MacCrellish & Quigley, Printers, 16 E. State Street, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

Between JENNIE E. DUNN AND ALEXANDER DUNN, Appellants, and KEZIAH DUNN, Respondent.	Brief of Appellants.

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1. The *Allegata* of Bill are not supported by *Probata*.

Complainant's bill charges, page 5, line 20, that Mr. Holt, as her attorney, in October, 1877, visited her and informed her that her mortgage referred to was worthless, as the property had greatly depreciated; and there were two mortgages ahead of hers, and the property would not sell for enough to pay them; and he offered her $900 for her mortgage; and informing her if she did not accept his offer she would get nothing; but she refused to accept the offer. That subsequently, page 6, she came to Trenton that the representations were repeated by Holt, and 10 offer renewed, and refused by her. That shortly after Mr. Murphy called upon her in Philadelphia and repeated all that Holt had told her, and offered her $1,200 for her mortgage.

About three months after, on February 2d, 1878, Murphy again called and repeated the statement and she accepted his offer of $1,225 and assigned her mortgage to him, page 7, line 8.

She charges representations to be false; that assignment was delivered to Holt, who sold it to Jennie E. Dunn, for $4,000.

Page 8, line 16, that assignment was made without consideration, and in pursuance of a conspiracy between Holt, Murphy, Alexander Dunn and Jennie Dunn; and that the $1,225 was, in fact, paid by Alexander Dunn, and Holt and Murphy were his agents.

Page 15, the bill is sworn to; and prays discovery, etc.

Mr. Holt, in answer, page 38, line 20, denies the allegations.

10 Page 39, lines 10 to 33, says that she requested him to make her an offer for the mortgage. Did so; about $1,000; and offer declined. Page 40, subsequently requested him to make an offer, which was accepted.

Page 41, then Murphy called upon him as her agent. That she was dissatisfied with the sale. He offered to surrender upon payment of what was due him. Negotiations were renewed and price increased, and assignments executed.

Page 42, all his transactions with her and her agent were honorable.

20 Page 18, Murphy answers, says he received a letter from complainant and called on her. Denies all representations charged as made by him to her.

Page 19, absolute denial of all her charges.

Page 20, gives interview with Holt. Page 122, line 33.

Page 22, was unable to negotiate the mortgage.

Page 23, assignments of mortgage were made with knowledge and consent of complainant; and $1,825 paid therefor. Additional sum paid by Holt induced by Murphy.

Page 29, line 4, denies conspiracy, and agency for Holt or 30 Dunns, but was solely complainant's agent.

Answer of Alex. Dunn and Jennie Dunn denies all conspiracy and knowledge of fraud; claim a *bona fide* purchase of mortgage.

Now complainant swore, p. 46, l. 25, that in November, 1877, Holt made an offer for her worthless mortgage which she declined; that he would have nothing more to do with it, and she must pay him; and then she went to another attorney.

P. 48, l. 30, admits that Murphy came to her pursuant to letter, *Exhibit A*, p. 139. She explained the matter to him, p 48, l. 34; she entered into negotiation with him. No pretense of 40 any representations made by him. Then, p. 51, l. 32, says Murphy bought mortgage himself.

So her proofs entirely fail to support allegations of bill. The denials of answers are not overcome. Her own evidence is contradictory and unreliable. Her *own* certificate, *Exhibit* 1 *H*, p. 141, contradicts her oath.

Then *in her* proofs she *makes* a charge *not mentioned in bill.*

She swore, p. 45, l. 38, that Holt told her when he paid her interest in October, 1877, that Alexander Dunn had failed and was paying 33 cents to the dollar.

It appears, p. 91, l. 34, the suspension of firm took place in October, and compromise or resumption in January following, 10 and on a basis of 36 cents to the dollar. Holt did not know of resumption then, p. 108, l. 25.

She swears that she only received $1,225, p. 7, l. 9; p. 15, l. 19. Murphy in answer says he paid her $1,825, p. 23, l. 11. Her certificate, *Exhibit H* 1, p. 141, says the same. *Exhibit B*, p. 140, she entered in her own handwriting $1,825 as the consideration, p. 50, l. 21. So Holt swears, p. 103, l. 20, it was between $1,500 and $2,000.

Again, as to payment of interest; she says she received her interest October 4th, 1877, in Trenton, p. 45, l. 29. At that time 20 Holt visited her in Philadelphia and informed her mortgage was worthless, p. 5, l. 20.

P. 6, l. 21, she charges that not receiving her interest she came to Trenton, concerned regarding it.

Now it was very unlikely that the interest was then paid, as Alexander Dunn had not paid it, p. 87, l. 10 and 30. Holt swears it was not paid in October, p. 100, l. 30; p. 102, l. 18. She would not likely have been embarrassed for money if she had received her interest; and Mr. Holt would have more likely to have kept the interest to reimburse himself; and if he 30 had paid her the interest she would have owed him that much more than the $500, she admits, which is not asserted.

Again, she charges in her sworn bill that there was but one mortgage ahead of hers, p. 7, l. 22.

On p. 6, l. 9, she had just charged that Holt took her to Clerk's office and showed her record of two mortgages ahead.

P. 53 bottom, and p. 54 top, she acknowleges that she knew there were two mortgages ahead.

The bill contains base and false charges and utterly unsustained by proof, and from complainant's own standpoint she is 40

an unworthy applicant for belief. The V. C. in his opinion does not find that any of the charges of misrepresentation mentioned in the bill are true.

The Decree is founded upon other grounds, to wit: That Mr. Holt, who had been complainant's attorney, obtained from her the assignment of the mortgage in question, by withholding from her knowledge that he had, and for an inadequate compensation.

The doctrine of effect of undue influence, as decided in our own courts, we do not now dispute.

10 *Condit* vs. *Blackwell*, 7 *C. E. Gr.* 485.
Porter vs. *Woodruff*, 9 *Stew.* 174.
Farmer Exr. vs. *Farmer*, 12 *Stew.* 216.

We claim that the conclusions are erroneous as to the facts and proofs in the cause.

1. Mr. Holt was agent or attorney of Keziah Dunn, only to collect interest on her mortgage. That is her evidence, p. 44, l. 30. Mr. Holt was not her counsel, p. 38, l. 10. It does not appear that he ever acted as such.

2. That agency ceased entirely, p. 39, l. 33, about October, 20 1877. Bill, p. 5, l. 20. Certainly in November, on her visit to Trenton, p. 6, l. 1; p. 46, l. 16, &c., on Holt's notice to her that he couldn't collect the interest, and bondsmen were insolvent, and demand of return of his loan to her. If not then, beyond question on the sale of the mortgage, in December, 1877, a sale she reported to her agent, Mr. Murphy, p. 20, l. 12; p. 123, l. 4; p. 40, l. 20, and shown by *Exhibit D* 14, p. 133.

This sale the bill does not mention, and no complaint is made of it; nor does she refer to it in her evidence.

3. The opinion of V. C. is based on the two distinct facts:

30 (*a.*) That Mr. Holt informed complainant of the failure of Mr. Dunn, but did not acquaint her with the fact of his resumption and compromise at 36 cents to the dollar, which meant that, as the mortgage debt was not included in the settlement, that it would eventually be paid.

(*b.*) That Holt, in March following, sold it for $4,200 to Jennie Dunn, and that showed the price paid by Holt was not a fair and full one.

As to the first, V. C. erred in his fact. Mr. Holt did not know of the compromise of Dunn's firm with their creditors, p, 108, l. 23, and argument of V. C. is, therefore, unfair. And although it does not positively appear that complainant knew of the resumption, she had the means of knowing, if she knew anything. She was in Trenton; she had relatives here; Dunn was her brother-in-law; and she had cut loose from Mr. Holt, and had complained of the small price she had sold it to him for, in December. Mr. Murphy was her agent, specially employed to negotiate a sale of the mortgage. He was a broker and banker 10 and attorney, too, with office immediately across the street from Dunn's store, and must have known the status of the firm, p. 98, l. 25.

The V. C. also errs as to the statement that as the mortgage debt was not included in partnership compromise, it meant that it would be paid.

The debt was Alexander and William Dunn's. William had sold his interest. Both were then insolvent. The firm which failed was Dunn & Murray, page 87, line 12, and any compromise or settlement of their affairs could not include the mort- 20 gage debt of one of the firm. The property comprised in mortgage alone could then be looked to, and the value of the property at that time made the mortgage of uncertain value.

4. But at date of assignment of February 2d, 1878, Mr. Holt was neither the attorney or agent of complainant, and he had no communication with her. The arrangements were all made through Mr. Murphy, the agent of Keziah Dunn. She admits this, pages 48 and 49. She had employed other persons, page 48, line 8. She left Holt's office after refusing his offer in December, and went to Mr. E. T. Green's office and put her case 30 in his hands. He said he would see what he could do.

Then she had her husband, Mr. Brande, to advise. He dictated the letter, *Exhibit A*, page 139.

It seems she refused Holt's offers, page 48, line 8, showing that she had a mind to consider and strength to say No.

She was at odds and hostile with Mr. Holt. Her fears were aroused for fear of losing her mortgage. She wanted to do what was best to secure it. Now, how can it be fairly said that under such circumstances she was unfairly influenced by Holt to

execute assignment? How can it be successfully maintained that anything that has been shown that Holt said or did influenced her in that act?

She and Murphy and Brande and Mr. Green knew as much about the mortgage and the mortgaged property as Mr. Holt. Murphy was a broker, whose special business it was to sell the mortgage. He was bound to know and presumed to know what he had to sell.

Did Mr. Holt act unfair, and was he disposed to retain the
10 mortgage which he had purchased for $900? Not at all. He told Murphy all he wanted was his money; he would gladly accept it.

Murphy failed to find anyone to give more than Holt had paid, or to purchase the mortgage at all. He did not invest his own funds in it, and hold it for the future. It was an unsaleable mortgage; they all knew it and recognized the fact. Then Murphy, at suggestion of complainant, approached Holt to get more money from him; he appealed to him, and that he could do better with it than anyone else, and actually prevailed upon
20 him to give $900 in cash more.

Persuaded him that it was worth $1,825. Murphy must have advised her to accept it. She did agree to accept it.

The evidence does not show any representations or inducements were made or offered.

She executed the assignments, *D* 12, page 130, *B* page 140.

Both dated the same day, and to Murphy.

Consideration of $1,825 written in one by her.

These facts appear in answers of Murphy and Holt.

5. The parties dealt at arm's length—and no influence or
30 action of Mr. Holt operated to control or direct the action of Keziah Dunn in the transaction. The principle is clearly set forth in *Kerr on Frauds, p* 151:

> "All that a court of equity requires is that the confidence "which has been reposed be not betrayed. A transaction be- "tween them will be supported, if it can be shown that the "parties were, notwithstanding the relation, substantially at "arm's length and on an equal footing, and that nothing has "happened which might not have happened had no such rela- "tion existed. If it can be shown that the other party had

"competent and disinterested or independent advice, or that he "performed the act or entered into the transaction voluntarily, "deliberately and advisedly, knowing its nature and effect, and "his consent was not obtained by reason of the power of influ- "ence to which the relation gave rise, the transaction will be "upheld."

See cases cited in note; Van Epps vs. *Van Epps*, 9 *Paige* 241, *and cases cited in note.*

Hawley vs. *Cramer*, 4 *Cowen* 717, *and cases cited.*

2 *Pomeroy on Eq. Jur.*, § 603 *to* § 670; where doc- 10 trine and cases are all collected and stated.

On page 166, *Kerr on Frauds:*

"If court is satisfied that the transaction on the whole has "been fair and reasonable, and that no undue advantage has been "taken, it will be supported, although there may have been "irregularities attending it."

So *Bigelow on Frauds*, 204, says:

"The doctrine concerning the burden of proof does not apply "to cases where the attorney is in the hostile attitude of an "urgent creditor, or generally where it appears that he had put 20 "his client at arm's length before the transaction was effected."

See cases in notes.

In 13 *Stew.*, *Korn* vs. *Becker*, on page 411, court says:

"Before these parties came to deal with each other in respect "to the matter under consideration, the bond of confidence had "been dissolved—distrust and fear had taken the place of con- "fidence and respect; the parties had assumed a hostile atti- "tude toward each other and were dealing at arm's length with "each other, and so distrustful were each of the other that each "had placed himself under the guidance of a skilled champion." 20

3 *De Gex and Jones* 13, *Johnson* vs. *Fesemeyer.*

6. Then we have complainant's written declaration that the transaction was fair and satisfactory, *Exhibit* 1 *H*, *p.* 141.

Vice Chancellor, p. 153, l. 10, puts a very unfair construction upon this evidence.

Holt, in his answer. explains that paper, p. 40, l. 35; p. 41, l. 18. He demanded a retraction of complainant's slander

against him in regard to the purchase of December, and refused to accept an assignment direct to himself from her, p. 56, l. 10. She says she signed that paper at request of Murphy (her agent). It was part of the final deal, and passed at the same time, p. 57, l. 30. How or why dated March does not appear.

Probably a mistake for February.

Both Holt and Murphy swear that it was given at the time of the assignments to Murphy, p. 41, l. 20, &c. They bear date in February.

10 What does that paper show that Holt knew to be questionable in the transaction? The V. C. misunderstood the purport of the evidence. It does not show that Holt was dissatisfied with anything he had done, or the details pursued. The reflection on Mr. Holt was not justified, because the Court misapprehended the true meaning of it. No *details pursued* or *acts done* appear against him. The paper was proof that she had slandered him, and when faced with the truth, withdrew it. That was the object of it, and she signed it when she had counsel, and was entirely aloof from presence or influence of Mr. Holt.

20 7. Mr. Holt was her creditor.

Did that fact prevent him from demanding his money—and doing so, did it make him guilty of undue influence?

He did not make a peremptory or threatening demand. He closed his agency, as interest was not paid, and asked her to make arrangements to pay him, p. 39, l. 30. He was an honest creditor. No advantage had been taken of her. He had accommodated her with mony on divers occasions. She makes no complaints of him.

Does an agent, loaning money to his principal, thereby bind 30 himself not to ask reimbursement, or to let his principal pay when and as she pleases? Has he any rights in the transaction?

If he has any, surely he may act as Holt did. He acted fairly—only asked that arrangements might be made for the repayment of his loan. He did not act hastily or press unduly. If he had used his indebtedness to force a sale or parting with property, it would have been an element to make out a case of improper influence.

Kerr on Frauds, p. 166 *and Cases in Note* 3.

But if Court is satisfied the transaction was, on the whole, fair, it will be supported.

Same authority.

28 *Beavan*, 599, *Pearson* vs. *Henson*, Court says a solicitor can take a mortgage from client for money justly due to him.

8. Did Holt give a fraudulent small price for the mortgage, as evidenced by the sale to Jennie E. Dunn a month after for $4,200?

V. C. says, p. 153, l. 8, this unquestionably shows that he did not pay a full and fair price for it. 10

It was a great difference and a great profit and calls for a thorough examination of the circumstances to ascertain whether it shows the sale of February 2d, for $1,825, to be a fraud.

Let us first ascertain what the authorities say on this subject.

Hill on Trustees, *p.* 836 (537), says:

> "If unfair advantage has been taken by trustee, by with-
> "holding information, or other fraudulent dealings, the transac-
> "tion will be set aside, and *mere inadequacy* of price will go a
> "great way in the mind of the court to constitute such fraud.
> "The purchase will not necessarily be set aside on that account 20
> "alone.

Bigelow on Frauds, *p.* 205, cites the V. C. in 2 *Hare* 60, *Edwards v. Meyrich*:

> "The nature and extent of the consideration are matters in
> "respect of which the courts exercise a watchful interest over
> "the client. Doubtless, if the property have a definite market
> "value or a value capable of definite ascertainment, and the
> "purchase be effected at a price so much below it as to show the
> "client had suffered an actual and not a mere probable loss, the
> "transaction will be voidable. But if the property have no 30
> "certain value, or if its value be estimated differently by com-
> "petent and disinterested persons and the amount paid be equal
> "to some though not to the highest estimates, and the court can
> "not certaiainly say that the client has lost money by the trans-
> "action, it would seem that the purchase would be valid.

And on p. 204 says:

> "The sale will be upheld, even though it appear the purchase
> "was one of speculation, and by the development of other facts,
> "turned out afterwards to his advantage.

2 *Leading Cases in Eq.* 1237 and 1239.

Now as to the facts.

The mortgage was for $8,000. A third mortgage, with $11,900 ahead. The property worth at the time clearly less than the mortgages.

The V. C. estimates it at $17,000 or $18,000.

10 We submit he is too high. Mr. Prior, the best judge of property, p. 84, line 40, put it at $14,000 or $15,000. Mr. Holt put it at $14,000, p. 101, l. 18.

Interest was in arrear on the mortgages. The taxes were unpaid for the previous year. It was the time of great depression in value of property. All the witnesses spoke of that, and the court recognized it.

If the property had been sold in the market the complainant would probably have realized nothing on her mortgage. She knew that, and so states in her letter to Murphy, p. 139, l. 23.

20 Alexander Dunn, the owner, says, p. 94, l. 10, the $8,000 mortgage, at the time he bought it for his wife, was really worth nothing. He agreed to pay $4,200, because he wanted to retain the business stand. He had to pay a bonus in Philadelphia to have the first two mortgages carried. Miss Furman says he said it was good, p. 61. Dunn denies the conversation, p. 88. No Trenton broker would take them. And complainant acknowledged that she couldn't get over $900 for it, p. 20, l. 35. And declined to refund what Mr. Holt had paid her, but sought, through her agent, to get more money from Holt.

30 The V. C., p. 145, l. 24, says this mortgage was a first lien on a small lot. He ought to have added that the small lot was of little or no value by itself. It is lot No. 4, p. 143. Mr. Dunn, on p. 86, describes the lot, and says it is of no value only as he uses it, and adds nothing to the value of the other property.

The mortgage was not a salable security, p. 84, l. 1; p. 70, l. 7.

Murphy, her agent, a banker and broker, could not dispose of it, and did not offer to advance the money to take it out of Holt's hands, and complainant failed to find a purchaser for it.

Now, note that with prior mortgages and interest and taxes, with probable costs of foreclosure, it would run property over $13,000; and with $1,825 paid for it, ran the property up to about $15,000.

No wonder it was not a salable mortgage in the then condition of money market.

Mr. Holt ran the risk of taking it.

V. C. says the offer of $900 influenced her as an expression of Holt's judgment of the value.

But she did not rely on his opinion or offer. She declined it, 10 and only took what she did because she found, and with the aid of her friends, that it was the best price she could obtain. No one would give as much. It was, therefore, *worth no more*, and the price was *not inadequate*.

She could not wait for time to help her out—she wanted money—and actually paid her agent $300 to make the negotiation, p. 23, l. 29; p. 51, l. 32. She denies that, but he swears to it, p. 23, l. 28. If he was her agent she must have compensated him.

Now Mr. Holt and Mr. Dunn were not friendly, p. 93, l. 25. 20 Did that unfriendliness make Dunn anxious to get that mortgage out of Holt's hands, or into friendly hands? Did it induce him to advise his wife to give a big price for it—having some confidence in himself that it would prove a wise investment for her—and would relieve him from a busines embarrassment, in which that wife certainly felt some interest? Could Holt foresee the anxiety Dunn would feel to have that mortgage in friendly hands? Could he foresee any likelihood of soon getting a return for his money invested in the mortgage? Wasn't it all pure speculation? 30

When Holt was informed that Dunn wished it for his wife, and offered $4,200 for it, how could it be any evidence that it was worth anything like that sum when Holt bought it, or that he acted unfairly a month or more previous when he purchased it of complainant.

Holt says, p. 108, l. 20, the property was worth about the same as when he bought the mortgage, but circumstances connected with the owner had changed—was it evidence of previous fraud that he took advantage of those circumstances?

We submit that when complainant executed assignment of mortgage, February 2d, 1878, to Murphy (of which a decree to set it aside is asked), she signed it knowing all and *every circumstance* affecting its value that *Mr. Holt* knew; that she obtained for it all that it was worth, as its value was purely speculative; that she acted under advice of others and with feelings so hostile to Holt that she would not be influenced by his opinion in any way; that thus protected by counsel, agent and husband, she not only executed the assignment voluntarily and far dis-
10 tant from presence of Holt, but gave a certificate under her own hand, with him as witness soon to be her husband, that Mr. Holt had acted fairly in the transaction.

It does, therefore, fully appear that no confidence was betrayed, but Holt acted fairly with her and originally only took her mortgage at her earnest and repeated requests, not seeking it or desiring it, only asking his own money.

It is proper to notice that the mortgage in question was not a loan mortgage, or an investment of funds by complainant; she gave nothing for it; it was a gift from her late husband, p. 141,
20 l. 26, *Exhibit* 1 *H*, p. 141.

The mortgage was originally given for the interest of her deceased husband in the property and firm of Dunn Bros., p. 99, l. 3, &c.

II.

If there was anything wrong or unfair in the assignment from complainant to entitle her to relief, then we submit that Jennie E. Dunn was an innocent purchaser.

The V. C. says:

> "The fullest knowledge must be imputed to her. Her hus-
> 30 "band was her agent, and he knew Mr. Holt was the attorney
> "of complainant."

It is true that he had paid interest to him as her attorney. Did that act require him to inquire if Holt had a right to sell the mortgage which he had in his possession, with assignment duly executed by the principal to another party, and with an

assignment in blank from that person. Was he bound to go to her and ask her if her assignment was all right? Was he required to ask Mr. Holt if he had acted unfairly in procuring those assignments? Did the simple payment of the interest to an attorney only known as authorized to receive interest, make Jennie Dunn responsible for the wrong-doing of that attorney in unduly influencing the owner of mortgage to part with it, as claimed in the case? Was that simple circumstance sufficient to put her on inquiry or run the risk of a purchaser with notice?

There was no consideration written in the original assignment, and $1 in the other. Did either of these facts require an inquiry under the circumstances of this case? 10

Why, the uncertain value of the mortgage and fact that Alexander Dunn was negotiating for it at about half face value, was enough to allay any suspicion on that score. Complainant had executed the assignment with blank consideration and second party had also executed a like assignment. Was it acting blindly to buy *such* a mortgage in that way?

In 4 *C. E. Green*, 572, *Hoy* vs. *Bramhall*, Court says:

> "Whatever puts a party upon the inquiry, amounts to notice, "provided the inquiry became a duty, and would lead to the "knowledge of the requisite fact, by the exercise of ordinary "diligence and understanding." 20

See 6 *C. E. Green* 478, *Raritan Water P. C.* vs. *Veghte.*

Story on Agency, §§ 227 and 228, says:

> "What will amount to notice of fraud is a matter of great "nicety in some cases. But it is settled, that the conduct of "the holder must amount to *malafides*, and even gross negligence "will not avoid his title."

Cites 34 *N. J.* (5 *Vroom*) 187, *Hamilton* vs. *Vought.* The leading case on this subject is *Jones* vs. *Smith*, 1 *Hare* 55. 30

V. C. McGraw says there are two classes of constructive notice.

> "The proposition of law upon which the first class proceeds "is, 'that he had actual notice of facts relative to the case.'"

And the second class:

> "That he had designedly abstained from such inquiry, for the "purpose of avoiding knowledge." "If mere want of caution, "as distinguished from fraudulent and willful blindness, is all "that can be imputed to the purchaser, the doctrine of con-"structive notice will not apply; he is, in fact, a *bona fide* pur-"chaser without notice."

See 2 *Leading Cases in Equity*, 122 (52) 4 *Ed.*, *Le Neve* vs. *Le Neve*; On p. 167. Doctrine ought not to be pushed to the extent of denying a purchaser the benefit of the presumption of inno-
10 cence, to which every one is entitled until he is proved to have acted in bad faith, or to have been guilty of the gross neglect which is equivalent in effect to fraud.

1 *Story's Eq. Jur.*, § 400.

In 31 *Eng. L. and Eq.* 89, *Ware* v. *Lord Egmont*, Chancellor says:

> "Where a party has not actual notice, he ought not to be "treated as if he had notice, unless the circumstances are such "as enable the Court to say not only that he might have acquired "the notice with which it is sought to effect him; that he
> 20 "would have acquired it but for his gross negligence in the con-"duct of the business in question."

So in 5 *Ohio St. Rep.* 76, *Woodworth* vs. *Paige*, C. affirm V. C. in 1 *Hare*, that if there is no fraudulent turning away from a knowledge of the facts which the *resgestæ* would suggest to a prudent mind, if mere want of caution as distinguished from willful blindness is all that can be imputed, then the doctrine of constructive notice will not apply; he is a *bona fide* purchaser without notice.

Kennedy vs. *Green*, 3 *Mylne & Keene* 699, was a case of con-
30 structive notice. The papers were all wrong, and it was apparent on the face; and solicitor concocting the fraud was solicitor of both parties.

2 *Pomeroy Eq. Jur.*, § 604, *etc.*, where cases are examined and cited.

It is true that notice may be inferred from facts and circumstances, and gross inadequacy of price may operate as notice by putting the purchaser on inquiry as to the cause or motive of the sacrifice.

4 *Rhode Island* 173, *Tillinghast* vs. *Chamberlin.*
1 *Sumner* 173, *Hoxie* vs. *Carr.*
6 *Harris* 157, *Trefts* vs. *King.*
6 *Harris* 394, *Phillips* vs. *Bank.*
25 *Wisconsin* 573, *Hopkin* vs. *Doty.*
3 *Barb. Ch.* 451, *Peabody* vs. *Fenton.*

Jennie Dunn had no knowledge *in any way* of anything wrong in the transaction. She did not turn away from any facts or shut her eyes to them. The price was not inadequate for the mortgage. She paid full value for it—and out of her own indi- 10 vidual funds—and sacrificed a percentage to raise the money.

She relied on her husband's judgment that it would be a good investment for her.

No ordinary investor of money would have taken the mortgage.

Hancock (their witness) admits that, p. 70, l. 8.

She would not have done it except for the praiseworthy object of assisting her husband by having the mortgage in friendly hands.

Kerr on Frauds, *p.* 320, says: 20

> "The court holds that it is not equitable for a person who has "bought for a valuable consideration, without notice, to be "deprived of that for which he has paid his money, and will "not give any assistance to a party claiming against him, or do "anything to prejudice his right."

And cases in note.

2 *Stew.* 412, *Putnam* vs. *Clark.*

A *bona fide* purchaser of a mortgage is entitled to hold it as against the original owner, who, by placing it in her agent's hands, assigned in blank or for a particular purpose, gave the 30 opportunity to perpetrate a fraud upon her.

6 *Stew.* 338, *same case on appeal.*
4 *Stew.* 229, *Vredenburg* vs. *Burnet.*
11 *C. E. Green* 414, *Starr* vs. *Hoskin.*
1 *McCarter* 168, *Woodruff* vs. *Depue.*
1 *McCarter* 213, *Danbury* vs. *Robinson.*
3 *Stockton* 246, *Losey* vs. *Simpson.*

3 *Stockton* 80, *Westervelt* vs. *Scott.*
2 *Beas.* 143, *Wilson* vs. *Hill.*
1 *Halst. Ch.* 633, *Van Hook* vs. *Somerille M. G.*

So in *Story on Agency*, § 453, *p.* 531:

> "If principal clothes the agent—although a mere special "agent—with all the apparent muniments of title to the prop- "erty in himself, the principal will be bound by the acts of the "latter. Or should trust him with negotiable securities, indorsed "in blank, a sale or disposal thereof by the agent, although in "violation of his private orders, would bind the principal, and "give correspondent rights and remedies to persons who become "*bona fide* possessors under such sale."

10

And in note:

> "As to all persons dealing in good faith with the agent, such "persons are not bound to inquire into facts *aliunde.* The "apparent authority is the real authority."

37 *N. Y.* 322, *Pres't* vs. *Comen.*

Now, if Mr. Holt were the agent of complainant as claimed in bill, she clothed him with the authority to deceive an inno-
20 cent purchaser.

But her proofs were an *absolute sale* to Murphy. She says, p. 51, l. 30, without any inducement or representation from or by him she sold mortgage to him.

The facts found by V. C. that the sale was to Mr. Holt and through Mr. Murphy, her agent, are found only in answers of Murphy and Holt. They are not evidence against their co-defendant, Jennie Dunn. She has a right to hold complainant to her own proofs.

2 *Daniels Ch. Pr.*, *p.* 981.
30 2 *C. E. Green*, 553, *Vandeveer vs. Holcomb.*
1 *Stewart's Digest*, 439 *and* 440. *Title, Answer.*

It thus appears by her own proofs that she made the sale to Murphy, her own agent (that appears in evidence), *intending* and *desiring* to sell the mortgage, and confirming the sale by

executing assignments and acceptir g the proceeds of sale. Is she not *bound* by *what* her agent did? Can she fairly ask to undo what she has thus so deliberately done.

If her agents have deceived or taken advantage of her, is not redress from them the full measure of relief she can ask?

Is she not estopped from setting up such claim against Jennie Dunn? Did she not put herself in position to mislead? And is she not estopped by acquiescence and silence for six years?

Says *Hill on Trustees*, 266 (168), *note:*

> **"Long acquiescence or laches in case of fraud is a bar in "equity to relief."** 10

4 *Cowen* 742, *Hawley* vs. *Cramer*, says:

> **"In cases of implied trusts right of action in equity will be "considered as barred in six years, in analogy to the limitation "at law, and relief refused on the principal of acquiescence, for "great length of time, after the party was in situation to enforce "his right, and with full knowledge of facts. What is reason-"able time is in the discretion of the court."**
>
> 2 *Pomery Eq Jur*, § 965, § 917.
>
> 2 *Leading Cases in Eq*, 1263. 20

Complainant kept silent for six years. If cheated was she justified in her silence? Are not cheated persons apt to, and are they not bound to take some action to make known the fraud to those interested when discovered? Is it not a strong point against complainant that she stood still and inactive for so long a period?

She says, p. 59, l. 10, she did so by advice of husband. So she knew it, and must have known it, if true. It does not appear that she ever in any way commuted to Jennie or Alex. Dunn any instruction of her fraud. She did *soon after*, to Miss 30 Furman, p. 61, l. 5.

Then, too, the status of the value of the property and of the mortgage have changed from what they were in 1878. The market was then depressed. No sale of property for any fair value. And complainant's mortgage was a very poor security for any amount of money.

Now the property has not only recovered from the depression, but has been increased in value by improvements to amount of $5,000, p. 88, l. 1.

As complainant was compelled to sell the mortgage, to pay her debt, as she says, *Exhibit A*, p. 139, and Bill, p. 7, top, and it was an unsalable mortgage as the market went, and Jennie Dunn gave full value and more for it when she purchased it, the complainant ought not to receive anything further from Jennie Dunn—or be entitled to a re-assignment of her mort-
10 gage—as it would be giving her an advantage she did not then have, and could not have in the nature of the case. Giving her a valuable security for a doubtful one of little value, would be more than restoring her to her then status, it would be giving more than she had. It would not be equitable.

The balance between what she got and what Jennie Dunn paid for the mortgage is all, in any event, that in equity complainant should be entitled to, and that only as against Holt, who received it, as Jennie Dunn paid it in good faith, or of Mr. Murphy, her agent, if he deceived her. And as she has dis-
20 charged Murphy, p. 114, she must discharge Holt, for the transaction was consummated between them.

JAMES S. AITKIN,
Sol'r of Appellant.

New Jersey Court of Errors and Appeals.

Between JENNIE E. DUNN, et al., Appellants, and KEZIAH DUNN, Respondent.	ON APPEAL FROM THE DECREE OF THE COURT OF CHANCERY.

RESPONDENT'S BRIEF.

This bill is filed for the purpose of having certain assignments of a bond and mortgage owned by the complainant declared void, and for other relief.

The decree of the Court is made upon the advisory opinion of Vice-Chancellor Bird, and grants the relief. 10

The case is mainly one of fact, and one which appeals loudly for the intervention of a Court of Equity. An attorney at law, after gaining the confidence of a weak and confiding woman, obtains from her her entire estate for a small fraction of its value.

I.

The defendant, Woodbury D. Holt, while acting as the attorney and agent of the complainant, purchased from her the $8,000 mortgage in controversy for the sum of $1,825, $1,225 of which the complainant received, and the balance was divided between those concerned in the
10 transaction. He sold it a month later to the defendant, Jennie E. Dunn, for $4,200; a profit of $2,375.

Complt's testimony, p. 49.
Holt's answer, p. 38 and 41.
Murphy's answer, p. 28.
Dunn's answer, p. 34.

It is insisted that by reason of the relation of the parties the law deems this transaction to have been fraudulent.

20 It is a well settled principal of law that an attorney or agent cannot make a profit out of his office to the prejudice of the rights and interest of a client.

2 White and Tudor, Lead. Cases in Eq. (4 Am. ed.) p. 1216.
Dockard v. McKinley, 9 W. N. C. 11.
Galbraith v. Elder, 8 Watts, 94.
Porter v. Woodruff, 9 Stew., 174.

The complainant says that she was induced to make the assignment by certain misrepresentations (Case, p.
30 46 and 47). This is denied by Holt and Murphy.

Previous to Mr. Holt's visit to the complainant, at her home in Philadelphia, she was not in anyway concerned about the mortgage. Immediately after that visit we find her acting as through she thought her mortgage was worthless. She sells it to Holt for $900. (Murphy's answer, p. 20. Holt's answer, p. 40) She writes to Murphy (Ex. A, p. 139) that she fears the property will be sold

and she is unable to protect herself. Holt takes her to the Clerk's office to show her it is a third mortgage—(Holt's answer, 40).

What produced this change of mind from one of ease to one of despair? It must have been what was said to her. Mr. Murphy, knowing her fears in the matter, says (answer, p. 19) that he made no representations to the complainant whatsoever, at that or any other time, respecting the number of mortgages encumbering said premises, or the value of 10 the complainant's mortgage. Mr. Holt says, (answer p. 39) he "called upon the complainant, explained to her the situation and requested her to make arrangements for paying her indebtedness to him." What the situation was which he explained he leaves to conjecture. That it must have been very much as she says is proven by her subsequent conduct.

Now what were the facts? The mortgage in dispute was a first mortgage on a very important part of the premises; it was a second mortgage on another portion, 20 and a third mortgage on the balance, (Ex. A1 for Def't, p. 143; Ex. D1, D2, D11.) According to the testimony of William Hancock (p. 67), John H. Hillman (p. 73) and Benjamin Bamford (p. 77), three disinterested and thoroughly experienced witnesses, the property was worth at the time at least twenty thousand dollars—enough to pay all the mortgage against it. Mr. Dunn confirmed this view by his statement at the time to Mrs. Furman that his property was worth all that there was on it, (p. 61), and Mr. Holt's offer to sell the mortgage at the time (know- 80 ing his insecure title) for $4,500 (p. 35) shows that he knew the property was worth all there was against it.

The interest had always been paid. When the Dunns failed in business they paid their unsecured creditors thirty-six cents on the dollar (p. 92.) Before

this transaction they had resumed business again (p. 91) without even proposing a composition to her, showing they fully expected to have to pay this mortgage debt in full. At thirty-six cents on the dollar she would have been entitled to almost twice the amount she received. Is it reasonable to say that with her mortgage she was in a less favorable position than unsecured creditors?

And yet this is the situation which Mr. Holt says he explained to her. If this were so, would the complainant have accepted $1,825 for this mortgage? The Vice-Chancellor has very properly said (p. 152) "The fact of her indebtedness to Mr. Holt, the fact of her destitution, the fact of her ignorance of the true condition of her debtors and the fact that neither her agent, Mr. Murphy, nor her attorney, Mr. Holt, did not make these facts known to her are of the utmost importance."

It is insisted that these facts make a sufficient case of fraud to set aside this transaction as against any person. But the case is still stronger when we consider the relation of the parties. The mere fact that the contract is between attorney and client puts the burden of establishing the perfect fairness of the transaction upon the defendant. In this they have absolutely failed.

When the relation of solicitor and client exists and a security is taken by the solicitor from his client, the presumption is that the transaction is unfair and the onus of proving its fairness is upon the solicitor.

Chief Justice Sharswood in Professional Ethics, p. 92.

Hill on Trustees, p. 160.

2 White and Tudor, Lead. Cases Eq. (4 Am. ed.) p. 1216, &c.

1 Story Eq. Par, 310–313.

Weeks on Att'ys at Law, p. 442.

Biglow on Fraud, 192, &c.

Farmers' Ex. v. Farmer, 12 Stew., 216.

Rooter v. Woodruff, 9 Stew., 174.
Condit v. Blackwell, 7 C. E. Grn. 485.

The attempt to show a re-affirmation of the assignment amounts to nothing. It does not appear that the complainant was in any way informed of the real facts in the case. On the contrary it appears that she was still resting under the same influences which induced her to part with the mortgage.

In order to show a valid confirmation of a contract tainted with fraud against one of the parties, very strong facts must be proved. Particularly, that he had full knowledge of the truth.

Biglow on Fraud, 185.
Somers' notes to 18th Vesy Jr., 130.

It is insisted that the Dunns would take no higher right in the mortgage than their ~~grantee~~. assignor

The equities existing between the assignee and assignor of a chose in action not negotiable attend the title transferred to a subsequent assignee for value and without notice.

Bush vs. Lathrop, 22 N. Y., p. 535.
Green vs. Deal, 64 N. Y., 222.
Conover vs. Van Mater, 3 C. E. Grn., 481.
Jaques vs. Esler, 3 Grn. Ch., 461.
Boller vs. Wade, 3 Grn., Ch., 459.
McFarland vs. Gilchrist, 10 C. E. Grn., 487.

The Vice Chancellor has found (p. 135) that Jennie E. Dunn is not an innocent purchaser. The fullest knowledge must be imputed to her. It is insisted that this is a reasonable and proper finding.

Alexander Dunn, who acted for his wife Jennie in the transaction, knew that Holt, from whom he bought the mortgage, was and had been for some time before, her

attorney in the matter, and to him he had always paid the interest on the mortgage, and this is constructive notice to the attorney's vendee and charges him with the trust.

Weeks on Att'ys at Law, p. 456, par. 273.
Biglow on Fraud, 201.
Haney v. Racman, 1 Corsey, 334.

The complainant was the sister-in-law of Alexander
10 Dunn. He purchased the mortgage from Holt with numerous imperfections appearing upon the face of the papers, and yet failed to apply to her for information or to have them explained. When he went to pay for the mortgage he found that Mr. Holt held it by an unrecorded assignment from the complainant to Murphy, in which there was no consideration recited (Ex. D12) and by an assignment from Murphy to blank, with a consideration of one dollar mentioned, (Ex. D13.) Mr. Murphy's office was on the opposite side of the street to his store (p. 98);
20 he was intimate with him (p. 90) and yet never stopped to ask how Mr. Holt had obtained this mortgage from his client (his, Dunn's, sister-in law) or why the title should have been in Murphy (p. 91.) He consents that his wife's name should be filled in the blank (p. 36) and pays his money without comment, knowing at the time, according to his statement to Mrs. Furman (p. 61) that he was buying it far below its real value, and that Keziah (the complainant) had done a very foolish thing in parting with the mortgage (p. 61); that his wife was
30 getting a good investment (p. 93) and the very next year paid the interest in full upon the entire eight thousand dollars, yet with full opportunity for inquiry he chose to close his eyes, when inquiry became a duty, (p. 91.)

Whatever puts a party upon inquiry amounts in judgment of law to notice, provided the inquiry becomes a

duty, as in the case of purchasers and creditors, and would lead to the knowledge of the requisite facts by the exercise of ordinary diligence and understanding.

Hoy vs. Bramall, 4 C. E. Green, 572.

Vredenburg vs. Burnet, 4 Stew., 233.

DeWitt vs. Van Sickle, 2 Stew., 209.

Taunton vs. Green, 6 C. E. Green, 364.

I took occasion in my opinion in the case last referred to (Robinson vs. Urquhart, 1 Beas., 515,) to suggest the propriety and safety of always stating in the mortgage the real character of the transaction. If the transaction is a fair one there can be no objection to state it as it really exists. By stating it otherwise it renders the security a suspicious one. It would require very little in addition to this circumstance to induce the Court to postpone such a mortgage to a creditor.

Chancellor Williamson, in Bell vs. Flemings Ex., 1 Beas., 19.

He knew just where to apply for full information. If he chose to refrain from doing so, and to purchase, relying entirely upon the representations of his assignor, I think he has no right to ask the complainant to bear the consequences of his own folly.

Vredenburgh vs. Burnet, 4 Stew., 233.

If there appeared (in the chain of title) that a debt of $1400, well secured by a mortgage of real estate, had been sold for less than one-fifth of that sum, that was enough, in my opinion, to put on ordinarily careful person upon inquiry.

Bush vs. Lathrop, 22 N. Y., 550.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

10 KEZIAH DUNN,

Appellant,

and

ALEXANDER AND JENNIE E. DUNN,

Respondents.

APPELLANT'S BRIEF.

The complainant as against Mr. Holt would be entitled to the return of the mortgage upon the payment of 20 $1,825, that being the amount paid to her for it. Looking at the case from any view, and especially from the view the Vice-Chancellor has taken, that she is chargeable with notice, the defendant Jennie E. Dunn can have no higher right than Holt, from whom she purchased. She must abide by the title of her assignee.

Pomroy's Eq., Vol. 2, p. 14.

Story's Eq., Vol. 1, p. 378.

The Vice-Chancellor in his decree has disregarded 30 this plain rule and has given her the protection of an innocent purchaser for value without notice. Requiring the complainant should pay back, not the money she reserved, but the amount which Jennie E. Dunn paid, with interest. If the complainant is entitled to the return of her mortgage it must be upon the re-payment of the amount of money that was paid to her for it only. The Dunns have their redress against Holt.

But the Decree goes still further and orders the interest to be endorsed as paid upon the entire eight thousand dollars, when the Dunns themselves do not even pretend that it has all been paid (p. 34) thus rewarding them for their part of the transaction. If they were innocent purchasers and entitled to the protection of such, they could only claim that protection for what they had actually paid.

It is submitted that that portion of the decree appealed from by the complainant should be reformed so as to 10
read that the said Jennie E. Dunn do assign, transfer and set over unto said complainant the bond and mortgage in controversy in this cause, with the interest endorsed thereon as paid upon the sum of eighteen hundred and twenty-five dollars ~~until the first day of January, A. D. eighteen hundred and eighty-four,~~ upon the said complainant paying to the said defendant the sum of eighteen hundred and twenty-five dollars.

IN CHANCERY OF NEW JERSEY.

Between KEZIAH DUNN, Complainant, and ALEXANDER DUNN ET AL., Respondents.	On Bill for Relief.

PETITION.

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

The humble petition of Woodbury D. Holt, appellant in 10 the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the tenth day of November, in the year eighteen hundred eighty-five, wherein the said Keziah Dunn was complainant, and the said Alexander Dunn and others, including this appellant, were defendants, in this respect, to wit, that the said decree adjudges the defendant Woodbury D. Holt should account to the complainant for the sum of two thousand three hun- 20 dred and seventy-five dollars, together with interest thereon from the second day of March, A. D. eighteen hundred and seventy-eight, at the rate of seven per centum per annum. And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous for that the funds of the said complainant amounting to two thousand three hundred and seventy-five dollars, nor any part thereof, were in the hands or possession of this appellant on the second day of March, eighteen hundred seventy-eight, nor 30 at any time subsequent thereto. And that your petitioner was not on the second day of March, eighteen hundred seventy-eight, nor at any time subsequent thereto, indebted in equity or otherwise to the said complainant in the sum of two thousand three nundred and seventy-five dollars, or any

other sum. And that this appellant should not account to said complainant for the said sum, with interest at seven per cent. per annum, nor for any sum.

Your petitioner therefore prays that the said decree 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.

W. D. Holt,
10 *Sol'r and of Counsel Pro Se.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between WOODBURY D. HOLT, Appellant, and KEZIAH DUNN, Respondent.	On Bill, &c., on Appeal.

ANSWER.

The answer of Keziah Dunn, respondent, to the petition 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 thereunto nevertheless says and admits that a decree was, on the tenth day of November last past, made and entered in the 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, or the part of said decree appealed from by said appellant, is agreeable to equity, and she prays that said decree as appealed from as aforesaid may be affirmed, with costs to be adjudged to this respondent.

JNO. F. HARNED,
Sol'r and of Counsel with Respondent.

MacCrellish & Quigley, Printers, 16 East State Street, Trenton.

In Chancery of New Jersey.

Between
KEZIAH DUNN,
Complainant,
and
ALEXANDER DUNN ET UX. ET AL.,
Defendants.

On Bill.

BILL FOR RELIEF.

[Filed January 31st, 1884.]

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey:

Complaining shows unto your Honor, your oratrix, Keziah Dunn, of the city of Philadelphia and State of Pennsylvania, that on or about the fourth day of April, A.D. eighteen hundred and seventy-two, Alexander Dunn and William C. Dunn, of the city of Trenton, in the county of Mercer and State of New Jersey, became and were justly indebted unto 10 Isaac A. Dunn in the sum of eight thousand dollars; and, being so indebted, the said Alexander Dunn and William C. Dunn, in order to secure the payment of the said sum of money with interest, did make and execute, under their hand and seal, and deliver unto said Isaac A. Dunn a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of sixteen thousand dollars, lawful money of the United States, with a condition thereunder

written, that if the said Alexander Dunn and William C. Dunn, their, or each of their heirs, executors or administrators, should well and truly pay, or cause to be paid, unto the said Isaac A. Dunn, his executors, administrators or assigns, the just and full sum of eight thousand dollars, in ten years from the date thereof, together with lawful interest on the same at the rate of seven per cent. per annum, payable semi-annually; provided, that in case default be made in the payment of any semi-annual installment of said interest for the
10 space of thirty days after the same becomes due, then the whole of said principal sum to be due and payable forthwith, without any fraud or other delay, then the said obligation should be void, otherwise to remain in full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your oratrix further shows that the said Alexander Dunn and William C. Dunn, in order to secure the payment of the said sum of money above mentioned, together with
20 the interest thereon, executed and delivered unto said Isaac A. Dunn a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Alexander Dunn and Maggie, his wife, and William C. Dunn, of the first part, to said Isaac A. Dunn, of the second part; whereby the said party of the first part did grant, bargain, sell, alien, convey and confirm unto the said party of the second part, his heirs and assigns forever, all that certain store-house and lot of land situate on the south side of East State street, in the city of Trenton and State of New Jersey, comprising
30 within its bounds the lots of land hereinafter described, to wit: the first lot beginning on the south side of East State street, at the northwest corner of Charles Van Syckle's lot, and running thence, first by the line of said Van Syckle's lot, south one hundred and five feet and six inches to a point in the same line; thence (2) by the same in a line with the easterly side of the Trenton Bank lot, south two degrees east, to the northwest corner of said wall, thirteen feet; thence (3) along said wall north seventy-seven degrees west, twenty-six feet to a corner of a lot of Liscomb R. Titus;
40 thence (4) along the line of said Titus and others north ten

degrees east, sixty-two feet; thence (5) by Welling Napton's line north eleven degrees and forty-one minutes east, thirty-four feet; thence (6) still by said Napton's line north ten degrees east, twenty feet to East State street aforesaid; thence by said street south eighty-eight and one-half degrees east, nineteen feet eight inches to the place of beginning, together with the privilege and use of the alley or passage-way adjoining said premises.

The second tract—Beginning at a stone standing in the old prison or bank yard wall, and corner to a lot late belong- 10 ing to the heirs of Sylvester Doyle, deceased, and more recently to Joshua English, and running (1) along said English's line south twenty-nine degrees east, fifty-four feet or to the extent of the width of said last-named lot more or less; thence (2) south thirty-five feet; thence (3) north seventy-nine degrees west, fifty-four feet or to the bank or old prison yard wall, be the same more or less; thence (4) along said wall north thirty-five feet to the place of beginning, containing eighteen hundred and seventy square feet of ground more or less, together with the right of passing 20 from said lot to and from Front street, excepting, however, from said lands all that part thereof conveyed by Isaac Dunn and Emma L., his wife, to Benjamin Bamford, by deed dated March 26th, 1862.

The third lot—Beginning at the northeasterly corner of the stone wall enclosing the lot or yard of the Trenton Banking House; thence (1) running along the easterly face of the said wall on the rear line of the said Banking House lot south two degrees west, eleven feet to the northerly line of the lot above named; thence (2) along the line of said 30 lot south seventy-eight and one-fourth degrees east, twenty-two feet; thence (3) by a line parallel with the first course, and by land of Benjamin Bamford, north two degrees east, eleven feet to a stake; thence (4) still by lands of said Bamford, and by a line parallel with the second course, north seventy-eight and one-fourth degrees west, twenty-two feet to a corner of the stone wall first above mentioned and the place of beginning, together with the right and privilege of the free and common use of the alley, nine feet in width, leading from State street along the easterly side of the lot 40

and store formerly of Isaac Dunn, and also the use of the open space eighteen feet in width in front of the said lot above described along the whole line thereof.

Fourth lot—Beginning at the point in the line between Charles D. Vansyckle's land and land formerly of Isaac Dunn, deceased, said point being eleven feet northerly from the northeasterly corner of the store wall enclosing the lot or yard of the Trenton Banking House, and running thence (1) southerly along the above named line eleven feet to the
10 corner of the said wall; thence (2) easterly along the line dividing the land of the said Vansyckle from the land formerly of the said Isaac Dunn, deceased, twenty-two feet to the northeasterly corner of land conveyed by Benj. Bamford and wife to Isaac Dunn by deed, dated March 26th, 1862; thence (3) northwesterly in a right line twenty-four feet six inches, more or less, to the place of beginning. Together with all and singular the tenements, hereditaments and appurtenances, reversions, remainders, rents, issues and profits thereof; and, also, all the estate, right, title,
20 interest, use, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part therein; to have and to hold the said granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to him and their own proper use, benefit and behalf forever; provided, always, that, if the said party of the first part thereto, their heirs, executors or administrators, should well and truly pay or cause to be paid unto said Isaac A. Dunn, his executors, administrators or assigns, the said sum of money mentioned
30 in the condition of the said bond, with the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted should cease, determine and be void.

And your oratrix further shows that, after the execution of the said indenture of mortgage, the same was, in due form of law, acknowledged before a Master in Chancery of New Jersey, and duly recorded in the office of the Clerk of Mercer county, in Book No. 26 of Mortgages, page 138,

&c., as by the several certificates endorsed on said indenture of mortgage more fully appears.

And your oratrix further shows, that on or about the twenty-first day of February, A. D. eighteen hundred and seventy-four, the said Isaac A. Dunn, for and in consideration of the full sum of eight thousand dollars, assigned, transferred and delivered unto Charles W. Mitchell all his right, title and interest in said mentioned mortgage, which said deed of assignment is duly recorded in the County Clerk's office of Mercer county, in Book G. of Assignments, 10 page 176, &c.

And your oratrix further shows that on or about the twenty-first day of February, A. D. eighteen hundred and seventy-four, said Charles W. Mitchell, for and in consideration of the full sum of eight thousand dollars, by deed of assignment assigned, transferred and delivered unto your oratrix all his right, title and interest in said mentioned mortgage.

And your oratrix further shows, that the interest accruing upon her said bond and mortgage was paid to her regularly 20 through her agent and attorney, Woodbury D. Holt, until the fourth day of October, A. D. eighteen hundred and seventy-seven; that on or about the fourth day of October, A.D. eighteen hundred and seventy-seven, and about the time the semi-annual installment of said interest became due, she was visited by the said Woodbury D. Holt at her residence in the city of Philadelphia, who informed her then, for the first time, that the mortgage was worthless, as the property therein described had greatly depreciated; that there was two mortgages on the same premises ahead of your oratrix, and that 30 the property would not sell for sufficient to pay the said two mortgages, which he represented to be ahead of the one in question. Your oratrix, being indebted to the said Holt in the sum of five hundred dollars, he offered to give her four hundred dollars for her said mortgage and to discharge her from the payment of the sum of money so due to him, making in all the sum of nine hundred dollars; and he then informed her if she did not accept his said offer she would get nothing at all for her said mortgage; but that your oratrix refused to accept said offer. 40

And your oratrix further shows, that not receiving her said interest money so due on said mortgage, she became concerned regarding the matter, and went to the city of Trenton, and called upon said Woodbury D. Holt, at his office in said city, who, up to this time, had acted as her counsel, and in whom at that time she had full confidence. That the said Woodbury D. Holt, then and there, repeated what he had previously said about the matter. He then took her to the Clerk's office of Mercer county, and showed
10 her the record of two several mortgages, which he said were ahead of hers, and that he then repeated that the property would not sell for sufficient to pay the incumbrances ahead of her said mortgage; but that she still refused to accept his offer for said mortgage.

And your oratrix further shows, that shortly after this, one Edward H. Murphy called upon her at her residence, in the city of Philadelphia, repeated to her all that the said Woodbury D. Holt had previously said, told her she would never receive any more interest money, and that she
20 would lose everything she had in the mortgage, that the mortgage was not worth the mortgages ahead of hers, and that her mortgage was entirely worthless. He concluded by offering her the sum of twelve hundred dollars, less the sum of five hundred dollars, so due to said Holt, and a n w Brussels carpet, and that she then refused to sell it to the said Murphy.

And your oratrix further shows, that on or about the second day of February, A.D. eighteen hundred and seventy-eight, and about three months after the above recited inter-
30 views, she was again called upon by the said Edward H. Murphy, at her residence in the city of Philadelphia, who again repeated to her that her mortgage was a third mortgage on the premises therein described, that the property would not sell for enough money to pay the encumbrances ahead of her said mortgage, that the mortgage was entirely worthless, and that she would never receive any more interest upon it, and that unless she accepted his offer she would never get anything out of said mortgage.

And your oratrix further shows, that relying upon the
40 statements so made to her by the said Woodbury D. Holt

and Edward H. Murphy, and being in needy circumstances and fearful of losing all her money, on the day and year last above written, to wit, on the second day of February, A.D. eighteen hundred and seventy-eight, your oratrix assigned, transferred and set over to said Edward H. Murphy, her right, title and interest to said mentioned bond and mortgage, for and in consideration of the sum of twelve hundred and twenty-five dollars (although no consideration whatever was ever inserted in said assignment), less the sum of five hundred dollars, which said Murphy 10 retained to pay to said Woodbury D. Holt, so due to him as aforesaid; which said assignment was acknowledged by her before Lewin W. Barringer, a commissioner of deeds for the State of New Jersey, resident at the city of Philadelphia, and is recorded in the Clerk's office of Mercer county, in Book I of Assignments of Mortgages, page 430.

But your oratrix further shows, and charges to be true, that the said several statements of the said Woodbury D. Holt and Edward H. Murphy, made as aforesaid, were false and fraudulent in every respect, and were made for the pur- 20 pose of deceiving your oratrix, and to defraud her of her said mortgage; that there was but one mortgage ahead of your oratrix's said mortgage; that the property therein described had not then, and has not since, depreciated very much in value, and that it was, and is now, worth very much more than the amount of said mortgage, over and above the prior incumbrances.

And your oratrix, therefore, charges that said last-mentioned assignment of said mortgage, having been procured by misrepresentations, is fraudulent and void as against your 30 oratrix.

And your oratrix further shows, that she is informed and believes to be true, that the said last-mentioned assignment, so made by Edward H. Murphy, was made without any name inserted therein as assignee, and was then delivered to one Woodbury D. Holt, the agent and attorney of your oratrix, who immediately thereafter sold and disposed of the same to one Jennie E. Dunn, for a large sum of money, to wit, the sum of four thousand dollars, and that the name of the said Jennie E. Dunn was then inserted in said assign- 40

ment, but that said Woodbury D. Holt has never paid to your oratrix the said sum of money as aforesaid.

And your oratrix further shows, that on day and year last above written, to wit, on the second day of February, A.D. eighteen hundred and seventy-eight, the said Edward H. Murphy, for and in a therein recited consideration of the sum of one dollar, assigned, transferred and set over unto Jennie E. Dunn, the wife of Alexander Dunn, the mortgagor in said mortgage mentioned, all his right, title and
10 interest in said mentioned mortgage, which said assignment was acknowledged before the same commissioner cited, at the same time as the hereinbefore last-mentioned assignment, and was recorded in the Clerk's office of Mercer county, in Book I of Assignments of Mortgages, page 431, &c.

And your oratrix charges, that said last-mentioned deed of assignment was made without any consideration whatever, but was made and executed in pursuit of a conspiracy entered into by and between Woodbury D. Holt, Edward
20 H. Murphy, Alexander Dunn and Jennie E. Dunn, his wife, or some of them, to defraud and cheat your oratrix of her said mortgage, and that said assignment is therefore void as against your oratrix.

And your oratrix further charges, that the only consideration moving between any of the parties in said transaction was the sum of twelve hundred and twenty-five dollars (less the said sum of five hundred dollars aforesaid), which was in fact paid by Alexander Dunn to your oratrix, and that all the other parties concerned in procuring said several as-
30 signments acted for him, the said Alexander Dunn, and were, in fact, his agents; and that said mortgage, so assigned by said Murphy to said Jennie E. Dunn, is held by said Jennie E. Dunn for the use and benefit of the said Alexander Dunn, and the said Jennie E. Dunn has no interest whatever in said mortgage.

And your oratrix further shows, that she fears that unless restrained by the writ of injunction of this honorable court, the said Jennie E. Dunn and Alexander Dunn, or one of them, will sell, transfer or dispose of said mentioned mort-
40 gage to a *bona fide* purchaser for value, or cause the same to

be cancelled of record, or that they will in some way settle for said bond and mortgage to the prejudice of your oratrix's interest therein.

And your oratrix further shows, that on or about the first day of July, A.D. eighteen hundred and seventy-six, William C. Dunn granted and conveyed all his right, title and interest in said mortgaged premises unto Alexander Dunn, which deed of conveyance was duly recorded in the Clerk's office of Mercer county; but your oratrix charges that said last-mentioned conveyance was made long subsequent to 10 the execution and delivery, and also recording, of your oratrix's said mortgage, and with due notice thereof, and is subject to the lien of the same.

And your oratrix further shows, that most of the principal money mentioned in and secured by the said bond and mortgage, with interest thereon from October, A.D. eighteen hundred and seventy-seven, still remains due and unpaid to your oratrix, whereby the said mortgage, and the estate thereby granted, have become absolute in your oratrix and her heirs. 20

And your oratrix further shows, that the said Alexander Dunn, since the execution of your oratrix's said mortgage, has possessed and enjoyed, and doth still possess and enjoy, the said mortgaged premises, and has always received, and still receives, the rents, issues and profits thereof, and that she, or some other person or persons for her, have frequently and in a friendly manner applied to the defendants hereinafter named, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys so due to your oratrix on the said bond and mort- 30 gage, and to cancel and deliver up to your oratrix said two last-mentioned assignments of said bond and mortgage, and to deliver, or cause to be delivered, unto your oratrix her said bond and mortgage, and your oratrix well hoped that they would have complied with such reasonable requests as in justice and equity they ought to have done; in tender consideration whereof, and forasmuch as your oratrix has not a complete remedy in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and 40

satisfaction of the said principal and interest moneys without the aid of this honorable court, where matters of this nature are particularly cognizable and relievable; to the end, therefore, that the said defendants, Alexander Dunn and Jennie E. Dunn, his wife, and Edward H. Murphy, may answer the premises according to law, and may, in particular, set forth their several and respective connection in this behalf as fully as if here repeated, and they thereto particularly interrogated; and that the said Edward H. Murphy
10 may fully and particularly answer whether he did not call upon the said complainant at her residence, in the city of Philadelphia, at the times hereinbefore mentioned, and if, at whose suggestion and request, and from whom he obtained the address of the said complainant, and whether he had at any time, before or after said assignments of mortgage from complainant to himself, any conversations with either Woodbury D. Holt or Alexander Dunn, and, if so, what was said at any or all of said conversations, and how he ascertained that complainant was the owner of said mortgage, and, also,
20 how and at what time he learned that complainant was indebted to said Holt in the sum of five hundred dollars; and whether he did not make the representations to said complainant heretofore more particularly set out; and whether he did not state to her that said mortgage was a third mortgage, and who informed him of that alleged fact, or whether he made it upon his own responsibility; and whether he did not state to complainant that the property mentioned in said mortgage had depreciated in value, and would not pay the encumbrances against it prior to hers,
30 and that she would lose all her money; and, if so, whether he made said statements upon his own judgment or upon the information of others; and whether the sum of twelve hundred and twenty-five dollars is not the only consideration that ever passed between the parties; and whether he did not retain out of said sum of twelve hundred and twenty-five dollars the sum of five hundred dollars, so due to said Woodbury D. Holt; and whether he paid the same to said Holt, and from whom he obtained the said sum of twelve hudred and twenty-five dollars; and whether he did not
40 obtain said sum from Alexander Dunn; and whether, in

said transaction, he did not act as the agent of Alexander Dunn and Woodbury D. Holt, or one of them, and if of only one, which one; and whether, at the time he obtained said assignment, he made any other representations to said complainant, and, if so, what they were; and what inducement did he offer said complainant to part with a bond and mortgage of eight thousand dollars for twelve hundred and twenty-five dollars; and whether he did not, immediately after receiving said assignment from said complainant, and at the same hour and place, and without seeing the said 10 Alexander Dunn or Jennie E. Dunn, assign and transfer said bond and mortgage to said Jennie E. Dunn, and why; and why he purchased said bond and mortgage; and whether the said Jennie E. Dunn paid him any consideration for said assignment, and, if so, how much; and whether the agreement to assign said mortgage to said Jennie E. Dunn was made before or after the assignment to him by said complainant, and with whom was said agreement made; and to state fully and particularly how much he made for himself in said transaction, and by whom was it paid; and why he 20 had the assignment made to himself and not directly to said Jennie E. Dunn; and whether the two several acknowledgments of said two mentioned assignments were not taken before the same commissioner, and at the same time, and, if not, how long a time was there between the taking of the two several acknowledgments, and to whom did he deliver the said bond, mortgage and assignment, and what was said by and between the parties at the time; and that he may fully and particularly set forth all other facts leading up to said transaction. 30

And that the said Jennie E. Dunn may fully and particularly set forth and answer, when, and under what circumstances, she contracted with the said Edward H. Murphy to purchase of him said bond and mortgage, and how much she paid therefor, and from whom did she obtain the money, and whether she has ever received any interest on account of said bond and mortgage, and, if so, how much, and when, and what arrangement exists between herself and her said husband respecting the same; and whether she does not hold said bond and mortgage for the use and benefit of her 40

said husband, and in whose possession said bond and mortgage now is, and whether she has ever had possession of the same.

And that the said Alexander Dunn may fully and particularly answer whether he did not employ Woodbury D. Holt and Edward H. Murphy, or one of them, to procure from the said complainant said mentioned bond and mortgage, and, if so, when and under what circumstances, and how much he promised to give them, or either of them, for
10 their or his services; and what conversations he had from time to time with said Holt and Murphy, or either of them, respecting said transaction; and whether he did not act as the agent for his wife in said matter; and whether he did not pay the consideration for said assignment, and how much it was, and why the assignment of said bond and mortgage was taken in his wife's name; and whether the assignment was not taken in his wife's name for his use and benefit; and when he first heard of the said assignment from said complainant and to said Murphy; and whether he did
20 solicit and request the said Murphy to go to Philadelphia and obtain the said assignment of said bond and mortgage, and, if so, why; and whether he did not pay the said sum of twelve hundred and twenty-five dollars, paid to said complainant as aforesaid, and, if so, when and under what circumstances, and to whom did he pay it; and whether he contracted with said Murphy for said bond and mortgage before or after the said assignment so made by complainant to said Murphy, and, if before, why he did not deal directly with said complainant for said mortgage, and, if after, how
30 the said Murphy came to assign said mortgage to his said wife before any bargain had been made respecting the same; and whether since said assignment to his said wife he has paid any interest on said bond and mortgage, and, if so, how much and when; and whether he did not cause both of said assignments to be recorded, and on the same day, and that he may fully and particularly relate all the facts in his knowledge leading up to the procurement of the two said last mentioned assignments of said bond and mortgage.

That the said Woodbury D. Holt may full, true and perfect answer make to all and singular the matters and things hereinbefore set out, and may more particularly answer and set forth when he received the said mentioned mortgage, and from whom, and how much he paid therefor, and to whom he paid the same, and at what time or times, and whether the same was paid in money or by checks, and whether he ever had any conversations with complainant respecting the value of the property by which mortgaged debt was secured, and whether he made the representations 10 to said complainant as set out in said bill, and, if any other representations, what they were; and whether he had any conversations with said Edward H. Murphy in respect to said mortgage, and, if so, when and what was said; and whether he disposed of said mortgage to Jennie E. Dunn, and, if so, when, and how much he received therefor, and what was his profit in said transaction; and that he may fully and particularly set forth all the circumstances concerning said transaction so far as they are within his knowledge.

And that the said assignment of such bond and mortgage 20 so made by your oratrix to said Edward H. Murphy, and dated the second day of February, A. D. eighteen hundred and seventy-eight, may be decreed to be null and void; and that the said assignment of said mentioned bond and mortgage so made by Edward H. Murphy to said Jennie E. Dunn, and dated the second day of February, A. D. eighteen hundred and seventy-eight, may be decreed to be null and void; and that the right, title and interest in and to said bond and mortgage may be decreed to be in your oratrix; and that the said Jennie E. Dunn, or Alexander Dunn, 30 or either or both of them, may be directed and commanded to hand over and return said bond and mortgage unto your oratrix, together with all papers concerned therewith; and that the said Alexander Dunn and Jennie E. Dunn, or either of them, may be enjoined and restrained by this honorable court from selling or transferring said mortgage, or causing or permitting the same to be cancelled of record, or from in any way paying off or settling for the same with any person whatsoever, except under the order of this court; that the said Woodbury D. Holt may be decreed to 40

pay to your oratrix the money so due to her as aforesaid, and which he received on account of said mortgage; and that he may be decreed to have been a trustee for her as to the money received by him as aforesaid; and that he may be decreed to pay said money over to your oratrix; and that said defendants, or some of them, may be decreed to pay to your oratrix the said principal sum so due on the said bond and mortgage, and the interest due and to grow due thereon, with your oratrix's costs and charges in this
10 behalf sustained, by a short day, to be appointed by this honorable court, and that in default thereof the said defendants, and all persons claiming or to claim under them, or any of them, may be foreclosed of and from all right, title and equity of redemption in and to said mortgaged premises and every part thereof, with the appurtenances, and may deliver unto your oratrix the possession thereof, and all deeds, demises and muniments of title relating to or concerning the same, or that the said mortgaged premises, with the appurtenances, may be sold, and that out of the moneys
20 arising from such sale your oratrix may be paid the said principal, interest and costs; and that your oratrix may have such further and other relief in the premises as the case may require, and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator, not only the State's writ of injunction issuing out of and under the seal of this honorable court, directed to the said Alexander Dunn and Jennie E. Dunn, requiring and commanding them or either of them abso-
30 lutely to desist and refrain from assigning, transferring, disposing of or cancelling of record the mortgage mentioned and described in complainant's bill of complaint, or permitting the same, or paying any interest on any money on account of the principal of the same, or in any way settling for the same with any person or persons whomsoever until the further order of this court; but also a writ or writs of subpœna issuing out of and under the seal of this honorable court, to be directed to the said Alexander Dunn and Jennie E. Dunn, his wife, and Edward H. Murphy and
40 Woodbury D. Holt, therein and thereby commanding them

on a certain day and under a certain penalty to be and appear before your honor in this honorable court, then and there to answer the premises and to stand to, abide by and perform such decree therein as to your honor shall seem meet and agreeable to equity and good conscience, and your oratrix will ever pray, &c.

JOHN T. HARNED,
Solicitor of, and
M. B. TAYLOR,
of Counsel with, Compl't. 10

STATE OF NEW JERSEY, }
CAMDEN COUNTY. } *ss.*

Keziah Dunn being duly sworn, on her oath says that she is the complainant mentioned in the foregoing bill of complaint; that the matters and things therein set out, so far as they relate to her own acts, are true, and, so far as they relate to the acts and deeds of others, she believes them to be true; that she had the interviews therein set out with the said Woodbury D. Holt and Edward H. Murphy; that relying upon said representations she assigned the said mentioned mortgage to said Edward H. Murphy, for the sum of twelve hundred and twenty-five dollars, and that five hundred of 20 said money was retained to be paid to said Woodbury D. Holt, and that she never received any other consideration for her said eight-thousand-dollar mortgage.

KEZIAH DUNN.

Sworn and subscribed this 30th day of January, A.D. 1884, before me.

JNO. H. FORT, *M. C. C.*

A true copy.
G. S. DURYEE, *Cl'k.*

ANSWER OF EDWARD H. MURPHY.

[Filed February 16th, 1884.]

The answer of Edward H. Murphy, defendant, to the bill of complaint of Keziah Dunn, complainant.

This defendant admits that the said Alexander Dunn and William C. Dunn, in the complainant's bill named, did make and execute unto the said Isaac Dunn, in said bill named, an indenture of mortgage of such date and of such purport and effect as in the complainant's said bill is mentioned and
10 set forth, and that said mortgage was acknowledged and recorded at the time and in the manner set forth in the said bill.

And this defendant, further answering, admits that the said Isaac Dunn did make and execute unto the said Charles W. Mitchell, in the complainant's bill named, a deed of assignment of said mortgage, of such date and of such purport and effect as in the complainant's said bill is mentioned and set forth; and that said deed of assignment was recorded at the time and in the manner set forth in the said
20 bill.

And this defendant, further answering, admits that the said Charles W. Mitchell did also make and execute unto the complainant a deed of assignment of the said mortgage, of such date and of such purport and effect as in the complainant's said bill is mentioned and set forth.

And this defendant, further answering, says that he has been informed and believes that the interest accruing upon the complainant's said mortgage was paid to her at the times, in the manner and until the date, as in said bill is
30 mentioned and set forth.

And this defendant, further answering, says that he has no knowledge or information save that contained in the complainant's said bill, and cannot answer as to his belief, or otherwise, whether or not the complainant was visited by the said Woodbury D. Holt, in the complainant's bill named, at the time and place named in said bill, or whether or not the said Woodbury D. Holt then gave her any information

respecting her said mortgage, or the said property comprised therein, of such purport and effect as in the complainant's said bill is mentioned and set forth; or whether or not the said Woodbury D. Holt ever, at any other time or place, gave the complainant like information; or whether or not the complainant, being indebted to the said Woodbury D. Holt in the sum of five hundred dollars, he offered to give her four hundred dollars for her said mortgage, and to discharge her from the payment of the sum of money so due to him, making in all the sum of nine hundred dollars, save 10 as hereinafter set forth; or whether or not the said Woodbury D. Holt then informed the complainant that if she did not accept the said offer she would get nothing at all for her said mortgage; or whether or not the complainant refused to accept said offer, as in the complainant's said bill is mentioned and set forth.

And this defendant, further answering, says that he has no knowledge or information, save that contained in the complainant's bill, and cannot answer as to his belief, or otherwise, whether or not, for the reason stated in said bill, the 20 complainant ever called upon said Woodbury D. Holt at his office, at the time in said bill set forth, or at any other time; or whether or not, up to the time mentioned in said bill, the said Woodbury D. Holt had acted as her counsel; or whether or not she had then full confidence in him; or whether or not the said Woodbury D. Holt then and there repeated what the complainant states in her bill he had previously said about the matter; or whether or not he then took her to the office of the clerk of the county of Mercer and showed her the record of two certain mortgages, or said to her that 30 said last-mentioned two mortgages were ahead of hers; or whether or not he then repeated what the complainant, in her bill, says he repeated—that the property would not sell for sufficient to pay the encumbrances ahead of her said mortgage; or whether or not the complainant still refused to accept the offer which the complainant, in her bill, says he made for said mortgage, as in the complainant's said bill is mentioned and set forth.

And this defendant, in explanation of the nature and circumstances of the case which brought him into a relation- 40

ship with the transactions related in complainant's bill, further answering, says that before and during the period covered by said transaction, he was a banker and a broker, doing business as such in the city of Trenton, in the county of Mercer and State of New Jersey, and had not then been admitted to the bar of this state; and that on or about the fourteenth day of January, eighteen hundred and seventy-eight, which said last mentioned date marks the commencement of his relationship with the said transactions, and his
10 knowldge of the same, he received by the hand of Henry W. Brande, who afterward, as this defendant is informed, married the said complainant, a letter in the hand-writing of the said complainant, of which the following is a true copy:

PHILADELPHIA, January 14th, 1878.

E. H. MURPHY, ESQ.:

I have placed a business matter in the hands of Edward T. Green, Esq., counselor-at-law. It will require on your part from two to five hundred dollars, and I will handsomely remunerate you for the money and
20 trouble which the business will necessitate. It is in regard to the $8,000 mortgage on Mr. Alexander Dunn's store property which I hold. There are about $12,000 ahead of mine, and I fear the property will be sold, and I am unable to protect myself. Mr. Green has recommended me to place my mortgage in your hands for sale or otherwise that may be deemed proper, subject to my approval. By giving this matter your immediate attention you will confer a great favor.

Respectfully yours,

KEZIAH DUNN.

Which said letter is now in the possession of this defend-
30 ant and ready to be produced and proved as this honorable court may direct.

And this defendant, further answering, admits it to be true that he called upon the complainant, at her residence in the city of Philadelphia, and that he made said call after receiving said letter, to wit, on the fourteenth day of January, eighteen hundred and seventy-eight, and says that he made said call under the circumstances hereinafter detailed; but he denies that he ever repeated to her anything which she says, in her said bill, was previously said to her by the
40 said Woodbury D. Holt; and he further denies that he ever told her that she would never receive any more interest money, or that she would lose everything she had in her

said mortgage, or that the property comprised in her said mortgage was not worth the mortgages ahead of hers, or that her mortgage was entirely or in any degree worthless, or that this defendant concluded by offering her the sum of twelve hundred dollars, less the sum of five hundred dollars due to said Woodbury D. Holt, and a new Brussels carpet, or that the complainant then refused to sell it to this defendant, as in the complainant's said bill is mentioned and set forth.

And this defendant, further answering, admits it to be 10 true that he again called upon the said complainant at her residence in the city of Philadelphia, on or about the second day of February, eighteen hundred and seventy-eight, but he denies that the said last mentioned interview was after an interval of about three months after the said first interview, and avers the truth to be that his said second call upon her was made between two and three weeks after said first call.

And this defendant, further answering, denies that he again repeated, or ever said to the complainant, that her 20 mortgage was a third mortgage on the premises therein described, or that the property comprised therein would not sell for enough money to pay the encumbrances ahead of her said mortgage; or that her said mortgage was entirely, or in any degree, worthless; or that she would never receive any more interest on her said mortgage; or that he ever made her any offer for her said mortgage; or that he ever said that unless she accepted his offer she would never get anything out of her said mortgage; or that he ever made use of language of such purport or effect as in the com- 30 plainant's said bill is mentioned and set forth.

And this defendant avers the fact to be, that he made no representation to the complainant whatsoever, at that or at any other time, respecting the number of mortgages encumbering said premises, or their priority, or their value, or the value of the complainant's said mortgage, or the value of the said mortgaged property; or that he ever mentioned to her any circumstance whatsoever affecting the value of her said mortgage; or that he ever used any inducement towards her to part with the same; and he further says, that all the 40

knowledge which he ever had at any time touching the matters relating to her said mortgage were disclosed to him by the complainant herself.

And this defendant, in explanation of the nature and circumstances of the case which led him to make such visits as aforesaid, says that at the time the said Henry W. Brande delivered to this defendant the said letter, he, the said Henry W. Brande, requested this defendant to make the said first visit to the said complainant, and thereupon
10 this defendant made said first visit, hereinbefore mentioned, and then learned from her own statements to him that she had negotiated a sale of her said mortgage to said Woodbury D. Holt, and that the said W. D. Holt had paid to her the sum of nine hundred dollars as the price of her said mortgage, and that she was dissatisfied with said price, and wanted more money for the same, and requested this defendant to call upon the said Woodbury D. Holt and endeavor to obtain more, and, in the event of the said Woodbury D. Holt refusing to pay her any more, she
20 requested this defendant to make the offer for her to refund the money she had already received from the said Woodbury D. Holt, and take back the said last mentioned mortgage. That thereupon this defendant immediately called upon the said Woodbury D. Holt, and communicated to him the statements the complainant had made to this defendant respecting her dissatisfaction and respecting her said mortgage, as hereinbefore set forth; that thereupon the said Woodbury D. Holt told this defendant that if the complainant was dissatisfied with her said bargain, he, the said
30 Woodbury D. Holt, would gladly surrender to her the said last mentioned mortgage upon receiving from her the amount he had already paid her for it, which said last mentioned offer, on the part of the said Woodbury D. Holt, this defendant at once communicated to the complainant; that shortly afterwards the said complainant stated to this defendant that she was unable to obtain for her said mortgage as much or more than she had already obtained for the same from the said Woodbury D. Holt, and declined to refund to him the said amount so received by her from him
40 as aforesaid, and requested this defendant to renew his

endeavors to obtain more money from the said Woodbury D. Holt for said mortgage; and thereupon this defendant prevailed upon the said Woodbury D. Holt to give her the additional sum of nine hundred and twenty-five dollars, which said last mentioned sum, together with the amount she had already received, she agreed to accept in full for her said mortgage, and to execute the deed of assignment of her said mortgage hereinafter next mentioned.

And this defendant, further answering, admits that the said complainant executed unto this defendant a deed of 10 assignment of her said mortgage, of such date and of such purport and effect as in the complainant's said bill is mentioned and set forth; and that said last-mentioned deed of assignment was acknowledged and recorded at the time and in the manner as in the complainant's said bill is mentioned and set forth.

And this defendant, further answering, says that the complainant executed said last-mentioned deed of assignment, after full explanation to her by this defendant of the effect of such proceeding on her part; but this defendant denies 20 that she executed said last-mentioned deed of assignment, relying upon any statements made to her by this defendant; and he further denies that no consideration whatever was ever inserted in said last-mentioned deed of assignment; and he further denies that he returned the sum of five hundred dollars to pay to the said Woodbury D. Holt.

And this defendant further says, that he knows not, and has not been informed, save by the complainant's said bill, and cannot set forth as to his belief, or otherwise, whether or not, in executing said last-mentioned deed of assignment, 30 she relied upon any statements made to her by the said Woodbury D. Holt, or whether she was, or was not, in needy circumstances, or whether she was or was not fearful of losing all or any part of her money, save as set forth in her said letter.

And this defendant, further answering, denies that any statements ever made to the complainant by this defendant were false or fraudulent in any respect, or were made for the purpose of deceiving the complainant, or to defraud her of her said mortgage; and this defendant further says, that 40

he knows not, and has not been informed, save by the complainant's said bill, and cannot set forth as to his belief, or otherwise, whether or not any statements ever made to the complainant by the said Woodbury D. Holt were false or fraudulent in any respect, or were ever made for the purpose of deceiving the complainant, or to defraud her of her said mortgage; or whether or not there was but one mortgage or more than one mortgage upon said premises, prior to the said mortgage of the said complainant, save by said letter;
10 or whether or not the property described in her said mortgage had not then, or has not since, depreciated very much or any in value; or whether or not it was, and is now, worth very much more than the amount of said last-mentioned mortgage, over and above the prior encumbrances.

And this defendant, further answering, admits that on the second day of February, eighteen hundred and seventy-eight, he made and executed a deed of assignment for and in a consideration therein recited, of the sum of one dollar, thereby assigning, transferring and setting over all his right,
20 title and interest in the said last-mentioned mortgage; which said last-mentioned deed of assignment was acknowledged at the time and in the manner, and was recorded as in the complainant's said bill is mentioned and set forth; but he avers that said last-mentioned deed of assignment was executed in blank, and that the name of the said Jennie E. Dunn, in the complainant's said bill named, did not appear in said last-mentioned deed of assignment, and that he never knew, until the filing of the said bill, that the name of the said Jennie E. Dunn was inserted therein.

30 And this defendant, further answering, says, in explanation of the nature and circumstances of the case which led to the execution of said last-mentioned two deeds of assignment, that the complainant, being unable to find any purchaser of said last-mentioned mortgage, and being unable to find any one to advance her, on the said last-mentioned mortgage, the amount of money she had received from the said Woodbury D. Holt, and the complainant having declined to refund to the said Woodbury D. Holt the said amount of money she had received from him, as hereinbefore stated,
40 and the said Woodbury D. Holt having refused to accept a

direct assignment from the complainant to him, the said Woodbury D. Holt, and having requested that the said last-mentioned mortgage should be assigned by the complainant to this defendant, and that this defendant should execute an assignment of said last-mentioned mortgage in blank, as hereinbefore set forth, the said last mentioned two assignments were made and executed, as hereinbefore stated, with the full knowledge and consent and approval of the said complainant, and at her request delivered to the said Woodbury D. Holt, who already had possession of the said mortgage thereby assigned. 10

And this defendant further says that said last mentioned two deeds of assignment were executed at one and the same time, and were part of one and the same transaction; and that the consideration of the same was the sum of eighteen hundred and twenty-five dollars, nine hundred dollars of which was a sum for that amount which the complainant had already received, as she informed this defendant, and nine hundred and twenty-five dollars, the residue thereof, was a sum which this defendant, at the request of the said complainant, and upon her solicitation, this defendant induced the said Woodbury D. Holt to pay, in addition to what he had already paid to the said complainant, and that this defendant received the said last mentioned sum of nine hundred and twenty-five dollars from the said Woodbury D. Holt, and paid over the same to the complainant, which she accepted, with which the said complainant stated to this defendant she was satisfied; and out of the same paid to this defendant the sum of three hundred dollars as compensation for the services which he had rendered to her in and about the negotiations hereinbefore stated; and that, until the filing of the said bill, this defendant had no knowledge whatever of the subsequent history of the said last-mentioned mortgage, and never knew the said Alexander Dunn or Jennie E. Dunn, his wife, in the said transactions. 20 30

And this defendant, further answering, denies that said deed of assignment, executed by him, was made without any consideration whatever, and, on the contrary thereof, this defendant says that the consideration for the making of said last-mentioned deed of assignment was as herein- 40

before stated; and he denies that said last mentioned deed of assignment was made and executed in pursuance of any conspiracy entered into by and between this defendant and the said Woodbury D. Holt, the said Alexander Dunn, and Jennie E. Dunn, his wife, or any of them, to defraud or cheat the complainant out of her said mortgage, so far as relates to the conduct of this defendant in the premises.

And this defendant, further answering, denies that the only consideration moving between any of the parties in said transaction was the sum of twelve hundred and twenty-five dollars, less the said sum of five hundred dollars aforesaid, and, on the contrary thereof, this defendant avers the fact to be that the consideration moving between the parties in said transaction was the sum of eighteen hundred and twenty-five dollars, which said sum was the consideration, and moved from the said Woodbury D. Holt to the complainant, as hereinbefore and hereinafter stated.

And this defendant, further answering, denies that any part of said consideration was paid to the complainant by Alexander Dunn.

And this defendant denies that in the transactions relating to said several assignments he acted for the said Alexander Dunn, or that this defendant was, in fact, the agent of the said Alexander Dunn; and, on the contrary, this defendant avers the truth to be that in said transactions relating to the complainant's said mortgage, and the said several assignments thereof, he acted for her, the said complainant, and was, in fact, her agent solely and exclusively.

And this defendant further says, that he knows not, and has not been informed, save by the complainant's said bill, and cannot set forth as to his belief, or otherwise, whether the said deed of assignment so made by him was made and executed in pursuance of a conspiracy entered into by and between the said Woodbury D. Holt, Alexander Dunn, and Jennie E. Dunn, his wife, or any of them, to defraud or cheat the complainant out of her said mortgage; or whether or not any of the other parties concerned in the procuring of said several assignments acted for the said Alexander Dunn, or were, in fact, his agent or agents; or whether or not the said mortgage so assigned by this defendant, as

hereinbefore stated, is held by the said Jennie E. Dunn for the use or benefit of the said Alexander Dunn; or whether or not the said Jennie E. Dunn has any interest whatever in said mortgage; but this defendant says that he never knew of any such conspiracy, and if any such conspiracy, as in said complainant's bill is mentioned and set forth, existed in fact, this defendant was not privy to it, and had no part or lot in the same.

And this defendant, further answering, admits that the said William C. Dunn did make and execute a deed of conveyance, of such date and of such purport and effect as in the complainant's said bill is mentioned and set forth, and that said last-mentioned deed of conveyance was recorded in the manner as in said bill set forth. 10

And this defendant, further answering, says that he knows not, and has not been informed, save by the complainant's said bill, and cannot set forth as to his belief, or otherwise, whether or not the most or any part of the principal money mentioned in, and secured by said last-mentioned mortgage, with interest thereon from the fourth day of April, eighteen hundred and seventy-seven, still remains due and unpaid to the complainant, except as hereinbefore stated. 20

And this defendant, further answering, admits that since the execution of said last-mentioned mortgage the said Alexander Dunn has possessed and enjoyed the said mortgaged premises, and does still possess and enjoy the rents, issues and profits thereof; but this defendant denies that the complainant, or any other person or persons for her, have ever applied to him or requested him to pay or discharge the principal or interest moneys secured by said last-mentioned mortgage, or to cancel or to deliver up to the complainant said last-mentioned assignments, or either of them, or to deliver, or cause to be delivered, to the complainant the said last-mentioned bond and mortgage; and he further says, that he knows not, and has not been informed, save by complainant's said bill, and cannot set forth as to his belief, or otherwise, whether the complainant, or any other person or persons for her, has ever applied to the said Alexander Dunn and Jennie E. Dunn, or either of them, and requested them, or either of them, to pay or dis- 30 40

charge the said principal and interest moneys secured by the said last-mentioned bond and mortgage, or to cancel or deliver up to said complainant the said last-mentioned assignments, or either assignment, of said last-mentioned bond and mortgage, or to deliver, or cause to be delivered, unto the complainant the said last-mentioned bond and mortgage.

And this defendant, further answering, says that so far as relates to the fraud, misrepresentation and conspiracy set up in said bill, and imputed to this defendant, the said bill
10 is a tissue of falsehoods, and that the complainant, in and by her said bill, has falsely and maliciously spread upon the records of this court the said charges of fraud, misrepresentations and conspiracy so made against him as aforesaid, with a view and purpose of harrassing, vexing and annoying this defendant, and of injuring him in his good name, fame, credit and reputation, and in order to bring him into public scandal, hatred, reproach, infamy and disgrace amongst his neighbors and other citizens of the State and elsewhere; and that in and by her said bill the said complainant, in the
20 guise of a suitor, has sought to perpetuate a libel against him, by means of the records of this court, under shelter of the privileges accorded a suitor applying in good faith.

First. To the first interrogatory addressed to this defendant, he says that he did call upon the complainant, at her residence, in the city of Philadelphia, two several times, between the date of the letter hereinbefore recited, to wit, the fourteenth day of January, eighteen hundred and seventy-eight, and the second day of February in said last-mentioned year inclusive; and that he called as aforesaid, at the sug-
30 gestion of the hereinbefore recited letter, delivered to him by the hand of one Henry W. Brande, whom this defendant has been informed subsequently married the complainant, who, at the same time, gave this defendant her address and requested him to make said call.

Second. To the second interrogatory addressed to this defendant, he says that he had no conversation with Alexander Dunn before or after said assignment of said mortgage from said complainant to this defendant; but this defendant says, that after the delivery of said last-mentioned
40 assignment, he had no conversation with the said Woodbury

D. Holt in relation to said transactions respecting the said last-mentioned mortgage, or the assignments thereof, but that before said last-mentioned assignment, and after the date of said letter, he had several conversations with said Woodbury D. Holt in relation to such transactions, set forth in the complainant's bill, as are hereinbefore detailed by this defendant; and in such conversations stated to the said Woodbury D. Holt that the complainant was dissatisfied with the bargain which she had made with him, the said Woodbury D. Holt, for the sale of the last-mentioned mortgage, and that she wanted more money as the price of the assignment to him of said last-mentioned mortgage; that in such conversations the said Woodbury D. Holt told this defendant that if the complainant was dissatisfied with the said bargain, he, the said Woodbury D. Holt, would surrender to her the said last-mentioned mortgage, provided she would refund to him the moneys he had already advanced and paid to her as hereinbefore stated.

Third. To the third interrogatory addressed to this defendant, he says that he ascertained that the complainant was the owner of said last-mentioned mortgage from the complainant herself, and by her said letter to him hereinbefore recited.

Fourth. To the fourth interrogatory addressed to this defendant, he says that he learned that the complainant was indebted in the sum of five hundred dollars from a statement to that effect, which she made to this defendant at the first interview he had with her, after receiving said letter hereinbefore recited.

Fifth. To the fifth interrogatory addressed to this defendant, he says he did not make to said complainant the representations, or any of them, particularly mentioned and set forth in her said bill.

Sixth. To the sixth interrogatory addressed to this defendant, he says he did not state to the complainant that said last-mentioned mortgage was a third mortgage; and that no one ever informed him that such was the case, except the complainant herself, who gave this defendant the information that her said mortgage was a third mortgage.

Seventh. To the seventh interrogatory addressed to this defendant, he says he did not state to the complainant that the property mentioned in said last-mentioned mortgage had depreciated in value, or would not pay the encumbrances against it prior to hers; or that she would lose all or any of her money; but that the said complainant gave to this defendant whatever information he had respecting the matter contained in said last-mentioned interrogatory; and that he never made any such statement respecting the matters con-
10 tained in such last-mentioned interrogatory, either upon his own judgment or upon the information obtained from others than the complainant herself.

Eighth. To the eighth interrogatory addressed to this defendant, he says that the sum of twelve hundred and twenty-five dollars is not the only consideration that ever passed between the parties to said transactions leading to the assignments of said last-mentioned mortgage, but that the true consideration for the same was and is eighteen hundred and twenty-five dollars.

20 *Ninth.* To the ninth interrogatory addressed to this defendant, he says he did not retain out of said sum of twelve hundred and twenty-five dollars, or said sum of eighteen hundred and twenty-five dollars, the sum of five hundred dollars due to the said Woodbury D. Holt, but that she had already received nine hundred dollars, parcel of said consideration of eighteen hundred and twenty-five dollars, as hereinbefore stated, prior to the time this defendant was brought into any relationship with the said transactions, and that he received from the said Woodbury D. Holt
30 the sum of nine hundred and twenty-five dollars, which this defendant at once paid over to the said complainant, and that he paid to the said Woodbury D. Holt no sum or sums of money whatsoever.

Tenth. To the tenth interrogatory addressed to this defendant, he says that he never received from any one the sum of twelve hundred and twenty-five dollars, but that he received from the said Woodbury D. Holt the sum of nine hundred and twenty-five dollars, and disposed of it as hereinbefore stated.

Eleventh. To the eleventh interrogatory addressed to this defendant, he says he obtained no money whatsoever from the said Alexander Dunn.

Twelfth. To the twelfth interrogatory addressed to this defendant, he says that in the said transactions, or any of them, he did not act as the agent of the said Alexander Dunn or Woodbury D. Holt, or either of them, but that he acted solely and exclusively as the agent of the complainant herself.

Thirteenth. To the thirteenth interrogatory addressed to 10 this defendant, he says that at the time he obtained said assignments, or either of them, he made no other representations to such complainant whatsoever.

Fourteenth. To the fourteenth interrogatory addressed to this defendant, he says he offered to the complainant no inducement whatsoever to part with her said bond and mortgage of eight thousand dollars for twelve hundred and twenty-five dollars.

Fifteenth. To the fifteenth interrogatory addressed to this defendant, he says he did not immediately, or at any other 20 time, after receiving said assignment from said complainant, assign or transfer said last-mentioned bond and mortgage to the said Jennie E. Dunn, but that this defendant assigned the said last-mentioned bond and mortgage in blank, as hereinbefore stated, and that he never knew, or saw, the said Alexander Dunn or Jennie E. Dunn in the said transactions; and that he, immediately after receiving said assignment to himself from said complainant, and at the same hour and place, and without seeing or hearing from the said Alexander Dunn or Jennie E. Dunn, or communicating in any wise 30 with them, or either of them, directly or indirectly, assigned and transferred said last-mentioned bond and mortgage in blank, as hereinbefore stated.

Sixteenth. To the sixteenth interrogatory addressed to this defendant he says he never purchased said bond and mortgage, save as the intermediary for the transfer of the same, as hereinbefore stated, at the suggestion of Woodbury D. Holt, to which the complainant consented.

Seventeenth. To the seventeeth interrogratory addressed to this defendant, he says that the said Jennie E. Dunn never 40

paid him any consideration whatsoever for said last-mentioned assignment.

Eighteenth. To the eighteenth interrogatory addressed to this defendant, he says that no agreement to assign said mortgage to Jennie E. Dunn was ever at any time made, so far as this defendant knows, but that the agreement to assign said last-mentioned mortgage had been made between the said Woodbury D. Holt and the said complainant, prior to the connection of this defendant with the said trans-
10 actions.

Nineteenth. To the nineteenth interrogatory addressed to this defendant, he says that for the services he rendered to the complainant in said transaction he received at her hands the sum of three hundred dollars, which she willingly paid at the time hereinbefore stated, when said last mentioned assignments were executed, and when this defendant, and after this defendant had paid to her the sum of nine hundred and twenty-five dollars hereinbefore stated, and that this defendant received no other money or other considera-
20 tion whatsoever from any other person or persons in respect of the said transactions.

Twentieth. To the twentieth interrogatory addressed to this defendant, he says that the said assignment to himself was made at the suggestion of Woodbury D. Holt, and with the consent of the complainant, as hereinbefore stated.

Twenty-first. To the twenty-first interrogatory addressed to this defendant, he says that the two several acknowldgements of said last mentioned two assignments were taken before the same commissioner, and at the same time, and
30 were part of one and the same transaction, as hereinbefore stated.

Twenty-second. To the twenty-second interrogatory addressed to this defendant, he says that he never saw and never had in his possession or under his control the last-mentioned bond or mortgage, and never delivered the same to any person or persons whomsoever, and that he delivered the last two mentioned assignments to the said Woodbury D. Holt, and that the said transactions then were closed, and that nothing was then said, so far as this defendant now
40 recollects.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without that, that any other matter or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently anwered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall 10 direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JAMES BUCHANAN,
Sol'r and of counsel with defendant Edward H. Murphy.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } *ss.*

Edward H. Murphy, the above named defendant, being duly sworn, on his oath saith that the matters and things set forth in the above answer, so far as relates to his own 20 acts, are true, and so far as they relate to the acts of others, he believes them to be true.

EDWARD H. MURPHY.

Sworn and subscribed this 16th day of February, A. D. 1884, before me.

JOHN T. TEMPLE, *M. C. C.*

REPLICATION.

The complainant joins issue with the defendant Edward H. Murphy.

ANSWER OF ALEXANDER DUNN AND WIFE.

[Filed May 29th, 1884.]

The joint and several answer of Alexander Dunn and Jennie E. Dunn, his wife, two of the defendants to the bill of complaint of Keziah Dunn, complainant.

These defendants, answering, say that they admit the
10 execution, delivery and recording of the bond and mortgage in the bill of complaint mentioned, dated the fourth day of April, in the year eighteen hundred and seventy-two, and made and executed by Alexander Dunn and William C. Dunn to Isaac A. Dunn, and also the assignment of said bond and mortgage made by Isaac A. Dunn to Charles W. Mitchell, and from said Mitchell to said complainant.

And these defendants, further answering, say that they have no knowledge of the several matters alleged in complainant's bill of complaint as having taken place between
20 said complainant and Woodbury D. Holt and Edward H. Murphy, or either of them, prior and relative to the assignment of said bond and mortgage from said complainant to said Murphy.

And these defendants, further answering, say that the said bond and mortgage was transferred to this defendant, Jennie E. Dunn, by deed of assignment from Edward H. Murphy, and that the consideration therein stated is the sum of one dollar; but these defendants for themselves, and said Jennie E. Dunn answering for herself, expressly deny
30 that the said deed of assignment was made without consideration, and in pursuance of a conspiracy as in said bill of complaint charged.

And this defendant Alexander Dunn, answering for himself, denies that he paid to complainant any part of any consideration for said assignment of said bond and mortgage, and expressly denies that any person or persons acted for him in procuring said assignment from said Keziah Dunn, the complainant, or were his agents for any such purpose; and he expressly denies that said mortgage, assigned to his
40 wife by deed of assignment from Edward H. Murphy, is

held by said Jennie E. Dunn for the use and benefit of this defendant Alexander Dunn, and further denies that said Jennie E. Dunn has no interest in said mortgage, but, on the contrary, says that the said assignment was made to her upon good consideration paid by her, with her own individual means, and was taken for her own use and benefit, and has been held, from the day of the delivery of said assignment to her, in her own exclusive possession, and under her sole control, as her own property.

And this defendant Alexander Dunn, further answering 10 for himself, says that it is true that William C. Dunn conveyed his right, title and interest in said mortgaged premises, and subject to the mortgaged encumbrances thereon, to this defendant, but the date of said conveyance was November twenty-ninth, eighteen hundred and seventy-three, and not July first, eighteen hundred and seventy-eight, as stated in said bill of complaint.

And these defendants, further answering, admit that the whole of the principal money of the said bond and mortgage remains due, with some arrears of interest, but they deny 20 that the same, or any part thereof, is due to the complainant.

And this defendant Alexander Dunn, further answering for himself, admits that since the said conveyance to him by said William C. Dunn, has possessed and enjoyed, and still does possess and enjoy, the said mortgaged premises, and received the rents, issues and profits thereof; but he denies that the said complainant, or any one in her behalf, has, since the assignment of said mortgage to Jennie E. Dunn, requested him to pay said principal, or the interest of said bond and mortgage, to said complainant, or to cancel 30 and deliver up the said assignments thereof delivered to said Jennie E. Dunn, but he says that the first intimation these defendants had that the said complainant made any such claim was after this suit had been commenced, and upon reading the bill of complaint.

And this defendant Jennie E. Dunn, further answering for herself, says that she never made any contract with Edward H. Murphy to purchase of him the said bond and mortgage, and that she never met the said Murphy, and never paid him any money on any account; and, further 40

answering, says that she negotiated for said bond and mortgage through her husband, and furnished him the money to pay therefor, and he brought to her the said bond and mortgage, with the several assignments thereof, and she has ever since kept them in her own possession and control, as her individual property; that she paid therefor the sum of four thousand and two hundred dollars; that she obtained the said money from the sale of bonds and mortgages held by her in her own name, and as her individual property, by
10 assigning the same to purchasers thereof, to wit, one mortgage for two thousand dollars executed by David T. Pittenger, and assigned to L. L. Howell, and another of two thousand five hundred dollars executed by James L. Johnson, and assigned to William Boswell; and that she obtained therefor the sum of four thousand and two hundred dollars, and used the same to pay the bond and mortgage on the property of her said husband.

And further answering, this defendant Jennie E. Dunn says that she has received interest on said mortgage from
20 her husband since said assignment to her; that said interest has been received from time to time, as she required it in procuring clothing and other articles for herself, and on her own account; that her bills for said articles were paid with checks from her husband, or by her husband; that in the year eighteen hundred and seventy-eight she received, altogether, the sum of five hundred and ninety dollars from her husband on that account; in the year following three hundred and sixty dollars; the next year four hundred and fifteen dollars, and the next year four hundred and eighty-
30 six dollars.

And further answering, she denies that she holds the said bond and mortgage for the use and benefit of her said husband, or of any other person, or by virtue of any arrangement existing between her and her husband, respecting the said mortgage; or that she holds the same in any other capacity than as her own property, and for her own use.

And this defendant Alexander Dunn, answering for himself, says that he did not employ Woodbury D. Holt and Edward H. Murphy, or either of them, to procure from the
40 complainant said bond and mortgage, and expressly denies

all knowledge of the procurement of the same by them, or either of them from said complainant; and denies having promised to give them, or either of them, anything for their services; and denies having any conversation with them, or either of them, respecting the said transaction alleged in the bill of complaint with the complainant; and expressly denies that he solicited or requested said Murphy to go to Philadelphia and obtain said assignment of said bond and mortgage from the complainant; and denies having paid the sum of twelve hundred and twenty-five dollars, or any 10 other sum, to said complainant, as charged in said bill of complaint; and also denies having any conversation with said Murphy respecting said transaction, or having ever seen him in connection therewith.

And, further answering, the defendant, Alexander Dunn, says that the transaction connected with the purchase of said bond and mortgage, and the assignment thereof to his wife, was as follows: That he and his co-partner, carrying on the hardware business in said mortgaged premises, became embarrassed in business in October, in the year eighteen 20 hundred and seventy-seven, by reason of losses in business and the general depression of business and shrinkage in values, and were compelled to suspend, and, therefore, the defendant was unable to pay the October interest on said bond and mortgage then held by the complainant, which had been regularly paid before that time to the complainant or her attorney, Woodbury D. Holt. That this defendant's firm compromised with their creditors, and procured an extension of time, and resumed business about January first thereafter. That the latter part of February or the first 30 part of March, of year eighteen hundred and seventy-eight, this defendant heard, casually, that this bond and mortgage of eight thousand dollars were on the market, and in hands of W. D. Holt, attorney. This defendant sent his uncle, Philip P. Dunn, to make enquiry relative to it, and ascertain how it was, in fact, and he reported to this defendant that the mortgage was held for sale, and that the price was four thousand five hundred dollars. This defendant thereupon informed his wife of the desirability of securing control of said mortgage, and that, as she had securities of her own, it would be a 40

relief to him for her to hold said mortgage instead of allowing some third person to get it and harass him for the payment of it at maturity, and that it would be a safe investment for her. She thereupon agreed to use her securities for that purpose, and authorized this defendant to make the purchase for her on the best terms he could; and this defendant saw Mr. Holt, and finally arranged to pay him four thousand two hundred dollars for said bond and mortgage; that this defendant received said sum from the sale of two
10 mortgages owned and held by his said wife, and on or about the eighth day of March, in the said year eighteen hundred and seventy-eight, he closed the matter with Mr. Holt, paying him the four thousand two hundred dollars. Mr. Holt produced with the said bond and mortgage an assignment from said complainant to Edward H. Murphy, and another from said Murphy with the name of assignee in blank, and Mr. Holt then wrote in the consideration and the name of Jennie E. Dunn, and delivered all the papers to this defendant, and this defendant had the said assignments recorded, and
20 delivered all the papers to his wife, Jennie E. Dunn, and she has continued to hold them as her own property and in her own possession from that time until the present.

And this defendant, Alexander Dunn, further answering, says that since said assignment of said bond and mortgage to his said wife, he has, in various ways and at sundry times, paid to her the equivalent of the interest, or parts of it. That she agreed that the clothing and personal adornments purchased by and for her should be paid by this defendant, and stand against her for interest.

30 And this defendant, Alexander Dunn, further answering, says that at the time of the said assignment to his said wife there were two prior mortgages against said mortgaged premises, amounting to the principal sum of twelve thousand dollars, and with the interest then due on the said mortgages, and the value of real estate then being much depreciated, the said real estate was not worth the sum of twenty thousand dollars, and would not have brought such a price in the market.

And these defendants, further answering, submit that the
40 said complainant assigned away all her right, title and

interest in said bond and mortgage, and has no right to claim the same, or any part thereof; and that this defendant, Jennie E. Dunn, is a *bona fide* holder of said bond and mortgage for valuable consideration paid by her, and without any knowledge of any imperfection in the transfer; and these defendants humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JAMES S. AITKIN,
Sol'r and of Counsel with said Defendants. 10

STATE OF NEW JERSEY, }
MERCER COUNTY, } *ss.*

Alexander Dunn and Jennie, his wife, the defendants named in the foregoing answer, being duly sworn according to law, on their oaths severally depose and say, that the matters and things set forth and contained in the foregoing answer, so far as relates to their own acts and deeds, are true, and so far as relates to the acts and deeds of other persons, they believe them to be true.

ALEXANDER DUNN,
JENNIE E. DUNN.

Sworn and subscribed this 29th day of May, A. D. 1884, 20 before me.

JOHN G. HOWELL, *M. C. C.*

A true copy.
G. S. DURYEE, *Cl'k.*

REPLICATION.

The complainant joins issue with the defendants Alexander Dunn and Jennie E Dunn.

ANSWER OF WOODBURY D. HOLT.

[Filed October 3d, 1884.]

The answer of Woodbury D. Holt, defendant, to the bill of complaint of Keziah Dunn, complainant.

This defendant admits the execution of the bond and mortgage by Alexander and William C. Dunn to Isaac A. Dunn, and the recording thereof, as well as the assignment by Isaac to Mitchell and by Mitchell to the complainant, as stated in said bill.

10 Further, that he was the agent of the complainant for the collection of the interest on said mortgage, as hereinafter stated.

Admits he collected and paid over the interest on said mortgage to complainant regularly until about the first of October, A.D. one thousand eight hundred and seventy-seven; but denies that at the last-named date, or for a long time previous thereto, he had acted as agent or attorney for said complainant for any other purpose.

Further, that on or about the last-named date he attempted 20 to collect the interest from Alexander Dunn, who had previously paid the same, and by said Dunn was informed that he was insolvent and unable to pay.

Further, that about that date he called upon complainant and gave to her an honest, candid statement of the situation of affairs, and at her earnest solicitation made her an offer for said bond and mortgage, which she declined to accept; but defendant most emphatically denies that on that occasion, or any other, he ever told complainant that her mortgage was worthless, or that if she did not accept defendant's 30 offer she would get nothing for her mortgage.

Further admits, that subsequently complainant called upon this defendant in Trenton, and at her request he went with her to the clerk's office and pointed out to her the prior encumbrances on the said mortgaged premises; but denies that at that time he made any offer for said mortgage, or in any way said anything as alleged in said bill.

And further answering, says that save from complainant's bill, and from the declaration of Edward H. Murphy, he has no knowledge of any interview between said complainant and said Murphy, and has no knowledge of what passed between said parties at any time.

Further answering, admits the assignment of said mortgage from said complainant to said Murphy, as stated in said bill; but as to the consideration he has no knowledge, save from complainant's bill and the answer of said Murphy.

Further answering, denies that any declaration or statements made by him to said complainant, in reference to said mortgage, were false or fraudulent or in an any way intended to mislead or deceive her. 10

Further answering, admits the assignment of said bond and mortgage by said Murphy, in blank, to this defendant, and that subsequently this defendant sold said mortgage to Jennie E. Dunn, wife of Alexander Dunn, and transferred the same by delivering the said bond and mortgage, with the several assignments thereof, to said Jennie E. Dunn.

This defendant, further answering, says that his relations with said complainant relating to said bond and mortgage, and the manner and means whereby he became possessed thereof and disposed of the same are as follows: 20

That for several years prior to the transfer by the said complainant to the said Murphy, this defendant had received and paid over to said complainant the interest.

That said complainant had borrowed from this defendant, from time to time, various sums of money, and on or about the fifteenth day of April, eighteen hundred and seventy-seven, was indebted to this defendant in the sum of five hundred and fifty dollars, to secure the payment of which she made an assignment of said bond and mortgage. 30

That on learning of the insolvency of the said Alexander Dunn, and also the insolvency of William C. Dunn, and being unable to collect the interest, this defendant called upon the said complainant, explained to her the situation, and requested her to make arrangements for paying her indebtedness to him.

Complainant desired and requested the defendant to make her an offer for her mortgage, and this defendant did so, 40

offering her about one thousand dollars, but as to the precise sum, this defendant is unable at this time, from memory or otherwise, to determine.

That complainant declined the offer, saying that she would take time to inquire into the matter; that subsequently she called upon the defendant at his office in the city of Trenton, and informed him that she was unable to find more than one mortgage on the property ahead of hers and asking this defendant to go with her to the clerk's office
10 and point it out, to which request this defendant acceded, giving her what information the records contained concerning the encumbrance on the property in question; that on or about the eighth day of December, A.D. one thousand eight hundred and seventy-seven, this defendant had another interview with the complainant, on which occasion this complainant again requested him to make her an offer for said bond and mortgage; this defendant then and there made her an offer, but of the precise amount this defendant is unable at this time to state, but believes the sum to be about
20 one thousand dollars; that said complainant then and there accepted said offer and agreed that the assignment formerly made as collateral security should be considered an absolute assignment; that some weeks subsequently this defendant was called upon at his office, in the city of Trenton, by Edward H. Murphy, who represented himself as the agent of said complainant, and said she was very much dissatisfied with the sale of her bond and mortgage to this defendant; that this defendant then and there informed said Murphy that he was ready and willing to surrender said mortgage
30 upon receiving the amount of money he had paid therefor; that said Murphy replied that this defendant's offer was perfectly satisfactory, and he would so inform said complainant; that subsequently said Murphy called on this defendant and asked him to increase the price of said mortgage, saying that complainant insisted that this defendant had bought the mortgage at too small a price, and that she was making hard declarations against this defendant on account of the purchase of said mortgage.

That this defendant refused to pay more for the said mort-
40 gage, but again renewed his proposition to return said mort-

gage upon the payment to him of the money he had paid therefor; that still later said Murphy again called on this defendant and asked him to carefully examine the property and see if he could not pay complainant a larger amount for her mortgage; that he, the defendant, was well acquainted with the value of property in the city of Trenton, had superior advantages for collecting the money, and could afford to pay more for the mortgage than any other party; in accordance with the request of said Murphy, shortly after this last interview this defendant examined the premises, and, after nego- 10 tiations with said Murphy, made a proposition to increase the price of said mortgage; as to the precise sum included in this last offer this defendant cannot now state, from memory or otherwise, but qualified said proposition by saying that if he, the defendant, repurchased, he would not accept of a deed of assignment from said complainant; that the mortgage must be transferred through some third party; and further, that said complainant should retract her slanderous declarations made against this defendant; that said Murphy then told this defendant that he would submit this 20 proposition to complainant, and he thought she would accept it; that subsequently he brought to this defendant the assignment from said complainant to him, the said Murphy, of said bond and mortgage and said Murphy's assignment in blank of the same, and also complainant's declaration that the dealings of this defendant with said complainant respecting said mortgage had been fair and honorable; whereupon this defendant paid to said Murphy the sum agreed upon; but whether the full amount was paid on the same day, or a part of it on the same day and a portion of 30 it subsequently, or whether it was paid by checks, or partially so, this defendant is unable at this time to state, from memory or otherwise.

And this defendant, further answering, says that subsequently he sold said bond and mortgage unto Jennie E. Dunn, through her husband, Alexander Dunn; but for what sum this defendant is unable precisely to state, but believes it to be about four thousand dollars.

And further, says that until after he had purchased said bond and mortgage of the complainant, through her attor- 40

ney, Edward H. Murphy, this defendant had no interview or communication with said Jennie E. Dunn or Alexander Dunn touching or concerning the purchase and sale of said bond and mortgage; that to the best of this defendant's knowledge and belief neither said Jennie E. Dunn nor Alexander Dunn had any knowledge or intimation that this defendant had any intention or expectation of purchasing said bond and mortgage of said complainant.

And the defendant, further answering, says that he has no
10 knowledge save from complainant's bill, whether the whole or any part of the principal money in said mortgage named, with interest, remains due and unpaid.

Further answering, admits that since the execution of the said mortgage the said William C. Dunn, who was formerly joint-owner with said Alexender Dunn, has conveyed his interest to said Alexander Dunn, as set forth in said bill of complaint.

And further answering, says that all his transactions touching and concerning said bond and mortgage and the
20 assignment thereof with the said complainant personally, and with her through Edward H. Murphy, her agent, have been open, honest, fair, and honorable; that in no form or manner has he ever in any way dealt fraudulently or dishonestly with the said complainant, or her agent, nor has he ever conspired with said Jennie E. Dunn, Alexander Dunn, Edward H. Murphy, or any or either of them, or with any other person or party, to cheat, deceive, wrong or defraud the said complainant; and that on no occasion nor at any time from the transfer of said bond and mortgage to this
30 defendant by said Murphy until the filing of complainant's bill, neither the complainant nor any one for her applied to this defendant for a return of the mortgage, or for the payment of any or all of the proceeds of the sale to Jennie E. Dunn, nor from any source whatever had this defendant any knowledge, belief or intimation that complainant was not perfectly satisfied with the transaction.

And this defendant humbly prays to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. D. Holt,
40 *Sol'r Pro Se.*

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } *ss.*

Woodbury D. Holt, the above named defendant, upon his oath saith, that the matters and things set forth in the above answer, so far as relates to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true.

WOODBURY D. HOLT.

Sworn and subscribed this thirtieth day of September before me.

W. HOLT APGAR,
Notary Public, N. J. 10

A true copy.
G. S. DURYEE, *Cl'k*

REPLICATION.

The complainant joins issue with the defendant, Woodbury D. Holt.

TESTIMONY.

Transcript of short-hand notes taken of the testimony in the above-stated cause, on Saturday, the 17th day of January, A.D. 1885, before His Honor Vice Chancellor Bird, at the State House, in the city of Trenton, N. J., in the presence of John Harned, Esq., and Frank M. Cody, Esq., of Philadelphia, counsel for complainant; James Buchanan, Esq., counsel for Edward H. Murphy; James S. Aitkin, Esq., and W. D. Holt, Esq.

10 *Keziah Dunn*, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Harned)—

Q. Where do you reside?

A. 525 South Eleventh Street.

Q. Philadelphia?

A. Yes, sir.

Q. What was your husband's name?

A. Isaac A. Dunn.

20 *Q.* What relation was he of Alexander Dunn?

A. A brother.

Q. Where is Isaac A. Dunn?

A. Dead.

Q. Were you the owner of a mortgage for $8,000 upon Alexander Dunn's property, in the city of Trenton?

A. I was.

Q. When did you receive that mortgage?

A. In 1872, as near as I can remember; that is when he received it, and 1874 it was when I received it.

30 *Q.* What did you do with that mortgage after receiving it?

A. Placed it in Mr. Holt's hands, to collect the interest.

Q. What arrangements did you have with Mr. Holt?

A. He was to charge me $10 a year for collecting it.

Q. Did you go away after placing that in Mr. Holt's hands?

A. I went West to live.

Q. When did you return?

A. In about two or three weeks.

Q. Did you go again to Mr. Holt?

A. Yes, sir; and he took me in the little back office, and persuaded me to leave the mortgage with him that it would always be safe.

Q. Did you borrow any money of Mr. Holt?

A. To the best of my knowledge, twice.

Q. When was the first?

A. I wrote for $550, but he could not loan me but $500. 10

Q. When was that?

A. In 1876.

Q. For what purpose did you require that money?

A. To furnish a house for Centennial boarders.

Q. Was anything said in reference to holding this mortgage as collateral?

A. He said as long as he held my mortgage as collateral he would charge me no interest, and I need not be in any hurry to pay him.

Q. When did you borrow any money after that from Mr. 20 Holt?

A. I borrowed at one time $50, at another time $25, as far as I can remember.

Q. How was that $50 and $25 paid—how did you repay that money?

A. He took it out of my interest when it came due.

Q. Up to what time did you receive your interest upon this mortgage?

A. I received my interest on the 4th of October, 1877.

Q. That was the last day that you received interest? 30

A. Yes, sir; that was the last day I received interest.

Q. Where did you receive that interest?

A. At Mr. Holt's office.

Q. In Trenton?

A. Yes, sir.

Q. Did he say anything to you at the time he paid you that interest?

A. He looked at me, and said that Alexander Dunn had failed, and was paying 33 per cent. on the dollar, but he said nothing about my mortgage being worthless. 40

Q. When was that?

A. 4th of October, 1877.

Q. Do you remember about what time in October that was?

A. It was after the 4th; a few days after the 4th, but that was the day my interest was due to me.

Q. When did you next hear from or see Mr. Holt?

A. Not until he visited my house.

Q. Did you hear from him?

10 *A.* He wrote me a letter that he was coming to the house.

Q. Where is that letter?

A. I haven't it.

Q. You don't know where it is?

A. No, sir.

Q. He came to your house?

A. Yes, sir.

Q. How long after that letter?

A. The last of November.

Q. When did you receive the letter?

20 *A.* A few days before he came to the house.

Q. (By the Court)—Was that in November, 1877?

A. Yes, sir.

Q. (Further direct)—What did he say to you?

A. He came to inform me that my mortgage was worthless, the property had depreciated, and that I was going to lose all, and would never receive a cent of interest, and offered me $900 for this worthless mortgage.

Q. Did you say anything about the $500?

A. No, sir; not until I visited his office.

30 *Q.* When did you next see Mr. Holt?

A. When he told me that he would want me to come to Trenton, and that he would take me over to the Court House.

Q. Where were you living when he called on you at Philadelphia?

A. 1238 South 17th street.

Q. Did you call upon Mr. Holt in his office, in Trenton?

A. At his request.

Q. How long after his visit to you in Philadelphia?

A. About the 8th of December; the last of November he called at my house, and this was about the 8th of December.

Q. About a week afterwards?

A. Yes, sir; about a week afterwards he called at the house.

Q. What did he say to you there in reference to this mortgage?

A. He showed me my mortgage and a small "3" placed at the top of the mortgage.

Q. A small what? 10

A. A small "3"; he did not say anything until after we got out to the Court House, but showed me this "3" placed at the top of the mortgage.

Q. Before going to the Court House, what did he say to you about the mortgage?

A. Nothing until we came out of the Court House.

Q. Was there any conversation passed between you at his office before going?

A. He said he wanted to show me the two mortgages that were ahead of mine. 20

Q. You then went to the Court House with him?

A. Yes, sir.

Q. After showing you the mortgages, you returned with him. [Objected to as leading.]

A. He took me over to the Court House, and showed me the small "3"; and afterwards he said, "Are you going to take $900 for this worthless mortgage?" and I told him I would rather wait and see; and he said, "I will have nothing further to do with the worthless mortgage; I want you to sign a paper, and that will free me from your mortgage." 30

Q. Did he then say anything about the $500?

A. Yes, sir; he said he would not have anything further to do with my worthless mortgage, and I had to raise this $500.

Q. Did he make any offer to you respecting the mortgage?

A. He offered me $900—that was all he offered—less the $500 that I paid him.

Q. What was the paper you signed?

Mr. Aitkin—Did she say she signed a paper? 40

Mr. Harned—Yes, sir.

A. It was to free him from my mortgage; it was a small paper that I signed, a little larger than an envelope.

Q. Did you accept that offer?

A. $900? No, sir, I did not.

Q. He still retained the mortgage?

A. Yes, sir.

Q. Where did you go after leaving his office?

A. To Lawyer Green's office.

10 *Q.* Which Green?

A. I don't know his first name.

Q. (By Mr. Holt)—Edward T. Green?

A. Yes, sir.

Q. (Further direct)—You had a conversation with him about this mortgage?

A. Yes, sir; and he said he would see what he could do for me.

Q. Never mind what he said. Who told you to go to Mr. Green's office?

20 *A.* Myself.

Q. Where did you go next?

A. After I went to Mr. Green's office I went home.

Q. Did Mr. Green subsequently call upon you at your house?

A. Yes, sir; he recommonded me then to see Mr. ——"

Q. Never mind what he said. From what he said you wrote this letter to Mr. Murphy, didn't you?

A. Mr. Brand wrote it, and I copied it.

Q. In pursuance to that letter, Mr. Murphy called upon

30 you at your house?

A. Yes, sir.

Q. What did he say to you in reference to it?

A. I explained the matter to him, and he said he would see what he could do for me.

Q. That is all that he said at that time?

A. He made me another offer for this worthless mortgage?

Q. When did you next see him?

A. In about three weeks.

40 *Q.* Did you see any one in the interval?

A. No, sir, I did not.

Q. What did he say when he came to see you the second time?

A. He said he would give me $1,200, less $500, for this worthless mortgage; as Mr. Holt would not have anything to do with it, he was the only one that would do anything for me.

Q. Did he say that he had seen Mr. Holt?

A. He said that Mr. Holt would not have anything to do with this mortgage; he must have seen him, or he could not make that reply. 10

Q. How much did he offer you at that time?

A. $1,200, less $500.

Q. Did you accept $1,200?

Mr. Holt—I object to that as leading. Let counsel ask what transpired.

Mr. Aitkin—This is not a fair examination at all.

The Court—Ask what took place.

Q. What took place when Murphy was at your house, at this second interview? 20

A. I turned around to him after he offered $1,200, and I said, "I wish I had a new carpet for this room," and he said, "What kind do you want?" I said, "I want a Brussels;" he said, "What will it cost?" I said, "$25;" he said, "I will give you $1,225, less the $500, but you must never say anything about this carpet, and sign this paper for $1,825; that is the only way I will take this mortgage."

Q. How long after that did you sign this assignment of this mortgage?

A. On the second of February, 1878. 30

Q. How long before that was this conversation?

A. A few days.

Q. How did he pay you this money?

A. In one check of $225, and the other of $500; I had to wait for thirty days for the $500.

Q. Did you wait?

A. Yes, sir; and put it in the bank and waited five days more.

Q. You know what kind of receipt you gave him?

A. I don't remember of giving him any receipt. 40

Q. After the assignment, Mr. Murphy took the assignment and left your house?

A. Went out of the door with the commissioner and came back.

Q. You have not seen anything of him since?

A. No, sir.

Cross-examination (by Mr Buchanan):

Q. You have spoken of having written a letter. I hand
10 you a letter; is this the letter you spoke of in your testimony?

A. Yes, sir; that is my writing.

Q. In whose handwriting is the body of the letter?

A. I copied that letter; it is all my writing.

Q. I hand you a deed purporting to be a deed of assignment of mortgage, dated the 1st of February, 1878, and purporting to be signed by you; I ask you if the signature is your handwriting?

A. Yes, sir. (On motion of Mr. Buchanan the rest of
20 the witness' answer to this question was stricken out).

Q. Examine this last document to which I have called your attention, and state who wrote in there the words "eighteen hundred and twenty-five dollars" and figures "1825?"

A. It looks like my writing.

Q. Will you swear that it is not your writing?

The Court—She swears that it looks like her writing; that settles it.

Mr. Buchanan offered in evidence the letter spoken of,
30 which was marked *Exhibit A* on the part of Edward H. Murphy. The same counsel also offered the assignment of mortgage which was marked *B*, on the part of Murphy.

Cross-examination (by Mr. Aitkin):

Q. Have you told all that you recollect as having taken place in connection with the assignment of the bond and mortgage to Mr. Murphy, on the 2d of February, 1878?

A. As far as I can remember.

Q. You have told all that you know about it?

A. Yes, sir.

Q. Where was that assignment executed and acknowledged?

A. At my house.

Q. At your house; and the commissioner was brought there?

A. Yes, sir.

Q. And, at the same time, was the other assignment from Mr. Murphy in blank executed?

A. I signed the paper with "1825;" that was the only one. 10

Q. Did Mr. Murphy execute an assignment of the same bond and mortgage at the same time in blank?

A. Yes, sir.

Q. Not to anybody. He executed the paper at the same time?

A. Yes, sir, as far as I can remember.

Q. Now at that time was anything paid to you?

A. A check of $225.

Q. At the same time when you executed that paper?

A. It may have been given to me the next day or the day after, I don't remember; the $225 was given to me. 20

Q. Was it paid to you then or subsequently?

A. I was sick at the time, and I don't remember whether it was given to me that night or the day or two afterwards.

Q. That was the check for $225?

A. Yes, sir.

Q. And you received a check for $500 payable in thirty days?

A. Yes, sir.

Q. And did you give Mr. Murphy anything? 30

A. No, sir.

Q. Were you to pay him anything?

A. No, sir; for he bought the mortgage for himself.

Q. For himself?

A. Yes, sir; it was for himself.

Q. You sold it to Mr. Murphy?

A. Yes, sir.

Q. It was an absolute sale?

A. For $1,225.

Q. To Mr. Murphy? 40

A. Yes, sir.

Q. And you executed that assignment to Mr. Murphy in consideration of $1,225?

A. Yes, sir.

Q. Paid to you?

A. Yes, sir.

Q. Whose checks were given to you?

A. Mr. Murphy's name.

Q. His individual checks?

10 *A.* Yes, sir.

Q. Did you understand why the other paper was signed by Mr. Murphy at that time?

A. What other paper?

Q. The other assignment of that mortgage.

A. I only signed one paper to the best of my knowledge; there was another paper in blank which I signed.

Q. Signed by Mr. Murphy?

A. Yes, sir.

Q. What for?

20 *A.* That I signed in blank, the one that was written besides by Mr. Murphy.

Q. Did you sign two?

A. Yes, sir; as far as I can remember.

Q. Who were they to now? one was in blank.

A. One was in blank, and the other was to Mr. Murphy.

Q. Why were two signed?

A. I don't know; he only told me to sign here; we had no conversation whatever when he brought the paper.

Q. After that time, when did you hear tell of this mort-
30 gage again?

A. Only through my brother-in-law, who came to the house and told me I ought to go and see about this mortgage.

Q. When?

A. Mr. Cody remembers the time.

Q. Never mind about that; when?

A. It was about the last of December, or the first two weeks in January.

Q. Last January?

A. Yes, sir.

40 *Q.* A year ago, you mean?

A. Yes, sir.

Q. Was your former husband then deceased?

A. Yes, sir.

Q. He had recently died?

A. Yes, sir; on the 3d of January he died, and this was right after he died.

Q. Why hadn't you looked after the matter before?

A. Because I hadn't any opportunity.

Q. Where were you living?

A. When this mortgage was taken away? 10

Q. From 1878 to 1884?

A. At 1238 South 17th street.

Q. Were you in Trenton at any time?

A. Yes, sir.

Q. Have you relatives living in Trenton?

A. Yes, sir.

Q. And you visited them once in a while?

A. Yes, sir.

Q. You got that bond and mortgage from Mr. Mitchell?

A. Yes, sir. 20

Q. What did you give him for it?

Mr. Cody—Never mind; I object to that.

The Court—There is no issue raised on that point, and you cannot go into that.

Q. You say the interest was paid October 4th, 1877; are you sure about that?

A. Yes, sir.

Q. At that time you learned that Alexander Dunn had failed?

A. I did not know it until I went to Mr. Holt's office. 30

Q. Did you find that the interest had been paid or not?

A. I did not know whether Mr. Dunn paid Mr. Holt, but Mr. Holt paid me my interest money and kept his money.

Q. You don't know whether Mr. Dunn paid it?

A. No, sir.

Q. When you went over to the clerk's office, and he showed you the mortgages, did you ascertain then that two mortgages were ahead of this one?

A. Yes, sir.

Q. He showed you the record of two? 40

A. Yes, sir; one of $2,000 and the other of $9,900.

Q. Making $11,900?

A. Yes, sir; and he said there was almost $12,000 ahead of mine.

Q. You knew, then, there were two mortgages ahead of you?

A. Yes, sir.

Q. What do you mean by swearing there was only one?

A. I don't remember swearing that there was only one
10 ahead of mine.

Q. Don't you charge in your bill that he told you there were two mortgages, and you say there was only one?

A. No, sir.

Q. You don't swear to that?

A. No, sir.

Q. Do you know what you swore to in your bill? Was the bill in this case read over to you before you swore to it?

A. Yes, sir; there were two mortgages ahead of mine.

Q. You knew that?

20 *A.* Yes, sir.

Q. And then, if you stated there was only one, you did not mean to state that?

A. I don't remember stating there was only one.

Q. I think you have somewhere, unless I am very much mistaken; it is on page 13.

Mr. Harned—It is there.

Q. You charge that there is only one ahead of yours?

A. That is my counsel's fault, if it is there.

A. Mr. Cody and Mr. Harned.

30 *Q.* Did you get all your information from them in regard to this matter?

A. No, sir; my brother-in-law.

Q. Who is he?

A. Charles Mitchell.

Q. He is your brother-in-law?

A. Yes, sir.

Q. Where did he live?

A. In Chambersburg; he was to have been here to-day, but he is in New York.

Q. You spoke about Mr. Brand writing that letter and you copying it?

A. He was my husband.

Q. Your second husband?

A. Yes, sir.

Q. Then your name is not Dunn?

A. I take my own name since his death, because—

Mr. Harned—I don't see that this has anything to do with this case; the fact that she lived with another man has nothing to do with this case. 10

A. He was an intimate friend of Mr. Murphy's.

Q. I only asked her who he was because he has dictated a letter which she wrote; I don't propose to follow it any further; that is all.

Cross-examination (by Mr. Holt):

Q. Is your second husband dead.

A. Yes, sir.

Mr. Holt—I desire to have this paper which I hold in my hand marked "*1 H*" for identification. [The stenographer did so.] 20

Q. ["*1 H*" being shown witness, and her attention being called to the signature.] Is that the signature of your late husband, Henry W. Brand?

A. Yes, sir; I know his handwriting; I have it here with me.

Q. Is that your handwriting to that paper?

A. Yes, sir; but I have no knowledge of that paper.

Q. Have you seen it since you signed it till now?

A. Seen that paper?

Q. Yes, ma'am. 30

A. I don't remember.

Q. You don't remember of seeing it since you signed it?

A. No, sir; I do not till now.

Q. Do you remember where you were when you signed that paper?

A. 1238 South 17th street, if I signed it.

Q. Have you any doubt about your having signed it?

A. It looks like my signature.

Mr. Cody—Don't you think you had better let her see the whole paper?

Mr. Holt—Suppose you wait till you come to your examination.

Q. How do you know that you lived there when you signed it?

A. Because that was the place I lived when I signed those papers.

Q. At whose request did you sign that paper?

10 *A.* At Mr. Murphy's, if I signed that paper.

Q. At the same time that you executed the other papers?

A. At the time Mr. Murphy got my mortgage.

Q. Are you in the habit of signing papers without knowing what you are signing?

A. I never had any assignments to sign until I had to deal with this mortgage.

Q. [Last question repeated.]

A. Yes, sir, I was.

Q. Did you sign this bill without knowing what you were

20 signing?

A. It was not read, as far as I can remember.

Q. She stated this bill was not read to her.

A. Mr. Murphy did not read any.

Q. This bill of complaint in this case—did you know what was in that when you signed it?

Mr. Harned—She has already answered that three or four times.

The Court—I don't know that she has answered it.

Q. I propose to read her the affidavit attached to the bill,

30 and ask her if she signed it.

The Court—Show it to her, and ask her.

Q. [Showing the affidavit to witness]—Is that your signature?

A. It looks like it.

Q. That is, attached to the affidavit?

A. Yes, sir.

Q. To the bill of complaint?

A. Yes, sir.

Q. You swore that this bill of complaint was true?

40 *A.* Yes, sir.

Q. Did you know what this bill of complaint contained when you swore to it?

A. Was it in my last answer?

Q. It is not in your answer, it is in the bill of complaint; you filed this bill of complaint, and swore that it was true.

A. Mr. Murphy—

Q. Did you know the contents of this paper—it is the bill of complaint—when you swore to it?

A. Yes, sir.

Q. Then you swore that this bill was true,—do you want to look at it? 10

A. [Witness examined it]—I don't know what this is for.

Q. Did you never see that paper?

A. This is my answer, is it not?

Q. No, ma'am, it is the bill of complaint; did you ever see it before?

Mr. Harned—Suppose you stand off a respectable distance from the witness, so that I can hear.

Q. Did you ever see that paper before, to the best of your knowledge and belief? 20

The Court—Ask her if her counsel ever read it over to her.

A. This is my answer.

Q. Did you hear that read over, or did you ever read it over?

A. Mr. Harned read it to me.

Q. Before or after you swore to it?

A. Before I swore to it.

Q. Now then—

A. If you will let me see the first of it. [Witness referred to *Exhibit 1 H.*] 30

Q. Did you ever see that paper before?

A. Yes, sir; that is the one Mr. Murphy, as far as I can remember, brought to the house.

Q. As far as you can remember?

A. Yes, sir; that is the one he brought to the house.

Q. Has it been changed or altered since that time?

A. No, sir; but this is "1825;" he would not pay the mortgage without I would not sign the paper for this 1825. He only paid me $1,225, less the $500 that I owed you. 40

Q. Again look at that paper and say if you saw that paper on the day you signed the assignment?

A. Yes, sir; I did.

Q. And you now recognize it as being the same paper?

A. Yes, sir.

Q. And you recognize that by your signature and by the contents of the paper itself?

A. I recognize my signature.

Q. Did you recognize the contents as having seen it then?

10 *A.* This paper that I signed, it was,—I don't know whether this one was the blank, or whether the other one was that I signed, it has been so long ago.

Q. Memory has become hazy on it, a little. To the best of your knowledge and belief, did you sign that paper at that time, and did you know its contents?

A. Yes, sir; as far as I can remember; there was one paper that I signed had printing and writing on it, the $1,825.

Q. (By Mr. Aitkin)—The one that you signed had

20 $1,825 printed?

A. It had printing and writing on it.

Re-direct.

Q. (*Exhibit B,* Murphy, being shown witness)—You spoke of signing a receipt; is that the paper you refer to?

A. Yes, sir; that is the one.

Q. At whose request did you write the consideration in that paper?

A. At Mr. Murphy's, as far as I can remember about that $1,825.

30 *Q.* (By Mr. Cody)—Had you ever been to the clerk's office of this county before the time you went there with Mr. Holt?

A. No, sir.

Q. Had you ever seen any of the records of the office?

A. No, sir.

Mr. Holt—That is not a re-examination, the questions being asked by another counsel; I only desire that it be kept within the rules of an ordinary examination.

Mr. Cody—That is a matter which slipped our memory at the beginning. I simply wanted to show that she never saw any public records, and she would not know whether it was the first, second or third mortgage, and she had to rely entirely upon what was said by her counsel.

The Court—What she has already stated may stand—that she has never been in any office of public records.

Q. (By Mr. Harned)—Did you ever say anything to Mr. Brand in reference to having this matter investigated?

The Court—He is not a party. 10

Mr. Harned—They have attempted to show that she has allowed this matter to remain quiet for a long period of years. I propose to show that this woman inquired of a person in whom she had a right to confide, and that he was a personal friend of the defendant.

The Court—You may show the relationship.

Mr. Buchanan—Her husband, as I understand it.

Q. Did you ever say anything to Mr. Brand in reference to this matter?

A. Yes, sir. 20

The Court—What he said cannot be repeated. She can state generally what was said, what directions he gave her. She can say that she kept quiet on account of what he said.

Q. From what he said, did you remain quiet in this matter?

A. Yes, sir.

Q. After you were supposed to have been married to Mr. Brand you heard that he had another wife living, didn't you? [Objected to.]

Mr. Cody—We simply ask that question to show why 30 she assumed the name of Dunn.

Re-cross (by Mr. Aitkin):

Q. In regard to this paper, *Exhibit B*, I want to know where you were when you signed that paper?

A. At 1238 South 17th street, as far as I can remember.

Q. That is dated the last of February, for $1,825; where did you execute that? 'Squire Street was a witness; do you recollect 'Squire Street?

A. No, sir. 40

Q. Were you in Trenton on the 2d of February, 1878?

A. On the 2d of February?

Q. Yes.

A. 1878?

Q. Yes.

A. No, sir; I was at my home, where Mr. Murphy came and took my signature.

Q. You had a commissioner brought in?

A. Yes, sir; he brought a commissioner with him.

10 *Q.* Before that, had you signed any assignment before any other commissioner?

A. No, sir.

Q. Is that your signature?

A. It looks like mine; but I don't know 'Squire Street.

Q. This purports to have been signed before 'Squire Street, on the 2d of February, 1878.

A. No, sir; I was not out of my house, and no one but Mr. Murphy and the commissioner came to the house.

Q. And you signed no other paper except in the presence 20 of that commissioner?

A. Yes, sir; no other paper, as far as I can remember.

The Court—Has that paper been offered in evidence?

Mr. Aitkin—It is one of the exhibits in the case.

Q. By Mr. Buchanan—You spoke of two visits by Mr. Murphy.

A. To the best of my recollection, three times.

Miss Sarah Furman, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith:

30 Direct examination (by Mr. Harned)—

Q. Where do you reside?

A. In Trenton.

Q. What relation are you to the complainant?

A. I am her aunt.

Q. Do you know Mr. Alexander Dunn?

A. Yes, sir.

Q. In the year 1878, did you see Mr. Dunn at his store?

A. Yes, sir, at his store; my sister and me were out shopping, and we called at Mr. Dunn's, and he had sent Mr.

Hanley to me to know her residence, and I asked him if Mr. Hanley found her, and he said he did, and that Mrs. Dunn had done a great many foolish things in her life, but the most foolish thing she had ever done was to part with this mortgage. I said to him that Mr. Holt deceived her; he went to the Court House with her, and told her it was the third mortgage. Mr. Dunn said it was a joint mortgage, and his property was worth all that there was on it, and no one would lose a dollar of what was on his property. Mr. Dunn said this to me and to my sister, and she would have been here to-day, but her health was so that she could not come; and she is an old lady, 70 years old. And then I went to Mr. John B. Anderson—you know him as well as I; he told me that Mr. Dunn's property was a very valuable property.

Q. When was this when you visited Mr. Dunn?

A. Pretty soon after this property was assigned, for it was common talk.

Q. You don't remember the date?

A. I don't remember the day or date, because I thought no more about it; at that time I knew the mortgage was given, and I did not suppose there would ever be anything more about it.

Q. Was it cold or warm weather?

A. In the spring of the year.

Q. That is all.

Not cross-examined.

Alexander Dunn, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith:

Direct examination (by Mr. Harned)—

Q. Where do you reside?

A. In Trenton.

Q. You are one of the defendants in this case?

A. I am, I suppose.

Q. Did you negotiate the purchase of an $8,000 mortgage upon your premises from a Mr. Holt?

The Court—Is that not admitted?

A. I have already alswered that in the answer; yes, sir, I admit that.

Q. How much money did you pay Mr. Holt for that mortgage?

A. I did not pay him any money myself.

Q. As an agent for somebody else, how much?

A. To the best of my recollection, $4,200; I don't say positively.

Q. You are the owner of the premises described in that
10 mortgage, are you not?

A. Yes, sir.

Q. Did you purchase an interest from your brother, William C. Dunn?

A. Yes, sir.

Mr. Aitkin—That is all admitted.

Q. What was his interest?

A. William C. Dunn had an interest in the store property and in the stock.

Q. How much was his interest?

20 *A.* I can't tell you at the present time.

Q. Who else was the owner of the building in connection with your brother?

A. No one.

Q. You and your brother?

A. Yes, sir.

Q. Then his interest was one-half in that building?

A. Well, that is something I can't answer posititively, because we kept separate accounts.

Q. How much money did you pay when you purchased
30 that property?

Mr. Aitkin—They are going into a matter that is not pertinent to this transaction.

Mr. Harned—This man says positively that this property is not worth the amount of the mortgage.

Mr. Aitkin—He has not said so.

The Court—The principal and main question, of course, is whether there was any such transaction between these parties as, under the circumstances of the case, the law denominates fraudulent. That is, might be by the relations of the parties, by what passed between them, and also by

the fact whether the consideration was so grossly inadequate as to shock the sense, and therefore be an implication of fraud. That is the way the books all put it. If this property was worth the amount of those mortgages, and it had been represented to the party holding the third mortgage that the owners of the property had failed, and that their bonds were worthless, and that the land held as collateral security was insufficient to pay, and that had been relied upon, and it should turn out that at the time the property was worth considerable more, or enough to pay 10 the mortgage, it might go a good way toward satisfying the mind of the court that it is within the rule laid down by all the cases, that fraud would be implied, though none might have been intended. Now the offer is to show the real value of this property at that time. I am disposed to think that I ought to allow the testimony. I do not think that there is any admission in the answer to make it clear, and my impression is, from hearing it read hastily, that the answer has nothing to deny the allegation of the bill upon that point. What is the fact, upon the value of the 20 property?

Mr. Aitkin—Nothing at all, except Mrs. Dunn's allegation in the bill is that this was a worthless mortgage, and by reason of being told that it was worthless, she parted with it. There is no answer in regard to whether the mortgage is worthless or not. The point I rose to call your honor's attention to I think you have lost sight of, and I think it renders the testimony improper at this time. The charge of the bill is that these parties entered into a conspiracy, that Mr. Murphy said so and so, and that Mr. Holt 30 said so and so, and that they were the agents of Mrs. Dunn. Now, until it is proved that Mrs. Dunn, who is the holder of this mortgage, is shown to have had something to do with that, she stands before this court as a *bona fide* purchaser, and she has not been attacked in any way, and there is not an intimation that she has anything to do with the property, and whether that mortgage was worth $1,000 or $10,000, there is no testimony to attack her, and if they don't lay a foundation for that, they cannot produce the testimony.

The Court—I think there is more in that case than that. If it turns out that she is a *bona fide* holder, she will be protected to the amount of her interest; but there is another principle of law which very distinctly places every person who deals with such paper upon the same footing as the person from whom they take it. That is settled in this State, and I think in most of the courts of the country. It may be immaterial, and it may be very material. Now, you may read the allegation of the bill; what does the bill say about
10 the value of the property?

[The portion of the bill, and answers, relating to the value of the property, was read.]

That is the impression I had about it. This bill, as it is, may involve the standing, to some extent at least, of an honorable member of the profession, and officers of the court—two of them; and, whilst I don't want to deprive counsel of the benefit of their exceptions (that is their duty to look after), yet I wish to say now, that I shall allow considerable latitude. It shall not be said that the court restrained in
20 any way a full and fair investigation. It is due to the court and to the profession, and if the transaction is right, the vindication will be what every fair-minded man desires. There may have been no occasion for me to make these remarks, but I make them now, and will allow this question and such answer as may be given to it, strictly in accordance with the well-settled rule.

Mr. Holt—Whilst agreeing with your honor that the fullest and fairest investigation should be made, it occurs to me that it is an exceedingly improper way to prove the value of
30 this property at the time of the assignment by showing what he paid for it.

The Court—The objection was not made upon that point; when was it purchased?

Q. About when was it purchased?

A. I purchased that property with William C. Dunn, I think in December, 1873; in fact, I know it was.

Q. You purchased his interest?

A. Yes, sir.

The Court—Now, the question you put is objected to
40 because it is not a safe criterion. I say to counsel that it

will be of very little value, perhaps, but he may answer the question. There are some things which the courts, whether they receive judicial knowledge of or not, cannot help knowing, and that is that in 1873 property was worth a great deal more than it was several years afterwards.

Mr. Harned—I think we ought to be allowed to show what it was worth prior and at that time of the transaction.

The Court—I will allow you to show what it was worth in 1873 by the answer to this question; the rest must be confined to the transfer of the mortgage. 10

Q. What did you give your brother-in-law for his interest?

A. It is impossible for me to tell, because I made my brother an offer for the whole thing, stock, property and everything that we owned in common.

The Court—Don't go any further.

Q. Did you execute a mortgage on the property to your brother after the one owned by Keziah Dunn?

A. I did.

Q. For how much money?

A. I am not positive, but I think it was for $10,000. 20

Q. Do you remember the date of that mortgage?

A. No, sir.

Q. Do you remember that it was in the Centennial year?

A. I could not tell you anything about it; I considered it of no account.

Q. (By Mr. Buchanan)—That is the mortgage to the guardian?

A. No, sir; one after ours.

Q. (Further Direct)—Has that mortgage been paid off?

A. It was never anything. 30

Q. Has it been cancelled of record?

A. Yes, sir.

Q. When?

A. I can't tell the date now.

Q. You don't know whether it was after or before your wife purchased this mortgage?

A. After my wife purchased this mortgage?

Q. Yes, sir.

A. Oh, no; it was not after.

Q. You are sure of that? 40

A. Yes, sir; I will take it back; I won't swear to it; I can't recollect.

Q. (By Mr. Aitkin)—What became of that mortgage?

A. It was cancelled on the record.

Q. What was it given for?

A. To William C. Dunn; I am not certain of the time I gave it; do you want to ask me what it was given for?

Q. Yes, sir.

A. Must I say here what I gave it for?

10 *Q.* That is what I want to know.

A. I owed William C. Dunn certain notes.

Q. (By the Court)—It was for an indebtedness?

A. No, sir; it was not, because nothing occurred to me during the time of our compromise, why then he would stand a chance if there was anything.

Q. (By Mr. Aitkin)—To secure him?

A. It was never considered any security, because it never left the safe; I had it in my possession.

Q. In your possession?

20 *A.* Yes, sir.

Q. There was no loan made then?

A. No, sir.

Q. That is all.

Mr. Harned offered a certified copy of the mortgage from Alexander Dunn, William C. Dunn and Isaac A. Dunn to Philip P. Dunn, marked *D 1;* also one from Philip P. Dunn to Peter Crozier, marked *Exhibit D 2.*

John F. Harned, a witness produced on the part of the 30 complainant, being duly sworn according to law, deposeth and saith:

Direct examination—

When this statement of the case came first to my hands I understood that the last payment of interest was paid to the 4th of April, 1877, and so wrote it in the first draft of the bill. When Mrs. Dunn came to the office to swear to this bill I read it to her, and she said that I had misunderstood her, and that the last payment of interest was paid up to the 4th of October, 1877. I then erased the word "April"

and inserted therein "October," before she swore to the bill, page 9.

Q. (By the Court)—In one place only?

A. Yes, sir.

Q. And there is another place where it appears.

A. There is another place where it says she hadn't received her interest—by implication only; it does not state the dates.

Q. Is that all?

A. Yes, sir. 10

Mr. Holt—I understand the solicitor to say that he has no testimony to offer except on the value of the property?

The Court—That is what he says.

The further hearing of this case was at this point adjourned until February 28th, 1885, at 10 A.M.

The trial of the above cause was continued, pursuant to adjournment, before Vice Chancellor Bird, at the State House, in the city of Trenton, N. J., on Friday, the twenty-seventh day of March, A.D. eighteen hundred and eighty-five. Appearances as heretofore. 20

William Hancock, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith:

Direct-examination (by Mr. Harned)—

Q. Where do you reside?

A. On Front street, in the city of Trenton.

Q. What is your business?

A. Banker, broker and real estate.

Q. Are you familiar with the value of real estate in the city of Trenton? 30

A. To some extent.

Q. For how many years have you been engaged in that line of business?

A. About six years.

Q. Do you know the property known as the Alexander Dunn property, on State street, in the city of Trenton?

A. Yes, sir.

Q. In your opinion, what was a fair value for that property on the first of February, eighteen hundred and seventy-eight?

A. Twenty thousand dollars.

Q. What is it worth to day?

A. Thirty thousand dollars.

Mr. Aitkin—I object to that. Is that competent?

The Court—The question is overruled and the answer goes with it.

10 Cross-examination (by Mr. Aitkin):

Q. In fixing your valuation in eighteen hundred and seventy-eight, do you recall the condition in which the property was at that time?

A. In what respect, sir?

Q. In any respect—the condition of it as to making its valuation.

A. Do you mean with regard to the market value?

Q. No, no, in regard to the property itself.

The Court—Its improved or unimproved condition.

20 *Q.* Whether there are any improvements made on it at the time; let the stenographer read my question.

[The stenographer read as follows: *Q.* In fixing your valuation, in 1878, do you recall the condition in which the property was at that time?]

A. In what year?

Q. The year you are speaking of.

A. 1878?

Q. Yes.

A. Yes, sir.

30 *Q.* Were any improvements made upon it subsequently, to your knowledge?

A. No, sir; not to my knowledge.

Q. Have you looked at it recently with an idea to forming a valuation?

A. No, sir.

Q. Now, what is your idea of the valuation of twenty thousand dollars in 1878; do you mean at a private sale, public sale, or how?

A. I think the property was worth that at public sale.

Q. You think it would have brought that at public sale?

A. Yes, sir.

Q. In 1878?

A. I do, sir.

Q. If it brought that at a public sale, what amount of encumbrance would you consider it a safe investment to make upon that property at that time?

A. Seventy-five per cent. of its valuation.

Q. That is your criterion?

A. Yes, sir. 10

Q. Is that the usual rule of investments in Trenton?

A. It is in many cases, not in all.

Q. At that time would you have loaned fifteen thousand dollars on that property in the then state of the market?

A. I think I would.

Q. Do you recollect the state of the market at that time?

A. Pretty well.

Q. What was the condition?

A. Everything was generally depressed.

Q. Was there any sale at all for real estate? 20

A. Very limited.

Q. Don't you know that there were a great many properties forced in the market that brought nothing at all, comparatively?

A. Yes, sir.

Q. Do you recollect any properties in that neighborhood?

A. No.

Q. Do you recollect a Freese property?

A. That is not in that locality.

Q. Is not that in that locality? 30

A. He didn't hold any in that immediate neighborhood.

Q. Within a block?

A. Yes, sir; within a block.

Q. How did that sell at a forced sale?

A. It sold for the amount of their claims.

Q. Did they bring the amount of their claims?

A. The sale which I attended did.

Q. Do you recollect in that block, about that time, the Temple property being sold?

A. Yes, sir. 40

Q. What did that property bring?

A. I don't remember the price of it.

Q. About ten thousand dollars, didn't it?

A. I can't answer that question.

Q. You don't recollect?

A. No, sir; I remember the sale, but not the price.

Q. Now, I will ask you a hypothetical question: If the owner of the Dunn property in February, 1878, in the condition it was then were insolvent, with twelve thousand
10 dollars mortgages on it, and interest in arrears, and taxes unpaid, would you have advanced any money upon second or third mortgages upon that property?

A. I would not; I don't dabble in second or third mortgages at any time.

Q. Are second or third mortgages negotiable?

A. Not at present.

Q. Were they at that time?

A. Just previous to that they were.

Q. How negotiable?

20 *A.* So negotiable that our most secure investors took them.

Q. They took second mortgages?

A. Yes, sir; and third ones.

Q. How did they come out?

A. They came out minus.

Q. In February, 1878, if there was twelve-thousand-dollar mortgage upon that Dunn property, and a subsequent mortgage was put upon it of eight thousand dollars, what would that mortgage have brought in the market?

30 *A.* That is a very hard question to answer.

Q. Would it have brought anything?

A. Yes, sir; I would have given something for it.

Q. How much?

A. I should not have hesitated to have given five thousand dollars for it?

Q. You would have given five thousand dollars for it?

A. Yes, sir.

Q. You consider that a safe investment?

A. Yes, sir.

40 *Q.* That would bring the property up to about what?

A. $17,000.

Cross-examination (by Mr. Holt)—

Q. How much frontage has that property?

A. I can't answer that, sir.

Q. How much depth?

A. I can't answer it.

Q. In your estimate of the value of that property in 1878, do you consider it in the same condition that it is now, so far as improvements are concerned?

A. Yes, sir.

Q. Then your estimate is based upon the supposition that the same improvements existed at that time that exist at the present time? 10

A. Yes, sir.

Q. I think that you stated that you don't know when the Temple property was sold?

A. I knew the time of the sale.

Q. But you can't recall the year now?

A. No, sir, I can't.

Q. The price of real estate in Trenton from 1877 to 1880, was there much variation? 20

A. From 1878?

Q. From 1877 to 1880?

A. Was there considerable variation?

Q. Yes, sir.

A. Yes, sir.

Q. When was it lowest?

A. The lowest was from 1876 to 1878.

Q. Did it reach its lowest point about 1878?

A. I think it did.

Q. After that it increased in value to some extent? 30

A. Yes, sir.

Q. And it has ever since?

A. Yes, sir.

A. Do you know how much frontage there is to the William Temple property?

A. No, sir.

Q. Do you know whether that was sold in 1876, '77, '78, '79 or '80?

A. No, sir; I have no recollection of dates, sir.

Q. How does that property compare in value with the Dunn property?

A. I consider it a very inferior property to the Dunn property.

Q. In what respect, locality?

A. Not so particularly in locality as the location of the property, where, with the privilege of that entrance, the side-way, makes it a valuable property for mercantile purposes.

10 *Q.* Saving the right to the alley, is it superior to the Temple property?

A. Yes, sir.

Q. In what respect?

A. It is larger in the rear.

Q. Anything else?

A. With more buildings.

Q. Is the locality superior, saving the alley?

A. No, sir.

Q. It is not so good, is it?

20 *A.* There is very little difference with regard to that.

Q. What do you think the Temple property was worth at that time?

A. The Temple property at that time was worth $12,000.

Q. Now, Mr. Hancock, in stating the value of property at that time, do you do it from your judgement as to its intrinsic value, or because you remember the price it brought at sale?

A. I answer that I don't know the price it brought at the sale?

30 *Q.* Do you remember the property adjoining the First National Bank, that used to be considered the Taylor property, called the Taylor property?

A. Yes, sir.

Q. What was that worth per foot frontage in 1878?

A. I can scarcely answer that.

Q. Why not?

A. It is an unimproved property with serious objections on it.

Q. Then your ability to estimate property is confined to

40 those that have improvements in that neighborhood?

A. I undertook to negotiate for the property at one time; they wanted a thousand dollars a foot for it, that was all.

Q. I didn't ask you that question, and I am not responsible for your answer. My question was to its value in 1878; you said you cannot estimate it. Do you know any property being sold in that block, beside the Temple property?

A. The Taylor property was sold.

Q. Do you know what that brought?

A. No, sir. 10

A. And you can form no estimate of its value?

A. No, sir.

Q. Now, the property that Mr. Baker occupies, do you remember that property distinctly?

A. Yes, sir.

Q. What was that worth in 1878?

A. It was worth $12,000.

Q. What was the Kline property worth?

A. The Kline property was worth $15,000.

Q. How much frontage is there to that? 20

A. I can't tell you exactly.

Q. You pass it every day?

A. Yes, sir; I do. I think there is in the neighborhood of twenty-five feet.

John H. Hillman, being conscientiously scrupulous of taking an oath, being affirmed, testified as follows:

Direct examination (by Mr. Harned):

Q. Where do you reside?

A. I reside in Trenton, in the First Ward.

Q. What official position do you hold? 30

A. I am one of the city assessors?

Q. Have you with you the assessors' books of the First Ward of the city of Trenton, for the year 1878?

A. I have.

Q. Will you take that book and refer to the assessment of the property known as the Alexander Dunn property, on State street, and say what is the value of it?

Mr. Aitkin—I don't know whether that is competent or

not. He was not city assessor at that time, as I understand it.

Mr. Harned—Standing alone, of course, we admit that it don't amount to much, but taken together with other evidence it might amount to something. Here is an assessment valued by an officer for taxation, and the presumption is that he made a thorough examination of the property.

The Court—That must appear before the testimony can be competent.

10 *Q.* When did you first take your office as assessor?

A. In 1879; I think I have been in the office five years this spring.

Q. What was your business before that?

A. I was in the lumber business.

Q. Are you acquainted with the value of real estate?

A. Somewhat.

Q. Did you assess this Dunn property in the year 1879?

A. Yes, sir.

Q. For how much did you assess it?

20 *A.* We assessed for—

Mr. Aitkin—Is that proper, your honor?

The Court—It does not appear that he examined the property at all.

Mr. Harned—He says that in 1879 he examined the property.

Mr. Aitkin—No, he said he assessed it.

Q. For the purpose of assessing that property, did you examine it at that time?

A. I examined it, and examined every property that we 30 assessed; assessors go around. I want it perfectly understood by the Court and everybody else—

The Court—What you did with other property don't matter.

A. That I did with this property.

Q. What did you assess that property at that year?

A. Hold on a minute; no, I didn't in 1879; I have had that ward three years; I was in the Fifth and in the Second; in 1880.

Q. (By the Court)—Then you examined it in 1880?

40 *A.* Yes, sir.

Q. What did you assess it at in 1880? [Objected to by Mr. Aitkin. Question overruled.]

Q. In your opinion, what was the property worth in 1878?

A. I think it was worth the assessment—

Mr. Aitkin—He don't say that he knew it in 1878.

A. I have known the property ever since it was built; passed it every day of my life.

Q. What do you think it was worth in 1878?

A. I think it was worth the full assessment, $17,000; that is the valuation of two-thirds the value of the property. 10

Q. Then you think it was worth the assessment, and two-thirds?

A. And one-third.

Q. How much would that make the property worth, in your opinion?

A. I should think the property was worth from $22,000 to $25,000.

Q. In the year 1878?

A. 1878.

20

Cross-examination (by Mr. Aitkin):

Q. You examined it in 1880, and knew the property in 1878?

A. Yes, sir.

Q. Did you fix your valuation from what you know about the property now, and carry your mind back?

A. I fix the valuation from what other property is assessed at in the neighborhood.

Q. And not from that property itself, individually, and not of that property independently? 30

A. I speak of that property independently.

Q. In relation to what other property is assessed at in the neighborhood?

A. Yes, sir; that is the way the assessors value the property; for instance, the assessors go—

Q. Never mind. Do you know of any improvements that were made on that property?

A. I don't know that I do, especially.

Q. At any time within ten years?

A. I don't know that I can state exactly. 40

Q. You don't know anything about that?

A. No, sir.

Q. You have never been in the real estate business?

A. Some little.

Q. To what extent?

A. I owned a property on State street and one on Stockton street.

Q. That is the extent.

A. Yes, sir.

10 *Q.* You never bought and sold?

A. Not a great deal.

Q. You never attended to the investing of money in bonds and mortgages?

A. No, sir; I never had much to invest. I had considerable to do with real estate in the old form, in the valuation of property.

Cross-examination (by Mr. Holt):

Q. I understood you to say that you didn't assess any 20 property in that block in 1878?

A. No, sir.

Mr. Harned—I object to this testimony; that is the testimony that was ruled out.

The Court—He said he didn't.

Q. Then the estimate that you put upon that property is based upon what other men did assess property at in that block?

A. The valuation as it is assessed.

Q. Did you base your estimate of the value of that 30 property in 1878 upon what other assessors assessed other property at in that block in that year?

A. I based my opinion upon that property according to the valuation of other property in that neighborhood?

Q. And you took that from what others assessed it at?

A. No; upon the value of property sold in that neighborhood,—what it brings in the market.

Q. What other property was sold in that neighborhood in 1878?

A. I don't remember; I can't answer your question.

Q. If you don't remember what other property was sold, or what it brought, how can you put your estimate upon it?

A. I understood you to ask me what the property was worth?

Q. Yes, in 1878; now you don't know any property that was sold in the neighborhood in 1878?

A. No, sir.

Q. Do you know of any that was sold in 1879?

A. I don't know that I remember any.

Q. Do you remember any sale in 1877? 10

A. No, sir.

Q. You don't know what property brought in that block in 1877, '78 or '79, when it was sold?

A. I base my opinion—

Q. I don't ask you that. You don't know what property brought in 1887, 1878 or 1879?

A. No, not positively.

Q. Do you know what property was sold, in that block, in either of those three years, '77, '78 or '79?

A. I say to you that I don't remember. 20

Q. Then you don't know that any was sold?

A. I don't know, of my own memory, that any was sold.

Q. And you don't know that it brought any price?

A. I don't know that any was sold.

Q. Have you any other way of getting at the value of this property, other than what you have told?

A. No, sir.

Q. That is all?

A. No, sir.

Benjamin Bamford, a witness produced on the part of the complainant, being duly sworn according to law, deposeth and saith: 30

Direct examination (by Mr. Harned):

Q. Where do you reside?

A. In Trenton.

Q. Are you engaged in any business at present?

A. No, sir.

Q. Are you acquainted with the value of real estate in the city of Trenton?

A. Somewhat.

Q. Do you know the property of Alexander Dunn on State Street, in the city of Trenton?

A. I think I do, sir.

Q. At one time you owned the property next to it?

A. I owned the Mansion House.

Q. In your opinion, what was a fair value for the Dunn property in 1878?

A. At a private sale or at auction.

10 *Q*. At a private sale.

The Court—What is the fair value without refence to any sale?

A. About twenty thousand dollars.

Cross-examination (by Mr. Aitkin):

Q. Do you mean that it was worth that to the owner, or at a public sale, or how?

A. You go to a public sale and to a private sale, and there is some difference sometimes.

Q. What do you mean, then, a public or private sale?

20 *A*. I should think it would bring that at a private sale.

Q. To a person who was not compelled to sell?

A. I should think it would bring that.

Q. If a person is not compelled to sell, he can hold at his own price?

A. Certainly.

Q. And that is what you consider the value of the property at that time?

A. I do.

Q. If you had been owner, would you have considered it 30 worth that?

A. I certainly would.

Q. Do you carry your mind back to 1878, as to the value of that property generally?

A. No, sir; I don't. I base my judgement on what I sold next to it.

Q. When did you sell next to it?

A. Just after the war, I can't tell the year.

Q. Was property depreciated in 1878?

A. I think it was.

Q. Do you know anything about it?

A. Not much about it. I was not dealing in it at all.

Q. You didn't know much about the real estate market?

A. Not much. I know some property sold very low.

Q. Don't you know that it was impossible to sell property at all?

A. I know the Taylor property was sold very low.

Q. Right opposite?

A. Yes, sir; and there was other property beside.

Q. Much lower than your valuation of this? 10

A. Yes, indeed.

Q. How much lower?

A. I could not say that.

Q. Comparatively—a good deal lower?

A. I should think so.

Q. What do you suppose this property would have brought in the the market, at public sale, in 1878, the way property was selling?

A. I could not say.

Q. About what proportion of your twenty thousand dollars? 20

A. From fifteen to eighteen thousand dollars.

Q. Do you think it would have brought that?

A. Yes, sir; that is a big property, and runs deep.

Q. It is a deep property?

A. Yes, sir; and has got a stable in the rear.

Q. But it has a very shallow front.

A. Some twenty feet.

Q. Seventeen feet?

A. I could not say what it is; I merely judge by appearance. 30

Q. Do you invest money in bonds and mortgages?

A. I have all I had; I invested all I had—and it has been there ever since—when I sold the Mansion House, next to it.

Q. When was that?

A. Just after the war.

Q. About 1865 or 1866?

A. I don't remember.

Q. And you have had no real estate business since that time, and made no investments? 40

A. Yes, sir; I bought other small properties.

Q. About 1878?

A. No; it was after that.

Q. Do you know that in 1878 property was very much depreciated?

A. Yes, sir; property was down.

Cross-examination (by Mr. Holt):

Q. In 1878, with a mortgage incumbrance of twelve thousand dollars, interest in arrears, taxes unpaid, would
10 you have loaned any more money on that? [Objected to, as witness stated that he had no knowledge of investments at all.]

The Court—I will allow the question to be answered, but I don't think it is worth anything; I don't see how it can influence the judgment of the Court.

Question withdrawn.

Q. If in 1878 the property was encumbered for twelve thousand dollars, the interest in arrears, and the taxes unpaid, would a further mortgage beyond the twelve thous-
20 and dollars have any market value?

A. I could not say; some persons might loan it. [The same objection is made to this question and answer.]

The Court—That question has been answered once without objection. I will allow it to be answered.

Mr. Harned—It was answered by a witness that had knowledge of the property; this witness has no knowledge of it.

Mr. Holt—Do you admit that this witness had no knowledge of the property?

30 Mr. Harned—I say that he has no knowledge of the mortgages.

The Court—I will allow this question to be answered. I can very readily see that it may have some consideration.

Q. That is all.

Mr. Harned—We wish to offer as *Exhibits* in this case the bond in controversy and the mortgage in controversy.

Mr. Aitkin—They are produced by the defendant, Mrs. Dunn in response to a call by the complainant.

The bond was then marked *Exhibit D 10*, for complainant.

The mortgage was marked *Exhibit D 11* for complainant.

The assignment by Keziah Dunn to Edward H. Murphy was marked *Exhibit D 12* for complainant.

The assignment from Murphy to Jennie E. Dunn was marked *Exhibit D 13* for complainant.

Mr. Harned—I served upon Mr. Holt notice for the production of a paper said to have been signed in his office by the complainant. Has he that paper?

Mr. Holt—What paper?

Mr. Harned—A paper signed in your office by Mrs. Dunn. 10

Mr. Holt—She signed several papers in my office.

Mr. Harned—I call for all the papers signed in your office.

Mr. Holt—I have had no notice; if you will designate what particular paper, Mr. Harned?

Mr. Harned—The paper I wished produced was signed on the 8th day of December, 1877.

Mr. Holt—Do you call for it?

Mr. Harned—Yes, sir.

[Mr. Holt then handed Mr. Harned the paper called for, and the same was offered in evidence and marked *Exhibit D* 20 *14* for complainant.]

Mr. Harned—We also call for various checks passed between the parties in this transaction. We have given notice, but I don't know what the checks are, definitely. The notice reads for all checks and stubs of check-books from which any checks were drawn.

Mr. Aitkin—I must say that I misunderstood that, if he refers to these checks for interest; I have not got those; I thought it was the check for the principal sum, I have got that. 30

[Mr. Aitkin handed said check to counsel for complainant, and the same was offered and marked *Exhibit D 15* for complainant.]

Mr. Harned— Have you the stubs?

Mr. Aitkin—No; he told me he had no stubs.

Mr. Cody—We call also for the receipts for interest.

Mr. Aitkin—We haven't got any.

Mr. Harned—We also call for all receipts passed between 1874 to 1878. I have also served upon Mr. Holt a notice to produce the assignment of the mortgage in controversy, 40

which he says was made over as collateral security April 15th, 1877.

Mr. Holt—In response to that I would say that when the case went on before I had the checks here. They were not called for, and learning from counsel that they were not going to offer any more testimony except as to the value of property, I didn't bring them this morning. I can have them here this afternoon. I now present to him an assignment of mortgage bearing date the 5th day of April, 1877.

10 [Mr. Harned then offered the assignment in evidence, and the same was marked *D 16* for complainant.]

Mr. Harned—We also call upon Mr. Holt for the checks and receipts passed between him and the complainant in this transaction from 1874 to 1878. He says he will produce them this afternoon.

Mr. Holt—There are no receipts.

Mr. Harned—Did you ever take any receipts?

Mr. Holt—I don't remember that I took any receipts. I don't find any; the checks are in existence and the stubs 20 which I will produce this afternoon.

Complainant rests.

Benjamin Van Cleve, a witness produced on the part of the defendant, being duly sworn according to law, testified as follows:

Direct-examination (by Mr. Aitkin):

Q. You reside in the city of Trenton?

A. Yes, sir.

Q. What is your occupation?

A. Real estate.

30 *Q.* How long have you been at that?

A. Twelve or thirteen years.

Q. During that time you have bought and sold real estate to a considerable extent in the city of Trenton and vicinity?

A. Yes, sir.

Q. You consider yourself pretty well acquainted with real estate at that time in the city?

A. Somewhat.

Q. Are you acquainted with the property occupied by Alexander Dunn on State street?

A. Yes, sir.

Q. In the year 1878 what was the condition of the real estate market in Trenton and vicinity?

A. Very much depressed.

Q. And very much depreciated?

A. Yes, sir.

Q. Carry your mind back to the Dunn property in 1878, and tell us what, in your judgment, what that property was worth, as it was then, in the market? 10

A. What it was worth or what it would bring?

Q. Give it to us both ways.

The Court—No; what was a fair market value?

Q. What was a fair market value?

A. Well, I should have to make a little margin there; I should say from fifteen to eighteen thousand dollars?

Q. What would that property have brought at public sale on the foreclosure of a twelve thousand dollar mortgage?

Mr. Cody—Is that competent? 20

The Court—I don't think that question can be of much value.

Mr. Aitkin—I only ask it because we have had some testimony upon that point.

The Court—I don't think that such testimony can be of much value; it is very well known that at times things most valuable have no market value—that is, they bring nothing at a sale. But this may be of some aid to the court and I don't want to make any mistake about the application of the rule. I will, therefore, allow the question to be answered. 30

Mr. Aitkin—There is another consideration in this case, it seems to me, and that is that the matter in controversy is a third mortgage on the property, and we are ascertaining what was the value of that mortgage, and that necessarily implies what the property would bring subject to the previous mortgage upon it.

The Court—I will allow the question to be answered.

A. At that particular time I doubt if it would bring more than the mortgage. There was no demand for property. 40

Q. With a twelve thousand dollar mortgage upon that property, was any third or any subsequent mortgage a negotiable mortgage in the market at that time?

A. I should think not, sir.

Q. That is all.

Not cross-examined.

Samuel Prior, a witness produced on the part of the defendants, being duly sworn according to law, testified as follows:

10 Direct examination (by Mr. Holt):

Q. Where do you reside?

A. Trenton.

Q. How long have you lived in Trenton?

A. 25 years.

Q. From 1870 to 1880 did you deal very extensivly in real estate?

A. Yes sir, considerably.

Q. Buying and selling?

20 *A.* Yes, sir.

Q. What was the condition of the market in 1878 compared with the market from 1869 to 1873?

The Court—There is no dispute about that. It is admitted that it was very much depressed.

A. Very much depressed.

Mr. Holt—I desire to follow that by a more important question.

Q. To what extent did this depression go?

A. One-third, in my judgment and experience.

30 *Q.* Were you acquainted with the market value of property in 1878?

A. Yes, sir.

Q. Were you acquainted with the Dunn property in 1878?

A. Yes, sir.

Q. What, in your judgment, was a fair market value then?

A. In 1878?

Q. Yes.

A. I should think not over fourteen thousand or fifteen thousand dollars.

Q. Were you not one of the largest land owners in Mercer county at that time?

A. I suppose I was, pretty nearly.

Q. You bought and sold to a very great extent?

A. Yes, sir.

Q. That is all.

Cross-examination (by Mr. Harned):

Q. What was your business at that time?

A. In 1878?

Q. Yes, sir. 10

A. My business was buying and selling properties.

Q. Did you purchase or sell any property on State street near Warren?

A. Not in 1878, I didn't; I offered property for sale in 1878, but could get no purchasers.

Q. Then your knowledge as to the value of property on State street does not grow out of any sales that you made yourself?

A. I tried to sell property on State street at that time, right opposite this one, on the opposite side of the street, but 20 I could not get any purchasers.

Mr. Harned—If the Court please, the witness has stated in response to a question from his counsel, that property had depreciated about one-third. I should like to ask this witness what was the value of this property in 1875, at which time he said the depreciation commenced.

The Court—The question out of which that grew was with respect to the depreciation between 1869 and 1878.

Q. In your opinion what was this property worth in 1869?

A. About twenty to twenty-one thousand dollars. 30

Q. That is all.

Alexander C. Dunn, one of the defendants in this case, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin):

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. It has been referred to in the testimony that there is a parcel of property covered by the mortgage in controversy

in this case, not included in the two prior mortgages. Which property is it in this mortgage, *Exhibit D 11?*

A. It is the fourth parcel described in this mortgage.

Q. What does it consist of?

A. Of a small triangular piece of ground running in front of what I used as a stable.

Q. Has it any building upon it?

A. No, sir; nothing.

Q. What is it used for?

10 *A.* I use it to put boxes and kindling wood and such as that on it.

Q. How far back is it from the street?

A. I am not positive as to the exact distance, but I think it is in the neighborhood of a hundred feet.

Q. (By the Court)—How many square feet does it contain?

A. It commences at nothing and runs to 11 feet. A little triangular piece of ground.

Q. (Further direct)—Of what value?

A. I don't consider that it is worth anything to any one 20 only as I use it.

Q. Does it add anything to the value of that property?

A. No, sir.

Q. You have a map there; is it shown on that?

A. Yes, sir, right here.

Q. (Witness was then shown a map by Mr. Cody)—Does that show your property?

A. Yes, sir.

Q. And this is the triangular piece?

A. Yes, sir; here is the bank building and here is my 30 property.

Q. This piece here don't belong to it?

A. No, sir.

Q. These four lots?

A. Yes, sir; this is the piece we are speaking of.

Q. Are you satisfied that this map is correct?

A. Yes, sir.

The map was then offered in evidence and marked *Exhibit A 1* for defendant.

Q. The piece is marked No. 4 on this map, *Exhibit A 1?*

40 *A.* Yes, sir.

Q. Can you state when you last made payment of interest on Mrs. Keziah Dunn's mortgage, prior to your wife taking an assignment of it?

A. April, 1877. I am not positive that it was in the month of April, it may have been in May.

Q. It was paid up to the 4th of April?

A. Yes, sir.

Q. Who did you pay it to?

A. To Mr. Holt's brother.

Q. Then what happened about October? 10

A. 1st of October, 1877?

Q. Yes, sir.

A. I was a member of the firm of Dunn & Murray, and we suspended payment.

Q. Then are you sure that the interest of October was not paid?

A. I am sure.

Q. Did you subsequently make any payment to Mr. Holt or Mrs. Dunn, the complainant?

A. No, sir. 20

Q. When you took the assignment for your wife from Mr. Holt, of *Exhibit D 13*, in March, 1878, you paid Mr. Holt for the mortgage forty-two hundred dollars?

A. Yes, sir; that is my recollection.

Q. A check for four thousand, and your recollection is two hundred dollars beside?

A. Yes, sir.

Q. What was done then in regard to endorsing on the bond?

A. I think Mr. Holt endorsed the interest on the bond. 30

Q. He made the last endorsement upon this bond, *Exhibit D 10?*

A. Yes, sir; so as to make it satisfactory to my wife.

Q. That endorsement was made at the time you made the assignment?

A. Yes, sir.

Q. Subsequently to that time were any improvements made upon the property?

A. Yes, sir.

Q. To what extent? 40

A. I spent several thousand dollars upon the property.

Q. Give us an estimate of the cost—about, when?

A. About five thousand dollars; I think it was in eighteen hundred—my impression is that it was either eighty or eighty-one. I can tell, of course, at the store. We underpinned the whole building, dug out the cellar and renovated the place thoroughly.

Q. At a cost of about five thousand dollars?

A. Yes, sir, about. We had to move all the goods out of
10 the store, and it was a pretty expensive business.

Q. Do you recollect the testimony of Miss Sarah Furman here the other day?

A. Yes, sir.

Q. She refers to a Mr. Manley. Did you ever send a Mr. Manley to her?

A. No, sir.

Q. Have you any recollection of any conversation such as she refers to in her testimony?

A. No, sir.

20 *Q.* She says that you said that Mrs. Dunn, the complainant, had done very many foolish things in her life, but the most foolish thing she had ever done was to part with this mortgage.

A. I have no recollection of making any such remark.

Q. What do you think about whether such a remark was made?

A. I don't think I would make such a remark. I might have said she had done a great many foolish things in her life, but I would not have made the latter part of that remark.

30 *Q.* Had you any occasion at that time to make any inquiries about Mrs. Dunn, the complainant, as to where she was?

A. No, sir; at different times I have asked where she was living.

Q. But you have no special reason?

A. No, sir; just for information.

Mr. Aitkin—I have not thought it necessary to go over the answers, as they stand for themselves.

Cross-examination (by Mr. Harned):

Q. (Showing witness a map)—There is the alley drive-way mentioned in this mortgage, indicate where it is on the map.

A. Right along here.

Q. Is that the east or the west side?

A. On the east side of the building.

Q. The drive-way then goes up to what is marked upon the map as No. 4?

A. Up to here.

Q. What are the improvements upon the plot marked No. 3 upon the map?

A. It is a brick shell of a building.

Q. What is it used for? 10

A. For storage purposes and stable.

Q. How do you approach No. 3?

A. You go right through here, across this line, and go up that way.

Q. What is there upon No. 4?

A. Nothing except the wood-pile.

Q. No buildings?

A. No, sir.

Q. Is there not a door-way leading from No. 3 out into No. 4? 20

A. No, sir.

Q. There is no opening at all?

A. There is an opening out of No. 3, but you cannot get into No. 4.

Q. Where does that lead to?

A. Out into the alley.

Q. Which way?

A. It comes right around here; this property belongs to A. K. Wilson.

Q. Is there any opening here? 30

A. No, sir; except you go down into the cellar. There was nothing there until a horse got down into that cellar, and I put a platform there to keep any more from going down.

Q. When did you first learn that this mortgage was upon the market for sale?

A. My impression is that my uncle, the president of the First National Bank, told me of it.

Q. Where did you learn that it was?

A. It was in the possession of Mr. Holt. 40

Q. Did you go to see Mr. Holt in reference to it?

A. I did not.

Q. Did you see him at any time?

A. I did at the time the assignment was taken, and once previous.

Q. How long before the assignment did you see him?

A. About three weeks, it may be only two. Mr. Holt and myself were not on very good terms at that time.

Q. Now, did you have a conversation with Mr. Holt in
10 reference to this mortgage?

A. I had but very little, because Mr. Holt and myself were not on very pleasant associations.

Q. Can you tell us what that conversation was?

A. No, sir; but it was very short.

Q. You have no recollection of what passed?

A. No, sir.

Q. Did he show you any papers?

A. No, sir.

Q. Did you close the bargain with him then?

20 *A.* No, sir; my uncle, Philip Dunn, closed the bargain for my wife.

Q. Did you go yourself to pay for this mortgage?

A. I went myself.

Q. When was that?

A. It is marked on this assignment; the check shows.

Q. Is it the date that the check bears date?

A. Yes, sir; the date of that check.

Q. You took this check yourself?

A. Yes, sir.

30 *Q.* And received in return therefor the mortgage?

A. The mortgage assigned to my wife; my wife indorsed it before I took the check there.

Q. When he produced that assignment to you there was no name in there where your wife's name now is?

A. That is a hard thing to remember.

Q. (Showing witness the assignment.)

A. I think that name was in there, because that is not my writing.

Q. The name of Jennie E. Dunn was in there?

A. That is my impression; I don't think I would have taken it without any name.

Q. Did he write it in when you were there?

A. I don't think he did.

Q. How did he know that Jennie E. Dunn was to be the purchaser?

A. My uncle made the arrangement with him.

Q. You knew that Mr. Murphy was the owner of the mortgage?

A. I never knew it until I saw the assignment. 10

Q. When you saw the assignment did you inquire how it was that Mr. Murphy was the owner?

A. No, sir.

Q. You made no inquiry?

A. No, sir; because I took it as being straight, the papers all through.

Q. Did you know Mr. Murphy at that time?

A. Oh, yes; I knew him ever since he lived in Trenton.

Q. By whose check was the interest upon this mortgage paid? 20

A. Do you mean to Mr. Holt?

Q. Yes.

A. I could not tell positively, sometimes by Murray's check, sometimes Murray & Co.'s, sometimes my own, and sometimes I paid the money.

Q. You have no stub of check-books?

A. I think I have the checks; a short time ago I destroyed a lot of checks, because after the six years expired I don't think they are of any use; I accumulate so many.

Q. Have you the stubs? 30

A. I am not positive; I think so. I am not positive.

Q. You haven't produced them?

A. No; I didn't know anything about it.

Q. When did you suspend business?

A. The first of October, 1877.

Q. When did you resume business?

A. I resumed it in the latter part of December or January. We gave notes for payment, which we didn't take up for fifteen months afterward.

Q. That was in January, 1878. 40

A. Yes, sir.

Q. Two months after you failed?

A. Three months. We didn't get all settled then.

Q. How much did you settle with the creditors?

A. Thirty-six cents on the dollar, and gave notes for four, eight and twelve months, and some two years.

Q. In the improvements of that building, did you put in any additional buildings?

A. No, sir; it was all done internally; the old store had
10 high steps coming down through the centre, and they were a great deal of annoyance.

Cross-examimation (by Mr. Cody):

Q. You say you have no recollection of the conversation which Miss Furman refers to. Are you willing to swear that it never took place?

A. I am willing to swear to the best of my recollection.

Q. It may have taken place?

A. I don't think it could. I think I am a little wiser.

Q. You don't think it could because you don't recollect it?

20 *A.* I don't recollect any conversation that I had with her like that?

Q. Is not that the reason that you say it did not take place, because you don't recollect it?

A. I don't say it didn't take place; I say to the best of my recollection it didn't take place, and I don't think it did

Q. You know Miss Furman very well?

A. Yes, sir.

Q. And saw her quite frequently?

A. Not very often.

30 *Q.* Do you recollect at any time having any conversation with her about this mortgage?

A. She came in once in a while to buy paint.

Q. I ask you if you had any conversation about the assignment of the mortgage?

A. No, sir.

Q. How long had you known Mr. Holt—a number of years?

A. I have known Mr. Holt by sight ever since he has been in Trenton.

Q. Has he ever acted as your counsel?

A. Only at the time of my father's decease.

Q. Not since?

A. We may have had little matters, transfer of property, or something of that sort; nothing else.

Q. Was he not counsel at the time of this failure?

A. No, sir; William L. Dayton was my counsel. Mr. Holt was counsel for the bank, and we were creditors of the bank.

Q. (By the Court)—The First National Bank? 10

A. Yes, sir.

Q. (Further cross)—Who was your counsel?

A. William L. Dayton, now minister to Hague.

Q. And who was it made the purchase of the mortgage for you?

A. My uncle made the arrangements; he is the President of the First National Bank.

Q. The same bank that Mr. Holt was the attorney for?

A. Yes, sir.

Q. Who first told you that this mortgage was in his 20 possession?

A. My uncle. I answered that a little while ago.

Q. Did you authorize him to buy it for you?

A. I asked him to see Mr. Holt, he being President, and Mr. Holt counsel, and we not being on good terms, I thought he could do better than I.

Q. Did you want to buy it at that time?

A. I?

Q. Yes.

A. Not myself. 30

Q. You wanted to control it?

A. I told my wife it was a good investment. She had mortgages on other property, and her better plan was to change the mortgages to prevent anybody from making trouble.

Q. You thought it was a good investment?

A. I said it was a good investment if she could buy it at a reasonable price.

Q. And you told her that you didn't want anybody else to get it? 40

A. I thought it was a good investment and it was better for her to have it.

Q. That it might make trouble in the future?

A. No, sir; I didn't say so.

Q. Did'nt you say that substantially?

A. You can take it as you understand it; my advice to my wife was that it would be a good investment for her.

Q. Why?

A. If she could buy it at a reasonable price.

10 *Q.* What did you consider a reasonable price?

A. I told my uncle that I didn't think the mortgage was worth over three thousand to thirty-five hundred dollars—in fact I told him that it was not worth anything to anybody.

Q. It was worth something to you?

A. Yes, sir; because I wanted to continue business..

Q. You didn't want the property sold?

A. It didn't make any difference if they wanted to give more than that, in fact I could not get investment for a first mortgage. I could not get a banker or broker in Trenton 20 to take them, and I was compelled to go to Philadelphia and pay a large bonus.

Q. It was on the first mortgage?

A. Not at that time.

Q. Are you willing to swear that the interest on this mortgage was not paid at that time?

A. Yes, sir; I said so in my testimony.

Q. Were you present at the time this check was paid and the assignment of the mortgage made by Mr. Holt to your wife?

30 *A.* Yes, sir.

Q. You saw the bond?

A. Yes, sir.

Q. Did you look at it and examine the receipts that were on the back?

A. I looked at the last receipt.

Q. October 4th, 1877?

A. Yes, sir.

Q. Did it say that interest was paid upon the within bond to October 4th, 1877?

40 *A.* Yes, sir.

Q. Was that all right?

A. I hadn't anything to do with that. I know that I hadn't paid it.

Q. Then you took this bond, knowing that this was untrue?

A. I don't know that I even looked at the back of it. I took this to see if the assignment was all proper. I didn't look at the indorsement on the back, because I knew that I had paid the interest, and I knew I had checks.

Q. Was there anything said about the interest at that time? 10

A. No, sir; not to my recollection, I don't think there was. I refused to pay the interest in October.

Q. Why?

A. Because I was not in condition to pay it; I was without money.

Q. At the time this transfer was made you had resumed business; you say you resumed in January?

A. We were not out of debt, and hadn't paid the old scores; we made a settlement and went on. 20

Q. Went on with your business?

A. Yes, sir.

Q. That was in January, and the first effort you made to get this mortgage was two weeks prior to March 8th?

A. That is the best of my recollection.

Q. Do you know where your wife got the money?

A. The answer shows.

Q. I ask you?

A. Yes, sir; she had a mortgage of two thousand dollars on property in West Hanover Street, and a mortgage of 30 twenty-five hundred dollars in property in Yard Avenue.

Q. You know how she got the money on those mortgages?

A. She sold them at a discount.

Q. Are you sure she got the money from those mortgages?

A. Yes, sir.

Q. Was not your wife a creditor of your firm?

A. No, sir.

Q. She hadn't loaned any money to the firm? 40

A. No, sir.

Q. She hadn't got anything as creditor from your firm?

A. No, sir; she was not that kind of a person.

Q. Did you see her sell those mortgages?

A. Yes, sir.

Q. Did you see her assign them?

A. The answer shows that, I think.

Q. I ask you?

A. I can't give the exact date.

10 *Q.* You say this money was received by her from the sale of these mortgages?

A. Yes, sir.

Q. Don't you know that the assignment of these two mortgages was made a month after the date of the assignment to your wife?

A. I am not positive; you mean the date of the assignment?

Q. You say she got that money by assigning these two mortgages, selling these two mortgages. I want to know 20 whether those were sold at least a month after the day you paid for this mortgage now in dispute?

A. What is the date of this assignment?

Q. I haven't got it here. I am asking you now whether you know. The date of this assignment to you is March 8th.

A. What is the date of the other?

Q. I ask you now.

A. I could tell it at home.

Q. (By the Court)—What is your recollection now?

30 *A.* Ask the question again.

Mr. Aitkin—I don't understand what you are about. The assignment is dated away ahead.

Mr. Cody—The check I should say is dated March 8th.

Q. (Further cross)—Now you paid four thousand dollars for this mortgage March 8th, 1878?

A. Yes, sir.

Q. The date of your check. I want to know whether the two mortgages which you say your wife sold to pay for this mortgage, whether those two mortgages were not sold at 40 least a month after the date of the check?

A. Since you speak of it my impression is that we borrowed the money from the First National Bank, with the other mortgages as collateral. There was some money borrowed from the First National Bank.

Q. By whom?

A. By Philip Dunn. These mortgages were given to him as collateral. I can't recall the exact circumstances.

Q. Why not? it is a very important matter.

A. No; I can't remember in reference to that.

Q. Can you remember where the money did come from? 10

A. I remember the money came from the sale of these two mortgages.

Q. Not at the time the money was paid?

A. We got some money from William Boswell and sold one mortgage to Lambert L. Howell.

Q. Were they not made a month after the mortgage was sold?

The Court—The witness says he first borrowed money out of the bank and gave these mortgages as collateral, and afterwards they were sold, and out of that sale he got the 20 money.

A. I think that is the way of it. As a general thing, money didn't change hands here until the 1st of April. Mr. Boswell and Mr. Howell didn't want to pay money until the 1st of April.

Q. Who borrowed the money from the bank?

A. Mr. Dunn, the president of the bank.

Q. On your note?

A. I don't know whether it was on my wife's note or not, or whether it was a joint note. 30

Q. You don't remember about that?

A. No, sir. I know those two mortgages were sold and the arrangements made for the sale of the mortgage.

Q. How did it happen that you gave your check to your wife for $4,000?

A. She kept no individual account and it was put in the account of Alexander Dunn & Co. for a day.

Q. Put in by Philip Dunn?

A. Credited by the bank.

Q. Are you sure this was the way it occurred? 40

A. I am sure that is the way the money was paid.

Q. I understood you to say that you didn't take any receipt for the interest paid by Mr. Holt?

A. My impression is that we didn't; my impression is that we gave checks and made checks answer for receipts.

Q. You don't know what became of those checks?

A. We have quite a number and I would have to go through these checks.

Q. How long have you lived here?

10 *A.* 43 years.

Q. How many years of that time have you been in business?

A. In active business 22 years. I have been in one store since I was 14 years old.

Q. You do business as a merchant, pay out money and take no receipt?

A. A check drawn payable to order, stating what it is for, is as good as a receipt.

Q. That is the way you do it?

20 *A.* We do it frequently. I don't have time to wait for a receipt, and sometimes it is in a place where we can't take a receipt, and then they send it by mail afterwards.

Q. How far is Mr. Holt's office from your store?

A. I should say about a block. He is on one block and I am on another.

Q. Where is Mr. Murphy's office.

A. Right across the street.

Q. (By the Court)—Across the street from your place of business?

30 *A.* Yes, sir; over Mr. Chumar's; it is directly opposite our place.

Q. That is all.

Re-direct examination (by Mr. Aitkin):

Q. In regard to the interest upon the first mortgage not being paid, I ask you whether the taxes in 1878 were paid or not?

A. No, sir; the property was advertised.

Q. And sold for taxes?

A. I don't think it was sold. It was advertised, and I think they have to hold it for a certain time.

Q. There is another matter that may be important, too, in regard to this mortgage, the original mortgage given by you to your brother Isaac, *Exhibit D 11* in this case, for $8,000. What was that given for?

A. That was balance, over and above; we made him certain payments, gave him notes—

Q. Was he formerly a partner?

A. Yes, sir; bought his interest out. 10

Q. And gave him that mortgage?

A. Yes, sir; as a balance of the amount due him.

Q. (By Mr. Holt)—What is the date of that mortgage?

A. April 2d, 1873.

Q. It was not an investment made upon the property?

A. No, sir.

Q. That is all.

Re-cross (by Mr. Harned):

Q. Was any portion of the money secured by this $10,000 mortgage ever paid? 20

The Court—Why do you go into that? is that a prior mortgage?

Q. This is a subsequent mortgage.

A. This $8,000 mortgage.

Benjamin Phillips, a witness produced on the part of the defendants, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Holt)—

Q. You are a resident of Trenton?

A. Yes, sir. 30

Q. And have been for fifteen years?

A. I think it is about twenty years this spring when I first came to Trenton; I was out of it afterward for a short time and returned.

Q. What is your business?

A. Real estate and insurance.

Q. Are you acquainted with the real estate market in 1878?

A. Somewhat.

Q. Did you know the Dunn property at that time?

A. Yes, sir.

Q. With a mortgage of $12,000 upon that property, with interest in arrears and taxes unpaid, what would be a fair market value of a third mortgage of $8,000?

The Court—That is not the way to put it. What was the fair market value of this property, is the way to put that.

Mr. Holt—Do I understand the Court to overrule that
10 question?

The Court—I do in the first instance. That question has been allowed, but after the witness has given a fair market value of the property.

Mr. Holt—I wish it to be marked so on the stenographer's notes, so that an exception may be taken if desired.

Mr. Aitkin—I think it is proper that we should have some testimony from Mr. Holt, and I call upon him, in behalf of Mr. Dunn, as a witness in this case.

Woodbury D. Holt, a witness called on the part of the
20 defendants, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Aitkin)—

Q. Referring to *Exhibit D 10* for complainants, and the last indorsement of interest upon it, will you state whether the interest upon that mortgage was paid to you—when the last payment of interest upon that mortgage was made to you by Alexander Dunn?

A. To the best of my knowledge this indorsement was made here at the time of my passing the papers over; by
30 which I mean the assignment, the two assignments; I have a distinct recollection that Mr. Dunn didn't pay the interest in the fall of 1877 when it was due.

Q. For the reason why?

A. The reason that he gave me was—

The Court—No, no; it is not worth while.

Q. I am referring to why he didn't pay?

A. Because of his insolvency.

Q. On account of the insolvency of the firm?

A. Yes, sir.

Q. Can you recall whether or not you paid Mrs. Dunn, the complainant, any interest at that time, October?

A. I paid her no interest to the best of my recollection.

Q. (By the Court)—That is, Keziah Dunn, the complainant?

A. Yes, sir.

Q. (Further direct)—You had considerable experience in buying and selling real estate in the city of Trenton?

A. Yes, sir.

Q. You consider yourself pretty well acquainted with the market value of property in Trenton? 10

A. Pretty well acquainted with its value.

Q. Referring to the fact testified to that in 1878 there was a great depreciation of property in Trenton, and knowing the property of Alexander Dunn on State Street, Trenton, what, in your opinion, was a fair market value of that property at that time?

A. I think fourteen thousand dollars was a big price for it.

Q. Is there anything else you would like to state? 20

A. (Not answered.)

Cross-examination (by Mr. Cody):

Q. This interest had been paid to you a number of years prior to the sale of this mortgage?

A. Yes, sir.

Q. And the receipts and memoranda were all put on the back of this bond?

A. All been endorsed on the bond I think.

Q. Most of these are in your handwriting.

A. I think so; yes, sir. 30

Q. Made at the time the interest was paid?

A. I presume they were.

Q. The entry here on this bond, October 4th, 1877, was not put on when the interest was paid, according to Mrs. Dunn.

A. I don't remember what Mrs. Dunn's declaration was.

Q. She said she received the interest for October, 1877—she received that interest. I want to know whether you didn't put this memorandum here on this bond, October 4th,

1877, at the time it was paid to you by Mr. Alexander Dunn?

A. I presume I put it on at the time it was paid to me by Mr. Dunn.

Q. October 4th, 1877?

A. No, sir.

Q. That is what I asked you?

A. You asked me if it was put on when Mr. Dunn paid it. When he paid me the interest up to October 4th, 1877, that
10 indorsement undoubtedly was made.

Q. Do you mean that was the interest. You have entered here, October 4th, 1877. I see no entries there from 1875 to 1877. Do you know why those were left out?

A. I have no recollection now.

Q. In point of fact, you have no recollection when you did put on this entry, the interest paid October 4th, 1877?

A. My only recollection in reference to that is, that it was not paid nor was put on in the fall of 1877—was not paid or endorsed in the fall of 1877.

20 *Q.* You don't know when you did put it on?

A. To the best of my belief, it was at the time he paid it; when the papers were handed over.

Q. Did he pay you the interest then?

A. He paid me the amount, I am not able to say; but at that time—

Q. $4,200?

A. That may have been the sum; that endorsement was made then.

Q. Was part of that $4,200 the interest that had been due
30 or fallen due in October, 1877?

A. Whatever he did pay me was for the mortgage.

Q. The interest wae not considered at all?

A. No, the interest was not considered at all.

Q. Then why did you put on the bond, interest paid October 4th, 1877?

A. I presume that was done at his request, to show the transaction; to show that the interest had been paid up to that time.

Q. That is only your presumption?

A. Yes, sir; I told you before that I did not have a distinct recollection of it.

Q. Would you not think it strange to make an entry of that kind when you transferred it to the wife of the owner of the fee?

A. Since you have asked my opinion about it, I will give it to you. Mr. Dunn evidently obtained his wife's consent for her to purchase this mortgage. Now, then, it was evident that Mr. Dunn wanted to own the mortgage, with interest that should accumulate after October 4th, and it would be 10 but natural that he should say, let us have this squared up to this time, and, as this is in your hands, and it comes from you, you indorse the interest up to October 4th?

Q. That is your explanation?

A. You ask me what I thought of it; that is merely my "think," so to speak.

Q. $1,835 you said you paid for this mortgage to Mrs. Dunn?

A. I don't say that.

Q. How much did you pay? 20

A. I don't remember the precise sum that I did pay.

Q. Do you know whether it was $1,500?

A. My impression is that it was over $1,500.

Q. Do you know whether you paid for it in money or in check?

A. My impression is that I paid part money and part check; I don't think that I paid for it all in one day or at one time.

Q. You have no recollection as to how much money you paid for it? 30

A. I have some recollection.

Q. How much?

A. It was between $1,500 and $2,000 to the best of my recollection.

Q. Do you keep any books of your business transactions?

A. Yes, sir.

Q. Have you any books showing the entry of this transaction?

A. No, sir.

Q None at all? 40

A. No, sir.

Q. No entry of this transfer?

A. That transfer has no book record except in my check-book.

Q. Can you let us have the checks and the payments you made on account of this mortgage?

A. Yes, sir.

Q. I understand you to say that you did keep books of your own personal matters?

10 *A.* Yes, sir.

Q. And there is no record in those books of this transaction?

A. None at all.

Q. Can you tell the Court why you left this out?

A. I had no occasion for entering that in my books.

Q. It was your mortgage?

A. It was, after I bought it.

Q. It was your mortgage until you sold it to Mrs. Dunn?

A. Yes, sir.

20 *Q.* And you received $4,200 for it. Who did you get the money from?

A. What money?

Q The $4,200.

A. I think it came through the check that is an exhibit in this case?

Q. Do you know who handed you the check?

A. My impression is that I got it from Alexander Dunn.

Q. Did you see his wife at all in the matter?

A. I didn't see his wife at all to the best of my recollec-
30 tion.

Q. Did you have any conversation of any kind with her?

A. No, sir.

Q. When did you first see Alexander Dunn about this mortgage?

A. I think my first interview with Alexander Dunn was about the time of the transfer; I don't remember of any prior interview.

Q. On the day of the transfer?

A. Yes, sir; on the day of the handing over of the
40 papers; I didn't transfer anything except so far as the handing over of the papers is a transfer.

Q. Are you willing to state directly that you had no conversation of any kind with Alexander Dunn or his wife about the assignment of this mortgage to Mrs. Dunn prior to the day that the assignment was made?

A. I may have seen Alexander Dunn in the negotiation once, but only once; if I saw him at all, it was only a very few days, to my recollection, before I handed over the papers.

Q. Who did you first have negotiations with?

A. My recollection is that the first intimation that I had that the mortgage was desired by the Dunn parties was from Philip P. Dunn. 10

Q. The President of the First National Bank?

A. Yes, sir.

Q. For which bank you were the attorney?

A. Yes, sir.

Q. Do you know how Mr. Dunn knew that you owned this mortgage?

A. I don't know.

Q. Did you ever say anything to him about it? 20

A. I don't think I mentioned the subject until he approached me.

Q. Do you know whether Alexander Dunn knew anything about you owning the mortgage?

A. To the best of my knowledge, he knew nothing whatever of my purchasing the mortgage of Mrs. Dunn through her agent until some time, quite a length of time, after it was done.

Q. You first saw Philip Dunn two weeks prior to this transfer? 30

A. No; I didn't say when I saw him.

Q. Can you say about what time?

A. I can't say how soon it was; some days.

Q. Can you say that it was a month or so?

A. I could not say; I would only guess at it; it may have been two weeks.

Q. Did you have the mortgage for sale after the time you received it from Mrs. Keziah Dunn to the time you had the negotiation with Mr. Philip Dunn?

A. I didn't make any effort at all. 40

Q. Did you have any negotiations with any one?

A. I don't think I did; I don't remember.

Q. Did you try before that to sell it to the Dunns?

A. No, sir.

Q. How much did you first ask Philip Dunn for this mortgage?

A. I don't remember that.

Q. Was $4,200 the first price you asked?

A. I don't remember.

10 *Q.* You don't know that you first asked $7,000 for it?

A. I have no recollection concerning the negotiation between me and Mr. Dunn concerning it?

Q. Did Mr. Philip Dunn say to you how he knew that you had this mortgage?

A. I don't think he did.

Q. Did you ask him how he knew that you had it?

A. I don't think I did.

Q. You didn't tell any one that you had it?

A. I don't remember expressing myself to any one?

20 *Q.* Is Mr. Dunn familiar with your private affairs?

A. No, sir.

Q. The first thing you knew that the Dunns wanted it was when he came to buy it?

A. When he came and inquired if I owned it, and if I would sell it.

Q. Did he say who he wanted it for?

A. I think I remember that he said that he wanted it for Alexander Dunn's wife.

Q. You cannot recollect how much money you asked him 30 for it at that time?

A. No, sir.

Q. The negotiations were continued for how long?

A. For a very few days.

Q. And the only matter in dispute was the amount?

A. There was no matter in dispute at all.

Q. Was there not some matter as to what price was to be paid you for it?

A. They wanted to know my price; it was a matter of negotiation, not dispute.

40 *Q.* How long were these negotiations pending?

A. I said only a few days.

Q. Have you any record on your books of the sale of this mortgage to Mrs. Dunn?

A. None.

Q. Until you saw this check, did you know how much you received for it—did you recollect?

A. I have never seen that check since I indorsed it.

Q. After you indorsed it and received the money, did the matter pass out of your mind?

A. Entirely. 10

Q. And you didn't recollect how much you received for it until you saw the check?

A. I have not seen the check; my recollection is not derived from that check.

Q. Then you did recollect that you received about $4,000 for it. How long have you known this property?

A. I have known that property for 20 years.

Q. At the time you bought the mortgage, did you know that it was a third mortgage?

A. I did. 20

Q. You knew it was a third mortgage covering all the lots described in it?

A. I don't remember, now that I consider, whether there was that little triangle, that was not covered. Since the question has been brought up, my mind goes back to the time it was purchased from the Van Syckle property, which was the Mansion House property, and I remember then the conversation that took place with regard to its value. I think I was counsel, or rather acted as scrivener, to the parties for the transfer from Bamford to Van Syckle of what is 30 called the Mansion House property, and probably drew nearly all the papers that passed, and for the Dunn property for some time afterward.

Q. Did you know this mortgage was a second mortgage for these lots?

A. I must have known it at that time?

Q. You say that this property, in 1878, was worth from $12,000 to $14,000?

A. I said I considered the property, at the time of my purchase of this mortgage, not worth over $14,000 in the 40

market, by which I mean, that it would not be possible or probable that any person could realize more than that amount out of the property itself.

Q. Do you mean at a public sale?

A. Yes, sir.

Q. When you got this mortgage, what did you consider then the property worth?

A. I say I considered it worth fourteen thousand dollars. I consider that a fair price.

10 *Q.* At the time you held this mortgage?

A. Yes, sir; at the time I bought it.

Q. After you bought it, and before you sold it again, had your opinion of the value of the property undergone any change?

A. It was intrinsically worth about the same when I sold it as when I bought it, but there were circumstances connected with the owner that had changed, that rendered the bond more valuable.

Q. What were those circumstances?

20 *A.* Alexander Dunn, I thought, from what I knew of him at that time, was going to get upon his feet again, financially speaking.

Q. That was in January, when he made this settlement with the creditors?

A. I didn't know that he made a settlement with his creditors; the first that I knew that he was insolvent was his declaration that he could not pay the interest.

Q. Didn't you know that when the money was paid by Mrs Dunn in February that Alexander Dunn was on his feet 30 again, had resumed buisness and started again?

A. No, sir.

Q. Was that not a fact?

A. My understanding of Alexander Dunn's financial condition at that time was that he was in a very precarious condition.

Q. That was in February when that was paid, when the money was paid to Keziah Dunn?

A. I don't remember the dates; I think that it was the second of February that the assignment bears date.

Q. After you got it then you considered that circumstances had so changed as to make the bond more valuable, and you sold it on the 8th of March for over $4,000, a little over four or five weeks afterward. That change occurred in four or five weeks?

A. I did not say that.

Q. I understand you to say that after you got possession of this bond and mortgage that you considered the circumstances of Mr. Dunn had so changed as to make his bond more valuable, and you sold it to him for $4,200. Then that change occurred between February 2d and March 8th? 10

A. The change occurred about that time.

Q. Have you got a copy of the letter which you sent to Mrs. Dunn, asking her to call and see you about this mortgage?

A. No, sir.

Q. Or saying that you would visit her in Philadelphia?

A. No, sir.

Q. You did call on her in Philadelphia?

A. Yes, sir. 20

Q. That is all.

Mr. Aitkin—That is all the testimony we have. There have been one or two papers marked for identification, and I suppose they are exhibits in the case.

The Court—If they were marked by the stenographer as exhibits they are in.

Mr. Holt—Here is a paper that I desire to offer in evidence; a note of hand from Keziah Dunn to me for five hundred and fifty dollars, for which the mortgage was signed as collateral. The note is dated April 5th, 1877. 30

Said note was marked *H 1* for defendant.

Mr. Cody—I desire to ask Mr. Holt a few questions about it.

Woodbury D. Holt, being recalled by complainant—

Further cross (by Mr. Cody):

Q. How much money did you give for that note?

A. $550.

Q. In money?

A. Yes, sir; cash.

Q. That you paid her in cash on the date mentioned here?

A. I say in cash; by that I don't mean that it was in bank bills or checks; I can't say it was all given at once; but she had, I know, $550 in consideration of that note.

Q. That, then, covered a number of loans which had been made to her prior to this time?

A. It may have covered more than one.

Q. Have you got the checks covering this loan?

10 *A.* I presume I have.

Q. Won't you produce them?

A. Your statement calls for them, you shall have all of them.

Q. Thank you, sir.

Re-direct examination (by Mr. Aitkin):

Q. Reference has been made to Mrs. Dunn's owing you $500; was that her amount of her indebtedness to you in October, 1877?

A. No; Mrs. Dunn owed me $550.

20 *Q.* We have been calling it $500 all the way through.

Mr. Cody—That was her statement.

Q. And this is the note that receipt refers to, which you had in your hand?

A. I can't say, at this time, whether that was the only money that she owed me at that time or whether I advanced her some money subsequently; but that was a portion of it, at least.

Q. Can you recall what that *Exhibit D 14* has reference to?

A. Very distinctly; the circumstances under which this 30 was given.

Q. The evidence of the debt for which you held the mortgage as collateral?

A. That is a portion of it. This refers to the sale of this mortgage to me by Mrs. Dunn, on the 8th of December.

Q. This assignment was given to secure the $550 mortgage?

A. Yes, sir; the $550, together with any sum that she might borrow. She said she wanted to borrow from time to time, and that mortgage was given to secure any loan that I might make to her.

Q. That receipt was given on the account.

A. This receipt was given when I purchased the mortgage of her.

Q. It is the date of the purchase of the mortgage?

A. Yes, sir; the date of the purchase by me of her mortgage.

Q. Which you afterwards gave up?

A. Yes, sir.

Q. And re-purchased it?

A. Yes, sir; through Mr. Murphy. 10

Q. On February 2d?

A. Yes, sir.

Further cross (by Mr. Cody):

Q. That receipt is for $100 cash, and $375 at some other time, is it not?

A. $375 to be paid on demand.

Q. And then it was agreed that this assignment should be absolute?

A. The paper speaks for itself.

Q. This was the assignment, was it not? 20

A. Yes, sir; that was the assignment referred to in this.

Q. (By the Court)—Is that an *Exhibit?*

A. Yes, sir; *Exhibit D 16.*

Q. (Further cross)—Will you state, then, why it was that you didn't have this assignment acknowledged?

A. The mortgage was handed over to me for the purpose of securing to me any loan that I might make to Mrs. Dunn.

Q. But afterward it was the agreement that this should become an absolute assignment?

A. Yes, sir. 30

Q. Why was it, as a careful lawyer, you didn't have it witnessed and acknowledged, so that you could put it on record?

A. Well, it hadn't been paid for in full; there was this $375, and, as a lawyer, I did not think it would be quite fair to take an absolute assignment until I paid her for it.

Q. You did take the assignment?

A. In that informal way for the purpose of securing my loan, and when I paid the balance, $375, I expected to take an absolute assignment and have it recorded. 40

Q. Do you know when this $375 was to be paid?

A. Yes, sir, on demand; the paper so states.

Q. Was there any agreement as to when that demand should commence—any understanding?

A. No, sir.

Q. Could she demand it the next day?

A. Yes, sir.

Q. And you would have to pay it to her?

A. I could have raised $375 if she wanted it.

10 *Q.* Why didn't you pay it at that time?

A. I hadn't it—she didn't want the money; she said she didn't need it, and she would rather receive it as she needed it.

Q. When did she demand the $375?

A. She never demanded it. Shortly afterward, her agent called upon me and said she was dissatisfied with her sale; and I said: "We will cancel it; you can take it back; all I want is the money I pay."

Q. You agreed that this assignment should be absolute;
20 why didn't you at that time surrender the note to her that was paid by her?

A. Yes, sir; the papers were to remain just as they were, until she got the money.

Q. Although she had paid you $550, you were to retain this note for $550?

A. There was no money exchanged.

Q. But you did give her a hundred dollars?

A. Yes, sir.

Q. And were to give her $375 more, and that, with the
30 $500 already paid, made it an absolute sale. Now, if that was the case, why didn't you surrender this note?

A. If you read this paper, you will see that it is not an absolue sale until the $375 is paid.

Q. But that says, with the $550 which had been paid, the money previously loaned to her. Now, it was then agreed that, with the $550, and the $100, and the $375, the thing was to be absolute?

A. Yes, sir.

Q. Why didn't you return the note to her then?

A. I didn't return the note, because I didn't have an absolute assignment, and I was not entitled to an absolute assignment until I paid the $375, and it was but fair that the matter should remain precisely as it was, until she got the balance of her money.

Q. Then I understand that there was no absolute sale of this mortgage by her until she was paid the balance of this money?

A. That paper says so.

Q. Then there was no sale at that time, of this mortgage to you; in point of fact, there was no sale until you paid her this amount of money, which you cannot recall; some time in February? 10

A. That is a matter of argument. The papers speak for themselves. I don't propose to go behind them.

Q. I understand you to say that $375 were not paid?

A. You are right.

Q. I understand you to claim that this mortgage was sold to you in October?

A. The paper speaks for itself. 20

Q. Do I understand you to say that this mortgage was sold to you in October, 1877?

A. I so understand; but it was a conditional sale.

Q. If it was a conditional sale, why didn't you surrender the note?

A. Because I wanted to carry out the conditions.

Q. But those conditions were never carried out?

A. Never.

Q. Then there was no absolute sale of this mortgage to you until February? 30

A. No, there was no absolute transfer, because she never got this $375.

Q. There was no absolute sale?

A. That is a question for the court, not for me. I give you the facts, the court can determine what it was.

Q. That is all.

The Court—Have you any other witnesses?

Mr. Buchanan—If the court please, the position of the defendant, Edward H. Murphy, should, I think, be at this stage

defined. Although the bill charges him with misrepresentations of particular facts, there is no pretense that he has any interest whatever in the subject matter of this controversy, either to receive, give up or convey away, and no specific relief is prayed as against him. As against all the other defendants, save Mr. Murphy, a special prayer is contained in the bill. Again, the complainant having failed to sustain the specific misrepresentations which in her bill she alleges Mr. Murphy made, her *probata* do not correspond with her *allegata*. Therefore, inasmuch as a prayer for general relief will not convert a bill for discovery into a bill for relief against a defendant, and because Mr. Murphy has no interest in the subject matter of this litigation, and because of this failure of proof of misrepresentation made by Mr. Murphy, I am at a loss to know how he stands, and I call on the counsel of the complainant to state whether he intends the bill as one for relief, and whether he intends to ask relief as against Mr. Murphy.

Mr. Harned—When this bill was filed we were, to a certain extent, in the dark in reference to the facts in the case, and for that reason the bill was made very broad. As the case proceeded it became apparent that the bill was broader as against Mr. Murphy than there was really any necessity for, so that in this case we shall depend entirely upon the proof, and not upon the general statements set out in the bill. I don't think that the proofs warrant as strong statements against Mr. Murphy as are contained in the bill. As far as the relief asked for is concerned, the bill simply prays that the assignment made by the complainant to the defendant, Murphy, giving the date, should be decreed null and void. Since Mr. Murphy's answer and testimony, it becomes apparent that Mr. Murphy only held this assignment at most as an agent for somebody else. He didn't purchase for himself. So I think the court can make a decree against that assignment without making a decree against Mr. Murphy, and for that reason I don't see the necessity of holding Mr. Murphy as a defendant in the case. There are some matters which I think he could explain, and I think he should be put upon the stand for that purpose. I have no objection to discharging him as far as the relief is concerned.

Mr. Buchanan—The test question as to whether a man is or is not a proper party to the suit is, has he or not any interest to give up, receive or convey away. Mr. Murphy desires to notify all counsel that if either the court or counsel have any questions to ask in reference to this transaction, he is not only ready and willing, but very anxious to answer them. The court has already intimated that Mr. Murphy is a party, and also an officer of the court, and, for that reason, it may not be impertinent for me to suggest that if the court has any question to ask Mr. Murphy, he is willing to waive the fact that he is not a defendant, and (if it is not impertinent, having ceased to be a party to the suit), he desires to tender himself to answer any question that may be in the mind of the court, to become a witness in the case, should anybody desire to call him as such. He does not wish to leave the impression that he has anything to hide, but is anxious that his reputation and standing with the court be protected; and, in the next place, that his relation to the parties with this suit should be clearly defined.

Mr. Aitkin—We have his answer in full before the court.

The Court—I don't think the court, except in case of infancy or lunacy, takes a part in the trial of a case for the elucidation of the matters in dispute, only so far as to understand what witnesses mean by expressions they use, or to have such other elucidation of the testimony as will enable the court to understand it. Counsel must pursue their own course about it. I will decide that the case is rested, if no other steps are taken.

Mr. Holt—There is a single witness here on the part of the defence, that hadn't come in when the Court adjourned for recess.

The Court—Have you anything to offer, Mr. Buchanan?

Mr. Buchanan—No, sir; since as I understand that Mr. Murphy ceases to be a defendant, he cannot offer anything.

The Court—He don't cease to be a defendant by not offering anything. He may cease to be a defendant, in the sense contemplated by the present situation of this case, the other side saying they will not ask a decree against him. The court will take notice of that. Then the case is rested, as to Mr. Murphy.

Mr. Holt then called—

Watson F. Van Camp, a witness produced on the part of the defendant, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Holt)—

Q. You reside in the city of Trenton?

A. Yes, sir.

Q. And have lived here for how many years?

A. About thirty years.

10 *Q.* What is your present business?

A. Real estate and insurance,—mostly insurance, however.

Q. You have been in that business for how long a time?

A. About eighteen years.

Q. During that time you have frequently been called upon to estimate the value of property for others, and fix the valuation yourself?

A. Yes, sir.

Q. Do you know the property now occupied by Alexander

20 Dunn?

A. Yes, sir, very well.

Q. You have known it for a long time?

A. Yes, sir.

Q. What was the condition of the real estate market in 1877, '78 and '79?

A. My memory is now that real estate was very much depressed in those years.

Q. Knowing the property of Alexander Dunn, what, in your judgment, was a fair market value for it during the

30 years 1877 and '78?

A. I have no data now by which I could answer that question; I never made an appraisement of that property especially, and I could hardly fix what I would call a value of it, so long ago.

Q. Can you approximate?

A. No; I would not like to name any figures, for the reason that it is so long ago that I can not fix any data in my mind by which to go, never having made any appraisement of it for any person; I never had my attention called

to it particularly, and I should say that property had depreciated—a horizontal depreciation—of at least twenty-five per cent., but whether that property had depreciated that much I cannot answer.

Q. Had you occasion, anywhere about that time, to examine any of the property in that block?

A. I think not.

Q. Did you ever have occasion to examine the William Temple property?

Mr. Cody—Does your Honor think that is pertinent? 10

The Court—I don't see how it can be; he may know about every other property in that street after what he has said about this, that he has never appraised it, I am unable to understand how it can throw any light upon it whatever.

A. I have no data by which to fix this particular property.

Q. That is all.

Mr. Atkin—Since the adjournment, Mr. Dunn has searched over his checks and books, and found some checks. He handed three to counsel, but they say they do not answer the purpose. 20

Mr. Cody—I would like to call Mr. Philip Dunn to the stand to testify what he knows about the negotiations under which this mortgage was sold by Mr. Holt to Mr. Dunn.

The Court—You can put him on in rebuttal.

Mr. Cody—Can't he testify about anything else that he may know about this matter?

The Court—Oh, no.

Mr. Cody—It is a matter in which we were taken by surprise; we would like him to testify what he knows about it.

The Court—You can call him, but his testimony must be 30 in rebuttal to what Mr. Holt says.

Philip Dunn, a witness produced on the part of the complainant in rebuttal, being conscientiously scrupulous of taking an oath, being affirmed, testified as follows:

Direct examination (by Mr. Cody)—

Q. You are president of the First National Bank?

A. Yes, sir.

Q. Do you know Mr. Holt?

A. Yes, sir.

Q. He is the attorney for the bank?

A. Yes, sir.

Q. Was he the attorney in 1878?

A. Yes, sir.

Q. Do you recollect the transfer of the mortgage upon the property on State street, held at that time by Mr. Dunn to Mrs. Jennie E. Dunn?

A. I have some recollection of it.

10 *Q.* You made the negotiation for Mrs. Dunn?

A. It is very likely I did, but I can't call it to mind.

Q. Can you recollect for whom you made the negotiations?

A. I think for Alexander Dunn.

Q. Who first mentioned this matter to you?

A. I can't say, certainly, I didn't charge my mind with it; I suppose Alexander Dunn, but I may be mistaken about that.

Q. You saw Mr. Holt after Mr. Dunn spoke to you about 20 this matter?

A. Yes, sir; I think I did.

Q. And you made the negotiations with him?

A. I could not say positively that I did, nor could I deny it.

Q. Do you recollect what sum was first asked by him for this mortgage of $8,000; how much he asked for it, when you first went to see him?

A. No, sir.

Q. You can't recall that?

A. No, sir.

30 *Q.* Do you know how much was paid?

A. By memory, I should say about $4,000.

Q. You can't recollect how much Mr. Holt first asked for it?

A. No, sir.

Q. It was not a matter which concerned you, and you dismissed it from your mind?

A. Yes, sir.

Q. Do you recollect where this money came from, which paid for this mortgage?

40 *A.* I suppose it came from Alexander Dunn.

Q. Do you know how he raised the money?

A. No.

Q. Do you know where he got it from?

A. No, sir.

Q. Do you know whether or not he got it from the bank, through you?

A. I don't think he did, still, I could not say positively.

Q. Do you know whether these mortgages were ever assigned to you as collateral? I will put this question:—It is testified here, that Mrs. Dunn got this money from the sale of two mortgages. These mortgages were assigued about a month afterward—after the money was paid to Mr. Holt. Now, do you recollect whether, about March 8th, these two mortgages, which Mrs. Dunn afterward sold, were transfered to you, to be held as collateral for the payment of this money? 10

A. No, I do not.

Q. Have you any knowledge of it?

A. No, sir; I could not deny it, it is something that I have not thought of, until to-day. Since I was subpœnaed, I have tried to get on the line. 20

Q. Can you recollect whether you paid him any money?

A. I have no reason to believe that I did.

Q. Could you tell by an examination of the books of the bank?

A. No, sir; I think not.

Q. Loaning a person $4,000, would you be apt to have some record or knowledge of it?

A. I would not think we did loan him $4,000; that is my opinion now, that we didn't. 30

Q. As a man of business, if you had done it, you would be very apt to recollect?

A. I can't say that I would be very apt to, because there is so much business transacted that I am not expected to remember all.

The Court—I don't see that any advantage is being gained, one way or the other, by this testimony.

Mr. Cody—If we can show that this money was the money of Alexander Dunn—

The Court—The testimony is so uncertain that no court could base any judgment upon it.

Q. Have you any memoranda, outside of the bank?

A. No, sir; I was not directly interested in the matter; if I had been, no doubt my memory would be much better than it is.

Q. That is all.

Mr. Cody—We would like to call Mr. Murphy.

Mr. Aitkin—I suppose his testimony will also be confined
10 to rebuttals.

Edward H. Murphy, a witness produced on the part of the complainant, being duly sworn according to law, testified as follows:

Direct examination (by Mr. Cody)—

Q. You are a member of the bar of this State?

A. I am.

Q. Do you know Mr. Holt and Mrs. Dunn?

A. I do.

Q. And Mr. Alexander Dunn?

20 *A.* I do.

Q. Did you have any conversation with Mrs. Dunn about this mortgage, with Mr. Alexander Dunn after Mrs. Dunn transferred it to Mr. Holt?

Mr. Aitkin—Is that rebuttal? I think they should have called attention to the evidence which they intend to rebut.

The Court—If they propose to contradict Mr. Alexander Dunn, they should have called his attention to any interview that he had with Mr. Murphy.

Mr. Cody—Mr. Alexander Dunn said that he hadn't paid
30 the interest on this mortgage, due October 4th. Now, I want to prove, by his admission to this gentleman, that he did pay it at that time.

The Court—You didn't ask him if he made such admission.

Mr. Cody—I asked him if he paid it, and he said, no. If your Honor thinks I ought to call his attention to that, I will call him to the stand.

Alexander Dunn, being re-called, testified as follows:

Direct-examination (by Mr. Cody)—

Q. Did you at any time say to Mr. Murphy that you had paid the October interest on this mortgage?

A. I might and might not; the only conversation that I ever had with Mr. Murphy was on a train. I got on a train at Hopewell, and he was coming from New York, and we talked about different things; I may have said that I paid the interest, but looking at it since this matter came up, and my wife corroborates me, it appears to me that I never did pay 10 the interest.

Q. You are not willing to swear that you did not say to him that you had paid the interest on the mortgage?

A. It is impossible for me to say what I said to Mr. Murphy on the train, it was so many years ago.

Q. It was after the assignment of the mortgage?

A. It was some two or three years afterwards. I got on the train at Hopewell and he was coming on the Bound Brook road from somewhere.

The examination of Edward H. Murphy being continued, 20 he testified further as follows:

The Court—As Mr. Dunn states that he may have said that he paid the interest, there don't seem to be anything to contradict.

Mr. Cody—He denies that he paid the interest. It seems to me that it might be pertinent in regard to his credibility.

The Court—Very well, you can proceed.

Q. State what that conversation was?

A. As Mr. Dunn stated, it was at Hopewell, on the train, 30 a long time after the transaction. We were speaking about the matter, and Mr. Dunn—do you wish me to go into the statement of the conversation preliminary to it?

Q. About this mortgage.

Mr. Aitkin—About the interest.

A. I wish you would define what you want. It is a long story if I told it all.

Q. (By the Court)—The question is with respect to the interest.

A. That was the statement that Mr. Dunn made that he had paid the interest; that there was no interest in arrears at the time. That is what he said substantially.

Q. Did you have any conversation with Mr. Holt about this mortgage?

A. At the time I went there to see him about it?

Mr. Cody—I suppose I will have to call Mr. Holt's attention to it. I want to prove a conversation with Mr. Holt about this mortgage.

10 The Court—You will have to direct Mr. Holt's attention to it.

Woodbury D. Holt, being recalled, testified further as follows:

Direct examination (by Mr. Cody)—

Q. Did you have any conversation, about the time this mortgage was transferred, with Mr. Murphy?

A. Transferred from whom?

Q. From Mrs. Keziah Dunn.

A. I had some conversation prior to that and subsequent.

20 *Q.* Did you make any representation to him that the mortgage was a third mortgage—that the property was worth nothing. Did you say that to Mr. Murphy?

A. I told him it was a third mortgage. I didn't tell him that the property was worth nothing.

Q. That the property had depreciated and there was nothing in it?

A. I told him the property had depreciated. I didn't tell him there was nothing in it.

Q. That there was no margin in it?

30 *A.* I didn't tell him there was no margin in it.

The examination of Edward H. Murphy being continued, he testified further as follows:

Q. State what passed between you and Mr. Holt?

A. There was no conversation of the character that you state, the circumstances under which I went to Mr. Holt are set out by my answer. I went there in accordance with a letter received from Mrs. Dunn. I went there to see Mr.

Holt about it. Mr. Holt had the mortgage at that time. I had never seen the bond and mortgage, Mr. Holt had it all the time during the transaction. When I saw Mrs. Dunn the first time she told me she had sold the mortgage to Mr. Holt, and I went with that knowledge to his office, and at that time Mr. Holt offered, if she was dissatisfied, that he would transfer the mortgage back to her. That was about the substance of it. I understood at that time that Mr. Holt owned the mortgage. Her own statement was to that effect and he corroborated her. I understood that Mrs. 10 Keziah Dunn had sold the mortgage to Mr. Holt prior to my seeing her in Philadelphia, and all the time during this transaction Mr. Holt had the mortgage.

Q. You understood that from Mr. Holt?

A. No; I went to Mrs. Dunn, in Philadelphia.

Q. You are testifying to contradict Mr. Holt?

A. No, sir, I am not contradicting him?

Mr. Holt—He is corroborating what I said.

Mr. Cody—There is some point that I can't get in under your Honor's ruling. If your Honor desires to hear it, Mr. 20 Murphy can tell all that occurred from beginning to end.

The Court—It is objected to.

Mr. Buchanan—I think it is only fair in the interest of Mr. Murphy that he be allowed an explanation. There seems to be a want of satisfaction with the answer.

Mr. Aitkin—With whom?

Mr. Buchanan—I don't want to name any names, but Mr. Murphy is an officer of the court, and the court has already intimated, on page 34 of the first day's testimony, that the rules of evidence are going to be relaxed, and that is the 30 rule in all courts when a matter is up between an attorney and his client. The court has already stated that he has not ceased to be a defendant, although a decree is not asked against him. Now, then, Mr. Murphy has still a status in this court, and his answer cannot be understood unless he is allowed to explain.

The Court—If you put him on the stand, and want him to make his statement about it, he shall be permitted to do so.

Mr. Buchanan—I have no business to put him on the stand, and for that reason I am compelled to adopt this method, and ask that he be allowed to explain any questions that have been put to him by making a full statement.

The Court—If there is nothing asked against him, he must go on the stand precisely as anybody else.

Mr. Buchanan—Then may I ask if the court means anything more by its utterance on page 34?

The Court—I mean a great deal less now; then, so far as
10 I could see, there might have been a decree asked against Mr. Murphy. Mr. Murphy can only be examined in this case as any other witness, unless he comes on in his own behalf.

Mr. Buchanan—Do I understand that he may go on in his own behalf, after the answer of complainant's counsel that he has no status here?

The Court—I certainly won't object in the administration of justice in this case; if the other side objects, then I will consider it.

20 Mr. Buchanan—I give notice that I will ask the case to be opened for the purpose of offering Mr. Murphy as a witness, because I was misled in supposing that he had no standing here, after the answer of complainant to my call.

The Court—This examination must be conducted as I have already intimated. If you want anything that Captain Holt has stated you can point it out to the witness, and ask him if it is so or not.

Mr. Buchanan—In reply to counsel's insinuation that Mr. Murphy was letting himself to the complainants, I wish him
30 to understand that there is no letting about it.

The witness—I wish to say to the court—

The Court—It is not worth while.

The witness—The Court addressed me by implication.

The Court—No, sir; I spoke to you through counsel.

Mr. Harned—We have no further questions.

The Court—That ends the matter.

Mr. Buchanan—I move, your Honor, that the case be opened, so far as concerns Mr. Murphy, for the purpose of asking Mr. Murphy, in his own behalf, to make an explana-
40 tion, if he has any standing here.

The Court—As I stated, I will allow Mr. Murphy to make a statement in this matter. I only do it because he is an attorney in this court.

Mr. Aitkin—It seems to me that there are others interested in this matter. I don't know where we stand about a thing of that kind. The case is rested on the part of the defendants, and the complainants have offered rebuttal testimony, and now Mr. Murphy, against whom no decree can be made in this case, whose rights are not jeopardized in any way, asks to have the case opened. What for? Where is he 10 concerned, or any body else, from anything that he may say? If they wanted him as a witness, they could have called him. Now the defendant wants him to give light to your Honor. What for? It seems to me that is a pertinent question. May it please your Honor, there is something involved.

The Court—Counsel must have seen from the rulings I have made, that Mr. Murphy could say nothing pertinent to the issue that will affect the other parties to this suit, in any way whatever. I could not consider it in that light.

Mr. Aitkin—I understood that the idea was, to hear this 20 story from begining to end.

Mr. Buchanan—Nobody ever gave such an intimation.

The Court—I don't know what counsel may desire to ask Mr. Murphy; but as long as he is in the case, (although the court may be very clear that it could not pronounce judgement against him, and especially as complainants say they will not ask a decree against him,) I say, not withstanding that, it is a very plain fact that there may be something that counsel might ask Mr. Murphy, that I would do a great injustice not to allow to be asked; but I am free to say, 30 that after what has passed, I don't know what counsel wants.

Mr. Buchanan—There is no issue, but I want to call more particular reference to the testimony on the part of the complainants, which, although it is not in accordance with the allegations in the bill, is obscure in regard to Mr. Murphy's relation to the case. Mr. Murphy has a reputation with the court, and although no decree may be taken against him, it is proper that on this occasion he should offer to the court anything that will remove from the mind of the court any bias that may have been created by the record. 40

The Court—How can that be, since the complainants withdraw any claim against him?

Mr. Harned—When the complainants stated that they would not ask any specific decree against this defendant, they governed that with the suggestion that there was in this case something for Mr. Murphy to explain, and that they would expect him to explain it.

Mr. Buchanan—What do you want him to explain?

Mr. Harned—We certainly don't consent that he should
10 be taken out of the case as a defendant unless he be allowed to make that explanation.

The Court—Do you put him on the stand for that purpose?

Mr. Harned—Yes; but we were shut out by the rule that we shall be allowed to ask questions in rebuttal only, and at the time we closed we had no knowledge of this.

The Court—The courts never allow the complainants to speculate that way. You must take your case as you made it, gentlemen. No rule is more inflexible than that. I say to counsel for the defendant, Mr. Murphy, that if the
20 answer is what it is said to be, and agreed to be on all hands, after what the complainant has stated, nothing further can be required from Mr. Murphy. I am sure that when party withdraws his right to a decree, that is all the absolution that he may expect.

Mr. Buchanan—Then, your Honor, I move that the charge in the bill of complaint of misrepresentation and fraud be stricken out, so far as it relates to Mr. Murphy, as impertinent.

The Court—You cannot do that now at this stage of the
30 case. The only relief is, when the decree is to be made, have the bill dismissed as to him. That will wipe out not only the allegation of fraud and misrepresentation, but the bill itself.

[Mr. Holt then produced the checks called for by Mr. Cody, and at the request of complainants, counsel took the stand for further examination.]

Woodbury D. Holt, being recalled, testified further, as follows:

Direct examination (by Mr. Cody):

Q. This is your check to Mrs. Dunn; $500 paid to her at that time?

A. Correct, sir.

[Said check was then offered in evidence, and marked as *Exhibit D 17* for complainant.]

Mr. Holt—I understand that all those checks are in evidence?

Mr. Cody—We called for them, but have not offered them.

Mr. Holt—You gave the notice, and they were produced; that makes them evidence. It is one of the rules of evidence that, if you call for a paper and it is produced, that makes it evidence. It is a common law rule. 10

The Court—They are in evidence, if the other side insist upon it.

Mr. Cody—Don't they have to put them in evidence themselves?

The Court—No.

Mr. Cody—I don't think they are important, but if your Honor considers them evidence, of course they are in. 20

[The said checks were then offered in evidence, and marked *Exhibits D 18, D 19, D 20, D 21, D 22, D 23, D 24, D 25, D 26*, on the part of the complainants].

Mr. Holt—Here are the stubs of check-books which the complainants called for. I insist that they are in evidence.

[The said stub check-books were then marked *Exhibits D 27, D 28, D 29, D 30, D 31, D 32, D 33, D 34*, on the part of the complainant.]

Rest all.

EXHIBITS OF COMPLAINANTS.

Exhibit D 1—Certified Copy of Mortgage.

ALEXANDER DUNN AND WIFE, ISAAC A. DUNN AND WILLIAM C. DUNN, to PHILIP P. DUNN, Guardian.	Dated Feb. 11, 1870. Recorded Feb'y 11, 1870, in Book W of Mtges., page 142. Consideration, $9,900.

On premises firstly, secondly and thirdly described in complainant's bill.

Exhibit D 2—Certified Copy of Mortgage.

PHILIP P. DUNN ET UX. to PETER CROZER AND IMLAH MOORE.	Dated Dec. 1, 1849. Recorded Dec. 1, 1849, in Book E, p. 33. Consideration, $2,000.

10

On premises firstly and secondly described in bill of complaint.

Exhibit D 10—Bond.

ALEXANDER DUNN AND WILLIAM C. DUNN to ISAAC A. DUNN.	Dated April 4, 1872. $16,000.

Conditioned for the payment $8,000, in ten years from the date thereof, with interest at the rate of seven per cent., payable semi-annually.

20

Exhibit D 11—Mortgage.

ALEXANDER DUNN et ux., AND WILLIAM C. DUNN, to ISAAC A. DUNN.	Dated April 4, 1872. Recorded in Book No. 26 of Mtgs, p. 138, &c.

Given to secure the payment of *Exhibit D 10. On all the* premises described in bill of complaint.

Exhibit D 12—Assignment of Mortgage.

Know all Men by these Presents, That I, Keziah Dunn, of
10 the city and county of Philadelphia, State of Pennsylvania, party of the first part, in consideration of the sum of

lawful money of the United States of America, to me in hand paid by Edward H. Murphy, of the city of Trenton, county of Mercer and State of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a
20 certain indenture of mortgage, bearing date the fourth day of April, one thousand eight hundred and seventy-two, made by Alexander Dunn and wife and William C. Dunn to Isaac A. Dunn, to secure the sum of eight thousand dollars, and covering certain premises in the city of Trenton aforesaid, as will more fully appear by reference to said mortgage, which is duly recorded in Mercer County Clerk's Office, in Vol. 26 of Mortgages, page 131, &c., and by Isaac A. Dunn assigned to Charles W. Mitchell by assignment dated February 21, 1874, and by the said Charles W. Mitchell assigned
30 to me; together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same, unto the said party

of the second part, his heirs, executors, administrators or assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned: And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name or otherwise, but at my proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made: And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of eight thousand dollars. 10

In witness whereof, I have hereunto set my hand and seal the second day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

KEZIAH DUNN. [L. S.]

Signed, sealed and delivered in the presence of

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } *ss.* 20

Be it remembered, that on this second day of February, in the year of our Lord one thousand eight hundred and seventy-eight, before me, Lewis W. Barringer, a commissioner for the State of New Jersey resident in the city and county of Philadelphia, Pennsylvania, personally appeared Keziah Dunn, who, I am satisfied, is the grantor in the within deed named, and I having first made known to her the contents thereof, and she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed. 30

Witness my hand and official seal the day and year aforesaid.

LEWIS W. BARRINGER,

[L. S.] *A Commissioner for New Jersey in Phila., Pa.*

Exhibit D 13—Assignment of Mortgage.

Know all Men by these Presents, That I, Edward H. Murphy, of the city of Trenton, county of Mercer and State of New Jersey, party of the first part, in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid by Jennie E. Dunn, of the same city, county and State, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bar-
10 gained, sold, assigned transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the fourth day of April, one thousand eight hundred and seventy-two, made by Alexander Dunn and wife and William C. Dunn to Isaac A. Dunn, to secure the sum of eight thousand dollars, and covering certain premises in the city of Trenton aforesaid, as will more fully appear by reference to said mortgage, which is duly recorded in Mercer County Clerk's Office, in
20 Vol. 26 of Mortgages, page 131, &c., and by Isaac A. Dunn assigned to Charles W. Mitchell by assignment dated Feb'y 21, 1874, and by said Charles W. Mitchell assigned to Keziah Dunn by assignment dated Feb'y 21, 1874, and by said Keziah Dunn assigned to me; together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same, unto the said party of the second part, his heirs, executors, administrators or assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned:
30 And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at my proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made: And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing

upon the said bond and mortgage the sum of eight thousand dollars.

In witness whereof, I have hereunto set my hand and seal the second day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD H. MURPHY. [L. S.]

Signed, sealed and delivered in presence of

PETER BACKES.

STATE OF PENNSYLVANIA, } ss.
COUNTY OF PHILADELPHIA, } 10

Be it remembered, that on this second day of February, in the year of our Lord one thousand eight hundred and seventy-eight, before me, Lewis W. Barringer, a commissioner for the State of New Jersey resident in the city and county of Philadelphia, Pennsylvania, personally appeared Edward H. Murphy, who, I am satisfied, is the grantor in the within deed named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed. 20

Witness my hand and official seal, the day and year aforesaid.

[L. S.] LEWIS W. BARRINGER,
A Commissioner for the State of New Jersey in Phila., Pa.

Exhibit D 14—Receipt.

Rec'ed of W. D. Holt Dec'r 8, 1877, one hundred dollars, in cash, which with three hundred and seventy-five dollars to be paid on demand and the amount due said Holt for money by him advanced to me, is in full for a certain bond and mortgage by me owned, which was made by Alexander 30 & Wm. C. Dunn to Isaac Dunn for eight thousands dollars—said mortgage having been formerly assigned to said Holt by me, and this makes the said assignment absolute.

KEZIAH DUNN.

Exhibit D 15—Check.

No.—— TRENTON, N. J., March 8, 1878.

THE FIRST NATIONAL BANK OF TRENTON

Pay to Jennie E. Dunn, or order, four thousand dollars.

$4,000.00. ALEX. DUNN & Co.

[Indorsed]:

Pay to the order of

W. D. HOLT.

JENNIE E. DUNN.

10 W. D. HOLT.

Exhibit D 16—Assignment of Mortgage.

Know all Men by these Presents, That I, Keziah Dunn, of the city of Philadelphia, in the state of Pennsylvania, party of the first part, in consideration of the sum of eight thousand dollars, lawful money of the United States of America, to me in hand paid by Woodbury D. Holt, of the city of Trenton, county of Mercer, State of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby 20 acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the fourth day of April, one thousand eight hundred and seventy-two, made by Alexander Dunn and others to Isaac A. Dunn, to secure eight thousand dollars with interest, and recorded in Mercer County Clerk's Office, in Book 26, page 138, &c., and by Isaac A. Dunn transferred to Charles W. Mitchell, and by said Mitchell transferred to 30 me by and of assignment dated February 21st, 1874, and recorded in Book "G" of Assignment of Mortgages, page 176, &c.; together with the bond or obligation therein described, and the money due and to grow due thereon,

with the interest. To have and to hold the same, unto the said party of the second part, his heirs, executors, administrators or assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned: And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as might or could do if these presents were not made: And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of eight thousand dollars.

In witness whereof, I have hereunto set my hand and seal the fifth day of April, in the year of our Lord one thousand eight hundred and seventy-seven.

KEZIAH DUNN. [L. S.]

Signed, sealed and delivered in the presence of

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } *ss.*

Be it remembered, that on this fifth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, before me, a Master in Chancery of New Jersey, personally appeared Keziah Dunn, who, I am satisfied, is the grantor in the within deed named, and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

Exhibit D 17—Check.

No. 2359.

TRENTON, N. J., May 20, 1876.

THE FIRST NATIONAL BANK OF TRENTON

Pay to Keziah Dunn, or order, five hundred dollars.

$500. W. D. HOLT.

[Indorsed]:

KEZIAH DUNN.

Exhibit D 18—Check.

No. 2948.

TRENTON, N. J., Feb'y 4, 1878.

THE FIRST NATIONAL BANK OF TRENTON

Pay to E. H. Murphy, or order, two hundred dollars.

$200. W. D. HOLT.

[Indorsed]:

E. H. MURPHY.

E. H. MURPHY & Co.,

10 *per* BACKES.

Exhibit D 19—Check.

No. 2946.

TRENTON, N. J., Feb'y 2, 1878.

THE FIRST NATIONAL BANK OF TRENTON

Pay to E. H. Murphy, or order, four hundred dollars.

$400.00. W. D. HOLT.

[Indorsed]:

E. H. MURPHY.

E. H. MURPHY & Co.

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20 **Exhibit D 20—Check.**

No. 2640.

TRENTON, N. J., M'ch 6, 1877.

THE FIRST NATIONAL BANK OF TRENTON

Pay to K. Dunn's note, or bearer, five hundred dollars.

$500. W. D. HOLT.

Exhibit D 21—Check.

No. 1935.

TRENTON, N. J., April 30, 1875.

THE FIRST NATIONAL BANK OF TRENTON

Pay to Mrs. Keziah Dunn, or order, two hundred seventy-five dollars.

$275. WOODBURY D. HOLT.

[Indorsed]:

JAMES ORRELL.

Credit of Trenton Bank, 10

JAMES H. CLARK, *Cashier.*

KEZIAH DUNN.

Pay to the order of Nat. State Bank, Camden,

C. W. R. SNEGHEALL.

Pay J. H. Clark, Cashier, or Order for Coll. for National State Bank, Camden, N. J.,

I. C. MARTINDALE, *Cash'r.*

Exhibit D 22—Check.

No. 1762.

TRENTON, N. J., Oct. 26, 1874. 20

THE FIRST NATIONAL BANK OF TRENTON

Pay to Mrs. Keziah Dunn, or order, two hundred and seventy dollars.

$270. W. D. HOLT.

[Indorsed]:

MRS. KEZIAH DUNN.

JAMES ORRELL.

Pay to the order of Nat. State Bk., Camden,

C. W. R. SNEGHEALL.

Pay J. H. Clark, Cashier, or Order for Coll. for National State Bank, Camden, N. J.,

I. C. MARTINDALE, *Cash'r.*

Credit Mech. Nat. Bank of Trenton, N. J. 30

JAMES H. CLARK, *Cash'r.*

Exhibit D 23—Check.

No. 2124.

TRENTON, N. J., Oct. 29, 1875.

THE FIRST NATIONAL BANK OF TRENTON

Pay to Mrs. Keziah Dunn, or order, two hundred dollars.

$200. WOODBURY D. HOLT.

[Indorsed]:

KEZIAH DUNN.

Exhibit D 24—Check.

10 No. 2774.

TRENTON, N. J., July 7, 1877.

THE FIRST NATIONAL BANK OF TRENTON

Pay to Keziah Dunn's note, or order, five hundred and fifty dollars.

$550. W. D. HOLT.

Exhibit D 25—Check.

No. 2566.

TRENTON, N. J., Dec. 5, 1876.

THE FIRST NATIONAL BANK OF TRENTON

20 Pay to Mrs. Keziah Dunn, or order, one hundred twenty-five dollars.

$125. WOODBURY D. HOLT.

Good when properly endorsed.

$125. WM. J. MIDDLETON, *Tell.*

[Indorsed]:

KEZIAH DUNN.

SPRING GARDEN BANK.

For collection and credit of First National Bank, Philadelphia.

30 M. MCMICHAEL, JR., *Cash'r.*

One hundred twenty-five.

Exhibit D 26—Check.

No. 2720.

TRENTON, N. J., May 12, 1877.

THE FIRST NATIONAL BANK OF TRENTON

Pay to Mrs. Keziah Dunn, or order, fifty dollars.

$50. W. D. HOLT.

[Indorsed]:

KEZIAH DUNN.

For deposit only.

WM. C. O'NEILL, 10

per C. E. WALTER.

Pay C. Whitehead, Cashier, or order, for acct. of W. H. Heisler, Cashier, Seventh National Bank, Philadelphia.

Fifty dollars.

Exhibit A on part of E. H. Murphy.

PHILA., Jan'y 14th, 1878.

E. H. MURPHY, ESQ.:

I have placed a business matter in the hands of Edward T. Green, Esq., Counsellor at Law. It will require on your part of from 2 to 500 Dollars and I will handsomely 20 remunerate you for the money and trouble which the business will necessitate. It is in regard to the 8,000 mortgage on Mr. Alexander Dunn's store property which I hold. There are about 12,000 ahead of mine, and I fear the property will be sold and I am unable to protect myself. Mr. Green has recommended me to place my mortgage in your hands for sale or otherwise that may be deemed proper, subject to my approval. By giving this matter your immediate attention you will confer a great favor.

Respectfully yours, 30

KEZIAH DUNN.

1238 S. 17.

Exhibit B—Assignment of Mortgage.

Know all Men by these Presents, That I, Keziah Dunn, of the city of Philadelphia, in the State of Pennsylvania, party of the first part, in consideration of the sum of eighteen hundred and twenty-five dollars ($1825), lawful money of the United States of America, to me in hand paid by Edward H. Murphy, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, 10 transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the fourth day of April, one thousand eight hundred and seventy-two, made by Alexander Dunn and wife and William C. Dunn to Isaac A. Dunn to secure the payment of eight thousand dollars with interest, and recorded in Book 26 of Mortgages, page 138, &c., and by the said Isaac A. Dunn assigned to Charles W. Mitchell by deed of assignment dated February 21st, 1874, and 20 recorded in said Clerk's Office in Book "G" of Assignments, page 171, &c., and by the said Charles W. Mitchell assigned to me by deed of assignment dated February 21st, 1874, and recorded in Book "G" of Assignments, page 175, &c.; together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same, unto the said party of the second part or assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned: And I do hereby make, constitute and appoint the said party of the 30 second part true and lawful attorney, irrevocable, in my name, or otherwise, but at my proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do if these presents were not made; And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of

In witness whereof, I have hereunto set my hand and seal the first day of February, in the year of our Lord one thousand eight hundred and seventy-eight.

KEZIAH DUNN. [L. S.]

Signed, sealed and delivered in the presence of
CHARLES W. STREET.

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } *ss.*

Be it remembered, that on this second day of February, in the year of our Lord one thousand eight hundred and seventy-eight, before me, a commissioner of deeds for New Jersey, personally appeared Keziah Dunn, who, I am satisfied, is the grantor in the within deed named, and I having first made known to her the contents thereof, she did acknowledge that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

CHARLES W. STREET,
Commissioner.

Exhibit 1 H.

Know all men by these presnts, that I, Keziah Dunn of the city of Philadelphia, and State of Pennsylvania, formerly the wife of Isaac A. Dunn, of the city of Trenton, New Jersey, do hereby make known and declare that I was formerly the owner of a certain mortgage, made by Alex'd. Dunn and wife and W. C. Dunn, to secure the payment of eight thousand dollars, covering certain lands in the city of Trenton; that I became the owner thereof by a gift from my said husband; that I sold said mortgage and bond accompanying same through E. H. Murphy, for the sum of eighteen hundred and twenty-five dollars; that the said amount received by me for said mortgage was and is now entirely to my satisfaction; that the transaction was an open and an honorable one in all respects, and I do further declare that any and all transactions with W. D. Holt of the city of Trenton,

aforesaid, with me touching and concerning the said mortgage, have been honest and satisfactory; that any and all reports by any person whatsoever spoken or circulated contradictory of this statement are entirely without foundation; and I do further certify that I will be ready at all times, whenever requested, to make affidavit to the truth of this statement.

Witness my hand this second day of March, A.D. 1878.

KEZIAH DUNN.

10 Witness:

HENRY W. BRANDE.

Exhibit H 2—Note.

$550. TRENTON, N. J., April 5, 1877.

Three months after date I promise to pay to the order of Woodbury D. Holt at the First National Bank of Trenton, five hundred and fifty dollars, without defalcation or discount, for value received.

No. 1428, due July 8th. KEZIAH DUNN.

[Indorsed]:

20 W. D. HOLT.

Exhibit D 27—Stub Checks.

No. 2946. Feb'y 2, 1878.

E. H. Murphy, p't pay't of D. mort.....$400.00

No. 2948. Feb'y 4, 1878.

Edward H. Murphy, part pay't of D. mort.....$200.00

No. 2970. March 13, 1878.

Mrs. Mary E. Clark, sale of Dunn mort..... $50.00

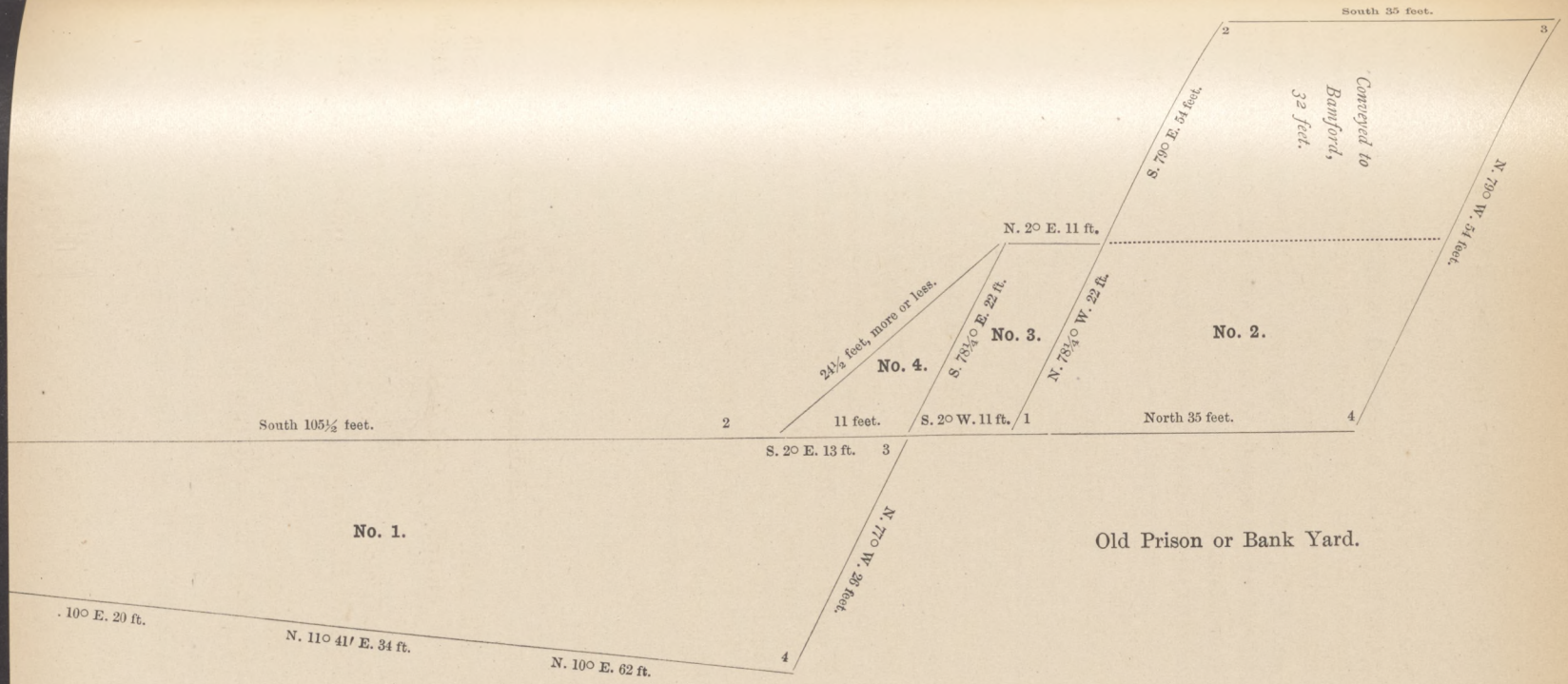

Exhibit A 1 for Defendants.

CONCLUSIONS.

[Filed September 26th, 1885.]

BIRD, V. C. This bill is filed for the purpose of having certain assignments of a bond and mortgage owned by the complainant declared void and to have Mr. Holt charged with the sum of $2,375, recived by him to his own profit in the transaction, and also to have the mortgage, itself, foreclosed.

The complainant's case rests upon the ground of undue influence by her legal advisor and attorney in the transaction, 10 and consequently what is called by some judges a constructive fraud; I think, rather than give many such transactions any harsh name, it is infinitely better to declare it to be against a wise public policy to uphold them, upon which ground may rest their judgments.

The principal facts are not numerous, nor are they disputed. I will first state them, then I will state the law which governs in such cases; and then my conclusions.

In 1874, the complainant became the owner of a bond and mortgage made by Alexander Dunn and William C. Dunn, 20 of Trenton, for $8,000. The principal of the bond was payable in ten years, the interest was payable semi-annually. The mortgage covered their place of business. It was the first lien on one small lot and the third on the two larger lots. The principal of the two mortgages which were prior was $11,000. The $8,000 bond and mortgage now in question, was given in 1872 by said Alexander and William to their brother, who assigned it to the complainant, his wife, in 1874.

When the complainant became the owner of these papers 30 she placed them in the care of Mr. Holt, an attorney and counsellor at law, with instructions to collect the interest and account to her therefor, less his commission. Mr. Holt had then been a member of the bar many years. Between the time of placing these papers in his hands and April, 1877, Mr. Holt loaned to the complainant several sums of money, which he retained out of the interest which he afterwards collected. In April, 1877, Mr. Holt loaned to

complainant $500, and took an assignment of the said bond and mortgage as collateral security, although the assignment purports to be for the consideration of the sum of $8,000, and is absolute on its face.

The interest came due on the bond October 4th, 1877. Some time prior to that time Alexander and William C. Dunn had failed in business. When Mr. Holt demanded the interest, he was refused payment. Soon afterwards he called on the complainant at her residence in Philadelphia, and in-
10 formed her of the financial condition of the Dunns. She says that Mr. Holt represented to her that the mortgage was worthless. This he denies and says that she wanted him to make an offer for it. They separated and met again at the office of Mr. Holt, when a paper was drawn by him and signed by her as follows: "Rec'd of W. D. Holt, Dec. 8, 1877, $100 in cash, which with $375 to be paid on demand and the amount due said Holt for money by him advanced to me is in full for a certain bond and mortgage by me owned, which was made by Alexander and Wm. C. Dunn
20 for $8,000, said mortgage having formerly been assigned to said Holt by me, and this makes the said assignment absolute."

About January 14th, 1878, the complainant sent a letter to Mr. E. H. Murphy, one of the defendants, in which she spoke of holding this mortgage, and said: "I fear the property will be sold, and I am unable to protect myself," and added that she had been recommended to place her mortgage in his hands for sale, or otherwise that may be deemed proper, subject to her approval. Mr. Murphy called
30 upon the complainant in Philadelphia very soon after. The complainant charges that he represented that her mortgage was worthless, and that he offered her $1,200, less the $500 due to Mr. Holt, all of which he emphatically denies in his answer. They parted without effecting anything.

But Mr. Murphy called upon the complainant again, February 2d, 1878, at her residence in Philadelphia. He also denies that in this interview he said to her that the property mortgaged would not sell for enough to pay the former encumbrances, or that her mortgage was worthless, or any
40 such thing. It is worthy of note that he says, "That he

never made any representation to the complainant whatsoever, at that or at any other time, respecting the number of mortgages encumbering said premises, or their priority, or their value, or the value of the complainant's said mortgage, or the value of the said mortgaged property, or that he ever mentioned to her any circumstance whatsoever affecting the value of her said mortgage, or that he ever used any inducement towards her to part with the same, and that all the knowledge which he ever had, at any time, touching the matters relating to her said mortgage, were disclosed to him by the complainant herself." 10

I should observe, in passing, that although the complainant called in Mr. Murphy, a third person, and paid him $300 for what he did, clearly, according to his own statement, he was not called in as an independent counsel and adviser, for he gave neither counsel nor advice.

At the first interview between the complainant and Mr. Murphy, she requested him to renew the negotiations with Mr. Holt, and instructed him to obtain more money for the mortgage, and, in case of failure in that, to offer to refund all the money which Mr. Holt had advanced. These facts were communicated to Mr. Holt by Mr. Murphy, when Mr. Holt said if she would pay what she owed him, and the the money advanced, he would surrender the mortgage. But the complainant was unable to raise the money necessary to reimburse Mr. Holt, and requested Mr. Murphy to prevail upon Mr. Holt to give more, which he undertook to do, and secured $900 more for the complainant, which, with what had been advanced, she agreed to accept in full for her mortgage, and to make an assignment of the same. 20 30

February 2d, 1878, at her own residence, in Philadelphia, she executed and acknowledged a deed of assignment of said bond and mortgage to Mr. Murphy, they still being in in the possession of Mr. Holt, and he still holding the former assignment. In this assignment to Mr. Murphy, the place for the consideration is blank, so that it nowhere appears upon the paper itself what was given for the assignment. At the same time Mr. Murphy executed an assignment of the same bond and mortgage, for the consideration of $1, and acknowledged it before the same officer. The place for 40

the name of the assignee was left blank, and it was afterwards filled without the knowledge of Mr. Murphy.

Although Mr. Holt held one assignment directly from the complainant, he declined to take another directly from her, and, consequently, it was agreed between him and Mr. Murphy that the transfer should be made first to Mr. Murphy and secondly by him to blank, but all should be delivered to Mr. Holt, which was done. At this point Mr. Murphy ceased to act in the matter.

10 March 2d, 1878, Mr. Holt procured a paper writing from the complainant, signed by her, in which, amongst other things, she says that she assigned said mortgage for $1,825, and adds, "That the said amount received by me for said mortgage was and is now entirely to my satisfaction. That the transaction was an open and an honorable one in all respects." In effect adding that all her dealings with Mr. Holt respecting said mortgage had been satisfactory, and that she would make affidavit at any time to that end.

About this same time (March 8th, 1878,) Mr. Holt sold 20 and assigned the said bond and mortgage to Jennie E. Dunn, the wife of Alexander Dunn, one of the mortgagors, who had become the sole owner of the premises. Jennie E. Dunn held two mortgages on other lands in Trenton, one for $2,000 and one for $2,500. These she called in and paid Mr. Holt $4,200 for the bond and mortgage he got from complainant, being $2,375 in excess of what he paid her, supposing that the highest amount claimed ($1,825) was actually paid her.

The Dunns suspended business about the first of October, 30 1877, but it is very important to observe that they compromised with their creditors at 36 cents to the dollar, and resumed business again in December or January next ensuing, before Mr. Murphy had procured the assignment from complainant. I believe that there is no evidence showing that this fact was communicated to the complainant either by Mr. Holt or Mr. Murphy, nor that she was aware of it from any other source. Had the complainant been paid at the rate of 36 cents to the dollar, she would have received at least $2,880, over $1,000 more than she 40 actually got. Nothing appears in the case establishing any

reason why she, with her mortgage, should be less favored than any other creditor.

Mr. Holt then was her counsellor. For years he had her confidence and the possession of about all her fortune. He had taken from her an absolute assignment of this bond and mortgage, purporting on its face to be for the consideration of $8,000, when only $500 had been advanced upon it, which I refer to to show how implicitly she trusted him, and only for that purpose, for he never attempted any unworthy use of it. That trust and confidence continued 10 until he broke to her the news of the failure of the Dunns. Not long after this communication he drew and had her sign the paper first above copied, according to which he was to pay her $975 for the bond and mortgage, the $975 being made up of the $100 in cash, the $375 due on demand and the $500 note which he held against her. Looking at it in the light of and as a perfectly fair and honest transaction, it shows that, at that time, Mr. Holt believed the mortgaged premises to be worth only that sum ($975) over and above the two prior mortgages, and that the complain- 20 ant, having confidence in his judgment, and trusting to him as her counsel, fully believed what was most naturally implied from his offer. Considering their relation to each other (counsel and client), when he said I will give you $975 for the mortgage, she had a most perfect right to believe that that, in his opinion, was all it was worth. And this shows where the influence arises and how it operates, which the law denominates "undue influence." The fatal vice of this influence is that it is unquestioningly received. It is never criticised. It lulls to the profoundest sleep. It 30 closes the door against all inquiry. And most naturally so. Who could reasonably expect anything else? Of all men known to the client, she selects the counsel in whom she has the highest or most unbounded confidence. This being so, why should she not rely upon his statements, whether they be made to her directly or by implication, as in this case, in the offer of only $975? And it does not follow that in any such case the act or advice of the counsel may be dishonest or fraudulent; not in the least, for the law does not proceed on such basis at all, since, if the act be either 40

fraudulent or dishonest, the remedy therefor is abundant, and proceeds on totally different grounds; but in such cases as the present one is claimed to be, the courts administer relief because of *undue influence*, that influence which blinds, misleads and prevents all further inquiry, or, if there be inquiry, still under the shadow of the same influence. In other words, public policy sets its face against such things.

The decided preponderance of testimony is, that at the time of the assignment by the complainant, the mortgaged
10 premises were worth from $17,000 to $18,000, being $6,000 over the encumbrance prior to her mortgage. Alexander Dunn, one of the mortgagors, and husband of Jennie E. Dunn, to whom the mortgage was assigned by Mr. Holt, told his wife that the mortgage "was a good investment." He said "she had mortgages on other properties, and her better plan was to change the mortgages, to prevent anybody from making trouble." The mortgages he referred to were to secure the sum of $4,500. Mrs. Jennie E. Dunn collected the money on these, and paid Mr. Holt $4,200 for
20 the mortgage in question. About the time of the assignment, Alexander Dunn said to Mrs. Furman that the complainant had done a foolish thing in parting with her mortgage, and "that his property was worth all that was on it, and no one would lose a dollar of what was on his property." Mr. Dunn does not deny saying this, but says he don't remember it, and thinks he could not possibly have said it. But I can see no grounds for discrediting Mrs. Furman's statement; and especially may she be believed when it is considered that her statements are corroborated by what Mr.
30 Dunn said to his wife,—that is, that it "was a good investment."

What is the law in such cases? In *Condit* vs. *Blackwell*, *7 C. E. Gr. 485*, the court said: "This fiduciary relation then existing between these parties, the validity of this transaction must be determined by rules of law which are not applicable to ordinary cases. The confidence which the relation of attorney and client begets between the parties, and the influence which the attorney thereby acquires, has led to a very close scrutiny of all transactions between
40 them, and the law often interposes to set aside contracts

which, between other parties, would be subject to no exception. In such case, the burden of establishing the perfect fairness, adequacy and equity of the negotiation is thrown upon the attorney, and in the absence of such proof, courts of equity treat the case as one of constructive fraud." And again: "The transaction must be characterized by the utmost good faith. There must be no misrepresentation, and an entire absence of concealment or suppression of any fact within the knowledge of the agent which might influence the principal; and the burden of establishing the perfect 10 fairness of the contract is on the agent."

As I have said above, it is not on the ground of actual fraud that courts interfere, but simply because of the fiduciary relation that is shown to have existed, and it not being made to appear that the transaction, whether a gift or contract, was perfectly fair and just. Weeks, in his work on "Attorneys-at-Law," says: "The rule is on the ground of public policy, not of fraud, and prevails although the attorney be innocent of any intentions to deceive, and act in good faith." (P. 442.) And again: "Dealings between at- 20 torney and client are carefully and jealously regarded, particularly by courts of equity, to protect the client even from his own acts, if done under the influence or supposed ascendency which the attorney may have over him." (Sec. 268.) And again: "As a general rule, the attitude of the attorney towards his client prevents the former from purchasing his client's property, and, at all events, without the most ample information being afforded to the client to place him on his guard." (Sec. 273.) See, also, *Bigelow on Fraud, 192, &c., 196, 200, 201; Farmer, Ex'r,* vs. *Farmer, 12 Stew. 216; Porter* 30 vs. *Woodruff, 9 Stew. 174; 2 White and Tudor Lead. Cases Eq., (4 Am. Ed.) 1216, &c.*

Such is the rule in these cases, than which no principle is more universally approved. I must follow it. I think that an application of the undisputed facts to this text sustains the complainant's bill. Mr. Holt, in his answer, says that the transaction was fair, just, honest, honorable and the like. The above-stated rule of law admits that all this may be, and yet the party asking relief at the hands of a court of equity obtain it. A transaction that would not be 40

questioned, in which one of the parties is not a solicitor, is often set aside when one of them is such solicitor.

Look at the facts in this case. The complainant was indebted to Mr. Holt about $500, showing that she probably was in needy circumstances, which is corroborated by the fact that after he had taken the first assignment, in December, and had learned of her dissatisfaction, and consented to re-assign to her upon payment of the $925, she could not raise that amount of money. Mr. Holt offered her only
10 $925 for a mortgage which was given to secure $8,000. Soon after this offer, and while the negotiations between them were being carried on through Mr. Murphy, the Dunns settled with their unsecured creditors at thirty-six cents to the dollar. That settlement, if it meant anything, meant that this bond would be paid in full; otherwise an effort would have been made to include it in the settlement. But at the rate of thirty-six cents to the dollar this bond was worth $2,880, more than one thousand dollars above what was paid to complainant. Before, or by the first of
20 January, 1878, the Dunns resumed business, and the assignment of the complainant was not procured until February 2d following. Now, it very pre-eminently appears that she was informed of their failure, but I believe it nowhere appears that she was informed, or knew, of their resumption of business, or that they had agreed to pay thirty-six cents on the dollar to their creditors. The fact of her indebtedness to Mr. Holt, the fact of her destitution, the fact of her ignorance of the true condition of her debtors, and the fact that neither her agent, Mr. Murphy, nor her attorney, Mr.
30 Holt, did not make these things known to her, are of the utmost importance. It is very difficult to believe that she would have taken $1,825 for an $8,000 mortgage had she been fully apprised of the facts above alluded to. Most clearly the law made it the duty of Mr. Holt to inform her of all these matters before he could contract with her. In my judgment it is no answer to say that he had ceased to be her attorney. Whatever may have been the true relation afterwards, it is most evident that he was her attorney when, December 8th, 1877, the paper first above copied was signed.
40 And it must be remembered that by that assignment he

became possessed of the absolute legal title, and, to all appearances, had her wholly in his power, which would most naturally influence a female client.

Again, Mr. Holt obtained this mortgage for $1,825, February 2d, 1878, and March 8th, 1878, he assigned it to Mrs. Jennie E. Dunn for $4,200. He thus realized $2,375 on the transaction. This fact cannot but arrest attention. It most unquestionably shows that Mr. Holt did not pay a full and fair price for the mortgage.

I have not overlooked the fact that on the 22d of March, 1878, Mr. Holt procured from the complainant a re-affirmation of her assignment. I do not think this changes the situation in the least. The same undue influence which controlled at the first, in December, or again on February 2d, would control four weeks later. February 2d Mr. Holt was willing to accept the $925 and surrender the papers, but she could not raise that amount for him. It is fair to presume that it was still more difficult for her to raise the $1,825 a month later, at which time the new declaration was procured from her.

But the presence of this paper, introduced to prove the high satisfaction of the complainant with the bargain, shows the absolute weakness of the defense. It shows that counsel knew that the transaction was questionable and liable to impeachment. It shows that the purchaser of the mortgage was himself dissatisfied with some of the methods or details pursued. On the face of it this must have been so; otherwise he would have rested on what had already been done. Every view that can be taken of this paper works mightily and effectually against the defense.

Therefore, as against Mr. Holt, I think the complainant should prevail. What as to his assignee, Mrs. Jennie E. Dunn? Does she stand in a more favored position?

Of two views one at least seems to preclude Mrs. Dunn from successful resistance; that is, that she was not, in any sense, an innocent purchaser. The fullest knowledge must be imputed to her. Mr. Holt had held the mortgage for four years, and had collected the interest thereon falling due from the husband of Jennie; and her husband was her agent in procuring the assignment of the mortgage from

Mr. Holt to her. Her husband knew that Mr. Holt was the attorney of the complainant, and was chargeable with all the means or steps by which Mr. Holt got the mortgage; and whatever is thus chargeable to the agent is necessarily extended to the principal. *Bigelow on Fraud, 201.*

I think Mr. Holt should account to the complainant for the $2,375, the amount he received from Mrs. Jennie E. Dunn, above what he paid the complainant, and Mrs. Jennie E. Dunn must assign the said bond and mortgage to the
10 complainant upon the complainant paying the $4,200 paid by her to Mr. Holt; and also, any interest that may be due on that much of mortgage from the mortgagors. The complainant is entitled to costs.

I will so advise.

IN CHANCERY OF NEW JERSEY.

KEZIAH DUNN, Compl't, and ALEXANDER DUNN ET AL., Def'ts.	On Bill for Relief.

FINAL DECREE.

[Filed November 10th, 1885.]

This cause coming on to be heard in the presence of John F. Harned, solicitor and of counsel with the complainant; James S. Aitkin, of counsel with the defendants Alexander Dunn and Jennie E. Dunn; James Buchanan, of counsel with the defendant Edward H. Murphy; and Woodbury D. Holt, of counsel *pro se*, and the court having heard the testimony of the respective parties and the argument of counsel thereon, and considered the same, and being of the opinion that the relief prayed for in the complainant's bill of complaint should be granted, and that the defendant Woodbury D. Holt should account to the complainant for the sum of two thousand three hundred and seventy-five dollars, together with interest thereon from the second day of March, A.D. eighteen hundred and seventy-eight, at the rate of seven per cent. per annum; and that the defendant Jennie E. Dunn should assign the bond and mortgage in controversy in this cause to the complainant upon said complainant paying to said defendant, Jennie E. E. Dunn, the sum of four thousand two hundred dollars, together with interest thereon from the second day of March, A.D eighteen hundred and seventy eight, at the rate of seven per cent. per annum, less the amount of interest money which said Jennie E. Dunn has heretofore received, and that the complainant is entitled to costs; and it further appearing by the answer of the defendant Jennie E. Dunn, in this cause, that she has heretofore received for interest money on said mortage the sum of one thousand eight hundred and fifty dollars.

It is on this tenth day of November, A.D. eighteen hundred and eighty five, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge and decree that the said Woodbury D. Holt account to and pay over to the complainant, or to her solicitor, the sum of two thousand three hundred and seventy-five dollars, together with interest thereon, at the rate of seven per cent. per annum from the second day of March, A.D eighteen
10 hundred and seventy-eight, and that the said Jennie E. Dunn do assign, transfer and deliver unto said complainant or to her solicitor the bond and mortgage in controversy in this cause, made by Alexander Dunn and William C. Dunn to Isaac A. Dunn, dated the fourteenth day of April, A.D. eighteen hundred and seventy-two, to secure the payment of eight thousand dollars with interest, and assigned to said Jennie E. Dunn by the defendant Edward H. Murphy, with the interest endorsed therein as paid until the first day of January, A.D. eighteen hundred and eighty four, together
20 with all other papers accompanying the same, upon the complainant paying to the defendant Jennie E. Dunn the sum of four thousand two hundred dollars, together with interest thereon, at the rate of seven per cent. per annum, from the first day of January, A.D. eighteen hundred and eighty four.

And it is further ordered that the defendants, or any one of them, do pay to the complainant or to her solicitor her costs to be taxed in this cause.

THEODORE RUNYON, *C.*

30 Respectfully advised,

JOHN T. BIRD, *V. C.*

A true copy.

G. S. DURYEE, *Cl'k.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
ALEXANDER DUNN AND JENNIE E. DUNN,
Appellants,
and
KEZIAH DUNN, Respondent.

PETITION OF APPEAL.

[Filed November 21st, 1885.]

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

The humble petition of Alexander Dunn and Jennie E. Dunn, his wife, the appellants above named in the above stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the tenth day of November, A. D. eighteen hundred and eighty-five, in a certain cause depending in said court, wherein Keziah Dunn was complainant and the said Alexander Dunn and Jennie E. Dunn and others were defendants, in this respect, to wit, that the said decree adjudges that the said Jennie E. Dunn do assign, transfer and deliver unto the said Keziah Dunn, or to her solicitor, the bond and mortgage in controversy in said cause, made by Alexander Dunn and William C. Dunn to Isaac A. Dunn, dated the fourteenth day of April, eighteen hundred and seventy-two, to secure the payment of eight thousand dollars, with interest, and assigned to said Jennie E. Dunn by Edward H. Murphy, with the interest endorsed thereon as paid until January first, eighteen hundred and eighty-four, together with all other papers accompanying the same, upon the said Keziah Dunn paying to the appellant, Jennie E. Dunn, the sum of four thousand two hundred dollars, together with interest thereon, at the rate of seven per cent. per annum, from the first day of January,

A. D. eighteen hundred and eighty-four; and that the said decree adjudges that the said appellants should pay the complainant's costs of suit in said cause in the Court of Chancery; and your petitioners humbly appeal from those parts of the said decree which decree as aforesaid, upon the ground that the same are erroneous and contrary to law and equity.

Your petitioners therefore pray that the said decree, in the particulars aforesaid, may be reversed, set aside and for
10 nothing holden.

JAMES S. AITKIN,
Solicitor of Appellants.

JAMES S. AITKIN,
Of Counsel with Appellants.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
ALEXANDER DUNN AND JENNIE E. DUNN,
Appellants,
and
KEZIAH DUNN, Respondent.

ANSWER TO PETITION OF APPEAL.

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 was, on the tenth day of November, A. D. eighteen hundred and eighty-five, made and entered in the 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, so far as it relates to anything contained in said petition, is agreeable to equity, and she prays that so far as anything is alleged in said petition the same may be affirmed, with costs to be adjudged to this respondent.

JOHN F. HARNED,
Solicitor of Respondent.

JOHN F. HARNED,
Of Counsel with Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
KEZIAH DUNN, Appellant,
and
ALEXANDER DUNN AND JENNIE E. DUNN HIS WIFE, AND OTHERS, Respondents.

PETITION OF APPEAL.

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

The humble petition of Keziah Dunn, the appellant above named in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the tenth day of November, A. D. eighteen hundred and eighty-five, in a certain cause depending in said court, wherein the said Keziah Dunn was complainant, and the said Alexander Dunn and others were defendants, in this respect, to wit, that the said decree adjudges that the defendant Jennie E. Dunn do assign, transfer and deliver unto the said complainant, or to her solicitor, the bond and mortgage in controversy in this cause, made by Alexander Dunn and William C. Dunn to Isaac A. Dunn, dated the fourteenth day of April, A. D. eighteen hundred and seventy-two, to secure the payment of eight thousand dollars, with interest, and assigned to the said Jennie E. Dunn by the defendant Edward H. Murphy, with the interest endorsed thereon as paid until the first day of January, eighteen hundred and eighty-four, together with all other papers accompanying the same, upon the complainant paying to the defendant Jennie E. Dunn the sum of four thousand two hundred dollars, together with interest thereon at the rate of seven per cent. per annum from the first day January, A. D. eighteen hundred and eighty-four. And your petitioner humbly appeals from the part of

said decree as aforesaid, upon the ground that the same is erroneous, and contrary to law and equity.

Your petitioner therefore prays that the said decree, in the particular aforesaid, may be reformed, and that your petitioner may have such further relief in the premises as to this honorable court shall seem meet.

JOHN F. HARNED,
Solicitor of Appellant.

JOHN F. HARNED,
Of Counsel with Appellant. 10

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
KEZIAH DUNN, Appellant,
and
ALEXANDER DUNN AND OTHERS,
Respondents.

ANSWER.

The answer of Alexander Dunn and Jennie E. Dunn, his wife, respondents to the petition of appeal of the above-named appellant.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the tenth day of November last past, made and entered in the Court of Chancery, in the cause
10 for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof these respondents pray to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said decree, or part of the said decree, appealed from by said appellant, is agreeable to equity, and they pray that the said decree, as appealed from as aforesaid, may be affirmed, with costs to be adjudged to these respondents.

JAMES S. AITKIN,
20 *Solicitor and of Counsel with Respondents.*