

NEW JERSEY  
COURT OF  
ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CAUSES.

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IN CHANCERY OF NEW JERSEY.

Between

JAMES HARRISON, Ex'r of  
Joseph Harrison, deceased,  
Complainant,

and

THOMAS V. JOHNSON and  
wife, JOSEPH RUSLING,  
and others, Defendants.

} On bill, &c.

P. BENTLEY,  
*Solicitor of complainant.*

JOHN P. JACKSON,  
*Solicitor of N. J. R. R. Co.*

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1868.



# N. J. Court of Errors and Appeals.

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## Bill of Complaint.

[Filed September 3, 1861.]

IN CHANCERY OF NEW JERSEY.

*To His Honor Henry W. Green, Chancellor of the State of New Jersey.*

Humbly complaining, showeth unto your Honor, your orator, James Harrison, of the city of New York, executor of the last will and testament of Joseph Harrison, late of the said city, deceased, that on the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and fifty-three, one Thomas V. Johnson, late of the city of Newark, in the county of Essex, and state of New Jersey, (but now of Morris county, in said state,) being indebted unto the said Joseph Harrison, in his lifetime, in the sum of four thousand five hundred dollars, and being so indebted, the said Thomas V. Johnson, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto the said Joseph Harrison, in his lifetime, a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of nine thousand dollars, lawful money of the United States, with a condition thereunder written, that if the said Thomas V. Johnson, his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said Joseph Harrison, his executors, administrators, or assigns, the just and full sum of four thousand five hundred dollars, lawful money aforesaid, on or before the first day of May, in the year eighteen hundred and fifty-four, then the said obligation should be void, otherwise to remain in full force and virtue, as in and by the said bond or obligation, 10  
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and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further showeth, that the said Thomas V. Johnson, in order to secure the payment of the said sum of money above mentioned, executed and delivered unto the said Joseph Harrison, in his lifetime, a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Thomas V. Johnson and Sarah F., his wife, of the first part, and the said Joseph Harrison, of the second  
 10 part, in and by which indenture of mortgage the said parties of the first part did grant, bargain, sell, alien, release, convey, and confirm, unto the said Joseph Harrison, his heirs and assigns, all that tract or parcel of land and premises herein-after particularly described, situate, lying, and being in the city of Newark, in the county of Essex, and state of New Jersey. Beginning on the east side of Ogden street, fifty feet to the north of the corner of Division street; thence running along Ogden street, north seven degrees forty minutes, west one hundred and eighteen feet; thence north  
 20 eighty-two degrees twenty minutes, east one hundred and eighty-five feet, to the Passaic river; thence down said river, the several courses thereof, one hundred and forty-four feet; thence in a direct line to the beginning point in Ogden street.

Excepting thereout an *alley* of ten feet wide, running through said premises nearly parallel with Ogden street; being lots No's twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and parts of lots thirty-six (36), thirty-seven (37), and nineteen (19), on a map of thirty-seven  
 30 lots, sold by Robert Baldwin, which map is dated August 11th, 1836, and being a part of the premises this day conveyed to said Johnson, by the said Joseph Harrison and others—this mortgage being given to secure a part of the purchase money.

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

in equity, of the parties of the first part, to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold the therein above granted and described premises, with the appurtenances, unto the said Joseph Harrison, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever. Provided always, and the said indenture of mortgage was therein declared to be, upon this express condition, that if the said party of the first part to the said indenture of mortgage, his heirs, executors, or administrators, 10 should well and truly pay unto the said Joseph Harrison, his certain attorney, executors, administrators, or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then the said indenture of mortgage and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your orator further shows, that after the execution of the said indenture of mortgage, the same was in due form of 20 law acknowledged by the said Thomas V. Johnson, and Sarah F., his wife, on the sixth day of December, in the year eighteen hundred and fifty-three, before C. R. Waugh, one of the Masters in Chancery of New Jersey, and duly recorded in the office of the clerk, in and for Essex county, in Liber D 3, of mortgages for Essex county, in the state of New Jersey, pages 42, and 43, on the sixth day of December, in the year eighteen hundred and fifty-three, at forty minutes past two o'clock in the afternoon of that day, as by the certificate of the clerk of the said county, endorsed on the same, on the 30 said indenture of mortgage, more fully appears, and to which registry and certificate thereof, so as aforesaid endorsed on said indenture of mortgage, your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows unto your Honor, that in causing search to be made in the clerk's office of the county of Essex, he finds that the said Thomas V. Johnson and Sarah F., his wife, did duly execute and deliver, unto one Joseph F. Rusling, a deed of conveyance in due form of law, and bearing date the fifth day of March, eighteen hundred 40

and fifty-seven, thereby conveying to him, and his heirs and assigns, all the following described tract of land and premises: "All those certain tracts or parcels of land and premises hereinafter particularly described, situate, lying, and being in the city of Newark, in the county of Essex, and state of New Jersey; beginning on the east side of Ogden street, twenty-eight feet to the north of the corner of Division street; thence along Ogden street, north seven degrees and forty minutes, west eighty-four feet; thence north eighty-

10 two degrees and twenty minutes, east ninety-two feet, to an alley of ten feet in width; thence along the said alley south seven degrees and forty minutes, east eighty-four feet; thence south eighty-two degrees and twenty minutes, west ninety feet, to the beginning, being lots 19, 20, and 21, on a map of 37 lots, sold by Robert Baldwin. Also one other tract, being on the east side of the aforesaid alley, directly opposite the southeast corner of the above described lot; thence along the said alley, north seven degrees and forty minutes, west eighty-four feet; thence north eighty-two degrees and

20 twenty minutes, east seventy-five feet, to Passaic river; thence down the river, the several courses thereof, eighty-four feet; thence south eighty-two degrees and twenty minutes, west sixty-five feet, to the beginning, being lots 34, 35, and 36, on said map. Also one tract beginning on the east side of Ogden street, one hundred and twelve feet to the north of the corner of Division street; thence along Ogden street, north eleven degrees and forty minutes, west fifty-six feet; thence north eighty-two degrees and twenty minutes, east ninety feet, to an alley ten feet in width; thence

30 along the said alley, south seven degrees and forty minutes, east fifty-six feet; thence south eighty-two degrees and twenty minutes, west ninety feet, to the beginning, being lots No's 22 and 23, on said map. The other beginning on the east side of the aforesaid alley, opposite the southeast corner of the aforesaid lot; thence, along said alley, north seven degrees and forty minutes, west fifty-six feet; thence north eighty-two degrees and twenty minutes, east eighty-four feet, to Passaic river; thence down the river, the several courses thereof, fifty-six feet; thence south eighty-two degrees and

40 twenty minutes, west seventy-five feet, to the beginning,

being lots 32 and 33. One other tract, being on the corner of Ogden and Division streets; thence north twenty-eight feet; thence east ninety feet, to an alley ten feet wide; thence south fifteen feet, along the westerly side of an alley, to Division street; thence westerly, along the northerly side of Division street, ninety-one feet, to the beginning. Also the tract, beginning at a point on the easterly side of the alley aforesaid; thence north, along said alley, forty feet; thence east sixty-five feet, south thirty-two feet; thence west sixty-five feet, to the beginning. Excepting out of the 10 above the tracts, the land, and premises described in a deed from Thomas V. Johnson and wife, to the New Jersey Railroad and Transportation Company, dated December 7th, 1853, and recorded in book No. 8 of deeds, for Essex county, page 37. The above mortgaged premises are the same as this day conveyed by said Johnson and wife, to said Rusling, and this mortgage is given to secure a part of the consideration money in said deed named;” which premises are mentioned and described in the said mortgage, made and executed by the said Thomas V. Johnson and wife, to the said 20 Joseph Harrison, as your orator believes.

And your orator further shows, that the said Joseph F. Rusling did, on or about the said fifth day of March, in the year eighteen hundred and fifty-seven, make and execute, under his hand and seal, and delivered unto the said Thomas V. Johnson, a deed of mortgage upon said premises lastly described, to secure to him the payment of a certain bond made by the said Joseph F. Rusling to the said Thomas V. Johnson, bearing even date with said mortgage, in the penal sum of five thousand dollars, conditioned for the payment of 30 two thousand five hundred dollars, with a condition that the same should become due and payable when the said Thomas V. Johnson should procure the title to an undivided one-eighth part of the said mortgaged premises from the heirs of William Harrison, deceased, and place the same on record in the clerk's office of Essex county.

And your orator further shows, that the said Joseph Harrison, in his lifetime, agreed with the said Thomas V. Johnson, that he would procure the title of the heirs of John Harrison, to the undivided one-eighth part of the property 40 mentioned in an agreement, bearing date the fifth day of

March, A. D. one thousand eight hundred and fifty, which agreement is now in your orator's possession and ready to be produced and proven; and did further agree, to and with the said Thomas V. Johnson, under his hand and seal, and bearing date the sixth day of December, in the year of our Lord eighteen hundred and fifty-three, among other things, that he would procure a title to said one-eighth part of said premises, within two years from the sixth day of December, in the year one thousand eight hundred and fifty-three, to

10 the said eighth part of said premises in said agreement referred to, which agreement is in the words and figures, and to the effect following, viz. Whereas, Joseph Harrison did, on the fifth day of March, in the year eighteen hundred and fifty, enter into an agreement in writing, under seal, with Thomas V. Johnson that he, the said Joseph Harrison, would sell and convey unto the said Johnson, the undivided seven-eighths of all the property contained in a certain deed made by Robert Baldwin and wife to William Harrison, dated the eleventh day of August, A. D. eighteen hundred and thirty-

20 six, and also seven-eighths of all the property contained in the deed made by Jonathan Osborn, sheriff, to William Harrison, of the city of New York, for the sum of two thousand eight hundred and forty-eight dollars. And whereas, the said Joseph Harrison did, in said agreement, further agree, that he would endeavor to procure the title to the other one-eighth part of said land and premises, being the right of the heirs of John Harrison, deceased. And whereas, the said Joseph Harrison has not perfected the title to said lots, either in himself or said Johnson, to the share or in-

30 terest of the heirs of John Harrison, deceased. And whereas, the said Joseph Harrison, James Harrison, and George Harrison, have conveyed to said Thomas V. Johnson, by full deeds of warranty, the said undivided seven-eighths of said aforementioned premises, who has paid and secured to be paid to the said Joseph Harrison, James Harrison, and George Harrison, all of the consideration money for the whole of said premises in said two deeds referred to, and that he, the said Joseph Harrison, desired said Thomas V. Johnson to pay the whole of said purchase money to him

40 for his use, and that of James and George Harrison, and

having agreed to and with said Johnson to procure a good and valid title to said Thomas V. Johnson for the one-eighth part of said lots of land,

Now this instrument witnesseth: that the said Joseph Harrison, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said Thomas V. Johnson, his executors, administrators, and assigns, that he will save, harmless, and indemnify him, the said Thomas V. Johnson, of and from all loss, damage, costs and expenses that he may be put to by reason of the said Harrison not procuring a good and valid title to said Johnson, for the said one-eighth part of said lots of land, or for any damage, injury, expense, or loss, the said Johnson may be put to, by reason of any improvements he may put thereon; and the said Joseph Harrison doth covenant and agree to and with the said Thomas V. Johnson, that he will, at his own costs and expenses, within two years from the date hereof, procure for the said Johnson a good title to the whole of said lots mentioned in said deed.

In witness whereof, the said Joseph Harrison hath hereunto set his hand and seal to these presents, this sixth day of December, in the year eighteen hundred and fifty-three.

JOSEPH HARRISON. [L. S.]

Signed, sealed, and delivered, in the presence of

C. R. WAUGH.

Which agreement is in the hands of your orator and ready to be produced and proven, as this court may direct, and with a further agreement annexed thereto, and bearing date on the said sixth day of December, eighteen hundred and sixty-three, made and executed by the said Thomas V. Johnson, wherein it was agreed by the said Thomas V. Johnson, that in case the said Joseph Harrison should not make a good title within two years, he, the said Joseph Harrison, should refund three hundred and fifty-six dollars, with interest, from the first day of February, eighteen hundred and fifty, until that time, to said Johnson, as liquidated damages on the above agreement.

And your orator further shows, that the said Joseph Har-

rison departed this life on or about the — day of February, A. D. eighteen hundred and fifty-five, having first duly made and executed his last will and testament, in due form of law, on or about the third day of January, in the year of our Lord eighteen hundred and fifty-two; that in and by said will your orator was appointed executor of the said will, and the same was, on the sixth day of April, in the year of our Lord eighteen hundred and sixty-one, duly admitted to probate by the surrogate of the county of Hudson, in the state of New Jersey; and that your orator then took upon himself the duties as executor of the said last will and testament of the said Joseph Harrison, deceased, and that he has acquired a complete title to the said one undivided eighth part of said real estate, and is now ready to convey the same to the said Thomas V. Johnson, or to his grantees, upon the payment to your orator of the said principal and interest, so due on the said bond and mortgage, so given to the said Joseph Harrison by the said Thomas V. Johnson and wife.

And your orator further shows, that on the sixth day of March, in the year one thousand eight hundred and fifty-seven, the said Joseph F. Rusling did convey all his right, title, and interest, of, in, and to said land, to the New Jersey Railroad and Transportation Company, by a deed of conveyance, duly executed according to law, to pass real estate, and that the said New Jersey Railroad and Transportation Company are still the owners of the said mortgaged premises.

And your orator further shows, that, upon making search at the clerk's office of the county of Essex, he finds that the said Thomas V. Johnson, on the second day of April, in the year eighteen hundred and fifty-six, applied to the clerk of the county of Essex for the mortgage so given to the said Joseph Harrison, by the said Thomas V. Johnson and wife, which mortgage was remaining, and had been from the time the said Joseph Harrison left it for record, with the said clerk of Essex county; that the said clerk, J. J. Terhune, did, without any authority, or right, or permission, deliver said mortgage to the said Thomas V. Johnson, who held the same in his possession till the sixth day of March, in the year eighteen hundred and fifty-seven, when he placed the

same in the hands of Algernon S. Hubbell, esquire, who was employed by the New Jersey Railroad and Transportation Company to investigate the title to the said real estate, so conveyed by the said Thomas V. Johnson and wife to the said Joseph F. Rusling, and by him, the said Rusling, conveyed to the said railroad company, and that on the said sixth day of March, in the year of our Lord eighteen hundred and fifty-seven, the said Algernon S. Hubbell presented said mortgage to the clerk of Essex county, for him to cancel the same, whereupon the said clerk did, upon such presentation, 10  
endorse upon the record of said mortgage the following, viz.

“On the sixth day of March, A. D. 1857, the original mortgage here registered, was produced in the office. Algernon S. Hubbell, esq., att’y at law, cancelled and made void.

J. J. TERHUNE, *Clerk.*”

And thereupon, the said Thomas V. Johnson, conveyed said property to the said Joseph F. Rusling, and the said Joseph F. Rusling thereupon, on the said sixth day of March, eighteen hundred and fifty-seven, duly executed a mortgage upon the same to the said Thomas V. Johnson, for the sum 20  
of two thousand five hundred dollars, to secure the payment of a certain bond of the said Joseph F. Rusling, to the said Thomas V. Johnson, for the sum of two thousand five hundred dollars, and, after making and delivering said mortgage, he then conveyed said premises to the said New Jersey Railroad and Transportation Company, by a proper deed of conveyance, under his hand and seal, and bearing date the said sixth day of March, in the year of our Lord eighteen hundred and fifty-seven; that the said Joseph F. Rusling, took said property in his own name, at the special request 30  
of the New Jersey Railroad and Transportation Company, and for their use and benefit, and did execute and deliver a deed, in manner aforesaid, to said company, which deed was not recorded for some time after the execution of the same; and that the said Algernon S. Hubbell was employed by and acted for the said railroad company as their counsel; that he, the said Hubbell, had no evidence or knowledge that the said bond secured by said mortgage so cancelled, had been paid, or any part of the same, that the possession of the 40

said bond has never been with any person or persons but the said Joseph Harrison during his lifetime, and with your orator, as his executor, since his death, that it has never been in the care, custody, or possession of said Thomas V. Johnson, Joseph F. Rusling, the said Algernon S. Hubbell, or the New Jersey Railroad Company, or either or any of them, that no evidence of payment or satisfaction was exhibited to the said Joseph F. Rusling, Algernon S. Hubbell, or to any other person, at any time, or more particularly at  
10 the time of cancellation by said Hubbell of said mortgage, that no receipt was endorsed upon said mortgage, or any other evidence of the payment or satisfaction of said mortgage from the said Joseph Harrison or his legal representatives, that the said sale by said Johnson, as aforesaid, to said Rusling, and by said Rusling to said Railroad Company, was for the sole use and benefit of the said railroad company; and the said Algernon S. Hubbell, being the counsel for said railroad company to look after their interest, and that of said Rusling, if any he had, in getting a good title  
20 free of incumbrance, it was his duty, before cancelling said mortgage, to ascertain beyond a doubt whether said mortgage had been *bona fide* paid by said Johnson, and duly discharged by said Joseph Harrison, so as to authorize said Hubbell to discharge the same upon the record of said mortgage.

And your orator further shows, that no part of said bond and mortgage has ever been paid, either to the said Joseph Harrison, in his lifetime, or to your orator since his death, that the whole principal and interest moneys remains due  
30 and unpaid; and your orator insists that the pretended cancellation, by the said Algernon S. Hubbell, of said mortgage, was illegal and of no effect as against your orator, and that the said Joseph F. Rusling, and the New Jersey Railroad and Transportation Company, have no right to claim any exemption from the force and effect of said mortgage, and that the said cancellation should be, by the decree of this honorable court, set aside and for nothing holden, and that your orator should be decreed by this honorable court, the principal and interest due on the said bond and mortgage,  
40 so given to the said Joseph Harrison, in his lifetime, deduct-

ing therefrom the said sum of three hundred and fifty-six dollars, as in and by the agreements herein before set forth; and your orator alleges, that he is ready and willing to execute and deliver, to the New Jersey Railroad and Transportation Company, a perfect title for the undivided one-eighth part of the said mortgaged premises, so agreed to be conveyed to the said Thomas V. Johnson, by the said Joseph Harrison, upon a decree being made by this honorable court to pay to your orator the principal and interest upon said bond and mortgage, so given by said Johnson and wife to 10 said Joseph Harrison.

And your orator further shows, that the said mortgage, so given to the said Joseph Harrison by the said Thomas V. Johnson and wife, is now, or was recently, in the hands of the said Algernon S. Hubbell; and your orator prays that he may be ordered, by this honorable court, to deliver the same into the hands of the clerk of this court, to abide such order or decree as this court may make in the premises in relation to said mortgage.

And your orator further shows, that the said Thomas V. 20 Johnson did, on the twenty-fifth day of April, in the year eighteen hundred and fifty-seven, or thereabouts, execute an assignment, under his hand and seal, of the said bond and mortgage so made to him by the said Joseph F. Rusling, for the sum of two thousand five hundred dollars, to your orator, and had the said assignment duly recorded in the clerk's office of Hudson county, which assignment, so made and put upon record by the said Thomas V. Johnson, was done without the acquiescence or knowledge of your orator, and he is willing, upon payment of the principal and interest due 30 to him upon said Thomas V. Johnson's bond and mortgage, to cancel the same of record.

And your orator avers, that he had no knowledge, directly or indirectly, of the cancellation of the mortgage so made by the said Thomas V. Johnson to the said Joseph Harrison, that the same was done contrary to equity or right, and ought to be so decreed by this court.

And your orator further showeth, that the whole of the principal money mentioned in the said bond or obligation and secured thereby, and by the said deed of mortgage, with 40

large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to the said Joseph Harrison in his lifetime, or since his death to your orator, so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises, the said deed and mortgage and the estate thereby mortgaged as aforesaid, have become absolute in your orator and his heirs. And your orator further shows, that the said Thomas V. Johnson and the New Jersey Railroad and Transportation Company, since the execution of your orator's said mortgage, have possessed and enjoyed, and that they do still possess and enjoy the said mortgaged premises with the appurtenances, and that they have always received and still do receive the rents, issues, and profits thereof. And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal moneys and arrears of interest so due to your orator as aforesaid, and that they or some other person or persons for them, have frequently and in a friendly manner applied to the said Thomas V. Johnson and the New Jersey Railroad and Transportation Company 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 orator on the said bond or obligation and deed of mortgage, given by the said Thomas V. Johnson and wife to the said Joseph Harrison ; and your orator well hoped that the said Thomas V. Johnson, The New Jersey Railroad and Transportation Company, or one of them, would have complied with such reasonable requests of your orator, and would have paid to him the said principal moneys and arrears of interest, so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done. But now so it is, may it please your Honor, that the said Thomas V. Johnson and Sarah F. his wife, The New Jersey Railroad and Transportation Company, and Algernou S. Hubbell, are combining are confederating together, and to and with divers other persons at present unknown to your orator, but whose names when discovered he prays may be inserted herein, and that they may be made parties hereto, with proper and apt words

to charge them how to injure and aggrieve your orator in the premises, and to defraud him of the said principal and interest moneys as aforesaid due to orator on the said bond or obligation and deed of mortgage, hereinbefore mentioned, and given to the said Joseph Harrison, and now held by your orator as aforesaid, sometimes give out and pretend, that although your orator's estate in the said mortgaged premises, contained in the mortgage given as aforesaid, may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same 10 will be subject to an equity of redemption, and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other incumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover; whereas your orator charges and insists, that if any such pretended incumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud, to injure and aggrieve your orator, and ought to be delivered up to be cancelled, or declared to be of no effect against your orator, who had no notice of any such pretended incumbrances. All 20 which acting and doings of the said Thomas V. Johnson, The New Jersey Railroad and Transportation Company, and Algernon S. Hubbell, and their confederates, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator. In tender consideration whereof, and forasmuch as your orator hath not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity 30 of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal moneys and arrears of interest, so as aforesaid due to your orator on the said bond and obligation and deed of mortgage, given to the said Joseph Harrison in his lifetime as aforesaid, without the aid and decree of this honorable court. To the end therefore that the said Thomas V. Johnson, The New Jersey Railroad and Transportation Company, Algernon S. Hubbell, and their confederates, when discovered, may upon their several and respective corporal oaths, true, full, 40

and perfect answers make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, and belief; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum of four thousand five hundred dollars, hereinbefore mentioned and expressed, and so due to him on the said bond or obligation and deed of mortgage, herein-  
10 before mentioned and set forth, and given to the said Joseph Harrison in his lifetime, and all the interest money now due, and to grow due thereon, together with all your orator's costs and charges, both at law and in equity, in this behalf sustained, by a short day to be appointed by this honorable court, and in default thereof that the said defendants and each of them, and all persons claiming or to claim under them, or any or either of them, may be foreclosed of and from all equity of redemption, or claim of, in, and to the said mortgaged premises, and every part and parcel thereof, with  
20 the appurtenances, and may deliver over unto your orator all deeds, demises, and writings whatever, relating to, or concerning the same, or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this honorable court, be sold, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money hereinbefore mentioned and expressed, and so due to your orator on the said bond or obligation and deed of mortgage to your orator as aforesaid, and all the interest now due and  
30 to grow due thereon, together with all your orator's costs and charges both at law and equity, in this behalf sustained, and that your orator may have such further and other relief in the premises, as to your Honor may seem meet, and shall be agreeable to equity and good conscience. May it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Thomas V. Johnson and Sarah F. his wife, The New Jersey Railroad and Transportation Company, Algernon S. Hubbell,  
40 therein and thereby commanding them, and each of them,

on a certain day, and under a certain penalty therein to be inserted, to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein, as to your Honor shall seem meet, and shall be agreeable to equity and good conscience. And your orator as in duty bound, will ever pray, &c.

PETER BENTLEY,  
*Solicitor and of counsel with complainant.*

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Answer of A. S. Hubbell.

[Filed March 18, 1862.]

*The answer of Algernon S. Hubbell, one of the defendants, to the 10 bill of complaint in the above suit.*

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiency in the complainant's bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says—that he has no knowledge of the making of the said bond and mortgage, set forth in the complainant's bill, and no knowledge of the existence of the said mortgage, 20 except as hereafter stated. And he further answers and says, that he knew of the execution and delivery of the deed from Thomas V. Johnson and wife to Joseph F. Rusling, mentioned in said bill; that on or about the day of the date of said deed, this defendant was called upon by the said Joseph F. Rusling, to go with him to the house of the said Thomas V. Johnson, who was then unable by illness to leave it, to examine the title to land he, said Rusling, was about to purchase of said Johnson; that accordingly he went there, and found Lewis C. Grover, esq., present, acting with said 30 Johnson; that searches of the records of Essex county and in the Supreme Court, were handed to this defendant to examine, and also the deed prepared and executed by said

Johnson and wife to said Rusling, of the property to be purchased; that the said search exhibited the mortgage mentioned in the complainant's bill, and upon examination the title to seven-eighths of the property, after removing the mortgage aforesaid, was found to be satisfactory; and said Rusling then paid the money required, and executed a bond and a mortgage upon the same premises to said Johnson, and the said deed was delivered by him to said Rusling; that it was stated by said Johnson or said Grover in his behalf, 10 and in his presence, that the mortgage given by said Johnson and wife to Joseph Harrison, for forty-five hundred dollars, was satisfied, being the mortgage mentioned in the said bill of complaint; and the same was produced, and either said Johnson or said Grover, in his presence and by his direction, at the same time, tore off the names and seals of the mortgagors, and handed the same to this defendant to be cancelled of record; that on the sixth day of March, A. D. 1857, this defendant took the said mortgage to the clerk's office of Essex county, and had it duly cancelled. And fur- 20 ther answering he says, that no intimation was made by said Johnson or Grover, or either of them, as to the manner said Johnson obtained said mortgage, or how it came to his possession; that the same was produced as satisfied, and the purchase was completed in good faith, upon the belief that said Johnson was in possession of the mortgage lawfully, and had good right to it, and to have it cancelled; that after the mortgage was cancelled, it remained in the possession of this defendant, with the searches and other papers relating to the purchase, until in the early part of the year eighteen 30 hundred and sixty-one, when he handed the same to John P. Jackson, and this defendant has not seen them since, or had them in his possession or custody; that it was several months before the bill in this cause was filed, and before he heard of the claim now made by the complainant; that from the time of the cancellation of said mortgage, to the time of his giving up the papers, no inquiry was ever made of this defendant about said mortgage, or any allegation made that it was improperly cancelled. And further answering, he says, that he has no recollection of seeing the bond men- 40 tioned in said mortgage, nor does he know whether it was

in said Johnson's possession; that he cannot now recollect whether there was a receipt on the said mortgage; that he has endeavored, since this suit was commenced, to see and inspect it, but owing to the illness and death of Mr. Jackson, he has not been able to do so; that he is informed and believes, that diligent search has been made for said mortgage, but that it cannot be found, and this defendant does not know where it is, or what has become of it. And this defendant denies all unlawful combination and confederacy, in said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge and belief of this defendant.

ALGERNON S. HUBBELL, *pro se.*

New Jersey, Essex county, ss.—Algernon S. Hubbell, the defendant above named, being duly sworn, on his oath saith—that the matters and things set forth in the above answer, so far as relate to his own acts, are true, and so far as relate to the acts of others, he believes them to be true.

ALGERNON S. HUBBELL.

Sworn and subscribed, the seventeenth day of March, A. D. 1862, before me.

GEORGE F. TUTTLE, *M. C.*

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Answer of the N. J. R. R. & T. Co.

[Filed September 3, 1862.]

*The answer of the New Jersey Railroad and Transportation Company, defendants in this suit, to the bill of complaint filed by the above complainant.*

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer

thereto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say—that they admit that said Thomas V. Johnson did make and execute the bond and mortgage mentioned in said bill of complaint, to the said Joseph Harrison, deceased, and as therein set forth; and they admit that said Johnson and wife did make, execute, and deliver, to Joseph F. Rusling, a deed of the land therein described, and that the said Joseph F. Rusling did make, execute, and  
10 deliver to said Johnson, the deed of mortgage mentioned in said bill, and of the purport therein stated; and they further answer and say, they have no other knowledge of the agreements set out in said bill, between the said Joseph Harrison and the said Thomas V. Johnson, thereby disclosed. And further answering, they admit that the said Joseph F. Rusling did convey to these defendants, by a deed of the date mentioned in said bill, the same land conveyed to him, as before stated, and that they are now the owners thereof.

And these defendants further answering say, that being  
20 desirous of purchasing said land, with a view to an important improvement of their road, they employed the said Joseph F. Rusling to negotiate for and purchase said land, and that A. S. Hubbell, esq., was employed as his counsel and the counsel of these defendants, to examine the title of said land, and to see that a proper conveyance of the same was perfected; and that the said Rusling did take the title from said Johnson in his own name, and afterwards conveyed the same to these defendants, subject to a mortgage of twenty-five hundred dollars, which was given by said Rus-  
30 ling, to be paid when a title was procured by said Johnson to one-eighth part of said premises—the said conveyance being for seven-eighths of said land; and they further say, that they employed said Rusling, and purchased said land in good faith, and paid for it a large and full consideration.

And these defendants further answering say, that they have no knowledge or information, except from the said bill, whether or not the said Thomas V. Johnson applied to the clerk of the county of Essex for the said mortgage given to the said Joseph Harrison by the said Thomas V. Johnson,  
40 nor whether said mortgage remained in the possession of the

said clerk until it was by him delivered to the said Johnson, as in said bill alleged, but these defendants are informed by the said Thomas V. Johnson, and believe, and charge the truth to be, that the said mortgage was satisfied by the said Thomas V. Johnson to the said Joseph Harrison, in his lifetime, and that he was lawfully entitled to the possession of the said mortgage, and had full right to cancel the same.

And these defendants say, that at the time the said mortgage was delivered to the said Johnson, and at the time of the cancellation thereof, the said Thomas V. Johnson was 10 doing an extensive business, and was possessed of a large estate, both real and personal, and was reputed to be a man of wealth; that his character and reputation in the community was unblemished, and that when said mortgage was produced by him with the seals torn off, these defendants had no reason to doubt that the same had been cancelled by the said Joseph Harrison, or at his request, and they believe, and still believe and charge the fact to be, that it had been so cancelled.

And these defendants further answering say, that when 20 the deed was delivered to the said Rusling, and the purchase money paid, the said mortgage was produced by said Johnson with the seals torn off, and was handed to said Rusling by said Johnson, in the presence of, and by the assent and direction of the counsel of said Johnson, with the statement that it was satisfied; and that thereupon it was cancelled of record by the clerk of Essex county, at the instance of the said A. S. Hubbell, esq., as these defendants believe, and therefore charge he had a right to do. And these defendants further answering say, they do not know whether there was 30 a receipt upon the said mortgage, that after it was cancelled they are informed it was given to John P. Jackson, esq., now deceased, and that it cannot now be found, and is not now in the possession of these defendants. And these defendants further answering say, that they have no knowledge or information, except from said bill, whether the possession of said bond, in the said mortgage mentioned, has never been with any person or persons but the said Joseph Harrison, during his lifetime, and with the complainant as his executor, since his death; nor whether or not it has been in 40

the possession of the said Thomas V. Johnson, nor whether the whole principal and interest moneys remain due and unpaid thereon. But these defendants further answering deny, that the cancellation of the said mortgage, given to secure the payment of the said bond, was illegal and of no effect against the complainant, but, on the contrary thereof, insist that the same is no longer a valid and subsisting lien upon the premises purchased by them as aforesaid.

And these defendants further say, that they entered into immediate possession of said land, and have made expensive and valuable improvements on the same, and until a recent period they never heard of the claim now set up by the complainant in said bill, and that said Johnson had no right to the possession of said mortgage, or any allegation that it was improperly cancelled.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said bill of complaint contained, material or necessary for these defendants to make answer thereunto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, which is true to the knowledge or belief of these defendants; all which matters and things these defendants are willing to aver, maintain, and prove, as this honourable court shall direct, and humbly pray to be herein dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN P. JACKSON, JUN.,

*Solicitor of defendant.*

F. H. TEESE,

*Of Counsel.*

JOHN S. DARCY, *Pres't N. J. R. R. & Trans. Co.* [L. S.]

State of New Jersey, ss.—The answer of the defendants, the New Jersey Railroad and Transportation Company, was taken this fourth day of September, in the year of our Lord one thousand eight hundred and sixty-two, before me, under the common seal of the said corporation, as by their said seal affixed appears.

C. T. ZIEGLER, *M. C.*

## Replication.

[Filed October 16, 1862.]

*The Replication of the complainant to the answers of Algernon S. Hubbell, and the New Jersey Railroad and Transportation Company.*

This repliant, saving and reserving to himself all and all manner of advantage of exception, to the manifold insufficiencies of the said answers, for replication thereunto saith, that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto, by this repliant; without that, 10 that any other matter or thing whatsoever, in the said answers contained, material or effectual in the law to be replied unto, confessed, and avowed, traversed or denied, is untrue; all which matters and things this repliant is and will be ready to aver and prove, as this honourable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

PETER BENTLEY,

*Solicitor and of counsel with complainant.*

## Order of Revivor.

[Filed February 7, 1864.]

This cause being opened to the court by Peter Bentley, of 20 counsel with the complainant, and upon reading an affidavit of the said Peter Bentley, on file in the cause, whereby it appears, that after issue joined in the cause, and on or about the third day of March, in the year of our Lord one thousand eight hundred and sixty-three, the said complainant, James Harrison, departed this life, intestate, and that Mary Harri-

son has been duly appointed administratrix of the said James Harrison, deceased; it is on this seventh day of March, A. D. eighteen hundred and sixty-four, ordered by the Chancellor, that the name of the said Mary Harrison, administratrix, &c., of James Harrison, deceased, who was the executor of the last will and testament of Joseph Harrison, deceased, be inserted as complainant in this suit, to the end that such further proceedings may be taken in this suit, against the defendants therein, as shall be agreeable to equity and in accordance with the rules and practice of this court.

HENRY W. GREEN, C.

### Evidence.

[Filed October 4, 1866.]

*Examination of witnesses in a cause depending in the Court of Chancery of New Jersey, wherein Mary Harrison, administratrix, &c., is complainant, and Thomas V. Johnson and wife, The New Jersey Railroad and Transportation Company, and others, are defendants, taken before me, George F. Tuttle, an examiner of said court, at my office, in Newark, on the eleventh day of September, in the year eighteen hundred and sixty-six, in the presence of Peter Bentley, esquire, solicitor of complainant, and John P. Jackson, jun., esquire, solicitor of said railroad company.*

Charles R. Waugh, a witness produced on the part of the complainant, being duly sworn, on his oath saith—A paper being shown to witness, which I have marked *Exhibit A* for complainant, he says—I have examined the signatures to this paper; my name is subscribed thereto as a witness; I have no doubt but that I saw this paper executed.

Another paper being shown witness, he says—I am the subscribing witness to this bond; it was executed before me, by Thomas V. Johnson, (heretofore marked as *Exhibit 1* for complainant); I don't know that I have had anything to do

with these papers since their execution ; I can't tell from recollection whether the mortgage securing this bond was executed before me or not.

C. R. WAUGH.

Subscribed and sworn before me.

GEORGE F. TUTTLE, *M. C.*

*Thomas V. Johnson*, a witness on the part of the New Jersey Railroad and Transportation Company, being produced and offered to be sworn, the complainant objects to the witness as an improper witness, and being duly sworn, 10 saith—I reside at Littleton, Morris county ; I lived in Newark until September, 1857 ; I remember deeding some property to Joseph F. Rusling, in 1857 ; it was wharf property, near Division street, Newark—near the railroad ; I have heard that he sold it to the railroad company ; I negotiated for this property with James Harrison and Joseph Harrison, a number of years before the deed was given by the heirs of the Harrison estate ; the principal men with whom I negotiated were James and Joseph Harrison ; I did not know the other heirs ; my recollection is that when the agreement was 20 made it was for the whole property, but when the deed was passed, it was only for seven-eighths. The full consideration was paid for the whole property ; I paid part of the consideration by a bond and mortgage upon the property purchased ; my recollection is that \$1500 was paid, cash, and \$4500 by bond and mortgage, or about those sums ; between \$1400 and \$1500 was paid cash ; I don't know who took that mortgage to the clerk's office to be registered ; I don't recollect who took the deed I received from them to the office ; it is very probable that I did, but I don't remember ; I have 30 no distinct recollection as to either, but I presume I did not take the mortgage to be recorded ; I took the mortgage to Mr. Harrison, from the clerk's office, before passing the deed to Mr. Rusling.

1 *Quest.* Why did you take the mortgage from the courthouse ?

*Ans.* Because Mr. Harrison told me to do so ; I mean Mr. James Harrison ; I can't fix the day, but I think that I did so about a year before the deed was passed to Rusling. (Coun-

sel for complainant objects to all testimony as to what Mr. James Harrison said.)

2 *Quest.* State the interview with Mr. James Harrison—what was said by him, and what by yourself? (Objected to.)

*Ans.* About the year 1855—I think it was between the summer of 1855 and the spring of 1856—I think I called upon Mr. James Harrison, to enquire when the title could be perfected, and to know who was the executor of his brother, and what could be done about perfecting the title. I  
10 told him it had been delayed a long while, and I thought it was time the matter was settled, that is that the title should be perfected; he replied that he had sent to Ireland by a friend, to try and secure the title to the other eighth, but had not succeeded; I reminded him of his promise that he made to me individually, that the title should be perfected; he replied that it would be done; it might take time, but that it would be done; I told him that I had gone forward and made improvements upon the property, and that I looked to him to have it accomplished; he replied, he thought I had  
20 no reason to fear but that it would be done, though it might take some time—that he had been made executor of his brother's estate; I told him then, in view of the fact that I had made expenditures there to a considerable amount, that it ought to be done immediately. It was at this time he requested me to go to the clerk's office and get the mortgage, which I did; subsequent to this he asked me to bring the mortgage down to him; I replied to it, that that was not the understanding of my getting the mortgage, as it was to be held by me as security for the completion of the title; I  
30 had several interviews with him afterwards, when he alluded to the mortgage, and requested me to bring it to him, saying that he would be prepared in a very short time to complete the title.

3 *Quest.* When he first told you to go and get the mortgage, what did he say that you should do with it?

*Ans.* I don't remember any thing further about that than what I have already said.

4 *Quest.* You have spoken of an understanding that the mortgage was to be held by you as security for the comple-  
40 tion of the title—what do you mean by that?

*Ans.* I expressed my fears that this would not be accomplished at this time, and he said, why you can hold the mortgage till it was accomplished. This occurred at the first interview, according to my recollection. It was at subsequent interviews that he spoke of bringing the mortgage down to him—I had applied to Mr. Harrison more than once to perfect the title.

5 *Quest.* Was this mortgage alluded to passed over to Mr. Rusling and Mr. Hubbell, at the time the deeds were passed to Rusling? 10

*Ans.* It was passed over to Mr. Hubbell, and, I suppose at that time. I think the deed to Rusling was passed at my house; I am not certain whether Mr. Grover was present then; I think he was; he was my counsel at that time.

6 *Quest.* Did you talk with Mr. James Harrison at any of your interviews about selling any part of this property, or prospects for selling the same?

*Ans.* I think I did.

7 *Quest.* What do you think that you told him?

*Ans.* My recollection is that I told him that I wanted to sell it; I had a good many interviews with him at his place in Fulton street, or where he stopped there, and at the Northern Hotel in New York City, where he frequently was. 20

8 *Quest.* Did you ever tell him that you wanted to sell it?

*Ans.* O, yes sir.

9 *Quest.* When you sold the property to Rusling, what agreement or understanding was there about the one-eighth of the title which was outstanding? (Objected to.)

*Ans.* The understanding was that Mr. Rusling was to give a mortgage, to be held until the title was perfected; the mortgage was made to me, and I assigned it to Mr. Harrison; that mortgage is not now in my possession; I don't remember whether I handed it to Mr. Bentley or Mr. Harrison, but to one of them—I think it was to Mr. James Harrison. The amount of that mortgage was, I think, \$2500. 30

Witness being cross-examined, says—

1 *Quest.* Was there any agreement made between you and Joseph Harrison, in case the title to the one-eighth should not be perfected, that the damage for non-performance of the agreement was fixed?

*Ans.* I think there was.

2 *Quest.* What was that amount? (Objected to.)

*Ans.* I don't know as I can tell exactly the amount, without referring to papers. *Exhibit A*, for complainant, being shown witness, he says—this paper shows the amount, \$356, but this paper does not tell the whole of the agreement.

3 *Quest.* When you took the mortgage from the clerk's office, did you keep it in your possession until the sale was made to Mr. Rusling?

10 *Ans.* Yes, sir.

4 *Quest.* Did you know at the time that you was conveying this property to Mr. Rusling, that the New Jersey Railroad Company was the real purchaser?

*Ans.* I did not know of my own knowledge, but I supposed the property would go to them; Mr. Rusling told me he bought it for his own use—for a coal-yard.

5 *Quest.* Who paid you the money that was paid you when you sold to Mr. Rusling?

20 *Ans.* Mr. Rusling; it was subject to a mortgage of \$10,000, and sold subject to that mortgage given by myself and wife.

6 *Quest.* When you took the mortgage from the clerk's office, in whose hands did you place it?

*Ans.* I did not place it in anybody's hands.

7 *Quest.* Have you still got it in your possession?

*Ans.* I suppose I have; though I don't recollect seeing it, but I only suppose I have it; I am not positively certain of having it. (Counsel for complainant here requests the defendants to produce this mortgage, or account for its non-production.)

30 8 *Quest.* How came the mortgage to be cancelled?

*Ans.* I delivered it to Mr. Rusling or his lawyer, I don't remember which.

9 *Quest.* Did you receipt the mortgage?

*Ans.* I don't remember.

10 *Quest.* Was there any receipts whatever upon that mortgage of its payment?

*Ans.* I have no distinct recollection about it; I don't recollect anything of that kind.

40 11 *Quest.* Did you ever pay that mortgage to James Harrison, to Joseph Harrison, or to any other persons for them at any time?

*Ans.* I did not.

12 *Quest.* Is that mortgage still unpaid at the present?  
(Question objected to.)

*Ans.* I don't know that it has been paid; I did not ever pay it, unless the assignment of the Rusling mortgage may be so considered.

13 *Quest.* Have you not, on repeated occasions, promised James Harrison, in his lifetime, as well as myself, as his counsel, from time to time, to pay said mortgage?

*Ans.* I have.

10

14 *Quest.* Have you not, since the death of James Harrison, had frequent interviews with Mr. Robinson, of New York, in reference to the payment of this mortgage?

*Ans.* I don't think I ever spoke to Mr. Robinson about it.

15 *Quest.* For whom did you understand Mr. Hubbell to be counsel, at the time of the sale of this property to Mr. Rusling, and to the New Jersey Railroad Company?

*Ans.* I supposed he was acting for Mr. Rusling; I did not know that the railroad company had anything to do with it, until afterwards.

20

16 *Quest.* Did Mr. Hubbell meet with you and Mr. Rusling, at the time of the sale to Mr. Rusling?

*Ans.* Not during the negotiation, but he was present at the delivery of the deed.

17 *Quest.* Was the deed delivered on the day it bears date, or afterwards? (Objected to.)

*Ans.* I think it was, but am not certain.

18 *Quest.* Was Mr. Hubbell the counsel to whom you delivered the mortgage to be cancelled?

*Ans.* Mr. Rusling and Mr. Hubbell were both present, and whether I gave it to the one or the other, I am not certain.

19 *Quest.* For what purpose did you give it to them?

*Ans.* I suppose to be cancelled.

20 *Quest.* Was there any receipt upon that mortgage, by either James Harrison or Joseph Harrison, at that time?

*Ans.* I have no recollection of any.

21 *Quest.* Was there a receipt upon it by any other person?

*Ans.* I have no recollection of any.

22 *Quest.* Who made the search for Mr. Rusling in the purchase of that property? (Objected to.)

*Ans.* I do not know.

23 *Quest.* When you gave the mortgage to Mr. Hubbell or Rusling, what did you say to them?

*Ans.* I do not recollect of saying anything.

24 *Quest.* Who asked you for that mortgage?

*Ans.* I do not remember.

25 *Quest.* You have stated in a previous answer, that you told Mr. Harrison that you was going to hold on to this mortgage till you got a title for the eighth part of the property; did you do so?

*Ans.* I don't think I used exactly that language.

26 *Quest.* Did you ever inform James Harrison that that mortgage had been cancelled, during his lifetime?

*Ans.* We talked it over; yes, sir.

27 *Quest.* When did you last see that mortgage?

*Ans.* I am not positive about it, but I think I have seen it since the transaction; I think it is among my papers.

28 *Quest.* What did you get for that property?

*Ans.* The whole purchase money, my recollection is, was \$17,000.

29 *Quest.* Did you get all cash, except the mortgage of \$2500 from Rusling to yourself?

*Ans.* I did not.

30 *Quest.* Did you get what you valued cash?

*Ans.* I did.

31 *Quest.* How much cash did you get?

*Ans.* My recollection is I got \$4500.

32 *Quest.* What did you pay for that property?

*Ans.* I think it was about \$5500—it may have been \$6000—what I bought of James and Joseph—I bought some in addition of Joseph individually.

33 *Quest.* You took a mortgage from Rusling for \$2500, which was not to be paid until the one-eighth interest was perfected—did you not then know that your agreement was out, that you could not compel them to perfect the title? (Objected to.)

*Ans.* Mr. James Harrison told me that he individually would see that the title was perfected. I had told him that

Joseph Harrison was unwilling to bind himself to perfect the title, and that I relied upon his promise to see it done, which he said he would do.

34 *Quest.* Question repeated. (Objected to.)

*Ans.* Yes; when Joseph Harrison came to execute the deed, he insisted upon it that he had the right to liquidate the damages, by paying \$356, with interest, and he refused to deliver the deed without I would sign that agreement; I having sold a portion of the property, told him I would sign it, but that that was not according to the previous understanding, and I called the attention of James Harrison to his brother's refusal, and he said it should all be made right. (All of the answer except the word yes, objected to by counsel of complainant. 10

35 *Quest.* Were you present when the mortgage of \$4500 was presented to the clerk of Essex county for cancellation?

*Ans.* I don't think I was; I think not, sir.

36 *Quest.* You have realized all the consideration money from the sale of that property, have you not?

*Ans.* I have lost nothing; the mortgage of \$2500 by Russell is not paid; I assigned that at the same time to Mr. Harrison. 20

37 *Quest.* Explain the mortgage of \$10,000.

*Ans.* It was a mortgage given by myself and wife to Mrs. Woodruff, and I sold subject to that.

38 *Quest.* Are you responsible and able to pay the money due upon the mortgage of \$4500, principal and interest? (Objected to.)

*Ans.* I expect to be able to pay it, and hope to pay it very soon. 30

39 *Quest.* The last question repeated.

*Ans.* I am not able to pay it to-day, but I expect to be able to pay it very soon. I told Mr. Harrison that it should be paid when he furnished the title.

40 *Quest.* Have you any property now in your possession, or the possession of other people, from which you expect to be able to pay it? (Question objected to.)

*Ans.* I have means which I expect to be able to appropriate in a very short time for that purpose.

41 *Quest.* Will you state what those means are? 40

*Ans.* They consist of an interest in an iron mine in New Jersey.

42 *Quest.* Please state what iron mines.

*Ans.* They are located in Jefferson township, Morris county, New Jersey; they are being developed, and are worked now; I am superintending them now; parties in New York furnish the means; they have already spent \$15,000 upon them; they will readily sell as soon as the beds are uncovered.

10 Being re examined, witness says—

1 *Quest.* Was the price paid by Rusling a large or a small price for the property?

*Ans.* I considered it then a fair price for it.

2 *Quest.* Had any improvements been made on the premises during your ownership?

*Ans.* There had; I had built a wharf, two store-houses, and a stone wall adjoining the street, erected cranes—altogether the expenditures were about \$10,000; all the property sold to Mr. Rusling, and by a previous sale, some four years,  
20 to the New Jersey Railroad Company, amounted to \$22,000.

3 *Quest.* How long did your negotiations with Mr. Rusling occupy?

*Ans.* I guess about a week or ten days.

4 *Quest.* In what respect was the assignment of the \$2500 mortgage, made by Rusling, a payment of the \$4500 mortgage, made to Harrison?

*Ans.* It was not a payment until the title was perfected and the mortgage paid by Rusling or the railroad company.

5 *Quest.* What recollection have you of the time and place  
30 of this mortgage of \$4500 being given back to you after you had delivered it to Mr. Hubbell or Mr. Rusling for cancellation?

*Ans.* I merely have an indistinct recollection of having seen it among my papers; I don't recollect its being handed back to me. (Counsel for defendant gives notice here that he has no control over the witness, or of the mortgage, and therefore declines to be responsible for its production.)

THOS. V. JOHNSON.

Subscribed and sworn before me.

*Joseph F. Rusling*, a witness produced on the part of the defendant, being duly sworn, says—I reside at Lawrenceville, Pennsylvania; before I resided there, I resided at New Brunswick, New Jersey; I resided there until about two years ago; I negotiated for certain property on Division street, near the railroad, in Newark, New Jersey, in 1857, with Thomas V. Johnson; my first object was simply for coal purposes, afterwards I was approached by Mr. Jackson, then vice president of the New Jersey Railroad, to get the right of way over the entire property, for railroad purposes. Finding that to be the case, I waived my right to buy the property, on condition that I was to rent what portion I needed for coal purposes, if any, for a reasonable sum of money. I bought the entire property on Division street, the wharf property, for \$17,000, subject to a mortgage made to a Mrs. Woodruff, of \$10,000, and to an escrow mortgage of \$2500, without interest, to complete the title to one-eighth interest, signed by myself; the balance of \$4500, cash. As near as I recollect, the one-eighth interest was owned by some party in a foreign country, or under age, and could not be reached for about two years, he gave me to understand; I gave this \$2500 mortgage to Mr. Johnson when the title deed was delivered to me; Mr. Johnson, Mr. Grover, Mr. Hubbell, and myself were present; it was at Mr. Johnson's house, on the hill, in Newark. The \$4500 mortgage was produced at that time by Mr. Johnson or Mr. Grover, I am not certain which, and was handed to me with the seals torn off; the seals were not torn off in my presence, that I recollect of; in receiving it, I asked the question of both parties whether the mortgage was paid and satisfied, and the answer was, it was, by both parties, I mean Mr. Grover and Mr. Johnson.

1 *Quest.* Had you any suspicion that this mortgage had not been paid to the Harrisons? [Objected to.]

*Ans.* None whatever.

2 *Quest.* Were any inquiries made by Mr. Hubbell of Johnson or Grover whether this was paid?

*Ans.* My impression is there was; he acted as my counsel in the matter; I cannot give his language.

3 *Quest.* What was Mr. Johnson's reputation at that time, as to wealth and general character? (Objected to.)

*Ans.* I knew nothing against his character, and I knew so little about him at that time, that I could not say as to his wealth, but from his house and grounds, and being connected with the steamboat company, I took him to be a man of considerable means.

4 *Quest.* When did you first learn that the Harrisons had not received the money on this \$4500 mortgage?

*Ans.* Some two or three years ago, it may have been longer; I was spoken to by Mr. John P. Jackson, jun., about 10 it, which was the first I knew of it.

The railroad company, I believe, took immediate possession of the premises. There was nothing which led me to suppose that this mortgage was not paid, prior to the sale by me to the railroad company; I bought it in good faith; the railroad company paid the same price that I paid for it; I accompanied Mr. Hubbell to the court house to have this mortgage cancelled; I did not go into the clerk's office with him; I do not know where that mortgage is now.

Being cross-examined, the witness says—

20 1 *Quest.* Had you any evidence of the payment of the \$4500 mortgage, other than what you received from Mr. Johnson and Mr. Grover, at the time you have stated?

*Ans.* I had not.

2 *Quest.* Was Mr. Hubbell counsel for you and the New Jersey Railroad Company in that transaction? (Objected to.)

*Ans.* He was not my counsel in the purchase of the property. In the closing up of the transaction, I went to Mr. Hubbell, to get him to make the necessary searches for the property, and having done that, I handed him the papers to 30 be put on record.

3 *Quest.* At the time that you had arranged with the New Jersey Railroad Company, to purchase the property for them, did they not ask you, or request that Mr. Hubbell should search the title, and act as counsel for them in the purchase of the property?

*Ans.* Not at that time. I initiated the purchase, and conducted it myself until within a day or two of its completion, and then I called on Mr. Hubbell, myself, and employed

him; I had Mr. Adrain as my attorney in the previous negotiations.

4 *Quest.* Was you requested by the New Jersey Railroad Company to employ Mr. Hubbell, in attending to their interest as counsel in regard to the title of the property?

*Ans.* If my memory is correct, Mr. Jackson said to me that Mr. Hubbell could aid me in making the necessary searches, if needed; he knew that I had Mr. Adrain.

5 *Quest.* Did you call on Mr. Hubbell to examine the title to that property? 10

*Ans.* I called on Mr. Hubbell to make the necessary searches, and to make a deed from me to the New Jersey Railroad.

6 *Quest.* Did you call upon him to do it for you, or the New Jersey Railroad?

*Ans.* I called upon him to do it for me, so far as that transaction was concerned.

7 *Quest.* Did you pay him, or the New Jersey Railroad?

*Ans.* I did not pay him anything.

8 *Quest.* How long before the delivery of the deed from 20 Johnson to you, had you arranged with the New Jersey Railroad to take that property?

*Ans.* The arrangement between Mr. Jackson and myself, was made after I had waived my right, as above stated, which was about two weeks previous to the delivery of the deed.

9 *Quest.* When you took your deed, did you go to the clerk's office with Mr. Hubbell, to have it recorded?

*Ans.* I took the papers; Mr. Hubbell went with me in my carriage to the clerk's office, and I handed him the deed and mortgage, the one to have recorded, and the other to cancel 30 of record.

10 *Quest.* At the time you went with Mr. Hubbell to the clerk's office, did you there get your deed entered for record, and the cancelation of the mortgage of \$4500, at the same time?

*Ans.* I gave them to Mr. Hubbell to do, and he went in; I did not get out of the carriage myself; that was on the same day that the deed was delivered to me.

The witness having heard the testimony given by him read, desires to add to his answer to the 7th question, on his cross- 40

examination, the words, "I expected to pay Mr. Hubbell, but when the railroad took the property of me, they took it off my hands, and I suppose paid him."

J. F. RUSLING.

Subscribed and sworn before me.

GEORGE F. TUTTLE, M. C.

The complainant here offered in evidence the bond proven by the witness, Waugh, and which I have marked *Exhibit B*, for the complainant. The defendants also offered in evidence two deeds, which I have marked *Exhibits No. 1 and No. 2*, for the defendants.

The examination was here adjourned to Friday, September 14th, 1866, at 2 P. M., at my office.

Friday, September 14th, 1866, 2 P. M., the examination was resumed. Present, Messrs. Peter Bentley and Isaac W. Scudder, esquires, for complainant, and John P. Jackson, esq., solicitor of the defendants.

*Algernon S. Hubbell*, was offered as a witness on the part of the defendant, the New Jersey Railroad Company, and was objected to by counsel of complainants, (because of his being a party to the suit), without the order of the Chancellor for that purpose, and they consented that the examination of the witness might proceed, upon condition that such order should be obtained, *nunc pro tunc*, before the hearing of the cause, without prejudice to their right to oppose the granting of said order, whereupon the witness being duly sworn, saith—

1 *Quest.* Do you recollect being engaged, some time in the year 1857, in certain transactions in which Thomas V. Johnson sold to Joseph F. Rusling, and Rusling to the New Jersey Railroad and Transportation Company, certain property in Newark, near Division and Ogden streets, and the Passaic river, and if so, please state what part you took in said transactions?

30 *Ans.* I do recollect being engaged in relation to the pur-

chase of the property referred to; I was applied to by Mr. Rusling to examine the title and make a search of land he was about to purchase of Thomas V. Johnson; a search was handed me that had been made, and I was requested to continue that search down to the time of the transfer. I made that search, I think, the last of February, 1857, according to my recollection, and after it was completed and I had examined the previous search submitted to me, Mr. Rusling called on me, about the 5th or 7th of March—my impression is it was on the 6th day of March—in that year, to go to Mr. Johnson's house, on account of Mr. Johnson's illness; he was not able to come out himself; he came with a wagon, and we drove up to the house; he lived in the house called the Wallace Place, on the hill; on arriving there, we found Lewis C. Grover, esq., there, with Mr. Johnson. The deed was already executed by Johnson to Mr. Rusling, and was handed to me by Mr. Grover to examine; after examining it, I told Mr. Rusling to proceed to complete his purchase; Mr. Rusling gave to Mr. Johnson a check for the money to be paid, and a mortgage of \$2500, for one-eighth of the property, for which no title could be made at the time; the deed was made subject to a \$10,000 mortgage, which Rusling assumed to pay by the deed given to him; Mr. Grover acted there for Mr. Johnson, he being present all the time, and sitting by a table in the room where the transaction was taking place, and was unwell at the time and could not speak loud, but only whispered; Mr. Grover was at that time a practicing lawyer of this city, and the known attorney of Mr. Johnson; I asked Mr. Grover—Mr. Johnson standing or sitting by—about the mortgage which appeared upon the search, and was, I think, for \$4500, given by Mr. Johnson and wife to Joseph Harrison; he handed out a mortgage to me, according to my recollection, with the seals torn off; I am not quite sure whether they were then off, or were torn off at the time, but they were torn off before it was delivered to me; I did not tear them off, nor did Mr. Rusling, in my presence; according to my recollection, there was no receipt upon that mortgage, by Mr. Harrison or any one else; looking at the mortgage, and holding it in my hand, I turned to Mr. Grover, in the presence of Mr. Johnson, who still sat by,

and asked him if this was right, and if we could cancel this mortgage of record; he said it was right, and we might cancel it of record; I then turned to Mr. Johnson and made the enquiry of him, and he nodded his head, not speaking; he could not speak.

2 *Quest.* What kind of a nod?

*Ans.* A nod, as I understood, agreeing with Mr. Grover.

3 *Quest.* What was Johnson's physical condition at that time?

10 *Ans.* He appeared to be very feeble, looked like a man in the last stages of consumption; and could only speak in a whisper, and said very few words even in that manner; having completed business, we very soon left.

(Counsel for complainant objects to the conversation between witness, Johnson, and Grover, Mr. Harrison, the mortgagee, not being present. The objection was made at the time the testimony was being given.)

4 *Quest.* Have you anything further to say in response to the first question?

20 *Ans.* Mr. Rusling and I soon left, and he brought me down to the court house, and I went into the clerk's office and delivered that mortgage to the clerk, or his deputy, I don't recollect which, and it was cancelled by him in my presence, and returned to me, and I brought it with me to my office, and I marked upon the search, in my handwriting, in figures, and I think at the same time, cancelled March 6th, 1857, and that concluded that transaction. The search spoken of was offered in evidence by defendant, and I have marked it *Exhibit No. 3* for defendant.

30 5 *Quest.* What is the last you saw of that mortgage?

*Ans.* The last, according to my recollection, I handed it to the late Mr. John P. Jackson, with the other papers relating to that transaction.

6 *Quest.* State further what you know in response to the first question?

*Ans.* Soon after this, I was requested by Mr. Rusling—how soon or at what time I cannot recollect exactly—to make a deed of this same property, from him to the New Jersey Railroad and Transportation Company; (the deed, marked 40 *Exhibit No. 2* for defendant, being shown witness, he says)—

this is the deed, drawn under my supervision and partly by me, dated March 6th, and acknowledged before me on the 7th; this, I believe, concluded my services in relation to this matter.

7 *Quest.* When did you first learn that any person claimed that the bond secured by the mortgage alluded to had not been paid, or that anything was claimed to have been done improperly in the matter?

*Ans.* I think not until the commencement of this suit, according to my recollection; Mr. Bentley may have spoken 10 to me before that time about it, but not long before.

8 *Quest.* What was Johnson's pecuniary reputation at the time alluded to, say March 6th, 1857? (Objected to as irrelevant to the issue.)

*Ans.* His reputation here in Newark was that he had a large amount of property in his hands; he was a large operator in real and personal property; he then, or lately, had been engaged in the Johnson's Transportation Company; that was a well known transportation company, doing business between here and New York. 20

9 *Quest.* Did anything occur at that time to lead you to suspect that the mortgage was improperly cancelled? (Objected to as an expression of opinion and not evidence.)

*Ans.* It did not, after I had made the inquiry and received the reply I have stated; I asked the question, in order to be satisfied about the fairness of the transaction, not seeing any receipt upon the mortgage; if I had, I should not have asked the question.

10 *Quest.* Did the clerk, or deputy, at the time of the cancellation of record, ask you for the bond, or a receipt for the 30 money secured by said mortgage?

*Ans.* He did not.

11 *Quest.* Was the money passed over by Rusling to Johnson, at the time of delivery of the deed to Rusling?

*Ans.* It was passed; I think a check was given for it, or a part of it.

12 *Quest.* Have you stated fully all you remember in regard to your connection with the transaction alluded to?

*Ans.* I have.

Being cross-examined, witness says—

1 *Quest.* When the deed was made and delivered by Johnson to Rusling, were you not aware that the New Jersey Railroad and Transportation Company intended to take the title to the property therein described?

*Ans.* I did understand that they were to have the title to the property.

2 *Quest.* Did you not acquire that information from Mr. John P. Jackson, an officer of that company?

10 *Ans.* I did.

3 *Quest.* How long before the deed was delivered, as near as you can tell, did you get that information?

*Ans.* Some few days before that, how many I cannot say; several days before that.

4. *Quest.* Did not Mr. Jackson, officer of said company, request you to look after the title to the property before the deed from Johnson to Rusling was delivered?

20 *Ans.* Mr. Rusling was introduced to me by Mr. Jackson, who first requested me to look after the title, and before the delivery of the deed, during the progress of the examination, Mr. Jackson informed me that the railroad company were to take the property, and did request me to look after the title for them.

5 *Quest.* You did so, and reported to Mr. Jackson?

30 *Ans.* Yes; I reported to Mr. Rusling in the first place, and I think to Mr. Jackson after the transaction; I think he was at Trenton at the time of the transaction; I think I reported to Mr. Jackson during the progress of the examination, but when it was concluded I think he was not here, but at Trenton.

6 *Quest.* You took the deed from Rusling to the New Jersey Railroad and Transportation Company, while Mr. Jackson, officer of that company, was absent?

*Ans.* I don't recollect whether Mr. Jackson was absent at that time or not.

7 *Quest.* Can you state anything in relation to the purchase money paid by Rusling to Johnson, as to whom it came from, Mr. Jackson, or any other person, on behalf of the railroad company?

40 *Ans.* I can not; I never knew where the money came from, except that Rusling produced it there and paid it.

8 *Quest.* When the deed was made by Rusling to the railroad company, did Rusling then receive any money?

*Ans.* I do not know; the deed was not delivered in my presence, or in my office; it was a transaction outside, with which I had nothing to do.

9 *Quest.* At the time of the deed from Johnson to Rusling, were you not in the habit of doing business for the New Jersey Railroad Company?

*Ans.* I was not in the habit of doing business for the New Jersey Railroad Company; I occasionally did some business 10 for them, but very little, and rarely; their legal business here was done principally by Mr. Jackson, himself, and other lawyers in Newark.

10 *Quest.* Were you acquainted with Mr. Rusling, or had you done any business for him before he was introduced to you by Mr. Jackson?

*Ans.* I was not acquainted with Mr. Rusling until he was introduced by Mr. Jackson, and never did any business for him, before or since.

11 *Quest.* At the time of the deed from Johnson to Rus- 20 ling, what was the pecuniary responsibility of Johnson?

*Ans.* I do not know; as I said before, he had the reputation of having a large amount of property, but whether it belonged to him or some one else, I don't know.

12 *Quest.* Did not the mortgage of \$4500, in question, have the seals on when you had your interview at Johnson's house, and Johnson, Grover, Rusling, and yourself, were present, as near as you can recollect?

*Ans.* I think I stated before; I cannot state whether they were actually off, or torn off after we arrived there, but I 30 know they were off when the mortgage was handed to me.

Being re-examined—

1 *Quest.* Do you know of Mr. Jackson's doing other business for the railroad company, as counsel, at about that time?

*Ans.* I know of his doing business for the railroad company, as counsel, but whether at that time or not, I don't know; I have known of his trying causes for them; I recol-

lect his trying the cause of The Pennsylvania Railroad Company vs. The New Jersey Railroad Company, about a car.

A. S. HUBBELL.

Subscribed and sworn before me.

GEORGE F. TUTTLE, M. C.

September 24, 1866. The examination before me in this cause is closed, by direction of the parties.

GEORGE F. TUTTLE, M. C.

[Filed October 22, 1866.]

- 10 *Testimony taken in the above cause, before me, J. Dixon, jun., master in chancery of New Jersey, in Jersey City, N. J., on September 24th, 1866, in presence of I. W. Scudder, esq., for complainant, and John P. Jackson, jun., esq., for defendants.*

*Henry J. Southmayd, being produced on behalf of the defendants, and duly sworn, on his oath says—I am treasurer of the New Jersey Railroad and Transportation Company, and as such have the custody of vouchers of the company, deeds, mortgages, and evidences of money paid out; I recollect the occasion of money being paid out for the purchase of*  
 20 *land in Newark, New Jersey, formerly owned by Thomas V. Johnson and J. F. Rusling, being land in Division street, Newark.*

*1<sup>st</sup> Quest.* Have you ever seen a mortgage alleged to have been given upon said property, by Thomas V. Johnson and wife to Joseph Harrison, for the sum of \$4500?

*Ans.* No, sir.

*2<sup>d</sup> Quest.* Have you ever heard of the existence of that mortgage?

*Ans.* Never, till about a year ago.

- 30 *3<sup>d</sup> Quest.* How recently have you been asked to search for it?

*Ans.* About one year ago.

*4<sup>th</sup> Quest.* Did you search for it then?

*Ans.* I did.

5 *Quest.* Where did you search for it?

*Ans.* In the safe in our office, No. 2 Nassau street, New York city; I mean the safe and office of the New Jersey Railroad and Transportation Company.

6 *Quest.* Is there any other place where papers of that description are kept by the company, to your knowledge?

*Ans.* No, sir.

H. J. SOUTHMAYD.

Subscribed and sworn to, this September 24th, 1866, at 10 Jersey City, N. J., before me.

J. DIXON, Jun., *M. C.*

*John P. Jackson, jun.*, being produced on behalf of the defendants, and duly sworn, on his oath says—I am the solicitor of the defendants, the New Jersey Railroad and Transportation Company; I am also one of the administrators of the estate of John P. Jackson, deceased, late of Newark, N. J., and am also one of the trustees of the heirs of said estate; as such I have had the custody of the deeds, bonds, and mortgages, and generally of all the papers which were in the 20 possession of the said deceased; I have looked through them all, and have been unable to find the mortgage above alluded to, said to have been given by Thomas V. Johnson and wife to Joseph Harrison, nor any memorandum relating thereto.

JOHN P. JACKSON, Jun.

Subscribed and sworn to, this September 24th, 1866, at Jersey City, N. J., before me.

J. DIXON, Jun., *M. C.*

[Filed June 1, 1867.]

*Examination of witnesses, taken at the Court House, in Newark, in the presence of I. W. Scudder and of John P. Jackson, jun., on notice admitted, &c.*

Peter Bentley, a witness produced and sworn on behalf of complainant, being shown *Exhibit (6) six*, purporting to be a day book of the Essex county clerk's office, under head of December (6) six, eighteen hundred and fifty-three (1853),

“MORTGAGORS. MORTGAGEES. DELIVERED TO.”

- 10 “Thos. V. Johnson and wife. Jos. Harrison, 40. T. V. Johnson, April 2, '56.”  
is asked in whose handwriting is T. V. Johnson in the original book, answering says—It is in the handwriting of Thomas V. Johnson. [Counsel for defendant objects to the admission of the book in evidence as not sufficiently proven to be the day book of the county clerk.]

PETER BENTLEY.

Sworn and subscribed before me, at Newark, this 18th day of July, A. D. 1865.

LUTHER S. ELMER, M. C.

- 20 *John R. Weeks*, a witness produced and sworn, upon his oath, on behalf of complainant, says—I was county clerk of the county of Essex, in the year eighteen hundred and fifty-three; from November, forty-nine, to November, fifty-four.

Being shown *Exhibit six*, says—It was one of the record books in the clerk's office in my time; it was used as a book of original entry for all deeds and mortgages brought for record, and for the record of the delivery of those papers and receipts by parties taking them from the office.

Cross-examined, says—

- 30 I was not officially employed in the office at the time Mr. Terhune was clerk; Mr. Terhune was clerk from November, eighteen hundred and fifty-four, to November, eighteen hundred and fifty-nine; I have not been officially employed in the clerk's office since the end of my term; my business

brings me here a great many times; I have an impression Mr. Johnson brought the mortgage alluded to, to the clerk's office; I was clerk of the county of Essex on the sixth day of December, eighteen hundred and fifty-three, when this mortgage from Thomas V. Johnson and wife to Joseph Harrison, was brought here for record.

*Quest.* Did Mr. Johnson bring other papers relative to transactions between yourself and the Harrisons to your office—and if so, what?

*Ans.* My impression is he did, but I can't tell you with- 10  
out searching the office what the papers were. On the sixth of December, eighteen hundred and fifty-three, four papers are entered for record among the deeds, which I believe were brought by Mr. Johnson. They were, a deed from John Kinnier to James, Joseph, and George Harrison; deed from Margaret Harrison to James Harrison; a deed from Joseph, James, and George Harrison to Thomas V. Johnson; and a deed from Joseph Harrison to Thomas V. Johnson. These papers were paid for on their entering in the office; I have aided my recollection by my having delivered to 20  
Thomas V. Johnson a search upon some of the same property which those deeds represent, on the sixth day of December, eighteen hundred and fifty-three; this search refers to the property described in that mortgage, and those four deeds; I mean the mortgage entered December sixth, eighteen hundred and fifty-three. My recollection of the location of that property; it is on the Passic river, near the Morris and Essex railroad bridge. [Counsel for complainant objects to this testimony as being outside of the cross-examination.] 30

*Quest.* Were you aware that this property was about to be sold by Johnson to one of the defendants in this case, viz. the New Jersey Railroad and Transportation company?

*Ans.* Mr. Johnson told me it was about to be sold to the railroad company. [This answer objected to as hearsay.]

Re-examined in chief.

*Quest.* In whose handwriting are the signature of Thomas V. Johnson and the date, April 2, '56, in the day book opposite the entry of the mortgage?

*Ans.* I think it is all in Mr. Johnson's handwriting; I am positive the signature is, and believe the April 2, '56, to be his.

J. R. WEEKS.

Sworn and subscribed before me, at Newark, this 18th day of July, 1865.

LUTHER S. ELMER, M. C.

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[Filed June 1, 1867.]

*Examinations, &c., continued on part of complainant.*

- 10 *Henry Harrison*, sworn.—Resides in 115 Bedford street, New York—You were personally acquainted with Joseph Harrison, now deceased?

Yes; he was a dealer in the hatting business, and I bought him out; he died in January, 1855; died in the Northern hotel; died very suddenly; he owned considerable landed property; I was not his agent in his land business; he attended to it himself; James Jacks attended some business for him—collecting rents, &c., for him; he might have had other agents about his land business and I not know it; I 20 couldn't tell what a man hadn't. James Jacks collected rents for tenement houses in Varrick street; I also bought some lots from him in 1835 or 1836; I believe he owned considerable in Newark; he bought and sold frequently; he was something of a speculator in land.

HENRY HARRISON.

Sworn to and subscribed, before me, at Jersey City, June 16th, 1866.

W. B. WILLIAMS, M. C.

[Filed June 1, 1867.]

*Examinations, &c., in above entitled cause, taken on part of complainant, before Washington B. Williams, master in chancery and examiner, on the 14th day of January, A. D. 1865, in presence of I. W. Scudder, for complainant, and of John P. Jackson, jun., for the New Jersey Railroad Company, on notice duly admitted before the examiner.*

*Peter Bentley, being duly sworn, on oath saith—I am the solicitor of complainant in this cause; I knew well James Harrison and Joseph Harrison; I knew but little of George 10 Harrison; I knew Thomas V. Johnson; did not know Joseph F. Rusling; Joseph Harrison, James Harrison, and George Harrison are dead—they were three brothers; Joseph Harrison called on me in his lifetime, in relation to this mortgage of \$4500; after his death, his brother James, who was one of the executors in his will, called upon me and wanted me to write to Mr. Johnson in relation to the settlement of this mortgage; I wrote to Mr. Johnson to come and settle it before I received any of the papers; James Harrison 20 came over and brought me, as he said, the papers of Johnson, and wanted me to foreclose the mortgage; I laid them by, without looking into them at the moment, in my safe; when I took them up to draw my bill, I found no mortgage; I informed Mr. James Harrison, the executor, of the fact, and he said—[Objected to.]*

*1 Quest. What was said, and what took place between you and James? [Objected to.]*

*Ans. He said he didn't know of any other papers, and thought they were all there.*

*2 Quest. What did you do thereupon?*

30

*Ans. He said he would go home and look for the mortgage; he afterwards came and said he had looked through his brother's papers and could not find the mortgage, and did not know what had become of it; it was then suggested by one of us that the mortgage might be at the clerk's office, at Newark, not having been taken away since it was left to be recorded; I went to the clerk's office and made inquiry; I inquired of Mr. Terhune, the clerk, if such a mortgage*

had been left there, and was in his possession; he then turned to the book of records, and found that the mortgage had been cancelled of record; the record stated that Algernon S. Hubbell had brought it to the office and had it cancelled; I then further inquired who took that mortgage away from the office; he then turned to the book of original entry of deeds and mortgages, received in and delivered from the clerk's office, and there we found that it had been delivered to and received by Thomas V. Johnson.

10 3 *Quest.* Did you see this receipt in the book referred to? [Objected to.]

*Ans.* Yes, sir.

4 *Quest.* In whose handwriting was the signature of Johnson?

*Ans.* In Thomas V. Johnson's own handwriting; I know his handwriting; I have seen him write, and had letters from him. [Complainant's counsel produces a paper purporting to be the original bond secured by the mortgage in question.]

20 5 *Quest.* Is that in the handwriting of Thomas V. Johnson—I mean the signature of the obligor?

*Ans.* I think it is; I have no doubt about it.

6 *Quest.* How did you come in possession of that bond?

*Ans.* I received it from James Harrison, executor of Joseph Harrison; he gave it to me.

7 *Quest.* Tell the date of the receipt in that book of original entries?

*Ans.* April 2d, 1856.

30 8 *Quest.* After finding the mortgage was cancelled, what then did you do?

*Ans.* I then called upon Mr. Hubbell; I asked him by what authority he cancelled that mortgage; he said that he done it at request of Mr. Johnson, who brought him the mortgage and asked him to have it cancelled; I asked him if he had the mortgage in his possession; he said he thought he had not—he would look; he did look, and after looking, he said he thought he had given it to Mr. John P. Jackson; I asked him if the mortgage was receipted by Mr. Joseph Harrison or his executor, and he said he thought not, but  
40 that he cancelled it on the request of Mr. Johnson, who brought the mortgage to him. [Answer objected to.]

9 *Quest.* Did you ever get possession of the original mortgage?

*Ans.* I never did; he said he was counsel for the New Jersey railroad, and when he got through, his impression was he handed that paper over, with other papers, to Mr. Jackson.

10 *Quest.* Did you ever apply to Mr. John P. Jackson for it?

*Ans.* When he told me he was counsel for the New Jersey railroad company, I asked him if he would get it of Mr. Jackson; subsequently, Mr. Hubbell told me he had asked Mr. Jackson, or the company, for it, and was told that it could not be found, or words to that effect; I never got it.

Complainant's counsel here gives notice to Mr. John P. Jackson, jun., solicitor for the New Jersey railroad company, to produce the above mentioned mortgage.

11 *Quest.* After this, did you have any interview or interviews with Thomas V. Johnson, about the mortgage; and if so, what took place? [Objected to.]

*Ans.* I think he admitted to me, that he took the mortgage to Mr. Hubbell, but made no other admission. At the same time he admitted the indebtedness for the sum secured by the mortgage, and has frequently admitted it, and that it was unpaid both before the time of the cancellation and afterwards, both verbally, and by letters, and as late as about eight months ago, and as often promised that it should be paid. He has never pretended that it has been paid by anybody. At the last occasion referred to, about eight months ago, he promised me to pay it in three or four weeks, and wanted me to forbear going on with the foreclosure, thanking me for my indulgence.

Complainants offer certified copy of the registration and cancellation of said mortgage.

Cross-examined.

1 *Quest.* Do you know who took the mortgage to the clerk's office in Essex for registration?

*Ans.* I do not; I have an impression that it was Mr. Waugh, but from whom I got that impression, I cannot say.

2 *Quest.* Was Mr. Waugh ever counsel for the Harrisons?

*Ans.* I do not know.

3 *Quest.* How long have you been counsel for the Harrisons?

*Ans.* For about twenty years, off and on; I believe they had some one to do their business at Newark; I cannot say that I have ever heard that Mr. Waugh was their counsel at  
10 Newark; I think that when they had business there they would sometimes employ other counsel than us; I have done business for them concerning property in Newark; the deed in this very case, and also the agreement of Harrison and Johnson, were drawn in my office; I do not know of any particular individual as being their counsel at any time in Newark. [Complainant's counsel here hands defendant's counsel two agreements relative to property in Newark, executed by Johnson and Joseph Harrison, and witnessed by Mr. Bentley, marked *Exhibits* 3 and 4.] Mr. W. B. Williams,  
20 who witnessed the deed from the Harrisons to Johnson, was with me in my office at that time, and I took his proof of the deed. [Deed offered and marked *Exhibit* 5.] I am the subscribing witness to the two agreements, marked *Exhibits* 3 and 4, and saw them executed.

4 *Quest.* Did Mr. Johnson, at any of these interviews with you, of which you have spoken, say that he had authority to have the mortgage cancelled?

*Ans.* He never did, at any time.

5 *Quest.* Did he ever say that the Harrisons, or either of  
30 them, had authorized him, on selling the land, to settle the mortgage?

*Ans.* Never; he always declined or evaded talking about it, except admitting that he took it to Mr. Hubbell.

Counsel agree that the witness may sign this examination, but that it is not deemed to be closed.

PETER BENTLEY.

Subscribed and sworn to, before me, at Jersey City, January 14, 1865.

W. B. WILLIAMS, *M. C.*

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**Order of Reference for Hearing.**

[Filed June 1, 1867.]

The Chancellor having been concerned as counsel for one of the parties to this suit, it is, on this eighteenth day of May, A. D. eighteen hundred and sixty-seven, ordered by the Chancellor, that James Wilson, esquire, one of the masters of this court, be called to the assistance of the Chancellor, for the purpose of hearing the said cause, and advising the Chancellor what order or decree should be made therein.

A. O. ZABRISKIE, C. 10

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**Opinion.**

By an agreement in writing, dated 5th March, 1850, Thomas V. Johnson, one of the defendants, agreed to sell to Joseph Harrison seven-eighths of certain lots of land in Newark, for \$2848, the deed to be delivered on or before the first of May, in the same year; the sum of \$37.50 to be paid on the delivery of the deed, and the residue to be secured by a mortgage upon those lots, and also upon certain other land, which, by an agreement of the same date, said Harrison agreed to sell to said Johnson. By the agreement first 20 mentioned, Harrison also agreed that he would endeavor to get the title to the remaining one-eighth of said lots, as soon as he could lawfully do so.

The deed was not delivered within the time so agreed on. But afterwards, by a deed dated 21st November, 1853, said Joseph Harrison, together with James and George Harrison, conveyed to Johnson seven-eighths of said lots, and Johnson thereupon executed to Joseph Harrison a bond of the same date, for \$4500, and in order to secure it, executed a mortgage to said Joseph upon a part of the property so con- 30  
veyed. This mortgage is of the same date as the deed, and was, on the 6th December, 1853, acknowledged, and left in the clerk's office to be recorded. On the same day, another

agreement in writing was made between said Joseph Harrison and said Johnson, whereby, after referring to the agreement first above mentioned, and after reciting that said Harrison had not yet perfected the title to said one-eighth of the property, either in himself or Johnson, and that said deed had been executed for seven-eighths thereof to Johnson, and that he had paid and secured to be paid the consideration money for *the whole* of the property, and that Joseph Harrison desired Johnson to pay the whole of said purchase money to  
10 him, for his own use, and that of said James and George, it was agreed by said Joseph that he would save harmless and indemnify Johnson from all loss and damage, cost, and expenses, that he might be put to by reason of said Joseph not procuring a good title to Johnson, for said one-eighth, and from any loss, damage, injury, expense or loss, which Johnson might be put to, by reason of any improvements he might put thereon; and that he (Joseph) would, at his own cost and expense, within two years from that date, procure for said Johnson a good title to the whole of the lots men-  
20 tioned in said deed. At the foot of this last agreement is another agreement, signed by Johnson, to the effect, that if Harrison did not make a good title within two years, he should refund to Johnson \$356, with interest from 1st of February, 1850, as liquidated damages.

Johnson took possession of said lots, and made extensive improvements on them, at an expense of about \$10,000. He afterwards mortgaged them to Mrs. Woodruff, for \$10,000, and her mortgage was duly recorded. After this he agreed to sell the property to Joseph F. Rusling, for \$17,000. Be-  
30 fore Rusling obtained his deed for the property, he agreed to sell it to the New Jersey Railroad and Transportation Company, and A. S. Hubbell, esq., assisted in examining the title papers, as counsel for Mr. Rusling and the company. Mr. Hubbell searched the record of mortgages in the county clerk's office, in order to ascertain what incumbrances there were upon the property. He there found the record of the mortgage above mentioned, given by Johnson to Harrison. After this, and early in March, 1857, (Mr. Hubbell says it was from the 5th to the 7th, and his impression is that it  
40 was on the 6th,) the parties met at the house of Mr. John-

son, who was at that time an invalid and unable to go out, and could speak but little, and only in a whisper. There were then present, Mr. Johnson, and Mr. Grover, his counsel; Mr. Rusling, and Mr. Hubbell. The mortgage which Johnson had given to Harrison, and which, in his search, Mr. Hubbell had found upon record, was then spoken of. Johnson then produced it with the seals torn off, and handed it to Rusling, and both Johnson and Grover stated that it had been paid and satisfied. Mr. Hubbell also examined it, and was also told by Johnson and Grover that it was all right, and he might take it to the clerk's office and have it cancelled and discharged of record. Mr. Hubbell thereupon advised Mr. Rusling that he might safely take the deed, and pay for the property according to the agreement of purchase. Rusling accordingly accepted the deed from Johnson, and paid him \$4400 of the purchase money, and executed to him a mortgage for \$2500, payable when the title to the one-eighth should be perfected. Rusling bought subject to the mortgage for \$10,000, given to Mrs. Woodruff. The deed so given by Johnson to Rusling contains a covenant of warranty of title, and other covenants. Mr. Rusling and Mr. Hubbell then went, on the same day, to the clerk's office, and produced to him the mortgage, with the seals torn off, and at their request the clerk cancelled it of record. At the same time Mr. Rusling left the deed with the clerk to be recorded. Mr. Rusling conveyed the property to the company, for \$17,000, by deed dated 6th March, 1857, which was recorded the next day. This deed is a deed of quit claim, without covenant of warranty of title. The company at once took possession of the property, and have held it ever since, and have made valuable improvements upon it. Mr. Rusling, and also Mr. Hubbell, both testify that they had no suspicion at the time but that the mortgage from Johnson to Harrison had been fully paid and satisfied.

On 25th April, 1858, Johnson executed an assignment of the \$2500 mortgage, so given to him by Rusling, to the complainant, and caused the assignment to be recorded, but the complainant, in his bill, charges that this was done without his knowledge or consent, and says that he is willing to cancel that mortgage of record upon receiving payment of the \$4500 mortgage, given by Johnson to Joseph Harrison.

The bill in this cause was filed 3d September, 1861, by James Harrison, as executor of said Joseph Harrison, who died in February, 1855; and said James having died after this suit was commenced, it was revived in the name of Mary Harrison, as administrator. The bill seeks to have the mortgage given by Johnson to Harrison, and which was cancelled as above stated, foreclosed, and the mortgaged premises, which are now owned by the railroad company, sold to satisfy the debt, deducting, however, the said sum of \$356, 10 with interest. It charges that the bond which the mortgage was given to secure, has never been paid, and that the whole amount of principal and interest is due; that the mortgage, which had been left in the clerk's office to be recorded, remained there until 2d April, 1856, when the clerk, without authority or right, delivered it to Johnson, who kept it in his possession until 6th March following, when he gave it up to Mr. Hubbell to be cancelled of record; that such cancellation of record was illegal and of no effect as against the complainant, and that Rusling and the company have no 20 right to claim any exemption from the force and effect of the mortgage. The complainant tenders himself ready and willing to execute to the railroad company a good title to the said one-eighth of the property, which he says he is now able to do.

The company, by their answer, admit the execution of the mortgage so executed by Johnson to Harrison. They say that they purchased the property in good faith, and for a full consideration, which they have paid. That they believed at the time that the mortgage had been fully paid and satisfied; 30 that they caused the record of mortgages to be examined, and there found this mortgage uncanceled of record; but that at the time of the delivery of the deed by Johnson to Rusling (of whom by previous arrangement they had agreed to buy the property when he got it of Johnson,) he, Johnson, produced the mortgage with the seals torn off, stating at the same time that it was paid and satisfied, and that he then gave it up to be cancelled of record; that Rusling believed Johnson, and accepted the deed from him, and paid the consideration as agreed on, in the full belief that the 40 mortgage was satisfied, and that Mr. Hubbell (whom the

company say was acting for them as well as for Mr. Rusling) acted under the same belief. That in making their purchase, the company used all reasonable care and diligence to ascertain the condition of the property as to the title and incumbrances, and that having done so, and paid full value for it, the mortgage ought not now be declared to be a lien upon the property.

The defendant, Johnson, was examined as a witness on the part of the company, under an order of the court for that purpose, subject, however, to all just exceptions. And upon the hearing, his testimony was objected to, upon the ground that he was an incompetent witness; that being a defendant, he could not, it was insisted, be a witness, because the complainant is suing in a representative capacity; and that under the act 18th March 1859, (*Nix. Dig.* 888), a party in a suit cannot be sworn as a witness when the opposite party is prohibited by any legal disability from being sworn as a witness, or either party sues or is sued, in a representative capacity. Johnson had parted with all his interest in the mortgaged premises, by the conveyance to Rusling, long before this suit was brought. He has no interest in the event of this suit. He is not a necessary party. *Vreeland v. Loubot*, 1 *Green's C. R.* 104. 10 20

If he had not been made a defendant, there would be no objection to his competency. The complainant cannot, by making him a defendant, when he is not a necessary party, deprive the other defendants of the benefit of his testimony. Before the statute just referred to was enacted, it was according to the practice of this court, to permit a defendant to examine his co-defendant, upon an allegation that he was not interested in the event of the suit, or in the matter upon which he was to be examined; saving however, all just exceptions. *Murray v. Shadwell*, 1 *Ves. & Beame* 401; *Kirk v. Hodson*, 2 *John's C. R.* 550; *Neville v. Demeritt*, 1 *Green C. R.* 333. 30

In such case, an objection to his testimony might be raised at the hearing, and if it then appeared that he was interested, it was rejected, otherwise it was admitted. If this case had occurred before the statute, and Johnson had been examined under such order, his testimony would have been received 40

at the hearing, for he is in no wise interested in the event of the suit. The statute was not designed to affect that rule of practice. If Johnson were interested in the event of the suit, then, as the complainant is suing in a representative capacity, he, Johnson, would not, under the statute, be sworn as a witness. But such is not the case. I receive his testimony, therefore, as that of a competent witness. The same objection was made to the testimony of Mr. Hubbell, who is also made a defendant. For like reasons, I think that he is  
10 a competent witness, and receive his testimony accordingly.

It was insisted by the complainant's counsel, that inasmuch as it appeared by a book kept in the clerk's office, called "the tickler," that the mortgage, after it was left there to be recorded, had been delivered by the clerk to Johnson, who was the mortgagor, and inasmuch as it did not appear that there was any receipt of payment endorsed on the mortgage when Johnson produced it to Rusling and Hubbell, with the seals torn off, and delivered it to them to be cancelled of  
20 record, and he did not produce the bond, which the mortgage was intended to secure, that these facts were sufficient to raise in their minds a doubt or suspicion whether it had been paid or not, and that there was enough to put them upon inquiry, and that they ought to have made inquiry of the mortgagor, or his legal representatives, whether it had in fact been paid or not.

But, according to the evidence, "the tickler" is not one of the public records; not a book authorized or required to be kept by law; but only a private book of the clerk's, kept for his own satisfaction and convenience. Mr. Hubbell was  
30 not bound to examine it in making his searches touching the property, and there is no evidence that he did examine it in fact, or that he knew what it contained, or even that he knew that such a book was in existence. I do not think that he can be considered as knowing, or as being bound to inform himself of what it contained. He searched the registry of mortgages, which the law requires to be kept. He found there an entry of the mortgage in question, standing open and uncanceled. He then went with Rusling to Johnson's house to examine the title papers preparatory to Rusling's  
40 taking his deed. And there Johnson produced the mort-

gage with the seals torn off, and gave it to them, stating that it was paid and satisfied, and that they could take it and have it cancelled and discharged of record. If the mortgage had in part been paid and satisfied, it would naturally and properly, and according to the usual course of such transactions, have been found in the custody of Johnson, who was not only the mortgagor, but still continued to be the owner of the mortgaged premises. And I do not think that the fact that the mortgage had no receipt of payment endorsed upon it, and that the bond was not produced, was one which ought to be taken as sufficient to raise a doubt or suspicion whether it had in fact been paid, in the minds of Mr. Hubbell and Mr. Rusling, or to put them upon further inquiry. There is no rule of law requiring such receipt to be endorsed upon a mortgage when it is paid or satisfied; and in practice, so far as I am acquainted with it, and as stated by counsel on the argument as within their own knowledge, a mortgage is often, when fully paid, cancelled by tearing off the seals, and is then given up to the mortgagor, without any receipt of payment upon it. And it sometimes happens, while the mortgage debt remains unpaid, that the mortgagee does, for the accommodation of the mortgagor, consent to give up the mortgage to him, and to have it cancelled; retaining the bond, however, as evidence of the debt, and relying upon that alone, or taking some other security in the place of the mortgage. In such case, the mortgage might properly, without any receipt of payment endorsed upon it, be given up to the mortgagor to be cancelled and to be held by him as evidence that it was no longer a lien upon the premises embraced in it.

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It was further urged, that the cancellation of record by the clerk was illegal, because our statute declares that "when any mortgage, registered as aforesaid, shall be redeemed, paid, and discharged, it shall be the duty of the clerk, on application to him made by the mortgagor or person redeeming, paying, or discharging the said mortgage, and producing to him the said mortgage cancelled, or a receipt thereon, signed by the mortgagee, or his executors, administrators, or assigns, to enter, in a margin to be left for that purpose, opposite to the said abstract, a minute of the said redemption, payment 40

and discharge; which minute shall be a full and absolute bar to, and discharge of, the said entry, registry, and mortgage." And it is insisted that there was no such receipt of payment endorsed upon the mortgage at the time it was produced to the clerk by Mr. Hubbell, with the seals torn off; and that it had not, in fact, been paid, and that the clerk, therefore, had no right or authority, under the statute, to cancel it of record. When the mortgage, with the seals so torn off, was produced to the clerk by Mr. Hubbell, he  
10 had just before received it in that condition from the hands of the mortgagor, who told him that it was paid, and that he could take it and have it cancelled of record. Mr. Hubbell may, therefore, be taken as acting in that matter for the mortgagor, and the clerk, on being satisfied of that fact, might lawfully do with the mortgage the same as if the mortgagor had, in person, and with his own hand, produced it to him, with the seals torn off; and with the request to have it cancelled of record. Mr. Johnson had then long been a resident of Newark, was actively engaged in business  
20 there, and, the owner of a considerable amount of property. Mr. Hubbell was also a resident of Newark, a counsellor of high standing in his profession, and often, no doubt, transacting business of that kind at the clerk's office. I think that the clerk did not act illegally, nor contrary to the statute, in cancelling the mortgage of record, under the circumstances of this case. Suppose there had been, at the time when the mortgage was so produced to the clerk to be cancelled, a full and explicit receipt, declaring that the mortgage had been paid and satisfied, and such receipt purported to be signed  
30 by the mortgagee. How would the clerk know that the signature was genuine? Could he go into the taking of proofs upon that question. How is he to call witnesses, what authority has he to examine them? Would he make such inquiry (if he entered upon it) *ex parte*, and without notice to the mortgagee, and if not, how shall he summon him to appear? I do not think that the statute meant to impose any such duty upon the clerk.

The case of *Miller, &c., v. Wach & al., Saxton's R. 204*, related to a mortgage which it was alleged the mortgagor, after  
40 it had been duly executed, delivered, and recorded, obtained

from the mortgagee upon the pretence that he wanted merely to look at it, and that, after he so got it into his hands, he refused to give it up, and having cancelled it, took it to the clerk's office and had it cancelled of record, while the debt which it was given to secure remained wholly unpaid. The counsel who argued that such cancellation of record ought to be declared fraudulent and void, and that the mortgage should be held still to be a lien on the premises, and entitled to the same place in order of priority as if such cancellation had not been made, quoted the above mentioned section of our 10 statute in relation to mortgages.

And referring to their having done so, Chancellor Vroom says: "And then they contend that the fact of the possession and cancellation of the mortgage is not to be taken as evidence of the legal satisfaction and discharge of the mortgage; that this must be proved by the person who holds the priority on the record, as against him who sets up and claims under such cancelled instrument. I do not consider this to be the sound construction of the act, and it appears to me that a more dangerous one could not well be given to it. 20 The clerk acts, and must act, upon the simple production of the mortgage with the seals torn off; or the mortgagor's receipt endorsed. He has no judicial power. He is not required to examine witnesses as to the fact of payment; and it is therefore true, that the simple cancellation is not an absolute bar, unless there has been actual satisfaction. It is not conclusive evidence, the facts may be inquired into in a proper way."

The Chancellor here is clearly of opinion that if the clerk acts "upon the simple production of the mortgage with the 30 seals torn off," he acts legally in cancelling the mortgage of record. The clerk did so in the present case. The Chancellor adds, however, that "it is not *conclusive* evidence of payment—that the facts may be investigated in a proper way." In these views I concur. The facts may be so investigated, and when that has been done, and the truth of the case is fully shown; then, what is the law arising upon those facts, and how are the rights of the parties to be affected by them, and how are the rights of the parties to be affected by them, is next to be considered. That must be done in the present case, and I will presently turn my attention to it. The 40

inquiry now is, was the cancellation of record, which was made by the clerk, upon the production to him of the mortgage with the seals torn off, with a request to have it cancelled of record, illegal, because there was not at the time a receipt of payment endorsed upon the mortgage? I do not think that it was.

- It is further alleged by the complainant, that the bond which the mortgage so cancelled was given to secure, has never been paid. That allegation is sustained by the proof.
- 10 It is also alleged that the mortgage, after it was left at the clerk's office to be recorded, was taken from there by Johnson, without any authority—that he obtained it illegally, and that he cancelled it without the knowledge or consent of the complainant, and that for these reasons it should be declared to be a valid and subsisting encumbrance upon the mortgaged premises, which as before stated, are now owned by the railroad company. No witness but Mr. Johnson speaks of the manner in which he got possession of the mortgage. He says that after the death of Joseph Harrison, the mort-
- 20 gagee, he called on James Harrison, the executor, and told him that it was true that the title to the one-eighth of the property was perfected; that Harrison replied that it should be done; that he had sent to Ireland by a friend to try to have it done, but did not succeed; but that it should be done, though it might take time; that Johnson then told him, that in view of the fact that he, Johnson, had expended a considerable amount in improving the property, he thought that it ought to be done immediately. That Harrison then
- 30 told him to go to the clerk's office and get the mortgage, and that he could hold it until the title was perfected; that he, Johnson, then went to the clerk's office and got it, and kept it in his possession until he conveyed the property to Rusling; that while he so held it, he had several interviews with Harrison, who alluded to the mortgage, and asked Johnson to bring it to him, saying, at the same time, that he would be prepared, in a very short time, to complete the title; to which request Johnson replied, that that was not the understanding on which he got the mortgage, but that
- 40 it was to be held by him "as security for the completion of the title." Johnson also testifies, that in some of those

interviews, he told Harrison that he, Johnson, wanted to sell the property.

It appears, therefore, that Johnson took the mortgage from the clerk's office with the consent, and by request of James Harrison, who, as executor of the mortgagee, was then the owner of it; that he so took it, to hold as security, until the title should be completed, and that in violation of this understanding, and abusing the confidence thus reposed in him, he cancelled the mortgage by tearing off the seals, and giving it up to Mr. Rusling and Mr. Hubbell to be cancelled 10 of record, at the same time, telling them that it had been paid and satisfied; that they were thus deceived, and led to believe that the mortgage was paid; that Rusling, under this belief, bought the property, as free from the mortgage, and paid \$4500, in cash, and gave a mortgage for \$2500 upon the property, to Johnson, to be paid when the title to the one-eighth should be completed, and that Rusling and Hubbell then took the mortgage to the clerk's office, and had it cancelled of record. When Rusling received his deed from Johnson, he received at the same time, that which enabled 20 him to have the mortgage cancelled of record—to wit, the mortgage itself, with the seals torn off; and he might, before actually closing the purchase, and taking his deed, have gone to the office, and had the cancellation of record made, and then have returned to Johnson's house and accepted the deed. I view this case, therefore, as the same in effect, as if the mortgage had been actually cancelled of record, before Rusling received his deed from Johnson. I consider, also, the railroad company, who, at the time, were represented by Mr. Hubbell as having all the knowledge of 30 the matter which he had, and that they ought, therefore, to have all the benefits, and bear all the burdens arising from that fact. The company are now the owners of the property, and the question is, shall this mortgage be declared to be an encumbrance upon it in their hands, or shall the complainant be left to collect the bond from Johnson?

If this question affected only the complainant and Johnson, there would be no difficulty in declaring the mortgage, under the circumstances of this case, to be still a valid encumbrance upon the property. If there were mortgages, or 40

other encumbrances upon it, which were taken subsequently to the cancelled mortgage, and while it was still in existence and in full force, and with notice, in law or in fact, that it was an existing encumbrance, it would be just and equitable to declare it to be still a lien, and entitled to priority over such subsequent encumbrances, for they were taken with notice of it, and subject to it.

But here is a bona fide purchaser, who has bought the property for full value, and paid a large sum of money for  
10 it. He bought after examining the record of mortgages, to ascertain what liens there were upon it. He relied upon the public record, which the law has furnished for his guide. He found there a registry of the mortgage in question, but before he completed his purchase the mortgage itself was placed in his hands, cancelled, with information that it was paid. It was so given to him, in order that he might have it cancelled of record, and he was thus enabled to have it done, and did have it done immediately after taking his deed. In all he did he acted under the full belief that the  
20 mortgage was paid, and I think, that under the circumstances he was justified in so believing. He used, as it seems to me, all requisite care and diligence to ascertain the situation of the property as to encumbrances, and to make his purchase a safe one.

Is it equitable and right now to revive the mortgage as against such purchaser? He did not, by any act, or any neglect, or want of diligence, contribute to the fraud which Johnson committed against the complainant by cancelling the mortgage. The executor of Harrison himself placed  
30 the mortgage in Johnson's hands, that is, consented that he should take it from the clerk's office. He thus put it into the power of Johnson to commit the very fraud which he has committed. Johnson took the mortgage from the clerk's office on 2d April, 1856, and held it until the fifth of March following, so that he had it in his hands for nearly a year. During all this time, Harrison, knowing that Johnson wanted to sell the property, and knowing also that while holding the mortgage, Johnson had it in his power to mislead an innocent purchaser, took no steps to compel him to  
40 give up the mortgage to him, though he had requested him to give it up, and he refused to do it.

If a fraud has been committed, and a loss must, in consequence, fall upon one of two parties, it ought to be borne by the party whose act or default has contributed to the wrong, rather than by the one who had no share in it, who has taken the public records for his guide, and has paid out his money upon the faith reposed in them—for as already mentioned, I consider this case in the same light, as if the mortgage in question had been actually cancelled of record, before Johnson placed the deed in the hands of Rusling. I think, therefore, that the mortgage ought not now to be 10 decreed to be an encumbrance upon the property, but that the complainant should be left to the bond, or to such other remedy as she may have against Johnson, to recover the debt secured by it.

In the case of *The Trenton Banking Company v. Woodruff, Green's C. R. 117*, the question was, whether a mortgage which had been fraudulently cancelled, should be revived, or not. There was a subsequent mortgage, and the owner of it, who was the party to be affected by such revival, had, as the court adjudged, taken his mortgage, with notice that 20 such cancelled mortgage was still a subsisting lien upon the property. Chancellor Pennington there says, "it is settled in this court, that the cancellation of a mortgage of record, is only *prima facie* evidence of its discharge, and leaves it open to the party making such allegation, to prove that it was made by accident, mistake, or fraud; On such proof being made, the mortgage will be established even against subsequent mortgages, without notice;" and he cites *Miller & al. v. Wach & al.*, 1 *Saxton* 214; *Lilly v. Quick*, 1 *Green's C. R.* 97.

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The question whether a mortgage cancelled of record by mistake or fraud, would be established as against a subsequent mortgagee, who took his mortgage after such cancellation of record, and on reliance upon the record, and having no notice that such cancellation had been improperly made, was not presented in the case of *The Trenton Banking Company v. Woodruff*, and it was not necessary in that case to decide it, and I do not understand the chancellor as intending to decide it. Nor do I find that it was so held in the two cases to which he so refers. So far as I have examined, 40

that question has never been decided in our courts. There are decisions in other states which decide it, or have a bearing upon it.

In *Robinson & al. v. Sampson*, 23 *Maine* 388, a mortgage had been cancelled of record by mistake. There was a mortgage subsequent to it, which, however, had been taken before such cancellation. The judge, in deciding that case, refers to the opinion of Chancellor Pennington in *Trenton Banking Company v. Woodruff*, and quotes from it, the same  
10 paragraph herein above quoted, and then says: "To this position we cannot hesitate to yield our assent, if the subsequent mortgagee, as in this case, becomes such, anterior to the cancellation." From which, I think it is fairly to be inferred, that if the subsequent mortgage had been taken subsequent to the cancellation of record, that the cancelled mortgage ought not, in the opinion of the learned judge, to be allowed priority over it.

In *Barnes v. Camach & al.*, 1 *Barbour's S. C.* 392, there were two mortgages. The second was taken while the first  
20 was upon record. The first was afterwards cancelled through fraudulent representations, in which, however, the holder of the second had no part. The cancellation was declared void. And the court, in their opinion, said: "The principle which runs through all cases of this description is, that when the legal rights of the parties have been changed by mistake, equity restores them to their former condition, when it can be done without interfering with any new rights, acquired on the faith and strength of the altered condition of the legal rights, and without doing any injustice to other persons." This implies that if, as in the case now under con-  
30 sideration, new rights had been acquired upon the faith of the cancellation of the mortgage, the mortgage would not be revived and established to the prejudice of such rights.

In *Vallis' Adm'rs v. American Iron Mountain Co.*, 27 *Missouri* 455, the case was on a petition to foreclose a mortgage, which had been cancelled of record. The defendants had purchased the mortgaged premises, of the mortgagor while the mortgage stood cancelled of record. The plaintiffs alleged that the cancellation was fraudulent. The court de-  
40 cided that the plaintiffs might prove that fact, if they could,

but that in order to affect the defendants, as *bona fide* purchasers, it must be shown also, that at the time of the purchase they knew of the fraud. The judge says: "Of course the fraud must be brought home to the defendants; if they purchased without knowledge of the fraud, the entry (meaning the entry of the cancellation,) is conclusive as to them."

The case of *Ely v. Schofield*, 35 *Barbour S. C.* 330, was for the foreclosure of a mortgage. It appeared that a mortgage had been given upon certain premises and duly recorded, and that it was afterwards cancelled of record by mistake 10 and without being paid. While it stood cancelled of record, the mortgagor sold the premises; the purchaser having first caused a search of the records to be made by the clerk, and received from him a certificate, in which the mortgage was noted as having been duly discharged. After the purchaser had taken his deed, and *had had it recorded*, the owner of the mortgage gave him notice that it had been cancelled by mistake, and that he claimed that it was still a subsisting lien upon the premises. It was decided by the court, that the purchaser was entitled to hold the premises free from the lien 20 of the mortgage. But that if such notice had been given to the purchaser *before* he had put his deed upon record, then under the peculiar provisions of the statute of that state, relating to such matters, the mortgage would have been a lien upon the lands in the hands of the purchaser.

In *Executors of Swartz v. Leist*, 13 *Crutchfield (Ohio) Rep.* 419, a mortgage was executed to Mr. Little, to secure certain promissory notes, held by different persons. Little held one of them, and afterwards transferred it to Swartz, testator of plaintiffs. After this, and while that note was yet unpaid, 30 Little cancelled the mortgage of record, and while it stood so cancelled, the mortgagor sold the mortgaged premises to Leist, the defendant, who was a *bona fide* purchaser, and had no notice that the cancellation was fraudulent. The court held that the cancellation was a fraud upon the rights of the holder of the note, but yet, that as against the *bona fide* purchaser, the mortgage could not be declared a lien upon the lands. The court said, among other things: "But the parties here are not equally faultless, and do not stand *in equali jure*. Swartz negligently, or confidently, permitted 40

Little, the mortgagee, to retain the legal title conveyed by the mortgage, and the power of control over it. Little thus had the legal power, and ostensibly, a perfect right to discharge and release it: Leist, the purchaser, having no reason to suspect fraud, was justified in regarding the release legally made by one who was ostensibly the proper party, as an effectual discharge of the lien. *And as between these parties, he who unwisely reposed confidence in Little, and gave him the power to defraud, should suffer the consequences.*"

- 10 The application of these decisions to the case under consideration is obvious, and I need not remark upon them.

I am of opinion that the complainant is not entitled to the relief prayed for, and that the bill of complaint should be dismissed, and I respectfully advise the chancellor to make a decree accordingly.

J. WILSON, *Master.*

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### Decree of Dismissal.

[Filed November 5, 1867.]

This cause coming on to be heard at the last regular Term  
20 of the Court of Chancery, before James Wilson, esq., a master of the said court, who was called by the chancellor to hear the same, in the presence of Peter Bentley, of counsel with complainant, and John P. Jackson, of counsel with the defendants, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the said master having advised the chancellor that the complainant is not entitled to the relief prayed for in his bill of complaint, and that the said bill should be dismissed—

- 30 It is accordingly ordered, adjudged, and decreed, that the complainant's said bill be and the same is hereby dismissed, with costs.

Dated November 5, 1867.

A. O. ZABRISKIE, *C.*

I respectfully advise the chancellor to sign the foregoing decree.

J. WILSON, *M. C.*

### Notice of Appeal.

[Filed March 13, 1868.]

The complainant hereby appeals from so much of the final decree made in this court, in the above stated cause, as decrees that the said complainant is not entitled to the relief prayed for in the said bill of complaint, and that the said bill should be dismissed to the Court of Errors and Appeals, in the last resort in all causes.

Dated March 19, 1868.

PETER BENTLEY,  
*Solicitor for complainant.* 10

I. W. SCUDDER,  
*Of counsel with complainant.*

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

Dated March 13, 1868.

I. W. SCUDDER,  
*Of counsel with the complainant.*

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### Petition of Appeal.

*To the Honorable the Court of Errors and Appeals in the last resort in all causes.* 20

The humble petition of Mary Harrison, administratrix of James Harrison, deceased, who was executor of Joseph Harrison, deceased, appellant, in the above stated cause, respectfully sheweth—

That your petitioner finds herself aggrieved by a final decree made in the Court of Chancery, by his Honor Abraham O. Zabriskie, Chancellor of the state of New Jersey, bearing date November fifth, eighteen hundred and sixty-seven, wherein the said Mary Harrison, administratrix of

James Harrison, deceased, who had been the executor of Joseph Harrison, deceased, was complainant, and the said Thomas V. Johnson and Sarah F. his wife, the New Jersey Railroad and Transportation Company, and Algernon S. Hubbell, were defendants, in this respect, to wit—

That the said decree adjudges that the said complainant is not entitled to the relief prayed for in the said bill of complaint, and that the said bill should be dismissed.

And your petitioners humbly appeal from that part of the  
10 said decree of the said chancellor, which decree as aforesaid, upon the ground that the same is erroneous, for that the said complainant was entitled to her relief prayed for in the said bill, and that the said bill should not be dismissed.

And that your petitioner was well entitled to the decree of the Court of Chancery, establishing as a valid lien the mortgage in the bill set forth, made by the said Thomas V. Johnson, and Sarah F. his wife, to the said Joseph Harrison, to secure the sum of four thousand five hundred dollars; and  
20 also for the foreclosure of the equity of redemption of the said defendants in the mortgaged premises in the said bill set forth, and the sale of the said mortgaged premises.

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 petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated March 5, 1868.

PETER BENTLEY,  
*Solicitor for the complainant.*

I. W. SCUDDER,  
*Of counsel with complainant.*

Answer.

These respondents, not confessing or acknowledging all or any of the matters to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto say—that they believe it to be true that such decree as is complained of by the appellants was made by the Court of Chancery, as in the said petition of appeal is set forth, but as to the date, substance, and contents thereof, these respondents humbly craves leave to refer thereto when the same shall be produced ; and these respondents are advised 10 and believe that the said decree is agreeable to equity and justice, and they therefore humbly pray that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to these respondents.

JOHN P. JACKSON, jun.,  
*Solicitor of respondents.*

F. H. TEESE,  
*Of counsel.*

## Complainant's Exhibits.

## EXHIBIT No. 3.

Article of agreement, made and entered into the fifth day of March, one thousand eight hundred and fifty, between Joseph Harrison, of the city of New York, of the first part, and Thomas V. Johnson, of the city of Newark, of the second part, in manner following: The said party of the first part, in consideration of the sum of nine hundred dollars, to him duly paid, hereby agrees to sell unto the said

10 party of the second part, all those two lots numbered eighteen and thirty-seven, as mentioned and described in a deed made by Elizabeth S. Birch to Joseph Harrison, dated 28th day of November, 1838, for the sum of nine hundred dollars, which the said party of the second part hereby agrees to pay to the party of the first part, as follows: in cash on the delivery of the deed, and the deed to be delivered on or before the first day of May, 1850, with interest from the first day of February, at the rate of six per cent.

20 per annum. And the said party of the first part, on receiving such payment, at the time and in the manner above mentioned, shall, at his own proper cost and expense, execute and deliver to the said party of the second part, or to his assigns, a proper deed for the conveying and assuring to him or them, the fee simple of said premises, free from all encumbrance; which deed shall contain a general warranty, and the usual full covenants. And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns, of the respective parties. All assessments to be paid by Mr. Johnson.

30 In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year above written.

JOSEPH HARRISON. [L. S.]

THOS. V. JOHNSON. [L. S.]

Sealed and delivered in the presence of  
(The word Joseph written on an erasure.)

PETER BENTLEY.

## EXHIBIT No. 4.

Article of agreement, made and entered into the fifth day of March, one thousand eight hundred and fifty, (1850), between Joseph Harrison, of the city of New York, party of the first part, and Thomas V. Johnson, of the city of New York, of the second part, in manner following: The said party of the first part, in consideration of the sum of two thousand eight hundred and forty-eight dollars, to him duly paid, hereby agree to sell unto the said party of the second part, seven-eighths of all the property contained in a certain deed made by Robert Baldwin and wife, to William Harrison, dated the 11th day of August, 1836, and also the seven-eighths of all the property contained in the deed made by Jonathan Osborn, sheriff, to William Harrison, of the city of New York, 2 d day of May, 1839, for the sum of two thousand eight hundred and forty-eight dollars, which the said party of the second part hereby agree to pay to the said party of the first part, as follows: the sum of thirty-seven dollars and fifty cents on the delivery of the deed, which is to be on or before first day of May next; the residue of the purchase money, being two thousand eight hundred and ten dollars and ninety-seven cents, to be secured by bond and mortgage, made by the said Thomas V. Johnson and wife, to the said Joseph Harrison, and to be upon the same property hereby agreed to be sold, together also upon the property which the said Joseph Harrison has this day agreed to sell, being lots number 18 and 37, as described in a deed by Elizabeth S. Birch to said Joseph Harrison, and to be free of all encumbrances; said mortgage and bond to be payable in five years, and to draw interest from the 1st February, 1850, at six per cent. payable half yearly; the said Harrison agrees that he will endeavor to get a title to the one-eighth of the said property as soon as he can lawfully do so, being the right of the heirs of John Harrison deceased. And the said party of the first part, on receiving such payment, at the time and in the manner above mentioned, shall, at his own proper cost and expense, execute and deliver to the said party of the second part, or to his assigns, a proper deed for the conveying and assuring to him and them, the fee simple of the said premises, free from all encumbrance; which deed shall contain

a general warranty, and the usual full covenants. And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns, of the respective parties.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year above written.

JOSEPH HARRISON. [L. S.]

THOS. V. JOHNSON. [L. S.]

10 Sealed and delivered in the presence of  
(The word Joseph written on an erasure.)

P. BENTLEY.

EXHIBIT No. 1.

Know all men by these presents, that I, Thomas V. Johnson, of Newark, Essex county, New Jersey, am held and firmly bound unto Joseph Harrison, of the city, county, and state of New York, in the sum of nine thousand dollars, lawful money of the United States of America, to be paid to the said Joseph Harrison, or to his certain attorney, ex-  
20 ecutors, administrators, or assigns; to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal, and dated the twenty-first day of November, in the year one thousand eight hundred and fifty-three.

The condition of this obligation is such, that if the above bounden Thomas V. Johnson, his heirs, executors, and administrators, or any of them, shall and do well and truly pay or cause to be paid unto the above mentioned Joseph Harrison, or to his certain attorney, executors, administra-  
30 tors, or assigns, the just and full sum of four thousand five hundred dollars, lawful money aforesaid, on the first day of May, which will be in the year eighteen hundred and fifty-four, without any fraud or other delay, then this obligation to be void, or else to be and remain in full force and virtue.

THOS. V. JOHNSON. [L. S.]

Sealed and delivered in the presence of

C. R. WAUGH.

## EXHIBIT No. 2.

Thomas V. Johnson and wife, to Joseph Harrison. \$4500.

All that tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the city of Newark, in the county of Essex, and state of New Jersey.

Beginning on the east side of Ogden street, fifty feet to the north of the corner of Division street, thence running along Ogden street, north seven degrees forty minutes west, one hundred and eighteen feet; thence north eighty-two degrees twenty minutes east, one hundred and eighty-five feet 10 to the Passaic river; thence down said river, the several courses thereof, one hundred and forty-four feet; thence in a direct line to the beginning point in Ogden street.

Excepting thereout an alley of ten feet wide, running through said premises, nearly parallel with Ogden street, being lots numbers twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), and parts of lots thirty-six (36), thirty-seven (37), and nineteen (19), on a map of thirty-seven lots sold by Robert Baldwin, which map is dated 20 August 11, 1836, and being a part of the premises this day conveyed to said Johnson, by the said Joseph Harrison and others, this mortgage being given to secure a part of the purchase money.

The premises above described are mortgaged by Thomas V. Johnson and Sarah F., his wife, of Newark, aforesaid, to Joseph Harrison, of New York city, to secure the payment of four thousand five hundred dollars, on the first day of May, eighteen hundred and fifty-four, according to the condition of a bond of even date with the mortgage, which is 30 dated the twenty-first day of November, A. D. eighteen hundred and fifty-three; was acknowledged the sixth day of December following, before C. R. Waugh, a master in chancery of New Jersey.

And received in the office the sixth day of December, A. D. 1853, forty minutes after two o'clock, in the afternoon.

J. R. WEEKS, *Clerk.*

New Jersey, Essex county, ss.—I, Joseph Doremus, re-

gister of said county, do hereby certify that the foregoing is a true copy of the registry of a certain mortgage, given by Thomas V. Johnson and wife to Joseph Harrison, as the same may be found registered in my office, in Book D 3 of Mortgages, for Essex county, New Jersey, pages 42 and 43.

In testimony whereof I have hereto set my hand  
[L. s ] and official seal, this twenty-ninth day of December, A. D. 1860.

JOS. DOREMUS, *Register.*

- 10 Received in the clerk's office, the sixth day of December, A. D. 1853, at forty minutes after two o'clock, P. M., and registered in Book D 3 of Mortgages, for Essex county, New Jersey, pages 42 and 43.

J. R. WEEKS, *Clerk.*

On the sixth day of March, A. D. 1857, the original mortgage here registered was produced in the office — Algernon S. Hubbell, esq., attorney-at-law, cancelled and made void.

J. J. TERHUNE, *Clerk.*

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EXHIBIT A.

- 20 Whereas, Joseph Harrison did, on the fifth day of March, in the year eighteen hundred and fifty, enter into an agreement in writing, under seal, with Thomas V. Johnson, that he, the said Joseph Harrison, would sell and convey unto the said Johnson the undivided seven-eighths of all the property contained in a certain deed made by Robert Baldwin and wife to William Harrison, dated the eleventh day of August, A. D. eighteen hundred and thirty-six; and also  
30 seven-eighths of all the property contained in the deed made by Jonathan Osborn, sheriff, to William Harrison, of the city of New York, for the sum of two thousand eight hundred and forty-eight dollars; and whereas, the said Joseph Harrison did, in said agreement, further agree that he would endeavor to procure the title to the other one eighth part of of said land and premises, being the right of the heirs of John Harrison, deceased; and whereas, the said Joseph Harrison has not perfected the title to said lots, either in him-

self or said Johnson, to the share or interest of the heirs of John Harrison, deceased; and whereas, the said Joseph Harrison, James Harrison, and George Harrison, have conveyed to said Thomas V. Johnson by full deeds of warranty, the said undivided seven-eighths of said aforementioned premises, who has paid and secured to be paid to the said Joseph Harrison, James Harrison, and George Harrison, all of the consideration money for the whole of said premises in said two deeds referred to, and that he, the said Joseph Harrison, desired said Thomas V. Johnson to pay the whole 10 of said purchase money to him for his use, and that of James and George Harrison, and having agreed to and with said Johnson to procure a good and valid title to said Thomas V. Johnson, for the one-eighth part of said lots of land—

Now this instrument witnesseth, that the said Joseph Harrison, for himself, his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said Thomas V. Johnson, his executors, administrators, and assigns, that he will save harmless, and indemnify him, the said Thomas V. Johnson, of and from all loss, damage, costs, and 20 expenses, that he may be put to by reason of the said Harrison not procuring a good and valid title to said Johnson for the said one-eighth part of said lots of land, or for any damage, inquiry, expense, or loss the said Johnson may be put to by reason of any improvements he may put thereon; and the said Joseph Harrison doth covenant and agree to and with the said Thomas V. Johnson, that he will, at his own costs and expenses, within two years from date hereof, procure for the said Johnson a good title to the whole of said lots mentioned in said deed. 30

In witness whereof, the said Joseph Harrison hath hereunto set his hand and seal to these presents, this sixth day of December, in the year eighteen hundred and fifty-three.

JOSEPH HARRISON. [L. S.]

Signed, sealed, and delivered in the presence of

C. R. WAUGH.

In case said Harrison does not make a good title within two years, he is to refund the three hundred and fifty-six dol-

lars, with interest from the first day of February, 1850, until that time to said Johnson, as liquidated damages on the above agreement.

THOS. V. JOHNSON. [L. S.]

December 6, 1853.

C. R. WAUGH.

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EXHIBIT No. 5.

This indenture, made the twenty-first day of November, in the year one thousand eight hundred and fifty-three, between Joseph Harrison and James Harrison, of the city of New York, in the county and state of New York, and George Harrison, of the county of Chenango, in the state of New York aforesaid, parties of the first part, and Thomas V. Johnson, of the city of Newark, in the county of Essex, and state of New Jersey, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of two thousand nine hundred dollars, lawful money of the United States, to them in hand paid by the said party of the second part, at or before the en-  
20 and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents, have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all the undivided seven-eighths part of those several lots of land and premises, situate, lying and being in the city of Newark, in the county of Essex, and state of New Jersey,  
30 one lot, beginning on the east side of Ogden street, twenty-eight feet to the north of the corner of Division street; thence running along along Ogden street north seven degrees and forty minutes west, eighty-four feet; thence north eighty-two degrees and twenty minutes east, ninety two feet to an alley of ten feet in width; thence along the said alley

south seven degrees and forty minutes east, eighty-four feet; thence south eighty-two degrees and twenty minutes west, ninety feet to the place of beginning; being laid down as three adjoining lots, and numbered nineteen (19,) twenty (20) and twenty-one (21,) on a map of thirty-seven lots, sold by Robert Baldwin, which map is dated August 11th, 1836, and recorded in the clerk's office of the county of Essex; also one lot beginning on the east side of the aforesaid alley, directly opposite to the south east corner of the above described lot, thence running along the said alley north seven 10 degrees and forty minutes west, eighty-four feet; thence north, eighty-two degrees and twenty minutes east, twenty-five feet to Passaic river; thence down the river, the several courses thereof, eighty-four feet; thence south eighty-two degrees and twenty minutes west, sixty-five feet, to the place of beginning, being designated on said map as lots numbers thirty-four (34,) thirty-five (35,) and thirty-six (36,); also the undivided seven-eighth part of those certain lots of land lying and being in Newark aforesaid, beginning on the east side of Ogden street, one hundred and twelve feet to the 20 north of the corner of Division street; thence running along Ogden street north eleven degrees and forty minutes west, fifty-six feet; thence north eighty-two degrees and twenty-minutes east, ninety feet to an alley of ten feet in width; thence along the said alley, south seven degrees and forty minutes east, fifty-six feet; thence south, eighty-two degrees and twenty-minutes west, ninety feet to the place of beginning, being designated as lots numbers twenty-two (22,) and twenty-three (23,) on a map of thirty-seven lots, sold by Robert Baldwin; which map is dated August 11th, 1836, and 30 recorded in the clerk's office of the county of Essex. The other lot, beginning on the east side of the aforesaid alley, directly opposite to the southeast corner of the aforesaid lot, thence running along the said alley north, seven degrees and forty minutes west, fifty-six feet; thence north eighty-two degrees and twenty minutes east, eighty-five feet, to Passaic river; thence down the river, the several courses thereof, fifty-six feet; thence south, eighty-two degrees and twenty minutes west, seventy-five feet, to the place of beginning, being designated on the aforesaid map as lots num- 40

bers thirty-two (32) and thirty-three (33). Together with all and singular, the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: to have and to hold  
 10 the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof, forever.

And the said Joseph Harrison, James Harrison, and George Harrison, for themselves, their heirs, executors, and administrators, do covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said Joseph, James, and George Harrison, at the time of the sealing and delivery of these presents, are lawfully siezed  
 20 in their own right, of a good, absolute, and indefeasible estate of inheritance, in fee simple, of, and in all and singular, the above granted and described premises, with the appurtenances, and have good right, full power, and lawful authority, to grant, bargain, sell and convey the same, in manner aforesaid; and that the said party of the second part, his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit,  
 30 trouble, molestation, eviction, or disturbance of the said parties of the first part, their heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unencumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances, of what nature or kind soever; and also, that the said parties of the first part and their heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore  
 40 granted premises, by, from, under or in trust for them,

shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, 10 or his or their counsel learned in the law, shall be reasonably advised or required; and the said Joseph Harrison, James Harrison, and George Harrison, their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend. 20

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

JOSEPH HARRISON. [L. S.]

JAMES HARRISON. [L. S.]

GEORGE HARRISON. [L. S.]

Sealed and delivered in the presence of

WASH. B. WILLIAMS,

*As to George Harrison.*

WASH. B. WILLIAMS, 30

*As to James and Joseph Harrison also.*

State of New Jersey, Hudson county, ss.—Washington B. Williams being duly sworn, on his oath, according to law, deposes and says—that he saw George Harrison, James Harrison, and Joseph Harrison, the grantors named in the within deed, sign, seal, and deliver the same, and heard them acknowledge that they signed, sealed, and delivered

the same as their voluntary act and deed, and thereupon he, the said Washington B. Williams, subscribed his name to same, as attesting witness.

WASHINGTON B. WILLIAMS.

Sworn and subscribed before me, at Jersey City, this 5th day of December, A. D. 1853.

PETER BENTLEY, *M. C.*

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Defendant's Exhibits.

EXHIBIT No. 1.

10 This indenture, made the fifth day of March, in the year one thousand eight hundred and fifty-seven, between Thomas V. Johnson and Sarah F., his wife, of the city of Newark, in the county of Essex, and state of New Jersey, of the first part, and Joseph F. Rusling, of the city of New Brunswick, in the county of Middlesex, and state of New Jersey, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of seventeen thousand dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the  
 20 second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said parties of the first part, therewith fully satisfied, contented, and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed, and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm, to the said party of the second part, and to his heirs and assigns forever, all those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the city of New-  
 30 ark, in the county of Essex, and state of New Jersey, beginning on the east side of Ogden street, twenty-eight feet to the north of the corner of Division street, thence along Ogden street north seven degrees and forty minutes west, eighty-four feet; thence north eighty-two degrees and twenty minutes east, ninety-two feet to an alley of ten feet in width; thence along the said alley south seven degrees and forty

minutes east, eighty-four feet; thence south eighty-two degrees and twenty minutes west, ninety feet to the beginning, being lots 19, 20, and 21, on a map of 37 lots sold by Robert Baldwin, &c. Also, one other tract, beginning on the east side of the aforesaid alley, directly opposite the southeast corner of the above described lot, thence along the said alley north seven degrees and forty minutes west, eighty-four feet; thence north eighty-two degrees and twenty minutes east, seventy-five feet to Passaic river; thence down the river the several courses thereof, eighty-four feet; thence south 10  
eighty-two degrees and twenty minutes west, sixty-five feet to the beginning, being lots 34, 35, and 36 on said map. Also, one tract beginning on the east side of Ogden street, one hundred and twelve feet to the north of the corner of Division street; thence along Ogden street north eleven degrees and forty minutes west, fifty-six feet; thence north eighty-two degrees and twenty minutes east, ninety feet, to an alley of ten feet in width; thence along the said alley south seven degrees and forty minutes east, fifty-six feet; thence south eighty-two degrees and twenty minutes west, 20  
ninety feet, to the beginning, being lots 22 and 23 on said map. The other, beginning on the east side of the aforesaid alley, opposite the southeast corner of the aforesaid lot; thence along said alley north seven degrees and forty minutes west, fifty-six feet; thence north eighty-two degrees and twenty minutes east, eighty-five feet to Passaic river; then down the river the several courses thereof, fifty-six feet; thence south eighty-two degrees and twenty minutes west, seventy-five feet, to the beginning, being lots 32 and 33. One other tract, beginning on the corner of Ogden and Division streets; 30  
thence north twenty-eight feet; thence east ninety feet, to an alley ten feet wide; thence south fifteen feet along the westerly side of an alley to Division street; thence westerly along the northerly side of Division street ninety-one feet to the place of beginning. Also, the tract beginning at a point on the easterly side of the alley aforesaid; thence north along said alley forty feet; thence east sixty-five feet; thence south thirty-two feet; thence west sixty-five feet to the beginning. *Excepting* all the following tract, sold by said Johnson to the New Jersey Railroad and Transportation 40

Company, by deed of December 7, 1853, being the southerly part of the premises of said Johnson, lying between Ogden street and the Passaic river, and embracing fifty feet in front on Ogden street, on the easterly side thereof, measured northerly from the northeasterly corner of Ogden street and Division street or alley, as extended easterly of Ogden street, and from the northerly end of said fifty feet in Ogden street, running in a straight line to the river, in a course as near as may be to the present storehouse of said Johnson, and not  
10 intersecting the same, so as to have a front on the Passaic river of the property hereby conveyed, of forty-two feet, more or less, including all the premises of said Johnson southerly of said line, running from said point of fifty feet north of Division street (from Ogden street to the Passaic river) to line of property of Beach Vanderpool, excepting for the use of said Johnson, in common with said company, an alley or passage way of twelve feet wide, to run at right angles from the southerly side of the said storehouse of said Johnson, opposite present south door, until it intersects the  
20 street or alley in extension of Division street easterly; and if the said street or alley, in extension of Division street, shall not at the time of the conveyance to said company be extended easterly far enough to meet the proposed alley of twelve feet wide from the south door of the aforesaid storehouse, then the said company agree that said Division street or alley shall be extended by them until it met the alley at right angles to the storehouse, and if the same width of said last mentioned alley, which is also to be used in common by the parties thereto, and the use of said alley was in  
30 no wise to be obstructed by any pier or erection thereon, subject to a mortgage on the premises, hereby conveyed, made and executed by Thomas V. Johnson and wife, to William H. Woodruff, dated January 27, 1854, which is computed as so much of the consideration money, said mortgage being given to secure the payment of ten thousand dollars. Also, all the wharves, docks, and buildings and improvements, including scales, together with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belong-  
40 ing, or in any wise appertaining. Also, all the estate, right,

title, interest, property, claim and demand whatsoever, of the said parties of the first part, of, in, and to the same, and of, in, and to every part and parcel thereof: to have and to hold all and singular the above described tracts or parcels of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns for ever. And the said Thomas V. Johnson doth for himself, his heirs, executors, and administrators, covenant and grant to and with the said 10 party of the second part, his heirs and assigns, that he, the said Thomas V. Johnson, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land or premises, or any time thereof, at the time of sealing and delivery of these presents are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made, or intended to be made, for the above described 20 land or premises, can or may be changed, charged, altered, or defeated in any way whatsoever. And also, that the said party of the first part now have good right, full power, and lawful authority to grant, bargain, sell and convey the said land and premises in manner aforesaid. And also, that he, the said Thomas V. Johnson, will warrant, secure and forever defend the said land and premises unto the said Joseph F. Rusling, his heirs and assigns forever, against the lawful claims and demands of all and every person and persons, freely and clearly freed and 30 discharged of and from all manner of encumbrances whatsoever.

In witness whereof, the said Thomas V. Johnson, and Sarah F., his wife, have hereunto set their hands and seals in the day and year first above written.

THOMAS V. JOHNSON. [L. s.]

SARAH F. JOHNSON. [L. s.]

Signed, sealed and delivered in the presence of

LEWIS C. GROVER.

State of New Jersey, Essex county, ss.—Be it remembered, that on this fifth day of March, in the year one thousand eight hundred and fifty-seven, before me, Lewis C. Grover, a master in chancery, of the state of New Jersey, personally appeared Thomas V. Johnson and Sarah F., his wife, who, I am satisfied, are the grantors in the within deed of conveyance named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed, and delivered the same as their voluntary act and  
 10 deed, for the uses and purposes therein expressed.

And the said Sarah F., his wife, being by me privately examined, separate and apart from her said husband, she did further acknowledge that she signed, sealed and delivered the same as her voluntary act and deed freely and without any fear, threats or compulsion of or from her said husband.

LEWIS C. GROVER, *M. C.*

Received in the clerk's office of the county of Essex, on the seventh day of March, A. D., 1857, and recorded in Book  
 20 C 10 of Deeds, for said county, pages 409, 410, 411 and 412.

J. J. TERHUNE, *Clerk.*

EXHIBIT No. 2

This indenture, made the sixth day of March, in the year one thousand eight hundred and fifty-seven, between Joseph F. Rusling, of the city of New Brunswick, in the county of Middlesex, and state of New Jersey, of the first part, and the New Jersey Railroad and Transportation Company, of the  
 — of —, in the county of —, and state of New Jersey, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of seventeen  
 10 thousand dollars, lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, hath granted, bargained,

sold, aliened, remised, released, and forever quit-claimed, and by these presents doth grant, bargain, sell, alien, remise, release, and forever quit-claim unto the said party of the second part. and to their successors and assigns, all those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the city of Newark, in the county of Essex, and state of New Jersey. Beginning on the east side of Odgen street, twenty-eight feet to the north of the corner Division street, thence along Odgen street north seven degrees and forty minutes west, 10 eighty-four feet; thence, north eighty-two degrees and twenty minutes east, ninety-two feet to an alley of ten feet in width; thence along the said alley south seven degrees and forty minutes east, eighty-four feet; thence south eighty-two degrees and twenty minutes west, ninety feet to the beginning; being lots 19, 20, and 21, on a map of thirty-seven lots, sold by Robert Baldwin, &c. Also, one other tract, beginning, on the east side of the aforesaid alley, directly opposite the south east corner of the above described lot, thence along the said alley north seven degrees and forty minutes west, 20 eighty-four feet; thence north eighty-two degrees and twenty minutes east, seventy-five feet to Passaic river; thence down the river the several courses thereof, eighty-four feet; thence south eighty-two degrees and twenty minutes west, sixty-five feet, to beginning; being lots 34, 35, and 36, on said map. Also, one tract, beginning on the east side of Odgen street, one hundred and twelve feet to the north of the corner of Division street, thence along Odgen street north eleven degrees and forty minutes west, fifty-six feet; thence north eighty-two degrees and twenty minutes east, ninety feet to 30 an alley of ten feet in width; thence along the said alley south seven degrees and forty minutes east, fifty-six feet; thence south eighty-two degrees and twenty minutes west, ninety feet to the beginning. Being lots 22 and 23 on said map. The other, beginning on the east side of the aforesaid alley opposite the south east corner of the aforesaid lot, thence along said alley north seven degrees and forty minutes west, fifty-six feet; thence north eighty-two degrees and twenty minutes east, eighty-five feet to Passaic river, then 40 down the river the several courses thereof, fifty-six feet;

thence south eighty-two degrees and twenty minutes west, seventy-five feet to the beginning: being lots 32 and 33. One other tract, beginning on the course of Odgen and Division streets, thence north twenty-eight feet; thence east ninety feet to an alley ten feet wide; thence south fifteen feet along the westerly side of an alley to Division street; thence westerly along the northerly side of Division street, ninety-one feet to the beginning. Also the tract beginning at a point on the easterly side of the alley aforesaid, thence north along the

10 said alley forty feet; thence east sixty-five feet; thence south thirty-two feet; thence west sixty-five feet to the beginning, excepting all the following tract sold by T. V. Johnson to the New Jersey Railroad and Transportation Company, by deed of December 7th, 1853. Being the southerly part of the premises of said Johnson, lying between Odgen street and the Passaic river, and embracing fifty feet in front on Odgen street, on the easterly side thereof; measured northerly from the end easterly corner of Odgen street and Division street or alley, as extended easterly of Odgen street, and from

20 the northerly end of said fifty feet in Odgen street, running in a straight line to the river, in a course as near as may be to the present storehouse of T. V. Johnson, and not intersecting the same so as to have a front on Passaic river of the property hereby conveyed of forty-two feet, more or less, including all the premises of said Johnson southerly of said line running from said point of fifty feet north of Division street (from Odgen street to the Passaic river) to the line of property of Beach Vanderpool, excepting for the use of said Johnson, in common with said company, an alley or passage

30 way of twelve feet wide, to run at right angles from the southerly side of the storehouse of said Johnson opposite present south door, until it intersects the street or alley in extension of Division street easterly. And if the said street or alley, in extension of Division street, shall not, at the time of the conveyance to said company, be extended easterly far enough to meet the proposed alley of twelve feet wide from the south door of the aforesaid storehouse, then the said company agreed that said Division street or alley shall be extended by them until it meets the alley at right angles to

40 the storehouse, and if the same width of said last mentioned

alley which is also to be used in common by the parties thereto; and the use of said alley was in no wise to be obstructed by any pier or erection thereon; also all the wharves, docks, and buildings, and improvements, including the scales thereon; subject to a mortgage of ten thousand dollars upon the same, given by Thomas V. Johnson and wife to William H. Woodruff, dated January 27, 1854, which the party of the second part assume to pay; also a mortgage of twenty-five hundred dollars, given by said Rusling, dated March 5, 1857, to Thomas V. Johnson, which the party of the second 10 part also assume to pay; the said two mortgages being computed as part of the above consideration money, being the same premises conveyed to said Joseph F. Rusling by Thomas V. Johnson and wife, by deed, dated March 5, 1857. Together with all and singular the profits, privileges, and advantages, with the appurtenances to the same belonging, or in any wise appertaining: also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in, and to every part and parcel thereof; to have and to hold all and singular the above de- 20 scribed tracts or lots of land and premises with the appurtenances, unto the said party of the second part, their successors and assigns, to the proper use, benefit and behoof of the said party of the second part, their successors and assigns forever. And the said party of the first part, doth for himself, his heirs, executors, and administrators, covenant and grant to and with the said party of the second part, their successors and assigns, that he, the said party of the first part, has not done, caused, suffered, or procured to be done, any act, matter or thing, whereby the title of the said party of the second part, 30 of, in, and to the above granted, bargained, and described land and premises, or any part thereof, can or may be changed, charged, altered, or defeated in any way whatsoever.

In witness whereof, the said Joseph F. Rusling has hereunto set his hand and seal in the day and year first above written.

JOSEPH F. RUSLING. [L. S.]

Signed, sealed and delivered in the presence of  
(The word heirs erased—the word successors interlined.)

A. S. HUBBELL.

State of New Jersey, Essex county, ss.—Be it remembered, that on this seventh day of March, in the year one thousand eight hundred and fifty-seven, before me, a master in chancery of New Jersey, personally appeared Joseph F. Rusling, who, I am satisfied, is the grantor in the within deed of conveyance named; and I having first made known  
10 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.

A. S. HUBBELL, *M. C.*

Received in the clerk's office of the county of Essex, on the seventh day of March, A. D. 1857, and recorded in Book C 10 of Deeds, for said county, pages 417, 418, and 419.

J. J. TERHUNE, *Clerk.*

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Amounts, and how they are ascertained.

5th March, 1850, agreement to convey two lots for	\$900.00
Interest from February 1st, 1850, six per cent.	
20 The <i>whole title</i> was to have been conveyed in the <i>two</i> lots.	
5th March, 1850, agreement to convey seven- eighths of the property in two deeds named; cash on delivery,	37.50
Balance to be on bond and mortgage. Interest from 1st February, 1850,	2810.97
	<hr/>
	\$3748.47
Interest from 1st February, 1850, to November 21st, 1853,	837.74
	<hr/>
	\$4586.21
30 By adjustment between the parties, the bond and mortgage on the 21st November, 1853, was made for	\$4500.00

Payable on the 1st of May, 1854, without interest.

The price for the seven-eighths would be

thus—

\$37.50

2810.97

—————  
\$2848.47

Take one-eighth, which would be \$356.00, for the liquidated damages.

Decree for \$4500.00

Add interest, from 1st May, 1854, on \$4500.00

Deduct \$356.00

10

Interest thereon, from 1st February, 1850.

EXHIBIT No. 3.

D 3, 511.

Isaac Van Wagenen and wife, to Robert Baldwin.

Deed dated May 20, 1829. Recorded April 8, 1830.

For land situate in the township of Newark, beginning at a corner of James Vanderpool's lot on the east side of Broad street, thence along his line north seventy-three degrees east, fourteen chains to Passaic river; thence up the same two chains fifty-five links; thence south seventy-three degrees 20 west, thirteen chains; thence south sixty-nine and a half degrees west, one chain seventy links to Broad street; thence along the same south eight degrees east, two chains forty-three links to the place of beginning. Bounded north by lands now or late of John I. Plume, east by Passaic river, south by land of James Vanderpool, and west by Broad street.

O 4, 53.

Robert Baldwin and wife, to Elizabeth S. Birch.

Deed dated August 11, 1836. Recorded September 17, 1836.

30

First lot. Beginning at the corner of Ogden and Division streets, thence along Ogden street north seven degrees forty minutes west, twenty-eight feet; thence north eighty-two degrees twenty minutes east, ninety feet to a ten foot alley; thence along said alley south seven degrees forty minutes

east, fifteen feet to Division street; thence along the same ninety-one feet to the place of beginning. Being designated as lot No. 18, on a map of lots sold by said Robert Baldwin.

Second lot. Beginning on the east side of said alley directly opposite the northeast corner of the above lot, thence north eighty-two degrees twenty minutes east, sixty-five feet to Passaic river; thence down the river the several courses thereof thirty-two feet; thence south seventy-three degrees forty minutes west, sixty feet; thence north seven degrees  
10 forty minutes west, forty feet to the place of beginning. Being designated on the aforesaid map as lot No. 37.

R 4, 13.

Robert Baldwin and wife, to William Harrison.

Deed dated August 11, 1836. Recorded November 17, 1836.

First tract. Beginning on the east side of Ogden street, twenty-eight feet north from Division street; thence along Ogden street north seven degrees forty minutes west, eighty-four feet; thence north eighty-two degrees twenty minutes east, ninety feet to a ten foot alley; thence south seven  
20 degrees forty minutes east, eighty-four feet; thence south eighty-two degrees twenty minutes west, ninety feet to the place of beginning. Being lots No's 19, 20, and 21.

Second tract. Beginning on the east side of said alley, directly opposite the southeast corner of above tract; thence along said alley north seven degrees forty minutes west, eighty-four feet; thence north eighty-two degrees twenty minutes east, seventy-five feet, to Passaic river; thence down the river, the several courses thereof, eighty-four feet; thence south eighty-two degrees twenty minutes west, sixty-five feet  
30 to the place of beginning. Being lots No's 34, 35, and 36.

A 5, 537.

Robert Baldwin and wife, to Michael Rice.

Deed dated August 11, 1836. Recorded June 13, 1838.

First tract. Beginning on the east side of Ogden street one hundred and twelve feet north from Division street; thence along Ogden street north seven degrees forty minutes west, fifty-six feet; thence north eighty-two degrees twenty minutes east, ninety feet to a ten foot alley; thence along said alley south seven degrees forty minutes east, fifty-six

feet; thence south eighty-two degrees twenty minutes west, ninety feet to the place of beginning. Being lots No's 22 and 23.

Second tract. Beginning on the east side of said alley, directly opposite the southeast corner of the above tract; thence along the said alley north seven degrees forty minutes west, fifty-six feet; thence north eighty-two degrees twenty minutes east, eighty-five feet to Passaic river; thence down the river, the several courses thereof, fifty-six feet; thence south eighty-two degrees twenty minutes west, seventy-five feet to the place of beginning. Being lots No's 32 and 33.

## C 5, 353.

Elizabeth S. Birch to Joseph Harrison.

Deed dated November 28, 1838. Recorded December 4, 1838.

First tract. Beginning at the corner of Ogden and Division streets. Being lot No. 18, aforesaid.

Second tract. Situate on the east side of aforesaid alley. Being lot No. 37, aforesaid.

## E 5, 468.

20

Jonathan Osborn, jun., sheriff, to William Harrison.

Deed dated May 23, 1839. Recorded May 23, 1839.

For lots No's 22, 23, 32, and 33, aforesaid, sold under a decree in chancery, wherein Joseph Jacobus was complainant, and Michael Rice and wife were defendants, to satisfy a mortgage given by said Rice and wife to Silas H. Kitchell, and by him assigned to complainant, dated August 11, 1836.

State of New Jersey, county of Essex, ss.—I, John R. Weeks, clerk of the county of Essex, do certify that I have examined the records of deeds and mortgages in my office, 30 in the name of Robert Baldwin, from November 1, 1833, to June 13, 1838; Elizabeth S. Birch, from August 11, 1836, to December 4, 1838; William Harrison, from August 11, 1836, to November 15, 1853; Michael Rice, from August 11, 1836, to May 23, 1839; and Joseph Harrison, from November 28, 1838, to November 15, 1853. And the records of judgments in same names, from November 1, 1833, to said dates respectively, and have not found thereon any deed, mortgage,

or judgment, by or against them, affecting lots No's 18, 19, 20, 21, 22, 23, 32, 33, 34, 35, 36, and 37, as designated on the aforesaid map, except as above stated.

In testimony whereof, I have hereunto set my  
[L. S.] hand and official seal, the sixteenth day of  
November, A. D. 1853.

J. R. WEEKS, *Clerk.*

T 8, 345.

Margaret Harrison, widow of William, to James Harrison.  
10 Deed dated April 3, 1849; recorded December 6, 1853.  
Release of dower in all lands of which Wm. Harrison died seized.

T 8, 342.

John Kinnier, and Elizabeth, his wife, Theron Grant, and Jane, his wife, Mary and Nancy Harrison, to James, Joseph, and George Harrison.

Deed dated October 30, 1848; recorded December 6, 1853.  
For lots 19, 20, 21, 34, 35, 36, 22, 23, 32, 33, of the Robert Baldwin lots above described; except that the front on Ogden street of No. 22 and 23, is here called "north eleven degrees forty minutes west, forty-six feet."  
20

T 8, 348.

Joseph Harrison, James Harrison, George Harrison, to Thomas V. Johnson.

Deed dated November 21, 1853; recorded December 6, 1853. For the undivided *seven-eighths* of the last above lots; except that the front along Ogden street of No. 22 and 23, is here called "north eleven degrees forty minutes west, fifty-six feet."

30

T 8, 350.

Joseph Harrison to Thomas V. Johnson.

Deed dated November 21, 1853; recorded December 6, 1853. For lots 18 and 37, as conveyed to Joseph Harrison by Elizabeth Birch, by deed dated November 28, 1838.

D 3, 42. For \$4500.

Thomas V. Johnson & ux., to Joseph Harrison.

Mortgage dated November 21, 1853.

Registered December 6, 1863.

Beginning on the east side of Ogden street, 50 feet north from Division street; thence along Ogden street north seven degrees forty minutes west, 118 feet; thence north 82 degrees twenty minutes east, 185 feet to Passaic river; thence down said river 144 feet; thence in a direct line to the beginning point in Ogden street. Excepting thereout an alley of 10 feet wide running through said premises nearly parallel with Ogden street.

10

Cancelled March 6, 1857.

ESSEX CIRCUIT COURT.

The Morris County Bank *vs.* Thomas V. Johnson.

Judgment September 27, 1853. \$785.91, besides costs.

H. J. MILLS, *Attorney.*

Satisfied in minutes. J. R. W.

The Morris County Bank *vs.* Thomas V. Johnson and Jona. E. Huntington.

Judgments September 27, 1853. \$330.25, besides costs.

H. J. MILLS, *Attorney.* 20

Satisfied in minutes. J. R. W.

State of New Jersey, county of Essex, ss.—I, John R. Weeks, clerk of said county, do certify that I have examined the records of deeds and mortgages of said county, in the names of John Kinnier and Elizabeth, his wife, Theron Grant and Jane, his wife, Jane Harrison, Elizabeth Harrison, Mary Harrison, Nancy Harrison, James Harrison, Joseph Harrison, George Harrison, and John Harrison, from February 1, 1847, to December 6, 1853; and Thomas V. Johnson, from November 21, 1853, to December 6, 1853; 30 and the records of judgments of said county, in the same names, for twenty years last past; and I find none affecting the lands above conveyed to Thomas V. Johnson, except those mentioned.

In testimony whereof, I have hereto set my hand  
[L. s.] and official seal, this seventh day of December, eighteen hundred and fifty-three.

J. R. WEEKS, *Clerk.*

U 8, 37.

Thomas V. Johnson and wife, to the New Jersey Railroad and Transportation Company.

Deed dated December 7, 1853. Recorded December 9, 1853.

For a lot, being the southerly part of the premises of the party of the first part, lying between Ogden street and the Passaic river, and embracing fifty feet in front on Ogden street, on the easterly side thereof, measured northerly from the northeasterly corner of Ogden street and Division street or alley, as extended easterly of Ogden street; and from the northerly end of said fifty feet on Ogden street, running in a straight line to the river, in a course as near as may be to the present storehouse of the said party of the first part, and not intersecting the same, so as to have a front on said Passaic river of the property hereby conveyed of forty-two feet, more or less, including all the premises of the party of the first part southerly of said line, running from said point of fifty feet north of Division street, (from Ogden street to the Passaic river,) to the line of the property of Beach Vanderpool; excepting for the use of the said party of the first part, in common with the party of the second part, an alley or passageway twelve feet wide, to run at right angles from the southerly side of the storehouse of the party of the first part, opposite the present south door, until it intersects the street or alley in extension of Division street easterly; and if the said street or alley in extension of Division street shall not at present be extended easterly far enough to meet the proposed alley of twelve feet wide from the south door of the aforesaid storehouse, then the party of the second part agree that said Division street or alley shall be extended by them until it meets the alley at right angles to the storehouse, and of the same width of said last mentioned alley, which is also to be used in common by the parties hereto, and the use of said alley is in no wise to be obstructed by any pier or erections thereon. (This agreement is made part of the consideration of the conveyance.)

D 3, 323.

Thomas V. Johnson and wife, to William H. Woodruff.

Mortgage for \$10,000. Dated January 27, 1854.

Upon lot on east side of Ogden street, one hundred and eighteen feet front, and running to Passaic river; beginning fifty feet north of Division street.

ESSEX CIRCUIT COURT.

Aaron D. Berry vs. T. V. Johnson. 19,529. Judgment  
January 26, 1856. \$1421.68.

H. J. MILLS, *Attorney.*

This judgment is paid, as per receipt.

I have continued the foregoing search in the name of 10  
Thomas V. Johnson, to this date, and find nothing except  
the above affecting the above lands.

J. R. WEEKS.

February 28, 1857.

I have continued the search in the name of Thomas V.  
Johnson to this date, and I find nothing affecting the above  
lands since the 28th day of February, 1857.

A. S. HUBBELL.

March 7, 1857.

Thomas Harrison, Mary Harrison, William Boyd, Eliza- 20  
beth Boyd, Robert Millar, Martha Millar, William Mitchell,  
Agnes Mitchell, William Harrison to James Harrison.

Deed July 13, 1860.

I have continued the above search in all the names of the  
parties to this deed to October, 1860, for deeds and mort-  
gages, from April 3, 1849, and for judgments for twenty  
years, and I find none of either affecting the land above  
mentioned, being one-eighth of the same which belonged to  
William Harrison, deceased.

A. S. HUBBELL. 30

Newark, October, 1860.

THE HISTORY OF THE  
CITY OF BOSTON  
FROM THE FIRST SETTLEMENT  
TO THE PRESENT TIME  
BY NATHANIEL BENTLEY

IN TWO VOLUMES.  
VOL. I.  
FROM THE FIRST SETTLEMENT  
TO THE YEAR 1700.  
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