

NEW JERSEY

Court of Errors and Appeals.

HENRY CLAIR,

Appellant,

and

CHARITY ANN TERHUNE,

Respondent.

} On Appeal.

Points of Appellant.

The bill in this cause was filed by Charity Ann Terhune for the purpose of compelling Henry Clair, the above appellant, to re-convey to her, free from all incumbrances, certain lands in said bill described, which lands had been by her and Peter H. Terhune, her husband, conveyed to said Clair, and to declare void as against her two mortgages, given by said Clair, on said lands, one made to the Mutual Life Insurance Company of New York, for \$3,000, and the other to James F. 10 Preston, for \$4,000. She alleging that the conveyance of said lands from her to said Clair was obtained at a time when she was entirely incapable of transacting

business, and that such conveyance was without consideration.

The cause having been referred to Henry C. Pitney, one of the advisory masters of the Court of Chancery, and he having heard the same upon the bill, answers, replications and proofs, a decree of the Court of Chancery was made on the twenty-sixth day of August, A. D. eighteen hundred and eighty, adjudging that the bill of complaint be dismissed as against the defendant, the
 10 Mutual Life Insurance Company of New York, that the \$4,000 mortgage of James F. Preston be set aside and cancelled of record, that Henry Clair do by proper deed of conveyance, executed by himself and his wife, convey to said Charity Ann Terhune, the lands mentioned in the bill of complaint subject to the said mortgage held by the Mutual Life Insurance Company of New York and all unpaid taxes; that said Henry Clair do account to said Charity Ann Terhune for all moneys borrowed by him on said premises, and that it be referred to William
 20 M. Johnson, one of the masters of the Court of Chancery, to take said account, and that upon said accounting, said Clair be credited *with all moneys necessarily and legally required to be (and actually) paid by him by the contract under which Sherman D. Phelps exchanged the property in the bill mentioned for lands at Binghampton, N. Y., and all taxes paid by him and all necessary expenses in procuring loans and advertising * * * * ** and that the evidence taken in the cause, be used in the said accounting.

30 *See decree, pages 98, 99 and 100, printed case.*

Under the above decree and reference William M. Johnson, the master aforesaid, took additional evidence, and by his report, dated June 4th, 1881, found that the amount borrowed by said Clair on the property in controversy unaccounted for, including interest to the date of his report, was the sum of \$2,247.42.

See report, pages 101, 102 and 103, printed case.

The evidence taken by said William M. Johnson, as master, will be found on pages 105 to 114, inclusive, printed case.

40 The final decree in said cause was made on June 30th,

1881. Adjudging that the report of said William M. Johnson, master, and all matters and things therein contained do stand ratified and confirmed, and that said Henry Clair do pay said Charity Ann Terhune, or her solicitor, the sum of \$2,247.42 and interest thereon from June 4, 1881, with her costs of suit to be taxed.

See *final decree, pages 115 and 116, printed case.*

The only contention of the appellant is, as to that part of the decree of August 26th, 1880, which directs an accounting, and limits the credits which are to be¹⁰ given to Henry Clair to "*moneys necessarily and legally required to be (and actually) paid by Clair by the contract under which Sherman D. Phelps exchanged property,*" &c., to the report of William M. Johnson, master, which finds that the amount borrowed by the said Clair on the property in controversy unaccounted for including interest to June 4, 1881, is \$2,247.42, and to the final decree which confirms the report and directs said Henry Clair to pay to said Charity Ann Terhune, said sum of \$2,247.42, with interest from June 4, 1881, together with²⁰ costs of suit.

I.

It clearly appears by the proofs, and the advisory master so finds, that Mrs. Terhune was not insane when she executed the deed to Phelps, and that the execution thereof was not procured by duress or fraud.

II.

It also appears that Peter H. Terhune was the authorized agent of his wife, Charity Ann Terhune, in making the negotiations which led to the conveyance to Clair,³⁰ and the giving of the mortgages by him, and the subsequent disbursement of the moneys received by him.

III.

The moneys received by Clair were all expended by

him for the benefit of Mrs. Terhune, or her family, with her concurrence.

The appellant should have been permitted to show this on the reference before the master; but by the terms of the order of reference, the credits to which he was entitled were expressly limited to such moneys as he had paid under the contract of exchange made by Peter H. Terhune with Sherman D. Phelps. All other payments were excluded.

10

IV.

The account, as stated by the master, *page 103*, is as follows:

	Amount received by Henry Clair,	\$3,000 00
	Cr.	
	Amount paid on Phelp's contract,	\$1,126 24
	Expenses Hardenburgh loan,	145 00
	Expenses Mutual Life loan,	124 31
	Insurance,	15 50
		<hr/>
20	Total credits,	\$1,411 05
	Clair should have been allowed in addition to these credits the following sums:	
	Commission paid Wells on exchange of properties (<i>page 106</i>),	115 00
	Cash paid Mr. Terhune by Hardenburgh (<i>page 106</i>),	100 00
	Interest on two above amounts (<i>page 107</i>),	42 50
30	Cash paid Winfield & Leeds, legal expenses on Binghampton property (<i>page 107</i>),	39 00
	Paid judgments against Terhune (<i>page 107</i>),	571 79
	[N. B.—The foregoing items were all paid by Hardenburgh as	

directed by Mr. Terhune, (*page 107*.)]

Paid college bill of Mr. and Mrs. Terhune's son (*pages 107 to 110*),

\$344 39

Interest on the \$2500 mortgage of Hardenburgh from October 30, 1874, to date of payment Feb-15, 1875,

51 05

Balance paid to Terhune (*pages 45 to 111*),

325 12

10

Total,

\$3,000 00

V.


If Clair was trustee for Mrs. Terhune, he should not have been charged interest by the master on the moneys received, unless it was shown that Clair had used the funds or received interest on it.

VI.

There is no such relief asked for by this bill of com-20
plaint as is given by the decree.

VII.

Mrs. Terhune made the conveyance to Clair in order that he might raise money to be used for the benefit of herself and husband, and the money received by Clair was so used.

G. ACKERSON, 

Solicitor and of Counsel with Appellant.

There is a small number of...

There is a small number of...

There is a small number of...

WM. S. SHARP, Printer, 21 West State street, Trenton, N. J.

COURT OF ERRORS AND APPEALS.

HENRY CLAIR,

Appellant,

vs.

CHARITY ANN TERHUNE,

Respondent.

Respondent's

Points.

Clair knew that the Binghampton property was complainant's separate estate, and that the Englewood property was received by her in exchange for it.

Clair's testimony, p. 95, line 284.

Clair knew of the complainant's mental condition, and was aware of the ill relations between her and her husband, who was the brother of his own wife. P. 95, line 288.

Clair had endorsed for the husband, and they conspired to get the title of the Englewood property from the complainant into Clair, so that they might handle it for their own benefit. P. 93, line 279.

Clair's statement of all that passed between him and complainant about this matter appears on p. 90, line 270.

"I said 'good morning, Charity;' she said 'good morning,' and then, without any further delay, she said, 'I think we had better give you a deed of that Englewood property—we can save that, anyhow;' I said 'very well, that will be all right;' I then got into the wagon and drove to the depot; *I have had no further interviews with her, either before or after.*"

Clair knew that she understood that he took the property *to save for her*.

In violation of his undertaking, he mortgaged the property for \$3000.

He must account to complainant for the \$3000, and must convey her the property, subject to the mortgage, or he must satisfy the mortgage and convey her the property, free and clear.

CHAS. H. VOORHIS.

Solicitor for Respondent.

Statement of all the papers...
that this matter appears on p. 30...
and good morning...
and then without any further delay...
the first letter was sent a day or two...
and we are now that way... I said very well...
I hope you will find the...
of the order; I have had no further...
the paper of the

It is not that the...
of the...
of the...

The most...
the...
the...

GEORGE H. VOORHIS
MEMBER OF THE HOUSE OF REPRESENTATIVES

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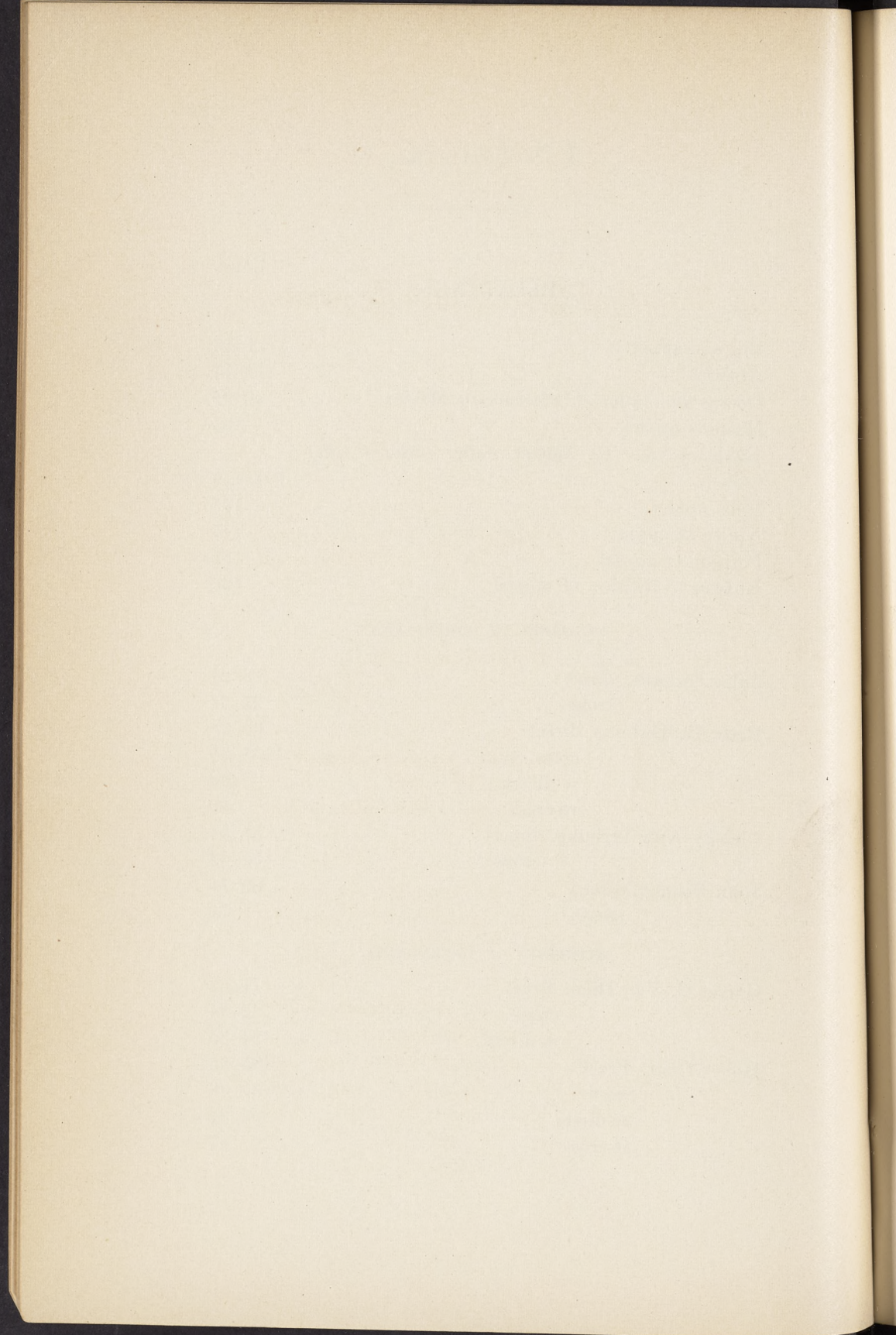
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N. J. Court of Errors and Appeals.

1

BETWEEN

HENRY CLAIR,

Appellant,

and

CHARITY ANN TERHUNE,

Respondent.

*On Appeal
from Decree of
the Chancellor.*

2

IN CHANCERY OF NEW JERSEY :

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

Humbly complaining showing unto your Honor your ora-
tor, Charity Ann Terhune, of the Township of Hohokus, in
the County of Bergen and State of New Jersey :

3

1. That in the year of our Lord one thousand eight
hundred and seventy-four, and for many years prior, she
was the owner in her own right of a certain house and
lands situate in Binghampton, in the State of New York,
which had been devised to her and which were free of all

incumbrances, and which were worth in the year eighteen hundred and seventy-four, at least thirteen thousand dollars.

2. That in said year your oratrix was induced and persuaded by her husband, Peter H. Terhune (with whom she has not lived since the middle of September last past), to exchange said house and lands for certain lands and the buildings and improvements thereon, situate in the township of Englewood, in the county of Bergen, and State of New Jersey, hereinafter described, and that in consequence thereof, she did, with her said husband, on or about the

4 day of _____, in the year eighteen hundred and seventy-four, convey to Sherman D. Phelps, the said Binghampton property, and said Sherman D. Phelps, by deed dated on the sixth day of June, A. D. eighteen hundred and seventy-four, did convey to your

5 oratrix, in fee, simple, free of encumbrances (in which deed the consideration stated was thirteen thousand dollars) all that parcel of land situate, lying and being in the township of Englewood (formerly Hackensack), county of Bergen, and State of New Jersey, bounded and described as follows, to wit: Commencing at a point on the Teaneck road in the southeasterly corner of said lot at a fence on the northerly line of land, now or late of Peter Christie, being the division fence between the land now or late of the said Peter Christie, and the premises thereby conveyed

6 running thereon westerly along the line of said fence as the same now stands three hundred and seventy feet; thence northerly on a line parallel with the Teaneck road one hundred and thirty feet; thence easterly and parallel with the said division fence sixty-two feet to an oak tree marked with a blaze for a corner; thence again northerly and parallel with Teaneck road twenty feet; thence again easterly on a line parallel with said division fence three hundred and eight feet to a fence fronting on Teaneck road and thence

southerly along said fence one hundred and fifty feet to to the point or place of beginning; bounded southerly by land now or late of the said Peter Christie westerly and northerly by land now or late of said Sherman D. Phelps, and easterly by the Teaneck road, which deed was recorded in said office on November 5th, 1874, at 4 o'clock P. M., in Book 39 of Deeds, page 321, &c.

3. That immediately after the consummation of said exchange, the said Peter H. Terhune and one Henry Clair, who married a sister of said Peter H. Terhune, succeeded by importunity and pertinacity, which your oratrix was unable to resist, in obtaining from your oratrix a conveyance to said Henry Clair of said lands and premises in Englewood Township above described, which conveyance was entirely without consideration, although the consideration therein expressed was fifteen thousand dollars, that at that time your oratrix was in very infirm and feeble health both of body and mind and entirely incapable of transacting any business or managing her affairs. That she has never received any consideration for the said conveyance to Henry Clair directly or indirectly, and that said deed ought to be adjudged fraudulent and void by this Honorable Court, or the said Henry Clair directed by the order of this Court to reconvey said lands and premises free of all incumbrances to your oratrix in as full and complete a manner as she held the same under the conveyance to her by Sherman D. Phelps.

4. That since the said conveyance to Henry Clair he has mortgaged said lands and premises without the knowledge authority or consent of your oratrix to the Mutual Life Insurance Company of New York to secure the payment of three thousand dollars by indenture of mortgage dated February 3. 1875, and recorded February 15th, 1875, in Book L 2 of Mortgages, page 413, in the Clerk's office of

said county of Bergen and to one one James F. Preston of Paterson, New Jersey, to secure the payment of four thousand dollars by indenture of mortgage dated March 17, 1875, and registered March 30, 1875, in said office in Book L, 2 of Mortgages, page 536.

5. That your oratrix never received any part of the moneys alleged to be secured by said mortgages and no value whatever from the same, and that she is informed and believes that no money was ever paid or advanced by said Preston to said Clair on said four thousand dollar mortgage, and that she has applied to said Henry Clair for recognition of her rights in said property and has never received any reply from him whatever.

6. That your oratrix only lately learned of the existence of the said mortgages and that said Englewood property was advertised to be sold at sheriff's sale by the sheriff of said county of Bergen, and upon inquiring was informed that said sale was under a decree of foreclosure in the Court of Chancery of New Jersey, in favor of said James F. Preston against said Henry Clair and Catharine, his wife, upon the said four thousand dollar mortgage, and that said sale is to take place on the twentieth day of December, 1876.

7. That your oratrix is informed and believes that said Henry Clay is a man of little or no pecuniary responsibility; that said Peter H. Terhune has no property, real or personal to the knowledge of your oratrix that your oratrix has no means of support and no other property, except said Englewood property or her rights in said Englewood property.

8. That said Englewood property is worth much more than it would bring at the present time at a judicial sale thereof, and that said Henry Clair never had any right in

the said property other than to hold said estate in trust for your oratrix with no authority to encumber or alien the said lands, and that said mortgages are void as against your oratrix.

In tender consideration whereof and forasmuch as your oratrix has not a complete and safe remedy in the premises at and by the strict rules of common law and can only find adequate relief in a Court of Equity, to the end therefore that the said Henry Clair and Catharine, his wife; the Mutual Life Insurance Company of New York and James F. Preston and Garret R. Hering, Sheriff of Bergen County, and their confederates when discovered may without oath true, full and perfect answer, 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, and that the said mortgage to the Mutual Life Insurance Company and said mortgage to James F. Preston may be decreed to be void as against your oratrix, and the said lands and that said mortgages may be cancelled of record by the order of this Court or that said Henry Clair may be directed by the order of this Court to relieve said property from said mortgages at his own cost and expense, and that he and his said wife may be decreed to convey back to your oratrix the said property free from all encumbrances, and that your oratrix may have such other and further relief in the premises as to your Honor shall seem meet and shall be agreeable to equity and good conscience may it please your Honor, the premises considered, to grant unto your oratrix not only the States writ of injunction issuing out of and under the seal of this Honorable Court to be directed to Garret R. Hering, Sheriff of the County of Bergen, restraining him from selling said premises under the fieri facias issued out of this Court in a cause wherein James F. Preston is complainant and Henry Clair and wife are defendants, and to be directed to said Henry Clair restraining him from conveying or encumbering the said laws-

but also a writ of subpoena issuing out of and under the seal of this Court to be directed to Henry Clair and Catharine, his wife, the Mutual Life Insurance Company and James F. Preston and Garret R. Hering, Sheriff of the County of Bergen therein and thereby commanding them and each of them on a certain day and under a certain penalty then 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 oratrix, as in duty bound, will ever pray, &c.

CHAS. H. VOORHIS,

Solicitor and Counsel with Complainant.

NEW JERSEY, ss :

17 Charity Ann Terhune, being duly sworn according to law on her oath, saith about twenty-eight years ago she was married to Peter H. Terhune, that she resided with him after her marriage and for several years at Binghampton in the State of New York, that about three years ago they left Binghampton and removed to the township of Hohokus, in the County of Bergen, in the State of New Jersey; that during the summer of eighteen hundred and seventy-six, the residence of said Peter H. Terhune at the Township of Hohokus, on which she then lived was sold by the sheriff of said county, under foreclosure and she was obliged to leave same and go to the residence of her father in said Township of Hohokus, where she has lived ever since; that her husband has not lived with her nor provided for her since that time nor offered to do so. Deponent further saith that for many years she owned a valuable real estate in Binghampton aforesaid, which had been devised to her in her own right; that in the year eighteen hundred and seventy-four,

she was induced and persuaded by her said husband, Peter H. Terhune, to exchange the same for a house and lot at the township of Englewood, in the County of Bergen, owned by one Sherman D. Phelps, and in consequence of said pursuance she joined with her husband in conveying to said Sherman D. Phelps said Binghampton real estate (which at that time was worth at least thirteen thousand dollars) and that said conveyance was made in that year, and that said Sherman D. Phelps by deed dated on the sixth day of June, 19 A. D. eighteen hundred and seventy-four, did convey to deponent said real estate and premises in Englewood township aforesaid, described in the annexed bill of complaint for the consideration of thirteen thousand dollars, that said deed was recorded in the Clerk's office of said County of Bergen, on the fifth day of November, A. D. 1874, at four o'clock P. M., and recorded in Book I, 9 of Deeds, page 321, etc.

Deponent further says that after said conveyance last 20 mentioned the said Peter H. Terhune and one Henry Clair, who married a sister of said Peter H. Terhune, succeeding by importunity and pertinacity in obtaining from her a conveyance of said lands and premises in Englewood township to said Henry Clair, which conveyance as appears by inspection of the record of it was dated on the eleventh day of September, A. D. 1874, acknowledged before Garret G. Van Dien, a Commissioner of Deeds, for said county on the ninth day of October, 1874, by deponent and acknowledged by said Peter H. Terhune before Isaac 21 Wortendyke, a Master in Chancery on the second day of November, A. D. 1874, and recorded on the fifth day of November, A. D. 1874, at 4 o'clock P. M. in Book I, 9 of Deeds, pages 317, &c., that the consideration expressed in said deed is fifteen thousand dollars.

Deponent further saith that said deed to Clair was wholly

without consideration, and was wrung from this deponent by fraud and while she was under duress, that at the time she was in very infirm and feeble health, both of body and mind, and entirely incapable of transacting any business or managing her affairs that she has never received any consideration or value for said conveyance to claim directly or indirectly, and that she has never received any rent or income from said Englewood premises.

22

Deponent further saith that she is informed and believes that said Henry Clair is a man of very little or no pecuniary responsibility, and that said Peter H. Terhune has no property real or personal to the knowledge of deponent.

23

Deponent further saith, that she lately learned that said Englewood property was advertised to be sold at Sheriff's sale by the Sheriff of said county of Bergen, and upon inquiry deponent was informed that said sale was under a decree of foreclosure in the Court of Chancery of New Jersey in favor of one James F. Preston against said Henry Clair and wife upon a mortgage made and executed to said Preston by said Clair and wife against said Englewood property.

24

Deponent further saith, that said sale is to take place on the 20th day of Dec., 1876; deponent further saith, that it appears by the record in said Clerk's office, that on or about the third day of February, A. D. 1875, said Henry Clair and Catherine, his wife, by mortgage dated on that day mortgaged said Englewood property to the Mutual Life Insurance Company of New York, to secure the payment of three thousand dollars on June 1, 1876, that said mortgage was acknowledged on Feb. 12, 1875, by said Clair and wife and recorded in said office on February, 15, 1875, in Book L, 2 of Mortgages, page 413 and that on or about the seventeenth day of March, A. D. 1875, by mortgage dated on that day said

Henry Clair and wife mortgaged said property to James F. Preston to secure the payment of four thousand dollars in one year, that said mortgage was acknowledged on March 20, 1875, and registered on March 30, 1875, in said Clerk's office in Book L 2 of Mortgages, page 536.

Deponent further saith, that she never received any part of the moneys alleged to be secured by said mortgages, and no value whatever from the same, and she is informed and believes that no money was ever paid by said Preston to said Clair on said four thousand dollar mortgage, and that she has applied to said Henry Clair for recognition of her rights in said property, and has never received any reply from him whatever. 25

Deponent further saith, that she has no means of support and no other property, except said Englewood property or her rights in said property. 26

Deponent further saith, that said Englewood property is worth much more then it would bring at the present time at a judicial sale thereof.

Deponent further saith that both said mortgages were made without the knowledge of this deponent and without any authority or consent from her.

CHARITY A. TERHUNE.

27

Sworn and subscribed this 15th day of December, A..D. 1876, before me, at New Barbadois.

GARRET ACKERSON, JR.

M. C. C.

NEW JERSEY, ss :

John Bentley, being duly sworn, according to law on his oath saith that he resides at Paterson, New Jersey ; that on the seventeenth day of November last past he called on James F. Preston at the Merchants' Loan and Trust Companys office, in Paterson, and told him that he had come to inquire about a four thousand dollar mortgage given to him by
28 Henry Clair, the mortgage mentioned in the foregoing bill, and asked him whether he had paid the money for said mortgage, and he intimated that he had paid it to Peter H. Terhune ; deponent told him that said Peter had said that nothing had ever been paid on said mortgage, to which Preston replied that it was false that he had given him about two thousand dollars, for which said Terhune had given him his promissory note or notes.

Deponent further saith that on the twenty-ninth day of
29 November last past or thereabouts he saw Henry Clair, and asked him how he came to have the title of the Englewood property in himself, and said Clair told him that it had been deeded to him directly by Judge Phelps ; that deponent asked him what he paid for it ; and he said it made no difference that one dollar was as good as thousands and that he was glad to get the property into his hands that he had endorsed a note or notes for Peter H. Terhune to James F. Preston, and this deed to him gave him
30 that said four thousand dollar mortgage was given in part for amount owing on said note or notes, and that the balance was to be furnished to said Peter H. Terhune in cash, and that he did not know whether Peter had received any of the cash or not, and said Clair had not received any of it.

Deponent further saith that last summer an inquisition in lunacy was held in Hackensack, to inquire into the

lunacy of said Charity Ann Terhune, under a commission issued out of the Court of Chancery of New Jersey and that the jury in said matter found that at that present time she was of sound mind, and that at the time of the conveyance by him of said Englewood property she was not of sound mind.

JOHN BENTLEY.

Sworn and subscribed this 18th day of December, A. D. 31
1876, before me, at New Barbadoes.

W. M. JOHNSON,
Master in Chancery,
N. J.

STATE OF NEW JERSEY, ss:

Peter H. Terhune, being duly sworn according to law, 32
on his oath saith that the prop rty in Englewood Township,
Bergen County, New Jersey, which was conveyed to
Charity Ann Terhune in 1874, was through the procure-
ment of deponent conveyed to Henry Clair, because said
Charity Ann was in such feeble condition of mind that
it was very difficult to get her to convey the property ; that
after Judge Phelps had conveyed it to her deponent had
arranged for a sale thereof but the sale fell through because
she would not execute a deed ; that it was the object of
deponent in procuring said deed to Clair to enable de- 33
ponent to use said property for his own individual benefit,
that said Charity Ann had no clear understanding of the
purpose of said deed to Clair ; and that the same was pro-
cured with great difficulty on the suggestion of said Clair
solely to enable said Clair to use said property for the ben-
efit of deponent, and that if said Charity Ann had
understood it so she would never have executed it, and that
said Clair was well aware of said fact that said Charity

Ann was of very weak mind ; that she was for nearly six months in the year 1872 an inmate of the Lunatic Asylum, at Canandiagua, whence she was taken by deponent against the advice of physicians ; that ever since that time she has not been of sane mind except perhaps within the last six months that her insanity first manifested itself by the apprehension that she was lost, ruined, could never be saved ; that she was watched, police after her, and since became a settled melancholy ; that about a year ago she became so
 34 frantic that deponent felt it necessary to take steps to have her placed in the asylum of this State, and procured certificates to be prepared and a doctor to call upon her with a view of signing said certificates and that the physician was undecided and changible in his convictions in the matter ; that during the summer last past, on the application of Cornelius H. Ackerman, of Goshen, New York, her brother, a Commission in Lunacy was issued out of the Court of Chancery of New Jersey, and the inquisition was held at
 35 Hackensack, New Jersey, and deponent was present under subpoena as a witness, and the jury found that at that present time she was sound in mind.

Deponent further saith that said Charity Ann Terhune has had no benefit whatever from said conveyance except the sum of one thousand dollars which was paid to Judge Phelps on the exchange.

Deponent further saith that he has never received any
 36 benefit from the said property or the mortgages which have been given by Clair thereon.

Deponent further saith that long before the deed from Charity Ann to Clair deponent was indebted to The Merchants' Loan and Trust Company of Paterson, for \$2,000, for which deponent had given his note endorsed by Henry Clair ; that the mortgage of \$4,000, from Clair to Preston was made to raise money, and that the said Preston has

never paid or furnished anything on account of said four thousand dollars either to said Clair or to deponent, and that said Preston without right or authority claims to hold said mortgage as a security for said note of deponent or the renewals thereof made prior to the execution of said mortgage, and that said Preston has admitted in presence of deponent that he never advanced any money to any one on said mortgage, and that he holds said mortgage only for said old debt of deponent and the interest thereon, and that said admissions were made by the said Preston in the presence of said Clair at Paterson, in February or March last past. 37

P. H. TERHUNE,

Sworn and subscribed this 18th day of December, A. D. 1876, before me, at New Barbadoes.

JOHN HOPPER,
Master in Chancery,
N. J. 38

ANSWER.

The answer of Henry Clair, one of the defendants to the bill of complaint of Charity Ann Terhune, complainant: 39

This defendant saving and reserving to himself all and all manner of advantage and benefit of exception to the many errors and insufficiencies in the said bill of complaint contained for answer thereto or unto such parts thereof, as this defendant is advised, it is material for him to make answer unto, he answers and says, that it is true as stated in the said bill of complaint, that the said complainant was

formerly the owner of a certain house and lands at Binghampton, in the State of New York, and that the same was conveyed to one Sherman D. Phelps, at the time and for the consideration and in the manner mentioned in the said bill of complaint.

40 And this defendant in further answering admits that the said Sherman D Phelps did convey to the complainant in fee simple free of incumbrances at about the time mentioned in said bill a certain parcel of land situate in the township of Englewood, in the county of Bergen and State of New Jersey, being the same parcel of land and premises mentioned and described in said bill of complaint.

41 And this defendant, in further answering says, that in addition to the conveyance of the Binghampton house and lands the said complainant was to pay to the said Sherman D. Phelps for the Englewood property the sum of twelve hundred dollars, the difference in value between the two properties as agreed upon by the parties, and the said Sherman D. Phelps, also insisted as a part of the contract, that certain judgments against Peter H. Terhune, the husband of said Charity Ann Terhune, amounting to about thirteen hundred dollars, should be paid and satisfied before he would accept a deed of conveyance of the Binghampton property, and that in order to raise the amount of money to make such payment, the said complainant applied to 42 this defendant for assistance, that thereupon this defendant borrowed the sum of twenty-five hundred dollars on his own promisory notes which money he loaned to the complainant, and the same was used by her to pay the balance of said purchase money and satisfy the judgments against her husband as aforesaid, whereupon the said Phelps made the conveyance of the Englewood property as hereinbefore stated.

And this defendant in further answering says that shortly after the conveyance by said Phelps to the complainant of the said Englewood property, it was proposed that a mortgage should be executed on said Englewood premises for the purpose of raising money to pay said sum of twenty-five hundred dollars advanced by this defendant, as aforesaid, and at the request of the said complainant and her husband, this defendant consented to take a deed for the said property in order to raise money thereon for the purpose 43 aforesaid, and thereupon the said complainant and her husband did execute and deliver to this defendant a deed of conveyance of said Englewood property at about the time in her said bill of complaint stated, but this defendant in further answering denies that at the time of the execution and delivery of said deed the said complainant was incapable of transacting or managing her affairs as alleged in said bill, but on the contrary this defendant shows that at the time of the execution of said deed the said complainant was fully aware of the nature of the transaction, and executed the same as her voluntary act and deed freely and 44 without any fear, threats or compulsion of her said husband or of any other person, and without any importunity, pertinacity or duress on the part of the said Peter H. Terhune (her husband), or of this defendant.

And this defendant in further answering says, that after the said conveyance to him by the said complainant and her husband, this defendant together with his wife on the thirtieth day of October, in the year eig' teen hundred and 45 seventy-four, executed a mortgage unto one Abraham J. Hardenbergh with the concurrence and consent of the complainant to secure the payment of the sum of twenty-five hundred dollars, being the amount of the promissory notes given by this defendant for the purpose of raising money to pay the said sum of twenty-five hundred dollars hereinbefore mentioned, which mortgage was recorded in the Bergen

County Clerk's office on the fifth day of November, in the year eighteen hundred and seventy-four, in Book L 2 of Mortgages, on page 59.

And this defendant in further answering, says that at about the time of the maturity of the notes mentioned in the mortgage to said Hardenbergh, this defendant applied to the Mutual Life Insurance Company of New York, for a loan upon said Englewood property in order to pay and
 46 take up said notes, and the said company after having carefully examined the title to said premises agreed to loan this defendant the sum of three thousand dollars, to be secured by a mortgage on said premises, that thereupon this defendant, together with his wife executed a mortgage on said Englewood property to the said Insurance Company, and obtained from it the sum of three thousand dollars, which was used and applied by this defendant after—payment of the expenses of said loan to the payment of the notes secured by said Hardenbergh, and thereupon the mortgage of
 47 said Hardenbergh was cancelled and discharged of record.

And this defendant in further answering, says that previous to the conveyance of the Englewood property to him the said Peter H. Terhune was indebted to the Merchant's Loan and Trust Company of Paterson, in the sum of \$2,000, or thereabouts for which said Trust Company held his note with the endorsement of this defendant thereon, and the said Terhune failing to pay said note, the same was renewed from time to time until about the month of February or March in the
 48 year eighteen hundred and seventy-five, at which time, the said Terhune being anxious to raise about the additional sum of fifteen hundred dollars to pay interest which he owed on his Hohokus property, urged this defendant to accept a mortgage of four thousand dollars for the purpose of paying the said note of two thousand dollars, and raising the said sum he needed to pay interest as aforesaid. that after some negotiation with James F. Preston, who was the Treasurer of said Trust Company, this defendant together

with his wife, executed to said Preston a mortgage on said Englewood property for the purposes aforesaid, a portion of the consideration of which said mortgage was the said note of two thousand dollars hereinbefore referred to, and held by said Trust Company, the balance of said four thousand dollars never having been advanced by said Preston or said Trust Company.

And this defendant in further answering, says that the two mortgages were given by him in good faith with the full knowledge, consent and concurrence of the said complainant and her husband, and that said mortgages are valid and subsisting liens on said premises to the extent of the amounts advanced thereon as aforesaid with interest. 49

And this defendant in further answering, says that he has received no benefit or advantage whatever from the said property conveyed to him as aforesaid or from the moneys mentioned in said mortgages. 50

And this defendant now and at all times has been, and is ready and willing to convey the said premises to the complainant subject to the aforesaid mortgages as aforesaid.

And this defendant denies all unlawful combination and confederacy in said bill charged without that, that any other matter, fact or thing necessary or advisable for him to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied is true to the knowledge and belief of this defendant, all of which matters and things this defendant is ready to verify, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained. 51

ACKERSON & VAN VALEN,
Solicitors for the defendant HENRY CLAIR.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CHARITY ANN TERHUNE,

*Complainant,**On Bill &c.*

AND

Depositions.

52

HENRY CLAIR et ux, et al,

Defendants.

Examination of witnesses, &c., in the above entitled cause on the part of the complainant taken before me, William W. Sanderson, a Master of the Court of Chancery, at my office No. 1 Exchange Place, Jersey City, on Monday the twelfth day of November, A. D. 1877, at ten o'clock in the forenoon, in the presence of Charles H. Voorhis, solicitor and counsel for the complainant and

53 Garret Ackerson, Jr., solicitor and counsel for defendants, Henry Clair and wife, and the Mutual Life Insurance Company of New York.

54 Julia Terhune, a witness produced on the part of the complainant being duly sworn, says: I am the daughter of the complainant; I lived in Hohokus, New Jersey, in June, 1874, with my mother, I continued to live there all the rest of 1874; I remember that Sherman D. Phelps sold to my mother for a place at Binghampton, a house and lot at Englewood Township in 1874; I know that my mother afterwards joined in a deed of the Englewood property to Henry Clair; father said he was going to sell the property to Mr. Slawson, who had been up there once to look at it, he looked at the Hohokus place, and I think he looked at the one at Englewood; he was to have in return for the Englewood property some gas stock and a mortgage on the place; my father then went to Saratoga; a short time after the deed was to be signed their was a deed

brought for my mother to sign ; I think Mr. Van Dien brought it there, he came alone with it, he asked my mother if she knew the contents of it, he came more than once, I am sure he came twice; he might have come three times, he read the deed the first time he was there, the deed was not signed at that time ; it was a deed to Henry Clair, the deed was not signed the first time because my mother said she did not know anything about it and she thought Mr. Slawson's name was to be on it; I don't know when Mr. Van Dien came again, whether it was two or three days, he was alone when he came; at that interview the deed was signed; I don't remember whether he read the deed over at that time or not; I can't say how long he was there, she refused to sign the deed at first, at that time her health was not good although she was not very ill, she was about all the time.

Q. What was her mental condition at that time ?

(Question objected to because it does not appear that this witness is competent to express an opinion on that subject, she not having been shown to be an expert.)

A. Her mind was very weak; she showed it in various ways, she would lose all interest in the affairs of the house and of her family; she was indifferent to every thing; she was melancholy, she was troubled that way before when she was in Binghampton, that was two years before I had a conversation with Mr. Clair about this deed before my mother signed it, I asked him how it was his name was on that deed and my father told me he had sold it to Mr. Slawson ; he said he was to take the deed to these other parties and sign it over to them, I think I explained that to my mother.

Q. Did Mr. Van Dien have any trouble getting her to sign it when she did sign it ?

(Question objected to.)

A. She did it very reluctantly ; I don't know whether any person had been to see her and urge her to sign it or not, I told her what I knew about it; I do not know as I did that at any one's request, only I asked him to explain it, I mean Mr. Clair.

Q. Had not your father asked you to aid in getting her to sign it?

(Question objected to.)

58

A. I suppose he had; he said he did not suppose we could get her to sign it; he had just gone to Saratoga; he was in Mr. Stewart's employ at that time, Mr. A. T. Stewart; he said that because she did not want to do anything any one wanted her to do, that was one of her peculiarities at that time; she did not want to do anything.

Q. That is the way her mental trouble manifested itself, was it?

59

(Objected to.)

A. That was one of the ways; she was very unnatural toward her children, my brother went away to college, she took no interest in his going; she told him he was not fit to go, he went away before this, the seventh of September; she would not assist, she thought my father was crazy for sending; him she would not go riding; you could not get her outside of the gate more than two or three times and then we had to have everything all ready and by almost surprising her compel her to go; she would say take her home, take her home; I can't think of any thing more that summer, I can of other years before and after, I can think of other things but more in other years before and after.

60

Q. Mr. Clair knew all about this, did he not?

(Objected to.)

Q. Did he or did he not.

(Objected to.)

A. He knew she had been to the asylum, the Insane Asylum at Canandaigua, she was there in 1872; she returned from there the same year. Mr. Clair resided next door to my mother in 1874.

Q. Did Mr. Clair ever pretend to buy or have bought this Englewood property of your mother's himself?

(Objected to.)

A. I think not, I don't remember that he said anything further about it. 61

Witness being cross-examined by Mr. Ackerson says:

I reside in Binghampton temporarily since March; my mother now lives at Ramsey, New Jersey; I lived in several places last winter prior to going to Binghampton, I came from there the 25th day of October; my home is not with my mother now, I have no home now; I am 27 years of age; my father is now working at Sing Sing, New York; 62 I am not supported at present by either my father or mother; I was living at Hohokus at the time Mr. Van Dien came to have the deed signed; my father was not there, he had been there all the time, but had just been gone about two weeks; we moved from Binghampton to Hohokus in August, 1873; I did not know that my father was in embarrassed circumstances when we moved from Binghampton to Hohokus, I think I learned of that the time the first deed was signed to Mr. Phelps, it was in June, 1874, then he was talking what he should do with the property; that 63 was the first time I learned of his embarrassment; Mr. Van Dien came the first time with reference to the deed for the Englewood property in September, 1874, and he came a second time with the Englewood deed a few days after, my father went away from the Hohokus property in September, he went to Saratoga; he came back again to live at Hohokus, the last year we were there my father and mother did not live very happily while living at Hohokus; the Ho-

hokus property was sold under foreclosure while I was living there; when I first learned of his embarrassment he said he had to do something, he said that in connection of the Binghamton place; it was not at that time that I heard about the foreclosure of the Hohokus property. I did not hear of the foreclosure of the Hohokus property shortly after the sale of the Binghamton property. My father came home Saturday night every other week in 1874; my mother, father and myself left Hohokus in the latter part of 1876; my mother then went to her father's at Ramseys; my father went to Hackensack; I did not go with him—I went to Sing Sing; my father and mother have never lived together since that time; I have never heard Mr. Clair say anything to my mother about signing the deed for the Englewood property; I can't tell that I ever heard father speak to mother about the deed to the Englewood property.

64
65 Q. When Mr. Van Dien came the first time in September, 1874, with a deed for the Englewood property, was that the first that you learned of deeding the property to Mr. Clair?

A. Yes, sir; I had not heard it spoken of by my father, mother or Mr. Clair before that time; I was home when Mr. Van Dien came; I opened the door for him; I think my mother was also there; I was present all the time Mr. Van Dien was there; I don't think I can give you the conversation that took place between Mr. Van Dien and my mother; I think Mr. Van Dien spoke first; he made known his errand; I remember very little of the conversation; I took part in the conversation about the deed; my mother said she was not going to sign the deed; she said she had not sold it; she said that because she had not really sold it she had not seen anybody about it.

66 Q. Did she say anything at that time about having sold it to Mr. Slawson?

A. I don't know that she did; he said he had better read it over before she signed it; we were both surprised,

because I told my mother that it was to be sold to Mr. Slawson; I told her that a short time before; I learned that from my father a short time before he went away; he came home once over Sunday in the meantime.

Q. What reason did your mother give to Mr. Van Dien for refusing to sign the deed?

A. She did not give him any reason; then he said he would not have her sign it until she understood it; my mother spoke to Van Dien; I can't recollect what my mother said to Mr. Van Dien; Mr. Van Dien is a quiet man and said as few words as possible. 67

Q. You have told us of some things Mr. Van Dien said on that occasion. Why, if your mother talked to Mr. Van Dien about the deed, can't you tell us something of what she said?

A. Because she used to say so many strange things that I tried to forget them; there was no reason in them.

Q. Did she say any queer things to Mr. Van Dien that day, or was her conversation with him sensible? 68

A. She did not say anything queer that day, but would not do anything about it.

Q. She simply refused to sign the deed because she did not know that Mr. Clair had purchased the property?

A. Not for that reason alone; she wanted to dispose of the property; the first exchange was in her name, but this time she thought it was going out of her hands; I would not swear that she said that when she refused to sign the deed; Mr. Van Dien said he would let it rest and we could send for him; I think he took the deed with him; he did not urge my mother on that occasion to sign the deed; Mr. Van Dien wanted us to find out about it before my mother signed it; I don't remember when I first spoke to Mr. Clair about the property; my father said the Sunday before he went away that my Uncle Harry would attend to it; by Uncle Harry I mean Mr. Clair; my father said that just before he went to Saratoga or the time he was home just before the deed was signed. 69

Q. My question was when did you first speak to Mr. Clair about deeding this Englewood property away?

A. When Mr. Van Dien had been there that afternoon I asked him the same evening how it was that the deed was not the same way we expected to sign it; he said we were to sign that to him, then he was to sign it over to the other party; I don't remember whether my mother told me to ask Uncle Harry about it; Mr. Clair said he wanted to sign it
70 as quick as he could. I told my mother what he said about it; that same night she did not understand how it was she said she supposed she would have to do it, or something like that; she talked a great deal about it; I urged her to do it, because I was told they were waiting for the deed; I sent a man for Mr. Van Dien the second time; that was the time the deed was signed; I think I have spoken to Mr. Clair more than once before the deed was signed when he was at his house; he did not go to my house about it; I don't know who told me to send for Mr. Van Dien; I thought
71 my mother would sign it that morning; so I sent for Mr. Van Dien.

Q. Did your mother tell you she would sign it that day if you sent for Mr. Van Dien?

A. I don't remember; she must have told me so; Mr. Clair lived next to me; our house stood back in the yard 450 feet, and I think it some distance further than that across the field; I was in the habit of going to his house frequently; it was very seldom a day passed but what I was there; I went on purpose to ask about this deed; I don't
72 know whether I went to ask him once, twice or three times; I think I went twice; my mother had never seen the Englewood property up to that time; she has never seen it yet to my knowledge; I don't know whether she left the trading of the Binghamton property for the Englewood property with my father or not; she said it was none of her doings at all; she said that the first time the Binghamton property was sold; I was home the time Van Dien came and got the deed signed; my mother was home; I was present all the

time Van Dien was there; I really don't know who spoke first at that meeting.

Q. Can you remember anything that was said on that occasion by either your mother, Mr. Van Dien or yourself?

A. I really cannot tell.

Q. Did not you or your mother tell Van Dien that you had sent for him, that your mother would sign the deed?

A. I think I must have told him so; I think I did.

Q. What did your mother say about signing the deed when you told Van Dien this? 73

A. I don't think she said anything; she signed it.

Q. Was your mother by when you told Van Dien she would sign the deed?

A. I think we were all in the same room.

Q. Don't you remember of anything your mother said to Van Dien on the occasion she signed the deed?

A. No, sir, I don't remember.

Q. She spoke to Van Dien, did she not?

A. Yes, sir. 74

Q. Did she not say to Van Dien that she now understood about the deed that it was all right and that she was ready to sign it, or words to that effect?

A. Not to my knowledge.

Q. Did she say nothing to him (Van Dien) that signified her willingness to sign?

A. Nothing, only she signed it.

Q. Did you say anything to her in the presence of Van Dien about her signing it?

A. I did not urge her one way or the other. 75

Q. Did Mr. Van Dien urge her?

A. No, sir.

Q. Did your father urge her?

A. No, sir.

Q. Did Mr. Clair urge her?

A. No, sir; he did not see her.

Q. On one or more of the occasions when you went to see Mr. Clair about this matter, as you have stated, and he ask-

ed you, if your mother had not yet signed the deed, did you not say to him, why don't you go and see mother about it, or words to that effect?

A. I do not remember.

Q. Will you swear that you did not so say to him?

A. I don't think I did, if I did, I have forgotten it.

Q. You have forgotten a great deal that was said and took place in reference to this matter, have you not?

76 A. Yes, sir.

Q. Did not Mr. Clair refuse to you to go and see your mother about this matter, the giving of the deed?

A. Not that I recollect.

Q. Did you understand from your father or Mr. Clair why the deed was to be given to Mr. Clair?

A. Nothing more than I have already said.

Q. Did you not understand that it was necessary to raise certain moneys in order to pay upon the Hohokus place that the deed was to be given to Mr. Clair in order that he
77 might raise certain moneys on the Englewood place, and also to pay the difference in value between the Binghampton property and the Englewood property?

A. No, sir; I did not know there was any difference between the Englewood and Binghampton place.

Q. How long had your father been gone to Saratoga?

A. He had been two weeks or more, and went it that same month of September.

Q. You have stated in your direct-examination that when Mr. Van Dien came the first time with the deed he
78 asked your mother, if she knew or understood the contents of it, what did she say in answer to that question?

A. She said no.

Q. Did he read the deed to her at that time?

A. Yes, sir.

Q. What did she say to him about the deed after he read it to her, what objection did she make to signing it?

A. She said, she was not going to sign it to him; I told her that the place was going to be sold for that stock: I had

told her it was to be sold to Mr. Slawson ; I explained it to her as best I could.

Q. Did she object to signing the deed, because it was made to Mr. Clair instead of Mr. Slawson ?

A. I think that was one of her reasons.

Q. Did she state that to be one of her reasons to Mr. Clair in your presence ?

A. I don't know what she said at all.

Q. Why is it that you remember all that Mr. Van Dien 79 said and did, and you said, and Mr. Clair said, and you can't remember anything your mother said ?

A. I don't remember all Mr. Van Dien said, or what Mr. Clair said, or what I said.

Q. How is it that you remember so much what Mr. Van Dien said, you said, and Mr. Clair said, as you have stated it, and remember nothing of what your mother said ?

A. Because I had not much of an opinion of anything she said then.

Q. How long did Mr. Van Dien stay there on those two 80 occasions ?

A. As near as I can remember about a half an hour.

Q. Did you say anything to Mr. Van Dien about the deeds on any occasion ?

A. I expressed my surprise at it the first time he called.

Q. When did your brother go to college and where ?

A. He went to New Haven, Yale College.

Q. When did he go ?

A. First week in September, 1874.

Q. Your mother objected to his going, did she not ? 81

A. Yes, sir.

Q. Your mother's objection was, that your father could not afford to send him ?

A. She said he was not fit to go, as thought he was not fit to go.

Q. Your mother knew that your father was in embarrassed circumstances ?

A. She did not know.

Q. You knew it at that time that your father was in embarrassed circumstances?

A. I did not; he said he could afford to send him.

Q. How soon did your father leave home for Saratoga after your brother went to college?

A. About one week.

82 Q. I understood you to say, that your father told you at the time he sold the Binghampton property, that he would have to do something; and that then was the first that you knew he was in embarrassed circumstances, is that so?

A. I did not know that he was embarrassed then; I knew he had nothing to do since we lived there?

Q. Can you tell us now when you first knew he was in embarrassed circumstances?

A. I went up to Binghampton in the winter and while I was gone, the place was advertised in the paper, when I came back, I heard of it.

Q. What place was that?

83 A. The Hohokus place.

Q. What winter.

A. The winter of 1875, it was April 1875, when I came back from Binghampton.

Y. You say your mother was melancholy in September, 1874, did you know any particular cause for it?

A. Nothing; only she had been so for a long time, she was out of her mind.

Q. You did not tell Mr. Van Dien that, when he came there?

84 A. No, sir.

Q. On either occasions?

A. No, sir.

Q. You said that your father and mother did not live in very pleasant relations; when did you first notice that?

A. When she was at her father's, and would not come to the house to us.

Q. When was that, for how long?

A. She was at her father's from the first part of January, 1873, until about May 3d, 1874.

Q. Was she troubled and melancholy while she was at your grand-fathers?

A. Yes, sir; I was not there.

Q. Where were you during that time?

A. I was at Binghampton and afterwards at Hohokus.

Q. When did you move from Binghampton?

A. In August, 1873. 85

Q. And you moved from there to Hohokus?

A. Yes, sir.

My father was not at Binghampton much while my mother was at my grand father's; he staid at Hohokus; my mother's father lived at Ramseys.

Q. Your father was at Hohokus from the time your mother left Binghampton until you came to Hohokus; your mother was at Ramseys and you were at Binghampton both living at different places?

A. My mother was at Ramseys; I was in Binghampton 86
myself and brother; and my father was building in Middletown and also fixing a house at Hohokus, he came home to Binghampton occasionally about every other week.

Q. How often did you see your mother after she left Binghampton before you left Hohokus?

A. I came down once to see her, that is all.

Q. And did you see her?

A. Yes, sir.

Q. How far is it from Ramseys to Hohokus?

A. Five miles. 87

I did not go to see her very often some times on Sundays we would drive up to see her; I know of no reason for my mother's melancholy, except that she has been so long and kept so.

Q. Do you know what has occasioned a separation between your father and mother?

A. I think so.

Q. Please state?

A. They could not agree at all.

Q. When did that disagreement commence?

A. I can't tell, don't know when.

Q. It was some time before your mother left Binghampton for Ramseys?

A. I suppose so.

Q. Don't you know it?

A. No, sir.

88 Q. They had never been separated before they left for Ramseys had they?

A. No, sir.

Q. Do you not know that the cause for your mother's melancholy and other peculiarities you have mentioned was occasioned by your father's treatment of her and because she alleged that he was unfaithful to her in his married relations; do you not know that she charged that upon him.

89 A. I don't believe that that was the cause of her being melancholy and out of her mind at first, but I think it made her so afterwards, made her act so.

Q. When do you think that commenced operating upon her mind?

A. After she came to Hohokus.

Q. You had never heard of that before you left Hohokus that trouble between your father and mother?

A. Yes, sir; I have.

Q. Do you know that your mother claimed that your father was unfaithful to her in his marriage relations?

90 A. I do.

Q. When did you first learn of that?

(Question objected to. Question waived.)

Q. When did you first learn that your mother charged your father with unfaithfulness?

A. I can't tell when.

Q. Was it before or after she left Binghampton?

A. After.

Q. Was it before your mother returned from Ramseys to live at Hohokus?

A. No, sir.

Q. Was it after she came to live at Hohokus with your father?

A. Yes, sir.

Q. How soon after?

A. I don't know; I don't remember.

91

Q. Was it before or after your brother went to college?

A. I think it was before.

Q. Did you hear from other sources than from your mother that your father was unfaithful to his marriage relations?

(Question objected to.)

A. I did.

Q. Did you also hear that prior to your brother going to college?

92

(Question objected to.)

A. Yes.

Q. Have your father and mother lived together as husband and wife since they left the place at Hohokus?

A. No, sir.

Q. Is your father here present to-day?

A. Yes, sir.

Q. Is your mother here to-day?

93

A. Yes, sir.

Q. Noticed anything peculiar about her to-day?

A. No, sir.

Q. How often have you seen your mother before to-day since you left Hohokus last fall?

A. She was in Binghampton visiting, and sometimes I saw her every day and sometimes I would not see her for several days.

Q. How long was she in Binghampton?

A. She was there for four weeks and then went away and came back again and was there about four weeks again.

Q. When did she return from Binghampton to Ramseys the last time?

A. The latter part of September, 1877.

Q. Have you been to Ramseys to see since she left Hohokus?

94 A. No, sir.

JULIA TERHUNE.

Sworn and subscribed, this 12th day of November, A. D. 1877, before me, at Jersey City.

W. W. SANDERSON,

Master in Chancery,

N. J.

95

Whereupon the examination was adjourned to Thursday, the twenty-second day of November, A. D. eighteen hundred and seventy-seven, at ten o'clock in the forenoon, at the same place.

At which time and place the examination was resumed in the presence of the respective parties.

96

Peter H. Terhune, a witness produced on part of complainant, says: I believe I am the husband of the complainant; I know of a deed made by me and the complainant to one Henry Clair of property in Englewood Township; I was not present when she signed this deed; my impression is that she signed the deed first; I won't be positive; I don't know who drew the deed, that is the last one; I do not know who drew the deed from the

complainant and myself to Henry Clair ; I know why that deed was made ; I bought the Hohokus property and thought that I could pay for it when it became due, the whole of it ; afterwards I found out that I could not get the money from the party whom I had loaned considerable to ; and I came to the conclusion that it was necessary to dispose of or turn into money to meet that payment or part of it ; I thought the matter over thoroughly, and came to the conclusion that there was only one way to save the Hohokus property ; and that I would make the attempt by disposing of the Englewood property ; I made a contract with a man by the name of Slawson for it ; who was to give me a certain amount of stock and a bond and mortgage ; I could not say positively, in the neighborhood of five or six thousand dollars ; I would not be positive as to amount now ; and turn that mortgage and stock into money, that was my object ; I knew that the way Mrs. Terhune was and acted, that I could not do anything unless I put it in another parties hands so I could get the deed when required to dispose of it ; I did have the deed made out to Mr. Clair ; that was in 1874, three years ago about, I think I acknowledged it in Saratoga and sent the deed to Ballston to the clerk's office of Saratoga County to get his certificate to show that the officer was authorized to take acknowledgments ; I then sent it to Henry Clair, with A. T. Stewart and Company ; my impression is I have never seen it since ; I could not say who procured the complainant to execute the deed ; I was not there, only what I have been told ; I wrote, urged it to be done very strenuously, urging it to be done ; I wrote to Julia, also to Mr. Clair ; my impression is I also wrote to Van Dien to go there again after I found he had failed in the first attempt ; I am not positive but what I sent Mr. Van Dien there the first time ; my impression is that I did, but I won't be certain ; I don't know whether the deed was sent to Van Dien or not of my own knowledge ; I sent it to Clair after I executed it at Saratoga ; I think I did not see

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the deed before that; I wrote a deed myself and sent it on, but it was not right; I think, according to my recollection, Isaac Wortendyke wrote the deed; the last one that I signed and Mrs. Terhune signed I merely judge by the recollection of the writing; I was in frequent communication with Mr. Clair at that time almost daily; he married my sister.

Q. Was the complainant aware of your plan and purpose in getting her to sign the deed to Clair?

100

(Question objected to.)

A. She was not.

Q. What consideration was there, if any, for that deed?

(Objected to.)

A. None or nothing; I have been informed that a mortgage was made by Clair and wife to the Mutual Life Insurance Co.

101

Q. What consideration, if any, have you ever received for that conveyance?

(Question objected to.)

A. Never a dollar directly.

Q. Why did you not yourself apply directly to the complainant to sign the deed to Clair?

102 A. Various reasons—I can state them in detail; in the first place, she would not do anything what I asked her to do; in the next place, I did not consider her capable of doing anything and had not been for a long time; she had been in that state of mind a long time back that you could not reason with her, especially myself, could not get her to do anything that was necessary to be done and from various acts and sayings; I became thoroughly satisfied that it was useless for me to accomplish with any possibility of success any such arrangement; her mind had not recovered, especially at that time, but what she could be influenced by others

and not by myself, and therefore I thought it perfectly useless to say anything to her; my whole object and only object was to try and save the Hohokus property, and if I could have got the deed in time; I could have done so, that is my firm belief; the Hohokus property was mine; I bought it and spent about sixteen thousand dollars on it; the complainant was not aware of my plan in that regard.

Q. How was the project made to appear to her mind ?

(Objected to because the witness has stated that he did not speak to the complainant on the subject.)

103

A. I could not say, I was not there.

Q. Have you not heard Henry Clair, the defendant, say anything about it ?

(Objected to, because whatever Henry Clair may have said cannot by any possibility be binding upon or effect the interest or right of the defendant, the Mutual Life Insurance Company of New York.)

104

A. I have.

Q. What have you heard him say ?

(Question objected for the same reason as stated in the last objection.)

105

A. Well, we talked the matter over a number of times; he wrote to me almost daily, every day or two about that time; he said he had a devil of a time to get her to sign it, he said he or they had; I might have kept the letters, but I did not think they would be necessary.

Q. Who proposed this plan of putting the title to the property in Clair.

A. My impression is that it was proposed to me by an

attorney whom I consulted once. I would not be positive whether it was Mr. Wells or Mr. Kneeland. Mr. Wells was a real estate man and Mr. Kneeland was an attorney; it was suggested in their office by one or the other, I am not positive which.

Q. What did Clair understand that the property was deeded to him for?

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(Question objected to because Mr. Clair can be called for himself to state what he understood him, and because what Mr. Clair understood would have no binding force or effect against the defendant, the Mutual Life Insurance Co.

107

A. Well, we talked this matter over and we came to the conclusion that it was for the purpose of accomplishing the object I stated before that I could get the deed when wanted for that object; that was the understanding between him and me before the deed was made and after that I had confidence in him, or I should not have done it.

Q. What has been done with that property since that deed was made?

108

A. Nothing that I am aware of, except that I had it cleaned out once and stopped some leaks and tried to let it, and I had a drain built, a passage way fixed to get in and out to the street; that is about all, except that I tried to let it; it was not occupied when it was deeded to the complainant; there has been no tenant in it since, unless there was one in it this fall; it was not let to my knowledge; the last time I saw it was in June, 1877, and then it was not let; my impression is that I went in it at time; I drove in and I think I went in the house; I was alone.

Q. Who took possession of the property when it was deeded to your wife?

A. I had it cleaned out and fixed it up myself so as I could lock it up; I locked it up; I have had the key ever since, I have it now, the repairing was done in 1876, and I

was going to build a walk; I tore up the old one, which was worn out.

Q. When did you first learn that the Mutual Life Insurance Co. held a mortgage against that property for three thousand dollars, dated Feb. 3, 1875, made by Henry Clair and wife?

A. I would not be positive what date; I could not say positively what date.

Q. Did you know it at the time or did you learn it afterwards? 109

A. I did not know it until after it was given; I think it was the first part of March when I first learned it; that is my impression; I am not sure whether it was the March after the mortgage was given; it must have been March, 1875; it was after the mortgage was given; I know a mortgage made by Clair to Preston for \$4,000; I have never seen it; I have talked to him about it.

Q. Did Preston ever tell you whether or not any money had been advanced by him on that mortgage? 110

Question objected to, because whatever Preston may have said not in the presence of Henry Clair or the defendant, the Mutual Life Insurance Co., is not proper evidence as against those defendants; also because it is hearsay evidence.

A. I had a talk with Preston; he said that Clair would give him a mortgage; he would get that mortgage cashed for four thousand dollars, he knew where he could get the money in Connecticut and would do so, and take out the amount which he claimed I owed him and pay over the balance; this was before the mortgage was given; I afterwards went to him after the mortgage was given and wanted him to do as he agreed; he said he would not do anything about it as he had me then where he wanted me, and he would hold me; I then offered to pay him the indebtedness, I owed him with interest and he to deliver up the mort- 111

gage; he said he would be damaed if he would do it; he would sell both places; I then left him.

Witness being cross-examined, says :

I am a builder; I have been in that business thirty years; I will be fifty-three years of age pretty soon; my wife is
 112 to report, Dec. 1877; she was born in 1824, according to
 report; I was married the 17th day of July, 1848; she has
 two children; the oldest is the one who was a witness in this
 cause; the other child's name is Charles Francis; he will be
 twenty-one the 9th of next April; I lived in Binghamton
 before I went to Hohokus; my home was in Binghamton
 from the 12th of September, 1849, until August 18th, 1873
 I owned property there; during that time my wife also had
 some there in her name; the property which was traded for
 113 the Englewood property was in her name; that was the
 homestead property on which we lived; she had owned that
 since 1853; she bought that property from a man by the
 name of James Munsell; she owned it continuously from
 1853 up to the time it was traded for the Englewood prop-
 erty; that was the only piece of property she traded for the
 Englewood property; there was no dwelling on that prop-
 erty when she purchased it; the property consisted of a
 brick house, barn, out-houses and fences, all necessary fix-
 114 tures; the lot was fifty feet by one hundred and eighty-one
 and a half—the ordinary size of a lot on that street; she paid
 \$700 for the lot when she purchased it; that was not the
 only property she had owned in her own name at Bing-
 hampton; I did not own any property in Binghamton the
 time the Englewood property was obtained.

Q. Had you not conveyed or caused to be conveyed to your wife the property which was in your name at Binghamton or some part thereof?

A. No; she is not the owner of any property at Bing-

hampton now; the last she owned there was the piece she traded for the Englewood property.

Q. When was the house and barn erected on the Binghampton lot which she traded for the Englewood property?

A. Part of it in 1856 and the other part afterwards along at different times; there was something done to it up to '62 or '63; I superintended the erection of those buildings and Mrs. Terhune's money built that house and barn and bought the lot. 115

Q. From what source did Mrs. Terhune get the money to put up those buildings and purchase the lot?

A. She got it; some was willed to her, and from that my trading and the rise of property she acquired enough to build. She received money by will from my father; his name was Henry Z. Terhune; he lived at Hohokus at the time of his death; the premises in 1870 was considered to be worth \$10,000, the house and lot and the whole premise; I don't know what the buildings were worth at that time or what they cost; they were built in cheap times. 116

Q. Did they cost \$5,000?

A. I don't know.

Q. You are a contractor for erecting buildings and have been for 20 years past?

A. Yes, sir, from '42.

Q. Can you not now, from your knowledge of the building, give us some idea of the cost and the other improvements on the property?

A. I can; they would cost \$5,000 at the time it was done. 117

Q. What amount did your wife inherit by will from your father?

A. I cannot tell; it is so long ago I can't remember; she was willed a piece of property with incumbrance upon it, also some money.

Q. When did your father die?

A. Seventh day of January, 1851.

Q. What other property did your wife own in Binghampton during the time she owned the homestead there?

A. She owned the lot, and she owned another house and lot at the same time; she disposed of the house and lot for other property which was put in this homestead so-called to build with; I am a mason by trade; my wife left Binghampton to come to New Jersey the forepart of January, 1873; myself and children remained there until I left for
 118 Hohokus, the 18th of August, 1873; when my wife left Binghampton she went to her father's, at Ramseys; myself and children kept house in the homestead, at Binghampton; I was not there much; my business called me away; my wife did not come back to Binghampton again while we lived there; my wife staid at Ramseys; I often went there and staid oftener than I went to Binghampton; my wife came from her father's to live with me at Hohokus, in May, 1874; I think I tried to get her to come before,
 119 left it; I did not rent; I did not try to rent it first off; I expected to go back; I lived on the farm at Hohokus, from August, 1873, to the fall of 1875; the Hohokus place contained 40 acres; I was not home much while I lived there; my business called me to different points; my wife lived with me there part of the time; in the winter I was at Saratoga during the coldest weather; she boarded in New York; it is three years ago this coming winter, I presume, my wife went to Ramseys, to her fathers during the fall of 1875; I believe she has been living there ever since;
 120 I have been so informed; we have not lived together since then; the Binghampton property was exchanged for the Englewood in 1874; I don't remember the date; it was the same time the Englewood property was conveyed to Mrs. Terhune; I made a contract with Mr. Phelps before he went to Europe; the deeds were not exchanged until he came back, the contract was made in June, 1874; I am quite sure that was the date; Mr. Phelps went to take his son to Germany; I think he was gone two or three months.

Q. Who negotiated with Sherman D. Phelps for exchanging the Binghampton property for the Englewood property?

A. I did; we had written about the trade several times; perhaps twice; he wrote me that he was agoing to Europe, and wanted me to meet him at a hotel the day before he was going to Europe; I saw him; we finally made the agreement for this house; and he placed a power of attorney in Chapman's hands to carry out the arrangement; the deeds were not delivered until he came back; I made the contract that day at the hotel; the contract was in writing; I have not that contract with me; I do not know where it is; it was signed by Phelps and myself; my wife did not sign it; she knew nothing about it; she knew nothing of the Englewood property; I had not consulted anything about the trade; I presume she signed the deed to Mr. Phelps for the Binghampton property the time he gave me a deed for the Englewood property; I don't know; I don't think I saw her sign it; I know I signed the deed and acknowledged it; and suppose she signed it; I don't think I ever asked her to do it; I did not think it was any use; I knew better than that if I wanted to accomplish it.

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122

Q. How did you and Mr. Phelps trade?

A. We made a little memorandum or contract, whatever you have a mind to call it.

Q. I mean what valuation did you place upon the Binghampton property, and what valuation did Mr. Phelps place upon the Englewood property?

123

A. I don't know; I don't remember the amount.

Q. Was there no difference to be paid by one to the other?

A. There was.

Q. Please state what difference and by whom to be paid?

A. I was to pay one thousand dollars.

Q. Did you pay it?

A. I never paid it.

Q. Do you know whether it has been paid and if so who paid it?

A. It was to be paid when the deeds were delivered and I suppose it was; I think I was in Saratoga when the deeds were delivered, I don't remember being present.

Q. Do you know to whom the deeds were delivered by Mr. Phelps for the Englewood property?

A. I was not present to my knowledge.

124 Q. It was never delivered to you or your wife was it?

A. Not to my knowledge.

Q. You have never paid the 1,000 dollars difference to Mr. Phelps.

A. No, sir.

Q. Neither you nor your wife had the one thousand dollars difference to pay to Mr. Phelps did you?

A. I can't say for her; I can only say for myself.

Q. Well speak for yourself then?

A. I did not have it to pay.

125 Q. You know your wife hadn't it, too, don't you?

A. You asked it and answered it; I don't know as I said before.

Question repeated.

A. I don't know whether she had or not.

Q. At the time when this deed to Mr. Clair was signed by you and your wife, the deed from Mr. Phelps had not yet been delivered, had it?

126 A. No.

Q. Was it not understood between you and Mr. Clair, that Mr. Phelps was to deliver the deed to Mr. Clair?

A. I don't know, I presume it was.

Q. Was it not understood that the deed should be made by you and your wife to Mr. Clair, in order that he might raise the money necessary to pay to Mr. Phelps as the difference in the valuation of the property, because neither you or your wife had the money to pay that difference?

A. I answer yes as to the first, and to the second part I did not have it nor I don't think she had it.

Q. How long after you and your wife had signed the deed to Mr. Phelps was it that you and your wife signed the deed to Mr. Clair for the Englewood property?

A. I don't remember for myself and can't answer for her.

Q. When did you make the arrangement with Mr. Clair that he should take the deed and raise the money necessary to pay to Mr. Phelps the difference? 127

A. All the arrangements that were made I think were made before I went to Saratoga.

Q. When did you go to Saratoga?

A. I went either the 14th or the 15th of September, 1874; I can't say which.

Q. How long after you had made the agreement with Mr. Phelps was it that you made the arrangement with Mr. Clair to raise and pay the difference?

A. I am quite certain I made arrangements with Mr. Phelps in June, 1874; I and Mr. Clair had the talk in August or September, 1874; it was certainly shortly after I made the trade. 128

Q. Is your memory good?

A. Pretty good.

Q. Don't you know that the one thousand dollars difference was paid at the time the deed was delivered by Mr. Phelps to Mr. Clair?

A. I have not the least doubt in the world but that it was paid at that time. 129

Q. Has not Mr. Clair told you he had paid it?

A. He has.

Q. He informed you of it about the time it was paid, did he not?

A. I presume he informed me the same day.

Q. Do you not know that Mr. Clair had paid that one thousand dollars difference to Mr. Phelps before you acknowledged the deed to Clair at Saratoga?

A. I don't remember.

Q. Do you know from what source or in what manner Mr. Clair raised or obtained the one thousand dollars to pay Mr. Phelps?

A. I think the money he raised to pay Phelps came from Hardenburgh.

Q. Did he tell you how he raised it?

A. I did know at the time.

130 Q. Do you not know that he raised it by giving a mortgage to Mr. Hardenburgh on this Englewood property?

A. I think he did; the particulars I don't remember; it was a complicated matter, on the part of Hardenburgh especially.

Q. Did not Mr. Clair tell you at the time that he could and would raise money from Hardenburgh by giving a mortgage on this property and before he gave the mortgage?

A. I think he did.

131 Q. Do you know what amount Mr. Clair raised upon the mortgage from Mr. Hardenburgh?

A. I did know, but I don't remember now how much?

Q. Was it not \$2,500?

A. It might have been, I can't say positively.

Q. Mr. Clair told you, didn't he?

A. We talked the matter over several times, both before and after, about the Hardenburgh mortgage, a dozen times.

Q. Mr. Clair consulted you about getting the money on the Hardenburgh mortgage?

132 A. He did.

Q. Was not the whole arrangement between Mr. Clair and Mr. Hardenburgh done with your knowledge and consent?

A. I suppose it was; we talked about it in almost every shape or form.

Q. Do you know what disposition was made by Mr. Clair of the money he obtained from Hardenburgh upon the mortgage given by him to Hardenburgh?

A. I presume I do most of it; I presume he paid that \$1,000 to Mr. Phelps and he paid judgments against me. I think one was about \$500 and the other about \$150.

Q. Don't you remember that about \$600 of those funds went to pay interest you owed for the Hohokus property?

A. My impression is that about \$300 was the amount paid to John W. Bogert, executor of Samuel T. Banta, who held the mortgage; I won't be positive.

Q. In whose name was the Hohokus property, yours or your wife's? 133

A. In my name.

Q. Mr. Clair accounted to you satisfactorily for all the moneys he received from Mr. Hardenburgh on that mortgage, did he not?

A. To the best of my recollection, I think he did; he either told me or wrote to me; I think he told me.

Q. In the accounting or statement Mr. Clair made to you with reference to the disbursement or expenditure of the Hardenburgh money, did you understand he retained any portion of it for his own benefit? 134

A. I think not. I think at the time he told me what he had done; my impression is that it was satisfied at the time, as far as I was concerned anyway.

Q. This loan from Mr. Hardenburgh was a temporary loan, was it not?

A. Yes.

Q. Did you not understand from Mr. Clair that he would have to obtain a permanent loan from some other source?

A. Yes; unless I could dispose of the property before. 135

Q. When did you first learn that he was negotiating a loan from the Mutual Life Insurance Co. of New York to pay off the Hardenburgh mortgage?

A. I can't tell; no way of telling.

Q. Mr. Clair advised you or informed you that he was about obtaining a loan from the Mutual Life to pay off the Hardenburgh mortgage, did he?

A. I can only guess at it; I can't remember.

R. When did you first hear of this loan being made from the Mutual Life Insurance Co.?

A. I don't know.

Q. You and Mr. Clair were upon friendly terms during all this time, were you not?

A. We were and always have been since as far as I know.

Q. You understood that Mr. Clair was acting in your behalf and for your interest at that time, do you not?

A. That was the understanding.

Q. Did Mr. Clair ever ask you to have the deed made to him?

A. He did not.

Q. It was a voluntary conveyance, then, to him on your part, was it?

A. I stated fully the reasons why this matter was entered into before.

Q. Whatever Mr. Clair done in the matter was done at your request, was it not?

A. I presume most of it was—perhaps all.

Q. At the time Mr. Clair obtained this loan from the Mutual Life Insurance Co. it was with your knowledge and consent, was it not?

A. I was in Saratoga at the time; I presume I knew all about it; I have forgotten all the particulars.

Q. He accounted or stated to you what disposition he made of the moneys he received from the Mutual Life, did he not?

A. I guess he did.

Q. And so far as you remember his statement or accounting was satisfactory to you?

A. I don't remember anything about it, but I presume it was.

Q. You never understood that he retained or kept any part of the money received from the Mutual Life for his own benefit?

A. I don't so understand; I never did.

Q. Did you not actually understand that he used a portion of the moneys that he received from the Mutual Life to pay off the Hardenburgh mortgage with interest on it?

A. Yes; he certainly paid that.

Q. Did your wife have anything more to do with reference to this Englewood property and the mortgaging of it to sign the deed to Henry Clair that you know of?

A. She never knew anything about it; either about the mortgages or the \$1,000 difference in the trade until a long time after. 143

Q. At the time you were living at Hohokus and about the time that the deed to Clair was signed, you and your wife were not upon very friendly terms, were you?

A. We had not been on very friendly terms since she went to Canandaigua, and before I could do nothing to please her.

Q. And you have not been able to do anything to please her since? 142

A. I guess not.

Q. From the time your wife left Binghampton up to the time you left Hohokus in the fall of 1875 you and your wife were upon very unfriendly terms, were you not?

A. Not all that time; most of the time she would not have much to say to me; everything I done was wrong.

Q. You still lived together as man and wife from the time she came to Hohokus until you went away in the fall of 1875?

A. I was not there much of the time; she was in New York most of the time; I saw her there occasionally. 141

Q. How many deeds were drawn to Mr. Clair for the Englewood property?

A. I am not sure whether there was two drawn for that property or the Binghampton property; there was two for one of them.

Q. If there was two drawn for the Englewood property, was there more than one executed?

A. My impression is I acknowledged two.

Q. Where did you acknowledge the first?

A. My impression is I acknowledged them both in Saratoga.

Q. What makes you think so?

A. Because Clair sent the first one back to Saratoga and said it was wrong; I think I wrote that deed myself and left some words out.

142 Q. Did your wife acknowledge more than one of them?

A. I don't know that she acknowledged any of them only what I heard.

Q. The last one that you acknowledged and executed at Saratoga for the Englewood property was the deed that was used, was it?

A. I presume it was; I don't know of my own personal knowledge.

Q. What did you do with the deed that Clair returned to you?

§143 A. I don't know what I did with it.

Q. Who drew the deed that you executed last for the Englewood property?

A. My impression is that Isaac Wortendyke did; I said that before.

Q. Did you send that deed after you signed and acknowledged it to Ballston for a clerk's certificate?

A. I sent one; I guess I sent this one.

Q. Had your wife signed this last deed at the time you signed it?

144 A. That I don't know; I paid no attention to it; if it required to be done I suppose I should have heard from it.

Q. To whom did you send the deed when you sent it back?

A. I must have sent it to Mr. Clair; he is the only one I could send it to.

Q. Which deed did you refer to in your direct examination when you referred to sending a deed to Mr. Van Dien?

A. I didn't say any such thing.

Q. Did you send any deed to Mr. Van Dien to be signed by your wife?

A. My impression is I did not; the only one to whom I communicated about those papers was Mr. Clair.

Q. Can you not fix the time when you first heard of the mortgage to the Mutual Life or the loan to be made by it?

A. I can fix no definite time.

Q. Can't you say whether you heard of it before or after 145 the money was paid for the first time?

A. I cannot place any time when I first heard it.

Q. Did you not know of Mr. Clair making that mortgage to Preston before it was made?

A. I stated this morning; I did.

Q. That mortgage for \$1,000 was made by Clair to Preston at your request was it not?

A. I think that Preston suggested it.

Q. To whom did he suggest it, you or Clair?

A. He might have suggested it to both of us; I don't 146 know.

Q. You know that that was not made for Clair's benefit did you not?

A. Why certainly; I stated so this morning.

Q. Mr. Clair has had no benefit from this property to your knowledge, has he?

A. Not to my knowledge.

Q. Mr. Clair has never refused to give you an explanation or give you any statement with reference to his acts concerning this Englewood property? 147

A. I have never asked him for any.

Q. Do you know of his refusing to make such statement to any one?

A. I don't know of any one asking him.

Q. Have you or has any one else on your wife's behalf tendered to Mr. Clair or offered to pay to him the amounts due upon this Englewood property and on which he is

liable and asked him to give him back a deed for the property?

A. I am sure I haven't; I can't speak for others; I have never heard of anybody else doing it.

Witness being re-examined says:

148 Q. What authority had you from the complainant to arrange with Mr. Clair that he should borrow money on the Englewood property?

A. I had no authority; I never spoke to her on the subject before or since.

Q. Did Mr. Clair know that the property was deeded to her by Judge Phelps?

A. I presume he did.

Q. Was any portion of the three thousand dollars coming from the Mutual Life Insurance Company paid to the complainant?

149 A. No more than I have stated, the \$1,000 which went to Hardenbergh; and \$1,000 of the Hardenbergh money had gone to Phelps.

Re-cross:

Q. Do you know whether any portion of the money which came from the Mutual Life went to the payment of taxes on the Englewood property?

A. I think not.

150 Q. Did you ever go to the Mutual Life Insurance Company after you first heard of this loan and informed them that Mr. Clair had no title?

A. I did not sir.

Q. Did you ever after hearing of the circumstances of that loan go to the Mutual Life and inform them that Clair had no title?

A. I never went near them.

P. H. TERHUNE.

Sworn and subscribed this 22d day of November, A. D.
1877, at Jersey City, before me.

WM. W. SANDERSON,
Master in Chancery,
N. J.

151

Charity Ann Terhune, I reside at my father's at Ramseys station, Hohokus Township; I know Henry Clair; he married my husband's sister; I remember signing a deed to Sherman D. Phelps for the Binghampton property; I remember signing a deed to Henry Clair for the Englewood property; I don't remember it was to him exactly, they told me it was a transfer to get the property disposed of to another person; they told me there was no other way to do, and I must do it; Julia said her father told her to tell me so and Mr. Clair; I never talked to Mr. Clair about it. 152

(Counsel of defendants objects to that part of the testimony what Julia says to her father and Mr. Clair.)

Q. How was this deed for the Englewood property got from you?

A. In the first place I was unwilling to make any transfer of it; as it did not seem right to me, but as all my friends considered that I was beside myself, and did not know right from wrong, I must comply to their requests; if I told Julia, who was my only companion in the house, that I thought it was wrong; she was constantly prevailing upon me to do what her father and her uncle Harry said about it; with a great deal of insisting, and frequent interviews with the other parties; I think Garret Van Dien brought the deed to me to sign from me to Clair, 153

and came very unexpectedly ; he brought it to take the acknowledgement ; that is the first I saw of the deed ; I refused to sign it ; because I had not heard that I was obliged to sign it for him, I did not sign it ; then he went away ; he came again ; I did not send for him ; I told Julia I was not going to sign such a deed ; she said Uncle Henry said I should do it, that if I would not do it at home, she should
 154 take me to Mr. Van Dien : I did not sign it then, I think he came three times before I signed it ; I am not positive whether it was two or three times that he came, but think it was three times, the last time he was there I signed it ; I did not think it was any use to refuse, they were determined I should do it ; they embarrassed and distressed me constantly by threats of violence, and assured me that I was nothing but a fool to be so contrary ; Julia told me and her father when he came home, and went away, he would call out “ say, are you going to do that,” “ are you going to do
 155 that ;” the men around the place could hear him ; there was only Julia and Mr. Van Dien present, when I signed it, the boy set out in the buggy, waiting to take Mr. Van Dien home ; my health at that time was miserable ; I had suffered for several years with distress of body, which brought on aberation of the mind ; I resided with my father one year and a half after we moved from Binghampton ; I went to Hohokus the last of April or first of May, this was the same year, when the property was transferred ; while I lived in Binghampton, I was taken to a lunatic asylum at
 156 Canandigau ; I was there seven months, from February to the first of August, or last of July, under treatment of Dr. Cook ; I was not discharged when my husband took me away ; I was never detained at any other asylum, he said he was going to take me to the Morristown Lunatic Asylum, since we lived in Jersey.

Q. For what purpose did you understand that the deed was made to Clair ?

(Question objected to.)

A. So that he could make arrangements with other parties who were intending to buy.

Q. Did he or any one else ever pay you anything for that deed?

(Question objected to.)

157

A. Not anything.

Q. Did you or not ever authorize Mr. Clair to mortgage the Englewood property?

A. I never did.

Q. When did you first learn that he had mortgaged?

A. I learned that he had been giving mortgages onto that property at the time of the inquest at the Court House in Hackensack, the inquest I refer to is one inquiring in my sanity or insanity, that was the year after the deed was given to Clair, the inquest was in August. 158

Q. Did you ever receive from any one any of the moneys represented by the mortgages, which Clair made on the Englewood property?

A. Not any, sir; after I was compelled to leave my home in Hohokus, I wrote to Clair informing him of my unfortunate condition; he was at Saratoga at the time, asking him for my property or the payment of it, as I had never received a cent; he never answered my letter after three times writing; all I have in the world is in that property, with the exception of a little furniture they allowed me; my husband promised to pay my board when we got turned out of the house; he has never done it; I sent him a board bill, but he paid no attention to it; I don't know whether the Englewood property, is let or not, I never saw the Englewood property; I have no knowledge of its being let since I owned it; I can tell what property Peter H. Terhune has now; he did have real and personal 159

property when he lived in Hackensack, he moved away some tools and building materials from Hohokus since he has been building at Sing Sing, buggies and horse ; I was under the impression, that if I got an attachment on any of that property, she would say she owned it ; I said he took furniture also, and some silver ware, a box of silver ware, a box of chandeliers, and various other articles ; I am either fifty-three or fifty-four years of age ; Mr. Van Dien
 160 did not read the deed to me, not that I remember ; I suppose he brought the deed with him when he came to take the acknowledgment ; I never saw it before or heard anything about it ; I read the deed, after he brought it there the first time Julia and I both read it and was surprised to find Mr. Clair's name on it, she said she was, and I am sure I was.

Q. What was your object in signing that deed ?

A. I had no object, more than to get rid of the trouble they were pressing me with.

161 Q. Were you not willing to sell ?

A. Not to have others to sell for me, without any wish of my own in regard to it ; I had no desire for it, nor for anything ; life was a burden, I could not enjoy any property.

Q. What consideration was to be paid to you ?

A. If I remember right, the deed was written for \$15,000.

Q. How was you to be paid that ?

162 A. I don't remember any particular specifications only that it was written in such a way that it was sold for that consideration ; I read it over once, in a hurry ; they blamed me for not doing it sooner, because Mr. Clair was troubled on my account with the New York men running after him about it, seeing him about it.

Witness being cross-examined by Mr. Ackerson, says :

I am living at my father's now ; I don't live with my husband ; I have not lived with him since I was turned out of the house at Hohokus, that was September, eighteen hundred and seventy-five ; the property had been sold under foreclosure, and we were required to get out by those who purchased it ; I then went to my father's, where I have lived ever since ; my husband said he went to Hackensack, I can't tell exactly how long he remained there ; some time last summer he left that place, he then went to the village of Sing Sing, where he now lives ; we had two children, Julia and Charles ; after we broke up housekeeping at Hohokus, Julia went to visit with her uncle Richard at Sing Sing, and also with her uncle Harry Clair, who was then in Englewood ; she has no home now, she is stopping with a kind friend again at Binghampton ; Charles is employed by A. T. Stewart & Co., at 10th street and Broadway, and boards at No. 24 9th street ; I suppose my husband is still at Sing Sing.

163

164

Q. How long had you owned the Binghampton property before you sold it, to Sherman D. Phelps ?

A. About twenty-five years, a Mr. Cushman owned the original property, which I came into possession of ; I got the property from my father-in-law in his will ; his name was Henry Z. Terhune ; the property was unincumbered ; when I sold it to Mr. Phelps, so far as I know, my husband sold it for me ; I never saw Mr. Phelps about it ; Mr. Phelps was unwilling to exchange the property in the first place ; Mr. Phelps has since told me before he received a notice purporting to come from my children to the effect that I was all right.

165

Counsel for the defendant objects to all that part of the witness' testimony which states conversation with Sherman D. Phelps, the same having been volunteered by witness.

I had nothing to do with the negotiations in the exchange of the Binghampton for the Englewood property; I might add that they told me that Judge Phelps had been unwilling to make the exchange without a thousand dollars in money extra, but then he was willing at that time; my husband carried on all the negotiations for the exchange of the property.

166 Q. Where were you living at the time these negotiations for the exchange with Phelps were going on?

A. At Hohokus, but they may have commenced before I came there; I at no time went to look at the Englewood property while the exchange was going on; I never saw it; I preferred my Binghampton property, and do still.

Q. You left the examination of the property and the terms of negotiation entirely with your husband, did you?

A. I did not, sir; it was only through compulsion that I made an exchange or caused it to be made.

Q. What compulsion—state specifically?

167 A. I was compelled to do just as my husband and daughter desired me to; at that time they called me crazy.

Q. How do you mean that they compelled you to exchange for the Englewood property?

A. He saying constantly, telling me that something must be done with the Binghampton property, and when he told me he had traded it, I was horrified and said, what could you have done worse?

Q. Now, was that all the compulsion there was?

A. No, it was not.

168 Q. State what other compulsion.

A. He said I must now sign the deed; I told him I wouldn't and I couldn't; he went from home leaving the documents for me to sign, and when he returned he troubled me again and he brought Garry Van Dien finally to take the acknowledgment as though he was taking me by storm, that I would have no refuge any more to escape from him.

Q. Now, have you stated all the compulsion to that deed?

A. No, sir.

Q. Please state them.

A. He left orders with my daughter Julia to use all her influence in his absence to get me to do it—the same as he did for the second deed.

Q. You were not present when he left these orders with your daughter, were you?

A. No, sir; but she said pa said so, she said pa says you have got to do it.

169

Counsel of defendants objects to the testimony where witness relates what orders were given by the father to the daughter, as it appears she was not present.

Q. What were the conditions of the exchange for the property at Englewood?

A. I said that Judge Phelps was willing to exchange the one for the other; judging from the information given to me by Julia and her father, I think I did not understand that there was a difference to be paid to Mr. Phelps in cash; I have since learned that there was a difference in cash to be paid to Phelps; I have heard such a rumor.

170

Q. Has not Mr. Phelps told you there was a difference paid to him on the exchange?

A. I asked him if he had received any and who he had received it from, and he said he thought from Mr. Clair; I understood from Mr. Phelps that it was about one thousand dollars; he said he could hardly remember since the transaction was made how it was made; he had left the rest with his lawyer while he was away to Europe; that conversation with Mr. Phelps took place last Summer at his office in Binghampton; I then informed him that I had commenced the suit, and he said it was a wonder Mr. Clair had not spoken to him about it, as he had been to Saratoga and saw him there; I had called to see Mr. Phelps before he was in Saratoga; I had no money to pay Mr. Phelps on the ex-

171

change; I did not know that any was paid or was to be paid; I don't know where the money came from that was to pay it no more than what Mr Phelps told me; I read the deed to Mr. Phelps before I signed it because it laid in the house some time; there was no mention made of a thousand dollars in money; I have a copy of the deed now; the copy I have is one of the first two deeds that was left for me to sign; first the one and then another was brought when Mr. Terhune went away.

172

Q. Why did you not sign the first deed that was left?

A. I have given my reasons; I refused because I did not want to sell it.

Q. Then there was objection on your part to signing the deed to Phelps as well as to signing the deed to Clair—was there?

A. There was; I was entirely unfit to decide for myself.

Q. You did not think so at the time, did you?

A. I did; if any new project came up my mind was in such a weak state I could not decide which way.

173

Q. You were at that time, were you?

A. Yes, sir; they called me crazy.

Q. You have stated all that took place with reference to the deeds and efforts made to get you to sign them, have you?

A. Yes, as near as I can remember; I presume he was trying while I was up to my father's—I mean my husband.

Q. You were crazy also as you think at the time you signed the deed to Clair, do you?

174

A. Yes, sir; I know of no change, happening in the meantime in regard to my mental capacity.

Q. Then in your opinion your mind was in about the same condition when you signed the deed to Sherman D. Phelps as when you signed the deed to Henry Clair, was it?

A. I know of no change in the meantime.

Q. All the testimony that you have given to-day, with

reference to occurrences and conversations at or about the times those deeds were given from your remembrance of those occurrences and conversations as they took place at the time, were they?

A. Yes, sir.

Q. How long after the deed to Clair was given, did you continue to live with your husband?

A. I did not live with him at all after that, he only came home on visits from Saratoga until we left the place for the winter; we spent the winter in the city, Julia and myself. 175

Q. For how long a time before the giving of the deed to Clair had you been crazy?

A. Well, I was a year and a half at my father's, about a year at home in Binghampton, seven months in the asylum before I moved to Hohokus; this deed was given in the same year I went there.

Q. How long after the giving of the deed to Clair did you continue to be crazy? 176

A. I improved gradually the next year after returning from New York; when we were back on the farm, I began to take an interest in all there was to be done in and about the place; and I superintended the work on the farm in Mr. Terhune's absence, likewise doing the house work so far as my strength would allow.

Q. You were aware of the fact at the time that you were crazy, were you?

A. I knew that people thought me crazy when I was locked up in a lunatic asylum, but I can remember every transaction that happened to me, while I was there; I constantly begged them to kill me. 177

Q. You knew and was aware at the time that you were crazy when you signed the deed to Phelps and the deed to Clair, was you?

A. Yes, sir; I felt as if it could not be lawful or right in any particular.

Q. What could not be right and lawful in any particular?

A. Any transaction that I could or was compelled to make in regard to it; the transfer of my property, I thought the same of the transfer to Phelps.

Q. Why at that time did you think so?

A. I did not want to have it done.

Q. Did you think it would not be lawful or right, because you were crazy?

178 A. I felt as if I could not decide for myself in anything I done; I could enjoy nothing that I might as well be dead as alive, and was so irritable that I could not bear to be questioned on any subject.

Q. Did you at that time think it would not be lawful or right to make any such transfers, because you were crazy?

A. The amount of it was that I did not care any about myself or anything in the world that I did, or ever had owned so long as I was so miserable. I was enveloped in gloom and melancholy and fearful forebodings.

179

Question repeated.

A. Of course.

Q. Do you remember of the proceedings which were taken by your brother Cornelius in the Court of Chancery, of this State, to declare you a lunatic, a couple of years ago?

180 A. I remember there were proceedings in the Court House, but I did not particularly think it so; I think the notice you sent me in regard to that meeting in the Court House was to inquire into my sanity, not to declare I was insane.

Q. Do you remember of appearing before the jury in that case?

A. I do, sir.

Q. Do you remember that you told the jury that you were not insane at that time, and that in your opinion you

had not been insane, but you were simply troubled with melancholy, produced by family difficulties, and that you had always thought your husband did wrong in sending you to the asylum?

A. No, sir; I remember telling the jury when they asked me some questions, how I was; they asked me how I was, and I told them in a very few words; I was only on the stand a short time; that I had been in great distress in mind and body, and that I had no desire to live, that my mind was very much disordered, and the inquired how long ago since I had recovered; I told them during the present year since I had commenced going about among people, there had been a change; they wanted to know why I made such strange noises around the house, screaming murder; I told them I had not done so lately, I told them that I did not want them to consider me crazy; then the jury in that matter, by their verdict considered that I was not crazy then. 181

Q. If, as you have stated, you did not at the time, when these deeds were signed by you care for any property, or for life itself, how is it that you was so particular in refusing to sign the deed, that you thought it wrong, that you told your husband it was the thing he could do with your property and that you did not want to sign? 182

A. The reason is, because the struggle to keep that property in my own hands had been for so many years standing, that I thought I must hold on to that as long as I lived.

Q. Then although crazy at that time you had sufficient reason, thought and mind to reason, as you have stated, in your last answer? 183

A. I can tell you so at this time, this quality of mind seems to have abided by me until they overpowered me, with dreadful threats.

Q. Well, you have not told us of those threats?

A. Well, if I would not do as he wanted me to do, he would carry me away to an asylum again, and have me

locked up, and he said he would do it any how; and I believed he would, and gave up tantalizing me for that property day and night in every shape and possible way, so I would rather be killed than suffer any more.

Q. Your mind is perfectly strong now, isn't it?

A. I feel as strong as ever I did, and my health is much better, general better, much health than it was ever since I was married.

184

The examination was then adjourned until Friday, May 3d, 1878, at 10 o'clock.

Q. How many deeds for Binghampton property were presented to you to be signed in exchange after the Englewood property?

A. Two.

Q. By whom was the first one presented to you?

185

A. My husband.

Q. Where?

A. At our house, at Hohokus.

Q. Who was present when he presented it?

A. I don't remember.

Q. Was Mr. Garry Van Dien present?

A. I can't remember that distinctly for the first one.

Q. Do you remember what part of the house it was that the first deed was presented to you?

A. Yes, sir; in the dining room.

186 Q. Did you examine the deed when he presented it to you?

A. Not then.

Q. When did you examine it?

A. After my husband had left home.

Q. How many days about was this after he had presented it to you?

A. I couldn't tell exactly.

Q. Did you keep the deed after he had presented it to you until you had examined it?

A. I left it or he left it lying on the table, and when I didn't want to see it, I had it under the table spread.

Q. And how long did you leave it there?

A. Left it so until he returned again.

Q. And what then did you do with it?

A. Nothing.

Q. Well, what became of it?

187

A. He didn't speak about it to me at first, but afterwards said that was not right, the deed was not written right; he didn't ask me for it and it was left there; I have it now.

Q. How long did you leave it under the table spread?

A. I couldn't tell how long; but I distinctly remember that I took it and put it under the carpet a short time before we tore up the furniture, and I left it under the carpet until I was afraid my husband would find it there when he tore up the carpets.

Q. Where did you put it after you took it from under the carpet?

188

A. I took it with me to my fathers.

Q. What did your husband say to you when he handed you that deed?

A. He said I had got to sign it.

Q. Is that all he said about it?

A. I can't remember everything he said.

Q. Did he not tell you what it was?

A. He did.

Q. Now, please tell us what he said so near as you can remember about that deed and the transfer of the Binghampton property for the Englewood property at the time he handed it to you?

189

A. He didn't seem to feel disposed to talk much about it at that time, and very soon left home again.

Q. You had heard before that time of his negotiating for the exchange, had you not?

A. Yes, sir.

Q. How long before had you first heard of it ?

A. Only a short time when Mr. Phelps sent my husband a letter, saying, he was ready to meet him in New York, when he should start for Europe.

Q. Then at the time of the receipt of that letter was the first that you knew of any exchange ?

A. It was.

Q. Did your husband then tell you about it ?

190 A. I think Julia told me first.

Q. Did not your husband also tell you about it, about that time ?

A. After he had seen Mr. Phelps in New York, in answer to that note.

Q. What did he say to you about it ?

A. He said, what should you say, if I tell you that I have traded the Binghampton property for Englewood property ; I immediately sprang up from the table, while we were at dinner, and said, what could you have done worse with it ; we didn't talk any further about it at that time ; I did not hold conversation with anybody.

191

Q. Did he not speak of the exchange again until the time he handed you the deed in the dining room as you stated this morning.

A. He frequently said, " say, when are you going to do that ? " sometimes I didn't reply at all.

Q. Now, this was before he had presented you the deed that he said this ?

A. He did before and after as near as I can remember.

192

Q. Is that about all that he said to you about the exchange ?

A. I think it is for this first deed.

Q. What did you say to your husband at the time he handed you the first deed for the Binghampton property ?

A. I talked very little about it to him.

Q. Did you tell him whether you would sign it or not ?

A. I told him I would not.

Q. What reason did you give him for your refusal to sign?

A. He didn't ask me for any reason.

Q. Did you give no reason?

A. I did not that I remember.

Q. What at the time was your reason for refusing to sign that deed?

A. Because I did not want the Binghampton property sold; I had no desire for anything in particular; don't think of any other reason. 193

Q. At the time he told you that first deed was wrong what did he say was wrong about it?

A. Something about the boundary line as near as I can remember.

Q. Did he then hand you another deed to sign?

A. Not then.

Q. When did he hand you another deed to sign and about how long after he had handed you the first one?

A. About a week or two, when he had been getting Garry Van Dien to come to the house and take the acknowledgment. 194

Q. Do I understand you to mean that you had not seen the second deed until the time when he brought Garry Van Dien to take your acknowledgment?

A. I can't tell whether I had or not; I had told him repeatedly that I was not willing to sign any deed.

Q. Did you sign the second deed in the presence of Garret Van Dien and acknowledged it before him?

A. I did; I said in Mr. Van Dien's presence that I couldn't and wouldn't sign; but I was awed and surprised in his presence and made but very little resistance; more than that, I remember saying, "now I have done, but you know I was not willing;" I said this to Van Dien, my husband was out; my husband at that time was at the front of the house speaking to Mr. Van Dien's wife. 195

Q. Did Mr. Van Dien say anything when you refused to

sign and when you made the remark that "now I have done it, but you know I was not willing."

A. No, sir; he didn't say anything.

Q. Did you read the second deed before you signed it?

A. I have no recollection of reading the second deed.

Q. How long about was it after signing this deed that you first heard of deeding the Englewood property to Harry Clair?

196 A. Some time in the next month.

Q. Who first told you about it?

A. The first that I knew about a deed being drawn up to Harry Clair was when Mr. Van Dien brought it to me to sign.

Q. Where did he bring it?

A. To the house at Hohokus.

Q. Where was your husband at that time?

A. At Saratoga.

197 Q. In what part of the house was it presented to you by Mr. Van Dien?

A. In the reception room.

Q. What did you do with the deed when Mr. Van Dien handed it to you?

A. I glanced over it and said I never heard of any such deed, and I am unwilling to sign it; that is all I said; Mr. Van Dien said he hadn't read it and didn't know the contents, and then went away.

Q. What became of the deed?

A. I suppose he took it with him.

198 Q. Did you not keep the deed?

A. No, sir.

Q. How long after this did you hear or see of the next deed to Harry Clair?

A. I don't know of any other.

Q. You did not sign the deed Mr. Van Dien presented at that time, did you?

A. I did not, sir.

Q. You remember of signing and acknowledging a deed

before Mr. Van Dien for the Englewood property, don't you?

A. I do, sir.

Q. How long after he was there with the deed which you refused to sign was it that you signed the deed to Clair and acknowledged the same before Garry Van Dien?

A. Not many days; don't know exactly how many.

Q. Where was it that you signed and acknowledged the deed to Clair before Van Dien to Clair?

199

A. In the same reception room.

Q. What same reception room do you mean?

A. Where he first presented the deed to me to sign.

Q. Did he bring the deed with him the last time?

A. I can't tell whether he did or not.

Q. Where was your husband at this time?

A. At Saratoga.

Q. Did you read the last deed before you signed it?

A. I may and I may not have read it.

Q. Don't you remember if you did or not?

200

A. No, sir.

Q. What did you say to Van Dien about signing it?

A. I said I didn't want to do it, but I thought I couldn't offer resistance any longer; my daughter Julia did the talking.

Q. Don't you remember her saying anything further to Van Dien about it at that time?

A. I do remember something was said about her father's signature which she said would be taken at Saratoga; I don't remember of saying anything else on that occasion than what I have stated.

201

Q. I think you have stated that Mr. Clair at no time spoke to you upon the subject of exchanging the Binghampton for the Englewood property or of deeding to him the Englewood property, is that so?

A. Yes, sir; I have said so and that is so; he never spoke to me about it.

Q. When in your opinion were you first crazy; what year and time of the year?

A. In 1871 I think it commenced; I was very much out of health during the summer and kept getting worse, until I was taken suddenly very ill in the fall and confined to my bed; I sent for my family physician, who commenced treating me, which didn't seem to have the desired effect; I kept growing worse and my neighbors advised me to send
202 for my husband, who was then away part the time at Goshen and sometimes at White Plains, and when he arrived he wasn't satisfied with the treatment I was receiving and called another physician whom I had also formerly employed; I didn't grow any better; the distress was mostly in my head afterwards and I imagined a good many fearful things; I couldn't bear to take any more medicines.

Q. How long did you continue to remain crazy from 1871?

A. Then in February, 1872, I was taken to the lunatic
203 asylum by my husband; I gradually recovered the next year after the transfer of the property to Clair; we left the place at Hohokus in 1875, and I commenced to improve the year before; I recollect being taken away to New York to spend the winter after the transfer of the property, and had no confidence in myself at that time; I could not step out of the door without my daughter going ahead or having her consent.

Q. In your opinion, then, you were crazy from 1871 down to what time in 1874?

A. From New York in the spring we went into the house
204 at Hohokus again, and I commenced to feel more interested in affairs at home and endeavored to take charge of some of the business, when I saw the great necessity of somebody superintending, for my husband was still living away from home, but he interfered with everything I did and called me crazy; yet I knew that I had met with a great change in body and mind; I then wanted to talk to people and could take pleasure in seeing my friends and in everything about

me if I was only allowed to and had my own desires or wishes.

Q. In your opinion, you have entirely recovered your mind, have you?

A. Yes, sir.

Q. Have you any means—pecuniary means?

A. I have none, as I stated before.

Q. Who furnishes the funds for carrying on this litigation?

A. Mr. Bently, my brother-in-law, has kindly volunteered to assist me.

205

MRS. C. A. TERHUNE.

Sworn and subscribed, this 10th day of May, A. D. 1878, before me.

WM. W. SANDERSON,

Master in Chancery,

N. J.

206

John Bentley, a witness produced on the part of the complainant, being duly sworn, says:

I live at Paterson and know Henry Clair; I have talked with him about a mortgage made by him to James F. Preston on this Englewood property for \$4,000. I cannot give you much of the conversation and I can't say whether it was Clair or Peter Terhune that I had the conversation with. Mr. Clair acknowledged that there was a mortgage given; he said it was given to Mr. Preston; he said it was given to raise money on the property.

207

Q. Did you ever have any conversation with James F. Preston about that mortgage?

Counsel for the Mutual Life Insurance Company and Henry Clair objects to above question on the ground that such testimony is incompetent as to those defendants.

208 A. Yes, sir; he said he had lent Pete some money and had taken this mortgage upon the property to get the money back; he had lent him money upon one or two notes, and Clair was endorser on the notes; he said the notes were made some time before the mortgage; he said the whole amount due at that time was twenty-seven hundred dollars I think, the balance of the mortgage; he did not state what the balance of the mortgage was; he said he was to get the money for the notes and pay the balance to Terhune; he said he had not paid him the balance; he never
209 raised any money on the mortgage; he was to raise the money on the mortgage to pay the notes and give the balance to Peter.

Q. You had some conversation with Mr. Clair about his having the title to this property, did you not?

A. Yes, sir; well, I cannot state exactly the time; it was about two weeks or so before the first sale was set down: I mean the sheriff's sale of the property; I went to him to ask him who the owner of the property was; he said he had the deed of it, and also had the deed of the first exchanged
210 property or that the property was deeded direct to him by Mr. Phelps; he afterwards stated that the property had been deeded by Mrs. Terhune to him; I asked him what he gave for it; he said that made no difference, and that a deed could be made for one dollar as well as for one thousand dollars; I asked him whether he had paid anything for it, and he evaded the answer; that is about all the conversation that I recollect of having on that point about getting the property except such other casual conversations as we had together;

I do not think he said anything about Peter being indebted to him; he said I think that he had endorsed the notes, but that he was very glad to give the mortgage on the property to Preston.

Witness being cross-examined by Mr. Ackerson, counsel for the Mutual Life Insurance Co. and Mr. Clair, deposes and says:

I am a brother-in-law of Mrs. Terhune, the complainant and have borne the expenses of this suit for her so far.

211

JOHN BENTLEY.

Sworn and subscribed this 10th day of May, A. D. 1878, at Jersey City, before me,

RAYMOND P. WORTENDYKE,

Master in Chancery

Of New Jersey.

212

Deposition of witnesses taken by consent before me, Frank Sanders, a Commissioner of New Jersey, for New York at the city of New York, this 18th day of October, 1870, to be used in the argument of the said cause.

213

Garret G. Van Dien, a witness produced on the part of the defendants being by me duly sworn testified as follows:

Q. You reside at Ridgewood, County of Bergen, New Jersey?

A. I do.

Q. How long have you resided there?

A. I have resided there all my life, about forty-four years:

Q. You are a commissioner of deeds in the State of New Jersey, and for how long?

A. I am and have been for twelve years.

Q. Are you acquainted with Charity Ann Terhune, complainant in this case, and her husband Peter H., and also with Henry Clair?

214 A. I am.

Q. How long have you known them?

A. Twenty-five years about, I have not known Charity Ann so long, but I have known her several years.

Q. Do you remember of going to Mrs. Terhune's house in Hohokus, at any time for the purpose of taking her acknowledgement to a deed or deeds?

A. I do.

Q. When first, as near as you can remember, and for what property?

215 A. I don't know as I can state the time, but the first property was the Binghampton property.

Q. How did you happen to go with reference to that property?

A. By being requested to take that acknowledgement, if I remember right, as commissioner for New York.

Q. Did you draw the deed?

A. No, sir.

Q. Do you know who did?

A. I do not.

216 Q. Did you take the deed with you, or did you go there to take the acknowledgement?

A. If I remember right, I think the deed was in the house.

Q. Who requested you to go and take that acknowledgement?

A. If I remember right, Mr. Terhune.

Q. Verbally or by letter?

A. I do not remember.

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Q. Did you find Mrs. Terhune at home when you went to take the acknowledgement ?

A. Yes, sir.

Q. Was Mr. Terhune home or not ?

A. I think he was.

Q. Who produced the deed when you got there ?

A. I don't remember.

Q. It was produced ?

A. Yes, sir.

217

Q. Was it signed by Mrs. Terhune that day ?

A. It was signed on the day it was acknowledged.

Q. Did she object to signing it or not ?

A. No, sir.

Q. Did she apparently know anything about the deed when you got there ?

A. I don't remember that; I know I read it over to her.

Q. Did she make any remarks about it, when you read it over ?

A. Not to me, or in my presence, except to acknowledge it. 218

Q. The acknowledgement was taken in the usual form ?

A. In the usual form, that sent from New York.

Q. Did you notice anything peculiar in her manner or conversation ?

A. I did not.

Q. Did she seem pleasant ?

A. Never saw her look pleasant.

Q. Were you at her house more than once to get her to sign a deed for the Binghampton property ? 219

A. Not that I remember.

Q. Did Mr. Terhune on the occasion when you went to take her acknowledgement to the deed for the Binghampton property say to you in your presence and hearing " I cannot and will not sign," or words to that effect ?

A. No, sir.

Q. After she had signed the deed, did she say to you or

in your presence or hearing, "Now, I have done it, but you know I was not willing to do it," or words to that effect?

A. No, sir.

Q. If she had made such a statement would you have taken her acknowledgement?

A. I would not.

Q. Was any persuasion used in your presence by any person, or yourself to induce her to sign and acknowledge the deed for the Binghampton property?

A. No, sir.

Q. Were any threats used in your presence for the purpose of obtaining her signature and acknowledgement to that deed?

A. No, sir.

Q. How frequently were you in the habit of seeing Mrs. Terhune about the time of the execution of this Binghampton deed?

A. Very seldom.

Q. Was your wife with you on that occasion?

A. I think she was.

Q. Did you have any conversation with Mrs. Terhune that day outside of that about signing the deed?

A. Not that I remember, except passing the time of day.

Q. Had you had any conversation with Henry Clair about the deed at that time?

A. Not that I remember?

Q. Did you get that deed from him?

A. I do not remember when I got the deed; I did not charge my mind with it.

Q. Have you any recollection that you received it from Mr. Clair or that Mr. Clair requested you to go and take the acknowledgment?

A. No, sir.

Q. Mr. Van Dien, did she evince any unwillingness in your presence or hearing to sign that deed or acknowledge it?

A. No, sir.

Q. Did she appear to pay attention to the reading of the contents of it?

A. Yes, sir.

Q. Did she make any remark upon it?

A. Not that I remember.

Q. Did she evince any surprise upon seeing you there or at the purpose for which you came?

A. No, sir; not that I remember.

Q. Did you on that occasion notice any evidence of insanity on her part? 220

A. I did not.

Q. Were her actions and conversation, so far as you observed, those of a sensible and sound-minded person?

A. I considered them so.

Q. Is it your recollection that you went but once to take an acknowledgment to the deed for the Binghampton property?

A. It is.

Q. When did you next see Mrs. Terhune, and where? 221

A. I do not remember.

Q. Do you remember of going to her house some weeks after for the purpose of taking her acknowledgment to any other deed?

A. I do.

Q. About how long after the acknowledgment was taken to the first deed.

A. I could not say.

Q. It was not very long; was it not many months?

A. I don't know that I can tell what the time was. 222

Q. Do you remember for what property this second time?

A. I think property in Englewood.

Q. Did you ever go to her house to take any other acknowledgments except for the Englewood and Binghampton properties?

A. Not that I remember.

Q. Did you draw the deed for the Englewood property?

- A. Not that I remember.
- Q. Do you know who drew it?
- A. I do not.
- Q. From whom did you receive it?
- A. I have an impression I received it from Julia, the daughter of Charity Ann Terhune.
- Q. And did she request you to come to the house to take her mother's acknowledgment?
- 226 A. That's my remembrance.
- Q. You went in compliance with that request?
- A. I did.
- Q. Did you find Mrs. Terhune at home?
- A. I did.
- Q. Did she evince any surprise at seeing you for the purpose for which you came.
- A. No, sir.
- Q. Did Julia leave the deed with you when she asked you to come, or was it at the house?
- 227 A. I think she left it with me.
- Q. Was the deed complete?
- A. No, sir.
- Q. What was incomplete about it?
- A. The name of the party of the second part or grantee was left out.
- Q. Did you read the deed over to Charity Ann Terhune or did she read it herself?
- A. I read it over to her.
- Q. What did she say on that occasion when you read it
- 228 over to her?
- A. She said she could not sign a deed without knowing who the property was going to or words to that effect?
- Q. Did she read it over at all herself?
- A. Not that I remember at that time.
- Q. Did she sign it at that time?
- A. No, sir.
- Q. What became of the deed?

A. I left it with them; they said they would return it to Mr. Terhune to have the name inserted.

Q. Was anything said at that time by Mrs. Terhune, or in her presence, of the name intended to be inserted?

A. There was.

Q. What?

A. I don't remember the name she said was to have been in the deed?

Q. From what she said did you infer that she was aware that the property was to be conveyed? 229

A. Yes, sir.

Q. What did you say or do after she expressed herself unwilling to sign the deed in its then condition?

A. I told her she would have to send the deed back to get the name inserted, as I did not know the name that ought to be in?

Q. Did you notice anything peculiar on this occasion in Mrs. Terhune's actions or conversation?

A. No, sir. 230

Q. Did she in her actions or conversation evince any unsoundness of mind on that occasion?

A. Not in my judgment.

Q. Was there anything said by Mrs. Terhune or her daughter in her presence of their sending for you or your coming to take her acknowledgment when the deed should be returned corrected.

A. Yes, sir; Miss Julia said as soon as the deed came back they would send for me to come and take the acknowledgment. 231

Q. Well, did you ever go there again to take the acknowledgment of the deed for the Englewood property?

A. I did.

Q. About how shortly after you were there the last time?

A. About a week or ten days?

Q. How did you happen to go there?

A. By being sent for.

Q. Who came for you ?

A. I do not remember whether Miss Julia came or sent a letter.

Q. It was either one or the other ?

A. It was.

Q. Did you go ?

A. I did.

Q. Was the deed at Mrs. Terhune's house at that time ?

232

A. I think it was.

Q. Who produced it Julia or her mother ?

A. I do not remember.

Q. Was Mr. Terhune at home at the time ?

A. No.

Q. What was said by Mrs. Terhune when the deed was produced on this occasion ?

233

A. When the deed was presented and read to her she again refused to sign it, if I remember right ; for the reason Henry Clair's name was put in as party of the second part ; that was not the understanding, that the property was to be sold to Mr. Clair when Mr. Terhune left home ; that was about all that was said ; she refused to sign ; and I went back home again.

Q. Did you on that occasion notice anything peculiar in her manner or conversation ; anything that indicated weakness or unsoundness of mind on her part ?

A. I did not.

Q. Did she act and speak rationally and sensibly ?

A. I thought so.

234

Q. Did either she or Julia say anything about sending for you again ?

A. They did.

Q. What did they say on that subject ?

A. As near as I can remember, Miss Julia said she would write to her father and get an explanation from him why Mr. Clair's name was put in the deed.

Q. Did they tell you on that occasion who had put Mr. Clair's name in the deed or caused it to be done ?

A. Not that I remember.

Q. Did they state where the deed had been between the time you was their last and this occasion?

A. If I remember right they said it had been to Saratoga to Mr. Terhune.

Q. Had the deed at this time been executed by Mr. Terhune, and if so where?

A. If my memory serves me right it had been executed by Mr. Terhune.

235

Q. Did you go the third time to Mrs. Terhune's to take the acknowledgment to the deed for the Englewood property?

A. I did.

Q. About how long after this last time did you go again?

A. About a week or ten days.

Q. How did you happen to go this last time?

A. By being sent for.

Q. By whom?

236

A. I do not remember whether it was by letter or by word of mouth.

Q. Do you know who it was that sent for you?

A. I presume it was Julia; she almost always attended to her mother's business as far as I was concerned.

Q. Did you go in answer to the request?

A. I did.

Q. Did you find Mrs. Terhune at home?

A. I did.

Q. Was Mr. Terhune at home?

237

A. No, sir.

Q. What was said by Mrs. Terhune?

A. She was ready to sign the deed now.

Q. Did you read it over to her?

A. I did.

Q. Was Henry Clair's name on it as party of the second part, as grantee, when you read it to her?

A. Yes, sir.

Q. Did she make any objection to the deed or to Mr. Clair's name on that occasion?

A. She did not.

Q. Did she give any reason for being satisfied with the deed at that time?

A. If I remember right she said Mr. Terhune said it was necessary to put it in Mr. Clair's name instead of the party spoken of.

238 Q. Did she on that occasion express any unwillingness to sign the deed?

A. She did not.

Q. Did you at any time ask her or urge her to sign the deed of the Englewood property?

A. No, sir.

Q. Did any one in your presence urge her to sign the deed for that property?

A. No, sir.

239 Q. Were any threats or persuasions made use of in your presence to get her to sign the deed for that property?

A. No, sir.

Q. If there had been would you have taken her acknowledgment?

A. I would not.

Q. If she had expressed her unwillingness to sign would you have taken her acknowledgment?

A. I would not have taken the acknowledgement unless she had been perfectly willing.

240 Q. Was the acknowledgment taken in the usual form, and in the usual manner for taking the acknowledgment of married women in the State of New Jersey?

A. Yes, sir.

Q. Did she on either of the occasions you were there to take her acknowledgment to the deed for the Englewood property state to you that she had been threatened, harassed or persuaded by her husband or any one else to sign a deed for that property?

A. No, sir.

Q. Did she ever say to you that she was unwilling to sell the Englewood property?

A. No, sir.

Q. On the occasion when she signed the deed and you took her acknowledgment to the deed for the Englewood property did she seem surprised at seeing you come there or did she act as if she expected you?

A. I did not see any difference in her behavior.

Q. On this last occasion you were there did you notice anything in her actions or conversation that indicated lunacy or weakness of mind on her part? 241

A. I did not.

Q. From her manner and conversation at that time, did she impress you as being of sound mind and to be perfectly cognizant of what she was saying and doing?

A. I think she was.

Q. Had you any doubt of it at the time or have you had any since?

A. I have not and had not at the time. 242

Q. Was the deed in her possession at the last time you went to take her acknowledgment?

A. I think it was.

Q. Did she on either of the occasions you were there to take her acknowledgment to the deed for the Englewood property say: "I am unwilling to sign a deed for the Englewood property," or words to that effect.

A. Only the first time when she refused to sign the deed because the name was not in; that is all.

Q. Did Mr. Clair ever ask you to go and take her acknowledgment or say anything to you on the subject? 243

A. Not that I remember.

Q. If he had wouldn't you have been likely to have remembered it?

A. I have no remembrance of it.

Q. Who paid you for your services in these different acknowledgments?

A. If I remember right, I did not get any pay for it.

Q. Did any one promise to pay you for it, and if so who?

A. Peter H. Terhuue.

Q. What became of the deed for the Englewood property after you had taken the acknowledgment?

A. I think I left it in the house with Mrs. Terhune.

Q. You never saw it again?

A. Not that I remember.

244 Q. Did you affix your certificate of acknowledgment to it on the day you took the acknowledgment at the house?

A. Yes, sir.

Q. About how long have you know Mrs. Terhune?

A. I don't know that I ever was acquainted to know her till after she moved back from Binghampton.

Q. Had you ever been introduced to her or spoken with her before you went to take her acknowledgment to the Binghampton property?

245 A. I don't think I was introduced to her till I went to take her acknowledgment to the deed for the Binghampton property.

On cross-examination the witness testified as follows:

Q. Then you knew of nothing that excited your suspicions that she was mentally unsound?

A. No, sir.

Q. Had Peter signed this last deed when you took her acknowledgment?

246 A. I think he had.

Q. Why do you think so?

A. I think so, for the reason there was one word in the deed that she objected to, and I told her I could not alter it as he had already signed.

Q. Was there a certificate of his acknowledgment on the deed then?

A. I am under the impression there was.

Q. Whose certificate was it?

A. I do not remember.

Q. Do you remember where it showed his acknowledgment to have been taken?

A. I do not.

Q. Was not it Isaac Wortendyke's certificate?

A. I do not remember.

Q. You were to see Charity Ann three times in all?

A. I went once for the Binghampton and three times for the Englewood property.

247

Q. Your visits on all these occasions were short, were they not?

A. Yes, sir.

Q. On your second visit she refused to sign the deed because the grantee's name was not in it?

A. Yes, sir.

Q. On your third visit Henry Clair's name was in the Englewood deed and she then refused to sign because his name was there?

A. Yes, sir.

248

Q. Had Peter seen you about this business before she signed the deed for the Englewood property?

A. Peter had not seen me between the times from the first to the last.

Q. Who was present when she signed the Englewood deed beside yourself?

A. I think her daughter Julia.

Q. Had Peter seen you at all about the Englewood deed before she signed it?

A. Not that I remember.

249

Q. Did Mrs. Terhune appear to be in good health or was she an invalid?

A. I thought she was in pretty good health.

Q. What did you do with the Binghampton deed when that was executed?

A. I think Terhune took that.

Q. Where did you give it to him?

A. I think at my office.

Q. Then you took that deed with you after it was executed?

A. Yes, sir.

Q. You are in the habit of taking a great many acknowledgments are you not?

A. Yes, sir.

Q. Was there any about these acknowledgments of Mrs. Terhune that attracted any special attention on your part?

250 A. Not that I remember.

Q. Then there was nothing about them calculated to produce any special impression on your memory?

A. Yes, sir, there was in the Englewood deed; I went there three times; that is all that distinguished it in my memory from any other.

Re-direct:

251 Re-d. Q. Was not you impressed with the notion at the time that Mrs. Terhune was a little more particular than most women are who sign before you from different objections she made?

A. I thought she was the most particular woman who had ever made an acknowledgment before me.

Re-d. Q. When at the time she signed the deed for the Englewood property, what was the word to which she objected?

A. I do not remember.

252 Re-d. Q. Was it in the description or in the printed part of the deed?

A. I think it was in the beginning of the description.

Re-d. Q. Did she call your attention to the word or did you call her attention to it?

A. She called my attention to it.

Re-d. Q. Was it only one word as you remember?

A. Only one word as I remember.

GARRET VAN DIEN.

Taken, subscribed and sworn to before me this 18th day
of October, 1878.

FRANK SANDERS,
Commissioner of New Jersey for New York.

253

Henry Clair being duly sworn on his own behalf testifies
as follows :

Q. Mr. Clair, you are one of the defendants in this action
and you know the complainant?

A. Yes, sir; I am one of the defendants, have known
her for 15 years.

Q. Are you connected with her by marriage?

A. I am; her husband is my wife's brother.

254

Q. Had you seen her often before she came to live at
Hohokus?

A. Not more than three times.

Q. When did you first hear of this Englewood property?

A. I don't remember the dates or times.

Q. Prior to the making and delivery of the deed of this
Englewood property, had you had business relations with
the complainant's husband?

A. Yes.

Q. From whom did you first hear of this Englewood
deed? 255

A. From Mr. Terhune.

Q. And what did he state to you in relation to that pro-
perty?

A. He said in order to raise money he wished to deed the
property to me.

(Testimony objected to.)

And for the reason that there were judgments against him and I could raise the money on the property.

Q. What was said about the deed, if anything?

A. There was nothing more said that I remember now.

Q. Did you ever go to see Mrs. Terhune about the deed or its execution?

A. I did not.

Q. Did you ever introduce the matter of the deed or its
256 execution to her?

A. No, sir.

Q. Did you ever go to see her daughter Julia in relation to this deed or its execution by her mother?

A. No.

Q. Did you ever introduce the matter of its execution as a subject of conversation between you and Julia?

A. No, sir.

Q. Did Mrs. Terhune ever see you in relation to this deed?

257 A. She did.

Q. Before or after its execution by her?

A. Before its execution.

Q. At that interview who first mentioned the deed?

A. Mrs. Terhune.

Q. State what she said about it, as nearly as you can collect?

A. She said she thought it would be better for me to take the deed; I answered, very well; she also said in substance, that it would at least save the Englewood property.

258 Q. Did she state to you at that time whether or not a deed to you had been shown her for execution?

A. No, sir.

Q. When did you first hear of her objection to execute the deed to you?

A. I never heard of any objection to execute the deed to me.

Q. At that interview to which I have referred was any-

thing said by Mrs. Terhune as to her having had or having an objection to make the deed to you?

A. No, sir.

Q. Did you ever in any manner ever request that that deed should be made to you?

A. No, sir.

Q. Who informed you of the execution of the deed, if you remember?

A. Her daughter Julia.

259

Q. Did you ever tell Julia to tell her mother that the deed to you must be signed?

A. No, sir.

Q. Did Julia ever inform you that her mother objected to make the deed to you?

A. Not until after its execution.

Q. How long after about?

A. A short time after, I can't say how long.

Q. Did she state whether or not that objection had been removed as far as her mother was concerned?

260

A. She simply stated that her mother objected giving me the deed.

Q. Did you ever have any conversation with Mr. Van Dien relative to this deed for its execution?

A. No, sir.

Q. Did you ever request him in writing to obtain the execution of it by Mrs. Terhune?

A. No, sir.

Q. Did you know before its execution of the number of times he had called in relation to it?

261

A. I did not. I was away most of the time.

Q. At or about this time were you away from home a good deal?

A. I was.

Q. Did you receive the amount of the mortgage made by you to the Mutual Life Ins. Co.?

A. I did.

Q. Who negotiated that mortgage for you?

A. Mr. Hardenbergh.

Q. What was done by you with the proceeds of that mortgage?

A. Twenty-five hundred dollars of it paid off a previous mortgage and the balance was paid on account of judgments against Terhune.

Q. Were not the expenses of that mortgage taken out of that balance?

262 A. Yes; both, the expenses and the judgments.

Q. To whom were the expenses or the mortgage paid?

A. I think they were paid to Hardenbergh.

Q. Was that the mortgage that was paid by you out of the proceeds of the Mutual Life mortgage?

(Mortgage offered in evidence and marked "Clair Exhibit A.")

263 Q. Do you know whether any taxes on this property were paid out of the proceeds of that Mutual mortgage, or not?

A. I think the taxes up to that time were paid out of money received from that mortgage.

Q. Was the house upon this Englewood property insured?

A. It was.

Q. Was the premium for that insurance paid out of the proceeds of that mortgage?

264 A. That I cannot say, but I know that all the taxes were paid out of that money.

Q. The mortgage—Exhibit A—had been made by you?

A. Yes, sir, on the Englewood property.

Q. What was the proceeds of that mortgage—Exhibit A—used for?

A. To pay equity in the trade between the Binghampton and the Englewood property, the real estate commissions, lawyers' fees and judgments against Terhune.

Q. Was any portion of the proceeds of that mortgage or of the Mutual Life mortgage used by you for your own benefit?

A. No, sir.

Q. At the time of this transfer to you of the Englewood property was Peter H. Terhune indebted to you?

A. He was between one thousand and twelve hundred dollars.

Q. Was any portion of the proceeds of either of the two mortgages referred to used by you to pay that debt due you from Terhune? 265

A. No, sir.

Q. Have you received at any time any personal benefit from that property?

A. No, sir.

Q. State as near as you can having reference to Exhibit A if it tends to refresh your memory what the several amounts of equity, commissions, lawyers' expenses and judgments connected with the Binghampton property were. 266

A. To the best of my knowledge it was \$1,500—equity expenses and commissions. It was \$1,200 equity that is paid Sherman D. Phelps in trade, the difference in value between the Binghampton and the Englewood properties, and \$300 in commissions and lawyers' fees; the judgments were about \$1,000.

Q. Against whom were those judgments?

A. Peter H. Terhune, the husband of the complainant?

Q. What were the relations between the complainant and her husband as to friendliness? 267

A. I can only answer from hearsay; they were very bad; I seldom saw them together.

Q. Did the complainant ever make any statements to you relative to her husband's action?

A. No, sir.

Q. Did you visit at complainant's house at or about the time of the delivery of this deed?

A. No, sir.

Q. Was your place of residence near to that of the complainant's?

A. Adjoining.

Q. Did complainant's daughter Julia often go to your house at about this time of the transfer?

A. Every day; that was her habit.

268 Q. Where was it that the interview was had between Mrs. Terhune and yourself prior to the execution of the deed of the Englewood property when she referred to it?

A. It was in my grounds adjoining my house in the morning as I was getting into my wagon to take me to the depot; I was in a hurry and only passed a few words with her.

Q. Had you sent for her?

A. No, sir.

Q. So far as you know, had she come of her own accord to see you?

269 A. As far as I know she did.

Q. At that time was anything said by her as to her having previously intended conveying the property to some person other than yourself?

A. No, sir.

Q. Was the matter of this deed to you the only conversation between Mrs. Terhune and yourself on the occasion you have referred to?

A. It was the only matter of conversation at that time.

270 Q. Did she at that time state that she had come to see you about that matter?

A. No; I said good-morning, Charity; she said good-morning, and then without any further delay she said I think we had better give you a deed of that Englewood property; we can save that anyhow; I said very well that will be all right; I then got into the wagon and drove to the depot; I have had no further interviews with her either before or after.

Q. Did you cause the deed to you to be drawn?

A. No, sir.

Q. Did you ever see it before it was finally executed?

A. No, sir.

Q. At the interview with complainant to which you have testified, were the actions and conversations of the complainant such as to impress you with the idea that she was of unsound mind?

A. There was nothing about it to give me any such impression.

271

Q. Did you at that time form an impression from her manner and conversation as to her mind?

A. I gave it no thought; only a few moment's conversation; of course there was nothing to attract my attention at all.

Q. Was Mrs. Terhune in your opinion of sound mind when she talked with you as you have stated about this deed?

A. Yes.

Q. Did you ever see her subsequently to that conversation?

272

A. Yes.

Q. At such times as you have seen her subsequently to that conversation, was she of sound mind in your opinion?

A. Yes.

Q. Did you ever tell Peter H. Terhune, complainant's husband, that you "had a devil of a time to get her (his wife) to sign the deed," or words to that effect?

A. No, sir; but I did say afterwards, "it seems they had a devil of a time to get her to sign that deed" a long time afterwards.

273

Q. Was that said by you before or after the execution of the deed?

A. Oh, it was a long time afterwards; it came up in conversation about this affair.

Q. Was that after the commencement of this suit?

A. No, before it.

Q. And subsequently to the making of the mortgage—the Mutual.

A. Yes, sir.

Q. Was it not some time after the making of the deed to you and the execution of the Mutual mortgage by you that you for the first time heard that there had been any difficulty in relation to Mrs Terhune's execution of the deed?

274 A. Yes, sir.

Q. Had you had conversation with Peter H. Terhune prior to the interview with Mrs. Terhune to which you have testified as to the object in view in conveying you this property?

(Objected to.)

275 A. Yes; he said that in order to raise money to pay the equity to Phelps to pay off the interest on the mortgage on the Hohokus property, about \$1,500. it was necessary for me or some one else to take a deed of that property and raise the money on it; he said they had first made up their minds to have his brother Richard, who resides in Sing Sing; but in thinking the matter over he thought that I would do better with the property, and if I was willing he would have the deed in my name; I said I did not care to be bothered about it, but if he wished it, all right; I then asked him if he had spoken to Charity about it; he said yes, that was all right.

276 Q. How long about was it after this conversation with him that Charity spoke to you upon the subject as you have stated?

A. It must have been at least from two to three weeks; I was away from home, and it was on my return.

Q. From her manner and conversation on this occasion when she spoke to you, was you led to suppose or believe that she was aware at that time of a proposition made by

her husband Peter to you to take the deed of the Englewood property.

(Objected to.)

A. Yes, from the fact that she came to me and requested me to, as she did.

Q. You had never had any communication with her on the subject before that time?

A. Never. 277

Q. Did Peter state to you at any time before the conveyance to you and before his wife's conversation with you that they proposed to sell the property to some man by the name of Slosser or Slosson?

A. After the deed was executed and the money received from the Mutual Life, Terhune told me that he could trade the Englewood property for some shares of stock for a gas machine company and also some stock in a patent steel manufactory which would realize \$25,000; I told him I would investigate the matter, but I did not believe the stock was worth two cents a thousand shares; next day Mr. Slosson called and said that he had a contract signed by Terhune agreeing to convey this Englewood property for so many shares of stock; I told him Terhune had no right to sign any contracts in regard to that property and that his stock did not amount to anything; he said the stock was worth \$25,000; I said if the stock was worth anything and he could realize \$20,000, I would convey him the property; he then said I would hear from his lawyer on the matter, and that was the last I ever heard of him. 278

Q. Did Peter H. Terhune, before the conveyance of the property to you, give as a reason for wanting to have you take the title that it would be necessary to raise money to pay the equity and other things, and that his wife objected to executing a mortgage herself? 279

(Objected to.)

A. Yes, sir.

Q. What did he say upon that subject?

A. He said he must raise money to pay off judgments against him to pay the equity between the two properties to Phelps and try to get money enough on the property to pay the interest on his mortgage on the property at Hohokus; that it had to be done very soon and that his wife would delay the matter of giving a mortgage; it was im-
280 portant to be done at once without her.

Q. Was this said to you before her conversation with you?

A. Yes.

Q. Who delivered you the deed from Peter and his wife of the Englewood property?

A. Julia brought it to me.

Q. Where was Peter at the time?

A. Peter was in Saratoga.

Q. Who paid to Mr. Phelps the \$1,200 equity?

281 A. Mr. Hardenburgh, the gentlemen to whom mortgage—Exhibit A—was given?

Q. Now, then, will you please state how the mortgage for \$4,000 to Preston made by you happened to be given and how the proceeds were used and applied?

A. Terhune some two or three years before obtained a loan from the Merchants' Loan and Trust Co. of Paterson, N. J., of \$2,000; the note from time to time was renewed until it amounted by discounts and interest to \$2,500; failing to realize sufficient money out of the Englewood prop-
282 erty to meet the amount of \$1,500 interest due on the Hohokus property and being pressed by the Merchants' Loan and Trust Co. to pay that note, Terhune requested me to ask Preston to take a mortgage from me on the Englewood property for an amount sufficient to pay the note and leave him funds to pay off the interest on the Hohokus property; Preston agreed to take a mortgage for \$4,000 and get it cashed at 10 per cent. discount; I executed the mortgage for \$4,000; Preston held it for

sometime, and then told me he was unable to negotiate it; but in the mean time had had it recorded in the County Clerk's office, and when the mortgage became due he commenced foreclosure proceedings on the property, but refused to return the notes, saying, that the note was not satisfied until he obtained money from the mortgagee.

Q. He has never paid to you or any one for you or Mrs. Terhune anything on that mortgage?

A. No, sir.

283

Q. Have you ever rented the property?

A. No, sir.

Q. You have never received any rent from the property?

A. No, sir.

Q. Any interest ever been paid to the Mutual Life on their mortgage?

A. No, sir.

On cross-examination the witness testified as follows:

284

Q. You knew that the Binghampton property belonged to Charity Ann before it was transferred to Phelps?

A. Yes; I always understood so.

Q. You are also aware that the Englewood property belonged to Charity Ann before it was deeded to you?

A. I did not know anything about it; I supposed it was received by her in trade for the Binghampton property.

Q. You never had actual possession of the Englewood property, did you?

A. I went to see it, took people to see it, and did everything that an owner would do.

285

Q. Have you made any effort to let it?

A. Yes; and to sell it.

Q. When last?

A. Oh! two years ago, as soon as these foreclosure proceedings were commenced I dropped it; I could not do anything then.

Q. Through whom did you try to let it?

A. I advertised it; I put it in the hands of a Mr. Mason, in Hackensack, but have never heard from him about it; I have spent \$25 in advertising it.

Q. Where is the key?

A. The key was originally in my possession, but I gave it to Terhune one day to go down and see the house and have never had it since.

286 Q. Where did Julia deliver you that deed?

A. At my house in Hohokus.

Q. Was Charity Ann ever of unsound mind?

A. Not to my knowledge; They say she was in an asylum and all that, but I don't know anything about it, of my own knowledge.

Q. When did you first hear of it?

A. Three or four years before they moved to Hohokus.

Re-direct:

287

Q. At any of your interviews with her you never saw any evidence of insanity?

A. No, sir.

Q. You have always regarded her whatever you have seen of her as a very bright woman?

A. Yes, the smartest one of the crowd; a great deal smarter than her husband, her children or her sisters. I mean to say she was a shrewd woman; she would pick up about the place produce and get better prices in market for
288 it than others; things that other people would not think of taking to market she would get \$5 for.

Q. Did she do marketing about the time this conveyance to you?

A. Yes.

Q. Go from her place at Hohokus, to the Paterson market?

A. Yes.

Q. How far is Paterson from her place?

A. Seven miles.

Q. Would she go alone?

A. Yes, and drive her own horse.

Be-cross :

Q. What personal knowledge have you of these facts, that you have testified to?

A. On one or two occasions I have seen her go by with things in her wagon; she said she was going to Paterson, and when she came back she would state that she had got so much money for them, and she would remark to my family that other people would not think of selling such things.

289

HENRY CLAIR.

Taken subscribed and sworn this 18th day of October, 1878.

FRANK SANDERS,

Commissioner of New Jersey for New York.

290

STATE OF NEW YORK, }
County of New York. } ss :

On the 18th day of October, A. D. 1878, at the office of of Turner, Lee & McClure, No. 2 Nassau street, in the city of New York, personally appeared before me, Frank Sanders, a commissioner of New Jersey, for New York, before whom the foregoing depositions were taken by consent, Garret G. Van Dien (whose deposition commences on the first page of the record), and Henry Clair (whose deposition commences at the 26th page of this record), and severally made oath that the depositions by them respectively subscribed contained the truth, the whole truth, and nothing but the truth.

291

FRANK SANDERS,

Commissioner of New Jersey for New York.

IN CHANCERY OF NEW JERSEY.

292 BETWEEN

CHARITY ANN TERHUNE,
Complainant

AND

HENRY CLAIR et al,
Defendants

293 This cause coming on to be heard upon the bill, answer replication and proofs, and in presence of Charles H. Voorhis, of counsel for complainant and of Garret Ackerson, Jr., Esq., of counsel with Henry Clair, and of David McClure, Esq., of counsel with the Mutual Life Insurance Company of New York, and the arguments of counsel having been heard and considered by the Court.

294 It is, on this 26th day of August, A. D. one thousand eight hundred and eighty, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that said bill of complaint be dismissed as against the defendant the Mutual Life Insurance Company of New York, with costs, and said defendant be allowed to proceed with the foreclosure suit upon its said mortgage; that the mortgage in said bill mentioned made by Henry Clair and his wife to James F. Preston, for four thousand dollars and interest dated March seventeenth, A. D. eighteen hundred and seventy-five, and registered March thirtieth, eighteen

hundred and seventy-five (1875), in the Bergen County Clerk's office, in Book L 2 of Mortgages, page (536) five hundred and thirty-six, and so forth be, and is hereby set aside and declared to be null and void, and the property therein described is hereby adjudged to be free and clear and discharged from all lien under or by virtue of said mortgage, and that the same be canceled of record and delivered up to said complainant with costs to the complainant, against the said James F. Preston, that said Henry Clair do by proper deed of conveyance executed by himself and his wife, convey forthwith to the complainant the said lands and premises situate in the township of Englewood, in said county of Bergen, and particularly described in said bill as conveyed by Sherman D. Phelps to said complainant by deed dated June 6, A. D. 1874, and recorded in said office on the fifteenth day of November, A. D. 1874, in Book I 9, of Deeds, pages 321, &c., subject only to the said mortgage held by the Mutual Life Insurance Company of New York, and all unpaid taxes that the said Henry Clair do account to the complainant for all moneys borrowed by said Henry Clair upon the said premises, and that it be referred to William M. Johnson, Esquire, one of the Masters of this Court to take said account, and that upon said accounting said Henry Clair be credited with all moneys necessarily and legally required to be (and actually) paid by him by the contract under which said Sherman D. Phelps exchanged said property at Englewood township for said lands at Binghampton, New York, of said complainant and all taxes paid by him against said Englewood property and all necessary expenses in procuring said loans and in advertising and taking care of said Englewood property, and that the question of costs between said complainant, and said Henry Clair is hereby reserved until the coming in of said report and said Master is directed to make his report with all convenient speed; and that said complainant do pay to the deponent the

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297

Mutual Life Insurance Company of New York its costs of this suit to be taxed; and that said James F. Preston do pay to said complainant her costs in this suit, to be taxed up to and including this decree, and that the evidence heretofore taken in this cause may be used upon the said accounting.

THEODORE RUNYON,
Chancellor.

298 Respectfully advised,
H. P. PITNEY,
A. M.

299

300

IN CHANCERY OF NEW JERSEY.

BETWEEN

CHARITY ANN TERHUNE,
Complainant,

and

HENRY CLAIR et al,
Defendant.

301
Master's Report.

In pursuance of an order of this Court, made in the above stated cause and hearing date the twenty-sixth day of August, 1880, whereby it was referred to the subscriber, one of the Masters of this Court to take an account of the moneys borrowed by the defendant Henry Clair upon the premises mentioned and described in the bill of complaint in said cause, and of the moneys necessarily and legally required to be, and actually paid by him by the contract under which Sherman D. Phelps, exchanged said property for lands at Binghampton, New York, and all taxes paid by him against said property, and all necessary expenses in procuring said loans and in advertising and taking care of said property. 302 303

I, William M. Johnson, the said Master, do respectfully report, that I have been attended by the solicitor of the complainant and the solicitors of the defendant Henry Clair, and that I have taken the depositions of witnesses produced before me, which depositions are herewith returned, and have also referred to and used the evidence heretofore taken in this cause pursuant to said order.

And I do certify and report, that the said Henry Clair borrowed the sum of three thousand dollars on said property by the mortgage in said bill mentioned to the Mutual Life Insurance Company, dated February 3, 1875, the proceeds of which mortgage were in part used to pay off another mortgage for two thousand five hundred dollars previously given by him to Abraham J. Hardenbergh, for moneys borrowed by him from said Hardenbergh, and for which he is accountable under said order, which, with the sum of five hundred dollars, balance of said Mutual Life Insurance Company mortgage makes the sum of three thousand dollars to be accounted for by said Henry Clair.

I further report, that the said Henry Clair should be credited with the sum of eleven hundred and twenty-six 24-100 dollars, being the amount paid on the contract of sale with Sherman D. Phelps, and with the sum of one hundred and forty-five dollars for surveying and searching the title paid by Abraham J. Hardenbergh as part of the necessary expense of procuring the said loan of \$2,500; and also with the sum of one hundred and twenty-four 31-1000 dollars paid to Turner & McClure, as part of the necessary expense of procuring the said loan of \$3,000; and also with the loan of fifteen 50-100 dollars paid for insurance as part of the necessary expense of taking care of said property, making the sum of fourteen hundred and eleven dollars and five cents in all to be credited on said sum of three thousand dollars received by said Henry Clair, leaving a balance of fifteen hundred and eighty-eight dollars and ninety-five cents, chargeable against said Clair with interest at seven per cent. from February 3, 1875, to July 4, 1878, and at six per cent. from July 4, 1878, to the date of this report, amounting to six hundred and fifty-eight dollars and forty-seven cents of interest, and an aggregate of principal and interest of two thousand two hundred and forty-seven dollars and forty-two cents, as appears by the annexed Schedule.

I do therefore report, that the amount borrowed by the said Henry Clair on the property in controversy, unac

counted for including interest to this date, is the sum of two thousand two hundred and forty-seven dollars and forty-two cents.

Respectfully submitted this fourth day of June, eighteen hundred and eighty-one.

WILLIAM M. JOHNSON,
Master in Chancery.

SCHEDULE.

307

Amount received by said Henry Clair, - - - \$3,000 00

Cr.

Amt paid on Phelps contract- - - \$1,126 24

Expenses of Hardenberg loan- - - 145 00

“ Mutual Life “ - - - 124 31

Insurance - - - - - 15 50

Total credits - - - - - \$1,411 05

308

Balance- - - - - \$1,588 95

Interest on \$1,588.95 from February 3, 1875, to July 4, 1878, at 7 per cent. - - - - - \$380 31

Interest on \$1,588.95 from July 4, 1878, to June 4, 1881, at 6 per cent. 278 16 658 47

309

Total principal and interest- - \$2,247 42

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

IN CHANCERY.

BETWEEN

310

CHARITY ANN TERHUNE,

Complainant,

On Bill, &c.

AND

HENRY CLAIR, *et als.,*

Defendants.

311 Proceedings under the order of reference made in above cause, dated August 26, 1880, before the subscriber, in the presence of Chas. H. Voorhis, Esq., Solicitor of complainant, and G. Ackerson, Jr., Solicitor of defendant, at my office in Hackensack.

W. M. JOHNSON,

M. C. C.

Complainant's solicitor claims that the answer and proofs taken in the cause show that he borrowed—

312 Feb. 3, 1875, by a mortgage to Mutual Life Insurance Co. of New York \$3,000.

Complainant claims that Clair is accountable for the sum of \$3,000, with interest, from Feb. 3, 1875.

Complainant closes.

IN CHANCERY.

BETWEEN

CHARITY ANN TERHUNE,

Complainant

AND

HENRY CLAIR *et als*,

Defendants.

313

Depositions in behalf of defendant taken before W. M. Johnson, Master in Chancery, pursuant to an order of reference herein dated August 26, 1880, in the presence of C. H. Voorhis, Solicitor of complainant, and Garret Ackerson, Jr., Solicitor of defendant, Henry Clair.

314

Abraham J. Hardenbergh being duly sworn according to law on this oath, saith :

I reside in Middletown, Orange County, N. Y.; I do business in the city of New York; I deal in personal securities; I loan money upon personal securities and upon bond and mortgage; I am acquainted with the defendant, Henry Clair; I have known him since 1873 or somewhere along there; I know Peter H. Terhune, a brother-in-law of Mr. Clair; I had a transaction through Mr. Terhune and Mr. C. A. Wells of loaning money at Englewood; by them I was brought in contact with Mr Clair.

315

I think in the spring of 1874 Mr. Terhune and Mr. Wells came to my office; Mr. Terhune stated to me that he was in very straitened circumstances for money; that Mr. A. T. Stewart had employed him to go to Saratoga to superintend the putting up of the addition to the Grand Union Hotel

and that he wished me to make him a loan on a note made by him and endorsed by Mr. Clair to give him money enough to go to Saratoga to go to work; I did not wish to let him have it, but upon his representation that Mr. Clair was his brother-in-law and was in the employ of Mr. Stewart, I let him have \$100 on his note endorsed by Mr. Clair; at the same time C. A. Wells was with him; he had a note of Mr. Terhune endorsed by Mr. Clair which [he
 316 wished me to cash, or Mr. Terhune wished me to cash it, as it was for commisions on an exchange of property at Binghampton for this property at Englewood, so he said to me; I let him have the money (\$115) at Mr. Terhune's request; those notes were renewed several times by Mr. Clair and Mr. Terhune; Mr. Wells and Mr. Terhune called on me several times and wanted a loan of \$5,000 on this Englewood property; then they got down to \$4,000, then to \$3,000, which, after examining the property, I declined to make, because I did
 317 not think it was worth it; finally, after many interviews, I told them I would loan \$2,500 on the property; I made the the loan, after searching the title, and paid the money, and I took a mortgage and notes from Mr. Clair on the Englewood property.

(A paper purporting to be a mortgage for \$2,500 made by Henry Clair and wife to Abraham J. Hardenbergh, dated October 30, 1874, acknowledged Nov. 2, 1874, before Isaac Wortendyke, M. C. C., and recorded in the Bergen
 318 County Clerk's Office in book L, 2, of mortgages, page 59, &c., marked Exhibit A, *ex-parte* defendants in this cause, is shown to witness, and he is asked :

Q. Is that the mortgage that you took as security for \$2,500 of which you have just spoken ?

A. I believe it to be the mortgage.

Q. How did you pay that \$2,500 ?

A. By giving up the notes representing the \$215 paid to

Terhune and Wells by payment to the attorneys of Sherman C. Phelps \$1,126.24; to Winfield and Leeds, \$39; former discounts on the above notes, \$42.50; insurance on the house mortgaged, \$15.50; check to H. Clair, \$344.49; Sheriff of Bergen County cancelling judgment against Terhune, \$571.79; interest and expenses of surveying and searching title, \$145, making \$2,500; my only knowledge of the consideration for the \$1,126.24 paid to Mr. Phelps is from the representations of the attorneys and from Mr. Wells and Mr. Terhune; I learned that it was the difference or boot money that Mr. Terhune was to pay Mr. Phelps for trading this house for the one in Binghampton; the attorneys of Mr. Phelps delivered the deed upon payment of this money; Mr. Clair did not get the title to the Englewood property till the payment of this money; the deed was delivered at that time? I gave my own check on the East River National Bank to Mr. Phelps' attorneys. 319

The \$39 paid to Winfield and Leeds was for some legal expenses in settling the title of the Binghampton house; I can't say what it was. 320

The \$344.49 was paid to Clair; I don't know what for, except as represented by Mr. Terhune; among other things of the gross amount he wanted some money to keep his son at school; I don't know what this particular item was for.

This was paid by check; that is my usual way of doing business.

The \$571.79 was paid to the Sheriff at Mr. Terhune's request.

I had other notes in the same matter on which interest had accumulated; then there were the expenses of the loan, making the item of \$145; it was all incident to the loan. 321

Mr. Terhune solicited the loan and I did the business with Mr. Clair; I did not know when I commenced the business who owned the property; these several payments were made on a statement sent by Mr. Terhune as to the least amount he could get along with; the transaction was carried out with Mr. Clair; the only portion paid to Mr.

Clair directly was this \$344.49; I made no other loans to Mr. Clair or Mr. Terhune than this \$2,500.

This mortgage has been paid and satisfied; I think I got the check of Turner and McClure in behalf of the Mutual Life Insurance Co. for the amount of the mortgage and accrued interest.

321 The mortgage was given to secure notes for \$2,500, and interest was paid on the notes from the time they were made till the time they matured by Mr. Clair, and the rest of the interest till the mortgage was paid Feb. 15, 1875, by Turner and McClure.

I negotiated the loan from the Mutual Life Insurance Co. for \$3,000; I went with Mr. Clair to the office of Turner and McClure and delivered up the mortgage and notes to be cancelled and got their check for my money.

They were unable to pay my mortgage, so at Mr. Clair's request I applied for the money from the Mutual Life.

323 *Being cross-examined he says :*

I am not certain who the attorneys of Mr. Phelps were.

Re-direct:

Q. Do you know of objection being made to your making the loan while that judgment was there?

324 A. I don't recollect; I know that I paid it; if Mr. Clair was on the note for which judgment was recovered it had to be paid; I do not remember whether Mr. Clair was a party to the judgment or not.

ABRAM J. HARDENBERGH.

Sworn and subscribed to before me April 26, 1881.

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

Henry Clair being duly sworn on his oath, saith :

I am one of the defendants to this suit; I am acquainted with Peter H. Terhune and Charity Ann Terhune; they are my brother-in-law and sister-in-law.

Mrs. Terhune owned a property in Binghampton, N. Y.; Mr. Phelps owned the property in question in Englewood, N. J.; Mr. Terhune and Mrs. Terhune wished to trade the Binghampton property for the Englewood property, and an arrangement was made, Mr. and Mrs. Terhune signing a contract with Mr. Phelps for the exchange of property; Mr. Phelps was to receive about \$1,100 as equity or difference in value between the properties. 325

Owing to Mr. Terhune having some judgments against him, the deed of the Englewood property was given to me; I was to raise money on that property by bond and mortgage of sufficient amount to pay this difference in valuation, to pay off the judgments against Terhune, and also to pay the accrued interest on the mortgage on their property at Hohokus, which amounted to about \$1,500 at that time; Mr. Terhune had debts which he wanted to pay off to Mr. Hardenbergh; I was brought in as an indorser of some notes of his; finally the \$5,000 which we attempted to raise we did not succeed in getting, but we got eventually \$3,000 from the Mutual Life Insurance Co.; this money was disbursed by me, as stated by Mr. Hardenbergh; the balance, amounting to something like \$200, I handed Mr. Terhune in cash. 226

At the time of the negotiation for the exchange of properties Mr. and Mrs. Terhune were living together as husband and wife; Mr. Terhune acted in the negotiation with Mr. Phelps; I think I never saw Mr. Phelps till the time the title was passed and the equity paid him by Mr. Hardenbergh. 227

Mr. Terhune had all to do with making the bargain with Mr. Phelps, but from my conversation with her I know Mrs. Terhune was cognizant of it; she approved of the bargain which was made with Mr. Phelps.

The title was first made by Judge Phelps to Mrs. Terhune, and afterwards she and her husband conveyed it to me; when the property was conveyed to me I made a mortgage thereon to Mr. Hardenbergh; I advised Mrs. Terhune before the execution of the mortgage that such a mortgage was to be made and the purposes for which it was to be made; this was at her residence at Hohokus; she was aware that we were trying to get \$5,000.

328 Q. What was the understanding between yourself and Mrs. Terhune and Mr. Terhune as to the disposition to be made of the \$5,000 if you succeeded in raising it?

(Question objected to as foreign to this inquiry.)

329 A. We were to pay off accrued interest on the bond and mortgage on their property at Hohokus, which was then under foreclosure, amounting to about \$1,500; we were to pay the amount due Mr. Hardenbergh on his note and mortgage and the \$1,100 equity and the judgment, which were included in the Hardenbergh mortgage; the only acquaintance I had with Mr. Hardenbergh was through Mr. Terhune, when he wanted to raise money through him; Terhune, I think, negotiated for the loan he made on the mortgage; after the making of the \$2,500 mortgage I told Mrs. Terhune how I had paid the money; I remember telling her that I had paid more than I had received; she made no objection to the manner in which it was paid; she said she did not know what Peter was coming to; in regard to the bill of her son at Yale College, she thought it was costing more than it was worth.

330 The \$344.49 which I received from Mr. Hardenbergh I sent to their son, Charles Terhune, by direction of his father; he was at Yale College; I explained this to her before I sent it; she made no objection to my doing so other than I have already stated; Hardenbergh deemed it necessary that the judgment against Terhune should be taken

from the record before the mortgage could be negotiated; a party in Binghampton had a judgment against him for lumber furnished him for his house at Hohokus; I talked to her about the judgment; she made no objection to its payment.

I did not receive any of this \$2,500 for my own benefit; before the commencement of this suit Mrs. Terhune made no complaint as to the regularity of these payments and made no demand for any of the money; I resided at the 331
time of the loan at Hohokus; the Terhunes resided at the same place, next door to me, and I never heard any complaint before this suit was brought; after she deeded this property to me she rather attended to her business.

We both continued to live at Hohokus till after the making of the mortgage to the Mutual Life; I would see her two or three times a week during that time.

Out of the \$3,000 received from the Mutual Life Insurance Company Mr. Hardenbergh received the amount of his mortgage; there was also a payment to Turner and 332
McClure, the attorneys of the company, of \$124.31 for their services, &c.; there was also a note of Terhune's held by C. A. Wells for \$150 for his services in negotiating the trade of the Binghampton and Englewood properties; then the balance, two hundred dollars and upward, I paid to Terhune; this was more than I owed Terhune after deducting some personal sums he owed me; I received no personal benefit from this loan of \$3,000; Mrs. Terhune knew of this loan of \$3,000 being made; I told her about these payments; she said if Peter kept on that way she did not know 333
how he could pay off the mortgage on the Hohokus property; she did not find any fault with me for making the payments; she never made any demand on me for any portion of this \$3,000; I saw her often after this loan had been made.

I never received any rent from this Englewood property or any other benefit whatever. The Englewood property

was sold a few months ago under foreclosure of this mortgage to the Mutual Life Insurance Co.

(Solicitor of complainant objects to all the testimony given by this witness.)

H. CLAIR.

Sworn and subscribed to before me April 26, 1881.

334

W. M. JOHNSON,

M. C. C.

335

JUNE 3, 1881.

Examination resumed in the presence of the same counsel.

Charity Ann Terhune, the complainant, being duly sworn according to law on her oath, saith:

Q. Did you either alone or with your husband ever sign a contract with Mr. Phelps for the exchange of property?

336

A. No, sir.

Q. Did you or not ever authorize Henry Clair to mortgage the Englewood property?

A. I never did; I first learned that he had mortgaged it in August, 1876.

Q. Have you or not had any conversation with him whatever, either you with him or he with you, since he received the deed from you to him of the Englewood property?

A. None at all.

Being cross-examined the witness saith :

Q. Who negotiated the exchange of property between yourself and Judge Phelps?

A. I understand my husband did.

Q. You carried out the arrangement made by your husband with Judge Phelps in exchanging the Binghampton property for the Englewood property, did you not?

A. I did by compulsion by my husband and others?

337

Q. Are you and your husband living together now?

A. No, sir; we have not lived together since 1876; the time I was compelled to leave the house we lived in was September, 1876. I mean I was compelled to leave the house because it had been sold under foreclosure.

Q. What papers did you sign for the transfer of the Binghampton property for the Englewood property?

A. None.

Q. Did you sign no paper for the transfer to Judge Phelps?

338

A. The deed to Judge Phelps I told before; I was compelled to sign

Q. You were compelled to sign in the manner heretofore given in the testimony in the cause?

A. Yes, sir, in my testimony; I remember of signing that deed to Judge Phelps; it was signed at our house at Hohokus before Garret G. Van Dien.

Q. Who else was present at the time you executed that deed?

A. My daughter Julia.

339

A. Was your husband present?

A. I think not; he stepped out in the next room; he was at home; I am not living with my daughter Julia now; my husband, as I understood, made the bargain with Mr. Phelps or with his attorney; Mr. Phelps was away in Europe at the time.

Q. What were the terms of that exchange?

A. I believe at the time the exchange was made without any difference; I was told as an inducement to make the transfer that Judge Phelps was now willing to exchange without difference, whereas formerly he wanted \$1,000 in money; my daughter Julia told me this.

Re-direct:

340 Q. Mr. Clair says in his testimony, "After the making of the \$2,500 mortgage I told Mrs. Terhune how I had paid the money." Is that true or not?

A. It is not.

Q. Mr. Clair says in his testimony: "The \$344.49 which I received from Hardenbergh I sent to their son Charles by direction of his father; he was at Yale; I explained this to her before I sent it." Is that true or not?

A. It is not.

341 Q. Mr. Clair in his testimony says: "Mrs. Terhune knew of this loan of \$3,000 being made; I told her about these payments." Is that true or not?

A. He never told me a word about it. I did not know of the loan of \$3,000 being made until August, 1876.

MRS. C. ANN TERHUNE.

Sworn and subscribed to before me this 3d day of June, 1881.

W. M. JOHNSON,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CHARITY ANN TERHUNE,

Complainant,

and

HENRY CLAIR et al,

Defendant.

*On Bill for In-
junction and
Relief. Final
Decree.* 343

This cause being opened to the Chancellor by Charles H. Voorhis, of counsel with the complainant and upon reading a report therein made by William M. Johnson, one of the masters of this Court pursuant to a decree of this Court made in this cause on the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty, whereby it appears that there was due to said complainant from said Henry Clair the sum of two thousand two hundred and forty-seven dollars and forty-two cents on the fourth day of June, eighteen hundred and eighty-one, the date of said Master's report, and it appearing by affidavit on file that the rule *nisi* entered in said cause on the sixteenth day of June, instant, was on the twenty-first day of June, instant, duly served on the solicitors of said defendant Henry Clair and no cause appearing to the contrary.

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345

It is on this thirtieth day of June, in the year of our Lord, one thousand eight hundred and eighty-one, on motion of Charles H. Voorhis, solicitor of the complainant,

by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the said report and all matters and things therein contained, do stand ratified and confirmed, and that the said Henry Clair do pay to said complainant or her solicitor, said sum of two thousand two hundred and forty-seven dollars and forty-two cents and interest thereon from the fourth day of June, A. D. one thousand eight hundred and eighty-one, together with her costs of this suit to be taxed, and it is further ordered that 346 a writ of *feri facias* do issue to levy and make said sum interests and costs of the goods and chattels, lands and tenements of the said defendant Henry Clair, to be directed to the Sheriff of the county of Bergen, by selling the same or so much thereof as may be necessary for the purpose, and that the surplus money arising from such sale, if any there be, shall be brought into this Court to abide the further order of the Court.

THEODORE RUNYON,

C.

347

A true Copy,
G. S. DURYEA,
Clerk.

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IN CHANCERY OF NEW JERSEY.

BETWEEN

CHARITY ANN TERHUNE,

Complainant

AND

HENRY CLAIR et al,

Defendants

349

*On Bill, &c.
Notice of Appeal.*

Henry Clair, one of the defendants in the above stated cause, appeal from the final decree made therein on the thirtieth day of June, last past, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes. 350

Dated December 24th, 1881.

ACKERSON & VAN VALEN,

Solicitors of said defendant.

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

GARRET ACKERSON,

Of Counsel.

351

A true Copy.

G. S. DURYEA,

Clerk.

N. J. COURT OF ERRORS AND APPEALS.

BETWEEN

HENRY CLAIR

Appellant,

AND

CHARITY ANN TERHUNE,

Respondent.

*Petition of
Appeal.*

351

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

The petition of Henry Clair, the appellant in the above
stated cause respectfully shows, that by a certain decree
made in the Court of Chancery, by Theodore Runyon,
Chancellor of New Jersey, in a certain cause, wherein
353 Charity Ann Terhune is complainant and Henry Clair and
Catharine his wife, The Mutual Life Insurance Company of
New York, James F. Preston and Garret R. Herring,
Sheriff of the county of Bergen, are defendants, under
date of August 26th, A. D. 1880, it was decreed and
adjudged as follows, to wit: that the mortgage made by
Henry Clair and wife to James F. Preston, for four thousand
dollars and interest, dated March 17th, A. D. 1875, and
registered March 30th, A. D. 1875, in the Bergen County
Clerk's Office in Book L. 2 of Mortgages, page 536, be set
354 aside and cancelled of record, and that said Henry Clair do
by proper deed of conveyance executed by himself and his
wife, convey forthwith to the complainant the lands and
premises, situate in the Township of Englewood, in the
county of Bergen as conveyed by Sherman D. Phelps to
said complainant by deed dated June 6th, A. D. 1874, and
recorded in said Clerk's Office November 15th, A. D. 1874, in
Book J. 9, of Deeds, page 321, subject only to the mortgage
held by the Mutual Life Insurance Company of New York,

and all unpaid taxes, and that said Henry Clair do account to the complainant for all moneys borrowed by said Henry Clair upon said premises, and that it be referred to William M. Johnson, one of the Masters of said Court of Chancery to take an account and that upon such accounting said Henry Clair, be credited with all moneys necessarily and legally required to be (and actually) paid by him by the contract, under which said Sherman D. Phelps exchanged said property at Englewood Township, for lands at Binghampton, New York, of said complainant and all taxes paid by him against said Englewood property, and all necessary expenses in procuring loans, and in advertising and taking care of said Englewood property; that pursuant to said decree said Master made his report to said Court of Chancery, and thereupon, it was ordered and decreed by said Chancellor by his decree under date of June 30th, A. D. 1881, which adjudges that the report made in said cause in Chancery by William M. Johnson, one of the Masters of said Court, and all the matters and things therein contained do stand as ratified and confirmed, and which decree also orders and directs that said Henry Clair, do pay to said complainant or her solicitor the sum of two thousand two hundred and forty-seven dollars and forty-two cents, and interest thereon from the fourth day of June, A. D. 1881, together with the complainants costs of suit to be taxed, and your petitioner finds himself aggrieved by the said decree, and hereby appeals from the said decree of the Chancellor, and from every part thereof, on the ground that the same is erroneous and contrary to law and equity, your petitioner therefore prays that said decree of said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet..

ACKERSON & VAN VALEN,
Sols. and of Counsel with Appellant.

N. J. COURT OF ERRORS AND APPEALS.

358 BETWEEN HENRY CLAIR,
Appellant,
AND
CHARITY ANN TERHUNE,
Respondent.

*On Appeal
from Decree of
the Chancellor.*

359 This respondent not confessing all or any of the matters to be true as in and by the said petition of appeal are mentioned and set forth for answer thereunto, says that such decree as is complained of was made by the Court of Chancery as in the said petition of appeal is mentioned and set forth, but as to the date, substance and extent thereof, this respondent humbly craves leave to refer thereunto when the same shall be produced.

And this respondent is advised and insists that the said decree is agreeable to equity and justice, and therefore asks that the same may be affirmed with costs.

360 Dated Feb. 4, 1882.

CHAS. H. VOORHIS,
Solicitor for and of Counsel with said Respondent.