

Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

Between—

JAMES HOY,
Complainant,

and

MOSES B. BRAMHALL, et
ux. et al.,
Defendants.

} Bill to
Foreclose.

Arch. K. Brown, solicitor of complainants.

Peter Bentley, solicitor of defendants.

Bill of Complaint.

[Filed March 29, 1866.]

*To his Honor Henry W. Green, esquire, Chancellor of the State
of New Jersey.*

Humbly complaining, showeth unto your Honor your orator, James Hoy, of the city of New York, in the county of New York, and state of New York, that on or about the fifteenth day of May, in the year one thousand eight hundred and sixty-one, one Moses B. Bramhall, of the city of Rahway, in the county of Union, and state of New Jersey, 10 became and was justly indebted unto "The Mechanics and

Traders Bank," of Jersey City, in this state, a corporate body of said state of New Jersey, in the sum of ten thousand dollars; and being so indebted, the said Moses B. Bramhall, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto the said "The Mechanics and Traders Bank," a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of twenty thousand dollars, lawful money of the United States, with a condition
10 thereunder written, that if the said Moses B. Bramhall, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said Mechanics and Traders Bank, or their successors or assigns, the just and full sum of ten thousand dollars, lawful money aforesaid, on or before the first day of July, eighteen hundred and sixty-two, with interest thereon at the rate of seven per cent. per annum, then the said obligation should be void, otherwise to remain in full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto
20 had, will more fully and at large appear.

And your orator further shows, that the said Moses B. Bramhall, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto the said the Mechanics and Traders Bank a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Moses B. Bramhall and Emily, his wife, of the first part, and the said the Mechanics and Traders Bank of the second part; in and by which said
30 indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey, and confirm, unto the said the Mechanics and Traders Bank, the said party of the second part, their successors and assigns, all the following described parcels of land and premises, situate, lying, and being in the township of Bergen, in the county of Hudson, and state of New Jersey, viz:

All those four certain lots, which on the map entitled
"Map of Sherwood, Hudson county, N. J.," made by Clerk and Bacot, city surveyors, duly affiled of record in the
40 clerk's office of Hudson county, are designated, known, and

distinguished as lots numbered thirty-one (31) and thirty-two (32) Clerk street, and forty-seven and forty-eight (47 and 48) Ocean street; and taken together may be described as follows, to wit:

Beginning at a point on the westerly side of Clerk street, distant one hundred and seventy-eight feet southerly from the southerly side of Union street; thence, running, 1st, westerly at right angles to Clerk street and parallel with Union street three hundred and fifty feet to Ocean street; thence, 2d, southerly along the easterly side of Ocean street 10 one hundred and seventy-eight feet; thence, 3d, easterly, parallel with the line first run and at right angles to Ocean street, three hundred and fifty feet to Clerk street; thence, 4th, northerly along Clerk street one hundred and seventy-eight feet to the place of beginning.

Also all those four certain lots, which on the map above referred to are designated, known, and distinguished as lots numbered one (1), three (3), five (5), and seven (7) Union street, and taken together may be described as follows, to wit: beginning at a point on the southerly side of Union 20 street, distant one hundred and twenty-five feet westerly from the westerly side of Ocean street; thence, to run, 1st, westerly along the said southerly side of Union street one hundred feet; thence, 2d, southerly, at right angles to Union street, one hundred feet; thence, 3d, easterly, parallel with Union street, one hundred feet; thence, 4th, northerly, parallel with the line second above run, one hundred feet to the place of beginning; each lot being twenty-five feet wide in front and rear, and one hundred feet deep on each side.

Also all that certain lot, which on the map above referred 30 to is described as lot numbered eight (8) Oak street; beginning at a point on the northerly side of Oak street, distant two hundred feet westerly from the westerly side of Ocean street; thence to run, 1st, northerly, at right angles to Oak street and parallel to Ocean street, one hundred feet; thence, 2d, westerly, parallel with Oak street, twenty-five feet; thence, 3d, southerly, and parallel with the line first run, one hundred feet to Oak street; thence, 4th, easterly, along Oak street, twenty-five feet to the place of beginning; being 40 twenty-five feet wide in front and rear, and one hundred feet deep on both sides.

Also all that certain lot, which on the map above referred to is described as lot numbered eleven (11) Forrest street; beginning at a point in the southerly side of Forrest street, distant two hundred and twenty-five feet easterly from the easterly line of Jackson avenue; thence, to run, 1st, southerly, at right angles to Forrest street and parallel with Jackson avenue, one hundred and sixty feet; thence, 2d, easterly, parallel with Forrest street, fifty feet; thence, 3d, northerly, parallel with the line first run, one hundred and sixty feet
10 to Forrest street; thence, 4th, westerly along Forrest street fifty feet to the place of beginning.

Also all that certain lot, which on the map above referred to is described as lot number three, (3) Park street; beginning at a point on the southerly side of Park street, one hundred and seventy-seven feet distant westerly from the westerly side of Ocean street; thence, to run, 1st, southerly, at right angles to Park street, one hundred and sixty-one feet eleven inches; thence, 2d, westerly, along the rear of said lot, fifty feet; thence, 3d, northerly, parallel with the
20 line first run, one hundred and fifty-nine feet nine inches to Park street; thence, 4th, easterly, along the southerly side of Park street, fifty feet to the place of beginning.

Also the lot, which on the aforesaid map is described as lot numbered fifteen (15) Park street; beginning at a point on the southerly side of Park street, distant four hundred and seventy-seven feet westerly from the westerly line of Ocean street; thence, to run, 1st, southerly, at right angles to Park street, one hundred and forty-nine feet two inches; thence, 2d, westerly, along the rear of said lot, fifty feet;
30 thence, 3d, northerly, parallel with the line first run, one hundred and fifty-seven feet to Park street; thence, 4th, along Park street easterly fifty feet to the place of beginning.

Also the two lots, which on the aforesaid map are described as lots numbered eight (8) and ten (10) Park street, and may be described together as follows, to wit.:

Beginning at a point in the northerly side of said Park street, distant three hundred and fifteen feet three inches westerly from the westerly side of Ocean street; thence, to run, 1st, northerly, at right angles to Forrest street, one hundred and sixty feet; thence, 2d, westerly, parallel to Park
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street, one hundred feet; thence, 3d, southerly, parallel with line first run, one hundred and sixty feet to Park street; thence, 4th, easterly, along Park street, one hundred feet to place of beginning.

Also the lot which on said map is described as lot numbered fourteen (14) Park street, beginning at a point on the northerly side of Park street, distant one hundred and twenty feet easterly from the easterly side of Jackson avenue; thence to run, first, northerly at right angles to Park street and parallel with Jackson avenue, one hundred and sixty feet; 10
thence, second, easterly, parallel with Park street, fifty feet; thence, third, southerly, parallel with the line first run, one hundred and sixty feet to Park street; thence, fourth, westerly along Park street fifty feet to place of beginning.

Also, all those four lots, which on the aforesaid map are described as lots numbered (9) nine, (11) eleven, (13) thirteen, and (15) fifteen, Jackson avenue, and together may be described as follows, to wit: beginning at a point in the easterly side of Jackson avenue, distant one hundred and six feet eight inches northerly from the northerly side of Park street; 20
thence to run, first, easterly at right angles to Jackson avenue one hundred and twenty feet; thence, second, northerly parallel with Jackson avenue one hundred and six feet eight inches; thence, third, westerly parallel with line first run one hundred and twenty feet to Jackson avenue; thence, fourth, southerly along said avenue one hundred and six feet eight inches to place of beginning.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, re- 30
mainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, property, possession, claim, and demand whatsoever, as well in law as in equity, of the party of the first part, to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold the therein above granted and described premises, with the appurtenances, unto the said Mechanics and Traders Bank, of Jersey City, the said parties of the second part, their successors and assigns, to and for their own proper use, benefit, and behoof, forever: pro- 40

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

And your orator further shows, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Moses B. Bramhall and Emily Bramhall, his wife, before E. Y. Rogers, a master of this honorable court, and duly recorded in the office of the clerk in and for the said county of Hudson, in Book 25 of Mort-
20 gages, page 319, on the twenty-second day of May, in the year one thousand eight hundred and sixty-one, as by the certificate of the clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows unto your Honor, that on or about the nineteenth day of February, in the year of our Lord one thousand eight hundred and sixty-six, the said the Mechanics and Traders Bank, of the first part, in considera-
30 tion of the sum of seven thousand five hundred dollars, to them in hand paid by your orator, of the second part, made, executed, and delivered unto your orator a deed of assignment, whereby they granted, bargained, sold, assigned, transferred, and set over unto your orator, the said indenture of mortgage hereinbefore set forth, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, to have and to hold unto your orator, his heirs, executors, administrators, and assigns, to his and their own proper use, benefit, and behoof, forever;
40 subject only to the proviso in the said indenture of mortgage

mentioned; and they, the said the Mechanics and Traders Bank, did thereby make, constitute, and appoint your orator their true and lawful attorney, irrevocable, in their name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment, to discharge the same as fully as they might or could do if those presents had not been made; as in and by the said deed of assignment, duly executed under the proper hand of their president and the seal of the said bank, will more fully appear, and to 10 which your orator begs leave to refer, if necessary.

And your orator further shows, that on the twentieth day of February, in the year eighteen hundred and sixty-six, the execution of the said deed of assignment was duly authenticated before William Brinkerhoff, commissioner of deeds in and for the county of Hudson, as appears by the certificate of said commissioner, written on the said deed of assignment, and to which your orator prays leave to refer.

And your orator further shows, that afterwards, to wit, on the twenty-first day of October, in the year of our Lord one 20 thousand eight hundred and sixty-three, the said Moses B. Bramhall and Emily Bramhall, his wife, conveyed all their right, title, and interest which they, the said Moses B. Bramhall and Emily Bramhall, his wife, had or claimed to have, in a part of the said mortgaged premises, namely, all those certain lots, pieces, or parcels of land, situate, lying, and being in the township of Bergen, in the county of Hudson, and state of New Jersey, which, on the map entitled valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, resurveyed by Garret I. Van Horne, C. E. and town sur- 30 veyor, June 1st, 1863, and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered eight, ten, eleven, and fourteen, in block numbered thirteen; also, lot numbered fifteen (15), in block numbered fourteen, as laid down on said map, to one Walter M. Bramhall; by virtue of which conveyance, the said Walter M. Bramhall claimed to have some interest in that part of the said mortgaged premises lastly above described; but your orator expressly charges that the said conveyance was made

subsequent to and with full knowledge of your orator's said mortgage.

And your orator further shows, that on or about the twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-three, the said Walter M. Bramhall, and Lydia M. Bramhall his wife, conveyed all their right, title, and interest which they, the said Walter M. Bramhall and Lydia M. Bramhall had, or claimed to have, in a part of the premises last above described, being a part of the premises
 10 described in your orator's said mortgage, viz., all that certain lot or parcel of land which, on a certain map entitled valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, resurveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863, and filed of record in the office of the clerk of Hudson county, is known and distinguished as lot numbered eight in block No. 13, fronting on Park street, and may be described as follows, viz: beginning at a point on the northerly side of Park street, distant three hundred and five feet westerly from the westerly side of Ocean street,
 20 from thence running, 1st, northerly and at right angles with Park street one hundred and sixty feet; thence, 2d, westerly and parallel with Park street fifty feet; thence, 3d, southerly and at right angles with Park street, one hundred and sixty feet to the northerly side of Park street; thence, 4th, easterly, along the northerly side of Park street, fifty feet to the place of beginning, said lot being fifty feet wide in front and rear, and one hundred and sixty feet deep on each side, to one Sebastien Robert, and by virtue of which last mentioned conveyance the said Sebastien Robert and Elizabeth Bobert,
 30 his wife, claim to have some interest in that part of the said mortgaged premises described in the last stated conveyance, as lot numbered eight, in block numbered thirteen, fronting on Park street; but your orator expressly charges that the said last mentioned conveyance was made subsequent to, and with full knowledge of, your orator's said mortgage.

And your orator further shows, that afterwards, to wit, on or about the first day of October, in the year of our Lord one thousand eight hundred and sixty-four, the said Walter M. Bramhall and Lydia M. Bramhall, his wife, reconveyed all
 40 their right, title, and interest which they, the said Walter M. Bramhall and Lydia M. Bramhall, his wife, had, or claimed

to have, in a part of the said mortgaged premises, namely, all those certain lots of land, situate, lying, and being in the township of Bergen, in the county of Hudson, and state of New Jersey, which, on the map entitled valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863, and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered ten, eleven, and fourteen, in block numbered thirteen; also lot numbered fifteen, in block numbered fourteen, as 10 laid down on said map, to the said Moses B. Bramhall.

And your orator further shows unto your Honor, that on or about the first day of December, in the year of our Lord one thousand eight hundred and sixty-three, the said Moses B. Bramhall, and Emily Bramhall his wife, conveyed all their right, title, and interest, which they, the said Moses B. Bramhall, and Emily Bramhall his wife, had, or claimed to have, in a part of the said mortgaged premises, namely: all that tract, or parcel of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, 20 and which, on the map of valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863, and filed of record in the office of the clerk of Hudson county, is known and distinguished as lot numbered three, (3), in block numbered fourteen, (14), as laid down on said map, and fronting on Park street; and may be more particularly described as follows: commencing at a point on the southerly side of Park street, distant one hundred and sixty-five feet westerly from the westerly side of Ocean street, as laid down on said 30 map; from thence running, 1st, southerly, and at right angles with Park street, one hundred and sixty-nine feet four inches; thence, 2d, westerly fifty feet; thence, 3d, northerly, at right angles to Park street, one hundred and sixty-six feet nine inches, to the southerly side of Park street; thence, 4th, easterly along the southerly side of Park street, fifty feet, to beginning; to one William H. Bumsted, by virtue of which last mentioned conveyance, the said William H. Bumsted, and Martha Bumsted his wife, claim to have some interest in that part of the said mortgaged premises described 40

in the last stated conveyance; but your orator expressly charges that the said last mentioned conveyance was made subsequent to, and with full knowledge of your orator's said mortgage.

And your orator further shows, that afterwards, to wit, on or about the thirtieth day of May, in the year of our Lord one thousand eight hundred and sixty-five, the said Moses B. Bramhall, and Emily his wife, conveyed all their right, title, and interest, which they the said Moses B. Bramhall, and
10 Emily Bramhall his wife, had or claimed to have in a part of the said mortgaged premises, namely: "all those certain lots of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, which, on the map entitled "valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863, and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered ten, (11), eleven and fourteen, in block numbered thirteen. Also lot numbered fifteen, (15),
20 in block numbered fourteen, as laid down on said map, to one Henry M. Kinne; by virtue of which last mentioned conveyance the said Henry M. Kinne claimed to have some interest in that part of the said mortgaged premises described in the last stated conveyance; but your orator expressly charges that the said last stated conveyance was made subsequent to and with full knowledge of your orator's said mortgage.

And your orator further shows, that afterwards, to wit, on or about the thirty-first day of May, A. D. eighteen hundred and sixty-five, the said Moses B. Bramhall, and Emily
30 Bramhall his wife, conveyed all their right, title, and interest which they, the said Moses B. Bramhall, and Emily Bramhall his wife, had or claimed to have in a part of the said mortgaged premises, namely: all those certain lots of land situate in the township of Bergen, in the county of Hudson, and state of New Jersey, and which, on map entitled valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863, duly affiled of record in the
40 clerk's office of the county of Hudson, are known and dis-

tinguished as lots numbered thirty-one and thirty-two, forty-seven and forty-eight, in block numbered eight, as laid down on said map, to one Henry M. Kinne; by virtue of which said last stated conveyance, the said Henry M. Kinne claims to have some interest in that part of the said mortgaged premises described in the last stated conveyance, but your orator expressly charges that the said last stated conveyance was made subsequent to, and with full knowledge of your orator's said mortgage.

And your orator further shows unto your Honor, that ¹⁰ afterwards, to wit, on or about the fourth day of January, in the year of our Lord one thousand eight hundred and sixty-six, the said Henry M. Kinne, and Elizabeth N. Kinne his wife, conveyed all their right, title, and interest which they, the said Henry M. Kinne, and Elizabeth N. Kinne his wife, had or claimed to have in a part of the said mortgaged premises, namely: all those certain lots of land, situate in the township of Bergen, in the county of Hudson, and state New Jersey, which, on the map entitled valuable lots at Sherwood, Bergen Hights. Hudson county, New Jersey, re-²⁰ surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863, and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered ten, eleven, and fourteen, in block numbered thirteen. Also, lot numbered fifteen, in block numbered fourteen, as laid down on said map. Also, all these certain lots of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, and which, on a map entitled valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey re-surveyed by Garret I. Van Horne, C. E. and town ³⁰ surveyor, June 1st, 1863, duly affiled of record in the clerk's office of the county of Hudson, are known and distinguished as lots numbered thirty-one and thirty-two, forty-seven and forty-eight, in block numbered eight, as laid down on said map, to one James T. Worthington, of Cincinnati, in the state of Ohio; by virtue of which last stated conveyance, the said James T. Worthington claims to have some interest in that part of the said mortgaged premises described in the last stated conveyance; but your orator expressly charges that the said last stated conveyance was made subsequent to ⁴⁰ and with full knowledge of your orator's said mortgage.

And your orator further shows unto your Honor, that on or about the nineteenth day of March, in the year of our Lord, one thousand eight hundred and sixty-six, your orator, at the request of the said Moses B. Bramhall, executed, under his hand and seal, and delivered unto the said Moses B. Bramhall, a deed of release, releasing unto the said Moses B. Bramhall from the operation of the said mortgage, the following described premises, being a part of the premises described in your orator's said mortgage, namely: all those

10 two certain lots of land, situate, lying, and being in the township of Bergen, in the county of Hudson, and state of New Jersey, and which, on a map entitled valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, resurveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863, and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered one, (1), and three, (3), in block numbered eleven (11), as laid down on said map, said lots fronting on Union street, and more particularly described as follows: beginning

20 at point at the southerly side of Union street, distant one hundred and fifteen feet westerly from westerly side of Ocean street; thence to run, 1st, westerly along said southerly side of Union street, fifty feet; thence, 2d, southerly at right angles to Union street, one hundred feet; thence, 3d, easterly parallel with Union street fifty feet; thence, 4th, northerly and parallel with the line 2d, above run, one hundred feet to the place of beginning, each of said lots being twenty-five feet wide in front and rear, and one hundred feet deep on

30 side: retaining the remainder of the said mortgaged premises for the payment of the mortgage indebtedness, as by reference to said deed of release now in the possession of the said Moses B. Bramhall, reference being thereto had, will more fully appear.

And your orator further shows, that no part of the principal money mentioned in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to the said the Mechanics and Traders Bank or to your orator, so that your

40 orator is greatly delayed and disappointed in the receipt of

the said moneys, by means of which said several premises the said deed of mortgage, and the estate thereby mortgaged as aforesaid, hath become absolute in your orator and his heirs.

And your orator further shows, that the said Moses B. Bramhall, and Emily Bramhall his wife, Walter M. Bramhall, and Lydia M. Bramhall his wife, Sebastien Robert, and Elizabeth Robert his wife, William H. Bumsted, and Martha Bumsted his wife, Henry M. Kinne, and Elizabeth N. Kinne his wife, James T. Worthington and his wife, since the execution of your orator's said mortgage, have possessed and 10 enjoyed, and that they do still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive, the rents, issues, and profits thereof.

And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he or some other person or persons for him, have frequently and in a friendly manner applied to the said Moses B. Bramhall, and Emily 20 Bramhall his wife, Walter M. Bramhall, and Lydia M. Bramhall his wife, Sebastien Robert, and Elizabeth Robert his wife, William H. Bumsted, and Martha Bumsted his wife, Henry M. Kinne, and Elizabeth N. Kinne his wife, James T. Worthington, and ——— Worthington his wife, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage herein before mentioned and set forth; and your orator well hoped that they would have complied with such reason- 30 able requests of your orator, and would have paid to him the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done. But now so it is, may it please your Honor, that the said Moses B. Bramhall, and Emily Bramhall his wife, Walter M. Bramhall, and Lydia M. Bramhall his wife, Sebastien Robert, and Elizabeth Robert his wife, William H. Bumsted, and Martha Bumsted his wife, Henry M. Kinne, and Elizabeth N. Kinne his wife, James T. Worthington, and ——— 40

Worthington his wife, combining and confederating together, and to and with divers other persons at present unknown to your orator, but whose names, when discovered, he prays may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve your orator in the premises, and to defraud him of the said principal and interest moneys, so as aforesaid due to your orator on the said bond or obligation and deed of mortgage herein before mentioned, sometimes
10 give out and pretend, that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other encumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover; whereas, your orator charges and insists, that if any such pretended
20 encumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid or satisfied, and kept on foot by fraud, to injure and aggrieve your orator, and ought to be delivered up to be cancelled, or declared to be of no effect against your orator, who had no notice of any such pretended encumbrances. All which actings and doings of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator. In tender consideration whereof, and for as much
30 as your orator hath not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and deed of mortgage, without the aid and decree of this honorable court—

To the end, therefore, that the said Moses B. Bramhall, and Emily Bramhall his wife, Sebastien Robert, and Elizabeth Robert his wife, William H. Bumsted, and Martha
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Bumsted his wife, and James T. Worthington, and _____
Worthington his wife, and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full, and perfect answers make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance, and belief; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum so due to 10
him on the said bond or obligation and deed of mortgage herein before mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable court; and in default thereof, that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them, may be foreclosed of and from all equity of redemption or claim of, in, and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, 20
and may deliver over unto your orator all deeds, demises, and writings whatever, relating to or concerning the same, or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this honorable court, be sold, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow thereon, together with all your orator's costs and charges in this behalf sustained; and that your orator may have such further and other relief in the premises as to your honor may seem meet and shall be agreeable to equity and good conscience. May 30
it please your honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said Moses B. Bramhall, and Emily Bramhall his wife, Sebastian Robert, and Elizabeth Robert his wife, William H. Bumsted, and Martha Bumsted his wife, and James T. Worthington, and _____ Worthington his wife, therein and 40

thereby commanding them, and each of them, on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order and decree therein as to your honor shall seem meet, and shall be agreeable to equity and good conscience.

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

ARCH. K. BROWN,
Solicitor of complainant.

S. B. RANSOM,
Of counsel with complainant.

10

Answer of James T. Worthington.

[Filed June 25, 1866.]

The answer of James T. Worthington, one of the defendants, to the bill of complaint of James Hoy, complainant.

This defendant, now and at all times hereafter, saving and reserving unto himself all and all manner of advantage of exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material to be answered unto, says—that he admits it to be true, that on or about the fifteenth day of May, in the year eighteen hundred and sixty-one, one Moses B. Bramhall executed and delivered unto the Mechanics and Traders Bank of Jersey City, his bond, and with his wife, a mortgage, in the manner stated in the said bill of complaint, but for what amount this defendant is unable to state positively, but as he is informed, and believes from representations made to him, it was not given for the amount stated in said bill of complaint, and therefore he denies that the said bond and mortgage was made to secure the sum of ten thousand dollars to the said Mechanics and Traders Bank,

10

then due to them, but was made to said bank to secure certain liabilities of the said Moses B. Bramhall to the said Mechanics and Traders Bank, at the time said bond and mortgage was made and executed; and which liabilities, if any, was far below the sum named in said bond and mortgage, and which has, since the making of said bond and mortgage, been paid and discharged by said Moses B. Bramhall to said bank, or to their assignees, or by persons for him, and that the said bank has realized, in full, all demands intended to be secured by said Bramhall to said bank by 10
said bond and mortgage.

And this defendant, in further answering, says, that he cannot say whether the said bank assigned the said bond and mortgage or not, but that it may be true that the said the Mechanics and Traders Bank did assign the aforesaid bond and mortgage to the complainant at the time mentioned in said bill, but whether for the consideration named in said bill he does not know, but he has doubts whether any consideration was ever paid, or if any, a very small one was given by said complainant to said bank, as this defend- 20
ant believes that said Bramhall paid his indebtedness to the said bank before the assignment of the said bond and mortgage.

And this defendant, in further answering, says, that he has no personal knowledge of the conveyances set forth in the said bill of complaint, made by the said Moses B. Bramhall and others, as stated therein, except said conveyances to Henry M. Kinne, and by said Kinne to this defendant, for the property described in said deeds to said Kinne, being part of the mortgaged premises mentioned in the mortgage 30
given to said the Mechanics and Traders Bank by said Moses B. Bramhall and wife.

And this defendant, in further answering, saith, that he has no knowledge as to what consideration the said Sebastian Roberts and wife and the said William H. Bumsted paid for their said lots, number eight and three, situate in Park street, at Sherwood, in the county of Hudson aforesaid, to the said Moses B. Bramhall, if any; and this defendant further saith, that if they have not paid any consideration to said Bramhall or the said bank, or their assignees, that then 40

they should be compelled by this honorable court to pay the full value of said lots, towards the payment and satisfaction of the said complainant's bond and mortgage, and in default thereof, a decree should be made for the sale thereof, and the proceeds applied to the satisfaction of said bond and mortgage, if anything should be found to be due; and in case of their having given any security for the payment of the same, that the said Moses B. Bramhall should be compelled to account to the said complainant for the amount of
10 said securities.

And this defendant, in further answering, says, that he has no knowledge, other than what is set forth in said bill of complaint, of the release made and executed by the complainant, for lots numbered one and three, on Union street, to the said Moses B. Bramhall, as stated in said bill of complaint, and that the said complainant had no legal or equitable right to release any of the said property so mortgaged by the said Moses B. Bramhall and wife, to secure his said bond by him given to said bank, and by them assigned to
20 the said complainant; that he, this complainant, should not be permitted to proceed with this foreclosure upon his said bond and mortgage, and should be restrained by this honorable court in further proceedings thereon, until the said two lots so released by him shall be duly restored to the said original mortgagee, free from all claims whatsoever, and that they shall be decreed to be sold by this honorable court before any other of said mortgaged premises shall be sold, if sold at all.

And this defendant, in further answering, says, that not
30 only the said two lots should be first sold, but that all the said lots of land contained in said mortgage made to said bank remaining unsold, and in the hands of the said Moses B. Bramhall, on the delivery of the aforesaid deeds made by him to the said Henry M. Kinne, bearing date the thirty-first day of May, in the year eighteen hundred and sixty-five, and recorded on the twenty-first day of October, in the year last aforesaid, as by the record will appear, should be first sold, before proceeding to sell any of the said mortgaged premises which the said Moses B. Bramhall had previously sold or
40 pretended to sell, and that the money arising therefrom be

applied to the payment of the amount found due upon the said bond and mortgage of the said complainant.

And this defendant, in further answering, says, that he is informed, and believes to be true, that when the said Moses B. Bramhall and wife conveyed said hereinbefore mentioned premises to said Henry M. Kinne, that he, the said Moses B. Bramhall, was indebted to him in the sum of twenty-five thousand dollars, or some other large sum of money; and that, in order to secure the said indebtedness to the said Kinne, he agreed to make, and did make, his four several promissory notes to him, each bearing date the twentieth day of June, in the year eighteen hundred and sixty-five, and each one for the sum of six thousand two hundred and fifty dollars; the first payable three months after date, the second payable six months after date, the third payable nine months after date, and the last twelve months after date, with interest on each note from date; and to further secure the said notes, he agreed to convey, and did convey, with his wife Emily, certain real estate to the said Henry M. Kinne, by a deed bearing date the thirtieth day of May, in the year eighteen hundred and sixty-five, and recorded on the twenty-first day of October, in the year eighteen hundred and sixty-five, in Liber one hundred and twenty-five of Deeds, pages two hundred and ninety-seven, &c., the following premises, viz: all those two certain lots of land and premises, situate, lying, and being at Sherwood, in the town of Bergen, in the county of Hudson, and state of New Jersey, which, on a map of the said place, filed in the clerk's office of said county of Hudson, are known and distinguished as lots numbered thirteen (13), fronting on Vreeland street, and eighteen (18), fronting on Clerk street, each lot being ninety-four feet wide in front and rear, and one hundred and seventy feet deep on each side. And the said two lots hereby intended to be conveyed, taken together as one plot, are bounded as follows, viz: beginning on the easterly side of Clerk street, at a point distant one hundred and eighty-eight feet southerly from the southerly side of Bramhall avenue, thence running easterly parallel with Bramhall avenue, three hundred and forty (340) feet; thence, southerly along the westerly line of Vreeland street, ninety-four feet; thence, westerly, parallel with Bram-

hall avenue, three hundred and forty (340) feet, to the easterly line of Clerk street; thence, northerly, along the easterly line of Clerk street, ninety-four (94) feet to the place of beginning. Also, all those two lots, tracts, or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the township of Bergen, in the county of Hudson, and state of New Jersey; which said two lots are known and designated on a map of property called "Claremont," made by Clerk and Bacot, city surveyors, and filed in the office

10 of the clerk of the said county of Hudson, as lots numbered four (4) and eleven (11), on block numbered six (6), as laid down and described on said map; each of said last two lots being one hundred feet in width in front and rear by one hundred and twenty-five feet in depth on each side; and on the said thirtieth day of May, in the year eighteen hundred and sixty-five, by another deed, duly recorded on the said twenty-first day of October, in the year eighteen hundred and sixty-five, in Liber One Hundred and Twenty-five of Deeds, pages two hundred and ninety-nine, &c., the following

20 premises, viz: all those certain lots of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, which, on a map entitled "valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, resurveyed by Garret I. Van Horne, C. E. and town surveyor," June 1st, 1863, and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered ten (10), eleven (11), and fourteen (14), in block numbered thirteen (13); also lot numbered fifteen (15), in block numbered fourteen (14), as laid down on said map; also all

30 those certain lots of land and premises, situate in the township, county, and state aforesaid, laid down on a map filed in the clerk's office of Hudson county, entitled "Map of Sherwood, Hudson county, New Jersey, surveyed and laid out by Clerk and Bacot, City Surveyors," are known and distinguished on said map by the number (32) thirty-two, and thirty-four (34), lying between the plank road to Newark and Beach street, and described as follows: beginning at a point on the westerly side of said plank road, where the line dividing lots numbered thirty and thirty-two intersects said

40 plank road, and running thence westerly along line of lot

numbered thirty, about one hundred feet; thence northerly, along line of lots No's thirty-one and thirty-three, about fifty feet; thence easterly, along the line of lot numbered thirty-six, about one hundred feet; thence southerly, along said plank road, about fifty feet to the place of beginning. Also, a lot of land, known and distinguished on said last mentioned map, by the number forty-four (44), lying between the plank road to Newark and Beach street, and is described as follows: beginning at a point on the westerly side of said plank road, where the line dividing lots No's (42 and 44) 10 forty-two and forty-four, intersects said plank road, and running thence westerly, along line of lot numbered forty-two, about one hundred feet; thence northerly, along line of lot numbered forty-three, about twenty-five feet; thence easterly, parallel with the line of first above described, about one hundred feet; and thence southerly, along said plank road, about twenty-five feet to the point of beginning. Also, two other lots of land, known and distinguished on said last mentioned map by the numbers thirteen (13) and fifteen (15), lying between the plank road to Newark and Communipaw 20 lane. And on the thirty-first day of May, in the year eighteen hundred and sixty-five, by another deed, duly recorded on the twenty-first day of October, in the year eighteen hundred and sixty-five, in Liber one hundred and twenty-five, pages three hundred and two, &c, for the following premises, viz: all those certain lots of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, and which, on a map entitled "valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, resurveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863," 30 duly affiled of record in the clerk's office of the county of Hudson, are known and distinguished as lots numbered thirty-one (31), and thirty-two (32), forty-seven (47), and forty-eight (48), in block numbered (8) eight, as laid down on said map; which deeds are in the hands of this defendant, and ready to be produced and proven as this honorable court shall order and direct.

And this defendant, in further answering, says, that the said deeds were, in fact, taken in the nature of mortgages, to secure the said four notes so given by the said Moses B. 40

Bramhall to the said Henry M. Kinne, and in case said notes were paid, that then the said lots were to belong to said Bramhall, and be conveyed to him by said Kinne or his representatives; that the said deeds so made were not delivered by the said Moses B. Bramhall to the said Kinne until the making of said notes, on the twentieth day of June, in the year eighteen hundred and sixty-five.

And this defendant, in further answering, says, that the said Henry M. Kinne becoming indebted to one Vachel
 10 Worthington, in the sum of sixteen thousand seven hundred dollars, and to this defendant in the sum of ten thousand and eighty-three dollars and sixty-two cents, did transfer to this defendant the said four promissory notes, made by said Moses B. Bramhall to said Henry M. Kinne, and guaranteed the payment of the same, and did, with his wife Elizabeth, on the fourth day of January, eighteen hundred and sixty-six, execute and deliver to this defendant a deed of conveyance, in due form of law, for all the said premises mentioned in aforementioned three deeds of conveyance, made by said
 20 Moses B. Bramhall and wife to said Henry M. Kinne, to further secure this defendant and the said Vachel Worthington against loss; and it was further agreed between said Kinne and this defendant, that upon the payment of the said four notes by the said Moses B. Bramhall, with all interest upon said notes, together with all costs, charges, and expenses incident to the management of said business and the collection of said notes, that then the said real estate so conveyed by said Kinne to this defendant, remaining unsold should be re-conveyed to the said Moses B. Bramhall.

30 And this defendant, in further answering, saith, that the said Moses B. Bramhall has refused to pay the said four notes so made by him to the said Henry M. Kinne, and by said Kinne transferred to this defendant, all of which are unpaid.

And this defendant, in further answering, says, that that part of the real estate which the said Moses B. Bramhall and wife conveyed to said Henry M. Kinne, and by said Henry M. Kinne and wife to this defendant, and not included in the bond and mortgage made by the said Moses B. Bram-
 40 hall and wife to the said the Mechanics and Traders Bank,

are included in another bond and mortgage, made by said Moses B. Bramhall and wife to the said complainant, for the sum as named in said bond and mortgage of seven thousand five hundred dollars, and dated the fifteenth day of May, in the year eighteen hundred and sixty-one, and recorded in the clerk's office of Hudson county, and that if the said bond and mortgage was, in fact, given for the real amount due to the said complainant at the time it was made from said Bramhall, that then the said property embraced in the said last named mortgage will be, as this defendant believes, 10
entirely exhausted, and will not leave anything to be applied to the payment of the said four notes of the said Moses B. Bramhall, so given to the said Henry M. Kinne, and by him transferred to this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is, by the said bill, charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and suf- 20
ficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

PETER BENTLEY,

Solicitor and of counsel with James T. Worthington,
one of the defendants. 30

New Jersey, to wit:—James T. Worthington, of full age, being duly sworn on his oath, saith—that he is the defendant in the foregoing answer named, and that the matters and things set forth in the said answer, as far as they relate to the acts and doings of this defendant, are true; and so far as they relate to the acts and doings of others he believes them to be true.

JAS. T. WORTHINGTON.

Sworn to and subscribed before me, at Jersey City, June 25th, 1866.

C. H. WINFIELD, *M. C.* 40

Replication.

[Filed August 22, 1866.]

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereto saith, that he will aver and prove his said bill to be true, certain, and sufficient in the law, to be answered unto, and that the said answer of the said defendant, James T. Worthington, is uncertain, untrue, and insufficient to be replied unto by this
 10 repliant. Without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is, and will be ready to aver and prove, as this Honorable Court shall direct; and humbly prays, as in and by his said bill he has already prayed.

ARCH. K. BROWN,
Solicitor of complainant.

S. B. RANSOM,
Of counsel with complainant.

20

Evidence.

[Filed January 3, 1868]

Examinations in above cause, taken before Washington B. Williams, examiner in chancery, at his office in Jersey City, in presence of A. K. Brown, esq., and S. B. Ransom, esq., for complainant, and of Peter Bentley, esq., for defendants, commencing on December 17th, 1866, and which were taken on notice on either side duly admitted.

Complainant's solicitor offers bond, mortgage, and assign-
 30 ment, stated in bill and admitted in answer. Bond is marked

Exhibit C 1. Mortgage is marked *Exhibit C 2.* Assignment is marked *Exhibit C 3.*

Complainants rest.

Adjourned to Wednesday, December 19, 1866, at 2 P. M., and further, to January 8th, 1867, at 2 P. M.

January 8th, 1867, at 3 P. M., counsel for both parties appeared and defendants opened their testimony.

John S. Fox, being duly sworn, on oath saith—I reside in Jersey City, and am president of the First National Bank in Jersey City; I was cashier of the Mechanics and Traders 10 Bank in Jersey City; I was such cashier on May 15, 1861.

1 *Quest.* State for what purpose the bond and mortgage, dated May 15, 1861, marked *C 1*, and *C 2*, on part of complainants, were made?

Ans. They were given as collateral security for the then indebtedness of Moses B. Bramhall, to the Mechanics and Traders Bank, and also for any future indebtedness that might occur subsequently.

2 *Quest.* Can you state what amount, if any, Moses B. Bramhall was indebted to the Mechanics and Traders Bank, 20 on May 15, 1861?

Ans. As near as I can remember, it was about twenty-five thousand dollars.

3 *Quest.* Was the indebtedness due from Bramhall to the bank, on May 15th, 1861, paid by him?

Ans. It has been paid since.

4 *Quest.* The bond referred to was taken as collateral to the indebtedness of Bramhall to the bank on the 15th May, 1861? [Objected to as leading.]

Ans. Yes.

30

5 *Quest.* Had the bank any other securities that they held from Bramhall at the time they took the bond and mortgage from Bramhall?

Ans. Yes, sir. We had a second mortgage on some property at Rahway, and also some coal stock; among other, I believe some American Coal Company stock, and some other claims, which I don't now recollect. That second

mortgage was given at about the same time that this mortgage was given.

6 *Quest.* Had you, at the time that the bond and mortgage were made, a statement of the particular securities that were held by the bank?

Ans. We had them all in an envelope. We had no particular statement of them. We don't enter collaterals in any book.

7 *Quest.* Does not the bank keep some statement or minute, showing what collaterals they hold, and for what purpose?

Ans. It is generally stated on the face of the note itself, and we keep no further statement. Upon the payment of the note, the note and securities are generally given up; if part payment is made, it is endorsed on the note.

8 *Quest.* Can you state whether there was one or more notes held by the bank at the time the bond and mortgage was made, on May 15th, 1861?

Ans. My impression is, there was quite a number of notes. The indebtedness was running through a long time; this bond and mortgage was given merely as a security for the then indebtedness of Mr. Bramhall, and any indebtedness that might accrue afterwards.

9 *Quest.* Can you state the amount of coal stock that you held at the making of said bond and mortgage, and what particular kind of stock?

Ans. I only recollect the stock of the American Coal Company; I think there was four thousand shares; I don't know what the market price was then—I think it was two or three dollars; the par value was \$25 a share; I don't think we had any other coal stock.

10 *Quest.* Had you other securities than coal stock at this time?

Ans. We had what we supposed was a security in this Overland Mail Route, but it was given up without receiving anything for it; it was an order on the post-office department for some money that was supposed to be due, but nothing was ever realized on it; there was no amount stated—it was merely a general assignment of any interest Mr. Bramhall might have in the claim; it was never recognized by the department.

11 *Quest.* What amount was the mortgage held by the bank upon his house property, at Rahway?

Ans. Fifteen thousand dollars, I think.

12 *Quest.* What amount was there upon those premises previous to your mortgage?

Ans. I don't know.

13 *Quest.* What was done with this second mortgage by the bank?

Ans. Nothing; it is, I suppose, on record at the county clerk's office, at Elizabeth; we never got it from there. 10

14 *Quest.* Does the bank now hold it?

Ans. We have the bond; the mortgage is there at the clerk's office; it has never been cancelled nor given up by the bank; we never looked upon it as much additional security.

15 *Quest.* Who now holds the coal stock above mentioned?

Ans. I have no idea; we parted with it a long time since.

16 *Quest.* To whom?

Ans. I cannot state from memory; but whatever was obtained from it was credited on Mr. Bramhall's indebtedness 20 to the bank.

17 *Quest.* Will the books of the bank show when, and for what they disposed of that stock?

Ans. No, sir.

18 *Quest.* Can you state when it was disposed of?

Ans. No, sir; I don't know that we disposed of it at all; it was probably given up to Mr. Bramhall on his paying a certain amount of money; the indebtedness ran down to the present year before it was all settled.

19 *Quest.* Has the bank books showing the transactions 30 with Mr. Bramhall from the giving of the bond and mortgage to the assignment to Mr. Hoy?

Ans. His account in the ledger will show the loans and discounts made to him from time to time, up to the present time; it would require an accountant to examine the loan account to state the amount due from him at any given time.

Adjourned to January 11th, 1867, at ten A. M., when the solicitors appeared, and also the said witness, and proceeded.

Witness.—I desire to correct now some testimony given at my former examination from memory; I find, on reference to the books of the bank, that on May 15th, 1861, the amount owing from Mr. Bramhall to the bank was \$36,406¹⁷/₁₀₀, instead of only \$25,000.

20 *Quest.* Can you state how many notes, or other liabilities, constituted this \$36,000?

Ans. I don't recollect—there were some six or eight notes.

21 *Quest.* Had those notes any endorsers upon the same?

10 *Ans.* No, sir; they were payable to the order of the bank.

22 *Quest.* Has the bank any minute upon their books authorizing the taking of this bond and mortgage of \$10,000?

Ans. I don't recollect; the board instructed me to get additional securities, but whether the fact of receiving this bond and mortgage was entered, I don't know.

23 *Quest.* Have you ever looked to know whether there was any resolution passed by the board authorizing the taking of the bond?

Ans. I have not.

20 24 *Quest.* Were all the notes existing on the 15th May, 1861, paid by Bramhall, and taken up by him?

Ans. They were.

25 *Quest.* Did Bramhall, at the time of the assignment to Hoy, owe the bank any of the specific indebtedness existing at the time of the execution of the bond in May, 1861?

Ans. He owed the bank ten thousand dollars at the time of the assignment.

26 *Quest.* Were the notes existing on May 15th, 1861, still existing at the time of the assignment to Hoy?

30 *Ans.* The same notes were not—of course not; those notes were renewed as they matured from time to time, until the final payment of the indebtedness, at the time of the assignment of the mortgage.

27 *Quest.* Was there any contract, written or verbal, between Bramhall and the bank, in relation to his account or indebtedness, or the security given therefor; if written, can you produce it; and if verbal, state what it was?

Ans. There was no written contract; the verbal understanding was that they were held as collateral against the 40 indebtedness then existing, or any liability that might be

incurred thereafter; it was not given to secure any particular debt.

28 *Quest.* Was this bond taken by the direction of the board of directors, or by direction of Mr. Bramhall, as president?

Ans. It was taken by direction of the board of directors.

29 *Quest.* Can you state what payments have been made by Bramhall, or any one, for his account to his credit on the said indebtedness with the dates of such payments, and what security or securities have been released or returned to him, 10 and the dates of such releases, or return?

Ans. I cannot.

30 *Quest.* At the time of the assignment to Hoy of the bond, did the bank pass to him any other security therefor than the mortgage, or does he, Hoy, to your knowledge, hold any further security therefor, and if so, what?

Ans. No, sir.

31 *Quest.* What amount was paid by Hoy to the bank for the assignment of the bond and mortgage? [Objected to as immaterial.] 20

Ans. Seven thousand five hundred dollars.

32 *Quest.* How, and in what manner, was that money paid to the bank? [Objected to as above.]

Ans. It was paid to me by a check by the cashier of the First National Bank of Jersey City, for the proceeds of a note discounted for Mr. Hoy on that day, and endorsed by Moses B. Bramhall.

33 *Quest.* How came the assignment to be made by the bank to Hoy?

Ans. In consideration of the \$7500. 30

34 *Quest.* When was the coal stock surrendered to Mr. Bramhall?

Ans. At various times, I don't remember the circumstances, as the indebtedness was retired the securities were surrendered.

35 *Quest.* If his indebtedness became increased thereafter, did he increase his collaterals?

Ans. I presume so—I don't remember any particular cases; we would not be likely to increase his indebtedness without an increase of security. 40

36 *Quest.* If Bramhall's indebtedness on the 1st October, 1865, was \$33,000, would your bank have let him have that amount without adequate collaterals?

Ans. We would not.

37 *Quest.* You being cashier, would not those collaterals come immediately under your supervision and adjustment?

Ans. They would.

38 *Quest.* Can you state what collateral securities your bank held during the month of October, 1865, and May, of 10 same year?

Ans. I do not remember.

39 *Quest.* Can you tell what was the indebtedness of Bramhall to the bank at any time in May, 1865, or in October, 1865?

Ans. Not from memory.

40 *Quest.* Can you give any further information as to the specific securities held by the bank, other than those heretofore stated?

Ans. I cannot.

20 41 *Quest.* Did you know that Mr. Bramhall had conveyed a portion of the property mortgaged to the bank to a Mr. Kinne; and if so, when?

Ans. I did not.

42 *Quest.* Had you any interview with Mr. Bramhall as to the reason why he wished this bond and mortgage assigned to Mr. Hoy?

Ans. I had not.

43 *Quest.* Who made the application to the bank to purchase and take an assignment of this mortgage?

30 *Ans.* Both Mr. Hoy and Mr. Bramhall conferred with me about selling the mortgage for a consideration.

44 *Quest.* Did the bank take any other security for the remainder of the mortgage?

Ans. No, sir.

45 *Quest.* Did the bank surrender to Mr. Bramhall the claims they had against him at that time?

Ans. The \$7500 or was endorsed on a note of \$10,000 which they then held of Mr. Bramhall's, leaving about \$2500 still due.

46 *Quest.* For that amount the bank looks to Mr. Bramhall and not the mortgage?

Ans. Yes; he has since paid it.

47 *Quest.* Can you state the day that the note of Hoy's was discounted?

Ans. I think it was February 17, 1866; I can tell by reference to the account.

48 *Quest.* Do you know whether Bramhall paid to Hoy any part of the bond and mortgage that he gave to him, Hoy, for \$7500? 10

Ans. I do not.

49 *Quest.* Has the bank the bond and mortgage of \$15,000 on Bramhall's property at Rahway, now in their possession?

Ans. No sir; I looked since I was here last, and find neither the mortgage nor the bond; the mortgage never was returned to us from the record.

50 *Quest.* Has the bank ever discharged that bond and mortgage?

Ans. No.

51 *Quest.* Was the coal stock returned to Bramhall before 20 or after May 1, 1865?

Ans. I don't remember.

52 *Quest.* Will you be good enough to examine the books of the Mechanics and Traders Bank for any written contract, minute, or agreement between the bank and Bramhall in regard to this \$10,000 mortgage; and if so, produce the same here in evidence?

Ans. I will.

Cross-examination.

53 *Quest.* How was the \$36,406.17, which Mr. Bramhall 30 owed the bank, paid, and at what times?

Ans. I cannot give the dates; there were various notes which were renewed from time to time, until finally they were discharged by the sale of that mortgage, excepting a balance of some \$2500, and interest, which he afterwards paid.

54 *Quest.* From the time the bond and mortgage was given May 15th, 1861, to the 13th February, 1866, when it was

assigned to Hoy, was there any time that Bramhall did not owe the bank at least ten thousand dollars?

Ans. I think not.

55 *Quest.* Was the bond and mortgage assigned to Hoy for the consideration of \$7500 with Bramhall's consent?

Ans. Yes.

56 *Quest.* Did you credit Bramhall on his indebtedness with the full proceeds of the bond and mortgage?

Ans. Yes.

10 Re-direct.

57 *Quest.* When did Bramhall pay the \$2500?

Ans. Sometime in 1866—I don't recollect the date.

58 *Quest.* Did Mr. Hoy know that the bank looked to Mr. Bramhall for the balance of the indebtedness, when he took his assignment?

Ans. I do not know.

59 *Quest.* Who paid the \$2500?

Ans. I presume Mr. Bramhall—I don't know of any one else.

20 60 *Quest.* Has Mr. Hoy any indebtedness to your bank besides this \$7500?

Ans. There is no indebtedness whatever of Mr. Hoy to the bank at this time; the note was paid long since, at maturity.

61 *Quest.* Do you know whether Bramhall placed any other securities in Hoy's hands for his note of \$7500, than this bond and mortgage?

Ans. I do not; I never heard any conversation in reference to it.

62 *Quest.* Has Hoy's note of \$7500 been paid?

30 *Ans.* It was paid at maturity at the Bank of the Commonwealth in New York, where it was made payable.

63 *Quest.* Has there been any other note of Mr. Hoy's discounted by your bank since that note, or discounted for Mr. Bramhall, with Hoy's endorsement?

Ans. No.

J. S. Fox.

Subscribed and sworn to, before me, at Jersey City, January 11th, 1867.

W. B. WILLIAMS, M. C.

Adjourned to Tuesday, January 15th, 1867. January 15th, 1867, 2½ p. m., solicitors appeared and proceeded.

James Hoy, being duly sworn on the part of the defendant, on oath saith—I am the complainant herein.

1 *Quest.* Did Moses B. Bramhall apply to you to take an assignment of the bond and mortgage made by him to the Mechanics and Traders Bank for \$10,000?

Ans. Yes, sir. I gave my note at four months for \$7500, which came due a day or so, I think, after I sailed for Europe; I sailed the 16th May, 1866; I left the money with 10 my son to pay the note; I can't tell the date now in any other way.

2 *Quest.* You subsequently released one or more of the lots specified in said mortgage—at whose request did you make said release?

Ans. The request came through Mr. A. K. Brown, the solicitor sitting here.

3 *Quest.* Did you receive any compensation—and if so, what, for making the release?

Ans. I did; the price in money and mortgages, I think, 20 paid for the lots; I can't now tell the amount.

4 *Quest.* Were there one or more lots released?

Ans. I can't tell.

5 *Quest.* Were you paid any money—and if so, how much?

Ans. I was paid money, but how much I can't say, as it came through Mr. Brown, and I haven't my books here to answer that question.

6 *Quest.* Did you understand from Mr. Brown that he made the application for the release at the request of Mr. Bramhall?

30

Ans. I did so understand him.

7 *Quest.* Did you take the assignment from the bank to oblige Mr. Bramhall? [Objected to as leading.]

Ans. I purchased the mortgage from the bank, having been informed by Mr. Fox as well as by Mr. Bramhall, that it was a good and valid mortgage, and at the same time to secure, as far as possible, Mr. Bramhall's indebtedness to me.

8 *Quest.* In what way, by taking the assignment, did you secure anything to yourself from Bramhall?

Ans. I haven't secured anything to myself, unless I collect the full amount of the mortgage; if I do collect the full amount of the mortgage, the difference between that and the \$7500 I paid, will be so much saved from what I consider a very doubtful debt.

9 *Quest.* Did you know at the time you took the assignment, for what purpose the mortgage was given?

10 *Ans.* No, I did not, except that I understood it was there as collateral security for money due from Bramhall to the bank.

10 *Quest.* Did you make any inquiry from Mr. Bramhall or from the bank?

Ans. I made inquiry from both of them whether it was a good and valid mortgage, and they both told me it was for its full value—that is, Mr. Fox and Mr. Bramhall.

11 *Quest.* When you speak of value, what do you mean?

Ans. I mean ten thousand dollars and interest.

20 12 *Quest.* Did you make any inquiry when you took the bond and mortgage, or before, for what specific purpose the mortgage was given?

Ans. No, I don't think I did—only a general impression that it was given as collateral security for loans by the bank to Bramhall.

13 *Quest.* You have stated that Mr. Fox told you that it was a valid mortgage—please state for what?

Ans. For the money, of course.

14 *Quest.* For what money?

30 *Ans.* The amount of the mortgage.

15 *Quest.* At the time you took the bond and mortgage by assignment, did you see them?

Ans. Yes, sir; it was sent to me, I think, before or simultaneous with the giving of my note.

16 *Quest.* Did you make inquiry of Mr. John S. Fox for what purpose the bond and mortgage were made?

Ans. No, I can't say I did; I have no recollection of it.

17 *Quest.* Did you make any inquiry of Moses B. Bramhall?

40 *Ans.* Yes, sir.

18 *Quest.* When did you make that inquiry?

Ans. When it was proposed to me to buy the bond and mortgage.

19 *Quest.* Had you, at the time you took the assignment, any securities belonging to Bramhall in your possession?

Ans. No, sir.

20 *Quest.* Did Mr. Bramhall place in your hands, or with any other person for your use, any securities for the payment of the \$7500 you advanced?

Ans. No, sir.

10

21 *Quest.* Had you any matters or things other than the mortgage, as security for the \$7500?

Ans. No, sir.

22 *Quest.* The bond and mortgage being due upon the face of it, did you inquire of the holders for what purpose it was given, previous to your taking the assignment?

Ans. Well, I inquired through Mr. Brown, and, I think, I inquired myself, but I am not so sure; Mr. Fox, I believe—no one else was talked with on the part of the bank; I wish to correct this: I can't say I asked Mr. Fox what the mortgage was given for—but I asked him merely the question if it was a good mortgage; I am sure I asked Mr. Bramhall, and he told me all about it.

23 *Quest.* What did Mr. Bramhall tell you about it?

Ans. He told me he was always in debt to the bank more than ten thousand dollars, and that the mortgage was made to secure the existing indebtedness, and any future indebtedness to the bank.

24 *Quest.* Did you know, at the time you took the assignment of the bond and mortgage, that Moses B. Bramhall had, sometime previously thereto, disposed of most of the property contained in said mortgage?

Ans. Yes, sir.

25 *Quest.* Did you know, at the time you released a portion of said mortgaged premises, that Bramhall had disposed of most of said property contained in the mortgage to the bank?

Ans. Yes.

26 *Quest.* Did you credit, on the bond and mortgage to the bank, the amount you received for the release of the 40 two lots?

Ans. I did not.

27 *Quest.* Was not the amount which was paid for the releases of said mortgaged premises paid over to Moses B. Bramhall?

Ans. No, sir, not a dime of it.

28 *Quest.* Did you receive it?

Ans. Yes, sir.

29 *Quest.* Will you furnish the amount you received for the releases?

10 *Ans.* Yes; I received it through Mr. Brown; it was seventeen hundred dollars, less commissions and stamp on deed.

30 *Quest.* Was Moses B. Bramhall indebted to you when you took this assignment?

Ans. Yes, sir.

31 *Quest.* To what amount?

Ans. About ninety thousand dollars.

32 *Quest.* Has it been paid since—if so, how?

Ans. It has not been paid.

JAMES HOY.

20 Subscribed and sworn to before me, at Jersey City, January 15th, 1867.

W. B. WILLIAMS, M. C.

Archibald K. Brown, being duly sworn, on oath saith—I reside in Jersey City, and am attorney and solicitor for the plaintiff in this cause; I negotiated the sale of lots one and three, in block eleven, on Union street, to Henry Foster; the consideration was \$650 for the two lots; there were no improvements on it at the time of sale; the deed was dated March 19th, 1866, I think, and recorded March 28th, 1866, 30 in Liber one hundred and twenty-nine, page six hundred, of deeds. I also, with another person, negotiated a sale of lots seven and eight, in block eleven, on Union street, for the consideration of \$700, to Jacob Skillman, by deed dated 23d April, 1866; recorded 25th April, 1866, in Liber one hundred and thirty, page five hundred and sixty-six, of deeds, &c. I and another person negotiated a sale in block number eleven, lot number five, for the consideration of \$350; by deed dated April 23d, 1866, and recorded May 1st, 1866, to

Henry Foster, recorded in Liber one hundred and thirty-three, page sixty. All the foregoing deeds were released by Mr. Hoy; the consideration, amounting to \$1700, was paid to Mr. Hoy, less the amount of commissions, stamps, drawing papers; the commissions and expenses, I think, amounted to about \$150—I transacted that business for Mr. Hoy.

Quest. Did you sell the lots at the instance of Mr. Hoy, or Mr. Bramhall, or both?

Ans. I can't answer that except by saying I don't recollect; I may have done it at the request of Mr. Bramhall, but the 10 money went to Mr. Hoy; I don't recollect whether I took a receipt or not; I don't recollect of ever consulting with Mr. Bramhall during the sale of that property; I believe I drew the deeds from Mr. Bramhall and wife, and also the releases from Mr. Hoy; I don't know whether I took the acknowledgements or not; I delivered the deeds to the purchasers at my office, as well as the releases to Mr. Hoy; I think, however, I had the releases from Mr. Hoy recorded myself; I know Mr. Hoy did not enter the amounts on the mortgages.

Cross-examined.

20

Mr. Bramhall gave the deeds for these lots that I negotiated; I don't know whether it was me or Mr. Hoy that asked him to give them; the money which Mr. Hoy received for the releases, Mr. Hoy informed me, was applied to another indebtedness of Mr. Bramhall to him; the sum I have named that Mr. Hoy received, I consider was as much as the lots were worth at that time; before he bought the mortgage, at the request of Mr. Hoy, I went to Mr. Fox and Mr. Bramhall and asked about the mortgage; I asked each of them if it was a good and valid mortgage, and they both said it was; 30 I reported what they had said to Mr. Hoy, and he bought it.

Re-examined.

Quest. Did you ask Mr. Fox for what purpose the mortgage was given?

Ans. No, sir.

Quest. Did you ask Mr. Fox what amount was due upon it?

Ans. I don't think I did.

Quest. Did you see the bond and mortgage at the time of asking him about it?

Ans. No; I did not.

ARCH. K. BROWN.

Subscribed and sworn to, before me, at Jersey City, this 25th day of January, A. D. 1867.

W. B. WILLIAMS, *M. C.*

Minot C. Morgan, being duly sworn, on oath saith—I reside in Jersey City; am sixty-two years of age; I have seen 10 James T. Worthington, Moses B. Bramhall, and Henry M. Kinne write, and am acquainted with their signatures.

[Being shown an agreement dated January 3d, 1866, between Henry M. Kinne, James T. Worthington, Vachel Worthington, and M. C. Morgan, marked *Exhibit D 5*, he says]—

Robert L. Williams and George W. Ryerson, the subscribing witnesses to this instrument, reside in the state of New York; the signature of Henry M. Kinne thereto is in his handwriting; and that of J. T. Worthington is in the 20 handwriting of James T. Worthington; the other two signatures are in my handwriting. [Being shown four promissory notes, marked *D 6*, *D 7*, *D 8*, and *D 9*, he says]—

The signatures of the maker to these notes is that of M. B. Bramhall, and is in the handwriting of Moses B. Bramhall; the signatures to the endorsements on the same are in the handwriting of Henry M. Kinne.

M. C. MORGAN.

Subscribed and sworn to before me, at Jersey City, March 16th, 1867.

30

W. B. WILLIAMS, *M. C.*

The papers marked as *Exhibits D 5*, *D 6*, *D 7*, *D 8*, *D 9*, also *D 1*, *D 2*, *D 3*, *D 4*, are offered in evidence on part of defendants, and objected to on part of complainant, as irrelevant.

John S. Fox, being re-called on part of defendants, says—

I have examined the accounts between Moses B. Bramhall and the bank since my last testimony. I found, that at the time the bond and mortgage in question was assigned to Mr. Hoy, the indebtedness of Bramhall to the bank was ten thousand dollars; nothing else was due, to my knowledge; I think ten thousand dollars was the amount.

J. S. Fox.

Subscribed and sworn to before me, at Jersey City, March 19th, 1867.

W. B. WILLIAMS, M. C. 10

Stipulation.

[Filed February 4, 1868.]

It is agreed that the following lots, described in the mortgage made by Moses B. Bramhall and wife, to the Mechanics and Traders Bank, dated 15th of May, 1861, for \$10,000 viz: lots No's 10, 11, and 14, in block No. 13, and lot No. 15 in block No. 14, on map of G. I. Van Horne, civil engineer, filed in the clerk's office of Hudson county, and lots No. 31 and 32, on Clerk street, and lots No's 47 and 48, on Ocean street, in Sherwood, are included in the deed made by Moses B. Bramhall and wife to Henry M. Kinne, and by said Kinne and wife to James T. Worthington, the above named defendant.

PETER BENTLEY,
Solicitor for defendants.

ARCH. K. BROWN,
Solicitor of complainant.

Opinion.

M. B. Bramhall being indebted to the Mechanics and Traders Bank of Jersey City, in the sum of thirty-six thousand dollars, on the 18th of May, 1857, gave his bond, secured by mortgage on eighteen lots in Hudson county, and payable July 1st, 1862, for ten thousand dollars, as collateral security for that amount of his debt; he also gave other collateral securities which from time to time were given up by the bank upon payments of portions of the debt, until February 19th, 1866, when the indebtedness of Bramhall to the bank was ten thousand dollars; on that day the bank, at Bramhall's request, assigned the bond and mortgage to James Hoy, the complainant. The amount paid by him to the bank for the assignment was seventy-five hundred dollars; this amount the bank credited to Bramhall and the remainder of his debt being twenty-five hundred dollars, he afterwards paid the bank. The whole transaction was with the knowledge and assent of Bramhall, who owed Hoy a sum much greater than the whole amount of the mortgage. The bank assigned the whole mortgage debt to Hoy, who paid nothing but the seventy-five hundred dollars on it, he neither paid Bramhall any money, or credited him, or agreed to credit him, anything on account of the debt owing by him.

Before this assignment, Bramhall, by three deeds, dated on the 30th and 31st days of May, 1865, had conveyed eight of these eighteen lots to H. M. Kinne, with full covenants, stating them to be "subject nevertheless to the payment of all existing liens now on said premises." Kinne subsequently conveyed these lots to the defendant, James T. Worthington, who now holds the title. The deeds to Kinne and Worthington included ten lots not in the mortgage to the bank, and the conveyance to Kinne, was intended as a mortgage to secure to him the payment of twenty-six thousand dollars, due from Bramhall to him.

After the assignment of the mortgage to him, Hoy, at Bramhall's request, had released from the mortgage five lots sold by Bramhall, and had received the whole of the consideration money, being fifteen hundred and fifty dollars, which

he has not credited on the the mortgage debt, but claims the right to appropriate on the unsecured debt from Bramhall to him. Hoy knew at the time he took the assignment of the mortgage that the most part of the mortgaged premises had been disposed of by Bramhall.

The defendant, Worthington, contends that to relieve the lots contained in his deed from the encumbrance of the Hoy mortgage, he has a right to have the other collaterals held by the bank accounted for and a proper part applied to the payment of the mortgage to the bank. That the mortgage 10 in the hands of the complainant can only be a lien for the sum actually advanced, and that he is entitled to have the fifteen hundred and fifty dollars received by Hoy, credited on the mortgage, and to have any part of the mortgaged premises held by Bramhall or sold by him after the deeds to Kinne, sold first to pay the balance due on the complainant's mortgage.

There is no rule of law or equity that prevents a creditor holding several collateral securities from disposing of any of them or returning any of them to the debtor, without the 20 necessity of inquiring whether there are any claims on either of them by subsequent creditors; and such disposition or return will not affect the creditors' right to the security retained. In the case of a subsequent mortgage upon part of the mortgaged premises, a release of the part not mortgaged will not affect the privity of the mortgage on the other part, unless the mortgagee had actual notice at the time of the release of the existence of the subsequent mortgage; constructive notice from recording or registry is not sufficient to postpone him. 30

In this case the validity of the bank mortgage cannot be affected by any disposition of the other collaterals, as it is not alleged or be shown that the officers of the bank knew or had any notice of the lien of the defendants. I do not mean to say that it would be affected with such knowledge.

This mortgage was given and held as collateral security for the debt of Bramhall to the bank. It was held in no sense as a pawn or pledge, and if the bank had sold it they must have accounted to Bramhall for the face of the security, and not merely for the price received. Being held as 40

- collateral security, if that debt was paid by Bramhall the mortgage would be satisfied, and the defendant, Worthington, would hold free from the lien. Bramhall had paid all the debt except ten thousand dollars, at the time of the transfer to Hoy, and has paid twenty-five hundred dollars of the debt since. So the only amount unpaid to be recovered on this mortgage, is seventy-five hundred dollars, and the interest on it. Hoy paid that sum for the assignment, and the bank credited it on Bramhall's note for ten thousand dollars, and, by agreement of all parties, retained Bramhall's note for the balance of twenty-five hundred dollars, which he afterwards paid. It is not necessary here to consider whether a good assignment of this mortgage for the full amount mentioned in it, could not have been made by an agreement with Bramhall and the parties to the assignment, that Hoy should give the full amount by paying to the bank seventy-five hundred dollars in cash, and crediting Bramhall twenty-five hundred dollars on his unsecured indebtedness; the bank taking Bramhall's unsecured note for the balance.
- 20 No such agreement was made; as it is, Bramhall has paid one-fourth of this debt, and he is now called on to pay the whole. If he had agreed to the transaction in this shape it would be clearly usurious and void. A mortgagee may sell a mortgage at any price below its face, but if the sacrifice is paid by the mortgagor, and this is known to the assignee at the time, it is a mere cover for usury.

The mortgage in the hands of the complainant as against Worthington, can only be a lien for seventy-five hundred dollars, with interest—the only part of the mortgage debt

30 due at the date of the deed to Kinne, now unpaid.

The clause in the deeds to Kinne, "subject to the payment of all liens now on said premises," cannot be construed into a covenant to pay the liens. It is only a limitation of the covenants of warranty and against encumbrances. The effect of such a deed is the same as that of a deed of bargain and sale of part of mortgaged premises—it makes the part conveyed subject to its proper proportion of the encumbrances. The rule that the part of mortgaged premises last conveyed must be first sold, only applies where the convey-

40 ances are by deeds with warranty or covenants against en-

cumbrances. And in this case the clause above mentioned expressly provides for the payment of liens by the lots conveyed to Kinne. Bramhall had the right and the power in conveying these lots, either absolutely or by way of mortgage, to stipulate that they should bear their part of the bank mortgage claim, so as to relieve, to that extent, the lots retained by him in order that he might have something wherewith to pay or secure his other creditors. With this express provision, Worthington's situation or equity is no stronger, because he is a mortgagee whom Bramhall is bound to pay 10 out of any of his property. Worthington is entitled to have credited on the mortgage of the complainant so much of the sum received by Hoy on the release of the five lots, as is their proportionate share of that mortgage debt. The excess over that amount is the amount due to Bramhall as the price of his equity of redemption in those lots which he had a right to sell and appropriate.

It must be referred to a master to ascertain the value of the several parcels of the mortgaged premises held by the several defendants, and of the lots so released, and the 20 amount due upon the mortgage, that the part of the mortgage money due from each owner may be paid by him, or his premises sold therefor.

The deed to Kinne, having been given as a mortgage, Worthington must be treated as a mortgagee; as his mortgage includes lots not in the complainant's mortgage, it is claimed that he must resort to those before he can compel the complainant to credit any of the proceeds of the five lots released on this mortgage. The rule of equity in such case will not require such mortgagee to file a cross-bill. When 30 a mortgagee, having two securities to which to resort, proceeds against a subsequent encumbrancer having only one, he may, in certain cases, be compelled to exhaust first his remedy against the security on which he alone has a lien, but when he is proceeded against, there is no precedent, and there ought to be none, to preclude him from setting up his claim in the suit into which he is dragged, but in such case the remedy, if any ought to be had, is by subrogating the party having but one security to the rights of the other in his second security, after his own debt is paid in full. 40

Interlocutory Decree.

[Filed May 25, 1868.]

Upon opening this matter to the court by Stephen B. Ransom, of counsel with the complainant, in the presence of Isaac W. Scudder, of counsel with the defendants, James T. Worthington and wife, and upon reading the bill, answer, replication, and proofs in this cause, and hearing the arguments of counsel thereon, and the said bill having heretofore been taken as confessed against the said defendants, 10 Moses B. Bramhall, and Emily his wife, Sebastien Robert, and Elizabeth his wife, William H. Bumsted, and Martha his wife, and the Chancellor having taken time to consider of the same—

It is now, to wit, on this twenty-fifth day] of May, in the year of our Lord one thousand eight hundred and sixty-eight, on motion of Stephen B. Ransom, of counsel with the complainant, ordered, adjudged, and decreed, that the said complainant is entitled to receive, upon his bond and mortgage, in his bill of complaint mentioned and set forth, the 20 principal sum of seven thousand five hundred dollars, with legal interest thereon, from the nineteenth day of February, in the year of our Lord one thousand eight hundred and sixty-six, the date of the assignment of the said mortgage by the said the Mechanics and Traders Bank to the said complainant, and no more.

And that the said defendant, James T. Worthington, is entitled to have credited on the said mortgage of the said complainant, so much of the sum received by the complainant, on the release of the five lots of land mentioned in the 30 bill of complaint and in the evidence in this cause, from the lien of his said mortgage, as is the proportionate share of the said five lots of land mentioned in the said bill of that mortgage debt.

And also, that the lots of land mentioned and described in the deeds from the defendant, Moses B. Bramhall, to the said Henry M. Kinne, and by the said Henry M. Kinne conveyed to the said defendant, James T. Worthington, and

embraced in complainant's said mortgage, are subject to the payment, together with all other property embraced in the complainant's said mortgage, of their proper proportion of the amount due upon the said complainant's said mortgage. And it is further ordered, adjudged, and decreed, that the deeds from the said Moses B. Bramhall and wife to the said Henry M. Kinne, for the said lots of land in the said deed mentioned and described, are, in truth and in fact, mortgages only, and are to be taken and treated as such. And it is further ordered, that it be referred to Washington B. Williams, esquire, one of the masters of this court, to take an account of what is due to the complainant for principal and interest upon his said mortgage; and also what is due, if anything, to the said defendant, James T. Worthington, upon his said mortgage deeds, and to ascertain the value of the several parcels of the mortgaged premises held by the several defendants in this cause, and of the lots released by the said complainant from the lien of his said mortgage, to the end that the part of the said principal and interest moneys found to be due to the complainant on his said mortgage from each owner of the said several parcels of the said mortgaged premises may be paid by him, or his premises sold therefor. 10 20

And that all further equity and direction be reserved till the coming in of the said report.

A. O. ZABRISKIE, C.

We consent to the above decree.

ARCH. K. BROWN,
Solicitor of complainant.

P. BENTLEY, 30
Solicitor for defendant, Worthington.

Appeal from Interlocutory Decree.

[Filed June 2, 1868.]

The complainant hereby appeals from so much of the interlocutory decree made in this court, in the above stated cause, as decrees that the complainant is entitled to receive, upon his bond and mortgage in his bill of complaint mentioned and set forth, the principal sum of seven thousand five hundred dollars, with legal interest thereon from the nineteenth day of February, in the year of our Lord one thousand
10 eight hundred and sixty-six, the date of the assignment of the said mortgage by the Mechanics and Traders Bank to the said complainant, and no more. And as decrees that the said defendant, James T. Worthington, is entitled to have credited on the said mortgage of the said complainant, so much of the sum received by the complainant on the release of the five lots of land, mentioned in the bill of complaint, and in the evidence in said cause, from the lien of his mortgage, as is the proportionate share of the said five lots of land mentioned in the said bill of that mortgage debt, to
20 the Court of Errors and Appeals in the last resort in all causes.

Dated May 28th, 1868.

ARCH. K. BROWN,

Solicitor and of counsel with complainant.

I conceive there is good cause for appeal in the above stated cause.

STEPHEN B. RANSOM,

Of counsel with complainant.

Petition of Appeal.

[Filed June 6, 1868.]

Between

James Hoy, *appellant*,*and*

Moses B. Bramhall, and Emily Bramhall

his wife, Sebastien Robert, and Eliza-

beth Robert his wife, William H. Bum-

sted, and Martha Bumsted his wife,

and James T. Worthington, and ———

Worthington his wife, *appellees*.} *On bill, &c.*

10

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

The humble petition of James Hoy, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by an interlocutory decree, made in the Court of Chancery by his Honor Abraham O. Zabriskie, Chancellor of the state of New Jersey, bearing date the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, wherein the said James 20 Hoy was complainant, and Moses B. Bramhall, and Emily Bramhall his wife, Sebastien Robert, and Elizabeth Robert his wife, William H. Bumsted, and Martha Bumsted his wife, and James T. Worthington, and ——— Worthington his wife, were defendants, in this respect, to wit, that the said decree adjudges that the said complainant, James Hoy, is entitled to receive upon his bond and mortgage, in his bill of complaint mentioned and set forth, the principal sum of seven thousand five hundred dollars, with the legal interest thereon, from the nineteenth day of February, in the year of 30 our Lord one thousand eight hundred and sixty-six, the date of the assignment of the said mortgage by the said the Mechanics and Traders Bank to the said complainant, and no more; and that the said defendant, James T. Worthington,

was and is entitled to have credited on the said mortgage of the said complainant, so much of the sum received by the said complainant on the release of the five lots of land mentioned in the bill of complaint and in the evidence in the said cause, from the lien of his said mortgage, as is the proportionate share of the said five lots of land mentioned in the said bill of that mortgage.

And your petitioner humbly appeals from those parts of the said decree of the Chancellor which decrees as aforesaid, 10 upon the ground that the same are erroneous, for that the said James Hoy, in law and in equity, is entitled to receive upon his said bond and mortgage the whole of the principal sum of ten thousand dollars, mentioned in the said bond and mortgage, and for that the said James T. Worthington is not entitled to have credited on the said mortgage of the said James Hoy, any of the moneys received by the said James Hoy on the release of the lots of land, mentioned in the bill and evidence in this cause, from the lien of his said mortgage.

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

Dated June 4th, 1868.

ARCH. K. BROWN,

Solicitor and of counsel with complainant or appellant.

Answer.

[Filed June 6, 1868.]

30 The respondent, James T. Worthington, not confessing or acknowledging all or any of the matters to be true as in and by the said petition of appeal are contained and set forth, for answer thereunto says—that he believes it to be true, that such decree as is complained of by the appellant, was made by the Court of Chancery, as in the said petition of appeal is set forth, but as to the date, substance, and contents

thereof, this respondent humbly craves leave to refer thereto, when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and justice, and he therefore humbly prays that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to this respondent.

PETER BENTLEY,

*Solicitor and of counsel with the respondent,
James T. Worthington.*

10

Complainant's Exhibits.

EXHIBIT C 1.—BOND.

Know all men by these presents, that I, Moses B. Bramhall, of the city of Rahway, in the county of Union, and state of New Jersey, am held and firmly bound unto the Mechanics and Traders Bank of Jersey City, a corporate body under the laws of the state of New Jersey, at Jersey City, in said state, in the sum of twenty thousand dollars, lawful money of the United States of America, to be paid to the said the Mechanics and Traders Bank of Jersey City, 20 their successors or assigns. For which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with my seal, dated the fifteenth day of May, one thousand eight hundred and sixty-one.

The condition of the above obligation is such, that if the above bounden Moses B. Bramhall, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid unto the above named the Mechanics and Traders Bank of Jersey City, their successors or assigns, the just and full sum 30 of ten thousand dollars, money aforesaid, on or before the first day of July, eighteen hundred and sixty-two, with interest thereon at the rate of seven per cent. per annum, then

the above obligation to be void, otherwise to remain in full force and virtue.

M. B. BRAMHALL. [L. S.]

Sealed and delivered in the presence of

E. Y. ROGERS.

EXHIBIT C 2.—MORTGAGE.

Mortgage given by Moses B. Bramhall and Emily his wife, to the Mechanics and Traders Bank of Jersey City, a body corporate under the laws of the state of New Jersey, 10 dated May 15th, 1861, conveying, for the consideration of \$10,000, to the party of the second part, their successors and assigns, all the several lots of land particularly described in the bill of complaint, with the proviso set out in the bill of complaint.

EXHIBIT C 3.—ASSIGNMENT OF THE FOREGOING BOND AND MORTGAGE.

Know all men by these presents, that we, the Mechanics and Traders Bank, a body corporate of the state of New Jersey, of the first part, in consideration of the sum of seven 20 thousand five hundred dollars, lawful money of the United States, to us in hand paid by James Hoy, of the city of New York, in the state of New York, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, unto the party of the second part, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said party of the second part, a certain indenture of mortgage, bearing date the fifteenth day of May, one thousand eight 30 hundred and sixty-one, made by Moses B. Bramhall and wife to the said the Mechanics and Traders Bank, to secure the sum of ten thousand dollars, on the first day of July, in the year eighteen hundred and sixty-two, with interest; which mortgage is duly recorded in the clerk's office of the county of Hudson, state of New Jersey aforesaid, in Liber

twenty-five (25) of Mortgages, on pages 319, &c. Together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest. To have and to hold the same unto the said party of the second part, his heirs, executors, administrators, and assigns, for his and their own proper use, benefit, and behoof forever, subject only to the proviso in the said indenture of mortgage mentioned; and we do hereby make, constitute, and appoint the said party of the second part our true and lawful attorney, irrevocable in our name or otherwise, but at his own proper 10 costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as we might or could do, if these presents were not made.

In witness whereof, the said Mechanics and Traders Bank have hereunto caused their corporate seal to be affixed, and caused this indenture to be signed by their president and attested by their cashier, this nineteenth day of February, eighteen hundred and sixty-six.

JAMES S. DAVENPORT, [L. s.] 20
Vice President.

Attest: J. S. Fox, *Cashier.*

State of New Jersey, Hudson county, ss.—Be it remembered, that on this twentieth day of February, eighteen hundred and sixty-six, personally appeared before me, a commissioner of deeds in and for Hudson county, John S. Fox, cashier of the said the Mechanics and Traders Bank, who, being duly sworn according to law, on his oath saith—that he subscribed his name to the within indenture as an attesting witness on the day the same bears date; and being well 30 acquainted with the common seal of the said the Mechanics and Traders Bank, knows that the same was and is thereto set; and that the said president signed, sealed, and delivered the same as his voluntary act and deed.

WM. BRINKERHOFF,
Com'r of Deeds.

Defendants Exhibits.

EXHIBIT D 1.

Deed from Moses B. Bramhall and Emily his wife, of Rahway, Union county, New Jersey, to Henry M. Kinne, of the city, county, and state of New York, dated May 30th, 1865, for the consideration of \$6200, Conveys by bargain and sale in fee—

All those certain lots of land, situate in the township of Bergen, county of Hudson, and state of New Jersey, which, 10 on the map entitled "valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne C. E. and town surveyor," June 1st, 1863; and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered ten (10), eleven (11), and fourteen (14), in block numbered thirteen (13); also lot numbered fifteen (15), in block numbered fourteen (14), as laid down on said map; also all those certain lots of land and premises, situate in the township, county, and state aforesaid, laid down on a map filed in the clerk's 20 office of Hudson county, entitled "map of Sherwood, Hudson county, New Jersey, surveyed and laid out by Clerk and Bacot, city surveyors," are known and distinguished on said map by the numbers (32) thirty-two, and thirty-four (34), lying between the plankroad to Newark and Beach street, and described as follows: beginning at a point on the westerly side of said plankroad, where the line dividing lots numbered thirty and thirty-two intersects said plankroad, and running thence, westerly, along line of lot numbered thirty, about one hundred feet; thence, northerly, along line 30 of lot No's thirty-one and thirty-three, about fifty feet; thence, easterly, along the line of lot numbered thirty-six, about one hundred feet; thence, southerly, along said plankroad about fifty feet, to the place of beginning. Also a lot of land known and distinguished on said last mentioned map, by the number forty-four (44), lying between the plankroad to Newark and Beach street, and is described as follows: beginning at a point on the westerly side of said plankroad

where the line dividing lots No. (42 and 44), forty-two and forty-four intersects said plankroad, and running thence, westerly, along line of lot numbered forty-two about one hundred feet; thence, northerly, along line of lots numbered forty-three about twenty-five feet; thence, easterly, parallel with the line of first above described, about one hundred feet; and thence, southerly, along said plankroad about twenty-five feet to the point of beginning. Also two other lots of land known and distinguished on said last mentioned map by the numbers thirteen (13), and fifteen (15), lying 10 between the plankroad to Newark and Communipaw lane. Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and 20 singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever, to his and their own proper use, benefit, and behoof forever. Subject, however, to the payment by said grantee of all existing liens upon said premises.

With covenants of seizin in fee, subject as aforesaid; for quiet enjoyment, except such persons claiming under and by virtue of their proper heirs upon said lots.

Against incumbrances; for further assurances; to warrant 30 and defend, subject as aforesaid.

Acknowledged before Archibald K. Brown, M. C., June 1st, 1865, and recorded in Hudson county clerk's office, October 21st, 1865, in Liber 125 of Deeds, page 299.

EXHIBIT D 2.

Deed from Moses B. Bramhall, and Emily his wife, of Rahway, in the county of Union, and state of New Jersey, to Henry M. Kinne, of the city, county, and state of New York, dated May 31st, 1865, for consideration of \$7000. Conveys by bargain and sale in fee—

- All those certain lots of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, and which, on a map entitled “valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863,” duly affiled of record in the clerk’s office of the county of Hudson, are known and distinguished as lots numbered thirty-one (31), and thirty-two (32), forty-seven (47), and forty-eight (48), in block numbered eight (8), as laid down on said map, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.
- And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever, to his and their own proper use, benefit, and behoof forever. This conveyance is made subject, nevertheless, to the payment by said party of the second part, of all existing liens on said premises.

With covenants of seisin in fee, subject to the liens aforesaid, for quiet enjoyment. Except such persons claiming under and by virtue of their proper liens on said premises; against encumbrances; for further insurances; to warrant and defend, subject to the above stated liens.

Acknowledged before Arch. K. Brown, esq., M. C., June 1st, 1865. Recorded in Hudson county clerk’s office, October 21st, 1865, in Book 125 of Deeds, page 302.

EXHIBIT D 3.

Deed from Moses B. Bramhall, and Emily his wife, to Henry M. Kinne. Dated May 30th, 1865. For consideration of \$6000. Conveys by bargain and sale in fee—

All those two certain lots of land and premises, situate, lying, and being at Sherwood, in the town of Bergen, in the county of Hudson, and state of New Jersey, which, on a map of the said place, filed in the clerk's office of said county of Hudson, are known and distinguished as lots numbered thirteen (13), fronting on Vreeland street, and eighteen (18),¹⁰ fronting on Clerk street; each lot being ninety-four feet wide in front and in rear, and one hundred and seventy feet deep on each side; and the said two lots hereby intended to be conveyed, taken together as one plot, are bounded as follows, viz: beginning on the easterly line of Clerk street, at a point distant one hundred and eighty-eight feet southerly from the southerly line of Bramhall avenue; thence running easterly, parallel with Bramhall avenue, three hundred and forty (340) feet; thence southerly, along the westerly line of Vreeland street, ninety-four (94) feet; thence westerly,²⁰ parallel with Bramhall avenue, three hundred and forty feet to the easterly line of Clerk street; thence northerly, along the easterly line of Clerk street, ninety-four (94) feet to place of beginning. Also, all those two lots, tracts, or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the township of Bergen, in the county of Hudson, and state of New Jersey, which said two lots are known and designated, on a map of property called "Claremont," made by Clerk and Bacot, city surveyors, and filed in the office of the clerk of the said county of Hudson, as³⁰ lots numbered four (4) and eleven (11), on block numbered six (6), as laid down and described on said map; each of said last two lots being one hundred feet in width in front and rear, by one hundred and twenty-five feet in depth on each side. Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also, all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatso-⁴⁰

ever, as well in law as in equity, of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever, to his and their own proper use, benefit, and behoof forever. The above described premises are conveyed, subject, nevertheless, to the payment of all existing liens now on said premises.

- 10 With covenants of seisin in fee, subject to all existing liens; for quiet enjoyment, except those claiming under and by virtue of their proper liens upon the said lots; against encumbrances; for further assurances; and to warrant and defend, subject as above mentioned. Acknowledged June 1st, 1865, before Arch. K. Brown, M. C. Recorded in Hudson county clerk's office, October 21st, 1865, in book 125, page 297.

EXHIBIT D 4.

- Deed from Henry M. Kinne, and Elizabeth his wife, of
 20 the city of New York, to James T. Worthington, of Cincinnati, in the state of Ohio, dated January 4th, 1866. Convey by bargain and sale in fee—

All those certain lots of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, which, on the map entitled "valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863," and filed of record in the office of the clerk of Hudson county, are known and distinguished as lots numbered
 30 ten (10), eleven (11), and fourteen (14), in block numbered thirteen (13.) Also lot numbered fifteen (15), in block numbered fourteen (14), as laid down on said map. Also all those certain lots of land and premises, situate in the township, county, and state aforesaid, laid down on a map filed in the clerk's office of Hudson county, entitled "map of Sherwood, Hudson county, New Jersey, surveyed and laid out by Clerk and Bacot, city surveyors," are known and

distinguished on said map by the numbers (32) thirty-two and (34) thirty-four, lying between the plankroad to Newark and Beach street, and described as follows: beginning at a point on the westerly side of said plankroad, where the line of dividing lots numbered thirty and thirty-two intersects said plankroad, and running thence, westerly, along line of lot numbered thirty about one hundred feet; thence, northerly, along line of lots numbers thirty-one and thirty-three about fifty feet; thence, easterly, along the line of lot numbered thirty-six about one hundred feet; thence, southerly, along said plankroad about fifty feet, to the place of beginning. Also two other lots of land, known and distinguished on said last mentioned map by the numbers thirteen (13) and fifteen (15), lying between the plankroad to Newark and Communipaw lane. Also all those two certain lots of land and premises, situate, lying, and being at Sherwood, in the town of Bergen, in the county of Hudson, and state of New Jersey, which, on a map of the said place, filed in the clerk's office of said county of Hudson, are known and distinguished as lots numbered thirteen (13), fronting on Vreeland street, and eighteen (18), fronting on Clerk street, each lot being ninety-four feet wide in front and in rear, and one hundred and seventy feet deep on each side; the said two lots, taken together as one plot, are bounded as follows, viz: beginning on the easterly line of Clerk street, at a point distant one hundred and eighty-eight feet southerly from the southerly line of Bramhall avenue; thence, running easterly, parallel with Bramhall avenue, three hundred and forty (340) feet; thence, southerly, along the westerly line of Vreeland street, ninety-four (94) feet; thence, westerly, parallel with Bramhall avenue, three hundred and forty (340) feet to the easterly line of Clerk street; thence, northerly, along the easterly line of Clerk street, ninety-four (94) feet to the place of beginning. Also all those two lots, tracts, or parcels of land and premises, hereinafter particularly described, situate, lying, and being in the township of Bergen, in the county of Hudson, and state of New Jersey, which said two lots are known and designated on a map of property called "Claremont," made by Clerk and Bacot, city surveyors, and filed in the office of the clerk of the said county of Hudson, as lots

numbered four (4) and eleven (11), on block numbered six (6), as laid down and described on said map; each of said last two lots being one hundred feet in width in front and rear, by one hundred and twenty-five feet in depth on each side. And also all those certain lots of land, situate in the township of Bergen, in the county of Hudson, and state of New Jersey, and which, on a map entitled "valuable lots at Sherwood, Bergen Hights, Hudson county, New Jersey, re-surveyed by Garret I. Van Horne, C. E. and town surveyor, June 1st, 1863," duly filed of record in the clerk's office of the county of Hudson, are known and distinguished as lots numbered thirty-one (31) and thirty-two (32), forty-seven (47), and forty-eight (48), in block numbered eight (8), as laid down on said map, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

Habendum in fee. Special covenant against acts of grantor.

Acknowledged January 10th, 1866, before Lucius Pitkin, notary public of New York. Recorded in Hudson county clerk's office, January 15th, 1866, in Liber 129 of Deeds, page 20.

EXHIBIT D 6.

\$6250.

New York, June 20th, 1865.

Nine months after date I promise to pay to the order of Henry M. Kinne, esq., six thousand two hundred and fifty dollars, for value received; payable at Bank of Commonwealth, New York, with interest.

No. 4. Due 20th, 23d March, '66.

M. B. BRAMHALL.

Internal revenue stamp, $\$3_{100}^{15}$.

Cancelled "H. M. K.," June 20th, 1865.

For and in consideration of the sum of one dollar to me in hand paid, I guarantee the collection of the within note.

H. M. KINNE.

Internal revenue stamp, cancelled H. M. K., five cents.

EXHIBIT D 7.

\$6250.

New York, June 20th, 1865.

Three months after date I promise to pay to the order of Henry M. Kinne, esq., six thousand two hundred and fifty 10 dollars, for value received; payable at Bank of Commonwealth, New York, with interest.

No. 1. Due 20th, 23d Sept. '65.

M. B. BRAMHALL.

Internal revenue stamp, $\$3_{100}^{15}$.

Cancelled, "H. M. K.," June 20th, 1865.

For and in consideration of the sum of one dollar to me in hand paid, I hereby guarantee the collection of the within note.

H. M. KINNE.

Five cent internal revenue stamp.

20

Cancelled H. M. K.

EXHIBIT D 8.

\$6250.

New York, June 20th, 1865.

Twelve months after date I promise to pay to the order of Henry M. Kinne, esq., six thousand two hundred and fifty dollars, for value received; payable at Bank of Commonwealth, New York, with interest.

No. 3. Due 20th, 23d June, '66.

M. B. BRAMHALL.

Internal revenue stamp, $\$3_{100}^{15}$.

Cancelled "H. M. K.," June 29th, 1865.

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For and in consideration of the sum of one dollar to me paid, I guarantee the collection of the within note.

H. M. KINNE.

Five cent internal revenue stamp.
Cancelled, "H. M. K."

EXHIBIT D 9.

\$6250.

New York, June 20th, 1865.

Six months after date I promise to pay to the order of Henry M. Kinne, esq., six thousand two hundred and fifty dollars, for value received; payable at Bank of Commonwealth, New York, with interest.

No. 2. Due 20th, 23d December, '65. M. B. BRAMHALL.

10 Internal revenue stamp, $\$3\frac{15}{100}$.

Cancelled "H. M. K." June 20th, 1865.

For and in consideration of the sum of one dollar to me in hand paid, I guarantee the collection of the within note.

H. M. KINNE.

Five cent internal revenue stamp.

Cancelled, "H. M. K."

EXHIBIT D 5.

Whereas, Henry M. Kinne, of the city and state of New York, survivor of Henry L. Gilbert, lately composing the firm of Kinne & Co., is indebted to Minot C. Morgan, representing Vachel Worthington, of the city of Cincinnati, Ohio, in the sum of sixteen thousand and seven hundred dollars, and to James T. Worthington, of said city of Cincinnati, in the sum of ten thousand and eighty-three dollars and sixty-two cents, said sums being this day agreed upon and liquidated for the price and value of certain sums of 10 money and securities, pledged and deposited by the said Minot C. Morgan and James T. Worthington with the said firm of Kinne & Co., as margin or collateral to certain transactions in stocks made by the said firm of Kinne & Co., for and on account of the said Minot C. Morgan as aforesaid, and the said James T. Worthington.

And whereas, all other matters of account, claim, or indebtedness of every other name or nature to this date, between the said Henry M. Kinne, survivor of said Kinne & Co., and the said Minot C. Morgan, representing the said 20 Vachel Worthington, and the said James T. Worthington, have been fully arranged and adjusted.

And whereas, the said Henry M. Kinne has this day transferred to the said James T. Worthington, four several promissory notes, made by M. B. Bramhall to the order of Henry M. Kinne, each for the sum of six thousand two hundred and fifty dollars, with interest thereon, and dated New York, June 20th, 1865, and payable in three, six, nine, and twelve months respectively from date, at Bank of Commonwealth, New York; for the purpose of collecting the said notes, and 30 applying the proceeds thereof to the payment of the said several sums due, as aforesaid, to the said Minot C. Morgan, representing the said Vachel Worthington, and to the said James T. Worthington, all costs, charges, and expense, including attorneys fees, necessary to said collection, to be chargeable to and paid by the said Henry M. Kinne. The said Henry M. Kinne hereby covenanting and guaranteeing the payment of the said notes, and that the proceeds thereof shall and will pay to the said Minot C. Morgan, representing the said Vachel Worthington, the said sum of sixteen thou- 40

sand seven hundred dollars, with interest thereon from this date, and to the said James T. Worthington, the said sum of ten thousand and eighty-three dollars and sixty-two cents, with interest thereon from this date.

And whereas, Moses B. Bramhall, the maker of said notes, and for the purpose of securing the payments thereof, heretofore conveyed to the said Henry M. Kinne, certain lots and parcels of land situate and being in the county of Hudson, and state of New Jersey, particularly described in three
10 several deeds, recorded in the office of the clerk of the said county of Hudson, New Jersey, in Book No. 125, pages 297, 299, 302, and _____ of deeds of said county, but subject to certain encumbrances, and liens existing at the time as referred to and mentioned in said conveyances, which said property is this day assigned and conveyed by the said Henry M. Kinne and wife, to the said James T. Worthington, for his use, and that of the said Minot C. Morgan or Vachel Worthington, in securing and collecting the payment of the said four promissory notes, as fully and completely as the
20 said Henry M. Kinne held the same therefor; but it being hereby expressly agreed and understood that any taxes, levy, assessments, costs, or charge on or against the said several parcels of land, or any part thereof, which it may be necessary and lawful for the said James T. Worthington to pay, or cause to be paid, in order to protect the said premises from further encumbrance, or cause the security thereof for the payment of the said notes to remain as full and unimpaired as at present, shall be chargeable to and repaid by the said Henry M. Kinne.

30 Now, therefore, the said Henry M. Kinne, survivor as aforesaid, and also individually for and in consideration of the premises and of the sum of one dollar to him paid, the receipt whereof is hereby acknowledged, doth hereby covenant and agree with the said Minot C. Morgan and Vachel Worthington and the said James T. Worthington, that the said four promissory notes, made by the said M. B. Bramhall, and transferred to the said James T. Worthington as aforesaid, will be fully paid and discharged, and that from out of and by the said four promissory notes, the said
40 Minot C. Morgan or Vachel Worthington shall realize and

receive the said sum of sixteen thousand and seven hundred dollars in full, with interest from the date hereof; and the said James T. Worthington shall realize and receive the said sum of ten thousand and eighty-three dollars and sixty-two cents in full, with interest thereon from the date hereof; it being expressly intended hereby to guarantee by the said Henry M. Kinne the collection and payment to them from said notes the said several sums, with interest as aforesaid, over and above and beyond all just, necessary, and lawful costs, charges, and expenses of collection, including custom- 10
ary and proper attorney fees, and all just, necessary, and lawful expenses incurred in protecting the said real estate security from impairment.

And upon and for the considerations aforesaid, it is further covenanted and agreed between the said parties, that in case the said Minot C. Morgan or Vachel Worthington and the said James T. Worthington, shall not realize and receive the said sum of money, with interest as aforesaid, from said notes, after deducting all of said costs, charges, fees, and other above mentioned expenses, then the said Henry M. 20
Kinne shall and will, on demand, pay or cause to be paid to the said parties the amount or proportion of said sums remaining unpaid to each or either of them.

And the said James T. Worthington, for and in consideration of the premises, and the sum of one dollar to him paid, the receipt whereof is acknowledged, hereby covenants and agrees with the said Henry M. Kinne, that in case said notes are paid and collected in full, he will account for and pay over to the said Henry M. Kinne, without delay, any and all surplus that may remain in his hands after paying the said 30
several sums of money, with interest thereon as aforesaid, to the said Minot C. Morgan or Vachel Worthington and to himself, and all costs, charges, and expenses as aforesaid, and that he will, upon the full payment of said notes, and all charges, costs, and expenditures lawfully chargeable upon the said real estate security, reconvey to the said Moses B. Bramhall all or any portion of the said real estate this day transferred and conveyed by said Kinne to said Worthington, as above recited, which may remain unappropriated, to the extinguishment of the said promissory notes. 40

And for and in consideration of the transfer of the said several promissory notes and the conveyance of the said several lots or parcels of land to the said James T. Worthington by the said Henry M. Kinne, for the purposes aforesaid, and of the contract of guaranty herein contained, and of the premises, the said Minot C. Morgan, for himself and the said Vachel Worthington and the said James T. Worthington, jointly and severally covenant and agree with the said Henry M. Kinne, that they and each of them will for-
 10 bear and desist from in anywise demanding or being entitled to demand, from the said Henry M. Kinne, any payment whatsoever, of or on account of the said above mentioned sums of money, until after all of the said four promissory notes shall have become payable, and until after legal efforts shall have been made to collect the same from said Moses B. Bramhall, and out of said security and found unavailing, but this covenant shall be deemed fully satisfied and discharged upon a sale of said real estate, by order of court, together with a return of an execution unsatisfied, and that
 20 they will pass to the credit of the said Henry M. Kinne, on account of said sums so due as aforesaid, all and every part of the proceeds of the said four promissory notes immediately upon the receipt thereof.

In witness whereof, the said parties have hereunto and to a duplicate hereof, set their hands, in the city of New York, this the third day of January, in the year eighteen hundred and sixty-six.

HENRY M. KINNE, [L. S.]
 as survivor, &c., and individually.
 JAMES T. WORTHINGTON. [L. S.]
 M. C. MORGAN. [L. S.]
 VACHEL WORTHINGTON, by
 M. C. MORGAN, Att'y. [L. S.]

30

Signed, sealed, &c., in the presence of

ROB'T L. WILLIAMS,
 G. W. RYERSON.