

COURT OF ERRORS AND APPEALS.

Between
Thomas Frazier, Jr., and Wil-
liam Frazier, administrators
of Thomas Frazier, deceased,
complainants,
and
Elizabeth Beatty and George
Beatty, her husband, defend-
ants.

On bill to fore-
close.

PETITION FOR WRIT OF ASSISTANCE.

[Filed June 6, 1874.]

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

The petition of Robert W. DeForest, of the city of New York, in the county of New York, and state of New York, respectfully showeth—that by virtue of the final decree made in the above court on the third day of November, eighteen hundred and seventy-three, a writ of *feri facias*, tested on or about the fourteenth day of November, eighteen hundred and seventy-three, issued out of this Honorable Court, directed to the sheriff of the county of Union, command-

ing him to make sale of all that certain piece or parcel of land, situate, lying, and being in the city of Elizabeth, county of Union, and state of New Jersey, bounded and described as follows, to wit: beginning at a west corner of Wm. Hunt's land, on the road leading to Elizabeth, and the north corner of the barn, thence along the barn south forty degrees east, seventy-two links; from thence, south sixteen degrees and fifteen minutes east, nineteen chains and eighty-eight links; thence, north eighty-three degrees east, 10 thirteen chains and nine links to Bruen Meadow; thence, south thirty degrees east, seven chains and seventy-one links; thence, south fifty-three degrees and forty-five minutes west, eight chains and twenty-six links; thence, south seventy-four degrees west, two chains and twenty five links; thence, north fifteen degrees west, five chains; thence, south eighty-eight degrees west, twenty chains and ninety-two links; thence, north twenty-seven degrees and thirty minutes east, twelve chains and forty-one links to the aforesaid road; thence, along the said road north forty-three 20 degrees east, eleven chains and sixty two links; thence, north thirty-seven degrees east, one chain and eighty links; thence, north forty-five degrees east, seven chains and thirty-six links, to the place of beginning; containing forty-five acres and sixty-six hundredths of an acre, strict measure, bounded northeast by said Hart and Bruen Meadow, east and southeast by Elias Woodruff, and northwest by Woodruff's farm road. And your petitioner further shows, that in pursuance of said writ of *feri facias* and in pursuance of another writ of *feri facias* issued out 30 of the Circuit Court of Union county, on a certain judgment therein against the said George Beatty and Elizabeth Beatty, and in favor of Peter R. Roach, which execution was subsequent in lien upon said premises to the *feri facias* issued out of this Honorable Court as aforesaid. Lette B. Ryder, then and still being sheriff of the said county of Union, having first in due form of law advertised the said premises to be sold at public vendue, the said sale to be at the court house in said city of Elizabeth, in said county, on Wednesday, the twenty-ninth day of April, eighteen hundred and 40 seventy-four, at the hour of two o'clock in the afternoon

at the said place and hour did accordingly offer and expose said premises for sale at public vendue, under and by virtue of said writ of *feri facias*; and thereupon your petitioner having bid for the said premises the sum of sixteen thousand two hundred dollars, and no other person having bid so much therefor, the said sheriff did then and there openly and publicly, in due form of law, strike off and sell the said premises for the said sum to your petitioner, he being then and there the highest bidder for the same.

And your petitioner further shows, that afterwards, to wit,¹⁰ on the twenty-ninth day of April, eighteen hundred and seventy-four, the said sheriff did execute and deliver unto your petitioner a deed of conveyance of said premises, bearing date said twenty-ninth day of April last, wherein and whereby the said sheriff did grant, bargain, sell, assign, transfer, and convey unto your petitioner, his heirs and assigns, the premises above described, with the appurtenances, to have and to hold to his own use and benefit forever, in as full, ample, and beneficial a manner as by virtue of the said writs of *feri facias* the said sheriff might, could, or ought to²⁰ convey the same, which said deed of conveyance was afterward duly acknowledged by the said sheriff, before N. C. J. English, Esquire, and afterwards duly recorded in the clerk's office of the said county of Union, in Book 91 of Deeds, pages 7, 8, &c., as by reference to said deed and said record will more fully appear.

And your petitioner further shows, that the said premises, at the time of filing the bill of complaint in said cause, were and now are in the possession and occupation of the defendants, Elizabeth Beatty and George Beatty, and that they en-³⁰joyed and now enjoy the rents, issues and profits thereof.

And your petitioner further shows that since the sale of the said premises, and the execution and delivery of the said sheriff's deed therefor to your petitioner, your petitioner has frequently applied to the said Elizabeth Beatty and George Beatty, and requested them to deliver up the possession of the said premises to your petitioner, but that the said Elizabeth Beatty and George Beatty have hitherto refused, and still do refuse, to comply with such reasonable request of your petitioner; and that on the twenty-fifth⁴⁰

day of May instant, your petitioner, by Samuel S. Moore, his agent, called upon the said Elizabeth Beatty and George Beatty, and exhibited to them the said sheriff's deed to your petitioner for the said premises, and demanded possession thereof, but that the said Elizabeth Beatty and George Beatty absolutely refused to deliver the same to your petitioner.

Your petitioner, therefore, prays that an order may be made by this Honorable Court, directing and commanding 10 the said Elizabeth Beatty and George Beatty, and their confederates, or any one holding under them, to quit said premises and to deliver the possession thereof to your petitioner, and that they pay the costs of this application, and that your petitioner have such other and further relief in the premises as may be necessary and proper. And your petitioner will, as in duty bound, ever pray, &c.

J. L. & N. ENGLISH,

Solicitors for and of Counsel with Petitioner.

20 State of New York, county of New York: Robert W. DeForest, of full age, on his oath saith—that he is the petitioner named in the above petition; that the matters and things therein set forth, so far as they relate to his own acts and deeds, are true; and, so far as they relate to the acts and deeds of others, he believes them to be true.

R. W. DeFOREST.

Sworn and subscribed before me, May 20th, 1874.

EDWARD F. WEEKS, *Notary Public.*

R. WILLIAMSON, *M. C.*

30 New Jersey, Union county, ss.—Samuel S. Moore, of said county, on his oath, saith—that he has read the foregoing petition; that on the day of May instant, acting as the agent of the petitioner, he called upon Elizabeth Beatty and George Beatty, in the petition named, and showed to them the sheriff's deed therein named; and served upon them a written notice to quit the possession of the premises therein named, and that they both, then and there, refused

so to do; and refused to deliver possession thereof to the petitioner or to this deponent, as his agent, and that said Elizabeth Beatty and George Beatty are now in possession of said premises.

SAMUEL S. MOORE.

Sworn and subscribed before me, June 5th, 1874.

JOSEPH ALWARD, *M. C.*

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Petition for Writ of Assistance.

[Filed June 8, 1874.]

New Jersey, Union county, *ss.*—Samuel S. Moore of 10 said county, on his oath saith—that at the sheriff's sale of the land described in the execution issued in the above cause, he was present and acting as the agent of Robert W. DeForest; that he purchased said lands for said DeForest at such sale for the sum of sixteen thousand two hundred dollars; that he received the deed for the same from the sheriff and had it recorded in the clerk's office of said county; that afterwards, in behalf of said DeForest, he paid the taxes and assessments in full on said lands to the city of Elizabeth, amounting to the sum of twenty three 20 hundred and seventy-two dollars.

And this deponent further says, that on behalf of said DeForest, he has many times endeavored to induce said defendants to give up the possession of said lands to said purchaser, and showed to them the sheriff's deed, but that they refused so to do; and further said that they had removed a part of the fencing from said lands, because they had put the same thereupon.

And this deponent further saith, that said defendants have a large herd of cattle, and that they suffer them to 20 run over the farm, to its damage.

That a portion of said lands are now unfenced, because

the fences have been removed by said defendants; and that if said defendants are not removed from said premises he believes that they will decrease the value of the same, and that the grass will be destroyed by the cattle of the defendants running over it.

And this deponent further says, that said George Beatty offered this deponent fifty dollars for the use of said land until the next autumn, but that he would not rent it through the winter.

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SAMUEL S. MOORE.

Sworn and subscribed before me, June 20, 1874.

J. R. FAIRBANK, *Notary Public.*

Notice of Motion for Possession.

To Elizabeth Beatty and George Beatty: Please take notice that we shall apply to the Chancellor of this State, at his chambers, in the city of Newark, on the fifteenth day of June instant, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard thereon, upon a petition for an order directing and commanding you to quit the

20 premises in said petition described, and to deliver possession thereof to Robert W. DeForest, the purchaser thereof at the sheriff's sale under the decree in the above cause, and also directing you to pay the costs of this application.

June 8, 1874.

J. L. & N. ENGLISH,

Solicitor of Robert W. DeForest, petitioner.

New Jersey, Union county, ss.—Samuel S. Moore, being sworn, on his oath saith: That on the eighth day of June instant, he served a copy of the within notice on Elizabeth

30 Beatty and George Beatty, the parties to whom the same is directed, and that deponent explained to them the contents thereof.

SAMUEL S. MOORE.

Sworn and subscribed this 8th day of June, 1874, before me.

GEO. F. PARROT, *M. C.*

Answer of Elizabeth Beatty and George Beatty.

[Filed July 6, 1874.]

The answer of Elizabeth Beatty and George Beatty, defendants to the petition of Robert W. DeForest, filed in the above stated cause.

These defendants answer as follows: The land and premises in question are the separate property of the said Elizabeth Beatty, wife of the said George Beatty, and were purchased by her over seven years ago, for the price of fifteen thousand dollars. They consisted of about forty-five and a-half acres of ground, with dwelling-house and barns, and constituted the homestead of these respondents. They 10 are now worth, in the judgment of these respondents, over fifty-five thousand dollars. That sum was offered these respondents for the same about one year since, by Mr. Charles C. Lathrop, of Newark. Previous to that time, other sums were offered for said property, ranging from forty thousand dollars; and these defendants have been sued for commissions alleged to be due, by reason of their alleged agreement to sell the said property at the rate of forty thousand dollars. The said property is of great value, because it is crossed by several streets—North avenue, 20 Humboldt avenue, Henry street, and others, and these defendants have sought to preserve the same, knowing that one day a very great price could be obtained for it. The respondent, said Elizabeth Beatty, is now over sixty years of age, and her husband somewhat younger. They are without children; have been industriously engaged many years in accumulating this property, which is the result entirely of their exertions as farmers, and in the sale of milk. This property is now their sole dependence, excepting one 30 other small tract of land, the assessments upon which render it of little value; and if this respondent is ejected from this property, she will be compelled to begin the world anew.

- When this respondent bought said property, she paid two thousand dollars cash, and gave a mortgage for thirteen thousand dollars besides. Upon this mortgage she paid the interest until the year eighteen hundred and seventy-three, the last payment being on the first of May in that year, for three months' interest, due the first of April preceding. Thomas Frazer, to whom she originally gave the mortgage, died. His son became his administrator, and called for the money to settle the estate in the year eighteen hundred and
- 10 seventy-three. About the first of August in said year, eighteen hundred and seventy-three, he commenced a foreclosure. This respondent immediately called upon Mr. Jacob Davis, of Elizabeth, a real estate broker, to procure the loan of thirteen thousand dollars, in order to prevent the sale of the property. Mr. Davis engaged to get her the money. An abstract of title was procured. Mr. Davis assured her that the money was forthcoming, and that he had procured a person to lend it, but demanded at first ten per cent. commission. This the respondent agreed to.
- 20 Afterwards said Davis met her in company with another person, and said, "Here is the man from whom I am going to get the money for you, and have the matter settled up; but now you will have to pay fifteen per cent." The respondent said it was too much. The man then left, when Davis again said, "If you don't give fifteen per cent., the hammer shall go down on your property." Respondent then agreed to do so. Davis then demanded twenty-five dollars, which was paid him, and as he left the room he said, "Now I will have the whole matter fixed up for you."
- 30 This was about a week before the first of April, eighteen hundred and seventy-four. Two weeks after this, respondent called upon said Davis, and asked him if Mr. Frazier had received his money. He said no; that the proposed lender had backed down, and was going to buy it in himself on the following Wednesday, April twenty-second.
- The plan of Mr. Davis, as respondent understood it, was that the mortgage for thirteen thousand dollars, originally given to Thomas Frazier, with the decree thereon, should stand at that sum, and that an additional mortgage of five
- 40 thousand dollars should be given to pay interest and

expense on said thirteen thousand dollars, taxes and said commission of fifteen per cent. upon eighteen thousand dollars, which was the amount proposed for the whole loan.

The sale was adjourned on the twenty-second of April, for one week, before the property was sold, which sale occurred April twenty-nine, eighteen hundred and seventy-four. Respondent called upon Davis and asked him to perform his agreement, as he had promised, when he replied he could not do it. The respondents gave the mortgage of five thousand dollars, and said Davis lodged the same in the record office, and it is now, as respondents understand and believe, there recorded. These respondents had no means, within the short time given them, of raising the money required to prevent the sale of said property, and had to witness its sale for sixteen thousand two hundred dollars. Said property was bought by one ——— Moore. The respondent asked said Davis to go to the sale and buy it in for them, but he refused. Said Moore is not a person of means, and told this respondent, Elizabeth Beatty, that he had no means, and did not buy for himself; he also said at first, that he would give it back, if paid for it. Thereupon this respondent told him she would pay him, when he said he could not do it until he had consulted the other parties for whom he acted. The said Robert W. DeForest is a person entirely unknown to these respondents, and they believe and charge that they were defrauded by the conspiracy of said Davis, the person from whom, as he alleged, he was to procure the loan, said Moore, and other persons, to rely with confidence upon effecting the loan, and saving the property from sale while it was intended by the said parties to take advantage of her position at the last moment, and purchase the property for a song. These respondents say that they are engaged in procuring evidence wherewith to apply to this Honorable Court for the purpose of setting aside said sale.

And these respondents pray that no order of possession may be given by this court, but that the court would refuse the prayer of said petition, and leave the parties to their remedy at law.

Affidavit.

Essex county, to wit—George Beatty and Elizabeth Beatty, his wife, being duly sworn say—that the above answer, so far as it relates to the acts of either of them, is true, and so far as it relates to the acts of other persons they each believe it to be true; and said Elizabeth Beatty says that the statements therein made as to the conversation and acts of said Davis and other persons in said answer mentioned, are each true, and further this deponent saith
10 not.

ELIZABETH BEATTY.
GEORGE BEATTY.

Sworn and subscribed before me, July 7, 1874.

JOHN A. MILLER, *M. C.*

Essex county, to wit—James Chandler Denmon and
05 Thomas Barber Mann, both citizens of Elizabeth, being respectively sworn say, each for himself, that he is acquainted with the value of real estate in the city of Elizabeth; that he is likewise acquainted with the nature and
20 character of the property belonging to Elizabeth Beatty, and referred to in the above stated answer, and that, in his judgment, said property was worth at least the sum of forty-five thousand dollars, on the fair ordinary sale thereof, upon the twenty-ninth day of April last.

JAMES C. DENMAN,
THOMAS B. MANN.

Sworn and subscribed the sixth day of July, eighteen hundred and seventy-four, before me,

RICHARD WAYNE PARKER, *M. C.*

AFFIDAVITS.

[Filed July 10, 1874.]

New Jersey, Union county, ss.—Seth B. Ryder, the sheriff of said county, on his oath saith—that the execution in the above stated cause was placed in his hands on the seventeenth day of November last past; that an execution out of the Union County Circuit against said defendants and in favor of Peter R. Roach, was placed in his hands on the twenty-ninth day of October last past; that he advertised the property described in such chancery execution, under both of said executions; that the sale was advertised to take place on the 28th day of January last past, and was then and afterwards adjourned until the twenty-ninth day of April last past, by adjournments in each case, when such property was sold by the deponent to Robert W. De Forest for the sum of sixteen thousand two hundred dollars; that at such sale and after the property was put up and a bid made upon the same, this deponent adjourned it for a short time, in order to give the defendants time to negotiate with the solicitor of the complainants, and after the other sales which were fixed for that day had been completed, this deponent again proceeded with this sale; that there were several persons present, as many as usually attend his sales; that there were two or three bidders for the property, and that after all had bid that this deponent could induce to bid on said lands, he struck the same off on the bid of Samuel S. Moore, who stated that he was acting as agent for said Robert W. DeForest; that said Moore afterward paid the purchase money in accordance with the terms of such sale; this deponent, at his request, executed a deed for said lands to said DeForest, and gave the same to said Moore, and that the total amount due on such executions was \$15,674.61, and that there is now in his hands a surplus amounting to \$525.39

SETH B. RYDER.

Sworn and subscribed before me July 10th, 1874.

JOSEPH ALWARD, *M. C.*

Union county, ss.—Samuel S. Moore, of said county, on his oath saith—that he is the person mentioned in the preceding affidavit of Seth B. Ryder, as the person who bought the lands in the execution in said cause described; that he did not know such lands were to be sold until a week before such sale, when he learned it from hearing such sale adjourned by the sheriff at his office; as that he on the same day he told John Kean, of said county, that such property was advertised for sale, and that on the day
 10 when such property was actually sold, said Kean instructed this deponent (whose employee this deponent is) to attend such sale, and bid the land up to a certain amount; that he, Kean, wanted said property, if it could be purchased at a certain price, for a man in the city of New York; and this deponent further says, that he bought such lands at such sale for sixteen thousand two hundred dollars, there being at the time several bidders for the same, and paid the money for them, and afterwards paid to the city of Elizabeth the sum of twenty-two hundred and seventy-two
 20 dollars and three cents for taxes and assessments on said lands; that by the directions of said Kean he caused the deed to be made by the sheriff to Robert W. DeForest.

And this defendant further says, that he at no time ever conspired with any one to defraud the defendants in the premises; that he never spoke to any one in relation to the matter except said Kean and his counsel, and one of the complainants, the latter of whom this deponent asked, the day before the sale took place, if the sale would actually take place the next day, and if any portion of the purchase
 30 money could remain on mortgage; that said complainant answered that the sale would certainly take place on the next day, and that the purchase money must be paid; and this deponent further says, that he has read the defendant's answer in this matter, and that he never, previous to such sale, exchanged a word with Jacob Davis, or with any one with whom the defendants were negotiating for a loan, in relation to such sale of said lands.

And this deponent further says, that he called on said defendants, at the request of said Kean, several times after
 40 such sale, and endeavored to induce them to give up the

possession of said lands; that he is the person whose affidavit is annexed to the petition in this application; that at one of such visits the said George Beatty offered to rent such lands until the next autumn; that he did not want them through the winter.

And this deponent further saith, that since such sale the said defendants have removed from such lands a part of the fencing material thereupon; that they have a herd of twenty cattle and upwards, and that they are permitted to go at large upon such lands, and are doing great damage to the same. 10

And this deponent further says, that he never told Elizabeth Beatty, or any one else, that he would give her back the said lands if she would pay for them, or anything like it; that said Elizabeth Beatty asked this deponent so to do at one time, and that he replied to her that he could not do so, and that he was acting for another in the matter.

And this deponent further saith, that such lands, at the very highest, are not worth at a cash sale more than twenty-five or twenty-six thousand dollars. 20

SAMUEL S. MOORE.

Sworn and subscribed before me July 10th, 1874.

J. R. FAIRBANK, *Notary Public.*

Union county, ss.—John Kean, of said county, on his oath saith—that he has heard read the preceding affidavit of Samuel S. Moore, and the statements therein contained of this deponent's instructions to said Moore, and the employment of said Moore by him, are in all respects true.

JOHN KEAN.

Sworn and subscribed before me, July 11th, 1874.

N. C. J. ENGLISH, *M. C.* 30

Union county, ss.—Jacob Davis, of said county, on his oath saith—that he is the person of that name mentioned in the answer of George Beatty and Elizabeth Beatty to the petition of Robert W. DeForest, in the cause above

named; that he has heard said answer read; that he is not nor ever has been a real estate or any other broker; that at the time mentioned in said petition he was and now is the president of the Elizabeth and Newark Horse Railroad Company, the president of the Dime Savings Institution, the vice-president of the Fire and Marine Insurance Company, and the vice-president of the First National Bank, and that his whole time and attention then were and now are occupied by the business of such corporations; that he
10 did undertake to procure a loan for said Elizabeth and George Beatty on the lands described in the papers in this cause, as a merely friendly form and on their urgent request; that he tried in several places to procure said loan, but was unsuccessful; that the only person who gave him any encouragement was Stelle Manning, of Perth Amboy; that then this deponent sent said Elizabeth and George Beatty to said Manning, and that said Manning agreed to lend them thirteen or fourteen thousand dollars; that this deponent told them, in Mr. Manning's presence,
20 that they would be obliged to pay him ten or fifteen per cent. on said loan, said Manning having told this deponent so.

And this deponent further says, that said Elizabeth and George Beatty did pay him twenty five dollars for the purpose of having a search of title to said property made, and that in their presence he handed such money to Charles T. Glen, an attorney-at-law doing business in the office of Parker & Keasbey, for that purpose; that said Glen took the money, and said that it would not be enough; that this
30 deponent never got any other money from said parties for his services in the matter, but, on the contrary, he spent twenty dollars in having appraisements of the property made for different corporations, in his endeavors to procure such loan.

And this deponent further says, that the reason why such loan was not made is as follows: that said Manning said he would not advance such money unless there were no other liens upon such lands; and that when search was
40 made it was found that there was a judgment, a large amount of taxes and a large amount of assessments there-

upon, and said George and Elizabeth Beatty stated that they should need upwards of twenty thousand dollars in all, and that said Manning refused to lend so much; and this deponent further saith, that he saw said Glen give to said Elizabeth Beatty the mortgage in said answer set out; that he never had the same and did not know until he read such answer that said mortgage had been recorded; and this deponent further saith, that he never had any conversation with Samuel S. Moore, John Kean or Robert W. DeForest, in relation to said lands or loan or suit, before such sale, 10 and never had any suspicion whatever that any one was expecting to buy such land; and that he does not know said DeForest at all.

JACOB DAVIS.

Sworn and subscribed before me, July 11, 1874.

N. C. J. ENGLISH, M. C.

Union county, ss.—Stelle Manning, mentioned in the foregoing affidavit, on his oath saith—that he has heard the same read; that the statements therein contained, so far as they relate to negotiations with him, are true; that he did not lend said money, because after such search was made 20 he found that he could not have a first lien upon said lands without making a much larger loan than he agreed to and than he desired to put upon the property. He further says that he never had any conversation with John Kean, Samuel S. Moore and Robert W. DeForest, in relation to the matter in any respect, and was not acquainted with said Kean or DeForest, and only slightly acquainted with said Moore; that he conspired with none of said parties to defraud any one, and had no suspicion that any one intended 30 to buy such lands; the other mortgage mentioned in the said answer he never saw, and did not know it was made until informed by said answer; and that he never had any money from said George and Elizabeth Beatty, but that, on the contrary, he paid to said Charles T. Glen, for such search, more than fifty dollars, but how much more he

don't recollect, the said Glen saying that he could not get the money from said George and Elizabeth Beatty.

S. MANNING.

Sworn and subscribed before me, July 11, 1874.

N. C. J. ENGLISH, *M. C.*

10 New Jersey, Union county, *ss.*—William McKinlay of said county on his oath saith—that he is a real estate owner in the city of Elizabeth, in the same ward in which is situate the land of Elizabeth Beatty, mentioned in the preceding affidavits; that he is acquainted with the value of real estate in such ward, and that said lands of Beatty at a cash sale are not worth more than twenty-five thousand dollars at the utmost.

WM. MCKINLAY.

Sworn and subscribed before me, July 13, 1874.

J. R. FAIRBANK, *Notary Public.*

20 Union county, *ss.*—Thomas B. Leggett, of said county, on his oath saith—that he is acquainted with the value of real estate in Elizabeth, and has bought and sold land in the ward in which that mentioned in the preceding affidavit is situate, to the amount of two hundred thousand dollars; that he is acquainted with said land, and that he thinks that at cash sale it is not worth over fifteen thousand dollars.

THOMAS B. LEGGETT.

Sworn and subscribed before me, July 13, 1874.

J. R. FAIRBANK, *Notary Public.*

30 Union county, *ss.*—Theodore C. English, of said county, on his oath saith—that he is a clerk in the office of J. R. & W. English, and that on this day he made diligent search in the records of mortgages in the Union county clerk's office, and that no mortgage made by Elizabeth or George

Beatty appear of record therein within one year last past, except one for six hundred dollars to a man named Tracy.

T. C. ENGLISH.

Sworn and subscribed before me, July 13, 1874.

GEO. S. PARROTT, M. C.

Order for Possession.

[Filed September 22, 1874.]

It appearing to the court, by the petition filed by Robert W. DeForest and the affidavit annexed thereto, that the said Robert W. DeForest purchased the mortgaged premises described in the bill of complainant, and foreclosed in the above stated cause, at the sale made thereof by the sheriff of the county of Union, by virtue of the execution issued in said cause, and that the said defendants, Elizabeth Beatty and George Beatty, who, at the time of filing said bill of complaint and making the decree in said cause, owned the equity of redemption, and was in possession thereof, retains the possession of the said mortgaged premises, and refuses to deliver up the possession thereof, and that the said Robert W. DeForest hath prayed the aid of this court, and it appearing that due and legal notice of this application hath been given to the said Elizabeth Beatty and George Beatty, and the Chancellor having considered the depositions taken in this matter, and the arguments of counsel, it is therefore, on this twenty-second day of September, in the year of our Lord eighteen hundred and seventy-four, ordered that said Elizabeth Beatty and George Beatty, defendants in this cause, on being served with a certified copy of this order, forthwith deliver up to the said Robert W. DeForest the possession of the mortgaged premises mentioned and described in the proceedings and decree in this cause, and in the deed of conveyance executed by the sheriff of Union county, to the said Robert

W. DeForest, in pursuance of said decree and execution thereon, and upon such service, accompanied with demand of possession, and refusal thereof, the said Robert W. DeForest apply for a writ of assistance, according to the course of the court in such case.

THEODORE RUNYON, *C.*

Appeal.

[Filed October 6, 1874.]

The defendants hereby appeal from the order of possession
10 issued by the Chancellor in this cause on the twenty-second day of September, to the Court of Appeals, in the last resort in all cases of law.

JOHN A. MILLER, JR.,
Solicitor of Defendants.
CORTLANDT PARKER,
Of Counsel.

Dated October 5th, A. D. 1874.

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

CORTLANDT PARKER,
Of counsel with defendants.

Petition of Appeal.

Between Elizabeth Beatty and George Beatty, her husband, Appellants, and Thomas Frazier and William Frazier, administrators of Thomas Frazier, deceased Appellees.	}	On Bill, &c.
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[Filed October 6, 1874.]

To the Honorable the Court of Appeals, in the last resort in all causes of law:—The humble petition of Elizabeth Beatty and George Beatty, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by an order of the Court of Chancery, made in a certain cause wherein Thomas Frazier and William Frazier, administaators of Thomas Frazier, deceased, are complainants, and Elizabeth Beatty and George Beatty, her husband, are defendants, in that the same directs that the said Elizabeth Beatty and George Beatty, defendants in said cause, on being served with a certified copy of said order, forthwith deliver up to Robert W. DeForest the possession of the mortgaged premises mentioned and described in the pleadings and decree in said cause, and in the deed of conveyance executed by the sheriff of the county of Union to the said Robert W. DeForest in pursuance of said decree and execution thereon, and upon such service, accompanied with demand of possession and refusal thereof, the said Robert W. DeForest may apply for a writ of assistance, according to the course of this court in such case.

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And your petitioners humbly appeal from the said order of possession, which orders, as aforesaid, upon the ground that the same is erroneous, and that it ought, according to the rules of equity, to have been denied.

Your petitioners therefore pray that the said order of the said Chancellor may be reversed, set aside, and for nothing holden. And that your petitioners may have such relief on the premises as to this honorable court shall seem meet.

October 5th, A. D. 1874.

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JOHN A. MILLER,
Solicitor of Appellants.
COURTLANDT PARKER,
Of Counsel with Appellants.

Order to Stay.

[Filed October 12, 1874.]

It appearing to the court that an appeal has been taken from the order of possession made in this cause, and dated the twenty-second day of September, one thousand eight hundred and seventy-four, it is ordered, on motion of John
20 A. Miller, Jr., solicitor of said appellants, Elizabeth Beatty and George Beatty, that all proceedings upon said order of possession, or founded thereon, do stay pending such appeal.

THEODORE RUNYON, C.

Dated October twelfth, eighteen hundred and seventy-four.

Answer.

[Filed November 11, 1874.]

0 The answer of Robert W. DeForest to the petition of appeal filed in the above cause, appealing from an order of
30 the Court of Chancery in a cause wherein the above named parties are complainants and defendants, by which order it

was directed that upon service of a certified copy of the same, the said appellants should forthwith deliver up to said Robert W. DeForest the possession of the premises mentioned in the petition of appeal, and that upon such service and demand of possession and refusal thereof, the said Robert W. DeForest may apply for a writ of assistance, according to the course of the Court of Chancery in such case, shows that such order of possession is not erroneous, and that it ought not, according to the rules of equity, to have been denied; and that said order should not be reversed, set aside, and for nothing holden, but that the same is equitable and just. 10

J. R. & W. ENGLISH,

Solicitors for, and counsel with, Robert W. DeForest.

OPINION.

THE CHANCELLOR—The petitioner, Robert W. DeForest, purchased the mortgaged premises at sheriff's sale, under the execution issued in this cause. The sale appears to have been fair. No complaint is made of the action of the sheriff. Nor does there appear to be ground for any. The property was struck off to Samuel S. Moore, the agent of the petitioner, at the price of \$16,200. The petitioner paid the money, and received a deed from the sheriff, accordingly. The respondents have answered the petition. In their answer they allege that one Jacob Davis, prior to the sale, undertook to obtain a loan on the property for them, to enable them to save it from sale, and they charge bad faith and duplicity on his part in the matter. The answer alleges, also, that the respondents believe that they were defrauded out of the property by the conspiracy of Davis and the person from whom he was to obtain the loan, and Moore, and other persons. The statements of the answer are verified only by the oaths of the respondents, and no other testimony is offered by them, except the affidavits of two persons who swear that the property was worth on the day when it was sold, at least \$45,000. The affidavits put in on behalf of the petitioner overthrow the charges and statements of the answer, in regard to the alleged fraud and conspiracy. On a full and careful examination of the case, I am unable to find any evidence of either fraud or conspiracy. Davis appears to have been acting merely as a friend to the respondents in the effort to obtain the desired loan, and his endeavors seem to have been unsuccessful, because the respondents required much more money for their purposes than they had led him to suppose. He swears that he never had any conversation with Moore or with Kean, who directed Moore to purchase the property at the sheriff's sale for DeForest, or with DeForest, in relation to the property or the loan or the suit, before the sale; and never had any suspicion whatever that any one was expecting to buy the land, and he further swears that he does not know DeForest at all. Moore swears that he first

learned that the land was to be sold by hearing the sale adjourned by the sheriff, at the latter's office; that he then told Kean that the property was advertised to be sold, and that on the day it was sold, Kean, in whose employment he is, instructed him to attend the sale and bid the land up to a certain sum, Kean saying that he wanted the property, if it could be purchased at a certain price, for a man in the city of New York; that he purchased the property for \$16,200, there being several bidders besides himself; that he afterwards paid to the city of Elizabeth \$2,272.03, for 10 unpaid taxes and assessments on the property, and that, by Kean's direction, he caused the deed to be made to De-Forest. He swears that he at no time conspired with any one to defraud the respondents, and that he never spoke to any one in relation to the matter, except Kean and Kean's counsel, and one of the complainants, of whom he asked, the day before the sale, whether the sale would certainly take place on the next day, and whether any portion of the purchase money could remain on bond and mortgage, and was told in reply that the sale would certainly take place 20 on the next day, and that the purchase money must be paid. He denies explicitly the statements made by the respondents in their answer, as to conversations with him, and swears that he never, before the sale, exchanged a word with 25 Davis, or with any one with whom the respondents were negotiating for a loan, in relation to the land or the sale. He also swears that the land, at the very highest, is not worth, at a cash sale, more than \$25,000 or \$26,000. Kean in his affidavit, affirms the truth of Moore's statements, as to the employment by him of the latter, and the instructions the latter received from him. The person to whom 30 Davis applied for the loan also swears to the circumstances of that transaction, and denies all conspiracy against the respondents, and swears that he had no suspicion that any one intended to buy the land. Two witnesses, William McKinley and Thomas B. Leggett, testify on the part of the petitioner as to the value of the land. The former is an owner of real estate in the same ward in which the land is situated. He swears that he is acquainted with the 40 property, and that at a cash sale it is not worth more than

\$25,000 at the utmost. The latter testifies that he is acquainted with the value of real estate in Elizabeth, and has bought and sold land in the ward in which the premises in question are situated to the amount of \$200,000; that he is acquainted with the property, and that he thinks that at a cash sale it is not worth more than \$15,000.

The petitioner was a fair purchaser at a fair sale. He has spent in the purchase money and taxes and assessments, over \$18,000. I see nothing to justify me in withholding
10 from him the desired order for possession.

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