State of New Jersey.

IN THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

Between

MICHAEL M. WILLIAMS,

Appellant,

and

JOHN T. WINANS AND OTHERS,

Respondents.

Appeal from Decree in Chancery.

ELIZABETH, N. J.

JOURNAL POWER PRESS PRINT.

1871.

IN
Chancery of New Jersey.

BILL OF COMPLAINT OF MICHAEL M. WILLIAMS.

[Filed February 10, 1868.]

To His Honor ABRAHAM O. ZABRISKIE, *Chancellor of the State of New Jersey.*

Humbly complaining showeth unto your Honor your orator, Michael M. Williams, of the city of Elizabeth, in the County of Union and State of New Jersey, that prior to the second day of April, in the year one thousand eight hundred and sixty-seven, your orator commenced a suit in the Supreme Court of the State of New Jersey, against one John T. Winans, for the recovery of a large amount of money, which he claimed the said John T. Winans owed him, and such proceedings were had therein, that the said cause was several times noticed for trial, and was twice postponed upon affidavits by the said John T. Winans; after which the said John T. Winans proposed to your orator to submit the same to arbitration, to which after much persuasion on the part of the said John T. Winans and his Counsel, your orator consented, and thereupon the said Counsel of the said John T. Winans, drew up an agreement which was as follows, to wit:

"An agreement made this second day of April, eighteen hundred and sixty-seven, between Michael M. Williams of the first part, and John T. Winans of the second part, wit-

nesseth: That the parties do hereby agree to submit the matter in difference between them, now pending in a suit in the Supreme Court of the State of New Jersey, wherein the said Michael M. Williams is plaintiff, and the said John T. Winans is defendant, to the award and final determination of Keen Pruden and William B. Tucker, arbitrators by them agreed upon and chosen, and the said parties hereto do hereby mutually covenant and agree each with the other, that they and each of them respectively, shall and will stand
10 to, abide and perform the award and determination of the said arbitrators as to the amount they may award to be paid, and in case the said arbitrators award that the said John T. Winans pay any amount to the said Michael M. Williams, the said John T. Winans agrees to make and execute his bond to the said Michael M. Williams in the penal sum of double the amount so awarded to be paid to the said Williams by the said John T. Winans, conditioned to pay the amount of such award in instalments of one fifth of the said amount each, as follows: One fifth thereof in cash, and the
20 balance in yearly instalments of one fifth each, with interest on the same at seven per cent per annum, payable half yearly, and if any instalment shall remain unpaid for the space of ten days after the same may become due, then the whole amount remaining unpaid to become due and payable at the option of the said Williams. And the said parties do agree that in case the said John T. Winans, shall not within thirty days after the said award shall be made, pay one fifth of the said amount so awarded, and execute and deliver the bond in manner and form as above mention-
30 ed, and execute and deliver to the said Williams a mortgage on the one hundred acres of land opposite his house, to secure the payment of the same, or pay the amount of the said award less five hundred dollars, then this submission may be made a rule of the Supreme Court of the State of New Jersey, upon the application of either party. In witness whereof the said parties have hereunto set their hands and seals, the day and year first above written.

"Signed, sealed and delivered in presence of

"Robt. S. Green.

"M. M. Williams, (L. S.)

40 "John T. Winans, (L. S.)"

Which said agreement was executed by the said John T. Winans and your orator under their respective hands and seals, and was witnessed by the Counsel of the said John T. Winans, and interchanged.

Your orator further shows that a number of meetings were had before the said arbitrators and witnesses on both sides were examined and Counsel heard in argument, and after which, both parties having submitted the case, the said arbitrators, on the thirty-first day of December, in the year one thousand eight hundred and sixty-seven, made their 10 award in writing, under their respective hands and seals, bearing date the thirty-first day of December, eighteen hundred and sixty-seven, and which is in the words following, to wit: "Award between Michael M. Williams and John T. Winans, made this thirty-first day of December, eighteen hundred and sixty-seven. The aforesaid parties having by their agreement made on the second day of April, eighteen hundred and sixty-seven, mutually agreed to submit the matter in difference between them, pending in a suit in the Supreme Court, of the State of New Jersey, wherein the said 20 Michael M. Williams is plaintiff, and the said John T Winans is defendant, to the award and final determination of Keen Pruden and William B. Tucker, arbitrators by them chosen, and the said arbitrators having been first duly sworn faithfully and fairly to hear and examine the matters in difference between the said parties and make a just and true award, according to the best of their skill and understanding, and having heard the allegations and proofs of the parties, and considered the same, we, the subscribers, the said arbitrators, do hereby make and publish our award, of and 30 concerning the matters, to the said arbitrators submitted, as follows: That we do award that the said John T. Winans do pay to the said Michael M. Williams the sum of five thousand eight hundred and fifty-three dollars and seventy cents ($5853.70), which said sum of five thousand eight hundred and fifty-three dollars and seventy cents, shall be paid and secured in the manner and time specified in the said agreement of submission, a copy of which is annexed to this award.

"Second, the said Michael M. Williams, having paid to 40 the said arbitrators the sum of one hundred dollars for their

services and expenses in and about the said arbitration, we do award that the said John T. Winans do pay to the said Michael M. Williams, on demand, the said sum of one hundred dollars, and that all other costs and charges by either party incurred, shall be borne and paid by the party incurring the same.

"In witness whereof we have hereto set our hands and seals, the day and year first above written.

"KEEN PRUDEN, (L. S.)

10 "WM. B. TUCKER, (L. S.)"

To which said award was attached a copy of the said agreement, and was made a part of the said award, and that thereupon the said arbitrators delivered to the said John T. Winans and your orator, each of them, the said award with a copy of the said agreement referred to as making a part of their said award, both of them executed under the respective hands and seals of the said Keen Pruden and William B. Tucker, the said arbitrators, the original of which so delivered to your orator as aforesaid, is now in his possession, 20 as also the said agreement, and which he is ready to produce, and to which for more certainty as to their contents, he refers.

Your orator further shows, that after the said thirty days mentioned in the award, when the said John T. Winans was to fulfil the same by paying one fifth of the said sum of five thousand eight hundred and fifty-three dollars and seventy cents so awarded to be paid by the said John T. Winans to your orator, and execute and deliver the bond and mortgage in manner and form as therein mentioned, or to pay 30 the said sum of five thousand eight hundred and fifty-three dollars and seventy cents, less five hundred dollars, to wit: on the first day of February instant, your orator called upon the said John T. Winans, and showed him the said award, and demanded of him its performance, to which said demand the said John T. Winans replied, he would not perform the same, and he would have nothing whatever to do with your orator.

And your orator further shows, that the following is a description of the said one hundred acres of land opposite the 40 house of the said John T. Winans, specified and referred to in the said agreement and award, to wit: All that lot,

tract or parcel of land and premises situate, lying and being in the Township of Linden, in the County of Union, and State of New Jersey, being a tract of land containing one hundred acres, more or less, bounded northerly by a road leading from the Edgar turnpike road to Morse's Mills, easterly by lands now or formerly of the estate of E. C. Mayo, dec'd, southerly by Morse's Creek and by lands now or late of A. Morse, and westerly by the Edgar turnpike road.

And your orator further showeth unto your Honor, that immediately after the said award was made known to the said John T. Winans, he declared he would never pay the same, or any part of it, and that to defeat your orator, he would put his property out of his hands, and would encumber it so as to defeat your orator in the recovery of the money so awarded to him, and that to carry out such purpose he went to Charles J. Howell and Jonas E. Marsh, to whom he owed about one hundred dollars, and told them of the said award, and of his determination to make such conveyance of his property as would defeat your orator in recovering the same, and in order to aid him in carrying out such fraudulent intent and purpose, he did propose to the said Howell & Marsh to give them a mortgage for a thousand dollars on the said one hundred acres, which they might hold as security for about one hundred dollars he owed them, and the balance for his, the said John T. Winans' benefit, and as a security for any further debts he might contract with them, to which fraudulent purpose the said Howell & Marsh acceded, and thereupon the said John T. Winans did make and execute a mortgage on the said one hundred acres of land opposite his house, bearing date the thirteenth day of January, one thousand eight hundred and sixty-eight, conditioned to pay one thousand dollars in one year, and interest semi-annually, and did deliver the same to the said Howell & Marsh, who did accept it for the frandulent intent and purpose aforesaid, and did put it on the record of mortgages of the County of Union, on the seventeenth day of January last, at eleven o'clock in the morning.

Your orator respectfully insists that when the said award was made, the said sum of five thousand and eight hundred and fifty-three dollars and seventy cents, became a lien on the said one hundred acres of land, by virtue of the said

agreement so made betweeu the said John T. Winans and your orator, bearing date the second day of April, one thousand eight hundred and sixty-seven, and the said award made in pursuance thereof, and that whoever took a conveyance of the said one hundred acres of land after the making of the said award, and with knowledge of the same, took it subject to the said agreement and award, and your orator's equiry under the same to have a mortgage of five thousand eight hundred and fifty-three dollars and seventy 10 cents, as was therein agreed between the said John T. Winans and your orator, and adjudged and awarded by the said arbitrators, and that the said mortgage made to the said Howell and Marsh is to be postponed to your orator's said equity, even if it was a bona fide mortgage, it having been executed and accepted with a knowledge of your orator's rights and equity, but it is more especially void as against your orator's claim and equity aforesaid, because it was executed and accepted forthe dishonest and fraudulent intent and purpose of defraudng your orator as aforesaid, and will therefore be de- 20 clared absolutely void as against your orator, not only forthe excess of any debt the said John T. Winans might have owed the said Howell and Marsh at the time, but being tainted with positive fraud, it is void in toto.

And your orator further shows, that on the tenth day of January, one thousand eight hundred and sixty-eight, the said John T. Winans made and executed to his mother, Eliza W. Winans, a mortgage on the same one hundred acres of land, bearing date the day and year last aforesaid, for the sum of seven thousand dollars, payable in one year after 30 date, with seven per cent interest, payable semi-annually, and did deliver the same to the said Eliza, who accepted it.

And your orator further shows, that the said Eliza is a woman upwards of eighty years of age, and very infirm in body and mind; that the said mortgage was acknowledged before David A. Hayes, a Master in Chancery, at the city of Newark, who was the attorney of record and counsel for the said John T. Winans in the said suit between the said John T. Winans and your orator, that there was no consideration paid by the said Eliza, or secured to be paid, 40 for the said mortgage, and that the same was voluntary, and was made for the sole purpose of defrauding your orator

and depriving him of the benefit of, and of his rights and equities under the said agreement and award; that the said Eliza, at the time she accepted the said mortgage, did it with the full knowledge of the said agreement and award, and to defraud your orator, and on the thirteenth day of the same month of January, the said Eliza W. Winans, without any other consideration than to keep said mortgage on foot after her death, and to have it where the said John T. Winans could control it to answer his said fraudulent intent and purpose against your orator, assigned the said mortgage to Hannah Maria Crane, wife of Edward Crane, and sister of the said John T. Winans, who accepted the said assignment with full knowledge of the said agreement and award.

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And your orator further shows, that on the sixteenth day of January, eighteen hundred and sixty-eight, the said John T. Winans made and executed a mortgage on the said one hundred acres of land, bearing date the day and year last aforesaid, to his three daughters, Sarah E. Winans, Harriet C. Winans, and Anna M. Winans, for the sum of three thousand dollars, payable in one year from date, with interest payable semi-annually, which said mortgage was accepted and placed on record on the seventeenth day of January, eighteen hundred and sixty-eight, at half past nine o'clock in the morning; and your orator charges that there was no consideration for the said mortgage, but the same was voluntary and without consideration, and was executed and accepted for the sole intent and purpose of defrauding your orator, and depriving him of the benefit of the said award and agreement.

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And your orator further shows, that the said Sarah, Harriet and Anna, were sworn as witnesses before the said Arbitrators on behalf of the said John T. Winans, and at the time of the execution of the said mortgage, had full knowledge of the said agreement and award, and were told by the said John T. Winans, that he executed the same for the purpose of preventing your orator from recovering anything against him, and to put his property beyond the reach of your orator.

And your orator further showeth unto your Honor, that after the execution of the aforesaid mortgages, to wit: on

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the twenty-fifth day of January, one thousand eight hundred and sixty eight, the said John T. Winans, did by deed bearing date the day and year last aforesaid, and for a consideration expressed therein, of fifteen thousand dollars, the same being a warrantee deed with full covenants, convey the same one hundred acres of land to his daughter Anna M. Winans, one of the mortgagees in the three thousand dollar mortgage before set forth, and in which said deed is the following description, and subject to the following in-
10 cumbrances, to wit:

All that tract of land situate, lying and being in the Township of Linden, in the county of Union, and State of New Jersey, being a tract of land containing one hundred acres, more or less, bounded northerly by a road leading from the Edgar turnpike road to Morse's Mills, easterly by land now or formerly of the estate of C. E. Mayo, deceased, southerly by Morse's Creek, and by lands now or late of A. Morse, and westerly by the Edgar turnpike road: said property so conveyed subject to the following mort-
20 gages: One to John Wood for twelve hundred dollars, one to Sophia Kirkpatrick for two thousand dollars, one to William F. Day for one thousand dollars, two mortgages of five hundred dollars each held by Eliza W. Winans, one mortgage of one thousand dollars held by John C. Johnson, one mortgage of one thousand dollars held by David A. Hayes, one mortgage of seven thousand dollars held by Eliza W. Winans, and also one mortgage held by Howell and Marsh.

And your orator charges that this deed was voluntary and without consideration, and was made and executed and
30 accepted for the sole purpose of defrauding your orator and to deprive him of the benefit of the said agreement and award, and was with full knowledge on the part of the said Anna of the said agreement and award.

And your orator further shows, that the said mortgage of two thousand dollars to Sophia Kirkpatrick, mentioned in the said last named deed, was long ago paid off and satisfied, but was not cancelled of record, and that after the making of the award aforesaid, the said John T. Winans procured the same to be assigned to his mother, the said
40 Eliza Winans; and your orator charges that the said assignment was without consideration, and was made and the

said mortgage is now held under the same by the said Eliza, and is kept on foot for the sole purpose of defrauding your orator, and depriving him of the benefit of the said agreement and award, and he respectfully insists that the said mortgage and assignment are fraudulent and void as against your orator, or that the said Eliza should be declared a trustee, holding the said mortgage under the said assignment for the benefit of your orator.

And your orator further shows, that on the twenty-third day of August, one thousand eight hundred and sixty-seven, the said John T. Winans executed and delivered a mortgage to David A. Hayes, his attorney and counsel in said suit of your orator, upon the said one hundred acres of land, to secure him against any future indebtedness that might accrue from said Winans to him, and your orator charges that the sum of one thousand dollars named in said mortgage is not owing justly to said Hayes, and that he took said mortgage with a knowledge of said agreement, and the pending of said arbibration, and subject to your orator's rights and equities.

And your orator further shows, and respectfully insists that he is entitled to have the full benefit of the said agreement and award, and a specific performance of the same by the said John T. Winans, so as to give him the full benefit thereof, not only as against the said John T. Winans, but against all persons claiming under him, who had knowledge or notice of the said agreement and award, and more particularly your orator is entitled to have the said John T. Winans make out and execute to him a mortgage on the said one hundred acres of land for the sum of five thousand eight hundred and fifty-three dollars and seventy cents, the amount so awarded to him; and that as the said Charles J. Howell and Jonas E. Marsh, Eliza W. Winans, Sarah E. Winans, Harriet C. Winans, and Anna M. Winans, took their said mortgages, and the said Anna M. Winans took her said deed of conveyance, and the said Eliza took the said assignment of said mortgage, and the said Hannah Maria Crane took the assignment of said mortgage to her, with full knowledge of the said agreement and award; and as the said David A. Hayes took his said mortgage with a knowledge of said agreement and arbitration, even if there was no fraud, equity would postpone them to your orator's

equity, and make them all subject to a mortgage to secure your orator the amount of the said award. But as your orator charges, and is ready to prove that the same are fraudulent, and the parties were all guilty of actual fraud in their execution, and that they were contrived and designed for the fraudulent purpose of defrauding your orator out of his said mortgage, which he was entitled to have to secure the amount so awarded to him, your orator insists upon his right to have all of them declared fraudulent and void as
10 against him, and if it is necessary, that they should be decreed to release or convey to your orator, with the said John T. Winans, so as to give your orator a mortgage on the said one hundred acres of land for the sum of five thousand eight hundred and fifty-three dollars and seventy cents, with interest from the date of the said award, free and clear of any lien or incumbrance by reason of the aforesaid fraudulent conveyances.

And your orator well hoped that the said John T. Winans would have specifically performed the said agreement
20 and award.

But now so it is, that he, the said John T. Winans, combining, &c.

To the end therefore that the said defendants, and their confederates when discovered may upon their several and respective corporal oaths, to the utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were herein again repeated and they and each
30 of them, distinctly interrogated thereto. And that the said John T. Winans, may be decreed specifically to perform the said agreement and award, and make and execute to your orator a mortgage on the said one hundred acres of land in the manner and according to the terms specified in the said agreement and award; and that the said mortgages to the said Charles J. Howell and Jonas E. Marsh, Eliza W. Winans, Sarah E. Winans, Harriet C. Winans, and Anna M. Winans, and the said assignment to the said Eliza W. Winans, and the said assignment to the said Hannah Maria
40 Crane, and the said deed of bargain and sale to the said Anna M. Winans, may be declared fraudulent as against

your orator and his said mortgage, and if necessary for your orator's protection, that the said Charles J. Howell, Jonas E. Marsh. Eliza W. Winans, Sarah E. Winans, Harriet C. Winans, David A. Hayes, Hannah Maria Crane, Edward Crane, and Anna M. Winans may be compelled to execute such releases and conveyances to your orator as will make his said mortgage on the record, prior to and valid as to their said conveyances; and that your orator may have such other and further relief in the premises as the nature of the circumstances of this case may require, 10 and as to your Honor shall seem meet and right.

May it please your Honor the premises considered, to grant unto your orator not only the State's writ of Injunction issuing out and under the seal of this honorable Court, to be directed to the said John T. Winans, Charles J. Howell, Jonas E. Marsh, Eliza W. Winans, Sarah E. Winans, Harriet C. Winans, David A. Hayes, Hannah Maria Crane, Edward Crane, and Anna M. Winans, enjoining and restraining them and each of them from assigning, transferring, disposing of, or in any manner acting upon or with 20 the said mortgages and assignments or any or either of them, and from conveying, encumbering, or in any manner disposing of, or interfering with the said one hundred acres of land or any part thereof, but also the State's writ of subpœna to be directed to the said John T. Winans, Charles J. Howell, Jonas E. Marsh, Eliza W. Winans, Sarah E. Winans, Harriet C. Winans, David A, Hayes, Hannah Maria Crane, Edward Crane, and Anna M. Winans, therein and thereby commanding them on a certain day and under a certain penalty therein to be expressed, to be and 30 appear before your Honor in this honorable Court, then and there to answer all and singular the premises contained in this, your orator's bill of complaint, and to stand to and abide by such order, direction and decree in the premises, as to your Honor shall seem meet and agreeable to equity and good conscience. And your orator as in duty bound will ever pray, &c.

F. B. Chetwood & Son,
Solicitors for and of Counsel with Complainant.

State of New Jersey, ss. :

On this tenth day of February, one thousand eight hundred and sixty eight, before me, Barker Gummere, one of the Masters in Chancery of said state, personally came Michael M. Williams, of full age, who being by me duly sworn according to law, on his oath says, that he is the complainant in the foregoing bill of complaint named, and that the facts, matters and things set forth in the foregoing bill of
10 complaint are true; that the agreement of submission to arbitration set forth in said bill was executed by this deponent and John T. Winans, one of the defendants, and that in pursuance thereof, on a full examination of the matters submitted thereby, the arbitrators therein named made the award stated in said bill of complaint. That the said John T. Winans told this deponent that he would prevent him from recovering anything from him on said award, and for that purpose he would put his property out of his hands, and would encumber it to defeat this deponent.

20 That the said John T. Winans, in pursuance of his said declaration, has made and delivered to his mother and sister, the mortgages mentioned in the said bill, and has executed to his sister, as stated in said bill, a deed of conveyance of the said one hundred acres of land mentioned in said bill, and that the assignment of the mortgages as stated in said bill have been made and accepted fraudulently, and with a full knowledge of the said agreement and award, and to aid the said John T. Winans in defeating this deponent from recovering the money due to him on said award, and to de-
30 prive him of the benefit of the said agreement, and that the assignments of the mortgages mentioned in said bill were made, as this deponent believes and expects fully to prove, to aid the said John T. Winans in defeating this deponent from recovering the money due to him on said award, and to prevent this deponent from obtaining the security and lien by mortgage or in any other manner, upon the said one hundred acres of land, and that on the first day of February instant, this deponent called on the said John T. Winans and showed him the said award, and demanded of him
40 its performance, to which he replied that he would not per-

form the same, and would have nothing whatever to do with this deponent.

M. M. WILLIAMS.

Sworn and subscribed before me, this 10th day of February, A. D. 1868.

BARKER GUMMERE, M. C. C.

A true copy.

B. GUMMERE, Clerk. 10

ANSWER OF JOHN T. WINANS.

(Filed June 3, 1868.)

This defendant for answer says, that he admits the commencement and pendency of the suit by the said complainant against the said defendant in the Supreme Court, and the execution and interchange of the agreement to submit the same to arbitration and the trial of the same before the said arbitrators, and the making, execution and delivery of the award by the said arbitrators, but submits that the said arbitrators were only to ascertain what amount, if any, was to be paid, and that said award, except as to the amount awarded to be paid, and so far as it provides the manner of payment or the security thereof, is not within the terms of submission to the said arbitrators, and void.

And the said defendant denies (as he is advised by his counsel and respectfully submits to the Court) that the said agreement was an agreement specifically to execute a mortgage on the property set forth in the said bill of complaint, or that when the said award was made the sum thereof became a lien on the said one hundred acres of land referred to therein, by virtue of the said agreement to the said award made in pursuance thereof, or that whoever took a conveyance of the said one hundred acres of land after the making of the said award, and with knowledge of the same, took it subject to the said agreement and award, and denies any equity in the complainant to have a mortgage under the same, of five thousand eight hundred and fifty-three dollars and seventy cents, or any other sum, or that it was specifically so agreed by this defendant, or so adjudged and awarded by the arbitrators, or that they had any right so to adjudge and award, but as he is advised by his counsel and respectfully submits to this honorable Court, the only effect of the said agreement was to give the said complainant a right to a payment of one-fifth of the said award in cash, with a mortgage on the said property to secure the remaining four-fifths of the said award, or the payment of the amount of said award in cash less five hundred dollars, at the option of this defendant, and on his refusal to do either, the right to make the said award a rule of the Supreme

Court and to enter judgment and issue execution thereon ; and this defendant prays all benefit and advantage of the want of equity in the said bill of complaint in the same degree and to the same extent as if the same was alleged by way of demurrer. And this defendant respectfully shows to the Court, that although the said arbitrators awarded to the said complainant the sum mentioned to be paid by this defendant, yet that he regarded and still regards, the same as unjust and inequitable towards this defendant, and he denies that, in his opinion, he was justly indebted to the com- 10 plainant in any such sum as that awarded, and he respectfully shows to this honorable Court, that he, this defendant, at the same time, was justly and legally indebted to the persons hereinafter named, in the amounts, and for the causes hereinafter particularly stated, and he supposed and still supposes, that he had a right to prefer the said creditors, and to secure to them the payment of their respective claims, and this defendant denies all fraudulent intent, so frequently charged in the said bill.

And defendant admits that the property described in the 20 said bill is the property referred to in the said agreement, and admits that the said complainant may have called on this defendant on or about the first day of February, one thousand eight hundred and sixty-eight, and demanded of him to perform the said award, but this defendant shows that no time during the said thirty days after the making of the said award was he able to pay in cash the sum of one thousand one hundred and seventy dollars and seventy-four cents, one-fifth of said award, or the sum of five thousand three hundred and fifty-three dollars and seventy cents, 30 the amount of said award less five hundred dollars ; and he admits he may have told the said complainant that he would not pay the said sum, or give the said mortgage, and would have nothing to do with him. And further answering admits that he may have said that he would never pay the said award or any part of it, but denies that he has said that to defeat the complainant he would put his property out of his hands, and encumber it so as to defeat the complainant in the recovery of the money so awarded to him.

And this defendant further answering, admits that on or 40 about the thirteenth day of January, one thousand eight

hundred and sixty-eight, he did make, execute and deliver to Charles J. Howell and Jonas E. Marsh, partners trading under the name of Howell & Marsh, a mortgage on the said one hundred acres to secure the payment of one thousand dollars, which he believes was worded as charged, but denies that it was for the purpose of defeating the complainant or to put his property out of his hands or to encumber it so as to defeat the complainant in the recovery of the money so advanced him, and denies that he only owed the
10 said Howell & Marsh about one hundred dollars, or that he told them of the said award and that he had determined to make such conveyance of his property as would defeat the complainant in recovering the same, or did propose to the said Howell & Marsh in order to aid him in carrying out any such intent and purpose, to give them a mortgage of one thousand dollars on the said one hundred acres which they might hold as security for about one hundred dollars and the balance for his benefit, or that there was any fraudulent purpose proposed to the said Howell & Marsh to
20 which they could or did accede, or that the said bond and mortgage was delivered to the said Howell & Marsh or accepted by them for the fraudulent intent and purpose charged or any fraudulent intent and purpose, and says that he does not know and has not sufficient information to form a definite opinion whether the said Howell & Marsh knew of the terms of the said agreement and award or not, but does not think they did. And he further denies that the said mortgage was executed or accepted for the dishonest and fraudulent intent and purpose of defrauding the
30 complainant or is tainted with positive fraud and void.

And this defendant in further answering, says that the said bond and mortgage was executed, delivered to and accepted by the said Howell & Marsh under the circumstances in the manner and for the reasons and consideration following, viz: This defendant was indebted to the said Howell & Marsh on book account in the sum of eighty-three dollars and thirty-eight cents, and for notes and checks of defendant which had been cashed by the said Howell & Marsh or for which this defendant had received
40 credit on account and then held by them, amounting with interest thereon to the thirteenth day of January, one thou-

sand eight hundred and sixty-eight, to the sum of two hundred and forty-six dollars and sixteen cents, for notes endorsed by defendant and cashed by the said Howell & Marsh for defendant or credited on their account against him and which were past due and protested, and on which the defendant was liable, and then held by the said Howell & Marsh to the amount of four hundred and ten dollars and six cents, and for interest thereon to the said thirteenth day of January in the sum of forty-one dollars and twenty-four cents, amounting in the aggregate to seven hundred and 10 eighty dollars and eighty-four cents, and this defendant knowing the said amount to be justly and honestly due by him to the said Howell & Marsh, and believing he had a right to so secure the same, and being desirous of obtaining further accommodation from said Howell & Marsh and which they agreed to furnish to the amount of the balance of said bond, executed and delivered the said bond and mortgage to them for the purpose of securing the said amount and such sums between that amount and the amount of said bond as they might advance; and that said Howell 20 & Marsh accepted the said bond and mortgage and the same was delivered for that purpose and with that intent, and that since the delivery of said bond and mortgage and before the service of the process in this case, the said Howell & Marsh did advance to this defendant the further sum and credit of eighty-three dollars and seventy cents or more.

And this defendant further answering admits, that on or about January tenth, one thousand eight hundred and sixty-eight, he did execute and deliver to his mother, Eliza W. 30 Winans, a mortgage on the said one hundred acres to sesure the payment of seven thousand dollars in one year with interest, and that said mortgage was acknowledged as charged in the said bill and was accepted by the said Eliza, but this defendant denies that the said mortgage was without consideration or was voluntary or made for the purpose of defrauding the complainant or depriving him of the benefit of or of any right or equities under the said agreement and award, and says that he does not know and has not sufficient information on which to form a definite opinion 40 whether the said Eliza M. Winans knew the terms of the

said agreement and award, but does not think she did, and he does not believe that the said Eliza accepted the said mortgage to defraud the complainant. And this defendant further answering says, that while his mother, the said Eliza, is an aged woman and subject to the natural bodily infirmities of old age still her mind is vigorous and active and not infirm as charged in said bill, and says that the said mortgage was executed and delivered to and accepted by the said Eliza W. Winans under the circumstances, in the
10 manner and for the reasons and consideration following, viz.: Aaron Winans, late of the County of Essex in the State of New Jersey, deceased, the father of this defendant, in and by his last will and testament, dated November fourth, one thousand eight hundred and fifty-two, duly made and executed, did among other things give and devise to his wife, the said Eliza W. Winans her heirs and assigns forever, the mother of this defendant, the tract of land known as the Dayton lot, and did further give and devise to his said wife to her use for and during her natural life the fol-
20 lowing tracts of land, viz:

First. The one equal half-part of the house and building in which he then lived, one equal half-part of all the out buildings, situate on both sides of the Essex and Middlesex Turnpike road near said house, except the cow shed and cow house, of which she was to have the use of the equal third part during her life and the one equal half part of all the land situate on the same side of the said turnpike with the said house.

Also, secondly. Five acres of any land she might choose
30 out of any land thereinafter given and devised to Edward P. Winans.

Also, thirdly. The one equal half, part of the lot of land known as the William Mitchell Willis lot of salt meadow.

Also, fourthly. A five acre lot of salt meadow which was purchased of Jehiel Hull.

Also, fifthly. About six or seven acres of land situate on the road leading from the then residence of his son John T. Winans to Morse's Mills.

Also, sixthly. A lot of upland called the calamus lot,
40 containing about five acres of land in which devise was also intended the use to and for the said Eliza during her

natural life of the house known as the Blue House situate on said land.

And the said will also provided that it was the will and intention of the said testator that his wife should if she so chose have and take her legal dower in to and out of any land and premises of which he might died seized not therein before devised to her and for her use notwithstanding the foregoing provision in her favor in the said will.

And the said testator in and by the said will did further give and devise the lands and real estate of which he might 10 died seized to his sons the said John T. Winans, this defendant, Nathan M. Winans, Jacob W. Winans and Edward P. Winans, who he also made his residuary legatees, as in and by said will more fully and at large appear, and to which, or to a certified copy whereof this defendant begs leave to refer.

And this defendant further answering says, that the said Aaron Winans died siezed of the above referred to tracts of land and of other real estate in the then County of Essex, now Union, and that the said will was duly proved before 20 the Surrogate of the County of Essex, by the Executor and Executrix therein named, and that thereby the estate in the said lands given and devised by the said will to the said Eliza, were vested in her subject only to the claims of creditors in case of want or personal property to pay the debts of the decedent. And this defendant further answering says, that the said Eliza W. Winans, as she was authorized to do in and by said will elected to have and take her legal dower in, to and out of all the other real estate of which her said husband died seized, and which had been devised to her 30 sons, by force of which said provision the portion of this defendant, together with other tracts purchased by him from his other brothers, were charged with the right of dower of the said Eliza W. Winans, who, being so entitled to the life estate in the different tracts referred to, as well as her right of dower in the remainder, permitted this defendant to have the individual use and occupation of such portions of the said lands and real estate as have been devised to or purchased by him, on the agreement made and entered into at the time, that he should pay therefor to the said 40 Eliza W. Winans the annual sum of four hundred dollars,

which this defendant agreed to pay to the said Eliza W. Winans, and which sum was a fair and not an unreasonable price for the said privilege—under which agreement this defendant took and enjoyed the undivided possession of the said lands and real estate, and continued therein for the space of about fifteen years. And the defendant shows that he had not paid any of the said yearly sums, nor any interest upon the same, and that there was due to his said mother on account of the said annuity and interest on the
10 said instalments on the said 4th day of January last the sum of six thousand dollars. And this defendant further answering says, that when his said mother, Eliza W. Winans broke up housekeeping he bought portions of her stock from her and gave her his notes therefor, and that he had from time to time borrowed money from his said mother and given her notes therefor, which notes were due and unpaid together with arrears of interest thereon, which notes and interest on the said 4th day of January last amounted to over the sum of one thousand dollars, and that this de-
20 fendant on the said fourth day of January, eighteen hundred and sixty-eight, knowing himself to be justly and honestly indebted to his said mother, Eliza W. Winans, in the said sum of seven thousand dollars for the cause aforesaid and believing that he had a right to secure the same to her had a settlement with her and executed and delivered to her the said mortgage for the purpose of securing the said amount and that the said mortgage was delivered and accepted by the said Eliza W Winans as a security to her for the payment of the amount due to her from the de-
30 fendant for the causes aforesaid and for that purpose and intent and she delivered up to him his notes which were due to her, amounting with arrears of interest to over the sum of one thousand dollars.

And this defendant further answering says, that he believes it to be true that the said Eliza W. Winans did assign the said mortgage to Hannah Maria Crane, wife of Edward Crane, and who is the daughter and not the sister of the said defendant, but denies that as far as he is informed and believes that the same was for the purpose of
40 keeping the same mortgage on foot after her death and to have it where this defendant could control it to answer any

fraudulent intent and purpose against the complainant or any one else. And he says that he did not know of her intention to make the same assignment until the same had been recorded and that the same was not made by his procurement or with his knowledge or at his request nor with his sanction, and this defendant denies that he has any control either present or prospective over the said mortgage, and says that he does not know and has not sufficient information to form a definite opinion whether the said Hannah Maria Crane or Edward Crane knew of the terms of the said agreement between the complainant and this defendant or of the terms of the said award but thinks they did not. 10

And this defendant further answering says, that he admits that on or about the sixteenth day of January last, he did execute and deliver to his daughters, Sarah E. Winans, Harriet C. Winans, and Anna M. Winans, a mortgage on the said one hundred acres of land, and on about forty acres on the opposite side of the road, to secure the payment of three thousand dollars, and the said mortgage was accepted by them, and as he believes, was placed upon record, but he denies that there was no consideration for said mortgage, or that the same was voluntary and without consideration, or that the same was executed or accepted for the intent or purpose of defrauding the complainant, and he admits that the said Harriet and Anna were sworn as witnesses before the said arbitrators on his behalf, but denies that the said Sarah was so sworn or that he told the said Sarah, Harriet and Anna, or any or either of them that he executed the said mortgage for the purpose of preventing the said complainant from recovering anything against him and to put his property beyond the reach of the complainant, and this defendant in further answering says that the same mortgage was executed and delivered to and accepted by the said Sarah, Harriet and Anna under the circumstances, in the manner, and for the reasons and considerations, that is to say: 20 30

His said daughter Sarah is upwards of thirty-five years of age; Harriet upwards of twenty-seven years of age, and Anna upwards of twenty-five years of age; that Harriet, since her majority, for a number of years taught school, and earned and received considerable sums of money by her 40

said occupation ; that during the time since his said daughters have attained their majority he lived upon his farm, near Elizabeth, in the County of Union, which was large, and required a great deal of care and attention, not only in the matter of tilling, but also such care and attention as can only be bestowed and rendered by a female ; that his wife was not physically able to take such charge entirely, and that the said Sarah and Anna devoted their time and skill to the service of this defendant in the management of
10 such matters as might properly be attended to by them in the assistance of their mother, and until she became entirely unable to attend to any of the concerns of the said farm, when the said Harriet gave up her said employment of teaching school, and the care and management of the affairs of the said farm formerly under the supervision and charge of his said wife, devolved upon and was discharged by his said daughters, during the illness of his wife, up to her death, and since that time ; that these services of his daughters were valuable to this defendant, and indis-
20 pensable in the proper conduct of his farm, and saved him from employing certain help which he would have been forced to do but for their services and labor. That by rendering such assistance to the defendant, they were prevented from acquiring money and wages in other employments for which they were fitted, and that such services were not gratuitous, but were rendered under the understanding and with the expectation that they would be remunerated therefor, and continued under such understanding on the promise by him that he would pay them therefor; that his said
30 daughters had from time to time received sums of money from other persons than himself, and the said Harriet had, as aforesaid, received money from her said employment, and that each of his said daughters have from time to time loaned to this defendant sums of money which he had agreed to return to them.

And this defendant further answering says, that in the year eighteen hundred and sixty-two his house was burned up and his wife procured him the sum of one thousand dollars to assist him in rebuilding the same and for which he
40 was to make a conveyance so that property of that value should be secured to his said wife in order that their said

daughters who had so assisted their said mother should receive the benefit thereof, and in pursuance of said agreement he did execute a deed to David Cutter, but the transfer of property was never perfected and his said wife directed that he should give the said girls the benefit of the said one thousand dollars, which he promised to do and which promise he believes he had a right to make and was bound to keep. And this defendant further answering says, that the services of the said Sarah were rendered to this defendant during a period of twelve years and were reasonably worth the sum of two hundred dollars per year—that the services of the said Harriet C. were rendered to this defendant during a period of five years and were reasonably worth one hundred dollars per year, that the services of the said Anna M. were rendered during a period of four years and were reasonably worth the sum of three hundred dollars per year, and that he would have had to pay at least such amounts to any other persons for similar services. And he further shows that said services were not gratuitous but that they were rendered under the expectation of being recompensed and that they were continued under such understanding and accompanied by promises from time to time by the defendant that he would pay therefor.

And this defendant further answering says, that the amount he had from time to time borrowed as aforesaid of his said daughter Sarah was upwards of seven hundred dollars of her own money, the amount he had from time to time borrowed as aforesaid from his said daughter Harriet C. was upwards of six hundred dollars, and the amount he had from time to time borrowed as aforesaid from his said daughter Anna was upwards of five hundred dollars, no part of which said several sums nor any interest accruing thereon had been paid by him to his said daughters or either of them, that he was indebted to his said daughters in the sum of one thousand dollars aforesaid with interest from the year eighteen hundred and sixty-two the time of the burning of his said house, which money indebtedness amounted to over three thousand dollars without allowing them for their said services, and this defendant knowing that he was fully and honestly indebted to his said daughters in the sum of three thousand dollars besides the value

of their services which fairly amounted to as much more and believing that he had a right to secure the same in as full a manner as possible, executed and delivered the said mortgage to his said daughters for the purpose of securing the said amount to them and they received and accepted the said mortgage as a security for the amounts so as aforesaid due from this defendant to them. And this defendant further answering says, that he admits that he did on or about the twenty-fifth day of January last convey the said one hundred acres to his said daughter Anna M. Winans, by deed of the date, consideration and covenants stated in the said bill, and subject to the incumbrances on the said property, the payment of which, with the interest accruing thereon, she, the said Anna, assumed to pay, and denies that the said deed was made or executed, or accepted for the sole purpose of defrauding the complainant, and to deprive him of the benefit of the said agreement and award, and does not believe that the said Anna M. knew of the terms of the said agreement between the complainant and this defendant, or of the terms of the said award. And this defendant further answering says, that the said deed was made under the circumstances, in the manner, and for the reasons and consideration following, viz.:

This defendant has been for two years past in declining health and unable to give to his affairs such attention and skill as would make his business of farming self supporting and enable him to pay and discharge the several yearly sums chargable on the said land, and the said lands were conveyed by the said deed to the said Anna, she to assume the payment of the mortgages upon the said land and relieve this defendant from liability on his bonds given with the said mortgages and to furnish this defendant with money to the value of the said property conveyed, and this defendant further answering says that the said Anna M. since the delivery of the said deed and in consideration of the said conveyance has advanced or raised and paid to this defendant the sum of eleven hundred dollars which considering the amount of the incumbrances on the said property is more than its market value.

And this defendant further answering says, that he denies that the said mortgage of two thousand dollars to Sophia

Kirkpatrick was ever satisfied, or that after the making of the said award this defendant procured the same to be assigned to his mother, the said Eliza W. Winans, and does not know that his mother ever saw or heard of the same, and denies that the same is now, or ever was held by the said Eliza, or is kept on foot for the purpose of defrauding the complainant and depriving him of the benefit of the said agreement an l award, and in further answering says, that the said mortgage was assigned by the said Sophia Kirkpatrick to , who purchased 10 the same from her, and holds the same as security for the amount thereof, and that the same was not cancelled because it is a subsisting lien on the said premises, and that the assignment thereof to the said was recorded on the day of , eighteen hundred and sixty, in the Clerk's office of Union County, in Book of assignments of mortgages, page as might have been ascertained by the said complainant before filing his said bill, and making affidavit thereto.

And this defendant further answering admits, that he did 20 on or about the twenty-third day of August last, execute and deliver to David A. Hayes, a mortgage on the said one hundred acres of land to secure the payment of the sum of one thousand dollars, and says that he was indebted at the date of the said mortgage to the said David A. Hayes in a sum the exact amount of which he cannot now state, and that the said mortgage was given to secure the payment of such sum, and whatever further sums the said Hayes might advance for him, and that the said Hayes did, since the date of said mortgage, and before the commencement of this 30 suit, as this defendant believes, advance him moneys on account of the said mortgage.

And this defendant further answering, respectfully denies that the said complainant is entitled to have any benefit of the said agreement and award in this honorable court, or a specific performance of the same, so as to give him the full benefit thereof, either against this defendant, or against any persons claiming under him who had knowledge or notice of the said agreement and award, or otherwise, or that the said compl.iinant is entitled to have this defendant make 40 and execute to him a mortgage on the said one hundred

acres of land for the sum of five thousand eight hundred and fifty-three dollars and seventy eents, the amount so awarded to him, or that the said persons holding the said mortgages and conveyance should be postponed to the claim of the said complainant, or that they should be made subject thereto, and he denies and challenges proof that they were fraudulent and that the parties were guilty of actual fraud or of fraud of any kind in their execution or that they were contrived or designed for the fraudulent pur-
10 pose of defrauding the complainant out of a mortgage or that the complainant was specifically entitled to have a mortgage to secure the amount awarded to him, or that the complainant has any right to have all or any of them declared fraudulent and void as against him or that they should be decreed to release or convey to the said complainant with this defendant so as to give to the complainant a mortgage on the said one hundred acres of land for the sum of five thousand eight hundred and fifty-three dollars and seventy cents or any other sum with interest from
20 the date of the said award free and clear of any lien or encumbrance by reason of the aforesaid conveyances.

And this defendant denies all and every and any fraudulent intent or purpose in the premises on his part and denies any knowledge of any fraudulent intent or purpose in the premises on the part of any of the other defendants.

And this defendant denies all unlawful combination, &c,

Robt. S. Green, Solr.
and of Counsel for Deft.,
John T. Winans.

ANSWER OF ELIZA W. WINANS.

(Filed June 3, 1868.)

This defendant answering says, that while she has a general knowledge that there was a suit pending between the said complainant and John T. Winans, and that there was an arbitration between them, she denies that previous to the commencement of this suit she knew or was informed of the terms of the said arbitration, agreement and award. 10

And the said defendant (as she is advised by her counsel, and respectfully submits to the Court,) denies that the said agreement was an agreement especially to execute a mortgage on the property set forth in the said bill of complaint, or when the said award was made the sum thereof became a lien on the said one hundred acres of land referred to therein by virtue of the said agreement and the said award made in pursuance thereof, or that whoever took a conveyance of the said one hundred acres of land after the making of the said award, and with knowledge of the same, 20 took it subject to the said agreement and award, and denies any equity in the complainants to have a mortgage under the same of five thousand eight hundred and fifty-three dollars and seventy cents, or any other sum, or that it was specifically so agreed by the defendant John T. Winans, or so adjudged and awarded by the arbitrators, or that they had any right so to adjudge and award, but as she is advised by her said counsel, and respectfully submits to this honorable court, the only effect of said agreement was to give said complainant a right to the payment of one-fifth of the said 30 award in cash, with a mortgage on the said property to secure the remaining four fifths of the said award or the payment of the amount of said award in cash less five hundred dollars at the option of the defendant John T. Winans, and on the refusal of the defendant John T. Winans to do, either the right to make the said award a rule of the Supreme Court and to enter judgement and issue execution thereon. And this defendant Eliza W. Winans, prays all benefit and advantage of the want of equity in the said bill of complaint in the same degree and to the same extent as 40 if the same was alleged by way of demurrer.

And this defendant further answering admits that on or about the tenth day of January, one thousand eight hundred and sixty-eight the said defendant John T. Winans did make, execute and deliver to this defendant a mortgage on the said one hundred acres, to secure the payment of seven thousand dollars which was worded as charged, but denies that it was for the purpose of defrauding the complainant or to put said property out of the hands of the said John T. Winans or to encumber it so as to defeat the complainant
10 in the recovery of the money so awarded him and denies that he, the said John T. Winans, delivered the said mortgage without consideration or was voluntary or made for the purpose of defrauding the complainant or depriving him of the benefit of or of any right or equities under the said agreement and award.

And this defendant further answering says that while she is an aged woman and subject to the natural bodily infirmities of old age still her mind is vigorous and active and not infirm as charged in said bill, and says that the said
20 mortgage was executed and delivered to and accepted by her under the circumstances, in the manner and for the reasons and consideration following, viz: The said defendant John T. Winans was indebted to her in over the sum of six thousand dollars for the use and occupation of lands and real estate which had been devised to her either in fee or for life and in which she had a right of dower and used and occupied by him for a space of upwards of fifteen years on an agreement to pay four hundred dollars per year and which he had not paid nor any interest thereon, and
30 being also indebted to this defendant on notes given to this defendant for stock she had sold and delivered to him and for money at divers times loaned him and which notes and interest thereon amounted to over one thousand dollars and having such claims against the said John T. Winans she endeavored to get the same secured, and received and accepted the said bond and mortgage to secure the payment of seven thousand dollars in satisfaction of said rent or yearly sum and the interest amounting to six thousand dollars and notes and interest amounting to over one thousand dollars
40 which she delivered up to the said John T. Winans on receiving the said mortgage.

And this defendant further answering says, that the said mortgage being so given to and accepted by her, and being her own property, she believed she had a right to make such disposition thereof as she thought fit, and assigned the same to the said Hannah Maria Crane, who was the favorite grandchild of this defendant, she denies that such assignment was for any fraudulent purpose, or to keep it on foot after her death, when the said John T. Winans could control it, or was done after consultation with, or by agreement with the said John T. Winans, or that he has to the knowledge of this defendant any control, either present or prospective, over the same. 10

And this defendant further answering, denies that she now holds, or ever did hold or have an assignment of a mortgage given by the said John T. Winans to Sophia Kirkpatrick, or that she holds any mortgage or assignment of mortgage, as trustee for said John T. Winans, or for his benefit.

And this defendant further answering, denies any knowledge or notice previous to the commencement of this suit, of any equities or rights of the complainant in the premises, and denies all and any fraudulent intent and purpose in the premises on the part of any other of the said defendants. 20

And this defendant denies all unlawful combinations, &c.

Robt. S. Green, Solr. and
of Counsel with Deft.,
Eliza W. Winans.

ANSWER OF SARAH E., HARRIET C., AND ANNA M. WINANS.

(Filed June 3, 1868.)

These defendants answering say, that while they knew there was a suit pending between the said complainant and the said defendant, John T. Winans, and that the same was on trial before arbitrators and two of these defendants the
10 said Harriet C. and Anna M. were witnesses before the said arbitrators on behalf of the said John T. Winans, the said Sarah E. not having been a witness as erroneously stated in the bill of complaint, they deny that previous to the commencement of this suit they knew or were informed of the terms of the said arbitrators agreement and award and the said defendants (as they are advised by their Counsel and respectfully submit to the Court) deny that the said agreement was an agreement specifically to execute a mortgage on the property set forth in the bill of complaint, or that
20 when the said award was made the sum thereof became a lien on the one hundred acres of land referred to therein by virtue of the said agreement, and the said award made in pursuance thereof, or that whoever took a conveyance of the said one hundred acres of land after the making of the said award and with knowledge of the same took it subject to the said agreement and award and deny any equity in the complainant to have a mortgage under the same of five thousand eight hundred and fifty-three dollars and seventy cents, or any other sum or that it was specifically so agreed
30 by the defendant John T. Winans in the said agreement, or so adjudged and awarded by the arbitrators or that they had any right so to adjudge and award, but as they are advised by their Counsel and respectfully submit to the Court the only effect of the said agreement was to give the said complainant a right to a payment of one-fifth of the said award in cash, with a mortgage on the said property to secure the remaining four-fifths of the said award, or the payment of the amount of the said award in cash less five hundred dollars at the option of the defendant John T.
40 Winans, and on the refusal of the said defendant John T. Winans to do either, the right to make the said award a

rule of the Supreme Court and to enter judgment and issue execution thereon, and these defendants, Sarah E. Winans, Harriet C. Winans and Anna M. Winans, prayed benefit and advantage of the want of equity in the said bill of complaint in the same degree and to the same extent as if the same was alleged by way of demurrer, and these defendants further answering admit that on or about the sixteenth day of January last the said John T. Winans, their father, did execute and deliver to them a mortgage on the said one hundred acres of land and on about forty acres of land on the opposite side of the road to secure the payment of three thousand dollars, and that the said mortgage was accepted by them and placed upon the record, but they deny that there was no consideration for the said mortgage or that the same was voluntary and without consideration or that the same was executed or accepted for the intent or purpose of defrauding the complainant and they admit that the said Harriet and Anna were sworn as witnesses before the said arbitrators in their father's behalf but deny that said Sarah was and deny that they were told by their father the said John T. Winans that he executed the said mortgage for the purpose of preventing the said complainant from receiving any thing against him and to put his property beyond the reach of the complainant.

And these defendants further answering say, that the said mortgage was executed and delivered to and accepted by these defendants under the circumstances, in the manner and for the reasons and considerations following, that is to say:

This defendant Sarah, is upwards of thirty-three years of age; this defendant Harriet C, is upwards of twenty-seven years of age, and this defendant Anna M., is upwards of twenty-five years of age; this defendant Harriet, since attaining her majority for a number of years, taught school, and earned and received considerable sums of money from her said employment; that during the time since these defendants have respectively attained their majority they have lived with their father, who resided on his farm, near Elizabeth, in the County of Union, which farm was large, and required a great deal of such care and attention as could only be rendered under the supervision and by females.

The mother of these defendants, and wife of the said John T. Winans, was sickly, and not physically able to take such charge entirely, and these defendants, Sarah and Anna, devoted their time and skill to the service of the said defendant in the management of such matters as might properly be attended to by them, in assisting their mother, and until she became entirely unable to attend to any of the concerns of the said farm, when this defendant Harriet, gave up her said employment of teaching school, and the care and man-
10 agement of the affairs of the said farm, formerly under the supervision and charge of their mother, devolved upon and were discharged by these defendants during the illness of their mother until her death, and ever since ; and these defendants further answering say, that by rendering these services to their said father, they were prevented from acquiring money and wages in other employment for which they were fitted, and from other employers ; and further, that such services were not gratuitously, but were rendered by these defendants respectively under the understanding and
20 with the promise from time to time by the said defendant, that he would pay them therefor. And these defendants further answering say, that they have each, from time to time, received monies from other persons than the said defendant, and that they respectively, have loaned from time to time, such monies to the said defendant, John T. Winans, under the promise by him to return the same on request. And these defendants further say, that they are informed and believe that they are respectively entitled to the benefit of one thousand dollars furnished in the year eighteen hundred
30 and sixty-two, by their mother towards the rebuilding of the homestead which had been destroyed by fire, together with interest thereon. And this defendant Sarah, for herself says that her services, which she so as aforesaid rendered to her father since her majority and during a period of twelve years, were reasonably worth the sum of two hundred dollars a year. And this defendant Harriet C., for herself says that the services which she so as aforesaid rendered to her father since her majority, and when not engaged in teaching school, and extending during the period
40 of five years, were reasonably worth the sum of one hundred dollars a year, and this defendant Anna M., for her-

self says that the services she so as aforesaid rendered to her father since her majority, and during the period of four years, were reasonably worth the sum of three hundred dollars per year, and this defendant Sarah for herself says, that the moneys which she had from time to time loaned to her father, of her own money, amounted at the time of the said mortgage, to upwards of seven hundred dollars. And the said Harriet C. for herself says, that the moneys which she had as aforesaid loaned to her said father, at the same time, amounted to the sum of upwards of six hundred dollars. 10 And the said Anna M. for herself says, that the moneys of her own, which she had as aforesaid loaned to her said father, amounted to the sum of upwards of five hundred dollars; and these defendants each for themselves say, that no part of the said sum, nor any interest thereon, had been paid by the said defendant to either of them. And these defendants further answering say, that the indebtedness of their said father to them on account of services rendered; on account of the money which had been advanced by their mother; on account of money which they had respectively 20 loaned to him and on account of interest amounted over the sum of three thousand dollars but that they are willing and did settle the whole claims which they had against their said father at the sum of three thousand dollars, and that it was to secure the payment of such amount that these defendants accepted such mortgage they believing that they had a right to obtain security for their said claim, and having no knowledge of any equity or claim of equity by the complainant in the premises mortgaged to them, and this defendant Anna M. for herself answering says (and 30 these other defendants believe it to be true) that she admits that on or about the twenty-fifth day of January last her father the said John T. Winans did convey the said one hundred acres of land to her for the expressed consideration of fifteen thousand dollars she assuming the payment of the incumbrances upon the said property with accruing interest and to relieve her said father from liability thereon, but she denies that the said deed was made or executed or accepted for the purpose of defrauding the complainant or to deprive him of the benefit of his said agreement and 40 award and says that she did not know what were the terms

of the said agreement between the said complainant and her father nor that the said complainant claimed to have any lien by virtue thereof upon the said one hundred acres and she says that she accepted the said deed for the purpose aforesaid believing that she might be able to so manage affairs as to keep down the interest and make the place pay and also pay something to her said father in consideration of the said conveyance, and she shows to this Court that since the said conveyance she has raised and paid over to
10 her said father in consideration of the said conveyance upwards of eleven hundred dollars which considering the amount of encumbrances on the property is more than its market value, and this defendant respectfully submits to this Court that she is entitled to the protection of this Court she having taken the said conveyance and paid the said money without any notice or knowledge of any equity of the complainant in the premises if any indeed exist, and these defendants deny any knowledge or notice at the time of taking the said mortgage and deed of any equity of complainant
20 in the premises, and they respectively deny any fraudulent intent or purpose in the premises on their part or the part of either of them and deny any knowledge of any fraudulent intent and purpose in the premises on the part of any of the other defendants.

And these defendants in further answering, as they are advised by their Counsel deny that the said complainant is entitled to have any benefit of the said agreement and award in this honorable Court or a specific performance of the same so as to give him the full benefit thereof as against
30 these defendants or that these defendants should be postponed in their mortgage or the said Anna in her conveyance to the claim of the said complainant or that their said mortgage or the conveyance of the said Anna should be made subject thereto or that the complainant is specifically entitled to have a mortgage to secure the amount awarded to him, or any right to have their said mortgage and the conveyance to the said Anna declared fraudulent and void as against him, or that they or either of them should be decreed to release or convey to the said complainant so as to
40 give him a mortgage on the said one hundred acres of land for his claim or any part thereof free and clear of the mort-

gage of these defendants or of the said conveyance to the said Anna.

And these defendants deny all unlawful combination, &c.

Robt. S. Green, Solr. and
of Counsel with Defts.,
Sarah E., Harriet C., and
Anna M. Winans.

10

ANSWER OF HANNAH MARIA CRANE AND EDWARD CRANE, HER HUSBAND.

(Filed June 3, 1868.)

These defendants answering say, that while they knew there was a suit pending between the said complainant and the said defendant John T. Winans, and that the same was on trial before arbitrators, this defendant Hannah M. Crane,
10 having been sworn as a witness before the said arbitrators on behalf of the said John T. Winans, yet previous to the commencement of this suit, they or either of them, did not know, and had not been informed of the terms of the said arbitration, agreement and award.

And the said defendants (as they are advised by their counsel and respectfully submit to the Court) deny that the said agreement was an agreement specifically to execute a mortgage on the property set forth in the said bill of complaint, or that when the said award was made, the same
20 thereof became a lien on the one hundred acres of land referred to therein, by virtue of the said agreement and the said award made in pursuance thereof, or that whoever took a conveyance of the said one hundred acres of land after the making of the said award, and with knowledge of the same, took it subject to the said agreement and award, and deny any equity in the complainant to have a mortgage under the same for five thousand eight hundred and fifty dollars and seventy cents, or any other sum, or that it was specifically so agreed by the defendant John T. Winans,
30 in the said agreement, or so adjudged and awarded by the arbitrators, or that they had any right so to adjudge and award, but as they are advised by their counsel and respectfully submit to the Court, the only effect of the said agreement was to give the said complainant a right to a payment of one-fifth of the said award in cash, with a mortgage on the said property to secure the remaining four-fifths of the said award, or the payment of the amount of the said award in cash less five hundred dollars at the option of the said defendant John T. Winans, and on the re-
40 fusal of the said defendant John T Winans to do either, the right to make the said award a rule of the Supreme Court

and to enter judgment and issue execution thereon, and these defendants pray all benefit and advantage of the want of equity in the said bill of complaint in the same degree and to the same extent as if the same was alleged by way of demurrer.

And these defendants further answering admit that on or about the thirteenth day of January last, Eliza W. Winans, the grandmother of this defendant Hannah Maria Crane, did assign to her a bond and mortgage of John T. Winans to her, the said Eliza W. Winans, to secure the sum of seven 10 thousand dollars, and that the same was assigned to this defendant as a present to her from her said grandmother; and they answering say, that they were informed and believe that the said mortgage was given for a good and valuable consideration, and was subject only to the disposal of the said Eliza W. Winans; and they deny any knowledge that there was no consideration for the said mortgage, or that it was voluntary, or made for the purpose of defrauding the complainant or of depriving him of the benefit of and of his rights and equities under the said agreement and 20 award or that the said Eliza W. Winans at the time she accepted it, did it with full knowledge of the agreement and award aforesaid and further that they do not believe that any of the allegations of which they have immediately hereinbefore denied acknowledged are true; and they also deny that the purpose of the said Eliza W. Winans as far as they know and believe in assigning the said mortgage to them was to keep the same alive and on foot after her death or to have it when the said John T. Winans could control it to answer his fraudulent porpose as alleged in said bill or 30 any other fraudulent intent and purpose, and they and each of them deny that the said mortgage is held by them to answer any intent or purpose to defraud the said complainant or any one else or that the said John T. Winans has any control over the same or that there is any agreement that they shall hold it for his benefit or that he shall at any future time have any control over it except as contained by the terms thereof, to be acquired by the payment of the sum secured thereby. And these defendants further answering say that the said Hannah Maria Crane is the daughter and 40 not the sister of the said John T. Winans.

And these defendants further answering deny, as they are advised by their counsel that the said complainant is entitled to have any benefit of the said agreement and award in this honorable Court or a specific performance of the same so as to give him the fuil benefit thereof. as against these defendants; or that these defendants should be postponed in the said mortgage, assigned to the said Hannah Maria Crane to the claim of the said complainant or that the said mortgage should be made subject thereto or that
10 the complainant is specifically entitled to have a mortgage to secure the amount awarded to him, or any right to have their said mortgage declared fraudalent and void as against him or that they should be decreed to release or convey to the said complainant so as to give him a mortgage on the said one hundred acres of land for his claim or any part thereof free and clear of the mortgage assigned to this defendant Hannah Maria Crane.

And these defendants further deny any knowledge or notice of any equity of complainant in the premises at the
20 time of taking the assignment of the said mortgage and they respectively deny any fraudulent intent or purpose in the premises on their part or the part of either of them and deny any knowledge of any fraudulent intent and purpose in the premises on the part of any of the other defendants.

And these defendants deny all unlawful combination, &c.

Robt. S. Green, Solr. and
of Counsel with
Crane and Wife, Defts.,

ANSWER OF HOWELL & MARSH, MORTGAGEES OF JOHN T. WINANS.

(Filed June 3, 1868.)

DECREE PRO CONFESSO AGAINST DAVID A. HAYES.

10

(Filed June 11, 1868.)

REPLICATION TO ANSWERS.

(Filed July 8, 1868.)

20

ORDER SUGGESTING THE DEATH OF JOHN T. WINANS, AND OF REVIVAL AGAINST THE SURVIVING DEFENDANTS.

(Filed November 24, 1868.)

30

SUPPLEMENTAL BILL OF COMPLAINT, AGAINST ALL THE DEFENDANTS, AND DAVID CUTTER.

(Filed November 23, 1868.)

And your orator further shows unto your Honor, by way of supplement, that on the first day of February, eighteen
10 hundred and sixty-four, Abel S. Hetfield, of the city of Elizabeth, in this state, recovered a judgment in the Circuit Court of the County of Union, in this state, against John T. Winans, one of the defendants in the said original bill of complaint, and Edward P. Winans, his brother, his security for the sum of one hundred and twenty-six dollars and sixty-eight cents of damages and costs, and did not intend to press the payment of the said judgment, but to let it remain until it should suit the defendants at some future time to pay it, as his said judgment was for a small amount and was amply secured
20 upon the real estate of the said John T. Winans, which included the one hundred acres aforesaid, and the said Hetfield never directed his attorney in said judgment, William F. Day, Esquire, nor any other person, to issue execution on his said judgment, nor to raise his money on a sale of the property of said John T. Winans, and did not know that execution had been issued thereon until he saw the advertised adjournment of the sale of the real estate of the said John T. Winans, under his said judgment, and also under the judgment in favor of the said William F. Day,
30 against the said John T. Winans, hereinafter mentioned.

And your orator further shows, that the said William F. Day obtained a judgment in the Supreme Court of this State, on the eighteenth day of September, eighteen hundred and sixty seven, against the said John T. Winans and one David Cutter, as his security, of the county of Middlesex, in this State, who is a brother-in-law of the said John T. Winans, the said Winans having married his sister; for the sum of two hundred and ninety-four dollars and fifty-three cents of damages and costs; and that the said David Cutter is pos-
40 sessed of considerable real and personal estate; is in very easy circumstances; is free from all pecuniary embarrass-

ment; is a bachelor, and from the date of said judgment to this time has always been and now is abundantly able to pay said judgment at any time and without inconvenience.

And your orator further shows that in order to protect his rights under the said agreement and award he requested Edgar Pierson, Sheriff of the county of Union, to inform your orator, if at any time there should come to his hands as Sheriff, any execution against the property of the said John T. Winans, which the said Sheriff promised your orator he would do; and your orator after that time, and on or about the first day of August, eighteen hundred and sixty-eight, saw the said Sheriff's advertisement of the sale of the lands and real estate of the said John T. Winans by virtue of executions on the before mentioned two judgments only; and your orator called on the said Sheriff in relation thereto, and was told by him that the property was not to be sold, and that the sale would be adjourned, and the sale was adjourned from the twentieth of August to the seventeenth of September, and was further adjourned to the fifteenth day of October last; and your orator called on the said Sheriff on the fourteenth day of October aforesaid, in relation to said sale, when the said Sheriff told your orator that the property was not to be sold; that the said executions had been settled in his hands, and that he had received his fees thereupon, being the half fees he was entitled to on the settlement of the executions in his hands, without a sale of the property; and also, in order to ascertain whether the said lands were to be sold by the Sheriff, your orator on or about the tenth day of October aforesaid, called upon William F. Day, Esq., and informed him of having seen the said advertisement of sale, and thereupon the said William F. Day told your orator that the said sale would not be made by the Sheriff, and that Mr. Cutter was going to pay the money for the children, meaning, as your orator understood and believes, the children of John T, Winans. who are defendants in the said original bill of complaint. And your orator has ascertained that the execution upon the said judgment of Abel S. Hetfield was issued on the second day of January, eighteen hundred and sixty-eight.

And your orator further shows, that his counsel, Francis B. Chetwood, of the city of Elizabeth, who is also his soli-

citor in the said original bill of complaint, called on the said William F. Day, a day or two only before the time at which the said property was advertised to be sold by the said Sheriff, and told Mr. Day that he was apprehensive that there was an effort making to defeat your orator in recovering the money John T. Winans owed him, and to cheat him out of all of it, by selling the property of said Winans away from your orator ; and he enquired of said Day if the property advertised by the Sheriff was to be sold, to which the said Day replied that the property was not to be sold by the Sheriff; that Mr. Cutter had agreed to take the judgments and pay the money, and that he expected it settled up that day or the next ; which information received by said Chetwood from Mr. Day, he communicated immediately thereafter to your orator.

And your orator further shows that on or about the twenty-first day of November, eighteen hundred and sixty-eight, he was greatly surprised to hear that notwithstanding the information given to him as aforesaid, the said Sheriff had on the fifteenth day of October last sold all the said lands of the said John T. Winans including the said one hundred acres under said executions, whereupon he immediately called on the said Sheriff to ascertain if what he had heard of said sale was true, and was told by the Sheriff that he had sold it all to David Cutter for four hundred dollars ; and immediately thereupon your orator went to the Clerk's office of Union County to see if the said deed had been left for record, and found that the deed had been left there for record on the twentieth day of November aforesaid, by which deed it appears that in pursuance of the executions issued on the said judgments, the whole of the lands and real estate of the said John T Winans including the said one hundred acres, were sold and conveyed to the said Cutter for four hundred dollars, and that the sale took place on the fifteenth day of October last, and the Sheriff's deed for the same to said Cutter is dated on the nineteenth day of November aforesaid.

And your orator further shows, that the property conveyed to said Cutter by said Sheriff's deed, comprises in all about one hundred and seventy-four acres of valuable land, with three farm dwelling houses, and large barns aud ont-build-

ings thereon, and is worth at least. from twenty to twenty-five thousand dollars, and that the whole amount of bona-fide incumbrances thereon prior to said judgments do not exceed the one half of the actual cash value of said property; and the children of the said John T. Winans, who are defendants in said original bill of complaint are in actual possession of the same, and have been in the possession thereof ever since the death of their said father.

And your orator further shows that the only persons whom he could learn, on inquiry from the Sheriff, who were present at the said sale by the said Sheriff, were David A. Hayes, Esq., one of the defendants in said original bill of complaint, the attorney of the said John T. Winans, in the suit of your orator against the said John T. Winans, in the Supreme Court of this State, mentioned in the said original bill of complaint; and Robert S. Green, Esqr., Counsel of said Winans before the Auditors in said suit, and Solicitor of all the defendants who have answered the said original bill; and that the said David Cutter was not present at said sale, and never authorized any person to purchase or bid for him at the said sale. And the said Sheriff informed your orator, that either the said David A. Hayes or Robert S. Green, Esqr., had bought it, and that there was but one bid made at the sale, and that was four hundred dollars ; and your orator is credibly informed that no person signed an acknowledgment of the purchase, and that there were no articles of said sale.

And your orator further shows that on hearing from the said Sheriff that he had sold the said property to the said David Cutter, your orator on the twenty-fifth day of November aforesaid went to the said Cutter at his place of residence, and enquired of him if he had purchased the said property at said Sheriff's sale and told him that the said Sheriff had made a deed to him for the same for four hundred dollars, to which the said Cutter replied that he knew nothing about it, that your orator must be mistaken, that he had nothing to do with John T. Winans, that it must have been his brother William Cutter, if it was sold to any Cutter, and he did not believe the Sheriff had made a deed to him, and that he had not authorized any person to bid

or purchase for him, and that he would have nothing to do with it.

And your orator further shows that in consequence of what the said Cutter had said to him in his said interview with him, your orator thought it possible that he might be mistaken in the first name of the party to whom the said Sheriff's deed was made but upon further immediate examination your orator ascertained to a certainty that said deed was made to the said David Cutter, and thereupon
10 your orator on the next day after his said interview with the said David Cutter, went back to the said Cutter and told him that it was certain that the said deed was made to him, whereupon the said Cutter repeated the same statements he had made to your orator on the day before, that he did not purchase the property, that he had nothing to do with the said Sheriff's sale, that he had no interest in the property, and had not authorized any person to purchase or bid for him at the sale; and your orator then asked the said Cutter if he would make a quit claim deed to your orator for the
20 said property to enable your orator to save some of the money which the said John T. Winans owed your orator, and which the said Winans had promised your orator to give him a mortgage on his property to secure the payment of, but had died without doing so, and all that your orator now wanted was the benefit of the property which the said John T. Winans had promised him, and if the said Cutter would make a quit claim deed to your orator for the property your orator would pay him for so doing, to which the said Cutter replied that he would not make a deed to your orator,
30 that he might injure the children of the said John T. Winans, who were his nieces, by giving your orator a deed, and that he, said Cutter, wanted to protect their interests, and he did not want to do any thing without seeing them lest he might injure them; and the said Cutter further said that two of said Winans' daughters, one of whom he called Elizabeth, had been to see him some time ago, and said they wanted him to sign a paper to enable them to pay their father's debts, and they showed him a list of their father's creditors, and that the name of your orator was not among
40 them; and that he, the said Cutter, told them that he was willing to give them his name for that purpose, provided it

would not cause him to pay any money, or make him any trouble, and he then signed a paper they produced to him, without his reading it, or having it read to him, and without knowing what it contained ; and at the same time they told the said Cutter, (as said Cutter informed your orator,) that they had sold, or were about to sell, a thousand dollars worth of hay from the farm to pay their father's debts with, and they would not call on him, the said Cutter, to pay any money, nor make him any trouble, and would not even put him to the trouble of going to Elizabeth. 10

And your orator charges that the money with which the said judgments and executions of the said Hetfield and Day were paid, and the execution fees aforesaid paid to the said Sheriff, was furnished by the daughters of the said John T. Winans, who are defendants in the said original bill, and was raised by them from the sale of hay and other crops and produce of the said lands of the said John T. Winans; and that the said Sheriff's sale of all the said property of the said John T. Winans was procured by the defendants in the said original bill, to defraud your orator of his rights under the 20 said agreement of the said John T. Winans with your orator, set forth in said original bill of complaint, and of your orator's rights under the said award mentioned in said original bill in pursuance of said agreement, under the false color and pretence of a judicial sale on judgments against the said John T Winans, prior to the rights and equities of your orator in the said one hundred acres of land, and to defeat your orator in the recovery of the money due to him from the said John T. Winans upon the said agreement and award, and is therefore fraudulent and void as against your 30 orator, and that the said Sheriff's deed was without any consideration, was never delivered, and ought to be set aside as fraudulent and void ; or that the said David Cutter should be declared and decreed to be a trustee holding the said Sheriff's deed and title to the lands therein mentioned for the benefit of your orator.

And your orator well hoped that the said David Cutter would have made a deed to your orator for the said one hundred acres of land to secure to your orator his rights and equities under the said agreement and award, and that 40

he would have complied with such fair and reasonable requests, as in justice and equity he ought to have done.

But now so it is, may it please your Honor that the said David Cutter refuses to comply with your orator's said requests and insists upon holding the said Sheriff's deed, and the title to the said one hundred acres of land mentioned and described therein, to deprive your orator of his rights under the said agreement and award to the manifest wrong and injury of your orator in the premises.

10 To the end therefore that the said David Cutter and the defendants in said original bill may upon his and their corporal oath, to the utmost of his and their knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they distinctly interrogated thereto, and more especially that he, the said David Cutter, may in manner aforesaid answer and set forth whether he purchased the said lands at the said Sheriff's sale, or was present thereat, or knew 20 whether the said sale was to take place, and whether he authorized any person to purchase or bid for the said lands for him at said sale; whether he furnished any money to pay for said lands sold as aforesaid by the said Sheriff, or to pay off and satisfy the said judgments and executions; whether he knew that the said lands had been sold to him by the said Sheriff until informed by your orator that the said Sheriff had made said deed to him; whether he left the said Sheriff's deed, or authorized or directed any other person to leave it in the County Clerk's office to be recorded 30 for him; whether your orator requested him to convey said lands or any part thereof to him to enable him to secure the debt and money the said John T. Winans owed him; whether he has been told by any person and by whom with whose money the said judgments or executions have been paid off, and when was he so told.

And that the said deed from the said Edgar Pierson, Sheriff as aforesaid, to the said David Cutter may be declared and decreed to be fraudulent and void, and may be set aside; or if it shall seem more equitable and proper to 40 your Honor, that the said David Cutter may be declared and decreed to be a trustee holding the said Sheriff's deed,

and the title to the said one hundred acres conveyed thereby for the benefit of your orator, and to secure his rights under the said agreement and award.

And that the said David Cutter may be restrained by the injunction of this honorable Court from conveying, or in any manner encumbering the said one hundred acres of land mentioned in said Sheriff's deed, or any part thereof, and from committing any waste or spoil thereof, and that your orator may have such further or other relief in the premises as the nature of the circumstances of this case 10 may require, and to your Honor shall seem meet.

May it please your Honor to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this honorable Court to be directed to the said David Cutter, to restrain him from conveying or in any manner encumbering the said one hundred acres of land mentioned in the said Sheriff's deed, or any part thereof, and from committing any waste or spoil thereof, but also the State's writ of subpœna to be directed to the said David Cutter, and to Eliza W. Winans, Charles J. Howell, Jonas 20 E. Marsh, Sarah E. Winans, Harriet C. Winans, Anna M. Winans, David A. Hayes, Hannah Maria Crane and Edward Crane, her husband, the surviving defendants in the said original bill of complaint, thereby commanding them at a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to perform and abide such further order, direction and decree therein as to your Honor shall 30 seem meet. And your orator shall ever pray, &c.

F. B. Chetwood & Son,
Solicitors and of Counsel
with Complainant.

STATE OF NEW JERSEY, ss.

Michael M. Williams, the complainant in the foregoing bill of complaint, being duly sworn according to law, on his oath says, that the facts, matters and things stated and set forth in the foregoing bill of complaint are true ; and that this deponent requested Edgar Pierson, Sheriff of the County of Union, at the time in that behalf stated in the foregoing bill of compiaint, to inform this deponent at any
10 time when any execution came to his hands as Sheriff, for the sale of any land or real estate of John T. Winans, and the said Edgar Pierson promised this deponent to give him the said information; that at about the first day of August, eighteen hundred and sixty-eight, this deponent saw an advertisement of the said Sheriff, of the sale of the lands of John T. Winans, by virtue of executions out of the Supreme Court of this State, and out of the Circuit Court of Union County, in this State, in favor of Abel S. Hetfield and William F. Day, and this deponent inquired of said Sheriff in
20 relation thereto, and was informed by said Sheriff that the said sale would be adjourned, and the sale was adjourned from time to time until the fifteenth day of October last; and this deponent called on the said Sheriff, on the fourteenth day of October aforesaid, and inquired about the said sale, and the said Sheriff told this deponent that the property was not to be sold under said executions; that the executions had been settled in his hands, and he had received his fees thereupon, being the half fees he was entitled to on the settlement of the executions in his hands without a
30 sale of the property, and on the tenth of October last, or about that day, this deponent called on William F. Day, the plaintiff in one of the execntions, and the Attorney of the plaintiff in the other, and informed him that he had seen said advertisement of the Sheriff, whereupon the said Day told this deponent that the sale would not be made by the Sheriff, and that Mr. Cutter was going to pay the money for the children, meaning the children of John T. Winans, defendants in the original bill of this deponent, and that in consequence of this information this deponent did not at-
40 tend said advertised sale; that on the fifteenth day of October aforesaid, the said Sheriff sold all the real estate of John

T. Winans, including the one hundred acres mentioned in the foregoing bill comprising one hundred and seventy-four acres with the dwelling houses, barns and outbuildings thereon for four hundred dollars, as he said, to the said David Cutter, and the said Sheriff informed this deponent that only one bid was made, which was four hundred dollars, that the said David Cutter was not present at the sale, and that David A. Hayes and Robert S. Green were present and one of them made the bid. That on the twenty-first day of November this deponent for the first time heard 10 that the said sale had taken place. That on the twenty-fifth day of November instant, this deponent went to the residence of the said Cutter and enquired of him if he had purchased the property of said Winans at Sheriff's sale and told him that the Sheriff had made a deed to him for it for four hundred dollars, to which the said Cutter replied that he knew nothing about it, and he did not believe that the Sheriff had made a deed to him. And this deponent called again the next day on said David Cutter, and informed him that he had ascertained to a certainty that the Sheriff had 20 made a deed to him for all the said property for four hundred dollars, to which the said Cutter repeated what he had said to this deponent on the subject the day before, and told this deponent that he was not at the sale, and knew nothing of it, and had not authorized any person to purchase or bid for him at the sale. And this deponent further says, that all the statements in the foregoing bill of complaint, of what occurred and what was said by this deponent and the said David Cutter, in relation to the said sale, and to the said deed, is truly stated and related in said bill. 30

M. M. Williams.

Subscribed and sworn to, the twenty-eighth of November, A. D. 1868, before me.

James R. English,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, ss.

John Norris, of the city of Elizabeth, of full age, being duly sworn according to law, on his oath says, that ne went with Michael M. Williams to the residence of David Cutter, on the twenty-fifth and twenty-sixth days of November instant; and was present at all of the interviews on those days between the said Cutter and Williams ; and this deponent heard the said Williams ask the said Cutter if he had purchased the property of John T. Winans at Sheriff's sale, 10 and heard the said Williams tell the said Cutter on both of said days, that the Sheriff had made a deed to said Cutter for all of John T. Winans's property for four hundred dollars, and that the said Cutter replied that he had not purchased the property at Sheriff's sale, and had nothing to do with it, and knew nothing about it, and that he was not at the sale, and had not authorized any person to purchase or bid at said sale for him, and that he did not believe the Sheriff had made a deed to him for it, and this deponent heard the said Cutter say considerable more on the same 20 subject, of about the same import as above stated.

JOHN NORRIS,

Subscribed and sworn to, the twenty-eighth of November, A. D. 1868, before me.

JAMES R. ENGLISH,
Master in Chancery of New Jersey.

AMENDMENTS TO SUPPLEMENTAL BILL.

(Filed December 10, 1868.)

Amendments to Supplemental Bill in pursuance of an order made on the tenth day of December, eighteen hundred and sixty-eight.

And your orator further shows that the said John T. Winans since filing his answer to said original bill, has died, having in his life time duly made and executed his last will and testament in writing, and thereby appointed David A. Hayes his sole executor, and died without revoking his said will, and by his said will he gave to his four daughters, who are defendants in said original bill all his personal estate and his two pews in the Second Presbyterian Church in the city of Elizabeth, and his two burying lots in the First Presbyterian Churchyard in said city, and he gave by his said will to his son John T. Winans, who is an infant about thirteen years of age, his two pews in the First Presbyterian Church in said city and his burying lots in the Evergreen Cemetery, and by a residuary clause and devise in said will he gave all the rest and residue of his estate as follows: "All the rest and residue of my estate both real and personal I order and direct my executor to sell and dispose of at public or private sale at such time and in such manner as he may deem best, giving due conveyances of the same to the purchasers, and that my executors hold and invest the proceeds received from such sales in trust for my son John T. Winans until he arrives at twenty-one years of age, but out of the same from year to year paying so much thereof as my executors shall deem proper for the board, clothing and education of my said son."

And your orator further shows that the said David A. Hayes has filed his written renunciation of his executorship of said will and of the trust therein created, in the Surrogate's office of Union County, since which renunciation letters of administration with said will annexed have been granted by the Surrogate of the County of Union to Anna

M. Winans and Sarah E. Winans, two of the daughters of the said testator John T. Winans who are defendants in said original bill, and they have procured the said will to be proved before the said Surrogate.

F. B. Chetwood & Son, Sols.

10 A true copy.

B. Gummere, Clerk.

INJUNCTION ON ORIGINAL BILL.

NEW JERSEY, TO WIT:

SEAL.

The State of New Jersey to John T, Winans, Charles J Howell, Jonas E. Marsh, Eliza W. Winans, Sarah E. Winans, Harriet C. Winans, David A. Hayes, Hannah Maria Crane, and Edward Crane her husband, and Anna M. Winans, their servants, agents and attorneys, and each and every of them greeting: 10

Whereas it hath been represented to us in our Court of Chancery, on the part of Michael M. Williams, complainant, that he has lately exhibited his bill of complaint against the said John T. Winans, Charles J. Howell, Jonas E. Marsh, Eliza W. Winans, Sarah E. Winans, Harriet C Winans, David A. Hayes, Hannah Maria Crane, Edward Crane, and Anna M. Winans, defendants, to be relieved, touching the matters therein contained, in which said bill it is, among other matters set forth, that you, the said defendants, are combining and confederating to injure the complainant touching the matters set forth in the said bill, and more particularly, that you threaten and intend to prevent the said complainant from recovering from the said John T. Winans, the sum of money awarded to him by the award mentioned in said Bill of Complaint, and to prevent the said complainant from obtaining the mortgage and security mentioned in the agreement set forth in said Bill of Complaint, upon the one hundred acres of land in the said agreement and Bill of Complaint set forth and described; and situate in the Township of Linden, in the County of Union, and that you have taken certain mortgages, deeds and assignments of certain mortgages to defeat the said complainant in the recovery of his said money, and in obtaining the mortgage he is entitled to upon the said one hundred acres of land as set forth and charged in the said Bill of Complaint, and that the actings and doings of you, the said defendants, touching the matters in the said bill mentioned, are contrary to equity and good conscience. 20 30

We, therefore, in consideration of the premises, do strictly enjoin and command you, the said John T. Winans, 40

Charles J. Howell, Jonas E. Marsh, Eliza W. Winans, Sarah E. Winans, Harriet C. Winans, David A. Hayes, Hannah Maria Crane, Edward Crane, and Anna M. Winans, your agents, servants, and attorneys, are each and every of you, under the penalty that may fall thereon, that you and each and every of yon, do from henceforth, altogether and absolutely desist and refrain from assigning, transferring, disposing of or in any manner acting upon, or with the said mortgages and assignments, or any or either of them, and
10 from conveying, encumbering, or in any manner disposing of or interfering with the said one hundred acres of land, or any part thereof, until you shall have fully answered the said bill, and our said Court shall have made other order to the contrary.

Witness his honor, Abraham O. Zabriskie, Chancellor of the State of New Jersey, at Trenton, this tenth day of February, A. D. eighteen hundred and sixty-eight.

F. B. Chetwood & Son, Sols.

Barker Gummere, Clerk.

INJUNCTION ISSUED UPON SUPPLEMENTAL BILL, NOVEMBER 28, 1868.

(Served November 30, 1868.)

NEW JERSEY, TO WIT:

The State of New Jersey to David Cutter, greeting:

Whereas it hath been represented to us, in our Court of Chancery, on the part of Michael M. Williams, complainant, that he has lately exhibited his supplemental bill of complaint against you, the said David Cutter, and Eliza W. Winans, Charles J. Howell, Jonas E. Marsh, Sarah E. Winans, Harriet C. Winans, Anna M. Winans, David A. Hayes, Hannah Maria Crane and Edward Crane her husband, defendants, to be relieved touching the matters therein contained, in which said bill it is among matters set forth, that you, the said defendants, are combining to injure the complainant touching the matters set forth in the said bill, and more particularly, that you, the said David Cutter, intend and threaten to convey or otherwise dispose of a certain tract of land of one hundred acres, in the township of Linden, in the County of Union, lately belonging to John T. Winans, situated opposite to the late residence of the said John T. Winans, bounded northerly by a road leading faom the Edgar Turnpike to Morses' Mill, easterly by land now or formerly of the estate of Edward C. Mayo, deceased, southerly by Morse's Creek and by land now or late of Anthony Morse, and westerly by the Edgar Turnpike road, being one of the tracts of land which were conveyed to you, the said David Cutter, by Edgar Pierson, Sheriff of the County of Union by his deed dated on or about the nineteenth day of November, eighteen hundred and sixty-eight, and mentioned and described in the complainant's bill, and that the actings and doings of you the said defendants touching the matters in the said bill mentioned are contrary to equity and good conscience, we therefore in consideration of the premises do strictly enjoin and command you, the said David Cutter, under the penalty that may fall thereon, that you do from

henceforth altogether and absolutely desist and refrain from conveying or in any manner encumbering the said one hundred acres of land or any part thereof and from committing any waste or spoil thereof, until our said Court shall make other order to the contrary.

Witness the Honorable Abraham O. Zabriskie, our Chancellor, at Trenton, the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

10 F. B. Chetwood & Son, Solicitors.

B. Gummere, Clerk.

SEPARATE DEMURRERS OF DAVID CUTTER AND THE OTHER DEFENDANTS, TO SUPPLEMENTAL BILL.

(Filed January 5, 1869.)

This defendant by protestation &c., saith that there is no matter or thing in said bill of complaint contained, good and sufficient in law to call this defendant in question in this honorable Court for the same, but that there is good cause of demurrer thereto, and therefore this defendant doth demur thereunto, and for cause of demurrer this defendant saith that the said bill of complaint, in case the allegations therein contained were true, which this defendant doth in no sort admit, contains not any matter of equity whereon this Court can ground any decree, or give the complainant any relief or assistance as against this defendant, whereupon this defendant doth demur in law thereunto, &c.

10

20

ROBT. S. GREEN, Sol. and
of Counsel &c.

JOINDERS IN DEMURRER.

OPINION OF THE CHANCELLOR

The argument of this cause was had upon demurrers filed by the defendants. The complainant had on the 10th day of February, 1868, filed an original bill against all the defendants except Cutter. He became interested in the property in question by purchase at a Sheriff's sale pending the suit, and a supplemental bill to have that purchase declared fraudulent and void, was filed against him November 28, 1868, in which the defendants in the original bill were
10 joined. The defendants in the original bill had answered, except one, against whom a decree pro-confesso had been entered. The supplemental bill prayed no relief against the defendants to the original bill, but only the prayer for relief against Cutter without any general prayer. All the defendants filed general demurrers to the bill of the complainant without stating whether to the original or supplemental bill.

Mr. C. Parker, and
20 Mr. R. S. Green,
for Defendants.

Mr. B. Williamson, and
Mr. F. B. Chetwood,
for Complainant.

The Chancellor.

The original bill was to compel the specific performance of an agreement to execute a mortgage on one hundred acres of land in Union County. This agreement was
30 alleged to be contained in a submission to arbitration between the complainant and John T. Winans, a defendant in the original bill, and as insisted by the complainant bound Winans to execute a mortgage to him for the amount which should be awarded by the arbitrators within thirty days after the award. The bill charged that the award was for a large sum and that Winans refused to pay it or execute a mortgage to secure it, but for the purpose of defrauding the complainant, within the thirty days mortgaged and conveyed the tract upon which he had agreed to give
40 the complainant a mortgage to the otner defendants, and that they knew of that agreement and joined in the scheme

for the purpose of aiding Winans in defrauding the complainant and that they paid no consideration.

The bill prayed that Winans might be compelled to execute the mortgage as agreed, and that the mortgages and conveyances to the other defendants might be declared void as against the complainant, or subject to the mortgage so to be executed to him.

The supplemental bill states that pending the suit the defendants, for the purpose of defrauding the complainant, procured executions to be issued upon two old judgments against John T. Winans, which existed and were liens upon this tract of land prior to the submission, and at a Sheriff's sale, under these executions, procured this tract to be purchased in the name of the defendant, David Cutter, who was their uncle, for $400, and procured the same to be conveyed to him by the Sheriff. That Cutter had not authorized, and did not know of the purchase in his name, and paid no part of the consideration money which was advanced by the defendants to the original bill, to defraud the complainant. That Cutter insisted upon holding the lands by this deed from the Sheriff, and refuses when requested to convey or mortgage them to the complainant.

A supplemental bill is proper to bring in as a party, a person who has acquired an interest in the controversy after the commencement of the suit as assignee or successor to an original defendant. Such subsequent assignee or successor will in general be bound by the decree and proceedings, except where his title is acquired involuntarily by the act of the law, as in cases of an assignee in bankruptcy or insolvency, in which it is necessary in order to bind him, that he should be made a party by supplemental bill. In other cases it may be expedient, but is not necessary. But when such person is made a party by supplemental bill, whether filed by himself or by the complainant, in such case the new party comes before the Court exactly in the same plight and condition as the former party; is bound by his acts, and may be subject to all the costs and proceedings from the beginning of the suit. It is merely a continuation of the original suit, and whatever evidence was properly taken in the original suit, may be made

use of in both suits, though not entitled in the original suit.

St. Eq. Pl. §, 343.

2 Dan. Ch. Pr. 1,609 and 1,611.

Sedgwick v. Cleveland, 7 Paige 290.

If Cutter was rightly brought into the original suit as the assignee pending the same of the interest of John T. Winans, and the other defendants in the original bill, he is bound by their answers, and he and such as have answered
10 cannot now demur to anything in the original bill. The defendant Hayes is in no better position.

But any defendant in a supplemental bill may demur upon the ground that the bill is not properly a supplemental bill, but that it seeks to make a new and different case from the original bill upon new matter.

St. Eq. Pl. 616.

Upon the facts stated in the supplemental bill the complainant cannot have any relief against the defendants in the original bill on the grounds of relief there set forth.
20 That is based upon a fraudulent transfer by one of them to the others of the land to be mortgaged for the purpose of defeating the complainant's rights. By the Sheriff's sale which is set forth in the supplemental bill the rights of all the defendants in the original bill are ended, By a sale under judgments not impeached, which were prior liens on the tract, the legal title was vested in Cutter.

This title they cannot dispute and all question as to the validity of their claims as against the complainant is at an end. If they have any right to claim the interest in the
30 premises by Cutter being a trustee it arises under the Sheriff's sale and not under the transactions set out in the original bill.

Had the defendants in the original bill other than John T. Winans bought in this title in their own names at the Sheriff's sale fraudulently as is set forth in this supplemental bill this could not have been set up in a supplemental bill.

It is a different transaction, no answer to the original bill no evidence taken in that suit could apply to it. One trans-
40 action may be honest, and the other fraudulent they are in no wise connected.

But here is a new defendant not concerned in the original frauds, who by a new fraud perpetrated by means entirely different is brought into Court, to have this new transaction declared void. It can only be effected by an original bill. It is not even the proper subject of an original bill in the nature of a supplemental bill.

St. Eq. Pl. §. 346, a.

And it is very questionable if an original bill had been filed after the Sheriff's sale against all these defendants on the ground of fraud in both transactions, whether a demurrer by Cutter for multifariousness would not be good.

The demurrers must be sustained.

A. O. Zabriskie, C.

ORDER SUSTAINING DEMURRER AND DISMISSING SUPPLEMENTAL BILL.

(Filed December 17, 1869.)

IN CHANCERY OF NEW JERSEY,

Between Michael M. Williams, Complainant, and 10 David Cutter, Eliza W. Winans, Charles J. Howell, Jonas E. Marsh, Sarah E. Winans, Harriet C. Winans, Anna M. Winans, Hannah Maria Crane, and Edward Crane, et. al. Defendants.	On Supplemental Bill, &c.

This cause coming on to be heard upon the pleadings and demurrers filed to said bill filed as a supplemental bill in this cause, and having been argued by Mr. R. S. Green 20 and Mr. Cortlandt Parker in support of the demurrers and Mr. F. B. Chetwood and Mr. B. Williamson for the complainant, and the court having considered the matters in question. It is now on this seventeenth day of December, one thousand eight hundred and sixty-nine, on motion of R. S. Green, Solicitor for the several defendants, ordered and decreed, that the said demurrers and each of them, be sustained and that the said supplemental bill be, and the same is hereby dismissed with costs.

A. O. Zabriskie, C.

30

A true copy.

B. Gummere, Clerk.

PETITION OF APPEAL.

(Filed January 20, 1870.)

The humble petition of Michael M. Williams, the appellant in the above stated cause respectfully shows, that your petitioner finds himself aggrieved by an interlocutory order or decree made in the Court of Chancery by his Honor Abraham O. Zabriskie, Chancellor of New Jersey, bearing date the seventeenth day of December, in the year one thousand eight hundred and sixty-nine, wherein the said Michael M. Williams is complainant, and the said David Cutter, Eliza W. Winans, Charles J. Howell, Jonas E. Marsh, Sarah E. Winans, and others, are defendants, in this respect, to wit: that the said interlocutory order or decree adjudges that the demurrers and each of them filed in said cause, be sustained, and that the supplemental bill in said cause be and is thereby dismissed with costs; and your petitioner humbly appeals from that part of the said order or decree of the Chancellor which orders and decrees as aforesaid upon the ground that the same is erroneous and contrary to law and equity.

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

Dated January 20, 1870.

F. B. Chetwood & Son, Solicitors
of Michael M. Williams.

ANSWER TO PETITION OF APPEAL.

(Filed September 19, 1870.)

This respondent not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition are contained and set forth, for answer thereunto says, that he believes it to be true that such decree as is complained of by the appellant was made by the Court of Chancery, as in the said petition of appeal is set forth, 10 &c. And this respondent is advised and believes that the said decree is agreeable to equity and justice, and humbly prays that the same may be affirmed.

Robt. S. Green, Solr., &c.

Court of Errors and Appeals.

Between

MICHAEL M. WILLIAMS, Appellant, and JOHN T. WINANS AND OTHERS, Respondents.	Complainant's Points.

First Point.—The defendant, David Cutter, is properly made a party to the suit by supplemental bill.

Second Point.—The defendant in the original suit could not defeat that suit, by procuring a fraudulent sale of the property in dispute; and the only way by which such a result could be avoided was, by bringing in Cutter, and making him a party by supplemental bill.

Third.—The fraud charged is, that the property was sold FRAUDULENTLY; and by means of that sale, was put in the name of Cutter, for the purpose of defeating the suit; and that it was done by the defendants, or some of them in the original suit, who had combined together to cover up the property in dispute, and this was one of the means resorted to for the original purpose in view, to wit, to defraud the complainant.

Fourth.—The demurer admits all the facts. Among others:

1. That the sale was a fraud.
2. That it was designed to carry out the fraud charged in the original bill, and a part of the scheme contemplated by the defendants.
3. That Cutter has no interest, and that his name is used by the defendants to perpetuate and cover up, and thus render more complete the fraud against which relief is sought by the original bill.

Fifth.—It is not a new fraud, as the ~~charge~~ Chancellor states, but it is a part and parcel of the old fraud to cover up the property from the creditor.

Sixth.—If a supplemental bill is not proper, and the Chancellor's last position is correct, the complainant has no remedy against this fraud.

Suppose he files his bill against Cutter alone, and succeeds in setting aside the sale as fraudulent; the mortgages and the conveyance, which the original bill was filed to set aside, will then stand as valid. The complainant not only wants to set aside the sale, but to set aside also the mortgages and the deed held by the defendants in the original suit. He cannot set aside the mortgages and the deed as fraudulent, without making the mortgagees and grantee parties to the suit. He wants to do something more. He wants to set aside the Sheriff's sale, or to hold Cutter as the trustee; and he cannot do this without making Cutter a party to the suit. It is clear, therefore, that the complainant can obtain no effectual relief, except by a decree against all the defendants, including Cutter; and this is the very object of

the supplemental bill, to bring in all the parties, in order that the relief may be effectual.

In an original bill, the complainant could obtain no complete relief without making ALL the defendants parties. That is the only object of the supplemental bill ; and if it is not proper, then the defendants are successful in an adroit fraud in ousting the Court of jurisdiction.

The whole mistake lies in the Chancellor's regarding the judicial sale as a bona fide one, and as wholly unconnected with the original fraud. It is not a different transaction, but part and parcel of the same.

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In an original bill, the complainant could obtain no complete relief without making, *viz*, the defendants parties. That is the only object of the supplemental bill; and if it is not proper, then the defendants are successful in an adroit fraud in ousting the Court of jurisdiction.

The whole mistake lies in the Chancellor's regarding the judicial sale as a bona fide one, and as wholly unconnected with the original fraud. It is not a different transaction, but a part and parcel of the same.

1. That the sale was a fraud.
2. That it was designed to carry out the fraud charged in the original bill, and a part of the scheme contemplated by the defendants.
3. [illegible]

Fifth.—[illegible] from the creditor.

Sixth.—If a supplemental bill be not proper, and the Chancellor's last position is correct, the complainant has no remedy against this fraud.

Suppose he files his bill against Geiger alone, [illegible]

[illegible]

Clerk

ELIZABETH DAILY HERALD Steam Print

Court of Errors and Appeals.

MICHAEL M. WILLIAMS, Appellant, *and* DAVID CUTTER et al., Respondents.	*Points of Respondents.*

The original bill in this cause was filed February 10, 1868.

Case, page 1.

The defendants, except David A. Hayes, answered June 3, 1868.

Case, pages 14, 27, 30, 36, and 39.

Decree *pro. confesso* against Hayes, June 11, 1868, and replication as to others July 8, 1868.

Case, page 39.

Supplemental bill, filed Nov. 23, 1868.

Case page 40.

10

Demurrers, January 5, 1869.
Case, page 37.

Decree sustaining demurrers, and dismissing supplemental bill, December 17, 1869.
Case, page 62.

Petition of appeal, January 20, 1870.
Case, page 63.

Answer to petition, September 19, 1870.
Case, page 64.

10 The decree of the chancellor, sustaining the demurrers and dismissing the supplemental bill, should be sustained.

First: Because this is not properly a supplemental bill but seeks to make a new and different case from the original bill upon new matter.

> If the purpose for which a supplemental bill is brought is not properly supplemental to the matter already in litigation between the parties to the original bill, and in respect to which the
20 relief is sought, a demurrer will lie.
> Story, Eq. Pl., Sec. 616.

If the facts brought forward by the supplemental bill are not material to the matters in controversy, a demurrer will lie.

Story, Eq. Pl., Sec. 343.

When is a supplemental bill proper? When new events or new matters have occurred since the filing of the bill, a supplemental bill is, in many cases, the proper mode of bringing them before the Court. But here we are to understand that such new events or new matters do not change the rights or interests of the parties before the Court, but merely refer to and support the rights and interests already in the bill. 10

Story, Eq. Pl., Sec. 336.

If the interest of a defendant is not *determined*, and only becomes vested in another by an event subsequent to the institution of a suit, the defect may be supplied by a supplemental bill. In these cases the party comes before the Court exactly in the same plight and condition as the former party, is bound by his acts, and may be subject to all the costs of the proceedings from the beginning of the suit. 20

Story, Eq. Pl., sec. 342.
Daniel's Ch. Prac., vol 2, pages 1609-10.

A supplemental bill is merely a continuation of the original suit, and whatever evidence was

taken in the original suit, may be made use of in both suits.

Daniel, Ch. Prac., vol. 2, page 1611.

A supplemental bill, when properly before the Court, is an *addition* to the original bill, and becomes *part of it*, so that the whole bill is to be taken as one amended bill.

Gillett *v.* Hall, 13 Conn. 426.
Harrington *v.* Slade, 22 Barb, 161.
10 And cases cited in note in Daniel's above.

If there has been no decree in the original suit before the supplemental bill is filed, the original and supplemental suit may come on together for hearing, and one decree will be made in both.

Daniel's Chan. Prac., vol 2, page 1612.

The rule controlling this case may be gathered from the foregoing, as follows: This supplemental bill can be retained only in case "the interest of any 20 or all of the defendants *has not determined*, and has only become vested in another, by an event or events which have occured subsequent to the filing of the original bill, and which 'are properly supplemental,' and 'material to the matters in controversy,' and do not change the rights or interests of the parties before the Court, but merely refer to, and support the rights and interests already in the suit." And, if it is to be retained, it follows as a consequence that

"this is only a continuation of the original suit," and "becomes part of the original bill, so that the bill is to be taken as an amended bill," in which the new "party comes before the Court in exactly the same plight and condition as the former party or parties, and is bound by his or their acts." "Evidence, if it had been taken on the original suit, could be made use of," and "the original and supplemental suit come on together for hearing and one decree be made in both." 10

What is the distinction between the interests of a party being *determined*, and their only becoming vested in another by subsequent events which do not change the rights or interest of the parties?

In such a case as the present, we take it to be, by "determined," to mean, where the interests which the defendant had, in the matter in controversy, at the time the alleged right of the plaintiff accrued, *ceases* or is *destroyed*, in which case a supplemental bill is not proper, and by the other to mean that such interest, 20 while subject to the equity of plaintiff's alleged right, was simply transferred to another person, in which case a supplemental bill is proper.

As instances of first,

See Story, Eq. Pl., sec. 350, and cases cited.

The interest of a tenant for life, determined by his death, after bill filed. The case of trustees defendants, where some die, others are removed, and new ones appointed, after bill filed. They come in under the original 30 founder and not under the old trustees.

Att'y Gen., *v.* Foster, 2 Hare. p. 80.

The case of a tenant-in-tail in remainder, entitled by the death of a prior tenant-in-tail without issue.

Lloyd *v.* Johns 9, Ves. 36

As an instance of the second:

The conveyance by a defendant of his interest *pendente lite.*

A sheriff's deed conveys the interest of the defendant in lands at the date of the judgment, and relates
10 back to the entry of it. It conveys to the purchaser all the interest of the defendant at that time.

Jacob's Law, Dic Tit Relation.
" " Execution, iv. i.

As a consequence, such sale and conveyance destroy all interests acquired in the defendant's estate subsequent to the entry of the judgment. It is not, therefore, a transfer, subject to an equity or right acquired subsequent to the judgment, but an event by which the interest of the defendant is *determined* as far as
20 subsequently acquired equities or rights are concerned.

This supplemental bill is not proper:

1. Because the subsequent event has *determined* the interests of the parties; their rights and interests have been thereby changed, and it does not merely refer to, and support the rights and interests already in suit.

The original bill was based on a submission to arbitration, dated April 2, 1867, between com-

plainant and John T. Winans, and an award under it in favor of complainant, dated Dec. 31, 1868, under which submission and award complainant claims he is entitled to have a decree for a mortgage from said Winans for the amount of the award on a certain tract of land which, he charges, has been fraudulently encumbered and transferred by the mortgages and conveyance of the other defendants, praying a decree for such mortgage, and that the 10 mortgages and conveyance of the other defendants are void as against him, or shall be postponed to his.

The supplemental matter set up in this bill, is the sale of the same property by the Sheriff, under judgments prior in date to the award and the mortgages and conveyance of the defendants, charging that said sale was fraudulently procured by defendants to deprive complainant of his security, and praying that the 20 Sheriff's sale may be set aside, or the purchaser be decreed a trustee, holding for the benefit of complainant.

By the sale under the two judgments, (the subsequent event which has happened) the interests of all the defendants in the original bill were *determined.*

Hetfield's Judgment, Feb. 1, 1864, p. 40, l. 10.
Day's Judgment, Sept. 18, 1867, p. 40, l. 31.
Sale, October 15, 1868, p. 42, l. 20.
Sheriff's deed, dated Nov. 19, 1868, p. 42, l. 36. 30
Defendant's mortgages and conveyance are all dated subsequent to both judgments, p. 5, l. 30, p. 6 l. 24, p. 7, l. 15, p. 8, l. 1.

This supplemental bill is not proper.

2. Because the subsequent event is not properly supplemental and material to the matters in controversy.

> The original bill presented two questions, one of law, the other of fact. 1st. What were the rights in this court of the complainant under his submission and award? 2d, Whether the mortgages and conveyance of the defendants were fraudulent and void as against the rights of the complainant.
>
> The supplemental bill presents the questions of law and fact; 1st, as to the rights of complainant under his submission and award. 2d, What is the force and effect of the judicial sale? Was it procured fraudulently, and is the complainant in a position to attack it for fraud?
>
> These are matters, certainly, not material to the matters in controversy in the original suit.

3. The two bills cannot be taken as one amended bill presenting these different questions.

It would be bad for multifariousness.

4. Evidence taken in original suit would have no bearing in the supplemental suit.

> The only question of fact in controversy in the original suit, was that of fraud—the execution and delivery of all the papers, submission, award, conveyance and mortgages, was not contested. The evidence of fraud in the first suit would have had no relevancy whatever to

the matters in controversy in the case under the supplemental bill.

5. One decree could not be made in both, for the same reasons, and because the supplemental matter set up, entirely annuls the case as made by the original, and if found to be true, would only set aside the Sheriff's deed as to complainant, and would nor revive defendant's mortgages and judgments.

The distinction between a supplemental bill, and an original bill in the nature of a supplemental bill, is not technical or artificial, but is attended by a considerable difference in its practical results. 10

Daniel's Ch. Practice, vol. 2, p. 1598.
Att'y Gen. *v.* Foster, 2 Hare 81.

Second: The demurrer of Cutter is properly filed, because he claims no interest out of the matter in controversy in the original suit.

If a bill is brought as a supplemental bill, upon matter arising subsequent to the time of filing 20 the original bill, against a person who claims no interest out of the matters in litigation by the former bill, the defendant to the bill thus brought as a supplemental bill may also demur; especially if the bill prays that he may answer the matters charged in the former bill.

Mirf., Eq. Pl., page 165.
Cooper, Eq. Pl., page 214.

The matters in litigation in the former bill cover the alleged fraudulent mortgages and conveyances of the defendants to it. Cutter has no interest in those matters—his interest arises from a totally distinct and independent matter.

Third: Because full relief could be given on the facts stated in the supplemental bill without reference to the original.

A plaintiff cannot file a supplemental bill to in-
10 troduce facts which have occurred since filing the original bill, and upon which a decree can be had without reference to the original.
Milner *v.* Milner, 2 Edw. Ch. R., 114.

Fourthly: This was not a proper case for a supplemental bill because John T. Winans, the principal defendant, died, previous to its being filed, testate, having fully disposed of all his estate, and administration with the will annexed having been obtained.
See case, page 54.

20 The suit abated by his death. It cannot be revived by amendment, but must by Bill of Revivor or by bill in the nature of a Bill of Revivor.
Story Eq. Pl., sec. 354, 354 and 369, 378, 379.

But the decree should not be reversed, even if this is a proper case for a supplemental bill.

The demurrers were well taken. It was urged

before, that the defendants having answered, they waived technical difficulties; and having answered the original bill they cannot demur to the supplemental bill; that the rule applied in all its force to the defendants who had answered, and also to Cutter, because by the rule applicable to supplemental bills, he stood in exactly the same plight and condition as John T. Winans. It is true that an answer waives all *technical* difficulties it does not seek to take 10 advantage of; but the rule also is, that "a defendant may, by answer, avail himself of and insist upon every ground of defence which he could use by way of demurrer, or of plea to the bill.

Story Eq. Pl., sec. 847.
1 Cooper Eq. Pl., 312.
Mit. Eq. Pl., by J., 209.

The qualification of this rule applies—

First, to discovery—by demurrer, you make none; 20 by plea, only partial; whereas, if you answer at all, you must fully.

Story Eq. Pl., sec. 847, *note*,
Portarlington v. Soulby, 7 Sim R., 28.

Second, to matters in abatement—the rule of the Supreme Court "that the defendant, instead of a formal demurrer or plea, may insist upon any special matter in his answer, and have the same benefit thereof, as if he had pleaded the same matter or demurred to the bill," *is simply in* 30 *affirmance of the common practice of Courts of*

Equity and applies to matters to the merits, and not to such objections as are in abatement merely.

Wood *v.* Mann, 1 Sumner. 578.

An answer to the merits does not deprive the defendants by any legal objection insisted on in the answer.

Teague *v.* Dendy, 2 McCord (210) 457.
Hawkins *v.* Sumpter, 4 Dessau, 102.

10 Each answer contains substantially the following:

"And the said defendant denies (as he is advised by his Counsel and respectfully submits to the Court) that the said agreement is an agreement specifically to execute a mortgage on the property set forth in the said bill of complainant, or that when the said award was made, the sum thereof became a lien on the said one hundred acres of land referred to therein by virtue of the said agreement or the said award made in pursuance thereof, or that whoever took a conveyance 20 of the said one hundred acres of land after the making of the said award, and with knowledge of the same, took it subject to the said agreement and award, and *denies any equity* in the complainant to have a mortgage under the same of $5,853.70, or any other sum, or that it was specifically so agreed by this defendant, or that they had any right so to adjudge and award; but as he is advised by his counsel, and respectfully submits to this honorable Court, the only effect of the said agreement was to give the said 30 complainant a right to a payment of one-fifth of the

said award in cash, with a mortgage on the said property, to secure the remaining four-fifths of the said award, or the payment of the amount of said award in cash less five hundred dollars at the option of this defendant, and on his refusal to do either, the right to make the said award a rule of the Supreme Court, and to enter judgment and issue execution thereon; *and this defendant prays all benefit and advantage of the want of equity in the said bill of complaint in the same degree and to the same extent as* 10 *the same was alleged by way of demurrer.*

These answers were not excepted to.

The claim is want of equity in the bill.

A court of equity would not make a decree where a plain want of equity appears at the hearing.

Penn. *v.* Baltimore, 1 Ves. Sen., 447.
Wood *v.* Mann, 1 Sumner, 582.

Is the objection of want of equity well founded? Has the complainant, by the case made by the bills, 20 or either of them, any right upon which to claim the interposition and assistance of a court of equity? If he has, it is upon his submission and award; for if he has none on those, then, although the other matters are reeking with fraud, he cannot ask the aid of the Court.

This bill must be taken either as a bill to enforce an award, or as a bill for specific performance of an agreement.

The other portions are merely to remove obstacles

in the way of this complainant's enjoyment of his alleged rights under his agreement and award.

The bill sets out:

1st. The pendency of a suit between the complainant and John T. Winans in the Supreme Court of this State.

2d. The submission of the matters in controversy in said suit, as far as relate to the amount (if anything) due from Winans to Williams, with
10 the agreement that the said Winans agrees to make his *bond* to said Williams in the penal sum of double the amount of the award, one-fifth in cash, and the balance in yearly instalments of one-fifth each, with interest, and ten days' forfeiture clause. "And the said parties do agree that in case the said Winans shall not, within thirty days after the said award shall be made, pay one-fifth of the amount so awarded and execute and deliver the bond in manner and form as above-mentioned, and execute and deliver to said Williams a mortgage on a certain one hundred acres, to secure the payment of the same, or pay the amount of the said
20 award, less five hundred dollars, then this submission may be made a rule of the Supreme Court of the State of New Jersey upon the application of either party.

See Case, p. 2, l. 14 to l. 35.

3d. The award of the arbitrators of $5853.70 to Williams, and the refusal of Winans to pay or perform it.

This Court will not enforce such a submission agreement and award.

The submission is under the act regulating arbitrations.
Nixon's Dig., p. 30.

This act is a copy, with a few and immaterial alterations, of the act 9 and 10 Wm. 3 ch. 15 Bac., Abrid. Tit. Arbitrament and Award B., vol. 1, p. 206, and which has been held to extend the rules applicable to arbitrations by 10 rule of court to the cases stated in the statute.
Lucas *v.* Wilson, 2 Burr, 701.

If the submission provides for making the award a rule of Court it is within the statute.
Nicholas *v.* Roe, 3 M. and K., 431.
Watson on Arbitration and Awards, pp. 28 and 29.

It stands, then, on the same footing as if the case pending in the Supreme Court had been referred by rule of Court at common law.

Although the Court of Chancery entertains jurisdic- 20 tion over awards made by arbitration, the rule is qualified, and seems to be, while never enforcing awards for the payment of money simply, yet, when the award calls for the performance in *specie*, the Court will enforce it if not made in a submission under the statute or by rule of Court, on the ground that the

award supposes an agreement between the parties and contains no more than the terms of that agreement, ascertained by a third person, and then the bill calls only for a specific performance of an agreement in another shape.

Thompson *v.* Noel, 1 Atk., p. 60-62.
Hall *v.* Hardy, 3 P. Wms., 187.
Wood *v.* Griffiths, 1 Swanst., 54.
Brown *v.* Brown, 1 Vern, 158, Notes Amer. edition.
10 McNeill *v.* Major, 5 Mason C. C. R., 244.
Jones *v.* Boston Mill Corp., 4 Pick., 587.
Cool *v.* Vicks, 2 How. Miss., 882.
Kiksey *v.* Fike, 27 Ala., 383.

As to specific performance of awards, under statute or rule of Court, bills have seldom been entertained.

The jurisdiction of the Court by means of statutes which have been passed both in England and America, has become, in a practical sense, although not in a theoretical view, greatly narrowed, and is now of rare
20 occurrence.

Story, Eq. Juris., vol. 2, sec. 1450.

Cases where the jurisdiction has been invoked.

Norton *v.* Maxwell, 2 Vern, 24.
Chicot *v.* Lequesne, 2 Ves. 315.
Auriol *v.* Smith, 1 Turn and Russ. 126.
Davis *v.* Getty, Sim. and Stu., 411.
Dawson *v.* Sadler, ibid, 539.
Nicholas *v.* Roe, 5 Sim., 156.
Nicholas *v.* Roe, 5 M. and K., 431.
30 Nicholas *v.* Hancock, 35 Eng. L. and E., 363.

The reason is obvious for not applying to Chancery to enforce an award where it is by statute or rule of

Court, as the method of enforcing it is the same, viz., by attachment.

Tidd's Prac., vol. 2, p. 755.
Sellon's Prac., vol. 2, p. 249.
Dan. Ch. Pr., vol. 2, p. 1054.

This award should not be enforced in Equity, because it is simply a money award, and such awards are never enforced there.

Watson on Arb. and Award, p. 29.
Hall *v.* Hardy, 3 P. Wms., 190. 10
W. J. R. R. Co., *v.* Thomas, 6 C. E. Green, 208.
Babier *v.* Babier, 24 Maine, 42.
Smallwood *v.* Mercer, 1 Wash. R., 295.

This is only a money award.

This award, as far it relates to any *method* of payment, is void as being without the submission.

Sellon's Prac., vol. 2, p. 251.
Watson on Arb., p. 105.

The submission was to stand to, abide and perform the award *as to the amount* they may 20 award to be paid (*Case, p.* 2, *l.* 10). So far as it is binding, it is only the finding that $5853.-70 is due Williams; the rest, as to method of payment, or security, was not submitted to them, and the award is simply a money one, and not enforceable in Equity.

Is the agreement, then, one of which specific performance will be decreed?

With agreements such as this the question always

is, what is the agreement? Is it that one certain thing shall be done, with a penalty added to secure its performance? or is it that *one* of *two* things shall be done, namely, the performance of the act or the payment of a sum of money? If the former, the fact of the penalty being annexed will not prevent equity from enforcing performance of the very thing and thus carrying out the intention of the
10 parties; if the latter, the contract is satisfied by the payment of money, and there is no ground for equitable proceedure against the party having the election.

Fry, on Sp. Perf. (26) p. 72.

What is this agreement?

The only *agreement* is to give a *bond* payable one-fifth in cash and four-fifths in yearly instalments of one-fifth each, with interest.

Case, p. 2, l. 14.

20 The bill asks for a *mortgage*. There is no such promise—no such agreement, and this Court will only enforce the agreement of the parties—it makes no contract for them.

Specific performance of an agreement to give a mortgage on a certain property to secure a debt would not be enforced unless bill charged that defendant had not sufficient other property to secure it, or without it defendant would be liable to loose his claim.

If the latter part of the submission is to be tortured into an agreement, it is an agreement to pay one-fifth cash, four-fifths secured by mortgage, or pay the amount of the award less $500 in thirty days, to do a thing or pay so much money, coming directly within the rule in Fay above.

Specific performance of an agreement will not be decreed where its terms are not clear, definite and positive.

Fry, Sp., Perf., sec. 229. 10
Kendall *v.* Almy, 2 Sumner, 278.
Stuart *v.* The L. & N. W. R. company. 1 De. G. M. & G., 721.
Tatham *v.* Platt, 9 Hare, 660.
Colson *v.* Thompson, 2 Wheat, 336.
King *v.* Ruckman, 5 C. E. Green., 316.

The agreement is uncertain and indefinite.

Case, p. 2.

This agreement will not be enforced in this court, as the parties have selected another remedy and an- 20 other forum.

They have agreed, in case of failure to perform, that it shall be made a rule of the Supreme Court. The complainant is estopped from proceeding elsewhere.

This complainant is not in a position to ask the relief demanded as against the defendants.

No one but a party holding a lien has a standing in court to enable him to question the convey-

ance or encumbrance of property by his debtor on account of fraud.

Swayze *v.* Swayze, 1 Stock, 273.
Young *v.* Frier, 1 Stock, 465.
Millville *v.* Brown, 1 Harr, 364.
Edgar *v.* Clevenger, 1 G. C. R., 258.
Brinkerhoof *v.* Bowen, 2 J. C. R., 671.
Wiggins *v.* Johnson, 2 J. C. R., 144.
Hendricks *v.* Robinson, 2 J. C. R., 296.
Williams *v.* Brown, 4 J. C. R., 682.
McDurmitt *v.* Strong, 4 J. C. R., 687.

This agreement is not a lien.

Jones *v.* Winans, 4 C. E. Green.

The award does not make it a lien. Awards in submissions, relating to real estate, do not themselves affect the land itself, but require futher action to make them effective, or they may operate by estoppel in cases between the parties.

Searle *v.* Abbey, 13 Gray, 409.
Goodridge *v.* Dustin, 5 Met., 367.
Witness *v.* Holmes, 15 Mass., 152.
Calhoun *v.* Dunning, 4 Dall., 120.
Morris *v.* Rosser, 3 East., 15.

The only right this award (being as before shown only a money award,) gave the complainant, was, under the submission, to have made it a rule of Court, and to have proceeded by attachment to enforce payment of the money.