

Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

Between

SAMUEL G. DECOURSEY,
HUGH HAMILTON, and
CHARLES T. EVANS, trading, &c., appellants,

and

CHAS. COLLINS, JAMES C.
ATWATER, and LEWIS F.
WHITIN, trading, &c., appellees.

} On appeal.

Peter L. Voorhees, of counsel with appellants.

Parker & Keasbey, of counsel with the appellees.

Bill of Complaint.

[Filed November 7, 1866.]

*To the Honorable Abraham O. Zabriskie, Chancellor of the State
of New Jersey.*

In chancery complaining, your orators, Samuel G. DeCoursey, Hugh Hamilton, and Charles T. Evans, copartners, trading under the name, style, and firm of DeCoursey, Hamilton & Evans, of the city of Philadelphia, and state of Pennsylvania, showeth—

1. That on or about the thirtieth day of April, in the year 10

of our Lord one thousand eight hundred and sixty-six, William H. Little, of Elizabeth, in the county of Union, and state of New Jersey, and Charles H. Dana, of the city of Brooklyn, county of Kings, and state of New York, copartners, trading under the name, style, and firm of Little & Dana, engaged in the manufacture of goods consisting wholly or in part of wool, at Good Intent, in the township of Washington, county of Camden, and state of New Jersey, became, and were indebted to your orators in the sum of ten
10 thousand dollars, for a special loan and advance made by your orators to the said William H. Little and Charles H. Dana, trading, &c., as aforesaid.

2. That to secure the payment of the said sum of ten thousand dollars, with interest, the said William H. Little and Charles H. Dana, by a certain deed, bill of sale, or chattle mortgage, bearing date the said thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty-six, did grant, bargain, and sell unto your orators, all the
20 machinery for the manufacturing of goods, consisting wholly or in part of wool, then in or that might thereafter be put in the mills and premises of the said Little & Dana, known as the Blackwood mills, and all other goods and chattels mentioned in the schedule thereto annexed, then in the mills known as the Blackwood mills, and premises of the said Little & Dana, in the town of Good Intent, county of Camden, and state of New Jersey.

3. That said mortgage, bill of sale, or deed, contained a condition, and the same was upon condition, that if the said William H. Little and Charles H. Dana, should and
30 do well and truly pay unto your orators, their executors, administrators, or assigns, the just and full sum of ten thousand dollars, with interest, at any time within thirty days after notice, in writing, or demand upon them, the said William H. Little and Charles H. Dana, by your orators for the payment of said sum of ten thousand dollars, then the same should be void; and the said William H. Little and Charles H. Dana covenanted in and by said mortgage, bill of sale, or deed that in case default should be made in the payment of the said sum of ten thousand dollars, after demand as
40 aforesaid, then it should be lawful for your orators, with the

assistance of any person or persons, to enter the said mill and premises, or such other place as the said goods or chattels may be placed, and take and carry away the said goods and chattels, and sell and dispose of them for the best price they could obtain, and out of the money arising therefrom, to retain and pay the said sum of ten thousand dollars, and all charges touching the same, and that until a default in the payment of the said sum of ten thousand dollars, the said William H. Little and Charles H. Dana, were to remain and continue in the quiet and peaceable possession of said goods 10 and chattels, and the full and free enjoyment of the same.

4. That on the twenty-ninth day of September, eighteen hundred and sixty-six, a true copy of the said mortgage, bill of sale, or deed, was filed in the clerk's office of the county of Camden, at Camden, and numbered and entered in the records of said office, according to law, the said county of Camden being the county where the property so mortgaged was at the time of the execution of said instrument, and where the same has ever since remained, and now is. That a true copy of said mortgage, bill of sale, or deed, was, on the 20 thirty-first day of October, in the year last aforesaid, filed in the clerk's office of the county of Gloucester, at Woodbury, and numbered and entered in the book of records of said office, according to law, the said county of Gloucester being the county in which the said Charles H. Dana, as your orators have been informed, and believe, resided or claimed his residence at the time of the filing of the same. That a true copy of said mortgage, bill of sale, or deed, was, on the second day of November, in the year eighteen hundred and sixty-six, filed in the clerk's office of the county of Union, 30 at Elizabeth, and numbered and entered in the books of records of said office, according to law, the said county of Union being the county wherein the said William H. Little, one of the mortgagors who executed said deed, bill of sale, or mortgage, resided at the time of the execution of said mortgage, and at the time of filing the same as last above stated.

5. That the property, goods, and chattels, contained and enumerated in the schedule annexed to the said deed, bill of sale, or mortgage, are as follows, to wit, one set of forty-40

eight inch cards and clothing complete, one three hundred spindle jack, seven broad plain looms, Furbush & Gage, makers; one broad gig, one steam engine, Corless' patent; one broad drying machine, one hydro extractor. That at the time of the execution of the said mortgage, there was then in said mill, and now still remaining therein, the following machinery for the manufacture of goods, consisting wholly, or in part, of wool, (including in part the goods mentioned and enumerated in the schedule annexed to the mortgage of
10 your orators), viz. four sets of forty-eight inch cards, thirteen broad plain looms, eleven broad twelve harness fancy Crompton looms, four broad twenty-four harness fancy Crompton looms, four three hundred spindle jacks, two double fulling mills, six broad gigs, one washing machine, two broad shearers, one broad brush, one hydraulic press, one press plate heater, one wool drying machine, one thirty inch wool picker, one burr picking machine, lot of belting and pulleys, one hydro extractor, one forty horse power steam engine, Corless' patent.

20 6. That on or about the twenty-ninth day of September last past, your orators gave notice, in writing to, and made demand upon the said William H. Little and Charles H. Dana, trading, &c., as aforesaid, for the payment of the said sum of ten thousand dollars advanced and loaned to them by your orators, and secured to be paid, as aforesaid, by the said mortgage, bill of sale, or deed, above mentioned and set forth, and that the said William H. Little and Charles H. Dana, trading, &c., as aforesaid, have hitherto failed and neglected to pay to your orators the said sum of ten thousand
30 dollars, or any part thereof, or the interest thereon, for more than thirty days after such notice in writing, and demand upon them for the payment of said sum by your orators as aforesaid.

7. That the said mortgage, bill of sale, or deed, and the said notice in writing and demand for the payment of the said sum of ten thousand dollars, to which your orators refer for certainty, are in their possession, ready to be produced and proven.

40 8. That the said William H. Little and Charles H. Dana, as your orators have been informed, and believe, on the third

day of August, eighteen hundred and sixty-six, made and executed a mortgage upon the goods and chattels, and machinery then in the said mill of the said Little & Dana, and mentioned and enumerated in a schedule annexed in said mortgage; that the said goods thus enumerated and mentioned in said schedule, are the same goods and machinery that are included in the mortgage of your orators, and hereinbefore mentioned and enumerated in paragraph number five, and that the said last mentioned mortgage was executed to Charles Collins, James C. Atwater, and Lewis F. Whitin, 10 copartners, trading as Collins, Atwater & Whitin, to secure the payment of ten thousand dollars, on or before the first day of January, eighteen hundred and sixty-seven, and also all sums of money that were then, or might thereafter become due to the said Collins, Atwater & Whitin, from the said Little & Dana, on accounts, notes, drafts, or otherwise, and to indemnify and save harmless the said Collins, Atwater & Whitin, and their legal representatives, from all loss by reason of any and all advances, acceptances, endorsements, or other liabilities made or incurred by said Collins, 20 Atwater & Whitin, at the request of said Little & Dana, not exceeding in all, at any one time, twenty-five thousand dollars, and shall repay all such advances, costs, and expenses therefrom; which said last mentioned mortgage was, on the eleventh day of August, eighteen hundred and sixty-six, filed in the office of the clerk of Camden county, at Camden, and numbered and entered in the books of record of said office according to law, the said county of Camden being the county where the property so mortgaged by said last mentioned mortgage was at the time of the execution of said 30 instrument; that the said last mentioned mortgage was not filed in the office of the clerk of the county of Union, where the said William H. Little, one of the mortgagors, resided at the time of the execution of the said last mentioned mortgage, and now resides; that the said last mentioned mortgage was made and executed, and delivered to the said Collins, Atwater & Whitin, with, and after full notice to them of the mortgage of your orators, and the same was received by them with full notice of the existence of your orators' said mortgage, and of the rights of your orators in 40 said mortgaged property; that at the time of the execution

of said mortgage by the said William H. Little and Charles H. Dana, to the said Collins, Atwater & Whitin, and at the time of the filing of the mortgage of your orators as aforesaid, the said Collins, Atwater & Whitin had, as your orators have been informed and believe, in their possession, and consigned to them by the said Little & Dana, for sale upon commission, for the account of the said Little & Dana, large quantities of goods belonging to the said Little & Dana, upon which the acceptances, endorsements, and other liabilities of the said Collins, Atwater & Whitin, made or incurred at the request of the said Little & Dana, or on their account, and referred to and mentioned in said mortgage had been made, and that since the execution of the said mortgage by the said Little & Dana, to the said Collins, Atwater & Whitin, and since the filing of the mortgage of your orators, as aforesaid, the said Little & Dana have consigned and delivered to the said Collins, Atwater & Whitin, large quantities of goods belonging to them, to be sold on commission for their account, as aforesaid, and that it was agreed, as your orators have been informed, and believe, by and between the said Little & Dana, and the said Collins, Atwater & Whitin, that the money arising from the sale of said goods, so as aforesaid consigned and delivered to them, should be applied to and for the payment and satisfaction of the said indebtedness of the said Little & Dana, to the said Collins, Atwater & Whitin, and for and towards the payment and satisfaction of all advances, acceptances, endorsements, and other liabilities made or incurred by the said Collins, Atwater & Whitin, for the said Little & Dana, at their request, and referred to and mentioned in their said mortgage; and that if the said goods, so as aforesaid consigned and delivered by the said Little & Dana to the said Collins, Atwater & Whitin, had been sold and disposed of by the said Collins, Atwater & Whitin, the money arising from the sale of the aforesaid goods, after paying all commissions and charges, would have fully paid and satisfied unto the said Collins, Atwater & Whitin, all the sums of money due to them from the said Little & Dana, on accounts, notes, drafts, or otherwise, and also all advances, acceptances, endorsements, or other liabilities made or incurred by them at the request of or on account of the said Little & Dana, mentioned and re-

ferred to in their said mortgage at the time of the execution of their said mortgage, or at the time of the filing of the said mortgage of your orators as aforesaid.

9. That the said mortgage mentioned in paragraph eight, is uncanceled and unsatisfied of record, and is claimed to be a subsisting lien upon the said goods and chattels and machinery mortgaged to your orators, as aforesaid; but your orators show, charge, and insist, that the said mortgage was executed and filed, and entered in the office of the clerk of the county of Camden, subsequent to the execution of your orators' said mortgage, and with full notice thereof, and with notice of the rights of your orators in the said goods and chattels, and machinery mortgaged to them as aforesaid, and that neither the said mortgage or a true copy thereof, was ever filed in the clerk's office of the county of Union, in which county the said William H. Little, one of the mortgagors, resided at the time of the execution of said mortgage, and that the said mortgage is subject to the lien and encumbrance of your orators' said mortgage upon the said goods and chattels and machinery. 20

10. That the whole of the said principal sum of ten thousand dollars, with interest thereon, from the day of the date of said mortgage, is due and payable to your orators.

11. That your orators have never had any possession of the said goods and chattels and machinery, mentioned and referred to in the said mortgage, or any part thereof, or received any issues, rents, or profits thereof.

12. That your orators have requested said William H. Little and Charles H. Dana, trading, &c., as aforesaid, and said Charles Collins, James C. Atwater, and Lewis F. Whitin, trading, &c., as aforesaid, who are the defendants in this suit, to pay unto them said principal and interest, so due on said mortgage, or to grant and deliver unto your orators, their interest in said goods and chattels and machinery, as payment to their fair value upon said mortgage debt, with which request they, and all of them, refused and neglected to comply. 30

In tender consideration whereof, and inasmuch as your orators are remediless in the premises in the courts of common law, and can only have adequate relief in a court of equity, and to the end— 40

1. That the defendants, and each of them, may answer

upon their respective oath or affirmation, according to the best of their respective knowledge, information, and belief, all and singular the premises, and each fact above stated, and that your orators' said mortgage may be declared to be a lien upon the said property mentioned and referred to in said mortgage, and schedule thereto annexed, prior to the lien of the said mortgage of the said Collins, Atwater & Whitin.

2. That an account may be taken, under the direction of this court, of the amount due upon your orators' said mortgage, for principal and interest.

3. That the defendants, or some of them, may be decreed to pay unto your orator the amount so found due, with interest thereon, and your orators' costs in this suit, by a short day to be appointed by this court, and that in default thereof, said defendants, and each of them, do stand debarred and forever foreclosed of all equity of redemption in said goods and chattels and machinery, mortgaged as aforesaid.

4. That the said goods and chattels and machinery may be sold by the order of this court, and out of the proceeds of said sale your orators may be paid the amount so found due upon his said mortgage, with interest thereon, and their lawful costs in this suit.

5. That if the proceeds of said sale shall not be sufficient to pay said amount, with interest and costs, that the said William H. Little and Charles H. Dana may be decreed to pay the deficiency.

6. That your orators may have such other relief as the nature of their case requires, and as may be agreeable to equity. May it please your Honor, to grant unto your orators the state's writ of subpœna, issuing out of and under the seal of this court, to be directed to the said William H. Little, Charles H. Dana, Charles Collins, James C. Atwater, and Lewis F. Whitin, commanding them, on a certain day, and under a certain penalty therein expressed, to be and appear before your Honor in this court, then and there to answer the premises in manner aforesaid, and to stand to, abide by, and perform such order and decree as to your Honor shall seem meet therein; and your orators, as in duty bound, will ever pray, &c.

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PETER L. VOORHEES,

Solicitor for and of counsel with complainants.

Answer.

[Filed January 22, 1867.]

The answer of Charles Collins, James C. Atwater, and Lewis F. Whitin, defendants, to the bill of complaint of Samuel G. DeCoursey, Hugh Hamilton, and Charles T. Evans, complainants.

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for 10 answer thereto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer un'to, answer and say—that they have no knowledge, except from the statements of said bill, of the indebtedness of the said William H. Little and Charles H. Dana, to the said complainants, alleged in said bill, and they leave the said complainants to make such proof of the nature and amount thereof as they may see proper.

And these defendants further answering say, that they have no knowledge of the execution of the chattel mortgage 20 by the said Little & Dana to the said complainants, except as derived from the statements contained in said bill, and the allegations of the said Little & Dana and the said complainants, made to these defendants since the filing of said complainants' mortgage, and long after the execution and filing of the mortgage of these defendants, hereinafter mentioned, and they pray that the said complainants may be required to make proof of the execution and tenor of said mortgage, and the filing thereof.

And these defendants further answering say, that they 30 have no knowledge of the alleged demand made by the complainants, upon the said Little & Dana, nor of the amount of money now due to the complainants from said firm.

And these defendants further answering say, that they admit it to be true, that the said Little & Dana, on the third day of August, eighteen hundred and sixty-six, executed a mortgage to these defendants upon the goods and chattels

and machinery then in the mill of said Little & Dana, at Good Intent, in the county of Camden, and mentioned and enumerated in a schedule annexed to said mortgage, to secure the payment of ten thousand dollars on the first day of January, eighteen hundred and sixty-seven, and also all sums of money that were then due, or might thereafter become due, to these defendants, from said Little & Dana, on accounts, notes, drafts, or otherwise, and to indemnify, and save harmless these defendants and their legal representatives, from all
10 loss by reason of any and all advances, endorsements, and other liabilities made or incurred by these defendants, at the request of said Little & Dana, not exceeding in all at any one time twenty-five thousand dollars, and to re pay all such advances, costs, and expenses therefrom; and that the said mortgage was, on the eleventh day of August, aforesaid, filed in the clerk's office of the county of Camden, as stated in said bill, and that the same was not filed in the office of the clerk of the county of Union; and these defendants believe
20 said mortgage are the same goods and machinery included in the said mortgage of the complainants.

And these defendants further answering say, that they expressly deny that their said mortgage was executed and delivered to them with or after any notice whatever of the alleged mortgage given to the said complainants, and they deny that they had any notice or knowledge whatever of the existence of the said mortgage, alleged to have been given to the said complainants, or of any rights or claims of the complainants in or to the said mortgaged property, or any
30 part thereof.

And these defendants further answering say, that they admit it to be true, that at the time of the filing of their said mortgage they had in their possession, as commission merchants, for sale on account of said Little & Dana, a large quantity of goods of said Little & Dana, and that since the filing of said mortgage they have received from said Little & Dana some small consignments of goods for sale, upon all of which they made advances equal to the present value thereof, and that if the said goods had been sold by these
40 defendants for more than sufficient to pay the advances made

thereon by these defendants, with expenses and commissions, the surplus would, according to the understanding with said Little & Dana, have been applied to the payment of the indebtedness secured by said mortgage; but these defendants deny that the said goods could at any time have been sold by them for such price as to have re-paid the said advances and expenses, and to have paid and satisfied said mortgage; and they further say, that the said goods were, by mutual arrangement, placed under the management of William P. Dana, the father of the said Charles H. Dana, for the purpose 10 of selling the same, and that owing to the prices fixed thereon by said William P. Dana, and Little & Dana, and the unusual dullness of the market, but few sales could be made, and the greater portion of the goods remain on hand; and these defendants are unable to sell them for enough to pay the actual advances made upon them; and that if they should now be sold at the present depressed rates, they would not bring the amount of such advances, and would produce no surplus to apply to the satisfaction of the debt secured by said mortgage, which is due to these defendants from said Little & 20 Dana, over and above the amount of the advances made upon said goods, to the full amount of twenty-five thousand dollars, as hereinafter stated.

And these defendants, further answering, say, that although their said mortgage was not filed in the office of the clerk of the county of Union, where William H. Little, one of the said firm of Little & Dana, resided at the time of its execution, it is not, for that reason, or for any other, subsequent to the lien of the said mortgage of the complainants; that the said mortgagors, being the partnership firm of Little & 30 Dana, doing business in the city of New York, as described in said mortgage, and carrying on their manufacturing business at their mill or factory in Camden county, and the said Dana, one of said firm, being then a resident of the state of New York, did not reside in the state of New Jersey, within the meaning and intent of the act concerning chattel mortgages, and that the office of the clerk of the county of Camden, where the said property was situated at the time of the execution of said mortgage, and where the mortgage of the said 40 complainants was first filed, was the proper place for the

filing of the said mortgage, under the provisions of the statute, and that the said mortgage of these defendants is a lien and encumbrance on said goods and machinery, prior to the mortgage of the said complainants, under the provisions of the said act.

And these defendants, further answering, say, that they are commission merchants, doing business in the city of New York, and that their firm was organized on the first day of August, eighteen hundred and sixty-six, under the name of
10 Collins, Atwater & Whittin; that prior to the formation of said firm, the said Little & Dana were indebted to the firm of Richards & Collins (which consisted of William M. Richards and this defendant, Charles Collins,) in the sum of seventy-three thousand three hundred and seventeen dollars and sixty-seven cents, of which fifty thousand three hundred and seventeen dollars and sixty-seven cents was for advances made by Richards & Collins for goods received from Little & Dana, and the balance of twenty-three thousand dollars was for confidential loans made to said Little & Dana, as follows:
20 ten thousand dollars, February, 1865; five thousand dollars, March 26th, 1866; five thousand dollars, April 5th, 1866; and three thousand dollars, April 12th, 1866; that at the time of said advance of March 26th, 1866, it was agreed between Little & Dana and the said Richards & Collins, that they, the said Little & Dana, should give to said Richards & Collins a mortgage to secure such loans, on the property in said mill, and that, on the twelfth day of April, 1866, at the time of the last of said loans, the said Little & Dana did execute and deliver to Richards & Collins a mortgage on said property,
30 to secure the payment of any amount due to them, up to twenty-five thousand dollars; that at the date of this mortgage, the amount due to Richards & Collins, over advances on goods, was twenty-three thousand dollars; and that said mortgage was not filed by Richards & Collins, they having, at that time, confidence in the assurances of Little & Dana, that no other lien on said property existed or should be created by them.

And these defendants, further answering, say, that on the first day of August, 1866, the said Little & Dana arranged
40 with these defendants to pay to the firm of Richards & Collins the full amount of their indebtedness to the last named

firm, being seventy-three thousand three hundred and seventeen dollars and sixty-seven cents, and to make to them, the said Little & Dana, a further advance of five thousand dollars; and it was thereupon agreed, that these defendants should pay to Richards & Collins, fifty-three thousand three hundred and seventeen dollars and sixty-seven cents, on account of the goods of Little & Dana, in the hands of Richards & Collins, which were to be turned over to these defendants, and should pay to Richards & Collins twenty thousand dollars, being the amount then due on said mortgage, and 10 should also advance five thousand dollars in cash, and that Little & Dana should execute a mortgage to secure the said twenty thousand dollars paid Richards & Collins, and the five thousand dollars advanced; that this agreement was fully carried out; and these defendants did pay to Richards & Collins the said sums of fifty-three thousand three hundred and seventeen dollars and sixty-seven cents, and twenty thousand dollars, and did advance to said Little & Dana the sum of five thousand dollars, and received the goods in the hands of Richards & Collins, and the said mortgage, dated August 20 third, eighteen hundred and sixty-six, mentioned in the complainants' bill, which mortgage was by these defendants filed as aforesaid in the clerk's office of Camden county, on the 11th day of August, 1866, and immediately after receiving the same from Philadelphia, where it had been sent for execution.

And these defendants, further answering, say, that at the time of making these payments, they were assured by said Little & Dana that the said mortgaged property was fully paid for, and that there was no lien or encumbrance thereon; and these defendants did not, at that time, nor until after the 30 filing of said complainants' mortgage in Camden county, have any knowledge or intimation whatever of the existence of said complainants' mortgage.

And these defendants, further answering, say, that the mortgage of the complainants was given to secure advances made to Little & Dana long before the execution thereof, and before the execution of said mortgage to Richards & Collins; and these defendants charge that said mortgage was given to secure a pre-existing debt, and that no money was paid by the complainants at the time of the execution of 40 said mortgage, and that the complainants were not, in equity,

mortgagees in good faith, as against the said prior mortgage given to Richards and Collins as aforesaid.

And these defendants further charge, that the said complainants, by an understanding and arrangement with said Little & Dana, withheld their said mortgage from being filed until after the said advances were made by these defendants, and after the execution and filing of the said mortgage given to these defendants, and did not file the same any where until after they obtained actual notice of the mortgage of
 10 these defendants, from the records in Camden county; and that these defendants are mortgagees in good faith, having parted with their money without notice of the complainants' mortgage, and as such are entitled, under the statute, to priority over the mortgage of the complainants, which was not filed until long after these defendants had parted with their money, on the security of said mortgage, nor until after the complainants had actual notice of the mortgage of these defendants.

And these defendants further say, that the said sum of
 20 twenty-five thousand dollars, secured by said mortgage, still remains unpaid, with the interest accrued thereon.

All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray that a sale may be made of the said mortgaged premises, under the decree of this court, and that out of the proceeds thereof these defendants may be first paid the amount due to them as aforesaid, on their said mortgage, with the interest accrued thereon, and their costs and charges in this behalf sustained.

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PARKER & KEASBEY,

Solicitors and of counsel with said defendants.

State of _____, county of _____, ss.—

Charles Collins, James C. Atwater, and Lewis F. Whitin, the defendants named in the foregoing answer, being duly sworn, say, that the matters and things therein set forth, so far as they relate to their own acts, are true; and so far as they relate to the acts of others, they believe them to be true.

CHARLES COLLINS.

J. C. ATWATER.

LEWIS F. WHITIN.

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Sworn and subscribed, this 21st day of January, 1867, before me.

J. B. NONES,
Commissioner of New Jersey in New York.

Replication.

[Filed January 31, 1867.]

These repliants, saving and reserving to themselves all, and all manner of advantage of exception to the manifold insufficiencies of the said answer of the said Charles Collins, James C. Atwater, and Lewis F. Whitin, three of the defendants, for replication thereunto, say—that they will aver and prove their said bill to be true, certain, and sufficient in the law, to be answered unto, and that the said answer of the said defendants, is uncertain, untrue, and insufficient to be replied unto by these repliants; without that, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is untrue; all of which matters and things these repliants are, and will be ready to aver and prove as this honorable court shall direct, 10 and humbly pray, as in and by their said bill they have already prayed.

PETER L. VOORHEES,
Solicitor for and of counsel with complainants.

Testimony.

[Filed December 20, 1867.]

Examination of witnesses in the above stated cause, taken before Charles P. Stratton, master, at his office in the city of Camden, on the fourteenth day of May, A. D. 1867, at the hour of ten o'clock in the forenoon, pursuant to no- 30

tice given in said cause, taken in the presence of Peter L. Voorhees, esq., the solicitor of complainants, and of Anthony Q. Keasbey, esq., solicitor of the defendants, Collins, Atwater, and Whitin.

James Armstrong, a witness produced on the part of complainants, being duly sworn, saith—I reside in Germantown, in the county of Philadelphia, and am a manufacturer; I am not engaged at this time in manufacturing; I am not superintendent of the Blackwoodtown mills; I am somewhat acquainted with Mr. Dana, one of the defendants in
10 this suit.

Quest. Have you ever had any conversation with him in reference to the mortgages upon the machinery in the mills at Blackwoodtown, known as Good Intent Mills, and held by DeCoursey, Hamilton & Evans, and Collins, Atwater & Whitin?

Ans. Yes, I have.

Quest. When, where, and what was it? [This question objected to.]

20 *Ans.* I asked Mr. Dana whether Collins, Atwater & Whitin were aware of the mortgage held by DeCoursey, Hamilton & Evans, and he stated that they were; this must have been between the first of January and the first of February of the present year; the conversation took place in the Continental hotel, Philadelphia.

Quest. Was that all that was said?

Ans. There was a good deal of other talk, but I wanted to find out who was the most interested in it; which of the parties holding the mortgage had the most interest, so that
30 I might deal with them for my son.

Quest. Did not Mr. Dana state very confidently, that Collins, Atwater & Whitin had notice of the mortgage of Hamilton, DeCoursey & Evans? [Objected to.]

Ans. Yes, that is just what he did say.

Quest. Did he say he would swear it? [Objected to.]

Ans. He said that that would be his evidence.

Quest. Where is Dana?

Ans. I do not know where he is.

JAMES ARMSTRONG.

Sworn and subscribed before me, this fourteenth day of May, A. D. 1867.

CHARLES P. STRATTON, *M. C.*

Samuel G. DeCoursey, a witness produced on the part of complainants, being duly sworn, deposes and saith—I am one of the complainants in this cause, and was a member of the late firm of DeCoursey, Hamilton & Evans.

Quest. Were Little & Dana indebted to your firm at any time?

Ans. They were, in large amounts. 10

Quest. Did you, for any part of that indebtedness, have a mortgage?

Ans. We did.

Being shown a paper dated April 30th, 1866, marked *Exhibit A*, on the part of the complainants, witness says—this is the mortgage that was given to us, to which I have referred; I do not know Edward W. Crittendon, except as I have heard Mr. Dana speak of him; I think I have understood him to be the counsel and brother-in-law of Mr. Dana; he lives, I believe, in New York or Brooklyn; I 20 know the handwriting of William H. Little and Charles H. Dana; the handwriting to this instrument is the proper handwriting and signatures of said William H. Little and Charles H. Dana; the mortgage, *Exhibit A*, was executed and delivered to us about the time it bears date; there was a mortgage executed to us prior to this one, about the eleventh of April, 1866; this last mentioned mortgage was refused by us on account of some informality respecting it, and the mortgage, *Exhibit A*, executed in the place of it.

Quest. What was the consideration of that mortgage? 30

Ans. It was given in consideration of a special loan of \$10,000, made by our firm to Little & Dana.

Quest. How was that loan made?

Ans. It was made at sundry times, by the issuing of our acceptances, some of which we negotiated for them, remitting to them the money.

Quest. Are those acceptances still unpaid, to the amount of \$10,000?

Ans. Yes, they are; I mean, of course, they have been paid by us, but not by Little & Dana.

Quest. Were those acceptances renewed by you, and when did the last ones become due?

Ans. They were renewed by us at various times, as far back as from February 14th, 1865; the acceptances remaining unpaid by Little & Dana are dated July 28th, 1866, at four months, for \$5000; August 25th, 1866, at four months, for \$5000.

10 [These two acceptances here produced, and offered in evidence, marked by me *Exhibit B*, on the part of complainants.]

Quest. At the time you took this mortgage, did you have any conversation with Little & Dana, as to whether the property was in any way encumbered? [Objected.]

Ans. Mr. Dana assured me that there was no encumbrance upon the property. He agreed to give us a mortgage for \$10,000, stating that there was no encumbrance upon the property, but asked of us that we would not file said mortgage. A few days after this first conversation, Mr. Dana
20 stated that he thought if he gave us a mortgage, he ought to give Richards and Collins one, to cover the amount of a special loan with which he said they had accommodated him for \$10,000, and that he had no doubt they would agree not to file their mortgage; we finally wrote to Messrs. Little & Dana, to the effect that we would accept the mortgage, stipulating, however, that they should give us, I think, ten days' notice, prior to the issuing of any other mortgage by them, that we might have time to record our mortgage; they likewise agreed to advise us promptly of any circumstance
30 that might arise affecting, or likely to affect, our interest, that we might protect ourselves by recording our mortgage; we received a letter from them, dated May 2d, 1866, with our mortgage, which said letter I here produce.

[Letter produced, and marked *Exhibit C*, on part of complainants.]

Quest. In accordance with the agreement, as stated by you, and this letter, did you hold your mortgage without filing?

Ans. We did, until September 29th, 1865, or about that day—a short time prior to the 1st of October—which day I

supposed was the earliest upon which Richards & Collins could file their mortgage.

Quest. When you went to file your mortgage at the clerk's office in the county of Camden, did you discover any other mortgage on file?

Ans. I did—a mortgage to Collins, Atwater & Whitin.

Quest. Immediately after the filing of your mortgage, did you give notice to Little & Dana, in writing, for the payment of the sum of money secured by your mortgage?

Ans. I did, and received from them a written acknowledgment of the service of said notice; this is the notice served upon them, which I now produce. 10

[Notice produced and offered in evidence, marked by me *Exhibit D*, on the part of complainants.]

Quest. After giving that notice, did you cause a copy of your mortgage to be filed in any other county than Camden?

Ans. Yes; there was one directed so be filed at Elizabeth, Union county, and also at Woodbury, Gloucester county.

[Complainants' solicitor offers in evidence a certified copy of the mortgage, filed at Elizabeth, Union county, on the 2d day of November, 1866, marked *Exhibit E*, of complainants. Also, a certified copy of that filed in Gloucester county, marked *Exhibit F*, of complainants. 20

Quest. Where were the mortgagors living at the time that these mortgages were filed by you?

Ans. Mr. Little was residing at the town of Elizabeth, and is still, and resided there before the giving of the mortgage; I have always understood that he lived there since I first knew him, which was in 1863; at the time the mortgage was given, I believe Mr. Dana was a resident of Brooklyn; 30 at the time of the filing of the mortgage, I believe he considered himself a resident of Woodbury; I think he moved to Woodbury in the summer of 1866; I do not know where Mr. Dana lives now; I understand he has left Woodbury.

Quest. Have you made any effort to procure the attendance here, before the master, of Mr. William H. Little?

Ans. I served a subpoena upon him on Saturday last, to appear before the master on this day, at Camden; I served a ticket upon him, and offered to pay his expenses; we had notified him several days before, that we should wish him 40 here.

Quest. Did you ever have any conversation with Mr. Little in reference to the mortgage held by Collins, Atwater & Whitin, or Richards & Collins—if so, when, where, and what was it? [Question objected to.]

Ans. On or about the 19th of October, 1866, I called, in company with Mr. Hugh Hamilton, on Mr. Little, at his office in New York city, and stated to him that the object of our calling was, to learn specially from him whether Messrs. Richards & Collins had knowledge of our mortgage;
10 Mr. Little answered that they had; I asked him if he could state the exact manner in which they had received that notice; he said he could not give the exact words, but that the conversation in reference to it, was between himself and Mr. Collins, at Little & Dana's office, no one else being present; Mr. Hamilton and myself went from the office of Mr. Little, and called upon Mr. Richards, who was then in the banking business, and in the course of conversation in regard to the affairs of Little & Dana, Mr. Richards expressed himself as ignorant of the existence of our mortgage up to within a
20 very short time; Mr. Hamilton and I then went back to Mr. Little's office; we met him (Mr. L.) just as he was about leaving, being at the door; we stated to him that Mr. Richards had denied any knowledge of our mortgage, at the time theirs (Richards & Collins') was given, and we wished to know whether there could be any mistake in regard to the statement he had made to us, of his conversation with Mr. Collins; he seemed to be a little annoyed at the frequency with which I had put this question to him, and answered that there could be no dispute about it, and that Mr. Collins
30 would not deny it; I then said to him, "Mr. Little, this is a question of vital importance to us, in our opinion, and we wish to know, sir, whether you would state, on your oath, that Mr. Collins had this information." He said he would.

Being cross-examined, the witness saith—

The date of the first acceptance out of which this loan arose, to Little & Dana, was issued October 11th, 1864, at four months, for \$5000; the next one was an additional acceptance, dated January 13th, 1865, at four months, for \$5000; these two were renewed from time to time, and were

continued on until these last acceptances, which are the sums remaining unpaid; the acceptances were as follows, viz:

October 11th, 1864, due February 14th, 1865, for \$5000.

January 13th, 1865, due May 16th, 1865, for \$5000.

February 11th, 1865, due June 14th, 1865, for \$5000.

May 12th, 1865, due September 15th, 1865, for \$5000.

June 4th, 1865, due September 7th, 1865, for \$5000.

September 2d, 1865, due January 5th, 1866, for \$5000.

December 2d, 1865, due April 5th, 1866, for \$5000.

January 2d, 1866, due May 5th, 1866, for \$5000.

10

March 30th, 1866, due August 2d, 1866, for \$5000.

April 28th, 1866, due August 31st, 1866, for \$5000.

July 28th, 1866, due December 1st, 1866, for \$5000.

August 25th, 1866, due December 28th 1866, for \$5000.

I found a mortgage on file in the clerk's office at Camden, when I went over to put our mortgage on file; said mortgage being that of Collins, Atwater & Whiting.

Quest. Was this the first notice you had of the last mentioned mortgage?

Ans. I received notice from Little & Dana, in a letter, dated 20 Sept. 28th, 1866, at New York, which letter I here produce.

[Said letter offered in evidence, and marked *Exhibit G*, on part of complainants.]

Quest. Was that the first notice you had?

Ans. Yes; that is the first knowledge; I came over, in consequence of receiving that letter, to Camden, and went to the clerk's office, where I found the mortgage of Collins, Atwater, & Whiting, already on file; I do not think I ever made any inquiry of Collins, Atwater & Whiting, or of Richards & Collins, respecting mortgages given by Little & Dana to 30 them, prior to the filing of our mortgage; the office of Little & Dana was in New York; their mill was at Blackwood town, Camden county; we generally addressed our correspondence to New York, but sometimes to the mill, at Blackwoodtown, when requested so to do, either partner being there; I do not know positively where Mr. Crittendon, the witness to the mortgage, lives; I have always understood he lives in Brooklyn; I do not know his writing; I never saw him write; I never saw him to my knowledge; he is practising law in New York, as I have understood.

40

SAMUEL G. DECOURSEY.

Sworn and subscribed before me, this fourteenth day of May, A. D. 1867.

CHARLES P. STRATTON, *M. C.*

Hugh Hamilton, a witness produced on the part of complainants, being duly sworn, saith—I am one of the complainants, and a member of the firm of DeCoursey, Hamilton & Evans.

Quest. Were you present with Mr. DeCoursey at the interviews in October last with Mr. Little, in New York city, both before and after seeing Mr. Richards, as recounted by Mr. DeCoursey in his testimony?

Ans. I was there.

Quest. Did the conversation, as stated by Mr. DeCoursey, all take place in your hearing?

Ans. Yes, it did; that is the purport of it.

Being cross-examined, witness saith—

Quest. Did you hear Mr. Richards deny knowledge of your mortgage, to Mr. DeCoursey?

Ans. Yes, until shortly before that time.

20 *Quest.* What was the first information you had of Collins, Atwater & Whitin's mortgage?

Ans. The letter of Little & Dana to our firm, dated September 29th, and received by us on the 29th, the letter marked *Exhibit G*.

HUGH HAMILTON.

Sworn and subscribed before me, this fourteenth day of May, A. D. 1867.

CHARLES P. STRATTON, *M. C.*

The solicitor of defendants, Collins, Atwater & Whitin, 30 produced a certified copy of mortgage filed in the clerk's office of Camden county, marked by me *Exhibit D*, on the part of said defendants.

The original of said mortgage also produced and marked *Exhibit E*, on the part of said defendants.

The complainants' solicitor produced before me a certified copy of mortgage, filed in Camden county September 21st,

1867, marked by me *Exhibit L*, on the part of said complainants.

Also, certified copy of mortgage filed in the office of the clerk of Union county, October 30th, 1867, marked by me *Exhibit M*, on the part of said complainants.

The above examination is hereby declared to be closed.

CHARLES P. STRATTON, *M. C.*

December 16th, 1867.

Testimony for Defendants.

[Filed June 1, 1867.]

10

Examinations taken before Staats S. Morris, a master and examiner in chancery, at his office, in the city of Newark, on the 31st day of May, A. D. 1867, pursuant to agreement.

Present, A. Q. Keasbey, esq., of counsel with defendants, P. L. Voorhees, esq., of counsel with complainants.

Charles Collins, called for the defendants, being duly sworn, deposeth as follows—I am one of the firm of Collins, Atwater & Whitin, doing business in the city of New York, as dry goods commission merchants; one firm was organized August, 1st, 1866; we arranged, on the first of August, 1866, 20 with Little & Dana for their account; we arranged to be their agents for the sale of their goods; we agreed to advance them three quarters of the market value of their goods, and also agreed to make them a further loan of twenty-five thousand dollars, to be secured by a mortgage on machinery, tools, and fixtures, in the Good Intent Mill; this negotiation on the part of Little & Dana was conducted by Mr. Dana; Mr. Dana assured us that this mill property was all paid for, and unencumbered; I mean the machinery, &c.; the proposed to mortgage to us, was free and unencumbered; we paid 30 Messrs. Little & Dana five thousand dollars, and paid on their order, given to Richards & Collins on us, seventy-three thousand three hundred and sixteen dollars and seventy-six

cents—twenty thousand dollars of which was to apply on the machinery mortgaged to us, and the balance as advances on goods transferred by Little & Dana, from Richards & Collins, to us; at this time we knew nothing of any mortgage having been given to DeCoursey, Hamilton & Evans, neither had we the least suspicion of the existance of any such mortgage having been given by Little & Dana; my first information of the mortgage having been given to DeCoursey, Hamilton & Evans was obtained from Mr. Richards, on or about the 22d
10 of October, 1866; some months after this transaction, when Mr. Richards informed me that he had learned the existence of this mortgage from Mr. DeCoursey a few days previous; we received the mortgage in pursuance of this arrangement, which was executed on the 3d of August, and recorded on 11th of August, 1866; it was understood that this mortgage was to be recorded, and it was left with Mr. Keasbey for that purpose, when it was executed, by both parties; none of the money secured by that mortgage has been paid; we have received no money to be applied on this mortgage. The
20 mortgage is drawn for ten thousand dollars, payable on the on the first of January, 1867, and for all sums of money that were then and that might thereafter become due up to twenty-five thousand dollars; the object of this was to meet a wish of Messrs Little & Dana, who wished to pay the fifteen thousand dollars on or before the first of January, 1867; they hoped at that time to reduce this amount to ten thousand dollars; twenty-five thousand dollars was advanced at the time the mortgage was executed, and was due and has since continued due, and was advanced strictly on the security of
30 that mortgage.

Quest. Were you informed, while you were a member of the firm of Richards & Collins, or at any time by Little & Dana, or either of them, of the existence of a mortgage given by them to the complainants or of their intention to make one?

Ans. No; never was, and never had the least suspicion of their intention to give such a mortgage.

Cross-examined by Mr. Voorhees.

In keeping our accounts with Little & Dana, we kept our

accounts of general consignments, and our account of special loans, in separate accounts.

Quest. In rendering your account to Little & Dana did you render your account of general and special advances in one account, or on separate sheets?

Ans. I know of no account having been rendered; my impression is that no account has been rendered them.

Quest. Have your firm any other securities for the indebtedness of Little & Dana except the goods consigned to you and this mortgage? 10

Ans. We received with the mortgage, and at the time of executing the mortgage, an assignment from Little & Dana of the lease of the mill and premises from Livermore, Cooper & Co., to Little & Dana; we have nothing beyond that.

Quest. Can you state the amount of the indebtedness of Little & Dana to your firm at this time?

Ans. On advances on goods fifty-two thousand five hundred dollars, and on the mortgage, twenty-five thousand dollars, besides interest.

Quest. Have you still on hand goods consigned to you by 20 Little & Dana—and if so, to what amount?

Ans. We have thirty-six thousand two hundred yards; the greater part of them are light goods, light weight; they are all, with the exception of five or six cases, six-four cotton warp cloths and beavers; the five or six cases are all wool, tender cloths; the highest offer that we have had in any lot, on the light weight cloths, was for twenty cases, \$1.27½ per yard, at six months credit; we have sold a few single cases for \$1.32½ to \$1.42½; the price for beavers last winter was \$1.50; I should say rather that such kinds of 30 goods were sold by the Philadelphia agents, at that price; I think such was about the market price; I was a member of the firm of Richards & Collins; that firm held a mortgage from Little & Dana on the machinery, &c., in the factory at Good Intent; it was executed on the twelfth of April, 1866, for \$25,000, at which time we advanced them \$13,000, and \$10,000 had been advanced previously, making \$23,000 secured by the mortgage, at the time it was given; that mortgage was in the same form as the present one, to secure \$10,000, and advances up to the \$25,000; at the time of tak- 40

ing that mortgage, we were under the impression that DeCoursey, Hamilton & Evans were also making advances to Little & Dana; though we had no positive knowledge of this fact; we got that impression from Little & Dana, who also informed me personally that they had goods sufficient in hands of DeCoursey, Hamilton & Evans to take care of that account.

Quest. Did not Mr. Little tell you, in their office, in presence of Mr. Dana, about the time they were going to
10 execute the mortgage to Richards & Collins, that if they give you a mortgage to secure your advances they would also have to give DeCoursey, Hamilton & Evans a mortgage, to also secure them their advances?

Ans. He did not; but on the other hand assured us that if we would retain the mortgage without putting it on record he would give us ample time to do so, to give us the first lien on the property; we hesitated about putting our mortgage on record, by their representing that it would injure their credit if we did, and they pledging their word and
20 honor to give us timely notice, we retained it until it was paid by their order on Collins, Atwater & Whitin.

CHAS. COLLINS.

Sworn and subscribed before me, at Newark, this thirty-first day of May, A. D. 1867.

S. S. MORRIS, *M. C.*

James C. Atwater, called for the defendants, being duly sworn, deposeth as follows—I am one of the firm of Collins, Atwater & Whitin; I have been present during the examination of Mr. Collins, as above, and heard the circumstances
30 under which the mortgage was given by Little & Dana to the firm of Collins, Atwater & Whitin; those circumstances are correctly stated by Mr. Collins, as far as my knowledge extends; I had a conversation with Mr. Dana myself, at the request of Mr. Collins; not favoring loans on machinery or mills, but Mr. Dana pledging me that the security in this case would be twice the amount of the loans he wished us to make on the property, and that the property was entirely unencumbered, and had cost them about \$50,000; I consented to the loan; I had no knowledge, information, or

suspicious whatever, of any mortgage held by the complainants on this property; the amount of this mortgage still remains due, as stated by Mr. Collins.

J. C. ATWATER.

Sworn and subscribed before me, at Newark, this thirty-first day of May, A. D. 1867.

S. S. MORRIS, *M. C.*

Counsel for defendants here offers in evidence two certified copies of the mortgages referred to in the above examination, which I have marked *Exhibits A* and *B*, on the part of the defendants; *Exhibit A* being copy of mortgage filed in Camden, August 11th, 1866; *Exhibit B* is a copy of same mortgage filed in Union, January 1st, 1867; and also a copy of a mortgage filed in Gloucester, January 18th, 1867, which I have marked *Exhibit C*, on the part of the defendants. Under objections from complainants' counsel for want of sufficient revenue stamps, counsel for complainants here offer in evidence four letters; one being a copy of a letter from complainants to Little & Dana, dated April 26th, 1866, which I have marked *Exhibit K*, on the part of complainants. The 10 other three from Little & Dana to the complainants, of dates April 25th, October 1st, and October 3d, 1866, and which I have marked respectively *Exhibits H, I, and J*, on the part of the complainants. 20

Examination declared closed.

S. S. MORRIS, *M. C.*

Exhibits on part of Complainant.

EXHIBIT A.

Filed in clerk's office, Camden county, September 29th, 1866.

[United States revenue stamp for \$10.00.]

MORTGAGE.

To all to whom these presents shall come, know ye, that we, William H. Little, of Elizabeth, county of Union, and state of New Jersey, and Charles H. Dana, of the city of Brooklyn, county of Kings, and state of New York, parties
10 of the first part, for securing the payment of the money hereinafter mentioned, in consideration of the sum of one dollar to us duly paid by Samuel G. DeCoursey, Hugh Hamilton, and Charles T. Evans, trading as DeCoursey, Hamilton & Evans, of Philadelphia, state of Pennsylvania, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, and sell unto the said parties of the second part, all the ma-
20 chinery for the manufacturing of goods, consisting wholly or in part of wool, now in and that may hereafter be put in, and all other goods and chattels mentioned in the schedule hereunto annexed, and now in the mill, known as the "Blackwood Mills," and premises of the parties of the first part, in the town of Good Intent, county of Camden, and state of New Jersey, to have and hold, all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said parties of the second part, their executors, administrators, and assigns, for ever. And we, the
30 said parties of the first part, for ourselves, our heirs, executors and administrators, all and singular of the said goods and chattels above bargained and sold, unto the said parties of the second part, their heirs, executors, administrators, and assigns, against us, the said parties of the first part, and against all and every person or persons whomsoever, shall

and will warrant, and forever defend, upon condition, and if we, the said parties of the first part, shall and do well and truly pay unto the said parties of the second part, their executors, administrators or assigns, the just and full sum of ten thousand dollars (\$10,000), at any time within thirty (30) days after notice in writing or demand upon us for the payment of said sum, (the parties of the second part, having made a special loan and advance to the said parties of the first part of said loan, to secure the repayment of which these presents are executed), then these presents shall be 10 void. And we, the said parties of the first part, for ourselves, our executors, administrators, and assigns, do covenant and agree, to and with the said parties of the second part, their executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, then it shall and may be lawful for, and we, the said parties of the first part, do hereby authorize and empower the said parties of the second part, their executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter the said mill, dwelling-house, store and other premises, and such other place 20 or places as the said goods or chattels are or may be placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain, and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any), unto us or to our executors, administrators, or assigns. And until default be made in the payment of the said sum of money, we are to remain and continue in the quiet and peaceable possession of the 30 said goods and chattels, and the full and free enjoyment of the same.

In witness whereof, we, the said parties of the first part have hereunto set our hands and seals the thirtieth day of April, one thousand eight hundred and sixty-six.

WM. H. LITTLE, [L. S.]

C. H. DANA, [L. S.]

Sealed and delivered in the presence of Edward W. Crittenden as to Wm. H. Little, Edward W. Crittenden as to C. 40 H. Dana.

SCHEDULE.

One set of forty-eight inch cards, and clothing complete.
 One three hundred spindle jack.
 Seven broad plain looms, Furbush & Gage make.
 One broad gigg.
 One steam engine, Corless' patent.
 One broad drying machine.
 One hydro extractor.

EXHIBIT B.

- 10 Two drafts for \$5000 each, drawn by Little & Dana to their own order, on and accepted by DeCoursey, Hamilton & Evans, at four months, one dated July 28th, 1866, and other August 25th, 1866, and each endorsed by Little & Dana.

EXHIBIT C.

Office of Little & Dana,
 No. 191 Broadway,
 New York, May 2, 1866.

Messrs. DeCoursey, Hamilton & Evans. Gents—We enclose a new mortgage altered to agree with your wishes, 20 although it was not previously understood that it should cover the whole of our machinery.

Mr. Dana stated to you that we should give a mortgage also, to Messrs. Richards & Collins to cover their loan; theirs, however, will not be on demand as yours is, but payable October first, previous to which time their partnership will expire, and we shall transfer the loan to another house, and cancel the mortgage. They consent to hold the mortgage without putting it on record. You will observe, therefore, as Mr. Dana said to you, that we cannot adopt the 30 provisions mentioned in your letter of April fourteenth, in full, but we agree to advise you promptly of any circumstances that may arise, affecting or likely to affect your interests, that you may protect yourselves by recording the mortgage. We trust this will be satisfactory to you.

We shall deposit \$5000 to your credit in the Bank of Commerce, to meet your special acceptance of our draft due fifth instant, to-morrow, third instant.

Yours truly,

LITTLE & DANA.

EXHIBIT D.

Due and legal service of the within notice and demand is hereby acknowledged. Dated September 29th, 1866.

CHARLES H. DANA,
for Little & Dana. 10

WILLIAM H. LITTLE,
for Little & Dana.

To Messrs. William H. Little and Charles H. Dana, co-partners, trading as Little & Dana—Please take notice that we hereby notify you, and demand the payment of the sum of ten thousand dollars advanced by us to you and secured to be paid by a certain chattel mortgage made by you to us, bearing date the thirtieth day of April, A. D. 1866.

Dated September 29, 1866.

DECOURSEY, HAMILTON & EVANS. 20

EXHIBIT E.

Same as *Exhibit A*, filed in clerk's office of Union county, November 2d, 1866.

EXHIBIT F.

Same as *Exhibit A*, filed in clerk's office of Gloucester county, October 31st, 1866.

EXHIBIT G.

New York, September 28th, 1866.

Messrs. DeCoursey, Hamilton & Evans. Gentlemen:—

Your favor of the 27th is at hand. The mortgage we gave to Richards & Collins has been canceled, and we have given one to Collins, Atwater & Whitin, due January 1st, 1867.

We do not know whether they have had it filed or not; they would make no promise that they would not, but we have always protested against it.

Under the circumstances, we withdraw our objections to your filing the one we gave to you.

Yours truly,

LITTLE & DANA.

10

EXHIBIT H.

New York, October 1st, 1866.

Messrs. DeCoursey, Hamilton & Evans. Gentlemen:—
Your favor of September 29th is received. We had not supposed that we had violated the spirit or letter of our agreement with you in regard to your mortgage. We canceled the one given to Richards & Collins, and gave a similar one to Collins, Atwater & Whitin, payable at a later date, and are not aware that your interest has been affected; if you
20 think it has been, please explain it to us.

Yours truly,

LITTLE & DANA.

EXHIBIT I.

Office of Little & Dana,
No. 191 Broadway,
New York, April 25th, 1866.

Messrs. DeCoursey, Hamilton & Evans. Gentlemen:—
Agreeably to our conversation with you last week, we send you the enclosed mortgage. As we do not remember the
30 christian names of Messrs. Hamilton and Evans, we could not fill them in, but our lawyer left it blank, with the understanding that you should fill them in. According to your

request, we have not made it out on any limited time, but, as we understand it, the thing is mutual, and in any event, you will give us ample time to make other arrangements.

In regard to the special draft of May 5th, we think we can get one through our bank here to meet that. Will that be agreeable to you?

Yours truly,

LITTLE & DANA.

EXHIBIT J.

New York, October, 3d, 1867 10

Messrs. DeCoursey, Hamilton & Evans. Gentlemen:— We have your favor of the 2d instant, and trust that when Mr. Dana shall see you, his explanations will be satisfactory to you, or at least disabuse your minds from the idea that we have dishonorably violated our understanding in regard to this matter.

The extra \$15,000 given to C., A. & W., is intended to cover any loans, &c., beyond the original \$10,000, that may exist on the first of January next.

Yours respectfully,

20

LITTLE & DANA.

EXHIBIT K.

Philadelphia, April 26th, 1866.

Messrs. Little & Dana, New York. Gentlemen:— We have yours of the 25th. We will reply to-morrow concerning the mortgage it referred to.

Please sign and return enclosed receipt; also remit us the balance due—\$166.93—as per enclosed statement, on April 30th.

The next special draft being due in New York on fifth of 30 May, you had better re-draw on us at once.

Yours truly,

(Signed,)

DECOURSEY, HAMILTON & EVANS.

E

April 3d. To cash remitted to take up special draft, due April 5th,	\$5000.00
27 days' interest,	22.50
	<hr/>
	\$5022.50
April 6th. By cash proceeds of special draft, due 8-2,	\$4836.24
24 days' interest,	19.33
April 26th. Balance due us, April 30th,	166.93
	<hr/>
	\$5022.50

10 (Interest to April 30th.)

The above is a correct copy from the letter press copy book of DeCoursey, Hamilton & Evans.

M. L. DECOURSEY.

EXHIBIT L.

Same as *Exhibit A*, filed in the clerk's office of Camden county, September 21st, 1867, with following statement, viz. we, Samuel G. DeCoursey, Hugh Hamilton, and Charles T. Evans, late trading as DeCoursey, Hamilton & Evans, the mortgagees named in the foregoing instrument or mortgage, 20 by this statement, do certify that no part of the principal sum, or debt mentioned, and intended to be secured by the foregoing instrument or mortgage, has been paid, satisfied, or discharged, and that the whole of the principal sum, or debt of ten thousand dollars, with interest thereon from the tenth day of December, in the year eighteen hundred and sixty-six, is claimed to be due thereon, and which sum and interest thereon, constitute the amount of our interest claimed as mortgagees in the property in the foregoing instrument or mortgage, mentioned and described by virtue 30 thereof.

Dated September 21, 1867.

EXHIBIT M.

Same as *Exhibit A*, filed in the clerk's office of Union county, October 30th, 1867, with a statement thereto, similar to *Exhibit L*.

Exhibits on part of Defendants.

EXHIBIT A.

Filed in the office of clerk of Camden county, August 11th, 1866.

Know all men by these presents, that we, William H. Little and Charles H. Dana, doing business in the city of 10 New York, as the firm of Little & Dana, (the former of Elizabeth, in the county of Union, and state of New Jersey, and latter of the city of Brooklyn, in the county of Kings, and state of New York, party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of one dollar, to us duly paid by Charles Collins, James C. Atwater, and Lewis F. Whitin, doing business in the city of New York, as the firm of Collins, Atwater & Whitin, of the city of New York, county of New York, and state of New York, party of the second part, at 20 or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell, unto the said party of the second part, their executors, administrators, and assigns, all the goods and chattels mentioned in the schedule hereunto annexed, and now in the mill and premises of the parties of the first part, in the town of Good Intent, in the county of Camden, and state of New Jersey, to have, and to hold, all and singular, the said goods and chattels above bargained and sold, or intended so to be, unto the said party of 30 the second part, their executors, administrators, and assigns, for ever. And we, the said party of the first part, for ourselves, our heirs, executors and administrators, all and singular, the goods and chattels above bargained and sold unto

the said party of the second part, their executors, administrators, and assigns against us, the said party of the first part, and against all and every person or persons whomsoever, shall and will warrant and forever defend. Upon condition, that if we, the said party of the first part, shall and do well and truly pay unto the said party of the second part, their executors, administrators, and assigns, on or before the first day of January next, (1867), the sum of ten thousand dollars, and also all sums of money that are now or may
10 hereafter become due to them from the said Little & Dana on account, note, draft, or otherwise, and shall indemnify and save harmless, the said Collins, Atwater & Whitin, and their legal representatives, from all loss by reason of any and all advances, acceptances, endorsements, and other liabilities made or incurred by them at the request of said Little & Dana, for or on account of said Little & Dana, not exceeding in all, at any one time, twenty-five thousand dollars, and shall repay all such advances, costs, and expenses therefrom, then these presents shall be void. And we, the said party of
20 the first part, for ourselves, our heirs, executors, administrators, and assigns, do covenant and agree to, and with the said party of the second part, their executors, administrators, and assigns, that in case default shall be made in the payment of the said sum above mentioned, or in case the said party of the first part, shall at any time before the day of payment herein provided for, remove the said goods and chattels, or any of them, or permit or suffer any attachment or other process against property to be issued against us, or permit or suffer any judgment to be entered up against us,
30 then the said sum of money herein mentioned, shall become instantly due and payable, and then it shall, and may be lawful for, and we the said party of the first part, do hereby authorize and empower the said party of the second part, their executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter our said mill, or our, or either of our dwelling-house, store, and other premises, and such other place or places whatever, in which the said goods and chattels, or any of them are, or may be placed, and take and carry away the said goods and chattels,
40 and to sell and dispose of the same for the best price they

can obtain; and out of the money arising therefrom, to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto us, the said party of the first part, our heirs, executors, administrators, or assigns.

In witness whereof, we, the said party of the first part, have hereunto set our hands and seals, the third day of August, in the year of our Lord one thousand and eight hundred and sixty-six.

WILLIAM H. LITTLE. [L. S.] 10

CHARLES H. DANA. [L. S.]

Sealed and delivered in the presence of as to William H. Little, George D. Little; as to Charles H. Dana, Frederick A. Dana.

[Stamped with United States internal revenue stamp, of the value of ten dollars.]

Schedule of woolen machinery, tools, fixtures, &c., in the mill of Little & Dana, at Good Intent, Camden county, New Jersey, being the property referred to in the foregoing mortgage, viz. 20

Four sets forty-eight inch cards.

Thirteen broad plain looms.

Eleven broad twelve harness fancy Crompton looms.

Four broad twenty-four harness fancy Crompton looms.

Four three hundred spindle jacks.

Two double fulling mills.

Six broad gigs.

One washing machine.

Two broad shearers.

One broad brush.

One hydraulic press.

One press-plate heater.

One wool drying machine.

One thirty inch wool picker.

One burr picking machine.

Belting and pulleys.

One hydro extractor.

One forty horse power steam engine, Corless patent.

And all other fixtures, tools, implements, gearing, apparatus, and machinery, in and about the said mill of Little & Dana.

August 3, 1866.

State of New Jersey, Camden county, ss.—I, Thomas M. K. Lee, jun., clerk of the Court of Common Pleas, of the county of Camden, do hereby certify that the foregoing is a true copy of the record of a chattel mortgage between the parties above mentioned, on file in my said office, and entered on
10 page second of the book of chattel mortgages, and numbered seven.

In witness whereof, I have hereunto set my hand and seal, the thirty-first day of October, one thousand eight hundred and sixty-six.

THOMAS M. K. LEE, JUN., *Clerk.*

EXHIBIT B.

Same as *Exhibit A* of defendants. Filed in office of clerk of Union county, January 1st, 1867.

EXHIBIT C.

20 Same as *Exhibit A* of defendants. Filed in office of clerk of Gloucester county, January 18th, 1867.

EXHIBIT D.

Same as *Exhibit A* of defendants, with following certificate annexed, viz. Be it remembered, that on this nineteenth day of July, A. D. eighteen hundred and sixty-seven, the above mortgage was produced to me by the mortgagees therein named, and it appearing that a revenue stamp of the value

of ten dollars only had been affixed thereto by mistake, when the true amount of the stamps required by law was twenty-five dollars, I have affixed the stamps of the value of fifteen dollars hereto, in addition to the one for ten dollars already affixed, making together the amount of twenty-five dollars, the whole amount required by law, and it appearing to me, the collector of the first collection district of New Jersey, that the said instrument was not duly stamped at the time of making and issuing the same, by reason of mistake and inadvertence, and without any wilful design to defraud 10 the United States of the stamps, or to evade or delay the payment thereof; I have and do hereby remit the penalty of fifty dollars, according to the provisions of the statute in that case made and provided.

Camden, July 19th, 1867.

WM. P. TATEM, [L. S.]
Collector of first district, N. J.

EXHIBIT E.

Same as *Exhibit A* of defendants, with certificate annexed, same as *Exhibit D* of complainants, and filed in the clerk's 20 office of Camden county.

Interlocutory Decree.

[Filed February 4, 1868.]

This cause came on to be heard in the presence of Peter L. Voorhees, of counsel with the complainants, and Parker & Keasbey, of counsel with the defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin, three of the defendants; no person appearing on behalf of the defendants, Charles H. Dana and William H. Little. And it appearing that process of subpœna hath been duly served upon the said 30 defendants, William H. Little and Charles H. Dana, and that they have not filed any plea, answer, or demurrer, within

the time limited by law, it is ordered that the complainants' bill be taken as confessed against them, the said William H. Little and Charles H. Dana.

And upon reading the complainants' bill, and the answer of the said defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin, and the proofs taken in this cause on behalf of the complainants and the last named defendants, and hearing the arguments of counsel thereupon, and upon due consideration thereof, it is, on this fourth day of February, 10 eighteen hundred and sixty-eight, ordered, adjudged, and decreed, by the Chancellor, that the mortgage of the complainants, made by the said defendants, William H. Little and Charles H. Dana, on the thirtieth day of April, 1866, and set forth in the complainants' bill, is void as against the said defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin, subsequent mortgagees in good faith; the said mortgage of the complainants not having been filed in pursuance of the statute, at the time of the execution and delivery of the mortgage of the said defendants, Collins, Atwater & 20 Whitin, set forth in their answer, and that the said mortgage of the last named defendants, ought to be first paid out of the proceeds of the property described in said mortgages.

And it is further ordered and decreed, that the mortgage of the complainants is valid as against the said defendants, William H. Little and Charles H. Dana, and ought to be paid out of the proceeds of said property next after the mortgage of the defendants, Collins, Atwater & Whitin.

And that it be referred to Joseph H. Hough, one of the masters of this court, to ascertain and report the amount due 30 to the said Charles Collins, James C. Atwater, and Lewis F. Whitin, and to the said complainants, upon their said respective mortgages; and all further equity is reserved until the coming in of the report of said master.

A. O. ZABRISKIE, C.

Final Decree.

[Filed June 23, 1868.]

This cause coming on to be heard in the presence of Peter L. Voorhees, solicitor and of counsel with the complainants, the complainants' bill having been heretofore taken as confessed against the defendants, William H. Little and Charles H. Dana, and the court having heretofore decided that the mortgage of the defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin, is entitled to priority, and to be first paid and satisfied from a sale of the said mortgaged 10 premises and property, in the said bill of complaint mentioned and described, before the mortgage of the said complainants, whereupon, and upon reading a report upon file made by Joseph H. Hough, esquire, one of the masters of this court, bearing date on the twenty-third day of April, in the year of our Lord one thousand eight hundred and sixty-eight, from which it appears that there was due to the complainant on the day of the making the said report, for principal and interest on their said mortgage, the sum of ten thousand 20 two hundred and fifty-seven dollars and thirteen cents, and to the defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin, on their said mortgage the sum of twenty-seven thousand and thirty-nine dollars and sixty-nine cents, and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid, and no cause being shown or appearing to the contrary, it is thereupon, on this twenty-third day of June, in the year of our Lord one thousand eight hundred and-sixty eight, by Abraham Zabriskie, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and 30 the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge, and decree, that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises and property be sold to raise and satisfy the several sums of money due to the said complainants and

defendants, that is to say, to pay in the first place to the defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin, the same of twenty-seven thousand and thirty-nine dollars and sixty-nine cents, together with lawful interest thereon, to be computed from the twenty-third day of April, in the year of our Lord one thousand eight hundred and sixty-eight, being the date of the master's report, with the said defendants' costs in this cause to be taxed; and in the second place, to pay unto the said complainants the sum of
10 ten thousand two hundred and fifty-seven dollars and thirteen cents, with lawful interest thereon as aforesaid, with their costs in this cause to be taxed, and that a writ of *feri facias* do issue for that purpose out of this court, directed to the sheriff of the county of Camden, commanding him to make sale according to law of the said mortgaged premises and property, and that out of the money arising from such sale he pay to the defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin, or their solicitors, their said
20 debt, interest, and costs, and also, to the said complainants or their solicitor, their said debt, interest, and costs, in manner aforesaid; and in case more money shall 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 this court, and that the said sheriff make return without delay of his proceedings by virtue of the said writ. And it is further ordered, adjudged, and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in,
30 and to said mortgaged premises and property, when sold as aforesaid, by virtue of this decree.

A. O. ZABRISKIE, C.

Petition of Appeal.

[Filed June 30, 1868.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

Samuel G. DeCoursey, Hugh Hamilton, and Charles T. Evans.
 appellants,

and

Charles Collins, James C. Atwater, and Lewis F. Whitin,
 appellees.

} *Petition of Appeal.*

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

The humble petition of Samuel G. DeCoursey, Hugh Hamilton, and Charles T. Evans, the appellants in the above stated cause, respectfully shows, that your petitioners find themselves aggrieved by the final decree made in the Court of Chancery, by the Honorable Abraham O. Zabriskie, Chancellor, bearing date on the twenty-third day of June, eighteen hundred and sixty-eight, in a certain cause in said Court of Chancery, wherein the above named appellants were complainants, and the said Charles Collins, James C. Atwater, and Lewis F. Whitin, and others were defendants, in this respect, to wit, that the said decree adjudges that the mortgage of the said Charles Collins, James C. Atwater, and Lewis F. Whitin was, and is, an existing encumbrance upon the mortgaged premises and property, in the pleadings in said cause mentioned, prior to, and entitled to priority of payment to the complainants' mortgage. And your petitioners humbly appeal from that part of the said decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the said defendants, Charles Collins, James C. Atwater, and Lewis F. Whitin's mortgage is not an encumbrance on said mortgaged premi-

ses and property, prior to your petitioners' mortgage. Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden; and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated June 30th, 1868.

PETER L. VOORHEES,
Solicitor for and of counsel with appellants.

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Answer.

[Filed July 9, 1868.]

The answer of the above respondents to the petition of appeal of the appellants.

These respondents, not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto, say—that they believe it to be true, that such decree as is complained of by the appellants, was made by the Court of Chancery, as in the said petition of appeal is set
20 forth; but as to the date, substance, and contents thereof, these respondents humbly crave leave to refer thereto, when the same shall be produced.

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

PARKER & KEASBEY,
Solicitors for respondents.

Opinion.

The suit is for foreclosure and sale of chattels, upon a chattel mortgage given to the complainants by the defendants, Little & Dana.

This mortgage was given and dated on the twelfth day of April, 1866. The chattels were situate in Camden county. The defendant, Little, resided in Union county; his partner, the defendant, Dana, resided in the state of New York. The complainants filed a copy of their mortgage in Camden county clerk's office, September 29th, 1866, in Gloucester 10 county, October 31st, and in Union county, November 2d. No copies were filed before those dates.

On the third day of August, 1866, Little and Dana gave a mortgage on the same chattels to the defendants, Collins, Atwater & Whitin, for ten thousand dollars actually advanced at the time. Collins, Atwater & Whitin had no notice of the mortgage to the complainants, and caused their mortgage to be filed in Camden county clerk's office, August 11th, 1866. No copy was filed in any other clerk's office.

On the twenty-eighth of September, Little & Dana advised 20 the complainants, who had promised them not to file their mortgage in the clerk's office, that they had given a mortgage to Collins, Atwater & Whitin; on the twenty-ninth DeCoursey saw that mortgage in the office of the clerk of Camden county. The mortgagors remained and still remain in possession.

The question is, which of these two mortgages is entitled to priority on this state of facts. This depends upon the construction of the act concerning chattel mortgages, approved March 24th, 1864. *Pamph. Laws* 493. 30

That act provides that every mortgage of chattels not followed by an immediate and continued change of possession, shall be void as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a copy of it, should be filed as therein as directed. It directs the mortgage or a copy of it, to be filed in the clerk's office of the county wherein the mortgagor may reside at the execution of it; and if he do not reside in the state, then in the clerk's office

of the county where the property so mortgaged shall be at the execution of it.

The mortgage of the complainants was filed in the county where the chattels were situate, and also in the county where the mortgagor who lived in this state resided ; of course this was a full compliance with the law, and it is not necessary to decide in this case whether filing in both counties was necessary in such case. But the time of filing in both counties was after the mortgage to Collins, Atwater & Whitin. By
10 the plain language of the act as against that mortgage it was void. When that mortgage was given it was good against the mortgagors and against every one except subsequent purchasers and mortgagees in good faith, and creditors who should obtain judgments, without being filed. The complainants are not subsequent mortgagees. They acquired no right whatever after the mortgage to Collins, Atwater & Whitin, and were in no manner injured by the fact that the mortgage to them was not filed in the proper county. They are neither within the letter or intention of the act if it is taken for
20 granted that the mortgage to Collins, Atwater & Whitin was not filed in the proper county. That mortgage was not filed in the county in which Little, the mortgagee who resided in this state, lived, which is required by the act, where there is but one mortgagor ; but it was held in the county where the chattels were situate, which is the proper county when the mortgagor resides out of the state, as Dana did, in case there is but one mortgagor. In such case, filing in both counties is certainly a compliance with the requisitions of the act ; but whether a filing in either would be sufficient, and if so, in
30 which it should be filed, are questions that admit of doubt, and which it is not necessary in this case to settle.

These defendands are especially mortgagors in good faith, they advanced their money at the giving of the mortgage, without any kind of notice or suspicion that the complainants had any lien or mortgage. The complainants are mortgagees, not merely negligent, but in bad faith ; they made an agreement with the mortgagors not to file the mortgage, to preserve a false credit to the mortgagors, and to impose upon subsequent creditors and mortgagees contrary to the
40 provisions and spirit of the act.

This act differs substantially in its provisions as to the effect of not filing the mortgage, from the provisions on the same subject in the act respecting mortgages on real estate. That provides (*Nix. Dig.* 550, § 10,) that a mortgage not left for registry shall be void against a subsequent judgment creditor, or purchaser, or mortgagee without notice, unless the same be lodged for registry before the time of entering such judgment, or of lodging for record such mortgage or conveyance to a subsequent purchaser or mortgagee. In that case, the negligence of the subsequent mortgagee or 10 purchaser would lose the advantage gained by that of the prior mortgagee.

In accordance with this principle, it has been held by a series of decisions in New York upon a similar statute, in nearly the same words as our own, that an omission to refile a mortgage at the end of the year will not give precedence to a subsequent mortgage, given and filed within the year; that the priority of such mortgages is fixed as soon as the last one is given, and that no subsequent diligence or want of diligence, can affect or change it. *Meech v. Patchin*, 14 20 *N. Y.* 71; *Thompson v. Van Veghten*, 6 *Bosw.* 373; *S. C.*, 27 *N. Y.* 568; *Lewis v. Palmer*, 28 *N. Y.* 271.

The mortgage of the defendants is entitled to be first paid out of the proceeds of the mortgaged property.

