

# In Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY.

*Between*

*BENJAMIN D. STELLE, com-  
plainant,*

*and*

*SOLOMON ANDREWS and wife,  
and ASHBEL GREEN and  
others, defendants.*

} Bill to  
Foreclose.

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## Bill of Complaint.

[Filed July 20, 1867.]

*To his Honor Abraham O. Zabriskie, esq., Chancellor of the state  
of New Jersey.*

Humbly complaining, showeth unto your Honor, your orator Benjamin D. Stelle, of the city of New Brunswick, in the county of Middlesex, and state of New Jersey, that on or about the second day of February, in the year one thousand eight hundred and sixty-one, one Solomon Andrews, of the city of Perth Amboy, in the county of Middlesex, and 10 state of New Jersey, became, and was justly indebted unto your orator, in the sum of \$5000; and being so indebted, the said Solomon Andrews, in order to secure the payment

of the said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of \$10,000, lawful money of the United States, with a condition there under written, that if the said Solomon Andrews, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said Benjamin D. Stelle, your orator aforesaid, his executors, administrators, or assigns, the just  
10 and full sum of \$5000, lawful money aforesaid, with interest, semi-annually, on or before the second day of February, A. D. eighteen hundred and sixty-two, then the said obligation should be void, otherwise to remain in full force and virtue, as in and by the said bond or obligation, and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows, that the said Solomon Andrews, in order to secure the payment of the said sum of money above mentioned, together with the interest which  
20 should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Solomon Andrews and Harriet his wife, of the first part, and Benjamin D. Stille, your orator aforesaid, of the second part; in and by which said indenture of mortgage the said parties of the first part did grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto your orator aforesaid, said party of the second part, his heirs and assigns, all the following described parcels of land and premises, to wit, all that  
30 certain tract of land, situated in the city of Perth Amboy, county of Middlesex, and state of New Jersey, on the north side of the Bound Brook turnpike road, that was conveyed to Solomon Andrews, by Asher Bissett, late sheriff of Middlesex county, by deed of 12th of May, A. D. 1847, and which deed is recorded at New Brunswick, in Book 45 of Deeds, pages 131 and 132, containing eleven acres more or less, known as the Barrack lot; bounded on the north by land lately of Archer Gifford; east by land of Solomon Andrews; south by the above named turnpike road, and west by lands  
40 of James Parker.

Also, all those certain lots of land situate on said city of Perth Amboy, and in the county and state aforesaid, that were conveyed with other land to Solomon Andrews by Joel Johnson and wife, by deed of 25th of August, 1855, and is recorded in Book 70 of Deeds, page 25, &c., in Middlesex clerk's office; one tract or parcel whereof is bounded east by State street; south, by Lafayette street; west, by the above described barrack lot, and north by land of James Parker, containing about eight acres—excepting thereout the following lots, marked and designated on a map, of "The Perth Amboy Manufacturing Company," heretofore sold and conveyed as numbers 186 to 191 inclusive, 199, 200, 212 to 217 inclusive, and a lot sold to William Dunham, bounded east by State street, south by No. 215, west by land of Solomon Andrews, and north by No. 216. <sup>10</sup>

Another parcel whereof is bounded in block north by the middle of Broad street, east by Mechanics street, south by Commerce street, and west by State street; excepting lots heretofore conveyed and numbered on the same map, from 87 to 99, inclusive, and Nos. 112, 113, 114. <sup>20</sup>

Also, another parcel of the same, situated in the block bounded north as last above, *viz.* north by the middle of Broad street, east by High street, south, as above, *viz.* south by Commerce street, and west by Mechanics street; excepting lots heretofore conveyed and numbered on same map, from 127 to 138, inclusive, and No. 144.

Also, another parcel of the same in the block bounded north and south as last above, *viz.* north by the middle of Broad street and south by Commerce street, east by Rector street, and west by High street; excepting lots on same map sold thereout, numbered from 157 to 176, inclusive, and the east half of 156, and the west half of 175. <sup>30</sup>

And that other parcel bounded north by the middle of Broad street, east by the sound, south by lot No. 185, and land of Merit Convery, deceased, and west by Rector street.

Also, that lot conveyed to Solomon Andrews, by J. C. Stout, sheriff, 31st of December, 1846, containing six tenths of an acre, bounded north by Commerce street, south by Dock street, east and south by E. M. Patterson, and west by

High street; excepting lots sold to Stephen Lawrence and William Patterson.

Also, that lot of land known as the "Cedar Lot," situated on the east side of the road from Perth Amboy to Woodbridge, and south side of a drift-way therefrom, to lands of Jos. D. Forbes, containing twenty-one and sixty-six hundredths acres, conveyed by Joel Johnson and wife to Solomon Andrews, bounded west and north by the above road and drift-way, south by land of Gage Inslee, deceased, and east  
 10 by land of D. N. Demarest, excepting ten acres heretofore sold to Sylvanus Tyrrell; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, property, possession, claim, and demand whatsoever, as well in law as in equity, of the parties of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold the therein  
 20 above granted and described premises, with the appurtenances, unto your orator, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof for ever: provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto your orator aforesaid, his certain attorney or attorneys, executors, administrators, or assigns, the said sum of money men-  
 30 tioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void, as will appear by reference to said mortgage, in your orator's custody, and to which your orator desires to refer if necessary.

And your orator further shows, that after the execution of the said indenture of mortgage, the same was in due form  
 40 of law acknowledged by the said Solomon Andrews, and

Harriet Andrews his wife, on the 5th day of February, A. D. 1861, before S. V. R. Patterson, a commissioner for taking the acknowledgment and proofs of deeds in and for said county of Middlesex, in New Jersey, as will appear by his certificate of acknowledgment endorsed on said mortgage, and to which your orator desires to refer if necessary; and said mortgage was afterwards and duly recorded in the office of the clerk in and for the said county of Middlesex, in Book 26 of Mortgages, page 178, on the eighth day of February, in the year one thousand eight hundred and sixty-one, as by 10 the certificate of the clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty begs leave to refer, if it be necessary so do to.

Your orator further shows, that on or about the 23d day of July, A. D. 1846, and before your orator's said mortgage, one James S. Green, esquire, recovered a judgment against the said Solomon Andrews, in the Supreme Court of New Jersey, for the sum of \$5837.19, which judgment was alleged to be a lien on the lands of said Solomon Andrews, and that 20 thereupon, in order to enable the said Solomon Andrews to procure of your orator the loan of said \$5000 on his said mortgage, herein before referred to, and that the said mortgage might take precedence of and have priority over the said judgment, the said James S. Green, by his deed of release and quit claim (which deed is written on and accompanies your orator's said mortgage), bearing date the 31st day of January, A. D. 1861, duly acknowledged and recorded in Middlesex clerk's office, Book 85 of Deeds, page 97, did, as said deed states, for a valuable consideration to him paid by 30 your orator, remise, release, and for ever quit claim unto your orator, his heirs and assigns, all and singular, the aforesaid lands and premises, described in your orator's said mortgage, from the effect of any judgment or judgments that he, the said James S. Green, had obtained in any court of record in New Jersey, or of the United States, at any time previous to the said deed, and uncanceled against the said Solomon Andrews, and did by said deed discharge the said lands from the encumbrance of any such judgments, so that by said deed of release, as your orator charges, the said 40

mortgage of your orator took precedence of and became entitled to priority over, and became a prior lien on said lands in said mortgage mentioned, to the aforesaid judgment of said James S. Green, which will more fully appear by reference to said deed of release, under the hand and seal of said James S. Green, in your orator's custody, and ready to be produced and proven as this court may direct, and to which your orator desires to refer if necessary.

Your orator further shows, that on or about the 6th day of 10 December, A. D. 1861, the said Solomon Andrews and wife, by deed of that date, recorded in Middlesex clerk's office, in Book 87 of Deeds, page 414, conveyed in fee to one Nathaniel H. Tyrrell, certain lots of land in Perth Amboy, being part of said premises so mortgaged to your orator, and described in said deed as lots known and numbered on the map of the Perth Amboy Manufacturing Company, as lots No's 151, 152, 153, 154, 155, and one-half of lot No. 156 on said map; which said lots of land your orator, at the request of said Andrews, did, by deed of the 8th day of February A. D. 1862, 20 release and quit claim unto said Nathaniel H. Tyrrell, so that the same are released, and discharged of and from the lien of your orator's said mortgage.

Your orator further shows, that said Solomon Andrews, by his deed of February 20th, A. D. 1863, did convey to one Joseph R. La Tourette, a part of said premises so as aforesaid mortgaged to your orator, *viz.* all that lot situate in Perth Amboy, known as the Cedar lot, containing twenty-one and sixty-six hundredths acres, more or less, bounded 30 Perth Amboy, southwesterly by land late of Solomon Reese and George F. Redfield, and southeast by land formerly of Henry Potter, and north by a drift-way leading from said road to a landing; excepting ten acres sold and conveyed by the Perth Amboy Manufacturing Company to Sylvanus Tyrrell.

And the said Joseph R. La Tourette claims to have some interest in that portion of said mortgaged premises, which was so conveyed as last aforesaid, but your orator charges that said conveyance to La Tourette was made subsequent to 40 and with full notice of your orator's said mortgage.

Your orator further shows, that on or about the 22d day of January, A. D. 1863, the said Solomon Andrews and wife, by their deed of that date, recorded in Middlesex clerk's office, in Book 90 of Deeds, page 220, conveyed in fee to one Matthew Smith, a lot in Perth Amboy, being part of said mortgaged premises, and on the west side of Mechanic street, adjoining the property of said Smith, beginning one hundred feet from the southwest corner of Mechanic and Broad streets, and running south along the line of Mechanic street twenty-two and a half feet; thence westerly, parallel with 10 Broad street, seventy five feet; thence northerly, parallel to Mechanic street, twenty-two and a half feet; thence easterly to the beginning; being one half the lot known as lot No. 115 on said map of the Perth Amboy Manufacturing Company; by virtue whereof said Matthew Smith claims some interest in said part of said mortgaged premises thus conveyed to him, but your orator charges that said conveyance to said Matthew Smith was made subsequent to, and with full notice of your orator's said mortgage.

Your orator also shows, that on the 4th day of March, A. D. 20 1863, the said Solomon Andrews and wife, by their deed of that date, recorded in said clerk's office, in Book 90 of Deeds, page 306, conveyed in fee to one Stephen V. R. Patterson, a part of said mortgaged premises, viz. all that lot on the easterly side of High street and southerly side of Commerce street, bounded northerly by Commerce street, westerly by High street, southerly by land patented to Samuel Gibson, and easterly by a lane or alley way in front of lots sold to Stephen Lawrence and William Patterson, extending on Commerce street, from the line of High street, one hundred 30 feet more or less; on High street, from the line of Commerce street, one hundred and thirty-two feet, more or less; on the southerly line one hundred feet, more or less; on the easterly line one hundred feet, more or less, being the westerly portion of lot conveyed by deed to Perth Amboy Manufacturing Company, by James C. Stout, sheriff, dated December 31st, A. D. 1846, by virtue of which conveyance the said S. V. R. Patterson claims some interest on that portion of said mortgaged premises so as aforesaid conveyed to him, but your orator charges that said conveyance to said S. V. 40

R. Patterson was made subsequent to your orator's said mortgage, and with full notice thereof.

And your orator further shows, that on or about the 19th day of May, A. D. 1863, the said Solomon Andrews, by deed of that date, recorded in Middlesex clerk's office, in Book 91 of Deeds, page 83, conveyed in fee, to one Alfred Whitman, all and singular the said several tracts of land and premises described in your orator's said mortgage, except the said lot lastly described in said mortgage, and called therein the  
10 cedar lot, containing twenty-one and sixty-six hundredths of an acre, by virtue of which said conveyance the said Alfred Whitman claims some interest in said lands; but your orator charges that said deed to said Alfred Whitman was made subsequent to, and with full notice of your orator's said mortgage.

Your orator further shows, that on or about the 10th day of September, A. D. 1863, by deed of that date, recorded in said clerk's office, in Book 92 of Deeds, page 364, the aforesaid Joseph R. La Tourette conveyed in fee to the Perth  
20 Amboy and Woodbridge Railroad Company all that lot or strip of land, situate in Perth Amboy, New Jersey, being a strip of fifty feet wide on each side of the centre line of the Perth Amboy and Woodbridge Railroad, as designated on a map filed in the secretary of state's office, on June 20th, 1863, which said centre line is described as follows: Beginning at a point in the centre of the highway; then south seven degrees and forty-two minutes east, for seven hundred and forty-seven feet to the division line between the lands of Joseph R. La Tourette and lands of Samuel Dally, contain-  
30 ing one and seven-tenths of an acre, and being part of the aforesaid cedar lot—part of said mortgaged premises, which was conveyed to said Joseph R. La Tourette by Solomon Andrews, by his aforesaid deed of February 20th, A. D. 1863; which said lot so conveyed by said Joseph R. La Tourette to said Perth Amboy and Woodbridge Railroad Company was, by your orator, by his deed of release, dated the 28th day of December, A. D. 1863, for the nominal consideration of one dollar, released to said railroad company, and discharged from the lien of his aforesaid mortgage.

40 And your orator further shows, that on or about the 13th

day of October, A. D. 1863, by deed of that date, recorded in said clerk's office, in Book 92 of Deeds, page 361, the aforesaid Alfred Whitman conveyed in fee to the Perth Amboy and Woodbridge Railroad Company, all that certain lot in Perth Amboy, New Jersey, beginning at a point in the division line between the lands of Solomon Andrews and lands of James Parker, two hundred and ninety-three feet west from State street; thence southerly, parallel with State street, three hundred and forty feet; thence westerly, parallel with La Fayette street, thirty-seven feet; thence southerly, parallel with State street, five hundred and sixteen feet, to La Fayette street; thence easterly, along the northerly line of La Fayette street, one hundred and thirty feet; thence northerly, parallel with State street, one hundred feet; thence easterly, parallel with La Fayette street, one hundred feet; thence northerly, parallel with State street, two hundred and nine feet; thence easterly, parallel with La Fayette street, one hundred feet; thence northerly, along the west line of State street, seventy-five feet; thence westerly, parallel with La Fayette street, one hundred and thirty feet; thence northerly, parallel with State street, four hundred and seventy-two feet; thence westerly, along the northerly line of said Andrews' land, one hundred and sixty-three feet to the beginning; being a part of the aforesaid mortgaged lands and premises so as aforesaid mortgaged to your orator, which were conveyed to said Alfred Whitman by Solomon Andrews, by his deed of May 19th, A. D. 1863, herein referred to in paragraph 8; which said lot of land last above described, part of said mortgaged premises so conveyed to said railroad company by said Alfred Whitman was, by your orator, by his deed of release to said Perth Amboy and Woodbridge Railroad Company, of September 28th, A. D. 1863, also released to the said railroad company and discharged from the lien of your orator's said mortgage.

And your orator further shows, that on or about the day of \_\_\_\_\_ A. D. 1862, the aforesaid James S. Green died intestate, and letters of administration on his estate were granted to Ashbel Green, esq.; and that afterwards, on or about the 25th day of March, A. D. 1863, the aforesaid judgment, so as aforesaid recovered by the said James S.

Green, in his lifetime, against the said Solomon Andrews, in the Supreme Court of New Jersey, on the 23d day of July, A. D. 1846, referred to in paragraph 3 of this bill, was revived by said administrator, upon *scire facias*, and such proceedings upon said *scire facias* had in the said Supreme Court; that on the 30th day of March of said year, 1863, a *feri facias de bonis et terris* was issued out of said Supreme Court on the said judgment against said Solomon Andrews, at the suit of said administrator, returnable to the June Term then next  
10 of said court, and directed to the sheriff of Middlesex county, and by virtue of said *fi. fa.*, Obadiah Clark, esq., then the sheriff of Middlesex county, did levy upon, and on or about the 25th day of April, A. D. 1864, did sell unto the said Ashbel Green, together with other lands, all and singular the afore mentioned mortgaged lands and premises, so as afore-said described in your orator's said mortgage, and in pursuance of said sale, the said Obadiah Clark, sheriff, afterwards, on or about the 25th day of April, 1864, made and delivered unto the said Ashbel Green a deed of conveyance for the  
20 said lands and premises so levied on and sold to him by virtue of said *fi. fa.*

And said Ashbel Green claims to have some interest in said mortgaged lands and premises, by virtue of such conveyance from said sheriff; but your orator charges that said lands and premises in your orator's mortgage mentioned, having been released to your orator as herein before stated, and discharged from the lien and effect of the above said judgment by the said James S. Green, esq., in his lifetime, and the said Ashbel Green having full notice thereof, what-  
30 ever interest the said Ashbel Green may have in said lands by virtue of said sheriff's deed, the same is subject and liable to the lien of your orator's aforesaid mortgage.

Your orator further shows, that on or about the 9th day of October, A. D. 1866, the said Ashbel Green, by deed of that date, conveyed to one Allecta De Hart a lot of land on the westerly side of State street, in Perth Amboy, known as No. 222, on map of Perth Amboy Manufacturing Company, being in width, front and rear, twenty-five feet, and in depth one hundred and thirty feet: bounded on the east by  
40 State street, on the south by land late of S. Andrews, on the

west by lands of the Perth Amboy and Woodbridge Railroad Company, and north by lands late of S. Andrews, and being part of the aforesaid lands and premises embraced in your orator's said mortgage, by virtue of which conveyance said Allecta De Hart claims some interest in that part of said mortgaged premises so conveyed to her by said Ashbel Green, but your orator charges that said conveyance to Allecta De Hart is subject to and with full notice of your orator's aforesaid mortgage; and the said Allecta has since intermarried with and is now the wife of William D. Mesh- 10  
row.

Your orator further shows that on or about the 9th day of October, A. D. 1866, as your orator is informed, the said Ashbell Green, by deed of that date, conveyed to one Edward H. Willford, a lot on the westerly side of State street, in Perth Amboy, known as lot No. 221 on said map of the Perth Amboy Manufacturing Company: bounded east by State street, south and West by the Perth Amboy and Woodbridge Railroad Company, and north by lands late of Solomon Andrews, and a part of the said lands so as aforesaid 20  
mortgaged to your orator, by virtue of which said conveyance the said Edward H. Willford claims to have some interest in that part of said mortgaged lands and premises so as aforesaid conveyed to him by said Ashbell Green; but your orator charges that said conveyance to said Willford was made with full notice to him of your orator's aforesaid mortgage thereon and subject to the same.

Your orator further shows that he is informed and believes that on or about the 4th day of June, A. D. 1853, the said Solomon Andrews made and executed to one John W. 30  
Quincy, a mortgage for \$5000, on the lot containing about eleven acres more or less, and known as "the Barrack lot," which is described in and part of the lands embraced in your orator's aforesaid mortgage, which said mortgage to John W. Quincy was registered in Middlesex clerk's office, in Book 20 of Mortgages, page 543, on the 16th day of June, A. D. 1853; and by virtue thereof the said John W. Quincy claims to have a prior lien in his said mortgage to the mortgage of your orator on the said lot known "as the

Barrack lot," containing eleven acres more or less, so mortgaged to him, said John W. Quincy.

And your orator admits that said mortgage so given to said John W. Quincy is a prior encumbrance on the said "Barrack lot" to the mortgage of your orator, and that whatever amount is lawfully due and unpaid on said mortgage of said John W. Quincy is entitled to priority in payment over your orator's mortgage out of the said Barrack lot of eleven acres so mortgaged to said John W. Quincy and embraced in your  
10 orator's said mortgage.

Your orator shows, that on or about the 3d day of April, A. D. 1863, one John W. Quincy recovered judgment against the said Solomon Andrews, in the Supreme Court of New Jersey, for \$11,836.79, or some such sum, and by virtue of said judgment, said John W. Quincy claims some interest or lien in said premises; but your orator charges, that said judgment was obtained subsequent to your orator's mortgage, and, if a lien at all upon said premises, is subsequent to the encumbrance of your orator's said mortgage.

20 And your orator further shows, that the whole of the said \$5000, the said principal money mentioned in the said bond or obligation, and secured thereby, and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to your orator, so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises the said deed of mortgage, and the estate thereby mortgaged as aforesaid, have become absolute in your orator and his heirs.

30 And your orator further shows, that the said Solomon Andrews, Harriet Andrews his wife, Ashbel Green, administrator, &c., of James S. Green, deceased, Joseph R. La Tourette, Matthew Smith, Stephen V. R. Patterson, Alfred Whitman, Ashbel Green, Allecta DeHart Meshrow, William D. Meshrow, Edward H. Willford, John W. Quincy, the defendants, since the execution of your orator's said mortgage, have possessed and enjoyed, and that they do still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have always received, and still do re-  
40 ceive, the rents, issues, and profits thereof.

And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he, or some other person or persons for him, has frequently and in a friendly manner applied to the said defendants, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage herein before mentioned and set forth; and your orator well hoped 10 that they would have complied with such reasonable requests of your orator, and would have paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done.

But now so it is, may it please your Honor, that the said defendant, Solomon Andrews, Harriet Andrews his wife, Ashbel Green, administrator, &c., of James S. Green, deceased, Joseph R. La Tourette, Matthew Smith, Stephen V. R. Patterson, Alfred Whitman, Ashbel Green, Allecta De- 20 Hart Meshrow, William D. Meshrow, Edward H. Willford, John W. Quincy, combining and confederating together, and to and with divers other persons at present unknown to your orator, but whose names, when discovered, he prays may be inserted herein, with proper and apt words to charge them as parties defendants hereto, and contriving how to injure and aggrieve your orator in the premises, and to defraud him of the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage herein before mentioned, sometimes give out 30 and pretend that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other encumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover; whereas your orator charges and insists that if any such pretended encumbrances 40

do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud, to injure and aggrieve your orator, and ought to be delivered up to be canceled, or declared to be of no effect against your orator, who had no notice of any such pretended encumbrances.

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

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and deed of mortgage, without the aid and decree of this honorable court—

To the end, therefore, that the said Solomon Andrews and Harriet Andrews his wife, Asbbel Green, administrator, &c., of James S. Green, deceased, Joseph R. La Tourette, Matthew Smith, Stephen V. R. Patterson, Alfred Whitman, Ashbel Green, Allecta DeHart Meshrow, William D. Meshrow, Edward H. Willford, and John W. Quiney, defendants, and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full, and perfect answers make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, and belief; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum so due to him on the said bond or obligation and deed of mortgage herein before mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable court; and in default thereof that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them, may

be foreclosed of and from all equity of redemption or claim of, in, and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your orator all deeds, demises, and writings whatever, relating to or concerning the same, or that all and singular the said mortgaged premises, with the appurtenances, excepting the several parts thereof which your orator heretofore released to Nathaniel W. Tyrrell and the Perth Amboy and Woodbridge Railroad Company, respectively, as herein before particularly described, may, by the order and decree 10 of this honorable court, be sold, and out of the moneys arising from the sale of the barrack lot aforesaid, if the said John W. Quincy consent to a sale for such purpose, the said John W. Quincy may be paid the amount lawfully due him on his said mortgage, according to its priority; and that out of said moneys, and out of the moneys arising from the sale of the other said mortgaged premises, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to 20 grow due thereon, together with all your orator's costs and charges in this behalf sustained; and if the said John W. Quincy shall not consent to such sale of said barrack lot as aforesaid, on which lot his said mortgage is a prior encumbrance to your orator's said mortgage, then that all and singular the aforesaid mortgaged lands and premises, with the appurtenances, excepting the said several parts thereof which your orator heretofore released to the said Nathaniel W. Tyrrell and the Perth Amboy and Woodbridge Railroad Company, respectively, as herein before particularly de- 30 scribed, may, by the order and decree of this honorable court, be sold—the said barrack lot to be sold subject to the encumbrance of the mortgage thereon given to the said John W. Quincy by said Solomon Andrews; and out of the moneys arising from the sale of all of the said mortgaged lands and premises, your orator may be paid the full amount of the said principal sum of money so due or to grow due thereon, together with all your orator's costs and charges in this behalf sustained. And that your orator may have such further and other relief in the premises as to your Honor 40

may seem meet and shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Solomon Andrews, Harriet Andrews his wife, Ashbel Green, administrator, &c., of James S. Green, deceased, Joseph R. La Tourette, Matthew Smith, Stephen V. R. Patterson, Alfred Whitman, Ashbel Green, Edward  
 10 H. Willford, John W. Quincy, Allecta DeHart Meshrow, and William D. Meshrow, therein and thereby commanding them and each of them, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honor, in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience. And your orator, as in duty bound, will ever  
 pray, &c.

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GEORGE C. LUDLOW,  
*Solicitor of complainant.*

JNO. C. ELMENDORE,  
*Of counsel.*

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### Answer of Andrews and Wife.

[Filed October 14, 1867.]

*The joint and several answer of Solomon Andrews and Harriet his wife, two of the defendants to the bill of complaint of Benjamin D. Stelle, complainant.*

30 These defendants, now and at all times hereafter, saviag and reserving unto themselves all benefit and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as these defendants are advised, is or are material or necessary for them to

make answer unto, these defendants answering say—they admit the execution, delivery, and record of the bond and mortgage mentioned in the said bill of complaint as having been given to the said complainant, and that the amount is correctly stated, and that the said mortgage embraces the premises set out in the said bill as nearly as these defendants recollect, but leave the complainant to the proof thereof if necessary.

And these defendants further admit the recovery of a judgment by James S. Green against this defendant, Solo- 10  
mon Andrews, at about the time and for about the amount named in the said bill; also, the execution by the said James S. Green of a deed of release of the said judgment to the said complainant, as therein stated; also, the conveyance by these defendants to Nathaniel H. Terrell of the lots specified in the said bill by deed of the date therein mentioned; also, the conveyance by this defendant, Solomon Andrews, to Joseph R. La Tourette of the property described in the said bill by deed of the date therein mentioned; also, the conveyance by these defendants to Matthew Smith, of the premises 20  
described in the said bill by deed of the date therein mentioned; also, the conveyance by these defendants to Stephen V. R. Patterson of the premises described in the said bill by deed of the date therein mentioned; also, the conveyance by this defendant, Solomon Andrews, to Alfred Whitman of the premises mentioned in the said bill by deed of the date therein named; also, on information and belief of the conveyance by Joseph R. La Tourette to the Perth Amboy and Woodbridge Railroad of the property described in the said bill at the date therein mentioned; and also, the 30  
release by the said complainant to the said railroad of the said premises from the lien of his said mortgage; also, the conveyance by Alfred Whitman to the Perth Amboy and Woodbridge Railroad of the property described in the said bill at the date therein mentioned, and also the release by the said complainant to the said railroad of the said premises from the lien of his said mortgage; also, the decease of the said James S. Green, intestate, the granting of letters of administration to Ashbel Green, the revival of the aforesaid judgment by the said administrator, the sale of the said pre- 40

mises by Obadiah Clark, sheriff, and the conveyance of the same by the said sheriff to Ashbel Green; also the conveyance by Ashbel Green to Allecta De Hart of the premises described in the said bill by deed of the date therein named, and also the marriage of said Allecta De Hart and William D. Meshrow; also, the conveyance by Ashbel Green to Edward H. Willford of the premises described in the said bill by deed of the date therein mentioned; also, that this defendant, Solomon Andrews, executed and delivered to John  
10 W. Quincy a mortgage on the premises known as the Barrack lot, about the time mentioned in the said bill to secure the payment of a certain bond of the said defendant, Solomon Andrews, conditioned for the payment of \$5000; and further, that said John W. Quincy did, on the 3d day of April, A. D. 1863, recover a judgment against this defendant, Solomon Andrews, in the Supreme Court of the state of New Jersey, for the sum of \$11,836.79, or about that sum; but these defendants aver that the said sum of \$5000, mentioned in the said bond, and secured by the said mortgage to  
20 the said John W. Quincy, together with all arrearages of interest thereon, was included in the said sum for which judgment was so as aforesaid entered in favor of the said John W. Quincy.

And these defendants admit that a portion of the principal money secured by the said bond and mortgage so given to the complainant has not been paid, but these defendants say that a portion of the said principal and interest thereon has been paid; and further, that much more than the amount of  
30 the lawful interest accruing on the said bond up to the time of payment, has been paid by the said Solomon Andrews, as the said Solomon Andrews alleges, and as the said Harriet Andrews verily believes, as will hereafter more fully appear.

And these defendants, the said Solomon Andrews, on his own knowledge, and the said Harriet Andrews, upon information from the said Solomon Andrews, which she believes to be true, further answering say, that the said indebtedness accrued, and the said bond and mortgage were given upon  
40 and for an usurious consideration, as will be herein after more particularly stated and set forth, and are therefore null and

void, and of no binding effect. And these defendants further answering say, that the transaction and agreement by virtue whereof the said bond and mortgage were given, was as follows, that is to say :

This defendant, Solomon Andrews, in the beginning of the year 1861, was engaged in the business of manufacturing in the city of Perth Amboy, in this state, and was desirous and intended to carry on the manufacture of locks under a patent owned by him, on a large scale ; that there was located in the said city of Perth Amboy, a bank organized 10 under the laws of this state, under the name of the City Bank of Perth Amboy, of which bank the said complainant, Benjamin D. Stelle, was president, and one William Patterson was a director ; that this defendant, Solomon Andrews, had received accommodation at the said bank, kept his account therein, and was desirous of receiving increased accommodation for the purpose of engaging more extensively in the manufacture of locks under his said patent ; that for this purpose, *viz.* of receiving enlarged facilities, he applied to the said Benjamin D. Stelle and William Patterson, as officers 20 of the said bank, and entered into negotiations with them as representing said bank, which negotiations resulted in an agreement as follows: the said defendant, Solomon Andrews, was to have a credit in the said bank of \$10,000, to be subject to his order, and such indebtedness as he might owe or incur to the said bank ; and agreed to secure the payment of the same, or such sums as he might owe the said bank, by the mortgage in this suit, and further to assign a bond and mortgage on certain property in the city of New York for \$5000, and a further mortgage upon the machinery 30 and personal property of the said defendant, on his factory in Perth Amboy aforesaid ; that he agreed to pay for the use and forbearance of the said sum, and the said credit was to be given on the express agreement that he should so pay interest on the same at the rate of seven per cent. per annum, which, as the said defendant, Solomon Andrews, and the said Benjamin D. Stelle and the said William Patterson were residents of, and the said bank was located in the county of Middlesex, in this state, and defendants allege was usurious ; and he, the said Solo- 40 mon Andrews, further agreed to pay for the use and forbear-

ance of the said sum, and credit to be given, the further sum of one cent on every lock manufactured by him under his said patent; that in pursuance of such agreement, these defendants executed the said mortgage involved in this suit, and the said Solomon executed the bond to secure which the said mortgage was given, also assigned the bond and mortgage on the property in the city of New York, and executed the mortgage on the personal property in the factory at Perth Amboy, or agreed to do so on request; that the  
10 property embraced in the said mortgages was estimated to be worth the sum of \$80,000, and the personal property embraced or to be embraced in the said chattel mortgage, of which a schedule was prepared, was worth the sum of \$25,000; that this agreement was made by this defendant, Solomon Andrews, with the said Benjamin D. Stelle and William Patterson, as this defendant, Solomon Andrews, supposed and believed with them as officers of, and representing the said bank, and this defendant was induced to give so large a  
20 security for the said sum, and to give so large a rate of interest, and an additional bonus on the ground and in the faith that the bank holding so large a security would give to this defendant increased and further accommodations for carrying on his said business; and further, that the said percentage on the number of locks manufactured, was to be for the use and forbearance of the said credit in addition to the said seven per cent., and not as a part thereof; and further, that the said bond and mortgage were prepared by or through the instrumentality of the said Benjamin D. Stelle and William Patterson, or one of them, and made payable  
30 to the said Benjamin D. Stelle, the complainant, and that the same were, in that way executed as this defendant supposed it was, in pursuance of some arrangement of their own as representing the said bank.

And he further shows, that on the second day of February, A. D. 1861, he received a credit of ten thousand dollars on the books of the said bank, and was charged with such drafts and checks which he had then made, and now held by the bank. And he further shows, that the further transactions in reference to the said bond and mortgage were carried on  
40 by the officers of and through the said bank. And he fur-

ther shows, that he was from time to time charged on the books of the bank, without any check or draft from him, with interest on the said bond, and also with the one cent on each lock manufactured by him, which amount was ascertained by monthly statements, furnished from the books of the said defendant, Solomon Andrews, and that the sums so charged amounted in the aggregate to a large amount, none of which are credited to this defendant, Solomon Andrews, in the bill of complaint. And he further shows, that the sale of the said lots to the said Nathaniel H. Tyrrell was 10 in pursuance of an arrangement between himself and the said complainant, president of the said bank, and the officers thereof, representing the said bank, by which he, the said Solomon Andrews, was to convey the property to the said Tyrrell, the said Stelle was to release the said property from the lien of the said mortgage, and the said Tyrrell was to pay the purchase money into the said bank; that in pursuance of such agreement with the officers of the said bank, these defendants did convey to the said Tyrrell, the said premises, for the sum of four hundred and seventy-five 20 dollars, the said Stelle did release the said premises from the lien of the said mortgage, and the said Tyrrell did pay into the said bank the sum of four hundred and seventy-five dollars, (the said purchase money,) less the taxes on the said property, these defendants, or either of them, never receiving one cent therefor, but although the said sum of money was paid by the said Tyrrell into the said bank (the exact amount whereof is not at present known to these defendants,) as this defendant, Solomon Andrews, believes he has never received credit therefor, and which he respectfully in- 30 sists he is entitled to. And these defendants, as aforesaid, further show, that this defendant, Solomon Andrews, still acting under the belief that the said bond and mortgage now owned and controlled by the said bank and its officers, entered into the agreement with the said Stephen V. R. Patterson for the conveyance of the premises mentioned in the said bill of complaint, he, the said Stephen V. R. Patterson, at the time being cashier of the said bank, and this defendant, Solomon Andrews, agreeing to convey the said premises to the said Patterson, representing the said bank, on the 40

understanding that the purchase money thereof, *viz.* the sum of one thousand dollars was to be credited on the principal of his said bond and mortgage, and in pursuance of such understanding this defendant, Solomon Andrews, conveyed the said premises to the said Stephen V. R. Patterson, for the said sum of one thousand dollars delivered the deed to him, did not receive any more therefor, but, for a time, supposed that he had received the credit of the one thousand dollars on the principal, which he respectfully insists he is entitled  
10 to on the said bond and mortgage. And he further says, that although, for some reason of their own, the bond and mortgage involved in this suit was drawn in favor of and to the complainant, yet, as he understood and believed, it was entirely a bank transaction, respectfully showing that the negotiations were with the officers of the bank, and not the said complainant alone; all subsequent transactions in reference to the said bond and mortgage were with the representatives and officers of the said bank, the said complainant being the  
20 president thereof, the officers of the said bank representing and seeming to have control of the said bond and mortgage, the large security given being on the faith of a large resulting advantage, in the way of accommodations from the said bank to the said defendant; all payments on the said bond, as well as matters of interest, and statements of per centage on locks were made on the books of the said bank, by the officers thereof, while the complainant was president thereof, this defendant believed that, in truth and in fact, the whole transaction was a matter between the bank and himself, and that the said Benjamin D. Stelle only held the said bond and  
30 mortgage as representing the said bank.

And this defendant, Solomon Andrews, further shows that the said bank has gone into the hands of receivers, and that William F. Day and George C. Ludlow, esquires, have been appointed receivers of the said bank by this honorable court, and that the said William F. Day and George C. Ludlow, receivers of the said bank, are necessary and proper parties to this suit, and should be made so; and he further respectfully insists that he is entitled to a credit for all amounts charged to him by the officers of the said bank, on  
40 account of the said bond and mortgage, for interest and for

per centage on locks, for the aforesaid conveyances of real estate, and for the amount due him from the said bank.

And this defendant, Harriet Andrews, insists that she is entitled to her right of dower in all property that she has not released therefrom, by the execution and acknowledgment of conveyances and mortgages on the same.

And these defendants further answering show, that the mortgaged premises are a large security for the debt alleged to be due the said complainant, and that the same has, for the most part, been laid out in building lots, and that if the same is directed to be sold by the order of this court, it should not be sold in whole, but in parcels, and respectfully request that the same may be referred to a master, to report upon the manner and order of sale.

And these defendants deny all and all manner of combination and confederacy to defraud the complainant, where-with they have been charged in the said bill of complaint, without this—that there is any other matter, cause, or thing in the said bill contained, and not herein and hereby sufficiently answered, confessed, and avoided, traversed or denied, that is true; all of which matters and things these defendants are ready to maintain and prove, as this court shall direct, and pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

JAMES R. ENGLISH,  
*Solicitor for and counsel with defendants, Solomon  
Andrews and Harriet Andrews.*

New Jersey, Union county, ss.—Solomon Andrews and Harriet Andrews, two of the defendants in the foregoing answer, the said Solomon Andrews alleging himself conscientiously scrupulous of taking an oath, on his solemn affirmation, and the said Harriet Andrews being duly sworn, on their affirmation and oath respectively say—that the facts, matters, and things in the foregoing answer contained and set forth, so far as relates to their respective act and deed, are true, and so far as relates to the act and deed of others, they respectively believe them to be true.

SOLOMON ANDREWS,  
HARRIET ANDREWS.

Sworn and subscribed, before me, at Elizabeth, October 14th, 1867.

ROB'T S. GREEN, M. C.

Answer of Edward H. Willford.

[Filed October 14, 1867.]

*The answer of Edward H. Willford, one of the defendants to the bill of complaint of Benjamin D. Stelle, complainant.*

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception 10 to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering says—that he is informed and believes that the several bonds and mortgages mentioned in the said bill of complaint were executed, delivered, and recorded, that the therein mentioned conveyances were executed, delivered, and recorded, and the said judgments therein referred to were recorded and received 20 as stated in the said bill of complaint, but leave the said complainant to prove the same, if it shall be necessary so to do.

And this defendant further answering admits, and says that Ashbel Green did, on the 9th day of October, in the year eighteen hundred and sixty-six, for the sum of \$250, paid by this defendant by deed of that date, convey to this defendant a lot on the westerly side of State street, in Perth Amboy, known as lot No. 221 on the map of the Perth Amboy Manufacturing Company, bounded east by State 20 street, south and west by the Perth Amboy and Woodbridge Railroad Company, and north by lands late of Solomon Andrews, and being a part of the lands mortgaged to the said complainant, as will appear by reference to said deed, ready to be produced.

And this defendant admits, that the said conveyance was made to this defendant subsequent to the making and recording of the complainant's said mortgage, but respectfully shows to this honorable court that the remainder of the said mortgaged premises are abundantly sufficient to satisfy the complainant's said claim, and all other liens thereon, without resorting to a sale of this defendant's said lot, and prays that by the order of this court, the balance of the property mortgaged may be sold to pay and satisfy the claims of the said complainant, and others, before the sale of his said lot, and that his said lot be not sold, unless it should be necessary so to do, after a sale of the other portions of the mortgaged premises. 10

And this defendant denies all and all manner of combination and confederacy to defraud the complainant, wherewith he has been charged in the said bill of complaint, without this, that there is any other matter, cause, or thing in the said bill contained, and not herein and hereby sufficiently answered, confessed and avoided, traversed or denied, that is true; all of which matters and things this defendant is ready 20 to maintain and prove, as the court shall direct, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

ROB'T S. GREEN,

*Solicitor for and of counsel with Edward H. Willford.*

New Jersey, Middlesex county, ss.—Edward H. Willford, being duly sworn, on his oath says—that the facts, matters, and things in the foregoing answer contained and set forth, so far as relates to his acts and deeds, are true, and so far as relates to the acts and deeds of others, he believes them to be true. 30

E. H. WILLFORD.

Sworn and subscribed before me, at Perth Amboy, October 12th, 1867.

WM. THOMAS, *J. P.*

## Answer of Meshrow and Wife.

[Filed October 14, 1867.]

*The joint and several answer of William D. Meshrow and Allecta De H. Meshrow his wife, two of the defendants to the bill of complaint of Benjamin D. Stelle, the complainant.*

These defendants now and at all times hereafter, saving and reserving unto themselves all benefit and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer there-  
10 unto or unto so much and such parts thereof as these defendants are advised, is or are material or necessary for them to make answer unto, these defendants answering say—that they are informed and believe that the several bonds, mortgages, and conveyances mentioned in the said bill of complaint were executed, delivered, and recorded, and the said judgments therein referred to were recorded and revived, as stated in the said bill of complaint, but leave the same to be proved if it shall be necessary so to do. And these defendants fur-  
20 ther answering admit and say, that Ashbel Green did, on the 9th day of October, A. D. 1866, for the sum of \$300, paid by this defendant, Allecta De H. Meshrow (then Allecta De Hart), by deed of that date, convey to the said defendant a lot of land on the westerly side of State street, in Perth Amboy, known as No. 222 on map of Perth Amboy Manufacturing Company, being in width front and rear 25 feet, and in depth 130 feet, bounded on the east by State street, on the south by land late of S. Andrews, on the west by  
30 lands of the Perth Amboy and Woodbridge Railroad Company, and north by lands late S. Andrews, as will appear by reference to said deed now in the possession of these defendants and ready to be produced. And these defendants further admit, that the said Allecta De Hart has since intermarried with the said William D. Meshrow, and that the said lot is a part of the lands mortgaged to the said complainant.

And these defendants admit, that the said conveyance was subsequent to the making and recording of the complainants' said mortgage, but respectfully show that the remainder of the said mortgaged premises are amply sufficient to satisfy the claim of the said complainant, and all other liens thereon, and pray that by the order of this court the lot of these defendants be not sold unless it should be necessary so to do after a sale of the other portions of the mortgaged premises.

And these defendants deny all and all manner of combination and confederacy to defraud the complainant where- 10  
with they have been charged in the said bill of complaint, without this, that there is any other matter, cause, or thing in the said bill contained, and not herein and hereby sufficiently answered, confessed and avoided, traversed or denied, that it is true, all of which matters and things these defendants are ready to maintain and prove as the court shall direct, and pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained. 20

ROBERT S. GREEN,

*Solicitor for and of counsel with William D. Meshrow and  
Allecta De H. Meshrow.*

New Jersey, Middlesex county, ss.—William D. Meshrow and Allecta De H. Meshrow, two of the defendants in the foregoing answer, being severally sworn on their oath respectively say—that the facts, matters, and things in the foregoing answer contained and set forth, so far as relates to their respective act and deed are true, and so far as relates to the act and deed of others, they respectively believe them to 30  
be true.

ALLETY D. MESHROW,  
WM. D. MESHROW.

Sworn to, and subscribed before me.

WM. HERNES, J. P.

## Answer of John W. Quincy.

[Filed October 14, 1867.]

*The answer of John W. Quincy, one of the defendants to the bill of complaint of Benjamin D. Stelle, complainant.*

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complainant contained, for answer there  
10 unto, or so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering says—as to the bonds, mortgages, conveyances, and judgments in the said bill of complaint mentioned and referred to, other than those in his own favor, on information he believes the statements of the said bill of complaint to be true, but leaves the same to be duly proved if it shall be necessary so to do.

And this defendant further answering says, that on or about the 1st day of May, A. D. 1853, the said defendant,  
20 Solomon Andrews, became indebted to this defendant, in the sum of \$5000, and being so indebted, in order to secure the payment of the said sum, did execute and deliver to this defendant his certain bond or obligation, bearing date the day and year last aforesaid, in the penal sum of \$10,000, conditioned for the payment of \$5000, with interest, at the rate of seven per cent. per annum; and in order further to secure the payment of the said sum, and interest, did execute, and deliver to this defendant a certain mortgage, bearing  
30 date the 4th day of June, A. D. 1853, upon eleven acres of land, more or less, in the city of Perth Amboy, known as the barrack lot, and which is part of the premises included in the complainant's said mortgage; and this defendant further shows, that his said mortgage was recorded in the clerk's office of the county of Middlesex, on the 16th day of June, A. D. 1853; all of which will more fully appear by reference to the said bond and mortgage, now in the possession of this defendant, and to which he begs leave to refer.

And this defendant further says, that the James S. Green, in the said bill of complaint referred to, in his lifetime, by his deed of release to this defendant, dated January the 1st, A. D. 1853, released to this defendant, the judgment by him obtained in the Supreme Court of the state of New Jersey, in the Term of July, A. D. 1846, and referred to in the said bill of complaint, as far as the same might constitute a prior lien to the aforesaid mortgage of this defendant, which said release was recorded in the clerk's office of Middlesex county, on the 13th day of December, A. D. 1854, and to which deed 10 this defendant begs leave to refer.

And this defendant further shows, that the bond so as aforesaid delivered to him was made and executed in the city of New York, and state of New York, by the said Andrews, and that the legal rate of interest in said state was, at the said time, seven per centum per annum.

And this defendant further says, that the interest has been paid upon his said bond up to the 1st day of May, A. D. 1855.

And this defendant further says, that on the 3d day of April, A. D. 1863, he recovered a judgment in the Supreme 20 Court of the state of New Jersey, against the said Solomon Andrews, for \$11,836.79 debts, and \$4 costs of suit.

And this defendant admits, that the said judgment was obtained subsequent to the mortgage of the said complainant, but avers that his, the said defendant's mortgage was executed, delivered and recorded prior to the complainant's said mortgage, and is a prior and first lien upon the premises therein described, and known as the barrack lot.

And this defendant further answering says, that if it shall be necessary to sell the premises embraced in his said mort- 30 gage, that he elects that the same be sold, and that his said mortgage be discharged, rather than that the said premises should be sold subject to his said mortgage, but respectfully shows, on information and belief, that the other property embraced in the complainant's said mortgage is ample to pay and satisfy the same without resorting to the said barrack lot.

And this defendant denies all, and all manner of combination and confederacy to defraud the complainant, where- with he has been charged in the said bill of complaint, 40

without this, that there is any other matter, cause, or thing in the said bill contained, and not herein and hereby sufficiently answered, confessed and avoided, traversed or denied, that is true; all of which matters and things, this defendant is ready to maintain and prove, as this court shall direct and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

ROB'T S. GREEN,

*Solicitor of, and of counsel with John W. Quincy, def't.*

- 10 New Jersey, Hudson county, ss.—John W. Quincy, the defendent above named, being duly sworn, on his oath says—that the facts, matters, and things in the foregoing answer contained and set forth, so far as relates to his acts and deeds are true, and so far as relates to the acts and deeds of others, he believes them to be true.

JOHN W. QUINCY.

Sworn and subscribed, before me, at Jersey City, October 16th, 1867.

A. S. JACKSON, *M. C.*

### Replication.

[Filed November 12, 1867.]

*The replication of D. B. Stelle, complainant, to the joint and several answer of Solomon Andrews and Harriet his wife, defendants.*

- This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—that he will aver and prove his said bill to be true, certain, and sufficient, in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and  
30 insufficient to be replied unto by this repliant, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto,

confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

GEORGE C. LUDLOW,  
*Solicitor of Complainant.*

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### Depositions.

[Filed October 20, 1868.]

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein 10 Benjamin D. Stelle is complainant, and Solomon Andrews and wife, and others, are defendants, taken at the office of Thomas H. Shafer, in the city of Rahway, on Wednesday, the 27th day May, A. D. 1868, before Thomas H. Shafer, one of the masters and examiners of the said court, in the presence of George C. Ludlow, esquire, solicitor and of counsel for the said complainant, and of Robert S. Green, esquire, of counsel for the said defendants.

*Solomon Andrews*, of Perth Amboy, in the county of Middlesex, a witness produced on the part of the defendants, 20 being conscientiously scrupulous of taking an oath, on solemn affirmation saith—

I am one of the defendants in this suit; in the year 1861, I resided at Perth Amboy; I was engaged in the lock business in that year; I am acquainted with Benjamin D. Stelle, the complainant, and with William Patterson; in 1861, Mr. Stelle resided at New Brunswick, and Mr. Patterson at Perth Amboy, both in the county of Middlesex; there was a bank located at Perth Amboy, in that year—the name of it was The City Bank of Perth Amboy; Mr. Benjamin D. Stelle was 30 the president, and S. V. R. Patterson was the cashier; Mr. Mr. William Patterson was a director of the bank; I had business transactions with that bank, in the year 1861, and previous to that; I should think there was a small balance

in my favor, if you don't include that day, February 2d, 1861; there was a balance against me previous to the 2d day of February, 1861; I think it likely that there were some outstanding checks at that time drawn by me.

Witness being shown *Exhibits A* and *B*, for complainant, says—I think the handwriting of the body of those papers is Mr. William Patterson's; I do not know positively.

*Quest.* State the arrangement and agreement made by you with any person or persons, in pursuance of which the bond and mortgage, marked *Exhibits A* and *B* on the part of the  
10 complainant, were given?

*Ans.* I stated that once in writing; I cannot state it any more definitely or particularly; I have made the statement once, and I don't know how I can give it any more definitely; I refer to my answer in this cause; the bond and mortgage were given on interest, and for a term of years, I think, at seven per cent. per annum, payable semi-annually; this arrangement was made some time previous to the 2d of February, 1861, with Mr. Stelle and Mr. William Patterson;  
20 there were several interviews before the arrangement was consummated; they took place in The City Bank of Perth Amboy; I was to receive \$10,000 for this bond and mortgage; there was something else to be given by me for \$10,000—this was a chattel mortgage on the personal property in the lock factory at Perth Amboy, and a bond and mortgage on a house in New York, for \$5,000; the property at Perth Amboy, the real estate, included in the mortgage was valued at \$80,000, and the personal property at from \$20,000 to \$25,000; the New York property was worth  
30 \$5,000, and a good deal more; I think the chattel mortgage was never delivered, the schedule was made out, but I don't recollect of ever executing the mortgage; I was to receive this \$10,000 in money; I did receive \$10,000 for the bond and mortgage marked *Exhibits A* and *B*; I received it by a deposit in the bank to my credit; this deposit was made by B. D. Stelle (so says my bank book, and I always understood it so); the New York bond and mortgage was given to Mr. Stelle; the rate of interest agreed on to be paid for this loan was seven per cent.; the agreement did not con-  
40 tain any other provision in reference to interest that I know

of, but the word interest has two meanings in my estimation; interest applies to a certain amount of money to be paid per annum for the use of money; the other is interest in a business, from which profits are to be paid in money; in addition to the interest, I was to pay one cent on every lock I manufactured under that patent in the factory; I know of no reason why the security was given on so large an amount of property for this loan, except to satisfy the parties who were to loan the money; I didn't want to give so much; nothing was said at any of these interviews as to the capacity in which these gentlemen, Mr. Stelle and Mr. Patterson, were acting, whether they were acting individually or otherwise. 10

*Quest.* How did you understand they were acting?

*Ans.* I understood they were acting as the bank, and I thought I was treating with the bank.

I received that impression because they were officers of the bank, and were at the bank, and that there was money in the bank; I didn't know that there was any outside of it; these negotiations commenced with those same parties; I do not recollect whether they were together at the first interview I had in relation to this; there was no definite arrangement that I was to receive anything more than the \$10,000 for these securities; I don't remember that there was anything definite said about it; I expected to have a better credit at the bank; there was no agreement to that effect—it was a mere supposition; I remember at the time only one word in reference to the per centage on locks; that was the word *bonus*; the bank had these papers prepared—the bond and mortgage; I don't know why the chattel mortgage was not made out and delivered; I made out the schedule which I have spoken of; I took it to the bank; I don't know whom I gave it to—most likely I gave it to Mr. Stelle, but I don't remember; I have my bank book with me; it is marked *Exhibit A 1* on the part of the defendant, Andrews; that book contains my account with the City Bank for the year 1861; I don't know that I have ever seen the bond and mortgage since they were made until to-day; I should think the last endorsement on *Exhibit A*, for the complainant, is in the handwriting of S. V. R. Patterson; the first I don't 40

know—it looks more like William's; I did not see the endorsements put on the paper—I never saw them till now; they purport to be endorsements of payment of interest; this interest was paid by the bank, out of my funds that were in the bank; I found it on my book; I never gave any check for these amounts, that I remember of; I might have done it once, as I see no entry on my book for one payment, except my own entry in pencil—I could tell by referring to my checks—I haven't them with me; I think the bank paid  
 10 itself, and put the checks among my checks when they were returned to me; I don't see any charge against me on my book, on the 1st of August, on account of interest; on the 5th of July, 1862, I find an entry of \$582.50, which I have marked "interest on bond," with a lead pencil, taken from my checks; I don't mean checks in my own handwriting—I mean taken from my bundle of checks; I can't say when this entry was made by me in lead pencil—I suppose it was in the year 1862.

Here is another memorandum about it, which says: "See  
 20 check, July 10th, 1862;" that's all I know about it; and underneath this is, "where is credit from Tyrrell, for lot sold for \$475?" I had two or three conversations with the cashier about that, and one with William Patterson about this \$475; this pencil memorandum was all made at the same time; I don't see any payments for interest on or about the 1st of August, 1863; in April, 1863, check for interest made by the cashier, \$325; I have paid a *bonus* from the profits, besides this interest upon account of this bond and mortgage; it is entered in the bank book as "statement of locks;" the  
 30 first item is 28th February, 1861, "monthly account, \$18.10;" the next is "bill of expenses, \$21.05," March 30th; I suppose this \$21.05 is a bill of expenses for drawing up bond and mortgage; I didn't suppose it was a statement of locks; I never inquired, and therefore do not know; the next is April 8th, \$9.40; this is statement of locks; the next, June 1st, 1861, statement of locks, \$62.90; July 1st, 1861, \$42.24; statement of locks; next, September 15th, 1862, statement of locks, \$216.22; the next, I see, is August 19th, 1863; statement of locks, \$309.72; that's all I see of statements of  
 40 locks; here is an entry of August 31st, 1863, six months in-

terest to August 1st, \$300; the reason I overlooked it is, because he had the checks on the opposite side from where they are usually entered; I stated before that there was no entry August 1st, or thereabouts, but here it is on the opposite page; there are three entries on the book and two on the bond for interest; I manufactured these locks myself; there was no company; I furnished these statements from the number of locks I had made; I furnished this statement to the cashier of the bank; these parties, or the bank, assumed no responsibility or liability in reference to the manufacture 10 of these locks; that business was carried on at my risk; that transaction, referred to, in lead pencil in my bank book in relation to certain lots sold to Mr. Tyrrell for \$475, refers to lots at Perth Amboy, the money of which was to be paid to Mr. Stelle or the bank, and the release was to be given on his deeds from this bond and mortgage by the bank; by the mortgagee, the money was to be paid into the bank, and he was to get it released; Mr. Stelle held the bond and mortgage, I see, and, I suppose, he had to do it; there might have been six lots, or five and a half, the sum is right—\$475; 20 nothing was said about taxes in the arrangement, that I know of, but I believe there was something done about it on the final payment; I understood from Mr. Patterson, the cashier, that he, Tyrrell, paid into the bank the sum of money minus the taxes, that he, being collector, that is, Tyrrell, kept back; that's as far as I could ever learn about it; I find no credit on my book for any of that money; this money was to be paid into the bank, and credited to me on my bond, on account of interest, as far as it was due, and any balance upon the principal; I don't recollect certainly with 30 whom I made this agreement; I think it was Mr. Stelle; it was done at the bank, at any rate; I did nothing in pursuance of this agreement except to execute the deed; I executed the deed to Mr. Tyrell; he paid me nothing, but was to get his release and pay the bank; after executing the deed I gave it either to him or the bank—I don't know which—I left it at the bank, I think; it must have been with the cashier; as a general rule I did that thing; the cashier was generally there alone; but, after this transaction, I looked on my book to find the credit, and I have never yet found 40

it; I inquired of the cashier about it—he looked over the bank books, and said there was a check there of Mr. Tyrrell's for some three hundred and odd dollars—I don't remember the precise amount—of that date, or thereabout; and these are all the particulars I could get from him; I then asked him if I ought not to have credit on my bank book for the amount paid by Tyrrell, and he said "no, that it was credited on the bond;" some time afterwards I asked his brother, William, about it—showed him my bank book, and  
10 asked him if I ought not to have credit on the book, and he said it ought to appear on the credit side; I have spoken to Mr. Stelle about it two or three times, and I either couldn't make him understand, or he couldn't make me understand; I don't remember that there is any other transaction similar to that of Tyrrell's; I don't remember that I sold any other lots, the proceeds of which were to go on this bond and mortgage, the money of which was to be paid to the bank; I have sold a couple of lots; yes, I have, too; I sold to the cashier of the bank, S. V. R. Patterson, some four or six—I  
20 don't remember the number of lots—for \$1000, which was to be credited on the bond; I deeded them to S. V. R. Patterson, and gave the deed to him; I took it to the bank; I don't remember the year in which that arrangement was made—it was sometime during the war; it was subsequent to the bond and mortgage; the agreement was made a few days or weeks before I made the deed; it was within a short period; the agreement was made with S. V. R. Patterson—no other person; the money was to be credited on the bond; I don't know anything about how the money was to be paid; I was to be  
30 credited \$1000 on the bond; I had an offer of \$1000 for those lots, and at a certain day—a few days afterwards—I was to have a final answer from a man who went out to the west somewhere, and if he got back within a certain time he was to have them; I told Mr. Patterson of it, and he said if he did not come back within the time to take them, he would take them at \$1000, and he did; I received nothing for that conveyance; I supposed I had credit on the bond; I never got any credit on my book—my bank account—for this.

*Quest.* In the whole of these transactions, who did you consider was the real party in interest?

*Ans.* The City Bank of Perth Amboy; I thought two persons owned the bank, or a great majority of it, which amounted to the same thing; these persons were Stelle and William Patterson; this opinion of mine grew up naturally—it was a mere opinion, and you can't tell how opinions come; some of them from small causes, and may be very erroneous.

[The counsel for defendants and complainant agree that 10 the deeds and mortgages mentioned in the bill, answers, and depositions shall be produced and used on the argument in this cause.]

I have sold one or two other lots since, but they have no reference to this bond and mortgage.

*Quest.* Can you give us any facts upon which you based your opinion that the bank was the real party in interest in this matter?

*Ans.* What I said about opinions was in reference to the ownership of the bank, not in reference to my dealing with 20 the bank; I never had but one idea about that, until after Mr. Stelle left the bank, and then I supposed he had taken that bond and mortgage as a part of the assets of the bank when he sold out; that's all I have to say about it.

*Quest.* Can you give us any facts upon which you based your opinion that the bank was the real party in interest in this matter?

*Ans.* Yes, lots of facts; well, I knew those gentlemen as the bank, and supposed their money was in the bank; I dealt with them at the bank, the business was done at the 30 bank, the money was paid into the bank, I was credited at the bank; I drew it out of the bank, and all the transactions I had with them afterwards were at the bank—the payment of interest, &c.; I suppose that is enough for that question.

I don't know when that bank stopped business; I dealt with them up to the time they stopped; I dealt with them, it seems, till the 31st of December, 1864; that must have been somewhere about the time; I am debited at that time \$341.66, and I am credited \$537.30; I don't know that that

is the day they stopped; that is my last credit and my last debit, both, as it appears on my book.

*Quest.* At the time you made this arrangement with these parties as to the \$10,000, what was your intention in reference to the conducting your lock business, as to its extent?

*Ans.* It was to carry on a very large business, and furnish locks very cheap, that I might do it.

There was no written agreement in reference to this per 10 centage on locks.

Witness being cross-examined by the counsel for the complainant, saith—

I have known S. V. R. Patterson and his brother, William Patterson, since they were little boys; I was upon friendly terms with them always.

SOLOMON ANDREWS.

Affirmed and subscribed, before me, at Rahway, the day and year first above written.

THOS. H. SHAFER, *M. C.*

Further examination by consent of the counsel of the respective parties was adjourned to Friday, the 5th day of June, A. D. 1868.

THOS. H. SHAFER, *M. C.*

*Nathaniel H. Tyrrell*, a witness produced on the part of the defendants, residing at Perth Amboy, in the county of Middlesex and state of New Jersey, being duly sworn, on his oath saith—

I reside in Perth Amboy; I am acquainted with Solomon Andrews, the defendant; I purchased property in Perth Amboy of Doct. Andrews; I purchased property at two different times of him; the last time was in December, 1861, that was when the bargain was made for it; I was to give for this property \$412.50; I got a deed for it; Mr. Benjamin D. Stelle gave me the deed on the 8th of February, 1862, in the City Bank of Perth Amboy; I paid \$412.50 for the property; I paid the money to Mr. Stelle at the same time that I received the deed; I think that I drew a check

and drew the money out of the bank and paid the money to Mr. Stelle, that is my impression; I have that check and produce it; it is marked *Exhibit A 2* on the part of the defendant, Solomon Andrews; I am not sure in whose handwriting the body of the check is; I paid the money to Mr. Stelle as agreed upon betwixt Doct. Andrews and myself; Doct. Andrews told me that I was to pay the money to Mr. Stelle; I will say that Mr. Stelle told me the same thing in George street, or it was in New Brunswick, at all events; I met him there; Mr. Stelle told me why I was to pay it to him; he said that he held a bond and mortgage which covered this property, among others of Doct. Andrews, and that unless the money was paid to him he wouldn't sign a release; I don't recollect that he said anything further about it than that; he might have said something, but I am not positive.

Witness being cross-examined by the counsel for the complainant, further saith—

The deed I have spoken of was a deed from Solomon Andrews and wife to me; he (Mr. Stelle) also delivered a deed of release of the mortgage to me; I think that the closing up of this matter was delayed for a few days in consequence of the absence of Mr. Stelle from Perth Amboy.

NATHANIEL H. TYRRELL.

Sworn and subscribed, at Rahway, this 5th day of June, A. D. 1868, before me.

THOS. H. SHAFER, M. C.

Counsel for defendants agrees to produce before the master the checks of the defendant, Solomon Andrews, referred to in his testimony, and have the same marked as exhibits in this cause.

Counsel for the complainant admits that the City Bank of Perth Amboy has gone into the hands of receivers under the order of the chancellor.

Counsel for the defendants offers in evidence the ledger of the City Bank of Perth Amboy, which is marked *Exhibit A 3* on the part of the defendant, Solomon Andrews.

*Stephen V. R. Patterson*, a witness produced on the part of the complainant, residing at the city of New York, being duly sworn, on his oath saith—

I reside in New York; I formerly resided at Perth Amboy; I know Solomon Andrews and Benjamin D. Stelle; I have known them ever since I was a boy; that is about the nearest that I can come to it; I was cashier of the City Bank of Perth Amboy for nine years, up to the time that it passed into the hands of receivers, which was on or about  
10 the 4th day of July, 1865; I think the injunction was served on me some time before the 4th of July, 1865; for the nine years prior to that I was cashier.

Witness being shown *Exhibits A and B*, on the part of the complainant, further saith—

I have seen these papers before; I couldn't specify the exact date when I first saw them; I saw them about the time they bear date; the City Bank of Perth Amboy had no interest in those papers; as far as my knowledge extends Mr. Stelle has had the possession and ownership of those papers  
20 from their date to the present time; I know who loaned Solomon Andrews the money which those papers purport to secure, it was Mr. Stelle, Mr. Benjamin Stelle; the City Bank of Perth Amboy never had any interest in that loan, nor any connection with it, to my knowledge; the first receipt upon the bond is made in my brother's handwriting, my brother, William Patterson, and the second is in mine; I know the fact that the second is in my handwriting; I know my own  
30 handwriting; the money I receipted for was paid to Mr. Stelle, by directions of Doct. Andrews; I acted for Doct. Andrews in paying the interest money on this bond to Mr. Stelle; I managed the financial business of Doct. Andrews, so far as that bank was concerned; this was at his own request; our relations with each other, for several years past, have been very friendly and intimate; I was in the room when the moneys were paid over by Mr. Tyrrell for the lots which he bought of Dr. Andrews; my impression is that the amount was somewhere above \$400.

Witness being shown check marked *Exhibit A 2*, says—

I think the body of this check is in my handwriting; this  
40 check of \$412.50 was to pay the interest; it is included in

the sums paid for semi-annual payments of interest, and endorsed on the bond; I suppose it is included in the first receipt; before the money was to be paid by Tyrrell, I might have had conversations with Doct. Andrews, as to what was to be done with it, and might not, I have no recollection; Mr. Stelle resided at New Brunswick at this time; I couldn't answer where he kept this bond and mortgage, he had it in his own possession; prior to the time when this money was actually paid, Tyrrell himself came to the bank to see me in relation to it; he presented his own check on the bank; he 10 handed it to me, in order to pay for the lot which he bought of Doct. Andrews; I can give my impression as to the amount of it, it was \$475; I did not receive it, because I had nothing to do with the payment of the money; I had no authority to receive it; I had no authority to act for Mr. Stelle in that matter at all; I had authority from Mr. Stelle to receive interest due on the bond and mortgage; the result of my refusing to take the check, was that it stood in the same position that it did before Mr. Tyrell offered me the check; I refused to take it, as I had nothing at all to do 20 with it; Mr. Stelle, from what I understood about it, closed the matter with Mr. Tyrrell; I considered myself as the agent, and acting between the two parties, Doct. Andrews and Mr. Stelle, in reference to the interest money on said bond and mortgage; I kept Doct. Andrews' account as to this interest money, and paid the money over to Mr. Stelle; my accounts as to this interest money, and as to my payments to Mr. Stelle of such interest, were all submitted to the doctor for his inspection, in a general way; there was no difference between us about them; I do not know that there 30 were any payments made by any other person than myself to Mr. Stelle, for Doct. Andrews for interest on this bond except as to the moneys by Mr. Tyrrell, as above; I acted as the agent of both parties, and continued so to act as to these interest moneys, up to the time of the last payment; no interest moneys were ever paid by doctor, or by me acting for him, or by any other persons excepting those which are receipted for on this bond, and the other bond which was assigned to him; they were all one thing; I remember distinctly at what rate per annum Mr. Stelle received the in- 40

terest on this \$10,000, it was six per cent. on the New Jersey mortgage, and seven per cent. on the New York mortgage; that is all the money that I ever paid to Mr. Stelle on this mortgage; I did not pay him one cent more; I paid him all that I received; I remember the fact of this loan from Mr. Stelle to Mr. Andrews; I couldn't remember particularly whether he applied to the bank for such a loan, my impression is that he did, I couldn't say positively; he had been a dealer in the bank for four or five years; the bank did not  
 10 make the loan to him; I don't know that the application was made to Mr. Stelle by any other person in behalf of Doct. Andrews; I don't recollect that I urged Mr. Stelle to make the loan, I told him what I thought about it; he applied to me, and asked my opinion about it, and I stated that I thought it would be perfectly safe; no moneys were ever paid to me by Doct. Andrews, which were not paid by me to Mr. Stelle, and receipted for on the bond.

In all my transactions as to this interest money of Doct. Andrews, and between Andrews and Stelle, the bank had  
 20 nothing to do with it whatever.

Mr. Stelle had not the slightest interest in the purchase by me of lots from Mr. Andrews, for \$1000, on the 4th of March, 1863; no other person than myself had any interest in that purchase, either directly or indirectly; it was entirely an individual transaction between the doctor and myself.

Witness being cross-examined by the counsel for defendants, saith—

I understood that I had full authority from Mr. Stelle to act for him in the collection of interest on both of these  
 20 bonds; the bond secured by the New York mortgage is for \$5000; the loan was \$10,000; I was not present at the time of the negotiations; the \$10,000 was paid by a check—Mr. Stelle's check on the City Bank of Perth Amboy; I was in the front room of the bank when the negotiations were carried on in the back room; I remember about what amount Mr. Stelle had in the bank at that time—it was \$3500, as near as I remember, to his individual credit; the amount of \$10,000 was made good by crediting him with \$10,000, which he took up a short time afterwards—not that day; by

"he took up," I mean that he brought the money there which he loaned to Doct. Andrews; Mr. Stelle had left memorandum notes of that amount; he left these memorandum notes the same day that he concluded the transaction, if I recollect; he afterwards brought this money there, and took up these notes; there were two notes; that was the way the bank account was kept; that money was brought in different sums; \$4000 was brought at one time at another time \$1650, and different sums at different times; I think these sums were credited to him on his account at the time he brought them, and the notes were paid and taken away; I don't recollect particularly whether these notes were charged to Mr. Stelle.

Witness being shown *Exhibit A 3*, and referred to page 102 of the same, says—

Mr. Stelle's account is on this page.

Being referred to the credit side thereof, under date of February 2d, 1861, he says—

The entries here are credit, cash by note, \$5000, and another, the same, right under it, the same date; \$4070 is credited on his account, June 27th, 1861; I find a credit of \$1740, August 1st, 1861; on the 3d of June—3d and 4th of June, 1861, which sums were brought there together, the two items are \$1716.50, and before that there were a number of other items credited, and a number charged; these moneys were understood by me to be deposited on account of the \$10,000 notes; this \$4070 was brought there for that purpose—that is, I was told so; I was told that it was brought there for the purpose of meeting this loan; I was told that by Mr. Stelle, at the time he brought the money there; the notes were, "on demand;" the account was a running one, the same as is kept in all banks; I cannot specify positively any other items, though I have no doubt that the item of \$1716.50 was for the same purpose.

Witness being referred to the debit side of that accounts says—

I don't see anything here that indicates that those notes were charged to Mr. Stelle.

Witness being referred to page 103, says—

On this page I do not see anything that indicates that

those notes were charged to Mr. Stelle; the next page of Mr. Stelle's account is on page 105; I do not see anything on the debit side here that indicates that those notes were charged to him.

The next page of Mr. Stelle's account, is page 106; I don't see anything here to show that those notes were charged to him; these are all marked as checks; under date of February 2d, 1861, there is charged to Mr. Stelle, on page 102; it is the same amount as the Andrews' loan, and  
10 the same time; between that time, and the end of Mr. Stelle's account, as it appears in that book, there is nothing amounting in itself to \$5000, on the the debit side—except that \$10,000; those pages which I have been referred to, bring Mr. Stelle's account down to October 3d, 1863; I think there is another account in this book; I am not certain; I have not seen the books in over three years; there is no other in the index; I suppose it wouldn't be carried to another page in that book, when there was all this blank space on this page; the first balance in this book in Mr. Stelle's  
20 account, after the \$10,000, was August 3d, 1861; the balance to his credit was \$6512.99; the next balance is October 9th, 1861; the balance then was \$9692.54; the next is January 16th, 1862, that is \$9316.54; the next is July 7th, 1862—\$5870.64; the next one is January 3d, 1863, \$1468.34; the last one in this book is October 3d, 1863, \$4040.59; that is the last one; when the bank stopped operations, I think the bank owed Mr. Stelle \$300 or \$400; I cannot speak positively as to that; I think it was about that amount.

[Witness being shown *Exhibit A*, for the complainant, and  
30 being referred to the last endorsement of payment of interest thereon says—

That payment was at the rate of seven per cent. on the New York mortgage, and seven per cent. on the other mortgage—\$650, I think, for the year; Mr. Stelle handed me this bond at the time I made the endorsement on it; it was not in my possession before; I did not put the amount, because this is the ordinary way in which I have been accustomed to endorse interest on bonds; it is my recollection that he handed me the New  
40 York bonds at the same time; I presume I made a similar

endorsement at that time on it; I was not present at the time the other endorsement was made on this bond; I paid Mr. Stelle both of those instalments of interest; I can't recollect particularly how I paid him; I can only recollect the particulars of one payment of interest that I made; I couldn't recall the date—I think it was in February, 1863; the particulars are that I paid him \$325, in notes of the bank; I did not in all cases nor in any case pay these moneys to Mr. Stelle as soon as I received them from Doct. Andrews; I paid him the first time that Mr. Stelle came 10 from New Brunswick after the doctor paid me; the doctor did not get the credit for the interest until it was endorsed upon the bond, because the bond wasn't there to endorse it on; I don't know that the doctor lost the interest from the time it was paid until it was endorsed on the bond; he paid it to me as his agent, and I held it till it was endorsed—he, as one of the principals, paid it to me as his agent, and I was to pay it to the other principal; I was the agent of both; I received the interest money as the agent of Mr. Stelle; all that appears on this bond I received from Doct. Andrews, 20 and I paid it over to Mr. Stelle—the exact amount; I kept no separate account of this interest money; on the second of August, 1862, there was due \$450 on this bond, according to my calculation for interest; this endorsement on the bond indicates that about the sum of \$450 was paid for interest up to that time, that's what the endorsement shows; I can't recollect particularly, but my impression is, that I put the interest I received away with a memorandum, and kept it till Mr. Stelle came down; I can't recollect whether I put it to Mr. Stelle's account; I didn't receive this money 30 from Tyrrell; I was authorized to receive interest money at that time; I was authorized to receive interest money which did not require a release; I had no authority to receive moneys which required a release, this is the reason why I did not receive the money from Tyrrell; that amount was included in one of the endorsements; I couldn't specify particularly, but I should imagine it was the first one; I didn't charge my mind particularly with it, not supposing that there would be any occasion to refer to it again.

Witness being referred to *Exhibit A 1* on the part of the defendants, says—

This is Doct. Andrews' account with the City Bank of Perth Amboy; these entries are partly in my handwriting, and partly in that of a clerk; his name is Joseph C. Latson; the entries up to October 5th, 1863, are in my handwriting.

Witness being referred to Doct. Andrews' account in *Exhibit A 3* on the part of the defendants, says—

The account is on page 336, from January, 1861; under 10 date of February 2d, he receives a credit of \$10,000; it reads: "February 2d. B. D. Stelle, \$10,000;" that's the way it reads.

Being referred to the debit side, under date of July 5th, 1862, witness further says—

There is a charge of \$582.50; this is on page 337.

Witness being referred to date of April 4th, 1863, says—

One entry is for interest, \$325; I suppose that is interest 20 on the two bonds for six months, and I made the entry to tell what the sum was for; this is on page 338; "August 31st. 6 mo's interest, to August 1st, \$300," is entered to his debit; this is on page 574.

Witness being referred to page 336, on the debit side, under date of February 28th, 1861, says—

This entry says, "Statement of locks, \$18.10;" it was merely my way of keeping the account; this statement was the same as a check; this memorandum was in order that I might know exactly what this money had gone for.

*Quest.* What does that "statement of locks" mean?

*Ans.* The statement of locks was a statement prepared by 30 Doct. Andrews of every lock he manufactured, at one cent per lock; that is my recollection of it; that was charged against Doct. Andrews, because he requested it for services rendered—services in keeping his account in the bank; I do not mean that the bank received a per centage on the locks manufactured by Andrews, as compensation for the accommodation of having his account kept by the bank; I mean just what he said; he said he didn't want any one to work for him for nothing; nobody received any benefit for the amount charged against Doct. Andrews as "statement of 40 locks"—not from me; he was not credited with these

amounts charged as "statement of locks," in my calculation of interest, which I figured up for Mr. Stelle; I knew what the interest was, from the papers, but I don't know that I made any calculation—I don't know; I don't think that I ever did make any calculation to ascertain the amount the doctor had paid me or not; I never troubled my head about it; he paid me the interest and I paid it to Mr. Stelle.

Witness being again referred to *Exhibit A 3*, to the account of Solomon Andrews, under date of March 30th, 1861, says—

10

The entry is "Bill of expenses, \$21.05;" I can't recall what that was for; I suppose it was money paid out for him; this is on page 336.

Being referred to date of April 2d, 1861, says—

The entry here is "Statement of locks, \$9.40;" under date of June 1st, 1861, the entry is "Statement of locks, \$62.90;" both of these are on page 336; under date of July 1st, 1861, there is entered "Statement of locks, \$42.24;" this is on the same page; on page 338, under date of September 15th, 1862, there is entered "Statement of locks, \$216.22;" August 1st, 1863, on page 338, is entered "One year's statement of locks, \$309.72;" I have no positive recollection of having endorsed any interest on the New York bond; I couldn't state, without I saw the bond.

20

Witness being referred to *Exhibit A 3*, page 338, under date of April 4th, 1863, says—

There is here entered "Check for interest, \$325;" that was the amount I paid over to Mr. Stelle on one occasion; I can't specify that this was the particular occasion; my recollection is, that the check Tyrrell brought me first was for \$475; I don't recollect particularly how it came to be \$412.50; I don't say positively that it was \$475—that is my recollection; I remember that there was something said about tax at the time; Mr. Tyrrell was the collector of taxes at that time; I have no distinct recollection of having paid the money received for interest to Mr. Stelle at any other time than the one I have mentioned, when I paid him \$325; the bank made one dividend; I can't tell, without referring to the books, whether or no they made two; I remember one distinctly.

40

Witness being referred to *Exhibit A 3*, page 76, says—

This is an account of discount received; it is made up in different ways—money received for discounting notes, interest on money, loans, and over-drafts, exchange, or what comes under the head of exchange in ordinary banking business; it is an account made to show the profits of the bank, and one of the items that would have gone to make up a dividend.

Witness being referred to page 77 of same exhibit, says—

- 10 This is a similar account—a continuation of the first; under date of March 30th, 1861, on the credit side, is entered “Andrews, \$18.10;” the credit to profit and loss, on the next balance, is \$284.37.

- This item of \$18.10 goes in to make up that balance; the date of May 31st, 1861, is on same page, the entry is “Andrews, \$62.90;” June 30th, 1861, the entry is, Andrews, \$42.20; the next balance was struck June 30th, it is \$17.81, to the credit of profit and loss; these amounts of \$42.20 and \$62.90, go in to make up that balance; date of February 20 8th, 1862, is entered on same page, “by Andrews’ interest, \$412.50;” the next balance has no date; the last date previous to it is April 5th; this balance is \$461.63; this item of \$412.50 is included in that balance; the date of July 5th, is on same page, it is “Andrews interest,” \$582.50; the next balance was struck July 5th; it is \$937.83, in which is included the item of \$582.50, above mentioned; on the debit side of that account there are entries made as having been paid to Mr. Stelle; they are June 22d, \$70.00, September 22d, \$70.00, December 20th, \$70.00—all in the year 1861; 30 “January 27th, 1862, B. D. Stelle, Hampton, \$100;” February 20th, 1862, \$70.00; June 20th, 1862, \$65.00; these were amounts that were paid for money to carry on the bank—the expenses of the bank; they had no reference to this transaction.

On the credit side of the account of discount received, after July 5th, 1862, on pages 78 and 79, there is no entry of any amount as having been received from Andrews, on account of interest, or as statement of locks; this brings the account to December 31st, 1864.

On the debit side, from the same time to the same time, the only charge is to profit and loss account.

Witness being referred to page 144 of the same exhibit, says—

This is Nathaniel H. Tyrrell's account under date of February 8th, 1862, the charge is check, \$412.50; on page 37 of the same exhibit is the account of profit and loss; the balances on that account go to show the profits which the bank has made in its business.

Witness being referred to page 36, says—

10

This is the same account—profit and loss—the last balance on this page; there is no date; it comes under date of March 30th; the credit to profit and loss account, on March 30th, is \$284.37, for discount received, and the balance is carried over to the next quarter; the balance is \$5367.43; this is the balance of profit and loss account for that quarter; on page 37, date of June 30th, is entered discount received, \$17.81; the balance of the profit and loss account is \$5116.54, which is carried to next quarter; October 5th, is entered discount received \$155.42; balance of profit and loss account is \$4987.- 20  
38; in the next quarter the entry, under date of January 4th, 1862, is discount received, \$174.14; balance of profit and loss account is \$4895.90; the next quarter under date of April 5th, 1862, is entered discounts received \$461.33; balance of profit and loss account \$5115.01; in the next quarter under date of July 5th, 1862, is entered discount received \$937.83; balance of profit and loss account \$976.93; these respective balances, at the end of the several quarters, were carried over to the account of the next quarter; July 5th, 1862, there was a dividend declared; on page 37 there is a 30  
dividend charged to profit and loss on July 5th, 1862; it was a dividend of 15 per cent.; this dividend was made out of the balance on that quarter; from January, 1861, to July 5th, 1862, on pages 36 and 37, there appears to be no charges of money paid Mr. Stelle on account of interest, in that account; the dividend of 15 per cent., which was declared, amounted to \$3750.00.

There were no other charges that I know of to be made against the balance of July 5th, 1862, in this account, except such as appear upon it; I presume that if there was 40

anything outstanding it would appear in the account afterwards; this quarterly balance was made under the law of the state as the business of that quarter; there is no corresponding entry to the entry of September 15th, 1862, of "statement of locks, \$216.22," in Doct. Andrew's account on page 338, in the account of discounts received, on page 78; that \$216.22 went into the general fund on hand; it might appear in balance of cash; it would appear in balance of cash account; they ought to appear in some account in  
10 the ledger; the items of the expense account were kept in small books, and the balances ought to appear in the profit and loss account; the charges to the expense account in these small books were for the daily expenses, salaries and tax, and other matters were not included in those charges in those books, nor discount nor interest; I can't state positively what became of these amounts of "statement of locks," September 15th, 1862, and August 1st, 1863, except that they went to the general creditors of the bank at the time of its failure; I find no reference to these amounts in  
20 this ledger after the date of July 5th, 1862, in the profit and loss account, in the discount received account, or in the expense account; I couldn't specify the date when I made the endorsement on the bond; I made it when Mr. Stelle brought the bond down and directed me to endorse it, whenever that was.

I received all the money that is endorsed on the bond; it all passed through my hands: I have no distinct recollection of the amount which passed through my hands for interest.

30 I handed Mr. Andrews the money for the lots which I purchased of him; the amount was \$1000; I handed him the money in the bank; the deed is dated March 4th, 1863; it was about that time that I paid him the \$1000; he didn't deposit the money in the City Bank; I can't say what he did with it; it was paid in ten \$100 United States notes, legal tenders, greenbacks; I did not take a receipt; I knew at the time that this mortgage covered that property; as far as I know he did not take that money away with him; as far as I know I don't think that he did anything with it; it was  
40 left there, because he didn't take it; it remained there with

the other money, in the vault; it was placed there for safe keeping, the same as any other funds; in the safe, I mean; I put it in the safe; I counted him out ten \$100 notes; he said he wanted that \$1000 to be paid to Mr. Stelle on the mortgage; I said I had nothing to do with that; I bought the property as my own individual property, and was ready to pay the money for it whenever a clear title, free from any encumbrance, was given; I bought it for the cash; it was a cash transaction; then there was nothing done about it between him and myself; it was agreed between him and myself 10 that nothing further should be done about it until Mr. Stelle came down; I then put the money in the safe; I didn't take the deed then; I saw Mr. Stelle several days after; I then offered the money to Mr. Andrews the same as before, in the presence of Mr. Stelle, and he offered it to Mr. Stelle; Mr. Stelle said that he would take it and endorse it on the mortgage; Doct. Andrews said that he didn't wish it endorsed on the mortgage; Mr. Stelle wouldn't take the money unless it could be credited in a proper way on the bond; he wouldn't sign a release for the lots unless the 20 money was credited on the bond.

The doctor didn't want it credited at all—he didn't want it to appear; he wanted to make the payment on the mortgage without having it credited; the whole matter stopped there; I wouldn't take the deed without the release, and the matter stopped, with the understanding that we would arrange it at some future time; the money was left there the same as before; the money was returned to me; he then handed me the deed for these five lots—I mean Doct. Andrews, and requested me to have it recorded, and there the 30 whole thing stood, from that day to this; the money was afterwards used by me; no part of it went to Mr. Stelle directly; I did not receive that money back from Doct. Andrews as a loan; that's the whole circumstance, as I have told you.

*Quest.* What did Doct. Andrews receive from you, in consideration of that conveyance?

*Ans.* He received, in the first place, this \$1000, under the circumstances I have stated.

*Quest.* And this same \$1000 was returned to you?

*Ans.* Under the same circumstances.

*Quest.* And you refused to take the deed?

*Ans.* I did, unless the property was released by Mr. Stelle.

*Quest.* Was that the end of the transaction at that time?

*Ans.* That was the end of the transaction at that time, with the understanding that we were to arrange it at some future time.

*Quest.* Did you afterwards receive that deed from Doct. Andrews?

10 *Ans.* I did.

*Quest.* Did you, at the time you so received it or afterwards, pay him anything as a consideration for that conveyance?

*Ans.* Nothing further was done about it, except that I had the deed recorded, as he requested me to have done.

*Quest.* Question repeated.

*Ans.* No, sir.

I have not conveyed that property away since.

[Counsel for complainant objects to all the foregoing cross-  
20 examination of this witness which relates to the accounts of  
Doct. Andrews, Benjamin D. Stelle, and Nathaniel H. Tyrrell, and all other accounts connected with the City Bank of Perth Amboy, and as taken from and referred to in book marked *Exhibit A 3*, for the defendant, Solomon Andrews, and also to that part of the cross-examination relating to the consideration of the deed from Andrews to this witness, because no legal cross-examination of the witness. He further objects to all such examination, except as to the consideration of said deed and the disposition of the money, said  
30 consideration, because irrelevant.]

[It is here understood, between the counsel of the respective parties, that the cross-examination of this witness, touching the matters objected to by counsel for complainant, shall be considered as the examination in chief of the witness on the part of the defendant, Solomon Andrews.]

Mr. Stelle continued to be the president of that bank up to October 25th, 1862; after that time he was not a director of the bank, and had no connection with it.

By consent of the respective parties, further examination  
40 was adjourned to Monday, June 8th, 1868.

Witness being further examined by counsel for defendants, says—

The signature to this check is in, Doct. Andrews' handwriting; part of the body of the check is in Doct. Andrews', and part in my own handwriting; the part, "interest on my bond," is in Doct. Andrews' handwriting; I presume that refers to this bond—I know of no other; I presume I received that check in payment of interest on this bond.

[Check offered in evidence, and marked *Exhibit A 4* on part of defendants.]

10

Witness being referred to page 337, of *Exhibit A 3*, says—

This is Solomon Andrew's account; he is charged check, July 5th, 1862, for \$582.50; this check, *Exhibit A 4*, is dated July 10th; the check and entry differ in date, but I presume that the check is the one referred to in the entry; I do not find this check charged anywhere else, about the same time.

[Counsel for complainant offers in evidence bond, mortgage, and assignment, which are marked *Exhibits C, D, and E*, on part of complainant.]

Witness being shown *Exhibit C*, says—

20

The first endorsements of interest on this bond, is in my brother's handwriting, I believe; the second one I know to be in mine; it don't appear when the endorsement was made by me; there is no specific date; I do not remember when it was made.

Witness being again examined by counsel for complainant, says—

I was not present when the contract between Mr. Stelle and Doct. Andrews was made concerning the loan of \$19,000.

I can't specify the exact time when the moneys referred to in the endorsement on the bond were paid to me, by Doct. Andrews; as to the receipts of these interest moneys, and as to the payment of them to Mr. Stelle, I acted individually for Doct. Andrews, and not as cashier of the bank; the entries made in this book, *Exhibit A 3*, as to interest, were made for my own reference; the bank had no interest in any interest moneys received by me of Doct. Andrews, and paid to Mr. Stelle, that I ever understood; the "statement of locks" referred to in this book had nothing to do with the loan made by Mr. Stelle to Doct. Andrews, that I know of; none of the 40

moneys received, for which "statement of locks," in *Exhibit A 3*, are the vouchers were ever paid to Mr. Stelle, by me; he never received them to my knowledge from any one, either directly or indirectly; I know nothing about the arrangement as to the "statement of locks;" Doct. Andrews first brought it to my knowledge; it was after the loan to him by Mr. Stelle; I can't recollect particularly what he said; it was when he first brought the "statement of locks."

Witness being referred to Solomon Andrews' account, on 10 page 336, of *Exhibit A 3*, says—

There is here entered, "February 28th, 1861, statement of locks, \$18.10;" Doct. Andrews, when he brought this statement, said that it was for me to receive as compensation for services rendered for him; whenever after that he brought any "statement of locks," they were entered in full upon the books, and also upon his bank book, all the way through; two particular statements of interest made by me, for Doct. Andrews, were submitted to him for his inspection; one was in February, 1862, as near as I can recollect, and the other 20 was in the first part of July, 1862, I think; the doctor signed all the checks given for interest to Mr. Stelle; I may have filled them up as I had often filled other checks; I might have signed one for him, but I have no specific recollection of it; I was in the habit, whenever he requested it, of filling up checks for him; I was not in the habit of doing so generally.

*Exhibit A 4*, states that it is for interest to August 1st, 1862; I could not state how this check of \$582.50 pays the interest to that time, without I had the memorandum which 30 I had then, and which was submitted to Doct. Andrews, at that time; the interest to February 1st, 1862, according to my recollection, was settled by this check of Tyrrell's; sometimes I paid the money to Mr. Stelle, for interest, and sometimes I gave him credit for it; I can't state; it was all a running account; it was my own money which I tendered to Doct. Andrews, on the purchase of that lot, it was no one else's; it belonged to me individually; I paid Mr. Stelle all the interest that ever was paid on that bond—on both bonds; I did not pay him the first cent more than seven per cent. 40 on the New York, or six per cent. on the other bond, either directly or indirectly, in any way, manner, or shape; by these

bonds I refer to *Exhibits A and C*, on the part of complainant; none of the moneys which I received from Mr. Andrews as interest, and paid to Mr. Stelle on these bonds, or either of them, was ever credited to the City Bank of Perth Amboy in any way, not by me; the City Bank was never credited with these moneys, or any part of them by any one that I know of; none of the money which I paid to Mr. Stelle as interest on these bonds out of the funds of Doct. Andrews, was ever credited to the bank in any way.

Witness being again examined by counsel for defendant, 10 says—

I received discounts from Doct. Andrews; I have no recollection of ever receiving any other interest moneys from him than those which he paid on this loan of \$10,000; the discounts would appear on the books as a deduction from the faces of the notes or drafts; sometimes he had mere temporary loans, or over drafts; these entries made in *Exhibit A 3*, were made for my reference; they were true entries, I presume.

*Quest.* Where the entry is for interest received from Andrews, was not there interest so received? [Question objected to on the ground that it presumes to be true a fact which does not appear to be true on the books, to wit, the books say "Andrews' interest."]

Question withdrawn.

Witness being referred to page 338 of *Exhibit A 3*, for defendant, Andrews, says—

Under date of April 4th, on the debit side, there is an entry referring to interest; it specifies, "for interest, \$325;" I presume this was received by me, from Doct. Andrews, for 30 the semi-annual interest on that loan, as his agent.

Witness being referred to page 77 of the same exhibit, under date of February 8th, and July 5th, 1862, "Andrews' interest"—

The first entry, February 8th, by Andrews, interest \$412.50; the other, July 5th, 1868, \$582.50; these mean that there was a settlement, and there was a general balance due from Doct. Andrews; in the first place, with regard to the entry of February 8th, there was a settlement with Doct. Andrews at that time, and quite a little statement was drawn up on a 40

separate slip of paper by me, and submitted to Doct. Andrews; it involved a number of other transactions, which I can't recall; if I had that slip of paper I could; this amount of \$412.50, was a part of it; that is, it was included in that, and I made this memorandum in that way, for my own reference, nothing else; it has no connection with anything else, except what was included in the memorandum; Doct. Andrews asked several times about this money, which had been paid by Tyrrell, and which is marked here "Andrews' interest," claiming that he had no credit for it; I took this memorandum three different times, to my positive recollection, and went over each item again with him, and he was perfectly satisfied each time about it; that memorandum remained in a pigeon hole, where his papers were kept, until the bank passed out of my hands; this entry, "Andrews' interest," refers to my own memorandum of what moneys came into my hands, and in order that I might refer to it for my own satisfaction; the money received from Tyrrell was included in this item of \$412.50; in receiving these moneys for interest, I acted as the agent of Doct. Andrews; I acted as the agent for both parties; I paid over to Mr. Stelle all the interest moneys I received; I don't recollect that I ever inquired particularly of Mr. Stelle in reference to this "Statement of Locks;" in calculating discount on notes, our usual custom was six per cent.

[Counsel for complainant objects to the last sentence above written on account of its being irrelevant.]

I can't specify particularly what were the items that went to make up this statement of interest; I presume interest on over drafts was included in it; I don't recollect particularly whether exchange on foreign drafts was included or not; it was all satisfactory at that time; I couldn't recall any of the items which went to make up the statement of interest; the moneys which I received from all sources were included in that statement; the moneys which I received from Doct. Andrews for interest I presume were not included in these statements, unless it was in this way that I paid the money to Mr. Stelle, and he paid it back to me to be deposited; my best recollection is that I received all this money in final settlement of everything, including the interest on this loan

and every thing that passed through my hands; whatever that balance might be I made the entry on the books for my own reference; in reference to this second entry, the entry of \$582.50, I presume that after giving Doct. Andrews credit for whatever had been paid there was this amount due; there was a ticket for that the same as the other, made up in the same way, leaving the balance; this money which I gave to Doct. Andrews in settlement for these lots was my own individual money; after I got it back it was also my own.

Witness being again examined by counsel for complainant, says—

The entry of \$412.50 on page 77 of *Exhibit A 3*, does not mean that the interest which was paid by Tyrrell was received by or credited to the bank as interest on the bonds A and C; it had nothing whatever to do with it that I know of; the entry of \$582.50 on the same page, under date of July 5th, 1862, does not mean that the interest money paid by Doct. Andrews on *Exhibits A and C* was ever received by or credited to the bank as interest on those bonds; it has nothing whatever to do with those bonds that I know of; 20 those entries of \$412.50 and \$582.50 do not relate in any way to interest moneys on *Exhibits A and C*; the interest moneys on those bonds were never paid to or received by the bank; they never went into the bank accounts that I know of; they might have gone into Mr. Stelle's private bank account the same as any other moneys of his.

Witness being again examined by counsel for defendants, says—

*Quest.* You say that those entries of \$412.50 and \$582.50 do not relate in any way to the interest received on bonds A 30 and C—tell us what interest they do relate to?

*Ans.* It's impossible for me to specify; those memoranda stated distinctly everything drawn out in full; I mean the two memoranda referred to above by me as statements of interest; I refer to the memoranda which I said were in final settlement of everything up to that date; I do not recollect anything particularly in reference to the items of those

memoranda which I did not when examined by counsel for defendants a few moments ago.

Witness being again examined by counsel for complainant, says—

The memorandum which I showed Doct. Andrews was one made about February 8th, 1862; that memorandum went with the effects of the bank into the hands of the receivers, I suppose; it was made on a slip of paper.

Counsel for complainant says that he desires to call the  
10 attention of witness to a correction of his testimony.

*Quest.* In the notes of your testimony as taken by me on page 57, I have your language written, as follows: "In reference to this amount of \$582.50, I presume, that after giving Doct. Andrews credit for all other interest that he owed, this amount remained; this was the amount due."

In the notes as taken by the master, he states your language, as follows; "In reference to this second entry, the entry of \$582.50, I presume that after giving Doct. Andrews credit for whatever had been paid there was this amount due."

20 State which is the correct statement of your testimony as to said matter.

*Ans.* The first.

Witness being again examined by counsel for defendants, says—

*Quest.* Do you mean to say that you used the language exactly word for word, as Mr. Ludlow has it, and did not use the language as the master has it?

*Ans.* I couldn't answer that question positively.

S. V. R. PATTERSON.

30 Sworn and subscribed, this 8th day of June, A. D. 1868, before me, at Rahway, aforesaid.

THOS. H. SHAFER, *M. C.*

Counsel for complainant offers in evidence the deed from Solomon Andrews and wife to Stephen V. R. Patterson, dated March 4th, 1863, which is marked *Exhibit F*, on the part of the complainant.

By consent of the counsel of the respective parties, further examination was adjourned to Tuesday, June 9th, 1868.

THOS. H. SHAFER, *M. C.*

Tuesday June 9th, 1868. *William Patterson*, a witness produced on the part of the complainant, residing at Perth Amboy, in the county of Middlesex, being duly sworn, on his oath saith—

I reside in Perth Amboy; my profession is that of a lawyer; I practice now in Newark; I know Mr. Stelle and Solomon Andrews; I have known Mr. Andrews pretty much all 10 my life, and Mr. Stelle about thirty-five years.

Witness being shown *Exhibits A* and *B* for complainant, says—

I prepared this bond and mortgage, at the request of Solomon Andrews; I was, at the time, acquainted fully with the circumstances connected with this bond and mortgage, and the loan under it—quite fully; Benjamin D. Stelle, I always understood, loaned the money secured by that bond and mortgage to Solomon Andrews.

*Quest.* State fully all the circumstances, contracts, and 20 matters in relation to that bond and mortgage, and the loan secured thereby?

*Ans.* As I recollect them now, they are these—during the winter of 1861, prior to the date of these instruments, Doct. Andrews applied to the bank, the City Bank, to know whether he could be accommodated with a loan of from \$5000 to \$10,000, those were the amounts first spoken of, for his own purposes; he spoke to, I think, Mr. Stelle first, and Mr. Stelle spoke to me about it; the matter went on—the negotiations went on for some time—speaking about it, but without coming to any result other than this: that as officers 20 and directors of the bank we had no money to loan, we were not in a condition to make such a loan as that, we told Doct. Andrews, that we would not and could not make the loan as a bank; doctor made liberal offers to procure the accommodations; I cannot say how long exactly the matter was talked over in that way; Mr. Stelle said that as the doctor was so much in need of money, if he could be satisfied that there would be no trouble with regard to it, he could loan him

\$5000 or thereabouts himself, and he consulted with me about it, not as an officer of the bank at all, but as an individual—as a lawyer and friend of both parties, he said he should like to assist the doctor in carrying out the objects he had in view, or which he had stated to as when applying for the loan; there was a good deal of conversation in one way or another in regard to that; I interested myself to procure this loan from Mr. Stelle for the doctor, and stated to him more than once, that I did not think there would be any  
10 trouble with him about it, giving this as a reason, that while the doctor and myself had differed on a good many occasions, and pretty sharply too, yet in all the pecuniary transactions I ever had with Doct. Andrews, I always found him as true to his agreement as any one I ever dealt with; that I had loaned him money without a scratch of the pen, and had effected settlements of tangled affairs of his with the Commercial Bank of New Jersey, which had always been carried out by him faithfully and fully, without any written agreement.

20 Mr. Stelle finally told the doctor that he could loan him \$5000; doctor said that would not be enough for his purpose; as I recollect now, he stated what he then owed the bank; he said that he had used up \$5000, in anticipation, and that it would be of no use to him for future operations, and desired the amount increased to \$10,000; I can't recollect all the matters in connection with it as they occurred, but my impression is that that terminated the negotiations for a few days; Mr. Stelle said he hadn't but \$5000 and hardly that at that time, and if the amount was to be increased to  
30 \$10,000, he should have to raise some of it himself; the doctor pressed the matter upon him very strenuously, and repeated how advantageous a loan of that kind, the use of that money, would be to him, until the result was that Mr. Stelle agreed, if the security was satisfactory to me, to assist the doctor; that closed the negotiations, so far as that part was concerned; it was understood that the doctor was to have that amount of money; he (doctor) then stated in what manner he proposed to secure this loan—gave a list of his property, real and personal (a schedule I should have called  
40 it,) with the values attached, as he estimated them; one-half

of it, \$5000, he proposed to secure by an assignment of *Exhibits C and D*, upon the property in New York; he stated how the title to that property was, how it came to stand in the name of his son, Solomon Andrews, jun., and the nature of the prior encumbrances or liens upon it; the other \$5,000 was to be secured by a mortgage on the Amboy property, which he valued, I think then, at from \$40,000 to \$50,000—the Barrack lot subject to a mortgage to Mr. Quincey for \$5000, and all of it was subject to a judgment of James S. Green, which judgment was to be released on any property 10 which was included in the mortgage; besides this, he was willing to secure the whole loan by a chattel mortgage upon his machinery, and other personal property in the Barracks buildings, which he valued at from \$20,000 to \$25,000; he had a list made out of the articles of personal property in the barracks—machinery it was; I told Mr. Stelle that there was no use in taking that personal property into consideration, the other property was ample security; besides, as the law of New Jersey was then, security on personal property was of no account unless that property was taken into actual 20 possession, we had no law authorizing chattel mortgages; this was said in presence of Andrews and Stelle; I considered that the loan would be secured very amply by the real estate, and so advised Mr. Stelle; the property agreed to be put in the mortgage was selected, and I was directed by Doct. Andrews to prepare the mortgage, and *Exhibit B* was prepared accordingly, and to prepare the assignment of the New York mortgage from Solomon Andrews, which I did, and which is *Exhibit E* in this cause; the papers were drawn by me, the negotiation was closed, and the New York assign- 30 ment and mortgage were given to me to have recorded in New York; I had them recorded, and paid for them, in New York; they were recorded on the 7th of February, both together; Doct. Andrews paid me for drawing the bond, mortgage, and assignment—I think it was \$3—and he paid me for recording the New York mortgage and assignment; that's all I received from either party; that ended my connection with it; Mr. Stelle took the New Jersey mortgage; I would add that I obtained the New York papers, *Exhibit D*

and *E*, from the register's office in New York, and handed them to Mr. Stelle.

Throughout this whole matter in relation to these negotiations and loan from Mr. Stelle to Doct. Andrews, I acted as a friend of both parties; I was desirous, if possible, that Doct. Andrews should receive that accommodation, and, as far as I could, my influence was exerted with Mr. Stelle to obtain it for him; I never intended, and did not charge either party one cent for any services connected with the  
10 negotiation, excepting for the draft of the New Jersey bond and mortgage, and the New York assignment; I would also state that Doct. Andrews was willing to remunerate me; I declined to receive anything except the usual charge which I made around Amboy for drawing similar papers; Mr. Stelle declined expressly, as I understood, to entertain any negotiation, excepting on the basis of legal interest only; there was a proposition made by Doct. Andrews to Mr. Stelle; he was willing to pay seven per cent. on the whole  
20 loan; he had made a similar proposition to the bank; he offered also to pay a royalty or commission on all the locks manufactured by him under his contract with the post-office department of the United States; Mr. Stelle said he would have nothing to do with anything of that kind, and, as I understood it, would not make any negotiations on that basis; so far as my knowledge extends, there was no arrangement or understanding between Mr. Stelle and Dr. Andrews, by which Mr. Stelle was to receive, or Doct. Andrews give, any more than legal interest for this loan; so far as my knowledge extends, there was no arrangement or understanding between  
30 Mr. Stelle and Doct. Andrews, whereby Mr. Stelle was to receive, or Doct. Andrews give anything in the nature of a *bonus* for this loan; I acted throughout the matter as the friend of both parties; I was extremely anxious that doctor should receive this loan; I was at that time a director of the City Bank of Perth Amboy; Mr. Stelle was president; the City Bank never, to my understanding of it, had any interest in this loan to Doct. Andrews; they declined, as a bank, to have anything to do with it; I have no knowledge of how Mr. Stelle paid the money to Doct. Andrews; throughout  
40 this whole negotiation and effecting of the loan, Mr. Stelle

and I acted as representing ourselves individually, and not as representing the bank, or as acting in our official positions of director or president respectively; I did not understand that I was acting as director of the bank at all; Doct. Andrews did not negotiate for, or effect a loan of this amount (\$10,000) with Mr. Stelle as president, and myself as director of the City Bank; he did not negotiate or effect this loan of \$10,000 of myself as director, or, as I understood it, of Mr. Stelle as president of said bank; Mr. Stelle and myself, when negotiating this loan, did not act as officers of, or as representing the City Bank; I certainly understood that it was known to Doct. Andrews that Mr. Stelle and myself, in negotiating and effecting this loan, were not acting as officers of the City Bank, or as representing said bank, because we had declined expressly to entertain that negotiation on behalf of the bank; it was no part of the agreement between Doct. Andrews and Mr. Stelle, as I understood it, that Doct. Andrews was to pay any *bonus* for this loan to any other person; Doct. Andrews was always willing to do so, and, as I said before, to pay liberally; there was no agreement or understanding, as I understood it, that Doct. Andrews was to pay any *bonus* to the City Bank of Perth Amboy, as a consideration for this loan from Mr. Stelle to him; as far as my knowledge extends, throughout the whole negotiation, to the closing up of the loan, Mr. Stelle declined and refused to enter into any negotiation by which he was to receive illegal interest for making the loan, or that Doct. Andrews was to pay any illegal interest or *bonus* for the loan.

As an officer of the bank I continued in the bank up to the time it passed into the hands of the receivers, and from the resignation of Mr. Stelle, in October, 1862, I was president; after Mr. Stelle's resignation he had no further connection with the bank as an officer; he had a collateral interest in it; he had an interest as the holder of stock of the bank, which he held as collateral security for the stock of the bank I bought of him; the City Bank of Perth Amboy never, to my knowledge, had any interest in this bond and mortgage; they had no interest in the moneys which were secured by it; it was not made to Mr. Stelle, and he never held it as trustee for the City Bank, to my knowledge; they

never had any beneficial interest in it whatever, that I ever knew of; the interest moneys which accrued on those bonds and mortgages never went to the City Bank as their moneys, to my knowledge; I have no knowledge of any arrangement ever having been made, by which Mr. Stelle was to hold those bonds and mortgages for the benefit, or any way in the interest of the City Bank of Perth Amboy; I never was a party to any such arrangement.

Witness being referred to *Exhibits A* and *C*, on part of  
10 complainant, says—

The first endorsement of interest on *Exhibit A*, "interest paid to 1st of August, 1862," is in my handwriting; the first endorsement on *Exhibit C* was also written by me; I know nothing about the payment of those interest moneys; there was nothing paid by me; I presume it occurred in this way—it is but an indistinct recollection; my brother was in New York that day, and Mr. Stelle came down to Amboy and wished me to endorse the payment of that interest on those bonds; the money had been paid before, I presume,  
20 when he had not the bond with him; that's the only way in which I can account for it; Doct. Andrews had, prior to this loan, large dealings; that is, considerable dealings with the City Bank of Perth Amboy; I couldn't say how his accounts were generally; as to the accommodations received by him from the bank, I could only speak from a general recollection, and that is, he obtained whatever accommodations he desired which it was possible for us to make; I couldn't say how it was as to his overdrawing his account; I know nothing at  
30 all with regard to these entries of statement of locks on the books, except what I see; Doct. Andrews proposed to do a thing of that kind, in connection with this loan, and it was declined; I can't say that I know the fact that Doct. Andrews presented statements of locks to the bank—not of my own knowledge; the payment marked statement of locks, was not, according to my understanding of it, any part of the consideration of the loan by Mr. Stelle to Doct. Andrews; I know nothing of any statement of locks personally—myself; I was told of it; I was told by my brother, I think, and Doct. Andrews, and I saw them on the books, too;  
40 I have no recollection of what I was told by Doct. Andrews,

or any one else, as to what those statements of locks were for.

*Quest.* What was your understanding as to those statements of locks, why they were given, and what they were for? [Question objected to.]

*Ans.* My general understanding was, that they were given by Doct. Andrews for the accommodations which he had received, and favors which he had obtained from the bank; I would say further, as I understood it, it was a voluntary thing, on his part. 10

Counsel for complainant offers in evidence, schedule of personal property of Solomon Andrews, marked *Exhibit G*, for complainant, which being shown to witness, he says—

This is the paper to which I referred as being the inventory of personal property offered by Doct. Andrews as security for the loan, in addition to the real estate.

Witness being cross-examined by counsel for defendants, says—

At the time these negotiations took place between Doct. Andrews, Mr. Stelle, and myself, we (Mr. Stelle and myself) 20 owned a majority of the stock of the City Bank of Perth Amboy; the bank was charging at the rate of 6 per cent. at this time for discounts; I presume the books of the bank will show that fact; that was our regular rate; as far as I know, Doct. Andrews was charged with the usual rate of discount on notes, and exchange for collections which was charged to others.

Witness being again examined-in-chief by counsel for complainant, says—

I had nothing to do with keeping the books of the bank 30 as a general thing; when my brother was away I made memoranda, and sometimes entries, not latterly, however; S. V. R. Patterson is my brother, and he had charge of the books and accounts; I can't say as to what arrangement there was between him and Doct. Andrews as to his acting as the agent of the doctor.

WILLIAM PATTERSON.

Sworn and subscribed, this 9th day of June, A. D. 1868, before me, at Rahway.

THOS. H. SHAFER, *M. C.*

*Benjamin D. Stelle*, a witness produced on the part of the complainant, residing at New Brunswick, in the county of Middlesex, being duly sworn, on his oath saith—

I reside at New Brunswick; I have lived there since 1833; I kept a hotel there for some years.

Witness being shown *Exhibits A* and *B*, on the part of the  
10 complainant, says: I am the owner of that bond and mortgage, and also the owner of *Exhibits C* and *D*; I loaned Solomon Andrews \$10,000 about the date of *Exhibits A*, *B*, and *E*.

*Quest.* State fully all the circumstances, contracts and matters relating to the negotiating and making of that loan by you to Solomon Andrews?

*Ans.* When I was president of the bank, when it first commenced; he was doing business in the bank when the bank first opened; he used to do his business there, and was  
20 very friendly; he applied for a loan through the bank; I told him we couldn't loan that amount, that the bank wasn't chartered for that purpose; we talked a long time about it; I suppose it went on for a month—I didn't give him any encouragement when he talked to me about it; he came there one day and said he didn't know what he should do; he had a contract from the government to finish some locks; I told him we had no money to loan, so he went off—a number of times; I told him, "Doctor, I believe I could raise the money for you myself if I didn't think I should have some trouble; some of my friends told me I should have some trouble."  
30 He said he didn't know that he ever gave any one any trouble, and that I shouldn't have any trouble if I would lend him the money; I finally concluded to loan him the money; the amount was \$10,000; my original offer was to loan him about \$5000; I asked him if he couldn't get along with that; he said it wouldn't be enough, and I then concluded to loan him \$10,000; he offered to give me a mortgage on the property in Amboy and an assignment of a mortgage on New York property; I agreed to take that se-

curity; he also offered to give me a chattel mortgage on some personal property; when the negotiation was closed I let the doctor have \$10,000; I got as security for that loan *Exhibits A, B, C, D, and E*, and I declined to receive the chattel mortgage; I gave Doct. Andrews a check for the \$10,000 on the City Bank of Perth Amboy; I didn't have as much money as that in the bank at that time; I have my bank book here.

Witness produces the same, and it is offered in evidence and marked *Exhibit H*, for complainant. Witness referring 10 to *Exhibit H*, says—

This is my bank book containing my account with the City Bank; the check, my check for \$10,000 to Andrews, went into the bank; it never was protested; I overdraw my account there; at the time I drew that check I made my account good at the bank by leaving a couple of notes—memorandum notes.

Being shown the bank book, witness says—

These notes are entered on this book February 2d, 1861, on the credit side of my account; these notes were consid- 20-  
ered as cash; they were taken up by me and paid to the bank; I didn't expect I was to be charged with them; I put them there as memoranda.

Witness being referred to the credit side of *Exhibit H*, says—

There was not one cent of the money which I paid to the bank in taking up and paying those two notes which ever went to my credit on this book or on the books of the bank; the statement made by S. V. R. Patterson that \$4000, \$1650, and other items on the credit side of my account, were for 30-  
moneys which went to pay and take up the \$5000 notes is not true—none of these moneys on the credit side of my account were deposited or used for the payment of those notes; those notes were treated as cash; they were taken up and paid by me; in making this loan to Doct. Andrews I acted for myself individually; I loaned my own money to Doct. Andrews; I paid my own money to the City Bank of Perth Amboy when I took up those notes of \$5000 each; when I loaned this money to Doct. Andrews, and took these bonds and mortgages, the arrangement and contract was 40-

that I was to receive six per cent. on the New Jersey mortgage, and seven per cent. on the New York mortgage; I did not agree as to this loan with Doct. Andrews, that I was to receive or he was to pay seven per cent. for the whole loan.

*Quest.* Was there any understanding, contract or arrangement between you and Doct. Andrews, at the time of making this loan, or at any time, that he was to give or you were to receive from him any *bonus* for this loan? [Question objected to as a leading question.]

10 *Ans.* No, sir.

The contract between Doct. Andrews and myself as to the rate of interest on this loan was that I was to receive and he to pay six per cent. on the New Jersey mortgage, and seven per cent. on the New York mortgage; there was no other contract between Doct. Andrews and myself as to the rate of interest and consideration for this loan, than the contract that he was to pay six per cent. on the New Jersey mortgage, and seven per cent. on the New York.

I advised with Mr. Patterson—William Patterson in refer-  
 20 ence to this loan and security; I asked him whether he thought it was worth it, and whether it was safe; I did not advise with him as a director of the bank; I couldn't say that Mr. William Patterson was present at all the negotiations with Doct. Andrews; he was present several times; Mr. Patterson drew the papers; Mr. Patterson was present at the time the papers were delivered; Mr. Patterson acted kind of for both of us; Mr. Patterson was present when I told the doctor I would like to loan him the money if I did  
 30 have trouble; Doct. Andrews offered to pay me a *bonus* for this money; he offered to pay seven per cent., and I wouldn't take it; he offered to give a *royalty* of one penny on each lock; I did not agree to receive that, and wouldn't have anything to do with it, and stopped the negotiations for a day or two; the negotiations were resumed again after a day or two; in every proposition which the doctor made to pay seven per cent. interest on the whole loan or the *bonus*, I invariably refused to receive it, or to have anything to do with it, or to make the loan upon any such agreement; there was no understanding or agreement between me, and Doct. Andrews  
 40 at the time of making this loan, or at any time, by which

he was to pay to the City Bank any *bonus* as a consideration for this loan by me to him; I never have assigned either of these bonds and mortgages to any one since they were given to me; no person other than myself has any interest in either of these bonds and mortgages, or the money secured by them.

In making these negotiations with Doct. Andrews, and this loan, I did not act as an officer of the City Bank, but for myself, individually; I was not representing the City Bank, in any way, in the matter of this loan; this bond and mortgage, *Exhibits A and B*, and the New York mortgage, were not made and assigned to me as representing the City Bank, in any way; I have received the interest moneys which have been paid on those bonds and mortgages up to this time; no person other than myself, since the making of those papers, has had any right, as owner, to receive the interest accruing thereon; it was no part of the understanding between Doct. Andrews and myself, at the time of making this loan, that the bank was to loan the money, and I was to hold the bonds and mortgages; I received the interest moneys which are endorsed as paid on those bonds; they were paid to me by Mr. Patterson—S. V. R. Patterson; Mr. Patterson was acting for Doct. Andrews and me both; I was then living at New Brunswick; sometimes I would go to Amboy once a week—sometimes twice a week; sometimes in two weeks, and sometimes once a month, and then sometimes, again, every day; I took the moneys which were paid to me by Mr. Patterson as interest; Mr. Patterson made one of the endorsements—Mr. William Patterson, and Mr. S. V. R. Patterson made the other; I have been paid on the New Jersey bond interest at six per cent., and on the New York bond at seven per cent.; I have never received seven per cent. on both; I have been the sole, absolute, and exclusive owner of these bonds and mortgages since the time they were made and assigned, respectively; the money received by me from Tyrrell, and for which a release was given by me, is a part of the interest money endorsed on these bonds; I have never received any other moneys on account of these bonds than the interest which is endorsed—up to August 1st, 1863; in regard to the lots purchased by S. V. R. Pat-

terson, I would state, that it is about the substance of what Mr. Patterson testified to here the other day; I had no interest in that purchase, and it was not made by any direction or authority of mine; I don't think he asked me to release the property; I would have released it, if he had given me the money; I did not refuse to receive the money, except in this way; Doct. Andrews didn't want it put on the bond; I didn't make any reply—I went off, I think; I couldn't tell the reason why the doctor didn't want it put on the bond; 10 if he had been willing to have it put on the bond, I would have been willing to receive it.

Witness being cross-examined by counsel for defendants, further says—

All these negotiations in reference to this loan took place at Perth Amboy; the matter was finally consummated there, and the contract was made there; the agreement was that I should loan him \$10,000; \$5000 of that money was to be secured by the mortgage on property in New Jersey, and the balance to be secured by an assignment of a bond and mort- 20 gage on property in New York; this bond and mortgage was assigned to secure a part of this loan of \$10,000—it wasn't a purchase of the bond and mortgage in New York; about that time the bank did not loan \$10,000 to any one else at a discount; this \$10,000 was not paid by me into the bank at one time—it was paid at different times; the first note was taken up very soon after—five or six days after; the second a very short time after; the whole \$5000 on this first note was not taken there at one time—it was taken up within two or three days; I think my bank balance did not 30 go towards paying that note—I took money there to pay this note; these two \$5000 notes were not discounted by the bank for me—I didn't expect to have them discounted; Mr. S. V. R. Patterson had authority from me to act for me, in the receipt of these moneys from Doct. Andrews; I can't state, without calculating, what amount of money I have received on these bonds; I don't know why the interest was not endorsed on the bond when I received it, except that Mr. Patterson had charge of the business of the interest, and didn't have possession of the bond; I kept these bonds

and mortgages, and all my papers, home in New Brunswick; I gave the doctor this check of mine for \$10,000 in the bank at Amboy, and received the papers there; this was an entire transaction—the loaning of the \$10,000 by me to the doctor.

Witness being re-examined in chief, by counsel for complainant, says—

I am not much of an accountant; I do not understand book-keeping much; I am no book-keeper at all; I left the matter of figuring upon these bonds to S. V. R. Patterson; I can't give exactly the date when I first knew of these statements 10 of locks being entered on the books; it might have been six months after I made the loan to Doct. Andrews, it may have been a shorter time; at the time I made the loan to Doct. Andrews, I had no knowledge that it was to be done; it was no part of my contract with Doct. Andrews that he was to pay any such moneys to the bank, that I know of; he mentioned that he was going to give the bank something for their trouble; I don't know what it was; I didn't talk to him about it; I told him I had nothing to do with that; he mentioned this after he had made the loan; it might be six 20 months afterwards, or a shorter time; Mr. S. V. R. Patterson was authorized to receive the interest moneys, and not the principal of these bonds; the bond and mortgage, *Exhibits C and D*, were assigned to me, for \$5000; I loaned Doct. Andrews \$5000 on the New Jersey bond and mortgage; in the transaction between the doctor and myself, I took the New York mortgage for \$5000, and I gave the check of \$10,000, in settlement of the whole thing.

*Quest.* As to this transaction, state whether or not the New York mortgage was a distinct matter, and taken by 30 you under assignment, for the sum of \$5000? [Question objected to.]

*Ans.* I gave \$5000, and took it for \$5000; it goes into the \$10,000, though.

*Quest.* Did you become the purchaser of the New York \$5000 mortgage? [Question objected to.]

*Ans.* By the assignment I did; I loaned to Doct. Andrews \$5000 on the New Jersey mortgage.

[Counsel for defendant's objects to the question, in reply to which this answer was given, because leading.]

I loaned to Dr. Andrews \$5000 on the New Jersey mortgage; I was to pay him, or give him, \$5000 for the New York mortgage.

Witness being again cross examined by the counsel for the defendants, says—

*Quest.* Was there anything said between you as to your giving \$5000 for the New York mortgage, and \$5000 for 10 the New Jersey mortgage, or was not the agreement that you should loan \$10,000 to the doctor, and take the New Jersey mortgage and the New York mortgage to secure that amount?

*Ans.* It was to be secured, \$5000 on the New York mortgage, and \$5000 on the New Jersey mortgage, and I was to loan him \$10,000.

Doct. Andrews' application to me was to borrow \$5000 at first; I afterwards lent him \$10,000; when I offered to lend him \$5000, he said that that wouldn't be enough; then he 20 wanted \$10,000, and all negotiations after that went to the end of his borrowing \$10,000, and I agreed to lend him \$10,000; and that he was to secure by \$5000 on the New Jersey mortgage, and \$5000 on the New York; Doct. Andrews offered to secure the whole amount of \$10,000 by a chattel mortgage on the personal property in the barracks; I didn't take that proposition into consideration; I talked about it with Mr. Patterson; Mr. Patterson told me that our law in New Jersey didn't recognize chattel mortgages, and it would be no use to me; that was one reason why I didn't 30 take the chattel mortgage, what Mr. Patterson told me; in the end, I did lend him \$10,000, and paid it to him in Perth Amboy, by my check on the bank there; as far as I know, I have received interest from the 2d of February, 1861, on both of these bonds, and as far as I know the interest endorsed on this New York bond was not calculated prior to that date.

Witness being again examined by counsel for complainant, says—

Doct. Andrews, on the 2d, of February, 1861, got from me \$10,000 of my money, and has had the use and benefit

of it, and has never repaid to me that money; he has never paid any interest since August 1st, 1863.

*Quest.* As you understood the arrangement between you and Andrews, did you become the owner of the New York mortgage for \$5000, and did you lend \$5000 to Doct. Andrews on the New Jersey mortgage? [Question objected to.]

*Ans.* Yes, sir.

B. D. STELLE.

Sworn and subscribed, this 9th day of June, A. D. 1868,  
before me, at Rahway. 10

THOS. H. SHAFER, M. C.

Counsel for defendants produced Solomon Andrews as a witness on behalf of the defendants.

Counsel for complainant objects to Solomon Andrews being again affirmed and testifying in this cause, without an order of the Chancellor for that purpose made.

*Solomon Andrews*, said witness, having conscientious scruples against taking an oath, on solemn affirmation saith—

*Quest.* In these negotiations which you had with Mr. Stelle and Mr. Patterson in-reference to borrowing \$10,000, 20 in what capacity did you understand they were acting?

[Question objected to. Counsel for complainant also objects to the matters inquired of, because witness has already testified in relation to them.]

*Ans.* In what capacity? as the owners of the money in the bank—that's my answer.

[Answer objected to, because it is a matter heretofore testified to by this witness, and in relation to which he has been previously examined in this cause.]

*Quest.* The owners of what money in the bank? 30

[Question objected to for the same reason as above.]

*Ans.* The money I was to receive.

*Ans.* Do you mean owners of moneys in the bank as stockholders, or as depositors?

[Question objected to, because the witness has already

been examined and testified in relation to the matter inquired of.]

*Ans.* Stockholders.

[Answer objected to for the same reason as above.]

SOLOMON ANDREWS.

Affirmed and subscribed, at Rahway, this 9th day of June, 1868, before me.

THOS. H. SHAFER, *M. C.*

It is admitted by counsel for defendants that the legal rate of interest in the state of New York, at the time the bond and mortgage marked *Exhibits C* and *D* were given, was seven per centum per annum.

THOS. H. SHAFER, *M. C.*

That part of the foregoing examination taken by both question and answer was, in the opinion of the examiner, necessary for the correct understanding of the evidence, owing to the manner of the witnesses, as well as the subject matter, and was therefore allowed by the examiner.

THOS. H. SHAFER, *M. C.*

[Filed June 16, 1869.]

In pursuance of an order of this court, entered in the above cause, bearing date the 27th day of February, 1869, I have been attended by the solicitor of the complainant, no person appearing for the defendants, although duly summoned and notified as to the time and place of proceeding under said order, the service of such summons being admitted by their solicitor, by endorsement, in writing, made on such summons, as to William H. Meshrow and Allecta De H. his wife, Solomon Andrews and Harriet his wife, Matthew Smith, John W. Quincy, Ashbel Green, esq., Edward Willford, of said defendants. And as to Joseph R. La Tourette and Ste-

phen V. R. Patterson, by such endorsement, made by themselves, and such summons having been put up in the clerk's office of this court for four days, agreeably to the order and rule of this court, as to Alfred Whitman, as by affidavit on such summons appeared, and as will appear by reference to such summons to said defendant, and said other defendants, returned with this report, and severally endorsed as aforesaid; and, in the presence of the party attending me, I have considered of the matters by said orders referred to me.

And the solicitor of the complainant produced before me <sup>10</sup> the mortgage in his bill mentioned, bearing date the 2d day of February, 1861, and made and executed by Solomon Andrews and Harriet his wife, to the said Benjamin D. Stelle, and which said mortgage was duly acknowledged, according to law, by the said Solomon Andrews and wife, and recorded, as in the bill mentioned, as appears by endorsements thereon; and the said complainant's solicitor also produced to me the bond intended to be secured by the said mortgage; which said bond and mortgage are marked *Exhibits A* and *B* respectively, on the part of the complainant.

And I find there is due to the said complainant on his said <sup>20</sup> mortgage, for principal and interest, on this day, the sum of \$6752.50. And I certify and report, that the schedule hereto annexed and marked No. 1, and making part of this, my report, contains a statement and account of the principal and interest money due to the complainant on his said mortgage, unto which, for greater certainty, I refer.

And I do further report, that for and in behalf of the defendant, John W. Quincy, the mortgage, in the bill also mentioned, bearing date the 4th day of June, 1853, and made <sup>30</sup> and executed by the said Solomon Andrews, (and to which his said wife is not a party,) to the said John W. Quincy, and which said mortgage was duly acknowledged by said Solomon Andrews, according to law, and recorded on the 16th day of June, 1853, in the clerk's office of the county of Middlesex, as stated in said bill, as appears by certificate and endorsement attached to and made on said mortgage; and that the bond intended to be secured by said mortgage, was also produced before me of the date of said mortgage, and <sup>40</sup> duly executed by said Solomon Andrews, which said bond

and mortgage are marked *Exhibits A* and *B* for said defendant, John W. Quincy; and I find that there is due to said defendant, on his said mortgage, for principal and interest, on this day, the sum of \$9932.08; said bond and mortgage having been executed in the city of New York, and interest thereon having been paid thereon at the rate of seven per cent. per annum; in my statement of the interest in arrears on said bond and mortgage, I have adhered to that rate of interest, to wit, seven per cent. per annum, as incident to  
 10 the contract, that being the place of payment stated thereon.

And I further report, that there was also produced to me, a certificate by the clerk of the Supreme Court of this state, under the seal of said court, by which it appeared that judgment was entered in said Supreme Court, in favor of said John W. Quincy, and against said Solomon Andrews, in debt on bond and warrant of attorney, on the 3d day of April, 1863, for \$11,836.79, of debt, and \$4 costs; which certificate I have marked *Exhibit C*, for said defendant, and the release  
 20 of the judgment, by James S. Green, I have marked *Exhibit D*, for him; and that *Schedule No. 2*, attached to this report, contains a statement of the amount of principal and interest money due at the date of this report, upon the last mentioned bond and mortgage, and to which, for greater certainty, I refer.

And I further report, that by a statement produced to me, under the seal of said Supreme Court of this state, and certified by said clerk, purporting to be a copy of a statement made by Obadiah Clark, late sheriff of Middlesex county, aforesaid, that by virtue of a judgment on writ of *scire facias*,  
 30 at the suit of Ashbel Green, administrator, &c., of James S. Green, deceased, judgment had been obtained by said James S. Green, in said Supreme Court, against said Solomon Andrews, on the 23d day of July, 1846, for \$5837.19, of damages and costs, upon which judgment on said *scire facias* was obtained on the 25th day of March, 1863.

And thereupon, levy made for said amount of \$5837.19, with interest thereon, from the 23d, day of July, 1846, to January 7th, 1864, amounting to \$6114.46, \$11,951 65  
 With sheriff's execution fees, 41 36

Carried forward,	\$11,993 01	
From which being deducted the sales.		
Whole amount of personal property,	1262 00	
	<hr/>	
	\$10,731 01	
And proceeds of sale of real estate, made April 28th, 1864,	\$1730 00	
Less sheriff's execution fees,	61 92	
	<hr/>	
	\$1668 08	
Leaving a balance due thereon of	\$9062 93	
And with interest thereon due since the 7th day of January, 1864, to the date of this report, amounting to	2909 98	10
	<hr/>	
Amount seeming to be due by said statement,	\$11,972 91	

Besides interest, if any, on said sum of \$1668.08, as by reference to said sheriff's statement of sales made by virtue of said execution, and certified and offered as aforesaid, will fully appear, which said certificate I have marked *Exhibit A*, for said defendant, Ashbel Green.

And I further report, that by virtue of a deed of release endorsed on the said mortgage of the complainant, made by said James S. Green, the plaintiff in said judgment to the complainant, the premises contained in said mortgage of the complainant were discharged from the effect of said judgment, which deed of release bears date the 31st day of January, 1861, and was duly acknowledged, by said James S. Green, as by reference to such endorsement and certificate of acknowledgment made on said mortgage, marked *Exhibit B*, for the complainant, will fully appear.

And that in like manner, by a similar deed of release, made by said James S. Green to said John W. Quincy, the premises described in the mortgage of said John W. Quincy, were also discharged from said judgment, which said last mentioned deed of release bears date the 21st day of June, 1853, and was also in due form of law acknowledged by said James S. Green, and recorded in said clerk's office, on the 13th day of December, 1854, and produced before me, and marked *Exhibit D*, for said defendant, John W. Quincy, and to which deeds of release, for greater certainty, I refer.

And I further report, that under the aforesaid sale, made by said Obadiah Clark, sheriff of Middlesex county, by virtue of the judgment obtained by James S. Green, esq., in his lifetime against said Solomon Andrews, on the 23d day of July, 1846, the said Ashbel Green purchased and had conveyed to him, by a somewhat different description, said mortgaged premises, certain parts of which had then been conveyed by said Solomon, and with release, by the complainant of his mortgage lien thereon, in some instances, as  
10 stated in said bill; and that said Ashbel Green having become such purchaser, afterwards by deed, dated the 9th day of October, 1866, conveyed certain parts of said mortgaged premises to Allecta DeHart and Edward H. Willford, respectively, as stated; also in said bill, the first of which deeds, duly acknowledged and recorded, was produced to me, and marked *Exhibit A*, for said Allecta De Hart, now Allecta D. H. Meshrow.

And that heretofore, to wit, on the 22d day of January, 1863, Solomon Andrews and wife, conveyed of said mort-  
20 gaged premises, the one half part of lot number 115, and subject to the said mortgage of the complainant to Matthew Smith.

And I further report, that the mortgage of the defendant, John W. Quincy, contains the first lot mentioned in the complainant's mortgage only, and called the barrack lot of eleven acres, more or less; and is prior in date, and is the first lien on said lot, and should be first paid from the proceeds of the sale thereof, the balance or surplus of such proceeds, if any, in the next place to be applied to the mortgage  
30 of the complainant.

And that the mortgage of the complainant is the second lien on said lot and the first lien on the residue of the premises described in it, except such parts thereof as have been released from such lien by the complainant as stated in said bill, and that of such residue in accordance with the opinion of the Chancellor heretofore expressed in this cause, the lot described in a deed made by said Solomon Andrews and wife to Stephen V. R. Patterson, bearing date the 4th day of March, 1863, should be first sold, and the sum of \$1000, with  
40 interest from the date of said deed, paid to the complainant,

and if the proceeds of the residue of the mortgaged premises are sufficient to pay off the balance of the complainant's debt and costs, then the excess of the proceeds of said lot should be paid to the defendant, Ashbel Green, and that in the sale of such last mentioned residue of the said mortgaged premises such residue should be sold by entirety, as described in the deposition hereto annexed, made upon this reference by Ezekiel M. Patterson; which entireties, comprising all of said mortgaged premises as described in the mortgage of the complainant are numbered in said deposition from one, (1) to seven (7) inclusive; but that as to entireties numbered two and four, a discretion should be allowed to sell the same in parcels, if at the time of sale it should be manifest that said two entireties would bring more if sold in that manner, to suit purchasers. 10

And that after the payment of the amounts due on said two mortgages respectively, as herein before stated, with the costs of foreclosure and of sale, the surplus money, if any, arising from such sales, should be paid to the defendant, Ashbel Green. 20

And I further report that in my opinion it will be necessary to sell the whole of said mortgaged premises not released by the complainant for the payment and satisfaction of said several claims.

But in the event that a sale of the whole should not be necessary for that purpose, then should be reserved from such sale, first, the half lot sold and conveyed by said Solomon Andrews and wife to Matthew Smith, herein before mentioned, and then the lots sold and conveyed by Ashbel Green and wife to Allecta De Hart and Edward H. Willford. 30

And I further report that I have appended to this report the deposition of Ezekiel M. Patterson, before referred to, and desire that it may be taken as part thereof.

All which is most respectfully submitted.

W. H. LEUPP, *M. C.*

Dated New Brunswick, June 3d, 1869.

## SCHEDULE No. 1.

*Referred to in the foregoing Report.*

	Bond bearing date the 2d day of February, 1861, in the penal sum of \$10,000, conditioned for the payment of \$5000 in one year, with inter- est semi-annually, secured by the mortgage in the complainant's bill mentioned,	\$5000 00
	Interest thereon paid to August 1st, 1863. 1869, June 3d, interest from August 1st, 1863, 5 years, 10 10 months, and 3 days,	1752 50
	Amount due complainant to 8th June, 1869,	<u>\$6752 50</u>
	W. H. LEUPP, <i>M. C.</i>	

## SCHEDULE No. 2.

*Referred to in the foregoing Report.*

	Bond bearing date the 1st day of May, 1853, in the penal sum of \$10,000, conditioned for the payment of \$5000, with lawful interest thereon, in the city of New York, in one year, and pay- able semi-annually, and secured by the mort- gage in the complainant's bill, also mentioned,	\$5000 00
20	Interest paid thereon to May 1st, 1855. 1869, June 3d, interest thereon from May 1st, 1855, being 14 years, 1 month, and 3 days,	4932 08
	Amount due thereon to June 3d, 1869,	<u>\$9932 08</u>
	W. H. LEUPP, <i>M. C.</i>	

Deposition of a witness, taken in the above cause, at my office, in the city of New Brunswick, in the presence of the solicitor of the complainant, and referred to in the foregoing report.

W. H. LEUPP, *M. C.*

*Ezekiel M. Patterson*, a witness produced on behalf of the complainant, being duly sworn, on his oath saith—

I have known the city of Perth Amboy, in the county of Middlesex, since the 3d day of September, 1834; I was then on the lands in the street alongside of the said lands on that 10 day; I then began to reside in said city, and continued to do business there, and board there, until the fall of 1841; I was engaged in the coal business there, and bought and sold real estate situate there; I am acquainted with the premises described in the mortgage of the complainant, mentioned in this suit, from the time I came to said city, and have been buying and selling property—real estate—ever since; the first lot described in said mortgage, known as the Barracks lot, No. 1, I am acquainted with; this lot has upon it several old brick buildings, and my opinion is that said lot 20 should be sold as an entirety, for the advantage of persons interested therein as mortgagees.

I also know the second lot, by its boundaries; it contains about eight acres; the Perth Amboy and Woodbridge Railway traverses this lot, and the depot of said railway is upon part of it; deducting from said lot so much as is owned by said railroad, and the lots by said mortgage excepted from it, I think that the residue should be sold as an entirety; the said lots so deducted interfere with the said lot, as described in a private map thereof, and render the description thereof, 30 according to said map, uncertain; it might be divided into parts east and west of the railroad, and bring a little more on sale.

I also know the third lot described in said mortgage, marked as *Exhibit B* for said complainant; it is a block of land; the mortgage excepts a large part of it—about one half part thereof—and the residue of said block, and upon

which said mortgage is a lien, should be sold as an entirety, in my opinion, because it is a small lot as it is.

I also know lot number four (4), described in said mortgage; nearly one half part of this lot has been sold, and is excepted by said mortgage; the residue, being rather more than one half part thereof, should be sold, in my opinion, together, as an entirety; such residue would bring as much, so sold, as in any other way, at a sheriff's sale, unless the same could be sold in parcels, on time, to suit purchasers.

- 10 I also know lot number five (5) described in said mortgage; about one fifth part only of this lot remains unsold, which fifth part is affected by said mortgage; this residue should, in my opinion, be sold together as an entirety, because it is already a small lot.

I also know lot number six (6), as described in said mortgage; it is a single lot of about one hundred and twenty or thirty feet front on the water—Staten Island Sound—by two or three hundred feet to and into the water; this lot should be sold together, in my opinion—it would spoil the lot to  
20 cut it up; it is too small to divide for any advantage, as to practical use.

I also know lot number seven (7), as described in said mortgage; the whole lot contained six-tenths of an acre, bounded north by Commerce street, south and east by lands of E. M. Patterson, and west by High street; of this lot, two lots have been sold to Stephen Lawrence and William Patterson, as stated in the said mortgage; the residue of this lot should be sold, in my opinion, together, as an entirety; it would bring as much, if so sold, as if sold in any other  
30 way; this lot is also a small lot as it is.

I know, also, lot number eight (8), called the cedar lot; this lot, or so much thereof as is affected by the said mortgage, should be sold together, if it should be necessary to sell the same; this lot is in the country, and is a small lot for a rural or country location.

The further examination of the deponent was adjourned to Friday, the 21st day of May, 1869.

*Ezekiel M. Patterson*, being further examined, on his oath saith—

I am of opinion that it will be necessary to sell all of the mortgaged premises contained in complainant's mortgage to pay the amount due to the complainant on his said mortgage, with the costs of this suit; I do not think that the Barracks lot will sell for more than will be sufficient to pay the amount due John W. Quincy on his mortgage, amounting to about now, \$9000; that is to say, after the sale of said Barrack lot to pay the mortgage of John W. Quincy, the balance of the said mortgaged premises, as contained in the complainant's mortgage, will not more than pay the amount 10 thereon due to the complainant, with his costs; in making this estimate, I have taken into consideration and excepted the several parcels of the mortgaged premises which have been sold and conveyed, or released, since the giving of said mortgage to the complainant, and herein before referred to, and mentioned in the bill in this cause.

Being shown the deed by Obadiah Clark, late sheriff of Middlesex county, which is marked *Exhibit* for Asbel Green, says—that the first and second lots described and conveyed in that deed, which bears date the 25th day of April, 1864, are not embraced in the complainant's said mortgage; the residue of the lands, described in and conveyed by said deed, comprise all the mortgaged premises except the cedar lot. 20

In my opinion, the said mortgaged premises will be sold more advantageously in parcels, as designated in this deposition, and in the mortgage, than if sold as an entirety or altogether.

The lots sold to Nathaniel H. Tyrrell, described in the bill, and which have been released from said mortgage, are part 30 of the fifth lot described in said mortgage.

The lot described in the bill, and conveyed to Matthew Smith, is a part of the third lot described in said mortgage.

The lot which was conveyed to Stephen V. R. Patterson, by deed of March 4th, 1863, is a part of the seventh lot described in said mortgage.

The lot which was conveyed to the Woodbridge and Perth Amboy Railroad Company, and released from said mortgage, as stated in the bill, is part of the second lot described in said mortgage. 40

The lot which was conveyed to Allecta DeHart, is part of the second lot described in said mortgage.

Also, the lot which was conveyed to Edward H. Willford, is also part of the same second lot, described in said mortgage.

E. M. PATTERSON.

5th month, 21st, 1869.

In saying that the lots should be sold separately, my opinion is based upon the fact that this mode of sale will enable more persons of moderate means to bid and purchase.

E. M. PATTERSON.

Sworn and subscribed, at New Brunswick, in said county, this 28th day of May, 1869, before me.

W. H. LEUPP, *M. C.*

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### Final Decree.

[Filed December 11, 1869.]

This cause, coming on to be heard upon exceptions to the master's report, and in the presence of George C. Ludlow, solicitor and of counsel with the complainant, and Robert S. Green, solicitor and of counsel with defendants, and the report of William H. Leupp, esquire, a master of this court, made in this case, in pursuance of the decretal order of this court, and bearing date the third day of June, in the year of our Lord eighteen hundred and sixty-nine, and the exceptions taken thereto by the defendants being produced and read, and the said exceptions being debated by the said respective counsel, and the Chancellor being of the opinion that the said exceptions to said report are erroneous and without foundation, it is ordered by the Chancellor that the same be and they hereby are severally overruled and disallowed.

And it appearing by the said report that on the day of

the date of said report there was due to the defendant, John W. Quincy, for principal and interest on the bond held by him, secured by the mortgage made to and held by him, in the bill mentioned, the sum of nine thousand nine hundred and thirty-two dollars and eight cents (\$9932.08), and that the said mortgage debt is the first lien in order and priority on the lot or tract first mentioned and described in the complainant's mortgage, and is entitled to be first paid and satisfied out of the proceeds of the sale of the said tract or lot of land and premises therein mentioned; and that there was 10  
due to the complainant on his bond, secured by the mortgage given to and held by him, and in the bill mentioned, for principal and interest, the sum of six thousand seven hundred and fifty-two dollars and fifty cents (\$6752.50).

And that the complainant's said mortgage debt is the second lien in order and priority upon the aforesaid tract first mentioned and described in said mortgage of the complainant, and is entitled to have the surplus, if any, of the proceeds of sale of said tract, after paying the aforesaid mortgage of said John W. Quincy, applied towards its pay- 20  
ment.

And that said complainant's said mortgage debt is the first lien in order and priority, upon all the residue of the lands and premises mentioned and described in his aforesaid mortgage, except such parts thereof as have been released therefrom, as stated in the bill.

And it appearing by said report, that on said day of its date there was due to Ashbel Green, administrator of James S. Green, now deceased, for principal and interest on his judgment against said Solomon Andrews, in the bill referred 20  
to, the sum of eleven thousand nine hundred and seventy-two dollars and ninety-one cents (\$11,972.91.)

And that said judgment, by releases made by said James S. Green, in his lifetime, was postponed to the aforesaid several mortgages of said complainant and said defendant, John W. Quincy, respectively, as to the lands in said mortgages mentioned and described, respectively.

And it further appearing by said report, that the whole of the mortgaged lands and premises not heretofere released by the complainant, should be sold to raise and satisfy the 40

amounts due to the complainant and said defendant on their said respective mortgages, and the costs of this suit; and that, in such sale, the said mortgaged tracts or lots of land should severally be sold as entireties, except as to the lots or entireties secondly and fourthly described in the complainant's mortgage, a discretion should be allowed to sell the same in parcels, if, at the time of sale, it should be manifest that the said two lots or entireties would bring more, if sold in that manner, to suit purchasers.

10 And it further appearing from said report, that certain parts of said mortgaged lands have been released from the lien of his mortgage by said complainant.

And that the mortgaged lands, except a tract herein after referred to, have been conveyed by the sheriff of Middlesex county, by deed dated April 25th, A. D. 1864, in the bill mentioned, on sale under *fi. fa.* to said defendant, Ashbel Green.

And it further appearing, as well by said report as by a previous decree in this cause, that in making sale of said  
20 mortgaged lands, a certain lot, being part of the lot severally described in the complainant's mortgage, and described in a deed made by Solomon Andrews and wife to Stephen V. R. Patterson, bearing date the 4th day of March, A. D. 1863, and recorded in Middlesex clerk's office, in Book 90 of Deeds, page 306, should be first sold, and out of the proceeds of the sale thereof, the sum of \$1000, with interest on said sum from the date of said deed, should be paid to the complainant; and if the proceeds of the residue of the mortgaged premises are sufficient to pay off the balance of the  
30 complainant's debt and costs, then such excess of the proceeds of said lot should be paid to the defendant, Ashbel Green.

And it further appearing by said report, that after selling the aforesaid tract or lot, that the residue of said several mortgaged tracts or lots of land and premises should be sold in the order in which they are set forth in the complainant's mortgage, excepting and reserving the parts thereof sold and released, as stated in the bill.

And it further appearing by said report, that after the  
40 payment of the amounts due on said two mortgages respectively, as herein before stated, with the costs of foreclosure

and sale, the surplus money, if any, arising from such sale of said mortgaged lands should be paid to the defendant, Ashbel Green.

And it further appearing by said report, that certain parts of said mortgaged premises have been sold and conveyed by said Solomon Andrews and by said Ashbel Green respectively, since the complainant's said mortgage, and that the same was subject to the complainant's said mortgage; and that in the event of a sale of the whole of the mortgaged premises not being necessary, that said several conveyed lots 10 should be reserved from the sale; and in the event of a sale thereof being necessary, that the said lots so conveyed should be sold as follows, *viz.* the lots sold and conveyed by Ashbel Green to Allecta DeHart (now Allecta DeH. Meshrow) and Edward H. Willford, in the first place, and the lots sold by Solomon Andrews and wife to Matthew Smith, in the next place.

And now the exceptions to said report having been overruled by the Chancellor, and no cause being shown or appearing against confirming the said report— 20

It is, on the 9th day of December, in the year of our Lord 1869, by Abraham O. Zabriskie, Chancellor of the state of New Jersey, ordered, adjudged, and decreed that the said master's report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said complainant is entitled to relief and to a sale of so much of the said mortgaged premises as shall be necessary to satisfy the said defendant, John W. Quincy, and the complainant, the amounts so as aforesaid reported due to them respectively, with the costs of the complainant and of said defend- 30 ant, John W. Quincy; and also the costs of the said Allecta DeH. Meshrow, and William H. Meshrow her husband, and Edward H. Willford respectively, other several defendants, who have answered the bill in this case.

And it is accordingly further ordered, adjudged, and decreed that so much of the said lands and premises in the mortgage of the complainant mentioned and described, as will be sufficient to raise and satisfy the said sums so as aforesaid reported to be due said complainant and the defendant, John W. Quincy, respectively, with the complain- 40

ant's costs, and the costs of the said defendant, John W. Quincy, and the costs of the aforesaid several other answering defendants, said Allecta DeH. Meshrow, and William H. Meshrow her husband, and Edward H. Willford, respectively to be taxed, to be sold.

And that a writ of *feri facias* do issue for that purpose out of this court, directed to William H. Leupp, esquire, one of the masters of this court, commanding him to make sale, according to law, of the said mortgaged premises; and that  
 10 he make sale, in the first place, and as an entirety, of that lot of land, (being part of the lot of land seventhly described in, and set forth in the complainant's bill and mortgage,) which was conveyed by Solomon Andrews and wife to Stephen V. R. Patterson, by deed dated March 4th, 1863, in said bill referred to, and in said deed described as follows: All that certain tract or portion of land, being five lots, situate, lying, and being in the city of Perth Amboy, in the county of Middlesex, and state of New Jersey, on the easterly side of High street and the southerly side of Commerce  
 20 street, and bounded northerly by Commerce street, westerly by High street, southerly by land patented to Samuel Gibson, and easterly by a lane or alley-way in front of lots sold to Stephen Lawrence and William Patterson, extending on Commerce street, from the line of High street, one hundred feet, more or less; on High street, from the line of Commerce street, one hundred and thirty-two feet, more or less; on the southerly line, one hundred feet more or less; and on the easterly line, one hundred and thirty-two feet, more or less; being the westerly portion of the lot or tract of land con-  
 30 veyed by deed to the Perth Amboy Manufacturing Company by James C. Stout, sheriff, and bearing date December 31st, 1846.

And that out of the moneys arising from the sale thereof, if sufficient, he pay to the complainant or his solicitor the sum of \$1000, with interest thereon, to be computed from the 4th day of March, A. D. 1863, in part payment of the complainant's said mortgage debt, interests and costs.

And if the said proceeds of sale are not sufficient for such payments, then he do pay the entire proceeds of the sale of

said lots to the complainant or his solicitor, in part payment of his aforesaid mortgage debt and interest and costs.

And if there be any excess over said sum of \$1000 and interest, arising from the sale of said lot, then to pay such excess to the defendant, Ashbel Green, administrator, in case the proceeds of the sale of the residue of the mortgaged premises are sufficient to pay the complainant's debt and interest and costs, and the costs of this suit.

And that in the second place he make sale, as an entirety, of the tract or lot of land first mentioned and described and set forth in the complainant's bill and mortgage, and that out of the moneys arising from such sale he, in the first place, pay to the said John W. Quincy, the sum of \$9932.08, with lawful interest thereon, to be computed from the date of the said master's report, and the costs of the said defendant, John W. Quincy, in this cause to be taxed. 10

And that in case there be any surplus, after paying the said amounts as aforesaid, then out of the proceeds of sale of said last mentioned tract or lot, he do pay, if sufficient, and if not sufficient, then he do pay so far as the same will extend, to the said complainant or his solicitor, the balance of the said sum of \$6752.50, with interest thereon from the date of said master's report, remaining due after the said payment, to the complainant herein first mentioned, together with his costs in this cause to be taxed, and the costs of the aforesaid several other answering defendants in this suit, said Allecta De H. Meshrow and William H. Meshrow her husband, and Edward H. Willford, respectively, to be taxed to the said defendants respectively or their solicitor. 20

And in case after paying as aforesaid, sufficient shall not be realized from the sale of the aforesaid lots to satisfy the complainant's debt and interest aforesaid, and his costs and the costs in this suit, then, in the third place, he make sale of, as an entirety or in parcels to suit purchasers, at his discretion, the tract or lot of land secondly described and set forth in the complainant's mortgage and bill, excepting thereout so much thereof as has been conveyed to the Perth Amboy and Woodbridge Railroad Company, and released from complainant's mortgage, and excepting also the lots conveyed to Allecta De Hart (now Allecta De H. Meshrow) and 30 40

to Edward H. Willford, respectively, by Ashbell Green, by deeds respectively dated October 9th, A. D. 1866.

And out of the proceeds of sale of said last mentioned tract or lot of land he do pay, if sufficient, and if not sufficient, then he do pay so far as the same will extend, to the said complainant or his solicitor, the balance of the said complainant's debt and the interest thereon as aforesaid, and his costs to be taxed, and the taxed costs of the aforesaid other defendants in this suit, said Allecta De H. Meshrow and  
10 William H. Meshrow her husband, and Edward H. Willford, respectively, to the said defendants or their solicitor.

And in case after paying, as aforesaid, sufficient shall not be realized from the sale of the aforesaid tracts and lots of land to satisfy the complainant's debt and interest aforesaid, and the said costs in this suit, then, in the fourth place, he make sale of, as an entirety, the tract and lot of land thirdly described and set forth in the complainant's mortgage and bill, excepting thereout the lot conveyed to Matthew Smith by Solomon Andrews and wife, by deed dated January 22d,  
20 A. D. 1863, recorded in Middlesex clerk's office in Book 90 of Deeds, page 220.

And out of the proceeds of sale of said last mentioned tract he do pay, if sufficient, and if not sufficient, then he do pay so far as the same will extend, to the said complainant or his solicitor, the balance remaining unpaid of the complainant's said debt and interest as aforesaid, and his costs and the taxed costs of the aforesaid other defendants in this suit, said Allecta De H. Meshrow and William H. Meshrow her husband, and Edward H. Willford, respectively, to  
30 the said defendants, respectively, or their solicitor.

And in case, after paying as aforesaid, sufficient shall not be realized from the sale of the aforesaid tracts and lots of land to satisfy the complainants said debt and interest and the costs in this suit, then, in the fifth place, he make sale of, as an entirety or in parcels to suit purchasers, at his discretion, the tract and lot of land fourthly described and set forth in the complainant's mortgage and bill, and out of the proceeds of sale of said last mentioned tract or lot of land, he do pay, if sufficient, and if not sufficient, then he do pay  
40 so far as the same will extend, to the said complainant or his solicitor, the balance remaining unpaid of the complainant's

said debt, interest, and costs, and the taxed costs of the aforesaid other defendants in this suit, the said Allecta De H. Meshrow and William H. Meshrow her husband, and Edward H. Willford, respectively, to the said defendants, respectively, or their solicitor.

And in case, after paying as aforesaid, sufficient shall not be realized from the sale of the aforesaid tracts and lots of land to satisfy the complainant's said debt and interest and the costs of this suit, then, in the sixth place, he make sale of, as an entirety, the tract or lot of land fifthly described and set forth in the complainant's bill and mortgage, excepting the lot conveyed to Nathaniel H. Tyrrell by Solomon Andrews and wife, by deed dated the 6th day of December, 1861, and recorded in Middlesex clerk's office in Book 87 of Deeds, page 414, and released from complainant's said mortgage, and out of the proceeds of the sale of the said last mentioned tract or lot of land he do pay, if sufficient, and if not sufficient, then he do pay so far the same will extend, to the said complainant or his solicitor the balance remaining unpaid of the complainant's said debt and interest, and cost and the taxed costs of the aforesaid other defendants in this suit, said Allecta De H. Meshrow and William H. Meshrow her husband, and Edward H. Willford, or their solicitor, respectively, to the said defendants, respectively.

And in case, after paying as aforesaid, sufficient should not be realized from the sale of the aforesaid tracts and lots of land to satisfy the complainant's debt and interest, and the costs aforesaid, then, in the seventh place, he do make sale of, as an entirety, the lot or tract of land sixthly described and set forth in the complainant's bill and mortgage; and out of the proceeds of the sale of said last mentioned tract or lot of land he do pay, if sufficient, and if not sufficient, then he do pay so far as the same will extend, to the said complainant, or his solicitor, the balance remaining unpaid of the complainant's said debt, and interest and costs, and the taxed costs of the aforesaid other defendants in this suit, said Alecta De H. Meshrow, and Wm. H. Meshrow her husband, and Edward H. Willford, respectively, to the said defendants, respectively, or their solicitor.

And in case, after paying as aforesaid, sufficient shall not

be realized from the sale of all the aforesaid lots to satisfy the complainant's debt, and interest as aforesaid, with the costs of this suit, then in the eighth place, that he make sale of the residue of the lot seventhly described and set forth in the complainant's bill and mortgage, remaining after the sale of said lot (part thereof,) herein first directed to be sold, and out of the proceeds of sale of the said residue of said last mentioned lot of land, he do pay, if sufficient, and if not sufficient, then he do pay so far as the same will extend, to the said complainant or his solicitor, the balance remaining unpaid of the complainant's said debt, and interest and costs, and the taxed costs of the aforesaid other defendants in this suit, the said Allecta De H. Meshrow, and Wm. H. Meshrow, and Edward H. Willford, respectively, to the said defendants, respectively, or their solicitor.

And in case sufficient shall not be realized from the sale of all the aforesaid lots of land to pay and satisfy the complainant's said debt, interest, and the costs of this suit, then in the next place, that out of the excess arising from the sale of the lot herein directed to be first sold, if any there be, over and above the said sum and interest herein before directed to be paid thereout to the complainant, he do pay, if sufficient, and if the same be not sufficient, he do pay so far as the same will extend, to the complainant or his solicitor, the balance remaining unpaid of the complainant's said debt and interest, and his costs, and the taxed costs of the aforesaid defendants, said Allecta De H. Meshrow, and Wm. H. Meshrow her husband, and Edward H. Willford, respectively, to the said defendants, respectively, or their solicitor.

And in case, after paying as aforesaid, sufficient shall not be realized from the sale of all the aforesaid lots to satisfy the complainant's debt, and interest, and the costs of this suit, then in the ninth place, that he make sale of the two lots, parts of the lots secondly described in said mortgage and bill, which were conveyed to Allecta DeHart and Edward H. Willford, by Ashbel Green, by separate deeds, dated respectively October 9th, A. D. 1866, and out of the proceeds of the sale of said last mentioned two lots he do pay, if sufficient, and if not sufficient, then do he pay so far as the same will extend, to the said complainant, or his solicitor, the

balance remaining unpaid of the complainant's said debt and interests, and costs, and the taxed costs of the said several defendants, Allecta De H. Meshrow, and William H. Meshrow her husband, and Edward H. Willford, to said defendants, respectively, or their solicitor.

And in case, after paying as aforesaid, sufficient shall not be realized from the sale of all the aforesaid lots to satisfy the complainant's said debt and interest, and the cost of this suit, then in the tenth place, that he make sale of the lot of land, part of the lot in the complainant's bill and mortgage 10 thirdly described and set forth, which was conveyed to Matthew Smith by Solomon Andrews and wife, by deed dated January 22d, 1863, recorded in Middlesex clerk's office, in Book 90 of Deeds, page 220.

And out of the proceeds of the sale of said last mentioned lot, he do pay, if sufficient, and if not sufficient, then he do pay so far as the same will extend, to the said complainant, or his solicitor, the balance remaining unpaid of the complainant's said debt and interest, and his costs.

And in case, after paying as aforesaid, sufficient shall not 20 be realized from the sale of all the aforesaid lots to satisfy the complainant's said debt and interest, and the costs, then in the eleventh and last place, that he do make sale of the lot of land eighthly and lastly described and set forth in the complainant's bill and mortgage, excepting so much thereof as was released to the Perth Amboy and Woodbridge Railroad Company by the complainant's deed of release, dated September 28th, A. D. 1863.

And out of the proceeds of sale of said last mentioned tract he do pay, if sufficient, and if not sufficient, then he do 30 pay so far as the same will extend, to the said complainant, or his solicitor, the balance remaining unpaid of the complainant's said debt and interest, and his costs.

And in case there shall be any surplus arising from the sale of the said first, second, third, fourth, fifth, sixth, and seventh tracts of land, in said mortgage described, or either of them, after paying the aforesaid several mortgaged debts and interest, and costs of this suit as aforesaid, then that he do pay such surplus to said Ashbel Green.

And in case it shall be necessary, for the purposes afore- 40

said, to sell the said lots of Allecta De Hart, Edward H. Willford, Matthew Smith, and Joseph R. La Tourette, or either of them, and if there be any surplus arising from the same, or either of them, then to pay such surplus into this court, to abide the further order of this court, unless otherwise disposed of the by order of this court.

And that the said master do make return to this court of his proceedings by virtue of the said writ.

And it is further ordered, adjudged, and decreed, that the  
10 said defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to so much of the said mortgaged premises as shall be sold as aforesaid, by virtue of this decree.

A. O. ZABRISKIE, C.

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### Order of Reference.

[Filed March 10, 1869.]

The bill in this cause having been heretofore taken as confessed, and decree to that effect entered against the defendants, Ashbel Green, administrator, &c., of James S. Green,  
20 deceased, Joseph R. La Tourette, Matthew Smith, Stephen V. R. Patterson, Ashbel Green, and Alfred Whitman; and the defendants, Allecta DeH. Meshrow, and William H. Meshrow, and Edward H. Willford, having by their answers admitted the bill; and the defendant, John W. Quincy, who holds a prior mortgage to the complainant's mortgage on a part of the mortgaged premises having, by his answer, consented to a foreclosure and sale—

And this cause having come on to be heard at the last  
30 term of this court, in the presence of George C. Ludlow, solicitor of the complainant, and Robert S. Green, of counsel for the defendants, Solomon Andrews and Harriet his wife, who had also filed answer to said bill, and the bill, answer, replication, depositions of witnesses, and exhibits in this cause having been read, and the arguments of the respective

counsel having been heard, and the Chancellor having considered the same—

And it appearing to the satisfaction of the Chancellor, that the complainant is the owner, in his own right, of the said bond and mortgage made to him in the bill set forth, and that he is entitled to the moneys secured thereby, and due thereon; and that the allegations in said defendants, said Andrews and wife, answer made as to said bond and mortgage of complainant having been given upon or for an usurious consideration or agreement, are not sustained and are disproved by the evidence in this cause; and that the said defendants ought not to be allowed the two credits on said bond and mortgage as claimed in their answer, that is to say, the sum of \$411.50, and the sum of \$1000 referred to in said answer; and it further appearing to the satisfaction of the Chancellor that the lot or piece of land, composed of five lots, being part of the mortgaged premises, which was conveyed to said Stephen V. R. Patterson, a defendant, by said Solomon Andrews and wife, by the deed dated the 4th day of March, A. D. 1863, in the the bill referred to, and marked *Exhibit F* for complainant, was never paid for by said Patterson, in any way; and the Chancellor being of the opinion that said lot or piece of land comprising said five lots, should be first sold, and the sum of \$1000, with interest, from the date of said deed to said Patterson, paid to the complainant out of the proceeds; and if the proceeds of the residue of the mortgaged premises are sufficient to pay off the balance of the complainant's debt and costs, then the excess of the proceeds of said lot or piece of land should be paid to the defendant, Ashbel Green—it is now, on this 27th day of February, in the year 1869, on motion of George C. Ludlow, solicitor of the complainant, ordered, adjudged, and decreed that it be referred to William H. Leupp, one of the masters of this court to ascertain and report the amount due to the said complainant for principal and interest upon the mortgage held by him, on the premises in the bill mentioned; and also the amount due to the defendant, John W. Quincy, upon his mortgage and judgment respectively, in the bill referred to; and also to ascertain and report the order and priority of the said several mortgages and judgment respectively; and

whether the said mortgages embrace the same, or what part of the said mortgaged premises, and whether the whole or a part and what part, of the said mortgaged premises, should be sold for the payment and satisfaction of the said several claims; and if all the said premises ought to be sold, whether they should be sold together or in parcels, and if in parcels, in what way and manner, regard being had by said master to the discretion of the Chancellor as to the said lot conveyed to said Patterson above referred to.

- 10 And that said master do make his report thereon with all convenient speed, and all further equity is reserved until the coming in of said report.

A. O. ZABRISKIE, C.

### Opinion.

THE CHANCELLOR. The suit is for the foreclosure and sale of mortgaged lands. Three defences are set up against the mortgage.

- The first is usury. This consists of two specifications; one, 20 that it was agreed at the time of making the loan, that the defendant, besides interest, should pay one cent on every lock manufactured by him, the loan being to enable him to go on with his business as lockmaker. This is proved by the oath of the defendant, Andrews, but it is expressly and fully denied by the oath of the complainant, and of two other witnesses who took part in making the loan; this defence is one not favored at law, and which must be sustained by satisfactory proof, by the defendants; it is not sustained to my satisfaction, so as to base a decree by which the mort- 30 gage shall be declared void. The clear weight of evidence is against it, without regard to the nature of the defence, or the burden of proof.

The second specification is, that the contract was for a loan of \$10,000, and that for one-half, or \$5000 of it, he took the assignment of a mortgage on property in New York,

which, on its face, bore seven per cent. interest, and that this, at the time of this loan in the county of Middlesex, was usurious interest. It would have been in a mere contract of loan, but, whatever the original contract was, at its execution it was changed by the parties, as to this part of it, into a contract to sell the New York mortgage, which was transferred absolutely to the complainant, who now holds it as his own, and not as collateral security. It does not appear that it was a shift to evade the usury law of this state. And even if it appeared that, at the consummation of the business, 10 Stelle had insisted on a transfer of the New York mortgage, so as to give him seven per cent. on \$5000, this would not constitute usury.

The second defence is, that the loan was made with the funds of the City Bank of Perth Amboy, of which Stelle was president, and that it was intended for the bank, and that Stelle holds it in trust for the bank, and that it, or the receivers, should be parties to the suit.

This is not proved by any witness, and it is expressly denied by Stelle and the two Pattersons, one the cashier, and 20 the other a director of the bank, and both taking part in the negotiations for the loan.

This proof is too strong to be overcome by the circumstantial evidence from the manner in which the money was advanced, and the payments of interest credited on the books of the bank. The memorandum notes of Stelle may have been paid in the manner stated by him, but the passing the interest paid by Andrews, to the account of discounts received, which was clearly done, is not accounted for. A mystery rests over this transaction, which it is proper the 30 receivers of this bank should investigate thoroughly, for the benefit of the creditors of the bank. No wrong will be done to Andrews if he is compelled to pay what he fairly owes on this mortgage to Stelle, whether he holds the mortgage in his own right, or as trustee for the bank. As the evidence stands, he holds it in his own right.

The third defence is, that part of the mortgage debt has been paid which is not credited; two sums are alleged to be paid, one, the sum of \$411.50, paid by \_\_\_\_\_ for a lot sold to him and handed to Stelle. The evidence of Stelle 40

and S. V. R. Patterson shows that this amount is credited on the bond. The other amount is \$1000, the price of five lots sold to S. V. R. Patterson, which have not been released from the mortgage. The evidence of Patterson shows that this price has not been paid by him to Stelle, or any one else. These lots are subject to this mortgage, and should be first sold, and the sum of \$1000, with interest from the date of the deed to Patterson, paid to the complainant out of the proceeds, and if the proceeds of the residue of the mort-  
 10 gaged premises are sufficient to pay off the balance of the complainant's debt and costs, then the excess of the proceeds of the five lots should be paid to the defendant, Ashbel Green.

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Petition of Appeal.

[Filed March 16, 1870.]

Between	Solomon Andrews,	Appellant,	}	<i>Pet'n of Appeal.</i>
		<i>and</i>		
20	Benjamin D. Stelle,	Respondent.		

*To the honorable the Court of Errors and Appeals in the last resort in all cases.*

The humble petition of Solomon Andrews, the appellant in the above stated appeal, respectfully shows—that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor Abraham O. Zabriskie, Chancellor of the state of New Jersey, dated the 9th day of December, 1869, in which Benjamin D. Stelle was complain-  
 30 ant, and Solomon Andrews and others were defendants, in this respect, to wit, that the said decree adjudges that the exceptions to the master's report are erroneous and without foundation, and severally overruled and disallowed, and that

there was due to the complainant at the date of the said master's report, on the bond secured by the mortgage given to and held by him, and in the bill mentioned, for principal and interest, the sum of \$6752.50, and that the master's report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said complainant is entitled to the relief prayed for, and to a sale of so much of the mortgaged premises as might be necessary to satisfy the complainant the amount reported due to him in the said master's report, with interest and costs. 10

And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, and that the exceptions taken to the said master's report ought to have been sustained, and that neither the said sum of money nor any part thereof was due to the said complainant, and that the said complainant was not entitled to the relief prayed for in the said bill of complaint.

Your petitioner therefore prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set 20 aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

J. R. ENGLISH,  
*Solicitor for appellant.*

ROB'T S. GREEN,  
*Of counsel.*

A true copy from the original, filed in my office March 16th, 1870.

H. N. CONGAR, *Clerk.* 30

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### Exceptions.

[Filed June 26, 1869.]

Exceptions taken by the defendants in this cause to the report made therein, on the 3d day of June, 1869, by Wil-

liam H. Leupp, esquire, one of the masters of this court, to whom this cause stands referred, by the decretal order of the court, made therein, bearing date on the 27th day of February, 1869, touching the matters therein referred to him.

First exception, by Solomon Andrews and Harriet Andrews—For that the said report states that there is due to the complainant, at the date of the said report, the sum of \$6752.50, whereas no such sum was due at said time.

Second exception, by John W. Quincy—For that the said  
10 master has not reported how much is due to the said John W. Quincy on his judgment, at the date of said report.

Third exception, by Solomon Andrews and John W. Quincy—For that the said master reports that interest is to be computed in favor of Ashbel Green, administrator, on the sum of \$1668.08, realized by him from the sale of real estate by the sheriff.

Fourth exception, by Harriet Andrews—For that the said master reports that the Barrack lot should be sold to satisfy the mortgage of said John W. Quincy, but does not report  
20 that it should be so sold, subject to her right of dower therein.

Fifth exception, by John W. Quincy, Ashbel Green, and Allecta DeH. Meshrow—For that the said master does not report that the Patterson lots should be first sold.

Sixth exception, by Allecta DeH. Meshrow—For that the order in which the said master reports the said property should be sold is not consonant to the rules of equity.

Seventh exception, by Allecta DeH. Meshrow—For that  
30 the manner in which the said master reports the said property should be sold is not the one whereby the most money would be realized, and that he should have reported that the same be sold by the lot.

In which said several matters and respects, herein above particularized, these exceptants except to the said report, and humbly conceive that the said master hath erred, and that the said report is wrong, unjust, and oppressive; and therefore pray that the said report, so far as regards the several particulars above specified, may be disallowed, re-  
40 jected, and set aside, and a new report be ordered to be

taken, or that the said report may be corrected in the said several particulars, and prays the judgment of this court thereupon.

JAMES R. ENGLISH,  
*Solicitor of Solomon and Harriet Andrews.*  
ROB'T S. GREEN,  
*Of counsel, and solicitor of other exceptants.*

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Appeal.

[Filed December 16, 1869.]

The defendants, Solomon Andrews and Harriet E. Andrews, hereby appeal from so much of the final decree made in this court in the above stated cause, as declares that the exceptions to the master's report are erroneous and without foundation and severally overruled and disallowed.

And that there was due to the complainant at the date of the said master's report on the bond secured by the mortgage given to and held by him and in the bill mentioned for principal and interest, the sum of \$6752.50.

And that the master's report and all the matters and things therein contained, do stand ratified and confirmed. 20

And that the said complainant is entitled to relief and to a sale of so much of the mortgaged premises as might be necessary to satisfy the complainant, the amount reported due to him in the said master's report, with interest and costs.

And that so much of the lands and premises in the mortgage of the complainant mentioned and described as would be sufficient to raise and satisfy the sum reported to be due said complainant, with interest and costs, be sold.

And that the tract of land conveyed by Solomon Andrews and wife to Stephen V. R. Patterson by deed dated March 4th, 1863, be sold, and out of the moneys arising from the sale thereof the sum of \$1000, with interest from March 4th, 1863, be paid to the complainant, and any excess over \$1000 and interest be paid to Ashbel Green, administrator, in case the proceeds of the residue of the mortgaged pre- 30

mises are sufficient to pay the amount reported to be due to the complainant, with interest and costs.

And that the tract or lot of land first mentioned and described in the complainant's bill be sold as an entirety, in the second place.

And that the complainant be paid the amount reported to be due to him, with interest and costs, to the Court of Errors and Appeals.

10

JAMES R. ENGLISH,  
*Solicitor of defendants.*  
ROBT. S. GREEN,  
*Counsel.*

I consider there is good ground for appeal in the above cause.

Dated December 16th, 1869.

ROBT. S. GREEN,  
*Of Counsel unto Defendants.*

COURT OF ERRORS AND APPEALS.

Solomon Andrews,	}
Appellant,	
and	
Benjamin D. Stelle,	
Respondent.	}

It is agreed by the counsel of the respective parties, that the bond and mortgage from Andrews to Stelle, being *Exhibits A & B* on part of Stelle, complainant, are correctly stated and described in the bill of complaint, *ante* pages 2, 3, and 4, and shall be so referred to on the argument, without printing them *in extenso* in the case.

Also, that the New York bond, mortgage, and assignment, *Exhibits C D & E* on part of Stelle, be referred to without printing the same.

Also, that the following extracts from the ledger of the 10 City Bank of Perth Amboy, being *Exhibit A 3* on the part of Solomon Andrews, be printed and used on the argument.

*Extracts from the Ledger of the City Bank of Perth Amboy, Exhibit A 3, on part of defendant, Andrews.*

Extract from account of Benjamin D. Stelle, p. 102 *et seq.*

Cr.		Dr.	
1861.		1861.	
Feb. 2.	Cash by note, \$5000 00	Feb. 2.	To check, \$10,000 00
	" " " 5000 00		
June 22.	Cash, 4070 00		
Aug. 1.	Cash, 1740 00		
June 3 and 4.	Cash, 1716 50		

Extract from account of Solomon Andrews, p. 336 *et seq.*

Cr.	1861.	1861.	Dr.
	\$		\$
Jan'y.		Feb'y. 23th. Statement of locks,	18 10
Feb. 2, B. D. Steele,	10,000 00	March 30. Expense account,	21 05
		April 8. Statement of locks,	9 40
		June 1. Statement of locks,	62 90
		July 1. Statement of locks,	42 24
		1862.	
1862.		July 5. Check 500, 582.50,	1082 50
Feb'y. 7. Cash,	80 00	Sept. 15. Statement of locks,	216 22
10. Watkins, 21-50	20 50	1863.	
25. Princeton,	300 00	April 4. Check for interest,	325 00
Mch. 8. Princeton,	300 09	Augt. 1. 1 yr's stat'm't of locks	309 72
		Aug. 31. 6 mo's int. to Aug. 1,	300 00

## Extract from account of N. H. Tyrell, p. 144.

Cr.	1862.	Dr.
	Feb'y. 8. Check,	412 50

## Extracts from account of discount received, p p. 76, 77.

Dr.	1861.	Cr.		
1861.	March 30. Andrews,	18 10		
Mch. 30. To profit & loss,	284 37	May 31. Andrews,	62 90	
		June 30. Andrews,	42 24	
June 30. Bal. to profit & loss,	17 81	1862.		
		Feb'y. 8. By Andrews' interest,	412 50	
1862.	April 5. Bal. to profit & loss,	461 63	July 5. By Andrews interest,	582 50
July 5. Bal. to profit & loss,	937 83			

Profit and loss account, p p. 36, 37.

Cr.		Dr.	
1861.		1861.	
Mch. 30. Disc't received,	\$284 37	Mch. 30. Bal. to next quarter,	<u>5367 43</u>
Balance,	5367 43		
June 30. Disc't received,	17 81	Bal. to next quarter,	5116 54
Balance,	5116 54		
Oct. 5. Disc't received,	155 42	Bal. to next quarter,	<u>4987 38</u>
Balance,	4987 38		
1862.			
Jan'y. 4. Disc't received,	174 14	Bal. to next quarter,	<u>4895 90</u>
Balance,	4895 90		
April 5. Disc't received,	461 63	Bal. to next quarter,	<u>5115 01</u>
Balance,	5115 01		
July 5. Disc't received,	937 83	Bal. to next quarter,	<u>976 93</u>

Dividend 15 per cent. out of balance of July 5, 1862.

EXHIBIT A No. 2 ON PART OF DEFENDANT, ANDREWS.

No..... Perth Amboy, N. J., February 8, 1862.

CITY BANK OF PERTH AMBOY

Pay to the Andrews Lots, or Bearer,

Four hundred and twelve  $\frac{50}{100}$  dollars.

\$412.  $\frac{50}{100}$ . N. H. TYRELL.

EXHIBIT A 4 ON PART OF DEFENDANT, ANDREWS.

No..... Perth Amboy, N. J., July 10, 1862.

CITY BANK OF PERTH AMBOY

Pay to Interest on my bond, or Bearer,

Five hundred and eighty-two  $\frac{50}{100}$  dollars, which pays the interest to Aug. 1.

\$582.  $\frac{50}{100}$ . SOLOMON ANDREWS.

IN SENATE, JANUARY 10, 1906.

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A 1—S. Andrews' bank book.....	33
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A 3—Ledger of the City Bank of Perth Amboy.....	39
A 4—S. Andrews' check, for \$582.50.....	53

IN SENATE, JANUARY 10, 1906.

BY THE COURT:

G. W. W. W.

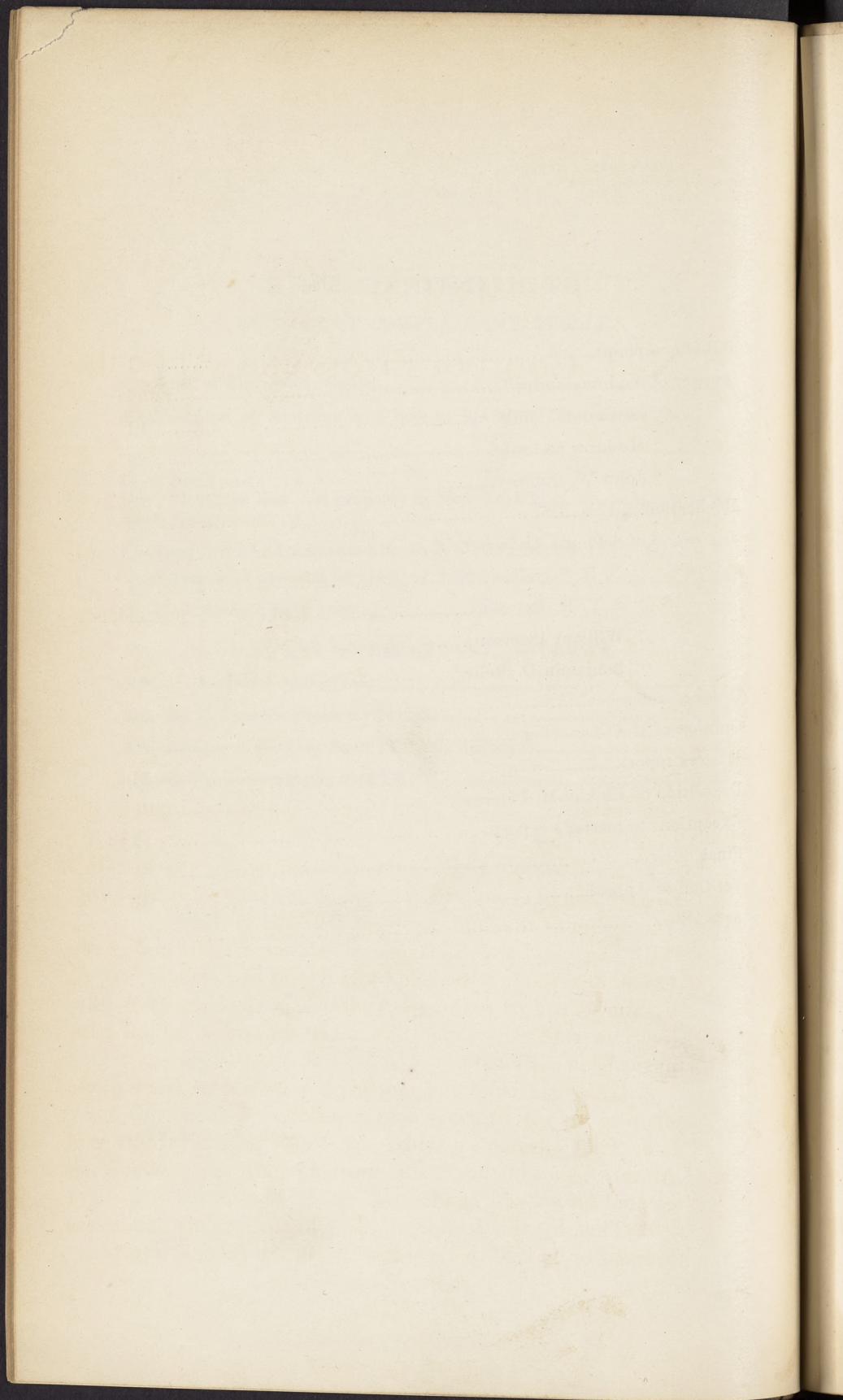
IN SENATE, JANUARY 10, 1906.

BY THE COURT:

G. W. W. W.

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## N. J. Court of Errors and Appeals.

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*Between*

*SOLOMON ANDREWS,*

*Appellant,*

*vs.*

*BENJAMIN D. STELLE, Adm'r,*

*Respondent.*

} Points of  
Respondent.

---

1. That the question as to usury is not brought before the Court by the Appeal.

2. No question as to usury is raised by any party in this cause having any title to the land or any interest in so doing. The owner of the land confesses the bill.

3. The bond and mortgage in suit were made and given to and held in his own right by B. D. Stelle to secure \$5,000, by him loaned to Solomon Andrews, at the time of the delivery of said papers and the interest on said sum, and have never been assigned.

4. That said bond and mortgage were not made or given upon or for any usurious consideration.

5. That all moneys which were ever paid by or for said Andrews, on said bond and mortgage, are credited and re-ceived for on said bond.

6. That, by the decree of the Chancellor, the lands are ordered to be sold in accordance with the rules of equity.

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*Clerk*

COURT OF ERRORS AND APPEALS.

SOLOMON ANDREWS,

Appellant,

*and*

BENJAMIN D. STELLE,

Respondent.

*Points  
for  
Appellant.*

The Bill in this case was filed July 20th, 1867, to foreclose a mortgage given by Andrews and wife to Stelle, dated Feb'y 2, 1861, to secure the payment of \$5,000, *with interest semi-annually*, on or before Feb'y 2, 1862.

The pleadings in the case raise the questions :

1st. As to the parties to the suit.

Case, page 19, fol. 10.  
page 22, fol. 10.

2d. As to the contract on which it is based.

Case, page 19, fol. 40, et seq.

3d. As to certain sums alleged to have been paid and not credited on the bond.

Case, page 21, fol. 1, et seq.

First, the Receivers of the City Bank of Perth Amboy and not the complainant are the owners and proper parties complainant.

Case, answer, page 22, fol. 31.

The Bank was incorporated April 5th, 1855.

Laws of 1855, page 718.

The Bank went into the hands of the Receivers under a decree of the Court of Chancery, about July 4th, 1865.

Page 39, fol. 32.

Page 40, fol. 10.

See Nixon's Digest as to the effect of this decree, page 405, sec. 5, et seq.

A Court of Equity will consider the rights of parties affected by the insolvency of a banking corporation in the same manner that it will take cognizance of and protect the interests of infants, whenever it is brought to its notice.

This question affects not only this appellant in the manner we

will hereafter show, but also every stockholder and billholder of the bank.

The original transaction was a loan of \$10,000.

Case, page 32.

From whom was it made?

Andrews says, of the Bank.

Case, page 19, fol. 10.

page 22, fol. 10.

page 33, fol. 10.

On the other hand Stelle says he made it himself, and in this he is sustained by two witnesses, which led the Chancellor to adopt his statement.

Page 97, fol. 20.

Stelle and the two Patersons are positive the Bank did not *advance* the money or receive any benefit or *interest* therefrom.

Stelle test : page 69, fol. 8.

Wm. Paterson's test. : page 62, fol. 35.

page 63, fol. 35.

S. V. R. Paterson's test. : page 42, fol. 15.

It is to be remembered that all these witnesses are testifying in 1868 *from* memory in reference to a transaction which took place seven years before, viz., Feb. 2, 1861.

All cotemporaneous written testimony contradicts them and sustains Andrews.

1st. This money was loaned by the Bank and not by Stelle.

The loan was purely a *paper* transaction, not a cent of money passed.

Stelle's account was not good for the amount, and was made so by two notes of \$5,000 each, which were passed to his credit in his account.

Page 42, fol. 35, et seq.

Page 67, fol. 14, et seq.

Andrews receives a credit in his account by Stelle's check.

Page 67, fol. 12.

Page 42, fol. 22.

Page 46, fol. 10.

Page 104, fol. 3.

The transaction up to this point then is the discount of Stelle's two notes of \$5,000 each, his account charged with his check for \$10,000, and Andrews receiving a credit of \$10,000.

The advance thus far made by the Bank is only protected by the two notes of Stelle, and the bonds and mortgages made or assigned by Andrews.

Unless these notes were taken up by Stelle, the only things the stockholders and creditors of the Bank have to show for its advance of \$10,000 are these bonds and mortgages.

Stelle says he paid the money to the Bank.

Page 67, fol. 10-30.

Page 70, fol. 20-30,

Cashier Paterson says the money was brought there and *Stelle's account credited with it.*

Page 42, fol. 39.

Page 43, fol. 1.

Page 43, fol. 20.

Which is likely to be correct ?

That the money was taken there at one time is not claimed even by Stelle.

Page 70, line 25.

It is not probable, a man like Stelle would leave from \$3,000 to \$10,000 lying around loose, when a proper business caution would suggest he should put it to his credit.

The cashier is positive as to the \$4,070, and has no doubt as to the \$1,716.50.

See page 103.

Page 43, line 47 et seq.

If these sums were brought by Stelle to the Bank, and credited to him, his account should show that these notes or checks representing them, were *charged* to the same account, or, the Bank remains still the advancer of the \$10,000 and the bonds and mortgages, all that represent the credit given to Andrews.

Neither these notes, nor any check representing them, were ever charged to Stelle's account.

Page 43, bottom; and 44, top.

We have then the Bank advancing this credit of \$10,000, and nothing left to show for it, but these bonds and mortgages.

It does not do to say this was a loan from the Bank to Stelle, with which we have nothing to do, because.

1st. Stelle was President of it, and acting in a fiduciary capacity, and the Bank has become bankrupt, and a Court of Equity will, at all times, go far to protect not only its stockholders, but its creditors (of whom Andrew's is one, page 37 bottom) from the acts of its officers.

2nd. Because the evidence shows, that as long as Stelle remained its President, the Bank was the recipient of all benefit from the loan by way of interest, bonus, &c.

Andrews has paid, because he received this loan :

1st. Interest.

2d. A percentage on all locks manufactured by him.

3d. Proceeds from sales of real estate.

Who received the benefit of these payments ?

Stelle says he received the interest.

Page 69, fols. 13, 20, 25.

Also, the proceeds of the lot sold to Tyrrell.

Page 69, fol. 35.

Cashier Paterson says, what he received he paid over to Stelle.

Page 45, fol. 1-10, 18-30.  
Page 56, fol. 23.

The fact is that up to Feb'y, 1863, Stelle did not receive one cent of interest paid by Andrews, nor the Tyrrell money, except as a stockholder of the Bank, in the way of dividend.

Andrews has paid, or been charged in his account with the Bank as follows :

Page 104.

1861. February 28. Statement of locks.....	\$18 10
March 30, Expense account.....	21 05
April 8. Statement of locks.....	9 40
June 1. " ".....	62 90
July 1 " ".....	42 24
1862. July 5. Check (Exhibit A p. 105).....	582 50
Sept. 15. Statement of locks.....	216 22
1863, April 4. Check for interest.....	325 00
Aug. 1. 1 year's statement of locks.....	309 72
Aug. 31. 6 mos. int. to Aug. 1.....	300 00
	<hr/>
	\$1,887 13
Also, Feb'y 8, '62. Amount of sale of lot to Tyrrell.....	412 50
	<hr/>
	\$2,299 63
Less item Mch. 30, '61. Expense account.....	21 05
	<hr/>
	\$2,278 58

Andrews says all this was paid on account of this loan.

Page 34, from top to fol. 18.  
Page 34, fol. 27, et. seq.  
Page 35, fol. 15-fol. 28.

There can be no doubt as to the \$5,821.50. It is check dated July 10, 1862, (Exhibit A 4, page 105,) bearing on its face the words "Pay to Interest on my bond or bearer—Five hundred and eighty-two 50-100 dollars, which pays the interest to Aug. 1." The latter part being Cashier Paterson's handwriting, (page 53, fol. 3, et seq.,) though dated July 10th, it appears in Andrews' account July 5th, p. 104. He paid no other interest except on this loan.

As to the Tyrrell transaction all agree the money paid for the lot, \$412.50, was to be received on account of this advance.

Tyrrell's check, Exhibit A 2, page 105.  
Andrew's test. : page 35, fol. 11.  
Stelle's test. : page 69, fol. 37.  
Paterson's test. : page 40, fol. 35, page 41, from top.

As to the items entered "Statement of Locks.:"

The items amount to \$658.58. We are considering the question whether it was paid upon and in consequence of this loan.

Andrews says the percentage was a *bonus* on the loan ; that he agreed to give it in addition to the interest, and that it was

charged to his account with the Bank on his furnishing a statement of the number of locks furnished.

Page 33, fol. 5-28.

Page 34, fol. 25.

Page 35, fol. 5.

William Paterson says such a proposition was talked over during the negotiations.

Page 62, fol. 20.

Page 64, fol. 30.

Cashier Paterson's account is, it means one cent on each lock Andrews manufactured, and was for *services*.

Page 46, fol. 30.

It does not appear that he was ever charged with such an item before this loan, and the whole evidence shows it was paid in consequence of having received it.

These moneys being paid on account of this loan should go to the owner of the security; if to Stelle, then to him; if to the Bank, then to it.

It will be remembered that these parties say the Bank had no interest in the loan, never received any benefit from it, and that Stelle always got the interest.

*Ante*. Also page 55, fol. 2; page 57, fol. 23.

The fact is the stockholders of the Bank received the benefit of these payments made by Andrews on account of this loan and this security up to a certain period, as is conclusively shown by the books of the Bank, kept by Cashier Paterson. While Stelle was President and constantly at the Bank as its managing officer, he knew of the "Statement of Locks" appearing on the books.

Page 71, fol. 10.

These amounts for statement of locks, the Tyrrell money and payment for interest, can be traced from the time of their payment through the various accounts until they go to make up the balance upon which the Bank declared a dividend of 15 per cent.

Take first the Tyrrell money, \$412.50. His check, dated Feb. 8, 1862, for that amount (Exhibit A 2, page 105,) is charged to his account on the same date (Tyrrell's account, page 104).

We find under same date, Feb. 8, 1862, in the account of *Discounts received*, the entry "By Andrew's interest, \$412.50."

Extract of account, page 104.

As to the \$582.50. Andrew's check, dated July 10, 1862, for that amount, "which pays the interest to August 1st," (Exhibit A 4, page 105,) is charged to his account (page 104), under date of July 5, with another check of \$500, and carried out in full, \$1,082.50. We have shown this entry refers to this check.

We find under same date of July 5, 1862, in the same account of "Discounts received," the entry, "By Andrew's interest, \$582.50."

As to what account of discount received means.

See page 48, top.

The cashier seeks to flounder out of this dilemma by denying the identity of the entries.

He says the entries of \$412.50 and \$582.50, in "Discount received account" had nothing whatever to do with the Tyrrell money or the interest he paid on this bond.

See page 57, fol. 11, 22.

page 55 fol. 35, et seq. and

page 56, 57, to fol. 9.

The memoranda spoken of then included the Tyrrell money, the \$582.50 paid on this bond as interest to Aug. 1, together with interest on over drafts in the Bank and every thing that passed through the cashier's hands—in other words this interest money and the Bank's claims against Andrews *were kept in a common account, and all formed one fund.*

But he can't specify what interest the items do refer to.

Page 57, fol. 29.

Yet, this is an account of interest received, (p. 48, top) and he never received any other interest moneys from Andrews, except what he paid on this loan.

Page 55, fol. 11.

As to the items charged against Andrews in his account (p. 104,) as "Statement of locks," 1861, Feb'y 28th, \$18.10, June 1, \$62.90, and July 1, \$42.24, we trace them to this same account of discount received (page 104), under entries, 1861, March 30, Andrew's \$18.10. May 31, Andrew's \$62.90. June 30, Andrews, \$42.24. The entries being money received from Andrews and the amounts identical with a slight discrepancy in the date.

"Discount received account" being charged with these amounts and others properly chargeable to it, balances are from time to time struck, and such balance being the profit made by the Bank from its discount and interest received, is carried to the account of "Profit and loss."

Page 48, fol. 10.

Page 104.

The "Profit and loss account" is thus charged with the balance derived from time to time from "Discount received account."

Page 49, fol. 10, et seq.

Page 105.

So we are enabled to trace these various items from their payment or being charged to Andrews, through the various accounts, Tyrrell's, Andrews', discount received, to the fund be-

longing to the stockholders, the profit and loss account, where they remain and receive accession until the balance of July 5, 1862, is struck, and out of this a dividend of 15 per cent. is declared and paid.

Page 49, fol. 30, et seq.

We submit this is demonstration that the Chancellor was misled in taking the statements of the complainant and the Patersons as conclusive, and that Andrews' statement is the correct one and establishes that the bank advanced the money, and that its Receivers should be made parties to this suit to protect the innocent stockholders and billholders, who have been deprived of \$10,000 of its assets, if this security is a valid one.

But this defence has a personal interest to Andrews, as we submit, if the Bank is the real party here, the defence of usury is made out.

The contract is claimed to be usurious, both as to the rate of interest and the bonus.

Answer page 19, fol. 40.

page 20, top and fol. 23.

Andrews says this was the agreement.

Page 32, fol. 39.

Page 33, fol. 5, fol. 27.

Stelle and Paterson both say it was talked over that Andrews proposed both to pay the 7 per cent. and one cent on each lock manufactured.

Stelle's test.: page 68, fol. 29.

Paterson's test.: page 62, fol. 19.

They say there was no agreement or understanding, but it was talked over. Was it only covered up to evade the law?

Refer to a singular conversation on page 60, fol. 8 to 20.

We submit that the recollection of Stelle and Paterson has been shown to be defective, and that it sufficiently appears Andrews understood it to be the agreement, and acted on it, and the Bank received the bonus of one cent on each lock, in addition to the interest, even if it did not receive 7 per cent.

The bond itself (Exhibit A) does not specify the rate. It is written out and not on the usual blank form specifying "with interest," or "with interest at — per cent.," but is "with interest semi-annually.

The endorsements do not throw any light on the question, being simply—

Interest paid to 1st August, 1862.

Interest paid to 1st August, 1863.

If, however, but 6 per cent. was paid, still, if the security belonged to the Bank, and it received in addition this percentage on locks, it makes out the defence of usury.

Muir vs. the Newark Savings Institution, 1 C. E. Green, 537.

At any rate, the Bank being the owner, we are entitled to a credit on this bond.

1st. \$412.50, the proceeds of the Tyrrell lot. The Bank received the money and the benefit of it.

It is claimed that Andrews has had credit for it.

This rests on the very unreliable, uncorroborated memory of Cashier Paterson.

It was paid Feb. 2, 1862. Andrews never gets credit for it in his account, and no endorsement is made on the bond until Aug. 1, 1862, when Andrews gives his check for \$582.50.

This check for \$582.50 paid the interest up to Aug. 1, '62. 6 per cent. interest on \$5,000, the amount of Andrews' bond from Feb'y 1, 1861, time of loan, to Aug. 1, 1862, 1 year, 6 months, is \$450, whereas the \$582.50 and \$412.50 would make \$995.

2d. We should have credit for money paid as per statement of locks, amounting to \$658.

We have shown this was paid on account of this loan, and that the Bank has had the benefit of it.

3d. We should have credit for \$195.64, amount due Andrews at close of his account.

See page 37, fol. 36.

4th. Not only \$1,000 with interest from March 4, 1863, from the Paterson lots, but with the whole amount they may bring if sold.

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