

New Jersey Court of Errors and Appeals.

Between

HENRY VAN DERVEER, complainant,

and

CHARLES P. HOLCOMB and wife et al.,
defendants.

} *Bill to foreclose.*

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### Bill of Complaint.

[Filed November 17, 1863.]

IN CHANCERY OF NEW JERSEY.

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

Humbly complaining, showeth unto your Honor your orator Henry Van Derveer, of the township of Bridgewater, in the county of Somerset, and state of New Jersey, that on or about the twenty-first day of October, in the year one thousand eight hundred and forty-four, one Charles Wyckoff, of the township of Bridgewater, in the county of Somerset, and state of New Jersey, became and was justly indebted unto one Cornelius Van Derveer, of the same place, in the sum of five thousand dollars; and being so indebted, the said Charles Wyckoff, in order to secure the payment of the said 40 sum of money, with interest, did make and execute, under his hand and seal, and deliver unto the said Cornelius Van Derveer, a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of ten thousand

dollars, lawful money of the United States, with a condition there underwritten, that if the said Charles Wyckoff, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said Cornelius Van Derveer, his executors, administrators, or assigns, the just and full sum of five thousand dollars, lawful money aforesaid, on or before the first day of April next (1845), with interest from the date thereof, then the said obligation should be void, otherwise to remain in full force and virtue, as in and by the said bond or  
 10 obligation, and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows, that the said Charles Wyckoff, 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 Cornelius Van Derveer a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Charles Wyckoff and Elizabeth H. his wife, of the first part, and the said Cornelius Van Derveer, of the  
 20 second part, in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said Cornelius Van Derveer, the said party of the second part, his heirs and assigns, all the following described parcels of lands and premises, situate, lying, and being in the township of Bridgewater, in the county of Somerset, and state of New Jersey, and described in said mortgage as follows: "All the lands and premises conveyed by David T. Talmage, sheriff, to the  
 30 said Charles Wyckoff, by deed dated the fourteenth day of October, eighteen hundred and forty-four, and in said deed described as follows: all those parcels of land and premises situate in the township of Bridgewater, county of Somerset, and state of New Jersey, beginning on the north side of the main street in Boundbrook, and runs north, three degrees and a half east, fifty-two links, to a corner of the well lot; thence north, forty-two degrees west, nine links, to a corner; thence north, forty-seven degrees east, nineteen links, to William Van Duyn's lot; thence, by his line north, thirteen and a quarter degrees east, four chains and twenty-nine links,  
 40 to a corner; thence, along the line of said Van Duyn (late

A. Van Norden and Doct. Cook's line) north, eighty-seven degrees west, seven chains and thirty-six links, to a corner of J. De Groot's land; thence, by his line north, eighteen and a half degrees east, six chains and thirty-six links, to a corner in a line of lands late H. Staats'; thence south, eighty-five and a quarter degrees east, seven chains and fifty-eight links, on the course in said Staats' line; thence, by said line and a lot of P. Marcellus, south, eleven and a half degrees west, eight chains and ninety-five links, to the south side of the New Jersey turnpike; thence along the same to the begin- 10  
ning, containing five acres and thirty-six hundredths of an acre, more or less.

The second lot is on the south side of said turnpike, at the corner of A. Van Duyn's lot; thence south, eighteen and a quarter degrees west, three chains and sixty-two links, to a stone and another corner of said Van Duyn's lot; thence along his line north, eighty-eight degrees west, seven chains twenty-nine links, to a stone in J. De Groot's line; thence by his line south, eighteen and a half degrees west, seven chains and twenty-eight links, to the Raritan river; thence 20  
down the same, the several courses thereof, to the corner of B. Giles' lot; thence, by his line north, seven degrees east, six chains and twenty-eight links, to lands late of G. Paints; thence, by the same and J. Ross's land, north, seventy-seven degrees west, ten chains and thirty-five links; thence north, thirteen degrees east, seven links, to a corner; thence, by lands late of Hannah Blachford and John H. Voorhees, north, seventy-seven degrees west, four chains and twenty-two links, to a corner of said Voorhees' land; thence along his line north, eight and a quarter degrees east, one chain and sixty- 30  
four links, to the south side of said road; thence along the same westerly to the beginning, containing eleven acres and five hundredths of an acre: also all that tract of land, situate as aforesaid, beginning at a stake two links westerly of a stone on the south side of the turnpike road, near the north-west corner of the shed; thence south, ten and a half degrees west, three chains and forty-five links; thence north, eighty-eight degrees west, seven chains and seventy-eight links, to the line of lands of Jacob De Groot, esq.; thence, with his line, south, nineteen degrees west, seven chains and fourteen 40

links, to the Raritan river; thence along the same, and binding thereon until it comes to the southwest corner of lands belonging to Benjamin Giles; thence north, seven and a quarter degrees east, six chains and eleven links; thence north, twenty-six and a quarter degrees west, six chains and fifty-seven links; thence north, seven and a quarter degrees east, one chain and seventy-one links, to the northwest corner of John H. Voorhees' land; thence north, seven and a quarter degrees east, five chains and fifty links; thence north, 10 eighty-two and a quarter degrees west, eighty-two links, to a corner of Caleb C. Berhaus' land; thence south, thirteen and a half degrees west, three chains and eighty-three links, to the centre of the well; thence south, eleven and a half degrees west, eighty-six and a half links, to the southeast corner of John T. Randolph; thence south, forty-five and a quarter degrees west, one chain and eighty links, to the place of beginning, containing eleven acres and eighty-eight hundredths, more or less; together with all and singular the tenements, hereditaments, and appurtenances thereunto be- 20 longing or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, use, property, possession, claim, and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances: to have and to hold the therein above granted and described premises, with the appurtenances, unto the said Cornelius Van Derveer, the said party of the second part, his heirs and assigns, to his and 30 their and their own proper use, benefit, and behoof for ever; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said Cornelius Van Derveer, or to his certain attorney or attorneys, executors, administrators, or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner 40 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 Charles Wyckoff and Elizabeth H. Wyckoff his wife before John M. Mann, esquire, one of the masters in chancery of New Jersey, and duly recorded in the office of the clerk in and for the said county of Somerset, in Book N of Mortgages, page 527, on the 10 eighteenth day of October, in the year one thousand eight hundred and forty-four, as by the certificate of the clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows, that the said Cornelius Van Derveer has departed this life since the execution and delivery of the said bond and indenture of mortgage, leaving John M. Mann, esq., of the county of Somerset, his sole executor; and further, your orator shows that the said John 20 M. Mann, as such executor, did, on the fifth day of October last, A. D. 1863, sell, assign, transfer, and deliver to your orator the foregoing indenture of mortgage, together with the said bond or obligation, and the money due and to grow due thereon, with interest, which transfer was made under the hand and seal of the said John M. Mann, and on the said fifth day of October, he acknowledged the same in due form of law before John V. Voorhees, esq., one of the masters in chancery of New Jersey, which assignment so made was, on the same fifth day of October, recorded in 30 Somerset clerk's office, in Book No. 2 of Assignments of Mortgages for Somerset county, at page 90, which said assignment is now in the possession of your orator, and ready to be produced when and where this honorable court shall direct.

And your orator further shows, that on or about the first day of August, in the year eighteen hundred and fifty-eight, there was paid on said bond, secured as aforesaid by the said indenture of mortgage, the sum of two thousand five hundred dollars, as and towards part payment of the said sum 40

of five thousand dollars, which payment so made is endorsed on the said bond now in the possession of your orator.

And further your orator shows, that the interest money due and owing on said bond is greatly in arrear, and remains wholly unpaid since the first day of April, in the year eighteen hundred and fifty-eight.

And your orator further shows, that on or about the twenty-fourth day of April, in the year eighteen hundred and sixty-one, Charles P. Holcomb (who had then become  
 10 the owner of the lots and parcels of lands and premises in the said mortgage herein before described), together with his wife, executed a mortgage on the same premises to me, Henry Van Derveer, to secure the sum of two thousand five hundred dollars, or some other sum, by virtue of which said mortgage the said Henry Van Derveer claims to have some lien upon the said premises; but your orator charges that the said last mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full notice therof, and if an encumbrance at all upon the said  
 20 premises, is subsequent to the mortgage of your orator.

And your orator further shows, that on or about the sixteenth day of December, in the year eighteen hundred and fifty-four, the said Charles P. Holcomb and Sarah his wife executed a mortgage on the same premises to the Boundbrook Building Loan and Savings Association, to secure the sum of one thousand dollars, or some other sum, by virtue of which said mortgage the said the Boundbrook Building Loan and Savings Association claims to have some lien upon the said premises; but your orator charges that the said last  
 30 mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and if an encumbrance at all upon the said premises, is subsequent to the mortgage of your orator.

And your orator further shows, that on or about the nineteenth day of March, in the year eighteen hundred and sixty-three, as your orator has been informed and believes to be true, one Isaac McCord procured to be issued a writ of attachment, out of the Circuit Court of the County of Somerset, against all and singular the goods and chattels, rights  
 40 and credits, moneys and effects, lands and tenements, of the

said Charles P. Holcomb, and that such writ of attachment was levied upon the said goods and chattels and lands and tenements of said Holcomb, and such proceedings were subsequently had in said court, under and by virtue of said writ, that Andrew V. D. B. Vosseller, Leonard Bunn, and Archibald C. Mollison were appointed auditors by the said court to audit and adjust the claim of the said Isaac McCord and of such other creditors of the said Holcomb as should apply to them or to the said court for that purpose; and further, your orator shows that subsequently such further proceedings were had in said court, under and by virtue of said writ, that a final judgment was entered in favor of the creditors who had so applied to the said auditors and to the said court to have their said claim allowed, by virtue of which said proceedings in attachment, and the final judgment entered therein, the said Andrew V. D. B. Vosseller, Leonard Bunn, and Archibald C. Mollison claim to have, as such creditors, some lien upon the said premises; but your orator charges that the said writ of attachment was issued subsequent to the mortgage of your orator, and all proceedings had under and by virtue of such writ were also subsequent to the execution and recording of your orator's said mortgage, and that such proceedings were had and taken with full notice thereof, and if such proceedings and judgment were an encumbrance at all upon the said premises, the same is subsequent to the mortgage of your orator. 10

And your orator further shows, that on or about the twenty-seventh day of March, in the year eighteen hundred and sixty-three, the said Charles P. Holcomb and wife executed a mortgage on the same premises to one Cellip F. Fisher, to secure the sum of three thousand five hundred dollars, or some other sum, by virtue of which said mortgage the said Cellip F. Fisher claims to have some lien upon the said premises; but your orator charges that the said last mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and if an encumbrance at all upon the said premises, is subsequent to the mortgage of your orator. 30

And your orator further shows, that on or about the third day of April, in the year eighteen hundred and sixty-three, 40

as your orator has been informed and believes to be true, one William S. Cook and Lewis D. Cook, then lately trading and doing business under the name, style, and firm of W. S. and L. D. Cook, recovered a judgment in the Supreme Court of Judicature of the State of New Jersey for the sum of two thousand five hundred and forty-nine dollars and forty-nine cents, or some other sum, by virtue of which said judgment the said William S. Cook and Lewis D. Cook claim to have some lien upon the said premises; but your  
 10 orator charges that the said judgment was obtained subsequent to the execution of your orator's said mortgage, and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the encumbrance of your orator's said mortgage.

And your orator further shows, that the said sum of two thousand five hundred dollars, balance 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 your orator or to  
 20 any one else for or on account of your orator, except as before stated, so that your 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, have become absolute in your orator and his heirs. And your orator further shows, that the said Charles P. Holcomb and wife, the Boundbrook Building Loan and Savings Association, Henry Van Der-  
 veer, Andrew V. D. B. Vosseller, Leonard Bunn, Archibald  
 30 C. Mollison, Cellip F. Fisher, W. S. and L. D. Cook, or some or one of them, since the execution of your orator's said mortgage, have possessed and 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  
 40 person or persons for him, have frequently and in a friendly

manner applied to the said Charles P. Holcomb and wife, the Boundbrook Building Loan and Savings Association, Andrew V. D. B. Vosseller, Leonard Bunn, Archibald C. Mollison, Cellip F. Fisher, W. S. and L. D. Cook, Henry Van Doren, 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 reasonable requests of your orator, and would have 10 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 Charles P. Holcomb and Sarah his wife, the Boundbrook Building Loan and Savings Association, Henry Van Derveer, Andrew V. D. B. Vosseller, Leonard Bunn, Archibald C. Mollison, Cellip F. Fisher, William S. Cook and Lewis D. Cook, combining and confederating together, and to and with divers other persons at present un- 20 known 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 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 30 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 encumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud, to injure and aggrieve 40

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 forasmuch as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law, nor can  
 10 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 Charles P. Holcomb and Sarah his wife, the Boundbrook Building Loan and Savings Association, Henry Van Derveer, Andrew V. D. B. Vosseller, Archibald C. Mollison, Leonard Bunn, Cellip F.  
 20 Fisher, William S. Cook and Lewis D. Cook, 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  
 30 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, and may deliver over unto your orator all  
 40 deeds, demises, and writings whatever relating to or concern-

ing 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 due thereon, together with all your orator's costs and charges in this behalf sustained; and that your orator may have such further and other relief in the premises as to your Honor 10 may seem meet and shall be agreeable to equity and good conscience, may it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Charles P. Holcomb and Sarah his wife, the Boundbrook Building Loan and Savings Association, Henry Van Derveer, Andrew V. D. B. Vosseller, Leonard Bunn, Archibald C. Mollison, Cellip F. Fisher, William S. Cook and Lewis D. Cook, trading, as aforesaid, under the name of W. S. and L. D. Cook, therein and thereby com- 20 manding 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.

J. V. VOORHEES,

*Solicitor and of counsel with complainant.*

## Answer.

[Filed January 30, 1864.]

IN CHANCERY OF NEW JERSEY.

*The joint and several answer of Charles P. Holcomb and Sarah Holcomb his wife, two of the defendants to the bill of complaint of Henry Van Derveer, complainant.*

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors, uncertainties, and  
 10 other imperfections in the said complainant's bill of complaint, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, these defendants answering say—that they have heard, and believe it to be true, and therefore admit, that at or about the time in that respect stated in said  
 20 bill of complaint, the said Charles Wyckoff, in said bill mentioned, became and was justly indebted unto the said Cornelius Van Derveer in the sum of five thousand dollars, and in order to secure the payment thereof, with interest, did  
 30 make and execute the bond or obligation, with a condition thereunder written, of such date and of such purport and effect as is in said bill mentioned and set forth, and did also make and deliver, in order to secure the payment of said moneys to the said Cornelius Van Derveer, the indenture of mortgage executed by himself and his wife, as is also described and set forth in said bill of complaint; and they likewise admit that the said indenture of mortgage was acknowledged and recorded at the times respectively and in the manner averred by the said complainant.

30 And these defendants further answering say, that they have heard and believe, and therefore admit, that the said Cornelius Van Derveer has departed this life since the execution and delivery of the said bond and indenture of mortgage, leaving the said John M. Mann his sole executor, and that the said John M. Mann, as such executor, did, on the fifth day of October last, sell, assign, transfer, and deliver to

the complainant the said above mentioned bond and indenture of mortgage and the money due and to grow due thereon, and that said transfer was made under the hand and seal of the said John M. Mann, and that the same was in all respects made, executed, and acknowledged and recorded at the times and in the manner set forth by complainant; and these defendants further admit, that the said sum of two thousand five hundred dollars was paid on said bond and mortgage at the time and in the manner averred by the complainant, and that said payment is endorsed on said 10 bond, and that there is some interest in arrear and due on said mortgage, but what amount these defendants cannot now say, as the said Charles P. Holcomb took no receipt when last interest was paid thereon; and these defendants show and aver the truth to be, that the said complainant did not procure the assignment of the said bond and mortgage for any just or equitable purpose, but that the same was procured by him by collusion with Henry Van Derveer, one of the defendants herein, and for the sole purpose of assisting the said Henry Van Derveer, defendant, in foreclosing a 20 certain invalid and usurious bond and mortgage, and which are hereinafter next mentioned; and these defendants show, and expressly charge, that the said complainant procured the said mortgage, and has exhibited his said bill of complaint, founded thereon, in this honorable court for the above purpose, and for no other purpose whatsoever.

And these defendants further answering say, that it is true that Charles P. Holcomb, one of these defendants, became the owner of the lands and premises mentioned in said mortgage of said complainant, and described in said bill of 30 complaint, and that, on or about the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty, these defendants made and executed a mortgage thereon to the said Henry Van Derveer, defendant, to secure the sum of two thousand five hundred dollars, by virtue whereof the said Henry Van Derveer, defendant, claims to have a lien on said premises; and they admit that the said mortgage was executed subsequent to the mortgage of said complainant, and with full notice thereof.

And these defendants further say, that the said mortgage, 40

herein above mentioned, was made, executed, and delivered to the said Henry Van Derveer, defendant, under the following circumstances, *viz.* that before the making of said last mentioned mortgage and of the bond next hereinafter mentioned, that is to say, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty, at Bedminster, in the county of Somerset, it was corruptly, and against the form of the statute in that case made and provided, agreed, by and between the said Charles P. Holcomb, one of these defendants, and the said Henry Van Derveer, defendant, that the said Henry Van Derveer, defendant, should loan and advance unto the said Charles P. Holcomb the sum of two thousand five hundred dollars, lawful money of the United States, and that the said Henry Van Derveer, defendant, should forbear and give day of payment thereof to the said Charles P. Holcomb until and upon the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, and that the said Charles P. Holcomb, for the loan of the said sum of two thousand five hundred dollars, and for giving day of payment thereof as aforesaid for the time aforesaid, should give and pay to the said Henry Van Derveer, defendant, on the said twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, the sum of seven dollars on each one hundred dollars of the said two thousand five hundred dollars, together with the said sum loaned of two thousand five hundred dollars so to be loaned; and that for securing the payment of the said sum of two thousand five hundred dollars, with lawful interest thereon, he, the said Charles P. Holcomb, should make and seal, and as his act and deed deliver to the said Henry Van Derveer, defendant, a certain bond, and should thereby bind himself in the penal sum of five thousand dollars, conditioned for the payment of the said sum of two thousand five hundred dollars, with lawful interest thereon, by him, the said Charles P. Holcomb, unto the said Henry Van Derveer, on or before the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, and that he, the said Charles P. Holcomb, together with his said wife, should make and deliver to the said Henry Van Derveer, defendant,

a mortgage on the premises described in said bill of complaint, securing the payment of the said money, according to the condition of the said bond; and these defendants say that, in pursuance of said corrupt and unlawful agreement so made as aforesaid, the said Henry Van Derveer afterwards, to wit, on the day and year and at the place last aforesaid, and upon the agreement and terms aforesaid, lent and advanced to the said Charles P. Holcomb the said sum of two thousand five hundred dollars, and that for securing the repayment thereof, with the lawful interest thereon, he, 10 the said Charles P. Holcomb, in further pursuance of the said corrupt and unlawful agreement, then and there made and sealed, and as his act and deed delivered to the said Henry Van Derveer, defendant, his writing obligatory, in the penal sum and with the condition annexed above mentioned; and the said Charles P. Holcomb did likewise, together with his said wife, make, execute, and deliver the mortgage last above mentioned, in pursuance of the said corrupt and unlawful agreement, and for the purpose aforesaid, and did at the same time promise the said Henry Van 20 Derveer to pay him the said sum of one dollar on every hundred dollars of the said money so loaned, in addition to the sum so loaned and the legal interest, at the time when the said principal sum and the legal interest thereon should fall due according to the condition of the said bond; and the said defendants aver that the said sum of seven dollars for the forbearance and giving day of payment of one hundred dollars for one year was contrary to the form of the statute in such case made and provided, by means whereof, and by force of the statute aforesaid, the bond and mortgage last 30 aforesaid were and are wholly void in law; and these defendants say, that the mortgage last aforesaid is the same mortgage mentioned in the said bill of complaint, and which it is therein alleged these defendants made to the said Henry Van Derveer, defendant, and which is erroneously described in said bill as having been made in the year eighteen hundred and sixty-one; and these defendants say, that at the time of making the said usurious agreement, and at the time of delivering of the said bond and mortgage in pursuance thereof, these defendants and the said Henry Van Derveer, 40

defendant, were residents of the said county of Somerset, in this state.

And these defendants further say and show, that the said Henry Van Derveer, defendant, having become possessed of the said corrupt and usurious bond and mortgage, on or about the second day of June, in the year of our Lord one thousand eight hundred and sixty-three, exhibited his bill of complaint in this honorable court to foreclose said mortgage; but that these defendants filed their answer to said bill, setting up the defence of usury thereto, and that thereupon, the said Henry Van Derveer, defendant, on or about the — day of October last past, by the order of this court, on his motion, dismissed his said bill of complaint, well knowing that he could not sustain his said suit; and these defendants show and charge that it was shortly before said dismissal that the said Henry Van Derveer, defendant, concerted a plan with the said complainant, whereby he, the said complainant, should procure an assignment of the mortgage herein first above mentioned, and should file his bill thereon in this court, making the said Henry Van Derveer a defendant in this suit, so that he could bring forward his said usurious mortgage as a defendant, and not in the character of a complainant, and thereby preclude these defendants from setting up the defence of usury; but these defendants submit to this court, and respectfully insist, that if the said Henry Van Derveer, defendant, shall attempt to enforce his said bond and mortgage, or either of them, in this suit in this honorable court, that these defendants have the right to set up and insist on the said usurious agreement, and the statute in such case made and provided, as a defence thereto.

And these defendants further say and show, that they expressly disclaim asking at the hands of this honorable court, in this suit, any decree to set aside, or to impair or to interfere with, or in any wise to affect the said bond and mortgage, or either of them, of the said Henry Van Derveer, defendant, except so far forth as a defence in this suit will necessarily affect the same, and that they are willing that a decree should be made, which, while it shall declare the said bond and mortgage void or nugatory for the purposes of this suit, shall leave the same, for all other respects, to the said

Henry Van Derveer, defendant, unaffected by the proceedings herein.

And these defendants further say and show, that on or about the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, when a year's interest became due on the said bond and mortgage last above mentioned, the said Charles P. Holcomb called upon the said Henry Van Derveer, defendant, to pay him the year's interest due on said bond and mortgage, and thereupon the said Henry Van Derveer, defendant, in pursuance 10 of said corrupt and usurious agreement, demanded of the said Charles P. Holcomb seven per cent, interest on the said bond and mortgage for one year then elapsed, and thereupon the said Charles P. Holcomb, one of these defendants, paid to the said Henry Van Derveer, defendant, the sum of one hundred and seventy-five dollars, as and for one year's interest on the said loan of two thousand five hundred dollars secured by said usurious bond and mortgage last above mentioned.

And these defendants further say and show, that on or 20 about the first of May, in the year of our Lord one thousand eight hundred and sixty-two, when a second year's interest became due on the said last mentioned bond and mortgage, the said Charles P. Holcomb again called upon the said Henry Van Derveer, defendant, to pay him the year's interest then due on said bond and mortgage, and thereupon the said Henry Van Derveer, defendant, in pursuance of said corrupt and usurious agreement, again demanded of the said Charles P. Holcomb seven per cent. interest on said bond and mortgage for the year then elapsed; and the said Charles P. Hol- 30 comb then protested to the said Henry Van Derveer, defendant, against paying more than legal interest on said bond and mortgage, and thereupon the said Henry Van Derveer, defendant, consented to take six and a half per cent. interest, for the year then elapsed, on said bond and mortgage, instead of seven per cent. before agreed upon, and the said Charles P. Holcomb then paid to the said Henry Van Derveer, defendant, the sum of one hundred and sixty-two dollars and fifty cents, as and for the year's interest then due on

said bond and mortgage for two thousand five hundred dollars above mentioned.

And these defendants in further answering admit that they did give a mortgage on the same premises to the Boundbrook Building Loan and Savings Association of the date and purport as mentioned in the complainant's bill of complaint.

And these defendants further state, that they have been temporarily absent from the state of New Jersey; and in further answering they admit that they have heard that certain proceedings by attachment were instituted against the said Charles P. Holcomb, in the Circuit Court of the county of Somerset, by one Isaac McCord, during the temporary absence from New Jersey aforesaid of the said Charles P. Holcomb; but that the claim of the said Isaac McCord has recently been settled in full, and the said Charles P. Holcomb, having heard that some few other persons had appeared under said attachment, he expects to settle the same in a few days.

And these defendants further answering admit that they did execute and deliver a mortgage on the same premises mentioned and described in complainant's mortgage to one Cellip F. Fisher, for the amount, date, and purport as mentioned and described in complainant's bill of complaint.

And these defendants severally and jointly deny all unlawful combination and confederacy wherewith they are 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 these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

A. G. RICHEY,  
Solicitor and counsel of Charles P. Holcomb and  
Sarah Holcomb, defendants.

State of New Jersey, ss.—Charles P. Holcomb and Sarah Holcomb, the above named defendants, being severally duly sworn according to law, on their respective oaths say, that the matters and things set forth in the above answer, so far as they relate to their own acts, are true, and so far as they relate to the acts of others, they believe them to be true.

C. P. HOLCOMBE,  
SARAH HOLCOMBE.

Sworn, subscribed, and stamped before me, this 30th of January, A. D. 1864. 10

JOS. F. RANDOLPH, M. C.

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Exceptions to Answer.

[Filed March 1, 1864.]

IN CHANCERY OF NEW JERSEY.

Between

Henry Van Derveer, complainant,

and

Charles P. Holcomb and Sarah his wife, the Boundbrook Building Loan and Savings Association, Henry Van Derveer, Andrew V. D. B. Vosseller, Leonard Bunn, Archibald C. Mollison, Cellip F. Fisher, William S. Cook and Lewis D. Cook, late partners trading under the name of W. S. and L. D. Cook, defendants.

Exceptions to answer of Charles P. Holcomb and Sarah Holcomb. 20

*Exceptions to the answer of Charles P. Holcomb and Sarah Holcomb, defendants, to the bill of complaint of Henry Van Derveer, complainant.* 30

1st exception. For that the insinuation conveyed in the following passage of the answer of the defendants, namely: "And these defendants show and aver the truth to be, that

the said complainant did not procure the assignment of the said bond and mortgage for any just or equitable purpose, but that the same was procured by him by collusion with Henry Van Derveer, one of the defendants herein, and for the sole purpose of assisting the said Henry Van Derveer, defendant, in foreclosing a certain invalid and usurious bond and mortgage, and which are hereinafter next mentioned; and these defendants show, and expressly charge, that the said complainant procured the said mortgage, and has ex-  
 10 hibited his said bill of complaint, founded thereon, in this honorable court for the above purpose, and for no other purpose whatsoever," is scandalous and impertinent, and ought to be expunged.

*2d exception.* For that the following passages of the defendants' answer, namely: "And these defendants further say, that the said mortgage, herein above mentioned, was made, executed, and delivered to the said Henry Van Derveer, defendant, under the following circumstances, viz. that before the making of said last mentioned mortgage  
 20 and of the bond next hereinafter mentioned, that is to say, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty, at Bedminster, in the county of Somerset, it was corruptly, and against the form of the statute in such case made and provided, agreed, by and between the said Charles P. Holcomb, one of these defendants, and the said Henry Van Derveer, defendant, that the said Henry Van Derveer, defendant, should loan and advance unto the said Charles P. Holcomb the sum of two thousand five hundred dollars, lawful  
 30 money of the United States, and that the said Henry Van Derveer, defendant, should forbear and give day of payment thereof to the said Charles P. Holcomb until and upon the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, and that the said Charles P. Holcomb, for the loan of the said sum of two thousand five hundred dollars, and for giving day of payment thereof as aforesaid for the time aforesaid, should give and pay to the said Henry Van Derveer, defendant, on the said  
 40 twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, the sum of seven

dollars on each one hundred dollars of the said two thousand five hundred dollars, together with the said sum loaned of two thousand five hundred dollars so to be loaned; and that for securing the payment of the said sum of two thousand five hundred dollars, with lawful interest thereon, he, the said Charles P. Holcomb, should make and seal, and as his act and deed deliver to the said Henry Van Derveer, defendant, a certain bond, and should thereby bind himself in the penal sum of five thousand dollars, conditioned for the payment of the said sum of two thousand five hundred dollars, 10 with lawful interest thereon, by him, the said Charles P. Holcomb, unto the said Henry Van Derveer, on or before the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, and that he, the said Charles P. Holcomb, together with his said wife, should make and deliver to the said Henry Van Derveer, defendant, a mortgage on the premises described in said bill of complaint securing the payment of the said money, according to the condition of the said bond; and these defendants say that, in pursuance of said corrupt and unlawful agreement 20 so made as aforesaid, the said Henry Van Derveer afterwards, to wit, on the day and year and at the place last aforesaid, and upon the agreement and terms aforesaid, lent and advanced to the said Charles P. Holcomb the said sum of two thousand five hundred dollars, and that for securing the repayment thereof, with the lawful interest thereon, he, the said Charles P. Holcomb, in further pursuance of the said corrupt and unlawful agreement, then and there made and sealed, and as his act and deed delivered to the said Henry Van Derveer, defendant, his writing obligatory, in 30 the penal sum and with the condition annexed above mentioned; and the said Charles P. Holcomb did likewise, together with his said wife, make, execute, and deliver the mortgage last above mentioned, in pursuance of the said corrupt and unlawful agreement, and for the purpose aforesaid, and did at the same time promise the said Henry Van Derveer to pay him the said sum of one dollar on every hundred dollars of the said money so loaned, in addition to the sum so loaned and the legal interest, at the time when the said principal sum and the legal interest thereon should fall 40

- due according to the condition of the said bond ; and the said defendants aver that the said sum of seven dollars for the forbearance and giving day of payment of one hundred dollars for one year was contrary to the form of the statute in such case made and provided, by means whereof, and by force of the statute aforesaid, the bond and mortgage last aforesaid were and are wholly void in law ; and these defendants say, that the mortgage last aforesaid is the same mortgage mentioned in the said bill of complaint, and which it is
- 10 therein alleged these defendants made to the said Henry Van Derveer, defendant, and which is erroneously described in said bill as having been made in the year eighteen hundred and sixty-one ; and these defendants say, that at the time of making the said usurious agreement, and at the time of delivering of the said bond and mortgage in pursuance thereof, these defendants and the said Henry Van Derveer, defendant, were residents of the said county of Somerset, in this state," are impertinent, and not responsive to the bill of the complainant, and ought to be expunged.
- 20 *3d exception.* For that the following passage of the defendants' answer, namely : " And these defendants further say and show, that the said Henry Van Derveer, defendant, having become possessed of the said corrupt and usurious bond and mortgage, on or about the second day of June, in the year of our Lord one thousand eight hundred and sixty-three, exhibited his bill of complaint in this honorable court to foreclose said mortgage ; but that these defendants filed their answer to said bill, setting up the defence of usury thereto, and that
- 30 about the — day of October last past, by the order of this court on his motion, dismissed his said bill of complaint, well knowing that he could not sustain his said suit ; and these defendants show and charge that it was shortly before said dismissal that the said Henry Van Derveer, defendant, concerted a plan with the said complainant, whereby he, the said complainant, should procure an assignment of the mortgage herein first above mentioned, and should file his bill thereon in this court, making the said Henry Van Derveer a defendant in this suit, so that he could bring forward his said usu-
- 40 rious mortgage as a defendant, and not in the character of a

complainant, and thereby preclude these defendants from setting up the defence of usury; but these defendants submit to this court, and respectfully insist, that if the said Henry Van Derveer, defendant, shall attempt to enforce his said bond and mortgage, or either of them, in this suit in this honorable court, that these defendants have the right to set up and insist on the said usurious agreement, and the statute in such case made and provided, as a defence thereto," is impertinent, and ought to be expunged.

*4th exception.* For that the following passage of the defendants' answer, namely: "And these defendants further say and show, that they expressly disclaim asking at the hands of this honorable court, in this suit, any decree to set aside, or to impair or to interfere with, or in any wise to affect the said bond and mortgage, or either of them, of the said Henry Van Derveer, defendant, except so far forth as a defence in this suit will necessarily affect the same, and that they are willing that a decree should be made, which, while it shall declare the said bond and mortgage void or nugatory for the purposes of this suit, shall leave the same, for all other respects, to the said Henry Van Derveer, defendant, unaffected by the proceedings herein," is impertinent and ought to be expunged.

*5th exception.* For that the following passage of the defendants answer, namely: "And these defendants further say and show that, on or about the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty-one, when a year's interest became due on the said bond and mortgage last above mentioned, the said Charles P. Holcomb called upon the said Henry Van Derveer, defendant, to pay him the year's interest due on said bond and mortgage, and thereupon the said Henry Van Derveer, in pursuance of said corrupt and usurious agreement, demanded of the said Charles P. Holcomb seven per cent. interest on the said bond and mortgage for one year then elapsed, and thereupon the said Charles P. Holcomb, one of these defendants, paid to the said Henry Van Derveer, defendant, the sum of one hundred and seventy-five dollars, as and for one year's interest on the said loan of two thousand five hundred dollars, secured by said usurious bond and mortgage last above mentioned," is impertinent, and ought to be expunged.

6th exception. For that the following passage in the defendants' answer, namely: "And these defendants further say and show, that on or about the first day of May, in the year of our Lord one thousand eight hundred and sixty-two, when a second year's interest became due on the said last mentioned bond and mortgage, the said Charles P. Holcomb again called upon the said Henry Van Derveer, defendant, to pay him the year's interest then due on said bond and mortgage, and thereupon the said Henry Van Derveer, defendant, in pursuance of said corrupt and usurious agreement, again demanded of the said Charles P. Holcomb seven per cent. interest on said bond and mortgage for the year then elapsed, and the said Charles P. Holcomb then protested to the said Henry Van Derveer, defendant, against paying more than legal interest on said bond and mortgage, and thereupon the said Henry Van Derveer, defendant, consented to take six and a half per cent. interest for the year then elapsed on said bond and mortgage, instead of seven per cent. before agreed upon, and the said Charles P. Holcomb then paid to the said Henry Van Derveer, defendant, the sum of one hundred and sixty-two dollars and fifty cents, as and for the year's interest then due on said bond and mortgage for two thousand five hundred dollars above mentioned," is impertinent, and not responsive to the bill, and ought to be expunged.

In all which particulars the said complainant excepts against in said defendants' answer, as scandalous, impertinent, and not responsive to the bill of complaint of the complainant, and therefore prays that the said passages in their said answer, for the causes above stated, may be expunged from their said answer.

J. V. VOORHEES,

*Solicitor and of counsel with the complainant.*

### Rule Referring Exceptions.

[Entered March 10, 1864.]

The complainant having filed exceptions to the answer put in by the defendants, Charles P. Holcomb and Sarah Holcomb his wife, to the complainant's bill in this cause— It is ordered, that it be referred to John P. Vroom, esquire, one of the masters of this court, to look into the complainant's bill, the answer thereto, and the said exceptions, and examine and report to this court, with all convenient speed, whether the said exceptions be well taken or not.—Entered 10 by John V. Voorhees, solicitor for complainant.

By the court.

BARKER GUMMERE, *Clerk.*

### Answer of Henry Van Derveer.

[Filed March 24, 1864.]

IN CHANCERY OF NEW JERSEY.

Between

Henry Van Derveer, complainant,

*and*

Charles P. Holcomb and Sarah Holcomb his wife, the Boundbrook Building Loan and Savings Association, Henry Van Derveer, Andrew V. D. B. Vosseller, Leonard Bunn, Archibald C. Mollison, Cellip F. Fisher, and William T. Cook and Lewis D. Cook, partners, &c., defendants.

*On bill to foreclose.* 20

*Answer of Henry Van Derveer, complainant.*

*The answer of Henry Van Derveer, one of the defendants, to the bill of complaint of Henry Van Derveer, complainant.* 30

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the com-

plainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says: that the said Charles Wyckoff and Elizabeth H. Wyckoff his wife, in the complainant's bill named, did make and execute an indenture of mortgage to the said Cornelius Van Derveer, in the said bill named, of such date and of such purport and effect as in the complainant's said bill mentioned and set forth; and he further admits that the said  
 10 Cornelius Van Derveer has departed this life, as in the complainant's said bill stated, and that he left a will, in which the said John M. Mann was named as his sole executor, which will has been proved by the said John M. Mann before the surrogate of the county of Somerset, and letters testamentary thereon issued by the said surrogate of the county of Somerset to the said John M. Mann, who has taken upon himself the burthen of the administration of the estate of the said Cornelius Van Derveer.

And this defendant further answering admits that the said  
 20 John M. Mann, as the executor of the last will and testament of the said Cornelius Van Derveer, deceased, did, at about the time in the said bill of complaint in that behalf mentioned, execute and deliver to the said complainant an assignment of the said bond and mortgage under his hand and seal, which assignment was duly acknowledged and recorded, as in the said bill is stated and set forth.

And this defendant further answering admits that the sum of two thousand five hundred dollars has been paid on the said bond and mortgage of the complainant, as in the com-  
 30 plainant's said bill of complaint is stated and set forth, and that a large amount of the interest money accrued on the said bond and mortgage is in arrear and unpaid, as stated in the said bill, but what amount so remains unpaid this defendant has no knowledge, and for greater certainty prays that reference may be had to the said bond and mortgage, and the amount distinctly ascertained.

And this defendant further answering saith, that the said defendant, Charles P. Holcomb, having become the owner of the equity of redemption in the said mortgaged premises  
 40 by purchase, and having become indebted to this defendant

in the sum of two thousand five hundred dollars, in order to secure the payment of the same to this defendant, on or about the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and sixty, made, executed, and delivered to this defendant a certain bond or writing obligatory, under his hand and seal, bearing date the day and year last aforesaid, in the penal sum of five thousand dollars, with a condition thereunder written, that if the said Charles P. Holcomb, his heirs, executors, administrators, or any of them, should well and truly pay, or cause to be paid, 10  
 unto this defendant the sum of two thousand five hundred dollars, on or before the twenty-fourth day of April, one thousand eight hundred and sixty-one, then the said obligation should be void and of none effect, or else to remain in full force and virtue, as by the said bond or writing obligatory, now in the possession of this defendant, and ready to be produced, as this honorable court shall direct, reference being thereto had, will more fully appear.

And this defendant further answering saith, that the said Charles P. Holcomb, in order further to secure to this de- 20  
 fendant the payment of the said sum of money in the said bond or writing obligatory specified, together with the interest which might accrue thereon, on the same day and year last aforesaid, together with his said wife, Sarah Holcomb, made and executed a certain indenture of mortgage, bearing even date with said bond or writing obligatory, whereby, in consideration of the said debt, and for the further consideration of one dollar, by this defendant to him in hand paid, he, the said Charles P. Holcomb, together with his said wife Sarah, granted, bargained, sold, aliened, released, 30  
 enfeoffed, conveyed, and confirmed unto this defendant all the lands and premises mentioned and described in the said bill of complaint of the complainant: together with all and singular the buildings, improvements, ways, streets, alleys, passages, woods, underwoods, waters, watercourses, mines, metals, fisheries, hawkings, rights, liberties, privileges, hereditaments and appurtenances to the above described premises belonging or in any wise appertaining; and also all the estate, right, title, interest, property, claim, and demand whatsoever of the said Charles P. Holcomb and Sarah his 40

wife in and to the said premises, and in and to every part and parcel thereof: to have and to hold all and singular the said granted and bargained premises, with the appurtenances, into this defendant, his heirs and assigns, to the only proper use, benefit, and behoof of this defendant, his heirs and assigns for ever; and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Charles P. Holcomb should pay unto this defendant, his executors, administrators, or assigns the aforesaid sum  
 10 of two thousand five hundred dollars, without any deduction or defalcation for taxes, assessments, or any other imposition whatever, according to the conditions of the aforesaid bond or writing obligatory, that then and from thenceforth the said indenture of mortgage, and the said bond or writing obligatory, and every thing therein contained, should cease, determine, and be void; and this defendant further saith, that the said mortgage was acknowledged in due form of law, on the — day of April, in the year of our Lord one thousand eight hundred and sixty, before Robert S. Smith,  
 20 esquire, a commissioner to take acknowledgments and proofs of deeds in the state of New Jersey, by the said Charles P. Holcomb and Sarah his wife, and registered in the clerk's office of the county of Somerset, in the state of New Jersey, on the twenty-fifth day of April, in the year last aforesaid, in Book V of Mortgages, pages 306, &c., all which will more fully appear by reference to the said mortgage, now in the possession of this defendant, and ready to be produced as this honorable court shall direct.

And this defendant further answering says, that the said  
 30 debt of two thousand five hundred dollars, so as aforesaid due this defendant, together with large arrearages of interest thereon, still remains due and owing to this defendant; and this defendant admits that his said mortgage was executed and delivered and registered subsequent to the mortgage of the complainant, and is a subsequent lien on the said premises to the lien of the complainant's mortgage.

And this defendant further answering admits that, at about the time in the said bill in that behalf alleged, the said Charles P. Holcomb and Sarah his wife executed another  
 40 mortgage on the same premises described in the complain-

ant's said bill of complaint to the said the Boundbrook Building Loan and Savings Association for the amount stated in the said bill ; but whether the same or any part thereof remains unpaid, this defendant has no means of knowing.

And this defendant further admits that, at about the time in the said bill in that behalf alleged, the said Isaac McCord sued out an attachment against the said Charles P. Holcomb, as is stated in the said bill of complaint of the complainant, and that such proceedings were had in said cause as is stated and set forth in the said bill, and that the said Andrew V. D. 10 B. Vosseller, Leonard Bunn, and Archibald C. Mollison were appointed auditors in said cause, as set forth in the said bill ; but this defendant insists that the said attachment and judgment are both subsequent to the date of the said mortgage of this defendant, and if any lien upon the said premises, is subsequent to the lien of this defendant's said mortgage.

And this defendant further admits that, at about the time in that behalf stated in the said bill, the said Charles P. Holcomb and wife executed a mortgage to the said Cellip F. Fisher for the sum mentioned in the said bill, or for some 20 other sum ; but this defendant charges and insists that the said mortgage is subsequent to the mortgage of this defendant.

And this defendant further answering admits that the said William S. Cook and Lewis D. Cook recovered a judgment against the said Charles P. Holcomb, in the court, for the amount and at the time stated in the said bill of complaint ; but this defendant charges and insists that the same is subsequent to his said mortgage.

And this defendant denies all unlawful combination and 30 confederacy in the said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct ; and humbly prays that a decree may be made by this honorable court for a sale of the land and premises in the foregoing mortgage mentioned and set forth in the complainant's bill, and out 40

of the moneys thence arising, that this defendant may be paid the full amount of principal and interest moneys so due to him as aforesaid, with all his reasonable costs and charges in this behalf sustained.

S. B. RANSOM,

*Solicitor for and of counsel with defendant.*

New Jersey, to wit.—Henry Van Derveer, 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 above answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true.

H. VANDERVEER.

Sworn and subscribed, this 21st day of March, A. D. 1864, before me.

JOHN M. BROWN, *M. C.*

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### Master's Report on Exceptions.

[Filed April 9, 1864.]

IN CHANCERY OF NEW JERSEY.

20 Between

Henry Van Derveer, complainant,

*and*

Charles P. Holcomb and wife, Henry Van Derveer, *et al.*, defendants.)

} *On exceptions to answer, &c.*

In pursuance of a rule of the Court of Chancery, entered in the aforesaid cause, bearing date on the tenth day of March last, whereby exceptions filed by the complainant to the answer of the defendants, Charles P. Holcomb and wife, are referred to the subscriber, one of the masters of the said court, to report thereon, the master has been attended by the solicitors of the said parties, who have presented their arguments thereon. And the said master, having examined and considered the said answer and exceptions, and the arguments

of the solicitors of the respective parties, doth respectfully report to his Honor the Chancellor upon said answer and exceptions as follows:

1st. The first exception is, in the opinion of the master, well taken, inasmuch as the allegations of the answer embraced in this exception deny neither the validity of the said bond and mortgage, nor the legal title of the complainant thereto by virtue of the assignment. The alleged fraudulent procurement of the assignment of the said bond and mortgage for the purpose of assisting another defendant to foreclose a cer- 10  
tain invalid and usurious bond and mortgage is not pertinent or responsive to that part of the bill which states that the executor of the said Cornelius Van Derveer sold, assigned, transferred, and delivered the said bond and mortgage under his hand and seal to the complainant.

2d. The second exception is, in the opinion of the master, well taken, inasmuch as the allegations of the answer, embraced in this exception, are pertinent and responsive to that part of the bill which states the mortgage from Holcomb to the said Van Derveer, and alleges that, by 20  
virtue of such mortgage, the said Van Derveer claims to have some lien upon the said premises. It is not insisted that the defence to which the complainant has excepted is not a valid one to the mortgage of Van Derveer, defendant, but that it cannot be set up in this manner but only by cross-bill. This point is fairly raised by this exception, and must be decided by the master.

In this case a cross-bill offering to pay the amount due might have been filed by Holcomb. A party who comes into court asking relief from a usurious contract must offer 30  
to pay the amount due, and the same rule applies to cross-bills as to original bills. In such case the party asking relief stands before the court as complainant, or in the light of a complainant, and the general rule, that he who asks equity must offer to do equity, applies.

Is the position of Holcomb that of plaintiff in respect to his co-defendant?

Holcomb has filed no bill; he does not come into court to avoid the usurious mortgage; he is here involuntarily, and not of his own motion. He is a necessary party by 40

reason of his position; he is the owner of the equity of redemption of both mortgages; he must answer the bill or suffer a decree *pro confesso*. Such decree would preclude him not only as to the first mortgage, but as to the second also; the second mortgagee would be entitled to have an account on his mortgage before the master, and to be paid, after the first mortgagee, out of the proceeds of the sale.

It is true the second mortgagee has not filed any bill, and stands actually defendant as regards the complainant; but  
 10 his real position towards his co-defendant is that of plaintiff, and not that of defendant. The mortgage of Van Derveer, defendant, is being foreclosed in this suit just as effectually as if he had filed his own bill and issued his own process, and Van Derveer, defendant, stands as much in the position of plaintiff in regard to Holcomb as Van Derveer, complainant, himself does in regard to Van Derveer, defendant.

A cross-bill will be required only where the rights of the parties cannot be fairly adjusted without it; but the court  
 20 will dispense with it in cases where the whole matter is before the court, and the party is not thereby deprived of any of his substantial rights by a decree in the existing suit.

It does not appear to the master that the defendant, Van Derveer, would be prejudiced by the want of a cross-bill. If he had filed a bill to foreclose his own mortgage, his position would have been no better than it now is, except that he would have had the carriage or control of the suit, and might have discontinued if he had chosen to do so. The defendant's allegation as to usury would probably have been  
 30 the same, and Van Derveer, as complainant in that case, would have had no more opportunity to answer than, as defendant, he has in this case, and, unless willing to go to a hearing on bill and answer, would have been obliged to file a general replication, and proceed to proofs in precisely the same manner as may be done in this case upon the filing of a replication by the complainant.

The master is therefore of opinion, as far as regards this exception, that the whole matter is fairly before the court, and that the interests of the respective parties may be de-  
 40 cided in the present suit; that Van Derveer, the defendant,

cannot be prejudiced, or deprived of any of his substantial rights by a decree in the existing suit; that the allegations of the answer, embraced in this exception, are pertinent and responsive to the bill, and that a cross-bill should not be required.

3d. The third exception is, in the opinion of the master, well taken, inasmuch as the allegations of the defendant's answer, embraced in the said exception, are altogether impertinent.

4th. The fourth exception is, in the opinion of the master, well taken, inasmuch as the complainant has a right to have all subsequent equities settled in this suit, and to have the principal and interest due upon his mortgage paid to him, or if a sale be ordered, then to have the premises sold clear of all subsequent encumbrances.

5th. The fifth exception is not, in the opinion of the master, well taken, inasmuch as the allegations therein embraced stand on the same ground as the allegations to which complainant secondly excepts.

6th. The sixth exception is not, in the opinion of the 20 master, well taken, for the reason lastly above set forth.

All which is respectfully submitted.

Dated April 9, 1864.

JOHN P. VROOM, M. C.

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### Exceptions to Master's Report.

[Filed April 9, 1864.]

IN CHANCERY OF NEW JERSEY.

Between

Henry Van Derveer, complainant,

and

Charles P. Holcomb and Sarah his  
wife, and others, defendants.

} *Exceptions* 30  
to  
} *Master's Report.*

*Exceptions taken by the complainant in this cause to the report made therein on the ninth day of April, eighteen hundred and*

sixty-four, by John P. Vroom, esquire, one of the masters of this court, to whom this cause stands referred by the decretal order made in the said cause, bearing date the tenth day of March, eighteen hundred and sixty-four, touching the matters therein referred to him.

1st exception. Because the said master has, by his said report on the second exception, taken and filed to the answer of the defendants, Holcomb and wife, decided and reported to this honorable court that said second exception of the  
 10 complainant is not well taken, because he says, and so reports, that "the allegations in the answer embraced in this exception are pertinent and responsive to that part of the bill (of the complainant) which states the mortgage from Holcomb to the said Van Derveer, and alleges that by virtue of such mortgage the said Van Derveer claims to have some lien upon the said premises," thereby determining that it is proper and competent for the defendants, Charles P. Holcomb and Sarah his wife, to contest the validity of the mortgage of their co-defendant, Henry Van Derveer, in this suit,  
 20 on the ground that the same is usurious and therefore void, and that the question as to the validity or otherwise of the said mortgage of the defendant, Van Derveer, can be ascertained and determined by the court in this suit without the intervention of a cross-bill and without an answer being filed by the defendant, Van Derveer.

2d exception. Because the said master, as to the said second exception of the complainant, reports as follows: "The master is therefore of opinion, as far as regards this exception, that the whole matter is fairly before the court, and that the  
 30 interests of the respective parties may be decided in the present suit; that Van Derveer, the defendant, cannot be prejudiced or deprived of any of his substantial rights by a decree in the existing suit; that the allegations of the answer, embraced in this exception, are pertinent and responsive to the bill, and that a cross-bill should not be required," thereby in effect reporting that the Chancellor can decide the question between these two defendants upon the simple allegation contained in the answer of Holcomb and wife, the defendants, Van Derveer having no opportunity to reply thereto.

*3d exception.* Because the said master, as to the fifth exception of the complainant, reports as follows: "The fifth exception is not, in the opinion of the master, well taken, inasmuch as the allegations therein embraced stand on the same ground as the allegations to which complainant secondly excepts," thereby deciding that it is competent and legal for the defendant, Holcomb, in this suit to go into an examination of the question whether he paid the defendant, Van Derveer, usury in the payment of the interest due on his bond and mortgage. 10

*4th exception.* Because the said master, as to the sixth exception of the complainant, reports that the same is not well taken, for the same reason as is by him stated in the above extract from his said report, thereby deciding the same as is above stated.

In which said several matters and respects, herein above particularized, this exceptant excepts to the said report, and humbly conceives that the said master hath erred, and that the said report, in the particulars herein excepted to, is wrong, unjust, and inequitable, and therefore prays that the said report, so far as regards the several particulars above specified, may be disallowed, rejected, and set aside, and a new report be ordered to be taken, or that the said report may be ordered to be corrected in the said several particulars, and prays the judgment of this court thereupon. 20

J. V. VOORHEES,

*Solicitor and of counsel with exceptant.*

## Exceptions to Master's Report.

[Filed May 3, 1864.]

IN CHANCERY OF NEW JERSEY.

|                                                                                                                                        |   |                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------------------------------------------------------------|
| <p style="text-align: center;">Henry Van Derveer, complainant,<br/>and<br/>Charles P. Holcomb and wife and<br/>others, defendants.</p> | } | <p style="text-align: center;"><i>Exceptions to mas-<br/>ter's report, &amp;c.</i></p> |
|----------------------------------------------------------------------------------------------------------------------------------------|---|----------------------------------------------------------------------------------------|

10 *Exceptions taken by the defendants, Charles P. Holcomb and wife, to the report made in this cause, on the ninth day of April, eighteen hundred and sixty-four, by John P. Vroom, esquire, one of the masters of this court, to whom this cause stands referred by the decretal order made in said cause, bearing date on the tenth day of March, eighteen hundred and sixty-four.*

20 *1st exception.* For that the said master has, by his said report on the first exception taken and filed to the answer of these defendants, Charles P. Holcomb and wife, decided and reported to this honorable court, that said first exception is well taken, inasmuch as the allegations of the answer embraced in that exception are not responsive to the allegations

30 *2d exception.* Because the said master, as to the said third exception of the complainant, reports that, in his opinion, "this exception is well taken, inasmuch as the allegations of the defendants' answer, embraced in the said exception, are altogether impertinent," when, as in truth and in fact, those allegations are material and necessary to present the facts which have arisen in connection with this case.

*3d exception.* Because the said master, as to the fourth exception aforesaid of the complainant, reports that in his opinion "is well taken, inasmuch as the complainant has a right to have all subsequent equities settled in this suit, and to have the principal and interest on his mortgage paid to

him; and if a sale be ordered, then to have the premises sold clear of all subsequent encumbrances;" whereas said master should have certified that said fourth exception is not well taken, as the allegations of the defendants' answer, embraced in the said exception, are relevant, material, and necessary, and will not affect or hinder the complainant from collecting the principal and interest due on his said mortgage, &c.

In which said several matters and respects, herein above particularized, these exceptants except to the said report, and 10 humbly conceive that the said master hath erred, and that the said report is wrong, unjust, and inequitable, and therefore pray that the said report, so far as regards the several particulars above specified, may be disallowed, rejected, and set aside, and a new report be ordered to be taken, or that the said report may be corrected in the said several particulars, and pray the judgment of this court thereupon.

A. G. RICHEY,

*Solicitor and of counsel with defendants,* 20

*Charles P. Holcomb and wife.*

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Rule for Hearing.

[Entered May 19, 1864.]

It is ordered, on motion of John V. Voorhees, solicitor for and of counsel with the complainant, that this cause be set down for hearing and argument at the present stated May term of this court, now holden at the State-house in the city of Trenton, or as soon as counsel can be heard thereon.

By the court.

BARKER GUMMERE, *Clk.* 30

## Opinion of the Chancellor.

Henry Van Derveer, of Bridgewater,

v.

Charles P. Holcomb and wife, Henry  
Van Derveer, of Bedminster, and  
others.*Opinion.*

The bill of complaint in this cause is filed by the first mortgagee, in order of priority against the mortgagor and all subsequent encumbrances, for the foreclosure and sale of 10 the mortgaged premises.

The third mortgagee answers, admitting the prior and subsequent encumbrances, setting up his own mortgage as a valid subsisting encumbrance, and concluding with a prayer that a decree may be made for a sale of the mortgaged premises, and that he may be paid the principal and interest due on his mortgage.

The mortgagor answers, admitting the existence and validity of the complainant's mortgage, but alleging that the complainant procured the assignment thereof to be made to 20 him by collusion with the third mortgagee, and exhibited his bill for the sole purpose of aiding the third mortgagee in recovering upon a void and usurious mortgage.

The answer admits the making of the third mortgage, but alleges that the mortgage is usurious and void, for the cause set out in the answer.

The answer also alleges that a bill was filed in this court by the third mortgagee, on the second of June, 1863, for the foreclosure of his mortgage; that the defence of usury was set up by the mortgagor, and that thereupon the complain- 30 ant in that suit dismissed his own bill, and concerted a plan with the complainant in this suit, by which the third mortgagee might be enabled to recover upon his usurious mortgage, and the defendant be precluded from setting up the defence of usury.

The mortgagor disclaims any intention or desire that a decree should be made in any wise affecting the bond or

mortgage of the third mortgagee, except so far forth as a decree in this suit will necessarily affect the same. And he consents that a decree be made which, while it shall declare the bond and mortgage void or nugatory for the purposes of this suit, shall leave the same, for all other purposes, unaffected by the decree.

To so much of this answer as alleges collusion between the complainant and the third mortgagee in the filing of the bill, the complainant excepted as scandalous and impertinent; and to so much as relates to the usurious character of the third mortgage, to the institution and abandonment of a previous suit for its recovery, and to the nature of the protection against that mortgage, which the defendant asks, the complainant excepted as impertinent. The master, having made his report upon the exceptions to the answer, the case is now submitted upon exceptions to the report.

The material question involved is, whether, upon a bill filed by a mortgagee for foreclosure and sale of mortgaged premises, the mortgagor may, by his answer, set up usury against the claims of other mortgagees, who are made co-defendants, or whether he will be driven to a cross-bill, and thereby deprived of his defence. A decree between co-defendants may be grounded on evidence between plaintiffs and defendants. It is declared, by Lord Redesdale, to be a jurisdiction long settled and acted on, and the constant practice of a court of equity. Where a case is made out between defendants by evidence arising from pleadings and proofs between plaintiffs and defendants, a court of equity is not only entitled to make a decree between the defendants, but is bound to do so. In the language of Lord Eldon, the defendant chargeable has a right to insist that he shall not be liable to be made a defendant in another suit for another matter that may be then decided between him and his co-defendant. And the co-defendant may insist that he shall not be obliged to institute another suit for a matter that may be then adjusted between the defendants; and if a court of equity refused so to decree, it would be good cause of appeal by either defendant. *Chamley v. Lord Dunsany*, 2 Sch. & Lef. 710, 718; *Cornv v. Caulfield*, 2 Ball & Beat. 255, 273; *Elliot v. Pell*, 1 Paige 263.

If the defendant asks substantial relief, either as against the complainant or a co-defendant, or a discovery, a cross-bill may be necessary. But the court dispenses with the necessity of a cross-bill where the whole matter is before the court, and the party is not thereby deprived of any of his substantial rights by a decree in the existing suit. *Ames v. New Jersey Franklinite Co.*, 1 *Beas.* 66.

Upon a bill for foreclosure and sale of mortgaged premises, all the subsequent encumbrancers are necessary parties, and to effectuate a complete decree, the existence, validity, order of priority, and amount due upon the several mortgages must be settled and decided. The rights of each mortgagee defendant are as fully established as those of the complainant, and the decree is as conclusive against the mortgagor, both as to the validity and amount of the several mortgages, as though a separate bill had been filed, and decree made upon each. It is, to all intents and purposes, a foreclosure suit by each of the encumbrancers against the mortgagor. As against the complainant, the mortgagor may allege and prove that the mortgage is usurious. Why not, as against every other encumbrancer who seeks to enforce his claim against the mortgaged premises?

It is urged that permitting the mortgagor to set up usury without filing a cross-bill deprives the defendant mortgagee of the benefit of his answer. But if he were complainant seeking to enforce his mortgage, he could have no benefit of an answer to the defence of usury. He must file a replication, and go before the master upon substantially the same pleadings and proofs that he will do as defendant.

The fact cannot be disguised that the encumbrancers are before the court seeking to enforce their claims. The mortgagor is here in the character of a defendant resisting the enforcement of a claim which he insists is usurious and void. He asks the protection which the law gives to every defendant against whom a usurious claim is sought to be established. Courts of equity follow the law in the construction of the statutes against usury. If the lender come into equity seeking to enforce the contract, the court will give effect to the statute, and declare the contract void. But if the borrower seeks relief against the contract, the court will prescribe the

terms of its interference. It will not actively interfere for the relief of the borrower, unless he will pay what is justly due. The principle of the court is, that he who will have equity must do it. So, if a discovery is necessary to aid him in a defence at law or otherwise, equity will not require the defendant to answer under oath, and thus be a witness against himself in a matter which will subject him to a penalty or forfeiture, or to any loss in the nature of a forfeiture. 1 *Story's Eq. Jur.* 301; 1 *Fonb. Eq.* 25, note h; *Fanning v. Dunham*, 5 *Johns. Ch. R.* 143; *Whitmore v. Francis*, 3 10 *Paige* 533.

And it makes no difference as to the nature of the relief granted that the remedy against the usurious contract is sought by cross-bill. *Mason v. Gardiner*, 4 *Bro. Ch. R.* 322 and note 2; *Fulton Bank v. Beach*, 1 *Paige* 433; *Miller v. Ford*, *Saxton* 364.

The principle of all the cases is, that if the defendant asks the interposition of the extraordinary or equitable powers of the court to aid him in his defence against a usurious claim, he must consent to do equity before he can obtain that aid. 20 But in this case the defendant does not ask the interposition of the extraordinary or equitable powers of the court. He seeks no discovery of the usury, nor does he ask that the contract should be surrendered or delivered up to be cancelled. All that he asks is that it should not be enforced as a valid encumbrance upon the mortgaged premises.

The mortgagor is asking no favor. He is not in a position in which terms may be imposed upon him. The court are not at liberty to interpose or withhold the exercise of its powers at its discretion. The mortgagor relies upon his 30 legal rights, and the court are bound to protect them. Nor has the third mortgagee any right to object that he is made a party unnecessarily, or brought into court against his will, or for the mere purpose of having his mortgage redeemed.

The answer alleges that he is in fact the actor. That by collusion with the complainant he caused the suit to be instituted, having first dismissed a bill, which he had exhibited in his own name for the foreclosure of his mortgage, and to which the mortgagor had set up usury as a defence. These circumstances clearly take the case out of the operation of 40

the decision in *Slater v. Nash*, made by the Court of Appeals, at March term, 1862.

They show that, so far from the third mortgagee being brought by other parties unnecessarily or involuntarily before the court, he is in truth the actor, seeking, under the color of the complainant's rights, to deprive the mortgagor of the protection of the statute as against a usurious claim.

In this aspect of the case, I think the mortgagor was justified in setting up in his answer those matters which the  
 10 master has regarded as irrelevant. Viewed in reference to the claim of the complainant, they clearly are so; but as against the claim of the third mortgagee, who is made a defendant by the complainant in order to the enforcement of his own rights, the allegations cannot be regarded as irrelevant or impertinent. They were obviously designed to remove the difficulties which were suggested by the Chief Justice to the defence of usury in *Slater v. Nash*. It is material to observe that none of these allegations are made by way of defence to the complainant's mortgage. That is admitted,  
 20 and no objection is made to a decree in his favor. They are designed solely as a defence to the claim of the defendant's mortgagee, and the exceptions must be viewed in that light. The complainant in fact, if he is merely seeking the enforcement of his own claim, has no ground of exception to the answer.

I think all the exceptions taken to the defendant's answer should have been disallowed by the master.

The order will be made accordingly.

HENRY W. GREEN, C.

## Order Overruling Exceptions to Answer.

[Filed November 14, 1864.]

IN CHANCERY OF NEW JERSEY.

Henry Van Derveer, complainant,

and

Charles P. Holcomb *et ux. et al.*, de-  
fendants.

} Order, &c.

This cause coming on to be heard before the Chancellor, at the last May term of this court, in the presence of John V. Voorhees, of counsel with the complainant, and of A. G. 10 Richey, of counsel with the defendants, Charles P. Holcomb and wife, and of S. B. Ransom, of counsel with the defendant, Henry Van Derveer, and it appearing to the Chancellor that exceptions were filed on the part of the complainant to the answer filed by the defendants, Charles P. Holcomb and wife; and that, by a rule of this court regularly entered, said exceptions were referred to John P. Vroom, esquire, one of the masters of this court, and that the said master, by a report bearing date on the ninth day of April last past, and now on file in this cause, hath reported that the first, third, 20 and fourth of said exceptions were well taken, and that the second, fifth, and sixth exceptions were not well taken to the said answer; and that the said complainant and the said defendants, Charles P. Holcomb and wife, have severally filed their exceptions to the said master's report, and the cause coming on to be heard upon said last named exceptions to said report, and the answer, exceptions, and report having been read, and the arguments of counsel heard and considered—

It is thereupon, on this fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty- 30 four, ordered by the Chancellor, that all the exceptions taken and filed on the part of the said complainant to the answer of the said Charles P. Holcomb and wife be disallowed and overruled, and the said answer is hereby declared to be a pertinent and proper answer to the said bill of complaint; and it is further ordered, that the said master's re-

port, as to the second, fifth, and sixth exceptions to said answer, do stand ratified and confirmed; but that, as to the first, third, and fourth exceptions to said answer, the said master's report be overruled and set aside; and that the said complainant do pay to the said defendants, Charles P. Holcomb and wife, or to their solicitor, their costs to be taxed in and about the matter of the exceptions to said answer, down to and including this order.

HENRY W. GREEN, C.

10

## Decree Pro Confesso, etc.

[Filed March 27, 1865.]

IN CHANCERY OF NEW JERSEY.

Between

Henry Van Derveer, complainant,

and

Charles P. Holcomb and Sarah his  
wife and others, defendants.} *Decree pro con. and  
order of refer-  
ence.*

This cause coming on to be heard at the regular May term of this court, held at the state-house in the city of Trenton, 20 in the year eighteen hundred and sixty-four, before the Chancellor, in the presence of John V. Voorhees, solicitor for and of counsel with the complainant, and of A. G. Richey, solicitor and of counsel with the defendants, Charles P. Holcomb and Sarah his wife, and of Stephen B. Ransom, solicitor for and of counsel with the defendant, Henry Van Derveer, no one appearing for the defendants, the Bound-  
brook Building Loan and Savings Association, Cellip F. Fisher, Andrew V. D. B. Vosseller, Leonard Bunn, and Archibald C. Mollison, auditors in attachment, and William 30 S. Cook and Lewis D. Cook, late partners in trade under the name, style, and firm of W. S. and L. D. Cook; and the argument of the respective counsel having been heard and considered, and the Chancellor having taken time to advise therein; and now, at the regular February term of said court,

it appearing to the Chancellor that the complainant is entitled to the relief sought and prayed for by him in his said bill of complaint—It is, on this seventh day of February, A. D. eighteen hundred and sixty-five, ordered, adjudged, and decreed, and the said Chancellor, by virtue of the authority in him vested, doth order, adjudge, and decree that the complainant is entitled to the relief sought and prayed for in his said bill of complaint; and that it be referred to Samuel S. Hartwell, esq., one of the masters of this court, to ascertain and report the amount due to the said complainant for 10 principal and interest upon the mortgage held by him upon the premises mentioned and described in his said bill of complaint; and also the amount due, if anything, to the Boundbrook Building Loan and Savings Association and to the said Cellip F. Fisher, for principal and interest upon their respective mortgages, and what is due, if anything, to the said Andrew V. D. B. Vosseller, Archibald C. Mollison, and Leonard Bunn, creditors in attachment, by virtue of their appointment as such auditors by the Circuit Court of the county of Somerset, and what is due, if anything, to the said 20 William S. Cook and Lewis D. Cook, late partners in trade under the name and firm of W. S. and L. D. Cook, upon their judgment, and to report accordingly; and also to ascertain and report the order and priority of the said several mortgages and judgment, and the claim of the said auditors respectively, and whether they all embrace the same, or what part of the said mortgaged premises, and whether the whole or a part, and what part of the said mortgaged premises should be sold for the payment and satisfaction of the said several claims, and if all the said premises ought to be sold, 30 whether they should be sold together or in parcels, and if in parcels, in what order. And that the said master do make his report thereon with all convenient speed. And all further equity is reserved until the coming in of the said report.

HENRY W. GREEN, C.

## Notice of Appeal.

[Filed March 30, 1865.]

IN CHANCERY OF NEW JERSEY.

Between

Henry Van Derveer, complainant,

*and*Charles P. Holcomb and Sarah his  
wife, the Boundbrook Building  
Loan and Savings Association,10 Henry Van Derveer, and others,  
defendants.*Appeal.*

The defendant, Henry Van Derveer, appeals from so much of the decretal order of reference, made in this court in the above stated cause, as refers it to Samuel S. Hartwell, esquire, one of the masters of this court, to ascertain and report the amount due to the said complainant for principal and interest upon the mortgage held by him upon the premises mentioned and described in his said bill of complaint; and also the amount due, if anything, to the Boundbrook Building

20 Loan and Savings Association and to the said Cellip F. Fisher, for principal and interest upon their respective mortgages; and what is due, if anything, to the said Andrew V. D. B. Vosseller, Archibald C. Mollison, and Leonard Bunn, auditors in attachment, by virtue of their appointment as such auditors by the Circuit Court of the county of Somerset; and what is due, if anything, to the said William S. Cook and Lewis D. Cook, late partners in trade under the name, style, and firm of W. S. and L. D. Cook, upon their judgment, and to report accordingly; and whether they all em-

30 brace the same, or what part of the said mortgaged premises; and whether the whole or a part, and what part of the said mortgaged premises, should be sold for the payment and satisfaction of the said several claims; and if all the said premises ought to be sold, whether they should be sold together or in parcels, and if in parcels, in what order; and does not require the said master to ascertain and report the

amount due to this defendant, Henry Van Derveer, for principal and interest due upon the mortgage held by him on the premises mentioned and described in the complainant's bill, which mortgage is admitted by the complainant's bill, and is set up and claimed by this defendant in his answer filed in this cause, and does not require the said master to ascertain and report the order in which the said mortgage of this defendant should be paid to the Court of Errors and Appeals in the last resort in all causes.

STEPHEN B. RANSOM, 10

*Solicitor for and of counsel with defendant, Henry Van Derveer.*

Dated March 30th, 1865.

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

STEPHEN B. RANSOM,

*Of counsel with defendant, Henry Van Derveer.*

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Petition of Appeal.

[Filed June 24, 1865.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

|                               |   |              |    |
|-------------------------------|---|--------------|----|
| Henry Van Derveer, appellant, | } | On bill, &c. | 20 |
| <i>and</i>                    |   |              |    |
| Henry Van Derveer, appellee.  |   |              |    |

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

The humble petition of Henry Van Derveer, of the township of Bedminster, in the county of Somerset, and state of New Jersey, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by an interlocutory decretal order of reference made in the

Court of Chancery, by His Honor Henry W. Green, Chancellor of the state of New Jersey, bearing date the seventh day of February, in the year of our Lord one thousand eight hundred and sixty-five, wherein your petitioner, Henry Van Derveer, with others, were defendants, and the said Henry Van Derveer, of the township of Bridgewater, in the county of Somerset, and state of New Jersey, was complainant, in this respect, to wit: that the said decretal order refers it to Samuel S. Hartwell, esquire, one of the masters of the Court

10 of Chancery, to ascertain and report the amount due to the said complainant, Henry Van Derveer, for principal and interest due upon the mortgage held by him upon the premises mentioned and described in his said bill of complaint, and also the amount due, if anything, to the Boundbrook Building Loan and Savings Association and to Cellip F. Fisher, two of the other defendants in said cause, for principal and interest upon their respective mortgages, and what is due, if anything, to Andrew V. D. B. Vosseller, Archibald C. Mollison, and Leonard Bunn, other defendants in

20 said cause, auditors in attachment, by virtue of their appointment as such auditors by the Circuit Court of the county of Somerset, and what is due, if anything, to William S. Cook and Lewis D. Cook, late partners, &c., other defendants in said cause, upon their judgment, and to ascertain and report whether the said mortgages and liens all embrace the same or what part of the said mortgaged premises, and whether the whole or a part, and what part of the said mortgaged premises should be sold for the payment and satisfaction of the said several claims, and if all the said premises ought to

30 be sold, whether they should be sold together or in parcels, and if in parcels, in what order. And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that your petitioner's mortgage, mentioned and described in the bill of complaint of the said appellee and in the answer of your petitioner in said cause, is the first encumbrance on the mortgaged premises in said bill of complaint described after the said complainant's mortgage, and is an encumbrance on said premises prior to the

40 said mortgages of the said defendants, the Boundbrook

Building Loan and Savings Association and of the said Cellip F. Fisher, and is also an encumbrance on the said premises prior to the lien of the said attachment, in which the said Andrew V. D. B. Vosseller, Archibald C. Mollison, and Leonard Bunn are auditors, and prior to the said judgment of the said defendants, William S. Cook and Lewis D. Cook, while the said decretal order does not recognise your petitioner's said mortgage as entitled to be paid out of the said mortgaged premises, and does not require the said master to ascertain or report the amount due to your petitioner for principal and interest upon his said mortgage on said premises, nor to ascertain or report the order in which your petitioner's said mortgage should be paid, but does recognise the encumbrances on said premises subsequent to your petitioner's said mortgage as entitled to payment out of the said premises prior to your petitioner's said mortgage.

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

STEPHEN B. RANSOM,

*Solicitor for and of counsel with the appellant.*

Answer to Petition of Appeal.

[Filed August 9, 1865.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

|                                    |   |                         |
|------------------------------------|---|-------------------------|
| Charles P. Holcomb and others, re- | } | <i>On bill, &amp;c.</i> |
| spondents,                         |   |                         |
| <i>and</i>                         |   |                         |
| Henry Van Derveer, appellant.      |   |                         |

*The answer of Charles P. Holcomb and Sarah his wife to the petition of appeal of the appellant.*

10 These respondents, not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto say: that they believe it to be true that such decretal order as is complained of by the appellants 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, these respondents humbly crave leave to refer thereto when the same shall be produced.

20 And these respondents are advised and believe that the said decree is agreeable to equity and justice, and they humbly request that the same be affirmed, and that the said petition of appeal may be dismissed by this honorable court with costs, to be adjudged to these respondents.

A. G. RICHEY,  
*Of counsel with respondents.*