COURT OF ERRORS AND APPEALS.

BETWEEN

ANNA MARIA VAN DUYN,
Executrix of CORNELIUS VANDUYN,
deceased, *Appellant*,

and

MATTIE C. SHANN, et als.,
Respondent.

} Brief for Appellant.

GEO. O. VANDERBILT, Counsel for Appellant.

STATEMENT OF FACTS.

John Fenning died December 31st, 1866, seized in fee of a lot of land 60 x 120, corner of Jackson and Witherspoon streets, Princeton, N. J., on which was a dwelling house, a small tenant house and a shop. He left a Will and by his Will devised all his real property (which was said lot) to his wife for life, with remainder in fee to his son John A., and charged it with legacies amounting to $1750 to his children James, Frederick, George, Teresa and Mary, payable at the death of his wife or within one year thereafter. On this real property were three mortgages at the time of the decease of said John Fenning—one made by said Fenning and wife in 1840 to David Hulfish for $200, and assigned to Job Olden; one for $500 to Anthony Simmons, dated June 13th, 1856, now held by appellant as assignee; one for $500 to Abram Johnson,

dated Aug. 1st, 1865, now held by Robert D. Warren as assignee. His wife and said son John A. were appointed Executors by said Will, and resided upon the premises and managed the estate. On May 26, 1868, John A. Fenning the son gave a mortgage on his interest in the lot to appellant Cornelius Van Duyn, for $1000. On the same day James Palmer & Sons recovered judgment against him for $250. August 22, 1868, Imlah and Charles Moore recovered judgment against him and John Cruser for 813.12. Nov 4, 1868 J. H. Cain & Co. recovered a judgment (now owned by Geo. Ward) against him for $669.99. Dec. 2d, 1868 Theodore F. Johnson & Co. recovered a judgment against him and Benj. R. Thomas (surety) for $504. John A. Fenning becoming financially involved, and the interest on the mortgages, and taxes being largely in arrears, on Oct. 9, 1869 he and his wife conveyed his remainder in fee of the said premises to his brother Chas. J. Fenning subject to the mother's life estate, legacies devised by his father's Will, the said three mortgages and taxes. The object of Charles buying was to try and save the property for his mother and the legatees. Dec. 8, 1869 (after he had parted with the property) John A. and wife also gave a mortgage on the same premises to John Cruser for $1000.

The appellant, March 10, 1870, filed a bill in the Court of Chancery to foreclose his mortgage of $1000. Chas. J. Fenning, then owner of the fee, John Cruser, mortgagee, Benj. R. Thomas, judgment creditor (he having paid and had assigned to him the said judgment of Theodore F. Johnson & Co.) were made defendants. James Palmer & Sons, Imlah and Charles Moore were not made defendants (supposed to have been paid). Final decree was made in said cause Jan'y 17, 1871 for complainant, $1183.75; for defendant Thomas, $256.41; and for defendant Cruser, $1146.42. J. W. Cain & Co. were not made parties.

The premises were sold March 31, 1871; struck off to Cornelius Van Duyn for $100, Deed to be made to Van Duyn or to whom he may direct. Deed delivered to Chas. J. Fenning April 7, 1871, by Thomas Crozier, sheriff.

April 6, 1871, Harriet Ann Fenning, widow, Teresa H., Mary E., Frederick H., James A. Fenning and Mary S. his

wife, legatees under said Will of John Fenning executed a deed of Release to said Chas. J. Fenning, releasing the said premises in question from the life right of said widow and said legacies of $1750.

April 7, 1871, Chas. J. Fenning and wife executed a mortgage upon same premises to Cornelius Van Duyn to secure $2000. April 7, 1871 Chas J. Fenning and wife executed two other mortgages upon same premises to Frederick H. Fenning, trustee, one to secure the widow Ann Harriet Fenning her dower, and the other to secure the said legacies of $1750 to said legatees under said John Fenning's Will, which had been released in order that said $2,000 mortgage might be advanced over them. January 8, 1872, Chas. J. Fenning and wife conveyed said premises to John F. Shann. April 17, 1872, Shann and wife conveyed same to Margaret Wyckoff. June 5, 1872, Margaret Wyckoff and husband conveyed it to Mattie C. Shann, and she now owns it. Cornelius Van Duyn on the —— day of —— of 188— filed a bill in the Court of Chancery to foreclose said mortgage of $500 made by said John Fenning and wife to Anthony Simmons, and by said Simmons assigned to him, also said mortgage of $2000 made by Chas. J. Fenning and wife to him and among others made J. H. Cain & Co. party defendants. Geo. Ward, surviving partner of J. H. Cain & Co., filed an answer claiming that said judgment was unpaid, and that said judgment was a lien next after the Simmons and Johnson mortgages of $500; each, and that said judgment had priority over said $2000 mortgage of Cornelius Van Duyn because it ante-dated the same. Cornelius Van Duyn filed an amended answer alleging that the consideration of the said $2000 mortgage was for the said $1000 mortgage given by John A. Fenning to Cornelius Van Duyn, dated May 26, 1868, interest on same and costs of foreclosure; for the payment of said Job Olden mortgage of $200 and interest; for the payment of the interest on said Simmons and Johnson mortgages, for the payment of taxes; amounting in all to said $2000. All of which said sum, $2000, was used for the payment of liens upon said premises prior to the Cain and Ward judgment, said $1000 mortgage never having been cancelled of

record. And that the failure to make said J. W. Cain & Co. parties under said first foreclosure was an oversight on the part of the solicitor foreclosing said mortgage and praying for a decree in favor of said Van Duyn for the said Johnson mortgage of $500, and the said mortgage of $2000, and that both have priority over said judgment of Cain and Ward; or, for a decree on his $1000 mortgage with interests and costs, and for all moneys advanced and paid by said Cornelius Van Duyn to Chas. J. Fenning to pay liens on said premises prior to said judgment of Cain and Ward.

The case was argued upon proofs at the February Term of 1884 of the Court of Chancery, and the Chancellor among other things decreed: [See passages in parentheses in Decree].

And from that part of said decree [in Brackets] the respondent appeals, to wit: From that part of the final decree in the above stated cause whereby it is ordered and decreed that the complainant is entitled, third, to an account "of all the moneys paid for taxes and interest thereon, whether paid by him or Charles J. Fenning or his grantees, and for all necessary repairs and improvements and interest thereon put on the property by said Charles J. Fenning or his grantees."

And, further, from that part of said decree as provides "that the said complainant is to account for all rents and profits of said mortgaged premises received by Charles J. Fenning or his grantees since the delivery of the sheriff's deed to said Fenning, to-wit: the seventh day of April, A. D., eighteen hundred and seventy-one."

And, further, from that part of said decree as provides "that if said accounting results in a balance against the complainant it must be credited on said complainant's mortgages, but if in complainant's favor he shall have a decree in his favor for said amount prior to the claim of J. W. Cain and company, now owned by George Ward."

And, further, from that part of said decree which orders a reference to a special master "to take and state said accounts as well on behalf of the complainant as on behalf of the defendant, George Ward, and to ascertain and report as speedily

as practicable what is due the complainant on the above basis as well as what is due the defendant, George Ward."

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

GEO. O. VANDERBILT,
Solicitor and of Counsel with the Complainant.

Dated June 27th, 1885.

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

GEO. O. VANDERBILT,
Of Counsel with Complainant.

BRIEF.

The said appeal is based upon the following reasons:

1st. The judgment of J. W. Cain & Co. was only a lien at the time of the Sheriff's sale, March 31st, 1871, on the interest of John A. Fenning in the premises—and that was worth nothing, for there were upon the property, as prior liens to his judgment, the following incumbrances, viz:

1840, March 10, Olden mortgage,	$ 200 00
1856, June 13, Simmons mortgage,	500 00
1865, August 1, Johnson mortgage,	500 00
1868, March 26, Van Duyn mortgage,	1,000 00
1868, May 26, Palmer judgment against John A.,	256 67
1868, May 22, Moore judgment against John A.,	813 12
Taxes, arrears of interest on mortgages and cost of foreclosure,	1,000 00
Legacies to John A. Fenning's children,	1,750 00
	$6,019 79

And the above encumbrances were subject to the life estate of the widow Ann H. Fenning in the premises.

As to amount of taxes and arrears of interest on mortgages prior to J. W. Cain & Co. judgment, see testimony, pp. 67, 70, 71, 72, 78, 98. Exhibits Z and Y, p. 88.

As to value of property at time of sheriff's sale, see pp. 71, 72, 95, 96, 97.

The property was encumbered for much more than it was worth prior to J. W. Cain & Co.'s judgment, which was therefore a lien upon nothing.

2d. Because J. W. Cain & Co. were not made parties to said first foreclosure through any design, but simply by mistake and oversight of the complainant's solicitor. See testimony, pp. 75, 76, 77. 35 Iowa p. 157.

3d. Because the $2,000 mortgage of appellant represents prior liens on the said premises to the said J. W. Cain & Co.'s judgment, and by allowing the same to be a prior lien to said Cain judgment, J. W. Cain & Co. will be no worse off, but stand in the same position they did at the time of the first foreclosure and sheriff's sale.

4th. Because by advancing in good faith and without knowledge of the judgment of J. W. Cain & Co. an additional $1,000, to pay prior liens, and taking a new mortgage of $2,000, Chas. J. Fenning was enabled to save the property, and thereby induced widow and legatees to release their rights. J. W. Cain & Co. ought not to be benefitted thereby to the predjudice of appellant. It did not change his position as to the priority of lien on said premises.

5th. Because the $2,000 advanced by respondent was to pay incumbrances prior to J. W. Cain & Co. judgment, to-wit: Job Olden mortgage, interest on Simmons and Johnson mortgages, taxes, appellant's mortgage of $1,000, interest, costs, &c. See testimony, pp. 67, 70, 71, 72, 78, 98. Exhibits Z and Y, p. 88. The respondent is therefore entitled to be subrogated in lieu of said incumbrances. Lidener v. Parey, 77 Ind., p. 244, also 35 Iowa, p. 157, Jones on Mortgages, § 971.

6th. Because the respondent has never been in possession of said premises, never paid any interest on encumbrances, taxes or costs of repairs and improvements, and never received any rents, issues and profits, and is therefore not subject to account in manner and form as the Chancellor

prescribes in his decree: Ten Eyck v. Casad, 15 Iowa, p. 524; Ross v. Boardman, 22 Hun, 527; Walsh v. Rutgers Fire Ins. Co., 13 Abb. Pr., p. 33; White v. Maynard, 54 Vt. 575, 580; Toots v. D—— Sheriff et als, 31st Ind.; Anson v. Anson, 20 Iowa, p. 520.

Can a judgment creditor, *who has not taken out execution or levied on the mortgagor's equity of redemption in the premises*, redeem from a mortgage prior to his judgment, after foreclosure and sale of the premises under such prior mortgage?

It has be held (*Worthington v. Welmot 59 Miss. 608*) that he could not, except where, *by fraud and collusion* between the mortgagor and mortgagee, he has been omitted as a party to the foreclosure of the prior mortgage, and the mortgagee bought in the premises at a very inadequate price, to his detriment.

The reason given is that a general judgment creditor *before levy* has no specific lien on the equity of redemption, and consequently *no privity of estate* with the mortgagor.

Where a mortgagee buys at an invalid sale of the premises he can only be liable to account where he has actually received the rents and profits. Bigler, v. Waller, 14 Wall 297, Rutherford v. Williams 42 Mo. p. 35, Shepard v. Jones L. R. (21 Ch. D. W.), Downs v. Hopkins 65 Ala. p. 508.

7th. Because the respondent has only received since April 7, 1871, the interest on his $2,000 mortgage, to wit: $120 per annum. The net income as rental from said property since April 7, 1871, would probably be about $300 per annum. So if he accounts on the basis the Chancellor has decreed, the $300 rental will take the $120 of interest and $180 of the principal, and in 14½ years, (since April 7, 1871), that will amount to 14½ × $180 = $2,610, thus wiping out the mortgage of appellant in toto; the decree goes further, and says, that if the accounting exhausts the $2,000 then the rental shall be charged up against the Simmons mortgage of

$500 (dated in 1856) now held by appellant as assignee. The decree says the accounting shall be against the appellant's "*Mortgages.*"

The Chancellor in his opinon uses the following strong language, as to the injustice of the judgment of J. W. Cain & Co., being advanced over appellant's mortgage.

"The foreclosure was complete as to all encumbrances subsequent to and including that $1,000 mortgage except J. W. Cain & Co. In the conviction that the title acquired under it was complete against all those subsequent encumbrances, the complainant advanced $2,000 on mortgage of the property on condition that the life estate should be extinguished, the charge of the legacies postponed to that mortgage and the money over and above what was due on his $1,000 mortgage with costs of suit and execution fees paid in discharge or reduction of prior encumbrances. And that condition was as before stated in all respects fully performed. The question is whether under the circumstances, Ward should have the benefit of that release and postponement and payment of paramount encumbrances. It is too obvious for remark that it would be contrary to the dictates of justice to give him that advantage and it would be surprising to find that any rule of equity (using the term in its technical sense) would prevent this court from doing between the parties what justice demands and constrain it to do injustice."

And yet by the system of accounting which he presribes the judgment of J.W. Cain & Co. is virtually given priority over appellant's mortgage under this decree. Where is the equity and justice which the Chancellor in his opinion says we are entitled to? It results in compelling Van Duyn to account for rents, issues and profits when he never was in possession and never received the same.

8th. The doctrine is well settled that if a mortgagee purchases and enters into possession he must account for rents, issues and profits while in possession. It is true the property was struck off to Van Duyn at sheriff's sale, and the deed was to be made to him or to whom he might direct, see exhibit 2, page 102 of testimony, but it was only so struck off as a matter of wise precaution, to see if Chas. J. Fenning would carry out his agreement contained in the following memoranda made on day of sale by Solicitor Hageman, to wit:—

Van Duyn is to take a new mortgage on the whole property for his claim, decree with interest and costs and as much more as will make $2000, to follow the two mortgages of Duryee and Johnson; amounting together $1000. The inter-

est on said mortgages and Job Olden's mortgage for principal and interest and taxes are to be paid out of the surplus of said $2000, after Van Duyn's claim shall be satisfied, and the widow and legatees of John Fenning, deceased, are to execute releases of their interest in said property; deed from sheriff to be made to Van Duyn or to whom he may direct.

The real purchaser therefore, was Chas. J. Fenning to whom the sheriff executed the deed April 7, 1871, and it was agreed he was to be the purchaser on the day of sale. Therefore as mortgagee he did not purchase and has never held possession as mortgagee, and the simple fact that the property was struck off to him as a matter of precaution until the above memoranda could be carried out should not be construed so as to make him purchaser under his mortgage and thereby be held down with an iron hand to the doctrine of accounting as mortgagee in possession, therefore we ask that so much of the decree as is appealed from be reversed, and that the mortgages of appellant have priority over judgment of J. W. Cain & Co.

Respectfully submitted,

GEORGE O. VANDERBILT.

Princeton, N. J., Nov. 21, 1885.

IN CHANCERY OF NEW JERSEY.

Between

CORNELIUS VAN DUYN, Compl't,

and

MATTIE C SHANN, Def't.

On Foreclosure.

Decree.

This cause coming on to be heard at the last regular term of the Court of Chancery, held at the State House in the city of Trenton, in the presence of Geo. O. Vanderbilt and John H. Stewart, of counsel with complainant, and J. W. and J. K. Field, of counsel with defendant George Ward, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered and the Court having duly considered the said pleadings, proofs and arguments and it appearing to the Court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint.

It is on this 20th day of June, A. D. eighteen hundred and eighty-four, by the Hon. Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the said Chancellor by virtue of the power and authority of this Court doth hereby order, adjudge and decree that the description of the premises covered by the complainant's mortgage be corrected so that the depth of the lot covered thereby shall be only one hundred and twenty feet instead of one hundred and ninety feet as stated in said mortgage.

And it is further ordered and decreed that the complainant is entitled first to an account of the moneys due him for principal and interest on his mortgage of Five hundred dollars, bearing date the thirteenth day of June, A. D. eighteen hundred and fifty six, and which was duly assigned to him according to law.

And it is further ordered and decreed that the defendant Robert D. Warren is entitled, second, to an account of the moneys due him for principal and interest on his mortgage of Five hundred dollars, bearing date the first day of August, A. D. eighteen hundred and sixty-five, and which was duly assigned to him according to law.

(And it is further ordered and decreed that the complainant is entitled, third, to an account of the moneys due him for principal and interest on his mortgage of One thousand dollars bearing date May twenty-sixth, A. D. eighteen hundred and sixty-eight, and [*of all the moneys paid for taxes and interest thereon, whether paid by him or Charles J. Fenning or his grantees, and for all necessary repairs and improvements and interest thereon put on the property by said Charles J. Fenning or his grantees*] and of all principal and interest paid by said Charles J. Fenning or his grantees on the prior incumbrances since the sale, and interest thereon).

[*And it is further ordered and decreed that the complainant is to account for all rents and profits of said mortgaged premises received by Charles J. Fenning or his grantees since the delivery of the sheriff's deed to said Fenning, to wit, the seventh day of April, A. D. eighteen hundred and seventy-one.*]

[*And it is further ordered and decreed that if the said accounting results in a balance against the complainant it must be credited on said complainant's mortgages, but if in complainant's favor he shall have a decree in his favor for said amount prior to the claim of J. W. Cain & Company now owned by George Ward*] with costs, and that the said mortgaged premises be sold to pay and satisfy said decree.)

And it is further ordered and decreed that the defendant George Ward is entitled, fourth, to an account of the moneys due him for principal and interest on his said judgment of six hundred and sixty-nine dollars and ninety-nine cents obtained on the fourth day of November, A. D. eighteen hundred and sixty-eight.

And it is further ordered and decreed that the defendant Frederick H. Fenning, trustee, is entitled, fifth, to an account of the moneys due him for principal and interest on his mortgage of seventeen hundred and fifty dollars, bearing date the

seventh day of April, A. D. eighteen hundred and seventy-one.

(And it is further ordered and decreed that all the foregoing matters be referred to Levi T. Hannum, one of the special Masters of the Court [*to take and state said accounts as well on behalf of the complainant as on behalf of the defendant George Ward, and to ascertain and report as speedily as practicable, what is due the complainant on the above basis as well as what is due said defendant George Ward*], and to report the amounts due the several other defendants upon their respective mortgages and judgments and the order of their priority and whether they all embrace the said premises and whether the said mortgaged premises should be sold together or in parcels and if in parcels in what order).

THEODORE RUNYON,
Chancellor.

A true copy.
G. S. DURYEE, Clerk.

DAVISON & Co., Printers, 27 Montgomery St., Jersey City.

N. J. Court of Errors and Appeals.

Between

CORNELIUS VAN DUYN,

Appellant,

and

MATTIE C. SHANN, *et als.*,

Respondents.

On Bill To Foreclose.

STATEMENT OF FACTS.

This is a suit for the foreclosure of two certain mortgages, upon property situated in the Borough of Princeton, New Jersey.

To the first mortgage complainant derives his title, as follows: on June 13, 1856, one John Fenning and wife, executed a mortgage to Anthony Simmons, for the sum of five hundred dollars, on April 22, 1869, Joseph Ten Eyck, Esq., executor and trustee of Anthony Simmons, assigned this mortgage to William Simpson, on the same day, April 22, 1869, said William Simpson, assigned this mortgage to Henry B. Duryee, and on June 9, 1871, said Duryee assigned this mortgage to Cornelius Van Duyn, the complainant.

On August 1, 1865, John Fenning and wife executed another mortgage to one Abraham Johnson, on the same property for $500, and which said mortgage was on December 3, 1872, by said Johnson, assigned to Robert D. Warren.

On December 31, 1866, John Fenning, the mortgagor died, leaving a will, devising the property covered by the above mortgages to his wife, Ann Harriet, during her life time, and at her decease, to his son, John A. Fenning, Jr., subject to paying his children, James A., Frederick H., George, Theresa H. and Mary E. Fenning, certain legacies amounting in the aggregate to $1,750.00.

On May 26, 1868, John A. Fenning, Jr., executed a mortgage upon this property to Cornelius Van Duyn, for the sum of $1,000.

On May 26, 1868, James Palmer and sons, recovered a judgment against John A. Fenning, in the Mercer Circuit Court, for the sum of $250.00.

On August 22, 1868, Imlah and Charles Moore, recovered a judgment against John A. Fenning, in the Supreme Court of N. J., for the sum of $813.12.

On November 4, 1868, Josiah H. Cain and George Ward, partners in trade, under the firm name of Cain and Ward, recovered a judgment against John A. Fenning, in the Supreme Court of N. J., for the sum of $669.99, which judgment is now owned by George Ward, the surviving partner of said firm.

On December 2, 1868, Theodore F. Johnson and company, recovered a judgment in the Mercer Circuit Court, against John A. Fenning, and one Benjamin R. Thomas, for the sum of $504.00.

On October 9, 1869, John A. Fenning and wife conveyed this property to Charles J. Fenning, subject to the charges in his father's will.

On December 8, 1869, John A. Fenning and wife executed a mortgage upon this property to John Cruser, for the sum of $1,000.00. (It will be observed that John A. Fenning, by above conveyance, had parted with the fee before the giving of this mortgage).

On March 10, 1870, Cornelius Van Duyn, filed a bill in this Honorable Court, for the foreclosure of a mortgage, executed May 26, 1868, by John A. Fenning, to Van Duyn, and joined as defendants in said cause Charles J. Fenning, John Cruser and Benjamin R. Thomas; a final decree, was made in said cause, January 17, 1871, for $1,183.75, amount due complainant Van Duyn, and for $256.41, amount due defendant Thomas, and for $1,146.42, amount due defendant Cruser. The premises were sold by the Sheriff of Mercer County, on March 31, 1871, to Charles J. Fenning, for $100, and on April 7, 1871, said Sheriff executed a deed to said Charles J. Fenning, for said premises.

On April 6, 1871, Harriet Ann Fenning (widow of John Fenning, deceased), Theresa H., Mary E., Frederick H., James A. Fenning and Mary S., his wife legatees under said will of John Fenning, deceased, executed a deed of release to Charles J. Fenning of the premises in question releasing said premises from the dower-right, and the charge of said legacies of $1,750.00.

On April 7, 1871, Charles J. Fenning and Sarah E, his wife, executed a mortgage to Cornelius Van Duyn, upon the premises in question, to secure the payment of $2,000.00, which mortgage was on April 10, 1871, recorded in book Y. of mortgages, page 195, this is mortgage number two, in complainant's original bill described.

On April 7, 1871, Charles J. Fenning and wife, executed another mortgage upon this property to Frederick H. Fenning, as trustee, to secure the payment to Ann Harriet Fenning, widow of John Fenning deceased of her dower-right, and also the sum of $1,750 of legacies.

BRIEF

of James W. & Joseph K. Field, of Counsel with Respondent George Ward.

FIRST POINT.

Defendant, Ward, is only obliged to redeem the $500 mortgage of complainant firstly described in his original bill of complaint in this case which was executed by John Fenning, deceased, to Anthony Simmons, and dated June 13, 1856, and the $1,000 mortgage dated May 26, 1858.

We do not dispute the priority of lien over defendant Ward of complainant's first mortgage of $500, nor of the mortgage of $500 given by John Fenning and wife to one Abraham Johnson and dated August 1, 1865. When John Fenning, (the ancestor) died on December 31, 1866, this property was encumbered by two mortgages of $500 each, making a total of $1,000; by his will he further encumbered and charged this property with the payment of $1,750 of legacies and then devised the same to his wife Ann Harriet for life, and the fee to his son John A. Fenning (or as he is called in said will John Fenning, Junior.)

On May 26, 1868, John A. Fenning further encumbered this property by mortgaging his interest therein to Cornelius Van Duyn for the payment of $1,000 and James Palmer and Sons on May 26, 1868, recovered a judgment against John A. Fenning in the Mercer Circuit for the sum of $250 and on August 22, 1868, Imlah and Charles Moore also recovered a judgment against John A. Fenning, in the Supreme Court, for the sum of $813.12.

So that on November 4, 1868, when defendant Ward recovered his judgment of $669.99 against John A. Fenning, this property was encumbered with the widow's dower right and mortgages and judgments amounting to the sum of $3,813.12 of principal moneys. On October 9, 1869, John A. Fenning, the then owner of the fee, and his wife conveyed this property to Charles J. Fenning.

And on March 10, 1870, Cornelius Van Duyn (who is

also the complainant in this cause) filed a bill in this Honorable Court for the foreclosure of the mortgage of $1,000, executed to him by John A. Fenning, May 26, 1868. He made defendants in that cause Charles J. Fenning, the then owner of the fee, and John Cruser and Benjamin R. Thomas, encumbrancers subsequent to Ward, the defendant in this present cause. Under this foreclosure proceeding the premises were sold by the Sheriff of Mercer county, on March 31, 1871, and according to an understanding and agreement made between Van Duyn, the complainant in that cause, and Charles J. Fenning, the then owner of the fee, Fenning was to be allowed to buy, provided he procured releases from the widow of her right of dower and from the legatees of their legacies, and to pay Van Duyn the costs of that foreclosure. If he did this, Van Duyn was to loan him an additional $1,000 and take from said Fenning a mortgage upon this property for $2,000, Van Duyn's object being to advance himself over the legacies amounting to $1,750, and the widow's dower right. That this agreement was faithfully carried out to the letter, complainant's bill and the proofs only too well show; that Van Duyn considered this mortgage of $1,000 as paid by the taking of the subsequent mortgage of $2,000, see Case, page 66, folios 10—40; page 77, folios 10—40; page 78, folio 10.

Charles J. Fenning bought his brother John A. Fenning's interest in this property subject to certain encumbrances which John had put upon it, among them being a $1,000 mortgage to Van Duyn, the present complainant. He wished to save this property if possible. (See case, p. 65, folio 30—40; p. 79, folio 30—40; p. 80, lines 2—5.) And for this purpose on March 10, 1870, Cornelius Van Duyn, the present complainant foreclosed this $1,000 mortgage in order to cut off other claims which John Fenning, Jr., had put upon his interest. (See Case, p. 66, folios 10—20; p. 69, folio 30.

Charles was to be allowed to buy, and Van Duyn was to advance an additional $1,000 and take from

Charles a mortgage for $2,000 and satisfy the mortgage given by John Fenning Jr., just foreclosed, if he Charles, would make him, Van Duyn, more secure by extinguishing the legacies and the widow's right. This was done. That the Fennings intended to advance Van Duyn ahead of the widow's right and the $1,750 of legacies and released their rights therein for that purpose, see Case, p. 66, folio 30, p. 67, lines 4 to 8, p. 68, lines 12 to 18, p. 70, lines 24 to 30, p. 71, folio 10, p. 80, folios 20—25, p. 88, folio 30, p. 89, lines 1 to 9, p. 92, lines 10—30, p. 92, 30—40.

Unless they had done this, he, Van Duyn, would would not have lent this additional $1,000 to Charles J. Fenning and taken a new mortgage for $2,000. (See Case, p. 71, folio 30—40.

For $1,000 of this $2,000 went as payment of the mortgage given by John Fenning, Jr., to him (Van Duyn). (See Case, p. 92, lines 5 to 11, same page, folios 10, 20 and 30.)

Van Duyn having thus accomplished his object of advancing himself over the widow's dower-right and the legacies, and making himself, as he supposed, more secure by the taking of this $2,000 mortgage, thereby advanced this defendant Ward, over the widow's dower and legacies.

The first foreclosure of appellant's $1,000 mortgage was complete as to all encumbrances subsequent to and including that $1,000 mortgage, except the judgment of J. H. Cain & Co., now owned by Respondent Ward.

As to him it was a nullity and left his rights and equities entirely unaffected.

By the sale Fenning as purchaser (he being allowed by Van Duyn to buy as per aforesaid agreement) acquired the title of all the parties to that suit, and he holds it subject only to the rights and equities of Respondent Ward who was not a party to that suit.

Now the point under consideration is what are those rights and equities. They are the right to redeem the prior encumbrances.

Hutchinson *vs.* Swartsweller, 4 Stew., 205.
Parker *vs*, Child, 10, C. E. Green, 41.
Ibid.

And to an account of the rents and profits.

Also all moneys which the purchaser had paid in reduction or discharge of prior encumbrances.

McCormick *vs.* Knox, 105, U. S., 122.

Or for interest thereon, or for taxes or for municipal assessments.

Atwater *vs.* West, 1 Stew, 361.

Benedict *vs.* Gilman, 4 Paige, 58.

Such being the undoubted equitable doctrine the accounting required by the Chancellor's decree is perfectly correct. No injustice has been done appellant, and we can see no possible cause for him to complain, as he is granted all he asks, so far as his case and proofs will allow. His mortgage for $1,000 dated May 26, 1868, is declared to be a subsisting lien upon this property as against Ward, and the Chancellor says that "he is entitled to an account of the moneys due him for "principal and interest on this mortgage, and entitled "to all moneys paid for taxes, whether paid by him "or Charles J. Fenning, or his grantees, and for "all necessary repairs put on the property by "Fenning or his grantees, and of all principal "and interest paid by Fenning or his grantees on the "prior encumbrances since the sale of this property "under the first Van Duyn foreclosure proceedings."

What more can he ask or expect. By this means the exact amount of moneys expended, whether by him or by Fenning and his grantees for the benefit and improvement of this property which Ward is required to redeem, can be ascertained, and after being allowed to increase his mortgage to this extent. What relief has Ward in the premises, other than to require

and demand from the complainant an account of the rents and profits and to have them applied to the payment of those moneys. This Ward is undoubtedly entitled to.

Parker *vs.* Child, 10 C. E. Green, 41.

Van Duyn *vs.* Shaun, 12 Stew, 6.

Chilver *vs.* Weston, 12 C. E. Green, 435.

And whether Van Duyn has been in possession of these premises or not, cannot alter this rule.

Van Duyn is allowed to increase his mortgage by any moneys expended on this property by Fenning or his grantees for the improvement of this property, and it certainly is no hardship to require him to account for all the rents and profits received by said Fenning or his grantees as an offset thereto; this is equitable and just and the only way in which justice can be done to all concerned.

Therefore, since neither James Palmer & Sons, who recovered a judgment of $250, May 26, 1868, against John A. Fenning, nor I. & C. Moore, who recovered a judgment of $813.12, August 22, 1868, against John A. Fenning, have appeared and proved their respective judgments, defendant Ward is thus advanced over them.

We therefore respectfully submit that the decree appealed from should in all respects be affirmed with costs.

JAS. W. & JOSEPH K. FIELD,
Solicitors for and of Counsel with
Respondent George Ward.

In Chancery of New Jersey.

Between

CORNELIUS VAN DUYN,
Complainant,

and

MATTIE C. SHANN, et als,
Defendants.

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

Humbly complaining, show unto your Honor your orator, Cornelius Van Duyn, of the township of Franklin, in the County of Somerset, and State of New Jersey, that on or about the thirteenth day of June, in the year one thousand eight hundred and fifty-six, one John Fenning, of the Borough of Princeton, in the county of Mercer, and State of New Jersey, became and was justly indebted unto Anthony Simmons, of the same place aforesaid, in the sum of five hundred dollars; and being so indebted, the said John Fenning, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal and deliver unto said Anthony Simmons a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of one thousand dollars, lawful money of

the United States, with a condition thereunder written, that if the said John Fenning, his heirs, executors or administrators, should well and truly pay or cause to be paid, unto said Anthony Simmons, his executors, administrators or assigns, the just and full sum of five hundred dollars, lawful money aforesaid, on or before the thirteenth day of June, in the year of our Lord, one thousand eight hundred and fifty seven, with lawful interest for the same from the date hereof without any fraud or other delay, then the said obligation should be void, otherwise to remain in full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said John Fenning, in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered unto said Anthony Simmons a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said John Fenning and Ann H. Fenning, his wife, of the first part, to Anthony Simmons of the second part; whereby the said parties of the first part did grant, bargain, sell, alien, convey, and confirm unto the said party of the second part, his heirs and assigns, all that certain lot of land situate on the corner of Jackson and Witherspoon Streets, in the Borough of Princeton aforesaid. Beginning at the corner of said streets and running thence along the line of Jackson Street one hundred and ninety feet, thence parallel with Witherspoon Street sixty feet to land of David Hullfish, thence along said Hullfish's line one hundred and ninety feet to Witherspoon Street, thence to the corner of Witherspoon and Jackson Streets the place of beginning sixty feet, said lot being sixty feet fronting on Witherspoon and one hundred and ninety feet deep.

Together with all and singular the tenements, hereditaments and appurtenances, reversions, 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 said party of the first part therein: to have and to hold the said granted and described premises, with the appurtenances, unto the said party of the

second part his heirs and assigns to his and to their own proper use, benefit and behoof forever: Provided always, that if the said parties of the first part thereto, their heirs, executors or administrators, should well and truly pay or cause to be paid, unto said Anthony Simmons his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond, with the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage and the estate thereby granted, should cease, determine and be 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 John Fenning and Ann H. Fenning, his wife, before William Lytle, a commissioner appointed to take the acknowledgment and proof of Deeds, and duly recorded in the office of the Clerk, in and for the said County of Mercer, in Book I of Mortgages, page 417, on the fourth day of July, in the year one thousand eight hundred and fifty-six, as by the several certificates endorsed on the said indenture of mortgage, more fully appears.

And your orator further shows, that after the execution of said bond or writing obligatory and of the said deed of indenture of mortgage to wit, on the twenty-second day of April, A. D., eighteen hundred and sixty-nine, one Joseph Ten Eyck, executor and trustee under the last will and testament of said Anthony Simmons, deceased, by writing under his hand and seal, dated on that day assigned said bond and mortgage to one William Simpson, and that after the execution of said assignment the same was in due form of law acknowledged by said Joseph Ten Eyck, executor and trustee as aforesaid, before Hezekiah Mount, a commissioner appointed to take acknowledgments and proofs of deeds, &c., and that afterwards to wit on the twenty-second day of April, A. D., eighteen hundred and sixty-nine, the said William Simpson by writing under his hand and seal, dated on that day, assigned the said bond and mortgage to one Henry B. Duryee, and that after the execution of said assignment the same was in due form of law acknowledged by said William Simpson before said Hezekiah Mount, commissioner as afore-

said, and duly recorded in the office of the Clerk in and for the County of Mercer, in Book E. of Assignments of Mortgages, page 312, &c., on the twenty-fourth day of December, A. D., eighteen hundred and seventy, as by the certificate of the Clerk of the said county endorsed on the said assignment 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 that afterwards to wit on the ninth day of June, A. D., eighteen hundred and seventy-one, the said Henry B. Duryee, by writing under his hand and seal, dated on that day assigned the said bond and mortgage to your orator Cornelius Van Duyn, and that after the execution of said assignment the same was in due form of law acknowledged by said Henry B. Duryee before William C. Vandewater, a commissioner appointed to take acknowledgments and proofs of deeds, &c., and duly recorded in the office of the Clerk in and for the County of Mercer, in Book E. of Assignments of Mortgages, Page 462, &c., on the tenth day of June, A. D., eighteen hundred and seventy-one, as by the certificate of the Clerk of the said county endorsed on the said assignment 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 in the description of said lot of land in your orator's said mortgage it is therein alleged that the said lot has a depth of one hundred and ninety feet, but upon searching the records your orator is satisfied that said alleged depth of said lot of land in said mortgage of one hundred and ninety feet is an error, for in the original deed from David Hullfish to said John Fenning of said lot of land it is therein described as being one hundred and twenty feet in depth, and upon searching the records and investigation your orator has been unable to find that the said John Fenning ever owned any lands adjoining this said lot of land, and that all other deeds, mortgages and conveyances respecting this lot of land speak of it as being one hundred and twenty feet in depth. And your orator is satisfied that the correct depth of said lot is one hundred and twenty feet, and your orator prays that the said description of said lot of land in your orator's said mortgage may be corrected, and that the words one hundred and ninety feet, wherever they appear in the des-

cription of said lot of land in said mortgage, may be stricken out and the words one hundred ant twenty feet substituted in lieu thereof and that the said description may be so reformed, and corrected so as to read as follows, viz. :—

All that certain lot of land situate on the corner of Jackson and Witherspoon Streets, in the Borough of Princeton, County of Mercer, and State of New Jersey. Beginning at the corner of said streets and running thence along the line of Jackson Street one hundred and twenty feet. Thence parallel with Witherspoon Street, sixty feet to land of David Hullfish. Thence along said Hullfish's line one hundred and twenty feet to Witherspoon Street. Thence to the corner of Witherspoon and Jackson Streets, the place of beginning, sixty feet, said lot being sixty feet fronting on Witherspoon, and one hundred and twenty feet deep.

And your orator prays this Honorable Court to decree that the said last named description be taken as the true and correct description of the lot of land mentioned and described in your orator's said mortgage, and that it be advertised and sold by this last-named and corrected description.

And your orator further shows that on or about the seventh day of April, in the year one thousand eight hundred and seventy-one, one Charles J. Fenning, of the City of Hoboken, in the County of Hudson, and State of New Jersey, became and was justly indebted to your orator Cornelius Van Duyn, in the sum of two thousand dollars, and being so indebted the said Charles J. Fenning, in order to secure the payment of the said sum of money with interest, did make and execute under his hand and seal, and deliver unto your orator Cornelius Van Duyn, a certain bond or obligation bearing date the same day and year last aforesaid, in the penal sum of four thousand dollars lawful money of the United States, with a condition thereunder written that if the said Charles J. Fenning, his heirs, executors, or administrators, should well and truly pay, or cause to be paid unto your orator Cornelius Van Duyn, executors, administrators, or assigns, the just and full sum of two thousand dollars in one year after date, with lawful interest from date, without any fraud or other delay, then the said obligation should be void, otherwise to remain in full force and virtue as in and by the said bond or obligation and the

condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows that the said Charles J. Fenning, in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered unto your orator Cornelius Van Duyn, a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Charles J. Fenning and Sarah E. Fenning his wife, of the first part, to your orator Cornelius Van Duyn, of the second part; whereby the said parties of the first part did grant, bargain, sell, alien, convey and confirm unto said party of the second part, his heirs and assigns, all that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Borough of Princeton, in the County of Mercer, and State of New Jersey. Beginning at the southeast corner of Jackson and Witherspoon Streets. Thence running along Jackson Street one hundred and twenty feet to a stone. Thence southerly along the line of David Hullfish, deceased, and parallel with Witherspoon Street sixty feet to a stone for a corner. Thence easterly along the line of said Hullfish's land and parallel with Jackson Street one hundred and twenty feet to Witherspoon Street aforesaid. Thence along Witherspoon Street sixty feet to the place of beginning. Being the same property of which John Fenning, Senior, died seized and in his possession at the time of his death; together with all and singular the tenements, hereditaments, and appurtenances, reversions, 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 said party of the first part therein: to have and to hold the said granted and described premises, with the appurtenances, unto the said parties of the second part, his heirs and assigns, to his and to their own proper use, benefit and behoof for ever: provided always, that if the said party of the first part thereto, their heirs, executors, or administrators, should well and truly pay, or cause to be paid unto said Cornelius Van Duyn, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond, with the interest thereon, at the time and in the manner

mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and be 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 J. Fenning and Sarah E. Fenning his wife, before J. Harvey Lyons, a Master in Chancery of the State of New Jersey, and duly recorded in the office of the Clerk in and for said County of Mercer, in Book Y of Mortgages, page 195, on the tenth day of April, in the year one thousand eight hundred and seventy-one, at eight o'clock A. M., as by the several certificates endorsed on the said indenture of mortgage, more fully appears.

And your orator further shows that on or about the first day of August, A. D. 1865, the said John Fenning and wife executed a mortgage on the same premises mentioned and described in your orator's said two mortgages, to one Abraham Johnson, to secure the sum of five hundred dollars or some other sum, who afterwards, on the third day of December, A. D. 1872, by writing under his hand and seal, dated on that day and duly acknowledged according to law, assigned the same to one Robert D. Warren, who claims now to be the holder and owner of said mortgage, and by virtue thereof 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 first mortgage, to wit: the mortgage executed by John J. Fenning and wife to Anthony Simmons, and with full notice thereof, and if an incumbrance at all upon said premises is subsequent to the said first mortgage of your orator, but your orator admits and charges that the said last-mentioned mortgage was executed and recorded prior to second mortgage of your orator herein described, to wit: the mortgage executed by Charles J. Fenning and wife to your orator, and if an incumbrance at all upon the said premises is prior to the second mortgage of your orator.

And your orator further shows that on about the seventh day of April, A. D. 1871, the said Charles J. Fenning and wife executed a mortgage on the same premises mentioned

and described in your orator's said two mortgages to one Frederick H. Fenning, Trustee, to secure the sum of seventeent hundred and fifty dollars, or some other sum, by virtue of which said mortgage the said Frederick H. Fenning, trustee, 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 two mortgages, and with full notice thereof, and if an incumbrance at all upon said premises is subsequent to the said two mortgages of your orator.

And your orator further shows that on or about the eighth day of December, A. D. 1869, the said John A. Fenning and wife executed a mortgage on the premises mentioned and described in your orator's said two mortgages, to one John Cruser, to secure the sum of one thousand dollars, or some other sum, and by virtue thereof claims to have some lien upon said premises; but your orator charges that all claim, lien or interest in said mortgaged premises, by virtue of said mortgage was foreclosed in a foreclosure suit in this Honorable Court, hereinafter more particularly set forth, but if a lien, is subsequent to your orator's first mortgage.

And your orator further shows that on or about the nineteenth day of March, A. D. eighteen hundred and seventy-two, the said John F. Shann and wife executed a mortgage on the same premises mentioned and described in your orator's said two mortgages, to one Henry D. Johnson, to secure the sum of five hundred dollars, or some other sum, who afterwards, on the twenty-first day of July, A. D. eighteen hundred and seventy-three, by writing, under his hand and seal, dated on that day and duly acknowledged according to law, assigned the same to one Henry B. Duryee, who claims now to be the holder and owner of said mortgage, and by virtue thereof 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 two mortgages and with full notice thereof, and if an incumbrance at all upon said premises, is subsequent to the said two mortgages of your orator.

And your orator further shows that on or about the thirtieth day of April, A. D. eighteen hundred and seventy-

two, the said Mattie C. Shann and John F. Shann her husband, executed a mortgage on the same premises mentioned and described in your orator's said two mortgages, to one Henry B. Duryee, to secure the sum of two hundred and fifty dollars, or some other sum, by virtue of which said mortgage the said Henry B. Duryee 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 two mortgages and with full notice thereof, and if an incumbrance at all upon said premises, is subsequent to the said two mortgages of your orator.

And your orator further shows that on or about the twenty-sixth day of May, A. D. eighteen hundred and sixty-eight, as your orator has been informed and believes to be true, James W. Palmer, James W. Palmer and David W. Palmer, trading as James Palmer & Sons, recovered a judgment against John A. Fenning in the Mercer County Circuit Court of New Jersey, for the sum of two hundred and fifty dollars and twenty-three cents damages and costs, or some other sum, by virtue of which said judgment the said James W. Palmer, James W. Palmer and David W. Palmer, partners, trading as James W. Palmer & Sons, claim to have some lien upon said premises; but your orator charges that said judgment was paid by said John A. Fenning, and should be cancelled of record, and is no lien against said premises, but if it is unpaid, your orator charges that the said judgment was obtained subsequent to the execution of both of your orator's said mortgages and with full notice thereof, and if a lien at all upon said premises, is subsequent to the incumbrance of your orator's said mortgages.

And your orator further shows that on or about the twenty-second day of August, A. D. eighteen hundred and sixty-eight, as your orator has been informed and believes to be true, Imlah Moore and Charles Moore, partners, trading as I. and C. Moore, recovered a judgment against John A. Fenning and John Cruser, in the Supreme Court of Judicature of the State of New Jersey, for the sum of eight hundred and thirteen dollars and twelve cents damages and costs, or some other sum, by virtue of which said judgment the said Imlah

Moore and Charles Moore, partners, trading as I. and C. Moore, claim to have some lien upon said premises; but your orator has been informed and believes to be true that said judgment was paid by said John Cruser, and who, by the payment thereof, claims to have control of said judgment and an interest therein, and by virtue thereof a lien upon said premises. And your orator further shows that the said John Cruser became deceased on or about
intestate, and that Aaron Cruser, of Princeton, Mercer County,
10 New Jersey, was duly appointed by the Orphans' Court of said County as administrator of his estate; but your orator charges that said judgment was paid, and is fully satisfied and should be cancelled of record, and is no lien against said premises; but if it is unpaid, your orator charges that the said judgment was obtained subsequent to the execution of both your orator's said mortgages and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the incumbrance of your orator's said mortgages.

And your orator further shows that on or about the
20 fourth day of November, A. D. eighteen hundred and sixty-eight, as your orator has been informed and believes to be true, Josiah H. Cain and George Ward, partners, trading as J. H. Cain and Company, recovered a judgment against John A. Fenning and John Cruser in the Supreme Court of Judicature of the State of New Jersey, for the sum of six hundred and sixty-one dollars and ninety-nine cents damages and costs, or some other sum, by virtue of which said judgment the said Josiah H. Cain and George Ward, partners, trading as J. H. Cain and Company, claim to have some lien upon
30 said premises; but your orator charges that said judgment was paid, and is fully satisfied and should be cancelled of record, and is no lien against said premises; bnt if it is unpaid, your orator charges that the said judgment was obtained subsequent to the execution of both your orator's said mortgages and with full notice thereof, and if a lien at all upon the said premises, is subsequent to the incumbrance of your orator's said mortgage.

And your orator further shows that on or about the second day of December, A. D. eighteen hundred and sixty-

eight, as your orator has been informed and believes to be true, Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson and Company, recovered a judgment against John A. Fenning and Benjamin R. Thomas in the Mercer County Circuit Court of the State of New Jersey, for the sum of five hundred and four dollars damages and costs, or some other sum, by virtue of which said judgment the said Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson and Company, claim to have some lien upon said premises; but your orator has been informed and believes to be true that said judgment was paid by said Benjamin R. Thomas, who by virtue of a statute in such cases made and provided, and by order of said Mercer Circuit Court, in pursuance of said statute, claims to have control of said judgment and an interest therein, and by virtue thereof a lien upon said premises; but your orator charges that all claim, lien or interest in said mortgaged premises, by virtue of said judgment was foreclosed in a foreclosure suit in this Honorable Court, hereinafter more particularly set forth.

But your orator further charges that said judgment was obtained subsequent to the execution of both your orator's said mortgages and with full notice thereof, and if a lien at all upon said premises, is subsequent to the incumbrance of your orator's said mortgages.

Your orator further shows that after executing said first-named mortgage of your orator's, to wit: on or about the thirty-first day of December, A. D. eighteen hundred and sixty-six, the said John Fenning became deceased, leaving a Will in writing by which he devised all the lands mentioned in your orator's mortgages to his wife Ann Harriet, during her lifetime, and then to his son John Fenning, Jr., subject nevertheless to paying his children James, Frederick, George, Teresa H. and Mary E. Fenning, certain legacies as appears by said Will which was duly probated before John H. Scudder, Surrogate of the County of Mercer, on or about January the ninth, A. D. eighteen hundred and sixty-six.

Your orator further shows that the said John A. Fenning called in said Will John Fenning, Jr., on or about the ninth

day of October, A. D. eighteen hundred and sixty-nine, conveyed all his interest in said premises by deed to his brother Charles J. Fenning, subject to said legacies named in said Will, which said deed was duly recorded in the Mercer County Clerk's Office, in Book of Deeds, Vol. 76, Page 635, &c.

And your orator further shows that on or about the tenth day of March, A. D. eighteen hundred and seventy, he filed a bill in this Honorable Court to foreclose a mortgage which John Fenning and wife had executed to him in their lifetime, to wit on the twenty-sixth day of May, A. D. eighteen hundred and sixty-eight, upon the said premises hereinbefore mentioned, to secure the sum of one thousand dollars, and that he made party to said foreclosure suit one John Cruser, who was duly served according to law with a *subpœna ad respondendum*, because said Cruser claimed to have some lien upon said premises by virtue of a mortgage executed by John A. Fenning and wife to him on said premises, bearing date December the eighth, A. D. eighteen hundred and sixty-nine, and duly recorded in Mercer County Clerk's Office February twenty-seventh, A. D. eighteen hundred and sixty-nine, in Book "U" of Mortgages, Page 268, &c., all of which appears of record in said foreclosure suit, to which your orator begs leave to refer, if it be necessary so to do.

And your orator further shows that he also made a party to said foreclosure suit Theodore F. Johnson and Francis W. Corwin, partners trading as Theodore F. Johnson and Company, who were duly served according to law with a subpœna ad respondendum, who claimed to have some lien upon said premises hereinbefore mentioned by virtue of a judgment obtained by them in the Mercer Circuit Court, on the second day of December, A. D., eighteen hundred and sixty-eight, against the said John A. Fenning and one Benjamin R. Thomas, for the sum of five hundred and four dollars damages and costs, and that said Benjamin R. Thomas was also made a party to said foreclosure suit and served with a subpœna ad respondendem because said judgment of Theodore F. Johnson and Company had been paid by said Thomas, who by virtue of a statute in such cases made and provided and by order of said Mercer Circuit Court in pursuance of said statute claimed

to have control of said judgment and an interest therein; all of which appears by record in said foreclosure suit, to which your orator begs leave to refer if it be necessary so to do.

And your orator further shows that other proceedings were had in said foreclosure suit and that a final decree was made therein on the seventeenth day of January A. D., eighteen hundred and seventy-one, and that the said final decree shows that there was due the complainant on his said mortgage the sum of eleven hundred and eighty-three dollars and seventy-five cents, and to this defendant Benjamin R. Thomas on his said judgment the sum of two hundred and fifty-six dollars and forty-two cents, and to the defendant John Cruser on his said mortgage the sum of eleven hundred and forty-six dollars and forty-two cents, and that still other proceedings were had in said foreclosure suit and an execution issued under the seal of this honorable court directed to the Sheriff of the county of Mercer, commanding him to sell said premises hereinbefore mentioned, which he did on the thirty-first day of March, A. D. eighteen hundred and seventy-one, and that the same were struck off to said Charles J. Fenning for the sum of one hundred dollars.

And further that the said sheriff, Thomas A. Crozer, by virtue of said foreclosure suit and sale executed a deed for said premises to said Charles J. Fenning which said deed bears date of the seventh day of April, A. D. eighteen hundred and seventy-one and was duly recorded in the Mercer County Clerk's Office in Book of Deeds vol. 83, page 227, &c.

And your orator further shows that by virtue of said foreclosure suit and proceedings had therein that the said defendant John Cruser was foreclosed of all claim, lien or interest which he may have had to said mortgaged premises by virtue of his said mortgage.

And that the said defendant, Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Company and Benjamin R. Thomas were also foreclosed of all their claim, lien or interest which they may have had to said mortgaged premises by virtue of their said judgment or the assignment thereof.

And your orator further shows that the said Harriet Ann Fenning, widow of John Fenning, deceased, and his said children, Theresa H. Fenning, Mary E. Fenning, Frederick H. Fenning, James A. Fenning and Mary S., his wife, legatees under his said will, did, on the sixth day of April, A. D. eighteen hundred and seventy-one, execute a deed of release for all the right, title and interest which they had in the premises hereinbefore mentioned to said Charles J. Fenning, which said deed was duly recorded in the Mercer County Clerk's office, in Book of Deeds, vol. 83, page 230, &c.

And your orator further shows that George Fenning, the only other legatee under said will, became deceased on or about the day of A. D. eighteen hundred and without issue, having never married.

And your orator further shows that the said premises were further conveyed by said Charles J. Fenning and wife to John F. Shann by deed, dated January eight, A. D. eighteen hundred and seventy-two, which said deed was duly recorded in the Mercer County Clerk's office, in Book of Deeds, vol. 87, page 216, &c.

And was still further conveyed by the said John F. Shann and Mattie E. Shann, his wife, to one Margaret Wykoff by deed bearing date the seventeenth day of April, A. D. eighteen hundred and seventy-two, which said deed was duly recorded in the Mercer County Clerk's office, in Book of Deeds, vol. 91, page 199, &c., and was again still further conveyed by said Margaret Wykoff and William S., her husband, to said Mattie C. Shann by deed bearing date the fifth day of June, A. D. eighteen hundred and seventy-two, which deed was duly recorded in the Mercer County Clerk's office, in Book of Deeds, vol. 93, page 320, &c., and that the said Mattie C. Shann is now the present owner of said premises and in possession thereof and that she is intermarried with one John F. Shann, who is now living.

And your orator further shows that all the said principal money mentioned in and secured by the said bond and mortgage, with large arrears of interest, still remains due and unpaid to your orator, whereby the said mortgage, and the estate thereby granted, have become absolute in your orator and his heirs.

And your orator further shows that the said Mattie C. Shann and John F. Shann, her husband, Robert D. Warren, Frederick H. Fenning, (trustee), Henry B. Duryee, Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Co., Benjamin R. Thomas, Aaron Cruser, administrator of John Cruser, deceased, Imlah Moore and Charles Moore, partners, trading as I. & C. Moore, James W. Palmer, James W. Palmer and David Palmer, partners, trading as James W. Palmer & Sons, and Josiah H. Cain and George Ward, partners, trading as J. H. Cain & Company, since the execution of your orator's said mortgage, have possessed and enjoyed, and do still possess and enjoy, the said mortgaged premises, and have always received, and still receive the rents, issues and profits thereof; and that the said premises are a scanty security for the payment of the said principal and interest money so due to your orator as aforesaid, and that he or some other person or persons, for him has frequently and in a friendly manner applied to the said Mattie C. Shann and John F. Shann, her husband, Robert D. Warren, Frederick H. Fenning (trustee), Henry B. Duryee, Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Co., Benjamin R. Thomas, Aaron Cruser, administrator of John Cruser, deceased, Imlah Moore and Charles Moore, partners, trading as I. & C. Moore, James W. Palmer, James W. Palmer and David Palmer, partners, trading as James W. Palmer & Sons, and Josiah H. Cain and George Ward, partners, trading as J. H. Cain & Company, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys due to your orator on the said bond and mortgage, and your orator well hoped that they would have complied with such reasonable requests, as in justice and equity they ought to have done. But now so it is, may it please your Honor, that the said Mattie C. Shann and John F. Shann, her husband, Robert D. Warren, Frederick H. Fenning (trustee), Henry B. Duryee, Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Co., Benjamin R. Thomas, Aaron Cruser, administrator of John Cruser, deceased, Imlah Moore and Charles Moore, partners, trading as I. & C. Moore, James W. Palmer, James W. Palmer and David Palmer, part-

ners, trading as James W. Palmer & Sons, and Josiah H. Cain and George Ward, partners, trading as J. H. Cain & Company, confederating with divers persons unknown to your orator but whose names, when discovered, he prays may be inserted herein, with proper words to charge them as parties defendant hereto, to injure and aggrieve your orator in the premises, not only refuse to pay the said principal and interest so due as aforesaid, but give out and pretend, that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that he cannot enter upon or dispose of the same to purchasers, and that the same will be subject to an equity of redemption. All of which actings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orator. In tender consideration whereof, and forasmuch as your orator has not a complete remedy in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys without the aid of this honorable Court, where matters of this nature are particularly cognizable and relievable. To the end, therefore, that the said defendants may, upon their respective oaths, true, full and perfect answers make to all and singular the premises, as fully as if here repeated and they thereto particularly interrogated and that they, or some of them, may be decreed to pay to your orator the said principal sum so due on the said bond and mortgage and the interest due and to grow due thereon, with your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable Court: and that in default thereof the said defendants, and all persons claiming or to claim under them, or any of them, may be foreclosed of and from all right, title and equity of redemption in and to the said mortgaged premises and every part thereof, with the appurtenances, and may deliver unto your orator the possession thereof, and all deeds, demises and muniments of title relating to or concerning the same; or that the said mortgaged premises, with the appurtenances, may be sold, and that out of the moneys arising from such sale your orator may be paid the said principal, interests and costs.

And that your orator may have such further and other relief in the premises as the case may require, and as 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 subpœna: issuing out of and under the seal of this honorable Court, to be directed to the said Mattie C. Shann and John F. Shann, her husband, Robert D. Warren, Frederick H. Fenning (trustee), Henry B. Duryee, Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Co., Benjamin R. Thomas: Aaron Cruser, administrator of John Cruser, deceased, Imlah Moore and Charles Moore, partners, trading as I. & C. Moore, James W. Palmer, James W. Palmer and David Palmer, partners, trading as James W. Palmer & Sons, and Josiah H. Cain and George Ward, partners, trading as J. H. Cain & Company, therein and thereby commanding them, on a certain day and under a certain penalty, to be and appear before your Honor in this honorable Court, then and there to answer the premises, and to stand to, abide by and perform such decree therein as to your Honor shall seem meet and agreeable to equity and good conscience. And your orator will ever pray, &c.

GEO. O. VANDERBILT,
Solicitor of Complainant.

S. M. DICKINSON,
Of Counsel with Complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CORNELIUS VAN DUYN,
Complainant,

AND

MATTIE C. SHANN, ET ALS,
Defendants.

The answer of George Ward, surviving partner of Josiah H. Cain trading as Josiah H. Cain and Company, one of the defendants to this bill of complaint of Cornelius Van Duyn, complainant.

This defendant now and at all times hereafter saving and reserving to himself all and all manner of benefit or advantage of exception to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to answering saith that he has no knowledge or information sufficient to form a belief whether said John Fenning of the Borough of Princeton in the County of Mercer and State of New Jersey on or about the thirteenth day of June in the year of our Lord one thousand eight hundred and fifty-six became and was justly indebted unto Anthony Simmons of the same place in the sum of five hundred dollars, or any sum or that on the day set forth in said bill or on any day in order to secure the payment thereof with interest did make and execute under his hand and seal and deliver unto said Anthony Simmons a certain bond or obligation bearing date in the penal sum of one thousand dollars with a condition thereunder written that if the said John Fenning, his heirs, executors or administrators should well and truly pay or cause to be paid unto the said Anthony Simmons his executor, administrator or assigns the just and full sum of five hundred dollars lawful money aforesaid on or before the thirteenth day of June, eighteen hundred and fifty-

seven, with lawful interest for the same from the date thereof without any fraud or other delay, and he leaves the complainant to prove the same.

And this defendant further answering says that he has no knowledge or information sufficient to form a belief whether said John Fenning in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered to the said Anthony Simmons a certain indenture of mortgage bearing date the same day and year first aforesaid made by the said John Fenning and Ann H. Fenning his wife of the first part to Anthony Simmons of the second part whereby the said parties of the first part did grant, bargain, sell, alien, convey and confirm unto the said Anthony Simmons his heirs and assigns that certain, lot tract or parcel of land in the said bill of complaint particularly described, and leaves the complainant to prove the same.

And this defendant further answering says he has no knowledge or information sufficient to form a belief whether the said alleged indenture of mortgage was acknowledge by the said John Fenning and Ann H. Fenning his wife before William Lytle a commissioner appointed to take the acknowledgment and proof of deeds and duly recorded in the office of the clerk in and for the said County of Mercer, in Book I, of Mortgages on Page 417, on the fourth day of July, in the year one thousand eight hundred and fifty-six, and leaves the complainant to prove the same.

And this defendant further answering saith that he does not know and that he has no knowledge or information sufficient to form a belief whether after the alleged execution of the said alleged bond or writing obligatory and of the said alleged deed of indenture of mortgage to wit.: on the twenty-second day of April, A. D., eighteen hundred and sixty-nine, one Joseph Ten Eyck, executor and trustee under the alleged last will and testament of said Anthony Simmons, deceased, by writing under his hand and seal dated on that day, assigned said bond and mortgage to one William Simpson and that after the execution of the said alleged assignment, the same was in due form of law acknowledged by said Joseph Ten Eyck, executor and trustee as aforesaid, before Hezekiah

Mount, or that afterwards on the twenty-second day of April, A. D., eighteen hundred and sixty-nine, the said William Simpson by writing under his hand and seal, dated on that day, assigned the said bond and mortgage to one Henry B. Duryee. or that after the execution of said alleged assignment, the same was acknowledged by said Willlam Simpson before said Hezekiah Mount, Commissioner, or was duly recorded in the office of the Clerk in and for the County of Mercer, in Book E of assignments of Mortgages on Page 312 on the twenty-fourth day of December, A. D., 1870, and leaves the complainant to prove the same.

And this defendant further answering saith that he has no knowledge or information sufficient to form a belief whether on the ninth day of June, A. D., eighteen hundred and seventy-one, the said Henry B. Duryee by writing under his hand and seal, dated on that day, assigned the said alleged Bond and Mortgage to the said complainant Cornelius Van Duyn, or that after the execution of said alleged assignment the same was acknowledged by said Henry B. Duryee before William C. Vandewater a commissioner appointed to take acknowledgment and proof of deeds, &c., or was duly recorded in the office of the Clerk in and for the County of Mercer in Book E of Assignments of Mortgages on Page 462, on the tenth day of June, A. D., eighteen hundred and seventy-one, and leaves the eomplainant to prove the same.

And this defendant further answering says, he has no knowledge or information sufficient to form a belief whether in the description of said alleged lot of land in the complainant's alleged mortgage it is therein alleged that the said lot has a depth of one hundred and ninety feet, or that said alleged depth of said lot of land in said alleged mortgage of one hundred and ninety feet is an error, or that in the original deed from David Hulfish to said John Fenning of said lot of land it is therein described as being one hundred and twenty feet in depth, or that the complainant has been unable to find that the said John Fenning ever owned any lands adjoining this said alleged lot of land, or that all other deeds, mortgages and conveyances respecting this alleged lot of land in said

bill of complaint described speak of it as being one hundred and twenty feet in depth, and he leaves the complainant to prove the same.

And this defendant further answering says, that he has no knowledge or information sufficient to form a belief, and therefore he denies that the correct depth of said lot in said alleged mortgage described is one hundred and twenty feet.

And this defendant further answering saith, that he has no knowledge or information sufficient to form a belief, and therefore denies that on or about the seventh day of April, in the year one thousand eight hundred and seventy-one, the said Charles J. Fenning became and was indebted unto the said complainant in the sum of two thousand dollars; that in order to secure the payment of said sum of money, with interest, the said Charles J. Fenning did make and execute under his hand and seal and deliver unto the said complainant a certain bond or obligation bearing date the same day and year last aforesaid in the penal sum of two thousand dollars lawful money of the United States, with a condition thereunder written that if the said Charles J. Fenning, his executors, or administrators should well and truly pay, or cause to be paid, unto the complainant, his executors, administrators, or assigns, the just and full sum of two thousand dollars in one year after date, with lawful interest from date, without any fraud or other delay, and leaves the complainant to prove the same.

And this defendant further answering says he has no knowledge or information sufficient to form a belief whether the said Charles J. Fenning, in order to secure the payment of the alleged sum of money above mentioned, together with the interest thereon, executed and delivered to the complainant a certain indenture of mortgage, bearing date the same day and year first aforesaid, made by the said Charles J. Fenning and Sarah E. Fenning, his wife, to the said complainant, the said Cornelius VanDuyn, whereby the said Charles J. Fenning and Sarah E. Fenning, his wife, did grant, bargain, sell, alien, convey and confirm unto the said complainant, his heirs and assigns, all that certain lot, tract or parcel of land in said bill of complaint particularly described, and leaves the complainant to prove the same.

And this defendant further answering saith, that he has no knowledge or information sufficient to form a belief whether after the execution of the said alleged indenture of mortgage the same was in due form of law acknowledged by the said Charles J. Fenning and Sarah E. Fenning, his wife, before J. Harvey Lyons, Esquire, a Master in Chancery of the State of New Jersey, and was duly recorded in the office of the Clerk in and for the said County of Mercer, in Book Y of Mortgages, page 195, on the tenth day of April, in the year one thousand eight hundred and seventy-one, at eight o'clock A. M., and he leaves the complainant to prove the same.

And this defendant further answering says he has no knowledge or information sufficient to form a belief whether on or about the first day of August, A. D. 1865, the said John Fenning and wife executed a mortgage on the same premises in said bill of complaint described to one Abraham Johnson to secure the sum of five hundred dollars or some other sum, who afterwards, on the third day of December, A. D. 1872, by writing, under his hand and seal, dated on that day and acknowledged according to law, assigned the same to one Robert D. Warren, who claims now to be the holder thereof, and he leaves the complainant to prove the same.

And this defendant further answering says he has no knowledge or information sufficient to form a belief whether on or about the seventh day of April A. D. 1871, the said Charles J. Fenning and wife executed a mortgage on the same premises particularly described in said bill of complaint of said complainant to one Frederick H. Fenning, trustee, to secure the sum of seventeen hundred and fifty dollars or some other sum, but leaves the complainant to prove the same.

And this defendant further answering says, that he has no knowledge or information sufficient to form a belief whether on or about the eighth day of December, in the year of our Lord eighteen hundred and sixty-nine, the said John A. Fenning and wife execnted a mortgage on the premises mentioned and described in the said bill of complaint of said complainant to one John Cruser to secure the sum of one thousand dollars or some other sum, and therefore he denies

that the same is any lien upon said premises in said bill of complaint described.

And this defendant further answering saith, that he has no knowledge or information sufficient to form a belief whether on or about the nineteenth day of March A. D. eighteen hundred and seventy-two, the said John F. Shann and wife executed a mortgage on the same premises described in the bill of complaint of said complainant unto one Henry D. Johnson to secure the sum of five hundred dollars or some other sum, who afterward, on the twenty-first day of July, A. D. eighteen hundred and seventy-three, by writing, under his hand and seal, dated on that day and duly acknowledged, assigned the same to one Henry B. Duryee, who now claims to be the owner and holder of said mortgage, and by virtue thereof claims to have some lien upon the said premises, and leaves the complainant to prove the same.

And this defendant further answering says, that he has no knowledge or information sufficient to form a belief whether on or about the thirtieth day of April, in the year of our Lord eighteen hundred and seventy-two, the said Mattie E. Shann and John F. Shann, her husband, executed a mortgage upon the same premises described in the said bill of complaint of complainant to one Henry B. Duryee to secure the sum of two hundred and fifty dollars or some other sum, and leaves the complainant to prove the same.

And this defendant further answering saith, that he has no knowledge or information sufficient to form a belief whether on or about the twenty-sixth day of May, A. D. eighteen hundred and sixty-eight, James W. Palmer, James W. Palmer, James W. Palmer and David W. Palmer, trading as James Palmer & Sons, recovered a judgment against John A. Fenning in the Mercer County Circuit Court of New Jersey for the sum of two hundred and fifty dollars and twenty-three cents or some other sum, and he leaves the complainant to prove the same.

And this defendant further answering says, that he has no knowledge or information sufficient to form a belief whether on or about the twenty-second day of August, in the year of our Lord eighteen hundred and sixty-eight Imlah

Moore and Charles Moore, partners trading as I. & C. Moore, recovered a judgment against John A. Fenning and John Cruser in the Supreme Court of Judicature of this State for the sum of eight hundred and thirteen dollars and twelve cents damages and costs or some other sum, and that he has no knowledge or information sufficient to form a belief whether said judgment was paid by the said John Cruser or whether the said John Cruser by the alleged payment thereof claims to have control of said judgment and an interest therein, or by virtue thereof a lien upon the said premises, and he leaves the complainant to prove the same.

And this defendant further answering saith, that he has no knowledge or information sufficient to form a belief whether the said John Cruser became deceased on or about , intestate, and that Aaron Cruser of Princeton, Mercer County, New Jersey, was duly appointed by the Orphans' Court of said county as administrator of his estate, or that said judgment was paid and is fully satisfied and should be cancelled of record and is no lien upon said premises, and leaves the complainant to prove the same.

And this defendant further answering admits that on or about the fourth day of November, in the year of our Lord eighteen hundred and sixty-eight, that Josiah H. Cain and this defendant, who were at that time partners in trade, trading as J. H. Cain & Company, secured a judgment against John A. Fenning and John Cruser in the Supreme Court of Judicature of the State of New Jersey for the sum of six hundred and sixty-one dollars and ninety-nine cents damages and costs, and that the said Josiah H. Cain and this defendant, trading as J. H. Cain & Company, claim to have some lien upon said premises, and this defendant denies that said judgment was paid and is fully satisfied and should be cancelled of record and is no lien against said premises, and this defendant also denies that the said judgment was obtained subsequent to the execution of both the said mortgages of the said complainant and with full notice thereof, and that it is subsequent to the incumbrance of the complainant's said mortgages.

And this defendant further answering, charges and insists that the said judgment recovered by this defendant and Josiah H. Cain, trading as Josiah H. Cain & Company, against the said John A. Fenning, was recovered prior to the execution and delivery of the alleged mortgage executed by the said Charles J. Fenning and Sarah E. Fenning, his wife, to the complainant on the seventh day of April, A. D. eighteen hundred and seventy-one, and that the said complainant at the time of the execution and delivery of the said mortgage had full knowledge of the said judgment, and that it is a prior incumbrance to said mortgage on said premises.

And this defendant further answering charges and insists that the said judgment recovered by this defendant and Josiah H. Cain, trading as Josiah H. Cain & Company, against the said John A. Fenning, was recovered prior to the execution and delivery of the alleged mortgage executed by the said Charles J. Fenning and Sarah E. Fenning, his wife, to the said Frederick H. Fenning, trustee, to secure the sum of seventeen hundred and fifty dollars, as alleged in said bill of complaint, and that the said Frederick H. Fenning, trustee, at the time of the execution and delivery of the alleged mortgage had full knowledge of the said judgment and that it was a prior incumbrance to said mortgage upon said premises.

And this defendant further answering charges and insists that the said judgment recovered by this defendant and Josiah H. Cain, trading as Josiah H. Cain & Company, was recovered prior to the execution and delivery of the alleged mortgage executed by the said John A. Fenning and wife to the said John Cruser on the eighth day of December, in the year of our Lord eighteen hundred and sixty-nine, and that the said John Cruser, at the time of the execution and delivery of the alleged mortgage, had full knowledge of the said judgment and that it was a prior lien on said premises to said mortgage.

And this defendant further answering charges and insists that the said judgment recovered by this defendant and the said Josiah H. Cain, trading as J. H. Cain & Company, against the said John A. Fenning, was recovered prior to the execution and delivery of the alleged mortgage executed by the

said John H. Shann and wife to the said Henry D. Johnson on the nineteenth day of March, in the year of our Lord eighteen hundred and seventy-two, and that the said Henry D. Johnson, at the time of the alleged execution and delivery of the alleged mortgage, had full knowledge of the said judgment and that it was a prior incumbrance to said mortgage on said premises.

And this defendant further answering charges and insists that the said judgment recovered by this defendant and Josiah H. Cain, trading as J. H. Cain & Company, against the said John A. Fenning, was recovered prior to the execution and delivery of the alleged mortgage executed by the said Mattie C. Shann and John F. Shann, husband, to the said Henry B. Duryee on the thirteenth day of April, in the year of our Lord eighteen hundred and seventy two, and that the said Henry B. Duryee, at the time of the execution and delivery of the said alleged mortgage had full knowledge of the existence of said judgment and that it was a prior incumbrance to said mortgage on said premises.

And this defendant further answering charges and insists that the said judgment recovered by this defendant and Josiah H. Cain against the said John A. Fenning is a prior lien to the judgment recovered by the said James W. Palmer, James W. Palmer and David Palmer, trading as James W. Palmer & Sons, and Imlah Moore and Charles Moore against the said John A. Fenning, and is entitled to priority of payment.

And this defendant further answering saith and he also charges and insists that the said judgment recovered by this defendant and Josiah H. Cain, trading as J. H. Cain & Company, against the said John A. Fenning, was recovered prior to the alleged conveyance made by the said John A. Fenning to his said brother Charles J. Fenning on the ninth day of October, in the year of our Lord eighteen hundred and sixty-nine, and that the said Charles J. Fenning, at the time of the execution and delivery of the alleged conveyance had full knowledge of the said judgment and that it was a prior incumbrance on said premises, and that he received said deed expressly subject to the lien and incumbrance of the said judgment.

And this defendant further answering also charges and insists that the said judgment recovered by this defendant and Josiah H. Cain, trading as J. H. Cain & Company, against the said John A. Fenning, was recovered prior to the alleged conveyance or deed of release, executed by the said John Fenning, Harriet Ann Fenning, widow of the said John Fenning, deceased, Theresa Fenning, Mary E. Fenning, Frederick M. Fenning, James A. Fenning and Mary S, his wife, to the said Charles J. Fenning on the sixth day of April, in the year eighteen hundred and seventy-one, and that the said Charles J. Fenning, at the time of the execution and delivery of the alleged conveyance, had full knowledge of the said judgment and that it was a prior incumbrance on said premises, and that he secured said deed expressly subject to the lien and operation of said judgment upon said lands.

And this defendant further answering insists and charges that the said judgment recovered by this defendant and Josiah H. Cain, trading as J. H. Cain & Company, against the said John A. Fenning, was recovered prior to the alleged conveyance executed by the said Charles J. Fenning and wife to John F. Shann, and bearing date on the eighth day of January, eighteen hundred and seventy-two, and that the said John F. Shann had full knowledge of the said judgment, and that he secured said deed expressly subject to the lien of the said judgment.

And this defendant further answering insists and charges that the said judgment recovered by this defendant and Josiah H. Cain, trading as J. H. Cain & Company against the said John A. Fenning was recovered prior to the alleged conveyance executed by the said John F Shann to the said Margaret Wyckoff, and that the said Margaret Wyckoff at the time of the execution and delivery of the alleged conveyance had full knowledge of the said judgment and that it was a subsisting lien and a prior incumbrance upon said premises.

And this defendant further answering charges and insists that the said judgment recovered by this defendant and Josiah H. Cain, trading as J. H. Cain & Company, against the said John A. Fenning was recovered prior to the alleged conveyance executed by the said Margaret Wyckoff and William

S. Wyckoff her husband to the said Mattie C. Shann on the fifth day of June, in the year of our Lord eighteen hundred and seventy-two, and that the said Mattie C. Shann at the time of the execution and delivery of the alleged conveyance had full knowledge of the existence of the said judgment and that it was a prior incumbrance on said premises and that she secured the said deed expressly subject to the lien of the said judgment.

And your orator further showeth unto your Honor that on or about the first day of February in the year of our Lord eighteen hundred and seventy-one, this defendant purchased of the said Josiah H. Cain and the said Josiah H. Cain sold and conveyed unto this defendant in consideration of the sum of seven thousand dollars, unto the said Josiah H. Cain well and truly paid by this defendant all his the said Josiah H. Cain's right, title and interest in the partnership property belonging to the said firm of Josiah H. Cain & Company and also all the right, title and interest of the said Josiah H. Cain in said judgment recovered by the said Josiah H. Cain and George Ward (this defendant) trading as Josiah H. Cain & Company, against the said John A. Fenning, recovered on the fourth day of November, in the year of our Lord eighteen hundred and sixty-eight, and this defendant is the sole owner of said judgment by virtue of a certain deed of assignment of said judgment bearing date the said first day of February in the year of our Lord eighteen hundred and seventy-one, executed by the said Josiah H. Cain to this defendant, by which assignment the said Josiah H. Cain in consideration of the sum of the sum of seven thousand dollars as aforesaid to him is paid by this defendant, did assign and set over to this defendant, his executors, administrators and assigns the said judgment and all moneys due or to become due and the benefit of all proceedings by execution or otherwise had, or to be had or due thereon, and the said Josiah H. Cain did also therein constitute this defendant his attorney irrevocable in his name, but to the use of this defendant to do all and every act and thing for the recovery and settling of the said debt, damages and costs due on the said judgment recovered against the said John A. Fenning as he himself could do, by virtue of which said assignment this defendant is the

sole owner of said judgment so recovered against the said John A. Fenning by the said Josiah H. Cain and this defendant as aforesaid.

And this defendant further answering says that he has no knowledge or information sufficient to form a belief whether on or about the second day of December in the year of our Lord eighteen hundred and sixty eight, Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Company, recovered a judgment against the said John A. Fenning and one Benjamin R. Thomas in the Mercer County Circuit Court of the State of New Jersey, for the sum of five hundred and four dollars damages and costs, and he has no knowledge or information sufficient to form a belief whether said alleged judgment was ever paid by said Benjamin R. Thomas, or whether by virtue of a statute in such cases made and provided and by order of said Mercer Circuit Court in pursuance of said statute the said Benjamin R. Thomas claims to have control of said judgment and an interest therein and by virtue thereof a lien upon said premises, or whether all claims, lien or interest in said mortgaged premises, by virtue of said judgment, was foreclosed in a foreclosure suit brought in this Honorable Court; but this defendant leaves the defendant to prove the same, and he charges and insists that if the said Theodore F. Johnson and Francis W. Corwine ever recovered such a judgment against the said John A. Fenning that it was obtained subsequent to the judgment recovered by this defendant and Josiah H. Cain against the said John A. Fenning, and if a lien at all upon the said premises is subsequent to the lien of this defendant's said judgment.

And this defendant further answering admits that on the thirty-first day of December, A. D. eighteen hundred and sixty-six that the said John Fenning, Senior, the father of the said John A. Fenning, became deceased.

And this defendant further answering admits that the said John Fenning, Senior, left a Will in writing by which he devised all the lands mentioned in the alleged mortgages of the complainant in this suit to Ann Harriet, the wife of the said John Fenning, Senior, during her life-time and then to his son John A. Fenning, who is named in the will as John

Fenning, Junior, subject, nevertheless, to paying his children James, Frederick, George, Teresa H. and Mary E. Fenning certain legacies, and he also admits that said will was duly probated before John H. Scudder, Surrogate of the County of Mercer, on or about the ninth day of January, A. D. eighteen hundred and sixty-six.

And this defendant further answering says he has no knowledge or information sufficient to form a belief whether said John A. Fenning, called in said will John Fenning, Junior, on or about the ninth day of October, A. D. eighteen hundred and sixty-nine, conveyed all his interest in said premises by deed to his brother, Charles J. Fenning, subject to said legacies named in said will.

And this defendant insists that if he did make such a conveyance it was made subject to the lien of the said judgment recovered by the said Josiah H. Cain and this defendant against the said John A. Fenning.

And this defendant further answering says that he has no knowledge or information sufficient to form a belief whether on or about the tenth day of March, in the year of our Lord, eighteen hundred and seventy, the said Cornelius Van Duyn the said complainant, filed a bill in this Honorable Court to foreclose a mortgage which John Fenning and wife had executed to him in their life-time, to wit, on the twenty-sixth day of May, A. D. eighteen hundred and sixty-eight, upon the said premises hereinbefore mentioned, to secure the sum of one thousand dollars, and that he made party to the said foreclosure suit, one John Cruser, who was duly served according to law with a subpœna *ad respondendum*, because said Cruser claimed to have some lien upon said premises by virtue of a mortgage executed by said John A. Fenning and wife to him in said premises bearing date December the eighth, A. D. eighteen hundred and sixty-nine, but this defendant insists and charges that if it is true as above alleged this defendant was not made a party to said suit, and that as a judgment creditor he had at that time a prior subsisting lien upon said premises.

And this defendant further answering says that he has no knowledge or information sufficient to form a belief whether Theodore F. Johnson and Francis W. Corwine, partners, trad-

ing as Theodore F. Johnson & Company were made parties to said suit and were duly served according to law with a subpœna *ad respondendum*, or that said Benjamin R. Thomas was made also a party to said suit, and served with a like subpœna.

And this defendant further answering saith that he has no knowledge or information sufficient to form a belief whether other proceedings were had in said foreclosure suit or whether a penal decree was made therein on the seventeenth day of January, A. D. eighteen hundred and seventy-one, or whether said penal decree shows that there was due the complainant on his said mortgage the sum of eleven hundred and eighty-three dollars and seventy-five cents, and to said Benjamin R. Thomas on his said judgment the sum of two hundred and fifty-six dollars and forty-two cents, or to the defendant, John Cruser, on his said alleged mortage the sum of eleven hundred and forty-six dollars and forty-two cents, or that still other proceedings were had in said foreclosure suit, and on execution issued under the seal of this Honorable Court directed to the sheriff of the County of Mercer commanding him to sell said premises hereinbefore mentioned, or that he did sell the same on the thirty-first day of March, A. D. eighteen hundred and seventy-one, and that the same was struck off to said Charles J. Fenning for the sum of one hundred dollars, or that by virtue of the said foreclosure suit and sale, the said sheriff, Thomas A. Crozer, executed a deed for said premises to said Charles J. Fenning.

And this defendant further answering charges and insists that the deed of release executed to the said Charles J. Fenning by the said Harriet Ann Fenning widow of John Fenning deceased, and by his said children Teresa H. Fenning, Mary E. Fenning, Frederick N. Fenning, James A. Fenning and Mary S. his wife, legatees under his (said John Fenning) said last will and testament on the sixth day of April A. D., eighteen hnndred and seventy-one operated and had the effect of a full release, surrender and discharge of all the right, title and interest which they had as a life tenant and co-legatees in said mortgaged premises unto the said Charles J. Fenning, and that he secured the said land and premises in said Mortgage of complainant described free, clear and discharged of

and from all claims and demands of the said Harriet Ann Fenning, Theresa H. Fenning, Mary E. Fenning, Frederick N. Fenning, James A. Fenning and Mary S. his wife as life tenants, heirs at law and legatees under the said will of John Fenning, Senior, deceased.

And this defendant also charges and insists that the said Charles J. Fenning had full knowledge of the said judgments recovered by this defendant and Josiah H. Cain against the said John A. Fenning and secured the deed of said property expressly subject to the lein and operation of said judgment recovered by the said Josiah H. Cain and this defendant.

And this defendent further answering admits that the said George Fenning the other legatee under said will became deceased, prior to the sixth day of April in the year of our Lord eighteen hundred and seventy one without issue, having never married.

And this defendant further answering charges and insists that by the conveyances excuted by the said Charles J. Fenning to John F. Shann on the eighth day of January A. D. eighteen hundred and seventy-two, the said mortgaged premises was likewise conveyed to the said John F. Shann and the said John F. Shann received the title to the same entirely freed and discharged of and from all liens of the life estate of Harriet Ann Fenning therein and also free and discharged of said legacies to the said Theresa H. Fenning, Mary E. Fenning, Frederick N. Fenning, James A. Fenning, and Mary S. his wife as legatees under the said will of John Fenning Senior, deceased and expressly subject to the lien of the defendants said judgment.

And this defendant also charges and insists that by the conveyance executed by John F. Shann to the said Margaret Wikoff executed on the seventeenth day of April, A. D., eighteen hundred and seventy-two, the said mortgaged land was likewise conveyed to the said Margaret Wikoff and she the said Margaret Wikoff secured the title to the same entirely freed and discharged of and from all liens of said legacies to the said Theresa H. Fenning, Mary E. Fenning, Frederick N. Fenning, James A. Fenning and Mary S. his wife as legatees under the said wife of John Fenning, Senior, deceased and also free and discharged of the life estate of Harriet Ann

Fenning, but expressly subject to the lien of the said judgment recovered by this defendant and the said Josiah H. Cain against the said John A. Fenning.

And this defendant also charges and insists that by the conveyance executed by the said Margaret Wikoff and William S. Wikoff her husband to the said Mattie C. Shann and bearing date of the fifth day of June, in the year of our Lord eighteen hundred and seventy-two, the said mortgaged premises was likewise conveyed to the said Mattie C. Shann and she the said Mattie C. Shann received the title to the same entirely freed and discharged of and from all liens of said legatees to the said Theresa H. Fenning, Mary E. Fenning, Frederick N. Fenning, James A. Fenning, and Mary S. his wife as legatees under the said will of John Fenning, Senior, deceased and also freed and discharged of all life estate of said Harriet Ann Fenning, but expressly subject to the lien of the said judgment recovered by this defendant and the said Josiah H. Cain against the said John A. Fenning.

And this defendant further says that the said judgment of six hundred and sixty-one dollars and ninety-nine cents so as aforesaid recovered by this defendant and Josiah H. Cain against the said John A. Fenning, together with the interest thereon, still remains due and owing to this defendant.

And this defendant denies all unlawful combination and confederacy in said bill charged without that that any other matter or thing material for this defendant to make answer unto and not herein or 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 the sale of the said land and premises in the complainant's alleged indenture of mortgage mentioned and set forth in the complainant's bill, and out of the moneys thence arising that this defendant may be paid the full amount of the judgment and the interest

moneys so due thereon as aforesaid, with all reasonable costs and charges in this behalf sustained.

JAMES W. and JOSEPH K. FIELD,
Solicitors for defendant.
GEORGE WARD,
JAMES W. FIELD,
of counsel.

New Jersey SS. George Ward, the above named defendant, being duly sworn on his oath saith that the matters and things set forth in the above answer, so far as relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true.

Taken, sworn and subscribed at Jersey City, Hudson County, New Jersey, before me this 20th day of November, A. D. 1882,

GEORGE W. CASSEDY,
Master in Chancey of New Jersey.
GEORGE WARD.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CORNELIUS VAN DUYN,
Complainant,

AND

MATTIE C. SHANN, ET ALS,
Defendants.

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

The amended bill of complaint of Cornelius Van Duyn, of the Township of Franklin, in the County of Somerset, and State of New Jersey, humbly shows, that heretofore he filed his bill of complaint in this court against one Mattie C. Shann, of the Borough of Princeton, in the County of Mercer, and State aforesaid, praying amongst other things, for a sale of certain premises mortgaged by one Charles J. Fenning to your orator, but now owned by said Mattie C. Shann as in said bill is particularly set forth.

And your orator further shows that Josiah H. Cain and George Ward, partners, trading as J. H. Cain & Company, were also made defendants in said bill of complaint to which bill the said George Ward, as surviving partner of the firm of said J. H. Cain & Company answered, and other proceedings were had as by the same proceedings now in this court will appear. And by an order made in this cause on the thirtieth day of April, A. D. eighteen hundred and eighty-three, on motion of George O. Vanderbilt, the complainant was granted leave to annex his bill as he shall be advised.

And your orator now shows by way of amendment to his aforesaid bill of complaint, that John Fenning was at one time the owner of the said mortgaged premises, as set forth in said bill of complaint, and executed during his life-time on

said premises two mortgages, one to Anthony Simmons for the sum of five hundred dollars and one to Abram Johnson for the sum of five hundred dollars as set forth in said bill of complaint; that afterwards he became deceased, leaving a will in writing by which he devised to his wife, Ann Harriet, all his lands, tenements, hereditaments and real estate whatsoever and wheresoever, to have and to hold the same to her sole and separate use, benefit and behoof during her life-time, and then to his son John Fenning, Jr., in fee, subject, nevertheless, to his paying his brother James two hundred and fifty dollars; Frederick three hundred dollars; George four hundred dollars, and his sisters Teresa Harriet and Mary Elizabeth each four hundred dollars, being a total of seventeeu hundred and fifty dollars of legacies.

And you orator further shows by way of amendment to his aforesaid bill of complaint that the only real estate that the said John Fenning owned at the time of his decease was the said lands mentioned and set forth in said bill of complaint which was then worth about four thousand dollars and that the same was then encumbered by the said two mortgages of five hundred dollars each above referred to, no part of the principal thereof having been paid.

And your orator further shows by way of amendment to his aforesaid bill of complaint, that John A. Fenning, who is called in his father's will John Fenning, Jr., remainder man and residuary legatee under said will of his father, John Fenning, deceased, during the life-time of his mother, to wit, on the twenty-sixth day of May, A. D. eighteen hundred and sixty-eight, executed to your orator a mortgage upon the lands mentioned in said bill of complaint to secure the sum of one thousand dollars. But that said mortgage was only a lien upon said lands as to the interest of John A. Fenning, called in said will John Fenning, Jr.

And your orator further shows by way of amendment to his aforesaid bill of complaint, that John A. Fenning (which is his true and correct name), called in said will John Fenning, Jr., on or about the ninth day of October, A. D. eighteen hundred and sixty-nine, conveyed all his interest in said premises by deed to his brother, Charles J. Fenning, subject

to the legacies named in said will and the mortgages heretofore mentioned as set forth in said bill of complaint.

And your orator further shows by way of amendment to his aforesaid bill of complaint that during the fore part of the year A. D. eighteen hundred and seventy, he handed his said mortgage to one John F. Hageman, a counsellor of this court, with instructions to foreclose the same for him; that the said John F. Hageman filed in this Honorable Court on the tenth day of March, A. D. eighteen hundred and seventy, a bill of complaint for your orator to foreclose his said mortgage bearing date of May twenty-sixth, A. D. eighteen hundred and sixty-eight, and that he made parties to the said foreclosure suit, Charles J. Fenning, the owner of John Fenning, Jr.'s interest in said mortgaged premises, and also John Cruser, to whom said John A. Fenning, called in said will John Fenning, Jr., had also on the eighth day of December, A. D. eighteen hundred and sixty-eight, executed another mortgage on said lands mentioned and described in your orator's said bill of complaint, and further that he also made a party to said foreclosure proceedings, one Benjamin R. Thomas, who was the owner of a judgment obtained by Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Company, on the second day of December, A. D. eighteen hundred and sixty-eight against the said John A. Fenning and Benjamin R. Thomas, that said Thomas paid said judgment and by virtue of the statute in such case made and provided and by order of the Mercer Circuit Court in pursuance of said statute, claimed to own and have control of said judgment.

And your orator shows by way of amendment to his aforesaid bill of complaint, that Josiah H. Cain and George Ward, partners, trading as J. H. Cain & Company, on the fourth day of November, A. D. eighteen and sixty-eight, obtained a judgment against said John A. Fenning (called in said will John Fenning, Jr.), and that by some mistake or error on the part of the said solicitor of the complainant, who filed the bill to foreclose complainant's said mortgage of one thousand dollars on the tenth day of March, A. D. eighteen hundred and seventy, as aforesaid, the said Josiah H. Cain

and George Ward, partners, trading as J. H. Cain & Company, were not made parties to said foreclosure proceedings.

And your orator further shows by way of amendment to his aforesaid bill of complaint, that other proceedings were had in said foreclosure suit, and that a final decree was made therein on the seventeenth day of January, A. D. eighteen hundred and seventy-one, and that the said final decree shows that there was then due the complainant on his said mortgage the sum of one thousand one hundred and eighty-three dollars and seventy-five cents, and to the defendant, Benjamin R. Thomas, on his said judgment, the sum of two hundred and fifty-six dollars and forty two cents, and to the defendant, John Cruser, on his said mortgage, the sum of one thousand one hundred and forty-six dollars and forty-two cents, and that still other proceedings were had in said foreclosure suit and an execution issued under the seal of this Honorable Court, directed to the sheriff of the County of Mercer, commanding him to sell said premises hereinbefore mentioned, which, after duly advertising the same according to law, he did, on the thirty-first day of March, A. D. eighteen hundred and seventy-one, and that the same were struck off to said Charles J. Fenning for the sum of one hundred dollars.

And further, that the said sheriff, Thomas A. Crozer, by virtue of said foreclosure suit and sale executed a deed for said premises to said Charles J. Fenning which said deed bears date of the seventh day of April, A. D. eighteen hundred and seventy-one, and was duly recorded in the Mercer County Clerk's office in Book of Deeds, vol. 83, page 227, &c.

And your orator further shows by way of amendment to his aforesaid bill of complaint, that he only sold by virtue of said foreclosure proceedings the interest of said John A. Fenning (called in said will John Fenning, Jr.), in said premises mentioned and described in said mortgage, and which he afterwards sold to his brother, Charles J. Fenning, and that the said mortgaged premises were sold subject to said two mortgages of five hundred dollars each, and the life estate therein of the said Ann Harriet, widow of said John Fenning, deceased, under his said will, and the said seventeen hundred and fifty dollars of legacies to be paid under said will by said

John A. Fenning (called in said will John Fenning, Jr.), at the death of his mother, said Ann Harriet, and which by said will were made chargeable on said premises, none of the persons having said last named liens on said premises having been made parties to said foreclosure suit.

And your orator further shows by way of amendment to his aforesaid bill of complaint, that previous to said sale he entered into an agreement with the said Charles J. Fenning, the then owner of said John A. Fenning's (called in said will John Fenning, Jr.) interest in said premises, that if he the said Charles J. Fenning should buy said premises at said public sale under said foreclosure proceedings, and then would procure releases of the respective interests of his mother, Ann Harriet Fenning and his brothers James and Frederick Fenning (George being then deceased), and his sister Teresa Harriet and Mary Elizabeth Fenning in said premises and also pay your orator's costs therein he, said complainant, would advance him one thousand dollars in addition to his said mortgage of one thousand dollars, provided he would execute to your complainant a mortgage of two thousand dollars on said premises, subject to said two mortgages of five hundred dollars each, but the said two thousand dollar mortgage should be a lien ahead of said widow, Ann Harriet's life estate in said property and of the legacies of his said brothers and sisters under said will of said John Fenning, deceased, and which by said will were made chargeable on said premises.

And your orator further shows by way of amendment to his aforesaid bill of complaint, that the said Ann Harriet Fenning, widow of said John Fenning, deceased, and his said children, Teresa H. Fenning, Mary E. Fenning, Frederick H. Fenning, James A. Fenning and Mary S., his wife, legatees under said will as aforesaid, did, on the day and year named in said bill of complaint and as therein stated, execute a deed of release for all their right, title and interest which they had in the said premises to said Charles J. Fenning, which was duly recorded as stated in said bill of complaint.

And your orator further shows by way of amendment to his aforesaid bill of complaint that said Charles J. Fenning and wife then executed to him the said mortgage of two

thousand dollars on said premises as set forth in his said bill of complaint, of which one thousand dollars was in lieu of said mortgage of one thousand dollars, bearing date the twenty-sixth day of May, A. D. eighteen hundred and sixty-eight and which he had just foreclosed, and the other one thousand was for money advanced to him pursuant to said agreement.

And your orator further shows by way of amendment to his aforesaid bill of complaint that the said Ann Harriet Fenning, widow, as aforesaid, and the said legatees as aforesaid, were induced by said Charles J. Fenning to execute the release as aforesaid to him, and for so doing and in lieu of their said interests and legacies chargeable on said premises under said will the said Charles J. Fenning and wife executed a mortgage on said premises to Frederick H. Fenning (trustee) for the same amount and of the same date as set forth in said bill of complaint, in trust, nevertheless, to be applied to the payment of the several legacies given in the will of said John Fenning, deceased, to his children named in his said last will and made chargeable on his real estate with lawful interest for the same to be paid annually, and also in trust to be applied to the use and benefit of the said Ann Harriet Fenning, yearly, during her natural life, and if the interest should be in arrear for six months the principal to be due, without any fraud or other delay.

And your orator further shows by way of amendment to his aforesaid bill of complaint that at the time of filing his said bill of complaint for the foreclosure of his said mortgage of one thousand dollars, bearing date the twenty-sixth day of May, A. D., eighteen hundred and sixty-eight—to wit on the tenth day of March, A. D., eighteen hundred and seventy, he did not actually know nor did his solicitor in said suit know of the existence of said judgment of said Josiah H. Cain and George Ward, partners trading as J. H. Cain and Company, and therefore did not make them or either of them a party to said suit—and that it was entirely through oversight and not by design that your orator and his solicitor neglected to make the said Josiah H. Cain and George Ward, partners trading as J. H. Cain and Company, defendants to said suit as holders of said judgment.

And your orator further shows by way of amendment to said bill, that his said mortgage of one thousand dollars, although foreclosed, was never cancelled of record in the Mercer County Clerk's Office.

And your orator further shows that the said John Fenning's widow, Ann Harriet, and all of his said children (except George, who died without issue) are still living.

And your orator further shows by way of amendment to his aforesaid bill of complaint, that before he filed said bill of complaint, he procured searches on said premises, and that said searches disclosed the existence on the record uncancelled of the aforesaid judgments of said James W. Palmer, James W. Palmer and David W. Palmer, partners trading as James W. Palmer & Sons. and of said Theodore F. Johnson and Francis W. Corwin, partners trading as Theodore F. Johnson & Co., and of Imlah Moore and Charles Moore, partners trading as I. & C. Moore; and of the said Josiah H. Cain and George Ward, partners trading J. H. Cain & Co., all of which judgments were obtained against said John A. Fenning, for the amounts and at the several times set forth in said bill of complaint, and that your orator believed that the amount of encumbrances prior to and also on the interest of said John A. Fenning in said premises prior to any of said judgments far exceeded the value of his interest therein, and that therefore the said judgments had been, in some way unknown to your orator, satisfied, or all hope of collecting the same out of the interest of said John A. Fenning in said premises, abandoned, but nevertheless for the purpose of clearing the title of said premises of what appeared by the records to be liens thereon, or on some interest therein your orator made all of said judgment creditors parties defendant to his said bill of complaint.

And your orator further shows by way of amendment, as aforesaid, that he believed the judgment of said J. H. Cain & Co. to be fully satisfied and paid, until after service of the subpœna in said cause on them, when they acknowledged service thereof, and asserted that their judgment was still unsatisfied, to the great surprise of your orator.

And your orator further shows by way of amendment as aforesaid that said J. H. Cain & Co., through George Ward, who claims to be the surviving partner of said firm and the

present owner of said judgment, filed an answer to said bill of complaint setting up that his said judgment was a lien on the premises prior to your orator's said two thousand dollar mortgage, to the great surprise of your orator.

And your orator expressly charges that said judgment if a lien at all on said premises is only a lien on the interest which said John A. Fenning had in said premises at the time of the recovery of defendant's said judgment against him; and further expressly charges and insists that not only was defendant's said judgment subject to the lien of the said two mortgages of five hundred dollars each and the interest accrued thereon; and of the said one thousand dollar mortgage of your orator, with the interest accrued thereon; and of the said seventeen hundred and fifty dollar mortgage, given as aforesaid in lieu of and to secure the life estate of said Ann Harriet in said premises and the several legacies given by said John Fenning deceased to his said several children and expressly charged by his will on said lands, with the interest accrued thereon, but is also subject to the lien of your orator's other one thousand dollars now secured together with your orator's prior one thousand dollars by your orator's said mortgage for two thousand dollars taken as aforesaid by your orator on said premises under the mistaken belief, induced by said solicitor Hageman's mistake or inadvertence, that said two thousand dollar mortgage would be and become after his aforesaid foreclosure of your orator's one thousand dollar mortgage a lien on said premises second only to said two mortgages of five hundred dollars each.

And your orator further shows, that said one thousand dollars, advanced and paid as aforesaid to said Charles J. Fenning, was so advanced and paid upon and only upon the belief and understanding of your orator, induced by the action and advice of said solicitor Hageman, and his supposed legal and regular proceedings in his said foreclosure of your orator's said one thousand dollar mortgage, that your orator's said one thousand dollars so advanced was and would be together with the other one thousand dollars then already due to your orator on his mortgage so foreclosed by said Hageman, a lien on said premises second only to said two mortgages thereon for five hundred dollars each.

And your orator further shows that, if by reason of said Hageman's mistake and oversight in not making said Cain and Ward, parties defendant to your orator's first foreclosure, the said Cain and Ward have, by the strict rules of law, obtained a lien on said premises prior to your orator's one thousand dollars, so advanced to said Charles J. Fenning and incorporated in and secured by his said two thousand dollar mortgage to your orator, then your orator further charges and insists that said lien is, as to your orator's right and priority in the premises, an unjust and inequitable advantage and priority over your orator's claim on said premises, and that your orator is, by the practice and rules of this Honorable Court, entitled to and your orator hereby prays for relief in the premises on account of said mistake and that said Ward may be decreed to hold said judgment subordinate to the claim and lien of your orator's said two thousand dollar mortgage on said premises.

And your orator further shows that, owing to the aforesaid mistake of his said solicitor Hageman in his said fore closure suit and the subsequent proceedings therein, in omitting said Cain and Ward as parties to said suit, by oversight, the interest and estate of your orator, in said premises, is subject in equity only to the right and equity of the said Ward to redeem your orator's said mortgage of two thousand dollars and all the other encumbrances on said premises prior to said Cain and Ward's judgment at the time of filing his aforesaid bill; and that said Cain and Ward only obtained, by virtue of their said judgment, either in law or equity, a lien on the equity of redemption which said John A. Fenning then had in said premises, and that said Ward now has no other right or interest in said premises.

And your orator shows that said Cain and Ward when they recovered their said judgments as aforesaid against said John A. Fenning, well knew that the said premises were barely sufficient to satisfy the incumbrances thereon prior to their said judgment; and that they well knew that your orator was foreclosing his said mortgage of one thousand dollars, as aforesaid, and that your orator had neglected to make them, the said Cain and Ward, parties thereto through mere oversight and mistake on the part of your orator's said solicitor Hage-

man, and that the said Cain and Ward stood by and permitted your orator to go on to decree and sale in said suit as hereinbefore set forth, without notifying your orator of the existence of their said judgment, or taking any step to be made parties to said suit: and your orator charges that said Cain and Ward so acted with intent to gain an inequitable advantage over your orator, and now said Ward pretends and sets up that their judgment, now claimed to be owned by said Ward, is a lien upon said premises prior to any lien thereon of your orator under his said mortgage for two thousand dollars, and prior to any lien thereon of your orator under his said mortgage for one thousand dollars and the proceedings, decree and sale aforesaid, and prior to any other lien thereon.

And your orator further shows by way of amendment to his said bill of complaint that he has frequently and in a friendly manner applied to said Ward and requested him either to redeem your orator and pay to him the amount of principal and interest due him upon his aforesaid mortgage of two thousand dollars or that he the said Ward would permit your orator from thenceforth quietly to hold the said premises, and would release to your orator all his right, title and interest and lien on said equity of redemption in said premises.

And your orator well hoped that the said Ward would have complied with such reasonable requests of your orator.

To the end therefore that the said Geo. Ward and his confederates when discovered may full, true, direct and perfect answers (without oath) make to all and singular the charges and premises aforesaid according to the best of their respective knowledge, information and belief, and that it may be referred to one of the Masters of this Court to ascertain and report the amount of interest and principal now due upon your orator's said mortgage of two thousand dollars or upon the decree in the aforesaid suit upon your orators mortgage of one thousand dollars, and upon all other incumbrances and claims upon said property which at the filing of the bill therein were liens upon said premises or upon the interest of John A. Fenning therein prior to said judgment of said Cain & Ward, and that the said George Ward may be decreed to pay unto your orator by a short day to be appointed by this honorable Court the amount of principal and interest found to

be due upon your orator's said mortgage for two thousand dollars or upon your orator's decree in said suit for the foreclosure of his one thousand dollar mortgage and upon all liens upon said mortgaged premises or upon the interest of said John A. Fenning therein which were prior liens to the judgment of said Cain & Ward, and that on failure of such payments by the said Geo. Ward, he and all persons claiming under him may be barred and forever foreclosed of and from all estate, right, title, interest and equity of redemption of, in and to the said mortgaged premises, or if your Honor deem it more equitable that the said premises shall be sold to pay and satisfy in the first place to your orator the amount of principal and interest found to be due on his said mortgage for two thousand dollars or upon his decree in the said suit for the foreclosure of his one thousand dollar mortgage and the said prior liens together with your orator's costs, and in the next place to pay and satisfy to the said Geo. Ward the amount of principal and interest due upon the said Cain & Ward's judgment, and that your orator may have such further and other relief as the nature of the case may require.

And your orator will ever pray, &c.

GEORGE O. VANDERBILT,
Solicitor of Complainant.

J. H. STEWART,
Of counsel with Complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CORNELIUS VAN DUYN,
Complainant,

AND

MATTIE C. SHANN, ET ALS,
Defendants.

The answer of George Ward, surviving partner of Josiah H. Cain, trading as Josiah H. Cain & Company, one of the defendants to the amended bill of complaint of Cornelius Van Duyn, complainant.

This defendant now, and at all times hereafter saving and reserving to himself all and all manner of benefit or advantage of exception to the many errors, uncertainties and imperfections in the said bill contained for answer thereto, or to so much thereof as this defendant is advised it is necessary or material for him to make answer to, answering saith that he admits that heretofore the said complainant filed his bill of complaint in this honorable court against one Mattie C. Shann, of the Borough of Princeton, in the County of Mercer, and State aforesaid, praying amongst other things, for a sale of certain premises alleged to be mortgaged by one Charles J. Fenning to the said complainant and now owned by one Mattie C. Shann.

And this defendant further answering admits that Josiah H. Cain and George Ward (this defendant), partners, trading as Josiah H. Cain & Company were, also made defendants in said bill of complaint, to which bill this defendant (said George Ward), as surviving partner of the firm of J. H. Cain & Company, answered said bill, and that other proceedings were had, as by the same proceedings now in this court will appear, and this defendant also admits that on the thirtieth day of April, in the year of our Lord eighteen hundred and eighty-three,

by an order made in this cause, the complainant was granted leave to amend his said original bill of complaint filed in this cause as he shall be advised.

And this defendant further answering saith that he has no knowledge or information sufficient to form a belief whether said John Fenning executed during his life-time on said premises, as set forth in said bill of complaint, two mortgages, one to Anthony Simmons for the sum of five hundred dollars and one to Abram Johnson for the sum of five hundred dollars, as set forth in said bill of complaint, and he leaves the complainant to prove the same as he may be advised.

And this defendant further answering said amended bill of complaint of said complainant, admits that on the thirty-first day of December, in the year of our Lord eighteen hundred and sixty-six, John Fenning, Senior, became deceased, leaving a will in writing by which he devised all his lands, tenements, hereditaments, and real estate whatsoever and wheresoever to Ann Harriet Fenning, his wife, during her life-time and then to his son John A. Fenning (who is named in the will as John Fenning, Junior), in fee simple, subject to his paying his brother James two hundred and fifty dollars, Frederick H. Fenning three hundred dollars, George Fenning four hundred dollars and his sisters Teresa Harriet Fenning and Mary Elizabeth Fenning each four hundred dollars.

And this defendant further answering said amended bill of complaint, says that he has no knowledge or information sufficient to form a belief that the only real estate that the said John A. Fenning owned at the time of his decease was the said lands mentioned and set forth in the said bill of complaint, and he leaves the said complainant to prove the same; but this defendant denies that the said lands mentioned and set forth in the said bill of complaint was then (to wit), at the time of his decease only worth about four thousand dollars; and he has no knowledge or information sufficient to form a belief whether the said lands or premises was then encumbered by the said two mortgages of five hundred dollars, no part thereof having been paid, and he leaves the complainant to make such proof thereof as he may be advised may be necessary for him to do.

And this defendant further answering said amended bill of complaint, admits that John A. Fenning (who is called in his father's will John Fenning, Junior), on or about the twenty-sixth day of May, in the year of our Lord eighteen hundred and sixty-eight, executed to the said complainant a mortgage upon the lands mentioned in said bill of complaint to secure the sum of one thousand dollars or some other sum, and this defendant admits that at first said mortgage was only an incomplete lien upon said lands, but he charges and insists that it became an absolute lien upon the same by virtue of subsequent proceedings which will hereafter more fully and at large appear.

And this defendant further answering said amended bill of complaint of said complainant, says that he has no knowledge or information sufficient to form a belief whether John A. Fenning (called in said will John Fenning, Junior), on or about the ninth day of October, in the year of our Lord eighteen hundred and sixty-nine, conveyed all his interest in said mortgaged lands and premises by deed to his brother, Charles J. Fenning, and he leaves the complainant to prove the same as he may be advised, but this defendant insists and charges that if the said John A. Fenning did make such a conveyance that it was made expressly subject to the lien of the said judgment recovered by the said Josiah H. Cain and this defendant against the said John A. Fenning.

And this defendant further answering said amended bill of complaint of said complainant, says that he has no knowledge or information sufficient to form a belief whether said complainant, during the fore part of the year of our Lord, eighteen hundred and seventy, handed his said mortgage to one John F. Hageman, Esquire, a counsellor of this court, with instructions to foreclose the same for him, but he admits that the complainant filed his bill of complaint to foreclose the said mortgage, on the tenth day of March in the year of our Lord eighteen hundred and seventy, which said mortgage bore date of the twenty-sixth day of May, in the year of our Lord eighteen hundred and sixty-eight, and that he made parties to said foreclosure suit Charles J. Fenning, John Cruser and Benjamin R. Thomas.

And this defendant further answering said amended bill of complaint of the said complainant admits that Josiah H. Cain and George Ward (this defendant), partners, trading as Josiah H. Cain & Company, on the fourth day of November in the year of our Lord eighteen hundred and sixty-eight, recovered a judgment against said John A. Fenning (called in said will John Fenning, Junior), but this defendant expressly denies that it was by some mistake or error on the part of the said solicitor of the complainant who filed said bill to foreclose complainant's said mortgage of one thousand dollars on the tenth day of March in the year of our Lord eighteen hundred and seventy as aforesaid, the said Josiah H. Cain and George Ward, partners, trading as Josiah H. Cain & Company, were not made parties to said foreclosure proceedings, but this defendant also insists that the said complainant and his solicitor intentionally omitted to make this defendant and Josiah H. Cain parties to the said alleged foreclosure for reasons well known to themselves at that time, there being other persons having liens on said premises at that time who also were not made parties to that suit.

And this defendant further answering said amended bill of complaint of the said complainant admits that other proceedings were had in said foreclosure suit, and that a final decree was made therein on the seventeenth day of January in the year of our Lord eighteen hundred and seventy-one, and that the said final decree shows that there was then due the complainant on his said mortgage the sum of one thousand one hundred and eighty-three dollars and seventy-five cents with interest thereon from the tenth day of January in the year of our Lord eighteen hundred and seventy-one, and to the defendant, Benjamin R. Thomas, on his said judgment, the sum of two hundred and fifty-six dollars and sixty-seven cents, together with lawful interest thereon as aforesaid, and to the defendant, John Cruser, the sum of one thousand one hundred and forty-six dollars and forty-two cents, together with lawful interest thereon as aforesaid, with his costs to be taxed, and that a writ of *fieri facias* do issue for that purpose out of this court, directed to the sheriff of the County of Mercer, commanding him to make a sale according to law of the said mortgaged premises, and that out of the money arising

from such sale he pay to the complainant or to his solicitor his said debt, interest and costs, and also to the aforesaid several defendants their said debts, interest and costs and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court to abide the further order of the court unless otherwise previously disposed of by the order of the court. And it was in and by said decree further ordered, adjudged and decreed that the said defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold, as aforesaid, by virtue of this decree. And that still other proceedings were had in said foreclosure suit and a writ of *fieri facias* or execution was duly issued upon said decree to the sheriff of the County of Mercer, therein commanding him to make sale of the said mortgaged premises, being the same premises described in the original bill of complaint in this cause, and also commanding him that he cause to be made of the said premises by selling the same for the purpose, the several sums of money due to the said Cornelius Van Duyn, the complainant in this suit. And also the several sums due to the said Benjamin R. Thomas and John Cruser, to wit, that is to say, the sum of one thousand one hundred and eighty-three dollars and seventy-five cents due to the said complainant, together with lawful interest thereon, to be computed from the tenth day of January in the year of our Lord one thousand eight hundred and seventy-one, being the date of the master's report in said cause, with the said Cornelius Van Duyn's costs to be taxed, and in the second place to pay unto the defendant, Benjamin R. Thomas, the sum of two hundred and fifty-six dollars and sixty-seven cents, together with lawful interest therein as aforesaid, with his costs to be taxed, and in the third place to pay unto the defendant, John Cruser, the sum of eleven hundred and forty-six dollars and forty-two cents, together with lawful interest thereon as aforesaid, with his costs to be taxed, and in and by said writ he, the said sheriff, was further commanded to have those moneys before our said Chancellor in our Court of Chancery aforesaid, at Trenton, on the third Tuesday of February, in the year of our Lord eighteen hundred and seventy-one, to render unto the said

complainant and to John Cruser and Benjamin R. Thomas the defendants in that suit, and also the surplus moneys, if any there be, to abide the further order of the court, and to which said writ of execution and to the return thereof by certificate under the hand of the said sheriff of the manner in which he executed the said writ of writ of execution, this defendant craves leaves to refer if it be necessary so to do.

And this defendant further answering said amended bill of complaint of the said complainant saith that by virtue of the above stated writ of execution issued out of this court and to him delivered the said Thomas A. Crozer then Sheriff of the county of Mercer levied upon the said mortgaged premises, being the tract in the original bill of complaint in this cause described, and did offer and expose for sale at public vendue after duly advertising the same according to law, on the thirty first day of March A. D., 1871, the said mortgaged premises, being the tract in said original bill of complaint in this cause described, by virtue of the said writ of *fieri facias*, and thereupon the said Charles J. Fenning did bid for the same the sum of one hundred dollars and no other person bidding so much the said Thomas A. Crozer, sheriff aforesaid did then and there openly and publicly in due form of law between the hours of twelve and five o'clock strike off and sell the said lot of land and premises in said original bill of complaint described for the said sum of one hundred dollars to the said Charles J. Fenning, he being the highest bidder for the same.

And this defendant further answering said amended bill of complaint of the said complainant saith that the said sheriff Thomas A. Crozer on the same day prepared a deed for the same and that the said Thomas A. Crozer sheriff as aforesaid executed said deed to the said Charles J. Fenning for said premises and delivered the said deed to the said Charles J. Fenning, which said deed bears date not of the seventh day of April but of the thirty first day of March in the year of our Lord eighteen hundred and seventy one, and that it was duly recorded in the office of the Clerk of the county of Mercer in book of deeds, volume 83, on pages 227, &c., as by the certificate of the said Clerk of the said county of Mercer endorsed on the said deed more fully appears and to which said record

of said deed, this defendant for greater certainty, begs leave to refer if it be necessary so to do.

And this defendent further answering said amended bill of complaint of said complainant denies that the said Thomas A. Crozer, sheriff of the county of Mercer aforesaid only sold by virtue of said foreclosure proceedings the interest of said John A. Fenning (called in said will John Fenning, Junior) in said premises mentioned and described in said mortgage and which he afterwards sold to his brother Charles J. Fenning, and that the said mortgaged premises were sold subject to said two mortgages of five hundred dollars each and the life estate therein of the said Ann Harriet, widow of the said John Fenning deceased, under the said will, and of the said seventeen hundred and fifty dollars of legacies to be paid under said will by said John Fenning (called in said will John Fenning, Junior) at the death of his mother said Ann Harriet, and which by said will were made chargeable on said premises, but this defendant insists that the said Charles J. Fenning was a bona fide purchaser at said sheriff's sale for value, and that by his said deed he acqnired a title to the said mortgaged premises free and clear of the incumbrance of the complainant's said mortgage of one thousand dollars executed to him by the said John A. Fenning and bearing date of the twenty sixth day of May A. D. eighteen hundred and sixty-eight, and also that said sale operated, and had and has the effect of cutting off and extinguishing the alleged claims of John Cruser, Benjamin R. Thomas, Charles J. Fenning, Theodore F. Johnson, Francis U. Corwine, and also cutting off and extinguishing all the right, title and interest of Ann Harriet Fenning the widow of said John Fenning deceased, and also of his said children Theresa H. Fenning, Mary E. Fenning, Frederick H. Fenning, James A. Fenning and Mary S. his wife as legatees under the said will of John Fenning deceased, and this defendant also insists inasmuch as he and the said Josiah H. Cain were not made parties to said suit, that he as a judgment creditor and surviving partner of the said Josiah H. Cain and company, and as assignee and owner of the said judgment, had and has a prior subsisting lien upon the said premises and has precedence and priority of the said complainant's second mortgage of two thousand dollars, and he

also insists that said deed from the said Thomas A. Crozer sheriff as aforesaid to Charles J. Fenning was executed and delivered expressly subject to the lien and incumbrance of the said judgment recovered by this defendant and Josiah H. Cain, partners as aforesaid, against the said John A. Fenning, and with full notice thereof, and also with full notice that it was a prior subsisting lien upon said premises.

And this defendant further answering said amended bill of complaint of the complainant, says, he admits that on the sixth day of April in the year of our Lord eighteen hundred and seventy-one the said Ann Harriet Fenning, widow of said John Fenning deceased and his said children Theresa (or Teresa) H Fenning, Mary E. Fenning, Frederick H. Fenning, James A. Fenning and Mary his wife, legatees under said will as aforesaid, did execute and deliver to the said Charles J. Fenning a deed of release for all right, title and interest which they the said Ann Harriet Fenning, widow of the said John Fenning deceased and his children, Theresa (or Teresa) H. Fenning, Mary E. Fenning, Frederick H. Fenning, James A. Fenning and Mary S., his wife, had or claimed to have in the said morgaged premises under the last will and testament of the said John Fenning, deceased, which said deed is duly recorded in book volume 83 of deeds in the office of the Clerk of the county of Mercer, on pages 230 &c., and this defendant charges and insists that said deed of release above described, operated, and had, and has the effect of extinguishing, and has extinguished, and is a full release, surrender and discharge of all the right, title and interest of the said Ann Harriet Fenning, the widow of said John Fenning, deceased, and his children Theresa (or Teresa) H. Fenning, Mary E. Fenning, Frederic H. Fenning, James A. Fenning and Mary S., his wife, which they had as a life tenant, and as legatees in said mortgaged premises unto the said Charles J. Fenning, and that the said Charles J. Fenning received the said land and premises in said original bill of complaint in this cause described, freed, cleared and discharged of and from all claims and demands of the said Ann Harriet Fenning widow as aforesaid, Theresa (or Teresa) H. Fenning, Mary E. Fenning, Frederick H. Fenning, James A. Fenning, and Mary S., his wife as life tenants, heirs at law, and legatees

under the will of John Fenning, deceased, and that the judgment recovered by this defendant and Josiah H. Cain became a lien ahead by virtue of said release of said widow, Ann Harriet's life estate in said property and of the legacies of the said brothers and sisters of the said John A. Fenning, under the will of said John Fenning, deceased.

And this defendant further insists, that the said Charles J. Fenning received the same expressly subject to the lien and operation of the judgment recovered by this defendant and Josiah H. Cain, partners as aforesaid, against the said John A. Fenning.

And this defendant further answering said amended bill of complaint of the said complainant denies that the said complainant previous to said sale entered into an agreement with the said Charles J. Fenning that if he the said Charles J. Fenning should buy said premises and then would procure releases of the respective interests of his mother Ann Harriet Fenning, and his brothers James and Frederick and his sisters Teresa, Harriet and Mary Elizabeth Fenning and also pay the complainant's costs thereon that he the said complainant would advance him one thousand dollars in addition to his said mortgage of one thousand dollars, provided he would execute to the complainant a mortgage for two thousand dollars on said premises subject to said two mortgages of five hundred dollars each.

And this defendant further answering said amended bill of complaint of the said complainant insists that by virtue of the said prior decree and by virtue of the said writ of execution issued out of this honorable court upon the final decree made therein and bearing date the seventeenth day of January in the year of our Lord, eighteen hundred and seventy-one, in the foreclosure suit wherein the said complainant Cornelius VanDuyn was complainant and the said Charles J. Fenning, John Cruser, Benjamin R. Thomas and others were defendants and bearing date as in said original bill is stated, directed to the Sheriff of the County of Mercer commanding him to sell the said premises in said original bill of complaint described, and which after duly advertising the same according to law he did on the thirty-first day of March, A. D., eighteen hundred and seventy-one strike of and sell to the

said Charles J. Fenning for the sum of one hundred dollars and also that the said Thomas A. Crozer by virtue of said decree and execution and sale did execute and deliver a deed for said mortgaged premises to the said Charles J. Fenning, that by said sale the said mortgage for one thousand dollars executed by the said John A. Fenning to the complainant bearing date the twenty-sixth day of May, A. D., 1868, was foreclosed, cut off and extinguished, and that said Charles J. Fenning purchased said premises at said public sale under the said foreclosure proceedings, free and clear of said mortgage, and this defendant also charges and insists that on the seventh day of April in the year of our Lord eighteen hundred and seventy-one the complainant made a new loan to the said Charles J. Fenniug of two thousand dollars, that part of the consideration thereof, was the payment of the decree made in said cause in favor of the said complainant, and bearing date of the seventeenth day of January in the year of our Lord eighteen hundred and seventy-one and that in pursuance thereof the said Charles J. Fenning and Sarah E. his wife, executed on the seventh day of April in the year aforesaid a new mortgage for two thousand dollars upon said premises payable in one year after the date thereof, and that the amount due the said complainant upon the decree aforesaid, was by said mortgage paid and satisfied by the said Charles J. Fenning to the said complainant, and this defendant insists that the judgment recovered by this defendant and Josiah H. Cain, partners trading as aforesaid, became by reason thereof a lien ahead of of the complainant's said mortgage of two thousand dollars as above set forth.

And this defendant further answering said amended bill of complaint of the said complainant denies that the said Ann Harriet Fenning, widow as aforesaid, and the said legatees as aforesaid were induced by the said Charles J. Fenning to execute the release as aforesaid to him, and for so doing and in lieu of their said interests and legacies chargeable on said premises under said will the said Charles J. Fenning and wife executed a mortgage on said premises to Frederick H. Fenning, trustee, for the same amount and of the same date as set forth in said bill of complaint, in trust nevertheless to be applied to the payment of the several legacies given in the will

of John Fenning, deceased, to his children named in his said last will and made chargable on his real estate with lawful interest for the same to be paid annually, and also in trust to be applied to the use and benefit of the said Ann Harriet Fenning yearly during her natural life, and if the interest should be in arrears for six months the principal to be due without fraud or other delay. And this defendant further answering saith that the said Ann Harriet Fenning widow as aforesaid and the said legatees as aforesaid could not have been so induced by the said Charles J. Fenning to execute the release as aforesaid to him, and for so doing and in lieu of their said interests and legacies chargeable on said premises under said will, because he saith that the said alleged mortgage on said premises was executed by the said Charles J. Fenning to the said Frederick H. Fenning three months after the execution and delivery to the said Charles J. Fenning of the deed of release executed by the said Ann Harriet Fenning, widow as aforesaid, and the said legatees as aforesaid, to wit on the seventh day of July in the year of our Lord eighteen hundred and seventy-one, and this defendant denies that the said Frederick H. Fenning is trustee for the said Ann Harriet Fenning, widow of John Fenning deceased, Theresa (or Teresa) H. Fenning, Mary E. Fenning, James A. Fenning or either of them, and his power in this respect is a mere piece of presumption, he having no authority to constitute himself trustee for the said Ann Harriet Fenning, Theresa (or Teresa) H. Fenning, Mary E. Fenning, James A. Fenning or either of them.

And this defendant further answering said amended bill of complaint of said complainant says that he admits that on the seventh day of July, A. D., eighteen hundred and seventy-one, the said Charles J. Fenning executed a mortgage unto the said Frederick H. Fenning for the sum of seventeen hundred and fifty dollars, but he denies that the said mortgage was executed to him as trustee for the said Ann Harriet Fenning, widow as aforesaid, Theresa (or Teresa) H. Fenning, Mary E. Fenning or James A. Fenning or either of them; this defendant also denies that the said Charles J. Fenning was indebted at that time to the said Frederick H. Fenning in the sum of seventeen hundred and fifty dollars or any other sum, and this defendant chargeth and insists that the said last-men-

mentioned mortgage was executed and recorded subsequent to this defendant's and Josiah H. Cain's said judgment against the said John A. Fenning and with full notice thereof, and that the same was taken by the said Frederick H. Fenning with full knowledge of the existence of the said judgment and with full notice thereof, and if an incumbrance at all upon said premises is subsequent and subject to the lien of the judgment recovered by this defendant and the said Josiah H. Cain against the said John A. Fenning.

And this defendant insists and expressly charges that the said Ann Harriet Fenning, widow of John Fenning deceased, and Theresa (or Teresa) H. Fenning, Mary E. Fenning, Frederick H. Fenning, and James A. Fenning and Mary S. his wife, legatees under the last will and testament of the said John Fenning deceased, have lost their priority if any they had over this defendant by reason of their executing to said Charles J. Fenning said deed of release hereinbefore mentioned and set forth and accepting from said Charles J. Fenning a secondary security by way of a trust mortgage as last above stated for their said legacies and said life estate, and that this defendant has thereby acquired a right of priority, and that the lien of his said judgment against the said John A. Fenning is advanced over the said alleged mortgage executed by the said Charles J. Fenning to the said Frederick H. Fenning trustee, for seventeen hundred and fifty dollars, on the sixth day of July, A. D,, eighteen hundred and seventy-one.

And this defendant further answering said amended bill of complaint of said complainant denies that the said complainant at the time of filing his said bill of complaint for the foreclosure of his said mortgage of one thousand dollars bearing date the twenty-sixth day of May, in the year of our Lord eighteen hundred and sixty-eight, to wit on the the tenth day of March, A. D. eighteen hundred and seventy, did not actually know, nor did his solicitor in said suit know of the existence of said judgment of said Josiah H. Cain and George Ward (the defendant) partners trading as J. H. Cain and Company, and therefore did not make them or either of them a party to said suit and that it was entirely through oversight and not by design that the complainant or

his solicitor neglected to make the said Josiah H. Cain and George Ward (this defendant) partners trading as J. H. Cain and company, defendants to said suit as holders of said judgment.

And this defendant further answering said amended bill of complaint of said complainant, says that he has no knowledge or information sufficient to form a belief whether the said mortgage of one thousand dollars although foreclosed was never cancelled of record in the Mercer County Clerk's office, and leaves the complainant to make such proof thereof as he may be advised, but this defendant insists that it makes no difference to the rights and statue of this defendant in said suit whether the said mortgage was cancelled of record or not, this defendant insists that said mortgage being foreclosed, paid and satisfied is virtually dead.

And this defendant further answering said amended bill of complaint, says that he has no knowledge or information sufficient to form a belief whether the said Ann Harriet Fenning and all of the said John Fenning's children (except George, who died without issue) are still living.

And this defendant further answering said amended bill of complaint of said complainant, says that he has no knowledge or information sufficient to form a belief whether the said complainant before he filed said bill of complaint procured searches on said premises and that said searches disclosed the existence on the record uncancelled of the aforesaid judgments of said James W. Palmer, James W. Palmer, Junior and David W. Palmer, trading as James W. Palmer & Sons, and of said Theodore F. Johnson and Francis W. Corwine, partners, trading as Theodore F. Johnson & Company, and of Imlah Moore and Charles Moore, partners, trading as I. & C. Moore, but this defendant admits that the judgment obtained by Josiah H. Cain and George Ward (this defendant), partners, trading as J. H. Cain & Company, was obtained against said John A. Fenning for the amount and at the time set forth in said original bill of complaint, but this defendant denies that the said complainant believed that the amount of encumbrances prior to and also in the interest of said John A. Fenning in said premises prior to any of said judgments far exceeded the value of his interest therein, and that therefore the said judg-

ments had been in some manner unknown to the complainant satisfied, or all hope of collecting the same out of the interest of said John A. Fenning in said premises abandoned, but this defendant admits that the said complainant made all of said judgment creditors parties defendant to his said bill of complaint.

And this defendant further answering said amended bill of complaint of the said complainant, denies that the said complainant believed the judgment of said J. H. Cain & Company to be fully satisfied and paid until after service of the said subpœna in said cause on them, but this defendant admits that they acknowledged service thereof and asserted that their judgment was still unsatisfied, but this defendant denies that it was a great surprise to the complainant.

And this defendant further answering admits that said J. H. Cain & Company, through George Ward (this defendant), who is the surviving partner of said firm and the present owner of said judgment, filed an answer to said original bill of complaint and setting up that his said judgment is still a lien upon said premises prior to the said two thousand dollar mortgage held by the complainant.

And this defendant further answering said amended bill of complaint of the said complainant, denies that said judgment is only a lien on the interest which said John A. Fenning had in said premises at the time of the recovery of this defendant's said judgment against him, the said John A. Fenning.

And this defendant also denies that not only was this defendant's said judgment subject to the lien of the said two mortgages of five hundred dollars each and the interest accrued thereon, and of the said one thousand dollar mortgage of the complainant, with the accrued interest thereon, and of the said alleged seventeen hundred and fifty dollar mortgage given as alleged in lieu of and to secure the life estate of said Ann Harriet and the several legacies given by the said John Fenning, deceased, to his said several children. And he also denies that it is subject to the lien of the said complainant's other one thousand dollars which is alleged to be secured with the complainant's prior one thousand dollars which said complainant alleges that he took, under the mis-

taken belief that said two thousand dollar mortgage would be and become after his aforesaid foreclosure of the complainant's one thousand dollar mortgage, a lien on said premises second only to said two mortgages of five hundred dollars each.

And this defendant further answering said amended bill of complaint of said complainant, denies that said alleged one thousand dollars advanced and paid as alleged to said Charles J. Fenning by the complainant, was so advanced and paid only upon the belief and understanding of the said complainant, induced by the action and advice of said Solicitor Hageman and his supposed legal and regular proceedings on his said foreclosure of the said complainant's one thousand dollar mortgage, that the complainant's said one thousand dollars so advanced was, and would be, together with the other one thousand dollars then already due to the complainant on his mortgage so foreclosed by the said Solicitor Hageman, a lien on said premises second only to said two mortgages of five hundred dollars each.

And this defendant further answering charges and insists that this defendant, by reason of the said judgment obtained by Josiah H. Cain and George Ward (this defendant), has obtained a lien on said mortgaged premises and acquired a right of priority as against the complainant's two thousand dollars so advanced to the said Charles J. Fenning by the said complainant, and that he has also acquired a right of priority to and over the alleged mortgage of seventeen hundred and fifty dollars, executed by the said Charles J. Fenning and wife to the said Frederick H. Fenning as trustee as alleged in said bill of complaint, and he is advanced to the first position as against both the said complainants and the said Frederick H. Fenning, alleged trustee as aforesaid.

And this defendant denies that the said complainant is entitled to relief in the premises, and he also denies that this defendant should be decreed to hold said judgment so obtained by the said Josiah H. Cain and George Ward (this defendant), subordinate to the claim and lien of the said complainant's two thousand dollar mortgage on said premises, he also denies that he has obtained any unjust or inequitable advantage over the complainant.

And this defendant also denies that the interest and estate of the said complainant in said mortgaged premises is subject in equity only to the right and equity of this defendant to redeem said complainant's mortgage of two thousand dollars and all the other encumbrances on said premises prior to said judgment recovered by the said Josiah H. Cain and this defendant at the time of filing the complainant's aforesaid bill, and this defendant also denies that said Cain and Ward only obtained by virtue of their said judgment either in law or equity a lien on the equity of redemption which said John A. Fenning then had in said premises, and this defendant also denies that he has no other right or interest in said premises.

And this defendant further answering said amended bill of complaint of said complainant denies that when the said Josiah H. Cain and George Ward (this defendant) recovered their said said judgment as aforesaid against said John A. Fenning that they or either of them well knew that the said premises were barely sufficient to satisfy the incumbrances thereon, prior to their said judgment, and he also denies that he well knew, or had any knowledge whatever that the complainant was foreclosing his said mortgage of one thousand dollars, or that he well knew or had any knowledge whatever that the said complainant had neglected to make said Cain and Ward parties thereto through oversight and mistake on the part of the said solicitor of the complainant or that they, this defendant and said Josiah H. Cain stood by and permitted the said complainant to go on to a decree and sale without notifying the complainant of the existence of their said judgment or taking any steps to be made parties to said suit, and this defendant also denies that they so acted with intent to gain any inequitable advantage over said complainant, but this defendant does charge and insist that the said judgment obtained by said Josiah H. Cain and George Ward against the said John A. Fenning and now owned by this defendant is a lien upon said mortgaged premises prior to any lien thereon of the said complainant under his said mortgage for two thousand dollars and also prior to any lien thereon of the said complainant under his said alleged mortgage for one thousand

dollars, and the proceedings, decree and sale aforesaid, and also is prior to any other lien thereon.

And this defendant further answering said amended bill of complaint of the said complainant says that the said judgment of six hundred and sixty-nine dollars and ninety-nine cents so as aforesaid recovered by this defendant and the said Josiah H. Cain and now owned by this defendant together with the interest thereon still remains due and owing to this defendant.

And this defendant denies all unlawful combination and confederacy in said amended bill of complaint of said complainant charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or 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 the sale of the lands and premises in the foregoing indenture of mortgage mentioned and set forth in the complainant's original bill of complaint, and out of the moneys thence arising that this defendant may be first paid the full amount of the principal and interest moneys so due to him as aforesaid with all reasonable costs and charges in this behalf sustained.

JAMES W. and JOSEPH K. FIELD,
Solicitors for defendant, George Ward.

JAMES W. FIELD,
of counsel, with defendant, George Ward.

The complainant filed the ordinary Replication.

IN CHANCERY OF NEW JERSEY.

BETWEEN

CORNELIUS VAN DUYN,
Complainant,

AND

MATTIE C. SHANN, ET ALS,
Defendants.

On Bill, &c.

Examination of witnesses in a cause depending in the Court of Chancery of the State of New Jersey, wherein Cornelius VanDuyn is complainant and Mattie C. Shann et als., are defendants, taken at the office of John F. Hageman, Jr., in Princeton, on the seventeenth day of September, in the year of our Lord one thousand eight hundred and eighty-three, before John F. Hageman, Jr., one of the Masters and Examiners of the said Court, in the presence of George O. Vanderbilt, Esquire, solicitor and of counsel for the said complainant, and of James W. Field, Esq, solicitor of George Ward, surviving partner of J. H. Cain & Co., one of the defendants in this suit.

JOHN F. SHANN, of the township of Princeton, in the County of Mercer, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith :

I live on Witherspoon Street in Princeton. Am one of the defendants in this suit. My wife's name is Mattie C. Shann, and she is one of the defendants in this suit. My wife is the owner of the property mentioned in this foreclosure suit. I bought this property myself in the first place of Charles J. Fenning. I have looked for the deed this morning and my wife looked for it, and we were not able to find it. The lot is one hundred and twenty feet on Jackson street and 60 on Witherspoon street. It is a corner lot. That is all I purchased. I have known the property 14 or 15 years. I

have always understood it to be the size I have mentioned. I had it surveyed once by Ernest Sandoz, and O'Brien had it surveyed. O'Brien joins my land on the south. John McGregor joins me on Jackson street. They both joined me when I bought this land. The surveyor found this lot 120 ft. x 60 ft. That is what I always understood to be the size of the lot.

On cross-examination saith :

My wife is not related to the Fennings. I thought I last saw the deed of my property in the bureau last summer. So I told my wife. I looked for it last Saturday. She looked for it then and she looked for it yesterday and to-day. I say John McGregor joins me on the west and Cornelius O'Brien on the south.

On re-direct examination saith :

My wife was unable to find this deed this morning. I cannot say the original deed from Hulfish to John Fenning was passed over to me.

JOHN F. SHANN.

Sworn and subscribed before me this 17th day of September, 1883. JOHN F. HAGEMAN, JR.,
M. & E. C. C.

CHARLES J. FENNING, of Hoboken, in the County of Hudson, a witness produced on the part of the aforesaid complainant, being duly sworn, deposeth and saith :

I live in Hoboken. My father was John Fenning and my mother was Ann H. Fenning. My father is dead. He died in 1866. I would not be positive, it was 1865 or 1866. He left his wife surviving him. She is living yet. He left children. The oldest James A. Fenning, the next Charles J. Fenning, (myself,) John A. Fenning, Frederick H. Fenning, Teresa Fenning and Mary Fenning. That is all. My father had a son George. But he died before my father. He never was married, and died without issue as far as I know. He and

father died on this property, corner of Witherspoon and Jackson streets. Father was the owner of it then. He left a will. The will if I remember right was made before George's death. All the children were living at the time of father's death, except George.

Witness being shown a paper purporting to be the last will and testament of John Fenning, deceased, says :

That is a copy of my father's will. I don't know who qualified as executors of my father's will. I was in Washington at the time. John Fenning, Jr., mentioned in the will of my father is the same person as John A. Fenning, who is my brother, and who previous to my father's death signed his name John Fenning, Jr. He did not put the *A* in to my knowledge. My mother continued to live on this property after my father's death. John A. Fenning also continued to live on it. I think that he was married at the time of my father's death. I am pretty certain he was. Cannot be certain. Father was in the grocery business up to the time of his death. John A., my brother, continued the business after father's death. I owned a future interest in this property, by buying John A. Fenning's interest. I bought John A. Fenning's interest in the property Oct. 9th, 1869, and received a deed for his interest in the property. I don't think that I have that deed. In fact I don't know what has become of it, whether Mr. Hageman has it. He transacted my business. I may have it. When I bought John A. Fenning's interest there were mortgages or judgments against him. There was a mortgage of Cornelius Van Duyn for $1,000, and a mortgage to John Cruser for $1,000, and the taxes were unpaid for several years, both Borough and Township. There were other claims against him. I don't remember how much. These claims were against the property—certainly taxes were, but the mortgages were given by John A. and his wife. My reason for buying that place and reselling it was for the purpose of saving something for the heirs should mother die, and my intention was to resell it and cut off those claims. My brother had mortgaged his interest for more than it was worth. Before I bought the property I employed Caleb S. Green with

the advice of ex-Governor Olden, and afterward John F. Hageman. The Van Duyn mortgage for $1,000 upon the place which I have mentioned was foreclosed by John F. Hageman, he being also Van Duyn's lawyer.

Q. Please state whether or not there was any agreement between you and Mr. Van Duyn to have this mortgage foreclosed, and if so what was that agreement?

A. There was. I agreed with Mr. Van Duyn that if he would advance me $1,000, I would give him a mortgage for $2,000 that would be including his old mortgage. I mean by the old mortgage the mortgage f r $1,000, given by John A. Fenning to Van Duyn of which I have spoken. The $1,000 mortgage I have spoken of was to be foreclosed in order to cut off if possible the mortgages given by John A. Fenning and other claims that might have been against his interest. In my own mind I thought that after the original mortgages with the accumulated interest and back taxes and with no insurance upon the property it would be unsafe to let it be any longer in that way, that was my reason. At the time of my father's death there were three mortgages upon this property. Job Olden held one for $200, Abraham Johnson for five hundred dollars, and the other mortgage I think was originally given to the Simmons estate and held by Duryee, that was for $500 also. After I bought the property I paid off the Job Olden mortgage and the taxes, and that left $1,000 on the property which were incumbrances made by my father before his death

Q. In consideration of Mr. Van Duyn advancing you the $1,000 and taking a mortgage for $2,000, of which $1,000 thereof was the mortgage made by John A. Fenning to Mr. Van Duyn, as you have stated, was there any arrangement about your mother and your brothers and sisters, legatees under your father's will, releasing their interest in the property to you, and if so, state what the arrangement was as near as you can recollect?

A. It was that Mr. Van Duyn should have a mortgage ahead of them to secure him the $2,000, and then for me to execute a mortgage to Frederick H. Fenning as trustee for the heirs for $1,750, the interest to be used for mother's benefit. I believe that's all. Mr. Hageman had the dusiness and

I cannot remember exactly how it was done, but I think it was done in that way. My brothers and sisters and mother consented to this arrangement, but reluctantly. Mr. Van Duyn for two thousand dollars, was to be next after the two five hundred dollar mortgages, of the Simmons estate and Johnson. The intention being that the two hundred dollar mortgage was to be paid off from the money I got from Van Duyn. I paid off the two hundred dollars and all the taxes.

Papers being shown witness, says they are a bond and mortgage from Charles J. Fenning and wife dated April 7th, 1871, to Ann Fenning, conditioned to pay to said Ann Fenning $250 a year as an annuity.

I sold the property to John F. Shann. At the time of this sale this mortgage I have last spoken of was paid off and cancelled of record.

The will of John Fenning is offered in evidence and marked Exhibit A on the part of the complainant.

The bond and mortgage for $250. annuity is also offered in evidence and marked exhibit B & C ex parte complainant.

The mortgage of John Fenning and wife to Anthony Simmons dated June 13, 1856 and bond for $500, offered in evidence and marked D and E ex parte complainant.

Also assignment of said mortgage dated April 22, 1869 to William Simpson, offered in evidence and marked exhibit F, ex parte complainant.

Also further assignment of same mortgage from William Simpson to Henry B. Duryee, dated April 22, 1869, and marked exhibit G, ex parte complainant.

Also assignment of the same mortgage from Henry B. Duryee to Cornelius VanDuyn, dated June 9, 1871, and marked exhibit H, ex parte complainant.

Also bond and mortgage from John Fenning and wife, to Abram Johnson for $500, dated August 1st, 1865, and marked exhibits I, J, ex parte complainant.

Also an assignment of the same from Abram Johnson to Robert D. Warren, the present owner and defendant, dated December 3, 1872, and marked exhibit K, ex parte complainant.

Mr. Hageman did foreclose the $1,000 mortgage for Mr. VanDuyn after the arrangement I have mentioned. I was present at the Sheriff's sale of the property. It was held at the Mansion House Hotel, Princeton. I bought it at the sale. I do not remember what I paid for it. I believe the Sheriff executed a deed to me for it. VanDuyn advanced to me the additional $1000, and everything was settled up satisfactorily through Mr. Hageman at that time. I gave VanDuyn the $2,000 mortgage I have spoken of then, and that mortgage was for the $1,000 he then advanced to me and the $1,000 in the mortgage of John A. Fenning to Mr. VanDuyn, which Mr. Hageman had just foreclosed.

Witness being shown a bond and mortgage from Charles J. Fenning and Sarah E., his wife to Cornelius VanDuyn for $2,000, dated April 7th, 1871, says :

This is the bond and mortgage for $2,000, which I have referred to.

Offered in evidence and marked exhibits L and M, ex parte complainant.

At the same time my mother and brothers and sisters executed the deeds of release I have spoken of. Mr. John F. Hageman attended to all this business for me, drew all the papers for me and drew the mortgage for Mr. VanDuyn, transacted Mr. VanDuyn's business. I owned the property some time not very long and sold it to John F. Shann, subject to these two mortgages of Simmons and Johnson of $500 each, and the $2000 VanDuyn mortgage and the $1750 Frederick H. Fenning, trustee mortgage.

A certified copy of the release by Ann H. Fenning, Teresa H. Fenning, Mary E. Fenning, James A. Fenning, Mary S. Fenning to Charles J. Fenning, dated April 5th, 1871, offered in evidence and marked exhibit N, ex parte complainant.

Bond and mortgage executed by Charles J. Fenning and wife to Frederick H. Fenning, trustee, dated April 7th, 1871, for $1750, recorded April 10, 1871, 3 P. M., in Book J, p. 196, offered in evidence and marked exhibit O and P, ex parte complainant.

Also certified copy of a mortgage from John A. Fenning and wife to Cornelius VanDuyn, for $1000, dated May 26th, 1868, recorded May 27, '68 in Vol. I, page 359, being the one which was foreclosed by Mr. Hageman, offered in evidence and marked exhibit Q, ex parte complainant.

On cross examination saith :

I resided in Washington at the time of my father's decease, and remained there about five years after his death. I was living in Princeton when the deed was executed to me by my brother John A. Fenning. I had been living in Princeton a very short time before that, probably a month. I dont remember how much I paid him at that time, very little. It wasn't considered worth any thing much. I did not pay him over a dollar and probably not less as near as I can remember. I cannot state how long after I purchased the property that proceedings to foreclose were commenced, but as soon as Mr. Hageman could foreclose. The object of foreclosure was to cut off the claims against my brother John A. Fenning Immediately after I bought the property of John A. Fenning. I agreed with Mr. VanDuyn that I would give him a mortgage of two thousand, if he would advance me one thousand, that was on or about the ninth of October 1869, as near as I can tell. That was done with the view of forclosing the mortgage of one thousand, and bidding in the property, and Mr. Hageman commenced the foreclosure of the mortgage as soon as possible after the deed was delivered. I don't remember when the sheriff's sale occured. At the sale Caleb S. Green was present, Mr. Hageman, Mr. VanDuyn and myself and the

sheriff. I don't remember whether anyone else was present, and I dont remember whether anyone else bid. I don't remember the amount of my bid. After the sheriff's sale and after the delivery of the sheriff's deed, upon the execution of the two thousand dollar mortgage dated April seventh, Mr. VanDuyn paid me one thousand, or the arrears of interest on the first one thousand, might have been deducted out of the said one thousand. This arrangement that was consummated in the spring of 1871 by the delivery of the sheriff's deed to me of the property was the carrying out of the agreement which I made with Mr. VanDuyn in October 1869, when I purchased my brother's interest by the deed I have spoken of. I don't remember when exactly I sold to Mr. Shann. I think it was 1872.

Witness being shown exhibit C. which is the annuity mortgage, which was cancelled of record on January twenty-fourth 1872; says that is about the time I conveyed the premises in controversy to John F. Shann. This annuity mortgage was cancelled because Shann would not take the property without it. I did not return to Washington to live after I returned to Princeton. I did not remain in Princeton long, that is to live there.

Witness being shown exhibit N, says, that was made by my brothers and sisters and mother to myself. Mother and sisters were against it, through the advice of Mr. Green and Mr. Hageman. I prevailed upon them to do it, for which I am sorry now. I paid off the two hundred dollars to the Olden estate out of the one thousand dollars of Mr. VanDuyn, also the taxes and insurance. I spent the whole one thousand, on the property and two hundred of my own money. I can't say what the consideration was that I received from Shann. It was at the suggestion of Caleb S. Green, I think, that I obtained the deed from my brother. In the first case I was going to Trenton to see the Bucks Co. Ins. Co. about the renewal of a policy of insurance. I met ex-Governor Olden. I stated the situation of my brother John A.'s affairs to him. The thing had all gotten in a muddle, and he suggested to me to go to Caleb S. Green and tell him the whole case. I told

the case to Mr. Green and I followed his advice. Then made the arrangement with Mr. Van Duyn through Mr. Hageman, his counsel. Mr. Hageman acted for Mr. Van Duyn and myself. At the time I took the deed from my brother I did not have the title examined. I thought I knew what old claims there were against it. What John put on his future interest I did not pay any attention to. I thought it was not neceseary to examine the title therefore. I understood at the time this foreclosure was made that Mr. Hageman was aware of the title and its condition. Shortly after I purchased from my brother John, my mother and brothers and sisters agreed that the mortgage of Mr. Van Duyn should be advanced over the legacies left them by my father's will.

On re-direct examination saith:

When I say I didn't consider the property worth much when I bought it I mean John A.'s future interest. The interest of John A. was not worth more than the Van Duyn mortgage subject to prior mortgages and interest and taxes. The sale was at the hotel at Princeton. Was open and public. I think no one bid but myself. This arrangement between my brothers and sisters and mother whereby they released their interest on the advance of the Van Duyn mortgage was made about the time I bought my brother's interest. It was not carried into effect until after I bought the property at the sale. The arrangement with Mr. Van Duyn was talked over and agreed upon after I bought it of John A. and before Mr. Hageman brought the foreclosure. Mr. Van Duyn said that he would advance the money if Mr. Hageman advised him to loan the money. Mr. Van Duyn said that he would not advance the money unless it was advanced over and prior to the widow's interest and the interest of the legatees under the will. This one thousand dollars was to go to pay off old debts, taxes and interest prior to the widow's, and to secure his, Van Duyn's, interest. It was because the one thousand dollars was to pay the old mortgage, taxes and interest and insurance that the widow consented to let it come in first. There was four or five year's taxes due, and it was out of repair. All the one thousand dollars went to pay the old two hundred

dollar mortgage, the back interest, the taxes and insurance. This was all done by the advice of Mr. Hageman, who was counsel at the time. I have always understood the property to be one hundred and twenty feet by sixty feet. I have known the property for forty years, that is the size of it as it was in the original deed. It has never been changed as I understand.

On re-cross examination saith:

Part of this money was put in repairs on doors and windows and painting when the repairs were made.

On re-direct examination saith:

The one thousand dollars did not pay the old mortgage, the taxes, the interest and repairs without my advancing more money. I advanced about two hundred and forty-five dollars to make the necessary repairs and square up the back debts.

On re-cross examination saith:

The costs and sheriff's fees were paid out of the one thousand dollars paid by Cornelius Van Duyn.

On re-direct examination saith:

If there had been no encumbrance whatever on my brother John's interest, owing to the mortgages on the property and the widow's life-time right and legacies, I would not have given a thousand dollars for John's interest.

The further taking of testimony was here indefinitely postponed by consent of Messrs. Field & Vanderbilt.

September 17th, 1883.

JOHN F. HAGEMAN, Jr.
M. & E. C. C.

On Friday, September twenty-eighth, the taking of testimony was resumed by the mutual consent of Messrs. Field & Vanderbilt, and in their presence, at the office of John F.

Hageman, Jr., in Princeton, and the further examination of Charles J. Fenning postponed until after the examination of John F. Hageman.

JOHN F. HAGEMAN, a witness produced on the part of the aforesaid complainant, being duly sworn, on his oath saith:

I live in Princeton. Am a counsellor-at-law and have lived here forty years. I am acquainted with Cornelius Van Duyn who lives at Kingston about three miles from here. I knew John Fenning, Sr., in his life time. I am acquainted with John Fenning, Jr., also with Charles J. Fenning and all the family. They were a family that lived in Princeton a long time. I had not done much business as an attorney for the Fennings in the life-time of old Mr. Fenning. I don't think I ever did anything for old Mr. Fenning. I have done business for Cornelius Van Duyn a good deal. I foreclosed a mortgage for him once against John A. Fenning.

On being shown papers, bond and mortgage, witness says:

Those are the papers on which that foreclosure suit was founded.

Offered in evidence and marked exhibits R and S, ex parte complainant, being bond and mortgage from John A. Fenning and wife to Cornelius Van Duyn, dated May 26, 1868, for one thousand dollars, recorded May 27th, 1868, in Book F of Mortgages, p. 359.

This mortgage was brought to me for foreclosure by Mr. Van Duyn. Cannot state precisely when it was brought. Have no memorandum to show when it was brought. It was left in my office a little before February 17th, 1870. I think I filed my bill to foreclose March 10th, 1870. I had not the mortgage in my possession long before February 17th, 1870. It was some time between October 9th, 1869 and February 17th, 1870. After I had this mortgage to foreclose there was some negotiation between Cornelius Van Duyn and Charles

Fenning, and Mr. Van Duyn wrote me a letter referring to some proposition of Charles Fenning touching this mortgage of John A. Fenning.

Witness being shown letter February 17th, 1870, written by Mr. Van Duyn to J. F. Hageman says:

That is the letter I refer to and is in Mr. Van Duyn's hand-writing

Letter offered in evidence and marked Exhibit T ex parte complainant.

I made no search on the property myself, but was furnished with a search or statement of liens upon the property left with me by either John or Charles, I don't know which. There were two statements of liens against the property.

Two papers being shown witness, says

These are the statements I refer to.

Offered in evidence and marked exhibits U and V ex-parte complainant.

I know Mr. VanDuyn saw these statements for I looked over them with him before I filed the bill, with regard to the claims against the property.

It is hereby admitted by Messrs. Field and Vanderbilt that the record in the said foreclosure suit shall be received as part of the evidence in this suit.

JOHN F. HAGEMAN, JR.,
M. & E. C. C.

I made Charles J. Fenning, owner of the mortgaged premises. John Cruser a mortgagee. Benjamin R. Thomas, who claimed an interest in the judgment of Theodore F. Johnson & Co., vs. John A. Fenning and B. R. Thomas. Imlah Moore was not made a party. Theodore F. Johnson & Co., were parties to the suit.

On exhibit U there appears a state of a judgment in the Supreme Court in favor of Imlah and Charles Moore vs John A. Fenning and John Cruser of $813. Judgment assigned August twenty-two, 1868, marked satisfied as to Cruser.

I did not make the Moores parties, because it appeared by those papers that they had been paid. I made Cruser a party. He was certainly a party mortgagee.

Q. Do you know whether or not the Moore judgment was satisfied by a sale of personal property of John A. Fenning by John Cruser, the assignee of said judgment?

A. I cannot speak with certainty having had no interest in it, but I recollect that the sheriff of Mercer sold under the Moore execution the personal property in the Fenning store, as the property of John Cruser, who claimed to have bought it of Fenning. I notice on this paper exhibit U is the hand writing of this, then, deputy sheriff Davis, an endorsement of the proceeds of sale, for six hundred and forty dollars and seventy-five cents. There appears therefore to have been a balance of $195.37 cents on the judgment unpaid. I did not make the Moores a party because I was satisfied they had been paid. I did not make John Cruser a party to the foreclosure as being interested in the judgment; it was because I understood that he had been paid. I made, with the direction of Mr. VanDuyn, no one interested in the mortgaged premises, whose liens were previous to the VanDuyn mortgage. He did not want to pay them; he thought he might have to buy the property, and he might have the cash to pay. And I made no search myself for subsequent incumbrances beyond the statement and search which the Fennings and VanDuyn furnished me. They all talked this thing over about the claims on the property in my office. I did not feel any personal responsibility about it, they all acted as friends. I understood that the statements furnished me comprised all the liens upon the property subsequent to VanDuyn's mortgage. John A. Fenning professed to give me the list of all his creditors that had sued him, made a clean breast of it; so I understood it always. I think the statement marked exhibit V. is in the hand writing of John A. Fenning. The marginal mem-

oranda are made in my handwriting. I made the marginal notes as we went over this statement with John A. Fenning from John's representations as to what was paid and what not paid. I did this so as to know whom to make defendants and whom not. Some are marked paid and some not paid, so as to show who were to be defendants.

Witness being shown a paper is asked, what it is? says:

It appears to be a search of Mr. Lee, Clerk of the Supreme Court. It contains a reference to the Moore judgment, marked cancelled. I notice also a reference upon it to the judgment of Josiah H. Cain and George Ward, partners as J. H. Cain & Co. vs. John A. Fenning, for $661.99, including costs, entered Nov 4th, 1868.

Q. As you will observe the date of entering said judgment precedes the filing of your bill of foreclosure for Mr. Van Duyn vs. John A. Fenning, will you please explain how it was that said J. H. Cain & Co. were not made parties in said foreclosure suit?

A. There was no reference to the Cain judgment in the searches or statements furnished me by the Fennings and Van Duyn, nor was I informed of such, and I had obtained no search myself from the Supreme Court. If I had known of it I should have made them a party, unless I had been told then that they had been paid, as I had done in other cases.

Q. Do you remember, Mr. Hageman, of anything being said by John A. Fenning, or any of the Fennings, or anybody to you about or concerning this judgment, when these statements or searches were brought to you, either before or during the progress of said foreclosure suit?

A. No, never; either then or since, or until the bringing of this suit. Mr. Vanderbilt then called my attention to it.

Q. As counsel of Mr. Van Duyn in foreclosing this mortgage for him if you had known of this judgment, would you have made J. H. Cain & Co. party defendant?

A. Most certainly, unless I had been assured that it had been satisfied.

Q. Were there any arrangements, agreements, or understandings between you and Mr. Van Duyn or the Fennings,

that J. H. Cain & Co. were left out and not made party to said foreclosure suit?

A. No, I know nothing about it. The judgment of J. H. Cain & Co. was not noticed, and the mistake and oversight or omission was because it was not known of, at that time and came about in the way I have stated.

Search of Supreme Court Clerk offered in evidence and marked exhibit W, ex parte complt.

Search of County Clerk offered in evidence and marked exhibit X, ex parte complt.

I continued the said foreclosure to decree and sale. The sale was made at the Hotel of Runyon Toms, Princeton. I think I attended the sale. Yes, I was there. I have a pencil memorandum concerning the same. It was made by me showing how the sale was to be made. I found this memorandum among the foreclosure papers in this cause, the date of it is March 31st, 1871. I made this memorandum undoubtedly to prevent any misunderstanding between Van Duyn and Chas. J. Fenning, who proposed to be the purchaser. The property was bid off to me for $100, for Mr. Van Duyn. Then, that Mr. Charles Fenning might become the owner of it, I made this memorandum, that if he wanted to become the purchaser and would do so, and so he could have the deed by complying with the terms of that memorandum.

The memorandum is offered in evidence and marked Exhibit Y, ex parte complt.

The property was struck off to me for Van Duyn.

Q. How did the deed from the Sheriff come to be made out to Chas. J. Fenning?

A. Because Fenning satisfied Van Duyn's claim as mentioned in my memorandum, and I authorized the Sheriff if he could do so to make the deed directly to Fenning instead of Van Duyn. That is the way the deed came to be made out so. He satisfied our claim as stated in the memorandum. I drew the $2000 mortgage from Chas. J. Fenning and wife to Cornelius Van Duyn, marked Exhibits L. and M., also the

Bond and Mortgage marked Exhibits B. and C., also the Release, a copy of which is marked Exhibit U., in conformity with the memorandum mentioned. They were all delivered the day the deed bears date. The Olden mortgage was paid out of the additional $1000, of Van Duyn; $500, at least, was paid on the previous liens of Olden, Duryee and Johnson, as I notice by a memorandum in my own hand writing made at the time which I find among my papers. $225 was paid to Olden, $100 to Duryee, $175 to Johnson, out of this $1000 advanced by Van Duyn. Then something, like $205.55 was paid for costs and taxes. Taxes about $200. I first took out my bill of costs and the Sheriff's and the interest on the plaintiff's mortgage above $1000, and that $705.55, to pay to the benefit of Fenning, and it went to pay Olden, Duryee and Johnson and taxes as I have already said, and that accounts for the $1000 advanced.

The memorandum of J. F. Hageman containing the payments of the Olden mortgage and Duryee and Johnson interest offered in evidence and marked exhibit Z, ex parte complainant.

Also a memorandum of J. F. Hageman of the encumbrances previous to the time of sale. Marked 1, ex parte complainant.

I find these memoranda among the foreclosure papers; they were statements or memoranda of the suit made at the time by me.

Being shown a letter bearing date March 11th, 1871, says:

That is a letter of Mr. VanDuyn's addressed to me, which seems to show that Mr. Fenning wished to avoid a sale by the sheriff.

Offered in evidence and marked exhibit No. 2, ex parte complainant.

Q. Mr. Charles J. Fenning says in his testimony as follows on cross examination, "the object of foreclosing (meaning the VanDuyn mortgage of $1,000) was to cut off claims

against my brother John A. Fenning," will you please state what you understood to be the object for which you were employed by Mr. VanDuyn to foreclose said mortgage?

Objected to because the question is incompetent, irrelevant and immaterial and is offered for the purpose of discrediting the complainant's own witness.

A. I have no knowledge that any one concerned in the foreclosure suit desired to cut off any claims whatever. Mr. VanDuyn's object in foreclosing so far as I could learn was to secure his mortgage debt which was growing constantly more insecure by the accumulation of interest on previous incumbrances, and I know of nothing contrary to such purpose on the part of Mr. VanDuyn in directing the suit. I am sure I had none. No such motive; and I think Mr. Fenning in giving his testimony must have not intended to state the matter in that way.

Q. Can you state when it was so far as you know that Mr. Van Duyn agreed to advance the additional $1,000 to pay back interest on the mortgages preceding his and taxes, providing the heirs and widow released their interest in the property and made a mortgage of $2,000 next to the two first $500 mortgages of Johnson and Duryee, and let Fenning take the deed for the property?

A. I think that arrangement was made at the time that I wrote that lead pencil memorandum; that was the day of the sale. I am quite sure of it.

Q. Before you made that memorandum during the progress of the foreclosure suit, do you know whether or not there had been some conversation or interviews between Mr. Fenning and Mr. VanDuyn relative to said foreclosure suit?

A. I don't know, but I presume there must have been. I suppose so from the letters I had. Mr. Charles J. Fenning was anxious to retain the property for himself and family. I mean his mother's family.

Q. Did Charles J. Fenning come to see you and see if it could be arranged with Mr. VanDuyn so that they could hold the property?

A. He saw me several times. I don't know that he came with Mr. Van Duyn. I suppose they were together. It was apparent to me all the time that he wanted to hold the property. I can't state definitely anything that he said. It was after the foreclosure had been commenced that they came, if they did come together. The result was that he was allowed to take the sheriff's deed and satisfied Van Duyn in the way stated. I can't say that the arrangement was made under my advice: it was an arrangement agreed upon by Mr. Van Duyn and Mr. Fenning. I superintended the completion of the arrangement as cousel to see that it was legally right.

Q. Then, as I understand, you drew the releases and mortgages and saw that they were so executed and so recorded that to carry out this arrangement the $2,000 mortgage would come in as a lien upon this property next to the two $500 mortgages of Johnson and Duryee?

A. I didn't see that they were recorded, unless, perhaps, I saw that the Van Duyn mortgage was. I cannot recollect whether I had them recorded myself, but I can say that in referring to the papers that I marked on the number in which they should be recorded. The Van Duyn mortgage is marked No. 1 and was to be recorded first; the widow's dower mortgage second and the trustee's mortgage third, and I believe they were recorded in that order. The endorsements on the bottom of the mortgages to that effect are in my handwriting.

Q. What arrangement, if any, was made for the widow and heirs is consideration of their releasing their interest in the estate?

A. Charles Fenning upon receiving the deed for the property executed to Mrs. Fenning, the mother and widow, an annuity mortgage upon the property for $250 a year. He also executed at the same time a mortgage to Frederick H Fenning, trustee, to secure $1,750 for the use of the children who under the will of their father had an interest in the property. My recollection is strengthened by reference to the mortgages, and those mortgages were to come in next to the $2,000 mortgage.

Witness on being cross-examined saith :

I do not think I could have anwered the questions as to the recording of the papers without my memory being refreshed by the papers themselves. This transaction happened about twelve years ago. My attention was first called to the subject of this suit probably some four, five or six months ago when Mr. Vanderbilt asked me about the Cain judgment. Then he spoke to me about it again perhaps two months ago when I referred to my papers. I could have given him some information without referring to my papers. I could not then and cannot now give him any light about the Cain judgment except that it was not put in. Mr. Vanderbilt asked me why I had not made Cain a party to the suit. I told him I did not find such a judgment on the memorandum I had, and gave him the memorandum. I gave him the one marked Exhibit U. It was among my papers, and has only reference to the Moore judgment. I can't call to mind any other question that Mr. Vanderbilt asked. That was the principal inquiry he made. I don't suppose that that was all the conversation we had, but I can't recall all the particulars of the conversations. I acted entirely as the attorney of Mr. Van Duyn in the foreclosure suit. I don't know that Mr. Charles J. Fenning had any attorney. There was no defence put in in the foreclosure suit. John A. Fenning on or about October 8, 1869, had a conversation with me about his troubles. Well, my recollection is very indistinct because he had several conversations with me at that time and during several months after. The only prominent part of a conversation that I remember of his is that he said he was sued. He stated that he was not getting along well at the store, and said that he proposed to sell the property to his brother Charles, that he was getting behind in interest, and I am not very clear in my mind whether he did not at that time give me the statement of the liens. I was going to say that he gave me Exhibit V at that time. It was among the first of the conversations I had with him. I believe that the memorandums in lead pencil on Exhibit V are in my hand writing. Certainly at the first interview he was alone. I think I had a little claim to collect against him and that was the reason he came to my office. Either at the first or

second he came to my office, he brought me his father's will which I have still, and talked with me about the interest of the heirs and his own interest, and that was followed by the proposition to sell his property to Charles, and it resulted in a conveyance of the property to Charles.

Being shown exhibit says:

That is the deed that was given by John A. Fenning and wife to Charles J. Fenning on October 9th, 1869. I filed the bill to foreclose March 10, 1870.

Q. How came John A. Fenning and wife to execute a mortgage to Cornelius Van Duyn on May 26, 1868 for $1,000 on his right, title and interest in the property?

A. I don't know and had nothing to do with it. Mr. Lytle was the attorney who drew the papers for Mr. Fenning at that time. I have been Mr. Van Duyn's counsel for thirty years. Mr. Charles J. Fenning was not present at the first interview I had with John A. Fenning. I can't say when I next saw John A. Fenning. While I saw him two or three times I don't know when it was before he came to execute the deed.

Q. It appears by the papers that in October, 1869, Mr. John A. Fenning and wife executed a deed to Charles J. Fenning for the consideration of one dollar, and it also appears that shortly after you filed a bill in the Court of Chancery of New Jersey for the foreclosure of a mortgage given by John A. Fenning to Cornelius Van Duyn for $1,000, in which it appears that all the judgment creditors that you knew of and all the mortgagees subsequent to the mortgage were made parties, please state what was the object of John A. Fenning putting the title of these premises into Charles J. Fenning and then foreclosing and selling out the premises under this sale?

A. John Fenning did not foreclose this mortgage. Van Duyn foreclosed it, and I know of no object that John Fenning had in conveying the property to Charles unless because of his difficulties and want of success in business.

Q. Please look at exhibit T and read the contents of that exhibit.

Witness reads:

"KINGSTON, February 17, 1870."

"MR. HAGEMAN,

DEAR SIR—I called at your office about 3 P. M. on Tuesday and found it closed. Probably you had returned home. I wished to see you in regard to Fenning. He told me that if I could command about $1800 it could all be arranged. Now, how can I get that amount of money at this time? Is there no other way so that I will be safe, as it will be almost impossible for me to raise that amount. I would of seen you on Tuesday but was detained in Judge Field's court waiting to see him in regard to the Post office, as it is my impression that some one is after it, that it was that detained me on that day.

"Truly yours,

"C. VAN DUYN."

Q. It appears by this exhibit that Mr. Van Duyn called upon you on the 17th of February, 1870 to see with regard to his loaning Charles J. Fenning $1800 upon the premises in controversy. Do you know anything further about the arrangement that was made between Mr. Charles J. Fenning and Mr. Van Duyn to do that?

A. Nothing whatever. I don't remember any conversation of mine with Mr. Van Duyn upon the subject.

Q. Do you not know of any arrangement between Mr. Van Duyn and Mr. Fenning by which Mr. Van Duyn would help Fenning save the property for himself and his mother and sisters?

A. No; none at that time.

The further taking of testimony was here adjourned by mutual consent until Friday morning, October 5th, at ten and a half A. M.

JOHN F. HAGEMAN, JR,
M. & E. C. C.

The testimony of John F. Hageman was resumed this 5th day of October, 1883, by consent of Messrs. Vanderbilt and Field.

Cross-examination being continued, witness says:

I have transacted business for VanDuyn for over 30 years I should think. I have not done anything for him as attorney for about 2 years. It is impossible for me to say definitely how long before Oct. 9th, '69, I had the conversation with John A. Fenning about his troubles. My impression is, not over a month or two. John A. Fenning did not come to me for advice at that time. I did not regard it so. He came I think because I had written to him in regard to a claim. He came to see me between that time and Oct. 9th. I am sure he did. I think he came to tell me what he was going to do. I was never his counsellor. I think he came to talk about a claim I had. I think the deed of Oct. 9th was prepared by me because I was VanDuyn's lawyer. John Fenning for one requested me to draw the deed. It was the result of an arrangement between Charles and John. I cannot give the particulars. I don't really remember anything except that the brothers had agreed to have it drawn. I do not know of my own knowledge that prior to Oct. 9th, 1869, Charles or John had been to VanDuyn to borrow money. Nor have I any recollection that prior to that time VanDuyn had agreed to let them have it. I have no recollection that after Oct. 9th, '69, there had been any proposals or negotiations between VanDuyn or them for the loan of money except what appears in the letters of VanDuyn to me which have been offered in evidence. There might have been. I don't know of my own knowledge, but I take it for granted that VanDuyn knew that the deed was to be given by John A. Fenning to Charles Fenning. The Fennings came to me because I was VanDuyn's lawyer, I suppose. I had never done anything for the Fennings before that time. I think it was before Oct. 9th, '69, that VanDuyn and the Fennings met at my office. I am not sure. I hardly remember what they talked about. There seemed to be an understanding that John Fenning could not go on in that way, running behind. I think John brought exhibits W and V before that time to me. I don't know how long before, not very long. I don't think Mr. VanDuyn had anything to do with the arranging of the deed of John A. to Charles J. Fenning; he had knowledge of

it. I say that when VanDuyn and the Fennings were together they talked freely. I do not say they talked about the foreclosure.

Q. At this meeting at your office between the complainant and John Fenning and Chas. Fenning, which took place as you have stated, and exhibits U and V were shown to you by John and John talked freely as you have said, what did he talk about ?

A. John Fenning did not show these exhibits U and V on that occasion for I had them already and exhibited them to him and Mr. VanDuyn and to Chas. Fenning if he was there. I am not sure that he was there on that very day. I cannot call to mind particularly what was said by any of the parties present, but the conversation had reference to the embarrassed position of John A. Fenning and to what would be best for all parties concerned.

Q. At the time when VanDuyn and John A. Fenning and Chas. J. Fenning were present at your office talking about the affairs in which the exhibits U and V were produced, and wherein you say that John A. talked freely about his embarrassments what did he say ?

No answer required.

Q. You have said on your direct examination "that you made no search yourself for subsequent incumbrances beyond the statement and search which the Fennings and VanDuyn furnished. They all talked this thing over about the claims on the property in my office," when John talked freely what did he say ?

Objected to because question has already been asked and answered.

A. I cannot particularize, at this time, about his conversation, and can only say that he professed to give the extent of his embarassments and creditors.

Q. At this time did not the complainant agree to let Chas. J. Fenning have some more money upon the property, then about to be foreclosed ?

Objected to because the witness has not said that anything whatever was said about foreclosing the mortgage at this interview.

A. Not a word, nothing of the kind that I recollect. I am almost positive of it. I was going to say that there was not, but it has been so long since, that I did not feel warranted to say that there might not have been.

Q. Is it not possible that there might have been some arrangement between the Fennings and VanDuyn between themselves and not known to you?

Objected to because too indefinite, because the very nature of this asks for something which the witness knows nothing about.

A. Barely possible, but strongly improbable.

Q. Do you intend to swear that it was not possible that Mr. VanDuyn and the Fennings had agreed about the advancement of more monies among themselves?

Objected to as asking for an opinion and not for what he knows.

A. It is impossible for me to swear or to know what parties might have agreed among themselves out of my presence and office.

Q. Did not VanDuyn write you a letter to let Chas. J. Fenning have some more money upon the property if he could do it safely?

A. The only letter upon this subject has been offered in evidence and marked as an exhibit. It can speak better than I can speak its precise language. My recollection of it is that Chas. Fenning previous to the sheriff's sale of the property applied for an additional loan which Mr. VanDuyn was perplexed to know how he could accommodate him with.

Witness being shown exhibit T for the complainant is asked if that is the letter he refers to, witness says:

Yes, that is the letter. It is dated Feb. 17, 1870.

The bill was filed March 10, 1870, and this letter exhibit T for complainant, bears date Feb. 17, 1870, about 3 weeks prior to the filing of the bill, and not immediately before the sheriff's sale. I find only two letters from Mr. VanDuyn on that subject and no other. He often saw me in those days. Exhibit No. 2 is the other letter. These are the only two letters that I remember to have received on the subject.

Q. How came you to foreclose the bond and mortgage without making a search?

A. I have already explained that. I took the searches which the parties interested furnished me.

Q. How came the complainant and the Fennings to furnish you with the searches and the statements of the claims against John A. Fenning for the forclosure proceedings and consult with you as to whom to make parties defendant in that suit?

A. John Fenning I think was the one who furnished the statement and searches, but they were spread out and exhibited to the complainant and also shown to Charles J. Fenning, they did not consult me as to whom should be made defendants, that I determined for myself, only they understood and desired that the mortgage should be foreclosed subject to prior mortgages. I mean Mr. VanDuyn and Charles Fenning both understood. I don't know anything about John. I don't know that he had anything to say about it.

Q. Was not the mortgage foreclosed by Mr. VanDuyn at the request of Charles J. Fenning?

A. Not to my knowledge. I have no reason to believe, from anything that I learned either from VanDuyn or Charles J. Fenning that the mortgage was foreclosed at the request of or for the benefit of Charles Fenning. My instructions were from VanDuyn himself. I remember nothing to justify me to say that there was any such understanding between the complainant and Charles.

Q. Was it not a friendly foreclosure?

A. I hardly feel authorized to say it was friendly, and yet I cannot say hostile. It seemed to be a necessity.

Q. Was it not foreclosed in the interest of the Fennings?

A. I cannot say that it was.

Q. It resulted in the interest of the Fennings on the day of sale, did it not?

Objected to because it is immaterial and irrelavent and asking for a conclusion and not a fact.

A. I cannot say that it did without analyzing the results.

Q. You have said that Cornelius VanDuyn was a friend of the Fennings, that before you filed the bill to foreclose you and the complainant discussed with regard to the claims against the property; if the foreclosure was not commenced and carried on in the interest of the Fennings, why did you do that?

A. I did not mean to say that Mr. VanDuyn was any more especially a friend of the Fennings, than he is a friend to all his debtors, but he was friendly to the Fennings in this business, and the statement that was made as to the amount it claims against the property was only designed to inform both Mr. VanDuyn and Mr. Charles Fenning of the legal liabilities against this property.

Q. You have said that at this meeting at your office that you made on exhibit V for complainant in your own hand writing the marginal notes thereon as you went over it from John A. Fenning's representations as to who were paid and who were not, please look at that exhibit and state if all the marginal notes thereon are in your hand writing?

A. I find eight entries in the margins including four with pencil, originally. They are in my hand writing.

Witness looks at exhibit U, and says that shows when the Moore judgment was recovered, it was Aug. 22, 1868, and was satisfied Jan. 26, 1869.

Q. You have said, "I made this memorandum undoubtedly to prevent any misunderstanding between Cornelius VanDuyn and Chas. J. Fenning who proposed to be the purchaser;" when was that exhibit Y made?

A. After the sale and on the same day. After the sale, I think, and on the same day, I know.

Q. Please read memorandum Y.

Witness reads exhibit Y.

"VanDuyn is to take a new mortgage on the whole pro-
"perty for his claim, decree, with interests and costs, and as

"such more, as will make $2000, to follow the two mortgages "of Duryee and Johnson, amount together $1000. The in- "terest on said mortgages and Job Olden's mortgage for prin- "cipal and interest and taxes are to be paid out of the surplus "of said $2000, after VanDuyn's claim shall be satisfied, and "the widow and the legatees of John Fenning, deceased, are "to execute releases of their interest in said property, deed "from Sheriff to be made to VanDuyn or to whom he may "direct. March 31, 1871." Endorsed "Memorandum," &c.

Q. Please look at exhibit 2 and tell me when that was made?

A. Cannot state the precise date, but it was after memorandum marked exhibit Y was made, and before or at the time the deed was delivered and the money paid.

Q. Please read Exhibit 2.

Witness reads. "Kingston, March 11, 1871."

"Mr. Hageman. Dear Sir. Charles Fenning called on "me to day in reference to the property. I referred him to "you, and informed him what you thought best I would be "satisfied with; he does not want the property sold. If you "are at home on Monday evening I will call at 7 o'clock.

"Respectfully yours,

"C. VanDuyn."

"He went from here to Trenton to consult with some "one of your profession."

Witness being shown a paper purporting to be a certified copy of the execution issued upon the foreclosure of the $1000 mortgage held by VanDuyn vs. Fenning, (which is marked D 1, ex parte deft. for identification,) is asked to state the amount of interest due the complainant over and above the principal sum of $1000, to the 10th day of April, 1871, that being the date of the delivery of the Sheriff's deed to Chas. J. Fenning, says:

It appears from the statement of the Sheriff appended to the writ of execution that the decree for complainant was $1183.75, and that the interest from Jan. 10, 1871, the date of the decree to April 10, 1871, was $20.71 more, making total of $1204.46, which would show that $202.76 was interest which had accrued on the original mortgage.

Q. The Sheriff's fees were what?

Objected to because the exhibit speaks for itself.

A. By another statement of the Sheriff attached to the said writ the Sheriff's fees over execution appear to have been $26.83.

Q. The taxed costs how much?

Same objection.

A. The complainant's taxed costs $70.03, and interest on the same $1, total $71.03. These figures, the questioner says, are $302.32. You say it is that, I presume you are right.

Q. Taking out of the $1000, advanced to Chas. J. Fenning the interest on the original $1000, to April 10, 1871, the Sheriff's fees and the taxed costs which you have said was paid out of the $1000; the question is, was not then the sum of $697.63 the exact amount that went to the benefit of Chas. J. Fenning, for the payment of the Olden, Duryee and Johnson mortgages and the taxes?

Objected to because it has been no-where stated that this overplus of the $1000 advanced was to pay the Johnson and Duryee mortgages, but only the interest on the same.

A. I have made no calculation of this matter and am not as able to answer this question as well as you are yourself with the data you have.

The witness is asked to look at Exhibit No. 1 for complainant.

Q. When was that exhibit made?

A. I don't know, probably just before the sale. It purports to be the amount of the encumbrances on the property, made before the sale. I suppose I wanted to know what the encumbrances were and what Mr. Van Duyn would have to bid.

Q. Were Job Olden, Anthony Simmons and Abram Johnson made parties defendant to that foreclosure because of their mortgages?

Question objected to because the record is the best evidence.

A. I have said who were made parties defendant and have said that those who held liens on the property previous to the complainant's mortgage were not to be made defendants to this suit and were not.

Q. If they were not how could that statement be made with a view to show how Mr. Van Duyn could be able the better to bid on the property.

A. I did not intend that Mr. Van Duyn should bid the property in without his knowing also what was the amount of the prior claims which he would be bound to pay. The Van Duyn mortgage was subsequent to those mortgages.

Q. Please look at Exhibit D 1 for defendant and state how much was due complainant for the whole amount, principal and interest, due complainant?

Objected to as paper shows for itself.

There was due the complainant the amount of his decree $1183.75, with interest to be calculated on that decree to the day of the delivery of the deed. Complainant was first entitled to that, B. R. Thomas was entitled to be paid second, a judgment, $256.67. John Cruser was third, $1146.42, and the costs of complainant's and sheriff's fees with interest.

The witness is asked to look at Exhibit No. 2 for complainant and state the date of it.

A. I have already done so, March 11, 1871.

Q. Please read exhibit No. 2.

Witness reads said exhibit No. 2.

Q. Was that exhibit written by reason of some negotiation pending to make a settlement of the foreclosure suit between Charles J. Fenning and the complainant?

A. I know nothing about it more than the letter itself indicates and that I think shows that Mr. Charles J. Fenning desired to avoid a sale of the property if that could be done.

Q. You have said that "Mr. Van Duyn's object in foreclosing the $1000 mortgage, so far as you could learn, was to securehis mortgage debt which was growing constantly more insecure by the accumulation of interest on the previous in-

cumbrances." In view of the fact that he took a mortgage for twice the amount he was then foreclosing, do you wish still to state that his only object in foreclosing was to secure his mortgage debt because it was growing more insecure?

A. I have no wish on the subject, but if you are desirous of any explanation I will say that when he took the new mortgage the legacies which had been charged upon the mortgaged premises by John Fenning in his will were released and brought in as subsequent incumbrances to his new mortgage.

Q. Then the new mortgage of $2000 given by Charles J. Fenning to the complainant was advanced over the legacies given under the will of John Fenning to his children and his heirs at law, was it not?

A. Yes, with their consent.

Q. You have said substantially that Charles J. Fenning and Mr. Van Duyn arranged the settlement of the $1000 foreclosure suit by which arrangement Mr. Van Duyn advanced Charles J. Fenning an additional $1000 and took a new mortgage upon the property for $2000. Was this done by your advice?

A. The arrangement was entirely their own. They only conferred with me as to whether and how that arrangement could be executed.

Q. Then as I understand it, the arrangement was made between themselves and you were employed to draw the necessary papers and superintend it so that it would be legally done?

A. Yes, that was the case.

Q. After Charles J. Fenning complied with that arrangement as set forth in Exhibit Y, for complainant, and took the sheriff's deed in his own name, that was a settlement and end of those foreclosure proceedings, was it not?

A. I suppose it was. It was intended so to be.

Q. Then the bond and mortgage of $2000, Exhibits L and M, were given and executed by Charles J. Fenning and wife to Cornelius Van Duyn as a payment of the $1000 mortgage then under foreclosure, was it not?

A. I have just stated that it was so, and I know of no equities to defeat it.

The witness being shown exhibit Z for complainant says:

The lead pencil marks "etc." are in my handwriting.

On re-direct examination saith:

Q. You say in your testimony that "the deed of Oct. 9, 1869, from John A. Fenning to Chas. J. Fenning, was drawn by me because I was VanDuyn's lawyer," please explain what you mean by that, and what interest Mr. VanDuyn had in having this deed drawn.

A. I had never been called upon before that time to do any attorney's work for the defendants and I know of no reason why they would come to me with any business relating to that property unless because I was known to be the constant counsel of Mr. VanDuyn who held this prominent mortgage on the place. VanDuyn did'nt pay me for it. I think Chas. J. Fenning paid me for drawing it. Chas. J. came to me to draw it. I cannot say that VanDuyn had talked of foreclosing the mortgage before the deed was drawn.

Q. You have said "I made no search myself for subsequent encumbrances beyond the statement and search which the Fennings and VanDuyn furnished me," do you mean to say that Mr. VanDuyn furnished any of these statements or searches and if not what do you mean?

A. I do not mean to say that Mr. VanDuyn furnished me with any statements or search, but I mean to say that the statements and searches which were furnished to me by Mr. Fenning were reported or read to Mr. VanDuyn and he was consulted as to whether there were any more encumbrances, as I wanted to know all of them. I want to say that Mr. Van Duyn is the most guileless man that I ever knew in all his transactions.

Q. Were not these statements or searches first brought to you by John A. Fenning to show the incumbrances on the property he was about to deed to Charles J. Fenning and that they were afterwards used in the foreclosure suit as you have testified?

A. I think they were brought to me by John Fenning first to show his indebtedness and perhaps to satisfy Charles

with a view to his purchase of the property and were then used by me in the foreclosure proceedings.

Q. You say "only they understood and desired that the mortgage should be foreclosed subject to prior mortgages, I mean Mr. VanDuyn and Charles J. Fenning understood," is that so?

A. I do not mean that Chas. J. Fenning desired the foreclosure of the mortgage at all so far as I know, but I do mean to say that both Chas. Fenning and Mr. VanDuyn understood that the mortgages being foreclosed at the direction of Mr. VanDuyn should be done, subject to the former incumbrances. JNO. F. HAGEMAN.

Sworn and subscribed before me this 5th day of October, 1883. JOHN F. HAGEMAN, JR.,
M. & E. C. C.

THOMAS CROZER, of the township of Ewing, in the county of Mercer and State of New Jersey, a witness produced on the part of the defendant, Geo. Ward, partner, &c., by consent of the solicitor of complainant, being duly sworn, deposeth and saith:

In the year 1871 I was sheriff of the county of Mercer, My term began in November 1870 and ended in 1873. I have my sale book with me. My sale book as sheriff. I will produce it. I have a record of the sale in the above mentioned cause in my sale book.

It is admitted that the sale spoken of in the sheriff's book is the sale of the property in dispute.

JOHN F. HAGEMAN, JR.,
M. & E. C. C.

It was sold for $100 on March 31st, 1871.

Witness being shown exhibit 3 for complainant says:

That is a Sheriff's deed made by me as sheriff to Charles J. Fenning, on April 7, 1871.

The oonsideration was $100.

Sheriff's book offered in evidence and marked exhibit D 2 ex parte defendant. THOS. CROZER.

Sworn and subscribed before me this 5th day of October, 1883. JOHN F. HAGEMAN, JR.,
M. & E. C. C.

The testimony of CHARLES J. FENNING is here resumed by consent; the evidence of John F. Hageman and Thomas Crozer having been introduced by consent.

October 5th, 1883.

JOHN F. HAGEMAN, JR.,
M. & E. C. C.

Charles J. Fenning on re-direct examination saith :

Q. You said when you were last on the stand that "you would not give $1000 for your brother John's interest in the property, because of the mortgages on the property and the widow's life-time right and legacies, even if there had been no incumbrance on my brother John's said interest." At what time do you mean you wouldn't give this?

A. At the time that I bought it of my brother, October 9th, 1869. What I mean is that I would not have given $1000 cash for my brother's interest if it had no incumbrances on it, taking in consideration the claims and interest accumulated on the property with the taxes, also mother's life right interest, and afterwards the amount due the heirs under my father's will.

Q. What do you mean by claims and mortgages?

A. I mean the mortgages of Olden, Duryee and Johnson and the interest on them, and taxes against the property. These were all incumbrances made before father's death.

Q. Mr. Fenning, you have said in your cross-examination that "the object of foreclosure was to cut off the claims against my brother John A. Fenning." Do you mean to say that you ever had any arrangement or understanding with Mr. Van Duyn to that effect, and if so, please state what it was?

A. I never had any such arrangement with Mr. Van Duyn.

Q. Then please state what you mean when you say that "the object of foreclosure was to cut off claims against my brother John A. Fenning?"

A. I mean that in my own mind, taking in consideration the claims ahead of John's interest, that it would not be probable that anybody would pay or bid more than Mr. Van Duyn's claim. Consequently I would reduce most of the claims of record against John. I mean they would be cut off because it wasn't probable that anybody would bid over the amount due on Mr. Van Duyn's mortgage. I only thought that in my own mind. I made no arrangement with anybody else. It was an open sheriff's sale for everybody to bid if they wanted to, on the front steps of the Mansion House. I never heard of the judgment of J. H. Cain & Co. during the foreclosure or up to the time of the sheriff's sale. I first heard of this judgment at the commencement of this suit, when my brother Frederick H. Fenning, in Brooklyn, wrote to me at Hoboken if I knew anything of the Cain judgment on record against John's interest. I answered him no, I never had.

Witness being shown Exhibit V, for complainant, says:

That is in my brother John's handwriting. At the time I went to John F. Hageman about getting the money from Mr. Van Duyn I took him this paper, Exhibit V, procured by John for me, and I left it with Mr. Hageman. I supposed when I got it of John that it had all the claims against the property.

On re-cross examination saith:

I must have taken Exhibit V to Mr. Hageman about the time when Mr. Hageman received that note from Mr. Van Duyn. I mean the note of February 17, 1870. I wanted to show Mr. Hageman the claims as far as I knew. I had seen Mr. Van Duyn prior to that. I cannot say how long before. Three months before. I saw Mr. Van Duyn more than once. I hadn't seen Mr. Van Duyn previous to October 9, 1869. The first thing I did was to secure John's interest. I think it was at the suggestion of Caleb S. Green. I went to Mr.

Hageman to have the deed prepared. I knew that Mr. Hageman was a Commissioner of Deeds. I don't know of any other reason. Mr. Hageman had never done any business for me before. I had been away from Princeton; didn't know anything of the lawyers there. I had not seen Mr. Van Duyn prior to that. I did not know then that Mr. Hageman was Mr. Van Duyn's lawyer. As soon as I got John's interest I tried to find out all the particulars of the claims and what best thing to do. I think that I asked my brother John if he thought that Mr. Van Duyn would lend another $1000 if he was made secure. He said he thought he would, and I went to see Mr. Van Duyn and he referred me to Mr. Hageman. I cannot say how long after the delivery of the deed from John A. to me I went to see Mr. Van Duyn. It must have been inside of four months. I could not tell exactly.

Q. Who first suggested the foreclosure of the $1000 mortgage held by Mr. Van Duyn?

A. I csuld not say really, but I think Mr. Green, of Trenton, thought it would be the best plan for me to hold the property at a lower rate, I suppose. Mr. Caleb Green I mean. I had consulted with him once. I mean by lower rate that in consideration of the claims ahead of John's interest and then adding to that all that John had put upon it, would be much more than the property was worth. It wouldn't be probable that they would bid at the sale to protect their claims.

Q. Do you know if any one went to Van Duyn and asked him to foreclose the $1000 mortgage?

A. I suggested that to him.

Q. What did you say?

A. As near as I can remember I told him, that there was interest and taxes against the property which had to be paid, and I would like to borrow $1000, I think, or more in the first place, and that I would secure him for the whole, meaning the $1000, he had advanced to John, and he referred me to Mr. Hageman, to arrange the matter. I went to Mr. Hageman then. I don't know how soon. As near as I can remember I stated all the difficulty of the property to him.

Q. What do you mean by difficulty?

A. I mean all the interest accumulated on the old mortgages, taxes, the incumbrances that John put on the place,

and there was no insurance. I can't think of the other claims. I mean the mortgages and judgments against John, and all there was against the place. The first time I saw Mr. Hageman, he said he would consult with Mr. Van Duyn. The next time I saw him he proposed to secure Mr. Van Duyn by putting his claim next to the two original mortgages of Johnson and Duryee, which I consented to do.

Q. You have said that after you went to Mr. Van Duyn he referred you to Mr. Hageman, and what did Mr. Hageman say about the foreclosure of the $1000 mortgage?

A. I don't remember the exact words, but it was understood between us that Mr. Van Duyn's mortgage should be foreclosed, between me and Mr. Hageman, and, as I understand, Mr. Van Duyn authorized Mr. Hageman to go ahead with it.

Q. Was the $1000 mortgage foreclosed in pursuance of that arrangement or not?

A. It was foreclosed for the purpose of obtaining money to pay off those original claims, and with my idea of reducing claims against John.

Q. When the deed was made to you in pursuance of the memorandum marked Y, ex parte complt, how much interest did you pay Duryee and on the Johnson mortgage?

A. I paid Johnson $175, and Duryee $100, I think I paid Olden $224 in all, interest and principal.

On re-direct examination saith:

The holders of the Olden, Johnson and Duryee mortgages were pressing for their interest when I bought the property of John. Mr. Duryee spoke of foreclosing, and Mr. Olden wanted his small mortgage paid off. The taxes were pressing.

On re-cross examination saith:

I told them I would raise the money and they were satisfied.

CHAS. J. FENNING.

Sworn and subscribed before me this 5th day of October, 1883.

JOHN F. HAGEMAN, Jr.,
M. & E. C. C.

The taking of testimony was here adjourned by consent to October 17th, 1883, at ten and a half o'clock at the office of J. F. Hageman, Jr.

JOHN F. HAGEMAN, Jr.,
M. C. C.

Deposition taken at the office of W. J. Gibby in Princeton, New Jersey, on Wednesday, October 17, 1883, in the presence of Geo. O. Vanderbilt, Esq., solicitor of complainant, and James W. Field, solicitor of George Ward, surviving partner of Josiah H. Cain & Company, one of the defendants; taken by consent of the solicitors.

GEORGE WARD, a witness on the part of the defendant, being duly sworn according to law, on his oath says:

I am one of the defendants in this suit. I am sixty-three years old. I reside at Closter, Bergen County, New Jersey, and am a wholesale grocer, at 238 Fulton street, corner of Washington street, New York City. I was a member of the firm of Josiah H. Cain and George Ward. The firm commenced business about 1848, and dissolved in March, I think, 1871. The firm of Josiah H. Cain and George Ward recovered a judgment against John A. Fenning in the New Jersey Supreme Court on the fourth day of November, 1868, for six hundred and sixty-one dollars and ninety-nine cents damages and costs.

Witness being shown a paper purporting to be a search in the New Jersey Supreme Court, made by Benjamin F. Lee, Clerk, says:

The judgment therein stated is the judgment mentioned by me in my testimony.

Paper offered in evidence and marked Exhibit D, 3½, on the part of the defendant, George Ward.

I am the surviving partner and the owner of that judgment, having bought out Josiah H. Cain's interest in the judgment together with all stock, book accounts, money in the bank and money out, in fact everything, including all judgments recovered by the firm in favor of the firm. I paid him for these seven thousand dollars ($7000). No part of the judgment recovered against John A. Fenning by Josiah H. Cain and George Ward has been paid, but the whole amount with interest from November 4, 1868, is still due and owing.

GEORGE WARD.

Sworn and subscribed this 17th day of October, A. D 1883, before me

W. J. GIBBY,
M. & E. C. C.

Examiners fees paid by James W. Field, Esq., solicitor of defendant, George Ward.

The further taking of testimony was by consent

Adjourned to	November	10,	1883
"	"	17,	"
"	"	24,	"
"	December	1,	"

JOHN F. HAGEMAN, Jr.,
M. & E. C. C.

Examination continued at the office of John F. Hageman, Jr., in Princeton, on December 1st, 1883.

Thomas Crozer, a witness produced on the part of the the defendant, George Ward, being duly sworn, on his oath saith:

Final decree offered in evidence and marked Exhibit D 4, ex parte George Ward, defendant.

Deed from Thomas Crozer to Charles J. Fenning. Recorded Book 83 of Deeds, page 227, Mercer Clerk's office. Marked Exhibit D 5.

Witness being shown Exhibit D 5, for the defendant, being a deed from Thomas Crozer, sheriff, to Charles J. Fenning, says:

I executed that deed the 7th day of April, 1871. I sold the property thereby conveyed, March 31, 1871.

Reads the following condition in Book Exhibit D, 2:

IN CHANCERY OF NEW JERSEY.

BETWEEN CORNELIUS VAN DUYN, *Complainant,* AND CHARLES J. FENNING, *Defendants.*	Fi. Fa. for sale of mortgaged premises.

"The conditions of the sale of the defendant's property made the 31st day of March, A. D. 1871, by Thomas Crozer, Sheriff of the County of Mercer, by virtue of the above stated writ: are as follows to wit:

"1st. The highest bidder to be the purchaser and will be required to sign their names, to these conditions acknowledging the purchase.

"2d. The purchaser will be required to pay ten per cent. of the purchase money in cash at the close of the sale.

"3d. A deed will be delivered to the purchaser on the 10th day of April next, at 11 o'clock A. M. at the Sheriff's office in the City of Trenton, at which time the purchaser will be required to pay the balance of the purchase money in cash.

"The purchaser, or purchasers, will be held liable for the payment of the purchase money, whether they attend and receive a deed at the time and place aforesaid, or not, and in

case they neglect to attend and receive a deed and pay the purchase money at the time and place aforesaid, the property will be advertised and sold again, and if it produce a less sum than the former bid, interest and expenses, the first purchaser will be held liable for the difference.

THOS. CROZER,
Sheriff."

"I do hereby acknowledge myself the purchaser of the above described property for the sum of one hundred dollars, subject to the above conditions, and agree to comply therewith. Deed to be made to me, or to whom I shall direct.

March 31st, 1871.

C. VAN DUYN."

The words at the end of the conditions, "one hundred dollars," and "Deed to be made to me or to whom I shall direct," were not written by me. They were written either by Mt. Van Duyn or his solicitor, and those premises were sold by virtue of an execution issued out of the Court of Chancery in the suit, the title of which is above set forth namely, Van Duyn vs. Fenning.

I have before me my Chancery and Supreme Court Execution docket as Sheriff of the County of Mercer which I produce.

Here docket is shown.

On page 8 of this docket I find the record of an execution in which Cornelius Van Duyn was complainant and Charles J. Fenning, et als. were defendants, returnable February term A. D. 1871, John F. Hageman, solicitor, by which I was commanded to levy the decree for complainant, $1183.75

Decree for B. R. Thomas,	256.67
" " J. Cruser,	1146.42
Interest from January 10, 1871.	
Costs taxed at	70.03
Interest thereon from January 17, 1872,	1.10

Beside sheriff's fees. Received this writ January 30, 1871.

April 7, 1871.

"Received of Thomas Crozer, sheriff, $100 on the above stated Fi. Fa. less $71.13 taxed, costs and sheriff's costs, $26.82.

"C. VAN DUYN."

The Chancery docket at page 8 is offered in evidence and marked Exhibit D, 6, ex parte George Ward, defendant.

Exhibit D. 5, was the deed executed by me by virtue of that writ.

On cross-examination saith:

I attended the sheriff's sale in person. I think I was there at the time. It was made at a public house, the hotel of Runyon Toms in Princeton. The sale was public and open and fair for any one to bid who desired. No arrangement was made with me that it should be struck off to any one. I do not remember how many people were there.

THOMAS CROZER.

Sworn and subscribed before me this 1st day of December, 1883.

JOHN F. HAGEMAN, Jr.,
M. & E. C. C.

Hugh S. Van Duyn, of the Township of Franklin, in the County of Somerset, a witness produced on the part of the aforesaid complainant, saith:

I live at Kingston, New Jersey, and am the son of Cornelius Van Duyn, the complainant in this suit. I am twenty-two years old. I am studying law with Mr. W. J. Gibby, have been for 3 years. My father is dead. He was sick for ten months before his decease. He became seriously sick in the month of July or August last. I remember that Mr. Vanderbilt, about the month of August last, spoke to me about the testimony of Mr. Van Duyn, my father. I said that I would ask the people at home whether it would be best for him to testify, and we had quite a consultation at home, and we came to the conclusion that it would be adrimental to his health if

he was to testify. I think Mr. Vanderbilt spoke to me about his testifying in September last. He was then much worse. His disease was of such a nature that he was easily excited. We were afraid for him to testify, because his sickness was of such a nature that it affected his reasoning power to a certain extent. We were afraid that if he testified, it would cause him to become agitated and excited, and we were afraid a reaction would set in which would be more fatal in his case. Any excitement affected him. I don't know that I consulted his physician about his testifying. He died October 22d, 1883, after an illness of ten months. He was never in a condition to testify after he was taken seriously sick, July or August, 1883.

Being cross-examined saith:

I can't say when he was taken to his bed. He was in bed all the time after July last. He had consumption, a lingering consumption, first thought to be hasty consumption. Before July the doctors had pronounced his case one of hasty consumption.

On re-direct examination saith:

Prior to the time he was taken seriously sick he was up and around some, but neglected his business generally.

HUGH S. VAN DUYN.

Sworn and subscribed before me this 1st day of December, 1883.

JOHN F. HAGEMAN, Jr.,
M. & E. C. C.

A certified copy of the deed of John A. Fenning to Charles J. Fenning is offered in evidence and marked Exhibit 3, ex parte complainant.

Also a mortgage made by John A. Fenning and wife to David Hullfish.

Marked Exhibit 4, ex parte complainant.

The complainant and defendant here rest with the understanding that the complainant may offer more evidence if he see fit.

JOHN F. HAGEMAN, JR.,
M. & E. C. C.

December 1st, 1883.

IN CHANCERY OF NEW JERSEY.

BETWEEN	
CORNELIUS VAN DUYN, *Complainant,*	On Bill to Foreclose.
AND	
MATTIE C. SHANN, ET ALS. *Defendants.*	

It being represented to the Court that the parties complainant and defendants have not agreed to print the evidence in this cause as provided in the 100th rule of this court; it is on this twenty-sixth day of January, A. D. 1884, ordered that said evidence be printed at the joint expense of both parties.

Respectfully advised.

JOHN T. BIRD, V. C.
THEODORE RUNYON, C.

A true copy,
G. S. DURYEE, Clerk.

EXHIBITS EX PARTE COMPLAINANT.

Exhibit A. Will of John Fenning.
" B and C. Annuity Bond and Mortgage for $250.
" D " E. Bond and Mortgage from John Fenning and wife to Anthony Simmons for $500, dated Jan. 13, 1856.
" F. Assignment of said mortgage to Wm. Simpson, dated Apr. 22, 1869.
" G. Assignment of said mortgage from Simpson to Duryee, dated Apr. 22, 1869.
" H. Assignment of said mortgage from Duryee to VanDuyn, dated June 9, 1879.
" I " J. Bond and Mortgage from John Fenning and wife to Abram Johnson for $500, dated Aug. 1, 1865.
" K. Assignment of said mortgage from Johnson to Warren, dated Dec. 3, 1872.
" L " M. Bond and Mortgage from Charles J. Fenning and wife to C. VanDuyn for $2000, dated Apr. 7, 1871.
" N. Certified copy of Release by Ann H. Fenning, F. H. Fenning, M. E. Fenning, J. A. Fenning, and M. S. Fenning, to Charles J. Fenning, dated Apr. 5, 1871.
" O " P. Bond and Mortgage from Charles J. Fenning and wife to F. H. Fenning, Trustee, for $1750, dated Apr. 7, 1871.
" Q. Certified copy of mortgage from J. A. Fenning and wife to C. VanDuyn, for $1000, dated May 26, 1868.
" R " S. Bond and Mortgage from J. A. Fenning and wife to C. VanDuyn, for $1000, dated May 26, 1868.
" T. Letter of C. VanDuyn to J. F. Hageman, dated Feb. 17, 1870.
" U " V. Statements of liens on Fenning property.
" W. Search of Supreme Court Clerk.
" X. Search of County Clerk.
" Y. Pencil memorandum made by J. F. Hageman.

Exhibit Z. Memorandum of J. F. Hageman, containing the payments of the Olden mortgage and Duryee and Johnson interest.

" No. 1. Memorandum of J. F. Hageman of encumbrances previous to time of sale.

" " 2. Letter of VanDuyn to J. F. Hageman, dated March 11, 1871.

" " 3. Certified copy of Deed of John A. Fenning and wife to Charles J. Fenning.

" " 4. Mortgage from John A. Fenning and wife to David Hullfish.

EXHIBITS EX PARTE GEORGE WARD, DEFENDANT.

Exhibit D 1. Fi. Fa., C. VanDuyn, Complainant, and Charles J. Fenning and others, Defendants.

" D 4. Certified copy of Final Decree. C. VanDuyn, Complainant, and Charles J. Fenning and others, Defendants.

" D 5. Deed of Thos. Crozer, Sheriff, to Charles J. Fenning.

WITNESSES.