John H. Lyon, Printer, Jersey City.

New Jersey Court of Errors and Appeals.

Charles F. Maryott, appellant,

and

George H. Renton and Alfred Mills, administrators of George Gage, deceased, respondents.

Appeal.

State of the case.

BILL, Filed August 27, 1867.

To his honor, Abraham O. Zabriskie, Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your honor your orator, George H. Renton, of the city of Philadelphia, in the county of Philadelphia, and state of Pennsylvania, that on or about the twentieth day of November, in the year one thousand eight hundred and sixty-six, Charles F. Maryott, of the township of Roxbury, in the county of Morris, and state of New Jersey, became and was justly indebted unto your orator in the sum of six thousand dollars; and being so indebted, the said Charles F. Maryott in order to secure the payment of the said sum of money, with interest, did indorse to your orator, a certain promissory note in writing, bearing date the same day and year last aforesaid, made by one John M. Jacobs for the sum of six thousand dollars, payable four months after the date thereof, to the order of the said Charles F. Maryott, for value received, at the Butchers and Drovers' Bank of the city of New York, which said promissory note neither the said John M. Jacobs, nor the said Charles F. Maryott, nor any other person or persons did or would pay, although the same was presented to the said Butchers and Drovers' Bank for payment, and payment thereof de-

manded on the day when the same became due, whereof the said Charles F. Maryott had due notice.

And your orator further shows that the said Charles F. Maryott, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the twelfth day of January, eighteen hundred and sixty-seven, made by the said Charles F. Maryott of the first part, and your orator of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto your orator, said party of the second part, his heirs and assigns, all the following described parcel of land and premises situate, lying and being in the township of Roxbury, in the county of Morris, and state of New Jersey, being called "the Mountain Pond lot," and beginning at a sharp rock at the north-west corner of the tract; thence (1) south fifty-nine degrees east, seven chains to a heap of stones; thence (2) north seventy-seven degrees east, ten chains to a heap of stones; thence (3) north fifty degrees east, sixteen chains to a large rock; thence (4) north thirty-five degrees and thirty minutes west, thirteen chains and fifty links; thence (5) north forty-three degrees west, twenty-eight chains and forty links to the place of beginning; containing thirty-six acres and thirty-eight hundredths of an acre, being the same premises conveyed to the said Charles F. Maryott by Ralph Cary and wife, by deed dated the eleventh day of October, 1866, and recorded in the clerk's office of said county of Morris in Book W 6 of deeds, pages 532, &c. 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 party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold the therein above granted and described premises, with the appurtenances, unto 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, his certain attorney or attorneys, executors, administrators, or assigns, the said sum of money mentioned in said promissory note with the interest thereof, at the time and in the manner mentioned in the same, according to the true intent and meaning thereof, that then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Charles F. Maryott before Timothy P. Ranney, Esq., a master in chancery of said state of New Jersey, and duly recorded in the office of the clerk in and for the said county of Morris, in Book M 2 of mortgages, page 96, on the nineteenth day of January, in the year one thousand eight hundred and sixty-seven, as by 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 to do.

And your orator further shows, that on or about the first day of February, in the year last aforesaid, the said Charles F. Maryott being indebted to your orator in the further sum of nine thousand dollars, did, in order to secure the payment thereof with interest, execute and deliver to your orator another mortgage thereon and on other premises, which last mentioned money, with interest, is due and owing though not payable to your orator, in addition to the money secured by the first above described mortgage.

And your orator further shows, that on or about the third day of August, in the year last aforesaid, the said Charles F. Maryott executed to one Lemuel Brown a mortgage on premises alleged to be embraced in whole or in part in your orator's said first mentioned mortgage, to secure the sum of

three thousand dollars, or some other sum, by virtue whereof the said Lemuel Brown claims to have some lien on the said mortgaged premises or a part thereof; but whether the last mentioned mortgage embraces any part of the premises included in the said mortgages of your orator he is unable to ascertain; but he expressly charges that if a lien at all thereon it is subsequent to the mortgages of your orator.

And your orator further shows that on or about the twenty-fifth day of September, eighteen hundred and sixty-six, one George Gage caused to be docketed in the court of common pleas of the county of Morris, a judgment for the sum of eighty dollars and sixteen cents, more or less, theretofore obtained by lien against the said Charles F. Maryott in the court for the trial of small causes of said county of Morris, by virtue whereof the said George Gage may claim to have some lien upon the said mortgaged premises.

And your orator further shows that all principal money mentioned in the said note 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 has been 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; and your orator further shows that the said Charles F. Maryott, since the execution of your orator, said mortgage has possessed and enjoyed, and that he does still possess and enjoy the said mortgaged premises, with the appurtenances, and that he has always received and still does receive, the rents, issues and profits thereof; and your orator further shows and expressly charges that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he or some other person or persons, for him have frequently and in a friendly manner, applied to the said Charles F. Maryott, Lemuel Brown, and George Gage, defendants hereto, 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

note or obligation and deed of mortgage hereinbefore mentioned and set forth; and your orator well hoped 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 note 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 defendants, 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 defendant 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 hereinbefore mentioned, sometimes give out 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 than the said judgment 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 do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud, to injure and aggrieve your orator and ought to be delivered up to be cancelled, or declared to be of no effect against your orator who had no notice of any such pretended 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 note and obligation and deed of mortgage without the aid and decree of this honorable court.

To the end, therefore, that the said 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 note or obligation and deed of mortgage hereinbefore 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 may, by the order and decree of this honorable court, be sold and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said note or obligation and deed of mortgage as aforesaid, and all the interest now due and 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 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 Charles F. Maryott, Lemuel

Brown, and George Gage, 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.

JOHN W. TAYLOR,
Solicitor and of counsel with complainant.

A true copy,

B. GUMMERE, *Clerk.*

The answer of Charles F. Maryott, one of the defendants, to the bill of complaint of George H. Renton, complainant.

This defendant now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained for answer thereto or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he admits that on or about the twentieth day of November, eighteen hundred and sixty-six he did endorse and deliver unto the said complainant, the note made by one John M. Jacobs mentioned and described in the complainant's bill of complaint, and that in order to secure the payment of said note, together with the interest which should accrue or become due thereon, he did execute and deliver unto the complainant the indenture of mortgage in the complainant's bill of complaint first mentioned and described as bearing date the twelfth day of January, eighteen hundred and sixty-seven; and this defendant further says that the said note was so endorsed and delivered to the complainant on the day and

year last aforesaid; that at the time of the giving of the said mortgage and note the said complainant in consideration therefor, gave to this defendant the sum of five thousand dollars in money, and also assigned to this defendant six hundred and twenty-five shares of the stock of the Golden Gate of Montana Mining Company, representing at the time to this defendant that said stock was worth at that time the sum of twelve hundred and eighty-four dollars, and that he had paid one year previous to that time for the said stock one thousand dollars in cash; that this defendant believing at the time that the representations of the said complainant so as aforesaid made to this defendant as to the value of the said stock were true, received of the said complainant the sum of five thousand dollars in cash and the said stock and passed to the said complainant, the said John M. Jacobs' note, and gave to him the said mortgage as collateral security for said note; that this defendant but for such representations so as aforesaid made by the complainant as to the value of said stock, would not have received the same from the said complainant for said note; that this defendant since receiving the said stock, and after the giving of the said mortgage in the said bill of complaint first mentioned, to wit: on or about the fifteenth day of February, eighteen hundred and sixty-seven, this defendant ascertained that the said stock was of no value and could not be disposed of for anything; and this defendant therefore charges it to be true, as he verily believes, that the said stock never was of any real value; and he further charges it to be true and verily believes that at the time the complainant passed to him the said stock the same was of no value and worthless; and he verily believes it to be true, and therefore charges it to be true, that at the time the complainant represented to this defendant that the said stock was good as aforesaid that the complainant well knew that the said stock was worthless and of no value, and he therefore charges that the complainant falsely and fraudulently assigned and passed to him the said stock as if the value of at least one thousand dollars, in consideration of the said Jacobs' note, and the giving of said mortgage; that this defendant now has the said stock or certificate thereof in the same manner as it was assigned

by the complainant to this defendant in his possession, and is ready and willing and always has been ready and willing to deliver up the same to the complainant, upon being credited by the complainant the amount allowed by the defendant to the complainant for the value of the same at the time it was passed by the complainant to the defendant, and has offered the said stock back to the complainant on such terms after this defendant ascertained as aforesaid that it was worthless, but the complainant refused to take the same back on any terms whatever, or to allow this defendant five hundred dollars for the same, as he, defendant, offered to take of complainant for the same; and this defendant in further answering says, that subsequent to the passing of said note to the complainant and the giving of the said mortgage to secure the same, and on or about the first day of February, eighteen hundred and sixty-seven, this defendant being desirous to raise more money to carry on his business applied to the complainant to loan him the further sum of nine thousand dollars; that this defendant wanted to raise said money for the purpose of purchasing four other tracts of land containing, as the defendant believed, large deposits of iron ore and lime stone, and so informed the complainant at the time; that the complainant before this at the request of the defendant had been upon said lands with defendant and examined the same and became satisfied with the defendant that there were valuable mineral deposits in the same, and that the said lands were of great value and could be purchased at a much less price than their real value; that in consideration that the defendant would purchase said lands with the said nine thousand dollars or such part thereof as might be necessary for that purpose, and would give complainant an interest in the said land and in other certain lands owned by defendant, he, the complainant, then and there agreed with defendant to loan him the further sum of nine thousand dollars, to secure which, together with the first sum of six thousand dollars so as aforesaid obtained on John M. Jacobs' note this defendant was to execute and deliver a bond and mortgage to the complainant for the sum of fifteen thousand dollars, to be dated on or about the first day of February,

eighteen hundred and sixty-seven, payable in one year, without interest, and which mortgage in the first place should cover the lands only mentioned and described in the first mentioned mortgage, and also another tract of land then owned by defendant of about ninety-two acres of land; and that after this defendant should purchase the four other tracts of land with the said nine thousand dollars so to be loaned to defendant, then this defendant was further to secure the said sum of fifteen thousand dollars by mortgage upon the said tracts of land so to be purchased; that upon executing the said mortgage for fifteen thousand dollars; that the first mortgage of six thousand dollars was to be null and void and cancelled of record; that in pursuance of such agreement the complainant wrote to his lawyer, Mr. Ranney, of Newark, the following paper, which was duly signed by the complainant and the defendant, to wit:

Mr. Ranney:

I have arranged with Mr. Maryott to loan him nine thousand dollars, for which he is to make me a bond and mortgage for fifteen thousand dollars, payable in one year, without interest. This mortgage is to secure the $9000 I now loan him, and also a note I took from him, made by Mr. Jacobs of New York, for six thousand dollars; to secure which, you draw a mortgage upon one piece of property, now to be mortgaged, for $15000. Mr. Maryott is also to purchase, with the money I now loan him, four other pieces of property, at a cost of about five thousand dollars, which he is also to mortgage to secure the $15,000. If Jacobs pays his note when due and I hold the money, then the mortgage will be reduced to nine thousand dollars, less the interest on the $6,000 Jacobs' note, from the time it is paid to the end of the year, at seven per cent. per annum. The deeds left are four in number.

Geo. H. Renton.

1867, Feb. 5th. Correct, Chas. F. Maryott.

I want you to see that the titles are all correct, and the deeds properly drawn.

Geo. H. Renton.

That at the request of the complainant, this defendant took the said agreements to Mr. Ranney, and delivered the same to him, together with this defendant's title deeds to the property to be mortgaged, including the ninety-two acres, the lot before mentioned, together with the abstract of searcher of said lands, and said Ranney was requested to prepare said mortgage; that said Ranney advised, in order to save the revenue stamps, that instead of drawing the mortgage for fifteen thousand dollars, the same should be drawn for nine thousand dollars, and the original mortgage of six thousand dollars so as aforesaid given to secure Jacobs' note should remain as it was, with the understanding and agreement that the time for its payment should be extended to the same length of time that the fifteen thousand dollars mortgage had to run, and that no part or portion should be payable until the expiration of the time mentioned in the nine thousand dollars mortgage; that he, Ranney, would inform the complainant that this was the best way, under the circumstances, to complete the business; that this defendant acceded to the proposition, and the said Ranney thereupon prepared the mortgage of nine thousand dollars mentioned and referred to in the said complainant's bill of complaint; and this defendant executed and delivered the same to Mr. Ranney; that on the same day this defendant and complainant met at the office of said Ranney for the purpose of closing up the said business, and the papers were read over and explained to complainant and the complainant approved of the manner in which the papers had been drawn, and paid to the defendant on account of the said nine thousand dollars mortgage his check for twenty-eight hundred and forty one dollars, and a revenue stamp of nine dollars, which, together with one hundred and fifty dollars, before then paid by complainant to defendant, made the sum of three thousand dollars, which is the only amount ever paid by complainant or received by defendant on account of said nine thousand dollars mortgage, and he therefore charges that no greater sum than three thousand dollars has ever been advanced upon the said nine thousand dollars mortgage by the complainant or any other person, and that the same can only be held only for the security for that sum, if for any sum.

And this defendant, in further answering, says: that at the time of the giving of said check, it was understood and agreed by and between the complainant and defendant, that the complainant should pay to the defendant the balance of six thousand dollars due him on the nine thousand dollars mortgage on the following Friday thereafter, being of the same week, and that the nine thousand dollars mortgage should, in the meantime, remain in the hands and possession of said Ranney until the same should be paid; that in pursuance of such understanding, this defendant, on the said following Friday, called upon the said Ranney for said money, and said Ranney informed defendant the complainant had gone to Philadelphia and had not left the money, nor a certified check with him for defendant, and that the defendant had better call when complainant returned; that in a few days thereafter defendant did again call and saw the complainant and told him that this defendant had purchased a portion of said lands, and had bargained for the balance of the lands mentioned in said agreement, and wanted the balance of the money on the said nine thousand dollars mortgage, in order to pay for said lands and complete the purchase therefor; that the complainant thereupon declined to pay any more money to the defendant on said mortgage, saying in substance as near as defendant can now recollect, that he had met with heavy losses and had to pay large amounts where he had not expected and could not go any further with defendant; that this defendant thereupon told complainant that he must have the money or it would be a great damage to him, and the complainant thereupon replied in effect that he could not let defendant have any more money on said mortgage, if they both lost every thing they had in said lands; that this defendant called several times thereafter upon the complainant for said money, but the complainant refused to give any; and this defendant in further answering says that he believes that the bond and mortgage of nine thousand dollars is now in the hands and possession of said complainant, and that the same was improperly obtained by him from the clerk of Mr. Ranney during the absence of Mr. Ranney from his office; that he has so been informed by

the said Ranney and believes it to be true, and therefore charges it to be true.

And this defendant in further answering says, that finding that the said complainant absolutely refused to carry out the agreement and advance the balance due on the said nine thousand dollars mortgage, and that this defendant would be greatly embarrassed in closing his agreements for the purchase of said lands, and that if he failed to purchase the same it would be to his great pecuniary disadvantage and injury, called upon the complainant and requested that if he would not advance the balance of the money due on the nine thousand dollar mortgage then that he should reduce the same to the sum of three thousand dollars, the actual amount advanced by the complainant therein, in order that the defendant might raise the money that he wanted from some other person on the lands and premises mentioned in said mortgage and thereupon complete the purchase for said lands, but the complainant thereupon refused to make any alterations in the papers whatsoever or to furnish any more money on said mortgage; and this defendant was therefore unable to purchase said lands and was thereby as the defendant alleges, greatly injured by the complainant's failing to fulfill his said agreement with this defendant, and has been thereby damaged to a much greater amount, as he believes, than the amount of money advanced by the said complainant to this defendant on the said Jacobs' note and the nine thousand dollar mortgage, and this defendant therefore prays that all proceedings in this court or elsewhere for the collection of either of the said mortgages may by the order and decree of this honorable court be stayed and this bill dismissed; and that this defendant may have such other and further relief in the premises as the nature and circumstances of the case may require and as may be agreeable to equity and good conscience; and he further prays that if your honor should be of opinion, under the circumstances of this case that any thing should be collected on the said mortgage given to secure this said Jacobs' note or the nine thousand dollar mortgage in this suit then that an account may be taken to ascertain what may be due thereon, and that the stock so fraudulently assigned and delivered to this

defendant by the complainant as aforesaid may be deducted from such amount upon this defendant's delivering up the certificate of said stock to the complainant or assigning the said stock to complainant, if it be necessary so to do, which this defendant hereby tenders himself ready and willing to do, and which he alleges he has always been ready and willing to do.

And this defendant denies all and all manner of unlawful combination and confederacies wherewith he is by said bill charged, without this that there is any matter or thing in said bill contained, matured or necessary for this defendant to make answer to and not herein and not hereby well and sufficiently answered, confessed, avoided or denied is true to the knowledge or belief of this defendant, all which matters and things this defendant is always ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be dismissed hence with his costs and charges in this behalf most wrongfully sustained.

AUGUSTUS W. BELL,
Solicitor, &c., defendant.

ARAM G. SAYRE,
Of counsel with defendant.

STATE OF NEW JERSEY, Morris County, *ss.*

Charles F. Maryott, defendant above named, being duly sworn on his oath, deposes and says that the facts, matters and things in this answer contained, so far as they relate to the acts and deeds of deponent are true and so far as they relate to the acts and deeds of others he believes them to be true.

CHARLES F. MARYOTT.

Sworn and subscribed to before me, November 23, A. D., 1867.

JOHN S. DE HART,
Master in Chancery of N. J.

To which complainant filed a general replication.

IN CHANCERY OF NEW JERSEY.

Between
GEORGE H. RENTON, complainant,
and
CHARLES F. MARYOTT, and others, defendants.
} *On Bill, &c.*

Examination of witnesses and taking of proof in the above stated cause before STAATS S. MORRIS, *one of the Masters and Examiners of the Court of Chancery, pursuant to the notice hereunto annexed, commencing on the second day of January, A. D.*, 1868, *at the office of said Master.*

Present, John W. Taylor, Esq., of counsel with complainant, and Augustus W. Bell, Esq., of counsel with defendant.

Complainant's counsel here offers in evidence the following papers, and requests that the same be marked Exhibits in the cause.

1. A note made by John M. Jacobs for $6,000, dated New-York, November 20, 1866, at four months, payable to the order of Charles F. Maryott, at the Butchers and Drovers' Bank. Endorsed, Charles F. Maryott, Edwin Ross, George H. Renton, which I have marked Exhibit No. 1, for complainant.
2. A deed of mortgage, dated January 12, 1867, and made by Charles F. Maryott, to the said George H. Renton, and given to secure the payment of the said note, Exhibit No. 1, which mortgage I have numbered Exhibit No. 2, for complainant.
3. A bond made by Charles F. Maryott to George H. Renton, dated February 1, 1867, penal sum of $18,000 conditioned to pay $9,000, which I have marked Exhibit No. 3, for complainant.

4. Mortgage made by Charles F. Maryott, to George H. Renton, given to secure the bond marked Exhibit No. 3, above which I have marked Exhibit No. 4, for complainant.

The counsel for the complainant here admits that three thousand dollars only has been advanced by the complainant to the defendant on the bond and mortgage, Exhibits No. 3 and No. 4, for complainant, and make no claim for principal as secured thereby beyond said sum of $3,000.

S. S. Morris,
Master in Chancery.

10

IN CHANCERY OF NEW JERSEY.

Between
GEORGE H. RENTON, complainant,
and
CHARLES F. MARYOTT, and others, defendants.
} *On Bill &c.*

Examinations and depositions of witnesses on the part of the defendant in the above stated cause, taken before me, THEODORE FRELINGHUYSEN, *a master and examiner in said court, at my office in the city of Newark, New Jersey, on this 8th day of April, A. D.,* 1868, *in the presence of John W. Taylor, Esquire, solicitor of the complainant, and C. E. Scofield, Esquire, solicitor of the defendant, due notice admitted.*

THEODORE FRELINGHUYSEN,
Master in Chancery.

Charles F. Maryott, being duly sworn according to law on his oath saith:

In 1867, about January, I think about the 7th, I wanted a loan on some property I had in Roxbury township, Morris county, New Jersey; I spoke to Edwin Ross, of Morristown, N. J.; he asked me how much I wanted, I told him fifteen thousand dollars; Mr. Ross gave me an introduction to Mr. George H. Renton the complainant; I talked with Mr. Renton, he gave me five thousand dollars in money, he gave me six hundred and twenty-five shares of the stock of the Golden Gate of Montana Mining Company, which he said he paid one thousand dollars cash for the year before, and it was worth twelve hundred and eighty-four dollars; I took that stock for one thousand dollars, the same as he paid, and I executed and delivered to him this mortgage now shown to me and marked Exhibit No. 2, on part of complainant by S.

S. Morris, Master in Chancery of New Jersey; I endorsed a note of one John M. Jacobs of New York; this mortgage I gave to secure the payment of that note which had four months to run from date for six thousand dollars; afterwards I called to see Mr. Renton, about the fourteenth of January, 1867, about a further loan; he said he would see and agreed to meet me up at my place that week; he did go up and I met him at Morristown; Mr. Renton and myself went up and examined the property, I think it was the 19th of January, A. D. 1867, in the eight o'clock train from New York, we went from Morristown to my place, we went up both of us together, went all over the property, looked at it, and on that property there had been two shafts commenced for taking out iron ore, and there had been taken out from those shafts about two hundred tons of iron ore which then lay on the ground; we looked at the ore and examined the place and Mr. Renton agreed that it could be all used with advantage in the furnace; thereupon he agreed to loan me fifteen thousand dollars on that property, and I was to purchase four other pieces of property with that fifteen thousand dollars at the cost of about five thousand dollars, and Mr. Renton was to give me the aforesaid note of John M. Jacobs and to cancel the first mortgage of six thousand dollars, marked Exhibit No. 2, as aforesaid, and to give me the balance, nine thousand dollars without interest, one year from date, making $15,000 without interest; he was to give me up the note just as it stood and the first mortgage, and let me have nine thousand dollars in addition thereto and take a mortgage on that property for fifteen thousand dollars without interest for one year, and with the balance of that money he was to give to me I was to purchase four other pieces of property at the cost of about five thousand dollars, and after I had purchased the other pieces of property he was to furnish to me a further sum of money of about sixty-five thousand dollars with the fifteen thousand dollars, he was to furnish as aforesaid without interest, to erect a blast furnace on the aforesaid described property; we then started, came over this way towards the depot to look at the other property I was to purchase; we looked at the property, and I wanted him to go down the hill towards the house and see where

another vein of iron ore cropped out of the ground; he went over the top of the hill a little and sat down and said he was too tired to go down there, and waited for me to go down and get a piece of the out croppings of the vein of iron ore, and I returned to him with a piece containing iron and also a small quantity of lead; then we started for the Drakesville depot, we got to the depot some fifteen minutes before the car came along; this was Saturday, the 19th day of January, A. D. 1867; Mr. Renton there left me at the depot, told me to come down on Tuesday following to Newark, N. J., and make my mortgage and he would give me the money; I came down, he had previously told me to go to Mr. Ranney's office, he lives in Broad street I think; Mr. Ranney told me when I called at his office that Mr. Renton had not returned from Philadelphia yet, and told me to come down again on Friday following in the same week; I came down and saw Mr. Renton; he told me he was not just ready, I must wait a few days; I came down two or three times after that, I think the first of February, A. D. 1867; it was Mr. Renton went with me to Mr. Ranney's office, Mr. Ranney was absent; Mr. Renton said he had some business to see to and we would write a note to Mr. Ranney and both sign it and I wait and instruct Mr. Ranny to make the mortgage for fifteen thousand dollars; he wrote this paper I hold in my hand, marked exhibit A No. 1, on part of defendant; I kept this paper with the four deeds I had and the searches of the above property, and waited until Mr. Ranney came in; this was the first day of February, A. D., eighteen hundred and sixty-seven; Mr. Ranney examined the searches and the deeds and advised me to make a mortgage of nine thousand dollars instead of fifteen thousand dollars, and let the first mortgage stand just as it did, by so doing, he said I would save six dollars by revenue stamp, and he said he knew Mr. Renton very well, and he could explain to him why it was done; by so doing we would save a revenue stamp of six dollars, and the trouble of drawing a description of the property over again, contained in the first mortgage, on those conditions I consented; Mr. Renton came back afterwards and told me that he could not let me have the money that day, that I would have to

come down again; I think he gave me a check that day for one hundred and fifty dollars, not positive about the day, and told me to come down on the fifth of February and he would give me the balance of the money on the mortgage, and then put the mortgage on record; I came down the fifth of February, Mr. Renton went with me to one master in chancery by the name of John Whitehead, and I acknowledged the mortgage for nine thousand dollars, marked exhibit No. 4, on part of complainant by S. S. Morris, Esqr., master in chancery; I took the mortgage, and went up into Mr. Ranney's office; Mr. Renton, on going with me up to Mr. Ranney's office, said he could not give me but part of the money to-day, but I would have to come down again; said he could give me enough to make up three thousand dollars, and we would leave the mortgage in Mr. Ranney's hands till the following Tuesday, and then he would give me the balance, and then put the mortgage on record; I went up with him to Mr. Ranney's office, and left the mortgage with Mr. Ranney on the fifth day of February, A. D., eighteen hundred and sixty-seven; Mr. Renton then gave me his check on Newark City National Bank, I think it is, for two thousand, eight hundred and forty-one dollars, and told me not to use the check here, but take it to Morristown and deposit it and he would have funds here to meet it by the time it got here, and he put a five dollar and two two dollar stamps on this mortgage, making nine dollars, and this with the one hundred and fifty dollars, made three thousand dollars, which is the whole amount I ever received on said mortgage; I came down on the following Tuesday to get the balance of this money; I did not see Mr. Renton; I went to Ranney's office and inquired if Mr. Renton had left the money or a certified check for the mortgage; Mr. Ranney said no he had not seen George; and that he must be in Philadelphia, and that I had better come down again; I did come down again the following Thursday or Friday; I saw Mr. Renton in Broad street, Newark, N. J.; I asked him for the money; he said he had lost considerable of an amount of money, and that he could not let me have any more money if we both lost all we had in that property in Morris county; I told him it would be more damage to me

than the whole amount of money I had had would be twice over; that I had purchased a property and paid all to about seven hundred dollars then, and if I failed to pay the balance of seven hundred dollars I could not get the property at all; he said he could not help it if I lost all I had and he lost all he had too up there; then he started off; then I went to Mr. Ranney, and he told me that George had already got the mortgage and put it on record, &c.; got it of his clerk, while he, Mr. Ranney, was absent; Mr. Ranney said he could not collect the whole amount of me. [Objected to by Mr. Taylor.]

I saw Mr. Renton two or three times again; I told him the way I was situated; I got into it and I could not get out without losing money; that there were two or three parties after the property; that I had purchased and paid all for it excepting $700 to lease it; they wanted to lease one piece of it; I had to give up the property by not having $700 to pay the balance due by me thereon; the other property I purchased and hold it now; the piece I had to give up for want of $700 is now leased for $10,000 a year; I saw the lease; Mr. Renton said he could not help it, he could not let me have any more money. [Objected to by Mr. Taylor.]

This paper, marked exhibit A No. 1, on part of the defendant, is in the hand writing of George H. Renton; I saw him write it and sign it; I looked it over and signed it the same time as correct; it was written the fifth of February, I think the same day that Mr. Ranney came in and wrote the mortgage; by the direction of this paper, I don't know but in the first part of my examination, I stated the mortgage was drawn the first of February, but it was done the fifth of February, the same day it was acknowledged; I have got a little confused about the day; this paper, exhibit A No. 1, on part of defendant, was given to me before the mortgage was drawn; this paper is offered in evidence.

Q. This paper says you were to purchase four other pieces of property, and you have said in your evidence you were to purchase five pieces of property, how do explain this? [Objected to by Mr. Taylor.]

A. I think I said four or five pieces. I had purchased one, and I was to purchase four more.

Q. Did you ever give any one authority to deliver that second mortgage?

A. I did not until they had the money or a certified check.

Q. What was the value of that Golden Gate Montana Co. mining stock?

A. I could not find that it was worth anything; there was no market for it at any price.

Q. Has it or not always remained in your hands ready to be delivered to Mr. Renton? [Objected to by Mr. Taylor.]

A. It has; Mr. Renton agreed to take it when he was up and examined that property in Morris county and give me the money in place of it, and after we had completed arrangements for that together in Morris county, each one of us was to own one-half of all the property; that was the reason he agreed to loan me the money; the mortgage was made without interest.

Q. Why was this bond and mortgage for $9,000, exhibit No. 2, on part of complainant drawn without interest?

A. Because Mr. Renton agreed to furnish the money without interest and go in partnership with me against the lands and premises that I owned to the amount of sixty-four or sixty-five thousand dollars, and then have one-half of the whole land and premises in equal with me for my rights, services and labor in aforesaid property.

Cross-examined by Mr. Taylor.

I don't recollect of any one being present at the time of the alleged representation by Mr. Renton as to the value of the Montana stock and the amount he paid for it; I did not consult some person as to the value of the said stock; I consulted Edwin Ross and a man by the name of Mr. Weeks, by the request of Mr. Renton; I don't know why he referred me to Mr. Weeks; he told me Mr. Weeks was an officer of the company and knew more about it than any body else or something to that effect; there was somebody with me when I consulted Mr. Weeks; Mr. Ross was with me; Edwin Ross and I think one or two others were there; I didn't know who they were; Mr. Ross went there

with me; Mr. Ross was not present when Mr. Renton told me it was worth $1,284; I think it was in Broad street, near Market street, that this representation was made to me by Mr. Renton in relation to the Montana stock; he was going to the Life Insurance Company, Market street; we were just coming from an office in Broad street when Mr. Ross introduced me I recollect; I recollect now it was at the Life Insurance office in Market street that I was introduced by Mr. Ross to Mr. Renton.

Q. Are you sure that the representation in regard to the value of the stock was made in Broad street near Market?

A. Yes, one representation.

Q. Where were the others made?

A. One was made in the car coming from New York to Newark.

Q. When was that made in the car?

A. Afterwards, when I complained to Mr. Renton that the stock was valueless; I don't recollect exactly, some few days afterwards.

Q. How many representations as to the value of the stock were made before the stock was assigned?

A. I think two.

Q. When and where were they made; state particularly?

A. One as I stated here in Broad street, and the other one around in the office while we were standing at the desk where he handed me the money, $5,000, for the note and mortgage.

Q. Was it before or after you had agreed to take the stock and the $5,000 on the mortgage?

A. It was before.

Q. Was it at the same time he was handing the money to you?

A. No; he assigned the stock to me, then he went out and got the money for me and brought it in.

Q. After or before the transfer of the stock?

A. It was before.

Q. Was it after or before you consulted Mr. Weeks?

A. I think it was both after and before.

Q. Was the representation which you say he made in the

Life Insurance office before or after you consulted with Mr. Weeks?

A. I think it was after.

Q. What did you learn from Mr. Weeks as to the value of that stock?

A. I don't recollect that I learned anything; the door was open and there was considerable noise in the street, and I didn't understand exactly what he did say.

Q. What impression did you get from Mr. Weeks as to the value of the stock?

A. I did not get any; I called to see Mr. Weeks afterwards when I was alone.

Q. What did he say as to the value of the stock at any interview you had with him?

A. He said he did not know, being as he was President of the Company that he ought to say anything about it, but he said he had some of the stock? He didn't say whether it was good or bad but referred me to the company's office in New York, to go there and inquire what it was worth; this was after I got it.

Q. Do you know what the stock was worth at the time it was transferred to you?

A. I don't know that it was worth anything; I inquired in New York the same day I got it; after I got it.

Q. What did you conclude the stock was worth at the time you took it?

A. When I took it I concluded from what Mr. Renton said it was worth, $1,000.

Q. Did you find out afterwards on the same day that the stock was worthless?

A. I did.

Q. When you negotiated for a loan upon the second mortgage did you not agree to take six hundred and twenty-five more shares for $1,000.

A. I did.

Q. Why would you take it for a thousand dollars if it was worthless?

A. Because Mr. Renton agreed to take it back, and give

me the money in the place of it, after I got the money and purchased the other pieces of property.

Q. Do you know whether Mr. Renton paid at the rate of $1,000 for these six hundred and twenty-five shares or not?

A. I do not, but was told that he got the stock for the loan of his name to the Company.

Q. Who told you?

A. A broker in Pine street, New York; don't recollect his name now; this officer took it and went around to the office of the Company; I did go to the office of the Company before and didn't find anybody there, and afterwards this broker went.

Q. Did Mr. Renton go to see this property more than once?

A. Not that I know of; he may have been a dozen times, but not that I know of.

Q. When did he go to your knowledge?

A. I think the time I stated, the 19th of January.

Q. What day of the week was it?

A. I think it was Saturday.

April 8, 1868. Examination adjourned to April 9, 1868, at 10 o'clock, A. M., at my office.

THEO. FRELINGHUYSEN,
Master in Chancery.

April 9, 1868. Met pursuant to adjournment. Present all parties.

THEO. FRELINGHUYSEN,
Master in Chancery.

Q. What day of the month?

A. I think about the 19th day of January, 1867.

Q. Where did you first see him on the day of his going up?

A. At Morristown, N. J.

Q. In the cars?

A. He was on the platform at the depot.

Q. Will you swear positively that it was on Saturday that Mr. Renton went to look at the property?

A. I am not positive whether it was Friday or Saturday; it is my impression it was Saturday.

Q. Are you positive that it was either Friday and Saturday?

A. I think I am; I understood Mr. Renton to say that he left Newark in the early train and went to Morristown to put the mortgage that had been made on record, and that he had left the mortgage, that is the $6,000 mortgage, in the clerk's office to be recorded.

Q. What leads you to think it was Friday or Saturday?

A. Because I thought it was the last of the week, and I think Mr. Renton said it was too late to do anything that week.

Q. Why do you think it was the last of the week?

A. It is my impression it was the last of the week.

Q. How did you get that impression?

A. By the time of the week and the day of the month.

Q. What was the time of the week and the day of the month.

A. I think it was Friday or Saturday, the 18th or 19th of January, 1867.

Q. Why do you think that?

A. Because I know it was about that time.

Q. How do you know it was about that time?

A. By some of my private memorandums.

Q. What private memorandums?

A. My diary for one and bank book for another; I think that is all.

Q. Have you your diary and bank book with you?

A. I have one, my bank book, with me.

Q. What is there in your bank book which guides your memory in this matter?

A. A private memorandum of my own in my bank book.

Q. What is it; produce the bank book?

A. I am mistaken as to having the bank book; I have brought the wrong bank book.

Q. Do you object to my seeing that bank book now in your hand?

A. I do.

Q. Why?

A. Because I am advised by my counsel not to, because it is irrevelent to the point in question

Q. Why did you bring this book with you?

A. I carry it with me all the time.

Q. When did you cease to carry the other one you refer to?

A. About the time I commenced with this bank.

Q. When was that?

A. On the 6th of February, 1867.

Q. When did you last refer to the other bank book? 10

A. I don't recollect now.

Q. Was it within a year?

A. I don't recollect.

Q. How can you say then that your memory is guided or refreshed by anything in that bank book you left home, if you are not sure you have referred to it within a year?

A. By my diary and some circumstances that transpired in New York city about the 20th of January, 1867, which was entered in that bank book.

Q. When were they entered in that bank book? 20

A. About the 20th of January, 1867.

Q. How do you know they were entered about that date, if you have not referred to your bank book within a year?

A. I entered them.

Q. What entry did you make in your bank book at that time? [Question objected to by Mr. Scofield because witness ought not to answer without the memorandum before him.]

Q. State as nearly as you can what entry you made in your bank book whether it was in ink or pencil?

A. It was a private affair of my own which I entered 30 with a pencil, which you have no right to know anything about.

Q. Did you keep a diary at the same time?

A. I did.

Q. Did you make the same entry in your diary?

A. I think I did.

Q. Have you that diary with you?

A. I have not.

Q. Did you have it with you yesterday?

A. I did not. 40

Q. Did you not refer to a diary or memorandum book yesterday in giving in your testimony?

A. I did not.

Q. Did you not refer to a memorandum book yesterday in giving in your testimony?

A. I did not.

Q. Did you not refer to it before you gave your testimony and while you were in this office yesterday?

A. I did not.

Q. Did you not refer to any book yesterday while in this office?

A. Not for anything relative to this suit.

Q. Where had you been the night previous to Mr. Renton's going to see your property?

A. To the New York Hotel, New York City.

Q. Did you come from New York that morning?

A. I did.

Q. What day of the week was it that you acknowledged this mortgage of $6,000?

A. I think it was the 12th of January, 1867.

Q. I asked you the day of the week?

A. I don't recollect.

Q. How long were you at the New York Hotel?

A. I think only that night.

Q. Did you register your name there?

A. I did not.

Q. Did you have a room there?

A. I did not.

Q. Did you sleep there that night?

A. I did not.

Q. Whereabout in the hotel did you stay that night; were you asleep or awake?

A. I was awake; I stayed in room No. 245, I think that is the number, about one hour and a half; might have been two hours and a half.

Q. What time of night?

A. It was about half past eight in the evening when I went there and some time after ten o'clock when I came away from there.

Q. Did you take tea there?

A. No.

Q. What part of the city is the New York Hotel?

A. I think it is about Eighth street and Broadway.

Q. Did you lodge that night at any hotel? [Question objected to by Mr. Scofield.]

A. I object to answer that question.

Q. When you left New York Hotel about ten o'clock where did you go? [Objected to by Mr. Scofield.]

A. I went where I stayed all night.

Q. Do you object to tell where you stayed all night?

A. I do.

Q. Where did you take breakfast next morning?

A. Where I stayed all night.

Q. What was your business at New York Hotel, and who did you go there to see?

A. My business was to see C. K. Garrison, the man who held the title of this property.

Q. Did you see him at that time?

A. I did.

Q. What did you see him about?

A. An agreement between myself and C. K. Garrison in reference to the property between us.

Q. About what piece of property did you go to see C. K. Garrison?

A. This Wells tract so called which I mortgaged to Mr. Renton for $9,000.

Q. Did you then make an agreement with him that night in reference to this Wells tract?

A. I had previously made an agreement and had closed it up by taking a deed for said property, and went back to get some papers that I forgot and left on the table in his drawing room on the 14th of January, I think it was, when I got the deed.

Q. When did you get this check for $150?

A. I think it was about a week previous to my executing the $9,000 mortgage; I don't recollect the date; the check will show for itself if Mr. Renton has it.

Q. When did you first apply to him for this further loan?

A. I think about the twelfth of January, eighteen hundred and sixty-seven.

Q. After or before the first mortgage was executed and acknowledged.

A. After.

Q. How long after as near as you can remember?

A. I think it was a day or two after.

Q. Where were you when you made this application to to Mr. Renton?

A. In Newark here; I am not certain whether it was at his house or coming from the house to the office of the Life Insurance Company; it was at the time that Mr. Renton agreed to go up and look at the property in Roxbury township, Morris county, which was afterwards mortgaged to Mr. Renton for $9,000 as aforesaid.

Q. Was it before or after the registry of this first mortgage?

A. It was before.

Q. How long before?

A. I don't remember exactly; I think it was two or three days.

Q. Did you not see Mr. Renton in Roxbury township on the twelfth of February, eighteen hundred and sixty-seven?

A. I never remember seeing him there but once and it was the day I think he told me he had just been up to the office and recorded his first mortgage, and my impression is it was the 18th or 19th of January, 1867.

Q. Where did you and Mr. Renton make the agreement you have mentioned, giving him an interest in these premises, or part of these premises?

A. It was on the premises right by the mines at the time we went up there.

Q. When and where did you first propose to give him an interest in the premises?

A. On the premises at the time above mentioned.

Q. You had not proposed before?

A. I think we talked about it, but there was no arrangement made until we got up there; we might have talked about it two or three time before.

Q. Did you ever make any proposition or suggestion before you got up there?

A. I don't think I did other than I have above stated.

Q. When did you next see Mr. Renton after your interview on the premises?

A. I think it was the Friday following; he told me to come down on Tuesday, my memory is that I came down on Tuesday and did not see him again until I think Friday following.

Q. Why was not this arrangement carried out then in giving the new mortgage?

A. Because Mr. Renton failed to furnish the money according to the agreement.

Q. Why was there not an agreement or instrument made at the time of this second mortgage showing that Mr. Renton had an interest in those lands?

A. There was an agreement made.

Q. Why was there not an agreement or instrument in writing?

A. There was to be one when this first agreement was carried out.

Q. Who affixed the date to this paper marked Exhibit A No. 1, on part of defendant?

A. I did.

Q. When did you put it there, after or before the agreement?

A. On the fifth of February, 1867, I put it there.

Q. When was the agreement left with Mr. Ranney?

A. It is my impression it was the first day of February, 1867; and the bond and mortgage, my impression is, was drawn that day, and executed the fifth of February, 1867.

Q. Why did you afterwards affix that date?

A. Because it was the day I executed the mortgage and got the check of Mr. Renton for $2,841, as before mentioned.

Q. Why did you put a false date to it? [Objected to by Mr. Scofield.]

A. I did not put a false date to it; that was the date it was carried into effect; I don't know any other reason why than the one I have stated; one reason was there was no date to it, and it was carried into effect that day, and I dated it the fifth of February, 1867, as a memorandum, and I don't know any other reason why.

Q. What pieces of property were you to include in the

second mortgage? [Objected to by Mr. Scofield on the ground that the agreement shows.]

A. The Wells tract that was mortgaged for $9,000 and the property covered by the first mortgage.

Q. You were to purchase four other pieces of property, what property and from whom?

A. The property we looked at, this side of the other, about 86 acres; there was one tract containing eleven acres, and another tract containing about twenty-three acres, and one tract containing five acres and a half, and one tract containing about fourteen acres and a half, making in all eighty-six acres.

Q. What four pieces of property are those referred to in this agreement and from whom was you to purchose them?

A. One piece from Ralph H. Carey of eleven acres about, another piece of about 44 acres from Ralph H. Carey and wife, another piece from Josiah Meeker of 14½ acres, and one piece from John M. Tone of about 50 acres I think; that is the piece I spoke of that I could not get the money to pay for; the other three pieces I now hold.

Q. When did you first discover that the Tone piece was sold?

A. It has been leased but not sold.

Q. Were you not to get a piece of land near the canal adjoining the property mortgaged for $6,000?

A. Yes, but it don't adjoin the land mortgaged for $6,000, it is more than half a mile from it, but by the side of the canal; that is an outside piece.

Q. Were you not to use the whole or a part of the $3,000 advanced to you on the second mortgage in the purchase of a tract near the canal?

A. I was not, no part of it.

Q. Where were you going to put your blast furnace?

A. Right below the mine where there is a splendid water fall.

Q. Were you not to buy the property out to the canal?

A. I was requested by Mr. Renton to buy a front on the canal; I went to look after it and found that it could not be bought for less than $200 an acre; the whole amount that he requested me to purchase after measurement, only mea-

sured about one acre and a half; I then reported to Mr. Renton to agree with him whether I should purchase at that price or not; Mr. Renton said it was too much to pay for it, that $100 was enough for the whole piece, and by examination I found there was a little corner run down and cut off in an angle, a part of that front between my property and the canal which was entailed and no title could be obtained for it; that left us only about a rod and a half front to get on the canal, and he said we had better let that go and get a front somewhere else.

Q. Did you not tell Mr. Renton when he was there that one of the four pieces mentioned in the memorandum had been sold to another party, or something to that effect?

A. Not when we were there I didn't, but after that I think I did.

Q. When?

A. It was sometime after that, but I don't know how long; it was within ten days I think.

Q. How long after the memorandum was signed?

A. It was before the last mortgage was drawn I think.

Q. Repeated. How long after the memorandum was signed?

A. I think two or three days, and I think I told Mr. Renton when I came down to execute the mortgage.

Q. Did you not then, or soon afterwards consent to the putting of that mortgage on record?

A. Not until the money was paid, or a certified check for the money.

Q. You were unable were you not, on account of the sale of one of these pieces to another party to include in this second mortgage all the property you had agreed to include?

A. I was not unable, but carried my agreement out to the letter; there was no other land to be included but was included.

Q. How much money did he advance to you at the time of the execution of the second mortgage?

A. Twenty-nine hundred and ninety one dollars, as near as I recollect, and $9 stamp.

Q. Were you not by reason of the sale of one of these

pieces of property to another person unable to comply with this agreement?

A. I was not; that had no reference to the agreement; there was about one acre and a quarter all told that had no reference to the agreement.

CHARLES F. MARYOTT.

Taken and sworn April eighth, also taken and subscribed April ninth, eighteen hundred and sixty-eight, before me.

THEODORE FRELINGHUYSEN,
Master in Chancery of New Jersey.

Testimony on part of defence is closed. April ninth, eighteen hundred and sixty eight.

THEODORE FRELINGHUYSEN.
Master in Chancery of New Jersey.

Edwin Ross, a witness produced on the part of the complainant being duly sworn according to law, on his oath saith, I reside at Rockaway, Morris county, New Jersey; my place of business is Morristown, New Jersey; I know the parties to this suit; I am the person who introduced Mr. George H. Renton to Charles F. Maryott, with a view of getting a note discounted; I was present at the negotiation between them; it took place at the office of The New Jersey Mutual Life Insurance Company, at No. 151 Market street, Newark, New Jersey; Mr. Renton told Mr. Maryott that he would give Mr. Maryott $5,000 in money and a certain number of shares of gold stock or silver stock for the balance to make up $6,000; Mr. Renton stated I think, to Mr. Maryott, the amount he paid for it, but I am not certain about that; he said it might prove to be valuable, and it might not, he would not say about that; he said Mr. Maryott must take it for what it is worth, and he might go and see Mr. Weeks, who could tell him all about it; Mr. Weeks, as I understood it, was an officer of the Company, and knew all about it, and he would rather Mr. Maryott should get the representations from Mr. Weeks, as he knew all about it; Mr. Maryott and I went then to see Mr. Weeks at his office over The Mutual Benefit Life Insurance Company, and I inquired for Mr.

Weeks; he was in the back office and came out; I left Mr. Maryott and Mr. Weeks to talk the matter over; I was present and heard the conversation; Mr. Weeks seemed very willing to tell all he knew about it; he stated the condition of affairs and what the stock actually cost Mr. Maryott, and asked him some few questions; I don't exactly recollect what, and we left the room; I think we went right back to the New Jersey office; Mr. Renton then counted him out the five thousand dollars, and gave him the stock, that is my recollection; I don't think there was anything said between them that I did not hear; we walked out of the office and I went to New York, or Morristown; don't recollect where.

I remember of being in Mr. Ranney's office when the mortgage marked Exhibit No. 2, on the part of complainant was written; I believe I delivered that to the Clerk of Morris county for registry the next day I think; the mortgage was drawn; I can't say when.

EDWIN ROSS.

Taken, sworn and subscribed April ninth, eighteen hundred and sixty-eight, at Newark, N. J., before me.

THEODORE FRELINGHUYSEN,
Master in Chancery of New Jersey.

George H. Renton, the complainant, being duly sworn, according to law on his oath saith: I am complainant in this suit; I paid for the stock I transferred to Mr. Maryott, the defendant, one thousand dollars on the ninth of October, eighteen hundred and sixty-five; I had subscribed for the stock sometime previous; I subscribed for that stock and $1,000 in another company, in which Mr. Joseph Morse, Jr., was Treasurer, as well as of the Golden Gate Montana Mining Company; I purchased six hundred and twenty-five shares of the Golden Gate Montana Mining Company, I think that is the title of the company, for $1,000; the same stock I transferred to him; I drew a check now shown here and marked exhibit T. F. No. 1 on part of complainant for $2,000, dated October ninth, eighteen hundred and sixty-five, payable to Joseph Morse, Jr., Treasurer or order; that check was paid with my own money, charged to me in my

bank book; this was paid $1,000 for the stock of six hundred and twenty-five shares that was transferred to Mr. Maryott, of the Golden Gate Montana Mining Company; the other $1,000 for the other stock mentioned; I simply told Mr. Maryott that I had paid $1,000 in cash for that six hundred and twenty-five shares of stock about a year previous to that time, whether it was worth more or less I did not know; that Mr. John R. Weeks was the President of the Company, and his office was here in town, if he would go and see him he would get all the information about it; the par value of the stock was $6,250, and I paid one thousand dollars for it; as I did not consider the stock at that time of no value, I was told at the office of the Golden Gate Montana Mining Company that the machinery was on its way to Montana, and that they had very valuable mines, and without doubt when they got the machinery at work they would have very large profits; I did not tell Mr. Maryott it was worth $1,284; he has never offered the stock back to me; I have never seen the certificate from the day I transferred the stock to him; he has never asked me to tack it back; after I had transferred that stock to Mr. Maryott, I made a trade with a friend who had six hundred and twenty-five shares of that stock of the same company, of which I became the owner; after that Mr. Maryott desired to borrow more money, and agreed if I would lend him the money he would take $6,000 in money; he would take this six hundred and twenty-five shares at $1,000; he would take some stock in a Lead Company and he would count the interest in a year on this first mortgage of $6,000, and on the mortgage he was to make for $9,000, and it was to be for one year, without interest; that is the second mortgage of $9,000; I can't tell the exact date when he applied to me for a further loan of money; it was somewhere about the twenty-fourth, twenty-fifth or twenty-sixth of January, eighteen hundred and sixty-seven; he then came to my house at No. 12 Lombardy street in this city, stated that there was some very valuable property adjoining the property he had already mortgaged to me, and the property that he had recovered back for C. K. Garrison or Mr. Garrison, with the money that I had let him have and about $5,000, would purchase

it all and it was worth half a million, or about that; he said he had been in that neighborhood ascertaining the value of the properties and he was satisfied they were worth a very large sum of money, having large deposits of iron ore; he brought me some specimens of the ore to show me, on or about the twenty-ninth of January, eighteen hundred and sixty-seven; I made this sort of agreement; I went with Mr. Maryott to Mr. Ranney's office to have Mr. Ranney draw the papers; Mr. Ranney was not in; Mr. Maryott was very anxious and in very much of a hurry to have the arrangement completed that we had made; Mr. Maryott said he would find Mr. Ranney if I would write down what I wanted done or what we had agreed.

Q. Explain the agreement between you and Mr. Maryott in relation to this second mortgage of $9,000, and also in connection therewith the memorandum marked exhibit A, No. 1, on part of defendant, and the circumstances under which it was given? [Objected to by Mr. Scofield because the agreement explains itself; does not object to proving the circumstances.]

A. Mr. Maryott was very anxious to secure four pieces of property which he said he could do with $5,000, and which were very valuable, containing large deposits of iron ore; he said that the Morris and Essex Railroad Company owed him about $2,000; that $5,000 altogether would secure this and $3,000 from me would make the $5,000; he would take $3,000 more in money; he would take six hundred and twenty-five shares of Golden Gate Montana Mining Company; that he would take some other stock that I had in a Lead Company; that he would have the interest on the Jacobs' note, and the mortgage given to secure it paid in and the interest on this mortgage; that he was willing to make for $9,000 to run one year without interest, the interest already being counted in; that he would have the deeds and the searches for these four pieces of property that he was to purchase brought down to Mr. Ranney, and then he would make a new mortgage that would cover the property already mortgaged, and also the four pieces of property that he was to buy; the mortgage was to be made for $15,000, and if Jacobs paid his note for $6,000 and I retained

that money then the amount retained would come off of the fifteen thousand dollars, and I was to allow him a certain amount of interest, and the amount is mentioned in Exhibit A, No. 1, on part of defendant; with that understanding I drew up this paper which is Exhibit A, No. 1; Mr. Maryott took it to Mr. Ranney and I think the same evening came to my house and I let him have the check for $150, by which he could secure one piece of property lying between his property and the canal; this check is now shown here and marked Exhibit T F, No. 2, on part of defendant; Mr. Maryott afterwards saw Mr. Ranney, and they arranged that a mortgage should be made for $9,000; that mortgage was made and on the fifth of February I paid Mr. Maryott enough to make $3,000, that is the check for $2,841, and $9 stamp on the mortgage; this check is marked Exhibit T F No. 3, on part of defendant; this and the other check made the $3,000, with $9 the government stamp, which I purchased at the request of Mr. Maryott for him; the mortgage was left with Mr Ranney, Mr. Maryott took the money and was to bring down the deeds that he would purchase with this money to Mr. Ranney and the searches of the titles of the property; then Mr. Ranney was to make a new mortgage covering the property already mortgaged, and this property that was to be purchased; Mr. Maryott came down in three or four days afterwards, he had not any of the titles to any of the property, stated that one piece of property running out from his lot to the canal was either sold or so that he could not get hold of it; I then told Mr. Maryott that before we did anything more I would like to go and see the property; I had never seen the property up to that time; I also told him that I did not want the mortgage to lie in that way, I wanted the mortgage to be recorded where it would bind the property, and I appointed a time when I would meet him at Drakesville station; I took at the depot at Newark the early eastern train by the Morris and Essex Railroad from New York; I got off at Morristown, took the $9,000 up to the clerk's office and had it entered for record; that is the mortgage marked Exhibit No. 4, on part of complainant; it is dated February 12, 1867; I then went to the depot at Morristown and when the train came along

that went to Drakesville I took the train and in the car found Mr. Maryott; we got off at Drakesville, went over the property that he claimed to own and was mortgaged, he showed me the piece out by the canal that he was to get in that memorandum, that he said he couldn't get it, showed me where there had been veins opened for iron ore, showed me the pond that was going to give a water power for a furnace as he said, showed me a pond which he called a water power, that I did not think would average four-horse power; there was no water running in or none running out that I could see; I was not satisfied with the character of the property, and as Mr. Maryott had not used the money already advanced him, I made up my mind that I wouldn't put any more money on that property; I did not think it was a good security; I saw Mr. Maryott afterwards in Newark; I told him I had lost a good deal of money in my time and I did not want to lose any more; he wanted to know if I was going to hold that mortgage for the $9,000; I told him that all I wanted was what I let him have, if he would give me $9,000 I would give him both mortgages, and say nothing about the interest; he said he would do it, but he never did; when the Jacobs' note became due it was protested for non-payment; I tried to get Mr. Jacobs or Mr. Maryott to pay it; I could not; I commenced a suit against Jacobs in New York; had a judgment; execution was issued; sheriff returned no property to be found; it was never paid, or any part of it; I did not take the first mortgage for $6,000 to the clerk's office for registry, I handed it to Edwin Ross to take, the same day that Mr. Maryott came down, and I met him at Mr. Ranney's office; the $9,000 mortgage was delivered to me; I am not certain who delivered the mortgage to me; think it was Mr. Ranney; Mr. Maryott had consented to it; don't know whether he was or was not present at the time it was delivered to me; I went to view the property on February 12th, 1867, to satisfy myself as to the value of the security; before that I had taken Mr. Maryott's word with what Mr. Edwin Ross had told me; I told Mr. Maryott that day that I had stopped and had the mortgage put on record; I have no recollection of his objecting to it; he did not deny at that time that he had consented to the delivery of it to me; I was not

to have any interest in the premises; I never made any agreement with him to have any interest in the premises, otherwise than under the mortgage.

GEORGE H. RENTON.

Taken, sworn and subscribed April ninth, eighteen hundred and sixty-eight, at Newark, N. J., before me.

THEODORE FRELINGHUYSEN,
Master in Chancery of N. J.

April ninth, eighteen hundred and sixty-eight. Adjourned by consent of parties to Friday, April seventeenth, eighteen hundred and sixty-eight, at 12 o'clock, M., at my office.

THEODORE FRELINGHUYSEN,
Master in Chancery of N. J.

DECREE PRO CONFESSO AGAINST GEO. GAGE,

defendant, by his written consent endorsed thereon, signed and filed April eighteen, eighteen hundred and sixty-eight.

IN CHANCERY OF NEW JERSEY.

Between
GEORGE H. RENTON, complainant,
and
CHARLES F. MARYOTT, *et al*, defendants.
} *Interlocutory decree.*

This cause coming on to be heard before the Chancellor, in the presence of John W. Taylor, of counsel with the complainant, and of Charles E. Scofield, of counsel with the defendant, Charles F. Maryott, and the pleadings having been read, and the arguments of counsel heard and considered, and it appearing that process of subpœna to appear and answer the complainant's bill hath been duly issued and returned, served upon George Gage, the other defendant in this case, and that he hath not appeared, pleaded, demurred or answered to the said bill of complaint within the time limited by law, and that the said bill hath been heretofore taken as confessed against him. It is now on this eighteenth day of June, A. D. eighteen hundred and sixty eight, ordered, adjudged and decreed by the Chancellor, that the mortgage made, executed and delivered by the said Charles F. Maryott to the said complainant, to secure the payment of the sum of six thousand dollars with interest, and bearing date the twelfth day of January, A. D., eighteen hundred and sixty-seven, and in complainant's bill of complaint set forth, is a valid lien and encumbrances upon the mortgaged premises in said bill set forth and described, to the extent of the whole of the principal and interest thereby secured, and which may be found to be remaining unpaid by the said defendant to the said complainant upon the taking and stating of the account hereinafter directed, and that the mortgage made, executed and delivered by the said Charles F. Maryott to the said complainant to secure the sum of nine thousand dollars with interest, and bearing date the first day of Feb-

ruary, A. D., eighteen hundred and sixty-seven, and in the said bill of complaint mentioned, is a valid lien and encumbrance upon the mortgaged premises in said bill of complaint described to the extent of the amount actually advanced and loaned thereon by the said complainant, to wit: the sum of three thousand dollars of principal, together with the legal interest thereon, or such part thereof as shall be found to be remaining unpaid by the said defendant to the said complainant upon the taking and stating of the account hereinafter directed; and that it be referred to Staats S. Morris, esquire, one of the masters of this court to take and state an account of the principal and interest remaining due and unpaid to the said complainant upon his two mortgages aforesaid, allowing credits to the said defendant for all payments made by him on account of the principal and interest due on said mortgages since the dates thereof, and also to ascertain and report the amount due to the said defendant, George Gage, upon his judgment in said bill mentioned, and the order of priority of lien of the said mortgages and judgment respectively, and whether the whole of said mortgaged premises should be sold to pay and satisfy the said liens, and whether they should be sold together or in parcels, and if in parcels, in what order, and that the said Master make his report with all convenient speed.

A. O. ZABRISKIE, C.

Filed June eighteen, eighteen hundred and sixty-eight.

IN CHANCERY OF NEW JERSEY.

Between
GEORGE H. RENTON, complainant,
and
CHARLES F. MARYOTT, *et al*, defendants.

Master's Report,
July 20, 1868.

In pursuance of an order in the above stated cause made by the Chancellor, bearing date the eighteenth day of June, A. D. eighteen hundred and sixty-eight, whereby it was among other things ordered, that it be referred to the subscriber, one of the masters of said court, to take and state an account of the principal and interest remaining due and unpaid to the said complainant upon his two mortgages mentioned in his said bill, allowing credits to the said defendant for all payments made by him on account of the principal and interest due on said mortgages since the dates thereof, and also to ascertain and report the amount due to the said defendant, George Gage, upon his judgment, in said bill mentioned, &c., I, Staats S. Morris, one of the Masters of the Court of Chancery, of the State of New Jersey, do hereby report to his Honor the Chancellor, that I have examined the matters referred to me by the said order, and that the complainants' solicitor produced before me, first, the mortgage in his said bill of complaint mentioned, bearing date the twelfth day of January, in the year one thousand eight hundred and sixty-seven, and made and executed by the said Charles F. Maryott to the said complainant, and which said mortgage was duly acknowledged according to law by the said Charles F. Maryott, and recorded as in the said bill mentioned, as appears by endorsements thereon, and the said complainants' solicitor also produced to me the note referred to in, and the payment of which was intended to be secured by the said mortgage, and which said

note and mortgage have been marked Exhibits No. 1 and No. 2, for complainant. And the complainants' solicitor secondly, produced before me the mortgage in his said bill mentioned, bearing date the first day of February, in the year of our Lord one thousand eight hundred and sixty-seven, and made and executed by the said Charles F. Maryott to the complainant, and which said last mentioned mortgage was duly acknowledged according to law by the said Charles F. Maryott before John Whitehead, one of the Masters of said court, and recorded in Book No. 2 of Mortgages, for the County of Morris, page 157, &c., on the twelfth day of February, in the year eighteen hundred and sixty-seven, as appears by endorsements thereon, and which said last mentioned bond and mortgage are marked Exhibits No. 3 and No. 4 for complainant; and I find there is due to the complainant on his said two mortgages, for principal and interest on this day, the sum of nine thousand eight hundred and sixty-eight dollars and fifty-eight cents; and I do certify and report that the schedule hereunto annexed, marked A contains a statement and account of the principal and interest moneys due to the complainant on his said two mortgages, and to which for greater certainty I refer. And I do further report, that there was produced to me on behalf of the defendant, George Gage, an abstract of the judgment entered in the Morris Common Pleas in favor of the defendant, George Gage, against the said Charles F. Maryott, said judgment being sworn to and docketed on the twenty-fifth day of September, in the year eighteen hundred and sixty-six, said abstract being under the certificate and seal of the clerk of said court, and which is marked Exhibit No. 5 for the defendant, George Gage, and I find there is due to the said defendant, George Gage, on his judgment for debt and interest on this day, the sum of eighty-five dollars and one cent. And I do certify and report that the schedule hereunto annexed marked B, and making part of this my report, contains a statement and account of the amount of debt and interest due to the said George Gage on his said judgment, and to which for greater certainty I refer. And I do further report that the judgment of the said George Gage was entered of record prior to the execution and registry of either of

the said mortgages of the said complainant, and is entitled to priority in payment. All which is respectfully submitted this twentieth day of July, A. D. eighteen hundred and sixty-eight.

S. S. Morris,
Master in Chancery.

SCHEDULE A.

Exhibit No. 1. Note as follows:

$6,000. New York, November 20, 1866.

Four months after date I promise to pay to the order of Charles F. Maryott, six thousand dollars, value received, payable at the Butchers and Drovers' Bank. $6,000 00

Due March 23, '67

John M. Jacobs.

Endorsed, Chas. F. Maryott,
Edwin Ross,
George Renton.

Secured by complainant's mortgage, Exhibit No. 2.

Interest thereon from March 20, 1837 to July 20, 1868, 1 year 4 months at 7 per cent..... 560 00

$6,560 00

Exhibit No. 3. Bond bearing date the 1st day of February, A. D. 1867, in the penal sum of $18,000, conditioned for the payment of the sum of $9,000, in one year from the date thereof without interest. Secured by the complainant's mortgage, Exhibit No. 4..... $9,000 00

Less as per the decree in said cause under which this reference is made. 6,000 00

$3,000 00

Interest thereon from the 1st day of February, 1867, to July 20, 1868, at 7 per cent. 1 yr. 5 mos. 19 days...	$308 50	$3,308 50
Whole amount due complainant July 20, 1868.....		$9,868 50

S. S. Morris,
Master in Chancery.

SCHEDULE B.

Exhibit No. 5. Judgment docketed in the Morris Common Pleas on the 25th day of September, A. D. 1866, for debt.....		$80 16
Interest thereon from September 25, 1866, to July 20, 1868, 1 yr. 9 mos. 25 dys. at 6 per cent.....		4 85
Amount due George Gage on his judgment, July 20, 1868.....		$85 01

S. S. Morris,
Master in Chancery.

Filed August 15, 1868.

A true copy,
B. Gummere, *Clerk.*

IN CHANCERY OF NEW JERSEY.

Between
GEORGE H. RENTON, complainant,
and
CHARLES F. MARYOTT, *et al.*, defendants.

On Bill, &c.
Final Decree.

This cause coming on to be heard in the presence of John W. Taylor, solicitor and of counsel with the complainant, the complainant's bill having been heretofore taken as confessed against George Gage, one of the defendants; whereupon, and upon reading a report upon file, made by Staats S. Morris, esquire, one of the Masters of this Court, bearing date on the twentieth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, from all which it appears that there was due to the complainant on the day of the making of the said report, for principal and interest on his mortgages the sum of nine thousand eight hundred and sixty-eight dollars and fifty-cents, and to the defendant, George Gage, the sum of eighty-five dollars and one cent, on his judgment in said bill mentioned; that said judgment is a lien prior to the said complainant's mortgages on the premises embraced therein, having been docketed prior to the execution and registry of said mortgages, and is entitled to be first paid, and that it is necessary and advisable that the whole of the mortgaged premises set forth and described in said bill, should be sold to raise the money so due as aforesaid; and no cause being shown or appearing to the contrary; it is thereupon, on this fifteenth day of August in the year of our Lord one thousand eight hundred and sixty-eight, by Abraham O. Zabriskie, Chancellor of the State of New Jersey, ordered, adjudged, and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge, and decree that the

said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the respective sums of money due to the said complainant and defendant, that is to say, the sum of eighty-five dollars and one cent, together with lawful interest thereon, to be computed from the twentieth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, being the date of the Master's report, being the amount due to the said George Gage, and in the second place, to pay unto the complainant the sum of nine thousand eight hundred and sixty-eight dollars and fifty cents, together with lawful interest thereon as aforesaid, with his costs to be taxed, and that a writ of *fieri facias* do issue for that purpose out of this court, directed to the sheriff of the county of Morris, commanding him to make sale, according to law, of the said mortgaged premises, and that, out of the money arising from such sale, he pay to the complainant or his solicitor, his said debt, interest, and costs; and also to the aforesaid defendant his said debt and interest, in manner aforesaid, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court, to abide the further order of the court, unless otherwise previously disposed of by the order of this court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ.

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

A. O. ZABRISKIE, C.

Filed August fifteenth, eighteen hundred and sixty-eight.

A true copy,
B. GUMMERE, *Clerk.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
CHARLES F. MARYOTT, appellant,
and
GEORGE H. RENTON AND GEORGE GAGE, appellees.
} *Petition of Appeal.*

To the Honorable the Court of Errors and Appeals of the State of New Jersey:

The humble petition of Charles F. Maryott, the appellant above named, respectfully shows that your petitioner finds himself agrieved by a final decree made in the Court of Chancery by his honor, Abraham O. Zabriskie, Chancellor of the State of New Jersey, bearing date the fifteenth day of August, in the year of our Lord one thousand eight hundred and sixty-eight, in a suit wherein the said George H. Renton was complainant, and your petitioner and George Gage and others were defendants, in these respects to wit:

That the said decree adjudges that the master's report filed in the said suit, and all the matters and things therein contained, should stand satisfied and confirmed.

And also in this, that the said decree adjudges that the mortgaged premises mentioned and described in the bill of complaint in said suit should be sold to raise and satisfy the respective sums of money due to the complainant, George H. Renton, and the said defendant, George Gage, as appears by the said master's report.

And also in this respect, that the said decree adjudges that the judgment of the said George Gage in the said bill, master's report and decree mentioned, is a lien upon the said mortgaged premises and entitled to be paid.

And your petitioner humbly appeals from the said decree in all its parts, upon the ground that the same is erro-

neous, for that it does not appear in the said suit nor in the said judgment any lien whatever upon the said mortgaged premises.

And for that the said decree in favor of the said George H. Renton is contrary to equity and good conscience, and contrary to the pleadings and proofs in the said suit, and for that the said master's report was made as appears by the proceedings in the said suit without any notice to your petitioner, and in violation of the rules and practice of the said Court of Chancery, and contrary to the rules of law and equity in such case made and provided.

And for that there was no evidence before the said master or court upon which the said decree could be justified or authorized either at law or in equity.

Your petitioner therefore prays that the said decree of the said chancellor, in the particulars aforesaid, may be reversed, set aside, and for nothing holden.

And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

C. E. SCOFIELD,
Solicitor for Appellant.

ROBT. GILCHRIST,
of Counsel with Appellant.

JOHN S. DE HART,
of Counsel with Appellant.

Filed November 17, 1868.

A true copy,
H. N. Congar, *Clerk.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
CHARLES F. MARYOTT, appellant,
and
GEORGE H. RENTON, and others, respondents.

On Appeals, &c.

The answer of George H. Renton, one of the respondents to the petition of appeal of Charles F. Maryott, appellant.

This respondent not confessing or acknowledging all or any of the matters and things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto says, that he believes it to be true that such decree as is complaind of by the appellant, was made by the Court of Chancery as in the said petition of appeal is set forth, but as to the date, substance and contents thereof, this respondent humbly prays leave to refer thereto, when the same shall be produced, and this respondent is advised and believes that the said decree is agreeable to equity and justice, and therefore humbly prays that the same may be affirmed so far as the same relates to or affects the respondent, and that the said petition of appeal may be dismissed this honorable court, with costs, to be adjudged to this respondent.

JOHN W. TAYLOR,
Solicitor for and of Counsel for the respondent.

Filed December 29th, eighteen hundred and sixty-eight.

A true copy from the original.

H. N. CONGAR,
Clerk.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
CHARLES F. MARYOTT, appellant,
and
GEORGE H. RENTON, *et al.*,
appellees.

The answer of Alfred Mills, administrator of George Gage, deceased, to the petition of appeal.

This respondent not admitting all or any of the matters to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto says, that he believes it to be true that such decree as is complained of was made by the Court of Chancery as in the said petition of appeal is mentioned and set forth, but as to the date, substance and extent thereof this respondent humbly craves leave to refer thereto when the same shall be produced.

And this respondent humbly conceives and is advised that the said decree in the matters complained of in said petition of appeal is correct and just according to law and the proofs in said matter, and humbly prays that said decree may be affirmed, and that the said appeal may be dismissed with costs.

ALFRED MILLS,
Solicitor of Counsel, per se.

Filed January fifteenth, eighteen hundred and sixty-nine.

A true copy from the original.

H. N. CONGAR, *Clerk.*

His Honor, the Chancellor, having heard the cause, gave no written opinion, and being called upon by me and shown a printed copy of the case, and being respectfully requested to give the reasons assigned by him in writing for his decree in this case in order that it might be printed declined, assigning the said reasons, saying, it might be stated that in his opinion the evidence in the case did not sustain the defence set up by the defendant Charles F. Maryott.

JERSEY CITY, March 6, 1869.

C. E. SCOFIELD,
Solicitor of the Appellant.

14

EXHIBITS ON THE PART OF GEORGE H. RENTON.

Nos. 1 *and* 2, page 15, John M. Jacobs' note and Maryott's first mortgage are both set out in the bill, pages 1 to 3.

Nos. 3 *and* 4, Maryott's bond and second mortgage, pages 15 and 16. Mortgage mentioned in bill ante page 3. This mortgage is on a lot of $91\frac{76}{100}$ and also on the mountain pond lot described in the first mortgage and is dated February 1, 1867, conditioned for the payment of $9,000 in one year after date, *without interest*, acknowledged February 5, and recorded February 12, 1867. T. F. No. 1, check for $2,000, October 9, 1865, $1,000 of it paid for stock, Renton's evidence, pages 35 and 36.

EXHIBITS ON THE PART OF GEORGE GAGE.

No. 5, certificate of search and abstract of title made by the Clerk of the county of Morris, dated August 24, 1867. See Master's report, ante 44 and 46.

It contains the following which is the only part of said abstract relevant to the point and the only pretended evidence of Gage's judgment.

"JUDGMENTS.

MORRIS COMMON PLEAS.

"GEORGE GAGE		
vs.	}	*In Debt.*
"CHARLES F. MARYOTT.		

"Amount sworn to be due is $80.16.

"Judgment docketed September 25, 1866, Book B, page "137. I have searched the record of judgments remaining "in my office in the said name (Charles F. Maryott) for "twenty years last past, and I do not find remaining unsat- "isfied any judgment against him except that above men- "tioned."

(This certificate is under the hand and official seal of Wm. McCarty, Clerk, &c.)

EXHIBITS ON THE PART OF MARYOTT, DEFENDANT.

Exhibit A. No. 1, on the part of defendant, ante page 21 is fully set out in the answer ante page 10.

Exhibit T. F. No. 2, on the part of the defendant, ante page 38, is Renton's check to Maryott, dated February 1, 1867, for $150.

Exhibit T. F. No. 3, on the part of defendant, is Renton's check to Maryott, dated February 5, 1867, for $2,841, ante page 38.

John H. Lyon, Printer, Jersey City.

New Jersey Court of Errors and Appeals.

Charles F. Maryott, appellant,

and

George H. Renton, and Alfred Mills, administrators of George Gage, deceased, appellees.

Points upon which the appellant means to rely for the reversal of the decree so far as the same is in favor of Renton.

Charles F. Maryott, on the 20th November, 1866, endorsed and delivered to George H. Renton, John M. Jacobs' note dated November 20, 1866, at four months for six thousand dollars, and in order to secure the payment thereof with interest, executed a mortgage of six thousand dollars on the "Mountain Pond Lot," of $36\frac{38}{100}$ acres. In consideration of the endorsement and delivery of said note, and the execution of said mortgage, Renton paid Maryott five thousand dollars in money and six hundred and twenty-five shares of the stock of the "Golden Gate of Montano Mining Co." Said stock proved to be worthless. On the 1st February, 1867, or there abouts, Renton agreed to loan Maryott nine thousand dollars more and to take a mortgage to secure fifteen thousand dollars *in one year, without interest*, to secure said nine thousand dollars, and said note of John M. Jacobs for six thousand dollars. This mortgage was only to cover at first the lands then owned by Maryott, but with the money Maryott was to purchase four other lots and then mortgage them also to secure the loan.

If Jacobs paid the note then the said mortgage of $15,000 (it was agreed) should be reduced to $9,000, less the interest on said $6,000 note from the time it was paid till the end of the year at 7 per cent. The intent and effect of this agreement was to extend the time of payment of the said $6,000 mortgage and note for one year, and to release interest on said last mentioned motgage for same time.

Instead of making a new mortgage for $15,000, the solicitor of the parties suggested it was better to save the expense of a stamp for the $6,000, and it was arranged that Maryott should give a mortgage for $9,000, and let the said $6,000 mortgage remain, with the understanding that it should not bear interest nor be due for one year as was agreed in respect to the whole $15,000.

In pursuance of this arrangement Maryott executed a mortgage for $9,000, falling due February 1, 1868.

This suit was commenced August 27, 1867, to foreclose said $6,000 mortgage. The points we rely upon are as follows :

First. The $6,000 mortgage was not due when this suit was commenced. An agreement was made to extend the time of payment to February 1, 1868. Renton's letter to Ranney (page 10) shews that the money secured by the mortgage for $6,000 was not to be paid till the second mortgage became due. (See pages 10 and 11 of the answer, also Maryott's Ev. page 18, lines 18 to 30. Renton's Ev. page 36, lines 28 to 31, page 37, line 39, to page 38 line 5).

1. It was the understanding that the interest on the first mortgage should be included as part of the $9,000, and of course the interest was paid by the second mortgage up to the expiration of the time when the second mortgage became due. Answer p. 10, Renton's Ev. p. 37, 38.

2. The arrangement for the second mortgage shews that the two were security for one sum, and that the two became inseparably connected.

3. The consideration of the first became a part of the consideration of the second.

4. If a debtor pays interest on a loan a year in advance he thereby becomes entitled to a years' credit on the loan. (See Renton's Ev. p. 36, lines 28, 31.)

Van Houten *v.* McCarty, 3 Green's Ch. 141, *Pennington*, Ch. The time specified for the payment of a bond may be enlarged by parol, page 148. The last objection is that the time of payment for the principal was extended by the complainant for five years from the twenty-seventh of April, 1837 ; and that the bond and mortgage will of course not be due until the twenty-seventh of April, 1842.

This is clearly established from the evidence, and the defendant is entitled to this time, before payment can be demanded. Edward N. Rogers expressly so swears, and the whole evidence, as well as the statement in the complainant's bill, go to shew such an understanding. It is well settled that the time for payment may be extended by parol.

(Chitty on contracts, 27 in note. 1 John, cases 23. 3 John, 528. 2 Wendell, 587. 14 John, 330. 1 Green, 165, Saxton, 280.

In King *v.* Morford Saxton, 280, *Vroom*, Ch. said "That a waiver may be by parol is now well settled, notwithstanding the old rule, '*unum quodque dissolvi eo ligamine quo ligatum est.*'" Sugden, 109 ; 1 Johns, Ch, R. 429.

Saxton, p. 281. The privilege appears to me to be complete, *and having been acted on* and a sale having taken place in consequence of it, I feel constrained to consider the contract as expressly abandoned by the complainant.

Cox *v.* Bennet, 1 Greens, R. 171, *Ewing, C. J.*

1st. The party to whom a condition or covenant is to be performed, *may by acts, as well as words*, enlarge the time of performance. No more full consideration was proved in Fleming *v.* Gilbert, 3 John, 528, where the time of the performance of a condition of a bond was enlarged by a parol agreement. Langworthy, *v.* Smith, 2 Wend. 587.

2d. The stipulated sum not having been paid at the day the agreement, it is said, was at an end, and Cox was entitled to claim the whole amount of the bond. Such result I think by no means follows. He may compel the payment of *what is due by the agreement but no more.* There is nothing in the terms or nature of the agreement which renders it in such event, void.

Lawrence *v.* Dole, 11 Vermont R, 555. Where the alteration is in regard to a condition precedent and is necessary to be shown by the party afterwards seeking redress upon the contract it is required that the alteration should be by a contract of as high a nature as the original contract, else the party performing the altered contract will lose his remedy, cites Craig *v.* Talbot, 2 B. & C. 179; Porter *v.* Stevens, 2 Aikens' R. 417. But where this is relied upon by way of defence it is not material, that the alteration, if

made before any breach should have been upon consideration or under seal in any case, for if *acted upon*, it is sufficient, cites 1 Swift's Dig. 288.

Keating *v.* Price, 1 Johns. cases, 22.

Langworthy and Clarke *v.* Smith, 2 Wend. 587, page 590, *Savage, C. J.* There can be no doubt that a parol enlargement of the time set in a sealed instrument for the performance of covenants is good, but there can be as little doubt at this day that where there is such enlargement of a condition precedent, the plaintiff loses his remedy upon the covenant itself, and must seek it upon the agreement enlarging the time of performance. See cases cited at page 591. "If a contract be subsequently changed, you must declare otherwise than on the contract itself, and they distinguish between cases where actions are brought on such agreements and those cases where the enlargement of time is presented by way of defence as in Fleming *v.* Gilbert, 3 Johns. R, 528, where such enlargement was held to be a good defence.

Fleming *v.* Gilbert, 3 Johns. R, 530, 531.

The defendant, within the time limited, did procure the bond and mortgage, and tendered and offered them to the plaintiff, and did also offer to do whatever the plaintiff should require for the further discharge of the bond and mortgage or the record thereof; but the plaintiff not knowing at that time what was further necessary did discharge the defendant from the strict and literal performance of the bond and entered into another engagement respecting the further proceedings. The plaintiff's conduct can be viewed in no other light than as a waiver of a compliance with the condition of the bond so far as it related to a discharge of the mortgage on record, and I see no infringement of any rules or principles of law in permitting parol evidence of such waiver. It is a sound principle that he who prevents a thing being done shall not avail himself of the non-performance he has occasioned. Had not the plaintiff dispensed with a further compliance of the condition of the bond it is probable that the defendant would have taken measures to ascertain what steps were requisite to get the mortgage discharged of record, and would literally have complied with the conditions of the bond.

We find the rule alluded to above recognized in ancient as well as in modern decisions.

Cummings *v.* Arnold, 3 Met. 486.

The terms of a written contract for the sale of goods may be varied by a subsequent parol contract though the original contract falls within the operation of the statute of frauds, page 490. "The principal design of the statute of "frauds was," (as Lord Ellenborough remarks in Cuff *v.* Penn. 1 M. & S. 26,) "that parties should not have imposed "on them burdensome contracts which they never made, "and to be fixed with goods which they never contemplated "to purchase." The statute therefore requires a memorandum thereof to be in writing that it may be made certain, but it does not undertake to regulate its performance. It does not say that such a contract shall not be varied by a subsequent real agreement for a substituted performance.

That is left to be decided by the rules and principles of law, in relation to the admission of parol evidence to vary the terms of written contracts.

Third. Interest on the $6,000 mortgage could only be calculated from February 1, 1868. This was the effect of the agreement dated February 5, 1867. It had been provided for by the second mortgage up to February 1, 1868. It had been counted in Renton's Ev. p. 36, line 28.

Fourth. Interest on the $3,000 which was secured by said $9,000 mortgage could only be calculated from 1st February, 1868. See Renton's Ev. p. 36, lines 29, 30.

Fifth. Renton attempts to justify this refusal to pay the whole $9,000 as he agreed, on the grounds that he did not think it was a good security, page 39, line 14. It does not appear but that the security was ample, nor that Maryott misrepresented its value.

Sixth. Renton's real excuse for not advancing the said $9,000 as gathered from the testimony is, that he met with heavy losses. See Maryott's Ev. p. 20, lines 37, 40; Renton's Ev. p. 39, lines 15, 17. Renton does not deny what Maryott swears to.

Seventh. Renton had no right to change the agreement he entered into. He endeavors to justify himself in so doing on the grounds that the property was not, in his opinion, a sufficient security for the money.

Eighth. There is no pretence that Maryott falsely represented the facts.

Ninth. The uncontradicted evidence on the part of the appellant proves conclusively that the property was ample security. See page 2[illegible], lines 19, 20.

Tenth. The $9,000 mortgage was not delivered. (See page 20.) Maryott's evidence contradicted by Renton. The possession of the mortgage by Renton is nothing in his favor, because he had not advanced the whole $9,000. The presumption is, that Maryott was not to deliver the mortgage till R. paid in full. Renton's Ev. p. 38, line 19. There is no difference between Renton's and Maryott's evidence upon the question of its having been placed in Ranney's hands for the purpose of carrying into effect the arrangements that had been entered into. Such being the case, the cases of Benson *v.* Wolverton 1st McCarter, 158 and Com. Bk. *v.* Reckless, 1 Halst. Ch. 650, are not applicable. The onus probandi is on Renton. Maryott's answer corroborated by the circumstances proved is not overcome by Renton's Ev. p. 39, lines 37, 49, p. 38, lines 31, 39.

Eleventh. The $6,000 mortgage should be reduced to $5,000, because Renton agreed to take the stock back. Renton does not deny this in his evidence, but says, Maryott did not ask him to take it back. (See page 36.) But he tendered it back by his answer, pages 8, 9, 13 and 14. The evidence on the part of Maryott is that the stock was worthless. The evidence on the part of Renton does not contradict that fact, but on the contrary, although offered for the purpose of contradicting it rather strengthens than contradicts Maryott's testimony with respect to it. Edwin Ross's testimony, pages 34–5, does not attempt to prove that the stock was of any value, and although he says he does not think there was anything said between them that he did not hear, he does not say that Renton did not represent to and promise Maryott what Maryott says he did.

Renton swears that he told Maryott, page 36 line 7, "whether it was worth more or less I do not know." Now Renton did know, for on the same page, line 21, Renton says, "after I had transferred that stock to Maryott I made "*a trade with a friend* who had 625 shares of that stock of

"the same company of which I became owner." But he tacitly conceals the value of it and by so doing admits what Maryott had sworn to, viz.: that it was worthless.

Renton has tried in his testimony to create the impression that Maryott knew the stock was worthless, and received it knowingly, thereby intending to give a bonus for the use of the money, but that must be proved. It cannot be presumed because that would be a presumption that an illegal act was intended. Renton seems to have been in a dilemma between swearing to an intended fraud, which would make the transaction void, and swearing only to such facts as, from which he supposed fraud, might be presumed but not proved. The law will not presume fraud in a man whereby he may be the gainer. He does not deny what Maryott swears to, viz: that he agreed to take it back. It must be presumed that it was only put in as a temporary counter between them. Renton therefore must be charged with the worthless stock. It must be deducted from the mortgage. The answer, as to the stock, is responsive to the bill. The bill, page 1 line 18, alleges that Maryott became and was justly indebted to Renton in $6,000. The answer is responsive in its statement of how the indebtedness accrued, and as to whether it was a just indebtedness.

Twelfth. It is impossible to believe that Renton refused to loan the balance of the $9,000 on the ground that Maryott could not purchase one of the four tracts. Maryott only needed $700 to complete the purchase of the fourth tract; he had purchased the other three on the strength of his agreement with Renton.

Thirteenth. Nor can it be believed that Renton refused to pay the $9,000 because he did not like the security. It must have been for some other reason, and the only reason was the one sworn to by Maryott, and not contradicted by Renton, viz: that he had lost a large sum of money. (See Maryott's Ev. p 20, lines 37, 40, p. 21, lines 1 to 23.

Fourteenth. Renton has no equity in the enforcement of the $9,000 mortgage. He who seeks equity must do equity. 1 Story's Sec. 64.

Fifteenth. Renton is not entitled to any remedy either at law or in equity. He cannot recover upon his contract for he has not fulfilled it on his part.

Before he can recover for the money actually advanced he must put Maryott in as favorable a position for obtaining a loan elsewhere as it was in his power to do.

It is unjust that he should hold the $9,000 mortgage for $3,000. He was at least bound to release the $6,000 of the $9,000 which he refused to pay to complete the contract on his part. Abbett *v.* Draper, 4 Denio 54. "The defendant did not receive the goods in question as a debtor but as a payment. Before he can recover their value he must put the defendant in the wrong by tendering the balance of the purchase money and demanding a deed."

As to the decree so far as the same is in favor of George Gage.

Page 4. The bill states that on or about the 25th day of September, 1866, one George Gage caused to be docketed in the court of common pleas, of the county of Morris, a judgment for the sum of $80.16, more or less theretofore obtained by him against the said Charles F. Maryott, in the court, for the trial of small causes, etc., by virtue whereof the said George Gage *may claim* to have some lien upon the said mortgaged premises.

Page 6. It asks a decree against Gage to pay Renton's mortgage and costs, and in default that he may be foreclosed of all equity of redemption or claim in the mortgaged premises, or that the property may be sold to pay Renton.

It does not allege even that the said judgment remains unsatisfied of record, or that it has not been reversed, annulled or set aside.

Mr. Gage did not answer the bill nor claim any lien by virtue of the supposed judgment but by his written consent, filed April 18, 1868, a decree pro confesso was made against him, page 40.

For reversal of the decree, so far as it is in favor of Gage, the appellant will rely upon the following

POINTS.

First. The decree, pro confesso, against him was a bar against any claim that he might have to any lien upon the premises in the suit by virtue of said judgment.

A decree by consent even of a person not a party to the suit is binding and cannot be set aside. See Seton on decrees (Eng. Ed. of 1862). French *v.* Shotwell, 5 Johns. Ch. 564. It is conclusive unless procured by fraud.

Second. Maryott answered the bill, and knowing that Gage could make no legal claim by virtue of the supposed judgment did not answer specially as to the judgment, but the answer contains a general denial of all the matters of the bill not being answered with which an answer usually concludes. 2 Daniels Ch. Pr. 843, n 2, says, it is assumed in Stafford *v.* Brown 4, page 90, that the general denial is sufficient as a pleading to put the several matters of the bill in issue.

This general denial, coupled with the consent of Gage, to a decree pro confesso, is conclusive that the judgment was not a lien.

Third. No decree, pro confesso or any default whatever was ever taken against Maryott. Yet the Chancellor proceeded without any evidence in favor of, and with a decree pro con. against Gage, to direct the master to ascertain and report the amount due on Gage's judgment and the order of priority, page 42. This was illegal.

Fourth. Although no decree pro con. against Maryott or any default whatever had occurred against him, yet the master proceeded to, and did report on Gage's supposed judgment, without any notice or summons to Maryott or his solicitor whatever to attend him, and made a report thereon ex parte without his knowledge and in his absence. See report, pages 43 to 46. This was illegal and void.

Fifth. The master in admitting a certificate of search as evidence, admitted illegal evidence. Such certificate is not recognized by law as proof of a judgment. The certificate of search may be true, and still the record of the judgment might shew that the said judgment was satisfied, or set aside. The record itself is the only evidence of the judgment.

Sixth. Altho Maryott was not in default and had fully answered the bill and was entitled to the privelege of filing exceptions to the Master's report, yet no such privilege was allowed him. The final decree was signed and filed on the very day, August 15, 1868, that the Master's report was filed

and without any order *nisi* to confirm the Master's report.

Seventh. For the reasons last stated the final decree, as far as it is in favor of Gage, is unjust and illegal and ought to be set aside.

The appellant does not claim to have the decree in favor of Renton set aside for the reasons last stated, but only for the reasons as first above stated.

C. E. SCOFIELD,
Solicitor of Appellant.

JOHN S. DE HART,
Of Counsel with Appellant.