

New Jersey Court of Errors and Appeals.

Between

WILLIAM D. GIVEANS, appellant,

and

WILLIAM McMURTRY and others,
respondents.

} On appeal from the
decree of the Chan-
cellor.

BILL OF COMPLAINT.

[Filed November 26, 1858.]

IN CHANCERY OF NEW JERSEY.

To his Honor Benjamin Williamson, esquire, Chancellor of the
State of New Jersey.

Humbly complaining, shôweth unto your Honor your orator, William D. Giveans, of the township of Vernon, in the county of Sussex, and state of New Jersey, that one Elizabeth Giveans, of the county and state aforesaid, on or about the fourth day of September, A. D. eighteen hundred and fifty-five, recovered a judgment against your orator, Samuel Giveans, John F. Giveans, and Bradner Perry, in the Circuit Court of the County of Sussex, in a plea of trespass on the case, for the sum of eleven hundred and one dollars, damages and costs, or for some other sum. 10

And your orator further shows, that afterwards, to wit, on or about the sixth day of September, A. D. eighteen hundred and fifty-five, an execution was issued out upon said judgment, and placed in the hands of Frederick Arvis for collection, he being then sheriff of the county of Sussex, commanding him, that of the goods and chattels of the said defendants, in his county, he should cause to be made the judgment and costs aforesaid; and that if sufficient goods and chattels of the said defendants, in his county, could not

be found, whereof to make the damages and costs aforesaid, that then in that case he should cause the whole, or the residue of the damages aforesaid, to be made of the lands, tenements, hereditaments, and real estate of the said defendants, in his county, whereof they were seized on the fourth day of September, A. D. eighteen hundred and fifty-five, or at any time afterwards, in whosoever hands the same might be.

And your orator further shows, that the said Arvis, sheriff
 10 as aforesaid, did, by virtue of said execution, levy upon the following lands and real estate of your orator, to wit, all those several tracts of land and premises situated, lying, and being in the township of Vernon, in said county of Sussex, and is bounded by lands of Samuel Sprague, James F. Giveans, Henry Chardavoyne, and others. First lot is called the Larrison lot, and contains, after deducting some laps on adjoining lands, twelve acres and thirty-five hundredths of an acre. Second lot is the northeast end of the homestead farm of John Giveans, deceased, and contains ninety-eight
 20 acres. Third lot contains one eighth of an acre of land, and is bounded by lands of James Crabtree and William Crabtree, and is known as the storehouse lot.

And your orator further shows, that the said levy was also made upon all the personal property of your orator, to the value of about fifteen hundred dollars, and also upon several tracts of land owned by the said Samuel Giveans, John F. Giveans, and Bradner Perry, and also upon their personal property, altogether of the value of about twelve thousand dollars, as in and by the said levy will appear, and to which
 30 levy and proceedings your orator begs leave to refer, if it be necessary so to do.

And your orator further shows, that on or about the twenty-sixth day of September, A. D. eighteen hundred and fifty-five, one Robert A. Linn and Lewis Dunn, survivors of William McCoy, deceased, recovered a final decree in the Court of Chancery of the State of New Jersey, against your orator and Jane his wife, for the sum of two thousand one hundred and six dollars and forty-two cents, the principal and interest secured by a certain mortgage, given by the
 40 defendants to the complainants, dated April the fifteenth,

eighteen hundred and fifty-two, and also the sum of fifty-three dollars and six cents, the costs of the complainants, which said mortgage was upon the same lands upon which the said sheriff levied as aforesaid, and which said lands were in and by the said decree ordered to be sold, as in and by the said decree will fully appear, and to which decree your orator begs leave to refer, if it be necessary so to do.

And your orator further shows, that afterwards, to wit, on or about the twelfth day of October, A. D. eighteen hundred and fifty-five, an execution, called a *feri facias de bonis et terris*, 10 was issued out upon the said decree, and placed in the hands of Frederick Arvis, who was then sheriff of the county of Sussex, to be executed, commanding him that he cause to be made of the premises described in said decree, by selling so much as might be necessary and needful for the purpose, the said sum of two thousand one hundred and six dollars and forty-two cents, and the lawful interest, and also the costs above named; which last said writ was returnable on the third Tuesday of October, A. D. eighteen hundred and fifty-five, and duly recorded, as in and by the said writ will 20 appear.

And your orator further shows, that the said sheriff, by virtue of said writ, and before the return thereof, levied upon the aforesaid lands and real estate of your orator, as in and by the levy annexed to said writ will appear.

And your orator further shows, that the said sheriff afterwards advertised the said lands and premises of your orator, above set forth and described, to be sold, upon the two executions herein before named and set forth, that is to say, at the suit of the said Elizabeth Giveans, upon the execution 30 issued out of the Sussex County Circuit Court, and upon the execution at the suit of the said Robert A. Dunn and Lewis Dunn, survivors, &c., issued out of the Court of Chancery aforesaid; and that your orator, in order to raise money to pay off and satisfy the above stated executions, costs, and interest, and to prevent said lands and real estate of your orator from being sold, as well as his personal property, afterwards, to wit, on or about the fifth day of February, A. D. eighteen hundred and fifty-six, applied to David Ryerson, of the county of Sussex, for a loan of three thousand dollars; 40

that the said David Ryerson agreed to loan to your orator the said sum, or to procure some one else to loan to your orator the said sum, for which your orator agreed to pay the said David Ryerson a shave of three hundred dollars on the said sum, and that your orator was to give his bond, with Samuel Giveans security, payable in three years from date, with interest at the rate of seven per cent. per annum, and also to give a mortgage upon the lands of said Samuel Giveans and your orator to secure the payment of the said bond; and
 10 that the said David Ryerson, in pursuance of said agreement, did, on the twenty-fifth day of February, A. D. eighteen hundred and fifty-six, furnish to your orator the sum of three thousand dollars for the purpose aforesaid, for which your orator paid him a shave of three hundred dollars; and that the said David Ryerson then informed your orator that the said three thousand dollars were the money of William McMurtry, who then resided and lived, and still does reside and live, at Newark, in this state; and that the said David Ryerson then also informed your orator that the bond and
 20 mortgage would have to be payable to the said William McMurtry; that the said William McMurtry then was and still is the son-in-law of the said David Ryerson; that your orator, together with the said Samuel Giveans, did, on the day and year last aforesaid, make and execute their bond to the said William McMurtry in the penal sum of six thousand dollars, conditioned to pay to said McMurtry, his heirs, executors, administrators, and assigns, the sum of three thousand dollars in three years from the date thereof, with interest for the same, payable annually, at the rate of seven
 30 per cent. per annum, which said bond bears date the twenty-fifth day of February, A. D. eighteen hundred and fifty-six, as in and by the said bond will fully appear, reference being thereunto had, and to which your orator begs leave to refer.

And your orator further shows unto your Honor, that in order to secure the payment of said bond, with interest, your orator, and Jane his wife and Samuel Giveans, made and executed with the said William McMurtry their certain mortgage, bearing date the twenty-fifth day of February, A. D. eighteen hundred and fifty-six, upon all the lands and real
 40 estate of your orator herein before referred to and set forth, being the same lands upon which the aforesaid levies were

made, and also upon two different tracts of land of the said Samuel Giveans, which said tracts of land are unencumbered, and worth twice the amount of the said mortgage, all of which said lands are situated in the township of Vernon aforesaid; which said mortgage was upon this condition, to wit, that if the said parties of the first part to said mortgage should pay unto said William McMurtry, his heirs, executors, administrators, and assigns, the sum of three thousand dollars, in three years from the date thereof, with interest for the same, payable annually, at the rate of seven per cent. 10
per annum, according to the conditions of said bond, then said mortgage and bond to be void, else to remain in force; which said mortgage was duly acknowledged, on the day of the date thereof, by the said Samuel Giveans, your orator, and his said wife, and delivered and recorded in Sussex county clerk's office, in book R of Mortgages, pages 621 and 622, &c., as in and by the said mortgage, acknowledgment, and record thereof will appear, and to which your orator begs leave to refer.

And your orator further shows unto your Honor, that the 20
sum due upon the two executions and judgments above stated, on the twenty-fifth day of February, A. D. eighteen hundred and fifty-six, amounted to about three thousand four hundred and eighty dollars, and that your orator, on the day and year last aforesaid, paid to the said Elizabeth Giveans the full amount of damages, interest, and costs then due upon her said judgment and execution, which money was paid and received in full satisfaction and discharge of her said judgment and execution, and the same then became, and now is, a paid off and satisfied judgment and execution, 30
and no longer has any legal existence or force against your orator; and that your orator, on the day and year last aforesaid, paid to the said Robert A. Linn and Lewis Dunn, survivors as aforesaid, the full amount of the said decree, costs, and interest then due upon said decree and execution, which money was paid and received in full satisfaction and discharge of their said decree and execution, and the same then became, and now is, a paid off and satisfied decree and execution, and no longer has any legal existence or force against 40
your orator, and the said decree, judgment, and both executions ought to be both cancelled and discharged of record.

And your orator further shows, that the said three thousand dollars were applied by him towardst he payment of the said decree, judgment, and execution, and that the balance due was paid with the funds of your orator; that your orator never heard anything about said decree and judgment and executions, from the time he paid and settled them, as above stated, until about the first day of October last, when, to his surprise, he found that his real estate, levied upon by said executions, was advertised to be sold at sheriff's sale by
10 Frederick Arvis, sheriff as aforesaid.

And your orator shows, that his real estate aforesaid is now advertised to be sold upon the execution issued out of the Sussex Circuit Court, at the suit of the said Elizabeth Giveans, and herein before stated and referred to, and also upon the execution issued out of the Court of Chancery at the suit of Robert A. Linn and Lewis Duun, survivors of William McCoy, deceased, and herein before referred to and stated, at public vendue, by the said Arvis, sheriff as aforesaid, on Monday, the twenty-ninth day of November, A. D.
20 eighteen hundred and fifty-eight, at the Cochran house, in Newton, and that the said sheriff now threatens to sell the personal property of your orator, levied upon by the said Arvis upon and by virtue of said executions, and that the said Arvis is now proceeding to collect the said judgment, decree, and executions out of the property of your orator.

And your orator further shows, that as soon as he discovered that his property had been advertised, as above stated, he applied to the said Arvis to know why said Arvis was proceeding to collect said executions, when the said Arvis
30 informed your orator that he was directed to do so by the attorney for the said William McMurtry; that the said William McMurtry claimed to be the assignee of the said judgment, decree, and executions, and that they were assigned over to him, by the plaintiff in the said judgment and by the complainants in the said decree at the time your orator borrowed the three thousand dollars aforesaid, and were to be held by him as collateral security for the payment of the bond and mortgage so given by your orator and the said Samuel Giveans for the said three thousand dollars, to the
40 said William McMurtry.

And your orator further shows, that the said bond and mortgage, so given to the said McMurtry by your orator and Samuel Giveans, are not yet due, and will not be due until the twenty-fifth day of February, A. D. eighteen hundred and fifty-nine, as by the same will appear.

And your orator further shows, that he has been informed, and believes and so charges, that the said McMurtry now claims, and gives out in speeches, that he loaned the said money to your orator upon the condition that said judgment, decree, and executions were to be assigned over to him, and held by him as collateral security for the payment of said bond and mortgage of three thousand dollars, and that it was agreed by him and your orator, at the same time, that the said judgment, decree, and executions should be assigned over to him as collateral security for the payment of said three thousand dollar mortgage; all which your orator expressly charges to be untrue, and expressly charges, that it was not agreed or understood by your orator or by said McMurtry, at the time the said three thousand dollars were loaned, or at any other time before or since, that the said judgment, decree, and executions, or either of them, should or might be assigned to said McMurtry or any other person, to be held for the purpose aforesaid, or for any other purpose; and that if they were ever assigned over to said McMurtry or any other person, the same was done without the consent and against the will and understanding of your orator; and that said judgment, decree, and executions have been paid off and satisfied, and ought of right to be cancelled of record.

And your orator further shows, that the said McMurtry and his attorneys are now trying to collect the full amount of said judgment, decree, and executions and interest and costs upon them, out of the personal and real property of your orator; that they have ordered the said Arvis to sell both the real and personal estate of your orator to an amount sufficient to pay off what they claim is due upon the same; that said McMurtry claims that there never has been anything paid on said judgment, decree, or executions, and that the full face of them, with interest and costs, are wholly unpaid, the contrary whereof your orator expressly charges to be true.

And your orator charges and believes the truth to be, that the said sum of three thousand dollars, loaned to your orator, was the proper money of the said David Ryerson, and not the money of the said McMurtry, and that the bond and mortgage for the same were merely made out to said McMurtry for the purpose of evading the usury laws, and that the said David Ryerson then was, and always has been, the equitable and true owner of said bond and mortgage, and that said McMurtry never owned the said money, bond, or
 10 mortgage, and never had any interest in them, and that the amount due upon said bond and mortgage is due and coming to said David Ryerson; that said McMurtry is merely acting as the agent and at the request of said David Ryerson in trying to collect the said judgment, decree, and executions.

And your orator charges, that even if the said money was loaned by said McMurtry, and he was the owner of the same, still the contract was a void and usurious one, and the bond and mortgage are void for usury, because the said McMurtry, at the time of the loaning said three thousand dol-
 20 lars and of the execution of the papers, lived in this state, to wit, at Newark, and your orator then lived in the county of Sussex.

And your orator further shows, that if the said judgment, decree, and executions were assigned over to the said McMurtry, as he claims, still he has no right to sell your orator's property upon said executions until the said mortgage of three thousand dollars becomes due and payable.

And your orator shows, that the amount for which said judgment was recovered against William D. Giveans, Samuel
 30 Giveans, John F. Giveans, and Bradner Perry, at the suit of Elizabeth Giveans, was the proper debt of your orator, and the other parties were merely security for your orator.

And your orator further shows, that he has frequently and in a friendly manner applied to the said defendants, and requested them to cancel the said decree and judgment, and to desist from attempting to collect the said executions issued thereon, and your orator well hoped they would have complied with such reasonable requests as in justice and equity they ought to have done; but now, so it is, that the
 40 said defendants, combining and confederating with divers

other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted in this his bill of complaint, with apt and proper words to charge them, as defendants hereto, to injure and aggrieve your orator in the premises, not only refuse so to do, or in any manner to comply with such reasonable requests of your orator, but they, the said defendants, sometimes pretend and give out in speeches, that the said decree, judgment, and executions, or any of them, never have been paid off or in any way settled or satisfied, in whole or in part, 10 and that the said McMurtry is the true owner of the same, and that they were duly assigned over to the said McMurtry at the time the said three thousand dollars were loaned, whereas your orator expressly charges the contrary thereof to be true; and at other times they give out and pretend that the said mortgage of three thousand dollars was given as collateral security for the payment of the said decree, judgment, and executions, and is so held by said McMurtry, which your orator charges is untrue; and at other times they pretend that the said decree, judgment, and executions 20 were assigned over to said McMurtry, and have no connection in any way with said mortgage of three thousand dollars; and at other times they pretend that said decree, judgment, and executions were assigned over to said McMurtry, as collateral security for the payment of said three thousand dollar mortgage, at the time said mortgage was given, and with the consent of your orator, all of which your orator charges to be untrue; all which actings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator, in 30 tender consideration whereof, and for as much as your orator is without adequate remedy in the premises by the strict rules of the common law, and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable—to the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect, and distinct answer make to all and every the matters aforesaid, and that as fully as if the same were here again repeated, and they thereto particularly interro- 40

gated paragraph by paragraph, and that the said decree and judgment may be cancelled of record, and that the said McMurtry, if he have any assignment of said decree, judgment, and executions, or any or either of them in writing or under seal, may be decreed to deliver them up to your orator to be cancelled and destroyed, may it please your Honor, the premises considered, to grant to your orator not only the state's writ of injunction, issued out of and under the seal of this honorable court, to be directed to the said William Mc-

10 Murtry, David Ryerson, Elizabeth Giveans, Robert A. Linn, Lewis Dunn, and Frederick Arvis, restraining them and each of them from selling upon or collecting said execution issued out of said circuit court, and from all further proceedings at law or otherwise against your orator and Jane his wife upon the decree and execution issued thereon in the Court of Chancery, in a suit wherein Robert A. Linn and Lewis Dunn, survivors of William McCoy, deceased, are complainants, and your orator, William D. Giveans and Jane his wife are defendants, and also restraining them, and each

20 of them, from selling upon or collecting said execution issued out of the Court of Chancery, and from all further proceedings at law or otherwise against your orator, William D. Giveans, Samuel Giveans, John F. Giveans, and Bradner Perry, upon the judgment and execution issued thereon in the Sussex County Circuit Court, in a suit wherein Elizabeth Giveans is plaintiff, and William D. Giveans, Samuel Giveans, John F. Giveans, and Bradner Perry are defendants, in a plea of trespass on the case upon promises, but also the state's writ of subpœna, to be directed to William McMur-

30 try, David Ryerson, Elizabeth Giveans, Robert A. Linn, and Lewis Dunn, therein and thereby commanding them, and each of them, at a certain day and under a certain penalty, therein to be expressed, personally to be and appear before your Honor, in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet, &c.; and your orator, as in duty bound, will ever pray, &c.

A. J. ROGERS,

Solicitor for and of counsel with complainant.

New Jersey, ss.—William D. Giveans, the complainant in the foregoing bill of complaint, being duly sworn, on his oath saith, that the facts, matters, and things therein set forth, so far as they relate to his own acts and deeds, are true, and so far as they relate to the acts and deeds of any other person or persons, he believes them to be true.

WM. D. GIVEANS.

Sworn and subscribed before me, November 24th, 1858.

JNO. LINN, *M. C.*

ORDER FOR INJUNCTION. 10

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

David Ryerson, William McMurtry,
Elizabeth Giveans, and others,
defendants.

On bill, &c.

Order for injunction.

[Filed November 26, 1858.]

Upon reading the bill of complaint in this cause, and the affidavit thereunto annexed, and on motion of Andrew J. 20 Rogers, solicitor and of counsel with the complainant—

It is ordered, that, upon filing the said bill and affidavit, an injunction do issue pursuant to the prayer thereof.

Dated November 26th, 1858.

B. WILLIAMSON, *C.*

ANSWER TO BILL OF COMPLAINT.

[Filed March 24, 1859.]

IN CHANCERY OF NEW JERSEY.

The answer of Robert A. Linn and Lewis Dunn, two of the defendants, to the bill of complaint of William D. Giveans, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to many errors, uncertainties, and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto such parts thereof as these defendants are advised is material or necessary for them to make answer unto, they answer and say, that they admit it to be true, they, these defendants, as survivors of William McCoy, deceased, recovered a judgment in the Court of Chancery of New Jersey against the said William D. Giveans and Jane his wife, on or about the twenty-sixth day of September, in the year eighteen hundred and fifty-five, for the sum of two thousand one hundred and six dollars and forty-
20 two cents, the principal and interest due on a mortgage before that time executed to these defendants and the said William McCoy by the said William D. Giveans and Jane his wife, together with costs of suit, as stated in the said bill of complaint; and, also, that an execution was afterward, and about the time for that purpose stated in the said bill of complaint, issued and placed in the hands of Frederick Arvis, sheriff of the county of Sussex, to be executed.

And these defendants, in further answering say, that after the execution issued upon the said judgment and decree had
30 been placed in the hands of the said Frederick Arvis, sheriff, to be executed, to wit, on about the twenty-sixth day of February, in the year eighteen hundred and fifty-six, these defendants executed, under their hands and seals, an assignment of the said judgment and decree, with all moneys due and to become due thereon, to William McMurtry, of Newark, in the county of Essex, and state of New Jersey, in consideration of the full amount of the principal and interest due thereon, paid to these complainants, as by reference to
40 the said assignment, now in the hands of the said William McMurtry, will more fully appear.

And these defendants, in further answering say, that the whole business of collecting the said judgment and decree was placed in the hands of their solicitor, David Thompson, by whom these defendants were informed, about the time that the assignment of the said judgment and decree was executed by these defendants, that the amount of principal and interest due on the said judgment and decree had been paid into his hands to be paid over to these defendants upon their executing an assignment of the said judgment and decree to the said William McMurtry, of Newark, in the county 10 of Essex, from whom the money had been received; and these defendants were also informed, by their said solicitor, that the said William D. Giveans had consented and agreed that the said assignment should be made, and thereupon these defendants executed the said assignment of the said judgment, and delivered the same to their said attorney, David Thompson, by whom the principal and interest due upon the said judgment and decree was then paid to these defendants; and these defendants have no other information 20 upon the subject of the said assignment, except what they derived from their said solicitor, as herein before stated; but these defendants believe it to be true, and so they charge the truth to be, that the money was furnished and paid by the said William McMurtry, and that the said assignment was made with the full knowledge and consent of the said William D. Giveans.

And these defendants, in further answering say, that since the execution of the assignment of the said judgment and decree by these defendants to the said William McMurtry, these defendants have had no direction or control of the said 30 judgment or decree, or of the execution thereon issued, and have not in any way interfered with the same: they have been informed, and believe it to be true, that the late sheriff of Sussex, Frederick Arvis, had advertised the lands of the said William D. Giveans by virtue of the said execution, but these defendants believe that the same was done by the order and direction of the said William McMurtry by virtue of the said assignment, as he had the right and authority to do.

And these defendants further answering say, that they, these defendants, have no knowledge or information as to 40

the execution of any mortgages to the said William McMurtry by the said William D. Giveans and others, as stated in said bill, nor do they know how much money was paid or advanced by the said William McMurtry on account of the said judgments, or through whose hands the said money was paid to their solicitor, as they were not present when the same was paid to their solicitor, and the only information they had upon the subject was that which was derived from their solicitor, as herein before stated.

- 10 And these defendants deny all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with all reasonable costs and charges in this behalf sustained.

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DAVID THOMPSON,

Solicitor for and of counsel with the defendants.

New Jersey, ss.—Robert A. Linn and Lewis Dunn, the above named defendants, being duly sworn, on their oaths say, that the matters and things set forth in the above answer, so far as relate to their own acts, are true, and so far as relate to the acts of others, they believe them to be true.

R. A. LINN,
LEWIS DUNN.

Sworn and subscribed this 1st day of March, 1859.

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GEO. W. HAMILTON, *J. P.*

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

David Ryerson, William McMurtry,
Elizabeth Giveans, Robert A.
Linn, and Lewis Dunn, defend-
ants.} *On bill for injunction.*

[Filed April 26, 1859.]

The several answer of William McMurtry, one of the defendants 10
in the above entitled cause, to the bill of complaint of William
Giveans, filed in the above cause.

This defendant, now and at all times for ever hereafter saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors and uncertainties in the bill of complaint aforesaid contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, answers and says, that he admits it to be true that Elizabeth Giveans, of the township of Vernon, in the county 20 of Sussex, recovered a judgment, on or about the fourth day of September, eighteen hundred and fifty five, against the complainant, John F. Giveans and Bradner Perry, in the Circuit Court in and for the county of Sussex, in a plea of trespass on the case, for the sum of eleven hundred dollars and twenty-six cents, damages and costs.

And this defendant further answering saith, that he admits that, at or about the time mentioned in the said bill of complaint, a writ of execution was issued upon said judgment, and that said writ was delivered to Frederick Arvis, then 30 sheriff of the county of Sussex, and that said writ was of the usual form of writs of that nature issued upon judgments obtained in courts of common law jurisdiction in the state of New Jersey.

And this defendant further answering saith, that he admits it to be true that the said Frederick Arvis executed said writ of *fieri facias* by levying on the several lots of land mentioned

and described in the said bill of complaint, and also on some personal property of the said complainant, but of what said personal property consisted, or what was the value of the property levied upon by said Arvis, this defendant does not know, except as informed by the said bill of complaint.

And this defendant further answering saith, that he admits it to be true that Robert A. Linn and Lewis Dunn, survivors of William McCoy, deceased, recovered a final decree in this honorable court against these persons for the amount of prin-
 10 cipal and interest of a certain mortgage given by and between the parties, and of the date and amount, and upon the lands, as mentioned and set forth in the said bill of complaint, and that an execution was issued upon the said decree, and placed in the hands of the said Frederick Arvis, who was then sheriff of the county of Sussex, and that said writ of *feri facias* was of the character, and made returnable at the time, as set forth in said bill of complaint.

And this defendant further answering saith, that he sup-
 20 poses said sheriff made no levy by virtue of said last mentioned writ, but that said sheriff proceeded, in obedience to the command of said last mentioned writ, to sell the land and premises therein described, and that the said sheriff duly advertised said land and premises to be sold by virtue of said two writs, this defendant admits.

And this defendant further answering saith, that he admits that the said complainant, in order to prevent said land and premises and said personal property from being sold, applied, at or about the time in that behalf stated in said bill, to David Ryerson for a loan of three thousand dollars; but
 30 whether the said complainant made said application for the purpose of raising and satisfying the amount of said decree and execution, or simply for the purpose of relieving himself from the position in which he then found himself placed in consequence of said sale, this defendant does not know, nor whether the said David Ryerson agreed to loan said sum to said complainant or to procure some one else to make the loan, or whether the said complainant agreed to pay the said David Ryerson what is called in said bill of complaint "a shave" of three hundred dollars on the said sum, or whether
 40 the said complainant agreed with said David Ryerson to give

his bond, with Samuel D. Giveans as security, payable in three years from date, with interest at seven *per centum*, and also to give a mortgage upon the lands of said Samuel Giveans and of the said complainant, or whether the said complainant paid said David Ryerson "a shave" of three hundred dollars, this defendant does not know, except as informed by said bill of complaint and such information as he derived from the facts and circumstances herein after stated; this defendant admits that the said David Ryerson informed said complainant that the sum of three thousand dollars, 10 which was loaned to said complainant, was the property of this defendant, and that the said bond and mortgage would have to be payable to this defendant.

And this defendant further answering saith, that he resided in the city of Newark, in the state of New Jersey, at the time mentioned in said bill of complaint in that behalf, and has since, and still does reside in said city of Newark, and that he was then, and is now the son-in-law of said David Ryerson.

And this defendant further answering saith, that the true 20 facts connected with the making of said loan mentioned and referred to in said bill of complaint, so far forth as this defendant has any knowledge thereof, are these: this defendant, just before the time of the making of the said loan, was called upon, in behalf of the said complainant, by the said David Ryerson, who represented to this defendant that he could make a loan for this defendant on perfectly safe security, and that it would be a great accommodation to the said complainant to have said loan, as his property was at that time liable to be sold out by execution, unless he could 30 obtain this loan, the said property being then advertised for sale by the sheriff; that this defendant was induced, in consequence of the statements made to him of the great benefit he would be doing the said complainant, and that he could be made perfectly secure for the payment of this money, to advance the amount of three thousand dollars to the said complainant, and to take the securities offered, which securities, as this defendant understood at the time, and which he insisted upon, were the assignment to this defendant of the decree herein before mentioned and referred to, and of 40

the said judgment and an indenture of mortgage, to be made and executed by the complainant and his brother, Samuel Giveans, of and upon certain land and premises situate in the county of Sussex, which securities were at that time represented to this defendant to be of such a nature as amply to secure to him the payment of the said sum of three thousand dollars, and which land proposed to be covered by said mortgage is the same land which is mentioned and referred to in the said bill of complaint; and that this defend-
 10 ant did advance the said sum of three thousand dollars, and the whole amount thereof, receiving, as security therefor, assignments of the said decree and of the said judgment and a bond and mortgage, made and executed by the said complainant and his wife and Samuel Giveans, the brother of said complainant, of and upon said land and premises mentioned and referred to in said bill of complaint.

And this defendant further answering saith, that the said complainant was present at the time of the making of the assignments of the said decree and said judgment to this de-
 20 fendant, and well knew that said assignments were made to this defendant, and gave his full consent thereto.

And this defendant further answering saith, that he does not believe or know, nor has he heard, that said complainant ever paid to said David Ryerson what is called in said bill of complaint "a shave" of three hundred dollars for said loan of three thousand dollars, as set forth in that behalf in the said bill; on the contrary, this defendant has been informed, and believes that said complainant never paid said David Ryerson any amount whatever for said loan
 30 as "a shave," but if the said complainant did pay to the said David Ryerson any amount as "a shave" on said loan, or as compensation for obtaining said loan, this defendant had no knowledge of any such fact, received no part whatever of such amount, if any such were paid, but this defendant expressly states and charges the fact to be, that he advanced the whole amount of the said sum of three thousand dollars in good faith for the purpose aforesaid; that said sum of three thousand dollars was his own individual property; that no part thereof belonged to said David Ryerson, nor had any
 40 part of said three thousand dollars been advanced by said

David Ryerson to this defendant in any way, shape, or manner, directly or indirectly, or otherwise, but that the same was every part and parcel thereof the sole and individual property of this defendant.

And this defendant further answering saith, that this defendant, being then a resident of the city of Newark, and being desirous to have his said loan made secure, made such an arrangement that the services of David Thompson, esquire, attorney-at-law, residing and practising law at the village of Newton, in the county of Sussex, in which county 10 the said land and premises were situate, were procured to attend to the management of the matter and to look after the interests of this defendant at the time of the making of said loan; and this defendant further saith, that in pursuance of the directions to the said David Thompson, he took and received said securities for this defendant.

And this defendant further answering saith, that he admits that the amount due upon the said decree and judgment was about the sum in that behalf stated in the said bill of complaint, and that the whole amount of said decree 20 and judgment was paid to the several parties entitled thereto at or about the time in that behalf mentioned in the said bill of complaint, but that the same was paid by the said complainant in full satisfaction and discharge of the said decree and judgment this defendant denies totally, for the same was paid with the money advanced by this defendant and by the said David Thompson on the behalf of this defendant, and the said judgment and decree were assigned at the time of the payment of the amount advanced by this defendant, by the several persons who were entitled to the same, to 30 this defendant, with the full knowledge and consent of the said complainant, and that it was understood and agreed, by the said complainant, that the said decree and judgment should be and remain to this defendant as subsisting liens and as security to this defendant for the payment of the money so advanced by him as aforesaid, and therefore this defendant is entitled to the full force and effect of the said decree and judgment, and the executions issued thereon, so far as it is necessary to secure him for the payment of the said money so advanced by him as aforesaid, and the inter- 40 est thereon and costs.

And this defendant further answering saith, that it is true that the said sum of three thousand dollars, advanced by him as aforesaid, was applied by the said David Thompson, on the behalf of this defendant, to the payment of the amount due on the said decree and judgment to the person holding the same, but that this was an advance made by this defendant for the said complainant to save his property from being sold by the sheriff under the executions issued on said decree and judgment; whether the balance of the amount due

10 on the said decree and judgment was paid by said complainant with his own funds, or whether the said complainant never heard of the said decree and judgment and executions, from the time when the money was paid thereon as aforesaid, until on or about the first day of October last past, or whether, on the said first day of October last past, the said complainant was surprised because he then found his real estate levied upon by said executions was advertised to be sold at sheriff's sale by Frederick Arvis, late sheriff, this defendant has no knowledge, except as informed by said bill.

20 And this defendant further answering saith, that he admits it to be true that the real estate of the said complainant was advertised to be sold by public vendue by the said Frederick Arvis, as such late sheriff, under and by virtue of the said executions issued on the said decree and judgment at the time mentioned in that behalf in the said bill of complaint whether the said sheriff threatens to proceed to sell the personal property of the said complainant, this defendant has no information, except as derived from said bill of complaint; but this defendant believes that the said Arvis,

30 as such sheriff, was proceeding, at the time of the filing of the said bill of complaint, to collect the amount due to this defendant on said decree and judgment out of the property of said complainant; whether said complainant applied to said Arvis for information relative to said Arvis's proceeding on the said executions this defendant has no information except as derived from said bill of complaint; but this defendant admits that he, through his attorney, directed said Arvis to proceed and collect the amount due to this defendant on the said decree and judgment.

40 And this defendant further answering saith, that he ad-

mits it to be true that he claims to be the assignee of the parties who were entitled to the said decree and judgment; that said decree and judgment were assigned to this defendant at the time before mentioned; but he does not admit that he claims that said decree and judgment were assigned to this defendant as collateral for the payment of the said bond and mortgage, but, on the contrary thereof, he states and charges the fact to be that they were assigned to this defendant as securities for the payment of the said amount of three thousand dollars, so loaned by this defendant to the 10 said complainant as aforesaid, and not as collateral security for the payment of the said bond and mortgage.

And this defendant further answering saith, that he admits it to be true that the principal money mentioned and intended to be secured by the said bond and mortgage is not yet due, as expressed in the said bond and mortgage; but this defendant says that no part of the interest of said principal sum has been paid, except the sum of one hundred dollars, which was paid by the said complainant about the seventeenth day of February, one thousand eight hundred 20 and fifty-seven, and that there is now nearly two and a half years' interest due on the said bond.

And this defendant further answering saith, that he admits, and he charges that to be the fact and truth of the case, that he loaned the said sum of three thousand dollars to the said complainant upon the condition that the said decree and judgment were to be assigned to this defendant, and held by him as security for the payment of the said sum of three thousand dollars, and that it was agreed by the said complainant, and fully understood and assented to by him, that 30 said decree and judgment should be assigned to this defendant, and held by him as security for the payment of the said sum of three thousand dollars, and the statement to the contrary thereof in the said bill of complaint this defendant says is untrue; neither is it true, as alleged in that behalf in the said bill of complaint, that the said decree and judgment had been paid off and satisfied, and ought of right to be cancelled.

And this defendant further answering saith, that he admits it to be true that he is endeavoring to collect the amount 40

due to him for principal and interest and costs out of the real property of the said complainant, by a sale thereof under the said executions, and that he has, through his attorney, ordered the said Arvis to collect the amount due to him as aforesaid out of the real and personal property of the said complainant, but it is not true, as stated in that behalf in said bill of complaint, that this defendant is endeavoring to collect the whole amount of the said decree and judgment; on the contrary thereof, this defendant does not now, and
 10 never did claim any more on the said decree and judgment than was sufficient to pay the amount due to him for his said loan and the interest and the necessary costs of the sheriff on the execution of the said writs of *feri facias*.

And this defendant further answering saith, that his reasons for so ordering the said Arvis to proceed and collect the amount due to this defendant on the said decree and judgment from the property of the said complainant were these: the said complainant had totally neglected and refused to pay the interest due to this defendant on the said
 20 sum of three thousand dollars, so loaned to him as aforesaid, except the said sum of one hundred dollars, although this defendant had frequently applied to him for the payment thereof; the said decree and judgment had been assigned to this defendant, with the full consent, knowledge, and approbation of the said complainant, as security for the payment of the said sum of three thousand dollars, and this defendant therefore considered that he had a perfect right to proceed and collect the amount due to him as aforesaid, and was so advised by his counsel; and this defendant considered
 30 it right and proper, as the said complainant was the proper person to pay the said sum of three thousand dollars, with the interest, that it would be right and just for this defendant to exhaust what security he had in the property of the said complainant before he attempted to collect the same out of and from the property of the other parties who were defendants in the said judgment, or whose property was bound for the payment of the said three thousand dollars to this defendant.

And this defendant further answering saith, that it is not
 40 true, as alleged in that behalf in the said bill of complaint,

that the said sum of three thousand dollars was the proper money of the said David Ryerson, and not the money of this defendant, neither is it true that the said bond and mortgage were made and given to this defendant for the purpose of evading the usury laws; nor is it true that the said David Ryerson then was and always has been the equitable and true owner of the said bond and mortgage, nor is it true that this defendant never owned the said money, bond, and mortgage, and never had any interest in them, nor is it true that the amount due upon said bond and mortgage is due and coming to said David Ryerson, and that this defendant is merely acting as the agent and at the request of said David Ryerson in endeavoring to collect the said decree and judgment; on the contrary thereof, this defendant saith, that the said sum of three thousand dollars, and every dollar thereof, was the proper money of this defendant, and that the whole amount thereof was advanced by this defendant to the said complainant; that the said bond and mortgage and decree and judgment always belonged to this defendant from the time of the making the said assignments thereof and of the executing and delivery of the said bond and mortgage; that said David Ryerson has not now, and never had any interest to the amount of a dollar in the said decree, judgment, bond, and mortgage, since the assignments, execution, and delivery thereof.

And this defendant further answering saith, that as to the charge in said bill of complaint, that even if the said money was loaned by this defendant, and he was the owner of the same, still the contract was a void and usurious one, and the said bond and mortgage are void for usury, because this defendant, at the time of the loaning said three thousand dollars, and of the execution of the papers, lived in this state, to wit at Newark, and the said complainant lived in the county of Sussex; he admits that the said complainant lived in the county of Sussex, and this defendant lived in the county of Essex, at the time of the making of the said loan, and that these very facts took the said transaction out of the statute relating to usury, and made the said contract and said bond and mortgage free from any taint of usury.

And this defendant further answering saith, that as the 40

said decree and judgment were assigned to this complainant as security for the payment of the said sum of three thousand dollars with the full consent, knowledge, and approbation of said complainant, and as said complainant has not paid the interest on the said loan of three thousand dollars, although often requested so to do, this defendant humbly insists that he has a perfect right to proceed to a collection of the amount due to him, with interest and costs, by means of the said executions.

10 And this defendant further answering saith, that he admits that the amount for which said judgment was obtained is the proper debt of the said complainant, and that the other parties defendants were merely securities for the said complainant.

And this defendant further answering saith, that it is not true, as alleged in that behalf in the said bill of complaint, that the said complainant has frequently or ever applied to this defendant, and so far as this defendant knows and as he believes, it is not true that the said complainant has ever
 20 applied to the other parties who are named defendants in the said bill of complaint, and requested them, or either of them, to cancel the said decree and judgment, and to desist from attempting to collect the amount of the said decree and judgment, and the executions issued thereon; and this defendant denies all unlawful combination and confederacy in the said bill charged, without that that any other matter or thing in the said bill contained, and not herein and hereby well and sufficiently answered, confessed, avoided, traversed, or
 30 denied, is true, to his knowledge or belief: all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and prays that the said writ of injunction may be dissolved, and the said bill of complaint may be dismissed, and that this defendant may be here dismissed with his reasonable costs and charges in this behalf most wrongfully sustained; and this defendant will ever pray, &c.

JNO. WHITEHEAD,

Solicitor and of counsel with the defendant, William McMurtry.

New Jersey, Essex county, ss.—William McMurtry, the above named defendant, being duly sworn according to law, doth depose and say, that the facts, matters, and things set forth in the foregoing answer, so far forth as said answer relates to the actings and doings of this deponent, are true, and so far forth as said answer relates to the actings and doings of any other person or persons, this deponent believes the same to be true.

WM. McMURTRY.

Sworn and subscribed before me, at Newark, N. J., February 15th, 1859.

WM. VANDERPOOL, M. C.

The usual replication was filed July 10, 1860.

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

William McMurtry and others,
defendants.

} On bill, &c.

20

EVIDENCE.

[Filed September 25, 1862.]

Examination of witnesses in the above stated cause, taken before D. S. Anderson, a master in chancery of New Jersey, on the part of the above named defendants, at the office of said D. S. Anderson, in Newton, on the seventh day of August, A. D. 1862, in the presence of the solicitors of the said complainant and of the defendants, and in pursuance of notice given for the purpose, the service of which is admitted by the solicitor of the complainant.

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Thomas R. Linn, of Hamburg, in the county of Sussex, a witness produced on the part of the defendants, being duly

sworn, deposeth and saith—I will be forty years of age in September next; I am a farmer by profession. A paper, purporting to be a deed of assignment executed by R. A. Linn and Lewis Dunn, dated February 25th, 1856, being shown to witness, he says—I have seen this paper before; I do not know where or when I have first seen it before; my name is to it as a subscribing witness. I don't remember whether I received the paper from David Thompson, esq., or that I brought the paper to him. I was at D. Thompson's office on the adjourned day of the sale of William D. Giveans's property; I was sent there by commissioners appointed by the court to sell the real estate of John Giveans, deceased; I was sent there by them to receive the money on the sale of the real estate; the commissioners were Robert A. Linn and Lewis Dunn; the other commissioner, William McCoy, was dead. The property, I believe, was advertised for sale under their judgment; the property was not sold that day under the judgment; I think the amount of the judgment was paid on that day; I received the money from D. Thompson, the attorney of the commissioners; I do not know who paid the money to Mr. Thompson, except that uncle David Ryerson was the man I looked after; I can't say that I saw that paper on that day, I have no recollection about it, except that I took a paper that day, from Mr. Thompson, for the commissioners to sign—and if I did, my impression is that this is the paper, as my name is signed to it as a subscribing witness; I do not remember that I ever took but one paper from Mr. Thompson's office for the commissioners to sign, although I may have done so; I took a paper drawn up by my father, and showed it to Mr. Dunn—it was the form of instructions to Mr. Thompson about the form of an assignment to be signed by the commissioners to who ever should pay the money, and it was to be without recourse; that was before I came down to get the money. Some of the parties to this judgment called at the store one day to see if the commissioners would assign the judgment if the money was paid—I mean my father's store at Hamburgh; my impression is that the person who called there was William D. Giveans, but I am not certain of it. I can't say how long it was before the money was paid on the judg-

ment that the person called there; I can't tell how long it was before the money was paid after the judgment was obtained—I think it was a short time, but I can't tell anything about it with certainty; I can't say how long after the money was paid that the assignment was executed—my idea is that it was on the next day, but I am not certain about it.

A paper marked by me *Exhibit W, No. 1*, offered in evidence on the part of the defendants.

I saw my father and Mr. Lewis Dunn execute this paper, and they acknowledged it to me. On the day I received the 10 money at Mr. Thompson's office, I saw there David Ryerson, George W. Ryerson, William D. Giveans, and Samuel Giveans; they were not there when I went there, but came afterwards. I did not know or inquire what their business was.

On cross-examination, witness says—I can't now tell the day or date when that money was paid.

Quest. Have you any recollection of taking this assignment from Mr. Thompson that day?

Ans. I will not undertake to say that I took this assign- 20 ment there—my impression is that I took a paper for the commissioners to sign.

Quest. Did you give Mr. Thompson a receipt for the money he paid you that day?

Ans. I do not know whether I did or not; I suppose I did, though I am not certain whether I did or not.

Quest. Do you recollect giving him a receipt?

Ans. I do not.

Quest. Have you any impression or recollection of taking more than one paper that day from Mr. Thompson for the 30 commissioners to sign?

Ans. No, sir.

Quest. Was not the paper you took a receipt to be signed by them for the money paid by Mr. Thompson?

Ans. I could not say what it was.

Quest. What did you do with the assignment after you saw it executed?

Ans. My impression is that I took it to Mr. Thompson, although I am not certain about that.

Quest. Have you any recollection of so doing?

Ans. I will not undertake to say that I did, although my impression is, as I said before, that I did.

Quest. Did you ascertain, before you left that day, what was the nature of the business being transacted between David Ryerson and the Giveans?

Ans. The only way that I understood it was, that Mr. Ryerson said he had a draft for the money, and he must go to the bank, and see if they would cash it.

The last question is repeated to witness.

10 *Ans.* I did not ascertain their business—I did not know what their business was.

Quest. How do you know that the time when you think Mr. William D. Giveans called to see your father about assigning the commissioners' claim was after the judgment had been obtained on the claim?

Ans. Because they spoke of the judgment.

Quest. Where did the conversation take place?

Ans. In the store, I think.

Quest. Repeat the conversation?

20 *Ans.* The conversation, as near as I can remember it, was—the person came in, and asked me if the commissioners would assign the judgment to whoever paid the money; my father was sick at the time, and confined to the house; my reply was, that I supposed they would, as I thought all they wanted was the money.

Quest. Can you now swear that the person who called and asked if the commissioners would assign the judgment, did not use the word mortgage, instead of judgment?

30 *Ans.* I do not remember of hearing the word mortgage at all—it was judgment.

Quest. Had not the commissioners a mortgage on which the judgment was obtained?

Ans. I think they had.

Quest. Why can you remember the conversation so accurately, and yet cannot tell with any certainty who the person was that called?

Ans. Because I charged my mind with it.

Quest. Why did you charge your mind with it?

Ans. Because my father told me to.

40 *Quest.* What did he tell you?

Ans. He told me to remember what had been said that day.

Quest. Did he not also tell you to remember with whom you had the conversation?

Ans. I think not.

Quest. Did you ever, on any other occasion, know of Mr. Wm. D. Giveans, or any other person for him, calling, and your father to inquire about an assignment of that claim?

Ans. No.

Quest. When did you first know or hear of this assignment, according to your present recollection? 10

Ans. When I put my name to it.

Quest. When was your attention next called to the fact that such an assignment had been executed?

Ans. I don't know that my attention was ever called to it until the present time; I don't know that I have seen it since it was executed until to-day.

Quest. Did not William D. Giveans once call on you to inquire what you knew about the commissioners having assigned that claim to William McMurtry? 20

Ans. He did; I do not know that he mentioned Mr. McMurtry's name, or that I then knew that McMurtry held the claim; I had no knowledge who owned it.

Quest. Where were you when he called on you, and what were you doing?

Ans. I was in the field at work, getting out stone, at Hamburg.

Quest. Who called with him?

Ans. I do not know as any one.

Quest. Was not Bradner Perry with him? 30

Ans. I do not know whether he was or not.

Quest. Did he ever call on you in the field more than once on that business?

Ans. I do not know whether he did or not; I do not remember of but once.

Quest. What conversation took place between you on that occasion about this claim?

[This question objected to by the defendants.]

Ans. I can't tell the conversation that took place between us.

Quest. Can you tell what he called on you for, or what he inquired about?

Ans. He asked me if it was not my understanding that that assignment was to have been made right off, and I told him that that was my understanding; that was my reply to the question.

Quest. Did you not tell Mr. Giveans, on that occasion, that you had no knowledge of any assignment of that claim, and that you had never heard of it before, or something to that
10 effect?

Ans. I think not.

Quest. How long was it after the money was paid to you that Mr. Giveans called on you, as above mentioned?

Ans. I don't know.

Quest. Can you not give any opinion as to the time, whether it was a month, a year, or two years afterward?

Ans. It must have been over a month, and it may have been a year or two years.

Quest. Did he state, at that time, that his property had
20 been advertised under that claim, or that they were proceeding to collect those judgments against him?

Ans. I don't know whether he did or not; he may have done so.

Quest. Did you give him any information or make any statement to him, at that time, that was not true, according to the best of your knowledge at the time?

Ans. I don't know that I did; I am not in the habit of telling untruths.

Quest. Has your recollection of what took place between
30 you and Mr. Giveans, on that occasion, always been the same as that which you now state concerning it?

Ans. I don't know—it is, as near as I can remember what happened; it is long since it happened, and some of it may have escaped my memory.

Quest. Were you examined as a witness in a suit between Mr. McMurtry and Mr. Giveans, in the Court of Chancery, on the foreclosure of a mortgage held by Mr. McMurtry against Mr. Giveans?

Ans. I was examined here once in H. O. Ryerson's office,
40 before him, in a case which, I suppose, is the one that you refer to.

Quest. Did you not testify, at that time, that you had no recollection of Mr. Giveans ever calling on you in the field, as you have above stated?

Ans. No.

Quest. Was the assignment which you witnessed executed on the day of its date?

Ans. I don't know.

Quest. Where was it executed?

Ans. One part of it was executed at the house of Lewis Dunn, and the other part at the house of Robert A. Linn. 10

Quest. Was it before or after Mr. Giveans had called on you in the field?

Ans. It was before, I think.

Quest. Why do you think so?

Ans. Because my father always wants everything done at once, and he told me I had better have it signed and taken back to Mr. Thompson, and have an end of it—that is the reason.

Quest. Did you come to Newton on purpose to bring that paper to Mr. Thompson? 20

Ans. I am not certain—my impression is that I did.

Quest. Did you see Lewis Dunn at Hamburg on the day that Giveans called on you in the field?

Ans. I don't know whether I did or not.

Quest. Are you related in any way to William McMurtry?

Ans. I am cousin to his wife.

Quest. Is David Ryerson your uncle?

Ans. Yes.

In chief.

Quest. At the time William Giveans called on you in the 30 field, did you then know or recollect of the assignment being made by the commissioners?

Ans. I suppose I did—I must have known of it.

Quest. Did you understand Mr. Giveans as referring to that assignment in that conversation?

Ans. Yes.

THOMAS R. LINN.

Sworn and subscribed before me, August 7th, 1862.

D. S. ANDERSON, M. C.

Nathan B. Giveans, of Vernon, in the county of Sussex, a witness produced on the part of the defendants, being duly sworn, saith—

Quest. What is your age, residence, and occupation?

Ans. My age is thirty-two, my residence Vernon, and my occupation is a school teacher.

A paper, purporting to be an assignment executed by Elizabeth Giveans to William McMurtry, dated February 25th, 1856, and shown to witness, he was asked this—

10 *Quest.* Have you ever seen that paper before?

Ans. I think I have.

Quest. Whose name is subscribed to that paper as the attesting witness?

Ans. My own.

Quest. Was that paper executed in your presence?

Ans. It was.

Quest. Do you know Elizabeth Giveans?

Ans. I do—she is my mother.

The foregoing assignment, marked by me *Exhibit W*, No. 20 2, offered in evidence by the defendants.

Cross-examination.

Quest. When and where was that paper executed?

Ans. It was in the town of Verbana, county of Steuben, and state of New York, some time between the 11th January, 1856, and the 1st April, 1856.

Quest. Was it before or after the money due her on the judgment had been paid to her?

Ans. It was before, I think.

30 *Quest.* How much money was due on the judgment at the time it was executed?

Ans. I don't justly remember, but I think the amount is stated in the assignment.

Quest. Had not some part of the judgment been paid to your mother before this time?

Ans. I think not.

Quest. Had not William D. Giveans before then paid to your mother six hundred dollars on that judgment, which money she lent to Andrew D. Martin? [This question objected to by the defendants.]

Ans. I don't know as he did; there was never six hundred dollars loaned by her to Andrew D. Martin.

Quest. Did she not loan some money to Andrew D. Martin?

Ans. Yes—through me.

Quest. How much, and who paid her that money?

Ans. Four hundred dollars—paid to her by Robert A. Linn; I do not know whether it was part of the judgment or not; Mr. Linn had other moneys of hers in his hands.

Quest. Was the money lent to Andrew D. Martin before 10 the execution of this assignment or afterwards?

Ans. Afterwards; I can't tell how long afterwards, but somewhere about a year, I think.

N. B. GIVEANS.

Sworn and subscribed before me, August 7th, 1862.

D. S. ANDERSON, *M. C.*

David Thompson, esq., of Newton, in the county of Sussex, a witness produced on the part of the defendants, being duly sworn, deposeseth and saith—

I am a counsellor-at-law; I know the parties in this suit; 20 I acted as solicitor for Robert A. Linn and Lewis Dunn, survivors, &c., in a foreclosure suit in the Court of Chancery against William D. Giveans; I was also attorney for Elizabeth Giveans in a judgment, in Sussex Circuit Court, against Wm. D. Giveans and others. I received payment on the foreclosure suit of Linn and Dunn, commissioners, against Giveans; the whole amount of principal, interest, and costs, exclusive of sheriff's costs, was paid to me; payment was also made to me of Mr. Giveans' judgment; this was paid on the 25th February, 1856; the amount paid on 30 that judgment was \$1132.66; the two claims were paid at the same time; three thousand dollars of the money was paid by Mr. David Ryerson for William McMurtry; David Ryerson, William D. Giveans, and Samuel Giveans were present at the time of the payment.

Two papers, marked by me *W, No's 1 and 2*, in this cause, being shown to witness, he says—I have seen these papers before—they are both in my handwriting; I drew both the papers at the time they respectively bear date; the two

Messrs. Giveans came to my office, and stated to me that Mr. David Ryerson was going to assist them in raising the money in Newark to pay off these judgments; they all three came to my office together, Mr. David Ryerson and the two Giveans. They stated that the two Messrs. Giveans were to execute a bond and mortgage, and these judgments were to be assigned to Mr. McMurtry; I told the parties that, as solicitor and attorney, I could not make the assignments, as I was not authorized to do so, and the plaintiffs were not present; they seemed anxious to have the business completed, and I proposed to give them a written stipulation, that if the money was paid to me I would procure assignments of the judgments; I executed such a paper, and delivered it to Mr. Ryerson, and the money was then paid to me; after that was done, I drew these assignments, and paid the money due to Messrs. Linn and Dunn to Thomas R. Linn; I sent the assignment by him, I think, to Messrs. Linn and Dunn, to be executed; that assignment was sent back to me in a few days executed as it is now; the other assignment was sent to Nathan B. Giveans, for him to procure the execution of it by his mother; he afterwards sent it back to me by letter executed; I think I paid or sent the money on Mrs. Giveans' judgment to Mr. Robert A. Linn, who was her agent; shortly after I received the assignment from Mrs. Giveans I delivered them both to Mr. Ryerson; these two papers, *Exhibits W, No's 1 and 2*, are the assignments; the transaction was all done at one time, and I do not know that any definite agreement was made on the subject of the assignments; I understood the judgments were assigned as security for the money; they were arranged to be assigned at the same time that the mortgage was executed. William D. Giveans was present at the time Mr. Ryerson stated that the judgments were to be assigned and was there when I executed the stipulation to procure the assignment from the parties, and I understood him to consent; it was my understanding that he agreed to it at the time; I don't recollect that I had heard about the assignments prior to that day; the object of the loan of \$3000 to the Giveans was to save his, William's, property from being sold by the sheriff and to pay the parties to these

judgments; Giveans' property was then advertised for sale by the sheriff; I think his property was advertised under both claims; Mr. McMurtry resided, at that time, in the city of Newark, N. J. It was stated, by Mr. Ryerson there that day, that he had a draft for three thousand dollars from Newark; I think it was stated there that the money came from McMurtry, from the fact that I find on my docket an entry like this: "Received from Wm. McMurtry," stating the amount received. I had a conversation with Wm. D. Giveans on the steps of the court-house in Newton; he met me on the steps of the court-house, and asked me to cancel the judgment in favor of Mrs. Giveans; I told him that I could not do it, as it had been assigned to William McMurtry; this conversation was before the sheriff had advertised his property. After that, he and Mr. A. J. Rogers came to my office; Mr. Rogers wanted to know of me if there had ever been any assignments executed of these judgments by the parties; I told him that they had both been assigned to Mr. McMurtry, and that that arrangement had been made at the time the money was paid; I think I told them the history of the transaction, as I have detailed it here; that was before the filing of the bill in this case; I think I had those assignments in my possession at that time, and I think I showed them to Mr. Rogers; Mr. Giveans was present at the time—I do not know whether he read them or not; he had an opportunity of seeing them; he was also present at the conversation between Mr. Rogers and myself, but I don't know that he said anything on the subject; Giveans came with Mr. Rogers to inquire about the assignments.

On cross-examination, witness saith—I think the two judgments on that day amounted to more than the three thousand dollars advanced by McMurtry; it was over two hundred dollars more, but I don't know the exact amount; the surplus was also paid on that day, so that the two judgments were reduced to the amount advanced by Mr. McMurtry—that was all that remained due; the mortgage was executed to McMurtry that day by William D. Giveans and wife and Samuel Giveans; a bond accompanied it, signed and executed by William D. Giveans and Samuel Giveans; the bond

and mortgage were for \$3000, payable in three years, with interest payable annually, at seven per cent. ; I don't know where the bond and mortgage were executed—they are witnessed by George M. Ryerson, and acknowledgment taken by him ; the bond is filled up by me, and the mortgage by George M. Ryerson ; the bond was filled up by me on the same day that the judgments were paid ; I think the papers were executed on that day ; the bond and mortgage were given, and the assignments of the judgments procured to secure the one debt, and that was the three thousand dollars advanced by Mr. McMurtry ; Mr. McMurtry was not present on that day ; George M. Ryerson resided in Newton at that time. The Giveans had been to see me several days before this time, and informed me that Mr. Ryerson was going to get a loan for them, but I think they did not inform me from whom the money was to come ; Mr. Ryerson had not had any conversation with me about it ; I think William and Samuel Giveans remained at my office until the business was completed—they were out and in, they did not remain there all the time. I have no doubt of the fact that William D. Giveans was present when the assignment of the judgments was talked about. When Mr. Giveans spoke to me on the steps of the court-house, and requested me to cancel the judgment spoken of by me in my principal examination, he did not bring to me the record book of judgments for that purpose ; I don't remember that he had, previous to the conversation on the steps, brought me the record book in the court room, and asked me to cancel the judgment. I think Frederick Arvis was sheriff of the county at the time the money was advanced by Mr. McMurtry ; he may have then been out of office, but he had the executions in his hands ; neither the sheriff or his deputy were present at the execution of this business, or any part of it ; I do not remember that the day on which this business was done was the day on which the property was advertised for sale. Samuel Giveans had called on me, and stated that they expected to get the loan through Mr. Ryerson ; I don't think he mentioned Mr. McMurtry's name ; my recollection is, that he said they were going to get it from some one down country, but I don't think he mentioned any name ; I don't think I knew

anything about McMurtry's connection with the transaction until that day; I learned it there on that day from some of the parties, but which ones I am not able to state; I don't remember that I knew at that time that McMurtry had sold out his store in Newark; I don't remember that I knew anything about his business at that time; I don't recollect of hearing any conversation on that day, between David Ryerson and Samuel Giveans, about Samuel's wife not being here to sign the mortgage; I can't say that I heard anything said that day about Samuel Giveans' land being included in the mortgage; his land was included in it.

DAVID THOMPSON.

Sworn and subscribed before me, August 7th, 1862.

D. S. ANDERSON, M. C.

At the request of the solicitor of the complainant, the defendants' solicitor produced to me the bond and mortgage referred to in the above examination of David Thompson, esq., which I have marked as *Exhibits M, No's 1 and 2* for complainant.

David Ryerson, of Newton, in the county of Sussex, a witness produced on the part of defendants, alleging himself to be conscientiously scrupulous of taking an oath, and being by me duly affirmed according to law, did declare and say— [The testimony of David Ryerson is objected to, on the ground that he is one of the parties in this suit.]—I am president of the Sussex Bank, and have been such for thirty years and over; I know William D. Giveans and Samuel Giveans; I know William McMurtry—he married my daughter; Mr. McMurtry lived in Newark in February, 1856; he lived there before 1856, and since then. Mr. McMurtry advanced three thousand dollars to the Giveans; I don't recollect precisely the time when that was, but I believe it was at the time of the execution of the mortgage and the assignment of the judgments; the money was advanced by him to pay some judgments that were against the Giveans; their property was advertised for sale by the sheriff. I don't remember in whose favor the judgments were, but I think one of them was in favor of Robert A. Linn and Lewis Dunn,

commissioners, and another one in favor of the step mother of the Giveans; I guess her name was Elizabeth. Mr. McMurtry was to have, as security for his money, an assignment of the judgments and a mortgage from the Giveans; the Giveans both agreed to give him the security.

Quest. How long before the loan was actually made was it that the Messrs. Giveans made the agreement to give this security?

Ans. As near as I remember, fifteen days.

10 *Quest.* Where was the arrangement consummated?

Ans. At the office of David Thompson.

Quest. Were the assignments spoken of on that day?

Ans. Yes, they were spoken of, for I put the money in Mr. Thompson's hands, and I took a writing from him that he was not to pay over the money until the assignments were consummated.

Quest. Who were present at the consummation of the transaction at Mr. Thompson's office?

20 *Ans.* Mr. Thompson, the two Giveans, and my son George was there a part of the time; Mr. William D. Giveans was there a part of the time, and I was in and out while the papers were being prepared.

Quest. Were those assignments prepared there that day by Mr. Thompson?

Ans. Yes, I think so.

Witness being shown *Exhibits W, No's 1 and 2*, and being asked, says—

Quest. Are these the assignments spoken of?

Ans. I think they are.

30 *Quest.* After the assignments were executed, did Mr. Thompson pass them over to you, and if he did, what did you do with them?

Ans. I think he passed them to me, and I gave them or sent them to Mr. McMurtry.

Quest. How was the money paid by Mr. McMurtry?

Ans. He placed the money with Charles A. Morford & Co., in New York, subject to my draft, and the cashier of the Sussex Bank paid me the money on my draft, which was honored and paid.

40 *Quest.* How much of that \$3000 belonged to you at the time it was advanced, or ever or since belonged to you?

Ans. Not a penny of it, nor any other amount or sum.

Cross-examination.

Quest. What has become of the writing which you took from David Thompson?

Ans. I returned it to him when he gave me the papers.

Witness being shown the bond and mortgage marked *Exhibits M, No's 1 and 2* for complainant, is asked—

Quest. Are those papers the bond and mortgage given to Mr. McMurtry to secure the said loan of \$3000?

Ans. I suppose they are; I have no doubt they are. 10

Quest. Was it a part of the arrangement that Samuel Giveans should join in executing the bond, and include his land in the mortgage?

Ans. That was the agreement; but it does not include all his land, only a piece of it, as I understand it.

Quest. For how long a time was it agreed that Mr. McMurtry should lend the money to the Giveans?

Ans. I think three years is the time mentioned in the papers.

Quest. For what purpose were the judgments assigned? 20

Ans. For further security for the debt; when I undertook to get the loan, it was expressly agreed that those judgments were to be assigned; the Giveans lived away from here some twenty miles, and I was not familiar with their property or their personal responsibility, but I did know that the judgments covered property that was valuable that they did not own; I knew the property of Bradner Perry was covered by the judgment; their proposition was to make the loan amply secure and to my satisfaction.

Quest. How were you compensated for your services in procuring this loan? [This question objected to by defendants.] 30

Ans. They agreed to give me a certain sum, but did not do it; I met them afterwards in Mr. Nicholas' store, when they gave me their note for the amount, which was afterwards collected.

Quest. How much was that amount?

Ans. Three hundred dollars. [The last question objected to by defendants.]

Quest. Was not that note given on the same day that the loan was consummated?

Ans. On the evening of the same day, after the other business was all done up.

Quest. Was it not a part of the original agreement with the Giveans that Samuel Giveans' wife should sign the mortgage, and that it should include all his land?

Ans. No, not that I remember.

Quest. Were you examined as a witness in the suit between
10 William McMurtry and William D. Giveans and others, in the Court of Chancery, for the foreclosure of that mortgage?

Ans. I think I was.

Quest. Did your testimony on that occasion relate to the same matters on which you have now been examined?

Ans. I suppose so—I don't recollect specially.

In chief.

Quest. Before Mr. McMurtry made the advance of three thousand dollars, did you say anything to him about the assignment of these judgments?

20 *Ans.* He knew the judgments were to be assigned before he made the loan—he knew that from me.

Quest. As whose agent did you act in making the negotiation with Mr. McMurtry for the loan?

Ans. The Giveans'; they both came to me, and employed me to get the loan for them.

Quest. How much of the three hundred dollars that you received from the Messrs. Giveans did you pay to Mr. McMurtry?

Ans. No part of it.

30 *Quest.* Did he know of that \$300?

Ans. Not that I know of.

Quest. How did you make the negotiation for the loan with Mr. McMurtry? [This question objected to on the ground that it is a renewal of the principal examination—the counsel for the defendants here states, that if he has not asked the last question in the principal examination, it was an oversight, and that he intended to ask it.]

Ans. By letter; I did not see him personally about the

matter—it was all done by correspondence; I had but a few days to do it in, and did not go down.

DAVID RYERSON.

Affirmed and subscribed before me, August 7th, 1862.

D. S. ANDERSON, M. C.

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

David Ryerson, William McMurtry,
Elizabeth Giveans, Robert A.
Linn, and Lewis Dunn, defend-
ants.

On bill, &c. 10

[Filed September 25, 1862.]

Examinations and depositions of witnesses on the part of the defendant, William McMurtry, taken before me, Theodore Frelinghuysen, a master in chancery of New Jersey, on this 23d day of September, A. D. 1862, at two o'clock, P. M., at the office of John Whitehead, esq., solicitor for said William McMurtry, and in his presence, and Thomas N. McCarter, esq., solicitor 20 for the complainant, upon due notice admitted.

THEO. FRELINGHUYSEN, M. C.

William McMurtry, a witness produced, sworn, and examined on the part of the defendants, on his oath saith—I am one of the defendants in the above stated cause; I live in Newark, New Jersey; on the 25th of February, 1856, I lived in Newark, New Jersey; prior to that time I had lived here in Newark about five years; I made a loan to William D. Giveans, the complainant, in the year 1856, in February, 1856, some time in February, 1856; the amount was three 30 thousand dollars; I made it on the application of David Ryerson, as the agent of William D. Giveans, the complainant, I supposed; he was not my agent at all in the transac-

tion; Mr. Ryerson made the application to me for the loan by letter, addressed to me at Newark, New Jersey, and received by me at Newark; I think I received more than one letter from Mr. Ryerson on the subject, perhaps two or three altogether; I received those letters at the post-office here in Newark; I don't know where those letters are—I either mislaid or destroyed them, with other papers, don't know which; I have made a search for them lately—I looked all through my papers and letters for them at my house and
 10 place of business; I never was careful in preserving letters of that kind that came to me, except in my business, and I was not in any business at that time.

Mr. Ryerson wrote to me that Mr. Giveans had applied to him for a loan of three thousand dollars, to take up a judgment that Robert A. Linn (I think) and other parties held against him; that he was willing to transfer the judgment to me, and also give me a mortgage for three thousand dollars on the same property, I understood; and also that his brother, Samuel Giveans, was willing that the mortgage
 20 should cover part of his property; Mr. Ryerson wrote to me that he believed they were very worthy men, and that they represented to him that they should be sold out by the sheriff, on a day in February, I think it was, unless they should raise the money; and that, if I could lend the money they needed, he had no doubt it would be repaid me in three years, and would be a great accommodation to them. [Mr. McCarter objects to the contents of David Ryerson's letter being proved by witness.] I answered David Ryerson's letters; I made the agreement with him; agreed
 30 to let them have the money by letter to him, Mr. Ryerson; I did not see Mr. Ryerson, nor the Messrs. Giveans, nor either of them, before I lent the money; the whole negotiation was done by correspondence, as far as I was concerned; the correspondence on my part was made at and from Newark, N. J.; I put the money in the banking house of Charles A. Morford, New York, or Charles A. Morford & Co., to the credit of Mr. Ryerson, three thousand dollars exactly; that three thousand dollars was my money; Mr. Ryerson had no interest in that three thousand dollars,
 40 nor in the securities that I received; he never had any interest in it, to the least amount whatever, from that day to this.

Exhibits W, No. 1 and W No. 2, on part of the defendants, being shown to the witness, he says, these are the assignments of the judgments that I received as security for that loan.

Exhibits M, No. 1, and M, No. 2, on part of the complainant, being shown to witness, he says, these are the bond and mortgage I received as additional security for the loan; the object of the bond and mortgage being given to me, was to have the mortgage cover the same land, and also the land of Samuel Giveans; the only knowledge I had of anything being 10 paid by William D. Giveans to Mr. Ryerson for his services in procuring this loan was, two or three years afterward, I was subpoenaed in a suit of Mr. Ryerson against Mr. Giveans, or both of the Giveans, in which Mr. Ryerson had prosecuted them for three hundred dollars, I think—I may be mistaken in the time—it may not have been as long as two years afterwards; that was the first I ever knew that any note or compensation had been given to Mr. Ryerson for procuring the loan; I had no interest whatever in that note or compensation—never received anything for it whatever. 20 [All testimony objected to as to the contents of letters between Mr. McMurtry and Mr. Ryerson on this loan.]

The final agreement between Mr. Ryerson and myself, as to the loan was, that I was to receive the assignment of those judgments and receive a bond and mortgage covering the property of William D. Giveans, and also a part of the property of Samuel Giveans, and the securities above named as *Exhibits W, No. 1 and W, No. 2*, on part of defendants, and *M, No. 1 and M, No. 2*, on part of complainant, are the securities I received in pursuance of the agreement. 30

Cross-examined by Mr. McCarter.

I made no agreement with David Ryerson, nor gave him any instructions about the loan, except by letter, not to my recollection; I did not go to Newton, nor complete the transaction there in person; David Thompson acted for me in the business, or at least I told Mr. Ryerson to get Mr. Thompson to see it was done right; I paid the money over, as I have above stated, by depositing it to the credit of Mr. Ryerson a day or two before the loan was effected; the money was

placed to Mr. Ryerson's credit, subject to his draft unconditionally; I wrote to him the same day that I had deposited the money to his credit.

Quest. Did you consider that by depositing the money to Mr. Ryerson's credit, you had paid it to Giveans?

Ans. I considered it placed there for Mr. Giveans.

Quest. On what condition?

Ans. That this judgment and bond and mortgage should be given to me.

10 *Quest.* Who was to see that that was done?

Ans. Mr. Ryerson and Mr. Thompson.

Quest. Was Mr. Ryerson authorized by you to pay that money to Giveans, except upon condition that the bond and mortgage was given to you?

Ans. No; and also the judgment was to be transferred to me.

Quest. Was not Mr. Ryerson then your agent, also, to see that you got the securities stipulated for before he paid the money over to the Giveans?

20 *Ans.* Yes, I suppose he was.

Quest. Did you direct Mr. Ryerson to take Mr. Thompson's professional opinion as to the correctness of the transaction?

Ans. Yes.

Quest. Did Mr. Thompson act for you in any other capacity than as a lawyer to give his opinion on the correctness of the transaction?

Ans. I requested Mr. Ryerson to say to Mr. Thompson to see that the assignment was properly made, and the mortgage properly drawn, and all properly arranged—I was very particular in that.

Quest. Did you ever pay Mr. Thompson anything for his services in this transaction?

Ans. I am not positive whether I did or not; I have paid him money for business transactions, but I don't know whether this was included in it or not; I suppose I owe Mr. Thompson an unsettled account now; he commenced a suit for me—I know I have not paid him for that.

Quest. Did you have any communication yourself with
40 Mr. Thompson about the transaction?

Ans. I don't think I did.

Quest. Why did you take a mortgage from Wm. D. Giveans for this loan?

Ans. The particular reason was to get the land of Samuel Giveans included.

Quest. Was it necessary for William D. Giveans to mortgage his land to enable you to have a lien on Samuel Giveans' property?

Ans. That I shall have to leave to you lawyers—I don't know that it was; I preferred to have a judgment and also a 10 mortgage on the same property; I did so more by the advice of Mr. Thompson and Mr. Ryerson than by my own judgment; Mr. Ryerson wrote me that Mr. Thompson said I had better take a mortgage also.

Quest. Was not the giving of a mortgage a part of the first proposition made to you about this loan?

Ans. I think it was; I think Mr. Ryerson wrote that they were willing to give a mortgage as well as assign the judgment.

Quest. Had Mr. Ryerson consulted Mr. Thompson about 20 the transaction before he applied to you?

Ans. I do not know whether he did before he made the first application, or not—I know he consulted him afterwards.

Quest. Was not Samuel Giveans a defendant in the judgments against William D. Giveans which this money was applied to pay?

Ans. I do not remember. [Objected to by Mr. Whitehead.]

Quest. Did you ever know?

Ans. No—at least I don't recollect.

Quest. Was not Bradner Perry also a defendant in those 30 judgments?

Ans. I think he was, if my recollection serves me right.

Quest. Did you not intrust your money to Mr. Ryerson, relying on him and Mr. Thompson to see that you were properly secured before he paid the money to Giveans?

Ans. I did.

Quest. Did not the judgments, at the time of the loan, amount to more than the amount you loaned?

Ans. I think they did.

Quest. How was the surplus of those judgments arranged? 40

Ans. I don't know.

Quest. Did the judgments belong to you, or had you any interest in them, except as securities for your money loaned to Giveans?

Ans. They were assigned to me for a loan of three thousand dollars which I made to Mr. Giveans, and the amount of the judgments, if they were more than three thousand dollars before, were reduced to three thousand dollars by Mr. Thompson—I presume by Mr. Thompson, for he did the
10 business for me.

Quest. How soon after this did you receive the mortgage?

Ans. I received the judgments and the mortgage ten days, I think, after the transaction, or it may have been longer.

Re-examined by Mr. Whitehead.

Quest. You say, in answer to Mr. McCarter's question, this money was placed unconditionally in Mr. Ryerson's hands—did you mean to be understood by that that you gave no instructions to Mr. Ryerson about your securities to be taken?

20 *Ans.* No, for I had given him positive instructions.

Quest. What instructions? [Objected to by Mr. McCarter, unless letters are produced in which they are given.]

Ans. I gave instructions to pay the money over to Mr. Giveans, and take the securities mentioned; the securities were the assignments of judgments for three thousand dollars and the mortgage above mentioned.

Quest. You say, in reply to one of Mr. McCarter's questions, that Mr. Thompson was to see it all properly arranged—what do you mean by that?

30 *Ans.* I mean that Mr. Thompson was to see that the assignments were properly made out, and the mortgage also—he was to attend to all the business, pay the money over, and attend to the whole of the business.

Quest. Who, then, in settling this matter, was your representative?

Ans. David Thompson—I depended entirely upon him.

Quest. You say, in answer to one of Mr. McCarter's questions, that Mr. Ryerson was your agent—do you mean to be understood by that that he was your agent to act for you in
40 the transaction of this business in the making of the loan,

or the receiving the securities therefor? [Objected to by Mr. McCarter on account of being leading.]

Question withdrawn.

Quest. When you say, in answer to Mr. McCarter's question, that Mr. Ryerson was your agent, do you, or not, mean to be understood as saying that he was your agent in this transaction for making the loan, or receiving the securities therefor, or what do you mean? [Objected to by Mr. McCarter as leading.]

Ans. I meant to say, that before the money was paid over, 10 the papers should be made out in a proper manner.

Quest. Then was Mr. Ryerson your agent in that matter?

Ans. No, I considered Mr. Thompson more my agent than Mr. Ryerson; I considered Mr. Ryerson my agent as far as paying over the money to Mr. Thompson.

Cross-examined.

Quest. If Mr. Thompson was your agent—why did you not pay the money to him?

Ans. Because I deposited it with Mr. Morford, at the request of Mr. Ryerson, and wrote to him he could draw it to 20 pay over to Mr. Thompson or Mr. Giveans.

Quest. Was not Mr. Thompson the attorney of the plaintiffs in those judgments?

Ans. I do not know.

Quest. Do you know to whom the money was paid by Mr. Ryerson?

Ans. I do not.

WM. McMURTRY.

Taken, sworn, and subscribed, September 23d, 1862, at Newark, N. J., before me.

THEO. FRELINGHUYSEN, *M. C.* 30

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

William McMurtry and others, de-
fendants.

} On bill, &c.

[Filed June 2, 1863.]

10 *Examination of witnesses in the above stated cause, taken before D. S. Anderson, a master in chancery of New Jersey, at his office, in Newton, on the part of the above named complainant, pursuant to notice given for the purpose, which is hereby admitted by the counsel of the defendants, and in the presence of Thomas N. M. Carter, esq., counsel of the complainant, and John Whitehead, esq., counsel for defendants, on the twenty-second day of January, A. D. 1863.*

20 *William D. Giveans, the complainant in this cause, being duly sworn according to law, deposeth and saith—[The evidence of Mr. Giveans, the complainant, was objected to by the solicitor of the defendants.]—Witness being shown the bond and mortgage, marked Exhibits M, No. 1 and M, No. 2, on the part of complainant in this cause, said papers being produced by the counsel of the defendant, William McMurtry, at the request of the counsel of complainant.*

Quest. Did you execute those papers?

Ans. I did.

Quest. On the day they bear date?

Ans. Yes.

Quest. For what purpose were those papers executed?

Ans. For a loan of money.

30 *Quest. To what was the money applied?*

Ans. My understanding always was that this money was applied on judgments with other moneys on the same day.

Quest. On what judgments?

Ans. On judgments that were held against me and others by Mr. Linn, Mr. McCoy, and Mr. Dunn, commissioners, and also one in favor of my step mother, Elizabeth Giveans.

Quest. Was the money realized on that mortgage applied to the payment of those judgments? [This question objected to by defendants' counsel.]

Ans. Yes.

Quest. Was it of sufficient amount to pay the whole sum due on the judgments?

Ans. This mortgage was not.

Quest. Was the balance paid on that day, and if so by whom?

Ans. It was paid by me.

10

Quest. Did you, on that day, settle with the sheriff for his fees on the executions? [This question objected to by the defendants' counsel.]

Ans. Yes.

Quest. Were those judgments assigned on that day to any person, to your knowledge?

Ans. No.

Quest. What was your understanding about those judgments after you had settled with the sheriff, and made the other payments? [This question objected to by the defendants' counsel.]

20

Ans. My understanding was that nobody else had a right to them but myself.

Quest. How did you come to execute that bond and mortgage—state the circumstances under which the loan was procured?

Ans. I had the loan to pay these judgments, and it was done the same day the mortgage was executed—so the sheriff told me; I was in the sheriff's hands on these judgments, and that is why I procured this loan.

30

Quest. To whom did you make application for the loan?

Ans. To David Ryerson.

Quest. State who was with you when you made the application, and what took place between you and Mr. Ryerson about the loan when the application was made?

Ans. Samuel Giveans was with me; Samuel Giveans spoke to Mr. Ryerson himself—I was present; Mr. Ryerson said that he could furnish it; then we came together, and saw him the second time; then Samuel Giveans told him that we had come to see whether we were going to be disap-

40

pointed or not; Samuel Giveans told him that it could not be adjourned again; then Mr. Ryerson said that he would not disappoint us; then Mr. Ryerson said that if he did not get his own means in, to have it of his own, that he had a son-in-law living at Newark, and he had sold out, and he knew he had some loose money; and if he failed in getting his own means in, he knew he could borrow it of his son-in-law until he (Ryerson) could return it; he said that he would not disappoint us on the day of the sale.

10 *Quest.* What agreement was made with Mr. Ryerson about the security to be given for the loan?

Ans. The agreement was that I was to give him a mortgage.

Quest. By whom was that mortgage to be executed?

Ans. It was to be executed by myself and wife and Samuel Giveans and wife.

Quest. On what property was the mortgage to be given?

Ans. It was to be given on my real estate, and also on Samuel Giveans'.

20 *Quest.* Was anything said between you and Mr. Ryerson, or between your brother and Mr. Ryerson, in your hearing, about assigning the judgments as a further security for the loan? [This question objected to by defendants' counsel.]

Ans. No, sir, never.

Quest. On the day on which the mortgage was executed, did you hear anything said in Mr. Thompson's office, or elsewhere, about the judgments being assigned to secure the loan?

Ans. No.

30 *Quest.* When was your attention next called, after that day, to those judgments?

Ans. I think it was about two years afterwards.

Quest. What then called your attention to them?

Ans. I was advertised by the sheriff again on those judgments.

Quest. What did you do when you learned that your property had been advertised on those judgments?

Ans. I saw the sheriff, I think, first; I said to him, what does this mean—[Any conversation between the witness and
40 the sheriff is objected to by the defendants' counsel.] Says

he, David Ryerson has ordered me to go on, and collect them; I told him, "Sheriff, you know better than this—you know those judgments never were signed over;" said he, "I never *knowed they was*:" well, then I went to Mr. Bradner Perry; then he went with me to Mr. Thomas R. Linn—he was here at the time the mortgage was executed; I found Mr. Linn in a lot, with another man with him, at Hamburgh, prying stone on his father's farm; I asked him if he got the commissioners' money that day that the mortgage was given; he said he did, with a considerable looking 10 after his uncle David; he said he found him to his own house; he said he told his uncle David that the time was about up; he said he told his uncle David that it was getting the last day in the afternoon, and that if he did not attend to getting this money, he would tell the sheriff to go on and make a sale; he says, then, that uncle David gave him his check, and he went to the bank and got the money, carried it home, and gave it to his father. I asked Mr. Linn if he heard anything about any assignment of any judgments on the day the mortgage was given, and he got the money that 20 was given to the commissioners; then he said he never had up to that date when I told him what was going on; he said he did not believe there ever had been; he said he was satisfied it had not been, for he was there, and got the money for his father and the rest of them; he said he knew if it had been done, his father never would have sent him without sending it with him.

[All this conversation with Mr. Linn objected to by defendants' counsel.]

Quest. Where did you next go? 30

Ans. I went to Mr. Lewis Dunn's, and Bradner Perry with me.

Quest. Did you have a conversation with Lewis Dunn about those judgments, and if so what was it? [This question objected to by defendants' counsel.]

Ans. The conversation was, I asked Mr. Dunn if he had ever made any assignment of those judgments, and he said he never had; I says to him then, that he never had any authority from me to assign those judgments; he said no, he had not. 40

Quest. Did you have any other conversation with him at that time? [Objected to by defendants' counsel.]

Ans. I think Mr. Dunn asked me when I was going to Hamburg.

Quest. To whom did you next apply about this business?

Ans. It was to Robert A. Linn, I think.

Quest. Did you have a conversation with him on the subject?

Ans. I had. [Question and answer objected to by defendants' counsel.]

Witness proceeds.—I asked him if he had made an assignment of that judgment; he said he had; well, then I says to him when; says he, I don't know as I can tell you when I done it; then I asked him what authority he had for doing so; he said he thought he had had it some time from me; then I says to Mr. Linn, did you and I ever have any conversation about any judgments; he gave me no answer then on that; then I says to Mr. Linn, says I, I asked you once whether you commissioners would sign the commissioners' mortgage, if I raised the money over to the man I raised it of; he said they would; then I says to him that I had asked you six or nine months before the prosecution of the commissioners' mortgage that question; then I says to him, do you recollect that conversation; he said yes; now, said I, can you tell where that conversation took place; says he, I thought it was in the store; says I, don't you recollect, Mr. Linn, whether it was in the store or out in the road; he said, when I asked him, that it must have been in the road; then I says to him, do you recollect ever having any conversation only once with me; he says he never did have but one conversation with me.

Quest. To whom did you next apply about this business?

Ans. To Thomas N. McCarter, esq., or A. J. Rogers, I am not positive which.

Quest. Did you call on David Thompson, esq., and request him to cancel these judgments of record?

Ans. I did.

Quest. Where was this request made?

Ans. In Sussex court-house.

40 *Quest.* Did he consent to cancel the judgments?

Ans. No.

Quest. Were all these conversations and applications before you filed your bill in this cause?

Ans. Yes.

Quest. Had you ever, before the giving of that mortgage to McMurtry, called on Robert A. Linn or Thomas R. Linn to ascertain if the commissioners were willing to assign the judgment they had obtained against you on the debt due to them?

Ans. I never had.

Quest. Had you ever made to them, or either of them, any 10 other application on that subject than the one above mentioned by you, referred to in the conversation between you and R. A. Linn?

Ans. No, I never have, to my knowledge.

Quest. When was that application made, before or after suit had been commenced by the commissioners on their claim against you?

Ans. I think, to the best of my recollection, it was in the neighborhood of a year before I was prosecuted.

Quest. Did that application have any reference to the loan 20 which you procured of McMurtry?

Ans. It had nothing to do with it in no shape.

On cross-examination, witness says—

Quest. Is your memory good?

Ans. I think it is.

Quest. Do you undertake now to relate all the conversation with Mr. Ryerson, Thomas R. Linn, Lewis Dunn, Robert A. Linn, and David Thompson, esq., which took place between you and them, at the times and places you have mentioned, relative to the subject matters of those conversations? 30

Ans. Yes, this is my recollection.

Quest. Did nothing else take place between you and those persons at the times and places you have mentioned, except what you have stated?

Ans. Not in these matters.

Quest. How did Samuel Giveans come to go with you to Mr. Ryerson?

Ans. He asked me if I did not think I could raise some money of David Ryerson; I said I did not know, and he said "I will go with you, and see him."

Quest. Did you not request your brother to go and do the talking with Mr. Ryerson?

Ans. I never did.

Quest. How many times did you go to Mr. Ryerson's with your brother on this business?

Ans. Twice before the day of the execution of this mortgage.

Quest. Did not Mr. Ryerson at first say that he could give no answer to you?

10 *Ans.* He did not say that.

Quest. Did he agree at the first interview to furnish the money?

Ans. He did.

Quest. Did he say anything at the first interview about writing a letter to you or your brother Samuel about the business?

Ans. I don't think he did.

Quest. Did he write a letter?

Ans. Not that I know of.

20 *Quest.* Did he write a letter to you or your brother Samuel about the business?

Ans. He never did to me, and I never knew that he did to my brother.

Quest. Who did the talking, in the interviews on your part with Mr. Ryerson, you or your brother?

Ans. My brother did all the talking that ever I heard talked about the matter.

Quest. Where were these interviews had between you and Mr. Ryerson prior to the execution of the mortgage?

30 *Ans.* The first one was in the street at Newton, and the other was also in the street near Mr. Ryerson's dwelling, in Newton.

Quest. Did you take part in the conversation?

Ans. No, not to my knowledge, in no shape.

Quest. Did you hear what was said at both interviews?

Ans. Whilst I was present I did.

Quest. Did you and Samuel Giveans come together to Newton from your homes to see Mr. Ryerson about this business by previous engagement?

40 *Ans.* Samuel Giveans came with me from his home once,

and that was the day the mortgage was executed ; my brother made the arrangement for us to come to Newton on the business—both times we saw Mr. Ryerson.

Quest. Was nothing said at either of those interviews between you and Mr. Ryerson about assigning those judgments ?

Ans. Nothing at all, never ; it was never named in my hearing.

Quest. Did you go with your brother and Mr. Ryerson to Mr. Thompson's office on the day the mortgage was executed ?

Ans. I did not.

Quest. Were you at Mr. Thompson's office at all on the day the mortgage was executed ?

Ans. Yes.

Quest. Who was with you ?

Ans. My wife was with me the first time—I was there three or four times on that day.

Quest. Were you there with Mr. Ryerson on that day ?

Ans. Yes, when David and George Ryerson both were there.

Quest. Was nothing said that day at Mr. Thompson's office about the assignments of judgments ?

Ans. No, sir, not a word when I was there.

Quest. Then you say, that in the interviews between you and your brother and David Ryerson, and on the day the mortgage was executed, the assignment of judgments were not mentioned at all by any person ?

Ans. No, sir, they wasn't.

Quest. Did your brother Samuel and you have any understanding before the day the mortgage was executed that the judgments were to be assigned ?

Ans. Never.

Quest. Did your brother Samuel never tell you that that was the arrangement ?

Ans. Never did, before or since, and never has yet.

Quest. Did he never say, in your presence, that that was the understanding ?

Ans. I never heard him.

Quest. Was he sworn as a witness in the cause in the 40

Court of Chancery, wherein William McMurtry was complainant, and William D. Giveans and others defendants, on your part; and were you present at the time he was examined, and heard his testimony?

Ans. He was sworn; I was present part of the time, and heard part of his testimony; I think I went out, while his examination was going on, to look for some one else.

Quest. What part of that testimony of Samuel Giveans did you hear?

10 *Ans.* I heard the opening of his testimony.

Quest. Were you there when he signed his examination?

Ans. I don't recollect whether I was or was not.

Quest. Did not Samuel Giveans, on that examination, swear in your presence "that it was the understanding with William, before the day the money was paid, that the judgments were to be assigned?"

Ans. Not that I heard.

Quest. Have you ever read that testimony of Samuel Giveans?

20 *Ans.* No, sir, I never have.

Quest. Or heard it read?

Ans. I ain't positive whether I have ever heard it read or not.

Quest. What part of the three thousand dollars advanced by Mr. McMurtry did you receive?

Ans. I never received any.

Quest. Who did receive it?

Ans. That I never knew myself yet.

30 *Quest.* Do you not know that it was all paid to Mr. Thompson on the day the mortgage was executed?

Ans. I don't know that there was any paid.

Quest. Did you take no measures on that day to learn to whom the money was paid?

Ans. I don't know that I did, only with the sheriff.

Quest. How much was paid to the sheriff that day?

Ans. Well, sir, I don't know as I can precisely tell; what I know I handled myself that day was about \$700.

Quest. How much was paid to the sheriff?

Ans. That I don't know, sir.

40 *Quest.* State as near as you can?

Ans. I don't recollect what all the judgments amounted to that day.

Quest. The last question repeated.

Ans. That I handled was some, I don't recollect how much, was through Sam Giveans—that I handled through him was about \$200.

Quest. repeated.

Ans. I think I paid him, and settled all up with him that day, and he said he was satisfied; I think I only handled individually that day about \$700. 10

Quest. still repeated.

Ans. All I handled that day about \$700; I have answered that twice, as near as I can tell.

Quest. Did you pay the sheriff about \$700 that day?

Ans. I did individually, as near as I can recollect.

Quest. What do you mean by individually?

Ans. Myself; his costs I paid into a note, with Samuel Giveans security.

Quest. How much did the judgments amount to on that day?

Ans. I can't tell exactly. 20

Quest. Did you not state, in your bill of complaint in this cause, the exact amount due on that day on the judgments?

Ans. Well, that I ain't positive of now, but I think I did.

Quest. The amount you did pay on the judgments you borrowed from your brother Samuel, did you not?

Ans. Not all of it—the amount I paid I didn't.

Quest. How much did you borrow from him?

Ans. I think it was a little over \$200—it was rather turned with the commissioners; he had a portion of legacy coming out of the commissioners' judgment from them. 30

Quest. Do you remember what the amount of the sheriff's fees on the judgments were?

Ans. I don't exactly—I think it was a little less than \$50 or \$60—I ain't positive which.

Quest. Do you now know who received the \$3000 on that day?

Ans. I don't, sir.

Quest. Have you never made inquiry who did receive it?

Ans. I inquired that day, or else it was told to me, I ain't positive which. 40

Quest. From whom did you inquire?

Ans. I inquired of sheriff Arvis whether that mortgage satisfied a certain portion of those claims or not.

Quest. Did you make no other inquiries?

Ans. Not to my knowledge.

Quest. Was sheriff Arvis present at the time the business was transacted at Mr. Thompson's office?

Ans. I saw him there once.

Quest. How long was he there?

10 *Ans.* I should think, as near as I can recollect, nearly half an hour; he then called me out, or I called him out on some other business, I am not positive which.

Quest. Did you not inquire of Mr. Thompson what became of that three thousand dollars?

Ans. I never have yet, sir, to my knowledge.

Quest. Do you mean to say that you gave your bond and mortgage for \$3000 on your real estate, and did not know at the time you gave the mortgage who received the \$3000, or what became of the \$3000 for which the mortgage was given?

20 *Ans.* I gave a mortgage for \$3000, and I never knew what became of the \$3000, only as I was told that day and since by Thomas R. Linn; he told me he got the commissioners' money that day that was coming to Mr. Dunn, Mr. McCoy, and his father.

Quest. Were you told, that day or any time, who received the \$3000?

Ans. Sheriff Arvis told me that he supposed Mr. Thompson had the \$3000 in his hands, he being the attorney for the commissioners and my stepmother; the judgments were
30 more than the mortgage that was settled that day.

Quest. Were you told, on that day or at any other time, who received the \$3000?

Ans. I wasn't in any particular instance that I recollect of; I am satisfied I never was.

Quest. When you saw David Thompson at the court-house in Newton, and asked him to cancel the judgments, did he say anything then to you about the assignment of the judgments to Mr. McMurtry?

Ans. He did not, to my knowledge.

40 *Quest.* Did he, at any time after the mortgage was exe-

cutted, and before your land was advertised for sale by the sheriff, show you the assignments, or say anything about them?

Ans. No, sir, never to my knowledge.

Quest. When you asked Mr. Thompson to cancel the judgments, did he tell you that he could not do it, as the judgments had been assigned to Mr. McMurtry?

Ans. No, he never told me that they had been assigned to McMurtry at that time; I asked him to cancel the judgments, and he said he wouldn't do it. 10

Quest. Did he give no reason why he would not?

Ans. I asked him, and he said they had been assigned.

Quest. To whom?

Ans. He did not tell me.

Quest. Did you not ask him to whom?

Ans. No, sir, not to my knowledge.

Quest. Did you know to whom they were assigned?

Ans. No, sir; I have learned since.

Quest. If you did not know at that time, when you asked Mr. Thompson to cancel the judgments, to whom they were assigned, did you not suppose they were assigned to McMurtry? 20

Ans. Well, I did not know; I supposed this, that if they was assigned they was assigned to David Ryerson.

Quest. Why?

Ans. Well, I never talked to any one else about the matter, that is about the loan of money.

Quest. Did you not know that the bond and mortgage had been given to Mr. McMurtry?

Ans. They read it so. 30

Quest. Did not Mr. Ryerson say, before the bond and mortgage were given, that the \$3000 were to come from Mr. McMurtry?

Ans. He never did in my presence, before nor since, to my knowledge.

Quest. Then you say that you called on Mr. Thompson to cancel the judgments, and was told by him that the judgments were assigned; that you did not know to whom the judgments were assigned, and yet you did not ask him to tell you to whom they were assigned? 40

Ans. Not to my recollection I didn't.

Quest. Why did not you ask him to whom they were assigned?

Ans. Why, I was satisfied they was paid—that was why I got the information from the sheriff.

Quest. Did you ever call with Mr. A. J. Rogers on Mr. David Thompson relative to the assignment of those judgments?

Ans. From what they say I have.

10 *Last question repeated.*

Ans. Yes.

Quest. Did Mr. Rogers ask Mr. Thompson if there had ever been any assignment executed of those judgments by the parties, and did Mr. Thompson tell him that they had both been assigned to Mr. McMurtry, and that that arrangement had been made at the time the money was paid, or did any conversation like this take place between Mr. Rogers and Mr. Thompson at that time?

20 *Ans.* There was some conversation took place between them at that time; if my memory serves me right, there was some such conversation took place between Mr. Rogers and Mr. Thompson.

Quest. Mr. Thompson then did tell you and Mr. Rogers that those judgments had been assigned to Mr. McMurtry?

Ans. I think that's my recollection; this was after I had asked him to cancel them.

Quest. But at the same conversation?

Ans. No, sir; it was in the court-house when I asked him to cancel the judgments.

30 *Quest.* Did you ask Mr Thompson to cancel the judgments when you and Mr. Rogers called on him?

Ans. No, sir, I think not.

Quest. How long was it after you had called on Mr. Thompson, and asked him to cancel the judgments, that you and Mr. Rogers saw him?

Ans. I think, according to the best of my recollection, it was the same day.

Quest. How long was this before your bill was filed in this cause?

40 *Ans.* I could not tell that, how long it was.

Quest. It was before the bill was filed, was it not?

Ans. Yes, sir, I think it was.

Quest. Did Mr. Thompson tell you, at any time before your land was advertised, that the judgments had been assigned?

Ans. No, sir, he never did before I was advertised the second time.

Quest. Did Mr. Thompson show you the assignments when you and Mr. Rogers called on him, or did he exhibit them in your presence at that time or at any other time? 10

Ans. He did not show me any at that time or any other time, that I recollect of; Mr. Rogers told me that he saw some assignments that day, but I did not.

Quest. Did you ever call with Thomas N. McCarter, esq., on Mr. Thompson relative to this business?

Ans. I am not positive whether I ever did or not.

Quest. Were you at Mr. Thompson's office on the day the mortgage was executed in company with Mr. David Ryerson?

Ans. I was in there when he was in there.

Quest. Did you state to Mr. David Thompson, or did Mr. David Ryerson, or your brother Samuel, or either of them, state to him, in your presence, that they (yourself and Samuel Giveans) were to execute a bond and mortgage, and these judgments were to be assigned to Mr. McMurtry? 20

Ans. Never, sir, at no place.

Quest. Did Mr. Thompson say, in your presence, that if the money was paid to him, he would procure assignments of the judgments, or anything like that?

Ans. No, sir.

Quest. Did you attend at Mr. Thompson's office while this business was being conducted, and hear what was said and done? 30

Ans. I was not there all the while.

Quest. How much of the time were you absent?

Ans. Well, sir, I don't know that I can tell how much of the time I was in there.

Quest. Whose debt was it that the judgments were obtained for, yours or some other person's?

Ans. I think they were all mine.

Quest. Where and when was it that you saw Mr. Lewis 40

Dunn, and had the conversation with him spoken of in your principal examination?

Ans. I saw him at his own place, but how long ago it was exactly that I can't tell—I think it was about two years after the mortgage was given to Mr. McMurtry.

Quest. Was it more or less than two years after the mortgage was given?

Ans. That I could not say positively.

Quest. State your impression?

10 *Ans.* Well, sir, it would be my calculation now, as near as I can recollect, that it was longer, if either way.

Quest. What time in the year was it?

Ans. My recollection is that it was either in the fall late, or as early as April in the spring, I ain't positive.

Quest. What induced you to go to Mr. Dunn?

Ans. I went to know whether he had ever assigned those judgments or not.

Quest. Why did you go to Mr. Dunn to learn that?

20 *Ans.* I went there to know whether he had ever done it or not.

The question is repeated.

Ans. Mr. Rogers told me that he had saw such assignments.

Quest. Was this conversation between you and Mr. Dunn before you filed your bill in this cause?

Ans. I ain't positive whether it was or was not.

Quest. How long was it after you had seen Mr. Thompson with Mr. Rogers?

Ans. I should think it was within a very few days—I would not be positive but that it was within a day or two.

30 *Quest.* Did not Mr. Dunn tell you that he had no recollection about it, whether he had made any assignment or not, or words to that effect, and not that he had never made any assignment of the judgment?

Ans. He told me he never had made any; he told me nothing else, only that he had never made any assignment.

Quest. When was it that you called on Robert A. Linn, and when on Thomas R. Linn?

40 *Ans.* I called on Thomas R. Linn before I did Mr. Dunn; I called on Robert A. Linn, I think, on the same day that I called on Lewis Dunn.

Quest. Why did you call on Thomas R. Linn?

Ans. He was here the day this mortgage was executed, and he told me he was here for the commissioners; his father was sick or lame at the time.

Quest. Did Mr. Dunn or Thomas R. Linn, or Robert A. Linn, or either of them, say anything to you at the time you called on them about the instruction which they had given to Mr. Thompson about the assignment of the judgment in their favor, or anything to that effect?

Ans. Mr. Thomas R. Linn never did till I heard him 10 sworn; Mr. Dunn came to Hamburgh the same day I saw him at his place, a short time after I got there; he saw Robert A. Linn, so he told me, that same day, and said that there was such assignments, as he had seen Mr. Linn.

Question repeated.

Ans. Never to my knowledge.

Quest. Do you now undertake to swear that the subject of the assignments of these judgments was never mentioned at all by Mr. David Ryerson at the interviews between Mr. Samuel Giveans and you and him, or on the day the mort- 20 gage was executed, or by Mr. David Thompson on that day, or by your brother at any time before the mortgage was executed?

Ans. They never did, sir; I do undertake to say that they, nor either of them, ever mentioned it in my hearing.

Quest. Where is Samuel Giveans now living?

Ans. In Union, in this county, about three miles from my own residence.

Re-examined in chief.

Quest. Did you know, or had you ever heard before your 30 property was advertised the second time on those judgments, that those judgments had been assigned to any person?

Ans. I never had, to my knowledge, in no shape.

Quest. In the conversations between your brother and David Ryerson about this loan, was anything said about how much of your brother's property should be included with yours in the mortgage, and if so, what was said about that?

Ans. There was; Samuel Giveans told Mr. Ryerson that I had a good property, and he says to Mr. Ryerson, that if

he was not satisfied with that security, he would put in a part of his, or all, in the same mortgage, and he would bring his wife along the day the mortgage was to be executed by me and my wife; then the arrangement was that I was to fetch my wife to Samuel Giveans' house, and they were to come with us.

Quest. How far is Lewis Dunn's residence from yours?

Ans. I should think four miles, and may-be a little more?

Re-cross-examination.

10 *Exhibit M, No. 2*, on the part of the complainant in this cause, being shown to witness, he is asked this

Quest. Please examine this mortgage, and tell what part of the property therein described is the property of Samuel Giveans?

Ans. It is said to be the "swamp lot"—that was my understanding of it.

Quest. What is the value of Samuel Giveans' property which is included in that mortgage?

Ans. Well, I should think probably it was worth \$40 per 20 acre.

Quest. How many acres are there in the property of Samuel Giveans included in this mortgage?

Ans. I should think about forty acres, may-be a little more, and perhaps a little less.

Quest. Is not the property of yours included in this mortgage the same which was covered by the mortgage given by you to the commissioners referred to above by you?

Ans. I think it is, sir; the two last lots described in that mortgage are the property of Samuel Giveans, and the others 30 are mine.

WM. D. GIVEANS.

Sworn and subscribed before me, at Newton, January 22d, 1863.

D. S. ANDERSON, M. C.

Bradner Perry, of the township of Vernon, in the county of Sussex, a witness produced on the part of the complainant, being duly sworn, deposeth and saith—

Quest. Did you accompany William D. Giveans to see Thomas R. Linn and Lewis Dunn?

Ans. Yes.

Quest. When did you go, and how did you come to go with him?

Ans. I can't tell how long ago it was, but I should think four or five years ago; I went with Mr. Giveans at his request.

Quest. To which one did you go first?

Ans. To Mr. Thomas Linn.

Quest. Where did you find him?

Ans. In the field prying stone, he and another man. 10

Quest. Did you hear the conversation between them?

Ans. Yes.

Quest. What was the conversation?

Ans. Concerning the assignment of those judgments that they had against Mr. Giveans. Mr. Giveans asked him if those judgments had been assigned over to anybody, and he said, not that he knew of—that is as nigh as I can recollect. Thomas said that he had come here on the day the sale was to take place, for his father and the commissioners; Mr. Giveans asked him if he got the money, and he said he did, 20 after waiting and bothering around here some time looking for uncle David, and found him at his house; Mr. Giveans asked him if he got the money, and he said he had, and brought it home to his father; Mr. Giveans then asked him if he heard anything about those judgments being assigned over to anybody, and he said he had not heard anything about it.

Quest. Did he say from whom he received the money?

Ans. He said he received it through a check from uncle David Ryerson, and he drew the money from the bank on the check. 30

Quest. Where did you go from there?

Ans. To Mr. Lewis Dunn's.

Quest. Did you hear a conversation between Mr. Giveans and Mr. Dunn on the same subject, and if so state what it was? [This question objected to by defendants' counsel.]

Ans. Yes; Mr. Giveans asked respecting the assignments of those judgments; Mr. Dunn said there had been no assignments made of them, and Mr. Dunn, I think, right away asked when Mr. Giveans was going to Hamburg; Mr. Giveans, I think, said he did not know when, but he thought 40

to-morrow, or in a very short time; and whether there was any more conversation or not, I can't say.

On cross-examination, witness says—

Quest. How far do you live from William D. Giveans?

Ans. I live in sight of him.

Quest. How do you undertake to remember what was said by Thomas R. Linn, Lewis Dunn, and William D. Giveans on the occasion to which you refer?

Ans. I went for the purpose to hear the conversation, and
10 charged my mind with it.

Quest. Did you take any memorandum of the conversations, or either of them?

Ans. No, sir.

Quest. You trust simply, then, to your memory?

Ans. Yes.

Quest. Can you specify within a year when the conversations, or either of them, took place?

Ans. It was one of the years that Mr. Frederick Arvis was sheriff, which one I can't say—that is as near as I can
20 come at it.

Quest. In what year was Mr. Arvis sheriff?

Ans. I can't tell as to that—some four, five, or six years ago; I can't tell that.

Quest. How do you know the conversations took place while Mr. Arvis was sheriff?

Ans. He was to my place, and took a levy on these judgments.

Quest. How many judgments were there?

Ans. I would not be certain, but think two or more—
30 may-be it was all in one—I can't tell now.

Quest. Were the conversations spoken of with T. R. Linn and Lewis Dunn in the same year the levies were made by Mr. Arvis?

Ans. I think so.

Quest. What time in the year were these conversations?

Ans. I think in the fall of the year.

Quest. What month?

Ans. I should think may-be in the month of September—
I was drawing stone and ploughing; this was when the levy

was made; I think the conversations took place as late in the fall as November.

Quest. Were the levies made on the judgments in the month of September, and the conversations with Lewis Dunn and Thomas R. Linn in the month of November of the same year?

Ans. I would not say as to the same year, but I think it was in the fall of the year that the conversations were had with Mr. Linn and Mr. Dunn; it may have been a year or two years after the levies were made, and it may have been 10 the same year—I can't say positive about that.

Quest. Are you positive the conversations took place when Arvis was sheriff?

Ans. I am not positive whether the conversations took place while Arvis was sheriff or whether it was the same year, or one or two years afterwards.

Quest. Have you not said in this examination, that the conversations did take place during one of the years that Mr. Arvis was sheriff?

Ans. If I did, I did not mean to be understood so; as to 20 the time, I do not wish to be confined to any one year; I think likely I did say that the conversations took place during one of the years that Arvis was sheriff, but it was not my intention to be understood so.

Quest. Do you now recollect distinctly whether you so said or not?

Ans. I do not.

Quest. Have you not said, in this examination, that the way you knew these conversations took place while Mr. Arvis was sheriff, was that he came to your place, and took 30 a levy on these judgments?

Ans. If I did, I did not understand the question; I did not mean to confine myself to that time; I do not now recollect whether or not I did so state.

Quest. Did not Mr. Thomas R. Linn say, in that conversation, that he could not recollect about the matters inquired of by Mr. Giveans of him, or to that effect?

Ans. He said he was satisfied there was no assignment made at that time, or his father would have told him of it. [Counsel for the defendants objects to this answer, as not 40 being responsive to the question.]

Last question repeated. No, sir, he did not.

Quest. Did he say, or did Mr. Giveans say anything about the assignments being made right off?

Ans. Not to my recollection.

Quest. Were you and Thomas R. Linn at that time well acquainted?

Ans. Yes, sir.

Quest. How long time was taken up in the conversation between Thomas R. Linn and Mr. Giveans?

10 *Ans.* I don't know—not long.

Quest. Was it five or ten minutes, or more or less?

Ans. It might have been five, ten, and may-be fifteen minutes.

Quest. Have you stated all that took place?

Ans. As near as I can recollect.

Quest. Where were you when this conversation took place?

Ans. I sat in the wagon by the side of Mr. Giveans; I think the bars were down, and we drove right in, or may-be we got out, and went in on foot.

20 *Quest.* Why were you called on to listen to this conversation?

Ans. I don't know.

Quest. Did not Mr. Giveans tell you why?

Ans. Yes, after he got me in the wagon.

Quest. After you got started, then, you did know?

Ans. Yes, he told me after we got into the wagon; I did not know it before.

Quest. Do you pretend now to state all that took place at that conversation with Mr. Linn?

30 *Ans.* All that I can recollect, and as nigh as I can recollect.

Quest. Have you and Mr. Giveans talked over this matter since that conversation with Mr. Linn?

Ans. I don't think we have, only since the day when the conversation took place.

Quest. Do you mean that you have had no conversation with Mr. Giveans about this subject since the day you and he saw Mr. Linn?

40 *Ans.* Yes, not until to-day; I did not know what I was to come here for until to-day no more than a child unborn.

Quest. Have you said nothing about these conversations to any other person since the times they took place?

Ans. Not that I recollect.

Quest. Have you been present during the examination to-day of William D. Giveans?

Ans. A part of it.

Quest. Did you hear what he testified to about these conversations?

Ans. Well, I suppose I did; I did not pay attention enough to know what was going on to track him up on it. 10

Quest. Did not Mr. McCarter call your attention to his testimony at the time he was speaking of these conversations?

Ans. No, sir; he has not intimated anything of the kind to-day in the office here nor hinted anything.

Quest. Do you say that Mr. McCarter has not called your attention at all to the testimony of Mr. Giveans while it was proceeding before the master to-day?

Ans. I do say so.

Quest. Did not Mr. Lewis Dunn say to Mr. Giveans that 20 he could not recollect about the matters inquired of, or to that effect?

Ans. He did not say so.

Quest. Were you not present at the time the testimony of Mr. Giveans was read over to him to-day, as taken by Mr. Anderson, the master?

Ans. I think not—I might have been.

Quest. Are you a party defendant in the judgments spoken of, or one of them?

Ans. I think I am in one of them, and may-be in both of 30 them.

BRADNER PERRY.

Sworn and subscribed before me, January 22d, 1863.

D. S. ANDERSON, *M. C.*

The counsel of the complainant here offered in evidence a paper purporting to be a transcript of the proceedings of a cause in the Court of Chancery of New Jersey, certified under the hand and seal of Barker Gummere, esq., clerk of said court, wherein William McMurtry is complainant, and

William D. Giveans and others are defendants, which is marked by me *Exhibit M*, No. 3, on the part of complainant, which is objected to on the part of defendants.

D. S. ANDERSON, M. C.

IN CHANCERY OF NEW JERSEY.

Between

	William D. Giveans, complainant,	}	<i>On bill, &c.</i>
	and		
10	William McMurtry and others, de- fendants.		

[Filed February 5, 1863.]

Examination of witness, taken this second day of February, in the year of our Lord one thousand eight hundred and sixty-three, at five o'clock in the afternoon, at the office of John Whitehead, esq., No. 145 Market street, in the city of Newark, New Jersey, on the part of the above named defendant, William McMurtry, in the presence of John Whitehead, esq., solicitor of the said defendant, William McMurtry, and of the complainant, William D. Giveans, said examination being held according to notice, a copy of which notice, with the acknowledgment of Thomas N. McCarter, esq., solicitor of the complainant, is hereto attached.

Samuel Giveans, a witness produced on the part of the defendant, William McMurtry, being duly sworn according to law, deposes and saith, in answer to questions propounded to him by counsel of the defendant:

Quest. What is your age, residence, and occupation?

Ans. I am sixty-two years and past; I reside in Vernon township, Sussex county, New Jersey; I am a farmer.

Quest. Do you know William D. Giveans, David Ryerson, and William McMurtry, the parties in this cause?

Ans. I know William D. Giveans and David Ryerson; I have seen Mr. McMurtry, but I don't know whether I should know him when I should meet him in the street.

Quest. Did you ever make application to David Ryerson, in company with William Giveans, for a loan of three thousand dollars; if so, when? how often did you see Mr. Ryerson about the loan with William Giveans, and was an arrangement made with Mr. Ryerson for the loan—and if there were arrangements made for the loan, what security was agreed upon to be given for the loan?

Ans. I did make such application in company with William Giveans; I cannot give the date without looking on some papers; on looking at the deed given by William Giveans to me, dated February 25th, 1856, I say, it was previous to the date of that deed; I saw Mr. Ryerson two or three times about it; at the first time, Mr. Ryerson, I think, promised to let us know by letter; I received a letter of Mr. Ryerson, and then went to see him a second time; I am not sure whether William Giveans was with me that time or not—he might have been; we made an arrangement with Mr. Ryerson about the loan; I am not able to say whether, at the first two interviews, the judgments were agreed upon to be assigned or not; the security to be given was a mortgage of three thousand dollars, to cover William's land and a part of my land; I call the swamp lot some thirty-five or forty acres.

Quest. Was it or not the agreement between you and William Giveans and Mr. Ryerson that certain judgments were to be assigned to Mr. McMurtry, the defendant in this cause, as security for that loan?

Ans. It is a good while since these occurrences took place, and to remember all the particulars that did take place I would not be sure to say about; the judgments were assigned; I would not like to say it was or was not the agreement that the judgments were to be assigned.

Quest. Were you present on the day when the bond and mortgage to Mr. McMurtry were executed?

Ans. I was present. [*Exhibit M, No. 2, on part of the complainant, being shown to the witness, he is asked*]

Quest. Is that the mortgage?

Ans. I suppose it is; that is my signature and the signature of William Giveans, and we never gave but one mortgage together to Mr. McMurtry for three thousand dollars.

Quest. Was it, or not, the agreement, on the day that mortgage was executed, that those judgments were to be assigned to Mr. McMurtry?

Ans. They were assigned; I am not able to say whether it was on that day, or previous to that day, that the agreement was that they were to be assigned.

10 *Quest.* Was there an agreement at any time that those judgments were to be assigned?

Ans. There must have been an agreement, or they would not have been assigned.

Quest. Who made that agreement?

Ans. The parties must have made the agreement—by the parties, I mean William Giveans; but to say when that agreement was made, whether at that day or previous to that day, I am not able to say.

20 *Quest.* Was the assignment of the judgments spoken of on the day the mortgage was executed?

Ans. It must have been on that date, because that is the date the mortgage was executed—that is the date spoken of, the twenty-fifth of February, eighteen hundred fifty-six.

Quest. Did, or not, William Giveans agree that those judgments should be assigned to Mr. McMurtry?

Ans. He must have done it, or they would not have been assigned; I had nothing to do with the assignment of the judgments.

30 *Quest.* Was it, or not, the understanding between you and William Giveans, before the money was paid by Mr. McMurtry, I mean the three thousand dollars for the mortgage, that the judgments were to be assigned to Mr. McMurtry?

Ans. As I said a little while ago, that must have been the agreement before the money was paid; there was no new agreement made between William Giveans and Mr. Ryerson, or Mr. McMurtry, after the money was paid, that I know of.

Quest. For whom was this three thousand dollars borrowed?

Ans. For William D. Giveans.

40 *Quest.* Was his property advertised for sale by the sheriff on these judgments spoken of before?

Ans. Yes, if the judgments were judgments in favor of Robert A. Linn and Lewis Dunn, commissioners, and Elizabeth Giveans; I understood his property was advertised by the sheriff; I do not recollect having seen the sheriff's advertisement; I suppose William told me of it at the time.

Quest. Was not this three thousand dollars borrowed for the purpose of relieving William Giveans' property from that sheriff's sale?

Ans. Yes, it was to pay those judgments.

Quest. What is the value of your property which is included in the mortgage to Mr. McMurtry? 10

Ans. I thought, at the time, it was worth sixty dollars the acre; what it is worth now is difficult to say; I would not like to sell it for less than that amount; what it would bring, I could not say.

Quest. Was you sworn as a witness in a cause between William McMurtry, complainant, and William D. Giveans and others, defendants, before Henry O. Ryerson, master in chancery, at Newton?

Ans. Yes, I was some time ago. 20

Quest. You say your recollection now is not fresh with reference to the occurrences of which you have been inquired in this examination—was your memory more correct at the examination before Mr. Ryerson than it is now?

Ans. My recollection was better then than it is now; since then I have not so much charged my mind with the facts; what I swore to before Mr. Ryerson was correct, every word of it, as I understood it.

Quest. From whom did Mr. Ryerson inform you the three thousand dollars was to come? 30

Ans. William McMurtry, his son-in-law.

Quest. When did he tell you that?

Ans. I think when we first called on him; he said Mr. McMurtry had gone out of business, and he might get the money of him.

Quest. How did you come to go to Mr. Ryerson about this loan?

Ans. William wanted me to go; William had been trying to raise that money, and I might have suggested to William Mr. Ryerson was the likeliest man to get the money from. 40

Quest. Did, or not, William Giveans hear all the conversations with reference to that loan which took place between you and Mr. Ryerson?

Ans. Yes, I think so, at all interviews he was present; I am not certain whether he was present or not at the second interview; but whatever it was agreed upon when he was present he heard.

Quest. What relation does William D. Giveans bear to you?

Ans. He is my brother.

10

SAMUEL GIVEANS.

Sworn and subscribed before me, at Newark, the second day of February, A. D. 1863.

LOUIS GREINER, *M. C.*

The complainant, William D. Giveans, declined to cross-examine the witness, stating that his counsel was not present.

LOUIS GREINER, *M. C.*

IN CHANCERY OF NEW JERSEY.

Between

20	William D. Giveans, complainant, <div style="text-align: center; padding: 5px 0;"><i>and</i></div> William McMurtry and others, de- fendants.	} <i>On bill, &c.</i>
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[Filed June 2, 1863.]

Examination of a witness in the above stated cause, taken at the office of Thomas N. McCarter, esq., in Newton, on Monday, the eighteenth day of May, A. D. 1863, pursuant to notice given for the purpose, the service of which is admitted by the solicitor of the defendants, in presence of T. N. McCarter, esq., solicitor of complainant, and of David Thompson, esq.,

30

who appears for the solicitor of the defendants.

Samuel Giveans, esq., a witness who was produced and examined on the part of the defendants, on the second day of February, A. D. 1863, is again produced, on the part of

the complainant, for the purpose of being cross-examined, and says—

Quest. When you first applied to David Ryerson for the loan spoken of, did you expect to get the money of William McMurtry?

Ans. I did not know anything about McMurtry until after Mr. Ryerson told me; when I applied to Mr. Ryerson for the loan, he told me he had not the money himself, but thought he could get it of his son-in-law, McMurtry; when we first applied, we expected to get the money of Mr. Ryerson, if he had it. 10

Quest. What reply did Mr. Ryerson make to your first application?

Ans. He said he had disposed of all of his money that he had to put out; after talking matters over, he said that McMurtry, his son-in-law, had gone out of business, and perhaps the money could be got from him.

Quest. What security did you and William offer for the loan?

Ans. William's property and my landed property. 20

Quest. What conclusion did Mr. Ryerson come to on that day?

Ans. Mr. Ryerson concluded that he would let us know by letter whether he could get the money from McMurtry or not.

Quest. How long before the advertised sale was it?

Ans. I can't tell—I should think it was not a great while before the sale; Mr. Ryerson was to let us know as soon as he could ascertain; Mr. Ryerson said he would get the money, if he could, from McMurtry, and I don't know but 30 that he said he would get it out of the bank, if he did not get it from McMurtry; at that time I had in possession and owned the farm where I now live and the "swamp lot," altogether about 160 acres.

Quest. How long afterwards was it that you had the second interview with Mr. Ryerson?

Ans. I should think not longer than two weeks, if it was as long as that; as soon as we got his letter, we came up to Newton—I know I came myself, but am not sure whether William came or not; I don't know whether I have got the 40

letter that I received from Mr. Ryerson or not—I can't say what became of it.

Quest. What took place at your second interview?

Ans. I suppose that Mr. Ryerson informed us that he could get the money from Mr. McMurtry—I can't remember the conversation all—I suppose that was the purport of it; at the first and second interviews, my property was talked about, along with William's, as security for the loan, but I can't recollect that anything was talked about the judgments; 10 I can't say at which interview it was that the assignments of the judgments were talked about—but the assignment of the judgments was talked about at one of our interviews.

Quest. When was the next interview?

Ans. I can't say what time it was; I think we came three times to Newton before the mortgage was executed—we were here four times altogether, I think.

Quest. Did William D. Giveans come with you on each of those occasions?

Ans. I can't say positively—I am not sure whether he was 20 with me the second time or not; I think he was here on the other occasions, and may have been at that time.

Quest. Was not Mr. Ryerson informed by one of you, at the last interview before the day on which the mortgage was executed, that the sale of William's property had been adjourned for the last time, and that, if he was disappointed in getting the money then, it would be too late to prevent his property from being sold, and that therefore you wanted an answer certain about the money, or something to that effect?

30 *Ans.* He was informed, without doubt, that William's property was advertised to be sold, and that the money had to be raised; I don't know that he was informed that the sale could not be adjourned again.

Quest. Did not Mr. Ryerson, on being so informed, undertake, at all events, to raise the money, and say, that if necessary, he could get the money out of the bank on a temporary loan, in case he failed getting it elsewhere?

Ans. When we spoke to Mr. Ryerson about it the first 40 interview, I think he said, if he could not get it of Mr. McMurtry, he could get it out of the bank; I don't think the

word temporary was used; Mr. Ryerson agreed to raise the money.

Quest. Did not Mr. Ryerson say, that if the loan was got out of the bank, it would only be for a short time, and in that case he would require the judgments to be assigned as security?

Ans. As I said, I don't know when it was that the judgments were first talked about; I don't know that it was talked that the money might be got out of the bank for a short time only; as I said before, Mr. Ryerson said he would raise the money, and if he could not get it from McMurtry, he would get it out of the bank.

Quest. Was not the assignment of the judgments, if spoken of at all, spoken of with reference to securing the loan, in case it was got out of the bank?

Ans. My understanding was that it was to secure the loan of the money with the other security which has been spoken of before.

Quest. What other security do you refer to?

Ans. His land and mine.

20

Quest. How was the loan to be secured on his land and yours?

Ans. William was to give a mortgage on his land, and my land was to be covered by the same mortgage, so that there would be no doubt about there being security enough for the money.

Quest. How long was the loan to stand?

Ans. I think it was three years.

Quest. What was the value of William's property at that time?

30

Ans. I should think \$50 or \$60 per acre without any encumbrance; my property I thought worth \$50 per acre take it altogether; my property was encumbered for \$2000; there was no encumbrance on the "swamp lot."

Quest. If you offered such security as that, what reason was given for wanting the judgments to be assigned?

Ans. I don't recollect when the first conversation took place about the judgments being assigned, and I don't know what reasons were given for their wanting to be assigned.

Quest. Did Mr. Ryerson make any objection to the suffi- 40

ciency of the security offered by you in the mortgage which you proposed to give?

Ans. None that I know of.

Quest. Why was not your whole property included in the mortgage, as you first offered?

Ans. I can't tell, only it wasn't; when the mortgage was made out, they thought the "swamp lot" was sufficient.

Quest. Who thought the "swamp lot" was sufficient?

Ans. I think Mr. Ryerson said that the "swamp lot" 10 would be sufficient.

Quest. If the judgments were to be assigned, why did you give a mortgage?

Ans. We gave a mortgage to secure the money, and if the judgments were to be assigned, it was to help strengthen the security; my farm was encumbered, and the "swamp lot" was not, and therefore I suppose the farm was not put in; I suppose they did not want the old place put in.

Quest. When was it first decided that the old place was not to be put in?

20 *Ans.* I think not until the day on which the mortgage was executed; I came up with the intention of having the whole put in the mortgage.

Quest. Was not your old place, with the encumbrance on it, worth more than the "swamp lot" without any encumbrance?

Ans. Yes, a good deal more, because the buildings are all on the old place, and 124 acres of land, while the "swamp lot" has only about 35 or 40 acres.

30 *Quest.* Can you swear that William D. Giveans, before the execution of the mortgage, ever agreed that the judgments should be assigned, or that he knew that they were assigned on that day?

Ans. It is reasonable for me to suppose that he must have known that they were to be assigned, or it would not have been done.

Quest. Have you any other reason for supposing that he did agree to it, except the fact that it was done?

Ans. Not that I know of; that would be the best of reasons.

40 *Quest.* Did you, or did he to your knowledge, take any

steps to procure those assignments before the day on which the mortgage was executed?

Ans. No, I did not myself, and he did not, to my knowledge.

Quest. Where were Elizabeth Giveans, Lewis Dunn, and Robert A. Linn residing at that time?

Ans. Elizabeth Giveans and Lewis Dunn were residing in Vernon township, and Robert A. Linn in Hardyston township, all in Sussex county.

Quest. How far did Elizabeth Giveans and Lewis Dunn live from William D. Giveans?

Ans. Elizabeth Giveans lived about one mile, and Lewis Dunn about two and a half miles from William D. Giveans.

Quest. In crossing from Vernon to Newton, did you pass the place in which Robert A. Linn resided?

Ans. Near by, pretty close; we passed his house within about 40 rods.

Quest. Was either of those persons present on the day and at the place of the execution of the mortgage?

Ans. I don't know but that Elizabeth Giveans was here; 20 Mr. Linn and Mr. Dunn were neither of them here; Thomas R. Linn, son of R. A. Linn, was here, I think; I do not know for what purpose Thomas R. Linn came here.

Quest. Did not Elizabeth Giveans, at that time, live in Steuben county, state of New York?

Ans. I think not—although I may be mistaken.

Quest. Was it not understood, before you came on that day, that your wife was to come with you, and join in the execution of the mortgage?

Ans. That was what we supposed in the commencement, 30 but I think she did not come; if she did come, she did not sign the mortgage, I think; I can't tell the reason why she did not sign the mortgage—I suppose she was not requested to.

Quest. Was your wife here at all on that day?

Ans. I can't say whether she was or not, I rather think she was not; I don't remember whether I came with William or whether I came with my own conveyance; William's wife was here.

Re-examined in chief.

Quest. Do you know who drew the mortgage?

Ans. I think George Ryerson filled up the mortgage, if I remember right.

Quest. After the bond and mortgage were drawn, were they not taken to the office of David Thompson, in Newton, and there executed?

Ans. It was all done in Mr. Thompson's office, I think.

Quest. Who were present when the papers were executed?

10 *Ans.* William D. Giveans, myself, Mr. Thompson, Thomas R. Linn, and David Ryerson was there a part of the time—who else I don't recollect now.

Quest. At that time was not David Thompson, as attorney of Mrs. Elizabeth Giveans, Robert A. Linn, and Lewis Dunn, requested to assign the judgments to Mr. McMurtry?

Ans. I don't recollect whether it was on that day or at other times.

Quest. Had not William D. Giveans agreed, before that time, to have those judgments assigned?

20 *Ans.* I suppose likely he had, or it would not have been done that day.

Quest. Did you not testify before Henry O. Ryerson, a master in chancery, in a foreclosure suit, "that it was the understanding with William D. Giveans, before the time the money was paid, that these judgments were to be assigned as security for the loan of the money"? [This question objected to by the complainant's solicitor as leading, as being irrelevant, as a renewal of the subject of the principal examination, and because it is cross-examining the defend-
30 ants' own witness.]

Ans. What I swore to then I thought to be the truth, as much as what I have been swearing to now; at the present time I don't recollect when the agreement did take place.

SAMUEL GIVEANS.

Sworn and subscribed, May 18th, 1863, before me.

D. S. ANDERSON, M. C.

PETITION AND ORDER FOR SUPPLEMENTAL BILL.

[Filed May 27, 1863.]

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

William McMurtry, David Ryerson,

Elizabeth Giveans, Robert A. Linn,

Lewis Dunn, and Frederick Arvis,

defendants.

On bill, &c.

10

To the Honorable Henry W. Green, Chancellor of the State of New Jersey.

The petition of William D. Giveans, the above complainant, respectfully shows—that your petitioner did, on the twenty-sixth day of November, A. D. 1858, file his bill of complaint in this court against the defendants above named in the cause above stated, setting forth that the defendants were endeavoring to collect against your petitioner the amount of a certain judgment recovered against your petitioner and others by Elizabeth Giveans, in the Circuit Court of the county of Sussex, and the amount of a certain decree recovered in this court by Robert A. Linn and Lewis Dunn, survivors of William McCoy, deceased, against your petitioner and others; that the amounts of the said judgment and decree had been paid to the said plaintiffs, respectively, by your orator, and that they were satisfied and ought to be cancelled; but that said William McMurtry had, without the knowledge or consent of your petitioner, procured said judgment and decree to be assigned to him, and pretended to hold the same as collateral security for the payment of a certain bond and mortgage of three thousand dollars, which said William McMurtry then held against your petitioner, which was not then due and payable, and praying that the said decree and judgment might be cancelled of record, and that the said William McMurtry, if he had any assignments of the said judgment and decree, or of the executions

thereon issued, might be decreed to deliver them up to your petitioner to be cancelled and destroyed ; and that the said defendants, William McMurtry, David Ryerson, Elizabeth Giveans, Robert A. Linn, Lewis Dunn, and Frederick Arvis, might be restrained from selling upon or collecting the executions issued upon the said judgment and decree, and from all proceedings, at law or otherwise, upon the said judgments and executions, as by your petitioner's said bill will more fully appear. And your petitioner further shows, that

10 the defendants, William McMurtry, Lewis Dunn, and Robert A. Linn, answered said bill, and your petitioner filed a replication to the said answers, and that evidence has been taken on both sides in said cause, and said cause is still pending in this court. And your petitioner further shows, that since the filing of said bill, and of the answers thereto, and during the pendency of the said cause, the said William McMurtry has exhibited his bill of complaint in this court against your petitioner and Jane his wife, and other defendants, for the

20 foreclosure of said mortgage of three thousand dollars in your petitioner's bill mentioned, and for a sale of the premises therein mortgaged, for the satisfaction of the debt claimed by said McMurtry to be due to him from your petitioner, and to secure which pretended debt the said McMurtry held said bond and mortgage, and also claimed to hold said judgment and decree, and the executions thereon issued, in your petitioner's said bill mentioned ; and that, after filing said bill for the foreclosure of said mortgage, your petitioner made defence, and filed an answer thereto, and such proceedings were had in that cause, that afterwards, and at the

30 term of May, in the year eighteen hundred and sixty-one, of this honorable court, the said cause came on for final hearing before your Honor on the merits of the case ; and that afterwards, and on or about the seventeenth day of October, eighteen hundred and sixty-one, a decree was made in said cause, by which the said bond and mortgage of said William McMurtry, and the contract for the loan to secure which they were given, were null and void, and that said William McMurtry was not entitled to the relief prayed for by his said bill, and that his said bill should be dismissed with costs.

40 And your petitioner is advised that he is entitled to the

benefit and advantage of the said final decree in his favor against said William McMurtry in said suit for the foreclosure of said mortgage, as evidence for him in the suit first herein above stated; but that because said proceedings and decree have all been had and pronounced since the filing of your petitioner's said original bill, your petitioner cannot avail himself of the benefit of said proceedings and decree in said foreclosure suit, except by filing a supplemental bill.

Your petitioner therefore prays that he may have leave to file a supplemental bill for the purpose of bringing before 10 your Honor, in the said original cause, the proceedings and decree herein above mentioned in the said foreclosure suit with such prayer for relief as may be proper, and for such other relief as shall be agreeable to equity and good conscience.

And your petitioner, as in duty bound, will ever pray, &c.

THOMAS N. McCARTER,

Solicitor for and of counsel with Wm. D. Giveans, petitioner.

On reading and filing the foregoing petition of William D. Giveans, the complainant in the cause therein stated—It 20 is, on the twenty-seventh day of May, eighteen hundred and sixty-three, on motion of Thomas N. McCarter, the solicitor of the complainant, ordered that the said William D. Giveans have leave to file a supplemental bill to bring before the court the matters stated in said petition relative to the new matters which have occurred since the filing of the complainant's original bill, and for relief as he shall be advised.

HENRY W. GREEN, C.

SUPPLEMENTAL BILL.

Supplemental bill, filed May 27th, 1863, sets out the contents of the original bill and answer, and the proceedings in the suit up to the filing of the supplemental bill, and contains the following supplemental matter :

And your orator further shows unto your Honor, by way of supplement, that afterwards, and on or about the thirty-first day of March, in the year of our Lord one thousand eight hundred and sixty, the said William McMurtry filed
 10 his bill of complaint in this honorable court for the foreclosure of the mortgage mentioned in the foregoing bill and answers given by the said William D. Giveans and Jane his wife and Samuel Giveans to the said William McMurtry, to secure the payment of the said sum of three thousand dollars, in and by which bill of complaint the said William McMurtry did, after alleging and setting forth the giving of the said bond and mortgage, and the acknowledgment and registry thereof, and setting forth at length, by metes and
 20 bounds, a description of the lands of the said William D. Giveans and of said Samuel Giveans, described in and mortgaged by the said indenture of mortgage, and that the whole amount of said principal sum of three thousand dollars, together with large arrears of interest, still remained due to the said William McMurtry; and after setting forth that Elizabeth Giveans, Joseph S. Read, Matthew Bailey, the President, Directors, and Company of the Sussex Bank, John L. Van Nostrand, William H. Edsall, and Jemima Edsall, administrators of William Edsall, deceased, Gabriel
 30 Houston and David Ryerson had recovered judgments against the said William D. Giveans, which were claimed to be liens upon the said mortgaged premises, and alleging that the said judgments were all paid and satisfied, or if not, that they were all subsequent liens to the said mortgage; and that, in consequence of the nonpayment of the principal and interest due on the aforesaid bond and mortgage, the said mortgage and the estate thereby mortgaged had become absolute in said William McMurtry and his heirs, pray, among other things, that the said William D. Giveans and
 40 Jane his wife, Samuel Giveans, Joseph S. Read, Matthew

Bailey, the President, Directors, and Company of the Sussex Bank, John L. Van Nostrand, William H. Edsall, and Jemima Edsall, administrators of William Edsall, deceased, David Ryerson and Gabriel Houston, the defendants in the said bill named, or some one of them, might be decreed to pay to the said William McMurtry the said principal sum of three thousand dollars so due on the aforesaid bond or obligation and indenture of mortgage, and all the interest money then due and to grow due thereon, together with all the said William McMurtry's costs and charges in that behalf sus- 10
 tained, by a day to be appointed by this honorable court; and in default thereof, that the said defendants, and each of them, might be foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances; and that they might deliver over unto said William McMurtry all deeds, demises, and writings whatsoever relating to or concerning the same, or that all and singular the said mortgaged premises, with the appurtenances, might, by the order and decree of this honorable court, be sold, and out of the 20
 moneys arising from the sale thereof, the said William McMurtry might be paid the full amount of the said principal sum of money so alleged to be due to him on the said bond or obligation and indenture of mortgage, and all the interest then due or to grow due thereon, together with all his costs and charges in that behalf sustained; and that the said William McMurtry might have such other and further relief in the premises as to this honorable court might seem meet, and should be agreeable to equity and good conscience, as in and by the said bill of complaint, now remaining on file 30
 and as of record in this honorable court, will among other things more fully appear.

And your orator further shows unto your Honor, that afterwards, and on or about the seventh day of June, in the year of our Lord one thousand eight hundred and sixty, your orator, the said William D. Giveans, having been duly subpœnaed to answer the said bill of complaint, appeared to the said suit, and filed an answer therein, setting up a defence to the said bond and mortgage, and claiming that the same were null and void, and that the said William McMur- 40

try was not entitled to any relief against your orator for or on account of anything in his said bill of complaint alleged for the reason in the said answer set forth, as in and by the said answer, now remaining as of record in this honorable court, will more fully and at large appear.

And your orator further shows unto your Honor, that afterwards, and on or about the tenth day of July, in the year of our Lord one thousand eight hundred and sixty, the said William McMurtry filed a replication to the answer so
 10 filed by your orator, and testimony was afterwards taken in said cause by both said parties, and that proceedings were had therein, that afterwards, and at the term of May, in the year eighteen hundred and sixty-one, of this honorable court, the said cause came on for final hearing before your Honor, in this honorable court, on the merits of the case; and that afterwards, and on or about the seventeenth day of October, in the year of our Lord one thousand eight hundred and sixty-one, a final decree was pronounced in the said
 20 cause by your Honor, in this honorable court, by which the said contract, entered into between your orator and the said William McMurtry for the loan and repayment of the principal and interest money mentioned in and secured by the bond and mortgage set forth in the said William McMurtry's bill of complaint, was declared null and void, and it was thereby decreed that the said complainant, William McMurtry, was not in equity entitled to the relief prayed in and by the said bill of complaint; and it was also thereby further ordered, adjudged, and decreed, among other things, that
 30 the said bill of complaint of the said William McMurtry be, and the same was thereby dismissed, and that the said William McMurtry should pay to your orator, the said William D. Giveans, his costs in that cause to be taxed.

All which will more fully and at large appear by an exemplified copy of the record of the proceedings in the cause last above stated, and to which your orator prays leave to refer himself, if it should become necessary so to do.

And your orator further shows unto your Honor, that afterwards, and on or about the seventeenth day of October, in the year last aforesaid, the costs of your orator in the said
 40 cause were duly taxed by the clerk of this court at fifty-six

dollars and sixty-four cents, as by the bill thereof, remaining on the files of this honorable court, will more fully appear.

And your orator further shows unto your Honor, that afterwards, and on or about the first day of November, in the year last aforesaid, your orator caused a duly certified copy of the said final decree, and also of the said taxed bill of costs, to be served upon the solicitor of the said William McMurtry, John Whitehead, esq., and payment thereof to be requested; and also afterwards, and on or about the first day of January, eighteen hundred and sixty-two, your orator 10 caused a demand to be made upon the said William McMurtry for the payment of the said costs, and that the said William McMurtry refused to pay the same, or any part thereof, and that neither he, nor any other person for him, has ever paid the same, or any part thereof, but that the same remain wholly unpaid.

And your orator further shows unto your Honor, that he is advised by his counsel that he is entitled to the benefit of the said proceedings and decree above set forth in the suit 20 for the foreclosure of the said mortgage, wherein the said William McMurtry was complainant, and your orator and Jane his wife and the said Samuel Giveans and others were defendants, as evidence for him in the suit first herein above set forth, wherein your orator is complainant, and the said William McMurtry and others are defendants, but that he cannot avail himself thereof, according to the rules and practice of this honorable court, except by bringing said proceedings and decree before this court by a supplemental bill.

And your orator further shows unto your Honor, and re- 30 spectfully insists, that he is entitled to the relief prayed for in the original bill.

To the end, therefore, that the said William McMurtry, David Ryerson, Elizabeth Giveans, Robert A. Linn, Lewis Dunn, and Frederick Arvis may, according to law, true, full, and perfect answer make to all and singular the matters herein above set forth, as fully and particularly as if the same were herein again repeated, and they interrogated thereto, and that your orator may have the benefit and advantage of the proceedings and decree of this honorable 40

court, above set forth in the said suit for the foreclosure of the said mortgage, wherein the said William McMurtry was complainant, and your orator and Jane his wife, Samuel Giveans, and others were defendants in evidence for your orator in his said original suit, and that the injunction issued in the said original suit may be made perpetual, and that the said assignments claimed to be held by the said William McMurtry of the said judgment of Elizabeth Giveans against your orator and others, and of the said decree in favor of the
 10 said Robert A. Linn and Lewis Dunn, survivors of William McCoy, deceased, against your orator and Jane his wife, which are mentioned in your orator's original bill, may, by the order and decree of this honorable court, be declared null and void, and may be given up to be cancelled and destroyed, and that the said defendants may be perpetually restrained and enjoined, by the decree of this court, from taking any further proceedings to collect the said judgment or decree, or any part thereof.

And that your orator may have such other and further relief
 20 in the premises as to your Honor shall seem meet and agreeable to equity and good conscience—

May it please your Honor, the premises considered, to grant unto your orator the state's writ of subpœna, issuing out of this honorable court, and under the seal thereof, to be directed to the said William McMurtry, David Ryerson, Elizabeth Giveans, Robert A. Linn, Lewis Dunn, and Frederick Arvis, commanding them, on a certain day and under a certain penalty, therein to be specified, personally to
 30 there to answer this, your orator's bill of complaint, and to stand to and abide such order and decree in the premises as to your Honor shall seem meet and agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

THOMAS N. McCARTER,
Solicitor of complainant.

DECREE PRO CONFESSO.

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

William McMurtry, David Ryerson,
Elizabeth Giveans, Robert A.
Linn, Lewis Dunn, and Frederick
Arvis, defendants.

} *On supplemental bill.*

[Filed September 29, 1863.]

10

This cause being opened to the court by Thomas N. McCarter, solicitor for and of counsel with complainant, and it appearing that process of subpoena for the defendants to appear and answer the said supplemental bill of the complainant hath been duly issued and returned served by the sheriff of the county of Sussex on all the defendants except William McMurtry, and that John Whitehead, esq., the solicitor of the said defendant, William McMurtry, has signed a written acknowledgment of service of another subpoena to answer said supplemental bill issued in said cause for the said Wil- 20
liam McMurtry, and that the said defendants have not, nor have any or either of them, appeared, pleaded, answered, or demurred to the said supplemental bill within the time limited by law, or at any other time, but that they have wholly failed and neglected so to do—it is therefore, on this twentieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, ordered and directed that the complainant's said supplemental bill be and the same is hereby taken as confessed as against all the said de- 30
fendants, to the end that such decree may be made against them as the Chancellor shall think equitable and just.

HENRY W. GREEN, C.

EVIDENCE.

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant, }

and }

William McMurtry and others, de-
fendants. }

On bill, &c.

[Filed October 16, 1863.]

10 *Examination of witnesses in the above stated cause, taken on the part of the above named defendants, before David S. Anderson, a master in chancery of New Jersey, at his office in Newton, in the county of Sussex, on the twelfth day of October, A. D. eighteen hundred and sixty-three, in the presence of Thomas N. McCarter, esq., solicitor of the complainant, and John Whitehead, esq., solicitor of William McMurtry, one of the defendants, in pursuance of notice given for the purpose, which is hereby admitted.*

20 *Robert A. Linn, esq., of Hamburg, in the county of Sussex, one of the defendants in this suit, being duly sworn, deposed and saith—*

[The examination of this witness is objected to by complainant's counsel.]

I am nearly seventy-eight years of age; I know William D. Giveans.

30 Witness being shown a paper, heretofore marked by me *Exhibit W, No. 1*, on the part of the defendants, says—I must have seen this paper before, as I have signed it; I remember about signing it—my son brought it to me from Newton to have it signed; I recollect particularly of directing the last two lines, previous to the *testatem* clause, having reference to the collection of judgment and costs to be put in; my son's name is Thomas R. Linn; I suppose my son brought the paper to me on the day it was dated—he brought the paper at the time he brought me the money; my son came to Newton to attend to this business for me. The property of Mr. Giveans had been advertised for sale a month before, under

the decree mentioned in this assignment, and had been adjourned to the day on which Thomas went down to Newton. When my son returned that night, he brought back the money with him and the assignment for me to execute; I give instructions about the form of the assignment in a letter to Mr. Thompson, which I sent by my son; in the letter to Mr. Thompson, I stated that that was the understanding between Mr. Giveans and myself. [The evidence in relation to the contents of the letter objected to by complainant's counsel.] Mr. Giveans came to me previous to the first 10 sale, but after it was advertised, and asked me if I would assign it if he got me a man that would find the money; I told him I would; he then wanted me to direct the sheriff to adjourn it for a month; I told him that I would not direct the sheriff, but that I would not object to it if the sheriff saw proper to do so; I was told, soon after, that the sheriff had adjourned it for four weeks or a month. A few days before the day of the adjourned sale, Mr. Giveans again came to see me; I was then sick, and could not get out of the house; he stated to me that he wanted me to go to New- 20 ton, and receive the money and make the assignments; he said he had got a man to furnish the money; I then told him that I was so unwell that I could not go down, but that I would send my son down with a letter to have the assignment made; when my son came home, he brought the assignment for me to execute, which I did; this is the paper that my son Thomas brought home that night; I have no recollection of Mr. Giveans ever calling on me to get an assignment of the mortgage held by the commissioners; I don't know that I should have remembered it if Mr. Giveans 30 had called on me to assign the mortgage; I hardly think I should have forgotten it if he had called on me, although after this transaction I had no occasion to remember it; I can't say whether he did or not. When Mr. Giveans called on me to get the adjournment, he stated, as a reason, that he thought he could find a man who would raise the money for him; he did not mention, in any of these conversations, the name of the man who was to raise the money, and I never knew who the man was until this paper was brought to me. After this paper was signed by me, I sent it back to Mr. 40 Thompson; I sent it the next day, by my son Thomas.

Cross-examined.

I can't say whether I signed the paper the same night or the next morning; I sent my son to Lewis Dunn to get him to sign it.

Quest. Has your recollection always been the same, in regard to the calls made by Giveans upon you about the assignment of this decree, as stated in your testimony, that it is now?

Ans. I think it has.

10 *Quest.* Did you, in your letter to Mr. Thompson of which you spoke, mention to him that you had made an arrangement, or had an understanding with Giveans, about the assignment of this decree?

Ans. I did write to Mr. Thompson to that effect.

Quest. When and to whom did you first mention the fact of Giveans calling on you in reference to the assignment to which you have above testified?

Ans. I don't know that I can tell that; I may have mentioned it to a number of people, and may not have mentioned
20 it to one; I can't tell about that; I know I wrote to Mr. Thompson about it.

Quest. Did you ever write more than one letter to Mr. Thompson about it?

Ans. Not about the assignment I did not.

Quest. When did you first inform Mr. McMurtry or his counsel of the fact of Giveans having so called upon you?

Ans. So far as my recollection goes, it was about the
30 twenty-second day of September last, by letter to his counsel; I don't think I ever had any conversation with McMurtry about it.

Quest. Did you file an answer under oath to the original bill of complaint filed in this cause?

Ans. There was an answer filed to some bill—I can't tell what it was; Mr. Thompson said he knew all about it, and would file a short answer.

Quest. Did you have a conference with Mr. Thompson about it before he prepared your answer?

Ans. I did—that is if it is applicable to this cause.

Quest. Did you not state, in that answer, that you never
40 had had any information about executing an assignment of

this decree, until you learned from your solicitor, about the time it was executed, that the money had been paid in to him, to be paid over to you upon your executing an assignment to William McMurtry, or something to that effect?

Ans. I can't say whether it was so or not; I don't think it could have been so in the answer, because I had had these conversations with Mr. Giveans prior to that time.

Quest. Are you a brother-in-law to David Ryerson?

Ans. Yes.

Quest. After you had executed that assignment, did Lewis 10
Dunn ever call upon you to inquire whether such an assignment had been executed?

Ans. Certainly not—because he knew that it was executed, as I had signed it before he did.

Quest. Do you not remember of Mr. Dunn and Mr. Giveans both calling on you on the same day, at Edsall's store in Hamburgh, to inquire about this assignment, some two years after the money had been paid to you?

Ans. I have no recollection of their having called on me for that purpose.

20

In chief.

I was the acting commissioner in that matter; Mr. McCoy, one of the commissioners, was dead, and Mr. Dunn, the other commissioner, lived several miles away, and requested me to attend to it; I did attend to the whole of the business, paid the money to the heirs, &c. I had no interest in the business when the answer was prepared; Mr. Thompson said that it required a short answer, and that all the business had been done in his office, and he would prepare the answer; I understood it to be merely a formal answer; Mr. Thomp- 30
son said it was a mere formal answer to state the facts that had taken place; I can't recollect what was in it; Mr. Thompson had the bill, but I don't recollect whether he read it to me or not; I don't think it was read to me; Mr. Thompson prepared the answer at his house, and brought it to Hamburgh, where Mr. Dunn and myself met him and signed it.

Re-cross-examination.

I have no more interest in it now than I had then; I believe I swore to the truth of that answer; I thought I was careful enough in it not to swear to that which was not so.

R. A. LINN.

Sworn and subscribed, October 12th, 1863, before me.

D. S. ANDERSON, *M. C.*

An answer was filed by William McMurtry to the supplemental bill after the decree *pro confesso* was entered, and 10 having been filed out of season, it was not used on the argument before the Chancellor.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between

William D. Giveans, complainant,

and

David Ryerson, William McMurtry,
Elizabeth Giveans, Robert A. Linn,
and Lewis Dunn, defendants.

} *On bill, &c.*

20

[Filed May 26, 1864.]

This cause coming on to be heard at a regular term of the Court of Chancery, at Trenton, on the first Tuesday of February, one thousand eight hundred and sixty-four, before the Chancellor, in the presence of Thomas N. McCarter, of counsel with the complainant, and of John Whitehead, of counsel with the defendant, William McMurtry, and the pleadings, depositions, exhibits, and proofs being read, and the arguments of the respective counsel being heard and considered, and the Chancellor having taken time to advise 30 thereon, and now, on this twenty-sixth day of May, one thousand eight hundred and sixty-four, it appearing to the Chancellor that the complainant is not entitled to the relief

sought for and prayed by him in this bill of complaint filed in the above cause—It is thereupon on this day, the said twenty-sixth day of May, one thousand eight hundred and sixty-four, on motion of John Whitehead, solicitor of the above named defendant, William McMurtry, by his Honor Henry W. Green, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said Chancellor, by virtue of the power and authority of this court, doth hereby order, adjudge, and decree, by virtue of the power and authority of this court, that the injunction heretofore issued 10 in this cause be dissolved and for nothing holden, and the same is hereby dissolved and for nothing holden; and it is also further ordered, adjudged, and decreed, that the complainant's said bill of complaint be, and the same is hereby dismissed with costs.

HENRY W. GREEN, C.

OPINION OF THE CHANCELLOR.

In the year 1855, a judgment at law and a decree in equity was recovered against the complainant, Giveans, amounting to over \$3200, upon which executions were issued, 20 and placed in the hands of the sheriff of Sussex. On the twenty-fifth of February, 1856, the complainant procured of the defendant, McMurtry, through the agency of David Ryerson, the sum of \$3000, which, together with the balance over that amount due on the judgments, were paid to the respective plaintiffs, and the sheriff's execution fees were satisfied. On the same day a bond and mortgage for \$3000, payable in three years, were given by Giveans to McMurtry, and by assignments of even date, the judgments were assigned to him. In October, 1853, the real estate of the de- 30 fendant in execution was advertised for sale by the sheriff, at the instance of McMurtry, who claimed to be the assignee of the judgments, in order to obtain satisfaction of the sum of \$3000 advanced by him. Giveans thereupon filed his bill in this court, alleging that McMurtry claimed to hold by as-

signments the judgments as collateral security for the payment of the bond and mortgage; that no such assignments had been made, or, if made, they were without the consent and against the will of the complainant, and that the judgments were paid and satisfied in full by the defendant in execution. The bill also charges that, if the judgments and executions were assigned to McMurtry, the property levied on could not be sold until the mortgage became due. It also alleges that the loan was made at a usurious rate of interest, being in reality not the money of McMurtry but of Ryerson, who had charged and received \$300 for making the loan.

The bill prays that the judgments may be satisfied of record, and that the assignments, if any exist, may be delivered up to be cancelled.

The defendant, McMurtry, by his answer, claims that the loan was made, and the money advanced by him, at the instance of Ryerson, who acted on behalf of Giveans, upon the security as well of the judgments as of the bond and mortgage; that the amount due upon the judgments and executions was paid, not by Giveans but by McMurtry, directly to the plaintiffs in execution, and that the judgments and executions were never satisfied, or intended so to be, but were assigned by the plaintiffs in execution to McMurtry, in pursuance of an agreement with Giveans, as security for the loan of \$3000, made to him by McMurtry.

That the judgments and executions were assigned to McMurtry is fully established. The deeds of assignment executed by the plaintiffs are produced in evidence, and their formal execution proved by the subscribing witnesses. No fraud or circumvention is alleged or shown in the procurement of these assignments. The allegation of the bill is, that the judgments were paid and satisfied in full by the complainant, and that the assignments were made without his consent and against his will. The substance of the allegation is, that the loan by McMurtry was made upon the security of the bond and mortgage alone, and that the judgments were in fact satisfied, and ought to have been cancelled.

The only evidence in support of this allegation is that of the complainant himself, who testifies that he heard nothing

of the assignments, and never agreed to them; that the loan in fact was made solely upon the security of the bond and mortgage. On the other hand, Mr. Ryerson, by whose agency the loan was procured, testifies that McMurtry was to have, as security for his money, an assignment of the judgments and a mortgage from the Giveans. The Giveans both agreed to give him the security. The circumstances attending the transaction strongly corroborated the testimony of Mr. Ryerson. The \$3000 loaned by McMurtry was not paid to Giveans, nor were the judgments paid by him. He paid the sheriff's fees, and reduced the amount due on the judgments to \$3000. That sum was paid by Ryerson, for McMurtry, into the hands of the attorney of the plaintiffs in execution, upon the express stipulation that the judgments should be assigned to McMurtry. Mr. Thompson, the attorney, testifies that Mr. Ryerson and the two Mr. Giveans came together to his office, and stated that the judgments were to be assigned to McMurtry. The assignments were then drawn, and in a few days returned executed. The judgments were assigned as security for the money. They were arranged to be assigned, and the assignments were drawn at the same time the mortgage was executed. The assignments bear even date with the bond and mortgage. Giveans was present when Ryerson stated that the judgments were to be assigned and when the stipulation to procure the assignment was executed. The attorney of the plaintiffs in execution neither drew nor acknowledged the mortgage. The only pretence for the parties going to his office must have been to insure the assignment of the judgments. The money was paid into his hands upon his stipulating to have the assignments executed by his clients. This was before the bond and mortgage were executed. The evidence is plenary that the assignments were made, and the judgments were to be kept alive as security for the money advanced by McMurtry.

Another ground of relief as suggested in the original bill, is that the loan from McMurtry to Giveans was usurious.

After the commencement of the suit, a bill was filed for the foreclosure of the bond and mortgage, which were given, contemporaneously with the assignment of the judgments, 40

to secure the loan. Giveans, by his answer, set up usury in the mortgage as a defence to the bill. The mortgage was decreed to be usurious, and the bill was dismissed. The complainant thereupon filed a supplemental bill in this cause, setting up that decree as ground of relief in this cause.

Irrespective of the decree in the foreclosure suit, it is clear that the complainant is not entitled to relief against the judgments on the ground of usury. A complainant who comes to a court of equity for relief against a judgment or
 10 other security on the ground of usury, will not be relieved unless upon the equitable terms of paying what is really due to the defendant. *Taylor v. Bell*, 2 Vern. 171; *Scott v. Nesbitt*, 2 Bro. ch. e, 641; *Henkle v. Royal Ass. Co.*, 1 Vesey, sen. 320; *Fanning v. Dunham*, 5 Johns. C. R. 122; *Miller v. Ford*, Saxton 364; *Ward v. Thompson's Admr's*, 2 Beasley 67.

The equity cases, says Chancellor Kent, speak one uniform language, and I do not know of a case in which relief has ever been afforded to a plaintiff seeking relief against usury by bill upon any other terms.

20 In 1856, the complainant's property being about to be sold under executions, McMurtry advanced \$3000 for the relief of the complainant, and took an assignment of the judgments and executions as a security for the repayment of the loan. The complainant has since held and enjoyed his property. Without the return of any portion of the principal or interest, the judgments remain unsatisfied. If this court restrain the defendant from proceeding at law on the ground of usury, it will only be upon the complainant paying the amount of principal and interest *bona fide* due to
 30 McMurtry. That is all that he claims to recover. He is entitled to have from the complainant the sum advanced with interest.

If the case stood upon the original bill and answer, there would be no room to question the application of the principle, and that the complainant could have no relief.

The case is in no wise altered by the fact that the contract for the loan of the money has, by a decree of this court, been pronounced usurious, and the mortgage given as security declared void. Nor can the complainant escape the
 40 application of the principle by a general allegation that the

court, by its decree, pronounced the contract void, without disclosing, by his pleadings, that the decree was made solely upon the ground of usury. It appears, by the decree, that the loan was pronounced usurious, and the mortgage security therefore void.

The decree has in fact no reference whatever to the charge of usury set up in the present bill. That charge is utterly disproved by the evidence. The decree declaring that the bond and mortgage are usurious upon one ground, cannot establish the fact of usury against the judgments on another 10 and different ground. It is not pretended that these judgments are usurious. They are admitted to have been valid and subsisting judgments. The complainant's ground of complaint is, that they were paid and satisfied. That charge has been disproved. They were duly assigned for their full value by the plaintiffs in the judgments to McMurtry, the defendant. They are security only for the amount actually advanced by McMurtry and remaining due on the judgments with legal interest. No usurious interest has been, or can be recovered upon them. The assignee of the judg- 20 ments seeks to enforce them not by virtue of any usurious contract made with Giveans, the defendant in execution, but by virtue of a contract with the plaintiffs.

So far as this case is concerned, the fact of usury is not established. But admitting the usury to have been fully proved, the complainant in equity is bound to pay the principal and interest really and *bona fide* due upon the judgment. Having made no such offer, he is entitled to no relief at the hands of this court. A party asking equity must do equity.

The evidence of a co-defendant is not rendered incompe- 20 tent by the fact, that no order was made for his examination. When witnesses were disqualified on the ground of interest, a defendant, having either no interest in the event of the suit, or not being interested in the whole of the matters embraced in the suit, might have been examined as to those matters in which he had no interest. This was done by order of the court. *Daniel's Chan. Prac.* 1036, 1038, 1042.

But since the act of 1859 has removed the disqualification of interest in the witness, as a party or otherwise, no order for his examination has been deemed necessary. The same 40

practice was adopted under the act of 1855, though the rule of July 1st, 1858, required that if the plaintiff or petitioner desired to avail himself of the benefit of the second section of that act, he should be examined before any other witness should be examined in the case, and within twenty days after issued joined.

Nor is it any objection to the competency of a co-defendant to testify that he has not answered the bill, but has suffered a decree *pro confesso* against him. The complainant may, at
 10 his discretion, require him to answer. But if he do not, the defendant, by failing to answer, cannot deprive his co-defendant of his testimony, or disqualify himself as a witness in the cause.

The bill must be dismissed.

HENRY W. GREEN, C.

PETITION OF APPEAL.

COURT OF APPEALS IN THE LAST RESORT.

	William D. Giveans, appellant,	} On bill, &c.
	<i>and</i>	
20	David Ryerson, William McMurtry, Elizabeth Giveans, Robert A. Linn, and Lewis Dunn, respondents.	

[Filed June 27, 1864.]

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

The humble petition of William D. Giveans, 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 Henry W. Green,
 30 Chancellor of the State of New Jersey, bearing date the twenty-sixth day of May, eighteen hundred and sixty-four, wherein the said William D. Giveans was complainant, and

the said David Ryerson, William McMurtry, Elizabeth Giveans, Robert A. Linn, and Lewis Dunn were defendants, in this respect, to wit: that the said decree denies that the said appellant is entitled to the relief sought for and prayed by him in his bill of complaint filed in the above cause, dismisses the said appellant's bill of complaint, and disallows and holds for nothing the injunction issued on said bill of complaint.

And your petitioner humbly appeals from the said decree, which decree as aforesaid, upon the ground that the same is 10 erroneous, for that the said William D. Giveans, the petitioner, is entitled to the relief sought and prayed for in his bill of complaint; that the said bill ought not to have been dismissed, and that the injunction issued on said bill of complaint ought not to have been disallowed or for nothing holden, but should have been made perpetual.

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

Newton, June 22d, 1864.

THOMAS N. McCARTER,

Sol'r for and of counsel with William D. Giveans, appellant.

ANSWER TO PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS.

William D. Giveans, plaintiff in	}
error,	
<i>vs.</i>	
William McMurtry, defendant in	}
error.	

[Filed November 22, 1864.]

10 *The answer of William McMurtry, the above named defendant and respondent.*

This respondent, not confessing or acknowledging all or any of the matters and things in the said petition and appeal mentioned to be true, as the same are therein set forth, and reserving to himself all benefit and advantage of exception to the errors, defects, and imperfections in the said appeal contained, for answer thereunto says—that he admits that the said Court of Chancery did make said final decree, as in said petition and appeal are mentioned and complained of, but this respondent, for greater certainty as to the date and con-
 20 tents of such final decree, refers thereto whenever the same shall be produced; but this respondent is advised and humbly apprehends, that the said final decree complained of is agreeable to equity and good conscience and to justice, and therefore humbly prays that the same may be affirmed, and the appeal dismissed.

J. W. WHITEHEAD,
Sol'r and of counsel with respondent.

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J. W. WHITEHEAD,

Solicitor and Counsel with Respondent

