Court of Errors and Appeals of New Jersey.

BETWEEN

HOWARD MELICK,
Defendant and Appellant,

AND

EMMA MELICK,
Complainant and Respondent.

BRIEF OF S. C. SMITH, OF COUNSEL, WITH THE APPELLANT.

This case involves questions of fact to such an extent that a proper conclusion cannot be reached without the most careful review of all the evidence. The complainant charges in her bill a case of fraud against the defendant which is not to any extent supported by the testimony produced, but upon the trial of the case before the Vice Chancellor these charges were shifted from the defendant to his deceased father. The case of fraud presented against him was deemed by his Honor the Vice Chancellor, sufficient to deprive the appellant of the property in question, although it is admitted that the defendant is innocent himself.

On the part of the appellant I insist that the decree by the court below is based on a misapprehension of the facts—assuming that the legal propositions are correct—and that a preponderance of the testimony in the case establishes the bona fides of the assignment to Howard Melick and fails to show

that the assignment was made with intent to defraud the respondent.

That the appellant's father, Henry H. Melick, did afterwards, when he surreptitiously obtained possession of the bond and mortgage, assign the same to the respondent with intent to defraud her is not questioned, but we maintain that that act was subsequent to, and unconnected with the original assignment to the appellant.

The appellant's assignment was executed and the bond and mortgage transferred thereby, delivered to him eighteen days before the execution of the complainant's assignment. This is an admitted fact in the case.

It is contended on the part of the respondent that a promise to transfer this mortgage to her was made before this time in consideration of the prospective marriage between the assignor and the respondent. Such a promise if made, and not in writing, was of no validity and could not be enforced, (See Statute of Frauds Rev. p. 445, Sec. 5) and can only be available in this case to show an intent conceived at that time, to defraud the complainant in the future.

A verbal promise to transfer the mortgage to her was no more binding than the verbal promise to give this five thousand dollars to Howard Melick, which was made several years before, and at various times alluded to, when the money was invested. Such a promise is proven, and shows that the assignment to the son was consistent with the expressed intention of the father, and speaks volumes in favor of the bona fides of that assignment when made.

The complainant testifies on page 144, line 13, as follows: "Now then he had more money left him, and I told him several times that he was not using me just right. I had always

worked for him on the farm and the rest of the boys didn't, and he was giving them all." He said, "I have always kept that $5000 on the Byard farm for you, and that you can have at any time you want it." This was about 1875 or '76. (Line 24) and on the same page in line 27 he explains that his father subsequently consulted him about the investment of the $5000 because "he had always considered that mine" and told him to put it into the Kramer mortgage.

Here is evidence to show that the father had contemplated for some time the giving of this property to his son Howard, in order to secure to him an equal share with his brothers who had already had large sums from their father.

But there was also a valuable consideration. He owed Howard money and Howard agreed to take up his note, and at their interview which Howard states was on the 17th of March, but which was really on the 16th (the 17th having been Sunday), these matters were then considered and Howard agreed to pay certain debts which were pressing his father and to support his father in the future, in consideration of his then assigning the bond and mortgage to him. See pages 145 and 146.

He paid these debts, advanced more money from time to time and carried out the agreement to support his father.

The adequacy of this consideration has been thoroughly discussed. I insist that it is not in the province of this Court to measure or weigh this consideration, nor can it assume that the consideration which passed was only for the Kase mortgage, which was assigned at the same time and as a part of the same transaction, and that not any part of it induced the assignment of the Kramer mortgage. Nor can we measure the consideration of support and maintainance.

While it is true that the old man had his interest to support himself with, it is also true that by the agreement with his son he was not compelled to use it for that purpose, and as a matter of fact his son paid him the interest and supported him besides, until he purchased the property, and then supplied him with money as he required it.

In his opinion the Vice Chancellor, page 349, comments on the fact that the books are not produced, nor are the items given to show the payments of money made by the appellant for his father, and says, " Their absence is a marked feature in the case."

His Honer evidently forgets that on the second day of the hearing, near the close of the defendant's direct examination, we undertook to establish his account, item by item, and after a few preliminary questions were stopped by his Honor who remarked, " I cannot see that you can gain anything by taking an account," No demand was made for the account, and counsel for the defendant in compliance with what they understood was the opinion of the Court that an itemized account was unnecessary, went no further.

But the intention of the father to transfer this property to his son Howard does not depend for proof entirely upon the statements of the son, who is a party to this suit. Independent and disinterested witnesses corroborated him.

Arthur Kase heard a part of the conversation and testifies clearly to it on pages 196 and 197, and further states on page 198 that Mr. Melick frequently, before that, talked to him about fixing his money matters so that Howard would be his guardian and that he frequently advised him to do something of this kind.

John Wilson, a neighbor and friend of the old man, advised

him to provide for his future and to take care of what he had got, and the old man assured Wilson that he intended to do that, that he expected to make his home with Howard. (Page 204, line 10.) Mr. Wilson is a disinterested witness.

And William Kugler, another disinterested witness, testifies to a conversation with Henry H. Melick about the time of the transfer to Howard, in which the old gentleman told him that he was going to transfer all of his property over to Howard, and Howard was to give him a home and keep him as long as he lived, and pay all of his debts. (Page 215, line 26.) A day or two after, the old man told Kugler that he had done this. (Page 216, line 15.)

These declarations by the old man of his intention to transfer his property to his son, accompanied by his reasons for doing so, show what his intention was, and that his purpose was proper, reasonable and consistent. He desired to provide for his old age and to secure himself against want in the future, as well as to relieve himself of the debts that were then pressing for payment.

These, together with the desire to secure to his son Howard an equal portion of his property, were the motives which induced him to make the assignment to his son. His expressed intention is established by the evidence not only of the defendant, but of three others not in any way interested in the result of this suit.

The complainant relies entirely on the proof, that Henry H. Melick had agreed to give her this property in consideration of her marrying him, before his assignment to his son, to establish her case of fraud.

If the agreement to marry was subsequent to the assignment to Howard Melick, then it cannot reflect upon the assignment

to him, or taint that assignment with fraud. She must make her contract ante-date his.

But it is a singular fact that no witness appeared who could testify that there was an agreement of marriage prior to the date of the actual marriage, except herself and her mother. Neither does any witness appear to have known that after the day had been fixed for the marriage, it was postponed to the sixth day of April. It is strange that if such a thing really did occur, that some of the associates of the old man who are friendly to his wife, never heard him speak of it to any person, and it is a fact that the evidence of the postponement was a perfect surprise to the defendant. As he has testified, he never heard of it until it was sworn to in the hearing of this case by the respondent and her mother.

It is not denied that the old man paid attention to this girl, went with her to places of amusement, and that she made sport of him for some years before the marriage. But the story of his attention shows they were only the attentions of a silly old man insane perhaps, upon this subject at least and that she only tolerated him for what she could get out of him. She went to the opera and other entertainments with him at his expense, and after the entertainment was over would run away from him. She undoubtedly called upon him at his store and coaxed money out of him whenever she wanted it. This is proven by both Arthur Kase and William Kugler, who are uncontradicted, except by the complainant, and although the Vice Chancellor chooses to take her word rather than theirs, assuming as he does that they are mistaken as to the time, I am willing to assert that by no system or rule, by which men ordinarily weigh evidence and try to get at truth, could such a conclusion be reached.

Nothing in the evidence shows that his attentions to her were regarded as serious, or that he was able to control her or prevent her associations with others. The mother attempts to prove that he asked her for her daughter a long time before the marriage, but she finally settles down to a date in the middle of February prior to the April when it actually occurred, as the time of the proposal. The daughter also fixes this date as about the time when the agreement between them was entered into, and upon their evidence alone rests the proof of this important fact. Why should this testimony prevail to set aside as fraudulent the assignment made to Howard Melick, and to stamp that transaction as a cheat and deception of the blackest character against the testimony of these witnesses, disinterested as they are, who show that the old man contemplated this assignment to Howard before it was made and did it after careful consideration and for the best of reasons.

His conversations with Wilson, Kugler and Kase certainly show that the purpose of that assignment was anything but fraudulent. The solitary testimony of these two most interested witnesses, mother and daughter, unsupported should not be allowed to impeach the evidence of the appellant supported as it is by Arthur Kase, William Kugler, and John S. Wilson.

No other person except Hilburn furnishes any proof upon the main questions at issue, and the perusal of his testimony will satisfy any person that his memory of what occurred is entirely unreliable, his impressions apparently having been derived from his conversation with counsel immediately before the examination.

These women in the first place attempted to establish a delivery of this bond and mortgage to the complainant some time prior to the date of the defendant's assignment, fixing

the period at about three weeks before the eighteenth of March, 1878. They both told the same story, particularly as to the several visits made to Hilburn by Mr. Melick and themselves when the bond and mortgage were carried there and placed in his hands; looked over and examined by him as well as themselves; when they were brought away again for the purpose of permitting him to collect his interest, and then returned for the purpose of having the assignment prepared for delivery before the marriage. The desire to establish a sort of delivery to, or control over these papers by the complainant prior to that time is evinced by the manner in which they emphasied this fact, and by the positiveness with which they stick to it when questioned and cross-examined particularly on this point. They reiterated their statements over and over again, and the complainant, as if to make assurauce doubly sure, on page 261, swears that she had the papers in her possession at her father's house on Sunday prior to the eighteenth of March, and before taking them to Hilburn in the first place, that she looked over them and listened to her father while he read them over. She remembers distinctly that they were the Kramer bond and mortgage; that she saw the signature of Joseph Kramer on both papers, and that she saw his wife's signature on the mortgage, and that she retained these papers in her possession until she placed them in Hilburn's hands, to have the assignment drawn some two or three weeks before the eighteenth of March. She distinctly remembers the contents of them and cannot be mistaken as to the time when this occurred, if it did occur.

It is admitted that afterwards, as his Honor the Vice Chancellor expressed it in his opinion, "She is hopelessly contradicted" in this regard by the records of the registry in the

Clerk's office of Warren county, and the testimony relating thereto, which shows that these papers could not have been in her possession prior to the eighteenth of March. The appellant now insists, as we insisted, before the Vice Chancellor, that this statement on thc part of the complainant and her mother is not a mistake but a story made up by them in order to establish a set of facts which they believed were necessary to complete their case. His Honor, the Vice Chancellor, is not satisfied that " She wilfully falsified in that behalf and tries to help her out of her awkward position by assuming that she is mistaken only as to the mortgage, and that in reality at that time, she had in her possession a part of the papers, the deed and bond, and not the mortgage." But I insist that she cannot be extricated from her awkward position by any attempt to modify her testimony. She has made her statements too strong, and particularizes with too much certainty. His honor must have overlooked that part of her evidence when in answer to Judge Morrow's questions, she specifically and positively states that she heard the mortgage read over by her father and saw the names of Joseph Kramer and his wife written on the same, and that at the same time she saw the bond and deed. This was before they were taken to Hilburn. Is it possible that this woman could have been mistaken, when she professes to remember with such accuracy all the details and what occurred in all the various conferences that were held at that time? Is it not just as probable and more probable that if she is mistaken as to the time in which she first saw the mortgage, and had it in her posession, that she is also mistaken as to the time in which the agreement to marry on her part, and to give her this property on his part took place? If it is a mistake, does not the evidence show she is mistaken as to the time when Hilburn was first em-

ployed, and when the day fixed for the marriage was first agreed upon. On the part of the appellant we insist that it was no mistake, that the testimony of the complainant and her mother unsupported as it is, by any other evidence is false as to the time of the promise of marriage, and as to the time of the agreement to transfer this property.

No person among their acquaintances and confidants appears to testify to any knowledge of this arrangement or that he heard that the marriage was going to take place before it had occurred. And there is not a particle of evidence except that of this woman, who is so deeply interested in this matter, that her testimony must be looked upon with the gravest suspicion.

The attempt to connect Howard Melick with fraud, and to show that he procured his father to assign this mortgage in order to defraud this woman in her marriage settlement has entirely failed. Not a word of testimony has appeared to dispute Howard Melick upon any statement of importance in this case. He is corroborated by his brother-in-law and two entirely disinterested witnesses on most important matters tending to establish the honesty of the assignment held by him.

My insistment is that the attempt to prove any kind of a promise of marriage in consideration of the transfer of this property, between Henry H. Melick and Emma Keiter, prior to the 18th of March, 1878, is a failure. That contract was simultaneous with the production of the bond and mortgage by Henry H. Melick and its delivery to Emma Keiter, and also simultaneous with the giving of the $500, which the complainant and her mother swear was given to her to buy furniture at the same time. The testimony of the complainant and her mother, when examined from beginning to end, result in the

establishment of that fact, viz: That the agreement to marry, the delivery of the bond and mortgage, and the paying of the $500, occurred at or nearly the same time. Their testimony is proven to be false, absolutely false, in respect to the time when the bond and mortgage were produced. And it is undisputed that they could not have been in the complainant's hands until several days after the assignment to Howard Melick was executed and recorded, and the papers delivered to him. It follows that the contract of marriage and agreement to transfer this mortgage had not occurred until after that time. The complainant believing that it was necessary to have the contract antedate the assignment to defendant, attempts to establish a set of facts by herself and her mother which would accomplish that result, but she has failed absolutely and is proven to have sworn to statements that were not true. And the fact remains that the fraud practiced upon her by Henry H. Melick, and every act connected therewith was subsequent to the assignment to his son, and therefore cannot reflect upon or vitiate that transaction. Negotiations, as his Honor was pleased to call the silly philanderings of this amatory old man with the girl and her crafty mother, were not promises or contracts, and even if marriage was proposed, until a consenting took place on both sides, no act of the old man in regard to his property could affect this woman.

Her statement as to the payment of the $500 is contradicted by Horace M. Norton, a hardware merchant in Easton, who by his books of account, fixes the time when she purchased a large part of her goods and got the money from Melick as the twenty-eighth day of March. He states that on that day he remembers that Miss Keiter and Mr. Melick were at his store, in Easton, together, and paid for a bill of goods which she had

purchased the day before. He says that Mr. Melick produced a roll of money amounting to four hundred dollars, about two hundred of which was paid to him for goods purchased of him and A. D. Cooke.

His Honor, the Vice Chancellor, is not satisfied that Mr. Norton's testimony can be relied upon on the point of the roll of money being produced by Mr. Melick. But that is not the only point in which Mr. Norton contradicts the complainant. The complainant asserted in her testimony on page 68 that her husband was not with her at Mr. Norton's store, that he was never with her at all when she bought anything. Now it is hardly probable that Mr. Norton, who has certainly no interest in this case and would have no motive in testifying to anything that he did not remember, is mistaken when he says that Mr. Melick was there at his store with Miss Keiter. His testimony on that point must certainly outweigh the testimony of the complainant.

What occurred at that time impressed him in a way that he did not forget the transaction. He was positive of the matter. He was not asked what the occurrences were. We could not ask him. But it is not strange that seeing an old man come with a young girl to purchase things to get married and go to house-keeping with, should impress his memory with what took place at the time.

She is certainly wrong in her statement that Melick was not with her when she purchased the things. Is it not probable that the evidence of Mr. Norton as to the production of the roll of money is the *reliable* and true statemeut of what occurred, and not that of the complainant, who is absolutely contradicted in so many important points?

It is more than probable that he gave her money and pres-

ents before that, and about Christmas he may have given her a bedroom set. But the bulk of the money to buy things to go to housekeeping was undoubtedly given her on the 28th day of March in Norton's store, and the agreement to marry him must have been entered into in consideration of this money and the bond and mortgage, which I believe was not given till the second day of April.

He was spending money beyond his income, borrowing at different places, and using his principal. Where did he spend it? He lived with his son without expense to himself and appears to have had no occasion to use any money except through his association with this girl and her family. It is not easy to believe that tickets to operas and entertainments were the only considerations which induced her to tolerate the old man, especially in the face of the evidence of Kase and Kugler as to her coming after the old man at the store.

The court below has seen fit to question the veracity of the defendant because of the contradictions of certain witnesses on matters of little importance in the decision of this case. We feel that these censures upon Mr. Melick are unjust, and that his statement of the conversation with Berry and his denial of having an interview with Grey, are entitled to at least as much credence as the testimony of these witnesses when the relative positions of the witnesses and their stories are compared. Berry by his own confession, if his evidence is to be considered, was hired to procure Grey to commit a crime, and makes himself an accomplice in the conspiracy with which he tries to connect the appellant. Grey has been an associate of the complainant and her family for years and, as a matter of fact, married the complainant immediately after the decision of this case in the court below. Aside from the evidence of

Mr. Melick, in which he denies the statements of these men, and says he never talked to Grey at all, it is hardly probable that an intelligent man of business would engage in such a transaction as Berry and Grey tried to connect him with. His natural prudence if nothing else would keep him from taking into his confidenee such characters, and especially as Grey, who, he knew, belonged to the Keiter click.

If Berry's story has any bearing upon the case, it goes to show that he, as an officer, and in a position to observe the conduct of people in his neighborhood, had seen and known enough of the complainant and her association with Grey after marriage, to convince him that their relations were anything but proper.

No attempt is made to impeach the general reputation of the appellant for truth and veracity, and in all the important points of this case, he is amply corroborated, while the complainant is hopelessly contradicted.

He asserts that he knew nothing of the proposed marriage of his father, nor did he think that the object of his father in going with this girl was marriage. The same opinion seemed to have prevailed among all of the old man's friends—Kase, Wilson, Kugler and Peirson, and other neighbors and friends, who talked with him every day and knew that he was running after Emma Keiter and spending his money on her, never dreamed that he expected to marry her. It was natural that his son should object to his going with this girl upon social and moral grounds, as well as for the reason that he was opposed to his father squandering his money in his old age. All the circumstances corroborate the defendant's assertion that he had no knowledge of the intended marriage before it took place. He is criticised for his carelessness in leaving the

papers where his father had access to them. Nothing points stronger to the conclusion that he neither knew or expected that his father was going to marry the girl than this fact, that he was careless with the papers. For he certainly knew that money was all the complainant was after, and by simply notifying her that the old man had disposed of his property the matter would have ended, and he could have prevented this disgrace.

But it is plain that the Keiters took every precaution to keep that knowledge from the defendant. They went out of the state to a lawyer not known to Mr. Melick, but intimate with the Keiter family, to have the business done instead of having it done in Phillipsburg, where Henry H. Melick was accustomed to have his business transacted.

They did not go to the minister to be married, or have him come to the bride's home, but had the minister come to the office of the lawyer to perform the ceremony at the very time of the transfer. These clandestine arrangements were planned by the Keiters, and intended to prevent any knowledge of the intended marriage of the complainant with Henry H. Melick coming to the ears of his son. Not one person—not even Robert Fair, who appears by the evidence to have had the confidence of the parties—seems to have heard of the intention of the old man to give the mortgage to his bride.

His Honor, the Vice Chancellor, censures the appellant for not bringing the suit to determine the ownership of this mortgage when he first heard of its assignment to, and possession by the complainant.

We see no reason why he should have plunged into a lawsuit with her, especially after he had purchased the property and taken possession of the same. Certainly the same stricture

can be applied to the complainant. Why should she have waited until the day after her husband died to bring her suit, when she discovered as early as August, 1878, that Howard Melick claimed the property by virtue of a prior assignment. Her witnesses were then living and in their right minds. Hilburn, Fulker and Joseph Kramer could have testified to what occurred, and fixed the time of these events without question. And the complainant would have had no compulsion then to put words into the mouths of the dead, in order to construct her case. It appears by the evidence that she consulted a lawyer immediately on her discovery of the defendant's assignment on the records of the clerk's office, and he drew a notice for her to serve upon Joseph Kramer — not upon Howard Melick—demanding the return of the bond which had been taken.

While it may appear now, by the light of the evidenee disclosed in this hearing, that it would have been wise for the defendant to have sued out his equity when he first discovered the claims of the respondent, yet it must be considered that much of the complainant's story, and especially that part of it which is relied upon as most important in her case, was heard by the defendant for the first time, when she went upon the stand to testify in this case. Strange to say, these women were able to confine in their own breasts the knowledge of these interesting facts during all these years.

Much has been said in regard to the unfortunate position of the respondent when she first discovered that the old man had disposed of the property before the marriage. His Honor, the Vice Chancellor refers to it with feeling. It is not my purpose to uphold the conduct of the old man in deceiving her, but it seems to me when we consider the history of their association

together up to and after the marriage, that her failure to get the coveted prize was not entirely undeserved. Did she deserve anything better? If the aged husband was to derive any benefit from his marriage with this woman, it was her companionship and care. If there was no love, surely her solemn vows to honor, comfort and cherish him in sickness and health, should have been binding upon her. Did she keep these vows? Was she any better than he? Did she not marry him with the intention of cheating him? She did not know of his deception until several months after the marriage, but she deserted him at the altar by refusing to go with him to his home on the evening of the marriage, and the testimony of the neighbors shows that during the period when they were living at New Village, she remained away from her husband a great portion of the time, only staying there with him when her mother or some other member of the family was there to keep her company. She excuses her absence by saying that she left the hired girl with him. But it is evident that she never intended to be a wife to him, in any sense of the word. Her conduct throughout was unwomanly and not calculated to invite approval or sympathy. Surely there is nothing in her position or conduct to warrant that ready excuses should be found for her many departures from the truth, and the facts supplied, which she has failed to establish by reliable testimony. The sworn statements of reputable and disinterested witnesses should not be lightly brushed aside and the testimony in the case distorted and strained to fit the ingenious legal frame work prepared for her purpose, at the expense of the faithful son whose kindness and care for the aged father continued to the end.

S. C. SMITH,
Of Counsel.

NEW JERSEY

COURT OF ERRORS AND APPEALS

EMMA MELLICK,
Complainant and Respondent,

vs.

HOWARD MELLICK,
Defendant and Appellant.

BRIEF OF J. G. SHIPMAN & SON.

The facts are so clearly stated in the opinion of the Vice Chancellor that it is hardly necessary to detail them in full in the opening of this argument.

The complainant files a bill to foreclose a mortgage, which she is in the possession of, and which she was put into possession of by the person to whom the mortgage was made, for a good and valuable consideration, and by virtue of a good and valid assignment, and also by virtue of a paral agreement that the bond and mortgage should be hers, in consideration of marriage.

The consideration is perfectly good and valuable. This complainant was induced to marry this old man,

not for any love she had for him, not because he was her choice as a husband, but merely because she was willing to satisfy his whim, and marry him for the consideration he agreed to give her. She was willing, and did, on the strength of this agreement of Henry H. Mellick, change her whole course of life, gave up all prospects, and joins her life with this old man who ran after her and insisted upon marrying her until she could resist his importunities no longer. It will be seen by the testimony that the agreement between Henry H. Mellick, the old man, and this complainant, was made long before any assignment of Howard Mellick, the son; that the inducement and representation was made by him, and the consent to the marriage obtained, the day for the marriage fixed, and the bond and mortgage handed over, delivered, and the five hundred dollars paid.

The defendant, Howard Mellick, sets up title to this bond and mortgage, and the issue is joined between complainant and defendant, upon the title to the bond and mortgage.

The bill charges distinctly that the assignment of Howard Mellick was obtained by fraud and conspiracy, and that his assignment was taken with full notice of the superior right of this complainant and that she owned the bond and mortgage, and that the assignment of Howard Mellick is absolutely void and fraudulent.

The consideration of this case must convince the Court that this defendant, Howard Mellick, was guilty of the most wicked and foul conspiracy that ever was formulated to obtain the ownership of this bond and mortgage. The testimony convinced the Vice Chancellor of the gross fraud practiced upon this complainant. His opinion shows what he thinks of the case. He does not convict Howard Mellick of the fraud. But I submit that every circumstance in this case points to Howard Mellick, and although he may not have been actually cognizant of the details of the fraud practiced upon this complainant, that everything done was done at his instigation, that this old man, his father, was en-

tirely under the control of the son Howard, and that his wicked attempt upon this girl, his assignment of this bond and mortgage were all done because he was afraid of Howard and wanted to satisfy Howard and do everything he asked him to do.

This complainant had superior title to Howard Mellick for the reason that her agreement with Henry H. Mellick was made before Howard's assignment.

The assignment by Henry Mellick to Howard is dated March 18, 1878. By its terms Howard was have no title until after the death of the said Henry H. Mellick —now by the assignm nt to Emma Mellick, the terms of that assignment were without condition, and the bond and mortgage were actually delivered to Emma Mellick with the assignment, so that the present possession and property in the bond and mortgage were put into the hands of the complainant. She was the absolute owner of them, and her title was perfect by the paral agreement before marriage, and by the actual assignment and delivery at the time of the marriage. The title of Howard Mellick is founded upon his assignment dated March 18, 1878. It is true it bears date prior to the date of the written assignm nt. But the assignment is a fraud. The whole testimony in the case shows that the title of Howard Mellick is fraudulent. The Vice Chancellor says he does not convict Howard Mellick of fraud. I say he is convicted by the testimony in this cause.

Let us look for a few moments. First look at the answer. The answer on page 19 sets up one consideration.

Now look at Howard Mellick's testimony on page 144 of book. There he tells that his father gave it to him. Had always kept it for him. Then on the very next page, 145, he begins to look out for some consideration on account of moneys paid for his father by him. Then look at the assignment itself. The consideration stated in it is $1 (one dollar), and natural love and affection; so there are as many as four different grounds that

Howard Mellick tries to take to show that he was entitled to this bond and mortgage.

Look, though just for one moment, at the testimony of Howard Mellick, how he contradicts his answer and himself. He says in his answer the old man gave up his claim to the interest, as I have shown. Now look on page 156, line 30. He admits that he collected the interest *and gav it to his father*, and after he bought the property furnished him with all the money he needed. Now look further at that piece of a letter on page 306. He tries to induce the father to leave his wife, and says his money is ready for him. Contradicts his answer. Contradicts his testimony flatly. Shows that he had no real claim to this bond and mortgage, but was only casting about in any and every way that he could to defeat Emma Mellick's claim to that bond and mortgage.

But if anything is wanted to convince the court of the absolute lack of consideration on Howard Mellick's part given for this bond and mortgage, the testimony in the case which shows that on the very day that Howard got his assignment of this mortgage and bond, he also received from his father an assignment of a lease mortgage for $2,000, for which he does not pretend that he ever paid one cent. He collected all the interest on this mortgage of lease, too, even though that interest was reserved to his father; that is, after Howard had succeeded in getting his father and complainant parted. He had clean sweep, collected all the rents, interest and everything, and accounted for nothing.

Then on the very day this bond and mortgage in dispute were assigned to him, Howard Mellick not only succeeded in obtaining from his father this assignment of the lease mortgage for $2,000, and also a deed was executed for the New Village property to Jacob Mellick. Jacob was not a party to the deed at all, except in name. He had no knowledge of the deed. It was not delivered to him. But was made, executed and put on record on the same day these assignments were put on record by

Howard Mellick's lawyer, and Mellick admits that he received the rents for this New Village property.

Why did he get this deed made? Why did he obtain these assignments of these mortgages? Because on that day he was anxious to get every bit of property his father had out of his hands, so that he would not have one bit to give to this complainant if he did marry her. The testimony shows that Howard Mellick knew his father was going to marry her, and on account of her money too, and he wanted to get every cent's worth of property out of his father's hands so she could get none. Testimony of Jennie Bowers, page 237 and 238, shows he knew of the old man's intentions; also Tillie Borden on page 235 and 236. Howard Mellick endorsed interest on bond. See the bond on page 294. Twice he collected $334 interest

He was very vigilant. You see by endorsement on bond he collected interest up to April 6, 1880. On March 11, 1881, Howey sold the property, and it was bought in the interest of Howard. Everything he did, all the evidence shows that every thing he could do, was done to get into his own hands this old man's property, and cheat and defraud this complainant out of it.

The fact that these assignments of these two mortgages were made and urged upon this old man just on this 18th of March is very noticeable also, especially when you consider that the deed for the New Village property was made to Jacob when he was not present and knew nothing whatever about it. It is very noticeable, and then, too, it is very noticeable that Mr. Smith, Howard Mellick's attorney, rushed off to the clerk's office to get these papers all on the records on the 18th of March, for on that day Henry Mellick and complainant were to have been married, and the old man, Henry Mellick, put off the wedding day. That this was the day fixed is distinctly proved by Emma Mellick, Elizabeth Hester and Valentine Hilburn. I say it shows conclusively that Howard Mellick knew the old man's plan, and took this opportunity to balk it, and

cheat this complainant, if possible. He urged the old man to this course before it was done. See testimony of Kugler, page 213.

There was no consideration whatever for this assignment of Henry H. Mellick to Howard Mellick of this bond and mortgage. The assignment to him was a voluntary assignment without any consideration, and the complainant was a purchaser for value. She never had actual notice of the assignment until long after the bond and mortgage was assigned to her. Even as against the assignment of Howard Mellick dated and recorded first, her title is good because she is a purchaser for value, and the assignment to Howard Mellick was a voluntary deed without consideration.

Howard Mellick is no worse off to-day if that assignment to him be declared fraudulent and void than he would have been if it had never been made to him. He is, in fact, much better off, for he has collected many dollars in rent and interest out of the property. By this assignment to Emma Mellick, Henry H. Mellick repudiated his assignment to Howard Mellick, and the fact that Henry H Mellick made this assignment to the complainant for the consideration of marriage is conclusive evidence of fraud in the assignment of Howard Mellick. His assignment is a mere voluntary assignment and without any consideration.

Now the rule with reference to such a conveyance is :

"A voluntary settlement of lands made in consideration of natural love and affection is void as against a subsequent purchase for a valuable consideration though with notice of the prior settlement before the purchase money was paid."

Otley vs. Manning, 9th East Rep., 59.

This is the rule in England, where the statute of Elizabeth is in force. This rule is continued in this country thus far.

The rule in this country is that the statute of Elizabeth, 27, is in force and the force of the statute is that a

subsequent sale without notice by a person who has made a voluntary settlement not on a valuable consideration is presumptive evidence of fraud, and throws on the person claiming under such settlement the burden of proving it was made bona fide.

Cathcart vs. Robinson, 5 Peters, U. S. Rep., 234.
Clapp vs. Tirrell, 20 Pickering, 247.
Beal vs. Werner, 2 Gray, 446.
Ricker vs. Ham, 14 Mass., 137.
Kerr on fraud and mistake, page 227.
Mackey vs. Douglas, L. R., 14, Equity 106.
~~Meigs~~ Clapp treatise on statute of Elizabeth, 45–203.
Kerr on fraud and mistake, 233. Note—Applies to all classes of property:

How has Howard Mellick met the presumption of fraud in this case. He is convicted by his own testimony as a liar, and proved to be a liar and a conspirator by the testimony in the cause.

It will not do to plead the statute of fraud in this case, or to ring the charges upon it, for the rule is fraudulent conveyances forfeit protection of every statute that gives confirmation to doubtful titles.

Roberts on fraudulent conveyances, 522.
May on fraudulent conveyances, star page to Blackstone ed., 470.

Fraud to be presumed from the circumstances and condition of parties contracting.

Roberts on fraud con., 537, 538, 536.

The relation of parties will also be considered. Here were father and son living together. The father old and dependent, and completely under subjection of the son. They were in a position to commit a fraud on this woman, and they did so. This very relationship renders any assignment made by father to the son, without consideration, fraudulent and void.

This old man represented that this bond and mortgage were his property; he induced this woman to

marry him upon that representation. He carried the papers to her, and she and he together went to Hilburn's office prior to March 18, and advised with Hilburn about making the assignment to complainant. He told Hilburn they were his property, and certainly had the bond there and the deeds, and, as we insist, the mortgage, too. (See the testimony of Hilburn and also of Mrs. Mellick and Mrs. Kester. Now, by the miserable pretense that he wanted to collect his interest and get more money, he succeeded in putting off the wedding day and getting possession of these papers, and putting them into the possession of Howard, while he made his assignment to him. Certainly the court will not give aid to such a fraud as that. The fourth section of the statute of frauds, it must be remembered, applies to AGREEMENTS only, and does not include representations.

Meigs' treatise on statute of Elizabeth, &c., star page, 384 and 385.

In any case in which the execution of the ante-nuptial settlement, or the reduction of it to writing after a paral promise to make one has been given, is prevented by the fraud of one of the parties, the court will give relief to the person defrauded just as if a binding, written agreement had been duly executed, and will order specific performance of it, and such settlement will be good against either the creditors or purchaser from the settler.

Meigs' treatise on statute of Elizabeth, page 386, star page and top of page.
Star page 394 of the Blackstone ed.

This man, Howard Mellick, was the grantee, or assignee rather, without any consideration whatever. He was in a position to know all about his father's movements, and to direct them, and he did know all about them. Certainly he cannot claim against this complainant, as purchaser in good faith and for value. Howard Mellick says he had no knowledge of his father's fraud. He knew

all about that wicked effort on the part of the old man, Henry Mellick and Kramer, to steal the bond and mortgage from the complainant. When they did succeed in getting the bond, and palming off the worthless bond on the complainant in August, 1878, (see testimony of Emma Mellick on page 48), she followed the old man to Howard's store. On page 49 she swears Howard received the bond from the old man, and the old man told her so. Now look at the answer on page 21. Defendant says that the bond, shortly after it was taken away, was returned to his safe, and Howard Mellick produces the notice served by Emma Mellick on Kramer, and makes it an exhibit on his part in this cause. See page 322.

The old man committed this gross fraud on complainant; stole away her bond. Howard knew all about it, and shall he now be permitted to set up that he is the owner of that bond and mortgage by a mere voluntary assignment?

The fact that this mortgage was assigned to Howard Mellick without consideration, and that his title was a conditional one, "after the death of his father," gave him no present interest in the mortgage, especially as against the complainant, to whom the bond and mortgage were delivered by the terms of an unconditional assignment—the bond, mortgage and assignment being actually delivered to her on April 6, 1878. Simple delivery of a bond and mortgage will constitute an effectual assignment in equity if such be the intention of parties.

The complainant in this cause is in a situation to take advantage of the terms of the statute of Elizabeth. A mortgage on real estate is an actual interest in lands.

Shields vs. Lozear, 5 Vroom, 496 and 502.

Fraud, if practiced by grantor in a conveyance, is sufficient to invalidate a voluntary conveyance. Not necessary to show fraud in grantee.

Woody vs. Dean, 24 S. C., 499.

A mortgagee is a purchaser within the intent of 27 Elizabeth, c. 4.

Lancaster vs. Dolan, 1 Rawle, 231.

It is insisted that the complainant in this case was entitled to actual notice of the assignment of Howard Mellick. This she did not have. The Vice Chancellor cites cases. We cite besides the following:

Gardner vs. Cole, 21 Iowa, 205.
Kerr on fraud and mistake, 227.
Fleming vs. Townsend, 6th Georgia, 103.
Fowler vs. Walrip, 10 Georgia, 350.
Harper vs. Scott, 12 Georgia, 125.

This woman was deprived, upon the eve of marriage, of property she had a right to expect, and property which she had a right to expect, and did expect, if she married Henry H. Mellick, and it was a fraud on the part of Henry H. Mellick to assign this bond and mortgage to Howard after it had been put into possession and control of complainant in expectation of marriage.

Smith vs. Smith, 2 Halsted, Chancery, 215.
Wheeler vs. Kirtland, 12 C. E. Green, 535.
Swaine vs. Pierce, 5 Johns. Chan., 482.
Jackson vs. Meyers, 18 Johns 425.
Williams vs. Carle. 2 Stockton, 548.
Meigs' treatise, 385, 386, 387.

What we have already said we think is entirely sufficient to show that Mrs. Mellick, the complainant, is entitled to the proceeds of the mortgage now in controversy. The opinion of the Vice Chancellor, as we have before stated, deals so fully with the facts and the law, that we would be content to rest the case entirely on it. The court will constantly bear in mind that it is a simple question of right. The mortgage is admitted; the sum due is admitted, and the only question is, has the complainant or the defendant the right to the proceeds of it?

There is no dispute that the complainant has an assign-

ment of the said bond and mortgage, executed in due form of law, and given for a good and valuable consideration; or, in other words, for a consideration paid by the complainant equal to $5,000 in cash, and that her title to the bond and mortgage is complete in law and equity, unless some one can show a better title, founded upon a good and valuable consideration, untainted with fraud and prior to its execution.

Well, now, this man, Howard Mellick, comes into court and says "I have a better title," and he says "I have an assignment of that bond and mortgage dated nineteen days ahead of the complainant's assignment of the said bond and mortgage, and recorded in the clerk's office of the county on the same day.

In point of fact his assignment is so executed. The complainant's assignment of the said bond and mortgage is dated on the 6th day of April, 1878, and recorded in Warren County Clerk's office on the same day.

The defendant's assignment is dated the 18th day of March, 1878, and it is alleged is recorded on the same day in the Warren County Clerk's office; but when you come to examine the record it shows an assignment of a mortgage dated on the 13th day of March, 1877, instead of the 30th day of March, 1877, the actual date of the mortgage in question. That is the situation of the assignments. Now, if you depended upon MERE DATES, the defendant would be in the better condition AS TO DATE.

That impels us to go farther and see what the character of the defendant's title is. Bear in mind that there is no dispute at all; yea, it is fully admitted that the complainant's title is founded upon a good and valuable consideration—a CASH consideration.

Now you turn to the defendant's assignment and examine it, and what do you find. It reads thus:

Book, page 306, line 20: I, Henry H. Mellick, in consideration of the sum of one dollar, and the further consideration of natural love and affection, have granted, &c. And you also find that on the same day the said

Henry H. Mellick assigned over to the said Howard Mellick, the defendant, a certain other bond and mortgage, given to the said Howard Mellick and one Case and wife to the said Henry H. Mellick for the sum of $2,000 for the very same consideration, to wit: for the consideration of one dollar and the further consideration of natural love and affection.

We find then that on the 18th day of March, 1878, the defendant received from Henry H. Mellick a gift of $7,000, and that gift included the claim of the complainant for what she had paid full value, and that if there was nothing else in the case the defendant's assignment is an assignment without consideration, or is a mere voluntary one, and is therefore void as against the complainant.

But the complainant goes further, and says that the assignment of the defendant was procured by fraud—fraud practiced upon her by the said Henry H. Mellick, and that he was actively assisted in that fraud by the said defendant, Howard Mellick. And we say that Howard Mellick, the defendant, stands before the court in such a way that he is not only not entitled to any credit as a witness, but that he has totally forfeited all claims to the consideration of the court.

He is a son of Henry H. Mellick. His father was a widower, a man of means. He had formed an attachment for the complainant. He had entered into an engagement of marriage with her and was about to marry her. He gave her an assignment of the bond and mortgage, and pretended and assured her that it was her property, and he had a perfect right to assign it, and she, believing it, accepted it and married him, and afterwards found that he had given this bond and mortgage to his son, and he afterwards surreptitiously got the bond from her and threw her a worthless bond in place of it. We say that this defendant was a party to all this, and not only knew all about it, but he assisted in it. And let us look at the character of this man and see how it stands. He had made efforts to get possession

of the bond and mortgage; had succeeded in securing the bond; he wanted the mortgage. See what he does. First he procures a search warrant to be issued, and places it in the hands of Samuel Berry, a constable. The testimony of this witness will be found on page 242 of the book, and extends to page 250. It is of the greatest importance, and we especially invite the attention of the court to it. He sends him to search, as he pretends, for stolen goods—an infamous outrage in and of itself, and then he instructs him to hunt for ANY PAPERS he could find there, and then he makes the proposition to him to get Joshua B. Grey, a person living near and familiar with the complainant's family, to get the complainant out in an exposed position and commit adultery, and he would give him from $300 to $500, which he could share with Grey. He made the proposition to Gray, who announced it as impossible. But this man, not content to leave it so, approaches Gray himself.

Joshua B. Gray's evidence will be found on page 250, and runs to page 253. It is of the greatest importance, and we call particular attention to it. He makes the same proposition to him, to have criminal intercourse with the complainant in some exposed place, or get some one to do it, and he will pay him well, and then urges him to STEAL THESE PAPERS.

When he is rebuked, why he excuses himself by saying they were "HIS PAPERS."

He was foiled. The court will remember that in all this he had his father by his side. Of course he was called on to explain this evidence. He virtually admits his conversation with Berry; tries to blacken the character of the complainant by a base insinuation which is perfectly false. He denies the evidence of Grey; swears he did not know him.

Now here are two unimpeached witnesses, and wholly unimpeachable, swearing to facts which show his character to be so detestable that it makes him an object of reproach to all good and honorable men, and renders

him utterly unworthy of any credit in a court of justice or anywhere else.

Bearing in mind now the character of this defendant, we will trace the case and see how it stands.

There is no pretence but what the old man, Henry H. Mellick, committed a gross fraud upon the complainant in reference to these papers, and but a very feeble denial that Howard Mellick, the defendant, is guilty of one also. The Vice Chancellor says he knew all about the old man's fraud, and it looks as if he might have actively assisted the old man in it.

It is useless for us here again to repeat the circumstances under which the assignment took place.

See the evidence of the complainant, page 31 to 76.

Mrs. Elizabeth Keiter, page 76 to page 100.

Valentine Hilburn, page 114 to 120.

This testimony shows the relation of the parties. The conduct of Henry H. Mellick; his proposition of marriage; his offer to pay her; the contracts of marriage; the going to Hilburn in the month of February, 1878; the agreement for that marriage to take place on the 18th of March, 1878; the taking of all the papers to Hilburn; the postponement of the marriage till the 6th day of April, 1878; the absolute agreement that she should have these papers, to wit:—the Kramer bond and mortgage, the New Village house and lot, and $500 to buy furniture. Notice his positive declaration that the Kramer bond and mortgage were his, and that he had a perfect right to dispose of it.

Notice the actual delivery to her of the bond and mortgage and deed.

Comment on this evidence and show its truth.

Notice the girl, poor but respectable. Notice the attempt to blacken her character, especially the insinuations of Howard Mellick.

She had no money; she had made this bargain with the old man Mellick prior to January. She says he gave her the $500 to buy things, and in proof of it we have the bill she bought of Davis & Taylor on January

7, 1878, for housekeeping purposes, for $125. See the bill, page 321. It is strong corroborative proof of the truth of her story.

When did the first conversation take place about the Kramer mortgage? Mrs. Mellick and Mrs. Keiter both tell you.

Notice when they went to Hilburn first. It was in February, 1878. They all say so—Hilburn and all.

Notice what they say about Hilburn. They were very anxious to have Hilburn examined. They visited him as soon as it was understood he should be examined. They had examined him closely. They wanted Mr. Hilburn, and we accepted their challenge, and then they want to repudiate him.

Notice the assignment to Howard Mellick.

We have seen that it is a mere voluntary assignment, and that another was given at the same time for $2,000. It is a badge of fraud, and calls on Howard Mellick for explanation.

But it was obtained by actual fraud—a fraud participated in by both father and son, and with intent to cheat and defraud the complainant. The old man, by the grossest fraud, attempted to and did obtain the rights of a husband from this poor girl, who was perfectly innocent and confiding.

We have seen how the old man obtained a postponement of the wedding from the 18th of March to the 6th of April.

Now, we submit that the old man committed this wicked fraud upon this girl through the active agency of this defendant, and he is equally guilty.

We have seen who he is; a man so base and so low that he would have men to try and destroy the reputation of a poor girl, by a crime too detestable to be mentioned. Look at him in this light all the time.

He of course denies everything in his evidence until you pin him down so close that he has no way of escape, and then he will make a half-way admission. Notice what he says about the old man's relations to this girl.

It was very distasteful to him, of course. He pretends at first, when we ask him, that he had never heard of the old man's attention to the girl. Why of course he knew perfectly well when he said it that it was absolutely false, and that he had testified to what he knew was positively untrue.

Notice that the attentions of this old man to the girl would be readily noticed and talked about everywhere. And he knew all about it.

Notice Jennie Bowers' evidence on page 237 and 238. She shows that Howard Mellick knew all about the old man's visits to the girl, and all about his determination to marry her. He tells the old man all the girl wanted was his money.

Mr. Bouden also, 295.

Mellick denies that he knew anything about the things going up to the New Village house. She swears he did and about notes.

You have also the evidence of defendant's brother-in-law, Kase, page 200. He says the old man was spending money, and he advised him to give it to Howard. And he says, page 201, that Howard knew all about the old man spending money. He knew he had sons, and he had a little interest in it himself, he says. He was the brother-in-law of Howard. His sister was Howard's wife, and he had an interest for her sake.

Now, then, we have the position of this man, Howard Mellick, in reference to the old man's relation to this girl. He knew she was going to be his wife, and he knew when the wedding was to take place, and he was bound to circumvent it. And doubtless he secured the postponement of the marriage, and he "made the old man come to school," as the boys say.

Notice how it happened that this gentleman, Henry H. Mellick, decided all at once to dispose of everything to this son Howard and his son Jacob,

He was not an old man, only 66 years of age, in full health and vigor; a man of property, worth, according to the defendant's own show, nearly $12,000; he had

been a widower for many years, a man of plain and simple habits; had plenty to live on; had talked of going to keeping house that spring at New Village, according to this Howard Mellick's evidence, and getting a woman by the name of Robbins to keep house for him.

Now we ask how came Henry H. Mellick all at once on this 17th day of March, 1878, to determine to strip himself of everything he had upon earth and put it under the control of the defendant and his son Jacob, for if this man is to be believed at all, he got all the old man had. It all passed out from his control to the control of this defendant and Jacob.

Howard worked on him and induced him to do it. The old man wanted the girl, and he wanted to cheat her out of that which he agreed to give her to induce her to sacrifice herself and marry him.

Who instigated the father to do it?

Jacob, his son, was not there. How came the old man to go to Howard's lawyer? Mr. Smith was Howard's lawyer. Howard sent him there.

In the first place mark the time—the 17th of March, Howard says, and all his witnesses. And the old man got the papers, and thought it too late that day, and he would go next morning, the 18th, and he did.

Now the 17th was Sunday; store not open at all and all a myth; shows the recklessness of his swearing; also take and read Howard Mellick's story.

Notice the nature of the assignment—to take effect after his death. Howard to collect the interest and pay it to him. Why all this? Is it consistent with honesty?

But trace him on page 144; begin and read on; it is interesting reading.

About the 17th of March, he says, his father owed him $600 in money. Read what he says, page 146, line 25, as to bargain on that 17th day of March.

Howard Kase, page 195, &c.: He tells you the story what Howard was to do; Howard told it; Howard had the papers in his hand, and he said the father was going

to assign them over to him, either money or papers, and he would keep the old man, clothe him, &c. Read his evidence, "The old man said to all this he would have a home anyhow."

John S. Wilson: He talked with the old man; he was one of Howard's tools; he knew the old man was going with the girl; he sounded him and told him what to do with his money, and he gives you the old man's answer, page 204, line 8. Read it. Was going to fix it.

W. M. Kugler, another of Howard's men, page 214; another witness for Howard; He tells you what the old man said, and how Howard had the papers in his hand and was too late that day; do it the next.

Now you have their stories. Now we have already alluded to the assignments, one dollar, love and affection.

They contradict all this evidence. Now take Howard Mellick's answer. Read it, page 16, line 26; he makes every word he has said a lie.

But go on. Take his answer again, page 19, line 20, &c.; sets up entirely a new contract after complainant and the father had separated, and the old man gave him the interest, &c., and he had expended $1,400 for clothing, and he prays an offset against the complainant's mortgage. Read the answer, page 20.

Where is the evidence of the indebtedness? The slips of paper? Where are his books? He was a merchant, keeping a book of daily entries and a ledger.

See what a chain of lies this man fabricates. The counsel talked of amending his answer. Why they couldn't make an amendment that will fit his various stories.

All false that the old man owed him a cent; he had the interest all the time on $7,000—$420.

He owed the old man. Notice Peirson's testimony, page 240.

Notice Howard Mellick down to Mr. Smith's while he was drawing the papers. Mr. Smith swears to it. Mellick denies it, of course. Contradicts his own counsel.

He was there seeing to it that Mr. Smith drew the papers right.

Who got the mortgage from the Clerk's office or ordered it sent down? If it was ordered on the 14th of March, of course it was ordered with fraudulent intent.

We will notice hereafter when it was obtained. It was the joint act of the old man and Howard. Howard says he took the bond and mortgage from the safe.

Now what next? Howard finds the bond and mortgage gone, and he must have them back. How does he propose to get them? Read Mrs. Mellick, page 46, 47, &c.

Herbert Yutz, page 103: Heard him and Kramer talk how to get the bond and mortgage. Of course Howard Mellick denies it all, and tries to blacken the witness, but when you take this evidence and put it along side of Berry and Gray, it is overwhelming against the man, and shows him to be a wicked falsifier.

He swears he never missed the bond and mortgage till Mrs. Mellick served the notice, August 13, 1878. Then he first knew it. He swears his father never gave him the bond. Read his answer, page 18, line 10, &c., page 21, line 3, &c. Proves him false in everything.

This court has rarely been called upon to see a man so utterly debased as this man. All his testimony shows him to be a fraud.

The old man would have been honest if he would have let him. He told Fair, page 100 and 101, that he had given the bond and mortgage, the New Village deed and $500 to his wife.

He pretends he paid the $250 note. He got the old man's interest to do it with.

If not a conspirator, but an honest man, why did he not resort to the Court of Chancery at once to compel this woman to give up these papers.

He had his father by his side; he had Kramer alive to testify; why did he not do it rather than resort to the diabolical methods he did?

He was afraid, and this is the most conclusive and

powerful argument against him, and should stamp him of itself as a conspirator, a fraud doer, and wilful perverter of the truth, and estop him.

And now, after thirteen years, he just discovers and charges by his cross answer or bill that this mortgage is a cloud upon her title.

What a discovery!

We have established conclusively the fraud.

They say why did the girl not file her bill. No occasion.

He broke up the old man's home by getting away the bond and mortgage.

Now when was the mortgage actually brought down from the Clerk's office at Belvidere. Mrs. Mellick, her mother, Mrs. Keiter and Valentine Hilburn all swear it was at Mr. Hilburn's office in February. Defendant in his answer, which I have already given, says he kept bond and mortgage in his safe from the time they were given until they were taken out on March 17th, to take them to Mr. Smith's office.

Kugler says the Kramer bond and mortgage were hunted out separately from a great number of papers, and the old man took them and all the testimony on both sides, took it as a mortgage kept in a safe in Howard Mellick's store, and defendant closed his testimony with that idea until all at once it occurred to Mr. Smith to inquire when mortgage came down, and called Hoagland to show that by entry on mortgage register he sent it by mail or by hand of Lewis M. Teel to Smith. That entry seemed to affect Vice Chancellor. He thinks they are all contradicted about it. First the book is not evidence. Nothing but a mere private memorandum; all a man could do was to look at it to refresh his memory. The 17th Section of Statute, Revision, 705, provides in reference to the registry of mortgages, and this entry not authorized by law, and not of the least value, and the court cannot receive it as such. The abstract is not evidence.

Den vs. Gasten, 7th Halsted, 44, New Jersey R.
R. vs. Suydam, 2 Harrison.

Notice too that Hoagland made a mistake in recording the assignment of mortgage to Howard Mellick, making it mortgage dated March 13th, instead of March 30th, 1877. Hoagland knows nothing except the entry on registry is in his hand writing. Now the evidence shows that old Mellick took that bond and mortgage to Smith when assignment was drawn. How did it get into Howard Mellick's safe? how did the old man get it? He had it before assignment. Evidence shows that clearly. See S. C. Smith's evidence on page 136.

This entry was wrong; the date not correct. Unless it is wrong you cannot reconcile any of the evidence. Notice the assignment to Emma Keiter on page 295. It is drawn with great accuracy and describes mortgage very carefully. Looking at original you see the figure 6 was put in after paper was drawn showing mortgage there some time before.

Notice their allegation that it is a made up story because they swear mortgage was taken over to Hilburn's.

We think fraud fully established, and we notice a little further the insistment that their assignment was recorded first, and that complainant is bound by constructive notice. Have already cited authorities, and refer besides to opinion of Vice Chancellor and leave it there. Except, we desire to and say, if they stand on strict rule the record shows an assignment of mortgage dated March 13th. The mortgage is really dated March 30, 1877, and we desire to show the court what kind of an application they would make of the law. Here is a case where a man for a year past or more had made proposals of marriage to a person, and to induce her to marry him agreed to give her certain property, and did actually make an assignment of it and deliver it to her before marriage completely lulls her to sleep, and then when she comes to look for her property he says I gave all this property away to my son on March 18, and the

assignment is recorded, that assignment is notice to you, and your assignment is not good. Suppose Henry H. Mellick had gone to this woman before April 6 and produced to her this bond and mortgage, and said to her I have this good bond and mortgage, it is my own property, let me have $5,000 on it and she takes his word and gives him the money, and takes an assignment of the bond and mortgage. Could Howard Mellick set up such notice as this woman did afterwards get? We submit not. We insist it is no notice at all in this case, and especially when you consider the easy and careless way Howard Mellick kept and took care of the bond and mortgage.

The truth is Howard Mellick thought if the assignment of this mortgage was on record that was all was necessary. See his testimony, page 175, line 30. Why was he so anxious to get this transfer on record, and why so satisfied when he knew it was there? Because he thought that record would cut out Mrs. Emma Mellick. He knew complainant was about to be married, and that this bond and mortgage were to be hers, and he therefore was anxious for one thing only—to get his transfer on record.

Notice the receipts. Notice Horace M. Norton's testimony. He is a very willing witness, and his testimony of no avail whatever. It amounts to nothing.

We cite the following authorities on the subject of estoppel and acquiescence by ~~complainant:~~ defendant

Keer on fraud and mistake, 299 and 300.

As to statute of frauds and the validity of marriage contract. Ungley vs. Ungley.

Law Reports 4 Chancery Div. 73. On subject of fraud and fraud presumed from the relations of parties.

Newman vs. Cordell, 43 Barber, 448.

Wood vs. Hunt, 38 Barber, 302.

Clark vs. Chamberlain, 13 Allen 257.

Bigelow on fraud, 403, &c.

Bump on fraudulent conveyances, 229.
Griffith vs. Goody, 113 U. S. Rep. 89.
Allere vs. Jewell, 94 U. S. 506.

J. G. Shipman & Son,
Solicitors of and Counsel with Complainant.

THE JOHN L. MURPHY PUB. CO., Printers, Trenton, N. J.

N. J. Court of Errors and Appeals.

BETWEEN HOWARD MELLICK,
Defendant and Appellant,

and

EMMA MELLICK,
Complainant and Respondent.

BRIEF OF WM. H. MORROW, OF COUNSEL WITH APPELLANT.

The mortgage mentioned in the complainant's bill was made by Joseph Kramer and Anna M., his wife, to Henry H. Mellick, dated March 30th, 1877, covering lands in the town of Phillipsburg, and securing payment for the sum of $5,000 in one year, with the privilege of extending the same for five years, upon the prompt payment of interest. It was acknowledged on the day of its daie, and was taken to the Warren County Clerk's office for record April 3d, 1887, and recorded in Book 32 of Mortgages, pages 460, &c.

The mortgage indisputably remained at the Clerk's office in Belvidere until the 14th day of March, 1878, because as appears by the testimony of William L. Hoagland, the Clerk, page 269, it was intended that day to be mailed to S.

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C. Smith, at Phillipsburg, but was actually sent by L. M. Teel.

Peter Young, a conductor on the Belvidere railroad line, says that on the 14th of March, 1878, two trains carried mail from Belvidere to Phillipsburg, the first one in the morning at ten minutes after six; and the next one that carried mail was at 12:55 in the afternoon. (See pages 274, lines 30, &c.; 275, lines 1 to 5.)

Now, from this testimony and from the Clerk's register, it is clear that Mr. Hoagland intended first to send this mortgage to Smith by the mail leaving Belvidere at 12:55 P. M., but Mr. Teel coming to the office, Hoagland sent the mortgage by him, by the same train.

So that this mortgage did not reach Mr. Smith's hands until, perhaps, two o'clock in the afternoon of March 14th, 1878, and that day was on Thursday, as appears by the calendar of that year.

It was assigned to Howard Mellick on the morning of March 18th, 1878. (See the assignment, *Exhibit C* 9, page 306; testimony of S. C. Smith, page 138, lines 20, &c.)

On the day previous to the assignment, or rather, two days before the assignment (for the 18th was on Monday), Henry H. Mellick had agreed with his son Howard to assign this mortgage to him. (See page 149, at foot, and top of page 150.)

On the morning of the 18th Howard took the mortgage from the inner lock-safe (page 150), which shut with a spring lock, to which he only had the key, and to which his father, Henry Mellick, had no access. (Page 148, lines 30, &c.; page 149, top. See, also, testimony of Wm. Kugler, pages 212, 213, 214, 215 and 216.) Kugler says that about the time this assignment was made, he went into Howard's office to get some money changed. Howard and his father were there. Howard had a bundle of papers in his hands, which he handed to Kugler and told him to get from the bundle the Kramer mortgage and give it to the old man; Kugler did pick out the bond and mortgage and

gave them to the old man. This occurred late in the afternoon.

That night the old man told Kugler that he was going to transfer all his property to Howard, and Howard was to give him a home; keep him as long as he lived and pay all his debts; that it was to have been done that afternoon, but it was too late that afternoon, and he would have it done soon. A day or so after that, the old man came to Kugler early in the morning, and asked him to unlock the safe for him, that he wanted to get these papers; the witness did not have the key, and by that time Howard came in by the back door, and the old man went to Howard and told Howard to get him the papers, and he would go down to Smith's office and have it fixed.

After that the old man told Kugler that he had transferred his property to Howard.

Now, Howard Mellick says (page 150) that on the morning of the 18th he took the mortgage from the inner safe and gave it to his father, and next saw it that same day, when Mr. Smith gave it to him, after the assignment to him had been executed, when he took it to his office and put it in the pigeon-hole in the open safe, on the outside of the lock-safe; and that the doors to that outside safe were not kept locked during the day; and that his father had access to that part of the safe. Now, I call attention to the fact that up to that time the old man's papers had been kept in the inner lock-safe, and he had reason to suppose that the Kramer mortgage would be kept in the same place after the assignment that it had been before.

I refer again to William Kugler's testimony (pages 216 and 217) that on the 2d of April, 1878, Joseph Kramer, the mortgager, and the old man, Mellick, came to the office and asked Kugler to unlock the safe and get the papers—that Kramer wanted to pay his interest; that Kugler had the key to the inside safe when Howard Mellick was not in; that he unlocked the inside safe and looked for the papers, but did not find them; that he then looked on the outside and found them in the pigeon-hole where Howard said he

had left them; that he handed the papers to the old man, and told him when he was done to put them back in the safe. On the bond is written a receipt for one year's interest, dated April 2d, 1878, and signed by Henry H. Mellick.

Two things will be observed: First, that this mortgage was in Phillipsburg, in Mellick's safe, from the 14th day of March to the 2d day of April; and second, Henry H. Mellick first knew on the 2d of April that the mortgage was not kept in the inner safe, and that it was where he could get it.

In corroboration of the evidence of Kugler and Howard Mellick, I call attention to the testimony of Arthur Kase (page 196): Kase and Kugler were clerks in Mellick's store in the spring of 1878. In the afternoon, toward evening, Howard and his father were in the back part of the office, talking; it was in the spring of the year. Howard called him into the office, and either Howard or the old man had papers in his hand; they were looking at the papers and talking about them, and Howard said that the old man was going to make over some papers or property to him, and he would keep him during his natural life and pay his, the old man's, debts. Then Kase went out of the office, and Kugler says (page 213, line 30, &c.) that he remembered seeing Kase there at the time, or just before, or just after he went into the office and was asked to pick out the Kramer bond and mortgage from the bundle.

I call attention to this: that the fact that this mortgage remained in the Clerk's office at Belvidere from April 3d, 1877, to March 14th, 1878, was not known to the complainant, or to her counsel or witnesses, until after all the testimony in the case on the part of the complainant had been given; and I propose to show to the court that the story told by the complainant and her mother, who are the principal witnesses on her part, is a manufactured story, and absolutely contradicted and overthrown by the indisputable fact that this mortgage was in Belvidere until noon of the 14th of March, 1878, and thence remained in Phillipsburg

until and on the 2d day of April, 1878, when Kramer came there and paid a year's interest, which was indorsed on the bond. But before doing that, I want to call the attention of the court to the averments in complainant's bill. On page 4, lines 32, &c., it is alleged that complainant and Henry Mellick intermarried on April 6th, 1878; that more than a month before the marriage Henry had agreed with her that if she would marry him, he would assign to her this bond and mortgage; that on the day of her marriage he did assign to her a bond and mortgage, by an assignment executed on that day; that the assignment was subject only to the right of Mellick to draw the interest during his lifetime.

The assignment itself (see page 302, line 25) recites that it is in consideration of the sum of one dollar; no other consideration is mentioned; but the bill alleges that there was a further consideration, to wit, the marriage of complainant to Henry H. Mellick.

The bill then proceeds to charge that Howard Mellick pretends to be the owner of the bond and mortgage by virtue of an assignment made on the 18th of March, 1878, and recorded in the Clerk's office at Belvidere on the same day. The complainant charges that the assignment to Howard assigns a mortgage dated March 13th, 1877 (but it appears in the case that on the 6th of April, when complainant took her assignment, the assignment to Howard, though lodged for record, had not been recorded. The Clerk, in recording, did make a mistake in writing the date of the mortgage. He should have written it March 30th, but if the lodging for record was notice, the assignment itself was correct, and gave notice that the mortgage assigned to Howard was the identical Kramer mortgage, dated March 30th, 1877).

The bill further charges (page 7) that Howard Mellick knew, when he took his assignment, that Henry H. Mellick had already made a contract for marriage with complainant, and had agreed to deliver the bond and mortgage to her, and that Howard procured his assignment in order to defeat

a marriage contract; that the assignment to Howard Mellick is a fraud, and without any consideration; that the bond and mortgage were not delivered to Howard Mellick, and were never intended to be assigned to him; that they were not delivered to him at the time of the assignment, and that they were delivered to her. There is no allegation of the delivery of the mortgage by the old man to her before the assignment to Howard, as a part performance of the marriage contract, nor a delivery to Hillburn, nor anything to the effect that the mortgage was left in Hillburn's hands, or that she was induced to consent to the giving up of the mortgage to the old man, with a promise that it should be delivered to her afterward; the material allegation of the bill being that Howard knew of the marriage contract, and that his assignment was without consideration and made to defeat the marriage contract, and that the mortgage was never delivered to him.

So far as the evidence corresponds with the allegation of the bill, it shows a legal assignment to Howard on the 18th of March, accompanied by delivery with a proper registry notice, and the subsequent assignment to the complainant, dated April 6th, in pursuance of a previous parol agreement, for the assignment to her of the bond and mortgage, but which was unenforceable against any one before the 6th of April.

If she had sworn to and proven what she alleges respecting the marriage contract, it would appear that she had no valid contract to assign to her the mortgage at the time Howard took his assignment, that he had no knowledge of any agreement between these parties, and that the fraud alleged in the bill was not proven as against him.

If the case showed a promise of marriage between them, and, in consideration of that promise on her part, a promise on his part to assign her the mortgage, such promise, not being in writing, would not be enforceable against him.

His failure to assign to her the mortgage is not a *fraud.* In support of this I cite

Jordan *v.* Money, 5 House of Lords Cases.

This was a marriage contract case, in which, on page 210, Lord Cranworth draws the distinction clearly between a representation which amounts to a *promise* only, and a representation which is of an existing fact. The doctrine of this latter case is approved in

Alderson *v.* Maddison, 8 L. R., Appeal Cases 473.

See, also,

Beattie *v.* Lord Enbury, L. R., 7 Chancery 804.

Exparte Burrell, 1 Ch. Div. 552.

The marriage was not a part performance of the contract so as to give the wife a right to the mortgage.

Warden *v.* Jones, 2 De G. & J. 76, star pages 84 and 85.

Caton *v.* Caton, L. R., 1 Ch. 148; 2 H. L. 127.

Lassence *v.* Tierney, 1 M. & G. 551.

Part performance making valid a contract invalid by the Statute of Frauds does not extend to contracts other than those relating to lands.

McElroy *v.* Ludlum, 5 Stew. 832.

Brittain *v.* Rossiter, 11 Q. B. Div. 123.

Maddison *v.* Alderson, *supra.*

Even where part performance is sufficient to take a case out of the statute, it must be a performance by the party seeking relief.

Caton *v.* Caton, Warden *v.* Jones, *supra.*

The older English cases may be stated to go to this extent, viz: That a contract will be taken out of the statute where the provisions of the statute have not been complied with, in consequence of a fraud of the *person against whom a decree for specific performance is sought.*

The later cases define such a fraud to consist of the *representation of a fact,* and not where there is a mere statement of something which the party intends, or does not

intend to do. The principle does not, however, apply to this case, because relief is not sought against Henry H. Mellick, who, it is alleged, committed the fraud, but against Howard Mellick, against whom no fraud is proven.

Fitting the evidence to the bill, I submit that the complainant has had no case at all.

Then a notion of a part performance, by way of delivery, or *quasi* delivery, to give the case some equity, appears.

And so the case of the complainant, attempted to be made by the evidence, is radically different from that made by the bill.

Now, I want to call the attention of the court, at some length, to the evidence of this woman and her mother, who are the principal witnesses, and to the testimony of the lawyer, Hillburn, so far as his testimony seems to corroborate that of the complainant.

But a preliminary observation should be made. If this suit was against Henry Mellick's administrators, to compel performance of this alleged agreement, the complainant would be clearly disqualified from testifying to transactions with him. It is conceded, however, that she is a competent witness here, but her testimony ought to be carefully scrutinized. She is putting into the mouth of her husband a contract, which she says was made eleven years before the filing of her bill, but in respect of which she took no action until his lips were closed, and until after the death of Kramer, both of whom would have been important witnesses on the one side or the other of the case.

And the observation of Lord Blackburn in Maddison *v.* Alderson, L. R., 8 Appeal Cases 487, is specially applicable to this case. He says: "It is not merely that the sole witness is a person deeply interested, giving testimony as to what took place between herself and a person deceased, and that no judge sitting in equity and deciding both the law and fact would have acted on such evidence without confirmation. * * * * I do not think there is any rule of law which prevents such unconfirmed evidence from being admissible, or that would prevent a jury from believ-

ing and acting on such evidence, though it ought to be strongly pointed out to them how dangerous it would be to do so." (See, also, Lord Chancellor Selbourn, pages 476, 478.) "So long as the connection of those *res gestæ* with the alleged contract does not depend upon mere parol testimony, but is reasonably to be inferred from *res gestæ*, justice seems to require," &c.

Now, observe her story.

On page 34, lines 10, &c., in answer to questions by the court, she says that in February, 1878, she had positively agreed to marry him; that the wedding day was then fixed for the 18th of March.

On page 35, lines 6 to 20, she says he proposed to her to go to the lawyer's and make the bargain there, to get these papers fixed and get married; at the foot of page 35, she says in February he took the papers and we were to be married in March; at top of page 36 she says they went to Valentine Hillburn's—she, her mother and Mellick went to Hillburn's.

Observe this testimony:

Q. Did you see the papers? *A.* Yes, sir; I saw the bond and mortgage of Mr. Cramer. *Q.* (by the Court) Made by Mr. Cramer, you mean? *A.* (the witness) Yes, sir. *Q.* (by the Court). Did you look through it? *A.* (the witness) Yes, sir. (Showing witness paper.) *Q.* Is that the mortgage that you saw? *A.* Yes, sir. *Q.* That is the mortgage you saw? [Said mortgage offered in evidence and marked *Exhibit C.*] *Q.* Were those the papers that you saw that he took over to Valentine Hillburn, when you went over there with your mother? *A.* Yes, sir. *Q.* (by the Court). Did you read them through? *A.* I did not, but my lawyer did, and we all looked through them there. *Q.* Do you recognize them as the same papers? *A.* Yes, sir. *Q.* When was that? *A.* That was sometime about the middle of February. *Q.* That was in February? *A.* Yes, sir. *Q.* Of 1878? *A.* Yes, sir. *Q.* And you and your mother and Henry Mellick went to Mr. Hillburn's office in Easton? *A.* Yes, sir. *Q.* What was said and

done? *A.* He told the lawyer that he would like to get married and had come over to see about fixing this money; he had this mortgage and would like to have it assigned over to me, and after his death it should become mine; he would like to have the interest during his lifetime; and then the lawyer told him he would look at them, and told him, and said, Are you sure that you own this, and he said he was."

On page 37, lines 34, &c., she goes on to say: "Mr. Hillburn asked me if I was satisfied with this mortgage, and I told him I was."

On page 38, lines 3, &c., she says: "And under those circumstances [that is, the taking of these papers there, leaving them at that office, the agreement to assign them to her, to give her $500 in money, and to make her a deed for the house and lot] we made the bargain to get married on the 18th of March."

Now observe that at some time before the 6th of April the mortgage was at Hillburn's, because in the assignment which Hillburn caused to be drawn, *Exhibit C 4* (page 295), and which was executed on the 6th of April, 1878, the mortgage itself is described with the utmost particularity, the description of the mortgaged premises being copied, and it is drawn as she says the agreement was made between them at Hillburn's office, when the mortgage was taken there; it provides, "said Mellick to draw the interest during his lifetime."

Now, there is no pretence that any agreement as to the assignment of this mortgage was canvassed or made at any time in Hillburn's office, except when they first took the mortgage there.

I do not propose to quote very much more of the testimony. I shall refer to the substance of it, leaving the court to read it when the case comes for final consideration.

Note the time; she says that this business of going to Easton, the old man taking the mortgage with him, the making of the contract there, was in February, 1878, and the papers were left there to have the contract drawn, to be

executed and delivered to her when they should be married, on the 18th day of March.

Note, too, the cunning with which the day is selected for the marriage—the 18th of March—the day when the record showed the old man had assigned the mortgage to Howard. On page 35 she says he said: "We'll go to the lawyer's and make the bargain there, &c., &c., to be married the 18th of March." * * * In February, 1878, she says it was. "In February he took the papers, and we were to be married in March." On page 36, after detailing the visit to Easton, and being asked when it was, she says it was the middle of February, 1878. On page 38 she says: "We made the bargain to get married the 18th of March; Mellick left the papers there to be fixed the 18th of March; they were left there until the forepart of March; then the old man said we had better put the marriage off till April" (that is, to put it off *from March* to April). On page 39, lines 22, &c., she told Hillburn she had as lieve wait until April as March. At lines 10, &c., she says, in answer to a question by the Court, as to what day they went back to Easton to get the papers, "In the forepart of March."

On her cross-examination (page 61, lines 30, &c) she says the papers were to be executed and presented to her on her marriage, on the 18th of March. On page 62 she told the Vice Chancellor the marriage was to take place at Hillburn's, on the 18th of March. On the same page she says they went back to Easton to get the papers in the forepart of March.

Now, this testimony of the complainant was taken on the 17th of October, 1889. Her case had been rested, when she was recalled, on the 27th of February, 1890, in rebuttal, it was said; then on page 259 she told more than she had told on any previous occasion, and I beg to read from her testimony on pages 259, 260 and to the foot of page 265.

Among other things then testified to by her, she said that Mellick brought these papers to her father's house in February, in the forepart. She knows it was in February, because they were to be married the *next month, on the 18th*

of March. On page 261 she says it was three weeks before the time fixed for marriage. She told the Vice Chancellor that; and when asked how she could fix the time to be three weeks, she says: "Because I know it was in February we took them there, and on the 18th of March we were to be married." On page 263 she says they went over to Easton three weeks, *anyway*—three weeks, *anyhow*—before the day set for the marriage; and she knows this because she knows "We were to be married on the 18th of March," and they were to be fixed in March and this was in February. On page 264, at the foot of the page, she says the old man came back a week or more before the 18th of March and asked for the papers. On page 265, lines 29, &c., she says the papers were away from Easton for about a week before the 18th of March, until the interest was paid.

Observe how positively she identifies the mortgage; she says that she looked over the bond to see that it was Joe Kramer's bond; she looked at the mortgage to see that Joe Kramer had signed the mortgage, too, and that his wife had signed it, also; and she noticed that Mrs. Kramer had signed it; she looked over it at Hillburn's office as he read it; she saw there that it was the same mortgage her father had read to her on the preceding Sunday at his house, and that Sunday was three weeks before the day set for the marriage; and at line 29, page 263, she says when she went there to Hillburn's office, three weeks before the 18th of March, she had these papers in her hands, in her possession this bond and mortgage, and the deed, and the deed for the New Village house. On page 264, lines 10, &c., she says on that Sunday, three weeks before the 18th of March, her father read to her—read through from beginning to end—the $5,000 bond and the $5,000 mortgage from Kramer to Mellick, and that she retained these at her house from that time when the old man brought them there until they were taken over to Hillburn's; that while they were there she showed them to her mother, and then she took them over to Hillburn's office after dinner the next day.

The mother's testimony is quite as positive—that is, on her direct examination it is quite as positive. On page 79, lines 30 to 40, she says the day for the marriage was fixed three or four weeks before the date was fixed; that it was in the middle of February; she says that the day they were to be married was the 18th of March. On page 81, line 7, &c., she says they went to Hillburn's in February. On page 82, lines 20 and 21, in answer to the Court, she says the day was fixed—the 18th of March—for the marriage.

On page 83, lines 10 to 15, she says the old man came back and asked if he could have the bond and mortgage *till spring*.

Now, see her cross-examination. On page 90, at the foot, and page 91, &c., I read it:

She can tell nothing about dates.

She forgot what she had evidently been taught.

She probably told the truth.

The question in this case, on this point, is: Can these two witnesses, the only witnesses, interested as they are, with so much at stake, be *mistaken* simply?

It may be that part of this story is the truth; part of it is not a mistake, but a lie.

It is true that there was no marriage contract until they took the papers to Easton, away out of the State of New Jersey, to her lawyer, whom she falsely makes the old man say had been a long acquaintance of his, but who himself says Mellick was a stranger, to get his opinion, and be guided by his advice—that is true enough.

It is a lie that they went there in February with these papers; that they made a contract there to be married the 18th of March.

She cannot be mistaken as to the time they were to get married. Over and over again she says it was the 18th of March; so says the mother.

If she and her mother are not to be believed as to when they took the papers to Easton, then they are not to be believed anywhere in the case.

When I asked the mother to state the time when first there was a promise of marriage between Mr. Mellick and her daughter, her answer was: "In March; 24th March." The Vice Chancellor asked her to state, according to the best of her recollection, when it was, and her answer was: "It was in March." And as I questioned her further, she persisted in saying it was in March, and then (page 91, lines 20, &c.) she says they went to Hillburn's the first time in March.

It is significant that no mention is made in the bill of complaint as to the taking of these papers to Hillburn's office and leaving them there, or of their being taken away from there before the 18th of March, or their delivery to the complainant before the 18th of March. It was a matter of so much consequence that before the conclusion of the testimony, counsel for the complainant stated that they claimed a superior equity arising from complainant's possession of this mortgage, and so informed the counsel for the defendant. And the Court then said that in that case there should be an amendment made at some time to cover it, &c. (See pages 257, &c.)

When complainant went to counsel, as it appears she did, shortly after the mortgage was gotten away from her, and when she went to counsel to have her bill filed, did she forget the important circumstance of the mortgage having been delivered to Hillburn for her in February, 1878?

I shall have something to say further on as to the effect, legally speaking, of this alleged delivery.

I go back now to the testimony of these two women, and will undertake to show that if there was any engagement to marry, coupled with a promise to assign this mortgage, and if the mortgage was actually taken to Easton before the 2d day of April, 1878, when the interest was paid, it could not have been earlier than Sunday, the 24th day of March, 1878.

The old lady says the engagement was made on the 24th day of March. The 24th was on Sunday; complainant says the papers were brought to her father's house on Tuesday or Wednesday of the week, and on the following Sun-

day her father read the mortgage to her, and the next day, on Monday, they went to Hillburn's.

There is no mistaking these days; complainant testifies to them with too much of circumstance to allow any mistake to be made.

Now, the mortgage was not at her father's house on Sunday, the 17th of March, nor at Hillburn's the 18th of March, because on Saturday, the 16th, it was in Howard Mellick's safe, and on Monday, the 18th, in the morning, it was in Smith's office; he says so, and he must have had it to write the assignment.

Complainant says they took them to Easton on Monday after dinner and they had been in the house since Tuesday or Wednesday before.

It could not have been on Sunday, the 31st of March, because that would make Monday, April 1st, the day when they all went to Easton; and they were clearly in Mellick's office and safe on the 2d day of April, when Kramer paid his interest.

Her story of their being taken to Easton and left there a considerable time, and being brought away again, and then taken there again before the 6th of April, or on the 6th of April, is involved in hopeless contradiction.

I do not claim, and have not contended, that complainant had these papers in her possession at her father's house on the 24th of March, or that she took them to Hillburn's on the 25th of March, I only assert that they were not taken to his place at any time in February, or prior to the 25th day of March.

There is no evidence to warrant the Vice Chancellor's finding that the old man had access to his papers in the inner safe. On the 2d day of April he supposed they were in the inner safe, to which he had no access, and he therefore asked Kugler to get them for him. Kugler thought they were in the inner safe and looked there; but Howard says that after the assignment on the 18th of March, he put the mortgage into a pigeon-hole in the outer part of the safe, and there Kugler found the papers and gave them to the

old man. He told him to put them away when he got through with them. That is the first that the old man knew where this mortgage was, and that he could get it; and it was after that that he took this mortgage out of the possession of its owner and carried it to these women and made the marriage contract, which was complete by the assignment executed and delivered at the time of the marriage ceremony on the 6th of April.

That is the only conclusion consistent with every indisputable fact in the case. Every independent fact in this case, everything in writing, corroborates this view, and is in conflict with the testimony of the complainant and her mother.

The learned Vice Chancellor, in commenting upon the alleged taking of the bond and mortgage to Easton and the taking of them away, as testified to by Mrs. Mellick, says that is impossible that all this, with its series of incidents, as detailed by mother and daughter, occurred in the eighteen days intervening between the two assignments. He says that this crowds the events, in point of time, more than the evidence will warrant, and is inconsistent with Kugler's evidence that he looked in the inner box for the papers, on the morning of the 2d of April, with the expectation of finding them there, and not in the outside compartment, the old gentleman standing by and looking on. (See pages 41 and 42.)

But this is impossible. If it was not between these two dates that the mortgage was taken to Hillburn's, remained there for a while, and was then taken away by the old man and the young woman, I ask, when did it occur? It surely was not on Thursday, the 14th; that was the day the mortgage was taken from Belvidere to Smith, at Phillipsburg; he undoubtedly took it to Mellick's office that night or the next morning; Kugler took it out of the bundle. (There is no evidence that it had been packed away in a bundle of papers in the inner box of the son's safe, and so hidden that the son would ask a clerk to hunt it out in order to hand it to the father, as the Vice Chancellor says. It was

not hidden at all. Kugler says Howard handed him the bundle and told him to get the Kramer papers and give them to grandpap; he didn't hunt for the papers; he found them right there, where Howard knew he had put them a day or two before, when he received them from Smith.) The 15th was on Friday, the 16th was on Saturday, and it was on one or the other of those days that Kugler handled this mortgage, and on Monday morning the mortgage was taken from the safe by Howard and given to the old man, who took it to Smith's office. It surely was not between the 15th and the 18th that the paper was in Hillburn's. Complainant says that it was after they had been first at Easton that the old man came back and asked for them again (pages 38 and 39); that is one day intervening; on a subsequent day he came again and said he had been at Hillburn's and Hillburn wouldn't give him up the papers.

At least two days intervening.

The next day, again, in the afternoon, they all went to Hillburn's and got the papers. Now, there are at least three intervening days.

It may be that it was on Sunday, the 24th of March, that the papers were in her father's house, and it may be that on Monday, the 25th, they were taken to Hillburn's; but it is utterly impossible that this mortgage was there before the 25th of March; there is no other time that at all corresponds with her evidence, nor do I believe the evidence will admit that he ever took the mortgage to her until after the 2d of April.

The Vice Chancellor sees the force of the fact that on the morning of April 2d, when the old man wanted the mortgage, he did not know that it was in a pigeon-hole in the outer part of the safe, to which he had access at all times, but supposed it was in the inner safe, to which he had not access; and so he asked Kugler to get it for him.

But why ask Kugler for the papers, if he had recently taken them out of the safe, carried them to Easton and brought them back again? Would he not himself have known where they were?

The truth is, the bond and mortgage were in the outer compartment, where he had not put them, but where Howard says he had put them after the assignment on the 18th of March.

I insist that this proves beyond question that the bond and mortgage were not at Keiter's house until after the 2d day of April; that was on Tuesday; on that day the old man knew where the mortgage was; that date is fixed by the indorsement on the bond. Kugler told him to put it away where he found it; on that day, or after then, the old man conceived the idea of offering this mortgage to this woman, and then he may have carried it to her, and it was carried to Hillburn's, and then they set the day to be married on the 6th of April, and Hillburn wrote the assignment between the two dates.

I beg to call further attention to the testimony of Mrs. Keiter, to her cross-examination on page 91. Her recollection seemed to be that the engagement was made in March. She had evidently been taught that it was in February, but she would forget. On page 92, lines 1 to 10, she says she heard of the engagement in February, two weeks before they went to Easton. On page 97, at the foot, and page 98, she says they were to be married on the 18th of March; the papers were there long before, in February. Again she says they were to be married on the 18th of March, first; then the papers were left there. On page 98 she says she knew it was in February when they first went, and she thinks it was about three weeks before they were taken away, &c.

The learned Vice Chancellor refers to the testimony of Valentine Hillburn. I call attention to his testimony (on page 115) in which he says Emma Keiter and Henry Mellick came to his place in the middle of February, 1878; they had papers with them; they had a bond and mortgage for $5,000 with them. On his cross-examination he says the two women came to see him alone before Mellick came with them (page 119); that afterwards Mellick came with them; that he had never known him before. (Complainant

says, page 37, lines 20, &c., that Hillburn said to Mellick, "Remember you have got children; you have three sons;" he says, "Suppose there is trouble about this—you must not wrong them, you must not give it all away.") He says the two women brought the bond and mortgage to him before Mellick came (page 119, lines 30, &c.); the women employed him to draw the papers, and Mr. Mellick did not employ him to draw the papers (page 120), nor did he pay him for drawing the papers; he says that the papers remained in his control from the time they were brought there until they were taken away on the 6th of April. Then the Vice Chancellor took charge of the further examination of this witness, but he did not change the old man's impression that the papers were not re-delivered to the old man Mellick.

Now, Hillburn is simply mistaken as to the time when these papers were brought to his office, but he makes it exceedingly probable that these two women got this mortgage after the 2d of April, and carried them to Hillburn, with directions to him to have an assignment drawn, transferring the bond and mortgage to Emma Keiter, and the date was left blank, as is evident from an inspection of the assignment, because they did not know just when they would be able to get him there to execute it. If the 6th of April was the day fixed upon, why was not that date inserted at the time the paper was drawn?

The court here must judge as to the credibility of these two female witnesses; they are the persons whose testimony is to carry the complainant's case.

The first date fixed for the marriage is positively stated to have been the 18th of March; it is stated in an equally positive way that the papers were taken over during the previous month. How could they be mistaken as to the day set for the marriage?

Complainant is specific as to the time the papers were at Hillburn's Three weeks she says it was. She knows they were to be married on the 18th of March, and the papers

were taken there in February, because they were to be married *the next month after.*

Why this delay?

Why wait from the middle of February until the 18th of March? It was the work of but an hour or so to draw the papers, and the inducement on his side was gratification of *lust;* on her side, acquisition of the $5,000 mortgage, the house and lot and $500 in money.

Why not complete the business at once, that each might get what each wanted?

I submit that this delivery, so called, of the mortgage to Hillburn is an invention on the part of the complainant, after the filing of the bill, just as the story of the delivery to her at her father's house, which she told on the last day of the hearing, was an invention after she had rested her cause. The learned Vice Chancellor feels the force of the fact that this mortgage was not at Hillburn's prior to the 18th of March. It is perfectly evident, from the part which he took in the conduct of the case while it was on trial before him, that he was allowing the complainant to build up her case, not upon a marriage contract and a promise, in consideration of marriage, to assign to her this mortgage, and knowledge on the part of Howard of the marriage contract, but upon the supposed equity flowing from the delivery of the mortgage to Hillburn in trust for the complainant. But seeing that it was utterly impossible to sustain the case on that view, he apologizes for and excuses the positive statements of these two women by saying that it might have been the bond only and the deed for the New Village house that were taken to Easton; that Mellick undertook to procure the mortgage from the Clerk's office at a future day; that it would not be unnatural for these women, at this distance of time, to have become confused in their recollection as to when they first saw the mortgage.

But how can this be, when she says her father read the mortgage over to her, at his house, on a Sunday in February; that she saw the bond signed by Kramer only; that she saw the mortgage signed by Kramer and Kramer's

wife; that first he took the bond, the mortgage and the deed to Hillburn; that afterwards Hillburn spoke of "this mortgage," and he says they brought a bond of $5,000 and a mortgage of $5,000, and he is a lawyer; and these two women always spoke with the utmost assurance and confidence that the deed and the bond and the mortgage were not only talked about, but were handled and read at Keiter's house, were taken to Hillburn's office, and the mortgage was read over by him there, the complainant looking on; the mortgage identified by her with the utmost positiveness as the mortgage which she saw and handled, and had read to her, and which had Mrs. Kramer's name signed to it and taken to Hillburn's office, and which, after the assignment to her, was taken to her mother's house and was afterwards, by trick, taken out of her possession.

How could she be mistaken? What room is there for the suggestion of the Vice Chancellor?

The simple fact is that she did not know while she was testifying to this February and March business that this mortgage was during all that time in the vault at the Clerk's office at Belvidere, or that this entry in the handwriting of Mr. Hoagland made her story absolutely untrue.

I beg the indulgence of the court while I further refer to her testimony. On page 38, line 8, the Vice Chancellor asked her what became of the bond and mortgage on occasion of the visit to Hillburn in February, and she says Mellick left the bond and mortgage there, with Mr. Hillburn, to have these papers fixed for the 18th of March, and they remained there until the forepart of March sometime. On her cross-examination she was asked if she had the bond and mortgage in her hands, and her answer was that Mr. Hillburn handed them to her to look at (page 60, lines 9, &c.); on page 61, at the top, she says she read these papers alongside of Hillburn; that she had them in her hands to look them over after her husband had given them to Hillburn.

On her direct examination, on page , she says the bond and mortgage remained at Hillburn's until the fore-

part of March. Then her husband came to her and asked to take the papers away to draw his interest; that she told him he might go and get the papers to get his interest.

On page 38 she says he told her he was going after the papers. He came back to the house the next day and said he had been over for them, but Hillburn declined to give them up, because he didn't think it was right to give the papers up without her presence. Then he asked her if she would go over and she said she would, and that she and her mother went over the next day in the afternoon.

Observe that she here mentioned four different days:

First, the day they took the papers to Easton; then,

Second, after two weeks, the day the old man came to ask her for the papers;

Third, the next day, when he came back and said he had been over to Hillburn's, and

Fourth, the next day after that, in the afternoon, when they all went to Hillburn's together, when the wedding was postponed until the 6th of April.

Now, this is her own story, and it is now certain that this was after March 18th.

The testimony of her mother is, that first on March 24th, then in March, then about the middle of February, three or four weeks before the 18th of March, these parties became engaged to be married; and in February, the mother, the daughter and the old man went to Hillburn's office. (Pages 77, &c.)

The old man came to her house *and told her that he had his bond and mortgage and all his papers, intending to give them to this young lady.* (Page 81, lines 12, &c.)

This was the day before they went to Easton.

On page 82 she says the old man told Hillburn to fix these papers, and she put these words into his mouth: "*I will leave them, Mr. Hillburn, with you.*"

It is evident that the purpose was here to make an equity by the delivery of the bond and mortgage to or for her; but it was not testified that there was a gift of these papers to her, that the most favorable view for the complainant is

that they were left in Hillburn's hands to be assigned and delivered to her at the time of the marriage. (Pages 61, 62, 64 and 84.)

At the utmost, it might have raised an equity or trust in her behalf to have the mortgage assigned to her. If so, it was a latent equity, of which Howard Mellick, the assignee, had no notice, and he took his subsequent assignment free of that equity or trust.

In support of this proposition, I refer to

Cooper *v.* Wormauld, 27 Beavan 266.

And also cases in New Jersey reports:

Dewitt *v.* Van Syckle, 2 Stew. 209; Woodruff *v.* Morristown Inst., 7 Stew. 174; Putnam *v.* Clarke, 2 Stew. 412; Woodruff *v.* Depue, 1 McC. 213. See, also, Uhler *v.* Semple, 5 C. E. G. 293.

Now, that is the situation in which the case was left at next to last sitting.

It showed no delivery *to* her, or to any one *for her;* the bond and mortgage were to be presented to her at the time, and before the marriage.

Hence, when she came again to testify, she had an entirely different story. Why not told before? It was not forgotten. It was an important event in the case. It was inconsistent with her previous story, and was inconsistent with the mother's story.

The effort now was to show a delivery to her, possession by her; then the Court said it was not a question of possession, but of whose control they were under.

Hence, it will be seen that the Vice Chancellor, until the Clerk's register was produced, considered this matter of control of the mortgage prior to the 18th of March, as one of great consequence.

Complainant's counsel thought so too, because he proceeded at the end of the case, on pages 259 and 260, to show a delivery to her of these papers, and possession and control of them by her for a period of almost a week before

they went to Hillburn's in the middle of February; and, although the Vice Chancellor declared that all this had been in before, at least by implication, I do not recall any testimony to that effect. The previous testimony was that the old man, Mellick, came to her house in the middle of February, and said he had his bond and mortgage and all his papers, intending to give them to her.

This story is not true; it is impossible to be true. The Clerk's book makes it impossible to be true. The mortgage was in the Clerk's office until on the 14th, Thursday, to go by afternoon mail, leaving Belvidere at 12:55 P. M., but taken by Teel, I suppose, by same train. If Howard Mellick tells the truth, and if Kugler tells the truth, this mortgage was in the safe on Friday or Saturday, and in Smith's office on Monday morning.

It could not have been at Easton before the assignment to Howard.

Not the result of forgetfulness or of mistake—too much particularity for that.

Too strong an endeavor to fix the month of February as the time for taking the papers over, and the *18th of March* as the wedding day. The evident purpose was to prove possession or control by her at a day anterior to the assignment to Howard.

There could have been no contract *in February to marry March 18th*, because she says the day was set in Hillburn's office long before the 18th; at a day when the *mortgage was there;* and the mortgage was not there before the 18th. It could not have been there before the 25th, if her story is true that it was in her mother's house the day before it was taken to Easton.

Note the danger of depending on this kind of testimony. No person connected with the transaction is now living to contradict, directly, what these women say. They are not corroborated by a single circumstance, but their testimony is most thoroughly disproved.

The Clerk's mortgage register proves that this mortgage was not at her house on a Sunday in February, it was not

read there by her father, it was not taken to Hillburn's office prior to the 18th of March, it was not read or handled, or even seen there prior to the 18th of March.

Hillburn, too, is as thoroughly contradicted when he says the papers were there three weeks, or in February, as are the women in their testimony.

If the title of Howard Mellick, acquired March 18th, was a *bona fide* one, and if it was for consideration, the taking of it to Hillburn's and the attempt to assign it to the complainant, the fraud contemplated was not against the complainant, but against the defendant.

If S. C. Smith is to be believed, this bond and mortgage were in his office on the morning of March 18th; if Howard Mellick is to be believed, they were in his inner lock-safe between March 14th and March 16th, the day was probably March 16th that he had them out; if William Kugler is to be believed, he had these papers in his hands in front of the safe from which Howard had just taken them, on the afternoon of March 16th; he handed them to Henry, and if Howard Mellick is to be believed again, the old man gave them back to him and he put them into the safe, where they remained until the morning of the 18th, when they were taken to Smith's office.

Now, if it is not true that these papers had been put under her control before the 18th of March, the complainant's case, in the most favorable aspect for her, resolves itself into this: A promise by the old man, prior to the 18th of March, to assign to her this mortgage at a time subsequent to the 18th of March, in consideration of her promise to marry him at such future time, his promise being by parol; an assignment by him to Howard, on March 18th, for good consideration, accompanied by delivery and proper registry notice, and without any notice to him of such antecedent promise to her; the assignment to her of April 6th, pursuant to the previous parol agreement, in consideration of the marriage.

Who has the title to the mortgage?

Whether there was, before March 18th, a parol promise

to assign to her, depends upon the credibility to be given to the testimony of these two witnesses. Complainant says it was in February; just as positive that in February the papers were at her mother's home.

False in one, why not in all? Evidence should be definite, clear, satisfactory.

Ackerman *v.* Ackerman, 9 C. E. G. 315, 485.

But, even if he had promised her before the 18th of March to give her this bond and mortgage, she cannot succeed in this case, because the statute provides that no action shall be maintained on such a promise, and the assignment to Howard was a withdrawal of the promise to her. The registry of his assignment was notice to her of the withdrawal—notice before she had changed her situation on the strength of the promise. The promise on his part was purely executory, and, not being enforceable by any action, it might be discharged at any time before anything was done under it which could amount to a part execution of it. See opinion of Lord Chancellor, in Maddison *v.* Alderson, 8 Ch. App. 475.

Beal cases.

The question, apart from the question of the consideration paid by Howard, is not whether the old man intended to defraud her on the 6th of April, but whether he intended to do so on the 18th of March. If he had no such fraudulent purpose on the 18th of March, and Howard paid no consideration for the assignment, then Beal *v.* Warren, 2 Gray 409, applies. The English doctrine to the contrary, that a voluntary conveyance is fraudulent, is properly characterized by Jessel, M. R., in Ex parte Hillman, 10 Ch. Div. 622, as judge-made law.

Whether he did, on the 18th of March, intend to defraud her depends, perhaps, on whether he had then promised to give her the mortgage, and whether he had then promised her the mortgage depends upon the credibility to be given to these two women.

But they say the promise was followed almost -immedi ately by the taking them to Easton, and that did not occur until after March 18th.

But if there had been a promise prior to March 18th it was of no validity, and the assignment to her on April 6th gave no life to it.

See Trowell *v.* Shenton, 8 Ch. Div. 318. 324

This case approves Warden *v.* Jones, *supra*, in which it was held that the statute forbids the proof of the parol promise, and criticises Dundas *v.* Dutens, 1 Ves. Jr., last case criticised in Reade *v.* Livingston, 3 Johns. Ch. 491.

In Coles *v.* Plinkinton, 19 Eq. Cases 174, the plaintiff had taken possession of leasehold premises under parol agreement for consideration, and such contract was held enforceable, but Melins, V. C., said if it had been the case of a marriage contract he would have followed Caton *v.* Caton, *supra.*

I refer also to Maumsell *v.* Hedges White, 4 H. L. C. 1039.

I have not overlooked Hammersly *v.* De Biel, 12 Cl. & Fin. 45. Note, also, the observation of Lord Chancellor Selbourne in Maddison *v.* Alderson, *supra*, in which he says "this was a case of contract for valuable consideration, duly signed so as to fulfill the requirements of the Statute of Frauds, in the view of both Lords Longdale and Cottenham, in Chancery, and of Lord Campbell in the House of Lords." He proceeds to state that the case does not justify, and Jorden *v.* Money is irreconcilable with, the reasons stated by the Vice Chancellor for his judgment in Loftus *v.* Maw. In Lassence *v.* Tierney, 1 McN. & G., star pages 571, 572, Lord Chanceller Cottenham remarked, upon Hammersley *v.* De Biel:

I come, now, to the next question in this case. Is Howard a *bona fide* purchaser, for good consideration, of this mortgage? In order to determine that question, we must know something of the family situation.

Henry Mellick was born in 1812. His son Howard was born in 1843. The first wife had died when Howard was a small boy, and the father was a widower for many years.

He had been possessed of considerable estate, and had advanced and given to his sons John and Jacob considerable sums—to John $6,000 and to Jacob $4,000—many years ago, and $1,000 to Howard.

Prior to March 18th, 1878, he was possessed of the $5,000 Kramer mortgage and the $2,000 Kase mortgage, both of which were assigned to Howard on March 18th. He had also the Hagar mortgage for $2,000. He had a mortgage of Mary Mellick for $200. (Pages, 142, 143, 144, &c.) Besides the house and lot, he had $9,200 on mortgages at seven per cent.; $644 income.

The old man had lived on his farm, having a housekeeper, till Howard married; then he moved to New Village, where his housekeeper died. After her death he came to Phillipsburg to live with Howard, and did live with him many years. He paid no board; he was engaged in no business. (Page 147.) He had sufficient income to support him.

Prior to his acquaintance with the complainant, he had paid no attention to any woman after his first wife's death. (Page 194.) He had stayed in the house nights. (Page 195.)

This was the situation prior to March 16th, 1878. He had then become acquainted with the complainant. It is not necessary to characterize the relation between them; the evidence speaks for itself.

The evidence of Kugler and Kase is that she came to the store, calling the old man out and getting money from him. (Pages 200, 201 and 202; also, 209, 210, 211, 212.)

Are not these witnesses—*disinterested* witnesses—to be believed? The Vice Chancellor says he believes them, but he thinks the occasions of her coming for money were after the marriage. But I call attention to the testimony of these

two witnesses, in which they say, clearly and explicitly, that it was before and up to the time of the marriage.

They were there, and were likely to observe what was going on; they talked to Howard about it; they talked to the old man about it.

The old man, with large income, costing himself nothing to live; getting $10 frequently out of the money-drawer; under these circumstances, giving it to this young woman, not a person of his society or position; Howard noticing that she wore dress and jewelry beyond her ability to pay for herself, honestly (page 193); the old man in debt in the sum of $700; his note for $250 coming due at the bank; other creditors pressing him (pages 145 and 146); the old man wanting more money (page 161, lines 1 to 10); Howard feeling that if the father kept on spending his money in this way, he would be in want—dependent on him (pages 146 and 147).

Now, would it occur to the son that the old man had matrimony in view?

He says positively that he did not suppose his father was going to marry her; he doubtless thought she was getting his money away from him; he knew that his father had talked about going to housekeeping, because he had gone down to see a Mrs. Robbins and get her to keep house for him. (Page 140.)

The other sons had received large amounts from the father and gone from home. Howard had remained at home, working for his father on the farm; the others were doing for themselves. When the old man broke up his home, he found another with Howard.

The complainant testifies that he complained of the treatment which he received at Howard's, from Howard's wife; Howard let him have no money, &c.

She is contradicted by the piece of the letter which she produces, *Exhibit C 8*. (Page 306.) She is contradicted by the testimony of John S. Wilson. (Page 205, lines 10, &c.; page 204, lines 17, &c.) The old man told Wilson that he had his home with Howard; that he expected to make his

home with Howard; he was the only one of the family he could make his home with. This was before the marriage. Wilson was advising him to take care of his money.

The other sons had not prospered; Howard had. He had repaid his father what he had borrowed from him.

In 1875 or 1876, this money was in the Bayard farm; it was paid off; the old man came to Howard and asked where he should invest the money; he had always considered that to be Howard's, and he would let him say where it should be invested. (Page 144, lines 28, &c.)

Howard complained that the old man was not using him right; he had stayed at home and worked on the farm and the other boys had not, and yet they were getting all. Then the old man told him he had always kept this $5,000 for him, and he should have it any time he wanted it. (Page 144, lines 10 to 20.)

The old man's friends observed his relations with the Keiter family; John S. Wilson was his intimate friend; in the winter of 1877–78 he had the conversation with him in which he advised him to take care of his property.

Arthur Kase, clerk in his store and his brother-in law, says the old gentleman used to talk with him about money matters, and he said he had better fix it so that Howard would be his guardian. (Page 198, lines 10, &c.) Kase advised him to have a guardian, and he gives as a reason for such advice, that he surmised that the old man was spending money on this woman (page 200, lines 30, &c.); he told Howard that the old man was spending too much money on this girl. (Pages 201, 202.)

Now, what these two clerks, Kugler and Kase, saw, they communicated to Howard.

Howard could see by the slips in the cash account what was going on. Would these things make no impression on his mind? In 1877 he was warning his father against these women; telling him that all they wanted was his money.

This was the course of affairs in March, 1878. The old man's indebtedness increasing; doubtless the demands upon

him by these women, who were leeching him, were growing.

About the middle of March the old man wanted more money. Howard says he knew that his father was spending more than his income, and at the rate that he was spending he soon would have none; he told the old man that he was spending too much money; he told him he was willing to keep him if he had nothing.

Howard says that he did not for a moment suppose that his father would marry this young woman; no other of the friends and acquaintances of the old man supposed anything of the kind. The true inwardness between these parties' relation was pretty well understood. Arthur Kase says he thought from what he saw, that the young woman would marry some other fellow.

Now, under all these circumstances, what would be expected to be the course of action adopted by the son toward the father? Did not Howard act precisely as a dutiful son was bound to act; to try to save as much as possible of what was going to wreck and ruin and waste?

I do not see why Howard Mellick is entitled in this case to less credit than these two women have received at the hands of the Vice Chancellor; it seemed to me that he and his witnesses were as respectable and truthful and honest as were the Keiters and Sam Berry and Joshua Gray.

We prove that the old man was then indebted to Howard in the sum of $600, for money loaned to him; his note for $250 was coming due at the bank; in this he is corroborated by Ludwig, the teller, and by the production of the note; other debts due and pressing demands for payment. The learned Vice Chancellor asks in his opinion, why we did not offer to prove further about this indebtedness—the indebtedness to Howard. Upon the trial he particularly said that he had no reason to disbelieve Howard's statement of the indebtedness of the old man to him. (See pages 209 and 210.) Why should we prove it further, when we were stopped by the Vice Chancellor in the midst of our evidence on that point?

Then we prove the agreement between Howard and the

old man; and that not merely by Howard, but he is corroborated in every essential by the testimony of Arthur Kase, and by the testimony of William Kugler (on pages 213, 214, 215 and 216). I ask the Court to read this testimony carefully.

This evidence is not disputed—it is not contradicted. It comes from trustworthy sources, and is corroborative; it is entitled to credit; these witnesses are not men who are contradicted by any of the independent evidence in the case, but these women are contradicted by *every* independent fact in the case.

The Vice Chancellor rejects the testimony of these three persons, without there being a single circumstance in the case to discredit them.

Howard paid the debts, provided a livelihood for his father, kept him in his old days, nursed him in his last sickness and buried him.

The transaction was, under the circumstances, a natural one, and in pursuance of a long-entertained purpose.

Who shall say that it was not the very best thing the old man could have done. It was upon a consideration, too.

In Currie *v.* Misa, L. R., 10 Exch. 162, valuable consideration is defined to consist, in its legal sense, either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

The assignment here was a settlement of the father's affairs with members of his family, in accordance with long-since intentions; a part of his family arrangements had been carried into effect by previous advances of moneys to the other sons, and this was in completion.

In such a case it is not necessary that an equivalent in value should be given.

I quote from the language of Lord Chancellor Sugden, in Fitmaurice *v.* Sadlier, 9 Irish Eq. 611: "In such cases it is perfectly clear that if the instrument purports to be a reasonable and family arrangement, and a consideration is given for it, its adequacy will not be inquired into. See,

also, Roe *v.* Mitten, 2 Ves. Jr. 391, 410; Callaghan *v.* Callaghan, 8 Cl. & Fin. 401. In Bayspoole *v.* Collins, 6 L. R., Ch. App. 228, the deed did not recite the consideration, which was £150 for property worth £1,500, and it was held to be a good consideration. In Rosher *v.* Williams, L. R., 20 Eq. Cas. 218, Vice Chancellor Malins says that if between a father, &c., or parent and child, or in any way whatever, an instrument is executed which ordinarily is called a voluntary settlement, and it turns out that instead of being purely voluntary any consideration was paid or given, or any benefit rendered to the grantor, even such an agreement *to relieve the grantor from the immediate payment of a debt*, the court will anxiously lay hold of any circumstance, constituting a consideration moving from the grantee to the grantor, to take the case out of the category of voluntary settlements. See Patteson *v.* Stewart, 6 W. & S. 72. So, In re Johnson, 20 Ch. Div. 397, Mr. Justice Fry says that when the instrument is executed for a valuable consideration, and the instrument is one between relatives, the court cannot say that the difference between the real value of the estate and the consideration given, is a badge of fraud.

See, also, to the same effect, the following cases: Thompson *v.* Webster, 4 De G. & J. 660; Persse *v.* Persse, 7 Cl. & Fin. 318; Atkinson *v.* Smith, 3 De G. & J. 186; Price *v.* Jenkins, 5 Ch. Div. 621, in which it is said that if there is any valuable consideration for a settlement, the *quantum* of such consideration is of no consequence under the statute of 27 Elizabeth. This latter case was approved in In re Marsh and Earl Granville, 24 Ch. Div. 25; and in In re Ridler, 22 Ch. Div., it is said that Price *v.* Jenkins was decided under 27 Elizabeth.

Consideration not mentioned in a deed may be resorted to, both at law and in equity, to support it, and the expression of a nominal consideration is not inconsistent with the fact that money or money's worth was the real consideration, and a grant to a relative, though expressed to be made in consideration of natural love and affection, may be

averred and shown to have been made for other valuable consideration, as *payment of debts;* such consideration not being inconsistent with that alleged.

It is not in contradiction of the expressed consideration to prove a larger one than that mentioned.

In support of these propositions, I refer to the text and cases cited in the notes to May on Fraud Con., star pages 266, 268; also to Pott *v.* Todhunter, 2 Coll. (33, Eng. Ch.) 80, 84; Clifford *v.* Turrell, 1 Younge & Coll. 148, 149; Gale *v.* Williamson, 8 M. & W. 405.

If I am right as to the law on this point, and if the court believes that Howard Mellick is a *bona fide* assignee for value of this mortgage, then he is not merely a pledgee or mortgagee as security for the debt due him from his father, or for the moneys paid by him for his father, or for the care and attention by him bestowed upon his father for ten years (the value of which is not measured or reckoned in dollars merely), but he is an absolute owner of this mortgage, and his title thereto is protected because he is within the immunity of the exception in the statute in behalf of a *bona fide* purchaser for value.

In support of this, I refer to the case of Phelps *v.* Morrison, 10 C. E. G. 538, &c.

In this last case, decided in this court, the opinion being written by the Chief Justice, it was held that the *bona fide* purchaser could not be held to be an equitable mortgagee and entitled to be paid the amount due him only.

The Vice Chancellor cites no authority for turning Howard Mellick's assignment into a pledge; Howard is the absolute purchaser of this mortgage.

There is no evidence at all that the Kase mortgage of $2,000 was transferred to Howard in pursuance of any agreement between them, as was the Kramer bond and mortgage. It was not mentioned nor spoken of in the negotiations. Its transfer to Howard was purely an act of gratuity on the part of the father to the son; and it may have been that the old man wanted to put *this* security beyond the reach of this woman, and have it kept where he

might afterward avail himself of its value; and that was not unlawful or fraudulent either on his part or that of his son Howard.

Now, I submit that this case shows that Howard Mellick, after the assignment to him, paid the $250 note at the bank, and unless this court sees proper to reject his testimony as unworthy of belief, he had already paid $600 for his father, and he afterwards paid other claims to the amount of $700 against the old man. (Page 153.) In addition to this, we were proceeding to prove further payments and advances of money by him to his father, when the Vice Chancellor stopped us, by saying that we could gain nothing by taking an account. (See pages 153 and 157.)

I call attention of the court to the registry of Howard's assignment.

It was left at the Clerk's office on the 18th of March, 1878; it was recorded on page 102 of Volume 5 of Assignments of Mortgages. Complainant's assignment was not brought for record until the 9th of April. It was recorded in the same volume, on page 96, so that when she took her assignment, Howard's assignment was not yet recorded; hers was actually recorded first. The notice to her was that a mortgage, dated March 30th, had been assigned.

The act concerning the recording of assignments of mortgages (Revision, p. 708, Sec. 32) provides that "such recording shall be notice from the time such assignment is left for that purpose, to all persons concerned, that said mortgage is so assigned."

Now, I submit that this notice is not constructive notice, merely, but that it is equivalent to actual notice, just as much as though Howard Mellick had exhibited this assignment to the complainant on the 18th day of March. In Wallace *v.* Silsby and Martin, 13 Vroom 4, the Chief Justice says that title, as it appears on the record, is a fact within the consciousness of the grantee at the time that he accepts his conveyance, and that this is a conclusion *juris et de jure.*

Lancaster v Dolan 1 Rawle 246

In Diele *v.* Judson, 82 N. Y. 37, it was held that the

87 N.Y. 450
107 " 363

record of the assignment was notice of the rights of the assignee as against any act of the mortgagee affecting the mortgage assigned. It was asserted that the record furnished protection against any subsequent assignment of the same mortgage. It was notice that the mortgagee's rights were gone, and that he could neither assign nor discharge the mortgage. In Youngs *v.* Wilson, 27 N. Y. 354, it is held that the registry of a mortgage is equivalent to actual notice of its existence and contents.

Spencer

The Vice Chancellor, in quoting from Ver Plank *v.* Sterry, 12 Johnson 556, does not state the limitation upon the principle there stated; Judge Sterry declares that the principle ought not to be extended to voluntary deeds made by a father as a provision for his children, and with every act of publicity usually attending the conveyance of an estate; and in that very case the notice of a voluntary deed of settlement was a strong factor in sustaining the validity of the settlement.

No case is cited by the Vice Chancellor, and it is believed that none exists, where a conveyance made upon valuable consideration, whether adequate or not, and without fraud on the part of the grantee, has been set aside at the suit of a subsequent purchaser having notice of a prior conveyance, and the tendency in this country has been to give effect to purely voluntary conveyances, made to carry out family settlements, as against subsequent purchasers with notice. I refer in support of my position to Atherly on Marriage Settlements 194, 200; Doe *v.* Routeledge, Cowp. 712; Stein *v.* Sullivan, 4 Stew. 409.

The Vice Chancellor is forced to acquit Howard Mellick of any participation in the fraud which he finds was in the mind of the father, though he has marshaled and set forth every fact and circumstance in the case going to prove such participation.

Now, I submit that, Howard being innocent of the fraud, and having paid some valuable consideration for this mortgage, his title to it is not invalidated by the subsequent assignment to the complainant.

In Hagerman *v.* Buchanan, 18 Stew. 292, this court held that even a voluntary settlement can be attacked by a subsequent creditor only upon the ground of the existence of an actual intent *in the mind of the parties* at the time of the execution of the conveyance, to defraud, &c.

In Gardner *v.* Kleinke, 1 Dick. 90, Vice Chancellor Van Fleet says that a voluntary conveyance will stand as against subsequent creditors, unless such conveyance was made and accepted with intent to defraud.

I further submit that the assignment of a mere chattel interest is not within the thirteenth section of the Statute of Frauds, which relates to subsequent purchasers.

And such this mortgage was, at the time of its assignment. The money secured by it was not yet due; it was not an estate, right or interest in lands.

Osborne *v.* Tunis, 1 Dutch. 633.

By the common law, an estate, even though made by fraud, shall be avoided only by him who had a former right, title or interest. And he who had right, title or interest more *puisne* shall not avoid a gift or an estate precedent by fraud, by the common law, was the second resolution in Twyne's Case, 1 Sm. Lead. Cas. 9, 10. See, also, Jones *v.* Croucher, 1 Sim. & Stu. 315; Stone *v.* Vanheythuysen, 45 Eng. Ch., 11 Hare 134; Atherly on Marriage Settlements 207, 208, 209.

In Chancery of New Jersey.

Between EMMA MELLICK, Complainant,

AND

HOWARD MELLICK, ET. ALS. Defendants.

} On bill to foreclose.

To his Honor, Alexander T. McGill, Jr., the Chancellor of the State of New Jersey:

Humbly Complaining, showeth unto your Honor your oratrix, Emma Mellick, of the town of Phillipsburg, in the County of Warren and State of New Jersey, that on or about the thirtieth day of March, in the year one thousand eight hundred and seventy-seven, one Joseph Kramer, of the town of Phillipsburg, in the County of Warren and State of New Jersey, became and was justly indebted unto Henry H. Mellick in the sum of five thousand dollars, and being so indebted, the said Joseph Kramer, in order to secure the payment of the said sum of money, with interest, did make and execute, under hand and seal and deliver unto the said Henry H. Mellick

A certain Bond or Obligation, bearing date the same

day and year last aforesaid, in the penal sum of ten thousand dollars, lawful money of the United States, with a condition thereunder written, that if the said Joseph Kramer, his heirs, executors, or administrators should well and truly pay, or cause to be paid, unto the said Henry H. Mellick, his executors, administrators or assigns, the just and full sum of five thousand dollars, lawful money aforesaid, in one year from date with the privilege of keeping the same five years (the interest being promptly paid), with interest for the same at the rate of seven per cent. per annum, payable simi-annually. Then the said obligation should be void, otherwise to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear. And your oratrix further shows, that the said Joseph Kramer and Annie M., his wife, 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 the said Henry H. Mellick

A certain Indenture of Mortgage, bearing the date the same day and year last aforesaid, made by the said Joseph Kramer and Annie M., of the first part, and the said Henry H. Mellick 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 the said Henry H. Mellick, said party of the second part his heirs and assigns, all the following described tract or parcel of land and premises, situate, lying, and being in the town of Phillipsburg, County of Warren and State of New Jersey; the first lot bounded and described as follows, to wit.: Beginning at the south-west corner of lot numbered in plan eighteen, thence north along said lot one hundred and ten feet to Spruce Alley, thence along said Spruce Alley thirty feet (which includes five feet of lot eighteen) to lot numbered in plan sixteen, thence south along said lot one hundred and ten feet to the turnpike road, thence east along said turn-

pike road thirty feet to the place of beginning, and numbered in said plan of lots, seventeen. Being the same premises that John C. Rinn and wife by their deed dated August 24th, A. D. 1860, conveyed to the party of the first part, said deed being recorded in Warren County Clerk's office in Book 510 of deeds, pages 520, etc. The second lot being bounded and described as follows, to wit.: Beginning at the northwest corner of the New Jersey turnpike road and Stockton street, thence northwardly along the west side of said street one hundred and ten feet to Spruce Alley, thence westwardly along the south side of said alley forty-five feet more or less to the north-east corner of lot numbered eighteen on plan of lots, thence southwardly along the east side of said lot one hundred and ten feet to the said turnpike road, thence eastwardly along the north side of said road forty-five feet more or less to the place of beginning, and numbered nineteen and twenty on said plan. Bounded on the north by said alley, on the east by said street, on the south by said road, and on the west by lot numbered eighteen aforesaid. Being the same premises conveyed to the party of the first part by deed of Alexander Wilson and others, bearing date January 16, 1861, and recorded in the Clerk's office of Warren County, in Book 54 of deeds, pages 468, etc., *together with all and singular* the tenements, hereditaments and appurtenances thereunto belonging or in anywise 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 part of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold the therein above granted and described premises, with the appurtenances unto the said party of the second part heirs and assigns, to his and their own proper use, benefit and behoof forever; provided always, and the said indenture of mortgage was

therein declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, his heirs, executors or administrators, should well and truly pay, or cause to be paid, unto certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth be null and void.

And your oratrix further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Joseph Kramer and Annie M., his wife, on the 30th day of March, 1877, before S. C. Smith, Esq., a Master in Chancery of New Jersey, and duly recorded in the office of the Clerk in and for the said County of Warren, in book 32 of mortgages, pages 460 etc., on the third day of April, in the year one thousand eight hundred and seventy-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 oratrix, for greater certainty, beg leave to refer, if it be necessary so to do. And your oratrix further shows that her maiden name was Emma Keiter, and that on the sixth day of April, 1878, your oratrix was married to the said Henry H. Mellick, and that she is now the wife of the said Henry H. Mellick.

And your oratrix further shows that before her marriage to the said Henry H. Mellick, and more than a month before the said marriage, the said Henry H. Mellick did agree with your oratrix that if she, your oratrix, would marry him, he would assign and make over to her, amongst other property, the bond and mortgage above mentioned and described.

And your oratrix further shows that on the day of her marriage to the said Henry H. Mellick, he did

make, execute and deliver to your oratrix, under the name of Emma Keiter, an assignment of said bond and mortgage above mentioned and described, and that said assignment of said bond and mortgage was executed on the sixth day of April A. D. 1878; that said assignment was duly acknowledged on the sixth day of April A. D. 1878, before A. S. Deichman, a Commissioner of Deeds for New Jersey in Pennsylvania by the said Henry H. Mellick; that by the terms of the said assignment, the said Mellick did grant, bargain and sell, assign, transfer, and convey and set over to the said Emma Keiter, her heirs, executors and administrators, the said bond and mortgage above described of the said Joseph Kramer, and the said messuage or tenements and lots or parcels of land and the premises therein described and granted, together with the appurtenances and also all the estate, right, title, interest, property, claim and demand whatsoever of him the said Henry H. Mellick in law, equity or otherwise howsoever of, in and to the same. To have and to hold all and singular the premises thereby granted and assigned and mentioned and intended to be with the appurtenances and the bond accompanying the said mortgage, unto the said Emma Keiter, your oratrix, her heirs, executors, administrators and assigns, to and for the only proper use, behoof of the said Emma Keiter, her heirs, executors, administrators and assigns forever. Subject nevertheless to the right or equity of redemption vested in the said Joseph Kramer, the mortgagor, and his heirs. Said Mellick to draw the interest during his life-time; that said assignment described the bond and mortgage fully and accurately as the same have been above set forth and described, and also gave a description of the land described in said mortgage as above described, and did assign said bond and mortgage to your oratrix and convey all the interest of said Mellick in said lands therein described.

And your oratrix further shows that the said assignment was a full and entire assignment of said bond and mortgage to your oratrix, and that it was

subject only to the right of said Mellick to draw the interest during his life-time.

And your oratrix further shows that the said assignment was delivered to her on the same day it bears date, and that the bond and mortgage described in said assignment and above described, were on the same day and at the same time delivered to your oratrix.

And your oratrix further shows that there was a valuable consideration expressed in the said assignment of said bond and mortgage, and that the further consideration for the said assignment was the marriage of your oratrix to the said Henry H. Mellick.

And your oratrix further shows that the said assignment of mortgage was duly recorded in the Clerk's office of the County of Warren, on the ninth day of April A. D. 1878, and recorded in Vol. 5 of assignments page 96 etc.; and that your oratrix has said assignment in her possession and that she is ready to produce and prove the same in this Honorable Court, as the Court shall direct.

And your oratrix further shows that she was married to the said Henry H. Mellick on the sixth day of April A. D. 1878, by the Reverend Thomas T. Porter, D.D., and that she immediately went to live with the said Mellick and that they lived together as man and wife for several years.

And your oratrix further shows that Howard Mellick is the son of the said Henry H. Mellick, and that he claims and pretends to be the owner of the said bond and mortgage set forth and described; that he bases his claim upon a pretended assignment which he procured his father to make to him on the 18th day of March A. D. 1878, and which he pretends was acknowledged on the same day by the said Henry H. Mellick and recorded in the Clerk's office of the County of Warren, on the same day in book five of assignments of mortgages for Warren County, page 102, etc.

And your oratrix shows that by the terms of said assignment the said Henry H. Mellick did assign to his son a mortgage dated on the 13th of March

A. D. 1877, made by Joseph Kramer and wife to said Henry H. Mellick, and that the bond and mortgage assigned and delivered to your oratrix is dated on the 30th day of March A. D. 1877; that by the terms of said assignment it is expressed that the said bond and mortgage were assigned to said Howard Mellick, his heirs and assigns and to his and their own use after the death of the said Henry H. Mellick.

And your oratrix charges that the said Howard Mellick knew when he took said assignment above mentioned that the said Henry H. Mellick had already made a contract of marriage with your oratrix, and had agreed to deliver said bond and mortgage above described by your oratrix in her bill and in her assingment, and that he procured the pretended assignment, to be made to him in order to defeat the said marriage contract.

And your oratrix charges that the said assignment to said Howard Mellick is a fraud, and that it was without any consideration whatever, and that it does not convey the title to the said bond and mortgage assigned to your oratrix; that the said bond and mortgage were not delivered to the said Howard Mellick and were never intended to be assigned to him by said Henry H. Mellick.

And your oratrix charges that the assignment to said Howard Mellick by its terms conveys no title to him of said bond and mortgage, and that said bond and mortgage were not delivered to said Howard Mellick at the time of the assignment thereof, but were delivered to your oratrix at the time of the assignment to her, and that her title to said bond and mortgage are superior to said Howard Mellick, and that the assignment obtained by said Howard Mellick is fraudulent and absolutely void.

And your oratrix further shows that she resided with said Henry H. Mellick in the town of Phillipsburg, and that when said Joseph Kramer paid the interest on said bond and mortgage she produced the same to said Kramer and her husband at their request,

and the interest was endorsed on the bond; that in the year eighteen hundred and seventy-eight in August, when the installment of interest came due, the said Joseph Kramer together with the said Howard Mellick came to the residence of said Henry H. Mellick and your oratrix, to pay the interest, said Kramer desiring to pay the interest as they represented, and they asked your oratrix to produce the bond; that the said bond was produced by your oratrix and the interest was paid, and that when said Kramer had obtained possession of said bond refused to deliver the same to your oratrix, but handed it over to said Howard Mellick, and threw into the lap of your oratrix an old bond with the seals torn off, made by one George D. Mellick to Henry H. Mellick; that the said Kramer and Mellick asked for said mortgage as well as the bond, but your oratrix would not produce the mortgage, and that they refused to deliver up said bond to your oratrix, and that the said Howard Mellick retained said bond forcibly and refused to give the same up, that the said Howard Mellick committed a gross fraud upon your oratrix by that transaction, and obtained said bond from your oratrix by fraud and conspiracy and has kept it ever since and now has it; and that the same is the property of your oratrix and she prays that the same may be decreed to be her property, and delivered up to her by the said Howard Mellick.

And your oratrix further shows that the said Joseph Kramer is deceased, and the said Annie M. Kramer is his administratrix and represents his estate.

Judgment recovered by George G. DeWitt for the sum of $227.15 damages and $52.07 costs in Warren County Circuit Court on the 23d of November, 1878. Against Joseph Kramer.

Judgment by George G. DeWitt in Warren Circuit on September 5, 1879, for $350.80 damages and $37.36 costs. Against Kramer.

Judgment by William J. H. Bruch on November 27, 1879, against Joseph Kramer in Warren Circuit

for $2,337.75 damages and $37.35 costs ; Bruch is dead and John J. Detweiler is his administrator.

Judgment by Howard Mellick against Joseph Kramer in Warren Circuit for $3,666.06 damages and $4.50 costs on September 23, 1879.

Judgment by Charles Calvin against Joseph Kramer in Warren Circuit for $1,576.51 damages and $5.50 costs on October 13, 1879.

Judgment by Joseph Shaffer vs. Joseph Kramer on October 5, 1879, in Warren Circuit for $225.14 damages and $4.00 costs.

Judgment by Holloway H. Amey and David Amey Administrators of John Amey vs. Joseph Kramer in Warren Circuit on June 2, 1880, for $684.71 damages and $45.66 costs.

Judgment by First National Bank of Easton, Pa., vs. Joseph Kramer in Warren Circuit on June 5, 1880, for $1,721.44 damages and $45.53 costs.

Above described lands sold by Benjamin F. Howey, Sheriff, to Sylvester C. Smith. Deed dated March 11, 1881. Consideration $750. Recorded April 7, 1882. Sale under executions on above stated judgments. Sold by Smith to Howard Mellick for $1, dated January 1, 1882, acknowledged April 5, 1882, subject to a mortgage of $5,000 held by Howard Mellick. But your oratrix charges that the mortgage referred to in said deed is the mortgage held by your oratrix, and that the said Mellick well knew when he took said conveyance that it was subject to the mortgage above mentioned held by your oratrix, and that he had no title whatever to any mortgage.

And your oratrix further shows that all of the last mentioned conveyances were made and accepted subject to the lien of the mortgage of your oratrix, and convey no title to the said property except subject to the mortgage aforesaid.

And your oratrix further shows that the said Howard Mellick is now in the possession of the said mortgaged premises under his deed above mentioned, and

that he enjoys the rents, issues and profits of said property and all the benefit thereof.

And your oratrix further shows that the said Henry H. Mellick departed this life on the 23 day of February, 1879, and that your oratrix is now the absolute owner of the said bond and mortgage and that the principal and interest thereof is due to her.

And your oratrix further shows that the said Howard Mellick has not paid any interest to said Henry H. Mellick upon said bond or mortgage, and that he has had the full enjoyment of the rents, issues and profits of said mortgaged premises, and your oratrix insists that he should pay to her the interest due upon said bond and mortgage, as well as the principal sum due thereon, that no interest has been paid as your oratrix is informed and charges since said deed of conveyance was made to Howard Mellick. Your oratrix insists that she should be paid the full amount thereof.

And your oratrix further shows that the said mortgaged premises are a scanty security for the said mortgage and the money due and to grow due your oratrix, and your oratrix had well hoped the said Howard Mellick would have paid over the amount due on said bond and mortgage to your oratrix, and that he would have delivered up said bond to your oratrix.

But the said Howard Mellick refuses so to do and gives out that your oratrix has no title to said bond and mortgage, and that her assignment is void, which actings, doings and pretences are contrary to equity and good conscience.

And your oratrix further shows that all of the principal money mentioned in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your oratrix, no part thereof having been paid to your oratrix, so that your oratrix was 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, has become absolute in your oratrix and her heirs.

And your oratrix further shows that the said Howard Mellick since the execution of your oratrix's 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 oratrix 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 oratrix as aforesaid, and that he or some other person or persons, for her has frequently and in a friendly manner applied to the said Howard Mellick, or one of them, and requested them or one of them, to pay and discharge the said principal and interest moneys so due to your oratrix on the said bond or obligation and Deed of Mortgage hereinbefore mentioned and set forth; and your oratrix well hoped that they would have complied with such reasonable requests of your oratrix, and would have paid to her the said principal and interest moneys so as aforesaid due to your oratrix on the said bond or obligation and Deed of Mortgage, as in equity and good conscience he ought to have done.

In tender consideration whereof, and for as much as your oratrix 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 oratrix on said bond and obligation and Deed of Mortgage without the aid and Decree of this honorable Court.

To the end, therefore, that the said defendants may without oath, your oratrix hereby waiving an answer under oath, may, upon their several and respective corporal oaths, true, full, and perfect answer make to all and singular the premises, as fully and particularly

as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, and belief; and that the said defendants, or some of them, may be decreed to pay to your oratrix the said principal sums due to her on the said bond 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 oratrix'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 oratrix 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 oratrix may be paid the full amount of the said principal sum of money so due to your oratrix on the said bond or obligation and Deed of Mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your oratrix's costs and charges in this behalf sustained; and that the said assignment of your oratrix may be declared to be a valid assignment of said bond and mortgage, and that the bond and mortgage may be declared to be the property of your oratrix and the assignment of the said Howard Mellick may be declared null and void; and that the said Howard Mellick be decreed to deliver up to your oratrix the said bond of said Joseph Kramer which the mortgage of your oratrix secures, and the said Howard Mellick may be decreed to have no title whatever to said bond and mortgage but that the same may be decreed to be the property of your oratrix, and all mon-

eys due thereon to be paid to her upon sale of the property as aforesaid, and that the deed of the said Howard Mellick which he holds for said property may be decreed to be of no effect as against the mortgage of your oratrix, and that the said Howard Mellick may be decreed to have no title to said property except subject to your oratrix's mortgage, and that the said mortgage may be decreed to be a first lein upon said property and first paid upon a sale thereof.

And your oratrix 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 oratrix a writ or writs of subpœna, issuing out, and under the seal, of this honorable Court, to be directed to the said Annie M. Kramer, administratrix of Joseph Kramer, deceased, Howard Mellick, George G. DeWitt, Charles Calvin, Joseph Shaffer, John J. Detweiler, executors of Wilson J. H. Bruch, deceased, Holloway H. Amey and David Amey, administrators of John Amey, deceased, The First National Bank, of Easton, Pennsylvania, 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 premises, and to stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience. And your oratrix as in duty bound, will ever pray, etc.

J. G. Shipman & Son,
Solicitor for and of Counsel with Complainant.

In Chancery of New Jersey.

Between EMMA MELLICK,
Complainant,

AND

HOWARD MELLICK, ET. ALS.
Defendants.

On bill of foreclosure.
Answer of Howard Mellick, Defendant.

The separate answer of Howard Mellick, one of the defendants, to the bill of complaint of Emma Mellick, complainant. This defendant for answer unto the bill of complaint of the said complainant or unto so much and such parts thereof as this defendant is advised it is material and necessary for him to make answer unto, this defendant answering saith that he admits the making of the bond and mortgage set out in the said bill of complaint and dated March 30, A. D. 1877, and made by the said Joseph Kramer and wife to the said Henry H. Mellick securing the sum of five thousand dollars covering the lands and premises mentioned in the said bill and the conditions of the bond or obligation and the provision in the said mortgage mentioned; and also the acknowledgement, delivery and recording of said mortgage as mentioned and set forth in the said bill.

The defendant further answering says that he has no knowledge whatever, except by hearsay, of the marriage of the said complainant to the said Henry H. Mellick and he therefore requires her to make proof of the same.

This defendant further answering denies that the said Henry H. Mellick did before such marriage, if any such there was, agree with the said complainant that if complainant would marry him, the said Henry, he would assign and make over to her, amongst other property, the bond and mortgage above mentioned and described and he therefore requires the said complainant to make proof of such agreement.

This defendant further answering says that he has no knowledge except as he is informed by the bill of complaint, that the said Henry H. Mellick did on the day of the said marriage, if any such marriage there was, make, execute and deliver to the said complainant an assignment of said bond and mortgage of the tenor and to the effect alleged in the complainant's bill or of the execution or acknowledgment or the recording of such assignment, and he therefore requires the complainant to make proof of the same and of its delivery to her; he denies that the said bond and mortgage were at the time alleged in the complainant's bill delivered to the complainant.

He further denies that there was any valuable consideration expressed in such assignment and he further denies that there was any further consideration for the said assignment or that a further consideration for the said assignment was the marriage of the complainant to the said Henry H. Mellick.

This defendant further answering denies that after said alleged marriage, if any such there ever was, complainant immediately went to live with the said Henry or that they the said complainant and the said Henry, lived together as man and wife for several years, on the contrary this defendant declares the truth to be that in a very short time after the said 6th day of April 1878, the said complainant separated from the said

Henry and the said Henry thereupon came and lived with and was supported by this defendant until the day of the death of the said Henry.

This defendant further answering says it is true that he is the son of the said Henry H. Mellick and that he not only claims to be the owner of the said bond and mortgage, but that he is the absolute owner of the same by virtue of an assignment thereof which his said father made to him on the 18th day of March, 1878, and which was acknowledged on the same day and was duly recorded in the office of the clerk of the County of Warren on the same day; and that by the terms of said assignment the said Henry H. Mellick did assign to this defendant a mortgage dated on the 30th day of March, A. D. 1877 (and not dated on the 13th day of March, 1877), made by the said Joseph Kramer and wife to the said Henry H. Mellick, and that on the terms of said assignment it is expressed that the said bond and mortgage were assigned to this defendant, his heirs or assigns, for himself and his and their own use after the death of the said Henry H. Mellick on condition that this defendant should pay the interest received by him on said mortgage to the said Henry H. Mellick in semi-annual payments during his natural life.

The defendant further answering avers that the said assignment was for a valuable consideration therein expressed to the said Henry H. Mellick, paid by the defendant before the delivery of the said assignment the receipt whereof was thereby acknowleged, and the further consideration of natural love and affection, and was under the hand and seal of the said Henry H. Mellick and the said assignment together with the said bond and mortgage were on the day of the date of the said assignment and at the time of the execution thereof delivered by the said Henry H. Mellick to this defendant.

The defendant further answering denies that he knew when he took the said assignment that the said Henry H. Mellick had already made a contract of mar-

riage with the complainant and had agreed to deliver said bond and mortgage to the complainant, or that this defendant procured the said assignment to be made to him in order to defeat the said marriage contract; he denies that the said assignment is a fraud, or that it was without any consideration whatever, or that it does not convey the title to said bond and mortgage, or that the bond and mortgage were not delivered to this defendant, or that they were never intended to be assigned to this defendant by the said Henry H. Mellick, or that said assignment by its terms conveys no title to this defendant of said bond and mortgage, or the same were delivered to the complainant at the time of the alleged assignment to her, or that her title to said bond and mortgage are superior to this defendant's title thereto, or that the said assignment to this defendant is fraudulent and absolutely void.

The defendant further answering denies the allegation in said complainant's bill that the complainant resided with the said Henry H. Mellick in the town of Phillipsburg, and that when said Joseph Kramer paid the interest on said bond and mortgage she produced the same to said Joseph Kramer and her husband at their request and the interest was endorsed on the bond, and that in the year 1878, in August, when the installment of interest became due, the said Joseph Kramer together with the said Howard Mellick came to the residence of the said Henry H. Mellick and complainant to pay the said interest, said Joseph Kramer desiring to pay the interest as they represented and they asked complainant to produce the said bond, that the said bond was produced by said complainant and interest paid, and that when said Joseph Kramer had obtained possession of said bond he refused to deliver the same up to the complainant but handed it over to the said Howard Mellick (this defendant) and threw into the lap of complainant an old bond with the seals torn off, made by one George D. Mellick to said Henry H. Mellick; that the said Joseph Kramer and Henry H. Mellick asked for said mortgage as well as said bond,

but complainant would not produce the mortgage and that they refused to deliver up said bond to complainant, and that Howard Mellick retained said bond forcibly and refused to give the same up, that the said Howard Mellick (this defendant) committed a gross fraud upon complainant by that transaction and obtained said bond for complainant by fraud and conspiracy.

This defendant answering alleges the truth to be that immediately after the assignment of the said bond and mortgage to him by the said Henry H. Mellick on the 18th day of March, 1878, the same were delivered to this defendant, the assignment thereof put upon record and the bond and mortgage were, by this defendant, placed in his safe in his office in the town of Phillipsburg, that the said Henry H. Mellick had access to the said safe, and afterward in the course of a month or more after the said assignment, this defendant discovered that the said bond and mortgage had been surreptitiously taken from its place of deposit in said safe, and upon questioning his father, his father admitted to him that he had taken the said bond and mortgage from the safe, and at the request of this defendant he promised this defendant that he would return to him the said bond and mortgage, and he did thereupon in a short time return to this defendant the said bond but was unable to return the said mortgage, and the said bond has ever since remained in the possession of this defendant and is his property, and is not the property of the said complainant.

This defendant admits that the said Joseph Kramer is deceased, but he does not admit that Anna M. Kramer is his administratrix or that she represents his estate.

This defendant further answering admits that the said mortgaged land and premises, were, by Benjamin F. Howey, Sheriff of the County of Warren, sold and conveyed to said Sylvester C. Smith and that the said Sylvester C. Smith did afterwards sell and convey the said land and premises to this defendant, but as to the

executions and judgments by virtue of which said premises were sold, or the consideration of said sales and conveyances and the dates and recitals therein contained as alleged in complainant's bill, this defendant requires the said complainant to make proof, but this defendant denies that he well knew that when he took the conveyance from said Sylvester C. Smith for the said lands that it was subject to the mortgage above mentioned held by the complainant.

And this defendant admits the recovery of the judgments against the said Joseph Kramer by the various parties mentioned in the said bill of complaint, but he denies that any of them were recovered after the said mortgage had been assigned to the complainant and she had possession thereof.

And this defendant further answering says that he has paid and fully satisfied to the said Henry H. Mellick all the interest due on the said bond and mortgage up to the day of the death of the said Henry H. Mellick; this defendant alleges the truth to be that after the said complainant had separated herself from the said Henry H. Mellick he was without any means for a livelihood except from the interest he might receive on the said bond and mortgage, that he thereupon came to the defendant and agreed to and with this defendant, that if this defendant would furnish to him a home with comfortable room, lodging and board for and during the term of the natural life of him, the said Henry H. Mellick, that the same would be accepted by him, the said Henry H. Mellick, in full payment and satisfaction of the interest which he the said Henry H. Mellick had or was entitled in and on the said bond and mortgage and which he had not assigned to this defendant, and that defendant assented thereto and agreed to and with the said Henry H. Mellick to furnish to him, for and during the term of his natural life a home with rooms and lodging and board so long as he the said Henry H. Mellick might live, in consideration of the said interest in and on the said bond and mortgage; and the said Henry H. Mel-

lick thereupon and thereafter continued to live with this defendant and this defendant furnished to him during his lifetime a home with rooms, lodging and board aforesaid as long as he the said Henry H. Mellick lived, and in addition thereto this defendant furnished to the said Henry H. Mellick his clothing and some sums of money amounting in the whole to the sum of fourteen hundred dollars or thereabouts and which stands charged on this defendant's books against the said Henry H. Mellick, and that this defendant in addition thereto paid the expenses of the last sickness and funeral of the said Henry H. Mellick, and the amount whereof ought to be decreed to be deducted from any amount which shall be ascertained to be due in any wise from this defendant to the said Henry H. Mellick, if any such decree shall be made.

But this defendant denies that the said complainant is entitled to any relief whatever claimed in and by her said bill of complaint and he prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

And this defendant by way of cross bill exhibited against the complainant says that after the making, executing and delivery by the said Joseph Kramer and Anna his wife to the said Henry H. Mellick of the bond and mortgage dated March 30th, A. D. 1877, securing payment of the sum of five thousand dollars in one year from the date thereof with the interest covering the lands and premises therein mentioned and described and particularly mentioned in the complainant's bill in this cause, the said bond and mortgage were, by deed of assignment duly executed under his hand and seal by the said Henry H. Mellick dated March 13th, 1878, and duly acknowledged according to law and recorded in the office of the Clerk of the County of Warren on the same day duly granted, bargained, sold, assigned, transferred and set over by the said Henry H. Mellick to this defendant and the same were thereupon delivered to this defendant and the said bond and mortgage were by him placed for

safe keeping in his safe in his office in the town of Phillipsburg, and then remained in his possession and custody until on or about the 8th day of April, 1878, when the same were, by some person or persons at present not fully known to this defendant, surreptitiously removed from the said place of safe keeping and came into the hands of the said Henry H. Mellick who thereupon, without the knowledge or consent of this defendant, delivered the same to the said complainant and at the same time executed to her some kind or sort of assignment thereof the nature and particulars of which this defendant does not know and cannot at this time further set forth, but he is informed that said complainant claims that the said assignment is in her possession and is of the same tenor and effect as is set forth in her bill of complaint in this cause, but this defendant denies that there is any such deed of assignment made upon any such consideration as is set forth in said bill of complaint or upon any other legal consideration or that there was any contract of marriage between the said complainant or the said Henry H. Mellick as is set forth in the complainant's bill is the consideration of such assignment.

And this defendant further saith that whatever assignment the said complainant may have of the said bond and mortgage, or title thereto by her claimed by virtue of such assignment, if any she has, was by her acquired subsequent to and with full notice of the aforesaid assignment thereof by the said Henry H. Mellick to this defendant, and of the record thereof in the office of the Clerk of said County of Warren, and that the said complainant has no title whatever to the said bond and mortgage or the money, the payment whereof is secured thereby.

The defendant further saith that the said bond was, shortly after the same had been taken from this defendant's safe, returned to this defendant by the said Henry H. Mellick, that the lands and premises mentioned and described in the said mortgage, are now owned by and are in the possession of this defendant

by virtue of the several deeds of conveyance made by Benjamin F. Howey, Sheriff of the County of Warren, to Sylvester C. Smith, to this defendant as mentioned and set forth in the complainant's bill of complaint. That the said bond of the said Joseph Kramer and the said assignment of the said bond and mortgage by said Henry H. Mellick to this defendant, and the deeds to the said Sylvester C. Smith and by the said Sylvester C. Smith to this defendant above mentioned, are all in this defendant's possession ready to be produced when and where this Honorable Court shall require.

This defendant further saith that the said complainant still retains possession of the said mortgage by virtue of her pretended title thereto, but this defendant charges that such claim is fraudulent and vicious, and that she has no title thereto, that the record of the said mortgage in the office of the Clerk of the County of Warren, constitutes a cloud upon the title to the said land and premises therein described, and which are now owned by this defendant and the same ought to be delivered up to be cancelled of record. And this defendant has applied to the said complainant and requested her to deliver up the said mortgage to him in order that the same might be cancelled of record, but the said complainant refuses to comply with such request and will not deliver up the said mortgage as she ought to do, and has exhibited her said bill of complaint in this Honorable Court for the foreclosure of the said bond and mortgage, and for the sale of the said mortgaged premises, and claims that she will be entitled to the proceeds of the sale thereof and that the same shall be paid to her.

This defendant alleges such claim and conduct on the part of the complainant is inequitable and fraudulent, and that in consideration of the premises the said complainant ought by the decree of this Honorable Court to be compelled to give up possession of the said mortgage to this defendant to be cancelled of record. This defendant therefore prays:

1st. That the said complainant may without oath answer the matters herein above alleged by way of cross bill.

2nd. That it may be decreed by this Court that the said complainant has no title to the said mortgage and that this defendant has title thereto.

3d. That the said complainant may be decreed to give up the said mortgage to this defendant that the same may be cancelled of record.

4th. That this defendant may have such other and further relief as the nature of the case may require, and as shall be agreeable to equity and good conscience.

5th. That the said complainant may be decreed to pay to this defendant his costs of suit to be taxed and this defendant will ever pray, etc.

S. C. SMITH,
Solicitor for and of counsel with defendant.
HOWARD MELLICK.
W. H. MORROW,
of counsel.

In Chancery of New Jersey.

Between EMMA MELLICK,
Complainant,

AND

HOWARD MELLICK, ET. ALS.
Defendants.

} Replication.

The complainant joins issue on so much of the answer of the defendant, Howard Mellick, as is not in the nature of a cross bill, and as to that part of said answer which is in the nature of a cross bill, she says she denies that after the making, execution and delivery by said Joseph Kramer and wife, to said Henry H. Mellick, of the bond and mortgage dated March 30, A. D. 1877, securing the payment of five thousand dollars in one year from the date thereof, with the interest covering the land and premises therein mentioned and described, and particularly mentioned in the complainant's bill in this cause, the said bond and mortgage were by deed of assignment duly executed and under his hand and seal by the said Henry H. Mellick, dated March 13, 1878, and duly acknowledged according to law, and recorded in the office of the Clerk of the County of Warren, on the same day duly granted,

bargained, sold, assigned, transferred and set over by the said Henry H. Mellick, to the said defendant, Howard Mellick, and she denies that the said bond and mortgage were thereupon delivered to the said Howard Mellick, the said defendant, and she denies that the said bond and mortgage were by him placed for safe keeping in the safe in his office, in the town of Phillipsburg, and she denies that said bond and mortgage remained in his possession and custody until on or about April 6, 1878, and she denies that the same were by some person or persons at present not known to said defendant, surrepticiously removed from the said place of safe keeping and came in the hands of the said Henry H. Mellick, who thereupon without the knowledge or consent of this defendant delivered the same to the said complainant, and at the same time executed to her some kind or sort of assignment thereof, the nature and particulars of which this defendant does not know, and cannot at this time set forth, and she denies that said Howard Mellick ever had the possession or ownership, or control of said bond and mortgage, or ever had the right to them previous to assignment and delivery thereof to this complainant as set forth in her bill of complaint, and she says in answer to said cross bill that she has in her possession an assignment of said bond and mortgage, of the tenor and effect set forth in her bill of complaint, and said assignment was made upon the consideration set forth in her bill of complaint that it is a good, valuable, valid and legal consideration for said assignment and delivery of said bond and mortgage to her, and that there was a contract of marriage between this complainant and the said Henry H. Mellick as is set forth in her bill of complaint, and that said bond and mortgage were assigned and delivered to complainant upon the consideration stated in her bill of complaint.

And the complainant further answering said cross bill, says she denies that whatever assignment she may have of the said bond and mortgage or title thereto, was by her acquired subsequent to and with full

notice of any assignment thereof by the said Henry H. Mellick, to the said defendant and the record thereof in the office of the Clerk of said County of Warren, and she denies the statement in the said bill that she has no title whatever to the said bond and mortgage or the money, the payment whereof is secured thereby, and she declares that she is the owner of said bond and mortgage and entitled to recover the money due thereon, that they were duly assigned and delivered to her by said Henry H. Mellick and that she never had any notice of any assignment of said bond and mortgage to said defendant, Howard Mellick, and she denies that she has any assignment of said bond and mortgage, or that said bond and mortgage were ever delivered to him, or that said assignment was ever recorded in the Clerk's office of the County of Warren, or that she ever had any notice of any such thing, and she denies that any assignment of said bond and mortgage was recorded, or is recorded in the Warren County Clerk's office, and she declares that the said Howard Mellick had full notice of the execution and record of the assignment to this complainant of said bond and mortgage, and of the delivery of the same to her. And this defendant further says she denies that said bond was shortly after the same had been taken from the defendant's safe returned to said defendant by said Henry H. Mellick, but she declares the truth to be that the said Howard Mellick obtained possession of the said bond by fraud, and that he took the same out of complainant's possession without any right, and by fraud and conspiracy, and that he obtained said bond from her in the manner she has set out in her bill of complaint, that the statements therein made in reference to the manner in which said Howard Mellick cheated her, and obtained possession of said bond are true in all respects, and she declares that he never had possession of said bond until he obtained possession of the same in the manner described in her bill of complaint, and she declares that said Howard Mellick has her property in his possession,

that he has no right to said bond, and should be compelled to deliver the same up to her, and prays a decree of this Court compelling as she has prayed in her bill of complaint, says she has and still retains possession of the said mortgage, but she denies that her claim thereto is fraudulent and vicious, and that she has no title thereto, she declares her title to said mortgage and to said bond, which Howard Mellick obtained from her by fraud and conspiracy, are good, and legal, and genuine, and that she has her assignment of said mortgage in her possession, and also the said worthless and cancelled bond which said Howard Mellick fraudulently passed to her in the place of said genuine bond, which he obtained from her as in her bill of complaint stated, that she is ready to prove her title to said bond in the possession of Howard Mellick, and the mortgage when this Honorable Court shall require.

And this complainant says that it is true that the said Howard Mellick is in the possession of said lands and premises and that he pretends to hold the same by virtue of a deed from the Sheriff of Warren County and S. C. Smith, Esq., as in the complainant's bill of complaint is set forth, but she declares the truth to be that said Howard Mellick took his deeds and title and possession to said lands subject to the mortgage of this complainant, that he has received the rents for many years and bound to account for them to this complainant, and she insists that this court should compel him so to do. And this complainant denies that the record of the said mortgage constitutes a cloud upon the title of the land and premises therein described and which are now owned by said defendant and that the same ought to be delivered up to be cancelled, and this complainant says the said defendant has no title to the said land and premises therein described and which are now owned by said defendant and that the same ought to be delivered up to be cancelled, and this complainant says the said defendant has no title to said land and premises, that the title which he may have is subject to the mortgage of this complainant, and

that he took with full notice that this complainant had perfect title to said bond and mortgage, and that he has no rights whatever in said property until the said bond and mortgage and all interest are paid to this complainant.

And this complainant denies that the said Howard Mellick the said defendant has ever applied to her the said complainant and requested her to deliver said mortgage to him and she declares that he has never before asserted his claim or right to said bond and mortgage; that this complainant has given written notice to said Howard Mellick and made repeated demands of him for said bond which he obtained by fraud from her, that he has declined and refused to deliver the same to her, but that he never until the filing of said answer and cross bill, made any claims or any assertion of his right to said bond and mortgage and that said claim made in said cross bill is a fraud upon the rights of this complainant, and she insists that she is entitled to the proceeds of the sale of said lands and premises a foreclosure of her said mortgage for the payment of said bond as in her bill of complaint she has prayed.

And she denies that her claims and conduct is inequitable and fraudulent, or that she should be compelled to give up possession of said mortgage, but she declares that the conduct and claim of said Howard Mellick are fraudulent, that he is guilty of fraud and conspiracy, and that he should be compelled to give up said bond to this complainant, and that the property in his possession should be sold to satisfy complainant's bond and mortgage as in her bill of complaint she has already prayed. And this complainant denies that the defendant is entitled to any relief whatever under his cross bill, she denies that he has any right to file any cross bill, and insists that he has no right so to do; she insists that said cross bill was entirely unnecessary, that the defendant is entitled to no affirmative relief in the case, that all the matters were set up by him in his answer which were necessary, and that the whole

case could have been settled upon issue taken upon defendant's answer, and that the matters set out are not properly and sufficiently pleaded, and she prays the same benefit of this last allegation if she had demurred to said cross bill or moved to strike out the same and this deponent prays as she has already prayed in her bill of complaint pled in this cause, etc.

J. G. SHIPMAN & SON,
Solicitors for and of counsel with complainant.

In Chancery of New Jersey.

Between EMMA MELLICK,
Complainant,

AND

HOWARD MELLICK and others,
Defendants.

Transcript of shorthand notes taken on Thursday, October 17, 1889, at the Court House in Belvidere, New Jersey, before the Honorable HENRY C. PITNEY, Vice-chancellor.

Appearances:

MESSRS. J. G. SHIPMAN & SON, for complainant.

HON. W. H. MORROW & S. C. SMITH, for defendants.

MRS. EMMA MELLICK, a witness produced in her own behalf, being duly sworn, testified as follows:

Direct examination by Mr. Shipman.

Q. Where do you live, Mrs. Mellick?
A. Phillipsburg.
Q. And where did you live in 1878?
A. In Phillipsburg.
Q. How old are you?
A. About thirty.
Q. In 1878, did you know Henry H. Mellick?
A. Yes, sir.
Q. How long before that time did you get acquainted with him?
A. Oh, about four or five years.
Q. Four or five years before that time, whereabout?
A. We lived down by the canal in Phillipsburg.
Q. Who did?
A. My mother.
Q. You lived with whom?
A. My mother and my father.
Q. And whereabouts did you get acquainted with Henry Mellick?
A. In the store, and when I would go to Church, and the like of that.
THE COURT: Was he in the store?
THE WITNESS: His son kept a store and he used to be in there.
Q. What did your father do?
A. Boated.
Q. What canal?
A. On the Morris Canal.
Q. You met Mr. Mellick in his son's store?
A. Yes, sir; his son, Howard Mellick.
Q. The defendant in this suit?
A. Yes, sir.
Q. Now then state whether he paid you any attention.
A. Yes, sir.
Q. Well, what attention did he pay you?
A. Whenever I would go out anywhere, when I would go to church he would come home with me, or walk alongside the street with me, and if I wanted to

go to the opera he would take me—any place of that kind he would come and ask me if I would go with him. I would tell him I would, and then we would go.

Q. When did he make a proposition to marry, the first time?

A. The first time he asked me?

Q. Yes.

A. O, he asked me two or three years before we did.

Q. What did he say?

A. He always said——

Q. Go on and state how it took place.

A. He always asked me when I got old enough if I would be willing to marry him; if I would, he would have this money and would assign it over to me, the $5,000 he said he had, and a house and lot, and he would give me all I wanted to get furniture with if I would marry.

Q When did he tell you that?

A. Always—a couple of years before we were ever married.

Q. Did you agree to marry him right away, or not?

A. No, sir, I always told him I was too young, and didn't care.

Q. What would he say?

A. I want you and nobody else, and I will go with you until I do get you.

Q. Did you have other suitors?

A. I would go out once in a while, and then if any one would walk with me he would come and insult him, and say that is my girl; you can't go with her.

Q. Drive them off?

A. Yes, sir.

Q. And what did he do about your clothes, or anything of that sort?

A. When I told him I don't care about going with him, you are too old for me, he said you had better; if you don't, I will do so and so.

Q. What?

A. He went to work and got some vitriol one night when I went to church——(Witness here paused and placed handkerchief to her eyes)——

Q. Take your time, don't get excited—go on now.

A. And he was a little mad; I was mad at him, and would not go with him; so one night when I come home he came along with me, walked behind me, and then when I got in the house, he threw vitriol all over my back and ate them off of my back.

Q. What, say?

A. I asked him who put that on; I didn't see him put it on; I asked him who put it on; he said he didn't know.

Q. (COURT) Afterwards?

A. Right away, then; I said I believe you throwed it on me; no, he said, I didn't. I said I don't know who else it could be; I guess you must have thrown it on me; then he went on for a while.

Q. (COURT) How did you know he did it?

A. He told me afterwards; but he never told me until after we were married.

Q. (*Direct*) After you were married he told you?

A. Yes, sir.

Q. And the reason?

A. He thought he would throw it on and spoil my clothes and then I could not go with any one; if I didn't go with him he made up his mind I should not go with any one else.

Q. How long did he run after you in this way—for how many years?

A. I was not quite fifteen years old.

Q. And how old were you when you were married?

A. Nineteen in the Fall as we were married in the Spring.

THE COURT: Eighteen and one-half.

THE WITNESS: Past nineteen; yes, sir.

Q. Tell what agreement he made with you before you agreed to marry, and what did he agree to give you?

Objected to as insufficient to prove any consideration (agreement).

Q. Go on.

A. Well, he told me—

Q. How long before?

A. Well—we were engaged to be married the eighteenth of March and he told me—

Q. What year?

Q. (COURT.) Was that the first you made a positive engagement?

A. No, that was the wedding day.

Q. How long before that had you positively agreed to marry him?

A. In February, 1878.

Q. What year?

A. 1878.

Q. (*Direct*) In February you say, of 1878?

A. Yes, sir.

Q. Go on?

A. He agreed to give me this money—this $5,000.

(BY THE COURT):—What $5,000, describe it if you can, what he told you.

Q. What did he tell you, did he tell you what $5,000 it was?

A. He said he would give me $5,000, and he had a mortgage onto Joe Kramer's property.

Q. How much for?

A. Five thousand dollars.

Q. (BY THE COURT) That is what he meant?

A. That is what I understood him. And I said I guess you have not got $5,000, and he said if you don't believe me go down to Mr. Kramer's and ask him; and I went and he said, yes I have it on my property, and if you get him to take it the money is good, it is here, he will assign it to you.

Objection is made to what Mr. Kramer said.

(BY THE COURT) It is competent to prove that the

woman went there; the answer that she got is not proof of the fact, but it is proof that she learned and had reason to believe it was true that he had a mortgage.

Q. Go on.

A. Then he said to me we will go to the lawyer's; anywheres where you want to go, and I will go and tell him, and we will make the bargain there to get these papers fixed and get married.

Q. Now when was that?

A. That was in 1878.

Q. And in January?

A. In February.

Q. And how long after that did you fix the time for marriage?

A. Eighteenth of March.

Q. For the 18th of March of that year?

A. Yes, sir.

Q. Well now what did you do?

A. Well then everything, he told what he wanted to be done to these papers.

(By the Court) Did you go with him to the lawyer?

(The Witness) To Mr. Hillburn, to lawyer Hillburn, over in Easton, Pennsylvania.

Q. One question more; what else did he agree to give you at that time?

(By the Court) What did he tell Lawyer Hillburn to do?

(The Witness) Yes, sir.

Q. Just tell what he agreed to give you besides this $5,000 bond and mortgage?

A. A house and lot in New Village, and he would deed that to me; and five hundred dollars for furniture and that I was to buy in my own name so that if anything should happen no one could take it from me.

Q. Go on and say what you did about the matter.

A. Then in February he took the papers, and we were to be married in March.

Q. Where did you go to?

A. To Valentine Hillburn with my mother and him.

Q. Did you see the papers?

A. Yes, sir. I saw the bond and mortgage of Mr. Kramer.

(By the Court) Made by Mr. Kramer, you mean?

(The Witness) Yes, sir.

(By the Court) Did you look through it?

(The Witness) Yes, sir.

Q. (Showing witness paper) Is that the mortgage that you saw?

A. Yes, sir.

Q. That is the mortgage you saw.

Said mortgage offered in evidence and marked Exhibit C.

Bond produced by the defendant's counsel on notice and request of complainant's counsel and handed to complainant's counsel and shown witness.

Q. Were those the papers that you saw that he took over to Valentine Hillburn, when you went over there with your mother?

A. Yes, sir.

Q. (By the Court) Did you read them through?

A. I did not but my lawyer did and we all looked through them there.

Q. Do you recognize them as the same papers?

A. (*Direct*) Yes, sir.

Q. When was that?

A. That was some time about the middle of February.

Q. That was in February?

A. Yes, sir.

Q. Of 1878?

A. Yes, sir.

Q. And you and your mother and Henry Mellick went to Mr. Hillburn's office in Easton?

A. Yes, sir.

Q. What was said and done?

A. He told the lawyer he would like to get married and had come over to see about fixing this money; he had this mortgage and would like to have it assigned over to me, and after his death it should become mine; he would like to have the interest during his lifetime; and then the lawyer told him he would look at them, and told him, and said, are you sure that you own this, and he said he was.

Q. Hillburn asked him?

A. Yes, sir; and he said he did; and then he told him that he thought I was too young to get married.

Q. (COURT) Hillburn told Mr. Mellick?

A. Yes, sir; that he thought he had better look for an older person; and he said he wanted me or nobody.

Q. (*Direct*) Go on?

A. So then he says, remember you have got children; you have got children; you have three sons, he said—Hillburn said to Mr. Mellick; so, then, he says, suppose there is trouble about this—my children he says—you must not wrong them, you must not give it all away. My children has all my money except this that they are going to get—all they are going to get.

Q. Mr. Hillburn said to Mr. Mellick you have got children and must not wrong them; and Mr. Mellick said my children have got all the money I have got, except this?

A. And they are trying to get this, and I have made up my mind this was for my wife, if I should ever get married—was to be her's to take care of.

Q. What more?

A. Mr. Hillburn asked me if I was satisfied with this mortgage, and I told him that I was; and then he told him also about the house and the lot.

Q. (BY THE COURT) Who told him?

A. My husband told Mr. Hillburn that he wanted that deeded over to me, too, and he would give me five

hundred dollars in money to purchase furniture in my own name and get the receipts for it if I would marry him, and that that should be mine. And under those circumstances we made the bargain to get married the 18th of March.

Q. (*Direct*) Before Mr. Hillburn?

A. To be made for the eighteenth of March.

Q. (By the Court) What became of the bond and mortgage?

A. (The Witness) He left the bond and mortgage there, and about two weeks after——

Q. (*Direct*) He left the bond and mortgage for Mr. Hillburn?

A. Yes, sir, to have these papers fixed.

Q. For what time?

A. For the eighteenth of march.

Q. Go on; they were left there?

A. They were there until the fore part of March, some time; I could not tell exactly what time. He came to me, Mr. Mellick came to me———

Q. Where to?

A. To my mother's house, in Phillipsburg.

Q. Mr. Mellick did?

A. Yes, sir; he came and said I guess we had better put the marriage off until April, and let me have the papers to draw my interest on the first of April; it is due one day before the first of April, but I will get it on the first of April, and I think, he says, it is best to put it off until April, and then I can have the papers to draw my interest—I can have more money to move and to get married. He asked me if I would be satisfied to do that. I said I didn't think it was very good luck to break an engagement if once set. For that reason he said he would like to draw his interest and would have more to get married with. So under those circumstances I told him if that was the case he might go and get the papers, and get his interest; then he went for them.

Q. (By the Court) How do you know?

A. He told me that he was going over after them.

He came back to the house the next day and said he had been over for them but Mr. Hillburn would not give them to him, without I would go with him and say I was satisfied; because this arrangement had been made and everything put in them, and he didn't think it was right to give the papers up without me now; and then he asked me if I would go over, and I told him I would. Me and my mother went over on the next day, in the afternoon.

Q. (By the Court) What day?

A. (The Witness) In the fore part of March. I could not say exactly.

Q. Go on?

A. Then we went over; and he says to Mr. Hillburn, we have come to the conclusion to put the wedding off until I draw my interest, and I would like to have my papers to draw the interest on, the first of April, and then we will have more money to move with, and have both put it off until after the first of April. Then Mr. Hillburn says if you are both agreed —are you willing to that.

Q. To you?

A. Yes, sir; I am willing; I would just as leave wait till April as March. Then Mr. Hillburn gave him the papers. Mr. Hillburn gave Mr. Mellick the papers; and then he took the papers away, and he asked him——

Q. Who asked him?

A. Mr. Mellick asked Mr. Hillburn what time he would set the marriage; Mr. Hillburn told him that it could not be fixed then—he could not have it fixed not sooner than the sixth of April—he could not get the papers ready till then; then the wedding was put off till the sixth of April; and on the sixth of April we were married in the evening, and the papers kept there.

Q. Where did you get married?

A. In Mr. Hillburn's office

Q. Who married you?

A. Dr. Porter.

Q. The Rev. Thomas C. Porter, D.D.?

A. Yes, sir.

Q. (Handing witness paper) Is this the certificate he gave you?

A. Yes, sir.

Said certificate of marriage marked exhibit C. 3.

The bond previously offered in evidence marked exhibit C. 2.

Q. (Showing witness another paper) Is that the assignment that was delivered to you on the day of your marriage?

A. Yes, sir.

Said assignment offered in evidence and marked as Exhibit C. 4.

Q. With the bond and mortgage. Who was present at that occasion.

(By the Court) When did Mr. Mellick die?

(The Witness) Last Spring, I don't know just exactly, they didn't send me any word or nothing; I think it was in February this year, the last February.

Q. (Court) You were ready to commence suit before he died?

A. Yes, sir.

Q. (*Direct*) Who was present, Mrs. Mellick, at the occasion of your marriage?

(By the Court) Did she say that they had the bond and mortgage there at that time?

Q. Who was present at that marriage?

A. My father, and mother, Mr. Hillburn, Dr. Porter and George Fulker.

(By the Court) Who was George Fulker?

(The Witness) I don't know; he was a gentleman who was always in there.

(By the Court) Belonged to the office?

(THE WITNESS) Yes, sir.

Q. Where is he?

A. He is dead.

Q. George Fulker is dead?

A. Yes, sir.

Q. And your father?

A. My father is dead.

Q. What papers were delivered to you on the day you were married?

A. The bond and mortgage.

Q. That you have just been shown?

A. Yes, sir.

Q. And the assignment?

A. And the assignment, and the deed of the property, old one and new one.

(BY THE COURT) The old deed, and a new one to you, eh?

(THE WITNESS) Yes, sir.

Q. And what else?

A. That was all that was presented to me on that day.

Q. The assignment was executed to you as it was offered, just as it was then?

A. Yes, sir.

(BY THE COURT) Were the papers executed before or after the marriage?

(THE WITNESS) They were given to me right there in front of the minister.

Q. They had all been signed before you got married?

A. Yes, sir.

Q. (BY THE COURT) You don't know when?

A. (THE WITNESS) No, sir.

Q. (BY THE COURT) Were they signed afterwards?

A. (THE WITNESS) I don't know.

Q. (BY THE COURT) How soon were they given to you?

A. (THE WITNESS) That evening.

Q. (BY THE COURT) Before, or after the marriage?

A. (THE WITNESS) Before we stood up to be married.

Q. (BY THE COURT) Before?

A. (THE WITNESS) Yes, sir.

Q. And all in the condition they are in now?

A. Yes, sir.

Q. The bond and mortgage, and the assignment of it?

A. Yes, sir.

Q. (Showing witness two papers) I show her those two—are those the two deeds you referred to?

(BY THE COURT) The witness is shown two papers.

Q. Those were the papers?

A. Yes, sir.

Said deeds offered in evidence and marked exhibits C. 5 and C. 6, respectively.

Q. That bond and mortgage that was delivered to you that night was the same bond and mortgage that was delivered by Valentine Hillburn to you before?

A. Yes, sir.

Q. (COUNSEL) That is the bond and mortgage?

A. (THE WITNESS) Yes, sir.

Q. Was this sum of money that you mentioned paid you—the five hundred dollars?

A. In that office?

Q. In that office or at any time.

A. No, sir; he gave me that in the house.

Q. He gave you the sum of money in the house?

A. Yes, sir, to buy furniture.

Q. (BY THE COURT) Did he give you the money the same night.

A. (THE WITNESS) No, sir, long before.

Q. When did he give you that?

A. O, I guess it was about two months or more.

Q. He did, eh?

A. Yes, sir.

Q. That was before the first day that you had agreed to be married?

A. Yes, sir.

Q. He had given you the money before the eighteenth of March?

A. Yes, sir.

Q. And what did you do with that money?

A. I had it; and I had bought a few pieces of furniture—bedroom suit, and a few things like that I had bought already.

Q. And you bought that furniture and had bills made out in your own name?

A. Yes, sir.

Q. You have those bills?

A. Yes, sir.

Q. Now what did you do with the papers, and where did you go after you were married?

A. I left them to Mr. Hillburn's office that evening.

Q. With him—with Mr. Hillburn?

A. Yes, sir.

Q. Go on.

Q. (By the Court) Why?

A. (The Witness) Well, I just thought I would leave them that evening.

Q. (By the Court) Did they ask you?

A. I asked Hillburn to take care of them until I called.

Q. Did your husband suggest that you should leave them there?

A. No, except for safe keeping.

Q. Did he suggest it in the first place?

A. No, he didn't say anything about it in the first place.

Q. You suggested it and asked your husband, and your husband assented to it?

A. Yes, sir, I asked him what I should do—leave them or take them along, and he said if you want to leave them for safe keeping, do so.

Q. (*Direct*) As a mere suggestion of yours?

A. Yes, sir.

Q. How long afterwards did you get those papers?

A. I could not just exactly tell you; but not very long; I think they were there—they might perhaps have been there three or four days, or a week.

Q. (By the Court) Who got the assignment recorded?

A. (The Witness) I don't know.

(By the Court) Recorded on the ninth I think.

Q. Did you send this up to the Clerk's office, or how?

A. No, Mr. Hillburn sent it.

Q. (By the Court) So far as you know Mr. Hillburn sent them?

A. Yes, sir.

Q. How many papers did you get from Mr. Hillburn's?

A. I got the assignment, and the mortgage, and the bond, and the deed assigning the old deed, and the new one.

Q. Had the deed and mortgage been recorded when you got them from Mr. Hillburn's?

A. Yes, sir.

Q. (*Direct*) Both the deed and the assignment?

A. Yes, sir. When I went after them they were all just as they are now.

Q. And you took them in that way?

A. Yes, sir.

Q. And you went to live with your husband immediately after the marriage?

A. Yes, sir.

Q. Where to?

A. Yes, sir.

Q, In what property?

A. In the property that he deeded to me.

Q. The property described in this deed?

A. Yes, sir.

Q. How far is New Village from Phillipsburg?

A. I don't exactly know; but between seven and eight miles.

(By the Court) Who had been living in this house before?

The Witness) Jim Smith lived in it?

Q. That was the tenant under your husband?

A. Yes, sir.

Q. What became of the papers—you took the papers with you?

A. Yes, sir, I took them home; left them home with my father's.

Q. Down to Phillipsburg?

A. Yes, sir.

Q. This bond and mortgage you left with your mother?

A. Yes, sir, and the assignment.

Q. Then how long did you stay at New Village?

A. We lived there till August.

Q. And then where did you come to?

A. Then I came to Phillipsburg.

Q. For what purpose?

A. Well the old gentleman told me he would like to get three months' interest; Mr. Kramer said he would pay him three months' interest, interest for three months, and he was going to Phillipsburg and he came up.

Q. (Court) Did you go to Phillipsburg to live?

A. No, sir, I had an errand there; and he told me—

(By Judge Morrow) Is it competent to prove what the old gentleman or her husband said to her for any purpose whatever; let her state the facts herself if the papers were taken away from her.

(By the Court) Judge, is it possible for her to tell the circumstances by which she lost possession of this bond without stating something of what was said. And then there is another question here I suppose counsel will raise, I don't know that the pleadings or facts will justify it, but there is some law or equity,

whichever you choose to call it, in New Jersey, but if there was a conspiracy between this woman's husband and his son to cheat this complainant, if the husband in pursuance of that afterwards arranged matters so as to get this bond out of the possession of his wife, would not his declarations be evidence in some point of view?

(By Judge Morrow) Perhaps so.

Q. Just proceed with what you were saying, about what your husband said about interest?

A. Well he had been down and told Mr. Kramer—

Q. He had been down?

A. To Phillipsburg, and he came home and he asked me if I would go down there so he could get his interest; he said he was down, and Mr. Kramer said he would pay every three months the interest and it would come easier for him, and if I would go down and give him the bond he would pay him the interest. I said can't he give you three month's interest, and my husband give Mr. Kramer a receipt. Mr. Mellick said he would not do that unless the receipt is on the bond. I said I don't care for that, and at the end of the year we will go to some lawyer, or a squire, and then it can be receipted on the bond. He said you go down and I will come the same as it was this afternoon, and I will come down in the morning. I said all right. I come down to Phillipsburg.

Q. You stayed all night with your mother.

A. Yes, sir; and in the morning he came down, my husband did, down to my mother's house where I was.

Q. Did you have the bond with you?

A. To my mother's house.

Q. (Court) Why did you keep the bond and mortgage at your mother's?

A. Yes, sir.

Q. (*Direct*) The papers were at your mother's house?

A. Yes, sir.

Q. And they were there when you got down there of course?

A. Yes, sir.

Q. He came down there of course?

A. Yes, sir.

Q. He came down there in the morning you say?

A. Yes, sir.

Q. Now tell what took place?

A. Then he went to Mr. Kramer's, he said I will go over and see what he has got to say.

(By the Court) Go over to Kramer's?

(The Witness) Yes, sir.

(The Witness) And Mr. Mellick went over, and he came back and then he told me that Mr. Kramer said I should bring my bond and come over with my bond and come over to his bake shop. I said no, sir; he can come over to my mother's and I will be there.

Q. Go on.

A. My husband said I don't know whether he will do so or not, I will go back and see. I will tell you what I will do if Joe will come over, he said, and you will bring the bond down, I will give you twenty dollars, that Joe would give me twenty dollars.

(By the Court) Twenty dollars out of the interest?

(The Witness) Yes, sir.

(The Witness) He went over, and him and Joe came over together.

Q. To your mother's house?

A. Yes, sir.

Q. Who were present?

A. My mother, and me, and my husband, and Mr. Kramer. So he came over and now Mr. Kramer says Em, you fetch down the bond and I will give the old man his interest, and give you twenty dollars, and write a check for him to go to the bank. He said, "Here is your twenty dollars" and wrote the check.

Q. (Court) They gave you the twenty dollars?

A. And I brought the bond down, and when I did so Mr. Kramer looked at that and said you ought to bring the mortgage down too. What for? said I, I

don't know, says he, they ought to be compared together. I said: "How is that?" I says if that don't do, if that won't do I won't bring you any mortgage. My husbaud said to Kramer, never mind, that will do, Joe, and then Joe wrote something on the bond.

(*Direct*) Do you know what he wrote?

A. He said he was going to write a receipt. I didn't see it, and he handed it to him and said, "Here, daddy, sign your name." He said, Joe, I can't see; I will go out in the kitchen; and I walked out too; and he made out on the table to sign his name on to it, and he turned his back around, and went to the stove and turned his back to me and folded it up and started through the kitchen, and just as he got to the door I saw him stick my bond in his pocket and pull out another and throwed that down instead. And I said Mr. Kramer he has throwed out the wrong papers, and he took it up this way. (indicating)

Q. Who did?

A. Mr. Kramer did, and he said, here, Daddy, you have thrown the wrong paper down. And he said that is no difference, and he went to his son, and gave him the bond. I followed.

(By the Court) Did you see him go to his son?

(The Witness) He told me he did afterwards.

Q. State what took place further between you and Joe Kramer?

A. Then Mr. Kramer picked up the old bond and my mother says, here Joe, let me see that.

Q. (Court) That is before you followed your husband down to his son's store?

A. Yes. sir; he picked it up rightaway. She says, Here; let me see that? My mother took it out of his hands; and my husband he started and I did too. I come back to the house. I saw my husband go to Howard's store, and Kramer went home.

Q. (Handing witness a paper) Look at this paper, and see if that is the paper they left you in place of the one they took?

A. That is not mine.

Q. Look at it and see if that is it?
A. That is the paper left.

Said paper offered in evidence and marked Exhibit C. 7.

(The Witness) That is the bond they threw me down and took mine.

Q. That is the bond they threw you down and left you in its stead?

A. Yes, sir.

Q. Now you say that your husband told you that he gave that bond to Howard Mellick?

A. Yes, sir.

Q. When?

A. Right away most, just a few days afterwards.

Q. How soon afterwards did you see your husband?

A. Why, I saw him about two days afterwards.

Q. What did you say to him?

(By the Court) He came back to the house then?

(The Witness) Yes, sir.

(By the Court) When did you go back to New Village?

(The Witness) About three days afterwards.

Q. When did you first see him?

A. He came to my mother's house in Phillipsburg.

Q. What did he say to you?

A. Are you going up home? Yes, I ought to come back the way you act; and I said I don't care to go up there very much. And so he says "why." Well, my mother says, I will tell you why; she is afraid to go up. Then he asked her why I was afraid. Then she says, Well, she says, I will tell you why; you have stole the bond from her, and tried to take her papers all away from her, and you poisoned her, and she is afraid to go up.

Q. What did he say?

A. He owned up to her, that he poisoned me, and tried to take the deeds.

(By the Court) Poison you?

(The Witness) Yes, sir.

Q. What did he say?

A. He said it was not his fault; it was Howard's and Kramer's, they had laid three plans. (interrupted)

(Judge Morrow) Now the conspiracy is complete. Is it competent to prove the conspiracy since one of the parties is dead?

(By the Court) I have doubts about this. If Howard Mellick claims a benefit under any act done by his father at that time, if what he did was not for a valuable consideration, and was voluntary, and says here was a pull between myself and this girl who got around the old gentleman, does he not in a measure become responsible for the old gentleman's statement in connection with it?

(By Mr. Shipman) We are not done with the conspiracy, we propose to prove further efforts to get the mortgage away.

(By the Court) I will let it in, but I am afraid it is not competent. I will let it come in conditionally, subject to overruling it hereafter.

(By Judge Morrow) I think, if the Court please, that all this evidence is outside of the pleadings in this case absolutely.

(By the Court) My view of it is this, the way the thing stands from the very hasty glance of the pleadings that I made, the bill sets out that these papers were delivered to her; the bill sets out that there was a prior assignment of it made without her knowledge and, in substance, alleges that that was a fraud on her. Then she says that the fraud was consummated, so to speak, by getting this bond away from her. The bill does not say in so many words that Howard Mellick and his father conspired to do this thing, but,

in effect, it amounts to a charge of conspiracy between the father and the son. I will admit the evidence with this expression of opinions that if it turns out to be incompetent it will be overrulled upon a further consideration of the case. I do not think it is proper to exclude it at this time, it will not be considered by the Court unless the Court is finally convinced that it ought to be.

Q. What did your husband tell you?

(By the Court) Was it in New Village?

A. At mother's house, that night. Well, he said, there were three plans laid to get the papers, and he says I will tell you what they were, he says one was for you to fetch the papers and come to Kramer's baker shop to get them signed for the interest.

Q. (By the Court) To get the interest endorsed on?

A. (The Witness) Yes, sir; and then I was to let them fall in the yeast bucket, and to get them out and hold them before the fire under the bake oven and let them fall out of my hands, and then let them burn up, and then Daddy to give Howard new ones; Mr. Kramer said that wont do, I will have to give her new ones. Then he said another one was to get them away with these papers—this old bond, he said he had a mortgage too—to take the original from me—to leave me an old bond and mortgage, and to take mine——

Q. They had a mortgage to go with that bond?

A. Yes, sir; and when Joe asked me for the bond they expected me to bring it down and then take the bond and mortgage, and throw these other papers down in place of mine; the same as they done it, and the other was to poison me, and they should not blame him; they laid the plans for Howard and Kramer to poison me.

Q. (By the Court) To poison you?

A. (The Witness) Yes, sir.

Q. When did you first find out in reference to Mr. Mellick's matter that Howard Mellick claimed?

A. Not until they stole the bond.

Q. (By the Court) What do you mean by that—when she first heard that Howard Mellick had an assignment?

A. (The Witness) Yes, sir.

Q. What did you do in reference to that matter?

A. I come up here to Belvidere, and they said to my mother there must be something wrong. I said we will go to Belvidere and have the records searched, and we did so, and found this assignment on it on record.

Q. When?

A. After they stole the bond—the next day.

Q. How long after that did you live with your husband?

A. Didn't live with him at all after that.

Q. Did you go back to New Village?

A. Not at that time—after that.

Q. How long after that did you go back?

A The next spring; I could not go back that time because they took everything away I had.

Q. (By the Court) Who did?

A. (The Witness) As soon as he told me of that plan, he stayed to my mother's house that night, and in the morning he said he would see Howard and would soon be back; he went out and stayed about an hour and came back and said to me, you stay down till to-morrow—this was on a Tuesday, I think, and he says you stay till to-morrow—and I will come with a horse and carriage and take you up home. I said, all right. So he went home, and in the morning by ten o'clock, the furniture was all moved down to Howard Mellick's, I saw them bringing it. There was a man told me they were moving my furniture; I went in and everything was out.

Q. (By the Court) You went out to New Village?

A. (The Witness) Yes, sir.

Q. Did you see your husband after that?

A. Yes, sir.

Q. How soon?

A. I saw him just in three or four days.

Q. Where did he come to?

A. Met me on the street.

Q. What did he say?

A. I asked him if he took my things away. He said that Howard said, father, the best thing you can do is to advertise in the paper that she left you.

Q. Were you advertised?

A. Yes, sir.

Q. (By the Court) He did advertise you?

A. (The Witness)Yes, sir.

Q. After that, when did he see you again?

A. O, well, in about a month or so, he came back to the house again and wanted me to go back.

Q. Where to?

A. To New Village—wanted me back again.

Q. Did you go?

A. Not then.

Q. When?

A. In the spring of 1879.

Q. How did you come back?

A. Well, he said that Howard was so nasty to him and his wife that he could not stand it, and wanted to know if I would not move back to New Village, that if he would get a house in Phillipsburg would I go with him. We went to see a house, and the one we wanted we could not get, so then I concluded that if he would hire a girl and get me company, I would do that, and in the spring we moved back——

Q. To New Village?

A. Yes, sir.

Q. (By the Court) How about the furniture?

A. The furniture they took it away from Howard's, the same furniture, and when he started to move it after he got one load out he came to the house and said Em, Howard has taken the best bedroom suit and locked it up. I said, all right, we will see that I get it. I went to Squire Arndt to have him arrested; and they moved everything up then.

Q. (The Court) Did you get your furniture then?

A. (The Witness) The hearing was put off, and he

sent Mr. Kugler and Arthur Case with it, in a wagon.

Q. (*Direct*) Well, then, how long did you live with him after that?

A. We lived there all that summer, and that winter—that is 1879; we lived there till 1880, just before 1881, till November, some time.

Q. Two years and a half?

A. Yes, sir.

Q. And then how did you come to leave?

A. He got so that he would get nothing in the house, said he had no money? Howard had the bond; Howard would not give him any money unless he had an awful fuss, said he used too much money, and for two weeks there was hardly anything in the house but a little bread, and a few potatoes and molasses—raised in the yard. I said, why don't you go to the store and get something to eat. He said that since Howard got the bond he gets it and gives me what he pleases; if he sees fit to give me anything he does, and if not, then I don't get it. He says I ain't got things and you will have to go down home. I said I wanted a pair of shoes. And he said to-morrow I will go to Howard's and see if I can get money, and get money to buy you a pair of shoes. I came down that morning, me and the hired girl, and early the next morning he came down and said to me, are you going up home to-day? I said, Yes, if you give me money for a pair of shoes. He said Howard is not there, and I will not go back there, and he never came back; went up and locked the house. I went up to see.

Q. (By the Court) Had you left your clothes all up at the house?

A. Yes, sir; so I got Mr. Ripley to take me up in a sleigh; we went up, and I saw he had took all his clothes, everything, all his clothes that belonged to him, had taken them all away, and I took my clothes after.

(By the Court) What became of the furniture?

(The Witness) It stood in the house.

(By the Court) Did you sell it?

(The Witness) Left it there, stood there until the spring.

Q. Until the spring of 1883?

A. Till the spring of 1881, that it was taken and packed upstairs in two rooms.

(By the Court) In your own house?

(The Witness) Yes, sir; in my New Village house.

Q. There the furniture remained in those two rooms, stored away?

A. I don't know who stored it; it was stored away there.

Q. Until 1883?

A. Yes, sir.

Q. While you and your husband were living together in New Village did he ever get any letter, to your knowledge, from Howard Mellick?

A. Yes, sir.

Q. What did your husband say?

A. I have got a part of the letter.

Q. Get it out and tell the circumstances about it.

(Witness produces a portion of letter).

Q. Now explain about that matter.

(By the Court) I do not see the competency of this, you may offer it if you wish, if you think it is competent.

Q. Just tell about that part of the letter that you have there, just tell about that paper.

A. (Witness read a few words, and paper was afterwards marked Exhibit C. 8).

Q. Now how did you get that?

A. He got the letter up there, in the office, they had it in the store, and he said he had a letter from Howard.

Q. The store in New Village.

A. Yes, sir. They kept the mail in there. He says to me, I wonder what he wants now, and he opened it and he read it and tore it up and throwed it in the coal bucket; he said you don't want to see it, and I went and picked this piece up, and saw what it read and thought I would keep it.

(By the Court) Why didn't you keep the whole of it?

(The Witness) This was the only piece that was whole, so I saved that piece.

Q. And that relates to the interest on the bond does it?

A. Yes, sir.

(Said torn piece of letter offered in evidence and the same is marked Exhibit C. 8).

Q. When did you find out; you found out there was another assignment?

A. Yes, sir.

(By the Court) She has told all about that.

Q. About the deed also, did you find there was any other deed given, at the same time?

A. Yes, sir.

Q. For this property up in New Village?

A. Yes, sir.

Q. And the same date as the assignment?

A. Yes, sir.

Q. When did you find it out; at the same time you found out about the other assignment?

A. Yes, sir.

(By the Court) That there was a deed of the lot on record ahead of you?

(The Witness) Yes, sir.

(By Mr. Shipman) The deed in March.

(By the Court) The same date as the assignment?

(The Witness) Yes, sir.

Q. Where is Valentine Hillburn?

A. Over in Easton.

Q. Have you been to see him?

A. Yes, sir.

Q. What is his condition?

A. He is very feeble, he is not able to go out of the house.

Q. What is the matter with him?

A. He has had a paralytic stroke in his feet, and

he can't scarcely walk, and he is quite old, and very feeble.

Q. Does he shake?

A. O, yes, sir.

Q. Does he go out at all?

A. No, sir.

(By the Court) Prove that by some one else.

Q. Did I go with you?

A. Yes, sir.

Q. What did you go to see him for?

A. I wanted him to come up to Belvidere as a witness on the trial.

Q. Was he able to come?

A. No, sir; said he was willing.

Q. That he was willing?

A. Yes, sir.

Q. Had he been out?

A. No, sir; he does not go out anywheres.

Q. When was it?

A. It was about a month ago, or two; a month and a half, or somewhere along there.

Q. It was before September, was not it?

A. Yes, sir.

Q. Before this case was set down at the September Term?

A. Yes, sir.

Cross-examination by Judge Morrow.

Q. How old was your husband when you married him?

A. He told me he was between sixty-four and sixty-five.

Q. He was an old appearing man, was not he?

A. No, sir; not at that time, no, sir; he was a smart man.

Q. How long had he been a widower?

A. I could not tell you; never asked him.

Q. Did you know him when his first wife was living?

A. No, sir.
Q. What was your father's business, a boatman?
A. Yes, sir.
Q. On the Morris Canal?
A. Yes, sir.
Q. Where did you live?
A. Right close by the canal.
Q. Down on what they call the flat?
A. Yes, sir.
Q. How long had you lived there?
A. Five or six years.
Q. Where had you lived before then?
A. Easton.
Q. All your lifetime?
A. No, sir; I was born in New Jersey.
Q. What did your father do over in Easton?
A. Always boated.
Q. As long as you can remember?
A. Yes, sir.
Q. When did he die?
A. I can't exactly tell you what year; eight years last April.
Q. Eight years last April?
A. Yes, sir.
Q. After you were married then?
A. Yes, sir.
Q. What have you been doing ever since your husband and you separated?
A. Working you mean?
Q. Yes.
A. I have been sewing, I am a dressmaker.
Q. Were you a dressmaker before your husband married you?
A. Yes, sir, I was; I always sewed ever since I was quite young.
Q. I think you keep some sort of a confectionery shop?
A. My mother does.
Q. You live with your mother?
A. Yes, sir.

Q. Where was this vitriol thrown on you, on the street?

A. What?

Q. Where was this vitriol thrown on you, on the street?

A. On the street coming from church on Sunday night.

Q. Who were you with?

A. Not any one, only he was walking behind me, wanted to go with me—Mr. Mellick. He wanted to go home with me, and I said I can go home myself.

Q. Did you have any other fellow at that time?

A. No, sir.

Q. Waiting on you?

A. No, sir.

(By the Court) Paying attention generally?

(The Witness) No, sir; I didn't.

Q. Didn't have any?

A. No, sir; he would not give me a chance to have any.

Q. You would not let him go home with you?

A. He wanted to go.

Q. You had always had company?

A. No, sir.

Q. Didn't make acquaintances on the street?

A. No, sir.

Q. Never had any?

A. I might have spoke to some one.

Q. Some fellow?

A. Some neighbor or something like that, but never scraped acquaintance on the street with any one.

Q. Where did you scrape acquaintance with this man?

A. We dealt in Howard's store, and he would bring groceries to our house, and we talked with him that way and occasionally he came in the afternoon and asked me to go to the opera, or if I wanted to go.

Q. He was pretty red hot after you?

A. I don't know whether he was red hot.

Q. He chased after you a good deal, didn't he?

A. Yes, sir.

Q. You had him on a pretty good string?

A. I don't know; I guess he put himself on it; told him lots of times to stay away.

Q. How did you find he had property?

A. What he told himself and then he told me to ask.

Q. To make an inducement to you to marry him?

A. I suppose so.

Q. When you went to Mr. Hillburn's that first time did you have the bond and mortgage in your hands at all?

A. In my hands at the office to look at it you mean?

Q. Yes, sir.

A. Yes, sir; he gave them and we all looked at them.

Q. Who did?

A. Mr. Hillburn had them on the table.

Q. But who handed them to you to look at?

A. Mr. Hillburn did.

Q. When you went into the office did your husband tell Mr. Hillburn what the business was?

Q. (By the Court) The first interview you mean?

Q. The first interview; did your husband tell Mr. Hillburn what the business was; he was going to marry you and to make you over all his property, and brought the bond and mortgage along for Mr. Hillburn to assign to you?

A. Yes, sir.

Q. For Mr. Hillburn to prepare the papers?

A. Yes, sir.

Q. And handed them over to Mr. Hillburn for that purpose?

A. Yes, sir.

Q. And they were laid down by Mr. Hillburn on the table?

A. Yes, sir.

Q. And Mr. Hillburn remonstrated with him about his marrying a young girl?

A. Yes, sir.

Q. And the conversation you have detailed took place?

A. Yes, sir.

Q. At what point was it that Mr. Hillburn gave them to you to look over them?

A. I read them alongside of him.

Q. Did you have them in your hands?

A. Yes, sir.

Q. What for?

A. Just to look them over.

Q. After your husband had given them to Mr. Hillburn?

A. Yes, sir.

Q. And was there a day fixed or set upon which you would go back and have an assignment executed, or was that to be done the day you were married?

A. That was to be all made before we were married, and the night of the marriage they were to be presented to me before we were married.

Q. (By the Court) Presented before?

A. (The Witness) Yes, sir.

Q. Was there any time fixed when your husband should go there and sign the papers before the marriage--any time?

A. Any time?

Q. Yes, sir.

A. I don't know.

Q. You didn't hear; well, at that interview was there any day fixed or set upon which your husband should go over there and sign the papers?

A. Not especially.

Q. The understanding was Mr. Hillburn should draw the assignment and they were to be executed by your husband and presented to you before you entered into the marriage?

A. On the eighteenth of March.

Q. By the eighteenth of March?

A. Yes, sir.

Q. And it was arranged between you parties then

that you were to go and get married on the eighteenth of March?

A. He said that we should go to some lawyer——

Q. At that time in Mr. Hillburn's office——

Q. (By the Court) The first interview you had at Mr. Hillburn's office, was it then understood that the marriage was to take place at Mr. Hillburn's office on the eighteenth of March?

A. Yes, sir.

Q. (By the Court) And you were to go back and be married there, and the papers to be got ready before you were married?

A. Yes, sir.

Q. (*Cross*) Then it was postponed, as you have told us, to any day particularly set?

A. Well it was till the sixth of March.

Q. Sixth of April?

A. Yes, sir.

Q. That was an arrangement between you and your husband?

A. Between me and my husband.

Q. Did you go over to see Hillburn about it?

A. Yes, sir.

Q. In the fore part of March you went to see Hillburn?

A. When my husband took the papers away, after they were left there.

Q. And when your husband took the papers away it was the understanding that you were to come back on the sixth of April, and the papers then given to you?

A. Yes, sir.

Q. (By the Court) It was arranged at the interview in March when your husband took the papers away from Mr. Hillburn that you were to do the same thing over on the sixth of April?

A. Yes, sir.

Q. And the papers were to be given to you?

A. Yes, sir.

MR. SHIPMAN: We have a witness to prove the execution of that assignment.

MR. A. S. DEICHMAN, a witness produced by the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Shipman.

Q. (Showing witness paper) Did you witness that, Mr. Deichman, that paper?

A. That is my signature.

Q. And is that your signature to the acknowledgment?

A. Yes, sir.

Q. You saw Mr. Mellick execute it?

A. I could not say that I saw Mr. Mellick sign the name to it; but it is my custom to apprize him of the contents; he might have signed it before I took the acknowledgment.

Q. Where was it done?

A. In Pennsylvania.

(By the Court) Whereabouts?

(The Witness) I don't know.

Q. (Court) No personal recollection?

A. That (indicating) is my name, I swear to it.

Q. Are you particular never to sign your name to anything that is not absolutely true?

A. No, sir, I never do that kind of business.

Q. From your habits of business you can swear it is true?

A. That is so; that is all right, I am positive of that, although I don't recollect it; where it was done I could not say.

Cross-examined by Judge Morrow as follows:

Q. Mr. Deichman, after this paper was given, you sent word to Howard Mellick that his father had been married to this woman—I want to refresh your memory.

(The Court) You may make him your witness.

It is understood that the defendants make this witness a witness for the defendants.

A. (The Witness) I was stopped by Mr. Mellick on the street about ten days ago and asked the question, and I had entirely forgotten it, it is so long ago, and I could not then recollect it; and he named another gentleman that I had been talking to about it, he said, and the other day I asked Mr. Alvin Mellick if that was the case, but I didn't send him word, but I might have talked to Mr. Alvin Mellick about it.

Q. Did you see the marriage ceremony?

A. No, sir, I did not; it might, perhaps, have been brought to him by this Mr. Mellick.

Q. The old gentleman?

A. Alvin Mellick; I think he is a relative.

That is all.

MR. SHIPMAN: No cross-examination.

AFTERNOON SESSION.

MRS. EMMA MELLICK, the complainant, resumed the stand, and her cross-examination proceeded as follows:

Q. The papers that were to be given to you was the bond and mortgage and the paper which Mr. Hillburn was to draw, assigning them to you and the deed for the New Village property?

A. Yes, sir.

Q. Had the old man then given you this five hundred dollars?

Q. (By the Court) When was this?

Q. He had given you that money when you went to Hillburn's office the first time?

A. Before.

Q. How long before?

A. Nearly two months before, quite, if not.

Q. Had you agreed to marry him then?

A. Yes, sir; we said we would get married then; he asked me if I would, and I told him well we would see; and then he says if I would why he would give me the money right away to get the furniture, so I would be sure that I would have that; he would see to the rest part of it, and so he gave me the money to get the furniture then.

Q. Did you tell him you would marry then?

A. Yes, sir.

Q. Did you tell him you would marry then?

A. Yes, sir.

Q. That was a good while before you went to Hillburn's office the first time?

A. He often talked about getting married before we went there; and the appointments were made there.

Q. Won't you be a little definite about that time, are you sure it was as much as two months before you went to Hillburn's office the first time?

A. Before what?

(By the Court) You were there three times, first the middle of February, that is when you first took the papers there, and the second time when you went to get the papers away, and the third time when you went and got married. Now then the counsel wants to know how long before the first time you went there, which I understand you to say was in February, that he paid you the five hundred dollars?

(The Witness) Somewhere around two months I think before I went there at all.

Q. Was it before Christmas?

A. Before Christmas?

Q. That he gave you this five hundred dollars.

A. Yes, sir; I think it was.

Q. Gave it to you all at once, in one sum?

A. Yes, sir.

Q. In bills?

A. Yes, sir.

Q. Was it just five hundred dollars.

A. Well, yes, sir; it was just five hundred dollars.

Q. How many bills?

A. I don't know how many bills, I didn't count them.

Q. Were they large bills, or bills of small denomination?

A. One of them one hundred dollars, and twenty dollar bill.

Q. That is all. Do you know where he got the money from; didn't he tell you?

A. No, sir, I didn't ask him; I didn't ask him at all.

Q. How soon after you got that five hundred dollars did you begin to buy things to go to housekeeping with?

A. I don't know; I bought a bedroom suit almost right away.

Q. What did you do with that bedroom suit?

A. I took it up to New Village.

Q. Where did you buy it?

A. Easton.

Q. Where did you take it?

A. To my mother's house.

Q. How long did you keep it there?

A. From that time until we went up in April.

Q. From before Christmas until April?

A. I didn't buy it until after Christmas.

Q. How long after?

A. I can't say.

Q. Was that the first thing you bought out of the five hundred dollars?

A. Ninety-five dollars for three pieces.

Q. Where did you get them from?

A. Got them over from Mr. Taylor's.

Q. In Easton?

A. Yes, sir.

Q. Didn't your husband give Mr. Taylor the money?

A. No, sir; he was not with me.

Q. And the next thing you bought?

A. I bought to go to New Village a parlor suit; another bedroom suit.

Q. Where did you buy the parlor suit and the other bedroom suit?

A. Mr. Cook's.

Q. When?

A. A week or two before we got married.

Q. Did you spend any of that five hundred dollars, except when you paid for the three pieces—ninety-five dollars?

A. For other furniture.

Q. I want the time you bought the other furniture.

A. Yes, sir.

Q. How much did you give for the first lot, the bedroom suit and the parlor suit?

A. That first bedroom suit cost me about one hundred and twenty-five dollars, the chairs and all of it.

Q. (By the Court) Including the three pieces that cost ninety-five dollars?

A. (The Witness) Yes, sir; and the parlor suit I gave ninety dollars for.

Q. Did you take the parlor suit direct from Cook's to New Village?

A. Yes, sir, they took it direct.

Q. What next?

A. Bedroom suit.

Q. What did you pay for it?

A. That is fifty dollars.

Q. Where was that taken to?

A. New Village.

Q. What next?

A. Stoves.

Q. Where?

A. Mr. Norton's.

Q. How much for them?

A. Sixty dollars.

Q. Did you pay that money out—five hundred dollars?

A. Yes, sir.

Q. Didn't your husband hand you that money right in Norton's store?

A. No, sir.

Q. Was he with you?

A. Never with me at all when I bought anything.

Q. Were you married when you went there at Norton's?

A. No, sir.

Q. Bought this before?

A. Yes, sir.

Q. And bought from Cook's before?

A. Yes, sir.

Q. And what else did you buy before?

A. Dinner dishes, and all such things.

Q. Did you use this five hundred dollars in paying for things?

A. Yes, sir.

Q. Anything more?

A. No, sir.

Q. Used nothing except the money Mr. Mellick gave you?

A. Yes, sir.

Q. Took them all down to New Village before you were married?

A. Yes, sir.

Q. Did you stay there any before you were married?

A. No, sir, only took the things down; took the things down.

Q. Stayed all night?

A. Yes, sir, but not with him.

Q. He was there in the house?

A. Yes, sir.

Q. He and you stayed in the house?

A. And others.

Q. Who else?

A. My sister stayed there; my brother, and my aunt there, over in Easton.

Q. Any of the rest of them?

A. That is all I know; Mr. Fair was down there.
Q. Who?
A. Mr. Fair.
Q. Who is he?
A. Mr. Robert Fair.
Q. A young man?
A. He ain't so very old.
Q. Married?
A. He was; he ain't now.
Q. Was he married then?
A. No, sir; he had been married; but his wife was dead then.
Q. Dead then?
A. Yes, sir.
Q. Was he related to you?
A. No, sir.
Q. What was he doing down there?
A. He had been taking something to his brothers and sisters—I don't know what; had come up that way, and just stopped.
Q. What was all this Keiter family doing down there before you got married?
A. We took the things down.
Q. Did you do cooking down there?
A. I didn't; it was all cooked when I came there.
Q. Well, you were down there before you married; did you eat meals there?
A. Only one; when we got there dinner was ready; that was our supper.
Q. And had your breakfast the next morning there?
A. Yes, sir.
(By the Court) Who cooked it?
A. (The Witness) Already cooked; we just set it on the table.
Q. (By the Court) Took cooked victuals?
A. (The Witness) The old man had some ladies to fix it.
Q. Were they his neighbors?
A. I suppose.

Q. Had he lived there before?

A. He did at some time.

Q. While he was a widower?

A. Yes, sir.

Q. Alone?

A. He told me he lived there, and had a housekeeper; I don't know.

Q. You were married on the sixth of April; when did you go down to New Village next after the marriage?

A. We went down—we came up that next morning; got Mr. Fair to come with us; we come up—brought us up in a wagon.

Q. (By the Court) The counsel wants to know how long after the day you were married did you go to New Village with your husband?

A. Not that night; the next morning.

Q. (*Cross*) Where did you go that night?

A. He went to New Village alone; he and Mr. Fair.

Q. You didn't go?

A. He says go back home.

Q. That old man told you to go back, and went to New Village and slept alone?

A. I don't know whether he slept alone or not.

Q. You went down the next morning after the wedding?

A. He came up after me the next morning; I went down when he came down.

Q. On the seventh of April did you go down?

A. It was the next day after the seventh—on the eighth.

Q. He went down on the evening of the sixth?

A. Then it was——

Q. (By the Court) Did he go the same night you were married in Easton?

A. Yes, sir, and said I should stay down; and he and Mr. Fair would come down in the morning, and he would take me up, and then he came down in the morning, and we went up.

Q. That was the next morning then?

A. Seventh.

Q. (*Cross*) What day of the week was it you were married?

A. Saturday.

Q. When?

A. In the evening.

Q. What time?

A. Between seven and eight.

Q. Did you go to Squire Hillburn's office in a carriage?

A. No, sir.

Q. Come away in a carriage?

A. No, sir.

Q. Did he?

A. No, sir, not from the office.

Q. Where did you separate?

A. Down at the Delaware bridge.

Q. On the Jersey side?

A. Right in front of Abel's.

Q. (By the Court) On the Jersey side?

A. (The Witness) Yes, sir.

Q. Which way did you go?

A. Home, with my mother; and Mr. Fair was there with the carriage, and he got there——

Q. (By the Court) Your husband got into the carriage?

A. (The Witness) With Mr. Fair.

Q. Did he ask you?

A. No, sir.

Q. And didn't you say you would be damned if you would?

A. No, sir; I don't swear, I never said that, I ain't that kind of a person, to swear.

Q. You would be damned if you would?

A. No, sir.

Q. Did your mother urge you to get into the carriage?

A. No, sir.

Q. Did anybody?

A. No, sir.

Q. Where was he going in that carriage?

A. To New Village.

Q. Single carriage?

A. Yes, sir, his own carriage.

Q. Did he go alone?

A. He went with Mr. Fair.

Q. Mr. Fair brought the carriage there to meet him, eh?

A. Mr. Fair left his spring carriage up to New Village and took our carriage to come down and meet us.

Q. That was Saturday night, and Sunday the old man came back to Phillipsburg after you?

A. Sunday?

(By the Court) Sunday.

Q. Was it on Sunday?

A. Yes, sir.

Q. Did you go with him to New Village that Sunday afternoon?

A. It was in the afternoon, I think toward evening.

Q. How long did you stay in New Village?

A. Stayed there till August.

Q. All the while?

A. Yes, sir.

Q. How many nights were you away from New Village from the seventh of April to the fifth of August?

A. I came home once in a while and stayed all night.

Q. Once in a while only?

A. Yes, sir.

Q. And you spent all the rest of your time at New Village with your husband?

A. I did.

Q. Who lived across the street from you in the Village?

A. John Mellick and his wife.

Q. Was he the blacksmith?

A. Yes, sir.

Q. When was this that they poisoned you—were you sick from the poison?

A. I was.

Q. You did take some; where was it?

A. Into the coffee.

Q. When was it?

A. Just before they stole this bond.

Q. At New Village?

A. At New Village, it was on a Saturday, too; I don't know which Saturday, we were cleaning up the kitchen.

Q. At breakfast?

A. Yes, sir, in the morning.

Q. And you were sick right away after that?

A. I was sick right away after that.

Q. And Mrs. Mellick came over to see you?

A. Yes, sir.

Q. Was your husband sick too?

A. No, sir.

Q. And after you and your husband went down to New Village to live together, he told you about it?

A. He told me before—when this happened about the bond.

Q. At your mother's house?

A. Yes, sir.

Q. You went up to Phillipsburg in the morning of the day to have the interest put on this bond, that was on the fifth of August, was it?

A. I cannot exactly tell you what date, it was in August; it was three months interest due, and I think it was in August.

Q. And how long did you stay in Phillipsburg then before going back to New Village?

A. About two days afterwards—about two days I went up and there was nothing there to stay with, the furniture was all gone; I come right back.

Q. How long did you stay at Phillipsburg?

A. Stayed to Phillipsburg—what do you mean?

Q. How long did you stay at Phillipsburg after you

come back from New Village when you say there was no furniture?

A. We stayed there from August until next spring.

Q. Did your husband live with you?

A. No, sir, he did not.

Q. He did not stay?

A. No, sir; he came there three or four times a day.

Q. Didn't sleep with you there at all?

A. No, sir.

Q. Then you went back to New Village the next spring, the spring of 1879?

A. Yes, sir.

Q. And you and your husband lived there together then?

A. Yes, sir.

Q. How long?

A. We lived there all through 1879.

Q. Till November 1880?

A. Yes, sir; and then just before 1881, just before Presidential election, it was in November, I can't tell you the date, then is when I come down home.

Q. The Presidential election of 1880?

A. Yes, sir.

Q. How much of the time were you at New Village form the spring of 1879 to 1880—were you there half the time?

A. I guess I was there half the time, more too.

Q. How much more?

A. I never was gone over a week, and I had a girl always left there.

Q. But your old man didn't marry the girl?

A. I don't know that he did.

Q. Who was she?

A. Wilhelm.

Q. Many of your folks there during this time?

A. Not then.

Q. Mrs. Mellick lived across the street then?

A. Yes, sir.

Q. Did the old man ever charge you with poisoning him?

A. No, sir.

Q. Never did, eh?

A. No, sir; he never told anything about the poison until it was told that evening; then he told how it happened.

Q. Did the old man ever give you any money before you married him, except this five hundred dollars?

A. He never gave me any money for anything, no more than he would take me out and give me tickets.

Q. (By the Court) Give you money in your own hands?

A. No, sir.

Q. Spend a good deal of money on you?

A. No, sir.

Q. Give you any clothes?

A. No, sir, never did.

Q. (*Cross*) Leave any money at your mother's?

A. No, sir.

Q. Or leave any there for you?

A. I had a good home at that time; better than the one I got afterwards.

Q. When the old man came to see you at your mother's did he ask you to go back and live with him?

A. When?

Q. From August 1878 until the spring of 1879?

A. He coaxed me back, and cried, and done everything.

Q. When was it he advertised you in the newspapers?

A. When I first left in August.

Q. What did he advertise you?

A. That I left him; in the advertisement.

Q. Why didn't you go back?

A. I did go back; there was nothing to go back to.

Q. You didn't find any furniture there?

A. Yes, sir.

Q. When he coaxed you where did he want you to go to?

A. If I wanted to he would get a house in Phillipsburg; we tried and we could not get any at present, and if I would go back there I should have a girl and should not stay alone, and then we agreed to go back.

Q. What paper did he advertise you in, in the Phillipsburg Democrat?

A. I don't know.

Q. Was your husband in any business when you married him?

A. Not that I know of.

Q. Where did he live?

A. With his son Howard.

Q. And had for many years, four or five years?

A. Yes, sir.

Q. All this time he was going with you he was living with Howard?

A. Yes, sir; he paid his board, twenty dollars a month.

Q. Did he tell you?

A. Yes, sir.

Q. You never saw him pay it?

A. No, sir.

Q. Then it must be so. That is all.

Re-direct examination by Mr. Shipman.

Q. Did Mr. Mellick ever say anything to you about having assigned mortgages or given property to Howard before he was married to you?

A. No, sir; never said anything like that to me.

(By the Court) I think she testified on that subject, testified to saying something about how Howard had got all his money.

Q. What did you say about that?

A. He told me. I told him he had better look for some one a little older, and you must not give your money all away, you might get in trouble. He said

that is the reason I want to give it to you, my children have got all, I don't want them to get this.

Q. That is all.

ELIZABETH KEITER, A witness produced on behalf of the complainant, being duly sworn testified as follows:

Direct examination by Mr. Shipman.

Q. Where do you live, Mrs. Keiter?

A. Phillipsburg.

Q. How long have you lived in Phillipsburg? 10

A. For twenty years, twenty years, somewhere around there.

Q. Is your husband living or dead?

A. Dead.

Q. How long has he been dead?

A. Eight years this April.

Q. Where did he die?

A. In Phillipsburg.

Q. This complainant is your daughter?

A. Yes, sir. 20

Q. Whereabouts did your hushand live, at what place in Phillipsburg?

A. Down toward the canal.

Q. You lived there until he died?

A. Yes, sir.

Q. You moved from there afterwards?

A. Yes, sir.

Q. Where did you move to after he died j

A. On Jersey Hill.

Q. You knew Henry H. Mellick, your daughter's 30 husband?

A. Yes, sir.

Q. When did he first come to your house to see your daughter?

A. I could not say just when he came, three or four or five years before.

Q. That is, before they were married?

A. Yes, sir.

Q. And what did he first say, or what did you first notice about his attention to your daughter?

A. Come there in the afternoon and talked to the family, the same as any one most would that come in.

Q Did he say anything about your daughter?

A. That he would like her for his wife, something like that, I didn't pay any attention to it then.

Q. When did you first begin to pay attention to it?

A. I didn't think much about it until it was about I guess a year or so, two or three years after he come there.

(By the Court) After he first came?

(The Witness) Yes, sir.

Q. Then what?

A. Then he asked me if I would be willing to let him marry my daughter. I didn't think of such a thing, and I thought he was joking. No, I didn't think it was worth while for him to marry a young girl, pretty nearly a baby, and nothing more was said on it until a little while before they got engaged.

Q. Would he still come?

A. I had two daughters; they generally come home together, he would generally come home with the two, and if he didn't go with them he would come afterwards. Sometimes they would run away, and then he would sit there until they came. Where are the girls? I guess they are run away again, got some other fellow.

Q. Did he make any reference to Emma?

A. O, yes, he was always after Emma; she used to run away when she saw him coming, yes, sir.

Q. Did he tell her so?

A. Yes, sir.

Q. Did he tell her?

A. Yes, sir; I told her so, he used to insult her, he would walk up and take her away, it was his girl, didn't want his girl to walk with anybody, wanted her himself.

Q. That you know?

A. He come to the door, that I know, he often took her to the opera house, but he would lose her in the crowd, and then come home and say to me is your daughter in. Then she has run away from me; something like that. The girl tried to keep out of his way.

Q. When did he first say about giving her property.

A. He spoke of that often, but I never paid any attention to that because I didn't think he had any.

Q. What did he say often?

A. To me—that if I would give my consent he would give her this bond and mortgage that he had; he spoke about that frequently, often told me that. I didn't think he had anything.

Q. Did he say anything to you about giving her other property?

A. That he had a house in New Village, when he was engaged to her; then he told me about this property, and that he would give it to her, and it should be "hern" after his death, this bond and mortgage; and this house in New Village; he would give her that outright, she could do as she pleased with it; or buy a house and live in Phillipsburg.

Q. Say anything about money?

A. About the money he said after they were engaged to be married he told me that he would give her five hundred dollars to buy furniture; she could do with that what she pleased—buy furniture or anything else, but he gave it for that purpose.

Q. When did he first agree to give her this bond and mortgage—when was that—when were they engaged—when did she promise to marry him?

A. In March; the eighteenth of March.

Q. That was the day they were to be married?

A. Yes, sir.

Q. (By the Court) When was the date fixed?

A. (The Witness) In March.

Q. (By the Court) How long before the eighteenth of March did you understand the day was fixed?

A. It might have been three or four weeks.

Q. (*Direct*) Before that time?

A. Yes, sir.

Q. Along in February?

A. About the middle of February.

Q. Whereabouts?

A. In my house.

Q. Did he say anything about a bond and mortgage; what did he say?

A. He asked me if I would be willing for him to marry Emma. I said, mercy, don't ask me; she is too young a girl. You had better not think of it because you are an old man, and she is a young girl, and maybe some one older, at your age, would suit you better. I said you can never work to keep a wife for you are too old a man. He said, "I don't need to work, I have got enough to do without, and I will give her that, and fasten it so that no one shall take it away from her, and all I want is my interest while I live, for my sopport."

Q. (By the Court) What was he speaking about then?

A. Why the bond and mortgage.

Q. Did he tell you how much that bond and mortgage was?

A. Five thousand dollars, that he had it in Kramer's estate, and if I didn't believe it I could ask him. I thought perhaps he was cheating her and I knew he was too old a man to keep house without something to live on. So I met Mr. Kramer. I lived in Kramer's house. He told me I might ask him. I lived in Kramer's house, and I said to Mr. Kramer, he is my landlord, and I said, "Have you got anything belonging to Mr. Mellick?" He says, "Yes, I have." And I says, "What is it?" "Why," he says, "a bond and mortgage," he says, "he has got on my property." I said, "Is it a first mortgage." "Yes, and it is as good as gold." And then I told him that he wanted to marry Emma. "If he does she will never do better, and may just as well marry an old man; and that he has a house in New Village besides," he said. He

spoke to me about that, Kramer did. And I says, Well, he has got children——

(By the Court) That is enough, that is not necessary.

(The Witness) I met him on the street, didn't go to his house.

Q. (By Mr. Shipman) Do you remember going to Mr. Hillburn's office in February?

A. I do.

Q. Mr. Mellick went along with you and your daughter?

A. Yes, he came to the house.

Q. He came to the house?

A. Yes, sir.

Q. Did he say anything about papers that he had?

A. He said he had his bond and mortgage and all his papers intending to give her.

Q. Did he show them in the house before he went?

A. I don't know whether he did or not, I won't say he did.

Q. He spoke about them?

A. Yes, sir.

Q. And told you he had them. (leading)

A. Yes, sir.

Q. Tell what you did?

A. I told him that I would go along with her, and then her father I don't know whether he went along or not, I think he did, I don't think he did.

Q. You went anyhow?

A. I went with him.

Q. Tell what took place over in Hillburn's?

A. We went in Hillburn's office and he sat down to a table like that (illustrating), and he said that he had come, that he brought his wife, he was going to get married, had a notion to get married, I am going to make her my wife. And Mr. Hillburn said you are thinking of getting married to a young girl? Yes, sir; I want some one young and able to take care of me when I get helpless. I says, me and Mr. Hillburn, don't you think he is very foolish? Then he says, Mr. Hillburn I want you to fix these papers for my wife

so that they are safe in her hands, and then Mr. Hillburn told him in what way, and that is the way he wanted them fixed.

Q. (By the Court) Mr. Hillburn explained to him how it would be right?

A. That he thought she would be safe. Well, he says, I am satisfied that is the way.

Q. What became of the papers?

A. "I will leave them, Mr. Hillburn, with you."

Answer objected to.

Q. (By Mr. Shipman) Go on?

A. He would leave them there with him to fix them as he ordered them to be done.

Q. To be fixed for your daughter?

A. Yes, sir; as he ordered them to be done. So Mr. Mellick said to me was I satisfied with that agreement that he spoke to Mr. Hillburn. Yes, it suited me, if everything was all right. He said, you need not be afraid, I would not defraud her, I would not do that.

Q. (By the Court) Was any day fixed?

A. The eighteenth of March.

Q. (By Mr. Shipman) For the marriage, was fixed for the marriage?

A. For the marriage, yes, sir; for to get married.

Q. Well?

A. Then we left them and came away. Mr. Hillburn, I said to him and Mr. Mellick, look here, you are foolish to give away your money to marry a wife—me and Mr. Hillburn—I would not if I were you. And he said, "I always kept that for my wife, if I ever got any."

Q. (By the Court) If he ever got a wife?

A. "I intend that to be yours." Then you have got children. He said my children have got all they ever will get out of me, for I have given them all, and Howard the most; and he is never satisfied with whatever I give him. He said, "I had $8,000 of this money

into some farm, and when I took it up Howard ding donged for $3,000 to start a drug store, and now he wants it. He is at me all the time for this, and I am bound to keep this for myself, for if I ever give it to him how am I going to get along. I am going to keep it, and so he said that that should be hers if she would marry him.

Q. Then you came away?

A. Yes, sir.

Q. What happened next about the marriage or about the papers; did he come to your house afterwards?

A. Then he came to our house, he said Emma—he says, Emma will you consent for me to have that bond and mortgage, he says till spring. What are you going to do? I would like to draw my interest, then I would have more money and in better shape to go to housekeeping than we are now, and I would rather wait, will you consent? She said it didn't make any difference to her. "Will you allow me to? "Yes, you can take them, if that is what you want them for." Then Mr. Hillburn would not give them to him. We told him to go and get them, and he would not give them to him, until she came over to tell him, my daughter; till Emma came over and told him he should deliver them to him.

Q. What did you do; go on?

A. Well then he got them.

Q. (By the Court) How do you know?

A. We went over with him.

Q. You went?

A. Then he came back and told us, we went with him, and she told Mr. Hillburn to give them to her.

Q. Was any further day fixed?

A. Mr. Hillburn—He said he would get married in April, and Mr. Hillburn said he could not be ready until April some time, and Mr. Mellick said he would like to get married the sixth of April, and that day was set. So there was twice a wedding day set.

Q. (By Mr. Shipman) Now then were you present on the day of the wedding?

A. I was.

Q. And it was what day?

A. On Saturday, I think, evening.

Q. And was it on this sixth of April, or do you know?

A. It was on the day that was fixed.

Q. Now then what took place that day, that evening, I mean?

A. When we come in Mr. Mellick was there first.

Q. (By the Court) How did you go there?

A. We walked over, me and her, and her father.

Q. Was her sister along?

A. No, sir; then we come in.

Q. Who was there?

A. And the minister was sitting there on the side of Mr. Hillburn, and Mr. Mellick sat on this side of them, on the front of them (illustrating).

Q. Mr. Mellick was there?

A. Before we was. Then Mr. Hillburn asked him if he was willing and satisfied with those papers that he had made, and agreement that he was satisfied was to be his wife's. He says I am. He says then shall I present them to her in your presence. Mr. Hillburn said to Mr. Mellick shall I present them to your wife that will be now, in the presence of you, and are you satisfied? He says, yes, I am satisfied; she shall have them. They were given to her as she stood on the floor beside of him.

Q. They were married there?

A. Yes, sir.

Q. And they went away together?

A. No—yes, we went away together, and came over the Delaware Bridge, and there was his carriage; he had got Mr. Fair to be there with the carriage.

Q. (By the Court) Mr. Fair lived at New Village?

A. Yes, sir; and after the papers were given to her——

Q. What did she do with them?

A. She said she would leave them there with Mr. Hillburn, and he said yes, he would take care of them until she called; and she asked Mr. Mellick if she should leave them, and he said yes.

Q. (By Mr. Shipman) That same evening?

A. Yes, sir.

Q. Did she bring the bond and mortgage to your house?

A. Home.

Q. To your house?

A. Yes, sir.

Q. Can you tell how long afterwards?

A. A few days, a day or two, only a short time, been so long ago I could not tell the exact time, a day or so afterwards, a short time afterwards.

Q. How long did they lay at your house, did she go up to New Village in the meantime?

A. Well, they were at our house; O, yes, she lived there some time.

Q. Do you remember when she came down in August in reference to this interest matter?

A. Yes, sir.

Q. The time she came there you can tell; as near as you can tell?

A. Somewhere about three months.

Q. After they were married?

A. Yes, sir; she had been up there that long, and they came down; she came down, somwhere around three months, might be three months or a little longer, I don't just remember exactly the time.

Q. What took place?

A. Mr. Mellick came back there, she came down first I think, and then Mr. Mellick told her to stay there until he came, and then he came over to the house and asked if she would come to Kramer's, and Mr. Kramer said it would come handier to pay every three months than by the year; and she said it didn't make any difference to her, but he says to her I would like to have that bond. Well, she says, can't you give Mr. Kramer a receipt, and receipt it on the bond

at the end of the year? He said no, that won't do, for he won't do that way. Well, he says he wants you to come along over to the bake shop. Well, she says I won't go there at all. Well, she says, Kramer can come here if he wants to do so. Then, he says, I will ask him, and he walked out and brought Mr. Kramer in. Then he asked her if she would go and get him the bond to sign the interest on, and Joe says I will give you the bond.

Q. (By the Court) Who is Joe?

A. Joe Kramer, yes, sir.

Q. The old gentleman asked her to bring down the bond?

A. Yes, sir.

Q. (By Mr. Shipman) Go on.

A. And he says I will give you $20, he says, and he laid it on the table near her, and the bond was brought down and Joe he took a hold of it and wrote the old man's name, he called him "Daddy," he said sign your name. He said I can't see right good, Joe, I will walk in the kitchen where it is lighter, and she walked after him into the kitchen.

(By the Court) That is your daughter?

A. Yes, sir; and she said he signed his name there, I didn't see that.

Q. Tell what you saw?

A. And he came in from the kitchen and throwed down an old bond that was Howard's.

Q Throwed down a paper?

A She says he has thrown me the wrong papers. I says, he has? And I went to the door, and Joe, he said, Daddy you have thrown the wrong paper down. He says, that is all right, and got away as hard as he could go.

Q. (By Mr. Shipman) Then afterwards what did Joe want to do?

A. He turned around and gathered up this money. And I said, here that belongs to me, that belongs to her, and he then picks up this bond and put it in his pocket. I said let me see what that is. He handed it

to me, they ain't no good to me so I handed it to you, he said. "If this ain't pretty," I said; "that is a great note." Then I said, I will keep it whether it will do me any good or not, it belongs to her.

Q. (By the Court) You kept it?

A. Yes, sir.

Q. (By Mr. Shipman) (handing witness a paper) is this the bond, Exhibit C. 7?

(By the Court) Is the bond there, George H. Mellick to Henry H. Mellick?

Q. See if you recognize it?

A. Yes, sir; this is the paper.

Q. Have you kept it yourself ever since?

A. No, sir.

Q. What did you do with it?

A. Put it with her papers.

Q. Give it to your daughter?

A. Yes, sir.

Q. She has kept it ever since?

A. Yes, sir; I have nothing to do with it.

Q. Did you see the bond that she brought downstairs?

A. Yes, sir; as soon as she laid it down.

Q. (showing witness a paper) Is that it, is that the bond, Exhibit C. 2?

A. That is the one, she laid it down.

Q. Which way did old Mellick go?

A. Down towards Howard's; she went after him, and she said——

Q. Never mind.

A. I didn't bother with him.

Q. (By the Court) You saw your daughter following?

A. Yes, sir. She went after him. Then she came back, and I said——

Q. Now then did Mr. Mellick come back after that to that house?

A. No, sir; not that house, not until a few days afterwards; a few days afterwards.

Q. Was there any conversation about this bond?

A. I told him what he had done.

Q. (By the Court) What?

A. I asked him what he made these papers for if they didn't belong to him, to ruin my girl, to destroy her comfort in her young days like this. He said, "I didn't do anything wrong to her, I meant what I done, I meant it."

Q. Done what?

A. What he gave to her; he said he meant it.

Q. Did you tell him what he had done contrary to that?

A. That he had made these papers; he had done wrong in making these papers.

Q. In what?

A. In assigning them over to his son, and giving them to her. He said he hadn't, he denied it. He said he hadn't done it.

Q. Had you heard that he made an assignment, previously?

A. We came up and searched the records.

Q. To Belvidere?

A. Yes, sir. That is the first we mistrusted there was anything wrong.

Q. When he took the deed that day?

A. We came up afterwards and told him.

Q. Told him he had assigned it to his son first?

A. Yes, sir; I said you needn't deny it, because we were up to Belvidere, and had seen it.

Q. What did he say then?

A. That he had no peace, and what he could give her she would get any way. I said it looked very bad on his part to do such capers. He didn't expect to turn her on the street.

Q. (By Mr. Shipman) Did you say anything to him about taking the bond away?

A. Yes, sir.

Q. What about that?

A. That he would not take them away, it was Kramer and Howard had made out arrangements for

him to do, different plans, which he done, which he never would have thought of.

Q. (By the Court) Different plans for what?

A. To take this here, to get the bond and mortgage away from my daughter; he sat there one night, he was talking about these different things. He said this was laid out for him to do. He was foolish enough to listen to his boy. Then he wanted her to go back along home and he would make everything right, to New Village. She said, no, I am afraid of you. Then he says to me why is she afraid of me? I says, Mr. Mellick I am going to tell you why she is afraid of you; you have done things you ought not to have done; you poisoned her. Well, he says—he began to cry dreadfully.

Q. (By Mr. Shipman) Did you go with your daughter anywhere—to New Village.

A. Yes, sir.

Q. How did you find it?

A. Goods gone; he came back to the house after this disturbance.

Q. (By the Court) After stealing the bond?

A. Yes, sir; and told her not to come back; told her to stay a couple of days and he would come down; he said she could stay for a couple of days. Her father was sick and could stay down a couple of days, and he would be down, and we didn't think about anything being wrong; so he went up.

Q. (By Mr. Shipman) Did you afterwards go up?

A. Yes, sir.

Q. How did you find it?

A. Nothing there; everything was moved away.

Q. (By the Court) All the furniture?

A. The house was totally empty.

Q. Then what did you do?

A. We came back; I went with her.

Q. (By the Counsel for complainant) Then did you see him afterwards?

A. Yes, sir.

Q. Did he come to the house?

A. Yes, sir; well, shortly afterwards. He came shortly afterwards, and he came at the house and wanted her to go back and talked one thing and another.

Q. And afterwards did she go back?

A. Yes, sir; but I can't tell just when she went back.

Q. Did he ask her to go back?

A. Often.

Q. And at last she did?

A. I told him the way he acted——

Q. Never mind that—did they go back together?

A. Yes, sir.

Q. Live there together?

A. Yes, sir.

Q. For a time?

A. Yes, sir.

Q. For how long?

A. I could not say how long.

Q. (By the Court) Did you or not—You commenced to say something about what you told him about being willing your daughter should go back there, what did you say to him about it; you commenced a while ago to repeat what you told him, as to your being willing that your daughter should go back, and you were interrupted.

A. I said to him she was afraid to go back. He said, "What for" I said you poisoned her. He says—

Q. Did you tell him you were unwilling?

A. Yes, sir; that I was afraid to let her go back with him.

Q. But I thought you were going to tell something else.

(Mr. Shipman) I believe that is all.

Cross-examination by Judge Morrow.

Q. When did your daughter and Mr. Mellick become engaged?

A. The first?

Q. The first that there was any promise of marriage between them?

A. In March, 24th March.

Q. Don't look at your daughter.

Q. (By the Court) State according to the best of your recollection?

A. It was in March.

Q. (By Mr. Morrow) In March of the year they were married? Do not look at your daughter. Is that the first you knew there was an engagement of marriage between your daughter and Mr. Mellick?

A. In March.

Q. Before or after you went over to Hillburn's office?

A. In February.

Q. Was it in February then?

(By Judge Morrow) She is looking at her daughter.

Q. It was in February?

A. Yes, sir. 1878.

Q. 1878?

A. Yes, sir.

Q. Before or after you went to Hillburn's office the first time?

A. The first time in March

Q. (By the Court) No, no; did you hear of the engagement—you don't carry the question—did you first hear of the engagement between your daughter and Mr. Mellick—what I mean by an engagement is a positive agreement to marry, not an agreement to think of it and not to have finally decided, but when she finally agreed to marry—was that before or after you first went with her to Squire Hillbure's office?

A. In February.

Q. No, no. Fix in your mind when you heard of it, and see if you can understand the question—whether you heard of it before you went over there or not.

A. He asked me at home.

Q. Was that before or after you went over there?

A. Before.

Q. (By Mr. Morrow) How long before?

A. It might have been—I could not just tell you how long before.

Q. Tell me as nearly as you can.

A. Somewhere about the middle of February.

Q. How long was it before you went over to Hillburn's?

Q. (By the Court) How many days or weeks?

A. It might have been two weeks before we went over.

Q. Was it a month?

A. O, no.

Q. It was not a month?

A. No, sir.

Q. Was that the first you ever knew that there was any promise of marriage between them?

A. No, sir.

Q. When did you first hear of it?

A. A while before we went over.

Q. When?

A. A couple of weeks or so.

Q. Two weeks before you went over?

A. When they were engaged to be married.

Q. Who told you first?

A. He asked me.

Q. Did she tell you?

A. She told me before.

Q. That she promised?

A. She didn't say she had promised; she asked me what she should do, and I said she should do as she pleased.

Q. How long was that before she went over to Easton?

A. A few days.

Q. When was it he told you she was going to get five hundred dollars?

A. After asking.

Q. How soon?

A. All he said was his interest in his life time—(interrupted.)

Q. No.

A. He said he would give her that to buy her furniture.

Q. When?

A. Right away. When she went there at that time, after he was engaged to be married.

Q. It was after he was engaged to be married?

A. Yes, sir.

Q. Did you see him give her the money?

A. No, sir.

Q. When did you see it?

A. She showed me.

Q. Before or after going to Hillburn's?

A. I guess a few days after.

Q. It was a few days after he asked you for your daughter, and before you went to Hillburn's?

A. When he gave her this money he had asked me if he could marry her.

Q. Did you say you saw the money?

A. I didn't see the money, she showed it to me rightaway.

Q. When?

A. After he gave it.

Q. Did he tell you that he had just given it?

A. Yes; sir.

Q. And after he had asked you if you would let her marry?

A. Yes, sir.

Q. And that was some time in the month of February?

A. Yes, sir.

Q. Before they were married?

A. Yes, sir; just a few days before.

Q. How long after the money was given her did she buy that set of furniture, and bring to your house?

A. I could not tell.

Q. As near as you can?

A. Some time after he gave her that money, she bought it then.

Q. How long was that furniture at your house before she moved it up to New Village?

A. That I could not say.

Q. As much as a month.

A. I don't know how long it was there.

Q. As much as two months?

A. O, no; I could not tell the day and dates when it came.

Q. Was there any other furniture brought to your house?

A. I don't think there was.

Q. (By the Court) Than what?

A. There was different other little notions.

Q. What was brought to your house in the way of furniture?

A. A bedroom suit that was all, and some other little notions; I don't just remember what, some little things that she wanted, I could not tell what all there was, and her sewing machine was one thing but that she bought herself.

Q. (By Judge Morrow) Did you give your consent to his marrying your daughter the first time?

A. No, sir.

Q. You went to see Kramer first?

A. I didn't go to see Kramer, I met him.

Q. You were about to say you thought he hadn't any $5,000?

A. I didn't know that he had then until he told me and then I didn't believe it.

Q. And so you didn't give your consent?

A. I thought he was going to fool her, and I thought he was too old to marry a young girl.

Q. Anyhow?

A. Yes, sir; and told him that.

Q. Too old a man to marry a young girl?

A. Yes, sir.

Q. Hadn't he had a stroke of paralysis?

A. He was as smart a man as most any of you men; just as smart as anybody, sensible and all right; a very nice man; he was all right as far as I know.

Q. (By the Court) Did he limp?

A. No, he was as smart on foot as I am; better.

Q. (By Judge Morrow) You all walked over to Hillburn's office together?

A. We did.

Q. Which time?

A. The first time he went.

Q. Why didn't you go to some one in Phillipsburg?

A. I knew Mr. Hillburn well. He said he would go anywheres. We all knew Mr. Hillburn for many years, we used to live in Easton.

Q. He was an acquaintance of yours, that was the way?

A. He knew him too, and was satisfied with him.

Q. Did you mention Hillburn's name to him, to go over to Pennsylvania?

A. I don't know whether I did or not, I won't say, that I don't remember.

Q. You all went to Hillburn's office together, and the old man told Hillburn that this was the lady he was going to marry.

A. Yes, sir.

Q. What next?

A. He had brought his bond and mortgage and his papers here; he wanted him to look them over and to fix them in a way over to his wife that no one could take them from her.

Q. How did you say Mr. Hillburn told him he would do it?

(By the the Court) She only said that Mr. Hillburn would do it, and that Mr. Mellick said it was all right; but she din't describe the mode.

Q. How did Mr. Hilllburn say he would fix it?

A. Told him this would be a good way to transfer these things over in her name and fix them in this way, though I don't remember the way, and he told him he would. and everything would be ready. He asked him, did he own this property, and he said he did.

Q. Mr. Hillburn said the way would be to draw an

assignment of that bond and mortgage and have the old man to execute it and sign his name?

A. The old man was there; Mr. Mellick was there.

Q. Mr. Hillburn didn't draw any paper there?

A. Made a memorandum of it.

Q. Did you see him make any memorandum?

A. I don't recollect now to say; I know they were talking, and he told me how. Mr. Hillburn fixed it just as he told him he put it down.

Q. Did you see him put anything down?

A. When the papers were taken (interrupted)

Q. Did you see Mr. Hillburn do any writing that night?

A. When they were married?

Q. The first time?

A. I don't know whether he did or not; I can't say.

Q. Mr. Hillburn told Mr. Mellick that he would write an assignment of this bond and mortgage, that Mr. Mellick was to come over and sign it before they were married; was that the arrangement? tell what it was.

A. I could not do that.

Q. It was to do it the way it was finally done?

A. It was to be done the way he ordered it to be done, as Mr. Mellick told him to do just what he done.

Q. You say it was finally done the way it was ordered to be done?

A. Yes, sir; as far as I know.

Q. By the execution of that assignment?

A. Yes, sir.

Q. Assignment C. 4?

A. Yes, sir.

Q. And Mr. Mellick then handed the papers over to Mr. Hillburn?

A. Yes, sir.

Q. And I believe you say here that Mr. Hillburn told him how they would be all right?

A. He did.

Q. And then Mr. Mellick said I will leave them to be fixed that way?

A. Yes, sir.

Q. And he did so?

A. Yes, sir.

Q. That is all you remember of that transaction?

A. Yes, sir.

Q. I don't know how long you were there?

(By the Court) She has told more than that—a great deal.

Q. I want to know anything else that she has not told either on direct or cross examination.

Q. Then you fix the eighteenth of March as the day you came back to Mr. Hillburn's office?

A. The eighteenth of March, she was to be married that day.

Q. When were the papers to be assigned over to her—that day?

A. No, they were there before that, a long time—they were in February.

Q. When were the papers to be given over to your daughter?

A. When she was to be married.

Q. Then the papers were to be delivered to her?

A. Yes, sir.

Q. (By the Court) Was the bargain when you were there in February, the bargain to be that the papers were to be delivered to her on the day of the wedding?

A. Yes, sir. He was asked several times if he was satisfied with the statement made before Mr. Hillburn, and he said that was right, yes, sir.

Q. (By Mr. Morrow) And they were to come back on the eighteenth of March and he was to hand the papers over to your daughter?

A. Yes, sir; they were there.

Q. But when was this paper that Mr. Mellick was to sign, when was it to be handed over to your daughter?

A. The sixth of April she was to be married.

Q. They were to be married on the eighteenth of March?

A. The eighteenth of March they were to be mar-

ried first; then they were left there, then he went to get his interest and asked to take them away with him; and then she gave her consent that he should get them, and then Mr. Hillburn would not give them to him, and then me and her both went and told Mr. Hillburn that he wanted to draw his interest in April, and then Mr. Hillburn said, You are satisfied he should take them away? Yes, sir, she said. She didn't like to put off her wedding, it was bad luck, but she was satisfied. On the sixth of April she was married. Mr. Hillburn said he could not get them ready before.

Q. Could not get what ready?

A. Could not get the papers ready—fixed.

Q. What papers?

A. Why the bond and mortgage—

Q. The assignment of them by Mr. Mellick over to your daughter?

A. Yes, sir.

Q. Can't you tell what day it was you went there and the papers were taken away by the old man?

A. I can't tell.

Q. How long before the eighteenth of March?

A. I can't tell.

Q. (By the Court) How long before the day they were to be married the first time—how long would it have been before they were going to be married?

A. The eighteenth of March.

Q. How long before that did he take them away?

A. I forget; I know it was in February when they first went, and I think they were about three weeks before they were taken away the first time.

Q. Did you say that Mr. Fair lived in New Village?

(By the Court) I made her say so.

A. (The Witness) He lived in Easton, but he was up that way on some business.

Q. Mrs. Keiter, Joe Kramer didn't take this bond away?

A. No, sir; no, sir; only he signed it for the interest.

Q. (By the Court) Endorsed it for the interest?

A. Yes, sir, the old gentleman took it away himself.

(Judge Morrow) that is all.

MRS. EMMA MELLICK, the complainant, recalled for further cross-examination.

Cross-examination by Judge Morrow.

Q. Mrs. Mellick can't you tell what day it was you came to Phillipsburg and had the records searched, came to Belvidere?

A. It was in August.

Q. Did you go to see Mr. Shipman that day?

A. I don't think I did.

Q. Where you up here afterwards in August?

A. Yes, sir.

Q. Did you go to see me one day when you were here?

A. Yes, sir; and saw you one day, too.

Q. In that same month of August?

A. Once when she was up here she saw you, my mother was up here one day.

Q. About this business?

A. She asked you about that.

Q. Did Joe Kramer take that bond away from you?

A. No, sir; my husband took it himself in the way I stated.

Q. (Showing witness a paper) Did you sign that paper?

A. Yes, sir; I signed that.

Q. It is to Joseph Kramer, and it says, "You committed a gross fraud on me the 5th of August last in taking the bond." Who wrote that paper—Mr. George Shipman it looks like. Did you sign it, remember signing such a notice as that, and "in taking the bond signed by you dated March 30, 1877, for the sum of Five Thousand Dollars out of my possession

and I give you notice that unless you return that bond to me forthwith I shall hold you responsible therefore, and if you do not I shall proceed against you to get the possession of that bond according to law, and I hereby authorize the bearer of this notice to receive the bond from you. Phillipsburg, August 13th, 1878, Emma Mellick." Did you serve that notice on Mr. Kramer or sign it and have some one else to serve it?

A. I didn't serve it.

Q. Do you remember sending any such notice as that to Joe Kramer?

A. Yes, sir; I think I did.

Q. How is it you say that Joe Kramer took it out of your possession?

A. I thought he had something to do with it, at that time; I didn't know that he had until afterwards.

Q. You didn't know what he had to do with it?

A. I just sent him that.

Q. Joe Kramer is dead?

A. Yes, sir.

Q. That is all.

Q. (By Mr. Shipman) You gave notice to Howard Mellick about the same thing?

A. Yes, sir.

Q. Gave notice to every one?

A. Anybody I thought had anything to do with it.

Q. (By Judge Morrow) You had got a notice from Howark Mellick about the mortgage?

A. Yes, sir; he read one off to me.

Q. Got a copy?

A. It is among the papers.

Q. Gave it to your attorney?

A. Yes, sir; all the notices are there.

ROBERT FAIR, a witness produced on the part of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Shipman.

Q. Where do you live, Mr. Fair?

A. Phillipsburg.

Q. How long have you lived there?

A. About fifteen or sixteen years.

Q. Where did you live in 1878?

A. Phillipsburg.

Q. And a few years prior to that time live in the same place—before that for a few years where did you live?

A. I was in Phillipsburg for a few years.

Q. Sir?

A. I was in Phillipsburg in 1878.

Q. Do you know Henry H. Mellick?

A. Yes, sir.

Q. Did you know him for several years about 1878?

A. I have known Henry Mellick for about twenty years.

Q. Did you know of his going to see Miss Emma Keiter before they were married?

A. Yes, sir.

Q. Did you see him going often?

A. I used to have a stable close by and I was often there myself; see him going to church with her.

Q. Taking her to places about?

A. Yes, sir.

Q. Did she seem to be willing to go with him or otherwise?

A. She didn't particularly care for his company, first, because she was younger, and he much older.

Q. Did he ever say anything to you about papers or marriage, that he was going to give her?

A. He said he was going to get married. I said, "Grandpap, why not make an older choice?" And he said, "I want her or none."

Q. What else did he say?

A. Then the night that they were married he had me meet him with the horse and wagon up to Abel's confectionery to fetch him to New Village to his residence, where he was going to live and told me—she didn't come along, she went home with her mother

and family; he said he had made her a nice present. "What is that grandpop?" "Five thousand dollar bond and mortgage." That he had also given her money to purchase the furniture goods with to the amount of $500.

Q. Anything else?

A. Not at that time, no. I stayed all night with him.

Q. You stayed all night with him?

A. Yes, sir.

Q. (By the Court) What was in the house?

A. The house was well furnished.

Q. New furniture?

A. Yes, sir; most all new furniture.

Q. Did you know where they came from?

A. Nothing more than what he stated, Mr. Mellick told me on the way up; it is about seven miles; it was eight o'clock when we left, and about ten or half past ten when we got there.

Q. He told you where this furniture came from?

A. Told me he gave Emma money to buy furniture.

Q. (By Mr. Shipman) Did he give you any reason for wanting to get married?

A. He often said he was neglected there at Howard's—Howard's wife was cross to him, and when sick he was left alone in bed all day, and they never looked after him, except the hired girl in the afternoon; neither fetched him a cup of tea or toast—that he was neglected around like a dog.

(Objected to as incompetent.)

Cross-examine.

(No cross-examination.)

(By the Court) You may reserve the right to call Mr. Fair hereafter if you wish.

HERBERT YUTZ, a witness produced on behalf of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Shipman.

Q. Where do you live?
A. In Phillipsburg.
Q. What is your business?
A. Baker.
Q. What was it in 1878?
A. Baker.
Q. And doing business for?
A. Myself, in 1878.
Q. Yes, sir?
A. For myself.
Q. You know Josep Kramer?
A. Yes, sir.
Q. Working for him in 1878?
A. Before 1878.
Q. What time were you working for him?
Q. (By the Court) Do you remember when Miss Keiter was married to Mr. Mellick—do you recollect of hearing that at the time or not?
Q. I will call your attention to this, Did you ever hear any conversation with Joseph Kramer in reference to a bond and mortgage?
A. Yes, sir.
Q. And Howard Mellick?
A. Yes, sir. I was down in the bake house, and Howard Mellick to the best of my knowledge, I didn't know the gentleman at the time, but some gentleman came there and talked to my uncle, and of course I was kind of inquisitive and listened what was going on; I thought some baker wanted to run me out of a job. He said to my uncle you go and try to get that mortgage away from her and tell her it is not right, and we will fix it for her. When I got acquainted with the gentleman I said that is the gentleman that talked to my uncle about this mortgage.

Q. Did you see him?

A. Yes, sir, and recognized him afterwards as the man that talk to my uncle.

Q. Who was it?

A. Howard Mellick.

Q. (By the Court) Repeat again what you heard him say to your uncle?

A. He says to my uncle, you try to get that mortgage away from her; tell her it is not right and that you will fix it for her. Yes, sir.

Q. Cross-examine.

(The Witness) I didn't stand to hear any more, I thought it was none of my business.

Cross-examination by Mr. Smith.

Q. At that time were your working for Joe Kramer?

A. Yes, sir.

Q. Where did it take place?

A. In the wagon place; the wagon was here and the shafts were here, and I was here.

Q. What were you doing here at the time?

A. Baking—for my bake shop.

Q. You were down in the bake shop?

A. Yes, sir.

Q. What part of the baking were you doing then?

A. Not at that time anything.

Q. I mean at the time of the conversation?

A. I merely walked past and listened to the conversation, and I catched this, and then I walked away.

Q. Did they see you as you stood listening?

A. No, sir; they didn't.

Q. Was there anything between you?

A. No, sir; I could only look right straight up and see them.

Q. How far from them?

A. Seven or eight steps.

Q. You saw them?

A. Yes; sir.

Q. How long were you there while they were talking?

A. So that I could catch these few words.

Q. You didn't get the whole conversation?

A. No, sir.

Q. You didn't know who they were talking about?

A. No, sir.

Q. And you don't know when it was, do you?

A. In 1878.

Q. How do you know?

A. Sure.

Q. Why?

A. I could tell by the time I went there with my uncle.

Q. How long were you there?

A. In 1875 I was working for him; I judge it is about three years longer.

Q. Then you were there several years with your uncle?

A. Twenty and some years.

Q. You don't know which year this conversation between your uncle and Mr. Mellick took place?

A. Yes, sir.

Q. How do you fix the year, how do you fix this as the particular year?

A. Well I took it from the time——

Q. How do you get at it, that it was in 1878?

A. A couple of years after I was there, about three years, about 1875. The last time I came there was 1875; it was over three years afterwards I come there.

Q. How do you come to remember this so vividly, the time you don't know, whether it was 1878 or 1877 do you?

A. To the best of my knowledge it was 1878, and towards fall sometime; it was around in September, sometime in September.

Q. You are sure it was in the fall of the year?

A. After July I know.

Q. Was it after September?

A. No, sir; I don't think it was so late as that.

Q. Then it was not so late as that?

A. Towards fall as near as I can judge?

Q. September is towards fall, ain't it?

A. Yes, sir.

Q. Was it in September?

A. In August or September.

Q. Then it was in August or September?

A. Yes, sir.

Q. How do you fix that time, how does it come to you?

A. Because it is in my mind; I know just what time it was, what time of the year it was, I didn't make a memorandum.

Q. How long afterwards did you tell anybody about it?

A. (Not answered)

Q. (By the Court) When first after you heard this thing did you mention it to anybody, did you tell anyone?

A. I thought it was none of my business at the time.

Q. (By Mr. Smith) You thought it was your business to listen?

A. I didn't know what it was amounting to.

Q. You were in the habit of listening?

A. No, sir.

Q. How did you happen to listen at that particular time?

A. Thought some baker wanted a job.

Q. Didn't you ever drive the bake wagon?

A. No, sir; not before that.

Q. Since that time you have been a tenant of Howard Mellick?

A. Yes, sir.

Q. And you and Howard had some difficulty, had a balance of rent, and he threatened to sue you?

A. Had no balance.

Q. You had a dispute with Mr. Mellick, didn't you?

A. Not a great dispute, no.

Q. Quite a difference was there not, you lived

there, is not that the case, was not there a difference?

A. What of it?

Q. You are not good friends?

A. As far as I know.

Q. He claimed you owed some rent, but you refused to pay?

A. I didn't owe it to him; I was satisfied to make a settlement, I offered him $15.

Q. (By the Court) There was a dispute between you as to the amount due?

A. I wanted to pay him and he refused it.

Q. You have not settled it?

A. Yes, sir.

Q. You told him——

A. He demanded of me the $30 and he didn't allow me any for my shed, he didn't allow me a penny.

Q. Hadn't been settled?

A. No, sir; you can take it to court and settle it.

Q. I want to know again about this conversation, this first conversation that you heard—when you first mentioned it to anybody—was it before this suit was brought or after—have you told all you know about that?

A. I might have mentioned it before, I don't think I did.

Q. Whom did you mention it to—if you mentioned it before, to whom did you mention it?

A. Well I could not tell you.

Q. Can't tell?

A. No, sir.

Q. Did you mention it to Mrs. Keiter—can't you tell when it was—somewhere near—I don't want the exact day?

A. I don't know, I think——

Q. What is that—can't you tell?

A. I mentioned it to several; I can't just tell who I told it first to.

Q. When did you tell it first?

A. After Mr. Mellick went to sell that place there—I told it to somebody.

Q. After he wanted to sell you the place and after you didn't buy it, and after you had this difficulty with him about the rent, then you told this to somebody?

A. Yes, sir; I thought he would be mean enough for anything.

Q. And so it was because he acted mean with you?

A. I told the truth and I heard the conversation, and I take my affidavit to it.

Q. And in order to shove it up his back you would swear to anything in this case?

A. No, sir.

Q. Didn't you say that in Carey's Hotel, Phillipsburg?

A. No, sir.

Q. You threatened Mr. Mellick considerably in talking with people after you had this difficulty with him—threatened to become a witness against him in this case and give damaging evidence against him, didn't you say that you would do that—you know whether you did or not?

A. Not to my knowledge.

Q. You don't have to think to answer that question.

A. Not to my knowledge; people ought to have their rights, and if I could do anything for anybody—

Q. When did you first begin to talk about it?

A. Well I suppose a couple of months ago.

Q. A couple of months ago?

A. Yes, sir.

Q. The first you mentioned it to anyone?

A. Before that.

Q. How long before?

A. I might have mentioned it right away, as quick as I heard it.

Q. Don't you remember?

A. I don't remember the parties I told it to.

Q. Didn't you go and tell Mrs. Keiter about it, for one?

A. Yes, sir; O, yes, sir.

Q. How long ago did you tell her that?

A. When I was subpœned to come here the last time on the carpet case.

Q. Then you went and told her about that?

A. Yes, sir.

Q. How long ago was that?

A. That is the last term of Court.

Q. This last September term of Court?

A. Yes, sir.

Q. And that was the first time you told it to her? 10

A. Yes, sir, to my knowledge.

Q. Who else did you ever tell it to now?

A. I told it to Mr. Shipman.

Q. When—before or after you told it to Mrs. Keiter?

A. Before, I think.

Q. Before?

A. Yes; sir.

Q. During that same term of court when you were up here attending court as a witness in reference to 20 this furniture?

A. Yes, sir.

Q. Who else did you tell?

A. I can't tell who I told.

Q. More than one person besides?

A. I have mentioned it a couple of times since.

Q. Before that had you told it to any one?

A. Yes, sir; several times I think.

Q. Whom to, give us the names?

A. I didn't think nothing of it at the time, so I 30 don't remember.

Q. You have pretended to remember just the time and just what was said, you must have thought something of it to fix it in your mind, now whom did you repeat it to?

(By the Court, to the witness) Don't wait, answer in some way.

A. I can't remember.

Q. This difficulty with Mr. Mellick was about a year ago?

A. A little over a year.

Q. When you think he treated you so meanly?

A. Yes, sir.

Q. And after that you said you would fix him on this case?

A. No, sir; I didn't.

Q. Or words to that effect?

A. No, sir.

Q. Didn't you threaten to testify against him?

A. No, sir.

Q. That is all.

Q. (By the Court) At the time, did you hear at the time, or about the time it occurred that the old man Mellick or his son had got his bond away from the young wife, was there any annoyance in the neighborhood?

A. About the bond?

Q. You know what evidence has been given here to-day about a bond being taken away from this woman?

A. Yes, sir?

Q. Did you hear about it at the time?

A. No, sir; I didn't hear of it.

Q. When did you first hear of it?

A. I don't know whether he took the bond or mortgage away.

Q. When did you first hear any talk or report about it.

A. I didn't know he had taken it away.

Q. Didn't hear of that?

A. No, sir.

Q. You didn't hear the evidence here to-day?

A. I heard it to-day here.

Q. Did you ever hear of any such story in Phillipsburg as has been told here to-day by the witness on the stand?

A. No, sir.

Q. That is all.

Q. (By Mr. Morrow) When you told Mrs. Keiter

didn't she tell you then they had taken the bond away?

Objected to.

A. I never heard about taking the bond away, about the mortgage.

Q. (By the Court) Did you hear any trouble concerning old Mellick and his young wife shortly after they were married?

A. Hear of any trouble? No, sir.

Q. After his wife had left him or that he had left his wife; and they stopped living together?

A. I was not so well acquainted with him.

Q. Were you acquainted with this young woman here, were you acquainted with her, this young woman?

A. No, sir.

Q. When did you first become acquainted with her?

A. I ain't much acquainted with her.

Q. When did you first become acquainted with her mother, the old lady?

A. Quite a while.

Q. How many years?

A. Quite a number of years.

Q. Ten years?

A. Yes, sir; longer.

Q. Did you know that that her daughter married Mr. Mellick, the old man?

A. I didn't know it.

Q. You are a German?

A. I am a German.

Q. (By Judge Morrow) How long have you been in this country, well, that will do.

(By the Court) Why can't you answer that?

(The Witness) I thought he was joking.

Q. (By the Court) How long have you been in this country?

A. Forty-two years.

Q. How old are you?

A. Forty-eight, going on forty-nine.

MRS. SARAH KEITER, a witness produced on the part of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Shipman.

Q. Where do you live?
A. In Easton.
Q. Who is your husband?
A. Johh H. Keiter.
Q. The brother of the complainant, your husband is?
A. Yes, sir.
Q. (By the Court) Is he living?
A. Yes, sir.
Q. He is living?
A. Yes, sir.
Q. (By Mr. Shipman) And you live with him?
A. Yes, sir.
Q. And you lived with him in 1878?
A. Yes, sir.
Q. And know Henry H. Mellick?
A. Yes, sir.
Q. Do you remember when your sister married Mr. Mellick?
A. Yes, sir.
Q. Do you remember that time?
A. They were married before I got married into the family; they were married before I was married.
Q. When were you married, if you please?
A. Well to my knowledge it is about nine years I have been married.
Q. Nine years?
A. Yes, sir; between nine and ten.
Q. After you were married did you see Henry Mellick?

A. He used to come quite often to my mother-in-law's house.

Q. Did he ever say anything to you about this mortgage?

Q. (By the Court) When was this?

Q. Was it after he was married?

A. Yes, sir.

Q. And after you were married?

A. Yes, sir.

(By the Court) She was married two or three years after.

(Mr. Shipman) Yes, sir.

(By the Court) I allowed the testimony of the other witnesses to come in because it was a part of the story, to account for the conduct of this girl.

The line of testimony being objected to, and the Court being in doubt as to its competency, the witness is withdrawn.

(Judge Morrow) Any declarations of Henry H. Mellick after he made the assignment I object to.

(Mr. Shipman) I offer in evidence the assignment of Henry H. Mellick to Howard Mellick, marked exhibit C. 9.

Exhibit C 9 was produced by the defendant at the request of the complainant.

(Mr. Shipman) I also offer in evidence the record of a deed—it is dated on the eighteenth of March, 1878—from Henry H. Mellick to Jacob Mellick, with the privilege of putting in a certified copy from the record in place of it.

It is admitted that Valentine Hillburn is an invalid and that he is unable to come to court to be sworn, but it is alleged on the part of the defendant that he

is perfectly competent to be examined at his house by a commission *de bene esse* on notice under the statute, and the defendants say that if the complainant intends to make use of his evidence in the case at all, hereafter, they insist on his being examined first, before proceeding with their defense.

Adjourned to meet at the house of Valentine Hillburn in Easton, to-morrow morning.

FRIDAY, OCTOBER 18, 1889.

Appearances as heretofore.

Counsel and parties and Hon. Henry C. Pitney, Vice Chancellor, met at the house of Mr. Valentine Hillburn, No. 124 South Ninth Street, Easton, Pennsylvania, to examine Mr. Hillburn on the part of the complainant, the attendance of the Vice-Chancellor here being by the consent of both parties, it being admitted that Mr. Hillburn was unable to leave his house.

VALENTINE HILLBURN, a witness produced on the part of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Shipman, Sr.

Q. Are you Mr. Hillburn?

A. Yes, sir.

Q. Mr. Hillburn, what is your age?

A. On the 13th of September I was seventy-five; born on the thirteenth of September, eighteen fourteen.

Q. What is the state of your health?

A. Good, except paralysis.

Q. Are you afflicted much with this paralysis?

A. O, yes, been that altogether; that is the only complaint I have; healthy, I can eat, I can eat as well as any of you.

Q. How long is it since y ou have been out of the house?

A. Nine months.

Q. Have you been confined to your bed most of the time?

A. No, sir; I sat up.

Q. Are you disposed to cry a good deal, are you?

A. That goes with the disease, but the disease has stopped.

Q. When did that stop?

A. (Not answered)

Q. How long ago did that stop, the disposition to cry all the time, when did that stop?

A. I don't know what time that is.

Q. Well, did you ever know Emma Keiter?

A. I knew her, I know her yet.

Q. How long have you known her?

A. Twenty years, that is a rough guess.

Q. Did she and a man by the name of Henry Mellick come to you to do some business for them?

A. Yes, sir.

Q. Can you remember when they first came?

A. I can't remember the date, but about the middle of February.

Q. About the middle of February of what year?

A. Of 1888.

Q. You mean 1878?

A. 1878.

Q. Did they bring any papers with them?

A. I don't know whether they had any; yes, they had papers with them.

Q. Can you tell just what they were?

A. Not without being asked.

Q. Do you remember whether it was a mortgage for $5,000?

A. I remember that.

Q. And a bond?

A. And a bond.

Q. With it?

A. Yes, sir.

Q. And a deed for some property in New Village?

A. Yes, sir; yes.

Q. Now will you tell what was said about what they wanted done with those papers and what bargain was made between them, if any?

A. Not much of any kind of bargain.

Q. Anything about marriage?

A. Yes, sir; they were going to be married; the bond of $5,000, and the bond of $2,500, and the property in New Village were altogether the conversation, and the marriage.

Q. Do you remember when the marriage was to take place, the first time?

A. The first time, as I said, the middle of February.

Q. The middle of February they first came, but was there any day fixed after that for their marriage, any other meeting to take place? That has escaped your memory altogether, when was that? Do you remember whether the wedding was postponed? (Leading.)

A. Yes, sir.

(By the Court) I shall permit a little more freedom of examination than usual because it is evident that the memory of the witness is somewhat shattered.

A. (The Witness) I boarded in Phillipsburg. Your memory is bad, mine is not.

Q. Do you remember, sir, whether there was a postponement of the day of the marriage?

A. I have told you already I think there was.

Q. You think there was?

A. Yes, sir.

Q. Do you remember when the wedding did actually take place?

A. Let me see; no, I don't think I do; yes, it occurs to me, on the sixth of April.

Q. Sixth of April—very well. Now were they over to your place more than once?

A. O, my, yes.

Q. How many times?

A. My memory is bad on that; I could not tell.

Q. (By the Court) Are you sure, Mr. Hillburn?

A. Yes, sir.

Q. You had an office in Easton?

A. Yes, sir.

Q. For how many years?

A. Thirty years; thirty years I practiced law.

Q. (By Mr. Shipman) Will you look at that signature of Valentine Hillburn there—exhibit C 4—assignment?

A. Yes, sir.

(By the Court) C 4 is the assignment.

Q. Did you see the man acknowledge that, sign that, Mr. Mellick?

A. The old man?

Q. Yes, sir.

A. Yes, sir, I saw him.

Q. And you signed your name as a witness?

A. I signed my name as a witness.

Q. (By the Court) Who prepared the paper?

Q. Do you know whose hand-writing that is in?

A. Not in mine.

Q. Was it prepared under your direction, do you recollect?

A. Well, yes, somewhat, I think James Linn drew the papers.

Q. James Linn drew the papers?

A. Yes, sir.

Q. At your office?

A. No, in his own office.

Q. Who is he?

A. A practicing lawyer.

Q. Have an office near you?

A. A block.

Q. Did you get him to draw papers for you?

A. I got him to draw papers for me, yes, sir.

Q. (By the Court) Did he draw that for you?

A. I suppose so; but I am not certain; I think it is in his hand-writing, but I am not certain. Merely as a convenience to me, it was my business.

Q. And you got some one to draw the papers?

A. Yes, sir.

Q. And you supposed it was Mr. Linn.

A. I thought it was Mr. Linn.

Q. In doing it he acted as your employee, or friend, or agent, or clerk?

A. Friend; I always had an antipathy against drawing papers.

Q. (By Mr. Shipman) And he acted as your friend?

A. Yes, sir.

Q. Where did the wedding take place?

A. In my office.

Q. Do you remember who married them?

A. Yes, sir; Porter.

Q. Dr. Porter?

A. Yes, sir.

Q. Professor in Lafayette College?

A. Yes, sir.

Q. Was a preacher in town?

A. Yes, sir.

Q. You were one of the witnesses to the marriage?

A. Yes, sir.

Q. Sign the certificate?

A. No, sir.

(By the Court) No, his name is simply mentioned in it.

Q. I believe that is all.

Cross-examination by Judge Morrow.

Q. Has your memory been refreshed about this transaction?

A. Yes, I have been questioned.

Q. How recently?

A. O, different times.

Q. Within the past year?

A. Within the last year.
Q. How many times?
A. O, I can't tell you.
Q. Two or three times?
A. Yes, more.
Q. More, eh?
A. Yes, sir.
Q. By whom?
A. I don't remember now altogether, some gentlemen came here whom I don't know, and only know them by asking who are they.
Q. You don't remember their names now?
A. No, sir; I can't remember their names, whether it was on one side of this question or the other.
Q. Who came first to see you about having these papers drawn?
A. O, I think the girl.
Q. Came alone or with her mother?
A. No, her mother was usually with her, might almost say every time.
Q. Did she and her mother come to see you alone before Mr. Mellick came with them?
A. Yes, sir.
Q. Did Mr. Mellick come to see you by himself before he came with the women?
A. No, sir; he came with them.
Q. The first time that he came?
A. Yes, sir; and every time after.
Q. And every time after?
A. Yes, sir.
Q. Had you known him before?
A. Never knew him.
Q. Who brought you the bond and mortgage?
A. I think the two women.
Q. The two women?
A. Yes, sir.
Q. Before Mellick came?
A. Before Mellick came; they were there before Mellick came.
Q. Have you any recollection about that?

A. I have some recollection, yes, sir.

Q. What do you recollect about it?

A. I recollect that they came there.

Q. Have you a recollection that they brought the bond and mortgage with them before Mellick came?

A. I think they did.

Q. When?

A. I can't tell you when.

Q. How long before Mellick came?

A. Can't tell you.

Q. Don't know?

A. No, sir.

Q. Have you anything by which you can fix the time by which Mellick first came?

A. No, sir.

Q. Who employed you to draw these papers or this paper?

A. Women.

Q. The women did?

A. Yes, sir.

Q. Mr. Mellick didn't?

A. No, sir.

Q. Not at all?

A. No, sir.

Q. Did he pay you for doing it?

A. I don't know whether he did or not; I guess not.

Q. You think not?

A. I am not certain.

Q. Have you any recollection about it?

A. No, sir.

Q. At all?

A. No, sir, to bring it to mind.

Q. How long were the papers in your possession?

A. The were in my possession for a considerable time.

Q. And continuously so?

A. Continuously there until they were completed and sent I don't know, some one told me that I sent them——

Q. To the Clerk's office you mean?

A. No——

Q. Or sent them where, Mr. Hillburn?

A. I deny sending them; I don't believe I did send them.

Q. Sending them where?

A. Sending them to Belvidere.

Q. That is what I thought you meant. But from the time they first came to your hands until they went out of your office, they remained in your office?

A. I think they did.

Q. How many weeks was that as nearly as you can?

A. I suppose I don't know, the time elapsed between the middle of February—I don't know exactly when, and the sixth of April.

Q. You think they were there all that time?

A. Not all the time; they were taken out for the mortgage to be fixed up by Linn.

Q. Any other time?

A. I don't think any other time; he was not there often.

Q. Who was not?

A. The old man.

Q. Do you remember any other occasion save the first occasion and when he came to be married?

A. No, I do not remember, the women conducted the whole affair.

Q. The women conducted the whole affair?

A. Yes, sir; there was nothing done by him.

Q. Don't you remember Mr. Mellick telling you that he wanted you to draw an assignment assigning this bond and mortgage over to Emma Keiter?

A. I don't remember; I might have done so.

Q. Don't you remember how it could be done—to transfer the bond and mortgage from him to Emma Keiter?

A. I don't remember.

Q. Nor your telling him how it could be done?

A. No, I didn't tell him that, because he was a man

of very few words. He was a man of very few words —an old man.

Q. Did Howard Mellick come to see you yesterday afternoon?

A. There was a number of men there; I don't know who they were.

Q. (Pointing to Mr. Howard Mellick) That gentleman there, Mr. Howard Mellick?

A. I can see just as well as here.

Q. Was that gentleman here yesterday afternoon?

A. I am not certain; I talked with people about this and that.

Q. Was Mr. Smith, that gentleman here (pointing), was he here?

A. His face looks familiar.

Q. When was he here?

A. They were all here within a few days.

Q. Don't you remember telling Mr. Smith yesterday that these papers were in your hands only two weeks before the marriage?

A. That much, more, if they were not longer.

Q. Only two weeks' time from the first time they came to be married?

A. Yes, sir. Only two or three weeks.

Q. Didn't you say last week only two weeks before the marriage—say that last night?

A. I don't remember.

Q. Don't remember that?

A. No, sir; I talked with everybody about this case. Indiscriminate talk.

Q. You don't mean to tell anybody anything except as you remember?

A. I don't know these gentlemen here—whether they are for the plaintiff or the defendant.

Q. But in this indiscriminate talk you don't mean to say anything that is not true?

A. I hope not.

Q. Don't you remember you sent this assignment to the Clerk's office at Belvidere, and that it was re-

turned to you, and that Emma Mellick came to your office and got it from you?

A. No, sir, I don't remember that; I don't remember I sent it to Belvidere.

Q. Don't you remember her coming to your office and getting it?

A. No, I don't remember that.

Q. Don't you remember her getting the bond and mortgage away from your office?

A. No, sir.

Q. Don't you remember her coming back to your office in about a week after the marriage and telling you she had been to Belvidere and had found on record there an assignment of this same bond and mortgage to his son Howard?

A. I know that.

Q. (By the Court) Know she told you that?

A. Yes, sir.

Q. (By Judge Morrow) In about a week after the marriage?

A. In about a week after the marriage; the papers I say were not in that transaction; I don't have any remembrance as to the papers, sending by me.

Q. You can't remember that, Mr. Hillburn; I don't care whether you do or not.

A. I gave him the papers.

Discussion among counsel.

(The Witness) And they may have been sent to me, but I deny that I sent any.

(Mr. Shipman) That is all right.

(The Witness) I gave the papers to Emma Keiter or to the complainant here; I gave the papers right after the marriage—I think I handed them in a bundle—handed them up to Emma.

Re-direct.

Q. Don't you remember that just before the mar-

riage you handed them to her?

A. No, sir.

Q. Don't remember that?

A. My recollection is that they were signed and—(interrupted.)

Q. Don't you remember, while they stood up there on the floor to be married, you asked Mr. Henry Mellick if he was satisfied that you should now deliver the papers, the bond and mortgage, and the assignment, to the woman?

A. I don't know.

Q. That may be so, although you don't remember?

A. Yes, sir.

Q. That is all.

(Mr. Shipman) That is all.

Q. (By the Court) Mr. Hillburn do you recollect—you say it was about the middle of February they brought these papers to you?

A. The first time.

Q. Did they bring papers then?

A. I am not certain if they did or not.

Q. Then you do recollect whether or not after the papers had been in your hands they came and took them again?

A. Yes, sir.

Q. Before the marriage?

A. Before the marriage—no; they may have had them but they didn't take them away, because I don't know why they should take them away; the papers were by me, by my own hand, given to Emma.

Q. I will see if I can refresh your memory. See whether you can recollect or not whether the first time they all three came together, the old lady, and her daughter, and Mr. Mellick, when they first came there about the middle of February, whether at that time they left a bond and mortgage with you?

A. I can't remember now, Emma I think brought the papers. But I am not certain, it is a long time ago.

Q. They were alone with you at the first interview, were they or not?

A. I think they were.

Q. Was that the first interview, keep your mind on that please, on the first interview, when all three came in, not when Emma and her mother came, but when the old gentleman and Emma and her mother came, the first time which you say was about the middle of February, at that time did they or not leave a bond and mortgage with you?

A. I can't tell you. I had them because I could not give them to the defendant here; I could not give them if I hadn't them, but I had them and gave them to her after the marriage.

Q. To whom did you give them?

A. To Emma, after the marriege.

Q. But did you or not at one time before the marriage hand them to Mr. Mellick between the time when they first came to see you and left the papers and the time of the marriage which you say is nearly two months, middle of February to the sixth of April, in that time did you or not hand back these papers to Mr. Mellick and receive them again the second time?

A. That may be; I don't remember.

Q. The question is whether or not after you had the papers in your hands the first time and before the marriage, they were handed back to Mr. Mellick and brought back?

A. They were given to me by Emma without condition.

Q. What do you mean "without condition"?

A. No condition, I can't tell, the word condition is so broad, I can hardly explain the word condition.

Q. If all parties brought them there all parties could take them away again?

A. No, sir.

Q. Why not?

A. Why not? Because they might not be entitled to them.

Q. You held on to them you think?

A. Because the very fact would make me out a very bad lawyer, if I had given these papers to anybody but Emma.

Q. After she brought them there?

A. Yes, sir.

Q. But with Emma's consent you might have given them back to Mr. Mellick?

A. Yes, sir; after they were executed.

Q. No, before the marriage?

A. Well Emma brought these papers, and they brought them backward and forward for the purpose of regulating the drawing of the papers.

Q. Then you are not sure whether the papers did or did not remain in your possession, in your particular custody and that of Mr. Linn all the time from the time they were first brought to your office until they were finally taken away, did you get that question?

A. Yes. Not all the time—I don't think they were in Linn's possession all the time.

Q. They were not in Mr. Linn's possession all the time. Mr. Hillburn, let me see if you understand this: I want to see if you recollect this, and can account for it. I have got in my hand the assignment which Mr. Linn drew at your request, as I understand it; in it is this clause, can you read now?

A. Yes, sir.

Q. Will you just please to read that clause (showin witness which clause)?

A. I——

Q. Read that to yourself, the last part of that if you will—"To Have and to Hold"—

A. I suppose it is the usual form.

Q. No, it is not the usual form, that is the reason I want you to read it. It is the last line.

A. (Witness reads)

Q. "Said ——"

A. "Said Mellick" —— (witness stumbles over next word)

Q. Can you read that?

A. Yes, sir.

Q. Can you understand it?

A. Yes, sir.

Q. How did that come to be written in it, "The said Mellick to draw the interest during his lifetime"?

A. He wanted the mortgage for the purpose of drawing his interest due on it, that is what they will tell you. He came there to draw his interest, and he came there for the purpose of getting, of drawing that interest, and then bringing the papers back.

(By the Court) I am satisfied that the conclusion we came to is right, that the answer is entirely insensible.

The court then adjourned to Mr. Smith's office in Phillipsburg, New Jersey.

AFTERNOON SESSION.

JAMES E. MOON, a witness produced on the part of the complainant, being duly sworn, testified as follows:

Direct examination by Mr. Shipman.

Q. You were Clerk of the County of Warren at one time?

A. Yes, sir.

Q. And is that the Registry of Mortgages that you hold in your hand?

A. It is, sir.

Q. And all mortgages and assignments were entered in that registry during your time that were received and recorded in the Clerk's office?

(By the Court) It is a daily register of the receipt of papers?

A. Yes, sir.

Q. Just turn to the eighteenth of March, will you, 1878?

A. (Does so)

Q. 1878?

A. 18th of March, 1878.

Q. Ain't there a leaf turned down?

(By the Court) 9th of April you want, do you not?

A. Two assignments there; those two, Henry H. Mellick to Howard Mellick, both of them.

Q. Henry H. Mellick to Howard Mellick?

A. Assignment of mortgages, marked assignments.

Q. Are those in your handwriting?

A. No, sir.

Q. Whose are they?

A. Mr. Hoagland's.

Q. He was a clerk in your office?

A. Yes, sir.

Q. Those assignments were received in your office?

A. March 18th.

(By the Court) What is the object of this evidence.

(By Mr. Shipman) To show that there were two assignments offered on that day. I want to offer those two assignments in evidence—the one is the assignment of this mortgage, and the other is the assignment of another mortgage for $2,500 on the same day to Howard Mellick from Henry H. Mellick.

Q. Page what?

(By Mr. Shipman) And a certified copy of the record, and the other assignment I want to offer.

Q. Now will you look at the 9th?

A. Same year?

Q. Same year, yes, sir; there you will find one from Henry H. Mellick to Emma Keiter?

A. Yes, sir.

Q. How did that get to your office?

A. It was received by mail.

Q. Read the entry, and whose hand-writing is it?

A. My hand-writing. "No. 2245," "ass'n," "Mortgagor, Henry H. Mellick," "Mortgagee, Emma Keiter." Received by mail, April ninth, deposit fee and record; recorded in Vol. 5, p. 96.

Q. To whom sent?

A. Taken away by "Val. Hillburn, Easton," "April 10, 1878."

Q. Does it say taken away?

A. "By whom taken."

Q. (By the Court) At the top of the page under "By whom taken" is "Val. Hillburn, Easton"?

A. Yes, sir.

Q. (By the Court) At the top of the page of the book which the Clerk has just produced are certain printed characters over different columns; the first is "No," the second is "Deed," the third is "Mortgagor," the fourth is "Mortgagee," the fifth "By whom brought," the sixth "Time," the seventh "Deposit," the eighth "Record," the ninth "Vol." the tenth "Page," the eleventh "By whom taken," the twelfth "When taken," and the entries under those respectively are: "2245, ass'n, Henry H. Mellick, Emma Keiter, Mail, April 9, $1.00, $1.00, 5, 96, Val. Hillburn, Easton, April 10, 1878."

(The Witness) This is my hand-writing—this part (indicating).

Q. Mr. Hoagland's hand-writing is the name of "Val. Hillburn, Easton"?

A. Yes, sir; and the date of the delivery.

Q. That is all.

Cross-examination by Mr. Morrow.

Q. I suppose you have no personal recollection of these entries at all?

A. No, sir.

Q. (By the Court) Entries made in the regular course of business?

A. Yes, sir.

Q. And the entries are supposed to be true?

A. Yes, sir; I don't remember anything about it.

Q. That is all.

(Mr. Shipman) We desire to offer a certified copy

of the deed offered last evening—Henry H. Mellick to Jacob A. Mellick, dated March 18, 1878.

Objected to.

Said deed marked Exhibit C. 10.

(By Mr. Shipman) The other paper is a certified copy of Exhibit C. 9, assignment of mortgage from Henry H. Melliek to Howard Mellick, dated 18th March, 1878, marked Exhibit C. 11.

(By Mr. Shipman) I also offer in evidence a certified copy of the assignment of the $2,500 mortgage, assignment of mortgage Henry H. Mellick to Howard Mellick, dated 18th March, 1878, marked Exhibit C. 12.

COMPLAINANT RESTS.

(By Judge Morrow) I move to strike out all the evidence to which we have made objection as it has been produced. In order that the Court may see and the record may show clearly what I object to I shall state it. First, the bill; now I have not my copy of the bill before me, but it is so familiar to me that I have no difficulty in stating it. I can state it.

The bill sets forth this mortgage and the bond, it then sets forth that Emma Keiter, the complainant, married Henry H. Mellick, the mortgagor, on the 6th day of April, 1878; that he promised her that if she would marry him he would assign to her this bond and mortgage, and that by reason of that promise she married him. That a month before the marriage they entered into an agreement by which he agreed if she would marry him he would assign her this bond and mortgage, and that in pursuance of that agreement, on the 6th of April, she married him, and he on that day executed an assignment to her of the bond and

mortgage, and on that day the assignment and the bond and the mortgage were delivered to her.

Then the bill sets forth the surreptitious and dishonest taking from her of the bond and of her search of the record by which she was apprized substantially that this mortgage had been, previous to her procuring an assignment of it, assigned to the defendant, Howard Mellick; that Howard Mellick had taken that mortgage with knowledge of her ante-nuptial agreement, and had taken it in fraud of the rights which were hers fixed by that ante-nuptial agreement, and hence that this title is good for nothing, states that $1 consideration was named in it. I am now stating what her charge is, she says that her assignment sets forth that it was for $1 consideration and a further consideration, to wit, her marriage to the assignor, but that does not appear in the mortgage, she says it does not.

We answer that bill, admitting the making of the bond and mortgage, denying the existence of a marriage contract, as set forth in the bill, calling for proof of its making, calling for proof of the marriage and the assignment to her and delivery to her; setting up our own assignment of the mortgage on the 18th day of March, antecedent to her procuring any title to the mortgage, and denying any knowledge on our part of any ante-nuptial agreement, or of our taking that in fraud of her agreement, and of recording our assignment on the day on which the assignment was made, and asserting our own ownership of this mortgage by virtue of our assignment to us, to the defendant Howard Mellick.

Now those are the issues presented by this bill and defendant's answer, and this cross-bill—by these pleadings—and it seemed to me the more I examined the case that it was a very narrow question to be presented to the Court, so made by the bill, and so made by the answer, and so made by the cross-bill, and the answer to the cross-bill—that we would have comparatively little evidence under the pleadings as they stood

—that it would be a simple matter for the complainant to prove the agreement to marry, to prove an ante-nuptial agreement in consideration of the marriage and to prove the assignment. But we have been met here by a great volume of testimony, to which I objected as we went along, which gives the details of the courtship, interesting as it may be, but so far as it having any reference to the real issue to be tried it was no better than any ordinary gossip, and as far as the case stands no force or effect of a probative character at all.

Then I suppose that under the issue the complainant might prove the taking from her of the bond. The charge was that Howard Mellick had taken it from her with Joseph Kramer. Now the evidence seems to show that the old man took it from her, and not only does not the defendant's name or his presence appear in the real fact of the taking away—the abstraction of that bond from her, but there is absolutely no showing that he knew anything of it—not a word.

I want to call the attention of the Court to the only bearing on the case that connected this defendant with it—this young German testified that he heard Howard Mellick asking Joe Kramer to get the mortgage away. It is not proper for me to remark upon that now. But that is all the testimony we have upon this subject. Then we go on after the taking of the bond and treat of the details of the differences between this husband and wife in which the wife puts into the mouth of the husband, what he said to her respecting the defendant, Howard Mellick. But not a scrap of evidence of any force against Howard Mellick at all—not a word of what Howard Mellick said. The poisoning, the breaking up of her household—nothing connects Howard Mellick with any of those transactions at all.

I submit to the Court that this case should not be encumbered with all that testimony. As to any charge of conspiracy to defraud this woman of her

marital rights this bill is not for that purpose. She stands here in this Court upon her bill alleging an ante-nuptial agreement, a marriage settlement, and an assignment in pursuance of that settlement, and notice to the defendant of it—whatever that may be worth—was all fully in the case. I have given this case a very great deal of patient study and thought, and I should have been prepared now to deal with this more at length, but for the loss of my brief. These matters ought to be eliminated from this case.

(By the Court) I expressed myself yesterday on this subject—that there was a large amount of this evidence that was not competent; it was not objected to as it went along, some of it; but I did not interfere as I would under ordinary circumstances, because I said that with witnesses like the complainant and her mother, it was impossible or nearly impossible for the counsel to get their story out, without getting it all out.

With regard to the point made about the conspiracy, I believe I remarked then that while it might not be charged exactly in the bill, there were facts there that looked in that direction, and I stated to counsel that if they didn't come here prepared to meet that, after the facts were in that I would give them opportunity to prepare their case to meet it. I do not know that the counsel for the complainant consider that of any importance to their case. I suppose the counsel for the complainant claim that the assignment, the prior assignment to the children, was without consideration, and if without consideration, then void against a transaction of this kind.

Having said so much what have you to say, Mr. Shipman, about any part of this being stricken out by consent, and confining yourself to the narrower issue?

(By Mr. Shipman) It is all competent.

(By the Court) What took place after the bond was prepared, the declarations of the old man. I believe I said yesterday, and repeat now, that I think according to the rule of law that it is not competent

to prove that, any declarations that his son did so and so, but it was competent for the purpose of accounting for this family's conduct, and this complainant's treatment of her husband, as a part of the family history. The question was not whether what he told her about Howard was true; the question was whether or not he did tell that to her, whether she acted upon that. That would excuse her, it was a part of the family history between the two.

(By Mr. Shipman) It seems to me that my learned friend takes a very narry view of the law and the character of this bill. The bill charges that this assignment was obtained by fraud and conspiracy, that word "conspiracy" is in the bill. The bill charges, and the answer quotes from the bill.

How do you prove a conspiracy? Why, by any acts or conduct of the parties; and the counsel is willing to tell the court it was no proof of conspiracy when the old man run right into Howard Mellick's store with the bond and left it, and it has been there ever since. That is not proof of conspiracy? (After reading portion of bill) If it is not full enough, we will move to amend our bill with regard to the conspiracy.

(By the Court) I think I would not be justified in ruling out any of the testimony. I refuse to strike out the evidence or any part of it, but state to the defendant that if there is any part of it of which he was not fairly apprized by the bill and he, through his counsel, says he was surprised, why he can have time to meet it.

(By Judge Morrow) I move to dismiss the complainant's bill on the ground that there was no ground of a contract for the consideration of marriage in writing; I have not a brief.

(By the Court) The Court overrules the objection,

there is no such thing as nonsuit in the Court of Chancery. If the complainant desires to amend his bill he must do it at his discretion, within a reasonable time, and the defendant must have an opportunity to answer and to open the proofs to meet it. I will amend it just as the Court of Appeals would.

S. C. SMITH, a witness produced on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Judge Morrow.

Q. Mr. Smith, you are an attorney-at-law?
A. Yes, sir.
Q. And counselor; practicing law in Phillipsburg?
A. Yes, sir.
Q. Were you so in March, 1878?
A. Yes, sir.
Q. Did you know Henry H. Mellick?
A. Yes, sir.
Q. Did you do some business for him?
A. Yes, sir.
Q. In the month of March, 1878?
A. Yes, sir.
Q. What was it?
A. I drew the assignments of some mortgages, and a deed for him.
Q. I show you Exhibit C. 9, is that one of the assignments which you drew?
A. Yes, sir.
Q. (Handing witness another paper) And we will mark this Exhibit D. 1, is that the other assignment?
A. Yes, sir.
Q. Who came to the office to have that done?
A. Henry H. Mellick.
Q. Alone?
A. He first came alone.
Q. And who gave you instructions to draw it?

A. He did.

Q. Q. Did he have with him the bond and mortgage assigned by this paper, Exhibit C. 9?

A. Yes, sir.

Q. And the other one also, or don't you remember?

A. My recollection is that he had all the papers, his old deeds and the two bonds and mortgages.

Q. What did you do with the papers after he executed the assignment?

A. I kept the assignments I think, I kept the deed that I drew; the bonds and mortgages I gave to Howard Mellick. Howard Mellick came into the office while I was engaged in drawing these papers, before we had finished drawing them, I think before they were executed Howard came in.

Q. Will you look at the signature of the subscribing witness to them, and you saw Henry H. Mellick execute these papers?

A. Yes, sir.

Q. You took the acknowledgment on the back?

A. Yes, sir.

Q. What did you do with the assignments?

A. I only know from the Clerk's entry that I took them to Belvidere; it was my custom to take or mail them to Belvidere, or to do it at once. I see by the Clerk's entry that they were delivered to him on the same day, otherwise they would have been mailed.

Q. Do you remember getting them back?

A. No, sir; I do not.

Q. Remember seeing them after that time?

A. Yes, sir; I remember seeing the one assignment; I don't recollect about this one, this is Exhibit C. 9.

Q. (By the Court) Which is the one you recollect seeing?

A. Exhibit C. 9; I think that I went to the Clerk's office and got this, I am not certain about it, I remember that I had it after I heard of Mr. Mellick's marriage to the complainant, sometime after that, I know that I had this and consulted with Judge Morrow. That is my recollection of seeing it after

that. I think I left it with Judge Morrow; I think it was there ever since.

Q. You brought it to me?

A. Yes, sir.

Assignment of Mortgage Henry H. Mellick to Howard Mellick—No. 2101—offered in evidence and marked exhibit D 1.

Cross-examination by Mr. Shipman.

Q. Mr. Smith, where did you have your office at that time—this same building?

A. Let me see—1878—yes, sir, I think I occupied these two rooms; it was done in the other room.

Q. Mr. Henry Mellick you say came to you alone in the first place?

A. Yes, sir.

Q. Had all the papers, you think?

A. Yes, sir.

Q. How soon after he came did Howard come?

A. I suppose from half an hour to an hour.

Q. And Henry H. Mellick came in the first place?

A. Yes, sir.

Q. And then Howard, his son, came half an hour or an hour after?

A. Yes, sir, some time after, I can't remember the time.

Q. You showed the papers to him I suppose—the assignment?

A. To whom?

Q. To Howard Mellick.

A. I think that Howard heard them read over; I think he was here when they were read to the old gentleman.

Q. Then Howard and the old gentleman were both present in a room when the assignments were read over?

A. That is my recollection.

Q. And the old gentleman executed them in the presence of Howard and yourself?

A. I think so.

Q. And then Howard Mellick took all the bonds and mortgages away with him?

A. Yes, sir.

Q. And did they both leave together?

A. I don't recollect that now; I can't say; I think they did, though.

Q. That is your impression?

A. Yes, sir.

Q. And you kept the assignments and took them to Belvidere?

A. Yes, sir.

Q. You don't remember whether you brought them both away or not?

A. I don't recollect how I got hold of the assignments; I remember having this particular one.

Q. (By the Court) The five thousand dollar assignment?

A. Yes, sir.

Q. (By Mr. Shipman) What time of the day were they there?

A. As soon as I got to the offioe in the morning I think.

Q. And you drew the papers right away?

A. I think I went right at it; the old man told me what he wanted.

Q. And you went at it and drew it and Howard came in, and they were executed, and they went away?

A. That is my recollection.

Q. That is all. Was Jacob Mellick there?

A. No, sir, I never saw Jacob.

Q. Do you know him?

A. I do. About that transaction I didn't.

Q. About that transaction you never saw him?

A. Yes, sir.

Q. (By the Court) You drew the deed to Jacob?

A. Yes, sir.

Q. (By Mr. Shipman) Did Howard take that deed —the deed to Jacob?

A. I think I kept that to have it recorded.

Q. Do you know what they wanted with it—whether Howard or Jacob took it?

A. I don't know; probably I would not remember a thing about this matter, but I heard of the marriage, and that refreshed my memory because some questions came up then to refresh it, otherwise I don't suppose I would remember a thing about it.

HOWARD MELLICK, the defendant, being duly sworn, testified as follows.

Direct examination by Judge Morrow.

Q. Mr. Mellick, you are the defendant in this cause?

A. Yes, sir.

Q. And Henry H. Mellick was your father?

A. Yes, sir.

Q. How long was your father a widower before he married the second time?

A. O, many years; I was quite a small boy when my mother died.

Q. How old are you now?

A. Forty-six.

Q. Where did your father live during his—from the time your mother died until he married again?

A. The different places you want to know?

Q. Yes, sir?

A. He lived on the farm near New Village until I was married. He hired a housekeeper from the time mother died until that time. Then he moved to New Village with his housekeeper.

Q. (By the Court) Off the farm into a house?

A. Yes, sir; and I don't remember the year now that his housekeeper died; but then he came to me, that is, when she died.

Q. To where?

A. Phillipsburg.

Q. You had moved to Phillipsburg in the mean time?

A. Sold out the farm.

Q. (By Judge Morrow) How long did he live with you in Phillipsburg then?

A. I could not say; quite a long time.

Q. Continuously?

A. Well, nearly so; once in a while he would come over to my brother John, to Easton, but not to stay; he didn't make his home there.

Q. In the spring of 1878 did you hear him talk about housekeeping again?

A. Yes, sir.

Q. What did he say to you on that subject?

A. Well he said that he felt like going to keep house again, and that there was a woman by the name of Charlotte Robbins——

(By Mr. Shipman) Is that competent?

(By the Court) I shall let it in unless you object.

Mr. Shipman—I object.

Mr. Morrow—I want to show by the witness that he understood by his father's preparation for going to housekeeping, that it hadn't matrimony in view.

Mr. Shipman—I object; that won't do at all.

Objection overruled.

Q. Go right on from that point?

A. That he could get to keep house for him.

Q. When was that?

A. That was--well now I don't know; it was in the spring of 1878, I dont remember just the date.

Q. You can say whether it was before or after you procured this assignment of the mortgage, after it was made, rather?

A. That was after.

Q. After it was made?

A. Yes, sir.

Q. Did he make any preparations for housekeeping?

A. Yes, sir, some.

Q. What?

A. Well, he wanted me to let him have some money in the first place to get things to go to housekeeping with more than what he had; he had a lot of things in New Village, but they were all old; but he wanted some more—had been standing there for some years.

Q. And did you do so?

A. Yes, sir, I did.

Q. Now state what you knew either from your father or from observation in any way respecting his relations with Emma Keiter.

A. What did I do?

Q. What did you know?

A. I didn't know anything about it; only that what I heard, that he was going with her; that is all I know.

Q. Did you see anything yourself of his attention to her?

A. No, sir, I didn't.

Q. How near to Mrs. Keiter did you live?

A. I was never at their house that I know of, but I suppose where they lived it is down by the canal; must be pretty near half—from a third to half a mile.

Q. Ever see your father take her to the opera house, or to church or to public places?

A. No, sir.

Q. No personal knowledge of it?

A. Yes, sir.

Q. But you say persons told you of it?

A. Yes, sir.

Q. Did he ever say anything to you respecting his relations with her.

A. No, sir.

Q. Now will you state what passed between your father and yourself relative to his assigning to you this mortgage?

Objection. Objection overruled.

A. Well, how far back do you want to go into that?

Q. When he first began to talk to you about assigning it to you.

A. That would go back three or four years, perhaps longer.

Q. I don't care how far back you go. What did he say on that subject—what passed between you from the first, after he proposed or talked to you about assigning it to you?

A. I can't remember his words or just the time; but he had let my brothers have considerable of money; I can state nearly the amount if you wish it.

Mr. Shipman.—I don't think that is material. I shall object to it.

The Witness.—Well, when my brother John started to go to school at Trenton he gave him or loaned him, I don't know which you would call it, a thousand dollars.

Q. Well?

A. And afterwards when he came home he went in business at New Village, he gave him two thousand dollars more, or loaned it to him. I suppose you want to know how I know it?

Q. Whether from your father or the transaction itself?

A. From my father and also he had a record.

Q. (By the Court) A family transaction?

A. Yes, sir.

Q. (By Judge Morrow) Go ahead.

A. Then he moved here at Easton, he bought a property there, and in a short time——

Q. (By the Court) Who?

A. My brother John; went into business, the corner of Northampton and Second streets, and then he loaned him that $2,000 more; and that didn't prove a very great success, and from there my brother went to New York; and then he let him have another thousand dollars. My brother John.

(By Judge Morrow) Did John ever pay these monies back to your father?

A. Not to my knowledge.

Q. What do you know about it; you say he loaned it to him, how did it result into a gift?

A. Well my father always kept a book, it is something about as wide as that paper here (illustrating) where he would put down all of those—(interrupted)

(By Mr. Shipman) I object to that book unless it is produced.

(The Witness) That book got taken away in the last few years somewhere.

Q. Did your father take any note or bond or anything from John for these sums of money?

A. Yes, sir.

Q. Advanced to him and charged in a book?

A. Yes, sir.

Q. Now go on?

A. My brother Jake he gave him a thousand dollars when he came of age, and my brother Jake loaned that to my brother John, and that is the last of that. Then my brother Jake went to business in Phillipsburg, in the stove business and he loaned him $2,000 more, let him have it; and that was not a very great success, and he went to New York, and he let him have another thousand dollars.

Q. Well?

A. Well now at that time he was living with me.

Q. Who was?

A. My father, and he had helped me to $1,000 when I commenced farming, that was when I became of age.

Q. Well?

A. And in the course of about a year I think it was, about two years, right in war time, I traded; no I made enough money to buy the whole of his stock, that was it, and I paid him a thousand dollars for the balance of it, money that I had earned.

Q. Well?

A. I then sold it out; traded it for a property in New Village.

Q. (By the Court) The farm?

A. No, the stock; not in New Village, but Phillipsburg here.

Q. (By Judge Morrow) Well?

A. Then I didn't have money enough to carry me through my business and he loaned me $1,200 on a bond and mortgage—I think it was $1,200.

Q. Did you pay that back to him?

A. Yes, sir.

Q. Did you pay that thousand dollars back?

A. No, that was a gift.

Q. What else?

A. Now then, he had more money left him, and I told him several times that he was not using me just right; I had always worked for him on the farm and the rest of the boys didn't, and he was giving them all. He said, "I have always kept that $5,000 on the Bayard farm for you, and that you can have at any time you want it."

Q. This $5,000?

A. Yes, sir.

Q. When was it he first told you that?

A. I could not exactly tell the date; I suppose in about 1875 or '76, along there.

Q. That was the first?

A. Yes, sir.

Q. Now proceed, sir.

A. Well, soon after that, anyhow, the Bayard farm was sold and the property went to pay off the mortgage and he came to me and wanted to know what he should do with it, as he had always considered that mine, and would let me say what he should do with it, and I told him to put it in this Kramer mortgage—he wanted to borrow this $5,000, just the amount he had, and he done so.

Q. Well, go on, sir.

A. What do you wish?

Q. When next was anything said to you about it, by you to him or him to you, about assigning this mortgage to you?

A. Well, that was in the winter of 1878.

Q. What time?

A. Or spring; the first that I recollect now was the 17th day of March.

Q. On the 17th of March?

A. Yes, sir.

Q. Will you state how things stood between you and him at that time, whether he was indebted to you, or you to him?

A. He was owing me quite considerable.

Q. How much?

A. Well, I think something like $600, if I remember right.

Q. What for?

A. For money that I had loaned him.

Q. Were you surety for him at that time on any other obligations of his?

Objected to as leading.

A. Yes, sir.

Q. Now then you must state what they were?

A. I was surety for a note at the Phillipsburg bank here.

Q. How much?

A. Two hundred and fifty dollars.

Q. Well, anything else, did you afterwards take that note up?

A. Yes, sir.

Q. Have you got that note, I don't know whether you have or not, have you that note?

A. I don't think I have.

Q. Well, what else, Mr. Mellick?

A. What have you reference to?

Q. Were you liable on any other papers?

A. I don't think that I was personally liable for any other papers, but he owed other debts and they were wanting their money.

(By the Court) How is that competent?

(By Judge Morrow) That he agreed to take those as part of the consideration.

(By Mr. Shipman) I object to the line of examination.

Objection overruled.

Q. Well now, sir, will you state what passed between you at that time on the 17th of March with reference to his transferring to you these two mortgages?

A. Well——

Objected to.

(The Witness) Well he owed the Agricultural Works at New Village, I don't remember the amount, and they were wanting their money. He owed Johanna Holsheizer, and she was wanting her money, and he owed Absalom Pursell, of New Village, and he was paid.

Q. Was that spoken of?

A. Yes, sir.

Q. Well?

A. And that I was to take up.

Q. What was the agreement between you?

Objected to. Objection overruled.

A. That if I would pay these debts—there were more debts than those—I don't just remember what they were, and would keep him as long as he lived, he would transfer that mortgage over to me, but that he wanted to draw his interest as long he lived.

Q. Did he say what he wanted with the interest?

A. No, sir.

Q. Now was there anything said by you and him about any necessity of taking care of him on your

part—any necessity of taking care of him on your part?

A. Yes, sir.

Q. Tell what was said, who said it?

A. The words that were said?

Q. As nearly as you can, the substance?

A. Why that he was spending a great deal of money.

Q. Was he in any business—who said that?

(By Mr. Shipman) The old man?

(The Witness) I told him that he was spending a great deal of money.

(By Mr. Shipman) All right.

Q. You told him that he was spending a great deal of money?

A. Yes, sir.

Q. Did you know that he was?

A. That he was taking money out of my money drawer, and the safe; I can't tell any amounts.

Q. Was he in any business?

A. No, sir.

Q. Had he been, in any considerable time?

A. Never been in any business since I bought out his stock on the farm?

Q. I don't remember the date of this bond and mortgage.

Mr. Shipman.—First of April, 1877.

The Court.—The Kramer mortgage is March 30, 1877; the Case mortgage is the 1st of April, 1870, or 1876.

The witness.—I think likely 1870.

Q. Prior to the investment in the Kramer mortgage had this $5,000 been at interest?

A. Yes, sir.

Q. For how many years?

A. Oh, for a number of years; I can't tell.

Q. Who had been receiving the interest on those two mortgages?

A. He had.

Q. Do you know what he did with it?

A. No, sir.

Q. Was he engaged in any business to use it?

A. No, sir.

Q. Who boarded him?

A. I did.

Q. Did he pay his board?

A. No, sir.

Q. Do you know what the $250 borrowed at the bank on your endorsement was for?

A. What it was for?

Q. What he did with it?

A. No, sir, I do not; I am not positive that that note at the bank has my endorsement on it?

Q. Did you pay it off?

A. Yes, sir; it may have my endorsement on; I don't know.

Q. Where had your father's papers been kept prior to this 17th of March?

A. In my own safe.

Q. Where was your safe?

A. In my office in the store.

Q. Where?

A. In the back part of the store.

Q. In Phillipsburg?

A. In Phillipsburg, yes, sir.

Q. Just describe that safe to the Court, what was it?

A. It was a safe about as high as that table (indicating a table) and I don't know just the width; I have it yet; and inside of that safe was a little iron safe.

Q. How was it locked—how was that shut?

A. That was shut with a spring lock.

Q. Who had keys to it?

A. There was but one key and I had it; if I was away my clerk had it.

Q. Who was he?

A. At that time William Kugler and Arthur Case.

Q. Where were your father's bonds and mortgages kept?

A. In that little safe inside of that safe.

Q. (By the Court) The cash box?

A. Yes, sir; we always called it my lock safe.

Q. (By Judge Morrow) Had your father any access to that inside safe?

A. No, sir.

Q. Where were the Kramer bond and mortgage up until the morning of the 18th of March, 1878?

A. They were in that little safe.

Q. How long had they been there?

A. Been in there from the time they were given by Kramer.

Q. When were they last out of that little safe?

A. When do you mean?

Q. Well, before the 18th of March?

A. Well, when Kramer paid his interest last.

Q. Look at the bond; the bond is dated the 30th of March, 1877, had any interest been paid on that bond prior to the 1st of April, 1878?

A. No, sir.

Q. (By the Court) Any interest endorsed on it, I suppose you mean?

A. Yes, sir.

Q. (By Judge Morrow) Who attended to receiving it for your father?

A. I did.

Q. The first endorsement is dated what?

A. April 2nd, 1878.

The Court.—It shows for itself.

Q. In whose handwriting is the endorsement of interest paid on the 2nd of April, 1878?

A. That is Joseph Kramer; that is, I think so.

Q. What arrangement between you and your father was made with reference to having the mortgage assigned to you under this agreement?

A. What arrangement?

Q. Yes, who was to do it, who was to do the work?

A. Oh, Mr. Smith.

Q. What time in the day of the 17th of March was this arrangement made between you and your father?

A. That was in the afternoon.

Q. And when were the mortgages to be assigned?

A. He said he would go that afternoon or the next day and see Mr. Smith.

Q. When were the mortgages taken from the safe?

A. On the morning of the 18th.

Q. Who took them from there?

A. I did.

Q. From what part of the safe?

A. The lock safe, as I call it, or inner safe.

Q. And to whom did you give them.

A. I gave them to him.

Q. When next did you see them?

A. Well, the next I saw of them was when Mr. Smith gave them to me.

Q. When was that?

A. That was the same day.

Q. What day?

A. On the 18th of March.

Q. The day these assignments were executed?

A. Yes, sir; that was the reason I remember the day.

Q. What did you do with them when Mr. Smith gave them to you.

A. Put them in my pocket and put them in my safe; chucked them in my safe.

Q. What part of your safe?

A. In the pigeon hole, one of them, as we call them.

Q. Is that pigeon hole in the inside of the box or on the outside?

A. On the outside box where I kept other papers.

Q. You kept a great many papers there?

A. Yes, sir.

Q. Now, were the doors of that outside part of the safe kept locked?

A. No, sir; not during the day.

Q. Did you at that time know that your father had any marriage arrangement between himself and Emma Keiter?

A. No, sir.

Q. Had you heard or been in any way informed that he had made any contract to assign to her this mortgage?

A. No, sir, I had nothing whatever.

Q. Where was your father during the month of March and up until the 6th of April, where did he keep himself?

A. March until the 6th of April?

Q. Yes, sir?

A. He was at my place.

Q. At your store?

A. Yes, sir.

Q. State what access he had to your store and to the office, and to the safe?

A. He had free access to the store; when he was able he would wait on customers if he saw fit, or he could go to the safe any time he wanted to; he had other papers in the safe he could always go there and look at.

Q. When did you first miss this bond and mortgage from the safe where you had put it.

A. When did I first miss it?

Q. Yes, sir, when did you first know?

A. I didn't miss that bond and mortgage until Mr. Kramer handed me a notice that he had gotten, he claimed, of the defendant here.

Q. (Handing witness a paper) Is that the notice?

A. I don't know what date that is; I can't tell.

Q. Just wait, we will show you the notice; just look at that paper and see if that is the paper?

A. Yes, sir.

Q. Was it then dated August 13, 1878, as you see it there now?

A. I could not say, positively about that, but I think so.

Q. I don't know whose handwriting that is—it ain't Mr. Shipman's writing—it looks like a woman's handwriting; what did you do then?

A. When he handed me this paper I said he was mistaken, that he would find the papers in my safe.

Q. What did you do?

A. I went and looked in the safe, and all I could find was that bond; the mortgage was gone; I immediately came down to Mr. Smith and notified him.

Q. (By the Court) S. C. Smith?

A. Yes, sir.

Q. The lawyer?

A. Yes, sir.

Said notice just testified about offered in evidence and marked Exhibit D. 2.

Q. (By Judge Morrow) Now Mr. Mellick with reference to that; when did you first know that Mrs. Emma Mellick had an assignment or claimed to?

A. That was the first I knew of it; I don't know, I should not say that; I think that was the first I knew of it after that notice was had; but that was the first I knew my papers was gone; I might have heard talk that something was going on.

Q. You might have; I want to know what you heard?

A. I don't know; if I am to testify I will say that I didn't hear anything.

Q. That (Exhibit D. 2) Was the paper that Kramer brought to you?

A. Yes, sir.

Q. I would like to have you state when you first had information of the assignment of this mortgage to Mrs. Mellick?

A. I don't know that I have ever had any positive information until lately.

Q. Did you ever get a certified copy of the assignment from him to her—ever see that?

A. I don't think I did.

Q. In whose hands did you leave the matter?

A. Mr. Smith's.

Q. As your counsel?

A. I suppose I must after this notice; I expect my attorney looked into the matter.

Q. (By the Court) 13th August, 1878?

A. Yes, sir.

Q. (By Judge Morrow) And then did your attorney draw for you a notice?

A. Yes, sir.

Q. And did you copy it?

A. Yes, sir.

Q. (Handing witness a paper) Look at it and see if that is it?

A. Yes, sir.

Q. Did you serve that on her, or a copy of it?

A. Yes, sir.

Q. Yourself?

A. Yes, sir.

(Said paper offered in evidence and marked Exhibit D. 3.)

Q. You have an endorsement on the notice—served on Emma Mellick, copy—is that in your handwriting?

A. Yes, sir.

Q. You did that shortly after its date?

A. I didn't notice the date; certainly I did.

Q. You say your father owed you about $600 for moneys advanced by you to him on the 17th of March; how much money after that did you pay for him and let him have that spring?

A. Including that?

Q. Including that $600 you gave us, how much more you paid to and for him?

A. About $700 more.

Q. When did you first know that he had married Emma Keiter?

A. I think it was on the night—on the evening of the day they were married; Alvin Mellick came to the store and told me he was sent there by Deichman, so he said.

Q. (By the Court) Sent there by Deichman?

A. Yes, sir; he said so.

Q. (By Judge Morrow) How long did your father continue to live at New Village; we will assume that he went to New Village; how long did he stay at New Village after that marriage?

A. He stayed there until late in the fall of 1878; I don't know just the date; I know the weather was getting cold.

Q. How much of the time was he there?

A. He was there all of that time?

Q. Who furnished him his supplies for his house during that time?

A. I did.

Q. And his clothing?

A. I did.

Q. And other means for his subsistence and that of his wife?

A. I did.

(By Mr. Morrow) Unless your Honor holds that it is of consequence in this case I do not propose to go into the domestic arrangments between Henry H. Mellick and his wife; I don't attack her in any way at all, I don't call in question her conduct towards her husband.

(By the Court) You must take your own course. I don't see that what occurred between them after the bond was procured from her has any bearing on the case. Under that view I think all the evidence of transactions between husband and wife after that bond are of no consequence in the case as at present advised unless the counsel for complainant can show me some reason.

(By Mr. Shipman) We have been over that. I don't intend to offer any more evidence on that.

(By the Court) With regard to the admissions of the husband to her that is subject to what I said.

Q. Now will you state, sir, what, if any knowledge you had with reference to the taking of this bond from Emma Mellick's possession as she has detailed it on the witness stand?

A. I have no knowledge of it at all; knew nothing about it.

Q. Did you suggest to anybody that it should be done?

A. No, sir; never.

Q. Did you know this young German that was sworn at Belvidere yesterday?

A. I do.

Q. Herbert Yutz?

A. Yes, sir.

Q. Did you ever say to Joseph Kramer—

A. I know that he swore he didn't know me, and he was there at the store every day.

Q. Did you ever ask Joseph Kramer, or say to him, would he go down and try to get the mortgage away from her?

A. No, sir; never had any conversation on the subject at all.

Q. How long have you known this young man Yutz?

A. I could not say just how long; a number of years.

Q. Were you acquainted with him prior to 1878?

A. Yes, sir.

Q. For how long had you known him before that?

A. Some time before that; I don't know how long, he was at Kramer's bakery and delivered bread nearly every morning at my place.

Q. Would he see you when he delivered the bread?

A. Yes, sir; we lived only one block apart.

Q. Have you had some difficulties?

Objected to.

Q. After the fall of 1878 what became of your father; where did he go to live?

A. At my place.

Q. How long did he stay there?

A. He stayed there until the spring of 1879; he was sick all that winter.

Q. Who cared for him and nursed him?

A. My family and myself.

Q. What became of him after the spring of 1879, where did he go?

A. He moved back to New Village again, he went off up there.

Q. Did you have anything to do with moving his goods to Phillipsburg?

A. No, sir; I was not there when they came there.

Q. Did they come to your house?

A. No, sir; they came next door to my place.

Q. How long did he continue at New Village from the spring of 1879?

A. He stayed there most to the fall in 1879, in the winter, think in December.

Q. Who furnished him supplies for his living during that spring and summer and fall?

A. I did.

Q. Where did he go to live then?

A. Came to my place again.

Q. And who cared for him the rest of his life?

A. I did; my family.

Q. Lived at your family?

A. Yes, sir.

Q. And who furnished him with all means of subsistence?

A. I did.

Q. What became of the interest on this mortgage of Kramer's, that Kramer mortgage, who collected it?

A. Why, I collected it.

Q. What did you do with it?

A. I mostly always passed it over to him; if he needed any money I gave it to him.

Q. You afterwards bought the property?

A. Yes, sir.

Q. And what did your father get as an equivalent on his mortgage after that time?

A. I furnished him with all the money he needed.

Objected to.

(By the Court) I can't see that you can gain anything by taking an account.

Q. Will you state whether or not you paid the debts which he owed so far as came to your knowledge after the 17th of March, 1878?

A. Yes, sir; all the funeral expenses and so forth.

Q. That is all.

Cross-examination by Mr. Shipman.

Q. You stated you were forty-six years of age, Mr. Mellick, at this time?

A. I will be in a day or two.

Q. And what was the age of your father when he died?

A. Now I don't know exactly; I can tell by the record; in the eighties.

Q. (By the Court) You know the date of his birth?

A. At home.

Q. (By Judge Morrow) He was in the eighties when he died?

A. Yes, sir; born in 1812.

Q. (By Mr. Shipman) Then he was not in the eighties. When did he die?

A. He died the last of February.

Q. This last year?

A. Yes, sir.

Q. Was born in 1812?

A. Toward the last; 23rd I think.

Q. Where does your brother Jacob live?

A. In New York.

Q. How long has he lived there?

A. A number of years; I don't know just now long.

Q. What does he do?

A. He keeps a boarding stable and has drays running there.

Q. Did he live there in March 1888?

A. Yes, sir.

Q. Married?

A. Yes, sir.

Q. Keep house there?

A. Yes, sir; that is, he does now.

Q. Did he in March 1878?

A. Yes, sir; I think so. I don't know how long he has been married.

Q. Have you got a very bad memory?

A. Not so very.

Q. Can't you remember when your brother was married, about?

A. No, I was not there.

Q. Where was he married?

A. In Brooklyn, or somewhere, wherever he got his wife.

Q. How old is he?

A. I think he is three years younger than I am.

Q. That makes him forty three?

A. Yes, sir; I am not positive about that.

Q. Ever see his wife?

A. O, yes.

Q. Had her out here?

A. Yes, sir.

Q. How long before 1878 was he married?

A. I don't know that he was married before 1878.

Q. Then you don't know he was married before 1878 at all?

A. Yes, sir; I judge so; children running around here.

Q. You judge from the children that is all. How many children has he?

A. He has three.

Q. How long before the 17th or 18th of March, 1878, had you seen him?

A. That I can't say.

Q. He was not here at that time was he?

A. No, sir.

Q. Wasn't about here?

A. No, sir.

Q. You took the deed that your father gave to him, you took charge of that deed, didn't you?

A. I am not sure about that; I don't know anything about it.

Q. You knew it was being drawn, didn't you?

A. No, sir.

Q. Didn't you know anything about it at all?

A. I can't say that I knew anything about it at all.

Q. Didn't you hear anything about it in Mr. Smith's office that day?

A. I may have.

Q. You may have; didn't you?

A. Well, my impression is that he was drawing it for him when I came in there, if you wish to know; but for me to have anything to do with the papers I didn't.

Q. I asked you if you knew about it?

A. I am under the impression that Smith said he was drawing a deed for brother Jacob; I am under that impression.

Q. For the New Village property?

A. Yes, sir.

Q. And you never saw that deed did you say?

A. I would not say I never saw it; but I don't think I did.

Q. Do you know where it is now?

A. No, sir.

Q. Do you know who had it ever since that time?

A. I don't know; I suppose he had it.

Q. Don't say suppose. What you do know, tell; what you don't, don't tell. You never saw that deed there that day?

A. I don't know that I did, I may have.

Q. Did you know that your father was going to give Jacob a deed on that day?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Didn't he say anything to you about it?

A. No, sir, not a word; not that I know of.

Q. Not that you know of; didn't you and he talk about it?

A. About his taking the other boys——

Q. Didn't you and he talk about a deed to Jacob that next morning?

A. No, sir, not that I remember of.

Q. Do you remember much that took place between him and you?

A. Yes, sir, most of it.

Q. Do you remember about his assigning these mortgages?

A. Yes, sir.

Q. Did you ask him to?

A. I don't think I did.

Q. He did it voluntarily?

A. He asked me about it.

Q. On the seventeenth of March, you say he and you talked about making an assignment to you?

A. Yes, sir.

Q. Where was it?

A. In my office.

Q. Anybody by?

A. Yes, sir.

Q. Who?

A. Arthur Case.

Q. Arthur Case, who is he?

A. He is a brother-in-law—clerking for me in the store.

Q. Did he hear your conversation?

A. He heard part of it; I don't know that he heard it all. He may have.

Q. What time of day was it?

A. In the afternoon.

Q. Did the old man come and speak to you voluntarily about it?

A. Yes, sir.

Q. What day of the week was it?

A. Now you ask me too much.

Q. What did he say to you first when he came to you?

A. I can't just remember the words that he spoke, my memory is not as fresh as if it was yesterday.

Q. You can say whether he introduced the matter?

A. Yes, sir.

Q. You think he introduced it?

A. Yes, sir; he wanted me to let him have some money.

Q. Say how much?

A. I would not say about that; I don't know.

Q. You don't know; did you give him any money?

A. I think I did, yes, sir.

Q. Well, you were down in the office when Mr. Smith drew the assignments, weren't you?

A. No, sir.

Q. You heard them read there?

A. No, sir.

Q. Mr. Smith says you did?

A. I can't help what Mr. Smith says.

Q. How long after did you see them?

A. I was tax collector at the time; I came into Mr. Smith's office nearly every day; I come in here for advice.

Q. Did you go in the office that morning when Mr. Smith was preparing these papers?

A. Yes, sir.

Q. Before the execution of them?

A. No, sir.

Q. Not until after they were signed?

A. I can't say about that.

Q. You were there before they were executed?

A. I don't think I were.

Q. You don't know?

A. If you want me to swear positively I will say I don't know.

Q. Did you see them? Did you see the papers?

A. I didn't see the papers until they came back from Belvidere, no, sir.

Q. Did you see the mortgages that day?

A. What mortgages?

Q. The different bonds and mortgages—the Kramer mortgage and the Case mortgage?

A. The Kramer mortgage that he gave to me to take home the same day; and the Case bond.

Q. The Case bond?

A. Yes, sir.

Q. The Kramer mortgage, what become of that?

A. I don't know.

Q. You got an assignment of that mortgage didn't you?

A. No, sir.

Q. I am asking you about the Case mortgage. Did you get the Case mortgage is what I asked you?

A. Yes, sir.

Q. And the bond?

A. Yes, sir.

Q. Who gave them to you?

A. The Case mortgage? Now what are you talking about? The Kramer mortgage he means, does he not?

Judge Morrow.—The witness does not understand the question.

Q. You got two assignments didn't you, that day?

A. There was no Case mortgage.

Q. What is the other mortgage, let us know what it is?

A. I don't know what it is.

The Court.—It is Exhibit D 1, a mortgage made by William S. Case and wife to Henry H. Mellick to secure $2,000.

(The Witness) I thought you were on the Jake Mellick mortgage—deed—at New Villiage.

Q. We are asking you about the Case mortgage; did you get that on that day?

A. Yes, sir.

Q. Who gave them to you?

A. Mr. Smith.
Q. Gave them to you?
A. Yes, sir.
Q. And you took them away with you?
A. Yes, sir.
Q. And the bonds?
A. Yes, sir.
Q. How soon now did you get these two assignments of those mortgages?
A. That I cannot say.
Q. What say?
A. No, sir.
Q. Well about how soon?
A. They might have laid in his office for some time for all I know.
Q. That ain't answering my question. About how soon did you get them?
A. I could not answer.
Q. You knew what was in them, didn't you?
A. What was in them?
Q. Yes, sir.
A. I knew what should be in them.
Q. You knew they were an assignment to you?
A. Yes, sir.
Q. Now all right. When did you first know Emma Keiter?
A. I have known her for a long time.
Q. A long time?
A. I don't know just how long that is, as she would come to the store.
Q. Trade there?
A. Didn't trade—traded there for cash.
Q. You would not trust her of course; you made her pay as she went, I suppose?
A. She was trusted a little, and stands there yet.
Q. Then she was not in very good credit?
A. I should judge not.
Q. Just so. Then you knowed her to your sorrow?
A. I knowed her to my sorrow, yes, sir.
Q. Was it a very large bill?

A. If you would like to see the books.

Q. I want to know whether it was a very large bill?

A. Just according to what you would call a large bill.

Q. How much do you call a large bill?

A. Seventy odd dollars.

Q. Never got it?

A. Guess not; that was while she was Emma Keiter.

Q. (By the Court) Did you say you trusted that girl?

A. I should not say that; I supposed it was for her mother; but she would come to this store and charge to Emma Keiter, my store No. 2; David Hawk can answer that when he comes on the stand; I don't know.

Q. Was that before she was married?

A. Before she was married, yes, sir.

Q. (By Mr. Shipman) When did you first hear that your father was going with Emma Keiter?

A. When did I first hear?

Q. Yes, sir; eh?

A. I could not answer that.

Q. As near as you can answer, Mr. Mellick?

A. I could not give you a very near answer.

Q. As near as you can tell—it was some time before this, March, 1878, wasn't it?

A. No, sir; my impression was it was along in about the middle of March the first I heard of it.

Q. (By the Court) You swore that from time to time he would take her to concerts?

A. That was indirectly.

Q. When you are asked by counsel whether you heard of it, it makes no difference when, or how, or where, but if you heard of it from anybody?

A. I could not state anyone I heard it from.

Q. (By Mr. Shipman) I don't ask you that. I ask you if you had heard it?

A. Yes, sir.

Q. Rumored around?

A. Yes, sir; there was such a rumor.

Q. (By the Court) The question is, how long before her marriage?

A. I could not say that.

Q. (By Mr. Shipman) Well, some time before?

A. I could not say the time.

Q. But it was before that, that you heard such stories?

A. I would not say; my impression is that I had heard it some time before; and yet I don't know.

Q. That is what I ask you, whether you had heard it some time before this 17th of March?

A. Yes, sir.

Q. Now, Mr. Mellick, didn't you hear that your father was likely to be married on the 17th of March, the 18th of March?

A. No, sir; no, sir.

Q. Didn't any one tell you that story?

A. No, sir.

Q. Had nobody told it to you at all?

A. No, sir. I didn't think such a thing as his getting married.

Q. I didn't ask you what you thought about but what you heard or did. Now then, Mr. Mellick, when you heard these rumors about your father's getting married, I mean about his running with Emma Keiter, I mean about going after Emma Keiter, did you never say anything to him about it?

A. I don't think I did.

Q. Didn't you ever say anything to your father about his going with Emma Keiter?

A. I don't think I did.

Q. You never did? Do you now swear here to what is here—wait a minute—do you swear here that you heard rumors that your father was going after this Emma Keiter and that you never, as a son, said anything to him about it?

A. I say I don't swear that I never did; I may have.

Q. You may have spoken to him?

A. And I may have spoken to him of her.

Q. You may have spoken to him?

A. Yes, sir.

Q. More than once?

A. It would not be likely; I might.

Q. Didn't you, now, tell your father not to do it, not to go with the girl, or to marry her?

A. It would be likely to be so, that I would tell him not to run with that girl, likely, yes, sir.

Q. Now, then, didn't he tell you that he wanted a housekeeper?

A. Yes, sir.

Q. And didn't he tell you that he was going to marry this girl?

A. No, sir.

Q. Eh?

A. No, sir; I didn't think of such a thing.

Q. What he said to you?

A. He told me who he wanted for a housekeeper.

Q. You said that before.

A. No, sir.

Q. Did that girl ever keep house for him?

A. No, sir.

Q. When did he tell you that about that girl?

A. That was along the last of March.

Q. The last of March?

A. Along the last of March.

Mr. Morrow.—What girl do you mean?

Q. The Robbins girl, is that the one you mean?

A. That is an old woman.

Q. Was she married or single?

A. Single.

Q. Well, you say he talked of getting her?

A. Yes, sir.

Q. When did he talk to you about her?

A. I told you along the last of March.

Q. What makes you think it was the last of March?

A. Because he talked about going to keep house.

Q. Then you heard before that, that he was running after this girl, Emma Keiter?

A. I may have heard it, yes, sir.

Q. And you might have spoken of it to him?

A. Yes, sir.

Q. And may have spoken to him about her more than once?

A. I don't know.

Q. Didn't you urge him to take this Robbins woman, to keep house for him?

A. No, sir.

Q. Didn't you suggest it to him?

A. No, sir.

Q. Where did she live?

A. Stewartsville, yes, sir.

Q. And relation to you or your family, in any way?

A. No, sir.

Q. How come you to speak about her?

A. I was acquainted a number of years.

Q. Who had?

A. We all had.

Q. And he had nothing to do with her—very little?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. (By the Court) Had he been in the habit of visiting her?

A. No, sir.

Q. (By Mr. Shipman) How long before he had seen her—a good while?

A. I could not say.

Q. A good while?

A. No, sir.

Q. How far is that place—Stewartsville?

A. Seven miles.

Q. Did he ever go?

A. I don't know.

Q. And you don't know that he had seen this girl for years?

A. Only what he told me.

Q. And he only told you he would like to have her.
A. Yes, sir. He wanted me to go and see her.
Q. When was that?
A. That was along in the last of March.
Q. Last of March?
A. Yes, sir.
Q. After this assignment was made to you?
A. Yes, sir.
Q. Did you go and see her?
A. Yes, sir.
Q. After this assignment was made to you?
A. Yes, sir.

The Court.—He swore positively that there was nothing said about the Robbins woman or keeping house, as I understand it, until after the assignment was made.

Q. Then you swear you didn't know anything about your father getting married until after he was married?
A. Yes, sir.
Q. Didn't you hear that he was going to get married?
A. I didn't.
Q. Didn't you know that he had been over to see Valentine Hillburn?
A. No, sir.
Q. Ever hear of that?
A. No, sir.
Q. Do you know Hillburn?
A. No, sir.
Q. See him personally?
A. Never saw him until yesterday that I know of.
Q. Hadn't you been over to see him before yesterday?
A. No, sir.
Q. What time did you go yesterday to see him—you did see him?
A. Yes, sir.

Q. Who with?

A. Mr. Smith.

Q. How long were you there?

A. Half an hour; twenty minutes.

Q. (By the Court) You knew the Court had adjourned to meet at his place this morning?

A. Yes, sir.

Q. (By Mr. Shipman) Now, Mr. Mellick, what time was it your father went down to Mr. Smith's about this mortgage business?

A. In the morning.

Q. Did you know he was going?

A. Yes, sir.

Q. Did he ask you to get the mortgages out of the safe?

A. Yes, sir.

Q. And you went and got them?

A. Yes, sir.

Q. He told you what he was going for?

A. Yes, sir.

Q. Why didn't you go with him?

A. Well, I had no particular reason to go with him; he told me what he was going to do.

Q. He voluntarily told you that morning?

A. Yes, sir.

Q. That he was going to make an assignment to you of the two mortgages?

A. Not of the two mortgages; I don't remember that one—he must have——

Q. All I want to get at is the fact. Did he tell you he was going to assign both those mortgages to you?

A. Did he tell me he was going to assign them both?

Q. Yes, sir.

A. That was the agreement.

Q. A while ago you said you didn't know about both of them?

A. I didn't know that you had reference to both of them; I thought you meant the Case—I was thinking about the deed to my brother Jacob.

Q. Then he told you before he started he was going to assign both those mortgages over to you?

A. Yes, sir.

Q. And you understood he was a going to?

A. Yes, sir.

Q. And you went down to the office pretty soon afterwards, didn't you?

A. No, sir, I don't think I did.

Q. You don't think you did?

A. No, sir.

Q. Mr. Smith says you came in half an hour?

A. I don't want to contradict Mr. Smith, but I don't think I was there that soon.

Q. What time do you think you were there?

A. About ten o'clock.

Q. Ten o'clock in the morning?

A. Yes, sir.

Q. What time did your father go?

A. He went right after we had our breakfast.

Q. What time did he take breakfast?

A. About seven o'clock.

Q. In the morning?

A. Yes, sir.

Q. You sold, you say—this property you say came from the sale of the farm—this $5,000 mortgage, originally?

A. No, sir.

Q. What did it come from?

A. From the mortgage that he had on a farm.

Q. Had on the farm?

A. On the Bayard farm.

Q. He sold the Bayard farm originally?

A. No, sir.

Q. Was not the original mortgage $8,000?

A. I think it was; yes, sir.

Q. It was $8,000. Didn't you get $3,000 of it yourself?

A. No, sir.

Q. You never did?

A. No, sir; well, I should not say no, I got my $1,200.

Q. Don't say no when you ought to say yes.

A. That is all right, but I don't know where he got this $1,200 from; I could not say.

Q. Didn't you collect the old man's money for him?

A. Not at that time.

Q. Not at that time?

A. No, sir.

Q. The New Village property, how long did he own that?

A. Oh——

The Court.—You mean the farm, or the house and lot?

Q. The house and lot.

A. I think I was seventeen or eighteen years old when he bought that.

Q. You were?

A. Yes, sir.

Q. And that now belongs to Jacob?

A. According to the papers here.

Q. Who lives on it?

A. I think Sylvina Cook.

Q. Do you rent it?

A. No, sir.

Q. You were the Agent of Jacob?

A. No, sir.

Q. Who is?

A. I don't know; no one has collected any rent since my father died.

Q. Before your father's death?

A. My father had possession of it?

Q. Didn't you collect the rents?

A. No, sir.

Q. None of it?

A. Some times they would be sent to me.

Q. How often?

A. I could not say.

Q. Keep any account?

A. No, sir.

Q. None at all?
A. No, sir.
Q. Can you tell how much you got?
A. None at all.
Q. How much rent—for the rent?
A. It was passed over to my father.
Q. How much would it rent for a year.

The Court.—I believe I ruled all this out; that he received this from his father.

Q. Now when your father moved down to New Village, after he was married, Mr. Mellick, he had pretty good furniture, hadn't he?
A. I don't know.
Q. You don't know—didn't you visit him?
A. No, sir; not while he lived there.
Q. Never visited him at all?
A. Yes, sir; when he was left alone there.
Q. When he was left alone?
A. Yes, sir.
Q. Now then didn't you see any of the furniture that was going down there?
A. When it went there? No, sir.
Q. Did you know he was going to move there?
A. Did I know he was going to move there?
Q. Yes, sir.
A. Well, yes; I will say that I knew he was going away to live there.
Q. You knew he was going to move there?
A. Yes, sir.
Q. When did you find that out?
A. When he went away.
Q. That is the first you knew of it?
A. Yes, sir.
Q. The day he went off?
A. Yes, sir.
Q. (By the Court) Did you hear that the house was fixed up, put in order, and that some people here from

Phillipsburg went up there to set it up, stayed all night and had a sort of a house warming before hand?

A. No, sir.

Q. Before he was married?

A. No, sir; I have heard since.

Q. (By Mr. Shipman) No, but before?

A. No, sir.

Q. (By the Court) Didn't hear of it at the time it took place?

A. I may have; I don't remember.

Q. None of the members of your family up there?

A. No, sir.

Q. (By Mr. Shipman) Your memory pretty good?

A. Yes, sir.

Q. What business are you in?

A. The wholesale produce business.

Q. How long have you been in that business?

A. I have been at it nearly a year.

Q. You have been in some public business—public office?

A. Yes, sir.

Q. What?

A. I have been freeholder; tax collector.

Q. Had some little trouble as Freeholder, too, didn't you?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Ran for Sheriff once, too?

A. Yes, sir; you voted against me, too.

Q. (By the Court) You say when you came back from Mr. Smith's office you threw these bonds and mortgages in a pigeon hole in the body of the safe where your father kept other papers?

A. Not just where he kept other papers, but he kept papers in my safe.

Q. In the outside part of it?

A. Yes, sir.

Q. What is there in this pigeon hole?

A. I can't say exactly, but I have a number of papers there, such as cancelled mortgage—

Q. And you never looked at them or thought of them again until this notice was brought you in August?

A. Come to look for them and they were not there.

Q. How near were they to any other papers that your father had?

A. Right by.

Q. In the same pigeon hole?

A. Were not supposed to be in the same pigeon hole.

Q. And your father kept his papers in there, and all of you together?

A. Yes, sir.

Q. I understood you to say that previously to that 18th of March they had been kept in the inside lock box?

A. Yes, sir.

Q. How come they to be put in there?

A. Oh, well, some papers I always kept in there, at his request; keep them in there; we always thought it was safer in there than the outside.

Q. Why safer?

A. Suppose, may be, a fire.

Q. Was the outside fire-proof?

A. Not so much so, we never thought?

Q. When he wanted them how could he get them?

A. He could not.

Q. When he did?

A. I would unlock that place and get them out for him?

Q. Who carried the key to it?

A. I did if I was home; if I was not I gave it to my clerk; kept money in it.

Q. (By Mr. Morrow) Which key?

A. The inside key.

Q. (By the Court) The outside door stood open during the day time?

A. Very seldom locked.

Q. After these bonds and mortgages had been as-

signed to you and you brought them back to the safe, why didn't you put them in the lock box again?

A. I have no particular reasons for putting them there; I had a number of papers outside, and I put them outside with the others.

Q. And you had been keeping them inside, and left them outside until this notice of 13th August was shown you?

A. Yes, sir.

Q. And didn't in the meantime think what had become of the assignments, whether they had come from the records, or from Mr. Smith, or what not?

A. I don't remember; no, I do not.

Q. No rocollection of ever thinking about the assignments at all, as I understand you, until at least after the 13th of August?

A. I can't say positively I never thought of them; I always had such confidence in Mr. Smith that anything he done was all right with them, and I think you will find he has papers of mine here now; I don't know.

Q. Can you now explain why if those papers had been kept so safely in the lock box when they belonged to your father, you having no legal claim on him, at least, why after they had been assigned to you personally, you didn't think it worth while to put them back in the lock box?

A. One reason—my way of thinking—they were not of any value after they had been transferred.

Q. No value?

A. How could they be? A common man's thinking. They had been transferred to me; on record--a transfer.

Q. Would that diminish their value?

A. I don't know; yes, sir; I don't know. But I can't say, that is the reason I left them out there.

Q. You knew your father had access to that part of the safe and was in the habit of going there?

A. Yes, sir; but I never thought of his taking them out.

Q. He was in the habit, I understand you, of going to that part of the safe freely?

A. Any part of the safe except the inside; that he had no key to. If I had two keys he would have been apt to have had one; because he had liberty to go to my money drawer; he could go there whenever he pleased.

Q. (By Mr. Shipman) You knew Mr. Kramer—how long had you known Mr. Kramer, the mortgagor in this case?

A. How long did I know him?

Q. Yes, sir.

A. Well, ever since I lived in Phillipsburg; I lived next house—I moved in his house when I first came to Phillipsburg.

Q. How long did you live in his house, Joe Kramer's house?

A. I think about two years.

Q. About two years?

A. Yes, sir.

Q. You and Mr. Kramer are pretty intimate?

A. Not necessarily so.

Q. Not necessarily, no; that ain't answering the fact; you are an intelligent man, why don't you answer my question; I asked you whether you and Mr. Kramer were very intimate?

A. We were not.

Q. You were not. Were you unfriendly then?

A. No, sir; as business men we were friendly.

Q. Are friendly—were you?

A. I can't say that we were.

Q. Political friends?

A. I don't know whether he was a Democrat or Republican.

Q. That is not the question; it is whether you and he were political friends?

A. Not any more so than you and me are.

Q. Not any more so?

A. No, sir.

Q. Did you often talk with him?

A. No, sir.
Q. Not very often?
A. No, sir.
Q. Ever sell to him?
A. No, sir.
Q. Ever talk to him about this mortgage?
A. No, sir.
Q. Ever talk to him about paying the interest on it?
A. I may have.
Q. Did you know he was going to pay this interest on the fifth of August?
A. No, sir; he had not been in the habit of telling me.
Q. Did you know that he was going to pay this interest on the 5th of August, 1878?
A. No, sir.
Q. (By the Court) Did you hear that he was expected to pay the interest?
A. No, sir.
Q. (By Mr. Shipman) Did you know that your father got the bond and mortgage at that time?
A. No, sir.
Q. Didn't know anything about it?
A. No, sir; and not only that, I can't say that he ever took it out of the safe.
Q. You can't say how it got out of the safe?
A. I supposed he did.
Q. You don't know?
A. I don't know.
Q. (By the Court) Never asked him?
A. I don't know whether I ever asked him or not.
Q. (By Mr. Shipman) Who brought you that bond?
A. Who brought it to me?
Q. Yes, sir; after the 5th of August, 1878?
A. No one.
Q. No one?
A. Yes, sir.
Q. Where did you get it?
A. It was in my safe.

Q. You never knew that your father had it out on the 5th of August, 1878?

A. No, sir.

Q. Had your father come in the store on the 5th of August, 1878?

A. I don't know, because it ain't likely I was home.

Q. Do you know whether he was?

A. No, sir.

Q. Did you see Kramer that day?

A. That I don't hnow; not that I know of.

Q. Did your father have any money that day?

A. I don't know.

Q. When did you see that endorsement on that bond of August 5, 1878?

A. That I can't tell you.

Q. You can't tell when you first saw that endorsement on that bond of the date of August 5, 1878?

A. My recollection would be when he showed me that notice he had that I went in and found the bond and would be likely to see it.

Q. Where did you find the bond?

A. In my safe.

Q. And whereabouts?

A. In one of the pigeon holes.

Q. In the same place where the other bonds and mortgages were?

A. What other bonds and mortgages?

Q. Why the Case mortgage and bond?

A. Yes, sir.

Q. Same pigeon hole that they were in?

A. Yes, sir.

Q. That is the first you had known that it was out was when you saw that out?

A. Yes, sir.

Q. You swear to that?

A. Yes, sir.

Q. Very well. Did you see anything of Mrs. Emma Mellick that day?

A. No, sir.

Q. Saw nothing of her?
A. No, sir.
Q. Did you ever talk to her about her marriage?
A. No, sir.
Q. Ever say anything to her?
A. No, sir.
Q. Did you know she was buying furniture?
A. No, sir.
Q. Never knew anything about it?
A. No, sir.
Q. (By Mr. Morrow) You mean at the time she was buying?
A. Yes, sir.
Q. (By Mr. Shipman) Didn't you know that Emma Keiter, as was then, was buying new furniture?
A. No, sir.
Q. Never heard it at all from anybody?
A. No, sir.
Q. Didn't you know she was buying furniture to move up to the house there?
A. No, sir.
Q. Never knew it was moved there?
A. No, sir.
Q. Never heard of it?
A. What?
Q. Prior to their marriage that she had bought new furniture to take to the house at New Village?
A. No, sir.
Q. Don't you remember now that your father went up to the house on the fifth of April, 1878?
A. No, sir.
Q. (By the Court) The day before you heard of his marriage—didn't your servant girl, or hired girl, go up?
A. I could not say, he might have; my horse and wagon was at his disposal.
Q. (By Mr. Shipman) Your hired girl was?
A. Yes.
Q. She was, eh?

A. Yes, sir.

Q. He took her, too?

A. I had nothing to do particularly with the hired girl.

Q. Did you know whether she was taking any furniture up that time or not?

A. No, sir, I do not.

Q. And didn't she come back with the wagon at night?

A. I could not say that.

Q. Didn't she tell you that she had been up there?

A. No, sir.

Q. You never knew that he had any furniture in there until after he was moved; that you swear to?

A. What?

Q. (By the Court) Never heard at the time that your father had put new furniture in the house at New Villiage until after he was married?

A. Could not say that I never heard it; I may have heard it.

Q. (By Mr. Shipman) You can't say?

A. I would not say.

Q. I want you to swear whether you ever heard, prior to your father's marriage, that Emma Keiter was buying furniture for that house?

A. No, sir.

Q. You swear she never did?

A. No, sir.

Q. At any time?

A. Yes, sir.

Q. How soon after he was married did you visit him up at the New Village house?

A. I never visited him while she was there; I may have come to New Village and seen him outside.

Q. Never went in the house while she was there at all?

A. No, sir.

Q. Never—you never had anything to do with her at all?

A. No, sir.

Q. Didn't recognize her as your step-mother?
A. No, sir.
Q. So you never had anything to do with her?
A. No, sir.
Q. You went into the house—you did go into the house?
A. No, sir.
Q. After she had gone away, when she was not there you went into the house?
A. I don't remember being in the house at all, I may have been.
Q. Never?
A. O, yes.
Q. That is what I ask—were you ever in the house?
A. Yes, sir, I was.
Q. Well, when?
A. O, years ago—lots of times.
Q. I want to know of you whether you had been in the house since Emma Keiter lived in the house and lived up there or not?
A. Yes, sir.
Q. When?
A. At the time he had a sale.
Q. When?
A. In the spring of 1883, I think.
Q. 1883?
A. Yes, sir.
Q. Was that the first time when you were there?
A. No, sir.
Q. When was the first?
A. I could not say when was the first.
Q. You could not say?
A. I may have went there after she moved down, for all I know.
Q. What?
A. I could not say positively.
Q. Were you there in the year 1879?
A. I was likely to have been in.
Q. Were you?

A. I can't say positively whether I was or not.

Q. Were you in the year 1880?

A. 1880?

Q. Yes, sir.

A. No, I think there was another family living in the house then.

Q. 1880?

A. I think so.

Q. When did they break up housekeeping entirely?

A. Entirely?

Q. Yes.

A. I think he broke up entirely in December, 1880.

Q. 1880?

A. 1879 or '80.

Q. '79 or '80; did you say 1879?

A. Well it is the second year after they were married; call it 1879; that is right.

Q. When were they married?

Q. (By the Court) That would be the fall of 1880?

A. 1880; yes, sir.

Q. (By Mr. Shipman) 1880?

A. Yes, sir.

Q. Were you in the house then?

A. I can't say positively, but very likely to have been in the house?

Q. Can't say.

A. No, sir.

Q. Could not see there was furniture there, new furniture?

A. Yes, sir; right new.

Q. New wasn't it?

A. I don't think you would call it new had you seen it.

Q. I am asking you whether there was new furniture in that house.

A. No, sir; I could not call it new furniture because it was mouldy and in bad shape.

Q. Hadn't it been bought knew?

A. I suppose so.

Q. (By the Court) You can state whether it was new furniture when he moved up there?

A: Yes, sir.

Q. (By Mr. Shipman) What was it?

A. I can't tell you.

Q. Now didn't you know when your father had a vendue?

A. Is that this case?

(Objected to.)

Q. Didn't your father hold your notes for large sums of money?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Didn't he hold it for a thousand dollars?

A. No, sir.

Q. For nothing?

A. No, sir.

Q. Didn't he threaten to sue for it?

A. No, sir.

Q. Didn't you give him a new note for it?

A. No, sir.

Q. Nothing of the kind?

A. No, sir.

Mr. Shipman—I don't know how far your Honor ruled about going into any of this.

Q. Didn't he have a note against you for $500?

A. No, sir.

Q. Nor $100?

A. No, sir.

Q. Or anything like it?

A. No, sir.

Q. (By the Court) Did he at any time ever have any note or obligation of any kind against you?

A. Well, now he had that mortgage.

Q. (By Mr. Shipman) What mortgage?

A. Twelve hundred dollars.

Q. (Showing witness Exhibit C. 7) Did you ever see that mortgage—that bond I mean?

The Court.—Cancelled bond.

A. I suppose so; I must have seen it; it has got my signature to it.

Q. Did you get the mortgage?

A. Yes, sir.

Q. Is it your mortgage?

A. Yes, sir, that is the one I was telling you about.

Q. This is George D. H. Mellick to Henry H. Mellick; is that your name—George D. H.?

A. Yes, sir.

Q. Commonly called "Howard?"

A. Yes, sir.

Q. When did you pay that mortgage off?

A. I don't know; it will show for itself.

Q. After that bond was paid off what became of it?

A. Put in my safe along with the others.

Q. Put in your safe along with the others?

A. Yes, sir.

Q. When did you last see it?

A. I didn't know anything about it until now. I supposed it was in my safe.

Q. Supposed it was in your safe up to this moment?

A. No, they claimed here that the bond with the seal torn—I supposed that was the deed they were claiming.

Q. When did you hear that?

A. The papers you have there will show it.

Q. What papers?

A. Any that you have here.

Q. I can't tell what papers will show; let us know?

A. I don't know whether it is in their pleadings here or not; I didn't know positively then that that was it; because it is G. D. Mellick.

Q. (By the Court) You never missed that bond out of the safe until this suit was commenced?

A. No, sir, because it was cancelled; I didn't think anything about it.

Q. (By Mr. Shipman) I want to know when you

first knew that this bond was taken out of your safe?

A. I don't know that I knew it before I come to look for it this fall or spring rather, or summer, whenever it was when this notice was given here.

Q. What time?

A. You know when it was; I don't know.

Q. (By the Court) When did you have any reason to believe or suspect that that bond had been taken out of your safe?

A. When they commenced this suit, that is as near as I can tell you.

Q. (By Mr. Shipman) Did you look for it then?

A. Yes, sir, it struck me when I saw that, that perhaps that was my bond.

Q. When you saw what?

A. Mr. Smith read over the bill in Chancery.

Q. The bill in Chancery?

A. Yes, sir.

Q. Was that the first that you had any idea that this bond was gone?

A. Yes, sir.

Q. Did you go and look for it then?

A. Yes, sir.

Q. And found it was gone?

A. Yes, sir, and told Mr. Smith.

Q. Why didn't you answer that a while ago?

A. You didn't ask me.

Q. Didn't you give that bond to any one?

A. No, sir.

Q. Didn't you hand it to your father?

A. No, sir.

Q. To Kramer?

A. No, sir.

Q. Didn't you have any talk with Kramer about it?

A. Not a word.

Q. He never told you anything about this bond?

A. No, sir.

Q. That the old man had given it to her?

A. No, sir.

Q. Or that he had given it to her?

A. No, sir.

Q. Did you see Kramer in the month of August, 1878, that you know of?

A. Every day I am likely to.

Q. Did he ever say anything to you about paying interest in August, 1878?

A. No, sir.

Q. (By the Court) When Mr. Kramer brought this notice to you that has been served on you, didn't you inquire about the circumstances, what had taken place at Mrs. Keiter's house, and all that sort of thing?

A. I may have done it, but I don't remember.

Q. You can't recollect that your curiosity was sufficiently excited to remember fully what transpired at Mrs. Keiter's house?

A. I can't remember what passed.

Q. Or didn't learn from Mr. Kramer that the old gentleman had handed back an old cancelled bond in the place of another?

A. I could not say that I hadn't learned that; yet I may have; I would not say that I did or did not; you don't want me to testify to what I didn't say. But I am very likely to know it, but I don't know.

Q. (By Mr. Shipman) Then you did know from Kramer when he brought that notice to you on the thirteenth of August, 1878, or thereabouts, that a cancelled bond had been handed to Mrs. Mellick?

A. I will not say that I did or did not, but my first recollection of it when your pleadings were here—(interrupted)

Q. A little while ago you answered the Vice Chancellor that you did not.

A. (Not answered.)

Q. You hadn't any other cancelled bond in your safe but this one?

A. I think I had.

Q. Not one that you had given?

A. I am not sure, but I think so, yes, sir.

Q. One that you yourself had given?

A. I think so; yes, sir.

Q. When did you pay that note to the Phillipsburg National Bank?

A. I think when it came due; I think it was the third day of April.

Q. Of what year?

A. 1878.

Q. Third of April, 1878?

A. Yes, sir.

Q. Were you on that note at all?

A. I am not positive, as I told you a while ago, that I was on that note.

Q. (By the Court) Your father collected $300 of interest that day apparently—did he give you any part of that?

A. No, sir.

Q. Didn't you know he collected the interest on the second April from Kramer?

A. Yes, sir, I am likely to have known it because he would have come to me—no, he would not—not at that time.

Q. If you ever knew that your father collected the interest on that bond, was not your curiosity excited as to where the bond was?

A. It is not likely, because he was to collect it according to my assignment.

Q. The assignment says you were to pay the interest to him?

A. As I understood it he was to collect his interest.

Q. And how would he collect it without the bond?

A. I don't know.

Q. Is that what you left the bond on the outside part of your safe for, that he could collect the interest?

A. That is very likely to be one of the reasons; I could not say.

Q. Tax you mind and see if that was not the case, or not?

A. Because I always supposed he would collect his

interest whenever he wanted to, or whenever it was due; didn't think of anything.

Q. (By Mr. Shipman) Were there ever any letters of administration taken out on your father's estate?

A. No, sir.

Q. None at all?

A. No, sir.

Q. And these assignments of these mortgages which your father made to you, and the deed to your brother, constituted all the property he had, didn't it?

A. All that I know of.

Q. All that you know of?

A. Yes, sir.

Q. Was that—so that on that day, on the 17th of March, 1878 your father divested himself of all the principal of his estate?

A. Well, yes, sir; that is, I didn't know that was all he had then; I could not say then.

Q. Do you know of anything he has ever had since?

A. I knew he had a mortgage on the Hager property up to Hollow.

Q. At that time?

A. Yes, sir.

Q. What has become of it?

A. I have never seen it; I don't know anything about the papers—I can't find any papers.

Q. Where were they kept?

A. I don't know anything about that.

Q. You don't know anything about those papers?

A. No, sir.

Q. Whether they were paid at that time or not?

A. They were not paid at that time.

Q. Were they in your safe?

A. I don't know anything about them, except that I heard that he had a mortgage there.

Q. Where did you hear?

A. Heard him say so.

Q. Didn't you have all his papers—you told us a while ago——

A. I may have had these papers; I don't know.

Q. Have you looked to see where they are?

A. No; I had supposed he collected the money and spent it.

Q. You supposed he had collected the money and spent it?

A. I supposed he had collected the money and spent it.

Q. Before the 17th of March, 1878?

A. Since.

Q. How much was the mortgage?

A. No, sir; I do not.

Q. You don't know?

A. I think it was $2,000.

Q. What Hager was that?

A. I don't know his first name.

Q. Where did he live?

A. Up to Hollow.

Q. Did you ever see the mortgage?

A. I don't remember; I may have.

Q. You say you would keep all your father's papers in your safe?

A. All he gave me.

Q. When did he give you these papers to keep in the safe?

A. I don't know.

Q. How long had you kept them locked up in that drawer?

A. After Kramer had given me the mortgage then he put them in my safe.

Q. After Kramer gave it?

A. Yes, sir.

Q. And the Case and Mellick papers?

A. Yes, sir.

Q. You put them in?

A. Right away.

Q. How long?

A. Before it was given?

Q. No, before—after it was given, before assigned to you?

A. That I can't say, whenever Mr. Smith returned it to me, and if he returned it the same day it must have been put there then.

Q. In that little box?

A. No, sir; in the outside.

Q. I asked you how long before the assignment to you was those two bonds and mortgages put in the lock box inside the safe?

A. When they were given.

Q. Any promissory notes put in there?

A. Promissory notes?

Q. Yes?

A. I don't know of any.

Q. Don't know of any?

A. No, sir.

Q. Those two bonds and mortgages were the only things that were kept in that little box?

A. I can't say they were the only ones. I had mine there.

Q. The same place?

A. Yes, sir.

Q. Then all that ever belonged to him was there?

A. No, sir; I can't say that.

Q. All that ever did was kept in that safe?

A. No, sir; I can't say.

The Court.—Answered several times.

Q. Then since 17th of March, 1878, you know of no other property since that time and never seen after it, but this deed and those two mortgages?

A. Yes, sir; he had a mortgage on a property in Stewartsville against Mary Mellick; that has been paid off.

Q. When?

A. The record will show.

Q. Paid to him?

A. Yes, sir.

Q. That was before the 17th of March, 1878?

A. I think not.

Q. No?

A. I think not, no, sir.

Q. After that?

A. I think so.

Q. Well when was it paid?

A. I can't tell you.

Q. (By the Court) Paid in his life time?

A. Yes, sir.

Q. How much was it?

A. A small amount—a couple of hundred dollars.

Q. What occasion had he to spend any money after he came to you?

A. I can't say; he was my father, and I let him do as he saw fit.

Q. Did he spend any money on anybody after he came back from New Village the last time?

A. I think not.

Q. What became of the interest on these mortgages?

A. That I can't say.

Q. Didn't you collect it yourself?

A. Yes, sir; but I gave it to him.

Q. (By Mr. Shipman) All of it?

A. No, I can't say that I gave him all the interest.

Q. How much did you give him now?

The Court.—I will overrule that.

Q. (By the Court) You say that when your father assigned these mortgages to you you promised to take care of him as long as he should live?

A. Yes, sir.

Q. Any suggestions that he should put that in writing?

A. No, sir.

Q. Was that promise made in Mr. Smith's office or not?

A. No, sir; made in my office.

Q. And you didn't suggest it here when you came to take the papers that it ought to be in writing?

A. No, sir.

Q. If he reserved the interest on these two mortgages, the mortgage for $5,000, and the mortgage for $2,000, was not that enough to support him?

A. Yes, sir.

Q. And if he had this other mortgage that you spoke of, and the house and lot in New Village, what occasion was there for you to undertake to take care of him so long as he had four or five hundred dollars interest coming in—rent?

A. All I can say is that he wanted to use considerable money; had been using considerable money.

Q. But this promise by a parent to take care of a child we generally understand is made for want of money, ready money—for the child to take care of a parent, is want of ready money?

A. The way he would spend money at that time he would soon have none.

Q. What did he spend his money in at that time?

A. I could not say.

Q. You told him some time before this that he was spending a great deal of money, borrowing money of you, and out of the Banks, and had an income of four or five hundred a year; didn't you have any curiosity to know what he did with that money?

A. I may have.

Q. Didn't you inquire of him?

A. I could not say.

Q. Didn't you take no pains to inquire outside and find out what your father was doing?

A. I might have, yes, sir.

Q. Don't you think you did?

A. Very likely to.

Q. Did you learn how he was spending money?

A. I heard indirectly that he was spending considerable on this girl.

Q. (By Mr. Shipman) When did you hear that?

A. I can't say.

Q. When, about?

A. I can't say.

Q. As near as you can tell, when you first heard that he was spending money, considerably money on that girl?

A. In the year 1877 or 1878.

Q. 1877 or 1878?

A. Yes, sir.

Q. What is the time—1877 or 1878?

A. I can't tell.

The Court.—The witness has evidently stated that it was prior to the time of this assignment.

The Witness.—And as he was going on he would have nothing left.

Q. (By the Court) Did you suggest that to him?

A. Yes, sir; I was perfectly willing to keep him if he had nothing already; but he was not using me as he did the other boys.

Q. He was spending his money, and spending it improperly did you suggest to him?

A. I could not say that.

Q. If he was spending it on this girl?

A. I might think so, but others might not.

Q. See any signs of dress on the part of the girl, presents or anything?

A. O, yes, sir.

Q. Did you observe that yourself?

A. Yes, sir; I might say that I did; yes, sir.

Q. Observed then that he was spending money on her—jewelry?

A. I saw her have jewelry.

Q. And you suspected your father giving her that?

A. Yes, sir.

Q. And that this money went that way?

A. Yes, sir.

Q. And that she had more finery than her father was able to supply her with?

A. Yes, sir.

Q. And you suspected your father of spending money improperly?

A. Yes, sir.

Q. And that he had not the least idea of marrying her?

A. I thought he was past the age.

Q. Where did he spend money on this girl?

A. I can't tell.

Mr. Morrow.—I forbore going into that.

Q. (By Mr. Shipman) What was your father's business of life, what had it been?

A. Farmer.

Q. That was his occupation until he quit working?

A. Yes, sir.

Q. Careful?

A. Yes, sir.

Q. Now then you say about your keeping him, that talk about keeping him, that was the first that took place on that afternoon prior to the execution of this assignment, as I understand you to say?

A. What was?

Q. The first talk that you and your father had about your keeping him or giving you these papers was the afternoon before this assignment was made?

A. No, sir; that was the first talk about—the complete talk; he had told me before.

Q. That was the first complete talk then?

A. Yes, sir.

Q. Where was that complete talk?

A. In my office, that conversation.

Q. What time of day was it?

A. In the afternoon.

Q. Who began it?

A. Well it began by his wanting money of me.

Q. That was the way of it. That is all.

Re-direct examination by Mr. Morrow.

Q. What had been your father's conduct with reference to the society of females after your mother's death until he began to go with this girl?

Objected to.

Q. What was it, Mr. Mellick?

A. To my knowledge he had never paid any attention to any woman since my mother's death.

Q. Had you heard anything of it since you heard of his going with this girl?

A. No, sir; not at all.

Q. What were his habits as to staying at your house nights?

A. He would always be in nights.

Q. I do not mean any reflections upon the lady, if your Honor please, but I would like to ask him: Had you any intimacy with this girl, or her family at all?

A. No, sir.

Q. Went with her friends or companions, society, at all?

A. No, sir.

Q. In the spring of 1878, and for some time prior to that, what had been your business?

A. In 1878?

Q. The spring of 1878?

A. And before that?

Q. Yes, sir.

A. In the mercantile business.

Q. How many stores were you carrying?

A. Two.

Q. Where?

A. Both in Phillipsburg.

Q. How much of your time was devoted to your business?

A. All my evenings; before 1878 it was.

Q. Up until the time of this marriage?

A. 1878 I was tax collector.

Q. As well as attending to your other business?

A. Yes, sir.

Q. I want to know how busy a man you were?

A. Yes, sir.

Q. Were you a very busy man, giving close attention to your business?

A. Yes, sir; I done considerable business.

ARTHUR KASE, a witness produced on the part

of the defendant, being duly sworn, testified as follows.

Direct examination by Mr. Morrow.

Q. Are you a brother-in.law of Mr. Howard Mellick?

A. Yes, sir.

Q. Were you a clerk in his store in the spring of 1878?

A. Yes, sir.

Q. Who had the key to the inner safe?

A. Why Mr. Mellick had that, I think.

Q. Which Mr. Mellick?

A. Howard Mellick.

Q. Was there more than one key?

A. Not that I know of.

Q. Did you hear a conversation between Howard Mellick and his father with reference to the assigning of bonds and mortgages?

A. Yes, sir, I heard a short conversation between them.

Q. Can you tell when it was?

A. I think it was in the afternoon, towards evening, he and his father were in the back part of the office talking.

Q. What month was that—what time of the year?

A. I could not tell you.

Q. Can you tell whether it was in the spring or fall?

A. In the spring of the year.

Q. What happened, what did you hear?

A. I was out in the store attending to the business and they called me into the office; I think Howard called me into the office, and he had papers in his hand. I don't know whether Howard had them in his hand or whether Grandpop; I don't know which one had the papers.

Q. Go on, proceed.

A. And they were looking at them, and talking

about those papers, and Howard said to me that Grandpop was going to make over some papers, or something, I don't know whether it was money or property or papers to him, and that he would keep him during his natural life and give him all the comfort I suppose, that is, board him, and clothe him and so forth; I don't know whether he said anything about giving him any money to spend or not.

Q. Anything said about the old man's debts?

Mr. Shipman.—Leading.

A. He was to settle up everything that Grandpap Mellick owed; he was to pay it.

Q. Who was?

A. Howard. Howard was to pay everything that his father owed, and should keep him, clothe him, and board him during his natural life—that is the way I understood it.

Q. What did the old man say—was that in the old man's presence?

A. Yes, sir, the old man was there, and he said to me at the time, I will be sure to have a place to stay anyhow.

Q. Who said that?

A. Grandpop, and he told me since that.

Q. Who did?

A. Grandpap Mellick, but since the time they called me into the office.

Q. Is that all you remember?

A. Yes, sir; I didn't try to keep it in my memory.

Q. You remember about the old gentleman's getting married?

A. O, yes, sir.

Q. Was it before the marriage?

A. Yes, sir; I didn't know they were going to at that time.

Q. How long before the marriage?

A. I can't remember.

Q. Had the old man ever talked to you about this business before that transaction, before that transfer of these papers to Howard?

(Objected to.)

A. I don't know. Now it has been a good while ago since this thing happened, and I didn't think about placing any of it in my memory. The day before yesterday I was subpœnaed. I tried to think of what I could; but I could tell of things—of course I aint asked the question,—that transpired between Mr. Mellick and his father relative to business.

Q. Has it anything to do with transferring these mortgages?

A. It was a talk that Mr. Mellick would have with me. He would sit in the store most of the time and wait on customers, and he used to talk about money matters, and he said he had better fix it so that Howard would be his guardian.

Q. How long was this before this conversation?

A. It might have been months before that.

Q. Was it before or after?

A. All before; before I was called in the office; because I was always advising him to do something of that kind. That is the reason I come to have the conversation with him.

Q. Had the old gentleman access to the outer part of the safe?

A. Yes, sir; any of us could go there.

Q. How was the inside of the safe kept?

A. I think it was always locked; I never noticed it open; sometimes the tin door was opened.

Q. (By the Court) You had only one key to that inside?

A. Yes, sir; I never unlocked it in my life; I might have seen it sticking in the door, but never opened it. Mr. Mellick would be there, whenever I saw it opened; I never noticed the key to know what it was.

Cross-examinaton by Mr. Shipman.

Q. Then of your personal knowledge you don't know anything about the key?

A. Yes, sir, there was no key of the outside, it was a combination lock.

Q. A combination lock?

A. We all had the combination, all the clerks, and Grandpap Mellick.

Q. The combination was not on in the day time, you say?

A. No, sir; the safe almost always stood open.

Q. That is the combination was not on?

A. The safe door was open. Mr. Mellick would take the books out in the morning and leave the door open.

Q. You don't remember the time of this conversation?

A. No, sir.

Q. Howard Mellick called you to him?

A. Yes, sir.

Q. And what you have related here is what Howard Mellick said?

A. It was the general conversation in Mr. Mellick's office.

Q. In Mr. Mellick's office?

A. Yes, sir.

Q. And you say Howard Mellick called you to him and he went over this statement what he was going to do with his father?

A. Yes, sir.

Q. Did the old gentleman make any remarks about it at all?

A. Only what I told you.

Q. That same day?

A. Yes, sir; the same time; the whole conversation.

Q. The same conversation that the old gentleman said he would have a place to stay?

A. Yes, sir.

Q. That is all he said about it?

A. Yes, sir.

Q. That is all the old gentleman said was it?

A. I told you what he said.

Q. Was that all he said?

A. Yes, sir. But then I told him—(interrupted)—

Q. Was that all you recollect what grandpop said--he would have a place?

A. Yes, sir; he would have a place and board, and Mr. Mellick would take care of him as long as he lived —that Howard would take care of him.

Q. That is what he said?

A. Yes, sir.

Q. You advised the old man to do that?

A. Yes, sir.

Q. About a month before?

A. I don't know how long before; I often talked to him, because I saw what he was doing with his money.

Q. What did you see about it, see him spending?

A. Taking a ten dollar bill, and come back broke.

Q. You saw him do that?

A. Yes, sir.

Q. Drunk?

A. No, sir, not until lately before he died; see him take a drink in the morning.

Q. Do you know what he did with these ten dollars?

A. No, sir, only by the direction.

Q. Which way would he go?

A. In the direction of the lady he afterwards married.

Q. You heard he was spending money on her?

A. I surmised it.

Q. That was the direction you thought of?

A. That was my idea; I never asked any one's opinion of it.

Q. And that was the reason you advised him to go to Howard?

A. Yes, sir; I didn't like to see it go that way.

Q. Yes, sir.

A. I knew he had sons, and I was a little bit interested myself, not directly, I never expected to get a dollar of it myself.

Q. You were his grandson?

A. No, sir, no relation to him.

Q. You were a brother-in-law?

A. Howard Mellick's wife was my sister.

Q. You were interested?

A. Naturally.

Q. That was the reason you advised the old man to do all that?

A. Yes, sir.

Q. (By the Court) Did you have any suspicion that the old gentleman might marry this young lady?

A. No, I didn't think he would marry her; I thought she would get married to some one else from what I see.

Q. Didn't you tell Mr. Mellick that he was spending his money on this girl?

A. I guess Mr. Mellick knew it.

Q. I asked you if you told him?

A. I don't remember that I did, I told him he was taking money out of the store, but he had free access to the money drawer, and to the safe.

Q. Mr. Mellick knew that?

A. He gave him a right in the store; he had a right to wait on customers if he felt like it, he could do that.

Q. Keep an account of the money he took out?

A. No, sir, it was not mine; it was not my money, so I didn't take an account.

Q. Was not it your business?

A. Whatever I paid; if anybody came in and got it I would keep an account of that; but so far as Mr. Mellick's action was concerned I kept no control of that.

Q. (By Mr. Shipman) Where do you live now?

A. Phillipsburg.

Q. You are in Mr. Howard Mellick's employ?

A. No, sir.

Q. What do you do now?

A. Work on the railroad.

Q. You spoke about spending money—did you tell the old man that he was spending too much money on this girl?

A. Yes, sir; most undoubtedly, that he ought not to do it.

Q. Before this seventeenth of March?

A. Before I was called into the office.

Q. That he was spending too much money on this girl?

A. I didn't say it was on the seventeenth of March.

Q. Had you and Howard talked about it, about spending money on this girl?

A. I don't remember that I had anything to say to Howard about that.

Q. In the course of business would Howard say the old man is spending too much money on this girl?

A. Howard would say the money is a little short, and I would tell him where it was gone.

Q. To the girl?

A. Not so; I told him that his father had took it,—not to the girl; I had no right to do that. He was my employer, and I was supposed to be under his orders.

Q. That is all.

Adjourned to Thursday, December 19, 1889, at Phillipsburg, N. J.

Transcript of shorthand notes in the above mentioned cause, taken at Phillipsburg, New Jersey, on

THURSDAY, JANUARY 30, 1889,

before Honorable Henry C. Pitney, Vice Chancellor.

Appearances as heretofore.

JOHN S. WILSON, a witness produced on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Judge Morrow.

Q. Mr. Wilson where do you live?

A. I live at Phillipsburg.

Q. And how long have you lived here?

A. I think I have lived here about nineteen or twenty years; nineteen years I think—I can't just exactly tell.

Q. Did you know Henry H. Mellick, the father of Howard Mellick?

A. Yes, sir.

Q. How long a time did you know him?

A. Well, I have been acquainted with him for about twenty years.

Q. Did you have a conversation with him in the winter of 1877 and 1878 with reference to transferring his property to his son?

Mr. Shipman.—I object to that, sir.

Judge Morrow.—The assignment to Howard is the 18th of March, 1878; I want to show it was the intention of Henry H. Mellick to convey to Howard some time before in order to show that it was not a fraudulent purpose.

Mr. Shipman.—We object to that.

The Court.—The rule, as the counsel know, is not to exclude any evidence that any one could think has any bearing. I do not think it is of much value, but always retain the privilege of changing my mind, and I don't want to adopt at present any settled notion about it. The question in the case—perhaps the vital question—is whether or not this assignment to the son was made as part of a scheme to defraud this girl; the question is not the same as if he made the assignment to his son years before. I have very grave doubts about it, but I will admit it subject to the objection.

Q. Answer the question?

A. This was during the winter of '78.

Q. (By the Court) Early part of '78?

A. The winter of 1877—'78—I could not locate the exact time in the winter; what time in the winter it was; I can tell you the reason I locate the winter of 1878.

Q. (By Judge Morrow) Go on.

A. He told me about his circumstances; sat there in the drug store one night, he and I; we were quite intimate, and I made a remark like this, Mr. Mellick you are getting along pretty well in years and probably your money in the end will be your best friend, and I would advise you to take care of what you have got, and he told me that that was what he intended to do; he didn't tell me what disposition he would make of it, but he expected to make his home with Howard, as he had done; he then had his home with Howard; he said he expected he was the only one in the family he could make his home with.

Q. Did he say anything to you in that conversation, or in any other, about the way he was treated at Howard Mellick's?

(Objected to.)

The Court.—I admitted evidence of the declarations to his wife, but they are not evidence against Mr. Howard Mellick; they are merely a circumstance occurring between husband and wife.

Judge Morrow.—Robert Fair testified to the same thing under my objection.

The Court.—I had forgotten that; but I am entirely satisfied. You may fortify that if you wish; evidence of that kind made no impression on my mind; you can counteract it if you choose. I thought I understood at the time why he talked that way to his wife. I don't think it binds Mr. Howard Mellick in the least degree.

Mr. Shipman.—We offered evidence on that subject as a part of the marriage contract—to show a part of the marriage relation.

The Court.—I will admit the evidence, but I want to say that there is no occasion for putting it in to affect the mind of the present Court. It might affect the Court of Appeals, but it has no effect on the mind.

Stenographer reads questions as follows :—" Did he say anything to you in that conversation, or in any other, about the way he was treated at Howard Mellick's ?"

A. I don't just recollect whether there was anything said at that time ; but he has.

The Court.—About that time ?

Q. About that time or any other ?

A. He had frequently told me he was well treated there, and I have called in myself different times when Mr. Mellick was sick ; we were always very intimate and friendly, and I have every reason to believe that every attention was given that should be given.

Q. Can't you say what you saw ?

A. That is just what I say myself. I seen him well cared for there during his sickness at different times.

Q. That is all.

Cross-examinaton by Mr. Shipman.

Q. What is your business, Mr. Wilson ?

A. I am a blacksmith, by trade.

Q. You are quite intimate with Howard Mellick ?

A. Known one another for the last twenty years—lived neighbors together.

Q. How near did you live to him ?

A. I don't live as close to him now as what I did some six or seven years ago.

Q. How near then ?

A. I suppose it is about two minutes, three minutes walk from my place to Mr. Mellick's.

Q. Visited him a great deal ?

A. No, sir, not lately.

Q. Any relation to him ?

A. None, whatever.

Q. You and Mr. Mellick talked a good deal about this thing?

A. I don't know that Mr. Mellick and I ever spoke upon this subject until he subpœnaed me.

Q. When did you tell him what you knew?

A. I have told it to-day.

Q. Is that the first you have told him?

A. I think at the time I was subpœnaed I spoke something about it.

Q. Did you ever talk to Mr. Mellick about it before you were subpœnaed?

A. I don't recollect ever speaking to Mr. Mellick previous to that.

Q. Or anybody else?

A. No, sir.

Q. How did Mr. Mellick know that you knew anything?

A. I was there at different times, and was very well acquainted with old Mr. Mellick, his father, and I used to talk over business matters; done business for him.

Q. You suppose that is the way he knew?

A. I don't know anything about it how he knew; I could not answer that question.

Q. That is your supposition, that is all; you never talked with Howard Mellick at all about your testimony?

A. Not previous to the subpœna; I didn't know I was going to be subpœnaed.

Q. Who subpœnaed you?

A. Mr. Mellick I think served the subpœna.

The Court.—I think Judge Morrow would hardly put a witness on the stand without knowing what he was going to swear to.

Q. What time was it in 1878 that you had this conversation with the old Mr. Mellick in the drug store?

A. I could not tell you the exact time.

Q. What month?

A. During the winter of 1878, I won't say positive what month it was; may have been in December; it may have been in January, the conversation that took place at Mr. Weldon's drug store.

Q. Anybody by?

A. I don't think there was anybody by that night.

Q. Had you heard anything about his getting married then?

A. No, sir.

Q. Hadn't heard anything about it?

A. I had heard—street talk—that Mr. Mellick was paying attention to a young lady, but never heard him say anything.

Q. Had you heard of it?

A. Yes, sir, I had heard talk.

Q. Prior to this conversation?

A. I won't say that I did prior to this conversation.

Q. I want to know now?

A. I can't tell you that.

Q. About that time then?

A. Well, I won't say what time it was.

Q. Was that what led you to talk to him about what you had heard?

A. No, sir, he commenced it himself; he said nothing about going with this girl, merely brought up his financial matters.

Q. When did he first tell you about his treatment at Howard's; when did he first tell you about that?

A. O, well, he told me about that at different times.

Q. When the first time?

A. He had at his home; I won't make a time.

Q. As near as you can?

A. You may date it back any time between the time of his last sickness and on back for twenty years, or up to the time of his second marriage.

Q. That is the best you can do?

A. I never heard him complain.

Q. When did you first hear him speak about it?

A. When I first hear him speak about it—about his treatment?

Q. Yes, sir.

A. Well, I don't know that I can name the time.

Q. As nearly as you can tell?

A. During the winter of 1878 as I told you.

Q. What time during the winter?

A. You may make it January or December, just as you choose.

Q. You ain't particular. Was it before or after this conversation?

A. It was——

Q. Was it before or after this conversation?

A. What conversation?

Q. The one in the drug store.

A. That is the conversation that I have reference to.

Q. You said there he made no reference to it?

A. That is the first time I recollect of it, I said.

Q. That is all.

Re-direct examination by Judge Morrow.

Q. This conversation was in the winter of '77-'78, about the latter part of 1877?

A. Yes, sir.

WILLIAM KUGLER, a witness produced on the part of the defendant, being duly sworn, testified as follows.

Q. (By Mr. Morrow) Where do you live?

A. Down in Phillipsburg.

Q. What is your business?

A. Selling goods for Crater & Sons.

Q. Where is their business?

A. In Easton.

Q. How long have you been in their employ?

A. Crater's about four years.

Q. Were you ever in the employ of Howard Mellick?

A. Yes, sir.

Q. When?

A. I think I commenced work for him in 1876.

Q. And how long did you continue?

A. About eight years, along there.

Q. Where was the store in which you were employed?

A. Down on the flats in Phillipsburg.

Q. Did you know Emma Keiter?

A. Yes, sir.

Q. Who afterwards married Henry H. Mellick?

A. Yes, sir.

Q. How far from the store did she live?

A. Well I could hardly say, not a great way; probably three or four squares.

Q. You remember her marriage, or hearing of her marriage to Henry Mellick?

A. Remembrr hearing of it.

Q. You remember hearing of it. Where did Henry Mellick spend his time prior to that marriage?

A. With Howard Mellick.

Q. How did he spend his time during the day and the night?

A. He was around the store there and helped around there and sat around.

Q. Did you ever see Emma Keiter there about the store?

A. I saw her around the store outside.

Q. Before the marriage?

A. Well I should say up to about the time of her marriage.

Q. Now will you state, sir, what you saw her do when she came here?

Objected to as irrelevant.

Judge Morrow.—I want to prove that she would come there and call the old man out, and he would go back and get money from the drawer and take it out and come back into the store again, and that slips were put in the drawer showing that this money had been taken by him, and it was communicated to his son Howard long before the marriage. It contradicts her

testimony, if the Court please, in which she says that he never gave her any other money except the $500. I want to show that the old man was wasting his money on her for a long time before he married her. We want to support the evidence of Howard Mellick in this respect; that this witness put slips in the drawer and told Howard Mellick that the old man had got this money.

The Court.—I have no reason to disbelieve Howard Mellick's statement of indebtedness by the old man to him.

Mr. Shipman.—There is no issue raised in the pleadings on this subject at all; they don't set it up in the answer—nothing about it. The assignment to Howard Mellick is for the consideration of one dollar and natural love and affection; and that is the ground on which he claims that assignment was made.

The Court (after discussion) The trouble in my mind Judge is this: Could any amount of solicitation on her part in running after him justify him in practicing a fraud on her—that is the trouble in my mind.

Judge Morrow.--But I submit that it affects the bona fides of Howard's taking this assignment.

The Court.—I have not any doubt of Mr. Howard Mellick's good faith in the matter so far. I don't see how I can disbelieve his statement of it. I have no reason to believe that Howard Mellick did not state the truth when he stated that he knew nothing about this fraud practiced on this girl, and I can't see how I can say on the evidence that Howard Mellick was any party to this fraud. If this evidence is admitted why then the complainant can come on the stand and go over it all again, and I don't see where the case is to end; nor do I see that it can in any way affect the marriage contract. Every lawyer knows what a marriage contract is, and what it is consideration for, and that there was a marriage contract between these parties is an undisputed fact in the case. Whatever her husband agreed to give her on that account, for that marriage contract, the consideration is a good one—

must be so held; impossible to do otherwise. I don't see how this evidence can have any effect in the final disposition of the case. It seems to me if you insist upon it I will admit it, although it is against my own judgment—I don't think it has any value.

Judge Morrow.—I don't think I ought to leave it out of the case.

Mr. Shipman.—Let our objection be noted.

The Court.—I admit the evidence with the expression of opinion that I do not think it is of any value whatever, but upon the principal that some other Court may take a different view of it. We don't have new trials in the Court of Chancery except for evidence that has been lost and not known.

(Stenographer read the question as follows:—"Now will you state, sir, what you saw her do when she came here?")

A. Well, I saw her come there at different times—came to the store at different times and motion for him to come out.

Q. Motion for who to come out?

A. For "Granpap" Mellick we always called him—for Mr. Mellick.

Q. (By the Court) The old gentleman?

A. Yes, sir; he would go out; hold a conversation with her and come in again and ask me at different times he done this for money; and I would give him money and he would go out and hand it to her.

Q. (By the Court) How do you know he handed it to her?

A. I seen him at different times; I don't know how much he handed to her; I could not say how much he gave her.

Q. (By Judge Morrow) When was the first that you ever saw this done?

A. Well, this was—I should say along in 1877.

Q. Can't you tell the time in 1877, whether warm weather or in the cold season?

A. During the summer season of 1877.

Q. And how long—through what time did that continue?

A. That continued on until their marriage; until I heard they were married, at different periods.

Q. Did you make any entry or memorandum of this money so taken?

A. Yes, sir; a slip; put it in the drawer, the money drawer.

Mr. Shipman.—We object to this unless you produce the slips.

The Court.—It is competent.

Q. Did you ever communicate these things to Howard Mellick?

A. He would see for himself.

Q. Did you tell him what she had done, and the old man had done?

A. I told him.

Q. Now, Mr. Kugler, did you hear a conversation between Mr. Howard Mellick and his father with reference to this Kramer bond and mortgage?

A. I never heard them converse together about that, although the old gentleman has told me.

Q. Never mind what the old gentleman had told you now but tell what you saw between them at any time with reference to the Kramer bond and mortgage?

Mr. Shipman.—Is that competent? What he saw between them with reference to it? I object to that.

The Court.—Please locate the circumstances.

Judge Morrow.—That it was a short time before this assignment was made—before the assignment to Howard Mellick; I am going to have him detail the facts and circumstances as they occurred, and then I think the Court will see it is competent.

(Objected to.)

A. Well, I can replace one time——

Mr. Shipman.—Speak louder so that we can hear you.

The Witness.—I have got a cold.

The Witness.—I remember one time that I had occasion to go into Howard's office to get some money changed. When I came there Howard and Grandpap was in the office at that time and Howard was in the safe, and I told him what I wanted. He had a bundle of papers in his hands; he handed them to me and told me to get the Kramer papers, mortgages, and give them to Grandpap, and he would make change.

Q. Who would make the change?

The Court.—While Howard was making change, he (Kugler) was to sort out the Kramer bond and mortgage and give it to Grandpap.

The Witness.—I did so.

Q. (By Mr. Morrow) When did you first see this bundle of papers in Howard Mellick's hands?

A. Just coming from the safe.

Q. What part?

A. From the little lock box; the door was open and he was just taking them from there.

Q. What did you do with the papers?

A. While he was making the change I sorted the papers; picked out the two papers of Kramer and Mellick and gave them to Grandpap, and at that time Howard gave me the change.

Q. Did you see Arthur Case there at that time either when you went or came away?

A. I remember seeing him there, yes, sir.

Q. When?

A. I would not say whether he was there when I came in or whether he was going in when I went out.

Q. You didn't hear the conversation between Howard and his father then?

A. No, sir.

Q. Did you hear of a conversation between Howard and his father that evening?

A. Yes, sir.

Q. What time in the day was it that this occurrence took place?

A. It was in the afternoon, late.

Q. Late in the afternoon?

A. I could not say what time.

Q. Now did you have a conversation with the old gentleman in the evening?

Objected to.

Judge Morrow.—I am going to prove now that the old gentleman had told him of the contract he made with Howard, which Howard testified to; that it was too late in the day to have the assignment made that day, but that he would have it done; and then in a day or two Howard came to the safe and gave him these papers to go out and have the transfer made.

Q. (By the Court) At that time when you went in to get the change and Howard asked you to pick the Kramer bond and mortgage out, did you pick out the Kramer bond and mortgage?

A. Yes, sir.

Q. And nothing else?

A. Nothing else.

Q. And handed it to the old gentleman?

A. And handed it to the old gentleman.

Q. How long after that was it that you saw this other transaction; did you see any other transaction about the bonds and mortgages; see the bonds and mortgages taken out another time?

A. No, sir.

Judge Morrow.—He heard a conversation which leads right up to that. It is important in this respect, to locate the time when this conversation that the witness has already detailed occurred.

The Court.—Make your opening, what you expect to prove by this witness.

Judge Morrow.—I intend to prove by this witness that in a day or so after this conversation the old man came to the store early in the morning and requested

him to unlock the inner safe and get that bond and mortgage out that he might take it to have it assigned, and that this witness hadn't the key to the inner safe; there was but one key and Howard had it, and at that moment Howard came in and the witness directed the old man to the fact that Howard was present, and the old man and Howard talked about getting this bond and mortgage out, and they went to the safe together, and in a day or two afterwards the old man told him he had done that. I want to prove the occurrences chronologically, and before I prove that I want to prove that the night after the conversation which the witness has already testified to the old man told him what the bargain between him and Howard was—that Howard was to take this bond and mortgage and was to pay his debts and to keep him as long as he lived as a consideration for it.

The Court.—You may prove it.

Mr. Shipman.—We object; it is entirely irrelevant and improper.

The Court.—Proceed; the witness has already stated that on this particular day he got the Kramer bond and mortgage out, and the old man took it.

Q. Now what conversation did you have with the old gentleman that night?

A. The conversation was that he came and told me that he was going to transfer all his property over to Howard and Howard was to give him a home and keep him as long as he lived; pay all of his debts.

Q. Did he say anything then about its being too late to have it done that day?

A. Yes, sir; he said it was too late, that he was going to do it that afternoon, but he was going to have it done soon—it was too late that afternoon.

Q. Now how soon after that did you—

The Court.—What was next after that?

Q. What was next after that?

A. The next I remember is probably a day or so afterwards he came to me in the morning—

Q. Who did?

A. Granpap Mellick—he came to me early in the morning and asked me to unlock the safe for him that he wanted to get those papers, and I told him that I didn't have the key, Howard had it; by that time Howard came in by the back door and he went to Howard and told Howard if you will get me these papers I will go down to Smith's and have it fixed; and they went into the office; what transpired I don't know.

Q. Did he tell you after that—did you have a conversation with him after that?

A. Yes, sir.

Q. What did he tell you?

A. He told me he transferred his property all over to Howard and he would have a good home there now, that he was sure of that anyhow.

Q. Now you say there was an inside lock box to that safe?

A. Yes, sir.

Q. Who carried the key of that safe?

A. When Howard was away I carried it, when Howard was home he carried it.

Q. How many keys were there?

A. But one to the lock safe.

Q. How was the door to that inside safe kept—closed or open?

A. Closed.

Q. (By the Court) Locked you mean?

A. Locked.

(By Judge Morrow) I think Howard testified it was shut with a spring lock.

Q. Now, Mr. Kugler, did you see this bond and mortgage any time after that?

A. I saw it, yes, sir—some time after that, about the first, along there, first of April, or along there.

Q. First of April following?

A. Yes, sir.

Q. You may state the circumstances of your seeing it there where you saw it?

A. The way I came to see it was Joseph Kramer and Grandpap Mellick came in there and asked me to unlock the safe and get those papers—Kramer wanted to pay his interest, and I done so. I unlocked the safe and gave him the papers.

Q. What part of the safe did you unlock—tell the whole story?

A. I opened the large door and then I went in and unlocked the lock part.

Q. (By the Court) Did you have the key to that?

A. Yes, sir.

Q. Of the inside lock part?

A. While Mr. Mellick was not in I had the key to it.

Q. (By Judge Morrow) Now you unlocked that inside safe; what did you do in there?

A. I looked for the papers and didn't find them.

Q. Well?

A. And I looked on the outside and I found them there among the little holes, pigeon-holes, whatever you call it.

Q. What were the papers there?

A. Many papers, but those two Kramer papers.

Q. Did you see Mr. Kramer pay the old gentleman interest on that day?

A. No, sir; I was busy in the store at the time; I handed Grandpap the papers and told him that when he was done to put them back in the safe; I was busy then.

Q. (Showing witness a paper) I show you Exhibit C, 2; is that the bond?

A. I think it is, yes, sir; I could not say exactly; but I remember seeing the names on the outside.

Q. This receipt reads: "Received Phillipsburg, N. J., April 2nd, 1878, on the within bond and mortgage interest for one year up to April 1st, 1878, Three Hundred and Fifty Dollars—$350." Whose handwriting is the signature "Henry H. Mellick?"

A. That is grandpap Mellick's.

Q. (Showing witness Exhibit C, 1) I show you

Exhibit C. 1, is that the mortgage that you have referred to?

A. As I stated before it is pretty hard to remember —the way I remember is by seeing the names.

The Court.—Unless he is a lawyer and had some mark on it, his identification would be of very little value. He saw it was the Kramer bond and mortgage.

Q. That is all.

Cross-examination by Mr. Shipman.

Q. How old are you Mr. Kugler?

A. I am in my 39th year.

Q. Did you ever go to school any?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Can you write?

A. Yes, sir.

Q. Let 's see you write.

A. What do you want me write?

Q. This is the thirtieth day of January eighteen ninety.

A. (Witness writes "Phillipsburg, N. J., January 30, 1890.")

Q. Can you read?

A. Yes, sir.

Q. What business have you been doing?

A. Well I have clerked in the grocery business?

Q. Where?

A. Easton; Phillipsburg.

Q. What did you do as clerk?

A. I suppose what a clerk will do—what does he do? Sell goods, keep books.

Q. Did you ever keep books?

A. Yes, sir.

Q. Who did you keep books for?

A. For Howard Mellick; kept books for myself while I was in business.

Q. Were you in business for yourself?
A. Yes, sir.
Q. When?
A. In 1870; '71, I think.
Q. Where do you live now?
A. Phillipsburg.
Q. Married?
A. Yes, sir.
Q. What is your present business?
A. Salesman.
Q. For whom?
A. Crater & Sons, Easton.
Q. Any relation to Howard Mellick?
A. No, sir.
Q. To his family in any way?
A. No, sir.
Q. When did you talk to Howard Mellick about this thing?
A. Not until after I was subpœnaed.
Q. Didn't say anything to him at all?
A. I hadn't seen him during several years before that; very seldom met.
Q. How long had you known old Mr. Mellick?
A. I have known him from 1875.
Q. How long were you in Howard Mellick's employment?
A. I think about eight years.
Q. Eight years in Howard Mellick's employ?
A. Yes, sir.
Q. (By the Court) Then you have not talked this matter over to anybody from the time the thing occurred until now?
A. What about?
Q. About the occurrences of that time?
A. Well, no, sir; not particularly that I know of; not about the property business.
Q. I mean about the taking of the bond and mortgage out of the safe and putting them back?
A. No, sir; I thought it was none of my business.
Q. Never mentioned it until shortly?

A. No, sir.

Q. (By Mr. Shipman) When did you first hear about this suit of Howard Mellick's?

A. I can't say how long ago.

Q. As near as you can?

A. I could not tell you.

Q. Who told you?

A. I heard—seen it in the papers.

Q. Is that where you knew of it?

A. Reading about it.

Q. Didn't you ever think then what you knew about it?

A. Never thought anything about it?

Q. When did Howard Mellick speak to you?

A. Not until I was subpœnaed.

Q. Give the date?

A. Let me see—was I subpœnaed in November? I think last November.

Q. November 1889?

A. I think so.

Q. Where did he subpœna you?

A. In the house.

Q. Howard himself?

A. Yes, sir.

Q. What time in the day?

A. Eight o'clock in the evening.

Q. How long did he stay?

A. (Not answered.)

Q. (By the Court) Prior to that time, during the ten or twelve years that elapsed had your attention been called to this subject at all—had your attention been called to it, to the occurrence that you have related here—talk to anybody about it—nothing to fasten it in your mind—what you have testified to here is testified according to the best of your recollection at this time as to what occurred?

A. Yes, sir.

Q. (By Mr. Shipman) How long have you known Emma Keiter?

A. About 1875 or '76.

Q. Have you ever had any personal acquaintance with her?

A. Not particularly; knew of her.

Q. Just knew her?

A. Yes, sir.

Q. Ever speak to her before this thing that you say took place?

A. Yes, sir.

Q. Where had she lived?

A. I think at that time they lived back of the store there—back over the Canal—I can't tell you exactly where.

Q. How far from Mr. Mellick's store?

A. Probably three or four or five squares, along there.

Q. Now when was the first time you ever saw her come there?

A. I could not tell you.

Q. I want you to locate the time—you have been fixing the times?

A. When she came to the store?

Q. Yes, sir; the very first time?

A. I could not say; along somewhere, along 1876 or 1877.

Q. Along '76 or 77—it is very important for us to know which it was?

A. I could not answer that.

Q. You can't tell whether it was in 1876 or 1877?

A. It was while I was in the store clerking.

Q. You was there seven years?

A. Along 1876—

(By the Court) What time in the year did you go there?

A. I was clerking there for another man before I clerked for Mr. Mellick; I clerked first for Mr. Mellick in August, 1876.

Q. It could not have been before that?

A. I was there a year in the same store before I worked for Mr. Mellick, under another man.

Q. Mr. Mellick did not frequent the store prior to August 1876 ?

A. He was in the store.

Q. He didn't get money out of the drawer ?

A. No, sir ; not at that time.

Q. (By Mr. Shipman) Now then, you can't tell whether it was '76 or 77 ?

A. Might say '76.

Q. What time in the year was it ?

A. Any time ; I could not state the first time exactly.

Q. What month was it in the first time ?

A. I could not answer.

Q. What can you remember then ?

A. I could not tell you that.

The Court.—He might remember without being able to locate the time ; it seems to me it is a waste of time.

Mr. Shipman.—Very likely.

Q. How many times did you ever see her come there ?

A. I saw her come there pretty often.

Q. Two or three times might be very often in your judgment ; how often did you see her come ?

A. I could not answer that ; probably a hundred times ?

Q. Do you mean to swear to that ?

A. Yes, sir.

Q. That you saw her come there a hundred times ?

A. Yes, sir.

Q. And get money a hundred times ?

A. I would not say that.

A. What would you say ?

A. I would not say she got money every time she came there.

Q. You say she came there a hundred times ?

A. During the time I was there.

Q. During what time did she come there a hundred times—between what periods ?

A. Between 1876 and eight years after that—as long as I was there.

Q. What time of the year was it she came?
A. Well—

The Court.—He said he first recollected her coming there along in the summer of 1877.

Q. Was there any other clerk in the store but you?
A. Yes, sir.
Q. Who?
A. Arthur Case was there a while.
Q. Who else?
A. During the time I was there?
Q. Yes, sir; these hundred times you spoke of, who was there during those hundred times?
A. I could not say that.
Q. What clerk?
A. I could not answer a question like that—100 times—I had not kept any account of who all was there a hundred times.
Q. I want you to state between what periods these one hundred times were—from 1876 up to what time?
A. As long as I worked there; I worked there about eight years.
Q. When did you quit?
A. I quit there in—I don't know exactly what month any more.
Q. What say?
A. I think it was in 1884 that I quit.
Q. These hundred times embraced all that period?
A. Yes, sir.
Q. You saw her coming all those one hundred times?
A. All that time.
Q. (By the Court) You have not a definite recollection as to periods of time?
A. I could not say that.
Q. (By Mr. Shipman) Well, now then you say you saw him give her money?
A. Yes. sir.
Q. How many times?
A. Different times.

Q. Did you keep any memorandum—any memorandum of money at all.

A. I kept a memorandum of money that I gave him that went out of the drawer.

Q. You threw them in the drawer?

A. Yes, sir.

Q. You don't know what became of them?

A. They were destroyed likely.

Q. All right.

The Court.—Mr. Howard Mellick swore that he kept an account of them and brought an account of it against his father—figured it up.

Q. When did you say what time it was that you first put out this Kramer bond and mortgage?

The Court.—He does not know the time at all.

Q. I did want to know the first time?

The Court.—He can't fix it at all; he can't fix any date.

Q. (By Judge Morrow) Those things with reference to the assignment was before you heard of the marriage of Mr. Henry Mellick to Emma Keiter?

A. Yes, sir.

Q. (By Mr. Shipman) When did you first hear of the marriage to Emma Keiter?

A. I heard that they were married—it was reported around; it was in 1878, I think.

Q. 1878?

A. Yes, sir.

Q. Are you sure it was 1878?

A. I was there probably about a year and a half before their marriage; I went there in 1876; it must have been about that.

Q. You heard that they were married?

A. Yes, sir.

Q. When did you first hear of their marriage?

A. I don't know when they were married.

Q. Did you hear they were going to be married?

A. Not until after they were married.

Q. That is all.

Re-direct examination by Judge Morrow.

Q. I forgot to ask this witness whether he had ever seen anyone come to the store with Emma Keiter and call the old man out?

A. I could not say that—I saw the brother come there and call the old man out.

Q. Whose brother?

A. Emma Keiter's?

Q. Would she be there?

A. She would be outside.

Q. Will you tell what the old man did then?

The Court.—Ask him if sometimes her brother was not with her?

Q. Go on?

A. Well, that is about all; he would call "Grandpap" out and hold a conversation with her and he would come in again and ask for money; said he wanted some money; and I gave it to him; he would go out then with them, and probably go off, or come in shortly again afterwards.

Q. He would sometimes go off, and sometimes come in again?

A. Yes, sir.

Re-cross by Mr. Shipman.

Q. You had control of the money drawer, to give money out?

A. When I thought it was right, yes, sir.

Q. Which brother was it?

A. He is dead now.

Q. Dead, eh?

A. Yes, sir.

Q. When did he die?

A. I don't remember when he died any more.

Q. What is his name?

A. Edward.

Q. Ever see any brother that is living now come?

A. No, sir; Ed used to be around there; these two never did much.

Q. That is all.

Judge Morrow.—I am going to offer to prove by the teller of the bank the payment of Henry H. Mellick's note dated January 2, 1878, at ninety days, which Mr. Howard Mellick swore he paid.

ARTHUR CASE, a witness recalled on the part of the defendant, further testified:

Direct examination by Judge Morrow.

Q. Arthur, while you were clerking for your brother-in-law, Howard Mellick, did you ever see this woman, Emma Mellick, come there?

Objected to.

The Court.—I make the same ruling as I did before.

A. Yes, sir.

Q. State what you saw there?

A. I seen her come there and Mr. Mellick go out and talk, then he would come in and get money and go out in the same way; he would converse with her and go out again and get money and go out; whether he gave it to her I can't tell; I should suppose that he did.

Mr. Shipman.—Never mind what you suppose.

Mr. Morrow.—That is not of the least consequence.

Q. Mr. Case, would you communicate this to Howard Mellick?

A. Not that I can remember; I suppose that I have.

Q. (By the Court) Did you make a memorandum and put in the drawer?

A. No, sir.

Q. Who did?

A. Mr. Kugler did generally; he was head clerk; I didn't unless Mr. Kugler was not there; but I never done that; Mr. Mellick helped himself to money when Mr. Kugler was not there—that is Grandpap—he helped himself. I thought it was none of my business.

Cross-examination by Mr. Shipman.

Q. You have been sworn as a witness in this case before?

A. Yes, sir.

Q. Told your story then—all you have to tell?

A. Yes, sir.

Q. You say you saw her come there?

A. Outside of the store frequently.

Q. When?

A. The date?

Q. What year?

A. I don't know.

Q. Don't know, do you?

A. Well it was before she was married to Mr. Mellick,

Q. Before she was married. You can go.

Recess here taken for dinner.

AFTERNOON SESSION.

HORACE M. NORTON, a witness produced on the part of the defendant, being duly sworn, testified as follows.

Direct examination by Mr. Smith.

Q. You are a merchant in Easton?

A. Yes, sir.

Q. And in 1878 you were engaged in the same business?

A. Yes, sir.

Q. What line?

A. Hardware, stove and house furnishing.

Q. Did you know Henry H. Mellick in his lifetime?

A. Yes, sir.

Q. Did you know Emma Keiter before she married Henry H. Mellick?

A I knew her about the time that I understood she married him; I had seen her mother previous to that. I don't remember meeting Emma Keiter until she came there to buy goods.

Q. Who came with her?

A. Her mother and once Mr. Mellick.

Q. Did you sell any goods while Mr. Mellick was there to Emma?

A. The most of the selection was made without his presence, but there was some of them she conferrd with him about, and they changed from one stove over to another by his wish.

Q. Do you remember what time they were there, when they were there together?

A. March.

Q. What year?

A. 1878.

Q. Have you refreshed your memory by looking at your books?

A. Yes, sir.

Q. Do you remember how large a bill they bought?

A. Some sixty odd dollars.

Q. Who paid for them?

Objected to.

The Court (after discussion)—I think you are endeavoring to contradict the complainant on a collateral matter. I will exclude it.

Q. That will do, Mr. Norton.

MRS. ELIZABETH MELLICK, a witness produced on the part of the defendant, being duly sworn, testified as follows.

Direct examination by Mr. Smith.

Q. Mrs. Mellick, are you any relation to the parties in this case, either of them?

A. I suppose my husband is a relation to them.

Q. (By the Court) Is he a brother?

A. Howard's father was an uncle to him.

Q. Did you live in New Village in 1878?

A. Yes, sir, by Mr. Mellick, just a street between us.

Q. Do you remember at the time Henry H. Mellick was married?

A. Yes, sir.

Q. Whether you heard at that time?

A. Yes, sir.

Q. Were you there when Mrs. Mellick came there?

A. No, sir, I was not there when she came there; I was home, but not over there.

Q. Do you remember her coming there?

A. Yes, sir.

Q. And who came with her?

A. When she came there she moved there with quite a good many; they were strangers to me.

Q. Did you have anything to do with getting up a supper?

A. The dinner I baked and fixed the dinner before they came.

Q. At whose request?

A. At Mr. Mellick's request; at Mr. Henry Mellick's, the old man's request.

Q. How do you know how much of the time Mrs. Mellick resided there with her husband from that time until the August following?

Objected to.

A. Off and on; I know she was there, and off and on.

Q. How frequently did she go away?

A. Sometimes up there two or three weeks, and then gone—be gone; sometimes be gone two or three days, and sometimes two or three weeks.

Q. When she was there were any of her friends with her?

A. Yes, sir; sometimes.

Cross-examination by Mr. Shipman.

Q. Did you visit the house much?

A. No, sir.

Q. How far did you live from her?

A. Just across the street.

Q. Didn't pay much attention to her business?

A. Yes, sir; I attended to my own business, that is all.

WILLIAM ANDREWS, a witness produced on the part of the Defendant, being duly sworn, testified as follows;

Direct examination by Mr. Smith.

Q. Mr. Andrews where did you live in 1878?

A. New Village?

Q. How near to the house of Henry Mellick?

A. Just a little alley between us.

Q. Then you were next door?

A. Yes, sir.

Q. Do you remember when he was married, and remember his wife there?

A. When he moved in there, but don't recollect when he was married.

Q. You remember when he moved in there?

A. Yes, sir.

Q. With his wife?

A. With this lady here; yes, sir.

Q. Did you see much of them after that?

A. I see them pretty nearly every day.

Q. Do you know whether his wife spent most of the time there afterwards?

A. Not a great deal, I don't think; she was there off and on.

Q. When she was there who else would be there with her?

A. Her mother sometimes as a usual thing; sometimes another lady. Two of them sometimes.

Q. That is all.

Cross-examination by Mr. Shipman.

Q. How often were you in the house—how often did you go in the house?

A. I was not there any at all while the—

Q. You didn't go there at all?

A. I might have or I might not.

Q. How often did you see this woman?

A. Pretty nearly every day she was there.

Q. Saw her nearly every day?

A. Yes, sir; pretty nearly every day; sometimes half a dozen times a day.

Q. So you saw her nearly every day all the time?

A. When she was there I did.

Q. How do you know she was not there of your own knowledge?

A. Sometimes Henry would tell me.

Q. Because you didn't happen to see her?

A. See her go away myself sometimes—several times.

Q. How long after she had been there?

A. Not a great deal.

Q. A great deal?

A. Not a great deal.

Q. How did she go away when she went away?

A. She generally went afoot.

Q. Ever see her come back?

A. I don't think I see that.

Q. Never saw her come back?

A. I might have seen her come back, but I don't say positively.

Q. That's all.

CHARLES M. LUDWIG, a witness produced on the part of the Defendant, being duly sworn, testified as follows:

Direct examination by Mr. Smith.

Q. Mr. Ludwig, you are a Teller of the Phillipsburg National Bank?

A. Yes, sir.

Q. And occupied the same position in 1878?

A. Yes, sir.

Q. In April?

A. Yes, sir.

Q. Can you state from any memorandum on that note (handing witness a note) who paid it, and when it was paid.

A. Well, that is my handwriting "Note paid by Howard Mellick"—that I recognize as my handwriting in pencil.

Q. And what would you say is the fact itself?

A. I would state from that that the note was paid by Mr. Mellick.

Q. And do you know when it was paid?

A. Our books show, in the Bank, that it was paid on the 4th day of April, one day before it was due.

Q. Discounted?

A. I could not say. It was discounted—it was paid on the day before it was due.

Q. (By the Court) That memorandum "Paid April 4th was put on later?"

A. Yes, sir; from the books.

Q. Is there not something possibly under the name of Henry Mellick?

A. That looks as if I had signed my name and then afterwards crossed it off, because that was evidently put on by Mellick's request; we don't endorse notes that way; but it looks on there, on the tail end as if "Teller" had been there and rubbed out. It is not our regular way of doing things.

Cross examination by Mr. Shipman.

Q. When did you say you put those words—"Note paid by Howard Mellick"—?

A. At the time the note was paid. What I put on afterwards was "April 4" this morning.

Q. And then crossed it off again?

A. No, sir.

The Court.—Right where it has been folded something has been rubbed off.

Q. This "Paid April 4, 1878"?

A. That I put on this morning.

Q. That you put on this morning?

A. Yes, sir.

Q. Do you remember putting that on—"Note paid by Howard Mellick"?

A. No, sir; I only recognize it as my writing.

Q. But when you put it on you don't know?

A. No, sir.

Q. Nor at whose request?

A. No, but I would suppose it would be put on by Mr. Howard Mellick's request.

Q. (By the Court) That is to say, it would not be put on except by request?

A. Yes, sir.

Q. And you presume it was his request?

A. Yes, sir, at the time it was paid. And I recognize it as my handwriting.

Q. (By Mr. Shipman) Have you any recollection that Howard Mellick paid it except from that memorandum?

A. No, sir.

Q. If you had not seen that on "Paid by Howard Mellick" you would not have known that it was paid by Howard Mellick at all?

A. No, sir, except that on that day the note was paid; there was a check of W. S. Case for Howard Mellick, $300.

Q. That does not make any difference.

A. I recognize that as my handwriting.

Q. You don't know whether it is correct or not?

A. I will swear it is my handwriting.

Q. That is all you can swear to?

A. Yes, sir.

Q. Is that—that is your handwriting?

A. Yes, sir.

Q. That is all you know about it?

A. Yes, sir.

Q. (By the Court) Would you have put it there if it was not true?

A. No, sir.

Q. (By Mr. Shipman) You don't know whose money furnished it?

A. No, sir.

Q. He was the mere instrument?

A. He came there and took up the note; I suppose he did from the fact that this is on the note, as the memorandum there states.

Q. That is all.

DEFENDANT RESTS.

MRS. LILLIE BOUDEN, a witness produced on the part of the complainant, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. George Shipman.

Q. Where do you live?

A. On Mersey street.
Q. Of this town?
A. I do.
Q. Do you know Mr. Howard Mellick?
A. I do.
Q. Did you ever work at his house?
A. I did.
Q. Can you remember how long ago?
A. It is over ten years.
Q. Over ten years?
A. Yes, sir.
Q. Did you know Henry H. Mellick?
A. Yes, sir.
Q. Did you know him?
A. Yes. sir.
Q. And you know Mrs. Mellick, Emma Keiter that was then?
A. Yes, sir.
Q. You remember when they were married?
A. No, I don't remember when they were married.
Q. Do you remember the occasion of the marriage, if you don't remember the date, do you remember when they were married?
A. I heard it; that is all I can say.
Q. Do you remember going up to the house at New Village?
A. Yes, sir.
Q. Who did you take up?
A. Mr. Mellick up, and the things, the groceries.
Q. Who assisted you in going before you went-- who helped you load the wagon?
A. Why, Will Kugler.
Q. And was anything said to you about going up?
A. Mrs. Howard Mellick didn't want me to go.
Q. What did Mr. Mellick say?
A. He said I could go if I wanted to.
Q. That is Mr. Howard Mellick?
A. Yes, sir.
Q. Did he help you load the things into the wagon?
A. I don't remember whether he did or not.

Q. Did he help yourself into the wagon?

A. No, sir; he didn't.

Q. Didn't you tell me to-day——

A. (Interrupting)——I did not, and it was none of your business to know whether he did or not; it makes no difference.

Q. Did you ever hear Mr. Henry Mellick say anything about a promissory note?

A. I heard him say something about it.

Q. What did he say?

Judge Morrow.—I object.

Mr. Shipman.—I want to prove that Mr. Henry H. Mellick in this witness' hearing stated that Howard Mellick owed him a note for $1,000, and that it was lost, and that he didn't know where it was; to show that the consideration for the assignment to Howard Mellick was not as he, Howard Mellick, stated, viz.: an indebtedness by the old man to Howard Mellick for $1,200.

Judge Morrow.—We object on the ground that it is hearsay evidence.

Q. (By the Court) Can you state when it was, madam, that this conversation occurred?

A. No, sir; I can't tell anything about it.

Q. Do you recollect whether it was before they were married?

A. Before they were married.

The Court.—I am in doubt about this.

Judge Morrow.—I don't think it is competent to prove what Henry Mellick said; it is pure hearsay as to a man owing him money.

The Court.—The evidence is admitted with the observation that I do not think it is competent.

Q. (By the Court) What did you hear Mr. Mellick

say about that promissory note against his son Howard, if anything?

A. That there was a note given.

Q. Whose note?

A. His note.

Q. Whose note?

A. The old gentleman's note.

Q. Who made it?

A. I don't know anything about that; that is all I heard him say.

Q. Did he say anything about the circumstances under which it was given, or that he suspected that it had been taken?

A. Not to me.

Q. Did he say how much it was?

A. A thousand dollars.

Q. Can you give me a little idea about when it was?

A. A good long while ago, and I have been married ten years.

Q. How long beforre he was married about?

A. Some time before he was married; I could not tell the exact time—not so very long.

(Not cross-examined.)

MRS. JENNIE BOWERS, a witness produced on the part of the complainant, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. George Shipman.

Q. Where do you live?

A. In Phillipsburg, on Aikman street.

Q. Do you know Howard Mellick?

A. Yes, sir.

Q. Did you know Henry H. Mellick?

A. Yes, sir.

Q. And Mrs. Mellick here, the complainant?

A. I do.

Q. Did you ever live at Howard Mellick's house?

A. Yes, sir; three different times.

Q. Did you live there at any time shortly before the marriage of Henry Mellick?

A. Before and after.

Q. Do you remember living there the summer before they were married?

A. Yes, sir; I do.

Q. Did you ever hear any conversation between Howard and his father with reference to the marriage?

A. Yes, sir; I heard him complain of his father for going with her, and when he came home he would say, "Were you up there to see her again?" "Yes" he would say, why it didn't hurt him to go with her. Howard said all she wanted out of Mr. Mellick was his money.

Q. (By the Court) Proceed?

A. He said he didn't care whether she did; he was going with her anyway.

Q. You heard—did you hear him say that more than once?

A. Yes, sir.

Q. Say anything about marriage?

A. Said they were going to get married.

Q. Who said that?

A. Howard—Howard knew it before they were to get married; all the time growling.

Q. Why?

A. While I lived there.

Q. How long before?

A. The summer before.

Q. How long back did you say—before?

A. All the time he went there; he went with her quite a while.

Q. That is all.

Cross-examination by Mr. Smith.

Q. When did you first live with Howard Mellick?

A. I was twelve years old.

Q. How old are you now?

A. Twenty-six.

Q. Fourteen years ago?

A. Yes, sir.

Q. Did you live with him up to the time that the old man married?

A. Three different times. I was living with him—before the marriage, after the marriage and after the seperation.

Q. How long?

A. All summer and the following spring, and not the following winter.

Q. Now you left in the summer of 1877?

A. I could not tell what month; it was in the fall.

Q. How late in the fall—before you had the stoves up?

A. Sir?

Q. Before you had the stoves up? Before that?

A. Yes, sir; about September that I left; when the fruit was ripe, and Mrs. Lizzie Rosalean—Bouden—went to live there, yes, sir.

Q. And after that you were there again?

A. After she left I went back again.

Q. Quite a while after the marriage?

A. Yes, sir.

Q. I guess that is all.

Q. (By Judge Morrow) How long had you lived there in the fall of 1877?

A. I don't know; I was there during the summer.

Q. These conversations occurred while you were there that summer?

A. Yes, sir.

Q. Ever talk with anybody about it until now—about those conversations?

A. No, sir.

Q. How did you come to tell Mrs. Mellick?

A. No, sir.

Q. Who did you tell?

A. Nobody; they knew I lived there.

Q. Who came to see you?
A. Nobody.
Q. Before you were subpœnaed?
A. No.
Q. (By the Court) You were sent for by somebody?
A. I was down to Keiter's to have a dress made.
Q. (By Judge Morrow) When were you there to tell this—when did you tell this?
A. In the fall—about three months.
Q. Before we commenced trying this case?
A. I don't know when it was commenced or nothing.
Q. You are a married lady?
A. Yes, sir, I am.
Q. What name then?
A. Jennie Stuhl, at that time.

JOSEPH PIERSON, a witness pooduced on the part of the complainant, in rebuttal, being duly sworn, testified as follows.

Direct examination by George Shipman.

Q. You reside in Phillipsburg do you, sir?
A. Yes, sir.
Q. Doing business here?
A. Yes, sir.
Q. You knew Henry Mellick in his lifetime?
A. Yes, sir.
Q. And knew him for a good many years?
A. The last twenty years.
Q. Did you ever hear him say anything about—you heard of his marriage to Mrs. Mellick here, didn't you?
A. Yes, sir.
Q. Previously to that time had you heard him speak of any notes that were mislaid or lost.

Objected to. Objection overruled.

A. Yes, sir; he told me that he had missed notes.

Q. Tell what he said about them?

A. I was over to the store and he was very much provoked about something. I always called him "Dad" —I said "Dad, what is the matter?" He said "I have lost some papers." I said, "Well, I guess you will find them; you have mislaid them." He said, "I can't find them."

Q. (By the Court) What was it, did he state?

A. I think they were notes—$2,000.

Q. (By Mr. Shipman) $2,000?

A. I think it was $2,000.

Q. Did he say who it was against?

A. He didn't tell me who it was against I don't think; I think he said that Howard had them in his safe; but I don't think he told me they were against Howard; but he said there was a $2,000 note I think; I am not positive; I didn't pay much attention.

Q. Didn't he say anything about Howard having them?

A. In the safe—he said he thought Howard had taken them. And then I saw him again, and he finally said, "I have found my notes." I said, "I thought probably you would; you have probably mislaid them."

Q. That is all.

Cross-examination by Mr. Smith.

Q. Can you tell when this occurred?

A. I am not positive; I suppose a year or likely more before they were married; I can't tell just when; I didn't keep any account with regard to dates.

Q. That is all.

Adjourned to Thursday, February 27, 1890.

Transcript of shorthand notes of testimony taken in the above stated case at Beividere, N. J.,

THURSDAY, FEBRUARY, 27, 1890,

before Honorable Henry C. Pitney, Vice Chancellor.

Appearances as heretofore.

SAMUEL BERRY, a witness produced on the part of the complainant, in rebuttal, testified as follows:

Direct examination by Mr. Shipman.

Q. Where do you live, Mr. Berry?
A. I live in Easton, Pennsylvania.
Q. And did you ever live in Phillipsburg?
A. Yes, sir.
Q. You lived in Phillipsburg in 1877 and 1878?
A. Yes, sir.
Q. What was your business in Phillipsburg at that time?
A. 1877 and 1878 I was railroading.
Q. Previous to that time what business were you in?
A. Railroading; employed by the Central railroad company.
Q. (By the Court) Working at the station or on the train?
A. I conducted trains; conducted them in the yard, run in the yard, such business as that—brakeman, anything they wanted.
Q. (By Mr. Shipman) And did you fill any office in Phillipsburg at that time?
A. Not at that time.
Q. When did you have an office in Phillipsburg?
A. I was constable there, elected I think in '79, either 1878 or '79, I can't tell just exactly which.
Q. That is what I refer to. '78 or '79 you were constable in Phillipsburg; do you know Howard Mellick?

A. Yes, sir.

Q. Did you, as constable, do some service for him?

A. Yes, sir; done considerable.

Q. "Considerable?"

A. Yes, sir.

Q. Did you know Henry H. Mellick in his lifetime?

A. Yes, sir.

Q. Did you know Mrs. Mellick that is now, Emma Keiter at that time?

A. I did, yes, sir.

Q. Did you ever go to the house and did you know Mrs. Elizabeth Keiter the mother of this lady?

A. I know her when I see her.

Q. Did you ever go to their house in Phillipsburg on business?

A. Yes, sir; I did.

Q. Do you remember the occasion, I mean Mrs. Keiter's house, do you remember the circumstances?

A. I have been there different times.

Q. Sir?

A. I have been there different times.

Q. Did you ever go there with a search warrant?

A. Yes, sir.

Q. Do you remember that?

A. Yes, sir.

Q. Remember going there?

A. I do.

Q. When was that?

A. That was in 1880—1880.

Q. Did Howard Mellick say anything to you about what you should do when you went there?

Judge Morrow.—Howard Mellick said nothing about that in his examination.

Q. Tell what passed if you please?

A. Well, I had my instructions of course before I went there with a search warrant; I would not go there without of course.

Q. Did he give you any instructions besides searching for the goods mentioned in the search warrant?

A. I had instructions about what to look for.

Q. What were those instructions?

A. Well, the search warrant described the goods as far as they were concerned I think—eaeh article.

Q. Anything else?

A. And outside of that I was to look for any papers that concerned Emma Keiter or Emma Mellick, and the old gentleman; of course that was not mentioned in the warrant.

Q. For what purpose did Henry H. Mellick go along, the old man?

A. I generally made a practice where I had a search warrant, to take parties along that was interested, to identify things that they claimed in the warrant.

Q. Well, was there any search made for papers?

A. Well, I looked it through; I didn't look for papers because the warrant didn't call for them.

Q. Did anyone else look for papers?

A. I don't know what the old gentleman done; he saw everything that was done.

Q. Did Howard Mellick say anything to you about papers besides that?

A. They talked about those things a good many times.

Q. Those papers?

A. About papers; I can't remember what papers were mentioned, or anything about them.

Q. Did Howard Mellick ever say anything to you about—ever offer you any money with reference to matters between her, Mrs. Mellick, and her husband, the old gentleman?

A. Yes, sir.

Q. When was that?

A. I think that was some time in January, 1882.

Q. Tell what took place if you please?

A. I was called into the store and this thing was proposed to me.

Q. What thing was proposed?

A. For to try to accomplish certain points.

Q. What were the points you were to accomplish?

A. The point was either to get a certain party to get Emma Mellick out and accomplish certain things so that parties could come on to them, either out on the lots in Phillipsburg, or in Easton.

Q. Well, "certain parties"--you mean what sort of parties, male or female parties, a man or a woman?

A. I suppose it was Mr. Mellick and other parties that was to be with them.

Q. I mean with Mrs. Mellick; you said certain party was to be with Mrs. Mellick?

A. A male party.

Q. Other than her husband?

A. Besides the old man; the husband was interested in this thing the way I took it because he was by when this thing was proposed.

Q. That is true; but some one other than her husband was to be with Mrs. Mellick when she was caught?

A. Yes, sir; was not to be her husband.

Q. Did you make any effort to carry out that instruction?

A. I did.

Q. What did you do?

A. I seen one party.

Q. Whom did you see?

A. I seen a man by the name of Gray.

Q. Did Howard Mellick mention any sum of money that he would pay you if you accomplished that object?

A. Yes, sir.

Q. Tell what it was?

A. I can't recollect whether it was three hundred or five hundred dollars; it was one of the two; if this thing could be accomplished.

Q. You saw Gray about it, I understand you?

A. Yes, sir; I went to his place of business as I agreed to do.

Mr. Morrow.—Repeat that.

The Witness.—I say I went to his place of business and approached him on the subject as I agreed to do.

Q. Did you accomplish it?

A. No, sir; I did not.

Q. One thing more, Mr. Berry: While you were constable in Phillipsburg you were on the streets?

A. Yes, sir.

Q. That was your business?

A. Yes, sir.

Q. Were you engaged as policeman, too?

A. Yes, sir; that is extra; I served at different times as police, if a man was sick or absent.

Q. During the time you were a policeman were you on the street?

A. Generally as late as any, and when I was a constable.

Q. In the day-time also?

A. Yes, sir.

Q. Did you go by Howard Mellick's store in Phillipsburg, up and down in front?

A. Yes, sir; the same as I did any part of the street.

Q. Did you ever see Mrs. Mellick, who was then Emma Keiter, before her marriage, with Henry Mellick in front of that store?

A. I can't say that I did.

Cross examination by Judge Morrow.

Q. How old are you?

A. I am in my forty-ninth year.

Q. What is your present business?

A. My present business is building railroad.

Q. Where?

A. Easton Northern Railroad; James Smith contractor; Wagner's mill.

Q. At whose mill?

A. Wagner's mill.

Q. How long have you been at work there on that line of the road?

A. Since last July 1st.

Q. Continuously?

A. Yes, sir.

Q. How old are you?

A. Forty-nine.

Q. A laborer on this road—a laborer on building the road-bed?

A. No, sir.

Q. What?

A. I have charge of a gang.

Q. You are superintendent of a gang of men?

A. Yes, sir.

Q. Were you at work yesterday?

A. I was.

Q. And the day before?

A. The day before.

Q. If you don't remember I don't care to take the time for you to look at your book?

A. We have had so much rainy weather it is pretty hard to tell.

Q. Whom did you first tell about this proposition of Howard Mellick to you?

A. I think Mr. Shipman.

Q. When?

A. Well, I think he was to my place if I recollect about two weeks ago.

Q. Mr. George Shipman?

A. Yes, sir.

Q. At your place in Phillipsburg—in Easton?

A. Yes, sir.

Q. Were you at work that day?

A. No, sir.

Q. Is that the day this case was on trial at Easton?

A. What case?

Q. This Mellick case?

A. I don't know.

Q. Did you tell anybody about this before?

A. No, sir.

Q. Won't you tell me what Howard Mellick's proposition to you was?

A. His proposition?

Q. Yes?

A. His proposition by him and his father?

Q. I want Howard Mellick's proposition to you, what he said—what Howard Mellick said to you?

A. I was called into the store.

Q. Who called you in?

A. The old gentleman. And the son was present, by, and proposed this thing.

Q. Tell what the son said?

A. They took me back to the back desk in the back part of the store, that is where they did their book business and approached me on this subject, whether I could accomplish certain things.

Q. (By the Court) The counsel wants to know what that end was, just what was said?

A. The point was for to get a certain party for to take Mrs. Mellick, so that they could catch them together.

Q. Out where?

A. It didn't matter where it was—whether on the lots or whether we appointed a certain place in Easton, so that we could come on to prove this thing, that they were having criminal intercourse.

Q. (By Judge Morrow) That was the proposition?

A. That was the proposition.

Q. That you were to get this man to go to Emma Mellick and enveigle her out on the lots and have criminal intercourse with her?

A. Yes, sir, I was to see if I could not find a party to do this. They asked me if I knowed of any one, I told them that I didn't know of anyone who would do a thing of this kind, unless it was this man Gray. I had seen him around Keiter's place.

Q. Give his first name?

A. I don't recollect his first name; he was a shoemaker; that is the man that is sitting there (pointing to a man sitting on one of the court benches), I thought that he must be pretty intimate, and that if a thing of that kind could be done, he would be the proper one to go to; and I went to his place of business; he was a shoemaker on Main street, about half a block from their store; I didn't do it that day; I

went two or three days afterwards, I waited two or three days, and I approached him with this thing, and of course he made very light of it; he said he guessed that kind of business could not be done; and I didn't bother more.

Q. And Howard Mellick said he would give you three hundred or five hundred dollars?

A. I can't say just which, but a pretty nice thing; I told this man Gray what was into it.

Q. (By the Court) The amount of money?

A. Yes, sir.

Q. (By Judge Morrow) Did you propose to divide with him?

A. Yes, sir.

Q. And then you would get one-half of three hundred or one-half of five hundred dollars, whichever it was?

A. Yes, sir.

Q. You undertook to do it?

A. No, sir; approached him for that purpose.

Q. How much were you police in Phillipsburg?

A. Policeman do you mean? Police or constable?

Q. When you say you were constable, your business was not to patrol the streets?

A. I followed that for a business, travelled from one Justice's office to another.

Q. You were not patrolling the street?

A. I had to travel the streets to do this business, and I generally kept my eye on the business.

Q. Where is this search warrant that you had?

A. That is a fair question to ask, Judge; whenever I had a search warrant or any business of that kind I made my return and turned it over to the Justice.

Q. Who issued this warrant?

A. Justice Johnston issued this warrant.

Q. Scott Johnson?

A. Yes, sir.

Q. The warrant said nothing about hunting for papers?

A. No, sir.

Q. Who swore out the search warrant?
A. I thought Mr. Mellick.
Q. Which one?
A. That one there.
Q. (By the Court) The young man here?
A. Yes, sir.
Q. That is all.
Mr. Shipman.—That's all.

JOSHUA B. GRAY, a witness produced in rebuttal on the part of the complainant, testified as follows:

Direct examination by Mr. George Shipman.

Q. Where do you reside, Mr. Gray?
A. Phillipsburg.
Q. How long have you lived there?
A. I lived there I guess since 1880 or 1881—'80 or '81; in '80 or '81 I was shoemaking on Main street; I don't recollect which year it was any more; I can tell by my books.
Q. Do you remember Mr. Berry coming to you?
A. Yes, sir; I recollect it.
Q. Do you remember his making you the proposition he has spoken of on the stand?
A. Yes, sir; he came to me and said—
Judge Morrow.—I think it is enough for him to say he made the proposition.
A. He made the proposition.
Q. He made a proposition?
A. Yes, sir.
Q. You didn't accede to it?
A. No, sir; I didn't; I don't recollect what I told him.
Q. You didn't do it?
A. I would not do it.
Q. Did you ever see Howard Mellick in reference to any papers?

A. Yes, sir; after Berry had been there and made this proposition it was two or three weeks, may be a month, Howard came there afterwards.

Q. Came to your place?

A. Yes, sir; and he asked me if some one, Berry, the constable, had been to see me about a certain arrangement, and I didn't give him much satisfaction at first and then he approached the subject himself about the same as Berry stated, only he wanted me to steal the papers, the mortgage and also receipts that she had for furniture.

Q. Did he say so to you?

A. He told me he would pay me for it, that the papers belonged to him. I told him it was a very bad thing for to get a man to steal; he said the papers belonged to him and his father; I told him he had the law to get it; he had that privilege, where if I stole them I could be sent to State Prison. He allowed there was no danger of that, for he could make it all right for the attorney, that they were too poor to prosecute, or rather she was.

Q. You didn't do as he wanted you to?

A. No, sir; I did not; of course he made the first proposition, was the same as Berry's, and I told him I could not accomplish that or would not if I could, and then he proposed.

Q. (By the Court) Repeat what the proposition was.

A. I should get her to go out with me and get her in some vacant lot or some out of the way place, anywheres, with me, and Mr. Berry and one or two others he mentioned, I don't recollect for sure who they were, they were to come on me, and I told him it was for criminal intercourse is what he proposed; I told him I could not accomplish anything like that. He said only I should get her into a compromising position. I asked him what his object was in that, and he said his father could prosecute her for divorce and adultery also and by that means he could make her sign a release for him for those papers; that was his object.

Q. What was the second proposition?

A. To steal the papers; I should steal the papers was the second proposition.

Cross examination by Judge Morrow.

Q. Mr. Gray, you have been arrested for stealing before that?

A. No, sir.

Q. Arrested for stealing chicken weren't you?

A. No, sir.

Q. Sure of that?

A. Yes, sir; never was arrested for stealing chickens.

Q. You ever live with these people?

A. No, sir.

Q. You have been very intimate with them?

A. Not particularly; they are neighbors.

Q. Haven't you been going with them ever since you knew them?

A. Going with the boys quite a bit.

Q. And with the girls, particularly with Mrs. Mellick?

A. Not particularly.

Q. You have been a good deal with them?

A. I have been in business with them.

Q. You have interested yourself in this case very much?

A. No, sir, I did not.

Q. Talk about it a great deal?

A. May have had an opinion, or something like that, which is natural—town talk.

Q. You hunted up evidence for them, didn't you?

A. I don't know that I am; I am an officer and I have that right if I did.

Q. What kind of officer?

A. Special police.

Q. Watchman on the Central—on the Jersey Central and special police at $1 a year?

A. And the "L and S" and its branches.

Q. (By the Court) Lehigh and Susquehanna?

A. And Lehigh and Susquehanna; done business with them all over the road from Susquehanna to Phillipsburg.

Q. You went over to Phillipsburg to see Mr. Berry, with Mr. Shipman?

A. Yes, sir.

Q. And have been with him a good deal getting testimony, and with the Keiters?

A. Not that I know of; I was with Mr. Shipman when he went to see Mr. Berry, to tell him where he lived; I certainly went.

Q. Whom did you first tell this story to?

A. To Mr. Shipman, and at the time it happened to Mrs. Mellick and her mother, I guess was all at the time.

Q. Right away?

A. Somewhere lately after it happened; and then afterwards I told Mr. Shipman, the day that the trial was going on at Phillipsburg; he stopped me and commenced talking with me; I told him I knowed about it; I met him on the street right in front of Bill McGlouhten's saloon.

Q. McGlochten's?

A. William McGlochten. I don't know the right pronunciation.

Q. Were you well acquainted with Howard Mellick?

A. I had often seen him, yes, sir; never very intimate after he wanted me to do that deed.

Q. Did Mr. Berry offer you some money that day?

A. No, sir; told me what was in it; said he would divvy up, he said.

Mr. Shipman.—That will do.

ADAM MARTIN, a witness produced on the part of the complainant, in rebuttal, testified as follows.

Direct examination by Mr. Shipman.

Q. Where is your residence, Mr. Martin?

A. Seven hundred, Main street, Phillipsburg.

Q. What is your business?

A. Mercantile business.

Q. How long have you been in the mercantile business?

A. I went there in 1879, December 1, 1879.

Q. What was your business before that?

A. I was driving horse car, the Phillipsburg street car railway company.

Q. Do you—did you know Henry H. Mellick in his lifetime?

A. Yes, sir, I knowed him as Dad Mellick.

Q. And you were acquainted with Howard Mellick also?

A. Yes, sir.

Q. Can you state—did you ever see—your street car line ran through Main street I understand you to say?

A. Yes, sir; from Center Square, of Easton, to opposite the Andover Furnace.

Q. That run by Howard Mellick's store in Phillipsburg at that time?

A. Yes, sir.

Q. Did you ever see Mr. Henry H. Mellick on your horse car?

A. Yes, sir.

Q. And Mrs. Mellick?

A. Yes, sir.

Q. Have you in your mind any circumstance about it?

A. Yes, sir, I have one I believe.

Q. State it if you please?

A. I could not say when it was, but I think there was a circus in town.

Q. Was it before or after they were married?

A. O, it was before they were married.

The Court.—What do you want to open?

Mr. Shipman.—I want to rebut the evidence that

Mrs. Mellick run after the old man; I want to show that the old man ran after her.

Judge Morrow.—I have not any doubt that he ran after her.

The Court.—Go on with the evidence.

Q. Go on, sir?

A. I turned around at the circle of Easton, and this lady, Mrs. Mellick, she got in the car with the young gentleman with her.

Q. (By the Court) Before she was married?

A. Yes, sir; and as I got on by Second street Mr. Mellick got on and he paid the fare for the three parties, and they "sot" on the right hand side and a gentleman sat next to her and the young man, and the old man fetched him out of that, he got him on the other side and he sot down by the side of her; that is what made me remember; and they went on down through Phillipsburg to Michael Henry's corner, there the young man and Mrs. Mellick got out and they stood on the corner, and when they had gone down the old man followed them. The only particular point in it was his getting this young fellow to go on the opposite side; it was another person in the car, not the young man she entered with.

Q. In driving up and down this street did you see this young lady in front of Mellick's store, or waiting in front of it?

A. That I could not say; we never paid any attention to any one except that came in the car.

Q. That is all.

STEWART KENNY, a witness produced on the part of the complainant, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Shipman.

Q. Where do you live?

A. Phillipsburg.
Q. Did you ever live at New Village?
A. Yes, sir.
Q. In the house of Mr. Mellick?
A. Yes, sir.
Q. What year, as near as you can remember?
A. Something like—(hesitates)—
Q. 1883 was not it?
A. Something like that—five or six years ago.
Q. To whom did you pay the rent that year?
A. I paid it to Howard Mellick.
Q. How much?
A. I have a recollection of paying the first half, twenty dollars—twenty-five dollars—$50, a year; the first half I have a recollection of paying to Howard Mellick, but the other half I have no recollection.
Q. Didn't you swear before the Circuit Court—well, that's all.
The Court.—What is the point?
Mr. Shipman.—To show that Howard Mellick collected the rent.
Q. How much was the annual rent?
A. Fifty dollars.
Q. That is all.

Cross-examination by Judge Morrow.

Q. Did you have a lease?
A. No, sir.
Q. Who did you rent of?
A. Henry Mellick.
Q. The old man?
A. Yes, sir.
Q. How did you come to pay to Howard?
A. I went to the old man and he said he could not see—go to Howard.
Q. That is all.

At this point in the case complainant's counsel proposed to recall the complainant; counsel for the

defendant said that he wished the counsel for the complainant to state now whether they relied upon the possession of this mortgage and a quasi-delivery of it, towards which there is some evidence pointing, prior to the date of the assignment to Mr. Howard Mellick, and whether they claim thereby a superior equity in point of time to Mr. Howard Mellick's equity; and counsel for the defendant stated that there was no allegation in the bill which was sufficient to cover that, but that something had been said about an amendment on the second day of the trial in that respect; that no amendment had been made. Counsel for the complainant stated that they did claim a superior equity on that account and so inform the counsel for the defendant. The court said that in that case there should be an amendment made at some time to cover it, but that the counsel for the defendant would understand they were at liberty to examine witnesses now with a view to that issue being raised.

MRS. EMMA MELLICK, recalled, in rebuttal, further testified as follows.

Direct examination by Mr. Shipman.

Q. Mrs. Mellick, did you ever see any notes of Howard Mellick's in the possession of your husband?

A. Yes, sir.

Q. When?

A. Saw them after we were married.

Q. Can you state how long as nearly as possible?

A. It was in 1879.

Q. '79. Where did you see them?

A. Why we were first married in 1878, and then we parted, and in '79 he wanted me to come back; so he said he would bring his papers over to me, and when we moved we would take them to the house, and he brought them to me, and I had them about two weeks before we moved, and he told me there were three notes

in there against Howard. And I took them over to Mr. Hillburn's and asked him to read them ; so he read the papers that I had, and there was three notes against Howard Mellick.

(By the Court) For how much ?

A. One was one thousand dollars; and one was five hundred dollars, and the other was four hundred and forty or four hundred and sixty dollars ; I can't say positive which.

Q. (By Mr. Shipman) The dates, have you any recollection ?

A. No, sir ; I didn't take notice of the dates ; Mr. Hillburn read them for me and said they were all right ; he read them and showed them to me.

Q. You could see the figures ?

A. Yes, sir.

Q. And you could read the notes ?

A. Yes, sir.

Q. And you did read then ?

A. Yes, sir.

Q. Those notes were they live notes then ?

A. Yes, sir.

Q. They were not out-lawed ? (Leading)

A. No, sir.

Q. What was done with those notes ?

A. We took them up ; I kept them till we moved up there ; that is the second year when we went to New Village ; I said you may as well take them now and lock them up in the bureau drawer, and they were there until 1880—New Year's Day of 1880 they were taken away.

Q. (By the Court) Who took them away ?

A. He said Howard took them away; I missed them, and asked him what he done with the papers. On New Year's Day, of 1880, we come home to stay over New Year's, and he went over to Howard's in the afternoon, and they hitched up and went sleigh-riding, and they may have gone down there.

Q. (By Mr. Shipman) Mrs. Mellick, do you owe Howard Mellick ?

A. No, sir.

Judge Morrow.—Howard Mellick said, on further examination, it was her mother; we don't pretend that.

Q. Now, another thing, Mrs. Mellick; did you ever go up to Howard Mellick's store to meet your husband before you were married?

A. Never was there in my life to meet him?

Q. Did you ever get money from him outside of that store?

A. No, sir.

Q. Did he ever come out to you in front of the store?

A. No, sir; only once.

Q. When was that?

A. After we were married.

Q. Never before you were married?

A. No, sir; that was about 1882 or 1883, I don't know which.

Q. Did you ever get any money in front of the store?

A. No, sir; in front of the store; no money except for the furniture and things.

Q. Previous to your marrying?

The Court.—This has already been sworn to. But she is entitled to swear to it again.

Q. Previous to your marriage did you see this bond and mortgage of yours at your house?

A. Yes, sir; before we was married; before we took them to Mr. Hillburn's at all I saw them.

Q. Who brought them there?

A. Henry Mellick.

Q. Under what circumstances?

A. He brought them over and said I could look at them and show them to my father and let him see them, and that they were all right.

Q. Did you take them?

A. I took them; he said I could let him look over them, or read them myself before we went to Hillburn's, so that I could be satisfied that the bond and

mortgage was right, and then my father read them for me; I had them pretty nearly a week.

Q. Then what did you do—by the way your father read them for you?

A. Yes, sir.

Q. Did you look over them?

A. Yes, sir; there was some things in there I could not read; that is the reason I asked him to read them.

The Court.—This was all in before, at least by implication.

Q. How soon after that were the papers taken to Hillburn's?

A. We took them over there on the following Monday.

Q. You had them a week?

A. Very near a week.

Q. And then the following Monday they were taked to Hillburn's?

A. Yes, sir.

Q. And you went there with the old man?

A. And my mother went along.

Q. And there you had the papers in your possession at Hillburn's?

A. Yes, sir.

The Court.—The question is not one of possession, but of whose control they were under.

Cross-examination by Judge Morrow.

Q. Mrs. Mellick can you fix the time when Mr. Mellick brought this bond and mortgage to your father's house?

A. Well, it was in the forepart of February.

Q. How do you fix the time as being the forepart of February?

A. Because I know we were to be married on the 18th of March, the next month.

Q. Then was it as much as four weeks before you were married that he brought it to you?

A. Not so long as that I think; somewhere about

three weeks, the time I saw them; I think it was three weeks before the day fixed for the marriage.

Q. (By the Court) You think it was three weeks before the time of the marriage?

A. Yes, sir.

Q. (By Judge Morrow) How do you fix the time as being three weeks before you were to be married?

A. Because I know it was in February we took them there, and on March eighteenth we were to be married, and they were to be all fixed by that time.

Q. What other papers did Henry H. Mellick bring with him to your father's house at that time?

A. At that time he brought the deed of a property in New Village.

Q. Anything else?

A. And a bond and mortgage, and that is all.

Q. Three papers in all?

A. Yes, sir; a deed for the house.

Q. Now, did you read any part of the mortgage during the week they were at your father's house?

A. Well, I just looked over them, and listened to him while he read them; I am not anything extra of a scholar.

Q. Did you stand by while your father read?

A. He read them on a Sunday for me.

Q. I want to show you the mortgage and ask you if you remember distinctly that it was that mortgage—exhibit C. 1—just look at that—that is the Kramer bond and mortgage?

A. (Taking exhibit C. 1 into her hands) Yes, sir, that is the paper.

Q. You haven't any doubt about that?

A. No, sir.

Q. And that was at your house on a Sunday?

A. Yes, sir, my father read it on Sunday.

Q. A week before you went over to Hillburn's?

A. No, sir.

Q. How long before?

A. He brought it on Tuesday or Wednesday of this

week, and Sunday father read it, and Monday next week we went to Hillburn's.

Q. What time did you go to Hillburn's?

A. After dinner, between one and two o'clock.

Q. As early as between one and two o'clock?

A. Somewhere around tnere; I don't remember the minute.

Q. Was it right after dinner?

A. Yes, sir, after dinner.

Q. And you have a pretty clear recollection that it had been in your father's house three or four days before that Sunday?

A. Yes, sir.

Q. Had you seen it yourself?

A. I had it myself.

Q. You had this identical paper in your hands?

A. Yes, sir.

Q. And I will show you the bond, which is marked exhibit C. 2; did you see that bond there?

A. (Looking at exhibit C. 2) Yes, sir, that is the bond.

Q. That is the bond that you saw?

A. Yes, sir.

Q. Now to go back—did you notice anything about the bond by which you identify it?

A. No, sir.

Q. Did you look it over to see that it was Joe Kramer's bond?

A. Yes, sir.

Q. That you looked over to see?

A. Yes, sir.

Q. The mortgage did you look at that to see that Joe Kramer had signed the mortgaged too?

A. Yes, sir.

Q. And that his wife had signed it also?

A. Yes, sir.

Q. Did you notice that she had signed it too?

A. Yes, sir.

Q. You noticed that?

A. Yes, sir, I noticed that she had signed it.

Q. What part of that mortgage did you ever read?

A. Well, I just looked over it as my father looked over it.

Q. Over at Hillburn's office what part of it did you read?

A. I just looked over it as he read it.

Q. And you saw at Hillburn's office that it was the same mortgage that your father read to you on Sunday?

A. Yes, sir.

Q. And that Sunday, and that day you went over to Hillburn's, was three weeks before the day set for your marriage?

A. No, somewheres around there; may have been a little longer.

Q. You are sure it was a week?

A. Three weeks anyhow; it was three weeks anyway.

Q. Have you anything by which you fix the time as being three weeks, except that it was in February?

A. No, sir, I have not anything that I just fix the time.

Q. But you know it was more than a week or ten days?

A. Because I know we were to be married on the eighteenth and they were to be fixed in March.

Q. And this was in February?

A. To be fixed for the eighteenth of March.

Q. When you went there to Hillburn's office you had these papers in your hands, in your possession— this bond and mortgage and this deed, and the deed for the New Village house?

A. Yes, sir.

Q. This is the deed to Henry Mellick for the Stewartsville property; it is marked Exhibit C. 5—I show you this paper: did he have that deed at your home on that Sunday also, or the week before, and did your father read that deed that Sunday?

A. Yes, sir; that is the deed or looks like it.

Q. Did he have that at your house?

A. Yes, sir.

Q. Did the old man bring that together with this bond and mortgage at your house?

A. Yes, sir; brought them together.

Q. Did your father read those papers?

A. All the papers.

Q. Read them through from beginning to end?

A. Yes, sir; I wanted to be sure that they were the right papers.

Q. So that you know he read your five thousand dollar bond from Kramer to Mellick, and five thousand dollar mortgage from Kramer to Mellick?

A. Yes, sir.

Q. And did you retain these at your house from that time when the old man brought them there until they were taken over to Hillburn's?

A. Yes, sir.

Q. Did your mother see them while they were there?

A. I showed them to her; said that they were the papers.

Q. And then you took them all over to Hillburn's office after dinner on Monday?

A. Yes, sir.

Q. Know the day of the month?

A. I could not tell that.

Q. And how shortly after that time did Mr. Mellick come back to your place and tell you that he would like to get the bond and mortgage to draw his interest on?

Objected to

The Court.—That is not open now.

Q. Now how long was it after you left the papers at Hillburn's on Monday before the old man came back to you and said he would like to have those papers, the bond and mortgage to draw his interest on?

A. I could not just exactly tell you, but I think somewhere around a week or it might have been a few days over, that is before the 18th of March.

Q. A week before the 18th of March?

A. Yes, sir; that is right.

Q. And what papers were given to him?

A. He gave these papers back to him, the bond and mortgage.

Q. Did you see them given over?

A. And the deed of the house.

Q. He took the papers all away?

A. Yes, sir; I saw them given back.

Q. Now how did the papers, this bond and mortgage, get back to Hillburn's before the sixth of April, do you know?

A. He came there back with me, and me and him went with them again.

Q. What day?

A. I can't say what day.

Q. How long before the sixth of April?

A. Well, it was right after he drawed his interest. whenever he drawed that.

Q. Then he and you took these papers back?

A. After he drawed his interest.

Q. Did you notice then when you took them back to Hillburn's that the interest was receipted on the second of April, 1878?

A. Yes, sir.

Q. So that it was after that?

A. After that; it was there one year before we were married; and this was the second.

Q. And that time you took them back, was how long after the time he had taken them away, as nearly as you can tell?

A. From about a week before the eighteenth of March until that interest was paid; it was that long.

Judge Morrow.—Did you offer in evidence these receipts for furniture?

Mr. Shipman.—I think so.

Judge Morrow.—I want to ask the witness some questions about them.

The Court.—I don't see the relevancy of the bills, but they may be shown the witness.

Q. (Handing witness a bill) There is a receipt of Horace M. Norton, dated March 28, 1878; is that one of the receipts you spoke of?

A. Yes, sir.

Q. (Showing witness another receipt) And S. Garis for marble table, $9.50, dated March 26, 1878; is that another

A. Yes, sir.

Q. And Ed. Able, agent, $8.05, dated April 3, 1878—is that one of them?

A. Yes, sir.

Q. Now your sewing machine you say had nothing at all to do with that thing at all?

A. No, sir.

Q. Then I don't care for that.

A. Yes, sir.

Q. (Showing witness another receipt) And Philip Stern, $6,75, dated March 29, 1878?

A. Yes, sir.

Q. (Reading another receipt) March 27, 1878, T. Taylor, $4 for looking glass; is that one of them?

A. Yes, sir.

Q. And William Laubach, $44.85, March 26, 1878; is that one?

A. Yes, sir.

Q. And April 2, Henry Hellmeger, $12.60 for oil painting, is that one of them?

A. Yes, sir.

Q. A. D. Cooke, April 4, 1878, $138.50; is that one of the them?

A. Yes, sir.

Q. Was that bill paid by you into the hands of H. M. Norton; it says; "Received payment by the hands of H. M. Norton, A. D. Cooke, per E."

A. I paid the money to Mr. Cooke.

Q. Didn't you pay it to Mr. Norton?

A. I don't know; maybe I might have.

Q. I guess you did?

A. I guess I did; he got me to do that.

Q. (By the Court) Who did?

A. Mr. Norton; I went there to look at stoves. He said, will you do a favor for me; he said I have been selling Mr. Cooke some goods and he didn't pay me and he said that if there was anybody going to housekeeping send them down there he would give a receipt; if I could do that favor for him he would give me a nice present for it; I said all right.

Q. (Showing witness Cooke bill.) Mrs. Mellick that bill was made out to Miss Emma Keiter; it is dated April 4, 1878.

A. His clerk went with me down to Mr. Cooke's; I asked him if I could get what I wanted there; and his clerk went there and I paid the money at the store afterwards.

Q. (By the Court.) Made the turn through the clerk?

A. Yes, sir; that is the way.

Q. (By Judge Morrow.) I want to ask you, Mrs. Mellick, I am not sure that I didn't ask it before, didn't your husband there that day have upwards of four hundred dollars which paid for the furniture you bought of Norton, and this bill, and was not the rest of it by your husband handed over to you that day in the store?

A. Thank you, my husband was not with me; that is not so; he was not with me.

Q. (By the Court.) Did your husband pay that for you?

A. No, sir; he was not over with me.

Mr. Shipman.—That was asked before, and Mr. Norton was called to contradict her and the Court said it was not competent at all.

Q. That is all.

WILLIAM L. HOAGLAND, a witness called on

the part of the defendant, in sur-rebuttal, testified as follows:

Direct examination by Judge Morrow.

Q. You live in Belvidere?

A. Yes, sir.

Q. Were you employed in the Warren County Clerk's office in March, 1878?

A. Yes, sir.

Q. In what capacity?

A. As a clerk.

Q. Who was County Clerk at that time?

A. James E. Moon.

Q. I want to show you the book of the daily entry of mortgages in this County kept at that time, I think it was the same book that was in evidence.

Mr. Shipman:—That book was offered in evidence.

Q. Were you County Clerk yourself after that time?

A. Yes, sir.

Q. Immediately succeeding Mr. Moon's term?

A. Yes, sir.

Q. Immediately succeeding Mr. Moon's term?

A. Yes, sir.

Q. For five years?

A. Yes, sir.

Q. I want to show you the book of the daily entries of mortgages which has been offered in evidence in this case, and if it is marked as an exhibit I don't know—it was down at Phillipsburg—and I want to call your attention to entry of mortgage number 1292; state to the Court what mortgage is there entered?

A. Mortgage from Joseph Kramer and wife to Henry H. Mellick.

Q. What number is it?

A. 1292.

Q. Does the record show it was brought to your office?

A. On the third of April, 1877.

Q. How was it brought there?

A. By mail.

Q. Where is it recorded as appears by that entry?

A. Volume thirty-two, page four hundred and sixty.

Q. And when was the mortgage taken from the office?

A. March fourteen, eighteen seventy eight.

Q. Who took it?

A. Why—

Q. I withdraw the question; In whose handwriting is the entry there—"Mailed to S. C. Smith, March 14, 1878," with the writing over "Sent by L. M. Teel" over "Mailed to S. C. Smith"?

A. In whose handwriting? That is mine.

Q. Mr. Hoagland, can you explain to the Court what that entry means?

A. First "Mailed to S. C. Smith," and then written over "Sent by L. M. Teel"?

Mr. Shipman.—Why explain? It shows for itself.

Judge Morrow.—What his habit is.

Mr. Shipman.—No, that won't do.

The Court.—He can state what the entries mean if they are in his handwriting.

Q. (By the Court) State what you mean by these entries, Mr. Hoagland?

A. Well, sir, how I got the information as to sending that mortgage I don't know; but when I made that entry "Mailed to S. C. Smith," I undoubtedly intended to send it to him by mail; and as was very frequently the habit or the custom with very many people that came there from Phillipsburg, if there was a messenger I would send by messenger; I done that frequently, and I make that explanation, that I handed it to Mr. Teel and made that entry above.

Q. (By Judge Morrow) What time did you get to the office in the morning at that time?

A. I really don't recollect the time.

Q. About those days, in March, 1878?

A. I went to the office in the morning to receive up mails—

Q. I mean the Clerk's office?

A. I generally got to the Clerk's office between seven and eight o'clock, at the Clerk's office; mostly by seven o'clock.

Q. And what time did the mail reach Belvidere from Phillipsburg in the morning?

A. I am not right positive, but my impression is it came up—that there was a ten o'clock mail; I don't recollect about the running of trains at that time; I really can't say about that—what time the trains came?

Q. Was the time—was it the habit and practice in the office to note on that register always the time that it was taken from the office?

Objected to.

Q. (By the Court) Was it the practice to note on that register the time that mortgages were taken out of that office?

Objected to.

Q. (By the Court) Answer the question.

A. Yes, sir, it was the habit.

Judge Morrow.—I don't know that this book was in evidence before; your Honor directed that the entries themselves should all be given in regular order, with the corresponding entries on the top.

The Court.—Each one that wants to use anything out of that book must make a copy.

Q. Will you give the titles at the head of the pages that are down before you over that mortgage; the first is the "number," the next is the "date," the next is the "mortgage," "mortgagor," "mortgagee," "by whom bought," "time," "deposit," "record," "volume," "page," "by whom taken away" and

"when taken." What is the entry under "number?"

A. 1292.

Q. Under mortgagor?

A. Joseph Kramer and wife.

Q. Under mortgagee?

A. Henry H. Mellick.

Q. Under "by whom brought"?

A. Mailed.

Q. Under time?

A. Third April, 1877.

Q. Deposit?

A. Eighty-five cents.

Q. Record?

A. Eighty-five cents.

Q. Volume?

A. Thirty-two.

Q. Page?

A. Four sixty.

Q. By whom taken?

A. By L. M. Teel—mailed to S. C. Smith, and sent by L. M. Teel.

Q. And when taken?

A. March 14, 1878.

Q. Do you know in whose handwriting the entries of the number and so on until the time taken away, in whose handwriting that is?

A. That is Mr. Moon's handwriting.

Q. Mr. Moon was County Clerk?

A. Yes, sir.

Cross-examination by Mr. Shipman.

Q. When did you make all this discovery, Mr. Hoagland?

A. I think I made it this week; it was called to my attention.

Q. Who called your attention to it?

A. Mr. Morrow.

Q. Showed you the book?

A. How?

Q. Did you remember anything about it?

A. Didn't remember anything about it?

Q. Are you sure that is your handwriting—"mailed to S. C. Smith"?

A. Yes, sir.

Q. When did you make it?

A. Made it on the fourteenth of March, 1878.

Q. Do you know?

A. I am satisfied that I did.

Q. When did you make that over—"sent by L. M. Teel"?

A. Made it all the same day, no doubt.

Q. Do you know whether you did?

A. That is twelve years ago, to say that I knew; I am just as well satisfied in my own mind that I did, as that you and I are talking.

Q. Didn't you sometimes make a mistake about it; is that a correct book of record, or didn't you make mistakes about it sometimes?

A. I am not infallible.

Q. Is that called a book of record, or is it merely a clerk's memorandum?

A. This is a book of entry of mortgages when they are brought and when taken away.

Q. A memorandum kept by the clerk that is all—clerk's memorandum?

A. It is a book——

The Court.—He is a living witness swearing to an entry he made himself.

Q. That is all.

Re-direct examination by Judge Morrow.

Q. Do you know what kind of a pen that writing is with?

A. I can't tell; my impression is it was a stub pen.

Q. Where was that book kept?

A. Generally kept in the vault; sometimes carried

out in the outer office; but, as a general thing, kept in the vault.

Q. And what kind of ink was kept in the vault?

A. Several inkstands; some become stale and some fresh.

The Court.—I am satisfied; you need not pursue that for my benefit.

Q. Where does L. M. Teel live?

A. I understand at Phillipsburg.

Q. That was Louis Marshall Teel?

A. L. M. Teel, yes.

Q. That is all.

PETER YOUNG, a witness produced on the part of the defendant, being duly sworn, testified as follows.

Direct examination by Judge Morrow.

Q. Were you a conductor on the Belvidere road running to Phillipsburg in March, 1878?

A. Yes, sir.

Q, Have you a time-table of trains from Belvidere to Phillipsburg?

A. I have a table or a memorandum.

Mr. Shipman.—Of what year?

Judge Morrow.—Of March, 1878.

Q. Will you be kind enough to tell what time trains left Belvidere for Phillipsburg?

A. The first one in the morning at six ten.

Q. What time did that reach Phillipsburg?

A. Reached Phillipsburg at six forty-five.

Q. And the next one?

A. The next one left Belvidere at twelve fifty-five.

Q. And what time did that reach Phillipsburg?

A. Reached Phillipsburg at one thirty-five; the last one at six forty-one P. M., and reaching Phillipsburg at seven ten.

Q. Now what time did trains leave Phillipsburg for Belvidere?

A. The first one left Phillipsburg at ten forty.

Q. Ten forty, A. M.?

A. Yes, sir.

Q. Was that the mail train?

A. Yes, sir; that was the mail train, the first one in the morning, reaching Belvidere at eleven thirteen.

Q. What time was the next one?

A. The next one is two twenty-five.

Q. P. M.?

A. That left Phillipsburg at two twenty-five, P. M.

Q. Reached Belvidere when?

A. At three o'clock.

Q. What was the next train?

A. The next one left Phillipsburg at seven fifteen.

Q. Reaching Belvidere at what hour?

A. Seven forty-eight.

Q. Do you know whether that train carried the mails?

A. The last train carried the mails—the one in the evening—the one that got here at that time, at 7.48, carried the mail.

Q. Do you know whether that mail was distributed that night?

A. Well, I could not say; I suppose likely it was; I suppose so.

Q. Did the ten forty train from Phillipsburg also bring the mail?

A. In the morning; yes, sir.

Q. Will you state which trains from Belvidere to Phillipsburg carried the mails going down?

A. From Belvidere down?

Q. Yes?

A. The first one in the morning at six ten; that carried the mail, that was a through mail; of course that carried the mail; and the next one at twelve fifty-five carried the mail.

Q. Another one—any other one.

A. No, sir.

Q. That was the table of trains in effect on the 13th and 14th of March, 1878?

A. Yes, sir.

Not cross examined.

HOWARD MELLICK, the defendant, recalled in rebuttal, further testified as follows.

Direct examination by Judge Morrow.

Q. Did your father have any notes against you?

Objected to on the ground that that question has already been asked and answered.

The Court.—You may ask him again.

Q. 1880——

The Court.—In 1879 she said.

Q. Any time after January 1, 1878?

A. No, sir.

Q. Did he have a note of $1,000 against you?

A. No, sir; he did not.

Q. Or one of five hundred dollars?

A. No, sir.

Q. Or one of $400.

A. No, sir; he did not.

Q. Had he any paper of that kind at all against you at that time?

A. No, sir.

Q. Are you acquainted with Constable Berry?

A. I am.

Q. Did you ever talk with him about watching Mrs. Mellick, your father's wife?

A. Yes, sir; I think I did.

Q. I don't know whether it is competent for him to tell what the talk was.

The Court.—You have a right to contradict what Mr. Berry swore to, and in doing so you may show

that he not only did not say that but said something quite different.

Q. Did you ever propose to him that he should get Mrs. Mellick out on the lots or in any place in a compromising position with any persons?

A. No, sir; but that was the report there; that she was a laying——

Objected to.

Q. Did you name any sum of money or offer to give any sum of money to him if he would get a party to get Mrs. Mellick in a compromising position where she would be caught?

A. No, sir.

Q. What did pass between him and you in your father's hearing?

A. Mr. Berry was living in my house and he would quite frequently come to the store and I would see him and he would tell me about this woman, what she was a doing why (interrupted)——

Objected to.

The Witness.—Why I didn't look after her laying around the street as she was; well, I said, Berry why don't you watch her too, or something to that effect—I don't know just what; he said I could easily catch her; I don't know just the words, that is the idea.

Q. What did you say to him?

A. What did I say to Mr. Berry?

Q. When he said—or in answer to what he said to you—what did you say to him, or what did your father say to him in your hearing?

A. My father made a remark something like this: that if he would catch him in such a thing as that he would pay him for his trouble, or something like that.

Q. Was there any sum of money mentioned?

A. No, sir; no sum of money; I think Mr. Berry

was a detective at that time on the railroad, the same as Mr. Gray is now.

Q. Did you ever give Berry instructions to go to Keiter's house or when he went to Keiter's house with a search warrant to search for papers concerning your father?

A. No, sir, I did not.

Q. What say?

A. No, sir.

Q. Or anything of that kind?

A. I know that they broke into the house up at New Village.

Q. I am not asking you that?

Mr. Shipman.—That is a volunteered remark.

Judge Morrow.—I have not conferred with him on the subject at all.

Q. I would like to ask the witness if he remembers about Kugler being there at the time those papers were taken out of the safe, and what occurred at the interview?

Objected to.

The Court.—He should have testified to that before.

Q. Do you remember at the time when you had the conversation with your father about assigning you the bond and mortgage that Kugler came there?

A. He was in the store.

Q. But did he go back where you and your father were talking?

A. Yes, sir.

Q. Do you know what became of the papers after that afternoon interview between your father and yourself?

A. Put back into the safe.

Q. Who put them back?

A. I did; in fact I know.

Q. What safe?

A. In the inside lock safe.

Q. And they were left there till when?

A. Left there till the next day, or the eighteenth.

Q. And then what?

A. The day they were taken down to be assigned.

Q. Then what?

A. I got them out in the morning; this conversation was in the afternoon; the first conversation.

Q. Now can't you remember whether it was the day before the assignment was made? (Leading.)

Q. Can you tell how long before the papers were actually assigned to you?

A. Well it was the day before; that is, this was on the eighteenth, and it was either on the—it would be on the sixteenth or seventeenth.

Q. Well, was it on Sunday?

A. No, sir, if Sunday is in there then it would be on the sixteenth, I don't know what date might be there; I can't tell about that.

Q. Did your father have the papers away from the store at that interview?

A. No, they were just taken out and looked at and he concluded it was too late to go down that afternoon and I put them back in the safe again.

Q. Mr. Teel lives in Phillipsburg?

A. Yes, sir.

Q. And did he come here to-day to be a witness for you?

A. Yes, sir.

Q. Have you any recollection of getting these papers back from the Clerk's office?

A. No, sir. I know that Mr. Teel has brought me papers; I would not say that this was the one.

Q. You say that Mr. Teel has brought you papers?

A. I can't say that these were the ones. I do recollect generally that Mr. Teel had brought me papers from the Clerk's office.

Q. That is all.

No questions.

S. C. SMITH, recalled on the part of the defendent further testified as follows:

Direct examination by Judge Morrow.

Q. Do you remember sending to the Clerk's office for this mortgage?

A. No, sir; I can't remember it; I have an impression—(interrupted)

(Objection is made to receiving the witness' impression.)

The Witness—I would like to explain how we came to look at this record.

Q. Who wrote this original bond and mortgage?

A. I wrote it.

Q. And who sent it to the Clerk's office?

A. I did.

Q. Did you send the mortgage to the Clerk's office, the Kramer bond and mortgage?

A. Yes, sir.

Q. Now you may go on and state Mr. Smith.

A. When reading the testimony last week, reading my own testimony in the case, it occurred to me that I had gotten this mortgage from the Clerk's office shortly before it was assigned, and the more I thought the stronger the impression became, and that led me to have it investigated to see what the Clerk's register said about it; that is all I know about it; I had that impression that I had gotten it from there by the request of somebody.

Q. Have you any recollection of what you did when you got it?

A. No, sir; I telephoned to Judge Morrow on the spur of the moment and told him to go and look.

Q. Can you tell where you were on the 14th of March?

A. Bloomsbury, at four o'clock in the afternoon, and returned at seven; I was in the office most of the day till then.

Cross-examination by Mr. Shipman.

Q. What day of the week was that?
A. I don't know the day of the week.
Q. We will have the calendar.
A. I think it was Thursday, sir; I would like to tell how I know; I have it from memoranda in my cash book.

Mr. Morrow—I want to call a witness for the purpose of contradicting Mrs. Mellick's testimony about the furniture.

Mr. Shipman.—We object to that.

The Court.—I will overrule the objection.

HORACE M. NORTON, recalled on the part of the defendant, testified as follows:

Direct examination by Judge Morrow.

Q. Mr. Norton I want to show you your bill which Mrs. Mellick has identified—bill dated March 28, 1878; who paid you the money on that bill?
A. It was paid jointly, that is, in the presence of Miss Keiter and Mr. Mellick.
Q. Which Mr. Mellick?
A. The old gentlemen.
Q. When?
A. At my store.
Q. When?
A. March, 28, 1878.

Q. Was the bill of A. D. Cooke paid at the same time?

A. The dating of this is April 4th; the money was there, and this was taken down for Mr. A. D. Cooke's receipt; the money was given to me as Mr. Cooke was owing me for merchandise.

Q. Who paid the money to you?

A. It was paid in the same manner; the money was counted out there, and there was some error in the count, and either Miss Keiter or Mr Mellick said "Let me count it;" it was handed to me; I counted the money, and then Mr. Mellick laid it down there.

Q. How much money did you count in all?

A. Something over two hundred dollars in all.

Q. How much money was there there?

A. I think some four hundred and some dollars.

Q. Who brought it there--who produced it to you?

A. Mr. Mellick.

Q. What did he do with the residue after paying these bills?

A. I don't know; Miss Keiter took the money.

Q. Do you remember that circumstance distinctly, Mr. Norton?

A. I remember the payment of these bills.

Q. And do you remember the circumstance of the old man producing the money?

A. He had the money; brought it out; she was waiting.

Q. Was anything said that day that caused you to remember the circumstances; I don't ask you what it was?

A. Things that occurred? Yes, sir.

Q. That is all.

Cross-examination by Mr. Shipman.

Q. Do you know how you came to make the receipts in her name?

A. The goods were bought in her name; she came

there and bought the goods; she selected the goods previous to this.

Q. How long before?

A. A few days; three days; five days perhaps.

Q. How long had she been in your store the day the money was paid before the old man came in?

A. Twenty minutes, or it might have been ten; utterly impossible to tell.

Q. Does your book show when it was when the charge was made?

A. I have my journal; it is over to the office.

Mr. Shipman.—Let us have it.

Q. Didn't you swear up before the trial of this suit before the Circuit Court or tell this lady that you didn't know anything about it?

A. The first question you objected to, and the court sustained your objection.

Q. That was the other day; was not you a witness in the Circuit Court?

A. No, sir; I was brought up here but was not called.

Q. Didn't you state there then that you didn't know anything about it?

A. Tell who?

Q. Mrs. Mellick, didn't she call you as a witness?

A. Didn't she call me as a witness?

Q. Didn't they subpœna you as a witness in that Circuit Court case and didn't call you because you said you didn't know anything about it, now? Was not you subpœnaed by the defence?

A. (Witness looks at his journal).

Q. When did all this come to your mind, Mr. Norton? When did it all come to your mind about Mr. Mellick being there?

A. When Mr. Mellick inquired of me he said——

Q. (Interrupting) Never mind that.

A. When they began to talk to me.

Q. How long ago?

A. A few weeks before; a short time after the other trial before Beasley.

Q. Weren't you subpœnaed here as a witness?

A. Yes, sir.

Q. Why didn't they call you?

A. I don't know, I was there.

Q. Didn't you tell Mrs. Mellick then that you didn't know?

A. She asked me what they wanted to prove and I said I don't know.

Q. Hadn't said anything to you at all?

A. They asked me with regard to Mr. Mellick's buying of goods, or rather of Miss Keiter's buying goods there and who paid for the goods.

Q. And Mr. Mellick, was he often at your store?

A. Which Mr. Mellick?

Q. The old man.

A. Occasionally.

Q. Was he over there with Miss Keiter before she was married?

A. Yes, sir; twice.

(The witness opens his journal and after turning to a certain page said) If Mr. Shipman thinks that I am manufacturing—March 27th—journal.

Q. The entry is made on the 27th of March.

The Court.—Opposite the entry is "not posted—counted as cash sales—paid."

Q. That is all.

Transcript of testimony &c., taken in the above entitled cause at Morristown,

SATURDAY, MARCH 29, 1890,

before Hon. Henry C. Pitney, Vice Chancellor.

Appearances as heretofore.

HOWARD MELLICK, recalled for further direct examination.

Judge Morrow.—If the Court please, I notice in reading over the notes of the stenographer that I did not call Howard Mellick's attention to the testimony of that man Gray, who said that Howard Mellick came to him and made him some offer, and would like to ask Howard Mellick if that is true.

Q. Mr. Mellick, are you acquainted with Joshua Gray?

A. Well slightly, yes, sir.

Q. Did you in 1880 or 1881, or at any other time make to him a proposition of the character he testified to on the witness stand at Belvidere?

The Court.—Proposition to steal the papers?

A. I don't remember what it was but I never passed half a dozen words with him in my life.

Q. Did you ever propose to him that he should go and get the papers that you claimed belonged to you and your father from Keiter's house, or in any way?

A. No, sir, I did not.

Q. To "steal the papers, the mortgages, and the receipts that Mrs. Mellick had for furniture?"

A. No, sir. What year was that?

Q. In 1881, or any time?

A. I don't think I knew him then. No, sir, I never did. No, sir.

Q. Were you acquainted with him in 1880 or 1881?

A. I don't hardly think I were.

Q. Did you make a proposition to Gray for him to get her in some vacant lot or some out of the way lot, anywhere with him, that Mr. Berry and one or two other persons might come upon them and surprise them in the act of criminal intercourse, or anything of that kind?

A. No, sir, I did not.

Q. Did you ever have any conversation with him on that subject at all?

A. No, sir, I never had any conversation with him whatever on those subjects or any subject for that matter. If I met him on the street I might pass the time of day; but nothing else.

Cross-examination by Judge Shipman.

Q. How long did you say you have known Mr. Gray?

A. I don't know exactly.

Q. Have you had much acquaintance with him at all?

A. No, sir.

Q. Did you ever talk with Mr. Gray?

A. No, sir.

Q. Never talked with him? Never done anything more than passed the time of day with him?

A. No, sir; not that I remember of.

Q. That will do.

Mr. Morrow (after reading p. 23 of stenographer's minutes); I want, if the Court please, to answer that allegation of equity.

The Court.—You mean answer it by a pleading?

Mr. Morrow.—By a pleading, and I want also in connection with that to amend our own answer by alleging certain facts, so that the answer will be in accordance with the proofs.

Mr. Shipman.—We object. They might as well file a new answer.

The Court (addressing Judge Morrow)—Do you wish to amend your answer if the complainants do not amend their bill?

Judge Morrow.—I do. I wish to amend it in the matter of the consideration for the assignment.

The complainant declines to say at this moment whether or not he wished to amend his bill; says he does if the Court thinks it is necessary in order that he shall have the benefit of all the evidence already adduced.

The defendant says he wishes to answer that amendment, and that the amendment to his answer which he now proposes and has just read to the Court was framed in such a manner as not only to answer the complainant's proposed amendment but also to set up the new matter which he desires to set up, and which is already covered by evidence.

The Court.—The court will not at present admit Judge Morrow's amendment, but will give him the benefit of having offered it at this time with so much of the allegations of the amendment as is an answer to the complainant's proposed amendment eliminated, and will determine hereafter whether the defendants shall have the benefit of such an amendment or not.

Judge Morrow.—I wish to set up the laches of the complainant in the endeavor to enforce her equity.

The Court.—I will determine nothing more at this time about the amendment.

Argument of the cause here followed.

EXHIBITS.

Plaintiff's Exhibits.

[EXHIBIT C. 1.]

Mortgage of Joseph Kramer and Wife to Henry H. Mellick.

This indenture, made the thirtieth day of March, in the year of our Lord one thousand eight hundred and seventy-seven, between Joseph Kramer and Annie M., his wife, of the town of Phillipsburg, in the County of Warren and State of New Jersey, of the first part; and Henry H. Mellick, of the town of Phillipsburg, in the County of Warren and State of New Jersey of the second part; witnesseth, That the said party of the first part, for and in the consideration of the sum of Five Thousand Dollars, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said party of the

second part, and to his heirs and assigns forever, all those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the town of Phillipsburg, in the County of Warren and State of New Jersey.

The First Lot, bounded and described as follows, to wit: Beginning at the south west corner of lot numbered in plan eighteen; thence north along said lot one hundred and ten feet to Spruce Alley; thence along said Spruce Alley thirty feet, which includes five feet of lot eighteen to lot numbered in plan sixteen; thence south along said lot one hundred and ten (110) feet to the turnpike road; thence east along said turnpike road thirty feet to the place of beginning, and numbered in said plan of lots seventeen. Being the same premises that John C. Riem and wife by their deed dated August twenty fourth, A. D. 1860, conveyed to the party of the first part, said deed being recorded in Warren County Clerk's office in book 51 of deeds, page 520, &c.

The Second Tract being bounded and described as follows, to wit: Beginning at the northwest corner of the New Jersey turnpike road and Stockton street; thence northwardly along the west side of said street one hundred and ten feet to Spruce Alley; thence westwardly along the south side of said alley forty-five feet more or less to the northeast corner of lot number eighteen on plan of lots; thence southwardly along the east side of said lot one hundred and ten feet to the said turnpike road; thence eastwardly along the north side of said road forty-five feet more or less to the place of beginning, and numbered nineteen and twenty on said plan. Bound on the north by said Alley, on the east by said street, on the south by said road and on the west by lot number eighteen aforesaid. Being the same premises conveyed to the party of the first part by deed of Alexander Wilson and others bearing date January 16th, 1861, and recorded in the Clerk's office of Warren County in book 54 of deeds, page 458, &c., together with all and singular the

profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof: To have and to hold, all and singular the above described tracts or lots of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. *Provided always*, and it is agreed by and between the parties of these presents, that if the said party of the first part their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid to the said party of the second part or to his certain attorney or attorneys, heirs, executors, administrators or assigns, the sum of Five Thousand Dollars in one year from date with privilege of keeping the same five years (the interest being promptly paid) with interest for the same at the rate of seven per cent. per annum, payable semi-annually according to the condition of a certain bond given by said Joseph Kramer to the party of the second part in the penal sum of ten thousand dollars conditions for payment of five thousand dollars in one year from date with privelege of five (the interest being promptly paid) with interest at the rate of seven per cent. per annum payable semi-annually, said bond bearing date March 30, 1877, without any deduction or defalcation, for taxes, assessments, or any other imposition whatsoever; then and from henceforth, these presents and said obligation, and everything herein and therein contained, shall cease and be void; anything herein and therein contained to the contrary in any wise notwithstanding; and the said party of the first part their heirs, executors and administrators, do covenant and grant to and with the said party of the second part, his heirs and assigns, that the said party of the second part his heirs and as-

signs, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial of the said party of the first part their heirs and assigns, or of any other person or persons whatsoever. And it is also agreed by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible insurance company or companies, to an amount not less than Two Thousand dollars and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said Bond or obligation, and secured by these presents, and payable on demand with legal interest.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOS. KRAMER, [L. S.]
ANNIE M. KRAMER. [L. S.]

Signed, sealed and delivered
in the presence of

["Sixteen" in description obliterated also "ten" on 3rd page obliterated before signing, also "semi" 2nd line 3rd page interlined before signing.]

S. C. SMITH.

STATE OF NEW JERSEY, } ss.
COUNTY OF——— }

Be it remembered that on this thirtieth day of March in the year of our Lord one thousand eight

hundred and seventy-seven before me, a Master in Chancery of the State of New Jersey, personally appeared Joseph Kramer and Annie M., his wife, who, I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed:

And the said Annie M. being by me privately examined, separate and apart from her husband she acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

S. C. SMITH, M. C. C.

EXHIBIT C. 2.

Bond of Joseph Kramer to Henry H. Mellick.

Know all men by these presents, that I, Joseph Kramer, of Phillipsburg, in the county of Warren, and State of New Jersey, am held and firmly bound unto Henry H. Mellick, of Phillipsburg, in the county of Warren, and State of New Jersey, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said Henry H. Mellick, or to his certain Attorney, Executors, Administrators or Assigns; for which payment well and truly to be made, I bind myself, my Heirs, Executors and Administrators firmly by these pesents. Sealed with my seal and dated the thirtieth day of March, in the year of Our Lord one thousand eight hundred and seventy-seven.

The condition of this obligation is such, That if the

above bounden Joseph Kramer, his Heirs, Executors, Administrators or any of them, shall and do well and truly pay, or cause to be paid, unto the above mentioned Henry H. Mellick, or to his certain Attorney, Executors, Administrators or Assigns, the just and full sum of five thousand dollars, lawful money aforesaid in one year from the date hereof, with privilege of five years (interest being promptly paid), with interest for the same at the rate of seven per cent. per annum, payable semi-annually without any fraud or other delay, then this obligation to be void or else to be and remain in full force and virtue.

JOSEPH KRAMER. [L. S.]

Sealed and delivered in the
presence of
S. C. SMITH.

ENDORSEMENTS ON BOND.

Received Phillipsburg, N. J., April 2, 1878, on the within bond and mortgage, interest for one year up to April 1, 1878, three hundred and fifty dollars.

$350. HENRY H. MELLICK.

Received, Phillipsburg, N. J., August 5, 1878, of Jos. Kramer three months interest up to July 1st, eighty-seven dollars and fifty cents.

$87.50. HENRY H. MELLICK.

Received, May 2, 1879, interest in full for within bond up to April 1, '79, two hundred and twenty-five dollars.

$225. HOWARD MELLICK.

Received on within bond, April 6, 1880, one hundred dollars interest.

$100. H. MELLICK.

[EXHIBIT C. 3.]

CERTIFICATE OF MARRIAGE.

This is to certify that I have this day joined in marriage Henry H. Mellick, of the State of New Jersey, and Emma Keiter, of the State of New Jersey, according to the laws of the State of Pennsylvania, and that there were present as witnesses Val. Hilburn, of the Borough of Easton, and George J. Folker, of the same place. THOMAS C. PORTER,
Pastor of the 3d street Reformed Church, of Easton, Penn.
Dated, April 6, 1878.

[EXHIBIT C. 4.]

ASSIGNMENT OF MORTGAGE OF HENRY H. MELLICK TO EMMA KEITER.

Know all men by these presents, that, whereas, that Joseph Kramer, of the town of Phillipsburg, in the county of Warren, and State of New Jersey, and Annie M., his wife, are held and firmly bound unto Henry H. Mellick, of the town of Phillipsburg. aforesaid, by bond and mortgage in the penal sum of ten thousand dollars, which said mortgage, dated the thirtieth day of March A. D. 1877, and recorded the third day of April, A. D. 1877, in Book No. 32, of Mortgages for said county of Warren, on pages 460, 461 &c., bound certain premises which the said Joseph Kramer therein granted to the said Henry H. Mellick, to wit: All those tracts and parcels of land and premises hereinafter particularly described, situate lying and being in the town of Phillipsburg, in the county of Warren, and State of New Jersey.

The first lot bounded and described as follows to wit: Beginning at the south west corner of lot numbered in the plan eighteen, thence north along said lot one hundred and ten feet to Spruce Alley, thence along said Spruce Alley thirty feet which includes five feet of lot eighteen to lot numbered in plan sixteen, thence south along said lot one hundred and ten (110) feet to the Turnpike road, thence east along said Turnpike road thirty feet to the place of beginning, and numbered in said plan of lots seventeen. The second tract being bounded and described as follows to wit: Beginning at the northwest corner of the New Jersey Turnpike road and Stockton street, thence northwardly along the west side of said street one hundred and ten feet to Spruce Alley, thence westwardly along the south side of said alley forty-five feet more or less to the northeast corner of lot number eighteen on plan of lots, thence southwardly along the east side of said lot, one hundred and ten feet to the said Turnpike road, thence eastwardly along the north side of said road forty-five feet more or less to the place of beginning, and numbered nineteen and twenty on said plan; Bounded on the north by said alley, on the east by said street, on the south by said road and on the west by lot number eighteen aforesaid, and also all the premises particularly described and set forth in said mortgage. The first of the tracts aboved named being the same premises which John C. Rinn and wife by their deed dated August 24th, A. D. 1860, conveyed to the said Joseph Kramer and recorded in Warren county aforesaid, in Book of Deeds 51, page 520 &c. The second tract above described being the same premises which Alexander Wilson and others, by deed dated January 16, 1861, and recorded in said county of Warren, in Book 54 of deeds, page 458 &c., granted to said Joseph Kramer in fee simple.

Now this Indenture witnesseth that the said Henry H. Mellick for and in consideration of the sum of one dollar unto him at and before the sealing and delivery hereof by Emma Keiter, of the town of Phillipsburg

aforesaid, single woman, well and truly paid the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred an set over, and by these presents doth grant, bargain, sell, assign, transfer and set over unto the said Emma Keiter, her heirs, executors, administrators and assigns, the aforesaid bond and mortgage of the said Joseph Kramer, and the messuages or tenements, and lots or pieces of ground and the premises therein described and granted, together with the appurtenances and all the estate, right, title, interest, property, claim and demand whatsoever of him, the said Henry H. Mellick, in law, equity or otherwise howsoever of, in and to the same. To have and to hold all and singular the premises hereby granted and assigned and mentioned and intended so to be with the appurtenances, and the bond accompanying the said mortgage unto the said Emma Keiter, her heirs, executors, administrators and assigns, to and for the only proper use and behoof of the said Emma Keiter, her heirs, executors, administrators and assigns forever; subject nevertheless, to the right or equity of redemption vested in the said Joseph Kramer, the mortgagor, and his heirs, said Mellick to draw the interest during his life time.

In witness whereof the said Henry H. Mellick, has hereunto set his hand and seal this sixth day of April, A. D. 1878. HENRY H. MELLICK. [L. S.]

Sealed and delivered in the presence of (the words "said Mellick to draw the interest during his lifetime" inserted before signing.)

VAL. HILLBURN.
A. S. DEICHMAN.

County of Northampton } ss.
State of Pennsylvania }

On the sixth day of April, A. D. 1878, before me, a

Commissioner for New Jersey, residing in Easton, Pa., personally appeared the above mentioned Henry H. Mellick, known to me to be person referred to in the within writing, which, having been explained to him, acknowledged the same according to law to be his act and deed, and desired the same to be recorded as such. In testimony whereof I have hereunto set my hand and seal the day and year aforesaid.

[C. S.] A. S. DEICHMAN, [L. S.

Commissioner for New Jersey in Pennsylvania.

[EXHIBIT C. 5.]

DEED OF JAMES LOMERSON, JOHN CLINE AND JAMES VLIET, COMMISSIONERS, TO HENRY MELLICK.

This Indenture, made the twenty-ninth day of March in the year of our Lord one thousand eight hundred and sixty-five, between James Lomerson, John Cline and James Vliet, Commissioners of the estate of Lydia Boyer, late of the township of Franklin, in the County of Warren and State of New Jersey, of the first part, and Henry Melick, of the township of Franklin, in the County of Warren and State of New Jersey of the second part.

Whereas, the Judges of the Orphans' Court in and for said county on the application of Absalom Pursel and Catherine, his wife, for an order to sell the real estate of the above named Lydia Boyer, deceased, did order and decree in manner and form following, to wit:

Warren Orphan's Court,
In the matter of the division of lands on the application of Absalom Pursel and Catherine his wife. } November 17th, 1864. Special Term. Order to Sell.

It appearing by the report of James Lomerson, John Cline and James Vliet, Commissioners appointed

by an order of this Court made on the twentieth day of September in the year of our Lord one thousand eight hundred and sixty-four, to divide the real estate, wherof Lydia Boyer, deceased, died seized; situate in the County of Warren aforesaid, among the nine children and heirs at law of the said Lydia Boyer, deceased, and by satisfactory proof that the said tract or lot of land and real estate is so circumstanced that the same cannot be partitioned among the owners and proprietors without great prejudice to their interest, it is this seventeenth day of November in the year of our Lord one thousand eight hundred and sixty-four ordered that the said commissioners sell such tract of land and real estate at public auction to the highest bidder, giving notice of the time and place according to law.

And whereas, the party aforesaid of the first part pursuant to the said order and decree of the said court having given due and timely notice by advertisements signed by them and set up at five of the most public places in the the said county, for at least two months, and also by publishing the same in one of the newspapers printed and published in this State, and circulated in the neighborhood of the said lands, &c., at least four weeks successively, once a week, next preceding the time appointed for selling the same, and in pursuance of the laws of New Jersey in such case made and provided, did at the house on said lot in said county, on the nineteenth day of January, offer and expose to sale at public vendue or outcry, in open market to the highest bidder (subject to all just and lawful encumbrances), all that certain house and lot situate, lying and being in the said county of Warren, hereinafter more particularly described, being all the real estate mentioned in the above recited order; and he the said Henry Melick party of the second part, then and there did bid for the said premises the sum of eighteen hundred dollars and no person bidding more, the said house and lot was on the said nineteenth day of January between the hours of twelve and five in the afternoon of said day, at the place

aforesaid, in due and open manner, cried off and sold to the said Henry Mellick as highest bidder therefor. And whereas since the day of said sale the said party of the first part made report thereof to the Orphans' Court of Warren aforesaid, when the said court confirmed the said sale according to law and ordered the said Commissioners to make good and sufficient deed or deeds to the purchaser or purchasers of the same.

Now, therefore, in order to convey and confirm the same unto the said Henry Melick, his heirs and assigns, this indenture witnesseth, that the said party of the first part, for and in consideration of eighteen hundred dollars, money of the United States, to them in hand paid by the said Henry Mellick the receipt whereof the said party of the first part do hereby acknowledged and are to be therewith fully satisfied, contented and paid; and he the said Henry Melick his heirs, executors and administrators, and by each and every of them, from all and every part and parcel thereof do fully acquit, exonerate and discharge have granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed; and by these presents do grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part his hiers and assigns forever, all that certain lot aforesaid, situate in the township of Franklin in the County of Warren, butted and bounded as followeth, to wit:

Beginning at a corner on the north side of the turnpike running through New Village about three feet from the corner of William Andrew's door yard fence; thence along side of the turnpike (1) south sixty-eight and a quarter degrees west one chain and fifty-one links to a corner to lot of Daniel Hulshizer, Jr.; thence by his lot (2) north twenty-one and a quarter degrees west three chains and fifteen links to a corner in line of land belonging to the late Melick estate; thence (3) north sixty-eight and a quarter degrees west one chain and fifty-one links to a corner of William Andrews' lot: thence by his lot (4) south

twenty-one and a quarter degrees east three chains and fifteen links to the place of beginning, containing forty-six hundredths of an acre of land more or less. Together with all and singular the improvements, privileges, hereditaments and appurtenances whatsoever to the same belonging, or in anywise appertaining. And also all the estate, right, title, interest, claim or demand whatsoever, in law or equity, of the said Lydia Boyer at the time of her decease or of the party of first part, of, in and to the said house and lot and premises, with the appurtenances, to have and to hold the above granted and bargained premises, with the appurtenances unto the said party of the second part, his heirs and assigns, to and for the use of the said party of the second part, his heirs and assigns forever. And the said party of the first part, for themselves, their heirs, executors and administrators, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said party of the first part, have not done, or wittingly or knowingly suffered to be done, any act, matter or thing so as to charge or in any wise encumber the above granted and bargained premises, with the appurtenances, or any part or parcel thereof, in title, estate or otherwise howsoever. And that the said granted and bargained premises, with all and every the appurtenances, unto the said Henry Melick, party of the second part, his heirs and assigns, against all and all manner of persons claiming or to claim the same by, from or under them the said patry of the first party will warrant and defend.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JAMES LOMERSON, [L. S.]
JOHN CLINE, [L. S.]
JAMES VLIET, [L. S.]

Signed, sealed and delivered
in the presence of
WILLIAM WINTERS.

STATE OF NEW JERSEY, } ss.
WARREN COUNTY, }

Be it remembered, That on the twenty-ninth day of March in the year of our Lord one thousand eight hundred and sixty-five, personally appeared before me, a commissioner to take acknowledgments and proofs of deeds and other writings for said county, James Lomerson, John Cline and James Vliet, who I am satisfied are the grantors mentioned in the within deed, to whom I first made known the contents thereof, and thereupon the said James Lomerson, John Cline and James Vliet acknowledged that they signed, sealed and delivered the same as voluntary act and deed, for the uses and purposes therein mentioned.

WILLIAM WINTERS,
Commissioner.

[EXHIBIT C. 6.]

DEED OF HENRY H. MELLICK TO EMMA KEITER.

This indenture, made the sixth day of April, in the year of our Lord one thousand eight hundred and seventy-eight, between Henry H. Mellick, of Phillipsburg, in the county of Warren, in the State of New Jersey, of the one part, and Emma Keiter, of the same place, single woman, of the other part, witnesseth, that the party of the first part, in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, release and confirm, to the said party of the second part, her heirs and assigns, all that certain lot situate in the township of Franklin, in the county of Warren, and

State of New Jersey, butted and bounded as followeth, to wit: Beginning at a corner on the north side of the turnpike running through New Village, about three feet from the corner of William Andrews dooryard fence, thence along side of turnpike (1) south sixty-eight and a quarter degrees, west one chain and fifty-one links to a corner to lot of Daniel Hulshizer, Jr., thence by his lot (2) north twenty-one and a quarter degrees west three chains and fifteen links to a corner in line of land belonging to the late Melick estate, thence (3) north sixty-eight and a quarter degrees west one chain and fifty-one links to a corner of William Andrews's lot, thence by his lot (4) south twenty-one and a quarter degrees east three chains and fifteen links to the place of beginning, containing forty-six hundredths of an acre of land more or less, being the same premises which James Lomerson, John Cline and James Vliet, Commissioners, appointed by the Orphans' Court, of Warren county, aforesaid, of the estate of Lydia Boyer, deceased, by their deed dated March 29, 1865, and recorded at Belvidere, in said county of Warren, in Book of Deeds, vol. 61, Folios 470, 471 &c., did, for the consideration therein mentioned, convey and confirm unto the said Henry H. Melick, in the name of Henry Melick, his heirs and assigns, as by reference thereunto will more fully and at large appear, together with all and singular the minerals, woods, underwoods, timber, waters, watercourses, ways, houses, fences, improvements, rights, liberties, members, hereditaments and appurtenances thereunto belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, benefit, property, claim and demand whatsoever, in law or equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof; to have and to hold the said lot of land to the said party of the second part, her heirs and assigns, to

the only proper use and behoof of the said party of the second part, her heirs and assigns forever.

And the said Henry H. Melick for himself, his heirs, executors and administrators, does covenant, promise and agree, to and with the said party of the second part, her heirs and assigns, that he, the said Henry H. Melick, and his heirs, all and singular the hereditaments and premises hereby granted, or mentioned and intended so to be, with the appurtenances, unto the said party of the second part, her heirs and assigns, against him, the said Henry H. Melick, and his heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and forever defend.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

HENRY H. MELICK. [L. S.]

Sealed and delivered in the
presence of us,
VAL. HILBURN.
A. S. DEICHMAN.

County of Northampton }
State of Pennsylvania } ss.

On the sixth day of April, A. D. 1878, before me, the Subscriber, personally appeared the above named Henry H. Melick, known to me to be the person named in the above writing, and acknowledged the above indenture to be his act and deed, and desired the same might be recorded as such.

Witness my hand and official seal the day and year aforesaid.

[C. S.] A. S. DEICHMAN, [L. S.]
Commissioner for New Jersey in Pennsylvania.

[EXHIBIT C. 7.]

BOND OF GEORGE D. C. MELLICK TO HENRY H. MELLICK.

Know all men by these presents, That I, George D. H. Mellick, of the Town of Phillipsburg, in the County of Warren and State of New Jersey, am held and firmly bound unto Henry H. Mellick, of the township of Franklin, in the County of Warren and State of New Jersey, in the sum of Twenty-four Hundred Dollars, lawful money of the United States of America, to be paid to the said Henry H. Mellick or to his certain attorney, executors, administrators, or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators jointly, severally and firmly by these presents. Sealed with my seal and dated the first day of April in the year of our Lord one thousand eight hundred and sixty-nine.

The condition of this obligation is such, That if the above bounden George D. H. Mellick, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above mentioned Henry H. Mellick or to his certain attorney, executors, administrators, or assigns, the just and full sum of Twelve Hundred Dollars, lawful money aforesaid, on or before the first day of April in the year of our Lord one thousand eight hundred and seventy, with interest for the same at the rate of seven per cent. per annum, payable without any fraud or other delay, then this obligation to be void or else to to be and remain in full force and virtue.

GEORGE D. C. MELLICK. {Seal Torn Off.}

Sealed and delivered in the
presence of
WM. M. DAVIS.

ENDORSEMENT ON BOND.

PHILLIPSBURG, Mar. 14th, 1871.
Rec'd payment in full for principle and interest.
$1,364.52. HENRY H. MELICK.

[EXHIBIT C. 8.]

DEAR FATHER:

I have long looked for you to come down. Joseph Cramer gave me the balance of money soon after you was down here last Spring, and it is here in my safe ready for you any time you come down.

[EXHIBIT C. 9.]

ASSIGNMENT OF MORTGAGE, HENRY H. MELLICK TO HOWARD MELLICK.

Know all men by these presents, That I, Henry H. Mellick, of the town of Phillipsburg, in the County of Warren, and State of New Jersey, party of the first part, in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid by Howard Mellick of the same place, aforesaid, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the further consideration of natural love and affections, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part a certain indenture of mortgage, bearing date the thirtieth day of March, one-thousand eight hundred and

seventy-seven, made by Joseph Kramer, and Annie, his wife, of Phillipsburg, aforesaid, to the said Henry H. Mellick, to secure the payment of five-thousand dollars in one year from the date thereof, (with privilege of keeping the same five years, interest being promptly paid) with seven per cent. interest payable semi-annually; together with the bond or obligation therein described and the money due and to grow due thereon with the interest. To have and to hold, the same unto the said party of the second part, his heirs, or assigns, for himself and his others own use, after the death of the party of the first part, on conditions that the said Howard Mellick shall pay the interest received by him on said mortgage to the said party of the first part in semi-annual payments during his natural life, subject only to the proviso in the said indenture of mortgage mentioned; and I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment to discharge the same as fully as he might or could do if these presents were not made; and I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of five thousand dollars and interest from the first day of October, 1877.

In witness whereof I have hereunto set my hand and seal the eighteenth day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

HENRY H. MELICK. [L. S.]

Signed, sealed and delivered in the presence of, (and the further consideration of natural love and affection interlined before signing.)

S. C. SMITH.

State of New Jersey, } ss.
County of Warren, }

Be it remembered, That on this eighteenth day of March, in the year of our Lord one thousand eight hundred and seventy-eight, before me, a Master in Chancery of New Jersey, personally appeared Henry H. Melick who, I am satisfied, is grantor in the within Deed named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

S. C. SMITH. M. C. C.

[EXHIBIT C. 10.]

WARRANTY DEED OF HENRY H. MELICK TO JACOB A. MELICK.

This indenture, made the eighteenth day of March in the year of our Lord, one thousand eight hundred and seventy-eight, between Henry H. Melick of the Town of Phillipsburg, in the County of Warren and State of New Jersey of the first part; and Jacob A. Melick of the City of New York, in the County of New York and State of New York of the second part: witnesseth, That the said party of the first part, for and in consideration of the sum of One Dollar lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the further consideration of natural love and affection and the said party of the first part therewith fully satisfied, contented and paid, has given,

granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain. sell, alien, release, enfeoff, convey, and confirm to the said party of the second part, and to his heirs and assigns forever all that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the township of Franklin, in the County of Warren and State of New Jersey, butted and bounded as follows, to wit: Beginning at a corner on the north side of the turnpike running through New Village about three feet from the corner of William Andrews' door yard fence; thence along side of the turnpike (1) south sixty-eight and a quarter degrees west one chain and fifty links to a corner to lot of Daniel Hulshizer, Jr.; thence by his lot (2) north twenty-one and a quarter degrees west three chains and fifteen links to a corner in line of lands belonging to the late Melick estate; thence (3) north sixty-eight and a quarter degrees west one chain and fifty-one links to the corner of William Andrews' lot; thence by his lot (4) south twenty-one and a quarter degrees east three chains and fifteen links to the place of beginning, containing forty-six hundredths of an acre of land more or less. Being the same premises that James Lomerson, John Cline and James Vliet, commissioners of the estate of Lydia Boyer, deceased, conveyed to the party of the first part by deed dated March 29th, 1865, and recorded in Warren County Clerk's office in book of deeds vol. 61, folio 470, &c., together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenances to the same belonging or in anywise appertaining; also, all the estate, right, title, interest, property, claim and demand whatsoever of the said party ef the first part, of, in and to the same and of, in and to every part and parcel thereof, to have and to hold, all and singular the above described land and premises, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; after the decease of the said party

of the first part, he reserving to himself the rents, uses, profits and incomes from said land during his natural life, and the said party of the first part does for himself, his heirs, executors and administrators covenant and grant to and with the said party of the second part, his heirs and assigns, that he, the said party of the first part is now the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging, and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever; and also, that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid, and also, that the said party of the first part will warrant, secure, and forever defend the said land and premises unto the said party of the second part his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

HENRY H. MELICK. [L. S.]

Signed, sealed and delivered in the presence of (N. B.—And the further consideration of natural love and affection on first page and after the deceased of the party of the first part he reserving to him-

self the rents, uses, profits and income from said land during his natural life, on third page interlined before signing.

S. C. SMITH.

State of New Jersey } ss.
County of Warren }

Be it remembered, That on this eighteenth day of March in the year of our Lord one thousand eight hundred and seventy-eight before me, a Master of Chancery of New Jersey, personally appeared Henry H. Melick who, I am satisfied is the grantor in the within deed of conveyance named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

S. C. SMITH, M. C. C.

Received and recorded
March 18, 1878.

JAMES E. MOON, CLERK.

State of New Jersey, } ss.
County of Warren, }

I, Theodore P. Hopler, Clerk of the County aforesaid and also clerk of the several courts thereof, do hereby certify [L. S.] the above and foregoing to be a true copy of a certain deed recorded in my office in book of deeds, vol. 103, folio 393, &c., in and for said county.

In witness whereof I have hereunto set my hand and official seal this 18th day of Oct. A. D., 1889.

THEO. P. HOPLER,

[EXHIBIT C. 11.]

ASSIGNMENT OF MORTGAGE BY HENRY H. MELICK TO HOWARD MELICK.

Know all men by these presents, That I, Henry H. Melick, of the town of Phillipsburg, in the county of Warren, and State of New Jersey, party of the first part, in consideration of the sum of one dollar, lawful money of the United States of America, to me in hand paid by Howard Melick, of the same place aforesaid, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the further consideration of natural love and affection have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the thirteenth day of March, one thousand eight hundred and seventy-seven, made by Joseph Kramer and Annie, his wife, of Phillipsburg aforesaid, to the said Henry H. Melick to secure the payment of five thousand dollars in one year from the date thereof, with privileges of keeping the same five years (interest being promptly paid) with seven per cent. interest, payable semi-annually, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest.

To have and to hold the same, unto the said party of the second part, his heirs, or assigns, for himself and his and their own use after the death of the party of the first part, on condition that the said Howard Melick shall pay the interest received by him on said mortgage to the said party of the first part in semi-annual payments during his natural life, subject only to the proviso in the said indenture of mortgage mentioned: And I do hereby make, constitute and appoint the said party of the second part. my true and lawful attorney, irrevocable, in my name, or other-

wise, but at his proper costs and charges, to have, use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as he might or could do if these presents were not made: And I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said bond and mortgage the sum of five thousand dollars and interest from the first day of October 1877.

In witness whereof, I have hereunto set my hand and seal the eighteenth day of March, in the year of our Lord, one thousand eight hundred and seventy-eight.

HENRY H. MELICK. [L. S.]

Signed, sealed and delivered in the presence of, and the further consideration of natural love and affection (interlined before signing.)

S. C. SMITH.

State of New Jersey, } ss.
County of Warren, }

Be it remembered, that on this eighteenth day of March, in the year of our Lord, one thousand eight hundred and seventy-eight, before me, a Master in Chancery, of New Jersey, personally appeared Henry H. Melick, who I am satisfied is the grantor in the within Deed named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

S. C. SMITH, M. C. C.

Received and recorded
March 18, A. D. 1878.
JAMES E. MOON, Clerk.

State of New Jersey, }
County of Warren, } ss.

I, Theodore P. Hopler, Clerk of the county aforesaid, do hereby certify the above and foregoing to be a true copy of a certain assignment of mortgage recorded in my office in Book of assignments, vol. 5, folio 102 &c.

In witness whereof I have hereunto set
[L. S.] my hand and official seal this eighteenth day of October, A. D. 1889.

THEO. P. HOPLER, Clerk.

[EXHIBIT C. 12.]

ASSIGNMENT OF MORTGAGE BY HENRY H. MELICK TO HOWARD MELICK.

Know all men by these presents, That I, Henry H. Melick, of the town of Phillipsburg, in the county of Warren, and State of New Jersey, party of the first part, in consideration of the sum of one dollar, lawful money of the United States of America, to him in hand paid by Howard Melick, of the same place aforesaid, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the further consideration of natural love and affection, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the first day of April, one thousand eight hundred and sixty-nine, made by William S. Case and wife, and George D. H. Melick and wife, to the said Henry H. Melick to secure the payment of two thousand dollars on or before the first day of April, 1870, said

mortgage being on property situate at the corner of Jefferson and Main streets, in said town of Phillipsburg, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest.

To have and to hold the same, unto the said party of the second part, his heirs, or assigns, for himself and his and their own proper use after the death of the said party of the first part, and on condition that the said Howard Melick shall pay the interest received by him on said mortgage to the said party of the first part in annual payments during his natural life, subject only to the proviso in the said indenture of mortgage mentioned: And I do hereby make, constitute and appoint the said party of the second part, my true and lawful attorney, irrevocable, in my name, or otherwise, but at his proper costs and charges to have use and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment to discharge the same as fully as I might or could do if these presents were not made; and I do hereby covenant, promise and agree, to and with the said party of the second part, that there is now due and owing upon the said Bond and Mortgage the sum of two thousand dollars and interest from the first day of April, 1877.

In witness whereof I have hereunto set my hand and seal the eighteenth day of March, in the year of our Lord one thousand eight hundred and seventy-eight.

HENRY H. MELICK. [L. S.]

Signed, sealed and delivered in the presence of, (and the further consideration of natural love and affection interlined before signing.)

S. C. SMITH.

State of New Jersey } ss.
County of Warren }

Be it remembered, That on this eighteenth day of

March eighteen hundred and seventy-eight before me, a Master of Chancery of New Jersey, personally appeared Henry H. Melick who, I am satisfied is the grantor in the within deed named; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

S. C. Smith, M. C. C.

Received and recorded
March 18, 1878.

James E. Moon, Clerk.

State of New Jersey, }
County of Warren, } ss.

I, Theodore P. Hopler, Clerk of the County aforesaid do hereby certify the [L. S.] above and foregoing to be a true copy of a certain assignment of mortgage as appears of record in my office in book of assignment of mortgages vol. 5, folio 103, &c.

Witness my hand and official seal this 18th day of October, A. D. 1889.

Theo. P. Hopler.
Clerk.

[EXHIBITS D.]

Easton, Pa., March 29, 1878.

Bought of Philip Stern,

12¼ lbs. Geese Feathers at 55.....$6.75

Rec'd Payment,

P. L. Stern,

Max.

Easton, Pa., March 26,1878.

Emma Keiter,

Bought of T. Taylor,

1 Looking Glass.....$4,00

Rec'd Payment,

T. Taylor.

Easton, March 26, 1878.

Rec'd of Emma Keiter $9.50 for Marble Table.

S. Garis,
Per H.

Phillipsburg, April 2.

Received from Mrs. Keiter the sum of twelve dollars and fifty cents in full for 3 oil paintings.

Henry Hellmeger,
Artist.

Easton, March 26th, 1878.

Mrs. Emma Keiter,

To Wm. Laubach, Dr.

To 41¼ yds. Carpet at 1.00		$41.25	
36 " Sewing at 10		3.60	$44.85

Received payment,

Wm. Laubach,
per E. L. B.

Easton, Pa., Apr. 4, 1878.

Miss Emma Keiter,

Bought of A. D. Cooke,

1 Medallion Parlor Suite, H- C		$85.00	
1 Wal. Sofa Rocker		14.00	
1 No. 8 Dressing Case Suite		38.00	
1 Wal. 10 ft. Ex. Table		11.50	$148.50
Less Discount of			10.00
			$138.50

Rec'd payment by the hands of H. M. Norton.

A. D. Cooke,
per E.

Easton, April 3, 1878.

Miss Emma Keiter,

Bo't of Ed. Able, agt.

8¾ Shading at 25		$2.18	
5 Setts Fixtures at 25		1.25	
5 yds. Fringe		62	
2 Lace Shades and Fix		4.00	$8.05

Paid.

Edward Able, agt.

Easton, Jan. 7, 1878.

Miss Emma Keiter,

Bought of Davis & Taylor.

3 Walnut Pieces	$80.00
4 Sofa Chairs	20.00
1 Sofa Rocker	15.00
1 Marble Table	8.50
1 Towel Rack	1.50
	$125.00

Received payment,

Davis & Taylor.

Easton, Pa., March 28, 1878.

Miss Emma Keiter,

Bought of Horace M. Norton.

To 1 No. 8 Highland Queen and Fixtures....
To 4 joints Pipe and 1 elbow, American.....
To 1 No. 22 Radiant Home with oven.....
To 3 joints Pipe and 1 elbow American.....
To 1 Culender, 1 Dust Pan, 1 Pan, 1 Wash Basin, 1 Brush, 1 Hemp Brush, 1 Cake Pan with centre, 1 Seive, 1 Basket, 1 Wood Pail, 1 Slaugh Cutter, 1 Coal Hod, 1 Pie Board, 1 Stew Kettle, 1 Skimmer, 1 Waiter, 1 Fluter..... $60.00
The whole amounting to.....$62.60

Rec'd March 28th Sixty Dollars in settlement of above account in full.

H. M. Norton,
per Mershon.

Easton, Pa., March 28, 1878.

Received of Emma Keiter Sixty Dollars in full for 2 stoves and fixtures, and other things.

H. M. Norton.

DEFENDANT'S EXHIBITS.

[EXHIBIT D. 2.]

To Joseph Kramer:

You committed a grave fraud on me the fifth day of August last, in taking the bond signed by you, dated March 30th, 1877—for the sum of $5,000—out of my possession, and I hereby demand that bond, and I give you notice that unless you return that bond to me forthwith, I shall hold you responsible therefor; and if you do not, I shall proceed against you to get the possession of that bond according to law, and I hereby authorize the bearer of this notice to receive the bond from you.

EMMA MELLICK.

Phillipsburg, Aug. 13th, 1878.

Phillipsburg, N. J., Jan. 2d, 1878.

Ninety days after date I promise to pay to the

order of Joseph Kramer, two hundred and fifty dollars at the Phillipsburg National Bank. Value received.

HENRY H. MELICK.

INDORSEMENT.—Jos. Kramer.

Note paid by Howard Mellick.

COPY OF ENTRIES ON REGISTER OF MORTGAGES.

No.	Deed.	Mortgagor.	Mortgagee.	By Whom Bro't
1292		Jos. Kramer and wife	Henry H. Mellick	Mail
2099		Balthus Melheufen and wife	Martin Freeman	M. Freeman
2100	Asst	Henry H. Mellick	Howard Mellick	S. C. Smith
2101	Asst	Henry H. Mellick	Howard Mellick	S. C. Smith
2102	Asst	Mahlon Fox	Elizabeth Wyckoff	M. Wyckoff

Time	Deposit	Record	Vol.	Page	By Whom Taken
April 3, 1877	85	85	32	460	Sent by E. M. Teel, (mailed to S. C. Smith
March 16, 1878	chg.	85	34	357	Martin Freeman
March 18, 1878	75	75	5	102	Mailed to S. C. Smith
March 18, 1878	75	75	5	104	Mailed to S. C. Smith
March 18, 1878	75	75	5	141	Martin Wyckoff

OPINION.

MELLICK VS. MELLICK.

1. A mortgage on lands made to secure a money bond gives to the mortgagee before forfeiture an "interest" in the land mortgaged within the 13th section of the act for the prevention of fraud and perjuries, Rev. p. 446.

2. An assignee of a bond and mortgage holding under an assignment made by the assignor for the purpose of defrauding a subsequent purchaser of the securities can, as against a subsequent purchaser for full value, derive no benefit from his assignment unless he is both innocent and ignorant of the fraud, and then only to the extent that he has parted with value on the strength of the assignment and before notice of the fraud.

3. He cannot in such case be allowed for past indebtedness against the assignor, unless he has given up some security or otherwise changed his position on the strength of the assignment.

4. Marriage is such a consideration for the subsequent assignment as will make the assignee a purchaser for full value.

5. Constructive notice to the subsequent purchaser

of the prior assignment arising from its record will not affect the right of such subsequent purchaser.

6. A father being the mortgagee and owner of two bonds and mortgages of $5,000 and $2,000 respectively contracted with complainant, then a single woman, to marry her and to settle upon her by assignment before marriage the $5,000 bond and mortgage. Nineteen days before the wedding, for the purpose of defrauding complainant, he assigned both bonds and mortgages to his son, the defendant, for the expressed consideration of one dollar and love and affection but actually received a consideration in money less than the amount of the smaller bond and mortgage. He afterwards regained possession of the $5,000 bond and mortgage and assigned the same to complainant just before his marriage with her.

HELD.—That the complainant was entitled to the benefit of the securities notwithstanding that the prior assignment was recorded on the day it was executed and that defendant was innocent and ignorant of the fraudulent scheme of his father.

Final hearing on bill, answer, cross-bill and proofs.

Mr. J. G. Shipman, Mr. George Shipman, and Mr. Howell (of the Easton bar) for the complainant.

Mr. William H. Morrow, and Mr. S. C. Smith, for the defendant.

Pitney, V. C. By this suit complainant seeks to enforce by foreclosure a mortgage dated March 30, 1877, to secure five thousand dollars in one year, with privilege of five years, with interest payable semi-annually, given by Joseph Kramer and wife to Henry H. Mellick, and by him assigned to complainant by her maiden name of Emma Keiter. This assignment bears date and was executed and acknowledged April 6, 1878; and on the same day, after the execution of the assignment and its delivery, with the bond and mortgage, to the complainant, she and the mortgagee, Henry H. Mellick, were married.

In 1879 Kramer, the mortgagor, failed. Judg-

ments went against him, under executions upon which the mortgaged premises were brought to public sale in 1881, and purchased by Howard Mellick the defendant. He does not dispute the validity of the mortgage, but sets up an assignment of it to himself by Henry H. Mellick, the mortgagee, who was his father, which is dated and was executed, acknowledged and duly recorded in the records of the proper county on the 18th of March, 1878, nineteen days prior to the execution of complainant's assignment.

It thus appears that the real contest is as to which of these two assignments conveyed, as against the other, the superior title to the mortgage in question.

The defendant's assignment purports to be in consideration of one dollar and natural love and affection, with *habendum* "to the party of the second part, his heirs and assigns for himself and his and their own use after the death of the party of the first part, on condition that the said Howard Mellick shall pay the interest received by him on said mortgage to the said party of the first part in semi-annual payments during his lifetime."

Complainant's assignment recites the bond and mortgage describes the land covered by it by metes and bounds, and then, in consideration of one dollar, grants, bargains, sells and assigns to the complainant the bond and mortgage and the lands so described with the appurtenances with unrestricted *habendum* to the complainant, subject to Kramer's equity of redemption, with these words added; "Said Mellick to draw the interest during his lifetime."

The complainant by her bill alleges that more than one month before the date of her assignment and long prior to the date of defendant's assignment Henry Mellick agreed with her that if she would marry him he would assign to her this bond and mortgage. That the said assignment was made and executed and with the bond and mortgage delivered to her in consideration of such marriage and immediately before the same was solemnized. She further by her bill charges that

the defendant's assignment was without any valuable consideration, was procured by the defendant from his father with full knowledge that the latter had contracted to assign the same to her in consideration of their approaching marriage, and was contrived by the father and son for the purpose of defrauding her in that affair and is for that reason fraudulent and void as to her. She further by her bill alleges that in August 1878 the defendant, acting in fraudulent collusion with her husband and Kramer, attempted to obtain possession from her by fraud of said bond and mortgage, and for that purpose, pretending a desire to indorse a payment of interest on the bond, asked complainant to produce both instruments for that purpose; that she did produce the bond and handed it to Kramer, who, after indorsing the payment on it handed it to the defendant, who has since retained possession of it; and that Kramer handed her back in place of it an old cancelled bond of Howard Mellick to his father.

Defendant by his answer denies complainant's allegation as to her assignment being given in consideration of marriage and the like, and puts her upon proof. As to his own assignment he does not, by his answer, assert that it had any other consideration than that expressed in it. He further denies the allegations of the bill charging him with knowledge of the intended marriage, and of the alleged preliminary contract between complainant and his father to settle the bond and mortgage on her at their marriage; and he denies that his assignment was procured for the purdose of defrauding complainant. He also denies all complicity in the trick by which the possession of the bond and mortgage were procured from complainant. He alleges that the bond and mortgage were delivered to him by his father on the eighteenth of March and placed by him in his safe, to which, however, his father had access, and were taken therefrom by his father surreptitiously and without his knowledge, and their absence from the safe was not discovered by him until after his father was married, and when discov-

ered he called his father's attention to it, and that he confessed that he had taken them and promised to return them, and did return the bond.

He further sets out in his answer that after the marriage and after complainant had seperated herself from his father, the latter was without any means of living except the interest on the bond and mortgage, and that "he thereupon came to defendant and agreed to and with this defendant that if this defendant would furnish to him a home with comfortable room, lodging and board, for and during the term of the natural life of him, the said Henry H. Mellick, that the same would be accepted by him, the said Henry H. Mellick, in full payment and satisfaction of the interest which he, the said Henry H. Mellick, had or was entitled in and on the said bond and mortgage, which he had assigned to the defendant," etc., and "that he, the defendant, agreed with the said H. H. M. to furnish him board," etc., "in consideration of the said interest in and on said bond and mortgage," etc., and that in pursuance of said agreement, defendant did furnish his father with such living, etc., during his natural life; "and in addition thereto, this defendant furnished said H. H. M. his clothing and several sums of money, amounting in the whole to the sum of $1,400, or thereabouts, which stands charged on this defendant's book against the said H. H. M., and that in addition he paid the funeral expenses of the burial of his father (who died just before the filing of the bill) and the amount whereof ought to be decreed to be deducted from any amount which shall be ascertained to be due in any wise from this defendant to H. H. M., if any such decree shall be made."

These citations from the answer have been given thus at length because they will appear to have an important bearing on the case as further developed.

The part of the answer set up as a cross-bill states that the existence of the uncancelled record of the mortgage is a cloud upon the defendant's title; that the instrument is wrongfully retained by complain-

ant and should be given up to him to be cancelled, and prays accordingly.

At the hearing and argument the allegations and proofs of the parties took a range somewhat wider and as to the defendant decidedly variant from that marked out by the pleadings.

The complainant offered evidence tending to prove that the preliminary contract of marriage, after months of negotiation, was concluded in February, 1878; that by its terms Henry agreed to give complainant a conveyance of a certain house and lot, an assignment of the Kramer bond and mortgage, reserving the life estate to himself in each, and $500 in cash to buy furniture and other outfitting necessary to commence housekeeping in the house, and that March 18, 1878, was fixed for the marriage. With that view her fiance produced to her the deed to him of the house and lot, and the bond and mortgage, and some two weeks prior to March 18th, went with her to one Hillburn, a lawyer, in Easton, Pa., stated to him the contract between the parties, left with him the three instruments, and instructed him to have papers prepared properly to carry out their contract, ready to be executed and delivered at the time of the ceremony on the 18th of March. That shortly before the 18th Henry came to her and asked her to postpone the marriage until after April 1st, and to let him have the bond and mortgage in the meantime, to enable him to collect the interest due on April 1st. That she consented and went with him to Hillburn's office to enable him to get the bond and mortgage which Hillburn had declined to deliver to him, without her order, and that the 6th of April was then fixed for carrying out the contract. By this evidence complainant sought to carry her equity back to a period anterior to the 18th of march, the date of defendant's assignment.

The defendant varied the case made by his answer by proof, by his own and his clerk's oath, and admissions of his father, that at the time of the assignment he agreed with his father as a consideration therefor,

to cancel an indebtedness which he had against him amounting to upwards of $600, to loan him a further sum of about the same amount, and further to support him as long as he lived; thus setting up an actual consideration for his assignment not set up in his answer.

I come now to an examination of the testimony. The parties all lived in Phillipsburg, Warren county. The defendant kept there two stores, in one of which was his counting room and his fireproof safe and papers. His father had been a widower for many years, was a farmer in his youth, had sold out his farm several years before the period of this transaction, and was living with Howard. He spent much of his time at the principal store and assisted in the business when he chose. He was the owner of a house and lot in New Village, Warren county, about seven miles from Phillipsburg, and was possessed of eight or ten thousand dollars in bonds and mortgages, including the one in question, and one made by his son Howard by the name of George D. H. Mellick and one Case jointly for $2,000. He was born in 1812, and was yet in full health and vigor, both of mind and body.

Complainant was the child of poor parents; her father was a boatman on the Morris canal, her mother kept a small candy and cake shop, and she was a seamstress and dressmaker, and was at her marriage about nineteen years old, and rather illiterate. There were no visiting relations between her family and that of Howard Mellick's.

Counsel for the defendant early in the hearing expressly disavowed any intention of aspersing the character of the complainant in any respect. Nevertheless, some of his witnesses, including the defendant, did, from time to time, drop expressions hinting at a want of chastity on her part, but I desire to say, once for all, that I observed nothing in her conduct as detailed by her, in her manner on the stand, or the other evidence in the case, to lead me to suspect her to have been guilty at any time, either before or after

marriage of any improper or immoral conduct or behavior.

Complainant's parents sent her to make purchases at defendant's store, and she there met the elder Mellick when still a mere child. He began to pay her attention three or four years before the marriage, visited at her parent's house, escorted her from church, and took her to evening entertainments, and continued his attentions openly until the marriage. During all this time he avowed his intention to make her his wife. She does not appear to have encouraged him, but to have treated him at times with girlish ridicule and generally with marked aversion. When he spoke to the mother about marrying Emma, she swears that she tried to dissuade him; that he insisted upon it, and finally, some time in the latter part of 1877 or early part of 1878, he pressed his suit so earnestly, according to the testimony of both mother and daughter, that they listened to it seriously. They swear that he often made the proposition above stated and that they finally accepted it. There was no pretence of any affection on the part of the girl, and the negotiations were carried on upon a purely money basis; nor is there the least evidence that she enticed him into the contract by the exercise of any of the ordinary feminine arts. At the same time her lover was very watchful and jealous, as far as possible preventing her from receiving attention from any other man of suitable age, and, in fact did effectively prevent her receiving the attention of other suitors. The old gentleman showed his good faith by promptly paying the $500 for the furniture in cash. This was done, as Emma swears, in January; and afterwards, in February, the 18th of March was fixed for the ceremony, and mother and daughter and fiance proceeded to Mr. Hillburn's office with the bond and mortgage, and deed of the house, explained to him the agreement, and instructed him to have the conveyance and assignment ready by the 18th. The papers were, according to their story, then left with him.

Emma swears that she had had them in her possession at her mother's house three or four days before the date of the first visit to Hillburn's. A few days before the 18th the old gentleman asked Emma to postpone the wedding until April in order to enable him to collect the interest due on the bond and mortgage on the first of that month. She consented to that and that he should take the papers for that purpose from Hillburn's. He came back the next day and stated to the females that Hillburn would not permit him to take the papers without their consent, and so they went with him to Hillburn's and consented in person to the withdrawal for the purpose mentioned, and then and there the sixth of April was fixed for the wedding. In the meantime the furniture and outfitting was purchased and placed in the house, and it prepared for occupation, and complainant and her brother and sister went out there and spent a night in the house with her future husband. About a week before the 6th of April Emma swore that Henry brought the papers to her and they went again to Hillburn's, and a second time left them with him to enable him to prepare the necessary instruments by the 6th. In the evening of the sixth, complainant and her father and mother went to Hillburn's office and found there Hillburn, the Rev. Dr. Porter, of Easton, and the groom. The papers were already executed. She stood up by the side of the groom and Mr. Hillburn, upon express direction of the latter, produced the two deeds of the house, the bond and mortgage and assignment, duly executed and acknowledged, and delivered all to the complainant, and the ceremony was at once performed. The papers were all left with Hillburn who put the new deed and the assignment on record, and later handed all to the complainant, who lodged them with her mother for safe keeping. The newly married couple went almost immediately to live in the New Village house, and their continued until about the 1st of August, when the husband stated to complainant that Kramer was willing to pay his interest quarterly,

and asked her to assist him in collecting it. She replied that Kramer could pay him and take his receipt, but he declared that the interest must be indorsed on the bond, and sent her home to her mother's for that purpose, and the next day came himself and asked her to bring the bond and mortgage to Kramer's bake-shop to receive payment. This she declined to do. Then he brought Kramer to her mother's house and she brought the bond from its place of deposit to the sitting room, and upon producing it Kramer asked for the mortgage also, and she declined to produce that, whereupon Kramer wrote an indorsememt of interest on the bond, handed it to the husband for his signature, who took it into the kitchen to sign it, was followed by his wife, signed it, turned his back to her, slipped it into his pocket, pulled out another similar paper, which proved to be an old cancelled bond made by the defendant, handed it to the complainant, and escaped from the house with her bond, which he took at once to the defendant. He returned the same evening to his mother-in-law's house, was taxed by his wife with his dishonest conduct, and then confessed that he and Kramer came there for the purpose of getting possession of both the bond and mortgage, and that they were prompted and urged to do it by the defendant. He said that one plan suggested by Howard for getting possession of the bond and mortgage was to get the two papers into Kramer's bake-shop there drop them as by accident into his yeast tub, take them to the oven to dry them and drop them into the fire. That this plan was not adopted because Kramer said he would be obliged to give a new bond and mortgage to complainant direct. The next day complainant and her mother being alarmed by this revelation went to Belvidere for advice. There they for the first time learned, by an examination of the records, of the previous assignment of her bond and mortgage to Howard, and also that her husband on the same 18th of March had conveyed to his son Jacob Mellick the house and lot at New Village. A day or two later she

and her mother went out to New Village and found that all her furniture had been moved out of the house, and heard that it had come to Phillipsburg. Her husband advertised her in the newspapers as having left his bed and board, with, I infer, the usual caution against trusting her on his account. Thus she found herself stripped of every particle of the consideration for which she had sacrificed her youth and prospect of a congenial marriage to the senile desires of her husband. Notwithstanding all this cruel and nefarious treatment, including, as she says, an attempt to poison her, which she says he confessed, he resumed his visits to her at her mother's house, and finally induced her to return to New Village and live with him. To this end the furniture was put back in the house, and husband and wife resumed cohabitation there about April 1, 1879, and continued there till the fall of 1880, when Kramer having failed in business, and stopped paying interest, and Howard refusing to furnish anything for their living, she was obliged to leave from sheer want of the actual necessities of life. She went to her mother's house where she has lived and supported herself by her needle ever since. Her husband went to Howard's and lived with him until his death in February, 1889.

In support of Howard's complicity in the theft of the bond, complainant produced one Yutz, a nephew of Kramer, who worked for him in his bakery, and who testified that he overheard a conversation between Howard and Kramer, in the summer of 1878, in which Howard asked Kramer to get a mortgage from complainant on the excuse that it was not right, and a promise to make it right. She also produced one Berry, who from 1878 to 1880, was a constable and special policeman in Phillipsburg, who swore that in 1880 one of the Mellicks, either father or son, swore out a search warrant for certain stolen goods alleged to be stolen from the house at New Village and to be concealed in Mrs. Keiter's (complainant's mother's)

house and placed it in his hands for execution, and that Howard Mellick especially instructed him that in searching the house for the specified articles he should also look for any papers between his father and Emma and take them. This witness farther swears that later on in 1882 the father called him into the son's store and the son, in the father's presence, asked him to make an attempt to procure some man to get Emma to go with him to some place to be agreed upon, where Howard and other witnesses might come upon them, and find them in a compromising position, and said that he would give him $300 if he could succeed in so doing. The witness, after some urging, promised to see what could be done, and with that view called on one Gray, a resident of Phillipsburg, whom he knew to be on friendly terms with complainant and her family. He opened the subject to Gray and offered to divide the reward with him, but Gray declined to have anything to do with the affair, and Berry so informed the defendant. Gray is also produced and corroborates Berry fully. He further swears that some time after Berry's visit Howard Mellick called on him, and made the same proposition to him that Berry had, stating that if his father did not get the divorce he could drive Emma into a settlement. The witness declined to entertain the proposition. Howard then proposed to him to make use of his intimacy with the complainant's family to get the mortgage into his hands and take it away—in plain words, to steal it—which the witness also declined to undertake. All this evidence is denied by the defendant, except that he asked Berry to hunt for evidence of adultery on the part of complainant. But, considering the manner and appearance of the witnesses on the stand, and the circumstantial manner in which they gave their evidence, I am constrained to believe it, and, as a consequence, can place little or no confidence in Howard Mellick's evidence where unsuported by other evidence. And it seems to me it must also cast a heavy shade of doubt upon the bona fides of the case which he has attempt-

ed to make on the merits; for, when it is considered that he was a man of education and experience, and aided by competent counsel whom he consulted at once, the question naturally arises—if this man took this assignment in good faith for the consideration and with the motive stated and without any knowledge or suspicion that his father contemplated marriage with the complainant, or meditated any fraud upon her, why should he resort to such nefarious and wicked means to regain possession of the mortgage? And why, when three or four years later he became the owner of the mortgaged premises did he not bring suit to test the right of the complainant to hold the incumbrance while yet his father and Kramer were alive and Hillburn in the full posession of his mental faculties?

I come now to defendant's evidence. He was sworn on the second day of the hearing, and stated that the Kramer bond and mortgage and a bond and mortgage made by himself and one Case to his father for $2,000, and which was assigned to him by his father at the same time with the Kramer bond and mortgage, were both kept by him for his father in the inside lock box of his safe to which he alone, or, in his absence, his clerk, had the key, and to which his father did not have access; that the Kramer bond and mortgage had been so kept from the time they were given. As to this he was very positive. That both these bonds and mortgages were taken out of the safe by him on the morning of the 18th of March, and handed to his father to be taken to Mr. Smith's office for the purpose of preparing assignments of the same to him, so that the papers in question could not have been shortly before that date in his father's posession and by him taken to complainant's house, and to Hillburn's. He further swears that he received both bonds and mortages from his father on that day at Smith's office after their assignment and placed them at once in a pigeon-hole in the safe outside this lock box. He swears that the bargain by which the assignment to him was made, was made on the business day next

before the 18th of March, which was on Saturday the 16th, and he produces his clerk, Kugler, who swears that on that day he had occasion to go to the safe in the counting room to get some change, and there found the father and son, the latter in the act of taking a bundle of papers from the safe; that he made known his errand, whereupon Howard handed him the bundle of papers directing him to get from it the Kramer bond and mortgage for his father, and stating that he (Howard) would make the change, and that the witness did so, handing the bond and mortgage to the father. That the same evening the father told him that he intended to have the securities transfered to Howard but that it was too late to do it that evening. Earley the next morning, the witness continues, the old gentleman asked him to open the safe and get the papers, but he was unable to do so for want of the key. This witness further swears that on the 2d day of April Kramer and the elder Mellick came to him in the store and the latter asked him to get for him the Kramer bond and mortgage from the safe for the purpose of indorsing a payment of interest thereon; that he unlocked both the outer door and the inner box and looked in the latter for the desired papers without finding them; then looked in the outer pigeon holes and there found them and handed them to Mr. Mellick. The indorsement of the interest on the bond is dated April 2d.

The complainant's witnesses and part of the defendant's including the defendant himself, were sworn on the 17th and 18th of October, 1889. Kugler, the clerk, was sworn January 30, 1890. After a further postponement, and on February 27, 1890, defendant produced the register of receipts and deliveries of instruments to be recorded, kept by the Clerk of Warren county, by which with other evidence it clearly appeared that the Kramer mortgage was not taken from the Clerk's office until the afternoon of March 14, 1878, when it was sent to Mr. S. C. Smith by private hands, and could not have reached him until night.

Mr. Smith has no recollection of the circumstances, but the fair inference is that he wrote to the Clerk for it. It cannot be inferred from anything in Howard's testimony that he directed Smith to send for it. To so infer is to run counter to the whole tenor of his evidence. Hence, the inference is that Henry Mellick directed Smith to recall the mortgage, and, if so, then Smith naturally handed it to the old gentleman, and could not well have done so until the 15th, which was Friday. The arrangement for the transfer to Howard was made between father and son on Saturday the 16th, and the transfer was made on Monday the 18th. From all this evidence defendant argues that the whole story of complainant and her mother is wilfully false; that there never was any agreement to assign these securities to the complainant, nor any concluded contract to marry until after the 18th of March; and so the assignment of that date could not have been and was not made in contemplation of the marriage, or for the purpose of practicing upon the complainant the fraud actually perpetrated on her.

Other evidence was introduced tending to contradict the complainant and show her unworthy of belief. She swore that the $500 for outfitting was paid her early in January, and produced a bill of furniture bought on the 7th of that month for $125, which she says was paid out of that fund and kept at her mother's house until about April 1st, and that the balance of the outfit was purchased during the latter week in March. Defendant produces a Mr. Norton, a merchant in Easton, who swore that on the 28th of March complainant and the elder Mellick were at his store, complainant coming in first and waiting for Mellick; and that Mellick then paid for the bill of goods previously ordered of the witness, and another bill bought by complainant of one Cook, at witness' request and on his order and credit, the two amounting together to about $200; and that one of the parties, and as he seemed to think Mr. Mellick, produced a roll of bills containing much more than enough to pay the

witness, and that Mr. Mellick, after counting it, paid him and handed the balance to the complainant. And defendant argues from that evidence that the first and only payment of the $500, was made then and there in Norton's store, but a careful examination of the evidence of this witness does not satisfy me that it can be relied upon on the point of the roll of money being produced by Mr. Mellick. It may well have been that the complainant had the money in her possession, and being illiterate and unfamiliar with large money transactions, and particularly with such a peculiar one as was then to be carried through with Mr. Norton, was unwilling to make the payment without the assistance of Mr. Mellick, and procured his attendance there for that purpose.

Again; complainant on cross-examination swore that she never received any moneys from Mr. Mellick before marriage except the one sum of $500. Defendant by the way of contradicting her, and subject to the objection of the complainant, called Case and Kugler, his clerks, who swore that for several months previous to the marriage, complainant was in the habit of coming to the store, and calling out the elder Mellick to the sidewalk, and after a short conversation the latter would come into the store, take money from the drawer, and go out and apparently hand it to her. Kugler swears that he made tickets for the money so taken, and put them in the drawer, and reported them to Howard Mellick. This story is corroborated by Case and denied by the complainant. I am constrained to believe that some such incidents did take place; but I am not at all sure that so far as relates to the payment of money they took place before the marriage. There was ample occasion and opportunity for them to occur after the marriage and during the temporary separation, from August, 1878, to April, 1879, and again in 1880 and afterwards, and the two clerks may well be mistaken as to the time. Here defendant had it in his power to determine the truth in this conflict of testimony by producing the account

which he must have kept of these tickets for money taken by his father from the drawer, but fails to do so.

Mr. Hillburn was examined before me at his house at Easton, where I attended by consent of counsel for that purpose. He was broken mentally and physically by paralysis. On the afternoon of October 17th, at Belvidere, at the close of the first day's evidence complainant's counsel asked for time and opportunity to take his evidence on behalf of the complainant if he was mentally fit to be examined at all, about which they expressed grave doubt. Defendant's counsel admitted his inability to leave his house, but asserted with much confidence his full capacity as a witness. I at once offered to attend at his house to take his evidence and fixed the next morning for that purpose. The defendant and his junior counsel proceeded at once to the witness' house and had an interview with him as to his evidence, and I believe that either the defendant or some one in his behalf had seen him previously. Mr. Shipman saw him privately in the morning just before he was sworn. His memory was very faint and imperfect, and his mind quickly wearied under the few questions which were put to him by the counsel on each side and by myself, and it was agreed by all that, although the evidence must stand for what it was worth, it was of little value. But so far as it goes it seems to me, taken as a whole, to corroborate rather than contradict the story of the complainant in its main features.

With regard to the actual custody of the mortgage itself prior to the 18th of March, complainant is, of course, hopelessly contradicted. Still I am not satisfied that she wilfully falsified in that behalf. It abundantly appears that the elder Mellick had free access at all times to all parts of his son's safe; that if he wished access to the inner box he could get it by applying to his son, or, in his absence, to his clerk. There is no pretence that Howard ever refused his father access to his papers. He could easily have procured the deed of the house and lot and the Kramer

bond at any time prior to March, 18th, and have taken them to complainant, and told her either that the latter was a mortgage or was secured by a mortgage. And just here is a piece of evidence which is somewhat significant. Both mother and daughter swear that he did tell them he had such a mortgage before he produced it, and that they separately inquired of Kramer, who was their landlord, about it, and learned from him that such was the case. It is also quite possible that they went, as detailed in the evidence, to the office of Hillburn the first time with the two papers—the deed and the bond—instead of the three, and that Mellick undertook to procure the mortgage from the Clerk's office at a future day, and that all the other circumstances occurred precisely as testified to by them. It would not be unnatural for these women at this distance of time to have become confused in their recollection as to when they first saw the mortgage. But I do not think it possible that such illiterate and rather simple-minded persons could have created in solido such a circumstantial story as they gave on the stand, especially that part of it in which they represent Mr. Mellick, after getting complaint's consent to a postponement of the wedding and a withdrawal of the securities from Hillburn, as going to Hillburn for them, and then coming back to them and saying that Mr. Hillburn had declined to let him have the papers without their consent. It seems to me that they could not invent such a story. Of course the old gentleman needed the bond and the old deed as well as the mortgage for use in carrying out his scheme of fraud in making the assignment to Howard, and the deed to his son Jacob. Counsel for the defendant felt the force of this evidence of a postponement and withdrawal of the securities from Hillburn, and attempted to compress the whole series of incidents as detailed by mother and daughter into the eighteen days which intervened between the two assignments; but I think a careful consideration of the facts and evidence shows that supposition to be

impossible. His theory is that the old gentleman took the bond and mortgage from the safe and handed them to the complainant a day or two after the 18th March; that she kept them over Sunday the 24th, and on Monday the 25th went with her mother and the old gentleman to Hillburn, just as she testified was done in February. That during the week commencing with the 24th the old gentleman procured their possession from Hillburn in order to collect his interest and replaced them in his son's safe, where they remained over Sunday the 31st and Monday, April 1st, and that on Tuesday, April 2nd, they were taken out of the safe, as testified to by Kugler, and the interest paid and endorsed, and then were returned to Hillburn. But this not only crowds the events in point of time more closely than the evidence will warrant, but is inconsistent with Kugler's evidence that he looked in the inner box for the papers on the morning of the 2nd of April with the expectation of finding them there, and not in the outside compartment, the old gentleman standing by and looking on. But it is further to be remarked of this theory that it tends strongly to prove that the original object of Henry Mellick in making the assignment of the 18th of March was fraudulent, as it would appear from it that he proceeded immediately after the 18th of March to make use of it for the purpose of deceiving his future wife.

But the effect of the revelation of the true history of the whereabouts of the Kramer mortgage is also quite inconsistent with the defendant's evidence as to its custody and manipulation. We have seen that it probably reached the father's hands from Smith on the 15th of March, and it is not at all probable that by the 16th it had been packed away in a bundle of papers in the inner box of the son's safe and so hidden that the son would ask a clerk to hunt it out in order to hand it to the father. Some such incident as is testified to by Kugler may have occurred, but it probably occurred with regard to the $2,000 Case bond and

mortgage which it must be remembered was equally with that of Kramer the subject of the pending discussion between the father and son.

On this part of the case—if it were necessary to come to a definite conclusion as to whether the incidents detailed by the complainant and her mother as having occurred prior to March 18th, actually so occurred or not, I should, I think, upon a careful consideration of all the circumstances and evidence, feel constrained to conclude that they did, omitting of course the presence of the Kramer mortgage. Of course the mere absence of the mortgage from the papers taken to Hillburn's office before March 18th, will not materially weaken whatever equity arose to complainant out of the transactions taking place prior to that date.

But I do not think it necessary to adopt a definite conclusion as to that part of the case, or to consider the value of the equity claimed by complainant's counsel to have arisen therefrom, and have spent so much time upon a review of these facts for two reasons: first, that the parties may have the benefit of my view of them; and, second, for their bearing on what I conceive to be the real controlling question in the case, viz.—Did Henry Mellick make the assignment in question to his son for the purpose of practicing a fraud upon the complainant, either that which he afterwards carried into execution, or any other, based upon an apparent ownership of this bond and mortgage? Counsel for the defendant contend that he did not, and that it was made in good faith for the purpose stated by the son and without any thought of, or by way of preparing for, the trick he afterwards played upon complainant—which counsel contend was entirely as afterthought—or for any other fraudulent purpose as against her. I cannot so believe. The evidence satisfies me that this contract of marriage was under negotiation for several months before it took place; that money was advanced on the strength of it as early as January. In that

connection the money borrowed by the elder Mellick from the bank on January 2nd is significant. That the mother and daughter were all the time holding out for the best bargain they could get, and the lover was resisting them as best he could; and that finally, in his infatuation, he promised them this bond and mortgage, and sent to the Clerk's office for the mortgage for the purpose of carrying out his contract. That either he of his own accord, seeking some loophole of escape, adopted the scheme afterwards carried out, or Howard, becoming aware of his father's intention to marry, and fearing his future wife would get hold of his money, besought him, as he admits he did, to put his property beyond her reach, and thus, unwittingly it may be, suggested to him the trick by which he might succeed in getting the bride and keeping the price he agreed to pay for her, and that the old gentleman executed the assignment to Howard with this view and intending to play the very trick on his bride which he afterwards did play.

He knew very well that, even if, in order to give the affair proper color, or to satisfy Howard, he must deliver the securities to Howard, yet he would have ample occasion and opportunity to regain their possession before the day fixed for the wedding, and so be able to deliver them to his wife at the altar; and he also no doubt thought that there was no danger that these simple ignorant women or their Pennsylvania counsel would suspect him of any bad faith, or even think of examining the records for previous assignment. When he produced the securities themselves in which he was named as the obligee and mortgagee the possession of them was quite enough proof to even a cautious business man that he was still the owner of them.

My conclusion is that the assignment to Howard was made for the purpose on the part of the father of practicing a fraud on the complainant.

Complainant's counsel contend that Howard participated in that fraud. This of course is not to be

lightly inferred but must be proven. Many circumstances point in that direction. Howard denies that he had any suspicion that his father meant to marry the complainant. But I am satisfied that he must have more than suspected it. Mrs. Bowers, an inmate of his family in 1877, swears that the attention paid by the father to the complainant was discussed openly between father and son, and that she heard Howard say that his father intended to marry the complainant. The defendant admits that he knew that his father was visiting complainant, taking her to entertainments and spending a great deal of money on her. In fact these attentions were notorious and he admits that they were the immediate cause of his solicitation of his father to make the assignment in question. He admits he saw Kramer daily. In September, 1879, he appears as a judgment creditor of Kramer for upwards of $3,000. In the summer of 1878 he asked Kramer to get possession of the mortgage, and when complainant, after the theft of August, 1878, made written demand on Kramer for the bond he came at once with the demand to defendant. From these facts it is easy to believe that Kramer reported to defendant the inquiries made of him by complainant and her mother about the mortgage as early, according to their story, as January or February. From all this it is evident that Howard's principal object in procuring the assignments was to place these securities beyond the reach of the influence of complainant, both as the object of his father's present infatuation and as his probable wife. Such object was not necessarily fraudulent but is consistent with honesty and fair dealing. A wife on her marriage acquires no property rights in her husband's personalty, and so the case is quite distinct from that of a wife before the married woman's act disposing of her personalty in view of present marriage, as in *Williams vs. Carle*, 2 *Stock.* 543, and that class of cases. I concluded, therefore, that the proofs are not sufficient to warrant the con-

clusion that defendant was cognizant that his father made the assignment for a fraudulent purpose.

It is common learning that marriage is a valuable consideration, and quite as much so as cash. The complainant, then, stands in this court precisely as if instead of marrying Mr. Mellick she had paid him $5,000 in cash for this security. This was not disputed, but was frankly admitted at the argument by counsel for the defendant. She stands, therefore, as a bona fide purchaser for full value.

The earlier assignment having been made for the purpose of defrauding the complainant and she having paid a valuable consideration for the later one, it seems to follow that a title under the later must prevail over that under the earlier, unless the claimant under the earlier deed was both innocent and ignorant of the contemplated fraud, and also paid or parted with a valuable consideration for it; and then he will be protected only to the extent of such consideration.

The case seems clearly within the thirteenth section of our Statute of Frauds. That section is broader in its scope than its prototype the 27th of Elizabeth, ch. 4, which declared, "that all and every conveyance &c. of, in or out of any lands, tenements or other hereditaments," made to defraud subsequent purchasers shall be void &c., against such subsequent purchasers—&c., while our statute declares; "that every conveyance, grant or alienation of land, tenements, or hereditaments, or of any estate or interest therein" made with intent to defraud &c., such persons &c. as shall purchase such lands, tenements, or hereditaments, or any estate, right or interest therein shall be deemed and taken to be void as against such purchasers &c.

It seems to be the rule in England that a sum of money secured by a charge on land is not within the English statute—*May on Fraudulent Conveyances, p,* 204—and that an ordinary estate under an ordinary mortgage is in the same category, though no direct adjudication to that effect was cited. But it seems to

me impossible to hold that the interest of an ordinary mortgagee of lands in New Jersey, is not within the language as well as the spirit of our statute. That language is too broad and sweeping to admit of such construction; and although our courts have reduced a mortgage interest before forfeiture to a low level, (*Sanderson vs. Price*, 1 *Zab.* 637; *Wade vs. Miller*, 3 *Vr.* 296; *Osborne vs. Tunis*, 1 *Dutch* 633; *Shields vs. Lozear*, 5 *Vr.* 496; *Betz vs. Verner, Court of Appeals, February T.* 1890) yet no case has gone so far as to say that the mortgagee has neither estate nor interest in the lands mortgaged.

The defendant's assignment conveyed to him the bond and mortgage in question and with them the interest of the mortgagee in the mortgaged premises, and it is upon this theory that the act providing for the recording of such instruments is based.

But I do not think it necessary to resort to the statute in question in order to determine the true value of defendant's assignment. The legislation in question has always been construed as merely declaratory of the common law, and resort might always, and without the aid of the statute, have been had to equity for relief against the transactions aimed at by it.

Lord Mansfield in *Cadogan vs. Kennett, Cowper's Reports*, 432 at p. 434, says; "The principles and rules of the common law, as now universally known and understood, are so strong against fraud in every shape, that the common law would have attained every end proposed by the statutes of 13 El. c. 5, and 27 El. c. 4. The former of the statutes relates to creditors only; the latter to purchasers. These statutes cannot receive too liberal a construction, or be too much extended in suppression of fraud."

And Lord Cranworth in *Perry-Herrick vs. Atwood*, 2 *De Gex & Jones at p.* 40, 27 *L. J., N. S.*, 121 *at p.* 128, a better report says; "If the intention of the parties to the transaction here in question was that the Misses Atwood should have this security, but that nevertheless Mr. Atwood should keep the title-deeds,

that he might be enabled thereby to deal with the estate in favor of third parties, I am strongly disposed to think that the security comes within the statute; it certainly comes within its principle. If the case does not come within the statute, the only difference that it makes is that the Misses Atwood have not the legal estate, and so could not maintain ejectment against the plaintiffs, but that would not in any degree oust the jurisdiction of this court, such jurisdiction having existed long prior to the statute, and not being in any degree defeated by an act which can only have been intended to give a more clear and distinct jurisdiction and a more tended remedy."

The Supreme Court of the United States in *Hamilton vs. Russell*, 1*st Cranch* 310, *at p.* 316, lays down the same doctrine and applied it to the case of a slave. And see *May on Fraudulent Conveyances, pp.* 3 *and* 4.

I know of no reason why this court should not lend its aid to protect against fraud in dealing with a chattel interest of this character as readily as with pure interests in realty where, as here, there is a lack of legal remedy and the question arises in a cause in which this court has unquestioned jurisdiction. And, I may add, it seems to me it would be a reproach to our system of justice if it could be said of it that it would permit such a transaction as that now before us to stand, and leave the party defrauded by it remediless.

It remains to consider what rights the defendant acquired under this assignment, supposing him, as I do, to be both innocent and ignorant of the particular fraud contemplated by his father. He swears that he gave and promised to give a valuable consideration for his assignment, the particulars of which are as follows: First, that he forgave his father a present indebtedness which he had against him of upwards of $600, and further advanced to him upwards of $600 immediately after the making of the assignment and before he had notice of the fraud; and that he supported him during his lifetime and buried him, all in

pursuance of a verbal contract so to do made at the date of the assignment. The fact that the deed itself is expressed to be in consideration of one dollar and love and affection, and reserves the interest on the security during the father's lifetime, and that it was drawn by the son's counsel, is strong evidence against this contention; but is not conclusive, and the defendant may nevertheless overcome it by evidence of what the real consideration was. But the frame and allegations of his answer are more serious obstacles in his way. He is a man of intelligence and business experience, and had, from the start, the aid of competent counsel, and it is difficult to conceive why, if the facts afterwards set up at the hearing really existed, they were not set out in the answer; and it is equally difficult to understand how counsel could on that basis of fact have set out in their answer—as they did—these very items of consideration as having been paid years after the assignment, and that the board and lodging was furnished in consideration of the interest which accrued on the securities.

Again; the answer alleges that the items going to make up the $1,400 of monies advanced are entered on defendant's books, and yet not a scratch of a pen was produced at the hearing in support of these payments, except a promissory note of the father for $250 which matured and was paid by the son on the 4th of April, 1878, two days after the father collected his interest from Kramer. Nor are the items given. Their absence is a marked feature in the case.

But accepting the statements of the defendant made at the hearing as true, and allowing him to amend his answer, as asked at the hearing, to correspond with this statement, it is still to be remarked that defendant cannot be allowed for the debt of over $600, which he says his father owed him on the 18th of March, since a prior indebtedness will not avail him as grantee of a fraudulent deed. And as to his undertaking to support his father, that was not in writing, and nothing was done under it until long after he

had full notice of the fraudulent character of his assignment, and the superior equities of complainant, which absolved him from all obligation in the premises.

Counsel for the defendant stoutly combated the position that defendant could be allowed for no more than he actually advanced, and further claimed that the payment of a less sum than the admitted money value of the securities, was sufficient to invest him with a complete title to the whole fund secured by them. The cases cited by counsel in support of this contention were all conveyances of land or leasehold interest in land, and, so far as applicable to the present case, were instances of dealing with the familiar English rule (to which I will again refer) that purely voluntary settlements of land were void under 27 Eliz. c. 4, as against subsequent purchasers, no matter how free they were of any actual fraud. Of late years the English judges have caught at very small matters of consideration for such voluntary settlements in order to relieve against the hardship of this rule. In one of the cases cited by counsel—*Bayspool vs. Collins, L. R. Ch. App.* 228—*Lord Hatherly* (*p.* 231, 232,) says: "With regard to the observation which was made by counsel, that purchasers would hardly know how they are to deal with property where there has been a voluntary settlement, I do not think anything could be more unsatisfactory than what we find to be the state of the law under which a person, with full and distinct knowledge of a voluntary settlement, is able at any time to overthrow it. It is quite established that, although a settler cannot get rid of such a settlement directly, he can do so indirectly by making a mortgage of the property to somebody else for the purpose of being able to destroy the settlement.

"Now it is not for me to say whether the mode by which the court has attempted to remedy some of the evils of this state of the law, namely, by holding that a small and inadequate consideration is sufficient to support such a settlement under the Statute of Eliza-

beth, has diminished the extent of the mischief. But so it is, that a very small consideration is admitted to be sufficient."

Price vs. Jenkins, *L. R.* 5 *Ch. Div.* 619, went on the same ground. It was a mere direct attempt by the settler to avoid his settlement by making a mortgage. This line of cases has no application to a transfer of an interest capable of precise measurement in money value. Nor to one where there is actual fraud in the prior settlement or conveyance.

With regard to so much of the consideration as consisted of past indebtedness it does not appear that the defendant gave up any security or lost any opportunity to enforce any such, or was prejudiced in any way in regard to his father's indebtedness to him by what occurred in connection with the assignment. The abstraction of the securities and their assignment to complainant absolved him from all obligation to forbear the enforcement of his debt. That such past indebtedness would not sustain the equitable plea of bona fide purchaser seems clear; 2 *Leading Cases in Equity*, 4 *Am. Ed.* (1887) *pp.* 77, 82, *et seq; Allaire vs. Hartshorne*, 1 *Zab.* (2*nd Ed.*) 665, 668 *at bottom; Holcomb vs. Wyckoff*, 6 *Vr.* 35.

This subject is discussed by Vice Chancellor Van Fleet and the rule settled in this court in *DeWitt vs. VanSickle*, 2 *Stew.* 209.

It thus appears that defendant's right on his own show is reduced to such actual cash payments as he can show that he made to his father or on his account in good faith at or after the date of his assignment and before notice of the fraud practiced on complainant, and as to them he offers no proof but his own oath, except as to the $250 note. I have already shown that for the reasons given I can place little or no confidence in his unsupported evidence.

But there is another fact proven which relieves this part of the case of all difficulty. At the same time that his father assigned to defendant the Kramer bond and mortgage he also assigned to him a bond

and mortgage for $2,000 made by the defendant himself and one Case to his father, (called in the evidence the Case bond and mortgage), which assignment was expressed to be made upon precisely the same consideration and terms as that of the Kramer securities. There was no contention that any other or further consideration was given for this assignment than that expressed in it. The two transfers constitute one transaction and were made upon the same consideration, whatever that was. There was no contention that the smaller security was not perfectly good and worth its face value. It was in fact the obligation of the defendant himself and was of course ample to cover defendant's claim for past indebtedness and present payments. Then as to the Kramer security--he paid his interest on it, as appears by endorsements on the bond, until about the time that the defendant became the purchaser of the equity at sheriff's sale, and from that time forward the defendant, as he says in his answer, paid, as he was bound to do, the interest by supporting his father. At all events there was no pretence at the hearing that the interest on the two securities, together with the principal of the smaller one was not amply sufficient to indemnify the defendant in the premises and indemnity is all that he is entitled to.

But defendant relies with great confidence on the fact that his assignment was duly and immediately recorded so that complainant is chargeable under the statute with constructive but conclusive notice of it, and that her equity is destroyed thereby. I cannot accede to that proposition. It is true that the complainant could not set up the ordinary plea of bona fide purchaser without notice, and by it overcome a prior assignment for value. But she is not seeking so to do; and the defendant's case is not that of a prior purchase for value. The real question is whether constructive notice to the party intended to be defrauded can eliminate from the transaction the fatal element of fraud inherent in it or add to it the fatal want—a

valuable consideration. I think it cannot. Notice has no curative or creative power. It cannot purify that which is essentially vicious, or in any wise or degree change the inherent character of a transaction. It preserves rights, but does not create them. It is on this principle that it was originally held that notice of the prior settlement to the subsequent purchaser would not defeat the latter's superior right under the *27th of Elizabeth, c. 4.* Within five years after the passage of that act in *Gooch's case, 5 Cook, p. 60, Wray, C. J. says:*

"If A. seized of land in fee makes a fraudulent conveyance to the intent to deceive and defraud purchasers against the statute of 27 El. and continues in possession and is reputed as owner, B. enters into discourse with A. for the purchase of it, and by accident B. has notice and knowledge of this fraudulent conveyance and notwithstanding concludes with A. and takes his assurance of him; in this case B. shall avoid the said fraudulent conveyance by the said act, notwithstanding his notice; for the act has by express words made the fraudulent conveyance void as to a purchaser; and forasmuch as it is within the express purview of the act, it ought to be so taken and expounded in suppression of fraud." And the report continues—according to the opinion of the Lord Wray, it was unanimously agreed and resolved by the whole court of Common Pleas, *Pasch. 3 Jacobi* in evidence to a jury in an *ejectione firmae*, on a lease made by Standen to House, plaintiff, against Bullock, defendant, that where one Bullock had made a fraudulent estate of his land within the said act of 27 El. to A., B. and C. and afterwards notwithstanding offered to sell the said land to Standen, and before assurance thereof made by Bullock. Standen had notice of the said fraudulent conveyance, and notwithstanding proceeded, and took his assurance of Bullock, that Standen should avoid (by the said act) the said fraudulent conveyance; for the notice of the purchaser cannot make that good which

an act of Parliament made void as to him. But in that case the purchaser is not deceived for the fraudulent conveyance whereof he has notice, is void as to by the said act, and therefore shall not hurt him, nor is he, as to that in any manner deceived."

And see the language of Lord Ellenborough in *Doe vs. James*, 16 *East* 213. The maxim that "he is not deceived who knows that he is deceived" has no application to such a case, and in fact can have no application to any case of mere constructive notice, however conclusive.

The English courts, however, went further than the doctrine laid down in *Gooch's* case, and finally held that a voluntary settlement, though made in good faith and without any present intention to defraud any person was fraudulent against the subsequent purchaser, however remote in time. The result was to give the settler power to revoke his settlement at his option. This doctrine has often been criticised and regretted in England (*Doe vs. Manning*, 9 *East; Robert's Fraud, Con.; May on Fraud, Con.*) and has been repudiated in this country. *Sterry vs. Arden*, 1 *J. C.* 261; 12 *J. R.* 536; *Cathcart vs. Robinson*, 5 *Peters* 280; *Beal vs. Warren*, 2 *Gray* 447. But a careful consideration of the numerous criticisms made upon the English doctrine will, I think, show that they are directed more against the notion involved in it of constructive fraud imputed by relation retroactively to a transaction which was originally innocent, than to the position that where the transaction was originally fraudulent notice of it to the subsequent purchaser could not purge the fraud and validate it. I have found no decision holding that notice in such cases validates the transaction, nor any suggestion that the doctrine now contended for is unreasonable or illogical. Judge Spencer prefaces his bold attack on the English doctrine in *Verplank vs. Sterry*, 12 *John R.* 536 *at p.* 557 with this language; "It is a sound and settled principle, that notice to a purchaser, of a prior fraudulent deed, will not affect the subsequent

purchaser, and that such subsequent purchaser may avail himself of the fraud in the first deed; and the reason for this is solid, because if he knew the transaction, he knew it was void by law."

And see *Roberts on Fraudulent Conveyances, p.* 39, 40 *and* 41.

The same principle is acted upon in the case of conveyances of land made for the purpose of defrauding future creditors. It is well settled that in order to avoid such conveyances as to subsequent creditors they must have been conceived in actual as distinguished from mere constructive fraud. And it is equally well settled that when such fraud clearly appears the registry of the fraudulent deed will not help it when attacked by a subsequent creditor.

In this connection I cannot but think and remark that there must, in a case like this, be a distinction between the effect of actual notice and that which is constructive merely. Chancellor Kent evidently so thought in *Sterry vs. Arden*, 1 *J. C.*, and see the remarks of Mr. Bishop in 2 *Bishop's Law of Married Women, sec.* 345; and also *Roberts on Fraudulent Con. p.* 39 *et seq.* Absence of actual notice must at least have the effect of showing the perfect good faith of the subsequent purchaser.

Nor do I think there was any lack of prudence or caution attributable to complainant in this transaction. Here the obligee and mortgagee named in a bond and mortgage produced those instruments with no marks upon them indicating that he had parted with his property in them, but with an indorsement showing a recent payment of interest to him as owner, and he proposed to assign them for full value, I think an ordinary business man would not, under the circumstances, have been considered lacking in prudence and caution if he had advanced money upon them without examining the records for prior assignments. If carelessness be attributable to any party it is to the defendant who permitted his father to have full access to those papers, and seems to have expected

that he would himself have the possession of them for the purpose of collecting the interest.

I think the complainant's equity is clear and that she is entitled to the relief prayed for, namely, an ordinary decree for foreclosure. In computing the amount due, interest will be allowed from the date of her husband's death. If that can be agreed upon the court can compute the interest without a reference.

In Chancery of New Jersey.

Between EMMA MELLICK,
Complainant,

AND

HOWARD MELLICK and others,
Defendants.

} Final Decree.

This cause coming on to be heard in the presence of J. G. Shipman & Son of counsel with the Complainant, and S. C. Smith and William H. Morrow of counsel with the defendant, Howard Mellick, and the said bill having been taken as confessed against all the defendants except the defendant, Howard Mellick, and the said defendant, Howard Mellick, having filed his answer and answers by way of cross bill, and the complainant having joined issue upon the same, and the bill of complaint and pleadings having been read, and the Court having heard the testimony and the arguments of counsel, and the Court being of opinion that the mortgage and bond mentioned in the bill of complaint are the property of the complainant, and that the principal money due upon said bond and mortgage are due to the said complainant with inter-

est on the same from the twenty-third day of February, A. D. eighteen hundred and eighty-nine, that being the day of the death of the said Henry H. Mellick, and it appearing that there is due to the said complainant upon her bond and mortgage aforesaid, on this twenty-third day of June, A. D. eighteen hundred and ninety, the sum of five thousand four hundred and sixty-seven dollars and sixty-seven cents, for principal and interest, and that the said mortgage is a first lien upon the property therein mentioned and described, and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid, and it appearing that the complainant is entitled to relief as aforesaid,

It is on this twenty-fifth day of June, A. D. eighteen hundred and ninety, by Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth order adjudge and decree that the said mortgaged premises, be sold to raise and satisfy the said sum of money so due to the said complainant, that is to say, to the said complainant the sum of five thousand four hundred and sixty-seven dollars and sixty-seven cents, with lawful interest thereon from the twenty-third day of June, A. D. eighteen hundred and ninety, with 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 Warren, 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 her solicitor, said debt, interest and costs in manner aforesaid, and if there be any surplus above what may be sufficient to make said payment, that surplus be brought into 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 said writ.

And it is further ordered, adjudged and decreed that the defendants and each of them do stand absolutely

debarred and foreclosed of, and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid, by virtue of this decree.

And it is ordered, adjudged and decreed that the sum of twenty dollars be allowed and paid to the solicitors of the complainants, instead of the retaining fee now allowed by statute, and that the same be included in the taxed bill of costs and collected with the other items of said bill,

And it appearing that the said bond, secured by the mortgage above mentioned, is in the possession of said Howard Mellick.

It is ordered that the said Howard Mellick do deliver up said bond to the complainant's Solicitors within ten days after service upon him or his solicitor of a copy of this decree.

ALEX. T. McGILL, C.

Respectfully advised,
H. C. PITNEY, V. C.

In Chancery of New Jersey.

Between EMMA MELLICK, Complainant,	
AND	On Bill, &c.
	Notice of Appeal.
HOWARD MELLICK and others, Defendants.	

The defendant Howard Mellick hereby appeals from the final decree made in this Court in the above stated cause to the Court of Errors and Appeals in the last resort in all causes.

Dated July 24, 1890.

S. C. SMITH,

Solicitor for and of counsel with Defendant, Howard Mellick.

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

WM. H. MORROW,
Of Counsel.

A true copy.
ALLEN MCDERMOTT,
Clerk.

Petition of Appeal.

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

The humble petition of Howard Mellick, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery, by his honor Alexander T. McGill, Chancellor of New Jersey, bearing date the 28th day of June, 1890, in a cause wherein Emma Mellick was complainant and the said Howard Mellick and others were defendants, in this respect; to wit: That said decree adjudges that the mortgage and bond, mentioned in the bill of complainant, are the property of the complainant; and the principal money due upon said bond and mortgage are due to the said complainant, with interest on the same from the 23d day of February, A. D. 1889; and that there is due to said complainant, on said bond and mortgage, the sum of $5,467.67, and that said mortgaged premises should be sold to raise and pay the money so due, as aforesaid, with costs to be taxed; and that a writ of Fieri Facias should issue for that purpose out of the said court, directed to the Sheriff of the County of Warren, commanding him to make sale, according to law, of the said mortgaged premises, and that out

of the money arising from such sale, he should pay to the complainant, or her solicitor said debt, interest and costs, and that said decree adjudges that the said petitioner do deliver up said bond to the complainant's solicitors, within ten days after service upon him, or his solicitor, of a copy of the said decree. And your petitioner humbly appeals from said decree, as aforesaid, on the ground that the same is erroneous, for that the said bond and mortgage should have been adjudged to be the property of this appellant, and not the property of the complainant, and sale of the mortgaged premises should not have been ordered. Your petitioner therefore prays that said decree of said Chancellor may be reversed, set asaid, and for nothing holden; and that your petitioner may have such relief in the premises as in this Honorable Court shall seem meet.

S. C. SMITH,
Solicitor for and of counsel with Appellant.