

IN CHANCERY OF NEW JERSEY.

Between GEORGE W. CASSEDY & als,

Complainants,

and

WILLIAM A. BIGELOW & als, Defendants.

Bill for Injunction and Relief.

[Filed, February 3, 1874.]

IN CHANCERY OF NEW JERSEY.

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey:

Humbly complaining, show unto your Honor, your orators, George W. Cassidy, Francis T. Lilliendahl, Virgil de Escoriaza, and Simon Bernheimer, trustees, as herein-after mentioned, the said Simon Bernheimer in his own right, The Marine National Bank, a corporation created under the laws of the United States, The National Park Bank, a corporation created in like manner, Theodore B. Woolsey, Rudolph C. Burlage, and Frederick Rose, Charles Spielmann, The Hanover National Bank, a corporation created under the laws of the United States, The Union Bank of Jersey City, a corporation created under the laws of the State of New Jersey, Raphael R. Barthold, Theodore Rose, Virgil de Escoriaza, in his own right, Ladislao de Escoriaza, William Kramer, David Jones, Watson E. Case, and Isaac Bernheimer, that John Roemelt, and Andrew Leicht, of the county of Hudson, in said state, being seized in fee of certain lands situate now in Jersey City, in said county, which are hereinafter described and mortgaged to the said George W. Cassedy, Francis T.

Lilliendahl, Virgil de Escoriaza, and Simon Bernheimer, trustees, gave a mortgage on a part thereof, as hereinafter is stated and set forth, to one William A. Bigelow. The wife of the said John Roemmelt, and the wife of the said Andrew Leicht joined in the said mortgage, and by their acknowledgment barred their dower in the mortgaged premises.

10 The said mortgage to Bigelow bore date the twentieth day of March, in the year eighteen hundred and sixty-nine, and mortgaged to said Bigelow, in fee simple, said part of said lands, to secure to him the payment of certain moneys therein mentioned.

20 The said William Bigelow filed a bill in this court some time prior to the month of October, in the year eighteen hundred and seventy-two, making parties thereto the said Roemmelt and Leicht and their wives, to foreclose his mortgage, and such proceedings were thereon had that on the petition of the said Bigelow, complainant in that case, your orators, the said trustees, were made parties to that suit, not in respect of the mortgage hereinbefore and hereinafter mentioned as given to them as trustees, but as trustees in bankruptcy proceedings, but said bankruptcy proceedings have been superseded. The right and title acquired by your orators, the said trustees, as trustees in bankruptcy, were under the sanction and approval of the court of bankruptcy, re-assigned to the said Roemmelt and Leicht, and the mortgage to your orators, the said trustees, made with the approval of the court of bankruptcy. And your orators claim the relief herein prayed under and by virtue of the

30 mortgage aforesaid so given to them, the said trustees.

Such further proceedings were had in the said foreclosure suit of said Bigelow, that on the eighteenth day of October, in the year eighteen hundred and seventy-two, this court made a decree wherein, after reciting that it appeared by the report of a master that there was due to the said Bigelow for principal and interest on his mortgage, the sum of fifty thousand dollars, principal of certain notes secured by said mortgage, amounting in the whole, with interest and protest fees, to fifty-two thousand and forty-two dollars,

40 this court did order, adjudge and decree that the complainant

ant's bill be taken as confessed, and the master's report and all the matters therein contained should stand confirmed, and that the complainant was entitled to have the said sum of fifty-two thousand and forty-two dollars, with lawful interest thereof, computed from the fourth day of said October, together with the costs of this suit, to be taxed, raised and paid out of the mortgaged premises; and did further order, adjudge and decree that so much of the estate and premises in the said mortgage contained, as would be sufficient to raise and satisfy the said debt, interest and cost, be sold, and that a writ of *feri facias* issue for that purpose out of this court, directed to the sheriff of the county of Hudson, commanding him to make sale according to law of so much of the said mortgaged premises as will be sufficient to satisfy the said debt, interest and costs, and to pay the same to the complainant or his solicitor; and in case more money should be raised by the sale than shall be sufficient to answer such payment, such surplus money may be brought into the court and deposited with the clerk, to abide the further order of this court, unless otherwise disposed of by order of this court, and that the said sheriff make return to this court of his proceedings by virtue of the said writ; and did further order, adjudge and decree, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption, of, in and to so much of the said mortgaged premises as should be sold as aforesaid by virtue of that decree. Pursuant to said decree the costs of the said Bigelow were taxed at ninety-five dollars and ninety-nine cents, and a *feri facias* was issued in conformity to the directions thereto to John Reinhardt, then and still sheriff of the county of Hudson, commanding him, as in said decree it was ordered he should be commanded.

The said John Reinhardt, sheriff of the county of Hudson, has advertised the said lands and premises so mortgaged to said Bigelow, and the sale has been from time to time adjourned, and pursuant to the last adjournment the lands and premises so mortgaged to said Bigelow will be sold on the fifth day of February, in the year eighteen hundred and seventy-four, unless the sale is restrained by the order and injunction of this court.

The said John Roemmelt and Andrew Leicht, with their said wives, by mortgage under their hands and seals, bearing date the twentieth day of June, in the year eighteen hundred and seventy-two, duly acknowledged by them and their wives on the twentieth day of August, A. D. eighteen hundred and seventy-two, so as to bar the estate of said wives, and thereafter recorded at length in the clerk's office of the county of Hudson, in said State of New Jersey, on the twenty-seventh day of August, A. D. eighteen hundred and seventy-two, at two o'clock P. M., in Liber ninety-seven
 10 of mortgages, on page four hundred and thirty-nine, &c., did grant, bargain, sell and convey unto your orators, the said trustees, and to their heirs and assigns for ever, as joint-tenants and not as tenants in common, the whole of the lands, premises and property so mortgaged to the said Bigelow and so ordered to be sold by said decree so obtained by said Bigelow, and so intended to be sold on the fifth day of February, eighteen hundred and seventy-four, and other lands.

20 The said mortgages to your orators, the said trustees, recited the giving of a bond bearing even date therewith, by said Roemmelt and Leicht to your orators, the said trustees in the penal sum of four hundred thousand dollars, conditioned for the payment at maturity, or within thirty days thereafter, of each and every of sundry promissory notes according to their tenor and effect, made and delivered or to be made and delivered by the said Roemmelt and Leicht to said trustees, in pursuance of an agreement of compromise entered into between said Roemmelt and Leicht and their
 30 creditors; and also recited that the said promissory notes had been made and delivered by the said Roemmelt and Leicht to the said trustees, as trustees for the creditors of the said John Roemmelt and Andrew Leicht, in pursuance of the agreement of compromise entered into between the said Roemmelt and Leicht and their said creditors, and that the said bond contained an agreement by which, at the option of the trustees, all of the said notes should become due in case of a default for thirty days in the payment of any one:

The habendum and condition in the said mortgage contained is as follows :

To have and to hold the above granted, bargained and described premises, with the appurtenances unto the said parties of the second part, their heirs and assigns, to their own proper use and benefit and behoof forever, as joint tenants and not as tenants in common.

Provided always, and these presents are upon the express condition, that if the said John Roemmelt and Andrew Leicht, their heirs, executors or administrators, shall well and truly pay or cause to be paid unto the said parties of the second part, their successors or assigns, the said several promissory notes mentioned in the condition of the said bond or obligation at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents and the estate hereby granted, should cease, determine and be void. 10

9. The bond in the said mortgage to said trustees recited, was, in fact, given by said Roemmelt and Leicht to said trustees, and is of the tenor in said mortgage recited, and the bond, mortgage, and notes were duly stamped, according to the statutes of the United States then in force, and a list of the said notes referred to in said bond and mortgage to said trustees, was, at the time of the delivery of said bond and mortgage, annexed to said bond, and is as set forth in *Schedule A*, hereto annexed 20

10. The promissory notes so secured by said bond and mortgage, were in fact given and consist of three hundred and twenty notes, all bearing date the first day of August, in the year eighteen hundred and seventy-two, and were all made by said Roemmelt and Leicht, by each of which they promise to pay to their own order a certain sum of money hereafter mentioned at a certain time, hereafter mentioned after the date of the said note, and all of the said three hundred and twenty notes were endorsed by said Roemmelt and Leicht, and delivered to your orator, the said trustees, as trustees for the creditors of said Roemmelt and Leicht, and the notes described in said list, (so marked *A*, and hereto annexed,) were made payable at the end of the number of months after the date thereof in the said list 30 40

mentioned, and by each note said Roemmelt and Leicht promised to pay to their own order, at the Second National Bank in Jersey City, the amount of money which, in the list aforesaid, is set opposite the number of months for which said note is in said list stated as given, and all of said three hundred and twenty notes were delivered to the creditors of said Roemmelt and Leicht entitled to the same, that is to say, the notes in said list described were delivered to the person whose name in said list precedes in the statement of the numbers of months and the amount of such note, all of whom were creditors of said Roemmelt and Leicht.

10 11. Of these said notes so delivered to any of your orators, they now hold as follows, that is to say, your orator, the said Simon Bernheimer, holds of the notes aforesaid those which in the list A, hereto annexed, immediately after the name of the said "Simon Bernheimer," are stated as the 4th, 5th, 6th, 7th, 8th, 9th and 10th notes.

20 Your orator, the said, The Marine National Bank, holds of the notes aforesaid, those which in the said list immediately after "Marine National Bank." are stated as 4th, 5th, 6th, 7th, 8th, 9th and 10th notes.

Your orator, the said the National Park Bank, holds, of the notes aforesaid, those which in the said list immediately after "National Park Bank," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

Your orator, the said Theodore B. Woolsey, holds, of the notes aforesaid, those which, in the said list immediately after "Theodore B. Woolsey," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

30 Your orators, Rudolph C. Burlage and Frederick Rose, hold, of the notes aforesaid, those which, in the said list immediately after "Burlage & Co.," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

40 Your orator, Charles Spielman, holds, of the notes aforesaid, that which, in the said list immediately after "Charles Spielman," is stated as the 10th note, and that which, in the said list immediately after "Union Bank of Jersey City," is stated as the 4th note, and a large number of other notes, passed to him by the owners thereof, in said list named.

Your orator, the Hanover National Bank, holds, of the notes aforesaid, those which, in the said list immediately after "Hanover National Bank," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

Your orator, the Union Bank of Jersey City, holds, of the notes aforesaid, those which, in the said list immediately after "Union Bank of Jersey City," are stated as the 5th, 6th, 7th, 8th, 9th, and 10th notes.

Your orator, the said Rafael R Barthold, holds, of the notes aforesaid, those which, in the said list immediately after "Rafael R. Barthold," are stated as 4th, 5th, 6th, 7th, 8th, 9th and 10th notes. 10

Your orator, the said Theodore Rose, holds, of the notes aforesaid, those which, in the said list immediately after "Theodore Rose," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

Your orator, the said Virgil de Escoriaza, holds, of the notes aforesaid, those which, in the said list immediately after "Virgil de Escoriazi," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes, and also those which in the said list immediately after "Leo del Banco," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes, and also those which in the said list are immediately after "William Tanning," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes. 20

Your orator, the said Ladislao Escoriaza, holds, of the notes aforesaid, those which, in the said list immediately after "J. and J. M. Escoriaza," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

Your orator, the said William Kramer, holds, of the notes aforesaid, those which, in the said list immediately after "William Kramer," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes. 30

Your orator, David Jones, holds, of the notes aforesaid, those which, in the said list immediately after "David Jones," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

Your orator, Watson E. Case, holds, of the notes aforesaid, those which, in the said list immediately after "Watson E. Case," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes. 40

Your orator, Isaac Bernheimer, holds, of the notes aforesaid, those which, in the said list immediately after "Isaac Bernheimer," are stated as 4th, 5th, 6th, 7th, 8th, 9th, and 10th notes.

12. The residue of the notes secured by said bond and mortgage to said trustees, are held by various persons, many of whom are to your orators unknown, but said persons are represented by your orators, the said trustees, and said persons are, besides being for the most part unknown, too
10 numerous to make parties hereto.

13. The lands and property mortgaged to said trustees by said mortgage, are described in a *Schedule* marked *B*, hereto annexed.

14. The lands and property mortgaged to said Bigelow, and ordered to be sold by said decree, and which are to be sold on the fifth day of February, in the year eighteen hundred and seventy-four, are described in a *Schedule* marked *C*, hereto annexed.

15. Your orators, Simon Bernheimer, in his own right,
20 The Marine National Bank, The National Park Bank, Theodore B. Woolsey, Rudolph C. Burlage, and Frederick Rose, Charles Speilman, The Hanover National Bank, The Union National Bank of Jersey City, Rafael Barthold, Theodore Rose, Virgil de Escoriaza, in his own right, Ladislao Escoriaza, William Kramer, David Jones, Watson E. Case and Isaac Bernheimer, who hold three quarters in amount of all the notes secured by said bond and mortgage to said trustees, have raised a fund sufficient to pay to the said William A. Bigelow, the amount of money directed by
30 the said decree to be raised by a sale thereof out of the said lands and premises so mortgaged to said Bigelow, that is to say, the principal and interest, costs and interest thereon, and sheriff's and other execution fees, and have contributed thereto as follows: the said Simon Bernheimer, five thousand dollars; The Marine National Bank, six thousand dollars; The National Park Bank, five thousand dollars; Theodore B. Woolsey, fifteen hundred dollars; Rudolph C. Burlage and Frederick Rose, fifteen hundred dollars; The Hanover National Bank, twelve hundred dollars; The Union Bank
40 of Jersey City, twenty-one hundred and fifty dollars;

Raphael R. Barthold, five thousand dollars; Theodore Rose, twenty-five hundred dollars; Virgil de Escoriaza, twenty-five hundred dollars; Ladislao Escoriaza, twenty-five hundred dollars; William Kramer, five thousand dollars; David Jones, five thousand dollars; Watson E. Case, fifteen hundred dollars; Isaac Bernheimer, five thousand dollars; and the said Charles Spielman, the balance thereof.

And your orators further show unto your Honor, that the said lands and property so ordered to be sold by said decree, 10
to raise and pay to said Bigelow said moneys in said decree and execution mentioned, are of very great value, and are worth much more than double the amount due to said Bigelow, on said decree and execution, yet if the same should be exposed to sale, and sold under the said decree and execution, the same would bring a much less sum than they are worth. The lands and premises so to be sold under said Bigelow's decree, consists of about two acres of land, containing at least twenty-four city lots, on which is built 20
a large brewery, of about eighty by one hundred and five feet, extensive cellar, blasted out of solid rock, which alone cost fifty thousand dollars, stables, wagon houses, wagon shop, a large cooperage, a large dwelling house for the workmen, a saloon in a large frame building, a bowling alley and summer house, and the private residence of said Roemelt and Leicht.

Adjoining the said property so mortgaged to said Bigelow, and on the south, are two plots of land, containing nearly an acre of land, which are mortgaged to your orators, the said trustees, and are described in said mortgage as part of lots lettered A, and A 1, and near to but 30
not adjoining said land, mortgaged to Bigelow, are eight city lots which are mortgaged to your orators, the said trustees.

Your orators, the said trustees, have also a chattel mortgage, given to them at the same time, by the said Rommelt and Leicht, that the said mortgage on the said real estate was given, to secure the payment of the same bond that is secured by the said real estate mortgage. The said 40
chattel mortgage covers and conveys in mortgage to your

orators, the trustees, all of the tools, machinery, and implements, casks, barrels, wagons, horses, and other personal property belonging to, or in any wise relating to the carrying on of said brewery.

Such personal property, tools, &c., are about the value of thirty thousand dollars, and it would be impossible to sell to advantage the said property on which the said Bigelow has his said mortgage, separate from said tools, machinery, implements, casks, barrels, and other personal property, and a sale of said property comprised in said Bigelow
10 decree, would greatly lessen the value of the security your orators have in the mortgage on said tools, machinery, im-
plements, and personal property.

The said brewery is now carried on with success by said Roemmelt and Leicht, who have paid to the beneficiaries under said mortgage, held by your orators, the said trustees, since the same was given, about fifty-four thousand dollars, and there is now unpaid, of the moneys secured by said bond and mortgage, so given to your orators, the said
20 trustees, about the sum of one hundred and fifty-four thousand dollars, and of this one hundred and fifty-four thousand dollars there is unpaid to your orators about one hundred and twenty-six thousand dollars, so that those of your orators who have contributed to raise the money to pay the said Bigelow decree, represent about five-sixths of the whole moneys now secured by said mortgage to said trustees.

The said Bigelow holds the unpaid notes mentioned in the list hereunto annexed, which are stated immediately after
30 his name, which amount to about ten thousand dollars.

The lands and property mortgaged to said Bigelow are more valuable to the said Roemmelt and Leicht than to any one else who is likely to buy the same, and no one is likely to buy the same at any price equal or nearly equal to their fair value, or to their value to Roemmelt and Leicht, or to their value to your orators and their co-beneficiaries, as security for the moneys due on the notes held by them respectively, and secured by the said bond and mortgage to said trustees, and all of your orators' securities for the money

due to them or to grow due on said trust mortgage are, together, a scanty security for said moneys.

If the said lands and property should be sold under said Bigelow decree, every one of your orators would be most seriously prejudiced thereby.

Such sale would sweep away the said two acres of land on which are said brewery and said buildings, which compose a large portion, and by far the most valuable portion, of the security they have in said mortgage to said trustees on such sale; the said lands and property would not bring above one-half of their value, at least it is highly improbable that they will bring one half of their value. 10

The present state of financial embarrassment prevailing in this state and elsewhere, makes it almost a certainty that the said lands and property would be sacrificed on such sale. It is really necessary for the protection of the interest of your orators in said mortgage to said trustees, that the said sale should not take place. It is also really necessary for the protection of the interest in said mortgage of every person who is interested in said mortgage, that the said sale should not take place. 20

It is also really necessary for the protection of your orators' interest in said mortgage to said trustees, and of said Bigelow's interest in said mortgage to said trustees—he being one of the beneficiaries thereunder—that the said sale should be prevented, and that the moneys due on the Bigelow decree should be paid by your orators, and your orators should be subrogated to the right, title and interest of the said Bigelow in said decree, and bond, and mortgage on which it is founded, and should have an assignment thereof to the intent that the amount thereof paid should be reimbursed to your orators out of the lands and property directed to be sold by said Bigelow decree. If the said lands and property be sold under the Bigelow decree, the interest of all the beneficiaries under said mortgage to said trustees, including the interest of said Bigelow as beneficiary thereunder, will be prejudiced and sacrificed. 30

By such sale, the land and property will be sold free from said mortgage to said trustees, and the lien of all such beneficiaries defeated without their being paid. 40

If your orators should pay the said Bigelow decree, and not be subrogated to the rights of said Bigelow thereunder, and have an assignment thereof, they will lose the amount of the money so paid, which will be about fifty-seven thousand dollars.

10 If they pay and are subrogated, and have an assignment, they will be able to realize the money they pay on the Bigelow decree, and as they believe the whole amount of the notes secured by the said mortgage to the trustees, including the notes held by said Bigelow and secured there-
by. At all events, your orators will have the opportunity of saving their liens, which will otherwise be destroyed.

And they are advised and insist that they have the right to pay off said decree, and to be subrogated to the rights of said Bigelow under his mortgage and decree, to redeem said mortgage and decree, and to have an assignment thereof from said Bigelow, to protect theirs as well as his interest under said mortgage to your orators, the said trustees.

20 And your orators further show, that none of them are under any personal obligation to pay part of the claim the said Bigelow has under the said mortgage to said trustees, or any part of any claim he has against Roemmelt and Leicht, or either of them, nor are they sureties to him for any debt or claim whatever he has against said Roemmelt and Leicht, though they will be obliged, for the protection of their interest in the mortgage to said trustees, to give the said Bigelow the amount of said decree.

30 And your orators are advised that they are therefore, under the circumstances herein stated, entitled to redeem and pay off the said Bigelow decree, without losing the money so paid, and to the end that they may be reimbursed the said expenditure so as aforesaid necessary to protect their interest in said mortgage to said trustees, to be subrogated to the rights of said Bigelow under the said decree, and to have an assignment of the said bond and mortgage and decree of the said Bigelow.

40 The said Bigelow has been applied to in behalf of your orators, and all the other beneficiaries under the said mortgage to said trustees, to receive the said moneys due on said decree, in order that your orators who contribute to

the payment thereof may be subrogated to his rights thereunder, and have an assignment of said bond and mortgage and decree thereon, and they have requested an assignment thereof, but the said Bigelow has expressed himself willing to receive the said moneys, if they are tendered by your orators, the said trustees, acting for the benefit of their trust, and your orators desire so to tender the same, and are so willing to pay the same, but do not intend that the beneficiaries under said trust mortgage, who do not contribute to the payment of said decree, shall receive any part of said moneys so paid by your contributing orators, when they are hereafter raised out of the property ordered to be sold by said decree. The said Bigelow has also caused your orators to be informed that if the said money is tendered not for the benefit of the trust generally, but by or for the benefit of any individual beneficiaries, or any mere portion of the beneficiaries, it will not be received. 10

And your orators say that they desire to tender and pay the same for the benefit of the trust generally, in manner before explained, but not in such manner that the beneficiaries who do not contribute can realize hereafter out of the premises, subject to said decree, any portion of the money so contributed by your orators so contributing. 20

It is impossible that the said money should be tendered by all the beneficiaries, as many are unable; although, as your orators believe, every single beneficiary under said mortgage (except said Bigelow) is willing to do so, if he were able, yet every one, except Bigelow, is anxious and desirous that your orators should make said tender, and be subrogated to said Bigelow's rights, and have an assignment of said bond and mortgage and decree thereon. 30

And the said Bigelow also caused your orators to be informed that even if the said money is tendered in the manner in which he has informed your orators he would receive the same, he will not make any assignment of said decree.

And your orators further show that the said Bigelow sets up and pretends that he has a right to refuse to permit your orators to be subrogated to his rights under said decree, and to make an assignment, on the ground that he desires 40

that the security of the said trust mortgage under which your orators claim, and he also claims, as holder of the said notes, secured thereby to the extent of about ten thousand dollars, shall be enhanced in value by the extinguishment of the mortgage now in decree.

But your orators are advised and insist that the said ground is a mere pretence. The said security of the mortgage to the said trustees cannot be enhanced except by the payment and cancellation of said Bigelow's decree.

10 The said Bigelow can have no equity to enhance his security by the total loss to your orators of the money which they should pay to said Bigelow to protect their and his interest in the said trust mortgage from the said decree of said Bigelow.

The only equity of the said Bigelow, in respect of his interest in said trust mortgage, is the very equity your orators have, and no more or greater, to pay off said decree, for the protection of their and his said trust mortgage security, and have an assignment of said decree, and the
20 bond and mortgage on which it is founded, made for the benefit of those interested in said trust mortgage who pay the same, which benefits enures equally to the benefit of those who pay and those who do not, except that those who contribute will be further entitled to reimbursement of the money paid. The refusal of said Bigelow to assign said bond, mortgage, and decree on payment thereof, is inequitable and unjust.

The said ground of the refusal to assign said decree, that said Bigelow is entitled to have the security which he is
30 entitled to, in common with your orators and others, enhance is a mere pretence, but the real ground of refusal is that he desires to have the said property sacrificed, and to purchase the same in at one-half its value, or to constrain your orators, by said refusal, to pay him at once the whole amount of his interest in said trust mortgage and another claim against said Rommelt and Leicht, secured by stock and bonds, and he has, from time to time, proposed to give time to your orators for several years to pay said decree, if your orators would pay said notes held by said Bigelow, and se-

cured by said mortgage to said trustees, and the other notes secured by said stock and bonds.

Your orators have caused to be tendered to the counsel and solicitor of said Bigelow, the said moneys due on said decree, and demanded an assignment of the said bond, mortgage and decree, and said Bigelow has neglected and refused to make such assignment.

And your orators further show, that they are willing to pay at once the money due on said decree of said Bigelow into this court, to be paid out to the said Bigelow upon his making an assignment of said decree and execution, and bond and mortgage, on which the same are founded. 10

In tender consideration whereof, and forasmuch as your orators have no relief except in this honorable court, to the end that the said William A. Bigelow and John Reinhardt may answer this, your orators' bill, under oath, and that the said William A. Bigelow may be compelled, by the decree of this court, to accept said money due on his said decree, and that your orators, who contribute said money to pay said decree, may be allowed to redeem said mortgage and decree of said Bigelow, and be subrogated to the rights of the said Bigelow, under his said bond, mortgage, and decree thereon, and execution issued, and that the said William A. Bigelow may be compelled to assign the said bond, mortgage, and decree, and execution to your orators who contribute said money to pay said decree, or otherwise, as shall be equitable and just, and that in the meantime, all interest on the moneys due upon said decree may cease, your orators hereby tendering to pay the same into this court, to be paid out on the assignment of said decree, and that the said Bigelow and John Reinhardt, sheriff of the county of Hudson, who holds the said writ of execution, may be enjoined and restrained from selling the said lands and property in said decree of said Bigelow, and execution described, on the fifth day of February, in the year eighteen hundred and seventy-four, or at any other time, and that your orator may have such further and other relief as to this court shall seem just. 20 30

May it please your Honor, to grant unto your orators not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said 40

William A. Bigelow, his solicitors, attorneys, counsellors and agents, and the said John Reinhardt, enjoining and commanding them that they refrain from selling or disposing of the lands and property in the *Schedule C*, hereto annexed, so mortgaged to said Bigelow, and ordered to be sold by said decree and execution. But, also, the State's writ of subpœna, issuing out of and under the seal of this court, to be directed to the said William A. Bigelow, John Reinhardt, John Roemmelt, and Amelia his wife, Andrew
 10 Leicht, and Mary his wife, commanding them on a certain day and under a certain penalty, to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to abide and perform such decree in the premises as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

ROBT GILCHRIST,

Solicitor for and of Counsel with Complainants.

SCHEDULE A.

Notes referred to in the within Bond.

| H. LANDSBERG. | | | JOHN KRESS. | | |
|---------------|-----------|-----------|-------------|-----------|-----------|
| 3 mos. | 1st note. | \$342 82 | 3 mos. | 1st note. | \$140 83 |
| 10 " | 2d " | 700 00 | 10 " | 2d " | 300 00 |
| 16 " | 3d " | 839 45 | 10 " | 3d " | 300 00 |
| 22 " | 4th " | 621 57 | 22 " | 4th " | 300 00 |
| 34 " | 6th " | 600 00 | 28 " | 5th " | 300 00 |
| 40 " | 7th " | 582 31 | 34 " | 6th " | 300 00 |
| 46 " | 8th " | 565 93 | 40 " | 7th " | 281 89 |
| 52 " | 9th " | 549 05 | 46 " | 8th " | 263 73 |
| 58 " | 10th " | 270 33 | 52 " | 9th " | 245 57 |
| | | \$5515 46 | 58 " | 10th " | 100 00 |
| | | | | | \$2331 98 |

| HANOVER NATIONAL BANK, | | | VIRGIL DE ESCORIAZA. | | |
|------------------------|-----------|-----------|----------------------|-----------|------------|
| 3 mos. | 1st note. | \$126 33 | 3 mos. | 1st note. | \$1495 74 |
| 10 " | 2d " | 255 90 | 10 " | 2d " | 2807 66 |
| 16 " | 3d " | 246 00 | 16 " | 3d " | 2752 28 |
| 22 " | 4th " | 240 00 | 22 " | 4th " | 2629 31 |
| 28 " | 5th " | 232 11 | 28 " | 5th " | 2411 69 |
| 34 " | 6th " | 227 67 | 34 " | 6th " | 2414 40 |
| 40 " | 7th " | 222 23 | 40 " | 7th " | 2354 93 |
| 46 " | 8th " | 218 78 | 46 " | 8th " | 2285 46 |
| 52 " | 9th " | 209 34 | 52 " | 9th " | 1157 33 |
| 58 " | 10th " | 100 00 | 58 " | 10th " | |
| | | \$2079 36 | | | \$22886 67 |

J. AND J. M. DE ESCORIAZA.

| | | |
|--------|-----------|-------------------|
| 3 mos. | 1st note. | \$ 666 75 |
| 10 " | 2d " | 1405 09 |
| 16 " | 3d " | 1216 40 |
| 22 " | 4th " | 1238 32 |
| 28 " | 5th " | 1160 24 |
| 34 " | 6th " | 1133 42 |
| 40 " | 7th " | 1082 60 |
| 46 " | 8th " | 1126 01 |
| 52 " | 9th " | 961 24 |
| 58 " | 10th " | 599 71 |
| | | <u>\$10598 78</u> |

SIMON BERNHEIMER.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$ 604 26 |
| 10 " | 2d " | 1271 95 |
| 16 " | 3d " | 1104 19 |
| 22 " | 4th " | 1134 77 |
| 28 " | 5th " | 1165 34 |
| 34 " | 6th " | 995 91 |
| 40 " | 7th " | 1026 48 |
| 46 " | 8th " | 957 06 |
| 52 " | 9th " | 987 63 |
| 58 " | 10th " | 476 77 |
| | | <u>\$9724 36</u> |

ISAAC BERNHEIMER.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$ 650 58 |
| 10 " | 2d " | 1221 37 |
| 16 " | 3d " | 1282 07 |
| 22 " | 4th " | 964 77 |
| 28 " | 5th " | 1089 59 |
| 34 " | 6th " | 916 53 |
| 40 " | 7th " | 943 46 |
| 46 " | 8th " | 885 20 |
| 52 " | 9th " | 997 32 |
| 58 " | 10th " | 530 40 |
| | | <u>\$9481 28</u> |

ALBERT GEIGER.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$110 26 |
| 10 " | 2d " | 232 26 |
| 16 " | 3d " | 221 35 |
| 22 " | 4th " | 216 56 |
| 28 " | 5th " | 210 77 |
| 34 " | 6th " | 200 00 |
| 40 " | 7th " | 195 00 |
| 46 " | 8th " | 187 35 |
| 52 " | 9th " | 184 61 |
| 58 " | 10th " | 89 15 |
| | | <u>\$1847 31</u> |

CHARLES MILLER.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$ 612 88 |
| 10 " | 2d " | 1248 35 |
| 16 " | 3d " | 1163 53 |
| 22 " | 4th " | 1135 04 |
| 28 " | 5th " | 1126 75 |
| 34 " | 6th " | 1088 46 |
| 40 " | 7th " | 1090 27 |
| 46 " | 8th " | 1021 98 |
| 52 " | 9th " | 973 69 |
| 58 " | 10th " | 469 63 |
| | | <u>\$9930 33</u> |

WM. H. AKIN & SON.

| | | |
|--------|-----------|-----------------|
| 3 mos. | 1st note. | \$ 75 23 |
| 10 " | 2d " | 68 57 |
| 16 " | 3d " | 64 28 |
| 22 " | 4th " | 60 75 |
| 28 " | 5th " | 28 93 |
| 34 " | 6th " | |
| 40 " | 7th " | |
| 46 " | 8th " | |
| 52 " | 9th " | |
| 58 " | 10th " | |
| | | <u>\$297 76</u> |

WATSON E. CASE.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$240 55 |
| 10 " | 2d " | 500 00 |
| 16 " | 3d " | 460 31 |
| 22 " | 4th " | 453 17 |
| 28 " | 5th " | 445 99 |
| 34 " | 6th " | 428 81 |
| 40 " | 7th " | 411 63 |
| 46 " | 8th " | 400 00 |
| 52 " | 9th " | 387 27 |
| 58 " | 10th " | 181 85 |
| | | <u>\$3909 58</u> |

WM. A. BIGELOW.

| | | |
|--------|-----------|-------------------|
| 3 mos. | 1st note. | \$ 835 23 |
| 10 " | 2d " | 1800 00 |
| 16 " | 3d " | 1723 91 |
| 22 " | 4th " | 1650 00 |
| 28 " | 5th " | 1628 53 |
| 34 " | 6th " | 1600 00 |
| 40 " | 7th " | 1523 14 |
| 46 " | 8th " | 1450 00 |
| 52 " | 9th " | 1437 75 |
| 58 " | 10th " | 700 00 |
| | | <u>\$14358 56</u> |

FIRST NATIONAL BANK OF HOBOKEN.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$278 44 |
| 10 " | 2d " | 565 11 |
| 16 " | 3d " | 525 73 |
| 22 " | 4th " | 519 93 |
| 28 " | 5th " | 500 00 |
| 34 " | 6th " | 490 00 |
| 40 " | 7th " | 487 55 |
| 46 " | 8th " | 476 78 |
| 52 " | 9th " | 455 97 |
| 58 " | 10th " | 205 28 |
| | | <u>\$4504 79</u> |

THEODORE ROSE.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$372 98 |
| 10 " | 2d " | 783 69 |
| 16 " | 3d " | 724 25 |
| 22 " | 4th " | 700 00 |
| 28 " | 5th " | 681 95 |
| 34 " | 6th " | 670 80 |
| 40 " | 7th " | 650 00 |
| 46 " | 8th " | 630 00 |
| 52 " | 9th " | 600 00 |
| 58 " | 10th " | 290 00 |
| | | <u>\$6093 67</u> |

MARINE NATIONAL BANK.

| | | |
|--------|-----------|-------------------|
| 3 mos. | 1st note. | \$ 746 04 |
| 10 " | 2d " | 1500 00 |
| 16 " | 3d " | 1430 20 |
| 22 " | 4th " | 1400 00 |
| 28 " | 5th " | 1367 73 |
| 34 " | 6th " | 1326 49 |
| 40 " | 7th " | 1326 27 |
| 46 " | 8th " | 1244 03 |
| 52 " | 9th " | 1200 00 |
| 58 " | 10th " | 551 12 |
| | | <u>\$12050 88</u> |

BURLAGE & CO.

| | | |
|--------|-----------|------------------|
| 3 mos. | 1st note. | \$162 05 |
| 10 " | 2d " | 330 59 |
| 16 " | 3d " | 312 18 |
| 22 " | 4th " | 300 00 |
| 28 " | 5th " | 300 00 |
| 34 " | 6th " | 283 36 |
| 40 " | 7th " | 275 41 |
| 46 " | 8th " | 267 48 |
| 52 " | 9th " | 259 61 |
| 58 " | 10th " | 125 41 |
| | | <u>\$2616 09</u> |

DE LA VERGUE AND HARE.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$100 00 |
| 16 " | 3d " | 213 46 |
| 22 " | 4th " | 190 63 |
| 28 " | 5th " | 194 11 |
| 34 " | 6th " | 192 58 |
| 40 " | 7th " | 181 07 |
| 46 " | 8th " | 179 53 |
| 52 " | 9th " | 173 02 |
| 58 " | 10th " | 166 51 |
| | | 70 46 |
| | | \$1661 37 |

NATIONAL PARK BANK.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$465 80 |
| 16 " | 3d " | 958 47 |
| 22 " | 4th " | 885 50 |
| 28 " | 5th " | 884 60 |
| 34 " | 6th " | 833 70 |
| 40 " | 7th " | 800 00 |
| 46 " | 8th " | 800 00 |
| 52 " | 9th " | 781 06 |
| 58 " | 10th " | 730 18 |
| | | 362 40 |
| | | \$7501 80 |

LEO DELBANCO.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$419 92 |
| 16 " | 3d " | 861 79 |
| 22 " | 4th " | 800 00 |
| 28 " | 5th " | 775 40 |
| 34 " | 6th " | 759 62 |
| 40 " | 7th " | 738 84 |
| 46 " | 8th " | 710 00 |
| 52 " | 9th " | 700 00 |
| 58 " | 10th " | 676 52 |
| | | 326 80 |
| | | \$6768 89 |

UNION BANK OF JERSEY CITY.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$450 00 |
| 16 " | 3d " | 921 22 |
| 22 " | 4th " | 861 83 |
| 28 " | 5th " | 851 22 |
| 34 " | 6th " | 830 00 |
| 40 " | 7th " | 810 00 |
| 46 " | 8th " | 790 00 |
| 52 " | 9th " | 762 10 |
| 58 " | 10th " | 737 15 |
| | | 338 67 |
| | | \$7353 63 |

ERNST. O. BERNET.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$162 93 |
| 16 " | 3d " | 332 60 |
| 22 " | 4th " | 318 48 |
| 28 " | 5th " | 310 22 |
| 34 " | 6th " | 300 00 |
| 40 " | 7th " | 290 00 |
| 46 " | 8th " | 285 47 |
| 52 " | 9th " | 277 22 |
| 58 " | 10th " | 268 97 |
| | | 129 86 |
| | | \$2675 76 |

WILLIAM FANNING.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$528 43 |
| 16 " | 3d " | 659 94 |
| 22 " | 4th " | 622 67 |
| 28 " | 5th " | 600 00 |
| 34 " | 6th " | 584 33 |
| 40 " | 7th " | 568 22 |
| 46 " | 8th " | 550 00 |
| 52 " | 9th " | 536 10 |
| 58 " | 10th " | 233 97 |
| | | \$5283 66 |

JOHN EICHLER.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$170 00 |
| 16 " | 3d " | 338 92 |
| 22 " | 4th " | 315 03 |
| 28 " | 5th " | 300 00 |
| 34 " | 6th " | 285 73 |
| 40 " | 7th " | 290 00 |
| 46 " | 8th " | 282 43 |
| 52 " | 9th " | 270 00 |
| 58 " | 10th " | 260 00 |
| | | 118 56 |
| | | \$2643 67 |

WILLIAM KRAMER.

| 3 mos. | 1st note. | |
|--------|-----------|------------|
| 10 " | 2d " | \$ 610 62 |
| 16 " | 3d " | 1286 86 |
| 22 " | 4th " | 1217 17 |
| 28 " | 5th " | 1167 38 |
| 34 " | 6th " | 1327 60 |
| 40 " | 7th " | 1107 82 |
| 46 " | 8th " | 1068 04 |
| 52 " | 9th " | 1018 55 |
| 58 " | 10th " | 968 47 |
| | | 480 80 |
| | | \$10083 41 |

CHARLES SPIELMAN.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$ 570 36 |
| 16 " | 3d " | 1200 00 |
| 22 " | 4th " | 1100 00 |
| 28 " | 5th " | 1096 97 |
| 34 " | 6th " | 1070 00 |
| 40 " | 7th " | 1015 99 |
| 46 " | 8th " | 1000 00 |
| 52 " | 9th " | 965 00 |
| 58 " | 10th " | 919 51 |
| | | 468 44 |
| | | \$9406 27 |

CHRISTIAN CORNEHLSSEN.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$ 80 47 |
| 16 " | 3d " | 157 60 |
| 22 " | 4th " | 152 33 |
| 28 " | 5th " | 148 26 |
| 34 " | 6th " | 149 13 |
| 40 " | 7th " | 144 49 |
| 46 " | 8th " | 140 43 |
| 52 " | 9th " | 131 35 |
| 58 " | 10th " | 127 23 |
| | | 64 17 |
| | | \$1256 58 |

DAVID JONES.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$ 574 23 |
| 16 " | 3d " | 1177 46 |
| 22 " | 4th " | 1121 91 |
| 28 " | 5th " | 1100 00 |
| 34 " | 6th " | 1073 17 |
| 40 " | 7th " | 1028 79 |
| 46 " | 8th " | 964 43 |
| 52 " | 9th " | 950 05 |
| 58 " | 10th " | 935 89 |
| | | 451 80 |
| | | \$9377 53 |

ANDREW E. LEICHT.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 10 " | 2d " | \$336 00 |
| 16 " | 3d " | 687 68 |
| 22 " | 4th " | 640 03 |
| 28 " | 5th " | 612 68 |
| 34 " | 6th " | 590 00 |
| 40 " | 7th " | 577 88 |
| 46 " | 8th " | 560 61 |
| 52 " | 9th " | 533 88 |
| 58 " | 10th " | 232 33 |
| | | \$5457 94 |

JOSEPH RUBSAM.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 3 mos. | 1st note. | \$290 00 |
| 10 " | 2d " | 594 92 |
| 16 " | 3d " | 566 76 |
| 22 " | 4th " | 540 00 |
| 28 " | 5th " | 532 06 |
| 34 " | 6th " | 509 72 |
| 40 " | 7th " | 497 37 |
| 46 " | 8th " | 480 00 |
| 52 " | 9th " | 460 00 |
| 58 " | 10th " | 228 23 |
| | | \$4689 06 |

GEORGE P. SCHINZEL.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 3 mos. | 1st note. | \$320 00 |
| 10 " | 2d " | 679 45 |
| 16 " | 3d " | 620 94 |
| 22 " | 4th " | 610 00 |
| 28 " | 5th " | 600 00 |
| 34 " | 6th " | 581 07 |
| 40 " | 7th " | 574 46 |
| 46 " | 8th " | 547 83 |
| 52 " | 9th " | 521 23 |
| 58 " | 10th " | 241 45 |
| | | \$5296 43 |

THEODORE B. WOOLSEY.

| 3 mos. | 1st note. | |
|--------|-----------|-----------|
| 3 mos. | 1st note. | \$126 40 |
| 10 " | 2d " | 255 81 |
| 16 " | 3d " | 240 00 |
| 22 " | 4th " | 237 35 |
| 28 " | 5th " | 233 15 |
| 34 " | 6th " | 223 99 |
| 40 " | 7th " | 214 81 |
| 46 " | 8th " | 210 64 |
| 52 " | 9th " | 206 46 |
| 58 " | 10th " | 100 00 |
| | | \$2048 62 |

RAFAEL R. BARTHOLD.

| 3 mos. | 1st note. | |
|--------|-----------|------------|
| 3 mos. | 1st note. | \$1017 03 |
| 10 " | 2d " | 2083 11 |
| 16 " | 3d " | 1952 85 |
| 22 " | 4th " | 1899 07 |
| 28 " | 5th " | 1845 28 |
| 34 " | 6th " | 1791 15 |
| 40 " | 7th " | 1737 00 |
| 46 " | 8th " | 1682 87 |
| 52 " | 9th " | 1628 72 |
| 58 " | 10th " | 800 46 |
| | | \$16437 55 |

SCHEDULE B.

All those certain lots, pieces, or parcels of land, situate, lying, and being in Hoboken, county of Hudson, and State of New Jersey, and which are known and distinguished upon a map entitled "Map of Property, situate at Hoboken, Hudson county, New Jersey, belonging to the estate of John G. Coster, deceased, surveyed and laid out into lots, November, 1860, by Daniel Ewen, Austin D. Ewen, city surveyors, New York," filed in the office of the clerk of said county of Hudson, as lots numbers 14 and 15, in block number 9; lots numbers 1, 2, 3, 4, 5, 6, 7, and 8, in block number 29; lot number 24, in block number 18; lots numbers 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28, in block number 19; lots numbers 1, 2, 3, 4, 5, and 6, in block number 139; lots numbers 2, 3, and 4, in block number 132; part of lots numbers 30, 31, 32, and 33, in block number 17, westerly part of block number 23; lots numbers 25, 26, 30, and 31, in block number 29; lots numbers 27, 28, 29, and 30, in block number 27; lots numbers 15, 16, 17, 30, 31, 32, 33, and 34, in block number 26; lots numbers 10, 11, 12, 13, 14, 15, 16, and 17, in block number 40; lots numbers 1, 2, 3, and 4, in block number 25; lots numbers 26, 27, 28, and 29, in block number 17; lots numbers 26, 27, 28, and 29, in block number 16; lots numbers 25, 26, 27, 28, 29, and 30, in block number 15; lots numbers 15, 16,

10

20

528 43
659 94
622 37
600 00
600 00
584 83
568 22
550 00
536 10
283 97
5248 65
610 92
1386 96
1317 17
1167 88
1227 60
1107 82
1068 04
1018 35
998 47
480 80
10083 41
80 47
157 60
152 33
145 26
140 19
144 49
140 42
131 85
127 28
64 17
1286 66
638 00
687 88
640 08
612 88
560 00
577 98
560 41
538 28
282 88
6547 34

and 17, in block number 30; lots numbers 7, 8, 11, and 12, in block number 31; lots numbers 1, 2, and 3, in block number 11; lots numbers 5, 6, 7, and 8, in block number 62; part of lot number 4, in block number 30, as laid out on said map.

Also all those lots of land, situate, lying, and being in the city of Hudson, aforesaid, county of Hudson aforesaid, and which on map entitled "Property belonging to James Montgomery, Jr., Hudson City, N. J.," made by J. M. Foquet & Co., surveyors, are known and distinguished as follows: lots numbers 1 and 2, and lot lettered A, in block number 1; lots numbers 1, 2, 3, 4, 14, 26, and 27, in block number 4; lots numbers 7 and 8, in block number 3, as laid down on said map.

Also, all those certain lots, pieces, or parcels of land situate, lying and being in the city of Hudson aforesaid, which on a map entitled "Map of Property belonging to the Van Vorst Heights Company, situated on Palisade avenue, opposite Washington village, Hudson county, N. J., are designated and distinguished as part of lot lettered A and lots lettered A 1, B 1, B 2, CC 1, C 2, DD 1, D 2, and lots numbers 123, 124, 169, 170, 171, 172, 173, 174, as laid down on said map.

Also, all those certain lots, pieces, or parcels of land situate, lying and being in the city of Hudson aforesaid, which are known and distinguished on a map entitled, "Map of Property of E. C. Bramhall and others, Hudson City, Hudson county, N. J., made by Loper & Britton, Town Surveyors, Bergen, Hudson County, N. J., April 18th, 1865," as lots numbers 1, 2, 3, and 4, forming one plot, numbered 1, in block number 12; lots numbers 1, 2, 3, and 4, forming one plot number 4 in block number 12; and lots numbers 1, 2, 3, and 4, forming one plot, number 3, in block number 10, as laid down on said map.

Also, the one undivided half or moiety of all those certain lots, pieces, or parcels of land situate lying and being in the city of Hudson aforesaid, known and distinguished on a map entitled "Map of Property situate on Bergen Heights, adjoining the reservoir of the Jersey City Water Works, laid out by Levi W. Post, City Surveyor," filed in the office

of the clerk of Hudson county, as lots numbers 16, 17, and 18 in block A; lots 17 and 18 in block D; lots 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 in block M; lots numbers 21, 22, and 23 in block L; lots number 1, 2, 3, 4, and 5 in block O; lots numbers 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 in block N, as laid down on said map.

Also, all those certain tracts of land situate, lying, and being in the township of North Bergen, county of Hudson aforesaid, containing together about thirty acres, more or less, which were conveyed to the said John Roemmelt and Andrew Leicht, by Aloys Hollinger, by deed dated April 20th, 1866, and recorded in the clerk's office of Hudson county, on the 21st day of April, 1866, in *Liber 131 of Deeds, page 383, &c.*

SCHEDULE C.

All those nine certain lots, pieces or parcels of land and premises, situate, lying and being in the city of Hudson, in the county of Hudson, and in the State of New Jersey, and which on a map, "Map of the Property belonging to the Van Vorst Height Company, situate on Palisade avenue, opposite Washington Village, Hudson county, N. J., and duly filed of record in the office of the clerk of said county of Hudson, are known and designated as lots lettered BB 1, B 2, CC 2, DD 1, D 2, and taken together, and may be described as follows: Beginning at a point in the easterly side of Hudson avenue, distant one hundred and seventy-five (175) feet, southerly from the southerly line of Broad street, as shown on said map; thence running southerly along the easterly line of Hudson avenue two hundred and sixty-two feet and six inches (262 feet, 6 inches;) thence easterly, and at right angles to Hudson avenue, three hundred and fifty (350) feet to Paterson avenue; thence northerly along the westerly side of Paterson avenue two hundred and sixty-two feet and six inches (262 feet, 6 inches;) thence westerly, and parallel with the line above run at right angles to Hudson

avenue, three hundred and fifty (350) feet to Hudson avenue, at the point or place of beginning, subject, however, to the easement of a private mountain road, as indicated and laid down on the said map, being the same premises conveyed to the said John Roemmelt and Andrew Leicht by the following deeds: one deed from Frederick Rohland and wife, dated August 21st, 1856, and recorded August 28th, 1856, in Book 56 of Deeds for Hudson county, pages 130, &c.

10 One deed from Peter Scheider and wife, dated April 6th, 1858, and recorded April 26th, 1858, in Book 66 of Deeds, pages 513, &c.

One deed from Philip Lauer and wife, dated May 1st, 1858, and recorded December 19th, 1859, in Book 78 of Deeds, pages 30, &c., and a deed from John Walker and wife, dated December 15th, 1862, and recorded December 20th, 1862, in Book 97 of Deeds, pages 374, &c.

New Jersey, Hudson county, *ss.*—Charles Spielman, being duly sworn according to law, on his oath saith—that he is one of the above named complainants; that he has read the foregoing bill of complaint; that he has been conversant with the facts relating to the settlement of the said Roemmelt and Leicht with their creditors, and with the giving of the said mortgage to said trustees, and generally with the progress of matters relating to said mortgage and said decree of said Bigelow; that the sale under said Bigelow decree and execution is to take place on the fifth day of February, A. D. 1874; that the complainants have contributed the moneys in the bill mentioned to pay off said Bigelow decree in the proportion therein mentioned; that
 20 the complainants are owners of such of the notes secured by said trust mortgage as in said bill is stated and set forth; that it is necessary for the protection of the interest of all parties who are beneficiaries under the said trust mortgage that the said sale, under said Bigelow decree, should not take place, but that the said Bigelow decree should be paid by the persons so interested in said trust mortgage, if they can be subrogated to said Bigelow's right under said decree, and have an assignment thereof; that the said Bigelow's
 30 pretence of being unwilling to assign his said decree on

payment thereof, because he wishes his security as *cestui que trust*, under the trust mortgage to be enhanced, is without any foundation in truth ; that he knows an enhancement thereof by such payment can never take place, inasmuch as if such would be the effect of such payment, he well knows that the payment would not be made ; that his real object in refusing to make an assignment of said decree is either to enable him to purchase the lands subject to be sold thereunder at a great sacrifice, or to constrain his co-beneficiants under the trust mortgages to pay the notes he holds secured by said trust mortgage and another claim he has against said Roemmelt and Leicht, secured by pledge of stock and bonds ; that said Bigelow has made propositions to deponent, that if the said trustees or the other creditors, or said Roemmelt and Leicht would pay off the said debts due to said Bigelow, secured by said trust mortgage, and the debt he claims so secured by said stock and bonds, he would not press said sale under his said decree, but none of the complainants are under any moral, equitable, or legal obligation to do so, and were obliged to refuse such proposition ; such proposition has been renewed, and in writing, more than once ; that said chattel mortgage in said bill mentioned, was given to said trustees as in said bill is stated ; the situation of the property mortgaged to said Bigelow, as well as of that mortgage to said trustees, is as it is stated to be in said bill ; that the amount stated in said bill as paid on said trustee mortgage, and the amount remaining unpaid thereon, and the amount unpaid and due on the notes held by the complainant, are truly stated in said bill ; that deponent has seen the letter of the counsel of the said Bigelow to the counsel of the complainants, in which the ground on which said Bigelow refuses to assign said mortgage on payment by complainants is stated, and the said ground is truly stated in said bill ; and deponent further says, that he verily believes every allegation of the said bill to be true ; that deponent knows all the securities that said trustees have for the payment of the moneys secured by said trust mortgage, and all of them together are a scanty security for the payment of said moneys.

CHARLES SPIELMAN.

40

Sworn and subscribed before me at Newark, this 2d day of February, A. D. 1874.

THEODORE RUNYON, *C.*

10 New Jersey, Essex county, *ss.*—Simon Bernheimer, being duly sworn according to law, on his oath deposeseth and saith—that he is one of the trustees and complainants in the above bill mentioned, that on the second day of February, A. D. eighteen hundred and seventy-four, he made a tender to Cortlandt Parker, Esquire, solicitor and counsel for said Bigelow, in the foreclosure suit within mentioned, of fifty six thousand nine hundred and seventy-five dollars, the amount of money due on the decree aforesaid, as deponent verily believes; that said tender was made on certified checks, and said Parker waived getting legal tenders for the purpose of said tender, which had been procured by deponent for the purpose, and deponent then and there, on behalf of complainants, demanded an assignment of said decree, bond and mortgage, and execution, and said Parker said he declined to accept the moneys on such condition, but would telegraph to his client, and he did not know what he would do; and deponent further says, that the facts, matters, and things in the foregoing bill set forth, so far as they relate to the acts and deeds of deponent, are true, of his own knowledge, and so far as they relate to the acts and deeds of others, he believes the same to be true.

20

SIMON BERNHEIMER.

30 Sworn and subscribed before me, at Newark, this 2d day of February, A. D. 1874.

THEODORE RUNYON, *C.*

State of New York, city and county of New York, *ss.*—Adolph Ascher, being duly sworn according to law, on his oath deposeseth and saith—that he resides in the said city of New York, that he has read the foregoing bill of complaint, entitled “In the Court of Chancery of New Jersey,” and that he knows, of his own knowledge, that the statements made in paragraphs nine and ten thereof, are true.

A. ASCHER.

Subscribed and sworn to before me, this 30th day of January, 1874.

FREDERICK B. SWIFT,
Commissioner for N. J., in and for N. Y.

A true copy.

H. S. LITTLE, *Clerk.*

ANSWER.

The answer of William A. Bigelow to the bill of complaint of George W. Cassedy, Francis T. Lilliendahl, Virgil de Escoriza, and Simon Bernheimer, trustees, and others named in said bill, their *cestui que trusts*, in a certain mortgage therein mentioned named, complainants. 10

This defendant, now and at all times hereafter, reserving to himself all right of objection to the errors, uncertainties, and irregularities in said bill contained, for answer thereto, or to so much as he is advised it is material for him to make answer unto, answering, says—

That he admits that he hath obtained in this court the decree for foreclosure and sale in said bill mentioned, that execution hath been sued out thereon, the sale ordered thereby advertised, and that such sale would have taken place as in said bill stated, but for the order of this Honorable Court. 20

This defendant also admits, that prior to the filing of the said bill of complaint, tender was made to the counsel of this defendant of a sum of money equal to the amount of said decree, with interest and costs, by the counsel of said complainants, or some of them; and he says that he learns from his said counsel, and believes that on inquiry by his own attorney and solicitor as to said tender, it was expressly stated that the same was made for and on conditions of receiving from this defendant an assignment of said decree, and that the tender was made by the trustees in said mortgage for the *cestui que trusts* secured thereby, and that, under instructions from this defendant, his said solicitor 30

refused said tender upon said conditions, stating that he would receive from said defendants in said execution, or any person acting for them, payment of the sum, and would receive such payment from the said trustees, or any persons secured by said mortgage, payment of said execution and decree, but that this defendant would not make an assignment of said decree to any one.

And this defendant further answering saith, that the reason of his conduct in the premises was not, as alleged in said bill, a desire to have said property sacrificed, or to purchase the same himself, or to constrain the complainants to pay him any other debt, as stated in said bill; but that the motives governing him are as follows: First, that he is advised by counsel that he is not by law called upon to make any such assignment; second, that being himself as creditor of the said defendants in said execution to a considerable amount, as stated in said bill, and having a full conviction that said defendants in such execution can pay the said decree if they choose, or procure some one to pay it for them, he regards the enforcement of said decree best for his own interests, and best for those of the parties represented by said trust mortgage.

And this defendant insists that he has the same right to his opinion as to what is best for his own interest, both as complainant in said decree, and as one of said *cestui que trusts* under said mortgage, as the said complainants or either of them, and he submits that the statement of the complainants in the said bill that said Roemmelt and Leicht have, since the making of said mortgage, actually paid thereon enough to satisfy or nearly satisfy the said decree, sufficiently sustains his opinion as to their ability to pay said decree, if the same be proceeded with.

And the defendant submits, that it sufficiently appears that said complainants have not any right to demand the assignment of said decree of him, because, if such assignment were made, this defendant would occupy exactly the same position in relation to the complainants, which they now sustain in relation to him. They would own the decree which he now owns, and have an interest in the mortgage, in which they now possess such a large interest, but if their

insistent is right, this defendant, after assigning said decree, could pay them back said money, and have the right thereupon to receive the said decree back again, and so on *ad infinitum*.

And this defendant submits, that the only proper course for the protection of all parties in this matter, is for the sale to take place. If any buyer will give enough to pay both mortgages, they will be paid, and the rightful demands of all satisfied. If not, the said trustees, by purchasing the property, can acquire the same for the use and advantage of their said trust. 10

And this defendant saith, that he is ready to accept the money due on said decree in payment thereof, but not to give any party, who is no more entitled to equitable relief than himself, the advantage of the decree which he possesses, and by means whereof he can, in his judgment, compel the defendants in said execution to discharge the first mortgage, and thereby enhance the security of the second.

And defendant saith, that the complainants took their said mortgage with full notice of his first mortgage now in decree, but by seeking to obtain payment of their debts before said first mortgage or said decree was paid, and by taking the avails of the business of Roemmelt and Leicht for their own use, instead of causing them to be applied to the first lien, have created all difficulty there is in the matter. All they now do is to pay back to Roemmelt and Leicht what they have received. Let it be applied to the discharge of the decree, and with their security enhanced, wait awhile and get the money back from the property or from its present owners. 20 30

And as to the value and condition of said property, defendant saith, that he has no knowledge, and that he hopes and believes it good security for both the mortgages existing thereon. But he denies, from information and belief, that it cannot be divided, or is unsaleable unless sold together.

And this defendant denies all manner of combination and confederacy wherewith he is by said bill charged,

and humbly prays to be hence dismissed, with his reasonable costs herein wrongfully sustained.

PARKER & KEASBEY,
Solicitors and of Counsel for Defendant.

Essex county, ss.—William A. Bigelow, the above named defendant, being duly sworn, saith—that the parts, matters, and things in the above answer contained, so far as they relate to his own acts and deeds, are true, and so far as they relate to the acts and deeds of others, he believes them to
10 be true.

WM. A. BIGELOW.

Sworn and subscribed, this 23d, day of February, 1874, before me.

N. PERRY, JR.,
M. C. of N. J.

[Filed May 28, 1874.]

This cause coming on to be heard before the Chancellor, on the twenty-third day of February, in the year eighteen hundred and seventy-four, on an order to show cause why
20 an injunction should not issue pursuant to the prayer of the bill, and having been adjourned from time to time, for the convenience of counsels' arguments, and on the fourth day of May instant, the answer of said Bigelow being read and amended in the reading thereof at the request of his counsel, so as to admit the tender by the trustees for certain of the beneficiaries as in the bill mentioned, and the answer of Roemmelt and Leicht and their wives being read, and
30 it appearing by the answer of the latter that the principal debtors admit the equity of the complainants' bill, and that it would be just that, on the redemption and payment of the bond and mortgage and decree of said Bigelow by the said trustees, in behalf of the beneficiaries who raise the money to pay and redeem said mortgage and bond of said Bigelow, and the decree thereon, which mortgage of said Bigelow is prior to the mortgage of said trustees, said persons paying

the same should be entitled to enforce the same against the mortgaged premises, and the said John Reinhardt not having answered the bill, and the cause being, as respects him, ready for decree final.

And the Chancellor having heard the arguments of Robert Gilchrist, of counsel with the complainant, and of Cortlandt Parker, of counsel with the defendant, Bigelow; and it appearing to the Chancellor by the bill and answer of said Bigelow, that the said complainants are trustees of a mortgage on property on which the mortgage and decree of said Bigelow are a prior lien, and that certain of the beneficiaries in the bill named under the mortgage of said trustees, raised and paid into court, by leave of the court, the full amount of the said Bigelow's bond, mortgage, and decree, principal, interest, and costs, to the day of such payment; and it also appearing to the Chancellor that the said moneys were, on the day of the payment into court, tendered to the said Bigelow or his counsel, and such tender was not made upon an improper condition, by reason of the demand for an assignment of said bond, mortgage, and decree, and that from the day of such tender and payment into court the interest on said money due to said Bigelow should cease, except so far forth as the interest realized on the money while in this court—

It is now, on this twenty-eighth day of May, in the year eighteen hundred and seventy-four, (until which day the Chancellor considered the said pleadings and agreements,) ordered by the Chancellor that the said injunction prayed for the bill do issue, and that on the delivery into court or to the complainant out of court, for the beneficiaries paying the money aforesaid of an assignment by said Bigelow of his said bond, mortgage, and decree, the said money now in court be paid out to the said Bigelow; the said assignment to be duly acknowledged and to be approved, if the complainant require it, by a master of the court, to whom the court will refer the matter, in case the parties shall differ; no sale under the execution on said decree is to be made, however, without the order of this court thereto first had and obtained; and all further equity is reserved until the final hearing of the cause.

THEODORE RUNYON, C. 40

A true copy—H. S. LITTLE, Clerk.

OPINION.

THE CHANCELLOR. The complainants, George W. Cassidy, Francis T. Lilliendahl, Virgil de Escoriaza, and Simon Bernheimer, as trustees, and Simon Bernheimer and Virgil de Escoriaza in their own right, and The Marine National Bank, The National Park Bank, and other individuals and corporations, filed their bill to redeem. The trustees are holders of a mortgage to secure the payment of over \$200,000 upon the brewery premises of Roemmelt and Leicht, in Hudson county, on which the defendant, Bigelow, when they took their mortgage, held a prior mortgage for \$50,000 and interest. Upon this mortgage he had then obtained a decree for foreclosure and sale in this court. That decree is still unsatisfied. An execution was issued upon it, under which the premises have been advertised for sale by the sheriff, but no sale has as yet taken place, adjournments having been made from time to time. At the filing of the bill the defendant, Bigelow, threatened to proceed to sale. The trustees hold their mortgage in trust for various creditors of Roemmelt and Leicht, among whom are two of their own number, and the other complainants and the defendant, Bigelow. The premises comprised in the mortgage consist of about two acres of land in what was formerly Hudson City, (now included in the boundaries of Jersey City,) on which is a very large brewery of costly construction, with stables, wagon houses, wagon shops, a large cooperage, a large dwelling house for workmen, a saloon in a large frame building, a bowling alley, and a summer house, and the private dwelling house of Roemmelt and Leicht, the mortgagors. In addition to this property, the mortgage of the trustees covers two plots, containing nearly an acre, adjoining the land covered by the first mortgage, and about eight city lots near to, but not adjoining the premises described in the first mortgage. The trustees hold besides, as security for their mortgage debt, a chattel mortgage of all the tools, machinery and implements, casks, barrels, wagons, horses, and other personal property belonging or relating to the brewery or its business. This personal property is of the

value of about \$30,000, and if sold apart from the brewery must be sold at a comparative sacrifice. The business is now successfully carried on by Roemmelt and Leicht, who, since the giving of the mortgage of the trustees, have paid on account of the debt secured thereby, about \$54,000, and there is now unpaid on account of it \$154,000, of which unpaid indebtedness the amount of \$126,000 is held by those of the beneficiaries under the second mortgage, who have contributed to redeem the first. The premises are more valuable to Roemmelt and Leicht than to any body else. 10
The part covered by the first mortgage is by far the most valuable part of them, the buildings being upon it. The property, if sold at this time would not, it is alleged, bring over half of its value, and a sale would endanger, if not destroy the complainants' security. The interest of the defendant under the second mortgage is about \$6,000. The defendants, Roemmelt and Leicht, and their wives, have answered, consenting to the substitution of the complainants in the place of Bigelow, as to the owner of the decree, and admitting that the payment thereof by the complainants or 20
any of them should not extinguish the debt or lien of the decree, and consenting that the decree shall remain a first lien on the premises mentioned therein, subject to a prior mortgage of about \$2,300 on part of those premises.

The complainants ask to be permitted to redeem Bigelow's mortgage in the interest and for the protection of the trust under their mortgage. Before filing the bill, they applied to Bigelow and requested him to permit them to redeem his mortgage, tendering themselves ready to pay the amount due on the decree and execution, on his executing an assignment thereof to them, but he refused. He 30
expressed his willingness, however, to accept the amount tendered in payment of the decree, and acknowledge satisfaction, but refused to permit the complainants to be substituted, by virtue of such payment, to his rights under the decree.

Bigelow has answered, admitting the facts above stated. He resists the complainants' claim to subrogation, on the ground that he, having a debt secured by the mortgage of the trustees, and another debt due from Roemmelt and 40

Leicht, not secured by mortgage upon the brewery premises, has a right to protect those claims by means of his mortgage, and this, he thinks, can be best done by compelling payment. His counsel argues that his equity is equal to that of the complainants, and that, therefore, if this court should allow the desired subrogation, he, by virtue of his interest under the mortgage to the trustees, might in turn successfully apply to be permitted to redeem the mortgage now held by him, from them. He further insists that

10 if the substitution be allowed, the complainants will, by reason thereof, have the advantage over him which he now has over them. But no such result is to be anticipated. It is admitted that, notwithstanding the statement in the answer to the contrary, the application to redeem is made in behalf of the whole trust, including, of course, the defendants' claim thereunder, although the complainants, other than the trustees, have alone contributed the whole of the money requisite to the redemption. This court will see to it that in the subrogation no advantage is given to

20 the complainants to the prejudice of Bigelow's interest, as a beneficiary under the mortgage held by the trustees. The decree is under the control of this court. If it be decreed to stand as security to the complainants for the amount advanced to redeem Bigelow, with the restriction that sale of the mortgaged premises under it shall not be made without the order of the court, it is difficult to see how Bigelow's interest under the mortgage of the trustees can be prejudiced. The right of the mortgagees under that mortgage to redeem, under the circumstances, is clear. Tacking

30 is not permitted in this state. Nor will the fact that the prior mortgage has an interest under the subsequent one, prevent the court from decreeing the redemption. In *Saunders v. Winship and Frost*, 5 *Pick.* 259, the holder of the first and second mortgages was, with two other persons, the holder of the third. He was in possession under the first and second.

The two who were interested with him in the third mortgage applied to redeem him as to the first and second. He resisted, on the ground of his interest in the third mortgage,

40 insisting that he was entitled to hold the premises until his

debt under that mortgage should be paid, and that, therefore, the complainants should be required to redeem him, not only as to the first and second mortgages, but also as to his interest under the third.

It was held that they might redeem him, as to the first and second mortgages, and though they could not compel him to contribute, he could not avail himself of his interest in the third mortgage, but they would be entitled to possession until they were reimbursed his proportion, and that, if he elected to hold under the third mortgage, he should contribute to the redemption of the first and second in the proportion his interest in the third bore to that of the other two mortgages. 10

Bigelow claims that, inasmuch as in his judgment it will be to his interest, with a view to the collection of his debt which is not secured by mortgage on the brewery, that his debtors should be compelled to pay off his mortgage, the court will not compel him to assign that mortgage. It is difficult to see how the collection of the debt unsecured by mortgage, is to be facilitated or accelerated by compelling the debtors to pay off his mortgage, but were such a result to be expected, that would not prevent the court from doing equity between him and the trustees as mortgagees. 20

It is the equitable right of the trustees to be permitted to redeem his mortgage, and to hold the premises under it, until they shall have been reimbursed their necessary expenditure to that end, the principal, interest and cost due on the decree. And they have a right to an assignment of the decree. *Pardee vs. Van Anken*, 3 Barb. S. C. R. 334; *Averill vs. Taylor*, 8 N. Y. 44; *Cheesebrough vs. Millard*, 1 J. C. R. 409; *Stevens vs. Cooper*, 1 J. C. R. 125; *Smith vs. Green*, 1 Coll. 555; *Ex parte Crisp*, 1 Atk. 133. 30

The complainants, on filing the bill, paid into court the full amount, \$56,975, due on the decree. They had previously tendered it to Bigelow, who as before stated, refused to receive it except in satisfaction of the decree. He is not entitled to interest on the money secured by the decree, except that which is allowed on money paid into court. *Austin v. Dadwell's Ex'rs*, 1 Eq. Ca. Abr. 319. 40

The order to show cause will be made absolute, and an injunction will be issued restraining Bigelow from selling under the decree. On his executing an assignment of the decree and execution to the trustees, in trust, to secure to contributing complainants the repayment to them of the amount by them contributed to the redemption, with interest on so much thereof as is principal from the time the money was paid into court, he will be permitted to take the money deposited, with the interest on it, payable under the rule of
10 this court.

For the complete protection of Bigelow, in respect of his claim under the mortgage held by the trustees, no sale under the execution will be permitted without the previous order of the court.

PETITION OF APPEAL.

[Filed June 9, 1874.]

Between William A. Bigelow, Appellant, } *On Bill, &c.*
and } *Petition of*
George W. Cassedy and others, Appellees. } *Appeal.*

20 *To the Honorable the Court of Errors and Appeals, in the last resort in all cases of law.*

The humble petition of William A. Bigelow, the appellant in the above stated cause, respectfully shows—that your petitioner finds himself aggrieved by an order and decree of his Honor, the Chancellor, made in a cause pending in the Court of Chancery of New Jersey, made and dated the twenty-eighth day of May, one thousand eight hundred and seventy four, wherein George W. Cassidy,
30 Francis T. Lilliendahl, Virgil de Escoriza, Simon Bernheimer and others were complainants, and the said William A. Bigelow and others were defendants, in these respects, to wit: That the said order and decree adjudges that the injunction prayed for by the bill of complaint in this case

should issue, and that the said order and decree declares that the tender of the moneys in said decree and bill mentioned as having been tendered to the said Bigelow, or his counsel, was not made upon an improper condition by reason of the demand for an assignment of said mortgage bond and decree in said order and bill mentioned, and that the said order and decree declares that from the day of said tender and payment into court of said moneys, the interest on said money due to said Bigelow should cease, except so far forth as the interest realized on the moneys whilst in this court. 10
And your petitioner humbly appeals from those parts, respectively, of said order and decree, which decrees as aforesaid, upon the ground that the same therein is erroneous; for that said injunction ought not to issue; and for that said tender was made upon an improper condition by reason of such demand of such assignment; and for that the said Bigelow was at all events entitled to all interest due upon said bond, mortgage and decree. Your petitioner, therefore, prays that the said decree of the Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden. 20
And that your petitioner may have such other and further relief in the premises, as to your Honor may seem meet.

PARKER & KEASBEY,
Solicitors of Appellants.
CORTLANDT PARKER,
Of Counsel with Appellant.

Dated June 9th, 1874.



