs. Badger, 2 Wall., 87, page 94.

Dean vs. Dean, 1 Stock., 425, page 432.

Stearns, Admr., &c., vs. Page, 1 Story's Rep., page 204.

## VII.

In that class of cases where the attorney takes from his client a bond or other security as compensation for 20 his services, the rule, as laid down in Brown vs. Bulkley, is, that the burden is laid upon the attorney, in order to sustain the contract, of showing its perfect fairness, adequacy and propriety—page 16, *supra*.

This rule, we submit, has been modified, and now is, that an agreement between attorney and client, concerning compensation for past or future services, wherein the Court finds that the client acted intentionally, with knowledge, and under no *actual* undue influence, will not be impeached on account of its subject 30 matter or provisions. Thus the element of adequacy is eliminated, the attorney released from the *onus* of showing fairness and propriety, and this *pseud* agreement elevated to the dignity of a binding contract.

2 Pomeroy Eq. Jur., § 960; Note 3.

Schomp vs. Schenck, *supra*.

Hassell vs. Van Houten, 12 Stew., 105, 110.

Cubberly vs. Cubberly, 6 Stew., 82, 86.

Terney vs. Wilson, 16 Vr., 282.

Mundy vs. Strong, (N. J.) 31 Atl. Rép., 611.

HERBERT A. DRAKE,  
Of Counsel with Defendant.

## New Jersey Court of Errors and Appeals.

Between

JOSEPH A. PORTER,  
Appellant,  
and  
MARTIN V. BERGEN,  
Respondent.

ON APPEAL  
FROM  
FINAL DECREE.

10

The appellant, in the spring of 1878, was elected Treasurer of the city of Camden, and shortly afterwards entered upon the duties of his office, and continued to exercise the duties thereof until about the month of February, 1881. The respondent, with some twenty others, was appellant's bondsman. At the time of appellant's removal from office there was a deficit of \$5,435.10, and in order to indemnify (page 19) <sup>20</sup> the bond, appellant placed in respondent's hands, cash and negotiable securities, and made to him a mortgage to secure the payment of \$4,000.00 secured upon properties 425 and 538 Cooper street, 432 and 434 Lawrence street, Camden, and a tract of land in Waterford township; he likewise assigned a mortgage (page 96) on a Taylor avenue property, which was paid to respondent

October 7, 1881, he receiving therefor \$535.00. The negotiable securities were practically turned into cash at once—respondent receiving, on February 1, 1881, \$1,000.00 in cash for a bond, and on February 5, 1881, \$994.33 in cash for some stock, and on March 19, 1881, the property 538 Cooper street was sold by appellant (page 96,) and the money paid to respondent, which, after deducting all expenses (including respondent's legal charges, &c.,) amounted to \$1,787.57. So that at this

10 time respondent had in his possession \$3,781.90 in cash; a mortgage securing \$500, with accrued interest; and the mortgage of \$4,000.00, above mentioned, (for which respondent had charged \$40.90 for his charges and expenses) secured upon four other properties. If a settlement had been made at once with the city the moneys advanced by respondent would have been \$1,694.10—see Master's statement, page 71. The placing of appellant's property in the hands of and under the control of respondent was done February 1, 1881, (page 19,)

20 and it was then in the power of the respondent, either as bondsman, or appellant's legal adviser, to settle with the city authorities. About this time, or shortly afterwards—by referring to a copy of the complaint or affidavit for bail (page 48, line 22,) it appeared February 5th, 1881,—a warrant was issued for appellant's arrest, and (page 30) bail was entered for his appearance at Court—May term, 1881,—by respondent, John B. Adams and respondent's brother Christopher.

The matter of settlement was still procrastinated, and

30 on April 16, 1881, suit was begun by the city of Camden on appellant's official bond, summons tested on that day and returnable April 29, 1881,—see page 63. On May 4, 1881, settlement was made with the city (page 34) in full payment of the claim so far as the (civil) suit instituted was concerned. The object of this delay by respondent was not capable of explanation by

him—see page 51. The testimony shows that the respondent (page 47) in the fore part of January, 1881, had represented to the Finance Committee of the city that all the cash was intact; on February 1, 1881, (page 19) he had all of appellant's property under his control; he had to go bail for his appearance, and finally had the annoyance of suit on the official bond. It was not until after all these things had transpired that respondent seemed to realize the injustice and wrong his procrastination was causing appellant, and effected a settlement with the city authorities as above stated. 10

On April 7, 1884, the property 425 Cooper street was sold and the net proceeds, amounting to \$1,404.48, paid to respondent; the Waterford township property was sold under foreclosure (page 46) and neither of these parties received anything therefrom. This therefore left under the control of respondent, the two properties 432 and 434 Lawrence street and concerning which this suit was brought.

The appellant frequently (pages 23, 26) asked for an account or statement from respondent (see respondent's testimony, pages, 45, 55) and was continuously refused satisfaction, and at last compelled to come into court for it. 20

On these Lawrence street properties there had been a decree in foreclosure proceedings, which appellant had paid (some \$1,600.00), and at the time of making his estates and properties over to respondent, on February 1, 1881, (see Exhibit D4, page 39) caused this decree to be assigned to respondent. Subsequently, about a year afterwards, the respondent directed the Sheriff to sell these properties under the assigned decree, and the respondent purchased the same for the nominal bid of \$1,000.00 and took title thereto himself—deed dated April 18, 1882—(see Exhibit D3, page 39) and applied the rents to his own use and likewise refused any satis- 30

faction to the appellant. By decree of January 4th, 1895, (page 64) these premises were decreed to be held in trust for the appellant and an account directed.

The appeal from the final decree brings up the whole case on its merits, at least to those merits of the case the appellant desires to have reviewed.

- 10     Terhune vs. Colton, 1 Beas., 312.  
        Crane vs. Decamp, 7 C. E. Gr., 614.  
        Decker vs. Ruckman, 1 Stew., 614.  
        Clair vs. Terhune, 8 Stew., 336.

The appellant therefore invokes the aid of this Court to reverse that part of the interlocutory decree directing the Master "to allow the defendant (respondent) the sum of one thousand dollars as counsel fees," because it is contrary to law, and is not warranted by the merits of the case.

20

#### I.

At the time appellant, at respondent's request, handed over the moneys and things to make settlement, and in fact during the whole transaction (page 24) nothing was said about a fee or compensation, and (pages 62, 63) there never was any agreement made or intimation of it. The respondent testifies that the next morning, after bail had been entered, appellant called on him at his request and said:

30

Page 31: "He would pay our firm such fees as was necessary to protect him in the suit (criminal); such moneys as we had to expend or advance for him if we succeeded in keeping him from going to jail" (page 35.) "He agreed to turn over to me all the rest of his personal property that he had or could control and

place in my hands. \* \* I was to keep him out of jail, if possible, and protect him as best I could" (page 39.) "The question was whether he was to go to jail or not, that is all, and if it became necessary to pay the city any money, that was only to protect him from going to jail." This, as above shown, was subsequently to the transfer of property and securities, &c., to respondent.

The respondent admits that after going bail he did nothing further in the matter. See page 58, last line, 10 *et seq.*

That nothing relative to the Lawrence street properties as a fee is manifest from respondent's testimony (page 35, *et seq.*) because the respondent admits that the settlement with the city had been made—May 4, 1881—before any conversation relative thereto was had.

It will be seen that in the matter of the \$4,000 mortgage, respondent had (page 15) fixed his costs and charges at \$40.90; in the sale of 538 Cooper street he likewise (page 16) deducted his costs, disbursements and charges; in sale of 425 Cooper street (page 17) likewise, 20 and has asked reimbursement for moneys advanced, with interest. Nothing therefore remained, to use respondent's testimony, but to keep appellant from going to jail.

It is respectfully submitted that there was no contract made which could be the ground of an action, neither was any service rendered by respondent, as he admits, hence the allowance of any compensation by the court was improper. 30

1 Perry on Trusts, s. 202.

Hopper vs. Ludlam, 12 Vroom, 182.

Schomp vs. Schenck, 11 Vroom, 195.

Zabriskie vs. Woodruff, 19 Vroom, 610.

The respondent claims that he took the title of the Lawrence street properties to the extent of a \$1,000.00

fee, and alleges that the conversation came up (page 35) after the settlement with the city of the suit upon the official bond—respondent admitting that he knew the appellant did not have anything. The circumstances are narrated on pages 36, 57. But respondent seems to forget that the decree was assigned prior thereto, and that he had refused to make any bill for his services, (page 58), and in any way to render a statement of account, (pages 45, 55, 58,) and it seems remarkable  
 10 that the forced sale of the Lawrence street properties was contemporaneous with the sale of 425 Cooper street, and the subsequent eviction of appellant by a writ of assistance. The respondent's admission (page 55) shows inferentially, if not conclusively, why he acted as he did—the power of the Court being used by a trustee to evict his *cestui que trust*. As the respondent admits, very frankly, that he did not render any statement, and in fact would not, it looks very much as if he thought that if he cleaned the appellant  
 20 out of every thing he possessed he could not give him any further annoyance.

See 1 Perry on Trusts, § 202.

The allowance of the counsel fee by the Court is not supported by our statutes.

§ 79, Chancery Act (Rev. 119) relates to foreclosures.

§ 113, same act (Rev. 113), as amended by § 122, refers to the retaining fee allowed counsel by statute, and the maximum is five per cent. of the decree.

30 These statutes are not applicable to this case.

O'Rourke vs. Cleveland, 4 Dick., 577.

If the allowance of the \$1,000.00 fee by the Court was within the Court's discretion, the amount was excessive and exorbitant. The respondent did nothing after entering bail (page 59) and the only question was, as respondent says (page 39), whether appellant was

“to go to jail” and the allowance of such a very liberal fee or compensation for practically doing nothing—and respondent admits such to be the truth—was in every sense excessive and exorbitant.

In the case of Moore vs. Zabriskie, 3 C. E. Gr., 51, the defendant acquired the complainant's property—as in this case. The complainant was indicted, tried and through defendant's exertion escaped capital punishment. Yet the Court, with the magnitude of that work, allowed only \$500.00 for the defendant's services. 10 And in our Courts of Oyer and Terminer, with the aid of statutory laws, allowances are made for *actual* work, not for doing nothing. In fact, without an indictment the respondent could not do anything, and there was no employment, nor could there be, until an indictment was found.

If such a thing as a contract for services existed, the 20 respondent could not have recovered from the appellant until the statute of limitations had been run. Hence respondent should have been under obligations to save appellant from criminal prosecution until the expiration of five (5) years from February 5th, 1881. Rev. Sup., 213, § 29.

And even then the respondent might have been guilty of procrastination—as he was in the settlement of the civil suit on the official bond—and overlooked the plea of the statute, (West Hoboken vs. Syms, 20 30 Vroom, 546,) and might have continued to hold on to this property acquired by him.

Therefore no counsel fee or compensation should, if of a contractual nature, ante-date the expiration of the statute of limitations.

If the allowance of this \$1,000.00 was within the

“grace” of the Court, no credit should have been allowed by the Master, or allowed by the final decree, until the date of its allowance in the interlocutory decree, to wit : January 4th, 1895.

## II.

The Master refused to allow the respondent an item  
 10 of \$75.00 (page 70,) and which sum was afterwards  
 allowed by the Court, (page 109) respondent claim-  
 ing that a year or two before the appellant was elected  
 Treasurer (page 53) he loaned him \$75.00; the receipt  
 or memorandum was asked for on the trial of the  
 cause, April 23, 1894, but was not produced, and was  
 again demanded before the Master, on January 30,  
 1895. The respondent simply alleging that it was lost,  
 (page 81) and having no one who had been in a posi-  
 20 tion to see it or examine it testify to that fact in his  
 behalf, afterwards admits (page 95) that it had nothing  
 to do with this matter. The appellant emphatically  
 denied the loan and was positive that it had never been  
 made.—(pages 62, 63.)

The burden of proof was on the respondent to prove  
 its existence, that it was not barred by time—his ad-  
 missions admitting that it was at least, if not more,  
 than five years old—the Master was correct in not  
 allowing it, and the Court was in error in allowing it,  
 on the hearing of the exceptions, and more especially  
 30 so in face of the respondent’s admission, if the note  
 had been made, that it had nothing to do with the case.

## III.

The Master also refused to allow an item of \$50.00  
 which the Court (page 109) subsequently allowed. The  
 answer (page 13) states that respondent’s brother Chris-

topher loaned appellant this money, making the note or due bill to the order of Bergen & Bergen, and the testimony of the respondent (page 40) is as follows: "I don't know whether it should be charged in the account or not. It was money just loaned him. I put it in because it was among the archives of it. Christopher lent him that money and took his due bill for it."

Hence, as this suit in no wise relates to the business of the firm, or the private relations of respondent's brother, the Master very properly excluded it and the learned Court was in error in not sustaining the Master. 10

#### IV.

The Court on final decree (page 109) allowed respondent commissions on sale of 538 Cooper street, amounting to \$50.00, and on \$5,000.00, the proceeds of sale of house 425 Cooper street, amounting to \$125.00.

As the sale of the property 538 Cooper street was made by the appellant, (page 96, line 20) and the respondent had nothing to do with it, (page 92, line 32) and the title was in the name of appellant's wife, and the money was paid to respondent for him to make settlement with the city in the suit upon the official bond, it is insisted that the Court was in error. In the statement to his answer, the respondent has embraced all his charges for the work he did in that matter. 20

As to 425 Cooper street, while it will be seen that the gross amount paid was \$5,000.00, on which the Court allowed commissions, yet the amount netted in any way to appellant's credit was only the sum of \$1,404.48, and this property was also sold by appellant, (page 21) and respondent had nothing to do with the sale (page 41). At the time of the defalcation there was a mortgage on this property held by M. B. Haines, which the respondent had assigned to his client, Eliza Schenck, 30

March 11, 1882, (pages 17, 86) and subsequently had the same sold under foreclosure proceedings, taking the title thereto in himself, and as soon as he had accomplished that, he immediately took proceedings to oust the appellant, his friend (?) therefrom by a writ of assistance, for which a charge of \$25.00 is allowed, and then from February, 1883, to April 7, 1884, the house remained idle—the Master charging appellant with interest and refusing to allow appellant anything while the house remained idle—see fourth exception, page 107. In the allowance of commissions the Court erred under the facts, and the Master erred in charging appellant with interest during the period the house remained idle by respondent's acts.

Moore vs. Zabriskie, 3 C. E. Gr., 51.

McKnight vs. Walsh, 8 C. E. Gr., 136.

The final decree is erroneous in allowing appellant costs only up to and including the interlocutory order of January 4, 1895,—see decree, page 113. The costs allowed appellant should have included costs in all proceedings to the final termination of the cause. In this case appellant frequently (page 23) asked for a statement and account, which the respondent (page 45) admits, and as he still persisted in refusing to render an account from the filing of the conclusions, July 24, 1894, until after the entry of the interlocutory decree, January 4, 1895, costs should be awarded the appellant up to final decree, as a matter of justice.

Moore vs. Zabriskie, *supra*.

The awarding of costs to respondent on the Master's accounting is not discretionary with the Court, but as matter of right and justice should be borne by respondent, because the accounting was through compulsion and enforced.

Burnham vs. Dalling, 1 C. E. Gr., 310.  
2 Daniel Ch. Pr., 1408.

The rule in the Chancery Court requiring each party to pay the Master's costs of examination and cross-examination was evidently disregarded, and the burthen of respondent's examination thrust upon appellant, which is contrary to justice and equity. It was not necessary for respondent to prove his accounts before the Master as he did, and had previously before the Court, for it remained with the appellant to require the accounting party to purge the account, and it was for him to ask it, not have it thrust upon him. 10

Now it will be seen by the respondent's examination of himself before the Master, that he exhibited an account, (page 92,) showing the gross assets as \$10,529.33, on which he pretended to have trumped up commissions of five per cent., which the Master properly declined to allow, in view of the testimony, and to which respondent took exceptions; the Court allowed as above shown two and one-half per cent. commission of \$7,000.00. If, therefore, he was unable to retain his pretended account *in toto*, he practically rendered no account, and it is insisted that respondent came under the common law rule, and is not entitled to any allowance for trouble or care. 20 30

Warbass vs. Armstrong, 2 Stock. 263.

It is respectfully submitted that costs, including the final decree, should have been allowed appellant as a matter of right and justice.

Loos vs. Obrv., 7 C. E. Gr. 52.

Frey vs. Frey's Adm., 2 C. E. Gr., 71.

Warbass vs. Armstrong, 2 Stock., 263.

State vs. Wood, 3 Zab., 560, 566.

All of which is respectfully submitted.

10

H. M. SNYDER, JR.,  
Of Counsel with Appellant.

# New Jersey Court of Errors and Appeals.

Between

JOSEPH A. PORTER,  
Appellant,  
and  
MARTIN V. BERGEN,  
Respondent.

ON APPEAL  
FROM FINAL  
DECREE.

10

## IN CHANCERY OF NEW JERSEY.

*To the Honorable Alexander T. McGill, Chancellor of  
the State of New Jersey:*

Humbly complaining unto your Honor, your orator,  
Joseph A. Porter, of the city of Camden, in the county  
of Camden and State of New Jersey, showeth: 20

1. That in the spring of the year eighteen hundred  
and seventy-eight your orator was elected the Treasurer  
of the city of Camden for the term of three (3) years,  
and that on the fifteenth day of March, in the year last  
aforesaid, he duly qualified as such Treasurer, by taking  
the oath of office and entering upon the duties of such  
office and giving bond to the city of Camden in the penal

sum of fifty thousand dollars, and which said bond was dated the \_\_\_\_\_ day of April, in the year last aforesaid, and was conditioned that your orator should well and faithfully discharge the duties of his office to the best of his ability and understanding for the term for which he was elected. That Martin V. Bergen and \* \* \* were the sureties of your orator, and in and by the said bond became and were bound for your orator's faithful performance of the duties for which he  
 10 was elected and had qualified.

2. That subsequently, and on or about the seventh day of February, in the year eighteen hundred and eighty-one, your orator was removed from the office of Treasurer of the city of Camden, to which he had been elected as aforesaid, by a resolution of the City Council of the said city, and that in order to save harmless and indemnify his bondsmen of and from any loss that they, or either of them, might sustain when his accounts  
 20 should be audited by the city of Camden, your orator did, on or about the thirty-first day of January, in the year last aforesaid, pay unto the said Martin V. Bergen, one of your orator's bondsmen as aforesaid, the sum of one thousand dollars; and on or about the third day of February, in the same year, your orator and Helen M. Porter, his wife, by indenture under their hands and seals, duly acknowledged and recorded in the office of the Register of Deeds of the county of Camden, in Book No. 28 of Mortgages, page 535, did convey unto  
 30 the said Martin V. Bergen in mortgage, to secure the payment of four thousand dollars with interest, all of your orator's real estate, to wit: premises known as 425 Cooper street, 538 Cooper street, 432 and 434 Lawrence street, and a farm containing fifty-one and twenty-five hundredths acres, situate at or near Waterford, in the county of Camden; that subsequently, and on or about the \_\_\_\_\_ day of February, last afore-

said, he paid unto the said Martin V. Bergen the sum of nine hundred and ninety-four dollars and thirty-three cents; that on or about the seventeenth day of March, in the year last aforesaid, your orator paid unto the said Martin V. Bergen the sum of two thousand dollars, and on the seventh day of October, in the year last aforesaid, your orator also paid unto the said Martin V. Bergen the further sum of five hundred and thirty-five dollars.

3. That on or about the fourth day of May, in the year last aforesaid, your orator is informed and believes it to be true that the said Martin V. Bergen, for your orator as such Treasurer of the city of Camden, and himself and \_\_\_\_\_ as your orator's bondsmen, settled all accounts that the city of Camden might or could have against your orator, or your orator's bondsmen; and that your orator has been informed that the amount paid to the city of Camden was the sum of five thousand four hundred and thirty-five dollars and ten cents, (\$5,435.10), which sum was the amount due the city of Camden from your orator, as Treasurer aforesaid, upon a full, careful and complete audit of his accounts, and said sum was received by the said city of Camden in full settlement of a suit then pending upon the official bond so as aforesaid given by your orator to the said city of Camden for the faithful performance of your orator's duties as Treasurer; and your orator's bondsmen and your orator were thereby released of and from the obligation they had entered into, as hereinabove fully set forth.

4. That upon premises No. 425 Cooper street there was a mortgage prior in execution, and registry to that given by your orator to the said Martin V. Bergen as aforesaid, to secure the payment of the sum of two thousand dollars, with interest in arrears for some period of time, and that foreclosure proceedings were

subsequently had thereon, and that it was suggested by the said Martin V. Bergen that he would advance for your orator the amount of the decree and take an assignment thereof and control the sale and purchase the same in at a sale under and by virtue of such decree; and that your orator should be allowed to find a purchaser therefor after he had gotten the title in his name, and that whatever moneys were realized from a sale thereof after the said Martin V. Bergen had become the owner of the title should be credited your orator on any sum or sums of money the said Martin V. Bergen or his co-bondsmen had advanced to the city of Camden in the settlement of your orator's accounts as Treasurer of the city of Camden aforesaid; that after the said decree was assigned, as had been understood and agreed upon as aforesaid, the said premises were advertised for sale, and after sundry adjournments so that there should not be any other purchaser, the said premises was sold by Theodore B. Gibbs, then Sheriff of the county of Camden, to the said Martin V. Bergen, and the said Theodore B. Gibbs, by deed under his hand and seal, dated the eleventh day of March, in the year eighteen hundred and eighty-two, granted and conveyed the said premises unto the said Martin V. Bergen, which said deed is of record in the office of the Register oi Deeds aforesaid, in Book No. 104 of Deeds, page 498, &c. That subsequently your orator, according to said agreement and understanding, was able to procure a purchaser for the said premises for the sum of five thousand dollars, and that after the said sale had been made and the said Martin V. Bergen was notified and approved of the same, the said Martin V. Bergen and Mary A., his wife, by deed under their hands and seals, dated the first day of April, in the year eighteen hundred and eighty-four, for the consideration of said sum of five thousand dol-

lars, granted and conveyed the said premises to one Asbury E. Irwin, the purchaser which your orator found as aforesaid. Which said deed is of record in the office of the Register of Deeds aforesaid, in Book No. 112 of Deeds, page 273, and to which your orator craves leave to refer.

5. That upon premises Nos. 432 and 434 Lawrence street there was a prior mortgage to that given as aforesaid by your orator and wife to the said Martin V. Bergen, held by one Naomi Haines, and that foreclosure proceedings were had thereon and that such proceed-  
 ings subsequently went to a decree, and execution was  
 issued thereon; that subsequently your orator paid the  
 amount of the decree and had such decree assigned to  
 the said Martin V. Bergen, and at the instance of the  
 said Martin V. Bergen, and in order to protect your  
 orator as alleged, and as a further indemnity to secure  
 your orator's bondsmen as aforesaid it was then and  
 there agreed that the said properties, to wit, 432 and 434  
 Lawrence street, should be sold and the title taken in  
 the name of the said Martin V. Bergen, and that  
 the said Martin V. Bergen would hold the same in  
 trust for your orator after the said Martin V. Bergen  
 and his co-bondsmen had been reimbursed and indemni-  
 fied for any and all sums of money advanced by himself  
 or co-bondsmen to the city of Camden in the settlement  
 aforesaid. That in pursuance of the said agreement the  
 said premises, 432 and 434 Lawrence street, were, on the  
 twenty-fifth day of March, in the year eighteen hun-  
 dred and eighty-two, sold under and by virtue of the  
 aforesaid decree, by William Calhoun, then Sheriff of  
 the county of Camden, to the said Martin V. Bergen,  
 for the nominal sum of one thousand dollars, and the  
 said William Calhoun, Sheriff as aforesaid, by deed,  
 under his hand and seal, dated the eighth day of April,  
 eighteen hundred and eighty-two, and of record in the

office of the Register of Deeds aforesaid, in Book 105 of Deeds, page 11, &c., granted and conveyed the said premises unto the said Martin V. Bergen, who now holds the title thereof, and has always received the rents, issues and profits thereof, and still receives the same and refuses to account to your orator therefor, to the great injury and oppression of your orator.

10 6. That your orator further shows, that he has frequently asked for an account and settlement and a conveyance of the said premises, 432 and 434 Lawrence street, and that he has never received any moneys from the said Martin V. Bergen on account thereof, or any statement thereof, except the sum of fifty dollars paid to your orator by one Samuel D. Bergen, in the absence of the said Martin V. Bergen.

20 7. That your orator charges that he has been unable to procure any statement or account from the said Martin V. Bergen, and believes that at the time of the assignment of the decree to the said Martin V. Bergen from the said Naomi Haines, as above set forth, that the said Martin V. Bergen had been fully paid and reimbursed any and all moneys he had advanced as your orator's bondsman as aforesaid, although he alleged that he had not, and that he has since received large amounts of rent from the said premises that were conveyed to him as aforesaid, and which he was to hold in trust for your orator after he and his co-bondsmen had been fully reimbursed for any and all moneys advanced by them in the settlement aforesaid of your orator's  
30 accounts with the city of Camden, and at which time, your orator has since been informed, they as well as your orator were released from the bond aforesaid.

And your orator claims a full and complete discovery of all matters and things concerning the premises.

And your orator well hoped that when he placed his property in the possession and under the control of the

said Martin V. Bergen for the indemnification of himself and fellow bondsmen and that he or they might be reimbursed and indemnified of and from any loss that he or they might sustain by reason of him or them becoming the bondsmen of your orator and bounden to the city of Camden for the well and faithful discharge of his duties as Treasurer of the city of Camden, that he would have accounted to your orator for such property, and that when the said Martin V. Bergen and his co-<sup>10</sup> bondsmen had been fully indemnified and saved harmless from any and all loss he or they might have sustained by reason of the premises, that he would have re-conveyed to your orator any property of whatsoever nature he had and would have placed your orator in possession thereof and accounted for any rents, issues and profits which he had received after deducting any lawful interest, charges, taxes, or necessary repairs in and about the premises, as in equity and good conscience he ought to have done.

All which actings, doings and pretences of the said<sup>20</sup> defendant are contrary to equity and good conscience and tend to the manifest wrong and injury and oppression of your orator in the premises. In tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable court, where matters of this nature are properly cognizable and relievable; To the end, therefore, that the said Martin V. Bergen may<sup>30</sup> without oath, to the best of his knowledge, remembrance, information and belief, true, full and perfect answer make to all and singular the matters aforesaid, and that he may answer, in manner aforesaid, and set forth the amount paid to the city of Camden in settlement of the accounts of your orator as Treasurer of the city of Camden, and when; the amounts of cash re-

ceived by him from your orator, from time to time, for the purpose of affecting such settlement and liquidating any claim the city of Camden might have against your orator as Treasurer as aforesaid, or against the said Martin V. Bergen or his co-bondsmen, as your orator's bondsmen, and what sums have been expended by him in and about the premises, or any part thereof, and what sums he has received for rents, issues and profits, or  
 10 from the sale of any of them, and what amounts of money he has charged for interest, taxes or other proper costs and charges, and that the said Martin V. Bergen may be decreed to account to your orator in the premises, and the premises Nos. 432 and 434 Lawrence street may be decreed to be held in trust for your orator, as in fact they are and were so understood and agreed at and before he took the title to the same; and that your orator may have such further and other relief in the premises as the nature of the case may require and as  
 20 may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Martin V. Bergen, 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 premises, and to stand to, abide by and perform such order and decree therein as  
 30 to your Honor shall seem meet and be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

H. M. SNYDER, JR.,

Sol. for and of Counsel with Complt.

ANSWER OF DEFENDANT MARTIN V.  
BERGEN.

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

He admits, that in the spring of the year eighteen <sup>10</sup> hundred and seventy-eight, the complainant was elected Treasurer of the city of Camden for the term of three years; that he was duly qualified as such by taking the oath of office and giving a bond to the city of Camden in the sum of fifty thousand dollars, and that this defendant, together with eighteen other persons, became the complainant's security on said bond for the faithful performance of his duties as said treasurer. He also admits that the said complainant was removed from said <sup>20</sup> office by a resolution of the City Council of the City of Camden. But this defendant denies that in order to save harmless and indemnify his bondsmen from any loss that they or any or either of them might sustain, the said complainant, on or about the the thirty-first day of January, eighteen hundred and eighty-one, paid to this defendant the sum of one thousand dollars or any other sum, or that the said money came into the hands of defendant, except as hereinafter stated. And this <sup>30</sup> defendant admits that on or about the third day of February, in the year last aforesaid, the complainant, together with his wife, made and executed a mortgage to this defendant for the sum of four thousand dollars, with interest, on the premises known as 425 Cooper street, 538 Cooper street, 432 and 434 Lawrence street, and a tract of land or farm containing fifty-one and

twenty-five hundredths acres, situate at or near Waterford, but denies that the same was given or made for the protection of the bondsmen of said complainant, or for any other purpose than as hereinafter stated, and also denies that on or about the day of February, in the year last aforesaid, the complainant paid unto this defendant the sum of nine hundred ninety-four dollars and thirty-three cents, or any other sum, or that the said sum of money came into the hands of this defendant except as hereinafter stated, and also denies that on or about the seventeenth day of March, in the year last aforesaid, the complainant paid to this defendant the sum of two thousand dollars, or any other sum, and also denies that on the seventh day of October, in the year last aforesaid, the complainant paid unto this defendant the sum of five hundred and thirty-five dollars, or any other sum, or that the said sums of money came into the hands of defendant except as hereinafter stated.

And this defendant denies that on or about the fourth day of May, in the year last aforesaid, this defendant paid to the city of Camden the sum of five thousand four hundred and thirty-five dollars and ten cents, the amount claimed to be due by the city of Camden from the said complainant as the Treasurer thereof; but states the truth to be, that on or about the fourth day of May, in the year aforesaid, this defendant, together with the complainant, settled up the accounts of the complainant as Treasurer with the city of Camden by the said complainant's giving his check on the Camden Safe Deposit and Trust Company to the order of James E. Hays, the solicitor of said city, for the sum of six thousand one hundred and forty-nine dollars and twenty-four cents; also his check on the First National Bank to the order of said solicitor for the sum of two thousand eight hundred and forty-six dollars

and thirteen cents; also check of Bergen & Bergen to the order of complainant and by the complainant endorsed to the order of said solicitor for the sum of five thousand four hundred and thirty-five dollars and ten cents, which last sum was claimed by said city as the amount that the complainant was in default to said city as its said Treasurer.

And this defendant, further answering, admits that there was a mortgage of two thousand dollars on premises No. 425 Cooper street prior to the mortgage so as aforesaid given by the complainant to defendant, and that the interest thereon was some four or five years in arrears, and that foreclosure proceedings were had thereon, and that the property was subsequently sold by the Sheriff, and that this defendant became the purchaser thereof, but denies that he ever took an assignment of the decree or made any arrangement with said complainant in reference to the control of said sale, or that there was any arrangement about the complainant's finding a purchaser for same, and says that this defendant has no knowledge of the complainant's ever finding a purchaser for said property, but admits that after defendant became the purchaser at said Sheriff's sale, he sold and conveyed said property to one Asbury E. Irwin for the sum of five thousand dollars, and states that the said complainant was at that time occupying the same, and in order to get possession thereof and deliver the same to said purchaser, it became necessary to take supplementary proceedings in the Court of Chancery, under said foreclosure proceedings, to oust the complainant of the possession thereof, and that the said complainant did not remove therefrom until after a writ of assistance was ordered by said court.

And this defendant admits that the farm set forth and described in complainant's bill as located at or near Waterford, Camden county, New Jersey, was covered

by said four thousand dollar mortgage made by said complainant and wife to defendant, but has no knowledge as to what disposition was made thereof by said complainant, but had been informed that said property was sold under the foreclosure of a former mortgage thereon, but this defendant has received nothing therefrom.

And this defendant admits that on premises 432 and  
 10 434 Lawrence street there was a mortgage prior to that given as aforesaid by the complainant to this defendant, held by Naomi Haines, but states that said mortgage had been foreclosed and execution thereon in the hands of the Sheriff prior to the making of said mortgage to this defendant, and that the complainant had paid over, prior to the making of the mortgage to this defendant, to the solicitors of said Naomi Haines, the amount of the decree. And this defendant denies that complainant had such decree assigned to this defendant, at the  
 20 instance of said defendant and as a further indemnity to secure complainant's bondsmen, or that it was agreed that said properties should be sold, or that the title should be taken in the name of defendant, and that defendant would hold the same in trust for complainant; but states the truth to be that it was agreed that defendant should be the bona fide owner thereof and that he should consider the said conveyance as on account of his fee for defending the complainant in the said suit of the city of Camden and for delivering him from  
 30 said criminal proceedings, and *that subsequently* for the purpose of conveying the title of said houses to this defendant on account of his fees in his defence, the decree was assigned to this defendant and said property was sold by the Sheriff, and this defendant became the purchaser thereof for the sum of one thousand dollars, which sum was the amount he was to take said properties for on account of his fees; that he shortly thereafter

took possession thereof and has controlled and managed the same as his own since that time and is the present owner thereof.

And this defendant, further answering, denies that the complainant, until years after the whole of the foregoing transactions, ever asked for an account and settlement, and denies that complainant has ever requested a reconveyance of said Lawrence street properties, because it was always understood between the defendant and complainant that the complainant was in debt to this defendant and had no means with which to pay this defendant; and also denies that Samuel D. Bergen ever paid, loaned or advanced to said complainant the sum of fifty dollars, but states that his brother, Christopher A. Bergen, loaned to the said complainant the sum of fifty dollars, for which the complainant give him his note or due bill to the order of Bergen & Bergen, dated May fourth, eighteen hundred and eighty-four, payable on demand.

And this defendant, further answering, denies that any of the moneys that he has received from any source whatever were received by him in trust, for the protection of the bondsmen of said complainant, or that said bondsmen or any of them knew or had anything to do with the transactions between the complainant and this defendant, but this defendant states the truth to be, that in the latter part of January or the first part of the month of February, eighteen hundred and eighty-one, the said complainant became a defaulter as the Treasurer of the city of Camden; that complaint was made before Charles Cox, a committing magistrate in the city of Camden, and a warrant for the arrest of said complainant issued; that before the warrant was served complainant fled to the city of Philadelphia, and while there sent for this defendant, who went to Philadelphia and found complainant at the St. Charles Hotel,

on Fourth street, between Market and Arch streets, and there had a consultation with him and made an arrangement to relieve him of his arrest, and met him by appointment that same night at the residence of said committing magistrate, and procured as bail for complainant Captain John Adams, C. A. Bergen and this defendant, and the complainant was released thereon; that the next morning the complainant came to this defendant's office, in pursuance of the arrangement made the night before, and gave him an order on James B. Dayton, with whom he had left a portion of the moneys of the city of Camden on the day he fled to the city of Philadelphia, for a sum which is the one thousand dollars which complainant charges in his bill as having been paid to defendant on the first day of February, eighteen hundred and eighty-one; and also left with the defendant an assignment or order for stock of the West Jersey Ferry Company, which was pledged at the Camden Safe Deposit and Trust Company, which stock this defendant obtained and afterwards sold to Wilbur F. Rose for the sum of nine hundred ninety-four dollars and thirty-three cents, which sum is the amount charged in complainant's bill as having been paid on the day of February, eighteen hundred and eighty-one, to this defendant; that this defendant obtained from Frank Skinner, out of moneys from property sold on Taylor's avenue, above Fifth, the sum of five hundred and thirty-five dollars, which is the money charged in said bill as having been paid by the complainant to this defendant on the seventh day of October, one thousand eight hundred and eighty-one; that on the third day of February, eighteen hundred and eighty-one, the said complainant, together with his wife as hereinbefore stated, made a mortgage to the defendant for the sum of four thousand dollars on the properties mentioned in the

bill of complaint; that the moneys so as aforesaid collected by this defendant and said mortgage so given were taken and received by defendant for the sole and only purpose of protecting the complainant from his arrest, and keep him if possible from being sent to State Prison for his said defalcation, and to pay to this defendant such fees and charges as this defendant should make for his services as his attorney and counsel, and also to reimburse him for such moneys as were then owing by complainant to this defendant and for such moneys as this defendant should be necessitated to pay for taxes, interest and costs. 10

This defendant, further answering, denies that the protection of the bondsmen was ever referred to, or that the payment of the money to the city, for which he was in default, was otherwise considered than as a possible necessity or means to prevent and save the complainant from criminal prosecution.

And this defendant, further answering, says that the following is a statement of the moneys received and of disbursements made by defendant to wit: 20

1881.		
Feb'y 1.	Received from James B. Dayton, as above stated.....	\$1,000 00
Feb'y 5.	“ from sale of W. J. Ferry Co. stock, as above stated	994 33
Oct. 7.	“ from Frank Skinner from Taylor ave. property, as above stated.....	535 00

ADVANCES AND EXPENSES.

1881.			30
	Loaned Jos. A. Porter, by Deft., to pay tuition of daughter.....	\$75 00	
Feb'y 4.	Drawing mortgage, Jos. A. Porter to Martin V. Bergen.....	\$10 00	
“	Recording.....	1 50	
“	Register's search, (Waterford land)	2 00	

Feb'y 10.	Cash, Martin V. Bergen to Jos. A. Porter.....	\$6 00	
"	Expenses to Trenton .....	2 00	
"	Circuit Court search.....	4 00	
"	Register's " .....	11 10	
"	Supreme Court " .....	2 30	
"	Tax search.....	2 00	
			————— \$115 90
1881.			
May 4.	Cash advanced by defendant to the complainant to pay deficiency due as Treasurer to city of Camden .....		5,435 10
IO			
1884.			
May 8.	Cash loaned complainant. ....		50 00

## ACCOUNT OF 538 COOPER STREET.

1881.			
March 19.	Received from Hannah Gibson from proceeds of sale of 538 Cooper street. ....	\$2,000 00	

## AMOUNT TO BE DEDUCTED THEREFROM.

20	1881.		
	March 19.	Drawing deed and recording, Porter to Gibson.....	\$6 25
	"	Drawing lease, Gibson to Porter...	5 00
	"	" and recording release, Martin V. Bergen to Jos. A. Porter from said \$4,000 mortgage.....	6 25
	May 3.	Int. on mortgage paid to S. H. Grey .....	46 33
	June 30.	Paid Geo. M. Thrasher, Tax Receiver, taxes for 1879 and 1880...	71 80
30	July 6.	Paid Geo. M. Thrasher, Tax Receiver, taxes for 1877 and 78.....	76 80
			————— \$212 43 \$1,787 57

## ACCOUNT OF 425 COOPER STREET.

1884.			
April 7.	Rec'd of Asbury E. Irwin from sale of 425 Cooper street.....	\$5,000 00	

AMOUNT TO BE DEDUCTED THEREFROM.

1882.			
March 11.	Amount of decree on the mortgage of Martha B. Haines, and by her assigned to Eliza Schenck, together with interest and costs....	\$2,902 82	
1884.			
April 7.	Int. thereon from March 11, '82 to April 7 1884.....	361 40	
	Drawing assignment of mortgage, Martha B. Haines to Eliza Schenck .....	5 00	TO
1882.			
March 25.	Recording deed, Theodore B. Gibbs, Sheriff, to Martin V. Bergen .....	3 00	
July 3.	Michael Doyle, fixing curb.....	2 50	
Sept. 30.	Tax, 1882 .....	58 57	
1883.			
Feb'y 21.	Cos's and expenses for order of possession.....		\$25 00
1884.			
April 22.	Water rents for '81 '82 '83.....	26 40	
1883.			
Sept. 29.	Taxes, 1883.....	61 99	
1884.			
April 7.	Paving Cooper st.....	92 80	
Oct. 30.	Tax 1881 (compromised).....	49 85	
1883.			
June 16.	George Burton, cleaning well.. .....	6 09	
		<u>\$3,595 52</u>	
			<u>\$1,404 48</u>

RECAPITULATION.

1881.			
May 4.	Dr. to money advanced to Porter to pay deficiency due as Treasurer..	\$5,485 10	
Feb. 4, 10.	Dr. to advances and expenses,.....	115 90	30
" 1.	Cr. by money rec'd from Jas. B. Dayton.....	\$1,000 00	
" 5.	Cr. by money rec'd from sale of Ferry Stock.....	994 33	
March 19.	Cr. by money rec'd from sale of 538 Cooper.....	1 787 57	
		<u>\$3,781 90</u>	
			<u>\$5,551 00</u>
			<u>3,781 90</u>

1881.			
May 4.	Bal. due Martin V. Bergen.....	\$1,769 10	
	Int. from May 4, '81 to Oct. 7, '81, (5 mo. 3d).....	45 11	
		<hr/>	
		1,814 21	
Oct. 7.	Cr. by cash from Frank Skinner (Taylor ave.).....	535 00	
		<hr/>	
		1,279 21	
	Int. from Oct. 7, '81, to April 7, '84, (2 yrs. 6 mo.)....	191 88	
		<hr/>	
1884.		1,471 09	
IO April 7.	Rec'd from sale of 425 Cooper.....	1,404 48	
		<hr/>	
		66 61	
May 8.	Cash loaned to complainant.....	50 00	
		<hr/>	
"	Bal. due deft. from complt .....	\$116 61	

BERGEN & BERGEN,  
Sols. of & Counsel with Deft.

20

REPLICATION IN USUAL FORM.

Transcript of stenographer's evidence taken in the above entitled cause, before his Honor, Robert S. Green, Vice Chancellor, at the Chancery Chambers, Camden, N. J., April 23d, 1894, at 11 A. M.

30 JOSEPH A. PORTER, being duly sworn according to law, on his oath saith:

Examined by Mr. Snyder.

Ques. You were Treasurer of the City of Camden?

Ans. Yes, sir.

Ques. From when and to when?

Ans. From 1878 to 1881.

Ques. Martin V. Bergen was one of your bondsmen?

Ans. He was.

Ques. In 1881 did you have any occasion to have any transaction with Mr. Bergen? State what you did at that time.

Ans. Yes; owing to a deficit of \$5,435.10 as City Treasurer, I placed in Mr. Bergen's hands, as sureties, cash and negotiable securities to indemnify the bond.

Ques. Did you also make a mortgage for \$4,000?

Ans. I did for the properties 425 and 538 Cooper 10 street, and fifty-one acres of land in Waterford township, and properties 432 and 434 Lawrence street.

Ques. Did Mr. Bergen make a settlement with the city?

Ans. He did.

Ques. Why didn't you make a settlement direct with the city?

Ans. Well, Mr. Bergen, being a bondsman, had requested that I should hand over the moneys and things into his charge to make a settlement. 20

Ques. Had Mr. Bergen full control of the matter?

Ans. Yes, sir.

Ques. What time was this?

Ans. On February 1st, 1881.

Ques. From the time the property was put into Mr. Bergen's control until the settlement was had, your actions were guided by Mr. Bergen?

Ans. Yes, sir; that is it.

Ques. Do you recollect about 425 Cooper street, the 30 foreclosure of that?

Ans. Yes, sir.

Ques. Who held that mortgage?

Ans. James B. Dayton represented the mortgage of \$2,000.

Ques. Did that come to foreclosure?

Ans. Yes, sir.

Ques. Had you any conversation with Mr. Bergen about the sale of that property?

Ans. Yes, sir; Mr. Bergen called at my house, and said that he thought it advisable to have the property sold, and take an assignment of the payment of the mortgage and interest.

Ques. Have you the amounts Mr. Bergen paid Mr. Dayton?

Ans. Yes, sir; I have Mr. Bergen's statement here; it was \$2,658.33.

Ques. What is that you have?

Ans. A statement Mr. Bergen furnished me.

Mr. Snyder: I offer this letter, dated November 16, 1883, addressed to Joseph A. Porter, and signed Bergen & Bergen, and is as follows:

“DEAR SIR:—We settled the mortgage with Mr. Dayton as follows:

Mortgage \$2,000, interest from February 1, 1876, to July 1, 1881, five years five months, at seven per cent. per annum, \$758.33, less amount paid March 14, 1880, \$100—\$658.33.

Amount paid Mr. Dayton \$2,658.33.

Yours respectfully,

BERGEN & BERGEN.”

Marked Exhibit C1.

30 Ques. After the sale of 425 Cooper street, who had charge of that property?

Ans. I was still in possession, living there for some time.

Ques. How long did you remain there?

Ans. Probably a year.

Ques. Now, had you anything to do with the sale of that property?

Ans. I had notices on the premises to apply 522 Penn street; I think that is where we were living then.

Ques. The notice was to apply to you?

Ans. Yes, sir.

Ques. Did Mr. Bergen know that notices of that sort were placed there?

Ans. Yes, sir.

Ques. Did you succeed in selling the property?

Ans. Mr. Irwin made application to me for the purchase of the property. I told him the price was \$5,000, 10 and I afterwards consulted Mr. Bergen about it, and he thought the property was worth \$5,500, and the matter went on for some time, and finally concluded to sell to Mr. Irwin for \$5,000.

Ques. Did you ever receive any of those moneys?

Ans. No, sir.

Ques. As to the properties on Lawrence street, 432 and 434 Lawrence street, were they under foreclosure?

Ans. Yes, sir.

Ques. Who paid the money on these decrees? 20

Ans. I paid it, some sixteen hundred and odd dollars.

Ques. Was that assigned to any person after its payment?

Ans. Well, it was understood by Gaskell & Sooy that they were to assign it to anyone I named.

Ques. Did you afterwards control the execution after that?

Ans. Yes, sir.

Ques. Was any sale had of that? 30

Ans. Yes, sir.

Ques. Will you state what led up to the sale of these properties?

Ans. They were to be for my benefit; it was supposed at that time we would have sufficient funds to meet all demands of the city—(interrupted).

Ques. Can you state whether any arrangements were made as to the disposition of this property after you had purchased this decree made by you with Mr. Bergen?

Ans. What arrangements?

Ques. If any arrangements were made?

Ans. Yes, sir; there was an arrangement made.

Ques. State what the arrangement was as to this decree?

10 Mr. Drake: I object to that, and ask that the examination be confined to the conversation.

Court: You may state what took place—what was said in the first place. I understand you to say that there was an arrangement made with yourself and Mr. Bergen; now state what was said by yourself and Mr. Bergen which resulted in that arrangement; what did you say and what did he say?

20 Ans. They were assigned to Mr. Bergen as I have stated—(interrupted).

Ques. At whose request?

Ans. At Mr. Bergen's request.

Ques. What was assigned?

Ans. 432 and 434 Lawrence street properties.

Ques. What do you mean?

Ans. The assignment of the decree.

Ques. Was the sale made under that decree?

Ans. Yes, sir.

30 Ques. Had you any conversation with Mr. Bergen as to his purchasing under this decree?

Ans. Yes, sir.

Ques. State the conversation?

Ans. I cannot recollect the conversation now, but the properties were to be purchased, you know, for my benefit, as far as I can recollect—I cannot recall the conversation now.

Ques. Did it have any bearing on this statement with the city of Camden?

Ans. It was given in the first instance to indemnify the bondsmen, you know, among the other securities.

Ques. At the time of the purchase of this decree, do you know what the value of these two houses was?

Ans. I refused \$1,250 for 434 Lawrence street some years ago.

Ques. Before the Sheriff's sale?

Ans. Yes, sir, 10

Ques. Are the houses similar houses?

Ans. Yes, sir.

Ques. After the sale was had, had you any conversation with Mr. Bergen as to the disposition of that property?

Ans. I cannot recall now.

Ques. Who collected the rents?

Ans. Mr. Bergen has been collecting the rents since January 23d, 1882.

Ques. Have you ever called on Mr. Bergen to render you an account or statement of your transactions with him? 20

Ans. I have repeatedly.

Ques. Relating to this matter?

Ans. Yes, sir; repeatedly I have.

Ques. In what way?

Ans. In person.

Ques. Have you ever been able to procure any?

Ans. Never.

Ques. Can you state how frequently you have asked for this statement? 30

Ans. Well, I think it is safe to say four days in a week for the average, for months, asking for a settlement.

Ques. Have you ever received any moneys from Mr. Bergen on account of this matter?

Ans. Fifty dollars through Samuel D. Bergen, who paid me that amount.

Ques. Was ever anything said in relation to a fee or compensation?

Ans. No, sir; no reference made to a fee, not the slightest intimation.

By the Court:

10 Ques. Do you mean by that, that this whole transaction between you and Martin Bergen was had without any reference whatever to his being counsel for you?

Ans. Yes, sir.

By Mr. Snyder:

Ques. In what capacity, now, was Mr. Bergen acting in this matter?

(Objection by Mr. Drake as incompetent, and objection  
20 sustained.)

Ques. What took place between you?

Ans. Mr. Bergen was a surety on the bond, and whatever advice was necessary to be given about the matter he was consulted.

By the Court:

Ques. In what capacity, as surety?

Ans. No, sir.

30 Ques. Well, what?

Ans. As a lawyer.

By Mr. Snyder:

Ques. Did Mr. Bergen in any of these matters act for you as attorney?

Mr. Drake: I object to that question as leading.

(Objection sustained.)

Ques. Was suit ever brought on the bond ?

Ans. Yes, sir.

Ques. Was any plea or defense put in ?

Ans. Not that I am aware of.

Ques. Who had the charge of the matter of this suit on the bond ?

Ans. Mr. Bergen.

Ques. Was this suit instituted previous to your placing all this property in his name ?

Ans. No, sir.

10

Ques. How long subsequently ?

Ans. I cannot say positively, a month or two probably.

Ques. Who made the settlement with the City Solicitor, James E. Hays ?

Ans. Mr. Bergen.

Ques. Were you present ?

Ans. I was.

Ques. Did you act in that capacity personally or through an attorney ?

20

Ans. Through Mr. Bergen as attorney.

Ques. And did Mr. Bergen have the entire charge of that matter ?

Ans. Yes, sir; he had.

Ques. Can you state whether on the two or three months intervening between the time you handed this property to Mr. Bergen and the settlement of the suit ?

Ans. No, sir; I cannot.

Ques. Did you have any direct communication with the city or its law officers in reference to adjusting your matters ?

Ans. No, sir; I have not.

Ques. Who appeared for you in those matters ?

Ans. Mr. Bergen.

By the Court:

Ques. Have you ever received from Mr. Bergen the bond or mortgage of \$4,000, which you gave him?

Ans. No, sir.

Ques. And never, as I understand, received any account whatever?

Ans. No, sir; none whatever.

Ques. Although you have made repeated demands?

10 Ans. Yes, sir.

By Mr. Snyder:

Ques. Can you explain why this matter seemed to lay so long and never was brought to suit?

Ans. He never endeavored to bring it to suit; he had other counsel employed.

Ques. Who?

Ans. Mr. Flanders.

Ques. Was it in his hands?

20 Ans. Yes, from 1885.

Ques. Up to when?

Ans. Up to 1893; I paid him \$50 to take the case, as a retainer.

Cross-examination.

By Mr. Drake:

Ques. Witness being shown D1, for identification, is asked whose signature it bears?

30 Ans. My signature.

Ques. When did you sign that?

Ans. The date of it, May 8, 1884.

Ques. Whose handwriting is the body of it filled up by?

Ans. Samuel Bergen, I think.

Ques. Does that represent the \$50 you received of Samuel Bergen, that you spoke of this morning?

Ans. That is the only \$50 I ever got of Mr. Bergen to my recollection.

Mr. Drake: I offer that paper in evidence.

(Marked "Exhibit D1.")

Re-direct examination.

By Mr. Snyder:

10

Ques. Who paid you this \$50?

Ans. Samuel Bergen.

Ques. Did he ask you for any receipt, or anything of that sort?

Ans. I cannot say about that.

Ques. What was said between you and Samuel D. Bergen at the time this was given?

Mr. Drake: I object to that question, as Samuel D. Bergen is not a party to this suit.

20

The Court: This paper will speak for itself; it is a paper that is entirely definite and certain in its terms; it cannot be altered by any previous conversation. This paper on its face purports to be a promise to pay; you cannot show that it is anything else.

MARTIN V. BERGEN, being duly sworn according to law, on his oath says:

Examined by Mr. Drake:

30

Ques. Where do you live?

Ans. In the city of Camden.

Ques. What is your business or profession?

Ans. I practice law.

Ques. For how long have you done so in this city?

Ans. I was admitted in November, 1866, I believe.

Ques. Do you hold any public position in this town? If so what, and how long have you held it?

Ans. The only public position I ever held, I am superintendent of the schools of the Board of Education of the city of Camden.

Ques. For how long have you been such superintendent?

Ans. About ten years.

10 Ques. Has your term been continued?

Ans. There was one year with a little intermission in it, but I forget how long ago it was, I forget how long it was.

Ques. Do you know this complainant?

Ans. Yes; I have known him and done business for him.

Ques. Under what firm name?

Ans. Bergen & Bergen.

Ques. Who is your partner?

20 Ans. Christopher A. Bergen.

Ques. Have you any other partner?

Ans. No, sir.

Ques. You were one of the bondsmen of Mr. Porter, were you not?

Ans. Yes, sir.

Ques. State what occurred about the time Mr. Porter got into trouble in the city to bring you in contact with him and what took place between you.

30 Ans. Either about the latter part of January or the first of February, 1880, or 1881, I forget which, but I think it was 1881, a friend of Mr. Porter's came to me and told me that he, Mr. Porter, was in the city of Philadelphia and wanted to see me, that he had had trouble with the city about the finances, and I went over to where I was told I could see him and I found him and saw him.

Ques. Where?

Ans. At the St. Charles Hotel—a hotel on Fourth street, between Arch and Market streets; I think it was the St. Charles, but I may be wrong in the name.

Ques. Third or Fourth street, which?

Ans. I think it was Fourth street, I don't know exactly. At any rate I went over there to see him and saw him. I might say, first, that this party didn't know where I could see him and went away and then he came back again afterwards and told me where I could see him, and I went over that evening and saw him where he told me, and then I came back again and Mr. Porter had agreed to meet me in Camden at about twelve o'clock that night. 10

Ques. What conversation took place between you and Mr. Porter in Philadelphia?

Ans. Mr. Porter told me what his troubles were with the city and about how much he was deficient, so as to keep his accounts with the city, and that a warrant had been issued for him, and that he, under the advice of some one he had seen, had gone over to Philadelphia, and there is where he was then, where we talked over the matter. 20

Ques. What did he want you to do for him?

Ans. What he wanted me to do for him was to try and get him out of his troubles.

By the Court:

Ques. What did he say to you?

Ans. He told me he was behind with the city of so much money, and that a warrant had been issued for him and was in the hands of some officer, I don't know who—he did tell me, but I forget now who it was—and that he wanted me to tell him how to get out of the trouble. 30

By Mr. Drake:

Ques. Did you advise him what course to take?

Ans. I advised him to come over to Camden and give bail for his appearance first.

Ques. What next did you advise him to do?

Ans. He carried that advice out; he did give bail.

Ques. Before whom—Justice Cox?

Ans. Yes, before 'Squire Cox, I think he was then called, City Recorder; I am not certain—at any rate he  
10 was committing magistrate, and he was Recorder at one time.

Mr. Snyder: I object unless you show the warrant.

The Court: It is competent for the witness to state what he was told by complainant, and it is also competent for him to show what took place before the Justice, although he must not characterize it.

By the Court:

20 Ques. What was done when you got before 'Squire Cox?

Ans. We entered bail.

By Mr. Drake:

Ques. What was done?

Ans. Captain John Adams, my brother Christopher and myself went his bail.

Ques. To do what?

Ans. For his appearance at the next term of court.

30 Ques. That would be the May term of 1881?

Ans. Well, yes, that is right.

Ques. Do you remember the amount?

Ans. No, I do not.

Ques. Was the bail accepted?

Ans. Bail was accepted and he was discharged on the recognizance having been entered.

Ques. What next occurred?

Ans. Next morning he came to the office and we entered into an agreement as to the management of the affairs.

Ques. What was the arrangement?

Ans. He agreed to pay me or our firm—

Mr. Snyder: Let us have the conversation.

Witness: He said he would pay our firm such fees as was necessary to protect him in the suit, such moneys 10 as we had to expend or advance for him, and if we would succeed in keeping him from going to jail—there may have been some more verbiage about it, but that is the gist of it as I remember it.

Ques. Did he speak of what moneys or property he had?

Ans. The question of paying money over to the city was not the question with us at all then.

Ques. There was a \$4,000 mortgage executed, was there not?

Ans. There was a \$4,000 mortgage executed to me to cover all that was supposed to be in the property that he had over and above the incumbrances on it. 20

Ques. This brings you up to the matter of the account?

Ans. He also agreed to turn over to me all the rest of his personal property that he had or could control and place in my hands, but subject to—well now, that is a deduction rather than a fact—anyhow, I was to keep him out of jail if possible and protect him as best I could. 30

Ques. Did he have any fee to hand you at that time?

Ans. No, sir, he did not. He then, or within a day or two thereafter, executed a mortgage of \$4,000. He gave me an order for the money that he had left with Mr. Dayton, which was a portion of the money that he

had in his hands of the city's at the time he went away. He assigned me some stock in the West Jersey Ferry Company, and I believe that is all he gave me; I don't now recall anything else.

Ques. What about the Taylor avenue property?

Ans. That was not in it at all that time; that came out of a foreclosure on Taylor's avenue, on the England property, and the amount as stated in the answer was  
 10 \$535. That was paid to me by Frank Skinner out of the sale of that property in which Mr. Porter had an interest.

Ques. State generally what property came into your hands besides the property covered by mortgage?

Ans. The first money that came into my hands was \$1,000 from Mr. Dayton.

Ques. When?

Ans. On February 1st, 1881, and on February 5th I received from the sale of some West Jersey Ferry Com-  
 20 pany stock \$994.33, that was sold to Mr. Rose, cashier of the National Bank. Then on October of the same year I got from Frank Skinner the \$535 I have spoken of.

Ques. What did you realize from the property covered by the mortgage?

Ans. From No. 538 Cooper street I realized \$1,787.57.

Ques. When?

Ans. Well, I received that on March 19th, 1881. Now, the account of that house is as stated here in the answer, and I will go over the items if you want them.

30 Ques. State if there was any other property—what did you realize on 425 Cooper street?

Ans. On 425 Cooper street we realized \$1,404.48.

Ques. When?

Ans. April 7th, 1884.

Ques. What large sum of money did you pay out for Mr. Porter, and when?

Ans. In 1881, May 4th, at the time we settled the deficiency with the city, I paid out \$5,435.10.

Ques. Then at that time you had not received any returns from No. 425 Cooper street property?

Ans. No, sir; I hadn't sold it then.

Ques. So you advanced the difference between—(interrupted).

Ans. I advanced the difference between \$1,000 and \$994 and \$1,787.57.

Ques. That makes \$3,751.90?

Ans. Yes, sir.

10

Ques. And leaves \$1,653.20?

Ans. Yes, sir.

Ques. You had not received the Frank Skinner money then?

Ans. No, I did not receive that until October.

Ques. The amount you advanced for Mr. Porter was \$1,653.20?

Ans. That is a mere matter of calculation—as it is here in this account in the answer it is correct.

Ques. Look at the last page of the account annexed 20 to the answer?

Ans. The last page of the account annexed to the answer, that is made up on the principle of partial payments, calculated as I understand it.

Ques. Did you allow Mr. Porter any interest that you received?

Ans. No, I didn't allow him any interest on the money, on the \$1,000 and \$994.33 up to the time I paid it out to the city. I did not allow him interest because I had that money in hand to meet any contingency that 30 might arise.

Ques. How did you pay this money out?

Ans. The five thousand and odd dollars?

Ques. Yes.

Ans. When we got to that shape of the transaction that we could not get clear of the indictment without paying that money and we met Mr. Hays—

Mr. Snyder: I object to that, unless you show that he was indicted.

The Court: You may cross-examine as to that.

By Mr. Snyder:

Ques. When you speak of the indictment, is that what you mean?

10 Ans. Yes, when Mr. Hufty and Mr. Hays at the time we settled with them—it was to prevent them from going before the Grand Jury—when was the time we paid that money?

By Mr. Drake:

Ques. To prevent a complaint being made, you paid this money over?

Ans. To prevent a complaint being made before the Grand Jury.

20 Ques. Who was Mr. Hays and Mr. Hufty?

Ans. Mr. Hays was the solicitor and Mr. Hufty was the Comptroller, I think, of the city.

Ques. City Auditor, was he not?

Ans. Yes, City Auditor, that is it.

Ques. What form did you hand over this \$5,435.10 in?

30 Ans. The form was our check of Bergen & Bergen, which was given to Mr. Porter and Mr. Porter endorsed it. We were all there together, and then it was handed to Mr. Hays and we took Mr. Hays' receipt, as the solicitor of the city, in full payment of the claim of the city so far as the suit that was instituted was concerned; it was not in full and in discharge of him as treasurer, only in full of the claim they had against him.

Ques. Why did you draw the check to Mr. Porter's order instead of to one of the interested officers?

Ans. That was to show that Mr. Porter had paid the

money to the city, that we had not paid it for him; it was done to protect him.

Ques. Was this the full amount of money that Mr. Porter was to pay, the full amount of deficiency at that time, or did Mr. Porter have other moneys that he handed over at the same time?

Ans. He had some moneys on deposit at different banks which he gave, which, together with the check we gave him, made up the amount that he was supposed to owe the city, and I guess it was correct, there is no trouble about that, we have never heard anything from it since, although we did not get any discharge. 10

Ques. Was anything said at this time about the Lawrence street property, and if so what?

Ans. Well, I don't know; there was nothing said about the Lawrence street property at that time that I know of.

Ques. When did the conversation about that property come up?

Ans. The conversation about that property came up at the time when I wanted some money on account of fees. 20

Ques. What was said between you and Mr. Porter about it?

Ans. He said he had no money, and I told him he had the Lawrence street property—well, he said that is so. Well, said I, I will take that on account to the extent of \$1,000 of what is against them, and he said that is all right.

Ques. Did he make any statement whether he had any money at that time that he could raise and pay you? 30

Ans. I don't think he did, but I knew he didn't have any unless he had been very dishonest to me.

Ques. Go on with the conversation about the Lawrence street property?

Ans. The property then stood in the shape of a mortgage foreclosed, and the execution in the hands of the Sheriff, and Mr. Porter had, by himself, or through the Sheriff, paid to the attorneys of complainant the amount of the decree and execution, but it was held there for such uses as he wished to make of it, and to dispose of it. He then wrote a letter or got the attorneys to have the decree assigned to me and it was done, I think. A party by the name of Haines assigned the  
 10 decree to me. After the decree was assigned to me we had the property sold, and it was bid off to me for the amount of money for which I was to take them for; it was \$1,000, and I took the deed and held the property ever since as my own, and there has never been any dispute about it, that I know of, until here. A long time after the question of indictment against Mr. Porter could be raised, that is what——

Ques. When did you get possession of this property from Mr. Porter?  
 20

Ans. Some few months after the time the deed was made.

Ques. What conversation did you have about that time in reference to this house?

Ans. He was poor and I let him collect the rents for awhile, or at least I did not object to it, and there seemed to be no end to it, and then I told him he would have to turn them over to me, and he then quit.

Ques. When was that?

Ans. Some time after I had taken title to the prop-  
 30 erty.

Ques. Have you the deed to the property here?

Ans. Yes; it is among the papers.

Ques. Did you take any proceedings about the complaint that was alleged against Mr. Porter?

Ans. Oh, yes; I undertook to get a certiorari, and I went to Chief Justice Beasley—the proceedings are all

there, if you want to see the thing; there is all affidavits and everything connected with it.

Ques. Did you present a rule for allowance?

Ans. I presented affidavits and asked for a rule, but the Chief Justice would not give it to me. You will find an affidavit by Mr. Porter and another by C. V. D. Joline and one by myself.

Ques. Is there an affidavit of Mr. Hufty?

Ans. I don't think so.

Ques. In whose name as attorneys were the proceedings commenced? 10

Ans. I think in the name of Bergen & Bergen, either that or in my own name.

Ques. Was it in the name of John H. Fort?

Ans. No, sir.

Ques. Are these the affidavits to which you refer, (handing papers to witness)?

Ans. Yes, sir.

Mr. Drake: I offer these original affidavits in evidence. 20

By the Court: This lead pencil memorandum is not part of the paper you presented to the Chief Justice?

Ans. No, sir.

Ques. With that exception, these affidavits were presented by you to the Chief Justice?

Ans. Yes sir.

By Mr. Drake:

Ques. You did have a copy of the affidavit on which the complaint was founded, didn't you? 30

Ans. I don't know.

Ques. Look at this paper and say if you used that copy (handing paper to witness)?

Ans. Well, I won't say, but I had it there unless it is

referred to in one of the affidavits, I don't know whether I had it there or not.

Ques. It is a fact that it is an affidavit of Mr. Hufty, and it seems to be an affidavit on which the complaint was founded?

Ans. I don't know whether it is or not.

Ques. What was Samuel Hufty at this time?

Ans. City Auditor.

10 Ques. State, if you please, whether or not, at the time you purchased those two houses on Lawrence street under foreclosure proceedings, they were to be purchased by you and held for the benefit of Mr. Porter as a payment on account of the moneys you had advanced for him?

Ans. I had nothing to do with that. They were purchased by me and were to be taken on account of my fees to the extent of \$1,000, the amount I bid.

Ques. What time was this purchase made?

Ans. I don't know.

20 Ques. Cannot you tell by referring to the account?

Ans. I can tell by looking at the deed; the deed is there—the deed bears date April, 1882.

Ques. When was the decree assigned?

Ans. I don't know; there is a copy of the assignment there.

Ques. Please state whether that is the assignment of the decree, (handing witness a paper)?

Ans. Yes, that is the decree; it is dated February 1st, 1881.

30 Ques. State, if you please, what was said between you and Mr. Porter any time during these transactions, or about the time the mortgage was made to you and the property turned over to you by Mr. Dayton and other, about its being taken as indemnity for the bondsmen?

Ans. The question of the bondsmen never was raised

or thought about, whether they got any money or not. The question was whether he was to go to jail or not, that is all, and if it became necessary to pay the city any money, that was only to protect him from going to jail; it didn't amount to anything about the bondholders; there was about twenty of them.

Ques. Were you responsible for those other bondholders?

Ans. No, sir; I tried not to let them know anything about it, or else he would have gone into jail, sure.

Mr. Snyder: I object to the offer of the affidavits, as they are entirely ex-parte affidavits.

The Court: It throws light on the transaction as to what Mr. Bergen did as counsel for Mr. Porter.

Mr. Snyder: I have no objection to their going in to that extent

Affidavits marked "Exhibit D2."

20

Mr. Drake: I offer in evidence the deed dated April 18th, 1882, being a deed for the Lawrence street property.

Marked "Exhibit D4."

I also offer the assignment of decree on the Lawrence street property, dated February 1st, 1881.

Marked "Exhibit D4."

30

Ques. Please take up your account on the first page, first item, there is \$1,000?

Ans. Yes, sir.

Ques Next is \$994.23 and the next is the \$535?

Ans. Yes, sir.

Ques You have already spoken of these three items?

Ans. Yes, sir.

Ques. Next is \$115.90 as entered in the summary on the last page of your account attached to the answer?

Ans. The first item is \$75—that is money I loaned to Mr. Porter to pay for the education of his daughter over in Philadelphia some time before he was elected treasurer, about a year before that.

Ques. That is money he owed you at that time?

Ans. Yes; that is \$75 he owed me at the time this transaction commenced.

10 Ques. What others have you?

Ans. Conveyancing, drawing mortgage \$10 and recording it \$1.50. Register's search, \$2; cash (that is money I let him have out of my pocket), \$6; expenses to Trenton, \$2.

Ques. That relates to the certiorari?

Ans. Yes, sir; that relates to the certiorari.

Ques. Well, go on.

Ans. Circuit Court search \$4; Register's search \$11; Supreme Court \$2.30; tax search \$2. They made us  
20 two certificates instead of one—that made a total of \$115.90.

Ques. Next is in relation to the 538 Cooper street?

Ans. No sir, the next charge is for the money, cash advanced to pay the deficiency to the city, \$5,435.10.

Next is the charge represented by that due bill for \$50, marked Exhibit D1; that was cash.

Ques. Please refer to Exhibit D1 and state whether it is filled in in the handwriting of Samuel D. Bergen of your firm?

30 Ans. It is Christopher's. I don't know whether it should be charged in the account or not. It was money just loaned to him. I put it in because it was among the archives of it. Christopher lent him that money and took his due bill for it.

Ques. What next?

Ans. The account of 538 Cooper street. At first

that property was sold to Mrs. Gibson and out of the proceeds of that sale we received \$2,000.

Ques. What was there against it?

Ans. Against that property was the taxes to be made up and the interest on mortgages and two or three other things that we had to pay. In the first place we drew a deed, that was \$6.25 with the recording, and then the property was leased by Gibson to Mr. Porter and Mr. Porter was residing in that house for some time and I drew that lease and charged him five dollars for it. Mrs. Gibson wanted the lease from Mr. Porter so that when the time came to take possession they could put him out if it became necessary. 10

Then there was the release from the mortgage, Bergen to Porter it was drawn, that was \$6.25, with the recording of it.

Then the interest on the mortgage was paid to Mr. Grey—that interest on that mortgage on the property at that time was \$46.33—that we paid to Samuel H. Grey. 20

Then we paid taxes to the Receiver of Taxes for the years 1879 and 1880. They were paid after this transaction went through, quite a considerable time after, because we wanted to get the taxes reduced, and we did ultimately get them reduced, and it was paid on June 30th, \$71.80.

And on July 6th, we paid the taxes for the years 1877 and 1878, \$76.80. Now that made \$212.42, which left \$1,787.57 that we received out of the \$2,000.

Ques. Did you give him credit for that? 30

Ans. Yes, that is credited.

Ques. What about No. 425 Cooper street property?

Ans. That was sold to Mr. Irwin for \$5,000.

Ques. Who sold it, you or Mr. Porter?

Ans. Well, I don't know who sold it. I made the deed for it, but the fact of the transaction I don't recollect.

In the first place we had agreed to sell the property before for \$5,000, and Mr. Porter would not take it, and he moved into that house and we took proceedings under foreclosure to put him out.

Ques. Look at that and say what it is (handing paper to witness)?

Ans. An order of possession—that is it.

(Offered and marked Exhibit D5).

10

Witness: I made an effort to sell the property. Mr. Porter was in possession, and then he would not go, and we got a writ of assistance, but that sale fell through. And afterwards, Mr. Irwin turned up through Mr. Taylor; so far as I know, Mr. Taylor sent him to me, but as to how he got to Mr. Taylor, I do not know anything about it. At any rate he came to me through Mr. Taylor, and after telling Mr. Porter he was to go out, he did go out of the house, and we then sold the  
20 property to Mr. Irwin for \$5,000. There was no dispute between us about the amount. The question was about another house for him to live in. I am not certain that the house would not have brought more money if we had kept it longer, but I would not have held it so long if he had not wanted me to do so. He was living in it, and we were getting nothing out of it. The charges against that was the mortgage in the hands of Mr. Dayton, I think originally it was  
30 for \$2,000—at any rate that mortgage we got a client of ours to take.

Ques. Did you draw another mortgage or take that same mortgage?

Ans. Took an assignment of that mortgage for a client of ours, and then rented it for some time, and then we foreclosed the mortgage and we sold the property, and I purchased it at the sale in my own name. It was sold for a nominal sum, I don't know what it was.

The decree and costs, including Sheriff's fees, &c., amounted to \$2,902.82.

Ques. What is that? (handing witness paper).

Ans. A statement made by the Sheriff and we paid the costs and took the deed in my name.

(Paper offered in evidence and marked Exhibit D6.)

Ques. Now, there is some interest?

Ans. Interest on that from the time, March 11th, 1882, up to April 7th, 1884, \$361.40. I think it was 10  
 April 7th, 1884, when the property was sold. In the  
 meantime we were carrying that money in that prop-  
 erty and Mr. Porter was occupying the property, and as  
 a matter of fact the interest was charged up to that  
 time, the time it was sold, and we got the \$5,000.  
 There is a charge for drawing assignment of mortgage  
 from Mr. Haines to Mr. Schenck, \$5.00. Then there is  
 the recording of the deed by the Sheriff to the Bergens,  
 \$3.00. Then Martin Doyle, fixing curb, \$2.50. Then  
 taxes of 1882, \$58.57. Then costs and expenses for 20  
 the order of possession, \$25.00. Now there is nothing  
 for that \$25.00 that I have got to show that that was  
 the cost, but that was estimated at that amount. We  
 filed our petition and other papers necessary, and did  
 not go to the expense of having the costs taxed up, and  
 so I just put it down as \$25.00; I don't think that is as  
 much as it really was. That is anyway an estimate.  
 Then the water rents for 1881, 1882 and 1883, \$26.40,  
 those we paid. Then the taxes for 1883, \$61.99, those  
 we paid. Then Cooper street was paved in the 30  
 meantime, and we paid that at the time the property  
 was sold, and that was \$92.80. Then on October 30th,  
 1884, we paid the taxes for 1881, and that was long  
 after the sale, and it was done because we had agreed  
 with Mr. Irwin that we would pay these taxes, and so  
 they were paid. At that time the city was compro-

mising the taxes, and we had it compromised at \$49.95, which we paid.

Ques. Mr. Porter did not pay anything while in this house?

Ans. Nothing; we even had to pay the water rents. We paid George Burton \$6.09 for cleaning the cesspool—I think that was a joint cesspool between that and the Lawrence street house—at any rate that is what we paid him. Now that makes a charge against that  
 10 property of \$3,595.52 and leaves a balance of \$1,404.48.

Ques. Did you give him credit for the \$1,404.48?

Ans. Yes, sir. Now under the recapitulation made on the last page of the account, the account is made up as of partial payments; we charge there for the deficiency due the treasury \$5,435.10, and the advances, making \$115.90. (Including the \$75, and the conveyance connected with the \$4,000 mortgage that was made.) We deducted from that the \$1,000 of February 1st, 1881, February 5th, \$934.33 and the money  
 20 received from the Cooper street house, \$1,787.57; and that leaves a balance of \$1,769.10 that he owed on May 4th, 1881. Then we calculated interest on that \$1,769.10 up to the next moneys that we received on his account, being the moneys that came from the Taylor's avenue property, \$535, and that is interest from May 4th, 1881, to October 7th, 1881, \$45.11, which makes \$1,814.21, and deducted \$535 from it, leaving \$1,279.21. Then we calculated interest on that amount  
 30 up to the time of the sale of 425 Cooper street house, and that is \$191.88, and makes a total of \$1,471.09. Deducting from that the amount we received from the Cooper street house, \$1,404.48, leaves a balance of \$66.61. Then we have added on to that (I am not certain exactly about it) the \$50 Christopher loaned to Mr. Porter—I don't know whether that balance is in the account or not—at any rate, that \$50 being added to the \$66.61, makes it \$116.61 in my favor.

Ques. With the interest on the \$50?

Ans. Yes, sir.

Ques. Mr. Porter stated several times this morning that he called on you repeatedly to get from you an account. Please state whether he did or not, and what took place at these different calls that he made when he demanded an account.

Ans. Mr. Porter came to see me, and had been to see me and spoke several times about this account and asked me to make it up. I hadn't made it up, and I didn't make it up. I told him it was no use to make up 10 an account; there is nothing in it; you have no money coming to you, and you haven't anything to pay me; and I didn't think it was necessary to make it up, and I knew he could not pay it, although I think he would have paid it if he had had the money, but I knew he didn't—he was in our debt and that ended it, and I didn't bother any more about it.

The Court:

Ques. What did you say to him when he applied to 20 you for an account?

Ans. I told him it was no use making it up, because he was in our debt and he had no money to pay even if we did make it up.

Ques. What did he say?

Ans. Most likely he said—I only imagine it; I don't recollect what he said.

Ques. Haven't you any recollection about it at all?

Ans. No, sir; I have not. I do know this, that he claimed that that was not so; he claimed that there was 30 money coming to him, but I don't know how he said it.

Ques. He did not accept your statement that he owed you money as being correct?

Ans. No, sir; he said there was money coming to him, and I knew there was not, so I didn't make it up.

By Mr. Drake:

Ques. Have you anything else to say?

Ans. I haven't anything to say; so far as I know that account is correct. I might speak a little about the property down at Waterford—I think somebody foreclosed the mortgage on the property and it was sold. I never received anything from it myself, and I have no recollection; I know nothing about it.

10 Ques. Did you ever receive anything on account of your fees or services except the two Leonard street houses?

Ans. No, sir.

Ques. Did you ever receive anything from Mr. Porter besides that which you have accounted for on the transaction which you have stated here to-day?

Ans. No, sir; I never received anything from Mr. Porter.

20 Cross-examination.

By Mr. Snyder :

Ques. Previous to your going over to this hotel in Philadelphia, had Mr. Porter spoken to you about this matter?

Ans. No, sir.

Ques. And had there been a warrant issued for Mr. Porter's arrest previous to your going over there?

Ans. Yes.

30 Ques. Did you ever have any occasion to examine the affidavit on which this warrant was made?

Ans. I don't recollect.

Ques. Did you ever make a copy of it?

Ans. I do not know—it strikes me there is a copy among the papers, but I did not make it.

Ques. Won't you examine this affidavit, or this copy of affidavit, and tell me whether the closing part of

that is not in your handwriting? (Handing witness a paper.)

Ans. Well, I guess it is, that part down there, from there down (indicating.)

Ques. Is not that a copy of the affidavit on which this warrant was issued?

Ans. Well, I do not know about that; I suppose it is; but I don't really know.

Ques. What is the date of that jurat?

10

Ans. Fifth of February, 1881.

Ques. Now, it was then subsequent to the 5th of February that Mr. Porter spoke to you about this matter, or sent to you?

Ans. No, it was not; not unless I have made a mistake in all my papers. I say, as a matter of fact, that there was a warrant issued for Mr. Porter, and he had gone to town and I went over to see him, subsequent to the time that the warrant was issued—what the date of that paper is, I don't know; that don't figure in it so far as I know. 20

Ques. Previous to that date, had you been before the Finance Committee of the City Council, or Mr. Hufty, previous to the date of this?

Ans. I never was before the Finance Committee or had anything to do with it until Mr. Porter came to give bail. I was before the Finance Committee with him, but that was long enough after that.

Ques. Did you, on or before the first of January, 1881, appear before the Finance Committee and state that Mr. Porter had the cash ready on demand to make the assets good? 30

Ans. I told him he had it in his pocket; it is the same thing.

Ques. The next transaction was the making of this bond and mortgage which you have testified to, to secure \$4,000?

Ans. What do you mean by the next transaction?

Ques. With you?

Ans. The first transaction with me, to get it chronologically, was when I went to town to see him. Next was his coming to my office the next morning.

Ques. Can you fix the date when you went to see him?

Ans. I cannot say whether on the first of February or the third, but I am very certain from my own  
10 memorandum—(interrupted)

Ques. Can it be previous to the date of the affidavit on which the warrant was issued?

Ans. No, sir; the warrant was issued before I went over there.

Ques. Examine the copy and state what date the warrant was issued?

Ans. No, sir; I cannot. I can only say that it was issued prior to the time I went to town—if that was  
20 on the 5th of February, then I did not go to town until after that.

Ques. That is a copy of the affidavit on which he was held to bail?

Ans. I don't know—that is my handwriting, and it is dated 5th of February, and it was made before Harry Scovel.

Ques. You spoke of making application to have this warrant of arrest reviewed before the Chief Justice?

Ans. No, sir; I went before him to get him certiorari the proceedings which the City Council was going to  
30 take to oust him from the city treasury.

Ques. Examine Mr. Joline's affidavit and see whether the resolutions had not been made previous to that application?

Ans. The affidavit before Mr. Joline—Mr. Joline went to the City Hall and took down what was said and brought it back and embodied it in the affidavit,

and the next day I went to Trenton—I don't know what the dates are; I can only speak of the facts.

Ques. Examine the dates; they are here?

Ans. (Reads the affidavit of Mr. Joline and says): That was sworn to on the 8th of February, before Judge Hugg. By the way, Judge Hugg went with me to see the Chief Justice.

By the Court:

Ques. He asked you whether they did not pass a resolution to vacate the office and turn him out? <sup>10</sup>

Ans. I suppose it was so—yes, I guess that is it.

By Mr. Snyder:

Ques. Had this warrant been issued previous to that?

Ans. Yes; long enough before that. The warrant was issued previous to my giving bail, and that is the first thing that occurred about it, except my seeing him over in town and he coming down here.

Ques. Examine Exhibit D4 and tell me in whose handwriting the date of that is? <sup>20</sup>

Ans. I think it is all in my handwriting.

Ques. Was it dated on that day?

Ans. I don't know; I cannot tell you. While I don't know, I suppose it was. I see it is acknowledged here by somebody else on the 9th of February, and I should rather think that is pretty near right.

Ques. Was not that assignment of the decree of the Lawrence street house made contemporaneous with the execution of the mortgage to you? <sup>30</sup>

Ans. I don't know; I don't think it was. I think it was made about the same time. One seems to be dated February 3d, and the other February 1st. This seems to have been dated before the mortgage was made (D4) being the assignment of the decree on the Lawrence street property, that appears dated

February 1st, and it is acknowledged February 9th, 1881, and specifies the Lawrence street house.

Ques. And the \$1,500 is the consideration paid?

Ans. That was the consideration I think that had been paid by Mr. Porter—that is the way that figure comes in—the amount wrote in here as consideration would be \$1,500 and I suppose that was the amount of the decree and interest, &c., at that time; I don't know how it was but I suppose that is the way it is.

10 Ques. At the time of the execution of that decree was anything said as to the need of your employment other than was said when the mortgage was given?

Ans. The mortgage was given after this, from the way it looks here—the time this decree was assigned—it was assigned to me for the purpose of paying my fees to the extent of \$1,000, to the extent of which these houses were to be taken.

20 Ques. I want you to answer positively to these things, what was said and done at the time this decree was assigned to you?

Ans. I have told you as near as I can; I say it was assigned to me for the purpose of having the Sheriff sell the property to be conveyed to me, to be taken by me for \$1,000 as a fee.

Ques. Why did you testify in your direct examination that it was not until some time subsequent to this transaction that you spoke to Mr. Porter and asked him for something on account of this fee?

30 Ans. I don't know, if I did say that; I cannot say how that is myself; that is one of the things I cannot explain now. It was a question of fees, and I might have said that inadvertently, but I do know this, that these houses were for fees.

Ques. When was that decided on, about the fees?

Ans. The first morning we met was the time we talked about the fees.

Ques. Was anything settled as to the amount?

Ans. Of what he was to pay?

Ques. Was anything settled as to the amount as to what he was to pay?

Ans. No, sir.

Ques. Nothing whatever?

Ans. Nothing at all.

Ques. Had you any idea what you would have to do in this matter? 10

Ans. Yes, I had a pretty clear idea what I had to do with it.

Ques. After Mr. Porter had paid you these sums in cash, or their equivalent, and the execution of that \$4,000, why did the matter lay so long in your hands without there being a settlement made with the city?

Ans. Well, I don't know why it lay—whether it was until the Grand Jury met—it was settled that day—it was not because I didn't have the money.

Ques. Hadn't suit been begun on the official bond? 20

Ans. Yes.

Ques. When?

Ans. I cannot tell you.

Ques. Had that been begun at the time Mr. Porter gave you all this property?

Ans. No, sir.

Ques. Had it been begun when you went before the Finance Committee, and stood ready to pay the money in your hands?

Ans. No, sir. 30

Ques. Didn't you have frequent conversations with Mr. Hays, the City Solicitor, previous to settling it?

Ans. I think so, but I do not remember.

Ques. What was the object in the delay of the settlements?

Ans. To save all the money we could and pay the city nothing if we could get clear of it.

Ques. Didn't you have to pay Mr. Hays the costs of the suit in the settlement of this city claim?

Ans. I think I have some receipt or some paper to show it among the papers.

Ques. After you had obtained the control of the Lawrence street decree, why did you delay in selling it?

Ans. Selling what?

10 Ques. The property?

Ans. Why, I don't know.

Ques. Was the property advertised for sale or was it sold on the day it was advertised for sale?

Ans. I think it was adjourned for four weeks; there was four adjournments made.

Ques. What was your object?

Ans. I don't know, unless it was to get clear of paying the costs—what was the object of the adjournments?

Ques. Yes, sir.

20 Ans. I do not know.

Ques. You spoke of making settlements with the city for taxes; was not that a general thing that mortgages were foreclosed to cut out the taxes?

Ans. Yes.

Ques. Didn't you suggest to Mr. Porter that you sell this Lawrence street property so as to cut out the city taxes?

Ans. No, I did not cut them out, because the city was not made a party; that is my recollection, and I think you will find it in the deed.

30 Ques. Just examine the deed and say if the city was not a party—was there not a judgment against Mr. Porter that you also suggested could be cut off by that sale?

Ans. I don't know; there was a judgment against him.

Ques. Didn't you suggest to Mr. Porter that that might be cut off by that sale?

Ans. I don't know whether I did or not.

Ques. Didn't you suggest to Mr. Porter having this Sheriff's sale for the purpose of cutting off the city taxes and getting rid of these judgments?

Ans. No, sir; I did not, no; because one of the judgments was a judgment where the money would have to come to us; I might have told him that the effect would have been that, and that is so, I guess it would.

Ques. Is the city made a party—tell by reference to <sup>10</sup> that deed?

Ans. Yes; the city is made a party, but I did not think it was.

Ques. When you loaned this \$75 for his daughter's education, did you take a receipt for it?

Ans. I think I did.

Ques. Have you got it?

Ans. No, sir; I have not.

Ques. Did you pay him in cash?

Ans. Cash. I know I gave him the money, and <sup>20</sup> I think I took a memorandum from him; I have looked for it but I cannot find it.

Mr. Snyder: I ask for the production of that memorandum or receipt.

The Witness: I haven't got it, or I would give it to you.

Ques. Was this previous to his giving the \$4,000 mortgage? <sup>30</sup>

Ans. No; just before he was elected Treasurer, a year or two before this.

Ques. It hadn't anything to do with this transaction, then?

Ans. It hadn't, except so far as that he owed me this much money at that time.

Ques. Please explain Exhibit C1, in which you state

to Mr. Porter that the sum paid Mr. Dayton is \$2,658.33.

Ans. Well, now, the money we paid to Mr. Dayton was \$2,658.33; the decree on that mortgage seems to have been taken October 28th, 1881. Now, I think if you will calculate the interest on the \$2,658.33, I don't know, but I think that will make \$2,703.84. I don't know how the calculation was made, but I think that is about right.

10 Ques. How, then, do you arrive at the amount paid November 11th, 1882, as being \$2,902.82?

Ans. The mortgage was originally \$2,000, and we paid to Mr. Dayton \$2,658.33; that seems to have been paid—well, it must have been paid, because the interest is calculated up to July 1st, 1881, although this statement is given in 1883. Now, on October 28th, 1881, the decree was for \$2,703.84; I suppose that is correct; I don't know whether the calculation will bring it out or not; it won't go far from it.

20 Ques. Then, in your statement, where you have the items of March 11th, 1882, as the sum of \$2,902.82, you had charged interest on that sum of \$2,653.33?

30 Ans. No, sir; I don't suppose I had; I don't think we would have done that if we could help it, for it could go through the hands of the Court. It was a seven per cent. mortgage, and from the time we took the decree the calculation is made at seven per cent., and the amount as found due by the Master at that time was \$2,703.84, on October 28th, 1881. Now, the balance—that brings up the \$2,902.82, is interest up to February 25th, 1882, with the costs of complainant, \$83.63, and the interest on that is made by the Sheriff, \$1.58, and then added to that is the Sheriff's costs, \$61.13, making \$2,902.82, which is in Walsh's handwriting, the deputy sheriff—whether the figures come out right at that I do not know; I haven't calculated them over, and I cannot say as to that.

Ans. When did Mr. Porter first ask you for a statement?

Ans. Well, I don't know, some two or three years after this thing went through.

Ques. And did you give him any satisfaction at that time?

Ans. Well, Mr. Porter and I were good friends until this thing got into this shape, but when he came down on me and asked me for a statement, and I didn't give it to him because there was no money coming to him, he went to Mr. James Hays and as James Hays was the man that gave us so much trouble, that made me pretty cross, and that brought on some words between us, and from that time on we never was very friendly. That is about the statement business, because I told him there was nothing coming to him, and I was annoyed very much about it, and I told him I would not give him any statement. 10

Ques. Was not this trouble with Mr. Porter solely relating to some of the banks here in Camden being jealous as to who should keep the city deposit? 20

Ans. Do you mean originally?

Ques. Yes.

Ans. I don't think Mr. Porter would have had any trouble if there had not been some trouble with the banks.

Ques. Don't you know that Col. Hufty, the City Auditor, acquired the combination of Mr. Porter's safe?

Ans. No, sir.

Ques. And went to work to make an arrangement with the city without your aid? 30

Ans. I think that was afterwards. After this trouble with Mr. Hufty, he picked his lock out there, and they wanted to settle with him by his books, and that is one of the troubles, because they had his books and we

didn't have any confidence in them. My impression is, that it was after this trouble occurred that they opened his safe.

Ques. Who was this party that went over to Philadelphia?

Ans. Mr. Harrison G.

Ques. Was it not Captain John B. Adams?

Ans. No, sir.

10 Ques. Didn't he go over to see Mr. Porter?

Ans. No.

Ques. Where did you meet Mr. Adams when you went before the 'Squire to give bail?

Ans. I met him at the office.

Ques. How came he to be there?

Ans. When Mr. G—— came to me he told me Mr. Porter was in the city, and he told me what the trouble was, and he asked me to go over to the city and see Mr. Porter there, and I asked him if he would not stay over there until I came, but meanwhile Mr. G—— told me  
20 he was over at the St. Charles Hotel——(interrupted.)

Ques. Didn't Captain Adams come to you to inquire from you what his liability was on that bond?

Ans. I don't know—we talked about a good many things that night; there were other bondsmen, probably twenty of them, including Mr. Porter and myself——(interrupted)

Ques. When was the first time that a deed was spoken of to you?

30 Ans. That was that time we made this arrangement of this mortgage.

Ques. Was anything said as to the amount of the fees?

Ans. That he was to pay?

Ques. Yes.

Ans. No, sir; there was this said, that I was—

By the Court:

Ques. I want to know what was said between you with reference to a fee, or the transfer of this property on account of a fee, or with reference to the value of the property—I want to know all about that transaction; as you were the attorney, it is necessary to show that everything was fair and well understood?

Ans. I spoke to him about some money for a fee—that started it. And I suggested that the houses on Lawrence street be conveyed to me on account of fees, and I would take them on account to the amount of \$1,000 and he said all right. Now as to the best way how to bring that about, so that I could obtain possession of the property, and it was then agreed that we were to put it through by that decree instead of taking the deed from him—that was the *modus operandi*—I don't know just now why, but at any rate it was put through in that way, and that is the manner in which I got the title. 10

Ques. What was said with reference to the value of the property? 20

Ans. Nothing.

Ques. Or the incumbrances on it?

Ans. I was to take it subject to what there was on it.

Ques. Was there nothing said about what was on it?

Ans. There was nothing understood to be on this property, except these taxes. The final decree was taken April 28th, 1880, and there was a year's taxes on it anyhow. 30

By Mr. Snyder:

Ques. Had you ever known anything about the value of this property?

Ans. No, sir; I don't think so.

Ques. You passed it every day, didn't you?

Ans. I passed through the street they were in.

Ques. You knew what they rented for?

Ans. No, sir; I did not.

Ques. How much did they rent for?

Ans. Eight dollars a month for each one; it may be more or less, but still I think it was not any more.

By the Court:

Ques. What were these properties worth then?

Ans. I don't know—I would rather have had the  
10 \$1,000 than the houses.

Ques. Is that all you can state with reference to that transaction?

Ans. I don't think of anything more to state; as a matter of fact, we were together a great deal at that time; I don't know that there is anything I can state further than that.

Ques. How long did you collect the rents?

Ans. I collected the rent for a few months; I don't know how long.

20 Ques. Did Howard Flanders ever call on you in reference to the settlement of this matter?

Ans. Yes, sir.

Ques. Do you remember telling him that you were ready to settle as soon as you could fix your fee, and that your fee would be \$600?

Ans. No, sir; I never told him such a thing; I never heard of such a thing, and I never thought of such a thing, and it was not true, and Mr. Flanders won't say so.

30 By the Court:

Ques. Did you ever make out a bill for your services, rendered by yourself or your firm to Mr. Porter?

Ans. No, sir.

By Mr. Snyder:

Ques. What services did you render for Mr. Porter in

this matter as attorney—you have charged him here for drawing the bond and mortgage of \$4,000, for drawing the decree and for expenses to Trenton—now were you under any expense so far as the warrant of arrest was concerned?

Ans. Actual expense?

Ques. Actual expense—you went, as I understand, with Mr. Porter and the other bondsmen before the Squire?

Ans. I went with Mr. Adams and brother Christo- 10  
pher and gave bail.

Ques. Did you do anything else after that matter?

Ans. No, sir.

Ques. You were several times before the Finance Committee, or in consultation with the City Solicitor, previous to their bringing suit?

Ans. Previous and after too, I expect.

Ques. Previous, about bringing suit, you were several times before the Finance Committee?

Ans. I don't think I was ever before the Finance 20  
Committee but once.

Ques. You had several conversations with the City Solicitor?

Ans. Yes, sir.

Ques. It was some time after the execution of the bond and mortgage and issue of warrant that the city brought suit for this bond?

Ans. Well, the record will show—they brought suit after a while.

Ques. Mr. Porter had given you all his property 30  
previous to bringing this suit?

Ans. No, sir; he had not; because I had got that \$535 after that, I guess; I think so.

Ques. It was after the mortgage had been made and the Lawrence street decree signed?

Ans. Yes; that is one of the first things.

Ques. Did you enter any defence in this city matter?

Ans. I suppose so, or they would have taken judgment; I don't know how it was done.

Ques. Did it ever come to trial?

Ans. No; it was settled when we paid the five thousand and odd dollars.

Ques. It was settled about the time that the Grand Jury met who would have acted upon this warrant before the Squire?

10 Ans. Yes.

Ques. Subsequent to that, did you transact any business in reference to this matter for Mr. Porter?

Ans. I can only answer you by calling your attention to this— did you ever have anybody on your hands to keep out of State's Prison, and that you had people running after him—that is all I can ask you.

Ques. Did you do anything further in a financial capacity, or as attorney?

20 Ans. Yes; I did a great many things.

Ques. Name them.

Ans. Well, now, I cannot—I cannot tell what I did to save a man from going to State Prison.

Ques. What were the services you rendered to Mr. Porter reasonably worth?

Ans. Well, if I was to go to take a fee to-day to defend him I would not do it for no \$1,000; I would not agree to do it to-day.

30 Ques. What was said with reference to \$1,000 at the time you say this Lawrence street property was deeded to you?

Ans. I said I would take the Lawrence street houses, subject to what was against them, as \$1,000 on account of my fee, and he said that is all right, or something to that effect.

Ques. Nothing was said as to the value of the property?

Ans. No, sir; I don't know anything about the value of the property; I don't think I had ever seen them to look at them, and I have never been in them since I owned them.

Re-direct examination.

By Mr. Drake:

Ques. Are any fees or charges claimed by you here for selling the houses? 10

Ans. No, sir.

Ques. Insurance charges?

Ans. No, sir.

Ques. How much of your time did this matter of Mr. Porter's take from the time he first called on you, about the first of February, 1881, until the settlement was made in May, 1881?

Ans. That would be impossible for me to state; it was a continual thing. It was one of those things that ran along all the time. There were twenty bondsmen and every one of them had to be quieted, so as to keep Mr. Porter from being indicted. There was about a hundred people in to see you every day, and they had to be quieted by every means possible to keep the matter of indictment off. I don't consider that in taking care of Mr. Porter in that respect amounted to any great fee, but I would not have the same sort of a time again for \$1,000 or anything like it. 20

Ques. Did he make any objection to your charging \$1,000 at the time?

Ans. No, sir; he would have given me almost anything at all then, I think; he was in a tight place, and he knew it. 30

By Mr. Snyder:

Ques. He was subject to being seized at any time?

Ans. Yes, he was, if anybody had seen him.

By Mr. Drake:

Ques. I call your attention to the transfer of the West Jersey Ferry Company's stock and ask you by that if you can tell what day you saw Mr. Porter in Philadelphia?

Ans. No, sir; that don't show.

10

I offer that paper in evidence; it is dated February 1st, 1881. Marked Exhibit D7.

JOSEPH A. PORTER, being re-called in his own behalf, saith:

Examined by Mr. Snyder:

Ques. You have heard the testimony of Mr. Bergen?

Ans. I have.

20 Ques. At the time that the decree of the Lawrence street property was assigned, or any of this property was placed under the control of Mr. Bergen, was anything said about a fee?

Ans. Not the slightest intimation, positively.

Ques. Did you ever have any conversation with Mr. Bergen in which it was agreed that the Lawrence street houses should be taken for \$1,000 on account of the fee?

Ans. None whatever, positively.

Ques. Was anything ever said to you about a fee?

30 Ans. Never, not the slightest intimation in any way.

Ques. There is a charge here of seventy-five dollars for the education of your daughter; did you ever receive it?

Ans. Mr. Bergen is mistaken about that; I have no recollection of anything of that kind being received from Mr. Bergen for the education of my daughter.

By the Court:

Ques. Did you ever pay Mr. Bergen anything for his services?

Ans. I never did; I never had a bill rendered.

Ques. Did you ever make any agreement to pay him?

Ans. Not the slightest; there never was any agreement made, or intimation of it.

By Mr. Bergen:

10

Ques. Do you mean to say that I did not let you have the \$75 to pay the education for Hattie over in Philadelphia?

Ans. You are mistaken about that; I haven't the slightest recollection of anything of that kind; you ought to have something to show for it.

Mr. Snyder: I offer in evidence a summons entitled "In a suit of the city of Camden against Joseph A. Porter and others." It is dated April 16, 1881, and returnable April 29, 1881. 20

Marked "Exhibit C2."

I also offer the declaration in the same case.

Marked "Exhibit C3."

Mr. Drake: I offer in evidence the City Solicitor's receipt in the same case.

Marked "Exhibit D8."

Case closed.

30

PORTER

vs.

BERGEN.

There must be a decree that the defendant holds this title in trust, subject to the payment to him of the amount found due to him from the complainant on a settlement of their accounts.

10 If counsel for either side think that the case as presented is not sufficiently before the Court to enable it to settle the account, there may be a reference to a Master to report what, if anything, is due.

July 24, 1894.

R. S. G.,  
V. C.

20

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH A. PORTER,

Complainant,

AND

30 MARTIN V. BERGEN,

Defendant.

ON BILL, &C.  
ORDER FOR AC-  
COUNT.

This cause coming on to be heard upon bill, answer, replication and proofs taken in open Court, in the presence of Henry M. Snyder, Jr., of counsel with complainant, and Bergen & Bergen and Herbert A. Drake, of counsel with defendant, and the pleadings having

been read and the proofs taken, and the arguments of  
 counsel heard and considered, and the Chancellor being  
 of the opinion that the complainant is entitled to the  
 relief prayed for and an accounting: It is thereupon,  
 on this fourth day of January, in the year of our Lord  
 one thousand eight hundred and ninety-five, by Alex-  
 ander T. McGill, Chancellor of the State of New Jer-  
 sey, ordered, decreed and adjudged, and the said Chan-  
 cellor, by virtue of the power and authority of this  
 Court, doth hereby order, adjudge and decree that the  
 several premises mentioned and set forth in the said <sup>10</sup>  
 bill of complaint were and are held in trust by the said  
 defendant, Martin V. Bergen, for the said complainant,  
 Joseph A. Porter, subject to any moneys due him, the  
 said defendant, on the settlement of the account between  
 the said complainant and defendant, and the said de-  
 fendant is directed to account for all rents, issues and  
 profits received therefrom, and for any interest, taxes or  
 other proper costs and charges expended thereon since  
 the several premises were conveyed to him, the said de-  
 fendant. And it is further ordered and decreed, that the <sup>20</sup>  
 matter in controversy be referred to Benjamin D.  
 Shreve, one of the Masters of this Court, to take and  
 state an account of the dealings and transactions be-  
 tween the said complainant and defendant, and for the  
 better clearing of which account the said parties are  
 directed to produce before the said Master, as he shall  
 direct, all books and writings in their custody or power  
 relating thereto, to be examined upon; and the said  
 Master is also to have power to use the testimony taken  
 on the trial of the cause, and to examine other wit- <sup>30</sup>  
 nesses in relation to said accounts; and in taking of the  
 said accounts, is to *allow the said defendant the sum of*  
*one thousand dollars as counsel fees*, and to make unto  
 the parties all just allowances, with leave to apply to  
 the Court for instructions, if he shall at any time find

it necessary so to do; and is to report what, upon such accounting, appears to be due from each party to the other, and also the balance which, upon said account, shall appear to be due from either party to the other, and if upon the balance of said account there shall appear to be due the said complainant from the said defendant any moneys, the said defendant is hereby directed to pay the same and to convey to the said complainant, or such person or persons as the said complainant may designate, any and all of said premises so as aforesaid found to be held by him in trust, and such sum as may appear to be due upon such accounting, within fifteen days after the said Master shall have made his report and the same shall have been confirmed; and if, upon the balance of said account, there shall appear to be due the said defendant any moneys from the said complainant, the said complainant is hereby directed to pay the same in like time, and in default of such payment it is ordered that J. Willard Morgan, one of the Masters of this Court, do sell said premises, or such of them as shall be sufficient to satisfy the same, at public vendue in fee simple, giving notice of the time and place of sale, pursuant to the statute in such case made and provided, and that said Master make report of such sale to the Chancellor for approval and confirmation.

And the said Master is to make his report touching the matters hereby referred to him with all convenient speed, and if, in the taking of said account, any special matter shall arise, he is at liberty to state the same to the Court.

ALEX. T. MCGILL, C.  
Respectfully advised,  
ROBERT S. GREEN, V. C.

## SUPPLEMENTAL ACCOUNT—CONDENSED.

1882.	Total receipts—432-434 Lawrence street . . . . .	\$70 00	
	Total expenditures . . . . .	89 12	
		<hr/>	<i>d</i> \$19 12
1883.	“ receipts . . . . .	161 00	
	“ expenditures . . . . .	49 42	
		<hr/>	111 58
1884.	“ receipts . . . . .	163 00	
	“ expenditures . . . . .	78 69	10
		<hr/>	84 31
1885.	“ receipts . . . . .	159 00	
	“ expenditures . . . . .	130 40	
		<hr/>	28 60
1886.	“ receipts . . . . .	177 00	
	“ expenditures . . . . .	44 08	
		<hr/>	132 82
1887.	“ receipts . . . . .	207 00	
	“ expenditures . . . . .	52 84	
		<hr/>	154 16
1888.	“ receipts . . . . .	157 00	20
	“ expenditures . . . . .	93 76	
		<hr/>	63 24
1889.	“ receipts . . . . .	180 00	
	“ expenditures . . . . .	40 28	
		<hr/>	139 72
1890.	“ receipts . . . . .	171 00	
	“ expenditures . . . . .	90 02	
		<hr/>	80 98
1891.	“ receipts . . . . .	176 00	
	“ expenditures . . . . .	107 67	
		<hr/>	68 33
1892.	“ receipts . . . . .	180 00	30
	“ expenditures . . . . .	42 70	
		<hr/>	137 30
1893.	“ receipts . . . . .	180 00	
	“ expenditures . . . . .	51 06	
		<hr/>	128 94
1894.	“ receipts . . . . .	180 00	
	“ expenditures . . . . .	50 83	
		<hr/>	129 17

## MASTER'S REPORT.

In pursuance of an order of this Court, made in the above cause, bearing date the fourth day of January, in the year of our Lord one thousand eight hundred and ninety-five, whereby it was referred to the subscriber, one of the Masters of this court, to take and state an account of the dealings and transactions between the  
10 said complainant and defendant, and for the better clearing of which account the said parties are directed to produce before the said Master, as he shall direct, all books and writings in their custody or power relating thereto, to be examined upon, and the said Master is also to have power to use the testimony taken in the trial of the cause and to examine other witnesses in relation to said accounts, and in taking of said accounts is to allow the said defendant the sum of one thousand  
20 dollars as counsel fees and to make unto the parties all just allowances, with leave to apply to the Court for instructions, if he shall at any time find it necessary so to do, and is to report what upon such accounting appears to be due from each party to the other, and also the balance which upon said account shall appear to be due from either party to the other, I set Thursday, the twenty-fourth of January, A. D. eighteen hundred and ninety-five, for the hearing of the cause; on which day the hearing of said cause was, on request of counsel of complainant and defendant, adjourned until Wednesday,  
30 day, January the thirtieth; on which day, in the presence of the complainant and defendant, and of their respective counsel, I heard the said cause and took the testimony herewith attached. And it appears from the pleadings and the evidence heretofore taken in the cause, and from that now taken and hereto attached, that in the early part of the year 1881 the complainant, who was and had been Treasurer of the city of Camden,

was in trouble as said Treasurer, and that such proceedings had been taken against him that he left the city of Camden and went to the city of Philadelphia, and whilst in that city he sent for the defendant to come to him. The defendant did see the complainant in Philadelphia. That the defendant made such arrangement that in a few days the complainant returned to the city of Camden and did give bail for appearance to court. That about this time the complainant made, executed 10 and delivered unto the defendant his bond in the penal sum of eight thousand dollars, conditioned for the payment of the sum of four thousand dollars, and to secure this bond did, together with his wife, make, execute and deliver unto the defendant an indenture of mortgage on certain houses and lots in the city of Camden, and a tract of land in Waterford township, Camden county. That the complainant shortly after paid, or caused to be paid unto the defendant, sundry sums of money. And the defendant took such proceedings that he realized 20 from the properties in Camden city sums of money. And defendant paid out certain sums of money for the benefit of the complainant—all of which sums are set forth in the answer of the defendant and hereinafter more fully set forth.

The defendant insisted that certain properties on Lawrence street, in the city of Camden, were held by him in lieu of fees for professional services and were valued at one thousand dollars.

This was denied by the complainant, who stated that 30 he employed the defendant to act as his attorney; no agreement was made as to the remuneration to be paid. The court decided that there was no agreement between the parties whereby the defendant was to hold the Lawrence street properties for his professional services, but held them in trust for the complainant and allowed the defendant one thousand dollars as

counsel fees, &c. In the answer of this defendant he makes no charge for commission, but alleges that he held the Lawrence street houses for his fees. The court having decided that the said houses were held in trust, and that the defendant should have the sum of one thousand dollars as counsel fees, it must be that the said sum of one thousand dollars as allowed is in lieu of said houses. And the defendant not claiming  
 10 in his answer commission, it is evident that the said fee of houses covered all services, so do not allow the defendant any commissions for any money received by or paid out by him.

The allowance by the Court of the said sum of one thousand dollars to the defendant was for services rendered by the defendant for the complainant. These services were rendered during the years 1881, 1882, 1883 and 1884, and the said sum of one thousand dollars should be considered as due when the last of the services were performed, and by the answer of defendant,  
 20 it is evident that such last services were performed on April 7, 1889, when the defendant sold a house on Cooper street to one A. E. Irwin. And defendant should be allowed interest on the said sum of one thousand dollars from the time it became due, on April 7, 1884. The account filed in this Court by the defendant as to the Lawrence street houses shows the receipts and disbursements of each house. I hold the defendant is liable for the net sums received, as appears by said  
 30 account, and also is liable for interest on the said sums. The claim of the defendant against the complainant for seventy-five dollars for money loaned some time before 1881 cannot be allowed.

In accordance with the above, the defendant is to be charged as follows:

February 1, 1881, cash received through J. B. Dayton . . . .		\$1,000 00
February 5, 1881, cash received from sale of West Jersey Ferry stock . . . . .		994 33
March 19, received from Hannah Gibson, for 538 Cooper street .	\$2,000 00	
Less expenses, taxes, &c. . . .	<u>212 43</u>	
		<u>1,787 57</u>
		\$3,781 90 10

The defendant is to be allowed as follows:

May 4, 1881, cash paid city of Camden . . . . .	\$5,435 10	
Expenses on the \$4,000 mortgage . . . . .	<u>40 90</u>	
		\$5,476 00 .
Balance due defendant on May 4, 1881 . . . . .		\$1,694 10
Interst from May 4, 1881, to October 7, 1881 . . . . .		<u>43 19 20</u>
		\$1,737 29
1881. October 7, debtor to cash from F. Skinner . . . . .		<u>535 00</u>
Amount due defendant October 7, 1881 . . . . .		\$1,202 29
Interest from October 7, 1881, to April 7, 1884 . . . . .		180 30
Loss on Lawrence street houses January 1, 1883, . . . . .	22 62	30
Interest up to April 7, 1884 . .	<u>1 68</u>	
		24 30
Counsel fee allowed by Court .		<u>1,000 00</u>
Amount due defendant April 7, 1884 . . . . .		\$2,406 89

	April 7, 1884, proceeds received from rent of Lawrence street houses on January 1, 1884 . . . . .	\$103 53	
	Interest from January 1, 1884, to April 7, 1884 . . . . .	1 55	
		<hr/>	\$105 08
10	April 7, 1884, proceeds received from sale of house, 425 Cooper street . . . . .	1,404 48	<hr/>
			1,509 56
	Balance due April 7, 1884 . . . . .		\$897 33
	Interest from April 7, 1884 to January 1, 1885 . . . . .		39 33
			<hr/>
			\$936 66
	Received rent of Lawrence street, January 1, 1885 . . . . .		76 16
			<hr/>
20	Due defendant January 1, 1885 . . . . .		\$860 50
	Interest to January 1, 1887 . . . . .		103 20
			<hr/>
			\$963 70
	Received rents January 1, 1886 . . . . .	\$20 65	
	Interest to January 1, 1887 . . . . .	1 23	
		<hr/>	
		\$21 88	
	Rents received January 1, 1887 . . . . .	124 07	
		<hr/>	145 95
			<hr/>
	Due defendant January 1, 1887 . . . . .		\$817 75
30	Interest up to January 1, 1888 . . . . .		49 06
			<hr/>
			\$866 81
	Rents received January 1, 1888 . . . . .		143 31
			<hr/>
	Due defendant January 1, 1888 . . . . .		\$723 50
	Interest up to January 1, 1889 . . . . .		43 41
			<hr/>
			\$766 91

Rents received January 1, 1889 .	<u>\$55 39</u>
Balance due defendant January 1, 1889 . . . . .	\$711 52
Interest up to January 1, 1890 .	42 66
	<u>\$754 18</u>
Rents received January 1, 1890 .	<u>130 72</u>
Balance due defendant January 1, 1890 . . . . .	10 \$623 46
Interest up to January 1, 1891 .	<u>37 40</u>
	\$660 86
Rents received January 1, 1891 .	<u>72 43</u>
Balance due defendant January 1, 1891 . . . . .	\$588 43
Interest up to January 1, 1892 .	35 30
	<u>\$623 73 20</u>
Rents received January 1, 1892 .	<u>59 53</u>
Balance due defendant January 1, 1892 . . . . .	\$564 20
Interest up to January 1, 1893 .	33 85
	<u>\$598 05</u>
Rents received January 1, 1893 .	<u>128 30</u>
Balance due defendant January 1, 1893 . . . . .	\$469 75 30
Interest up to January 1, 1894 .	<u>28 18</u>
	\$497 93
Rents received January 1, 1894 .	<u>119 94</u>
Balance due defendant January 1, 1895 . . . . .	\$377 99
IO	

Interest up to January 1, 1895 .	\$22 67
	<hr/>
Rents received January 1, 1895 .	\$400 66
	120 17
	<hr/>
Balance due defendant January 1, 1895 . . . . .	\$280 49

10 And I find that the complainant was indebted to the defendant, on the first day of January, in the year of our Lord one thousand eight hundred and ninety-five, in the sum of two hundred and eighty dollars and forty-nine cents.

All of which is respectfully submitted this the fourteenth day of March, A. D. eighteen hundred and ninety-five.

BENJ. D. SHREVE,  
S. M. C. C.

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—————

Taking of testimony resumed on the thirtieth (30) day of January, eighteen hundred and ninety-five, in the presence of Henry M. Snyder, Jr., for complainant, and Herbert A. Drake, for defendant.

MARTIN V. BERGEN, sworn.

30 The Witness: The account as filed in the original was here before the Chancellor, and the testimony which is in the case refers to all the property that was in my hands, except the Lawrence street. This account I have since filed, and it is correct, so far as I know, in every particular.

By the Master:

Ques. You have reference now to the accounts other than the Lawrence street houses?

Ans. Yes, sir. It is an account making up the full settlement of it to the first of the year, I believe.

By Mr. Drake:

Ques. Now, before you go on with that. This account that you have there. Does the new or supplemental account give a true account of all the rents, issues and profits which you have received from the Lawrence street houses?

Ans. It does. Now, as to the accounts of the estate that have come into my hands, I would say that there came to me from Mr. Dayton one thousand dollars. 10

By the Master:

Ques. At the date mentioned in your account?

Ans. Yes, I guess the date is right. The original answer shows that date exactly.

Ques. February 8th?

Ans. Yes. There also came into my hands, \$994.33, from the sale of the West Jersey Ferry stock. 20

Ques. That is also mentioned in your answer?

Ans. Yes. There also came into my hands from the Taylor avenue property, \$535.

Ques. That came in October?

Ans. Yes. Now, then, the Cooper street property, \$538, was sold for \$4,000. That is one of the properties that came into my hands, and netted me \$2,000.

Mr. Drake: You mean netted to the estate?

Ans. Well, I mean the cash that came into my hands from that was two thousand dollars. All that I had to pay afterwards was taxes and such things. It is in the original account. 30

The Master: There was a two thousand dollar mortgage on that property?

Ans. Yes. And afterwards you will find charges in there that was made for the payment of taxes, which were not paid at that time. It was agreed that they should be adjusted, and we got them adjusted for less than the regular sum that appears in the account. And the 425 Cooper street house—

By the Master:

10 Ques. That is the Irwin house?

Ans. Yes, the Irwin house. It sold for five thousand dollars. And the Lawrence street properties are the ones in question. They were put down among the assets for \$1,000.

Ques. How was that valuation arrived at?

Ans. From the fact that I took them for \$1,000.

Mr. Snyder: The statement of the witness is objected to as to value, and the taking of the \$1,000.

20 Ans. And the value of these properties is put down by the complainant as much larger. Now, the amount that I claim that came into my hands, on which I am entitled to a commission as trustee, is \$1,000 and \$994.33 and \$535. \$4,000 upon the 538 Cooper street house, \$5,000 from the 425 Cooper street house, and the value of the Lawrence street houses, as arrived at by the evidence.

Ques. As stated in your supplemental account?

Ans. Yes, sir.

30 By Mr. Snyder: I will enter an objection also as to this.

Mr. Drake: Objection to what?

Mr. Snyder: To what he has just stated. I make the objection on the ground that the statute of frauds prohibits anything of that sort.

Mr. Drake: Now, Mr. Bergen, please state whether or not the amount of moneys which you have just stated as coming into your hands as a basis for a claim for commissions, corresponds exactly with the sum added to your account.

Ans. No. The account is \$2,000 short; and such other amount to be added as the Lawrence street houses should be adjudged to be worth more than one thousand dollars.

Ques. In what respect is the account \$2,000 short of 10  
the statement?

Ans. On the 538 Cooper street house. I sold that for \$4,000, and my account only shows that I netted out of it \$2,000.

Ques. Proceed with your statement.

Ans. Well, if you haven't got any other questions, I don't know of anything that I have got to say.

The Master: I now hand paper to witness, and he is asked what it is. 20

Ans. That is the paper originally filed, the original answer.

Ques. And the statement at the end is the statement you referred to when you spoke of the original statement?

Ans. Yes, sir.

Ques. That is a statement of the Lawrence street houses. As a supplementary account, isn't it?

Ans. Yes; supplementary account, and it contains 30  
the Lawrence street houses, and a residuum, as it were, of the whole claim as to expenses except as to the valuation of the property.

By Mr. Drake:

Ques. The supplementary account shows a balance

at the end of the account, on page 24, of \$72.48, Mr. Bergen. Please state in whose favor that balance is claimed by you to be?

Ans. That balance is in my favor, but there should be added to that balance, according to my calculation, \$100, for the \$2,000 additional for the No. 538 Cooper street.

Ques. That would be besides interest?

10 Ans. Oh, I know; besides interest, I think, from the time it was due.

By the Master:

Ques. That means a commission on the \$2,000 not charged before? How much commission on the Lawrence street houses is charged in this statement?

Ans. Well, the commission is charged on \$1,000.

By Mr. Snyder:

20 Ques. Mr. Bergen, have you a receipt for the moneys paid the city of Camden?

Ans. Well, on what property?

Ques. In the settlement of the claim of the city of Camden against yourself and others; in the settlement of Mr. Porter's account?

Ans. I don't know whether I have or not. Isn't that marked as an exhibit in the other case?

Ques. I don't know whether it was produced or not. It was called for.

30 Ans. If it was called for then, and I had it, I produced it; that is all there is about it.

Ques. Well, will you produce it?

Ans. I will if I got it. I don't know whether I have. I think I've got it.

By Mr. Snyder:

Ques. Mr. Bergen, did you have an account of these different transactions?

Ans. What do you mean, an account?

Ques. Well, were they entered into any book or memoranda, or anything of that sort?

Ans. Well, kind of a loose account; no book account kept of it, exactly; only reason why there was so much trouble finding anything.

Ques. Did you keep account of the moneys received from Mr. Dayton in any book?

Ans. Well, I don't know as I did, Harry; I don't think I did.

Ques. Where did you get these items annexed to your answer?

Ans. Well, I took them off from a memorandum, that went through the office, and the payments were made by checks. I have got no account of them at all, but I know that I got the money.

Ques. Didn't you make any memorandum in any book?

Ans. The only memorandum I got is a little book here that shows "Cash, \$1,000, February 1, 1887."

Mr. Snyder: I think I ought to know what he is looking at.

The Witness: Why, it is a little memorandum book that we kept in the office. It has got a whole lot of stuff that we kept right along; you can see the book. 30

(A small book, marked "Bergen & Bergen, No. 10" on the outside, is offered and marked Exhibit P. ).

Mr. Drake: I would state to the Master that no question was raised about the amount of money.

The Witness: I think the answer to the bill agreed.

The Master: Except I think the bill claims there was two thousand dollars in Dayton's hands.

Mr. Drake: The order of reference does not cover this, as I understand it. The order of reference is that he shall account for all rents, issues and profits derived from the property.

By Mr. Snyder:

10 Ques. Now, Mr. Bergen, in your answer, there is mentioned a loan to Mr. Porter of \$75?

Ans. Yes.

Ques. You were asked before the Vice Chancellor to produce your memorandum in reference to it? It has never been produced.

Ans. Well, I can't produce it. I told you that it was lost at that time.

Ques. Can you show me where you made the original entry of that loan?

20 Ans. No, I have no entry made, except on the memorandum.

Ques. Which memorandum?

Ans. The memorandum that was lost.

Ques. When was this loan made?

Ans. Prior to this; and was made for the purpose to pay the tuition, or whatever you may call it, of his daughter, at a school over in town where she was going, and for the reason that she could not go any more, because the bill was not paid.

30 Ques. How much previous to this was that loan made?

Ans. It was not very long. I don't know how long before it was; my idea was that it was only shortly before.

Ques. Have you any memorandum, or anything to show about the \$75?

Ans. No.

Ques. No receipt from Mr. Porter ?

Ans. Nothing except that little bill, or whatever it was that he gave me.

By the Master:

Ques. You say that is lost ?

Ans. Yes, that is lost.

By Mr. Snyder:

10

Ques. In your answer, you have charged to Mr. Porter, for drawing mortgage, \$10. Is that a proper price for drawing a mortgage ?

Ans. I think it is.

Ques. Is not the proper price \$5 ?

Ans. No, I have drawn many a one for \$5. I know a lawyer who wants \$25.

By the Master:

Ques. How many properties are in this mortgage? <sup>20</sup>  
How many properties are described in it ?

Ans. I don't know. What is the mortgage about ?

Ques. The \$4,000 mortgage.

Ans. No, \$10 is no price for it at all. That included all the properties. It included 538 Cooper street, 425 Cooper street, the Lawrence street houses, and a piece of land down at Atco. I say Atco ; it is down there somewheres.

Ques. And in reference to property, No. 538 Cooper street, did you sell this property to Mrs. Gibson your- <sup>30</sup>  
self ?

Ans. I understand I did, yes. Do you mean to say, did I go and hunt her up and find out about it ?

Ques. Didn't she come to you through Mr. Marmaduke Taylor ?

Ans. He and I did the business between us. I think he came to me.

Ques. He employed you to perform these services in conveyancing?

Ans. I don't know that anybody did actually employ me any more than I did the work. I held the title to the land, and I drew the papers so as to make them a title.

10 Ques. I don't think you held the title to the No. 538 property?

Ans. 538 Cooper street? I think I did. No, I didn't; I had a mortgage; I think I had a mortgage on the Cooper street house. I suppose Mr. Porter asked me to do it; I don't know whether he did or not.

Ques. Have you any charge against Mrs. Gibson in the books for this conveyancing?

Ans. No, I don't recollect it.

20 Ques. Is it customary or not customary for the grantor to pay for recording a deed to the grantee?

Ans. Well, I don't know what the arrangement was in this case. If I paid for it, and charged for it, then I agreed to do it, when it was done.

Ques. Now, you have here an item, drawing a lease from Gibson to Porter. What was the object of that lease at that time?

30 Ans. The object of that lease, as I recollect it, was this: That Mr. Porter was in possession of the property—the property was sold to Mrs. Gibson. Mr. Porter was not in a position to move, but Mrs. Gibson wanted it in such a shape that if he did not go out after this conveyance was made that he was her tenant, and she would have a lease against him.

Ques. Your item is charged as to March 19, 1881. Is that the correct time?

Ans. I don't know; but it was about that time.

Ques. Where was Mr. Porter living at that time?

Ans. No. 438 Cooper street.

Ques. No. 438 ?

Ans. No. 538.

Ques. Then why did you subsequently, in the month of February, 1883, obtain an order for possession for removing from property, No. 425 Cooper street?

Ans. Because he moved in that afterwards, and then when I had a chance to sell it, he would not go out. Then I had to get an order, a writ of possession to put <sup>10</sup> him out.

Ques. Have you a copy of the agreement of lease?

Ans. Of what?

Ques. Of the lease?

Ans. Lease for what?

Ques. No. 538 Cooper street.

Ans. No, I have not. I expect Mrs. Gibson kept that.

Ques. Now, Mr. Bergen, don't you know as a matter of fact that Mr. Porter did not remove into No. 538, or <sup>20</sup> take possession of it until he had been removed from No. 425 Cooper street?

Ans. No, sir. I know, as a matter of fact, that he lived at No. 538 until this trouble occurred, and then removed to No. 425, and then into Lawrence street. He lived in No. 538 Cooper street when this mortgage was made to me.

Ques. Now the interest on the mortgage paid to S. H. Grey, under date of May 3, 1881. For what period of time is that interest? <sup>30</sup>

Ans. Well, I can't say. What is charged there is right.

Ques. It don't state. What is that, the mortgage on No. 538?

Ans. Well, I don't know. How much is it?

Ques. \$46.33.

Ans. I know I paid the money. I don't know how

much time it was, but I suppose the calculation was right; but if you want that—

Ques. (Interrupting). Was the mortgage paid off at that time?

Ans. I don't know.

Ques. Or was the property sold subject to the mortgage made by Mr. Grey?

Ans. Well, I don't know. The mortgage was on  
10 previous to the conveyance to Mrs. Gibson.

Ques. And if any settlement of that mortgage was made, it was made subsequent to the conveyance to her, by that statement?

Ans. Well, I don't know whether it was or not. I know that a mortgage was made on that property. I paid this interest to Mr. Grey, if that is the way I got it charged there. I have got no way of showing it now, except the checks shows it, and I suppose it was paid by a check. I will send and find out.

20 Ques. But you have no recollection of paying off the mortgage?

Ans. No. I have no recollection of paying off the mortgage. If there was one there, it is my impression that it was paid off.

By the Master:

Ques. What was the property sold for?

Ans. Four thousand dollars.

30 By Mr. Snyder:

Ques. Subject to a mortgage of \$2,000?

Ans. I don't know; I think it was set out.

Ques. When was the Cooper street property sold?

Ans. March 19, 1887. The interest was paid May 3, 1881, to S. H. Grey.

Ques. Now, you have charged or have credited yourself with having received March 19, 1881, \$2,000, the

proceeds of the sale, and on May 3, nearly two months after, you pay the interest to S. H. Grey. Was the interest calculated subsequent to March 19, 1881?

Ans. I don't know. I have got this memorandum here: "May 3, 1881. S. H. Grey, interest on mortgage on No. 538 Cooper street, Joseph A. Porter and Annie Gibson."

Ques. Have you any receipt from Mr. Grey that will show when the interest was paid? 10

Ans. I don't know as I have. I never looked up any.

Ques. Does that memorandum state whether it was six months interest?

Ans. No; it didn't state a word about that. It just says \$46.33.

By Mr. Drake:

Ques. Where is this memorandum, Mr. Bergen?

Ans. That is in my check book; stub of my check. 20

Ques. Those were only taxes?

Ans. Yes.

Ques. But you had money in your hands to meet the taxes, as also any interest?

Ans. The agreement was that we were to pay them.

Ques. But my interrogatory is to see whether the payment of interest, on May 3, included any interest on the principal of the mortgage, after the title had been vested in Mrs. Gibson.

Ans. Well, I don't know when the title was vested 30  
in her, but if it was paid afterwards, then the agreement was, when it was to be paid, that I was to pay that interest. It may have been paid afterwards, but I was to pay the interest, and did pay it. Before I gave up any money of Mrs. Gibson's to do it with, or anything like that, I was to pay it out of the moneys out of the property that I got.

By Mr. Drake:

Ques. Could you have sold the house for even two thousand dollars, Mr. Bergen, without agreeing to square up the back interest?

Ans. No, and the back taxes.

Ques. You have no memorandum with reference to that interest?

10 Ans. No, sir, unless my check shows there; I don't know anything about that.

By Mr. Snyder:

Ques. Well, Mr. Bergen, if you will look over your papers and if you have any memorandum, produce it?

Ans. Yes, I will see if I haven't got a receipt from Sam. Grey.

20 Ques. Now, in reference to premises No. 425 Cooper street. You have here the amount of the decree of the mortgage under date of March 11, 1882, to Martha B. Haines, and by her assigned to Eliza Schenck, together with interest, amounting to \$2,902.82?

Ans. Yes.

Ques. Now, from whom did you purchase this mortgage and decree?

Ans. Through Mr. Dayton, but I suppose it came from Mrs. Haines.

Ques. Now, at the time of your purchase from Mr. Dayton, did you pay him by check?

30 Ans. Yes.

Ques. Will you please produce that check?

Ans. Here it is.

(Check dated July 23, 1881, made to the order of William C. Dayton by Bergen & Bergen, for \$2,658.33, is offered and marked Exhibit 3C).

Ques. Now, will you explain how you make the sum of \$2,902.82?

Ans. It was added to it up to the time when we foreclosed that mortgage.

Ques. Who foreclosed it?

Ans. We did, Bergen & Bergen.

Ques. Now, when did you file your bill?

Ans. We filed the bill July 30, 1881, and our Master's report was dated October 28th, '81, for \$2,703.84. Interest on it from October 28th, '81, to February 25th, '82, was \$52.12. The costs of the complainant was \$83.63. The interest on the costs was \$1.58. That interest of \$52.72 should have \$3.31 added to it. 10

Ques. For what?

Ans. I don't know.

Ques. Well, go on.

Ans. And the \$1.50, interest on the costs, should have \$.08 added to it.

Ques. Was that for an adjournment?

Ans. I don't know what that is in there for.

Ques. Here is the Sheriff's statement.

Ans. I have the Sheriff's statement; that is what I am going by. 20

The Master: You should have that marked as an exhibit.

Ans. It is an Exhibit, D6, in the original testimony.

(Said statement is now marked Exhibit C4.)

The Witness: And the Sheriff's costs in the case are \$61.13. 30

By Mr. Snyder:

Ques. And when did you obtain a deed for that property from the Sheriff?

Ans. The property was sold March 11, 1882. This statement—I will tell you where the discrepancy comes

in as to the eight cents, and the \$3.31. The statement was made up to the 25th of February, 1882, but the sale took place on the 11th of March, 1882, and the \$3.31 is the additional interest up to that date from February 25th, and the \$.08 is from February 25th to March 11th, when the sale took place.

Ques. The sale took place, you state, on the 11th of March, 1882?

10 Ans. Well, I say so, because that is what it says in my docket.

Ques. Then is not the interest calculated to a period two weeks subsequent to the date of sale?

Ans. The first interest is.

Ques. Then you had spoken about additional interest of \$3.31 and \$.08 on the costs.

20 Ans. The sale took place on the 11th day of March. The interest was calculated up to February 25, 1882, and that statement was made—the first statement—and then the interest was added to make up the difference, and \$3.31 made up the difference.

The Master:

Ques. That would be March 25th?

Ans. March 11th. This statement makes it up to the day of sale, as I understand it.

Ques. What was the original amount of the mortgage?

30 Ans. I think it was \$2,000, but I say that without being certain.

Ques. What rate of interest did the mortgage draw?

Ans. I do not know.

Ques. Mr. Bergen, these other bills that you have on property No. 425 Cooper street; will you produce and leave them with the Master for taxes and water rents?

Ans. I don't know that I have got them, but if I have got them, I will give them to you. I guess I can give you the books, but I can't give you the receipts.

By Mr. Snyder:

Ques. Now, Mr. Bergen, what was done with property No. 425 Cooper street, after you obtained a writ of possession for it?

Ans. Then it was sold to Mr. Irwin.

Ques. Was it rented during that time?

Ans. No, sir.

Ques. And Mr. Porter was in possession previous to your getting a writ?

Ans. Yes.

Ques. Have you, in your account, allowed Mr. Porter for the use of that house from the time you obtained a writ of possession until it was sold?

Ans. Well, it was not rented. I have received nothing from No. 425 Cooper street that I know of.

Ques. You have in your account here charged him with interest until the delivery of the deed to Mr. Irwin. Have you made him any allowance for the use or possession of that property from the time you obtained a writ of possession until the delivery of the deed to Mr. Irwin?

Ans. Well, I don't suppose I have, for I do not think there was any income from it. If I had any income from it, why, then I would have given him credit for it. We got the writ of assistance on February 5, 1883. It was allowed with costs on February 21, but was never enforced; for he finally went out.

Ques. Didn't you have the Sheriff go to his house on a number of occasions?

Ans. Well, that I don't know. If he did, he didn't put him out. That might have all been; I don't know.

Ques. He went out in pursuance of that writ, though, didn't he?

Ans. Well, I don't know whether he did or not. At the time, if my recollection serves me right, at that

time I had a chance to sell the property. That went through because we couldn't get possession. That is what made me get the writ of possession.

Ques. Who was this party that was applying for the purchase?

Ans. That I don't know, but I know we wanted possession of the property.

Ques. You can't recall who the party was?

Ans. No, I don't know who he was.

10 Ques. Can you recall the time,—about the time?

(Objected to as immaterial.)

Ans. About the time we got this writ of possession; must have been; I think that was the occasion of it.

Ques. Were these costs in the writ of possession taxed?

Ans. No, sir.

20 Ques. Do you know what a fair rental of that property would have been, Mr. Bergen?

(Objected to as immaterial.)

Ans. I never rented it, and I don't know. I could tell you by calculation what the thing ought to have been.

Ques. In your supplemental account, did you keep a regular account of these houses on Lawrence street?

30 Ans. Well, in the latter part, we kept an accurate account. In the former part, I don't know that we kept a very accurate account.

Ques. How did you get at these different items of expenditures?

Ans. Well, we have got receipts for them here, I think; all of the Lawrence street houses we have got receipts for here; all but one, and that was for a dollar I paid for fixing a window. We have got no receipt for that.

Ques. Mr. Bergen, what did these houses rent for when you received the title?

Ans. Well, I don't know what they rented for then, but that is the rent we got out of them.

Ques. Did you make a new contract with them,—with the parties in possession?

Ans. We didn't collect the rent right away, when we got the deed.

Ques. But when you commenced to collect the rent, did you make a new contract with them as to the amount of rent? 10

Ans. I don't know about that. I made a half a dozen contracts with them, I guess; had a half a dozen people in there. I don't know whether they ever rented higher than seven or eight dollars apiece or not. We had them once rented for \$8.50. The account there shows when and whom we received them of.

Ques. The accounts show the actual amounts received, do they?

Ans. Yes, sir.

Ques. Now, in that portion of the account which is identified as balances (page 20) you have in there "less five per cent. commission?" 20

Ans. Yes.

Ques. Was there any agreement or understanding between Mr. Porter and you as to any charge for commission?

Ans. No; Mr. Porter was not supposed to own the houses at all.

Ques. Then the charge in there is an arbitrary charge? 30

Ans. Arbitrary charge of five per cent. for collection.

Ques. Now, in your books of original account, have you any charge made there of any commissions? Under the head of balances on each item you have, "Less five per cent. commission." Would your an-

swer be the same as to all of these statements as it was in the previous statement, the charge being merely arbitrary.

Ans. I don't exactly understand what you mean by that. Under the head of "Balances" it shows the yearly balances from the different houses, as I understand it. The rents are everywhere summed up at the full amount received, and five per cent. for fee and expenses are taken off, and that leaves the balance.

10 Ques. Under the head of "Summation" (page 23) you have itemized the amount of assets received as \$10,529.33, on which you have charged a commission?

Ans. Yes.

Ques. Was anything said about commission at the time the properties were put in your name?

Ans. When the properties were turned over to me by Porter?

Ques. Yes, sir.

20 Ans. He was to pay me for everything that he owed me; all my expenses, all my charges and legal fees.

Mr. Snyder: I object to that answer.

The Witness: I mean to say that was the gist of our understanding—was when I took it.

Ques. You mean to say that he agreed to pay you so much commission distinct from any other charge?

30 Ans. Nothing said about commission. I would like to say one thing here. I don't want to put myself on the record wrong. In speaking that I should have two thousand dollars more added to the Cooper street property, as part of the assets, I think that is wrong, for the reason that I did not hold title to that property, but held a mortgage on it.

Ques. And that charge should be for the other account?

Ans. I think that is right.

Ques. Won't the same thing apply to the Taylor avenue property?

Ans. No.

Ques. The title to that property was not in your name?

Ans. No.

Ques. That \$45.35 was brought to you by Frank Skinner, as I understand?

Ans. I don't remember exactly how that came to me; <sup>10</sup> I know it did.

Ques. The statement of receipts on page 24 are the net receipts after deducting your arbitrary commission of five per cent. and all expenses?

Ans. I believe it is. It is taken right from the one above, yes.

By Mr. Drake:

Ques. When did you last see the memorandum from Porter for the \$75, which has been lost or mislaid? <sup>20</sup>

Ans. When we undertook to make up this account.

Ques. When was that?

Ans. Well, I guess it was about the time the bill was filed, I guess. I don't know exactly. It was about that time.

Ques. Have you a personal recollection of having seen the memorandum at that time?

Ans. I gave it to Christopher with some other notes to take down stairs, and I have never seen it since.

Ques. When you handed it to Christopher, did you <sup>30</sup> look at it to see if it was signed by Mr. Porter?

Ans. I don't know as I looked at it then. I know it was.

Ques. I refer you now to the bond and mortgage, dated February 3, 1887, made by Joseph A. Porter and wife to you, now marked Exhibits 5 and 6, and ask

you if these are the bond and mortgage for the drawing of which you charged \$10?

Ans. They are.

Mr. Drake: Mr. Bergen is a lawyer himself. He wants to make any statement that he thiinks of in regard to any other matters.

Mr. Snyder: One question that I would like to ask  
10 Mr. Bergen. It is in reference to this mortgage, I think on No. 425 Cooper stseet. Was that an investment of your own moneys, Mr. Bergen?

Ans. No, not all of it. Part of it was. Two thousand dollars of it we got of Mrs. Schenck, or Miss Schenck. The trouble was that Mr. Dayton was going to foreclose that property, and thought that property would be sold, and we thought there was a margin in the offer, so I borrowed \$2,000 from Mrs. Schenck, and had the mortgage assigned to her, and went on and  
20 foreclosed the mortgage in her name. Of course, we afterwards settled for the \$2,000.

Ques. Was that all at or about the time of the Sheriff's deed to you?

Ans. I don't know; I suppose it was.

Ques. Do you recall what interest you paid Mrs. Schenck on the \$2,000?

Ans. I do not.

Ques. Was it more than six per cent.?

Ans. No, I don't suppose it was. If six was the  
30 legal rate of interest, then we paid her six. If seven, we paid her seven.

Ques. Can you tell by reference to the books the amount you paid her?

Ans. No.

Ques. Didn't you pay her by check?

Ans. No, it was never paid to her in a solid sum. I don't think it was ever paid to her. I think she died afterwards when the money was in our hands.

Ques. Mr. Bergen, in reference to this \$75.00 matter, were you preparing your answer at the time you had it?

Ans. Well, I don't want to say that I was or wasn't. I don't know; I suppose I was at that time. The only reason I say I suppose it was at that time was because when we undertook to get this account up, we were hunting up the data, and so I suppose it was at that time?

Ques. Did you make any memorandum as to this date? 10

Ans. I don't know.

Ques. The \$75 was not in any way connected with the defalcation matter, was it?

Ans. No, sir; had nothing to do with it.

Ques. A personal matter entirely?

Ans. Yes, sir.

By Mr. Drake:

Ques. Mr. Bergen, how extensive a search have you made for your memorandum of the \$75, of which you speak? 20

Ans. I don't know; we have made a pretty extensive search around the offices, but I couldn't find it anywhere.

Ques. Have you looked for it diligently?

Ans. I looked all over where I thought it was possible to find it.

Ques. Have you asked your brother Christopher for it? 30

Ans. Yes; he said it was there among those papers, but I know it wasn't.

Ques. Has he looked for it?

Ans. No, I don't think he has. He has been sick. He hasn't been to the office for pretty near a year.

By the Master:

Ques. You collected nothing towards the mortgage of \$4,000 did you ?

Ans. No, nothing except in the shape the account shows.

Ques. That mortgage is still in existence here, and unpaid and unsatisfied; nothing ever received from it?

Ans. No, sir.

JOSEPH A. PORTER, sworn.

10

By Mr. Snyder:

Ques. Mr. Porter, in reference to the property sold Mrs. Gibson, will you just state who sold the property to Mrs. Gibson?

Ans. I sold the property to Mrs. Gibson. In consequence of what Mr. Bergen told me, I called on her at her residence; sold the property for \$2,000, subject to the mortgage of \$2,000, and directed her to give the check to Mr. Bergen.

20

Ques. Was Mr. Bergen in anyway interested in the actual sale of the property?

Ans. No, sir; not at all.

Ques. The moneys paid by Mr. Dayton, \$100, and \$900, were on your order, were they not?

Ans. He is examined about that. I have here an order on the bank.

Ques. And that was gotten by an order on the bank?

30

Ans. Mr. Bergen is examined about his receiving that thousand dollars from Mr. Dayton. He received that from me in cash.

Ques. The Taylor avenue property,—had Mr. Bergen anything to do with that?

Ans. Well, I made an assignment of that mortgage to Mr. Bergen; that is all I know of it.

Ques. No, the Taylor avenue?

Ans. That is the \$500 mortgage.

Ques. It was a mortgage?

Ans. Yes, sir.

Ques. And that you assigned to Mr. Bergen?

Ans. Yes, sir.

Ques. Mr. Porter, when you left the property, No. 425 Cooper street, was it at your own volition, or through the writ of possession?

Ans. I can't say now whether it was or was not. My personal recollection of that writ of possession was our first meeting before the Chancellor. I don't recollect seeing any Sheriff or anything of that kind. 10

Ques. Did you realize any rents or profits from that property after you had vacated it?

Ans. No, sir.

Ques. Had you at any time been offered any rental for the property?

Ans. Not to my recollection.

Ques. Do you know what would have been a proper rental for the property?

Ans. Well, I think it rented for \$35 a month, \$30 or \$35, I am not sure. 20

Ques. Was that previous to your moving in it?

Ans. Yes, sir.

Ques. The matter of the \$75 note was fully gone into before the Chancellor, and Mr. Porter denied ever having received it.

By the Master:

Ques. When was it you vacated the house at No. 425 Cooper street? 30

Ans. The date?

Ques. Yes.

Ans. I can't tell you.

By. Mr. Snyder:

Ques. Can you tell by reference to the property you rented afterwards?

Ans. I can through Mr. Stiles and the Bank. He was the owner of the property.

Ques. How long was it before Irwin bought it before you went out?

Ans. I had been out some time.

Ques. Was the object of your going out so that the property would be available for sale?

10 Ans. Yes, sir; there was a number of bills put on it.

Ques. The object was to sell the property so they could realize some money?

Ans. Yes, sir.

Ques. When you moved out, did you move out under compulsion, or of your own free will?

Ans. Well, I can't say that; I don't recollect.

Ques. You were not put out?

Ans. No, sir. The first I knowed about the writ was what Mr. Bergen testified to in his examination  
20 before the Chancellor.

Ques. Did Mr. Bergen have anything to do with the sale of the property to Mr. Irwin?

Ans. No, sir; the only notice that ever appeared on the house "For Sale" was through me.

Ques. Was the notice that appeared on the house to apply to you personally?

Ans. Yes, sir.

Ques. That was the only notice that was put on the house?

30 Ans. Yes, sir.

Ques. When did you move from this house,—in the fall or spring, or don't you know?

Ans. I don't know.

Ques. Were you trying to sell this property?

Ans. Yes, sir.

Ques. And Mr. Bergen was trying to sell it?

Ans. I don't know anything about that. He came down once with the old gentleman's son, and insisted on selling the property for \$5,000, and he had a consultation with his brother Christopher, and concluded that \$5,500 was a fair price.

Ques. Did that sale fall through on account of that increase?

Ans. Irwin bought later. They concluded to sell it then at \$5,000. 10

Ques. I think that is all, except I would like the witness to find from Mr. Stiles when he moved on Penn street.

Cross-examination.

By Mr. Drake:

Ques. Now, Mr. Porter, you say the thousand dollars, which Mr. Bergen says he got from Mr. Dayton, he got from you directly, in cash? 20

Ans. Yes, sir.

Ques. Did you get it from Mr. Dayton?

Ans. No, sir.

Ques. Who was in this house, No. 425 Cooper street, after you went out, before it was sold?

Ans. There wasn't nobody in there at the time it was sold.

Ques. From the time you went until the time it was sold, the house was vacant?

Ans. Yes, sir; bills on it all the time. 30

Ques. Who lived in the house just before you went into No. 425?

Ans. There was a gentleman there.

Ques. How long had he been out of the house when you moved in it?

Ans. Well, I think he moved out at our request.

Ques. When No. 538 was sold, he moved out, so that

you could move into No. 425? Our object in that house was to sell it always, wasn't it? The only reason we didn't sell it at that time was because we wanted to get more for it? That was the reason it didn't go through that day?

Ans. I understand that was the reason.

Ques. This Exhibit 7, which purports to be an assignment of stock by you to Martin V. Bergen of eight shares of the West Jersey Ferry Company,—is  
10 that the ferry stock of which you have been speaking?

Ans. I believe it is; yes, sir.

Ques. That is the only stock that you owned at the time?

Ans. Yes, sir.

Ques. It was held by the Camden Safe Deposit and Trust Company at that time?

Ans. I think so.

Ques. Sold to Mr. Rose, I think?

20 Ans. Sold by Mr. Bergen to Mr. Rose. Mr. Rose got the stock, I don't know how many shares.

By Mr. Bergen:

Ques. Did we ever try to rent that house, No. 425?

Ans. Not to my knowledge.

Ques. You didn't want to rent it, did you?

Ans. No, sir. I wanted it sold.

Ques. And that is the reason it was not rented, so far as you are concerned?

30 Ans. Yes, sir.

By Mr. Snyder:

Ques. Now, from the time they desired to get \$5,500 to the time it was sold, how long a time had elapsed, do you know?

Ans. I can't say.

Ques. A month?

Ans. It was more than that.

Ques. Six months?

Ans. I don't know.

RULE NISI ENTERED.

10

DEFENDANT'S EXCEPTIONS.

Exceptions taken by the defendant in this cause, to the report made therein on the fourteenth day of March, eighteen hundred and ninety-five, by Benjamin D. Shreve, Esquire, one of the Masters of this court, to whom this cause stands referred by the decretal order made in the said cause, bearing date January 20 fourth, eighteen hundred and ninety-five, touching matters therein referred to him.

First Exception. For that the said Master, by his said report, found "It must be that said sum of one thousand dollars so allowed is in lieu of said houses, and the defendant not claiming in his answer commissions, it is evident that the said fee of houses covered all services, so do not allow the defendant any commissions for any money received by or paid out by him;" whereas, said Master ought to have made all just allowances, according to the said decretal order and the principles of equity, and as in and by said decretal order he was commanded to do, without respect to the pleadings in the cause, and to have allowed to the exceptant in the management, conduct, sale and disposal of the property of the complainant, a commission on the moneys received and disbursed by this exceptant 30

in respect to the same, in addition to the allowance of said sum of one thousand dollars, which related to and was paid and by the Court allowed to the exceptant for services as counsel, and of a totally different character from the just allowance claimed as commissions on moneys received and disbursed by this exceptant in the conduct, management and sale of the property of the complainant.

10 Second Exception. For that the said Master has, by his said report, declined to allow this exceptant over and above a counsel fee for services rendered to the complainant to save him from criminal proceedings growing out of his financial embarrassments, any commissions on moneys received and disbursed by this exceptant in the taking, managing, protecting and disposing of the property of complainant (largely subject to heavy encumbrances) without loss and to good advantage; whereas, by the terms of said decretal order  
20 and the principles of equity, he ought to have allowed to this exceptant a commission, as trustee, distinct from his function as attorney and counsel, of at least five per cent. on the said moneys received and disbursed by this exceptant as aforesaid.

Third Exception. For that the said Master has declined to allow this exceptant interest on the said sum of one thousand dollars from the time of the termination of the services of this exceptant as the counsel of the complainant as aforesaid, and has allowed interest  
30 on that sum only from the termination of the services of this exceptant, as trustee as aforesaid; whereas, according to the said order and the principles of equity, he ought to have allowed interest on said sum of one thousand dollars, if not from the time when the services of this exceptant, as counsel, ceased, on the fourth day of May, eighteen hundred and eighty-one, at least from the time when the said Lawrence street houses were

conveyed to this exceptant in payment of said one thousand dollars to wit, on the eighth day of April, in the year eighteen hundred and eighty-two.

Fourth Exception. For that the said Master has allowed to the complainant interest on the net sums of money received as rents from said Lawrence street houses, when said net sums were insufficient to pay and discharge the interest on the then unpaid sums of money theretofore allowed to this exceptant, and when there was due to this exceptant more of interest on allowances then already made than said net sums of rent would pay, or cover; whereas, according to the said order and the principles of equity, the said Master ought not to have made such allowances of interest as aforesaid to the complainant. 10

Fifth Exception. For that the said Master, in and by his said report, has found that the claim of this exceptant against the complainant for seventy-five dollars for money loaned some time before eighteen hundred and eighty-one, cannot be allowed to this exceptant; whereas, said Master ought to have allowed the said sum with interest from the beginning of the said account, according to the terms of the said order and the principles of equity, and as the same, having been a part of the account attached to the answer of this exceptant, was practically and substantially allowed by the Court before making said decretal order, as a part of the account of this exceptant attached to his answer as aforesaid, which the Court allowed as there stated before making said decretal order. 20

Sixth Exception. For that the said Master has, by his said report, declined to allow this exceptant with money loaned complainant May eighth, eighteen hundred and eighty-four, amounting to fifty dollars, with interest thereon from said date; whereas, he ought to have allowed the same, either according to the terms of 30

the said decretal order or principles of equity, and as the same was also included in the account of this exceptant attached to his answer and allowed this exceptant as part thereof.

Seventh Exception. For that the said Master has, by his said report, found that there was due by said complainant to this exceptant, on January first, eighteen hundred and ninety-five, the sum of two hundred and eighty dollars and forty-nine cents; whereas, according to the terms of the said decretal order and the principles of equity, he ought to have found there was owing this exceptant by said complainant the sum of one thousand seven hundred and four dollars and seventy-four cents at that time and to have stated said account and arrived at said result as follows, viz: That he should have allowed interest on the one thousand dollars which was allowed to this exceptant by the court on account of fees in the criminal matter from April eighth, eighteen hundred and eighty-two, the date of the deed of the Lawrence street houses to him. That as this exceptant was held by the court to hold as trustee the estate which came to his hands, and to account for same to complainant he should be allowed commissions as such trustee on the amount of such estate, consisting of ten thousand five hundred and twenty-nine dollars and thirty-three cents, as shown by his supplemental account, at five per cent., in consideration of the amount of work and labor done in performing said trust, amounting to five hundred and twenty-six dollars and forty-seven cents, with interest thereon from April seventh, eighteen hundred and eighty-four, the date when 425 Cooper street was sold and the date when last of said estate was disposed of. That the balance shown by his answer due this exceptant, the sum of one hundred and sixteen dollars and sixty-one cents, including the seventy-five dollars loaned for

tuition of complainant's daughter and the fifty dollars loaned by this exceptant to complainant, which said balance was allowed by this court to this exceptant, should be allowed to this exceptant with interest from May eighth, eighteen hundred and eighty-four, the date to which said account was carried; that this account should be made upon the principle of partial payments with annual rests, and as follows, to wit:

April 8, 1882. On account criminal fee . . . . .	\$1,000 00	
Interest to January 1, 1895, 12 yrs., \$720; 8 m. 23 d., \$43.83 . . . . .	763 83	
		\$1,763 83
January 1, 1883. Deficit of receipts Lawrence streets houses	\$22 62	
Interest to January 1, 1895, 12 yrs., \$1.36 per yr. . . . .	16 32	
		\$38 94 <sup>20</sup>
April 7, 1884. Commissions on estate \$10,529.33 at 5 per cent.	\$526 47	
Interest to January 1, 1895, 10 yrs., \$315.90; 8 m. 24 d., \$23.16 . . . . .	339 06	
		\$865 53
May 8, 1884. Balance from account in answer . . . . .	\$116 61	
Interest to January 1, 1895, 10 yrs., \$70; 7 m. 23 d., \$4.53 . . . . .	74 53	
		\$191 14 <sup>30</sup>
January 1, 1895. Amount due defendant . . . . .		\$2,859 44
January 1, 1895. Receipts from Lawrence street houses . . . . .		1,154 70
		\$1,704 74

In which said several matters and respects, herein above particularized, this exceptant excepts to the said report, and humbly conceives that the said Master hath erred, and that the said report is wrong, unjust and inequitable; and therefore prays that the said report, so far as regards the several particulars above specified, may be disallowed, rejected and set aside, and a new report be ordered to be taken, or that the said report may be corrected in the said several particulars, and prays the judgment of this Court thereon.

BERGEN & BERGEN,  
Solicitors of Defendant.

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#### COMPLAINANT'S EXCEPTIONS.

Exceptions taken by the complainant in this cause to the report made therein on the fourteenth day of March, in the year eighteen hundred and ninety-five, by Benjamin D. Shreve, Esq., one of the Masters of this Court, to whom was referred the accounting of the dealings and transactions between the parties hereto, by the order made in this cause bearing date the fourth day of January, eighteen hundred and ninety-five, touching the matters and things therein referred to him.

First Exception. For that the said Master has reported as follows: "The Court having decided that the said houses were held in trust, and that the defendant should have the sum of one thousand dollars as counsel fees, it must be that the said sum of one thousand dollars so allowed is in lieu of said houses."

Second Exception. For that the said Master has reported as follows: "The allowance by the Court of the said sum of one thousand dollars to the defendant was

for services rendered by the defendant for the complainant; these services were rendered during the years 1881, 1882, 1883 and 1884, and the said sum of one thousand dollars shall be considered as due when the last of the services were performed, and by the answer of the defendant it is evident that such last services were performed on April 7, 1884, when the defendant sold a house on Cooper street to one A. E. Irwin."

Third Exception. For that the said Master reported as follows: "And defendant should be allowed interest on the said sum of one thousand dollars from the time it became due, viz.: April 7, 1884." 10

Fourth Exception. For that the said Master has allowed the defendant interest during the period of time the said defendant suffered the house, No. 425 Cooper street, to remain idle, i. e., from the time the defendant obtained possession thereof, through the assistance of this Court, until the said house was sold—a period of about one year—whereas, the said Master should allow the complainant credit for the use and occupation thereof by the defendant; or else the said Master should not charge the complainant with interest during that period of time. 20

And the complainant insists that the said Master's report is contrary both to law and equity, for as much as the said Master had no authority or lawful right to presume or arbitrarily fix a period of time when the said sum of one thousand dollars should be allowed, but was bound by the order aforesaid allowing the defendant said sum, and should not have allowed it until the date of its allowance by the Court, and the interest thereon should not have been allowed from the time so arbitrarily fixed or presumed by the Master; and further, that the act of the defendant in taking possession of house No. 425 Cooper street was a wrong and injury to the complainant, and for which reason the defendant 30

should not profit thereby; and that the said Master should have only allowed said sum of one thousand dollars from January 4, 1895—the date of allowance by the Court—and should have charged defendant with the use and occupation of house No. 425 Cooper street after the defendant had taken possession thereof from complainant.

10 Whereas, the said Benjamin D. Shreve, Master as aforesaid, has not reported properly, or in accordance with the terms of the said order, or with principles of equity.

In which said several matters and respects this exceptant prays the judgment of this Court.

H. M. SYNDER, JR.,  
Sol. and Counsel with Complainant.

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## NOTES.

By order of the Court, entered March 30, 1895, the exceptions to the Master's Report were set down for argument at the Chancery Chambers, in Newark, for April 23, 1895, before the Hon. Robert S. Green, Vice Chancellor, but owing to his illness and sudden decease the argument was not heard.

30 Subsequently, by consent, the matter was referred to the Hon. Henry C. Pitney, and counsel, by consent, had him appoint a day at Camden for the argument.

## MEMORANDA OPINION.

PITNEY, V. C.

It is unfortunate for the parties that these exceptions could not be heard by the same Judge who heard the

cause and made the reference. I confess to feeling an embarrassment in dealing with them.

I think the exception as to the \$75 claimed by defendant to have been advanced to complainant to pay for the schooling of his child, and \$50, cash advanced in 1884, evidenced, as I understand, by a due-bill, should be sustained, and that both those sums should be allowed the defendant.

I think, also, that the defendant should be credited with the counsel fee fixed by the learned Vice Chancellor as of the date when his work as counsel ended. Except that he has fixed it in April, 1882, I should have said he should have credit for it on or about the 1st of May, 1881, when the settlement was made with the city. 10

The general reading of the order, and the interlineation made in the proper handwriting of Vice Chancellor Green, compels me to the conclusion that he did not intend that the \$1,000 fixed for his services as counsel was intended to cover all his services. 20

Defendant claims commissions, and I am inclined to think that his claim should be allowed in part.

It was urged against the allowance of any commissions that defendant made no claim for those in his original answer. I do not think that is conclusive, for the reason that the defendant made up an account, as a part of his answer, showing that the complainant was indebted to him without charging any commissions, and I find that his account in that respect was correct.

I do not think he is entitled to any commissions on the first items of his charges to himself, to wit, the money received from Mr. Dayton, or from the sale of the Ferry stock, or from Skinner. 30

I think he is entitled to a commission of two and a half per cent on the sale of No. 538 Cooper street, amounting to \$50; and to two and a half per cent on

the \$5,000 proceeds of the sale of No. 425 Cooper street, which would amount to \$125.

I find myself unable to allow him any commissions on the rents of the Lawrence street houses, and for the simple but unanswerable reason that he denied his trust by his answer and put the complainant to suit therefor.

Complaint is also made as to the mode in which interest is allowed by the Master on the different items of the account. I have not examined these  
10 exceptions carefully, and decide nothing about it.

The counsel may each make up a statement of the account on the basis of the foregoing opinion, making the charges of interest according to his peculiar notions in that respect, and submit them to me, and I will then determine which is right; and until then no order need be entered.

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#### FINAL DECREE.

This cause coming on to be heard upon exceptions taken by complainant and defendant to the report made therein by Benjamin D. Shreve, Esq., one of the Special Masters of this court, dated March 14, A. D. 1895, in the presence of the counsel of the respective parties, and the said report, and the several exceptions thereto, having been read and considered by the Court, and the matter of costs having been also presented to  
30 and considered by the Court, and the Court having also heard and considered the statements and arguments of counsel thereupon, and being of the opinion that said Master's report ought to be modified, in part, as excepted to as aforesaid, and that the defendant should pay costs to complainant up to and including the said order of reference to said Master, which was dated January 7, A. D. 1895, and that the complainant

should pay the costs of said Master, and all costs incurred by the defendant before said Master after the said order of January 7, A. D. 1895, and that no other costs should be allowed either party; and it further appearing by a statement made up by the complainant and filed in the cause, that the amount due to the defendant, on the first day of January last past, was the sum of one thousand and thirty-three dollars and forty-nine cents, and that since that date the defendant has received as rents for the houses and lots known as Nos. 432 and 434 Lawrence street, in the city of Camden, after deducting all proper charges, the sum of ninety-eight dollars and twenty-five cents, that the amount or balance due by the complainant to the defendant on the day of the date hereof is the sum of nine hundred and eighty-two dollars 10

\$982.78

made up as follows:

Due defendant January 1, A. D. 1895 . . .	\$1,033	49
Interest from January 1, 1895, to October 7, 1895 . . . . .		20 47 54
		47 54
Amount due October 7, 1895 . . . . .	\$1,081	03
which after deducting therefrom said net rents of . . . . .		98 25
		98 25

leaves the aforesaid amount or balance of . \$928 78  
 which is the amount or balance due to the defendant from the complainant on this day.

It is thereupon, on this tenth as of the seventh day of October, A. D. 1895, on motion of Henry M. Snyder, Jr., solicitor for complainant, by the said Court of Chancery ordered, adjudged and decreed, that the said Master's report be so modified and corrected as to find that there was due to the defendant from the complainant, on the first day of January last past, the sum of one thousand and thirty-three dollars and forty-nine cents; that the complainant allow interest to the 30

defendant, on the said last mentioned sum, to the extent of forty-seven dollars and fifty-four cents above recited; that the defendant do allow, as a credit thereon, the said net rents to the sum of ninety-eight dollars and twenty-five cents, and that the balance due by the complainant to the defendant on this day be ascertained to be the sum of nine hundred and eighty-two dollars and seventy-eight cents; and it is further ordered, adjudged and decreed, that the complainant do pay to the defendant, within fifteen days from the day of the date hereof, the said sum of nine hundred and eighty-two dollars and seventy-eight cents, together with interest thereon from that date, and that thereupon the defendant do forthwith convey or cause to be conveyed to the complainant or to such person as he shall designate in writing to be executed, &c. Acknowledged as a deed of lands the said houses and lots known as Nos. 432 and 434 Lawrence street, in the city of Camden, New Jersey; and it is further ordered, adjudged and decreed that in default of such payment all the following described tract or piece of land, situate in the city of Camden, in the county of Camden and State of New Jersey, and bounded as follows: Beginning at a corner in the south line of Lawrence street, at the distance of forty feet from the southwest corner of Lawrence and Fifth streets; thence running (1) south forty-five feet to a corner; thence (2) west twenty-four feet to a corner; thence (3) north forty-five feet to the south side of Lawrence street; thence (4) east along the south side of Lawrence street twenty-four feet to the place of beginning; being the said houses and lots known as Nos. 432 and 434 Lawrence street, with the appurtenances, or so much or such parts thereof as may be needful for the purpose, be sold by and under the direction of Charles V. D. Joline, one of the Masters of this Court, to pay and satisfy

unto the defendant, the said sum of nine hundred and eighty-two dollars and seventy-eight cents, together with lawful interest thereon from October 7, 1895, as aforesaid, besides the Master's costs for selling the same; and that in case of said sale the said Master do have those moneys in our said Court of Chancery, at Trenton, on the third Tuesday of October instant, to render unto the defendant, and also the surplus money, if any there be, to abide the further order of this Court, unless otherwise previously disposed of by order of this Court; and it is further ordered, that costs of this suit be taxed against the defendant in favor of the complainant up to and including the said order of reference of January 7, 1895; and that the said defendant do pay the said costs to the complainant or his solicitor, or allow them as a credit to complainant upon the said balance in favor of the defendant as above ascertained, as the defendant may elect, within fifteen days from the date of this decree; and it is further ordered, that the complainant do pay the costs of said Master, Benjamin D. Shreve, and all costs incurred by the defendant before said Master on said reference from and after the time of the making of the said order of January 7, 1895, and that no other costs be allowed; and it is further ordered, that the complainant do and shall exhibit to the defendant, within said fifteen days from the date hereof, in case he pay the said decree to the defendant and require said houses and lots to be conveyed to him as aforesaid, acquittances for the payment of said Master's costs, and all costs incurred by the defendant in this cause be paid said Master from and after said January 7, 1895, and that the defendant shall not be bound to convey said houses and lots until said last named costs be fully paid and satisfied; and it is further ordered, adjudged and decreed, that the said complainant and defendant do stand absolutely de-

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barred and foreclosed of and from all equity of redemption and of and from all right, title and interest of, in and to the said houses and lots when sold as aforesaid by virtue of this decree, and either party may appeal for further directions.

ALEX. T. MCGILL,  
C.

Respectfully advised,

H. C. PITNEY,  
V. C.

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#### NOTICE OF APPEAL.

The complainant hereby appeals from the final decree made in the above stated cause, on the tenth as of the seventh day of October, eighteen hundred and ninety-five, and from the interlocutory decree made in the above stated cause on the fourth day of January,  
20 eighteen hundred and ninety-five, and from the whole and every part of said decree, to the Court of Errors and Appeals in the last resort in all causes.

Dated October 28, 1895.

H. M. SNYDER, JR.,  
Solicitor for and of Counsel with Complainant.

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

H. M. SNYDER, JR.,  
Of Counsel with Complainant.

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#### PETITION OF APPEAL.

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

The humble petition of Joseph A. Porter, the appel-

lant in the above stated cause, respectfully shows, that your petitioner finds himself to be aggrieved by a final decree made in the Court of Chancery, by his Honor Alexander T. McGill, Chancellor of the State of New Jersey, bearing date the tenth, as of the seventh day of October, eighteen hundred and ninety-five, in a certain cause therein, wherein your petitioner, Joseph A. Porter, was complainant, and the respondent, Martin V. Bergen, was defendant, in this respect, that the said decree adjudges that the Master's report be so modified and corrected as to find that there was due to the defendant from the complainant, on the first day of January last past, the sum of one thousand and thirty-three dollars and forty-nine cents, and that after all allowing interest and a credit thereon the balance due by the complainant to the defendant on the day said decree was signed was ascertained to be the sum of nine hundred and eighty-two dollars and seventy-eight cents; and further, that the complainant do pay to the defendant, within fifteen days from said day, the said sum of nine hundred and eighty-two dollars and seventy-eight cents, together with interest thereon, and that thereupon the defendant do forthwith convey, as therein directed, the premises described; and further, that in default of such payment, the said premises to be sold in the way and manner therein set forth and directed; and further, that the costs of said cause be taxed against the defendant in favor of the complainant, up to and including the said order of reference of January 7th, 1895, and that the said defendant pay said costs to complainant or his solicitor, or allow them as a credit to said balance as ascertained, as defendant may elect; and further, that complainant do pay the costs of the Master, and all costs incurred by defendant before said Master, and that no other costs be allowed; and further, that the said complainant exhibit to defendant acquit-

tances for the payment of said costs, and that defendant be not bound to convey said premises until said costs be paid; and further, that the said complainant stand absolutely debarred and foreclosed of and from all equity of redemption, and from all right, title and interest in said premises when sold.

10 And your petitioner hereby appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that there was not due to the defendant from the complainant, on the day therein specified, the sum of money there alleged to have been ascertained; that the complainant ought not to pay to the defendant the sum of money therein specified as therein directed as therein specified; that the said lands therein described ought not to be sold as therein directed; that the costs of the suit were erroneously directed to be taxed; that the complainant ought not to pay the costs of the Master on the reference therein mentioned; that the complainant ought not to  
20 be required to exhibit to defendant any acquittances for the payment of said Master's costs, or other costs, and that the said defendant should be bound to convey the said lands without regard to payment of any costs; and that the complainant ought not to stand debarred and foreclosed of and from all equity of redemption, and of and from all right, title and interest of, in and to said lands when sold as therein directed; and that said decree is in various other respects erroneous and illegal.

30 And your petitioner finds himself further aggrieved by an interlocutory decree or order made by his Honor in the said cause, on the fourth day of January, in the year last aforesaid, in this respect, to wit, that the said decree or order adjudges and directs the said Master in taking of said accounts to allow the said defendant the sum of one thousand dollars as counsel fee, and to make unto the parties all just allowances.

And your petitioner humbly appeals from that part of the decree or order of the Chancellor which decrees or orders as aforesaid, upon the ground that the same is erroneous, for that the said defendant was not entitled by the law of the land under the pleadings and proofs to the relief granted by said decree or order, and that the same is illegal.

Your petitioner therefore prays that the said decrees of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 10

H. M. SNYDER, JR.,  
Sol. for and of Counsel with Appellant.

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ANSWER TO PETITION OF APPEAL. 20

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

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree, bearing date the tenth as of the seventh day of October, eighteen hundred and ninety-five, was made and entered in the Court of Chancery, and an interlocutory decree or order was, on the fourth day of January, in the year last aforesaid, made and entered in the said Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree and the said interlocutory decree or order are agreeable to equity, and he 30

prays that the same may be affirmed with costs to be adjudged to this respondent.

Dated December 9th, 1895.

BERGEN & BERGEN,  
Solicitors and of Counsel with Respondent.

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