

NEW JERSEY HERALD PRINT, NEWTON, N. J.

COURT of APPEALS in the LAST RESORT, &c.

Between
WILLIAM T. ROE,
and SUSAN ROE,
Appellants.
and
CHARLES V. MOORE,
Respondent.

ON BILL FOR RELIEF.
On Appeal from ~~Trial~~ *Final*
Decree of Vice Chancellor
Amzi Dodd.

:o:

BRIEF OF ROE & SHEPHERD FOR THE APPELLANTS.

This was an action brought in the Court of Chancery on December 10th, A. D., 1880, by the Respondent, Moore, a judgment creditor of William T. Roe, to set aside a conveyance made by said debtor to his mother Susan Roe.

It is admitted 1. That on May 24th, 1880, the said William T. Roe was seized of a farm of ninety-one and ninety-nine hundredths acres.

2d. That said property was then encumbered by a mortgage on which was due \$1,450, together with the interest thereon accrued from April 1st, 1879. (See pages 44 and 45 of printed case.) Amount of principal and interest then due was \$1,566.72.

3. That he on that day conveyed his equity therein to his mother.

4. That Respondent, Moore, had on May 1st, 1880, began ^Wsuit in Assumpsit against William T. Roe, and on July 14th, following, recovered a judgment for \$434.29, damages and costs.

5. That the said William T. Roe lost his right of contesting the said suit to which he claimed a perfect defence by reason of the neglect and misconduct of his attorney as shown in the evidence of Respondent. (See page 17, printed case, George H. Nelden's testimony ; page 18, C. J. Roe's testimony ; supplemented by testimony of Wm. T. Roe, page 31, lines 30 to 36.)

6. That execution was issued on the judgment so obtained, and the execution not delivered to the Sheriff until the 9th of November, 1880, and levy made December 6th, 1880, by direction of Respondent's attorney, on the lands. (See pages 13 and 14, Henry C. Stoll's testimony.)

The bill alleges that said conveyance was made :

1. Without any consideration.

2. If any consideration was paid it was entirely insufficient and inadequate, and was paid with the intention of defrauding the Respondent, and to prevent him from collecting his debt, and prays that it should be adjudged void as to him.

The answer denies both these allegations and says :

1. That the consideration was a debt due from William T. Roe, grantor, to Susan Roe, grantee, of about \$2,000.

2. That it was full, fair, complete and adequate, and not done to defraud Respondent or to hinder and delay him in the collection of his debt, and that the conveyance is legal.

The Court of Chancery declared the said conveyance void and ordered the property sold to satisfy the Respondent's debt. (See Final Decree, 45 and 46 pages.)

From the whole of said decree this appeal is taken.

The reasons for this decree are given in the opinion of the Vice Chancellor at the close of the case. (See page 53.)

In this opinion the Vice Chancellor admitting that there was consideration, but losing sight of the fact that the consideration was a DEBT DUE, bases the decree on two reasons, which, as he says, appear from the evidence.

First—That the consideration was inadequate.

Second—That if adequate to the value of the premises conveyed the intention of the parties to it was to hinder and delay the Respondent, Moore, in the collection of his debt.

The second and last of these propositions is not set up in Respondent's bill by way of allegation, nor was any proof directed toward the same.

Now, bearing in mind that this conveyance is made IN PREFERENCE of creditors, we will consider :

I. Was there a consideration ?

II. Was the consideration adequate ?

III. Was the ~~consideration~~ ^{conveyance} made to hinder or defraud creditors ?

In considering these propositions we will examine the reasons of the Court below.

I. Was there a consideration ?

The Vice Chancellor in his opinion, first admitting that there was a consideration, in the next clause intimates that there was no consideration whatever, saying, that although Susan Roe had loaned to William T. Roe various sums at different times for which SHE HELD his *promissory notes* at the date of the conveyance, and although he owed her other sums beside, yet the said Susan Roe being of *advanced age, a widow, and his mother*, seems to have given these sums by way of *advancement*, on which she only expected interest.

This conclusion is neither warranted by *law* nor the *evidence*.

The case of Osgood vs. Breeds' Heirs, 17 Mass., page 346, holds that it is entirely contrary to the character of an advancement, that it should be viewed in the light of a DEBT upon INTEREST.

So also case of Barton vs. Rice, 22 Pickering, page 508.

Also case of Batton vs. Allen, 1 Halstead Chéy., page 99, that a note given by a son to a father is not of itself evidence of an advancement given to such son by the *father*. Also that proof of mere parol declarations of the father is not sufficient to establish an advancement.

Same case also holds that no part of an advancement can be recovered back, that a note ~~of~~ ^{is} a debt that may be *recovered* at any time by the *father* in his lifetime is not a gift and does not divest the father of his property.

Case of Arnold vs. Arnold, 8 B, Mon., 22, holds that if a *father*

takes a *note* at the time of making an advance to his son he retains control of the money and a transfer in consideration of it is good as against creditors, although he may not under certain circumstances have intended to enforce payment.

2 Williams on Executors, 5th Edition, pages 350, note 1, defines an advancement as an *irrevocable* gift by the parent.

Also Holt vs. Fredericks, 2 Peer & William, page 356, holds that a *mother* being a widow cannot advance a child, that the act of distribution does not affect a widow's personal estate. It is always a gift to the child receiving it and never an *advancement*.

The above case is sanctioned by Redfield on Wills, volume 3, note 29, page 428, second edition.

We therefore insist that by law the Vice Chancellor's reasoning is incorrect, because,

First:—A *father* and *not a widowed mother* can make an advancement by law.

Second:—That if a widowed mother can make an advancement such advancement is an irrevocable gift and *not a debt bearing interest*, which said Susan Roe could collect at any time, as the Vice Chancellor admits in his opinion was the case of the indebtedness of William T. Roe to Susan Roe.

Third:—That in any view of the case an *intention* to advance must be proved, and the evidence in this case does not warrant any such conclusion.

The Vice Chancellor deduces this from illegal evidence, viz: the evidence on cross-examination of Susan Roe, (see printed case, page 42, line 25th; also page 45, lines 1 to 20) where she is questioned as to the money her children had borrowed. This is objected to and is neither proper cross-examination nor relevant evidence. Besides it proves conclusively that in no case was either the loan to William T. Roe or to any of her other children an advancement, but she expected to receive it back and took notes for it or a part of it.

Page 35 of printed case, line 8th, shows directly, and the testimony of William T. Roe, that they *were debts*, and there was not a particle of evidence showing a gift or from which a gift could be inferred.

These *debts* due Susan Roe from William T. Roe were the consideration of the conveyance. (See page 23, lines 27, 28 and 29;

page 26, lines 1 to 5 ; page 31, lines 10 to 13 ; page 33, lines 20 to 29 ; page 40, lines 23 and 24.) These being good debts there was therefore a consideration.

II. Was the consideration adequate?

The Vice Chancellor in his opinion says that the farm appears to have been worth in the market not far from four thousand dollars.

This does not appear from the testimony. The *highest valuation* shown in the whole evidence is given by Joseph B. Hunt, the Respondent's witness. (Shown on pages 19 and 20.) He thinks it worth forty dollars per acre, or only thirty-six hundred and forty dollars. He is an interested witness, owning an adjoining farm, and says, (see page 20, line 10) that "he has not been on the farm in nigh twenty years."

The Respondent produces three other witness as to value, viz : Mahlon Budd, (see pages 14 and 15) who swears that the farm is worth only thirty-five dollars per acre, or three thousand two hundred and twenty dollars. (There being about ninety-two acres in the whole farm.) Joseph L. Budd, (see pages 15 and 16,) who swears that it is worth only thirty-five dollars per acre, or three thousand two hundred and twenty dollars. Both witnesses interested in keeping up the price of land in that neighborhood. The other witness produced by the Respondent as to value, Joseph H. Westbrook, (see pages 16 and 17) who is the tenant, says that he pays one hundred and fifty dollars a year and part of the road tax rent, or the interest on twenty-seven hundred dollars. This witness, who is one of the three called by the Appellants as to the value, on pages 38 and 39, swears that the property is worth not to exceed thirty dollars per acre, or twenty-seven hundred and sixty dollars.

Another witness for the Appellants, John Hogan, (pages 39 and 40) swears that the farm is worth but thirty dollars per acre, and would bring no more in the market. This witness also testifies that he had purchased the best portion of that property some years before and paid one hundred dollars per acre for it. The other witness for the Appellants, David C. Roe, (page 33, lines 30 to 40) swears to the same valuation, twenty-seven hundred and sixty dollars. This is the only evidence as to value.

The weight of evidence, we submit, being that the value of this property is between twenty-seven hundred and sixty dollars and

thirty-two hundred and twenty dollars, the Vice Chancellor has no warrant for placing the valuation three hundred and forty dollars higher than it is placed by the most visionary witness for the Respondent, Moore.

Besides this it is admitted that the property is subject to an encumbrance of mortgage, which at the date of the conveyance amounted to fifteen hundred and sixty-six dollars and seventy-two cents, principal and interest, as calculated, (see stipulation pages 44 and 45) which amount is to be taken from the gross valuation to ascertain the actual value of the property conveyed by William T. Roe to Susan Roe. The value of this property actually conveyed, being the equity of William T. Roe in the premises, is somewhere *between* eleven hundred and ninety-three dollars and twenty-eight cents and sixteen hundred and fifty-three dollars and twenty-eight cents.

The Vice Chancellor in his opinion leaves the impression that the value of the premises was four thousand dollars, although he obscurely mentions the mortgage.

Next, as to the indebtedness of William T. Roe to Susan Roe for the payment of which this conveyance was made.

The Appellants produce three notes marked respectively A. B. and C., (pages 51 and 52) which Susan Roe held up to the time of the conveyance against William T. Roe, and which were in consideration of the conveyance delivered to him, (see page 28, lines 15 and 16.) These notes being produced by William T. Roe.

The Respondent nowhere *attacks* or *disputes* the genuineness or *bona fides* of these notes and claims.

The first note is dated April 1st, 1873, given for one thousand dollars, for money loaned, and to pay part of purchase money on farm when bought by William T. Roe. (See page 24, lines 4 to 15; also line 26; also testimony of Wm. T. Roe; also page 40, line 25, testimony of Susan Roe.) The amount due on this note at the time of making the conveyance was the principal and interest thereon from April 1st, 1875. (See page 24, lines 17 and 18, &c.)

It appears there was an endorsement of two hundred and ten dollars on this note for three years interest. (See page 26, lines 31 and 32.) But this was reloaned at the time and the endorsement made regularly. (See page 27, line 1 to 15; also page 24, line 15; page

40, line 34 to line 4 on page 41 ; and page 43, lines 18 to 20, testimony of Wm. T. and Susan Roe ; also page 39, lines 13 to 16.) On this note at the date of the conveyance was due principal and interest thirteen hundred and sixty dollars and forty-nine cents.

The second note is marked exhibit "B," and was also for money loaned. (Proved on page 24, lines 18 to 26, and page 27, lines 18 to 26, and page 40, line 25.) There was due on this note at the time of the conveyance for principal and interest the sum of two hundred and eighteen dollars and fifty-nine cents.

The third note is marked exhibit "C," and was also given for money loaned. (See page 24, lines 32 to 34 ; page 28, lines 15 to 16 ; page 33, line 19 ; page 34, line 34, and page 40, line 26.)

The amount due upon this note at the time of making the conveyance was one hundred and six dollars and fifty cents.

The total due on these three notes at the time of making the conveyance was sixteen hundred and eighty-five dollars and fifty-eight cents. *This it is to be observed is considerable more than the value of the property conveyed, as proved by the evidence, and more than the value as shown by the Respondent's own witnesses.*

However this is not all the consideration. William T. Roe borrowed other moneys of the said Susan Roe for which accounts were kept, but no security had been taken. (See page 24, lines 2 and 3, 40 ; page 25, lines 1 to 10 ; also page 28, lines 1 to 10.) These it appears from the testimony were as follows, one hundred and sixty dollars, seven years before the date of the conveyance, making due thereon at date of conveyance (calculating interest for seven years,) the sum of two hundred and thirty-eight dollars and forty cents.

Also the sum of eighty-five dollars, five years before the date of the conveyance. (See page 25, lines 3 and 4 ; page 27, lines 39 and 40.) On this was due at the date of conveyance (principal and five years interest,) the sum of one hundred and fourteen dollars and eighty-five cents.

There was the further sum of forty dollars, (one year before the conveyance,) (see page 25, lines 4 and 6.) On this was due for principal and interest the sum of forty-two dollars and forty cents.

None of these claims are impeached or attempted to be impeached by the Respondent. The total amount of these claims at the date of the conveyance, over and above the said notes, was three hundred

and ninety-five dollars and sixty-five cents.

Therefore the *total indebtedness* of Wm. T. Roe to his mother Susan Roe at the date of the conveyance, including notes and accounts, which the evidence shows, was the sum of two thousand and eighty dollars and twenty-two cents, *and for this the conveyance was made*. So it appears that the value of the property was *inadequate to the consideration*, and *not the consideration inadequate to the value of the property*.

The Vice Chancellor in deciding this case seems to have entirely *ignored* or overlooked the *specific* and *particular* proof of this consideration, and from a general remark of Susan Roe that "it might have been \$1,400, \$1,500, or \$1,600, perhaps more, perhaps less," and another of Wm. T. Roe that "it was about \$2,000," as well as the statement in the answer that the indebtedness was about \$2,000, deduces that the indebtedness was not ascertained, but was arrived at in a "proximate way."

Now, we submit, that it is an unfair conclusion to say that the indebtedness or consideration was proximate or unfixed because the witness, Wm. T. Roe, in his testimony said generally that it was about \$2,000, when in the same testimony he testifies *particularly* to the items of it, which sum up \$2,080.52, (see pages 23, 24 and 25) or because Susan Roe testified *generally* as stated, after swearing *particularly* to items of indebtedness as notes and cash loaned, the notes alone amounting to over \$1,685. Susan Roe's testimony on this point (page 41, lines 4 to 14) is that these sums amounted to \$1,400, \$1,500, or \$1,600, more or less. She only speaks of the aggregate amount. The most that can be said is that her aggregate is general. The amount sworn to particularly was more. (See page 40, lines 12 to line 3 on page 41). She evidently refers only to the *principal sums* then due *without interest*. Now this principal sum was \$1,575, notes \$1,390, and cash \$185. It must be borne in mind that Susan Roe is an old woman over eighty years old, poor in memory and not as strong in faculty as at the age of forty years. (See page 35, lines 30 to 33, D. C. Roe's testimony, and page 41, lines 10 to 13, her own.) Now the deduction made by the Vice Chancellor from this that because Wm. T. Roe and Susan Roe, after stating items, aggregated the amount wrongly, that all the testimony they gave particularly should be sacrificed and only their general estimate selected out and used without regard to the whole testimony, looks like forcing a conclusion which the testimony does not allow.

Nor do we conceive the reasoning of the Vice-Chancellor strengthened that the consideration, which was an *indebtedness*, was got at in a proximate way by the fact that the answer says it was about \$2,000. The answer is no evidence. It is not even under oath. It is simply pleading—laying the basis for proofs. Now if the answer says the consideration was an indebtedness of about \$2,000, (one-third more than the value of the property conveyed) and the proof was that it was \$2,080.22, we apprehend our pleading is sufficient to sustain the *proofs* upon which, and *not* on the pleading, a cause must be decided.

The value of the property conveyed by Roe to his mother was the mean between \$1,200 and \$1,650. The consideration was the payment of an indebtedness of said Roe to his mother of nearly \$2,100. Almost \$1,700 of which was evidenced by bona fide notes and none of it attacked or disputed by Respondent.

How can it then be claimed that the consideration was inadequate when the debtor paid off by the conveyance an indebtedness amounting to \$700 more than the property was worth ?

The mistake of the Court below was in placing the value of the lands at \$4,000, which was *assumed* from the statement in Respondent's *bill of complaint* and *not from the proof*, and then, placing the consideration as proved at \$2,080.22, it would be inadequate ; but the value of the equity conveyed being only from \$1,200 to \$1,650, or about \$1,300 or \$1,400, the consideration was ~~more~~ *more than* adequate.

III. Was the conveyance made with intention to hinder and delay Respondent in collecting his claim ?

The Respondent's bill of complaint alleges that the consideration was inadequate *and made* with intention to hinder and delay Respondent in collecting his debt.

If, therefore, the consideration was adequate he is entitled to no relief either *under his bill* or *by law*.

There is a distinction in law between a conveyance made by debtor to creditor by way of *preference*, and a conveyance made by a debtor to a *stranger* not a creditor, which we will consider hereafter. The Court below erred in this case by applying the principles of law relating to the latter class to those of the former. The Vice Chancellor says, although the bill does not ask it, that if the

consideration was *adequate*, and made to hinder and delay Respondent in collecting his debt, the conveyance must be set aside. Now this rule cannot apply generally to preferences. A preference always hinders and delays other creditors. The conveyance in this case (an honest preference) was not made with *intention* (1) to hinder, delay or (2) to defraud any creditor. William T. Roe in making this conveyance to Susan Roe made a preference of creditors. *By law* he had *the right* to make this preference, although it hindered and delayed Moore.

In the case of *Hendricks vs. Mount*, 2 Southard, page 742, where a creditor had transferred property to satisfy a debt, Judge Southard says, "Is there anything to prevent a creditor from securing his debt even if by so doing he defeats the claims of other creditors? It is every day done under our insolvent system and every day sustained in our courts of justice."

The case of *Tilton* ^{Law} vs. *Brittin*, 4 Halstead, page 135, holds that neither Court nor jury have any lawful right to presume a sale or transfer fraudulent merely because the seller stood indebted at the time, and was in failing circumstances. A person has a right of sale for valuable consideration, or to transfer property to a creditor in satisfaction of an honest debt. The notice should have stated the transfer as being without consideration or not in satisfaction of a debt justly due, or some other matter from which a court might infer an intent to hinder, delay and defraud creditors. The debtor has the *right* to prefer a creditor without any imputation of fraud by the other. A man in failing circumstances may pay any just debt first which will best relieve his circumstances.

The case of *Garr vs. Hill*, 1 Stockton, page 210, holds the debtor in failing circumstances or about to abscond may legally make a conveyance for the purpose of preferring an honest creditor.

The case of *Coley vs. Coley*, 1 McCarter, page 350, holds a debtor in failing circumstances has the right to prefer any creditor, as well ~~as~~ a *parent* or other near relation as a stranger, and if the debt were *bona fide* due the strongest consideration of duty may prompt a son to prefer a claim of a widowed mother over the claim of a mere stranger.

Bump, on *Fraudulent Conveyances*, second edition, page 182, says, "that by virtue of his absolute dominion over his property a debtor may either give or allow a preference. It is not part

of the policy of the statute to prohibit its application to the payment of one debt rather than another."

Note 1, on page 183, quoting decisions in support of same. Benton vs. Thornhill, 2 Marsh, 427; As to debtor in failing circumstances, McMenemy vs. Roosevelt, 3 Johnson Chey, 446; Waterbury vs. Sturtevant, 18 Wendell, page 353; As to secret trusts, Lewis vs. Whitlemore, 5 New H., 364; Holbird vs. Anderson, 5 D. & E (Term,) 235; Buffum vs. Green, 5 N. H., 71; Guild vs. Leonard, 18 Pickering, 511; Williams vs. Brown, 4 Johns Ch., 681; and other cases cited.

Bump further says, page 183, "That the right of preference is not affected moreover by the debtor's insolvency or the preferred creditor's knowledge of such insolvency." Cases quoted in Notes 2 and 3, U. S. Courts and various State Courts. Bump on page 184, further says: "The fact that a suit is pending or that the transfer includes all the debtor's property, or all the property which is not exempt from execution, or that other creditor's lose their debts by reason of the debtor's inability to meet all the demands against him, does not necessarily affect the validity of the preference. There is a distinction to observe between the effect of a transfer by a debtor in failing circumstances made to pay one or more of his debts, and that intent to hinder, delay and defraud other creditors against which the statute is aimed. The effect of the preference may be to delay them or even to prevent them obtaining payment at all, but if the motive is to pay the preferred debt the transaction is not invalidated. The statute is aimed only at intended fraud, but the payment of a debt to one creditor is no fraud upon other creditors." See cases, Koykendall vs. Hitchcock, 15 Missouri, 416; Waterbury vs. Stuyvesant, 18 Wendell, 353; Aton vs. Harrison, L. R. Chey Appeals, 622; Giddings vs. Sears, 115 Mass., 505; Young vs. Dumas, 39 Alabama, 60; National Bank vs. Sprague, 5 C. E., Green, 13; York County Bank vs. Carter, 38 Penna., 446.

Bump also holds, on page 186, "That a preference may be given and received for the express purpose of defeating an execution, where intent to defeat an execution does not of itself constitute fraud."

See Hendricks vs. Mount, 2 Southard, page 138. Bump also holds, on page 187, "That wherever there is a true debt and a real transfer there is no collusion." See case cited.

Bump, on page 191, says, "A preferred creditor may *give a portion of his debt* or the property received in payment of it as a bounty to the debtor."

Now there is a distinction between a preference and a sale of transfer to a stranger. (Bump, F. C., page 194, chap. 8th.) The sale is void, if to defeat an execution. (Bump, F. C., page 204, and cases.) If purchaser have notice of insolvency or of judgment and takes conveyance to hinder creditors (Bump, 199) and the like.

We consider the law as settled that the *mere fact* of William T. Roe making a transfer to his mother in preference to other creditors cannot be considered as fraudulent, nor as done to hinder, delay or defraud his creditors. This preference the *law* gives him the *right* to make.

2. Was the conveyance to defraud Respondent, Moore ?

The Respondent must clearly prove the fraud ; the burden of proof is upon him. The case of Jones vs. Naughtright, 2 Stockton, page 298, holds that proof should be clear and satisfactory to establish a fraud where it is proved the debt is justly and honestly due.

The reason given by the Vice Chancellor in his opinion declaring this conveyance fraudulent is because of a declaration made by William to Respondent's solicitor, (page 22, lines 25 to 26.) It is not insisted that Susan Roe knew of this remark, nor is she connected with it, nor is the remark itself any evidence of fraud being contemplated. Wm. T. Roe intended to contest the claim and was defeated by the negligence of his attorney. (See page 31, last four lines ; also complainant's testimony on pages 17 and 18.) William T. Roe claims that he does not owe Dr. Moore over one-quarter of what he claims. (See page 29, lines 27 and 28.) Beside, if Roe had made an assignment for the benefit of his creditors, Moore would not have received much. Now, we insist, the interpretation put upon the words of William T. Roe by the Vice Chancellor, to wit, that he intended to commit a fraud, in the absence of any other proof showing that that was his idea, is both unfair and unjust, and inferring therefrom a bad motive when a just and honest motive to prefer his mother is the most natural inference.

The second reason given by the Vice Chancellor for declaring the conveyance fraudulent is that the conveyance was made at the suggestion of William ; that it wanted the essential features of a bona

fide sale, and would not have been conveyed but for the expected judgment of the Respondent, and because Mrs. Roe said: "She did not want Moore to sell the property because she wanted to get her money." Admitting this to be so, (which we do not) *in law* it is no fraud. Because William offered to prefer her was she precluded from accepting the deed?

On page 42, lines 12 to 20, it is shown that Susan Roe was importunate for a deed, and on page 26, lines 9 and 10, William T. Roe swears that she demanded the deed. The complainant offers no evidence on this point.

There is no evidence that she knew Moore had brought suit against William T. Roe. On page 42, lines 15 to 20, she says she knew Moore was pressing his claim. That is all the evidence of her knowledge of the transaction between Moore and William T. Roe, her son.

The case of *Waterbury vs. Sturtevant*, N. Y., on appeal from Chancery, 18 Wendell, page 353, above cited, holds that a debtor after verdict and previous to the entering of judgment may lawfully prefer a creditor by conveying real estate in satisfaction of a debt, and thus prevent the attaching of the lien on property by virtue of such judgment afterward entered.

Both *Wm. T. Roe* and *Susan Roe* swear that the transfer in which he preferred his mother was not made with an intent to defraud Moore or any other creditor. (See page 25, lines 30 to 40; also page 41, lines 20 to 28.)

And the Vice Chancellor in his reasons, without any direct proof being offered by the Respondent, undertakes to intimate that they both committed perjury in giving that testimony, and, with no other testimony, undertakes to support the Respondent's case upon the alleged perjured testimony.

If these witnesses have sworn falsely, their testimony is worthless to sustain the Respondent's, as well as their own case, in as much as the burden of proof is on the Respondent, but, we submit, in the absence of impeaching testimony that they are entitled to the benefit of this direct denial.

The whole testimony on the other hand shows the transaction was fair and made in good faith. The Respondent, (page 21, lines 20 to 24, and on page 22, lines 26 to 40, and the testimony of Susan Roe, page 41, lines 36 to 40,) shows that the Appellant Susan Roe offered to convey this property to the Respondent if he would pay

her her debt. Now, if the conveyance had been to hinder and defeat him in the collection of his claim or to reserve a secret trust for the debtor, Susan Roe would not have made the said offer, and it is reasonable to suppose that if the Respondent had supposed the property conveyed was of greater value than the consideration paid he would have accepted the offer as securing to him his debt.

In the Vice Chancellor's opinion, quoting Bump on F. C., he says a transfer of all the debtor's property is a badge of fraud, so also the existence of indebtedness and the pending of a suit. The same author, on page 184, says that the fact that a suit is pending, or the transfer includes all the debtor's property, does not necessarily affect the validity of a preference.

See cases there cited.

We submit that the law is that these would be declared badges of fraud if it was a *sale* to one *not a creditor*, and does not apply to sales by way of *preference*.

The case of Garr vs. Hill, 1 Stockton, page 210, quoted by Vice Chancellor as sustaining this doctrine has reference to a *purchase* in contradistinction to a *preference*, and *distinctly holds* that a debtor in failing circumstances and about to abscond may *legally make a conveyance for the purpose of preferring an honest creditor*, but he cannot sell to convert in funds and cheat creditors.

The case of Knight vs. Packer, et. al., 1 Beasley, 214 page, quoted by the Vice Chancellor, has no applicability to this case. That case holds that if a deed is executed by a debtor to a stranger not a creditor with the intent to delay his creditors, makes the deed fraudulent. And the answer in that case admits that the conveyance was made to prevent the property from being sacrificed.

The case of Sayre vs. Fredericks, 1 C. E. Green, 205, also quoted, being also a case where conveyance made to a stranger in trust for creditors and not a preference, holds the undisputable principle of law whether a conveyance is fraudulent or not depends upon its being made on good consideration and bona fide. This does not support the Vice Chancellor that although consideration is good and full necessary badges of fraud attending transfer makes it void.

Also the case of Tantum vs. Green, 6 C. E. Green, 364 page, quoted, has nothing to do with a conveyance made to *prefer* a creditor, but holds that if a purchaser having facts that should put him upon inquiry takes a conveyance, and those facts should amount to fraud on a third party, though the purchase be for full value, will

not be protected.

The authorities therefore quoted by the Vice Chancellor do not sustain the principle he lays down.

In the opinion it is inferred that the conveyance in this case, although an absolute deed, is simply taken as security for the money, and that the consideration is loosely and inaccurately expressed.

With regard to the first there is *no proof* that it was other *than an absolute deed* or intended for anything different. On page 31, lines 10 to 13, and page 44, line 24, the testimony of Susan and Wm. T. Roe. One swears that he conveyed it to pay his debt, and the other swears that she took it to get her debt, and not to secure it.

As to the second point of looseness in the expression of the consideration, the evidence is or at least it is admitted that the consideration as expressed in the deed was \$2,000. The value of the property conveyed between \$1,200 and \$1,600. The indebtedness for which the conveyance was made was nearly \$2,100.

Now so long as the consideration expressed in the deed was much more than the real value of the property conveyed, it certainly was not the intention to cover up the debtor's property and protect it against his creditors, and consequently no fraud can be inferred from that. Besides the *consideration expressed* was *less than the real debt due*, and it is only in cases where the consideration ^{Expressed} is more than the real debt due that any inference of fraud can arise from that source.

The case of *Holt vs. Creamer*, 7 Stewart, page 181, (quoting Judge Depue,) holds that if a mortgage is given with the intent to cover up the debtor's property it would be void.

The same doctrine is held in the case of *Demerest vs. Terhune*, 3 C. E. Green, page 534.

Now in the present case the value of the property was much less than the debt for which it was conveyed to pay. In such case, we insist, that the Vice Chancellor had no ground for holding that this conveyance was intended to hinder, delay or defraud the Respondent in the collection of his debt.

It is intimated in the opinion that if the conveyance had been of the nature of a mortgage security the transaction would have been considered not fraudulently by the court below. We are unable to see the equity of this, or the fine distinction here drawn, which

obliges a creditor who has an indebtedness much larger than the value of the property offered in payment of security, to refuse a conveyance and take a mortgage, which in order to enforce he is compelled to go through a costly foreclosure, and then be obliged in the end to take a conveyance of the property, and sink a portion of his debt in the cost of such proceeding, when the same result would follow with a greater benefit to debtor and creditor by a direct conveyance.

On this very ground this court in case of *Demerest vs. Terhune*, last cited, sustained a conveyance, and goes further in holding that a creditor who has taken a conveyance of a property for an *inadequate* consideration, when the honesty of such conveyance is left in doubt, the court will protect the same to the extent of the consideration actually paid, and allow it to stand as security for that amount.

The same doctrine is held in the case of *Boyd vs. Dunlap*, 1 Johnson, N. Y. Chcy. Rpts., page 478, and cited in the last case, that where the conveyance, though not wholly, yet in some degree voluntary and for an inadequate consideration, is constructively a fraud in delaying creditors, yet in that case the conveyance was sanctioned and held as a first lien on the property for the money actually paid.

It is clear then from these cases :

First :—That this class of conveyances are good, although the consideration is inadequate, if no fraud is proved.

Second :—That where the consideration is adequate to the property conveyed *no presumption whatever* of fraud can arise as to the consideration expressed in the deed.

Third :—That the consideration being adequate, by the case of *Demerest vs. Terhune*, last cited, it *rests with the Respondent* to prove *clearly and beyond a doubt* fraud in the transaction.

We therefore claim, that in the present case not only is *no intention* to defraud Moore *proved*, but further that none existed.

It has been assumed by the court below and in this argument that the conveyance by William T. Roe to his mother was the conveyance of the whole of his property. Now there is no evidence of this. It is concluded from the evidence of the Sheriff who returned the execution ^{me}*nulla bona*, issued about four months after judgment, that the whole of the debtor's property had been conveyed. We respectfully insist that the Respondent should not be entitled to the benefit which *his own delay* occasioned.

It cannot be held as an objection to the validity of the transfer that a portion of the consideration, namely the sum of \$160, was more than six years due.

Bump on Fraud, Congs.⁷⁴⁵, page 220, holds "that wherever there is a moral obligation which cannot be enforced on account of the provisions of the statute then the party may waive the benefit of the statute and the transfer will be valid as against creditors. Thus, a debt which is barred by the statute of limitations or a discharge in Bankruptcy is a good consideration for a conveyance."

Updike vs. Titus, 2 Beasley, page 151; Sayre vs. Fredericks, 1 C. E. Green, page 205.

This of course refers to but a small portion of the consideration.

In the present case therefore we have a conveyance made by a debtor to one creditor in preference to another. This preferred creditor, Susan Roe, takes the conveyance of a property the value of which by the Respondent's own showing is much less than the amount of her debts, which are unattacked. This, we claim, makes out a strong case. It of itself carries almost *conclusive conviction* of the *honesty* and *good faith* of the transaction, because the creditor does not get full value for her honest debt. Of course every preference tends to hinder and delay other creditors, but so long as the debtor has dominion over his property, and so long as courts recognize the right of the individual to control his property as he sees fit, so long must courts consider preferences legal, and as not coming within the statute of frauds and perjuries. So also do the courts adopt a different rule between conveyances made by way of *preference*, and those by way of *purchase*, because in cases of purchases by a stranger where the purchaser takes the conveyance with notice of the grantor's insolvency the conveyance would be clearly void. Whereas in the case of preference were the same rule applied not a single conveyance could stand. We therefore insist that the court below has to a great extent in this case *confused the distinction*.

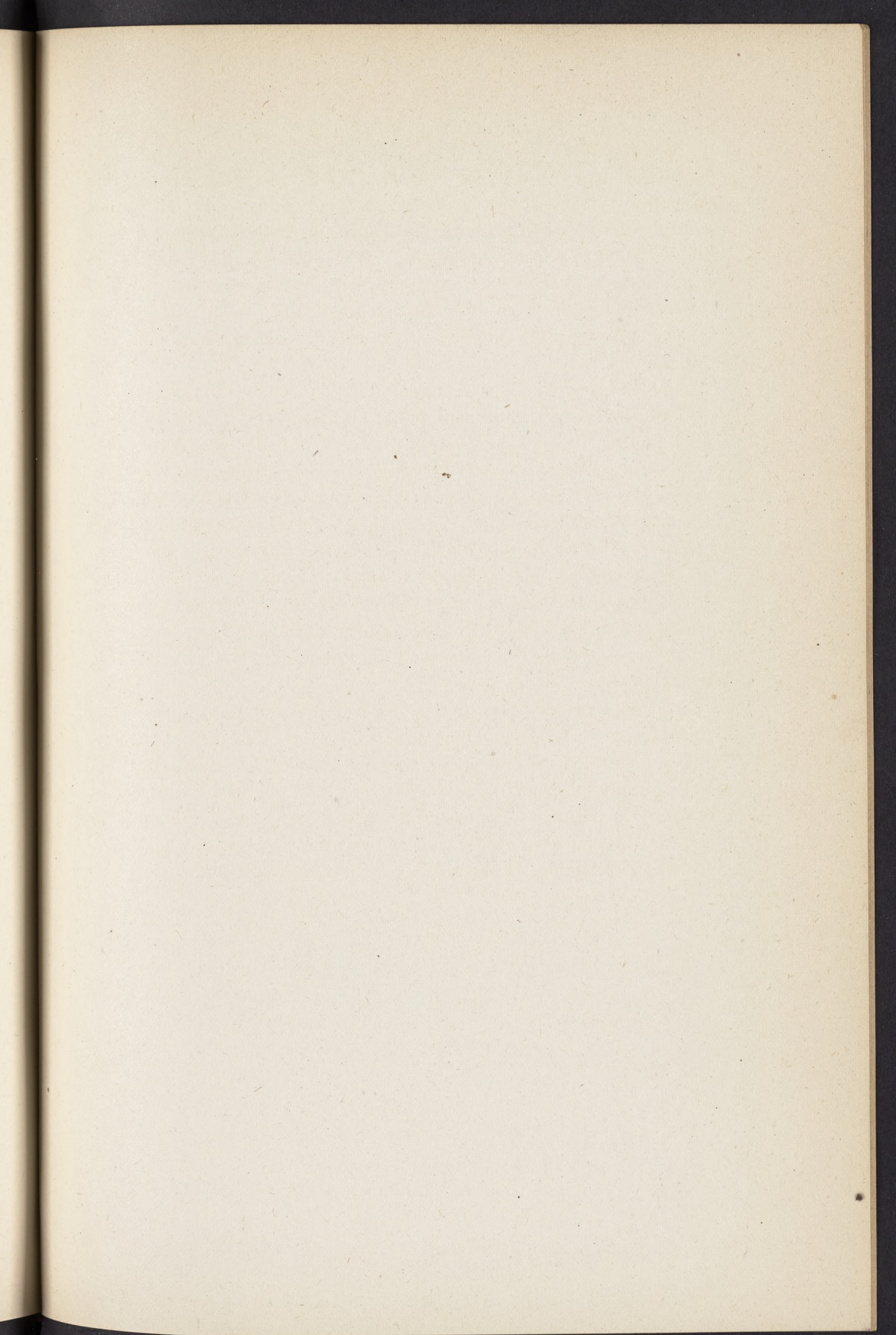
We further submit, that a conveyance made by a debtor of property of a certain value in *true* and *actual* payment²² of a debt that largely exceeds that value, is bona fide without regard to the consideration expressed in the deed, and we also insist that, unless the consideration is inadequate to the value of the property conveyed, a conveyance to *actually pay* a debt by way of preference can never

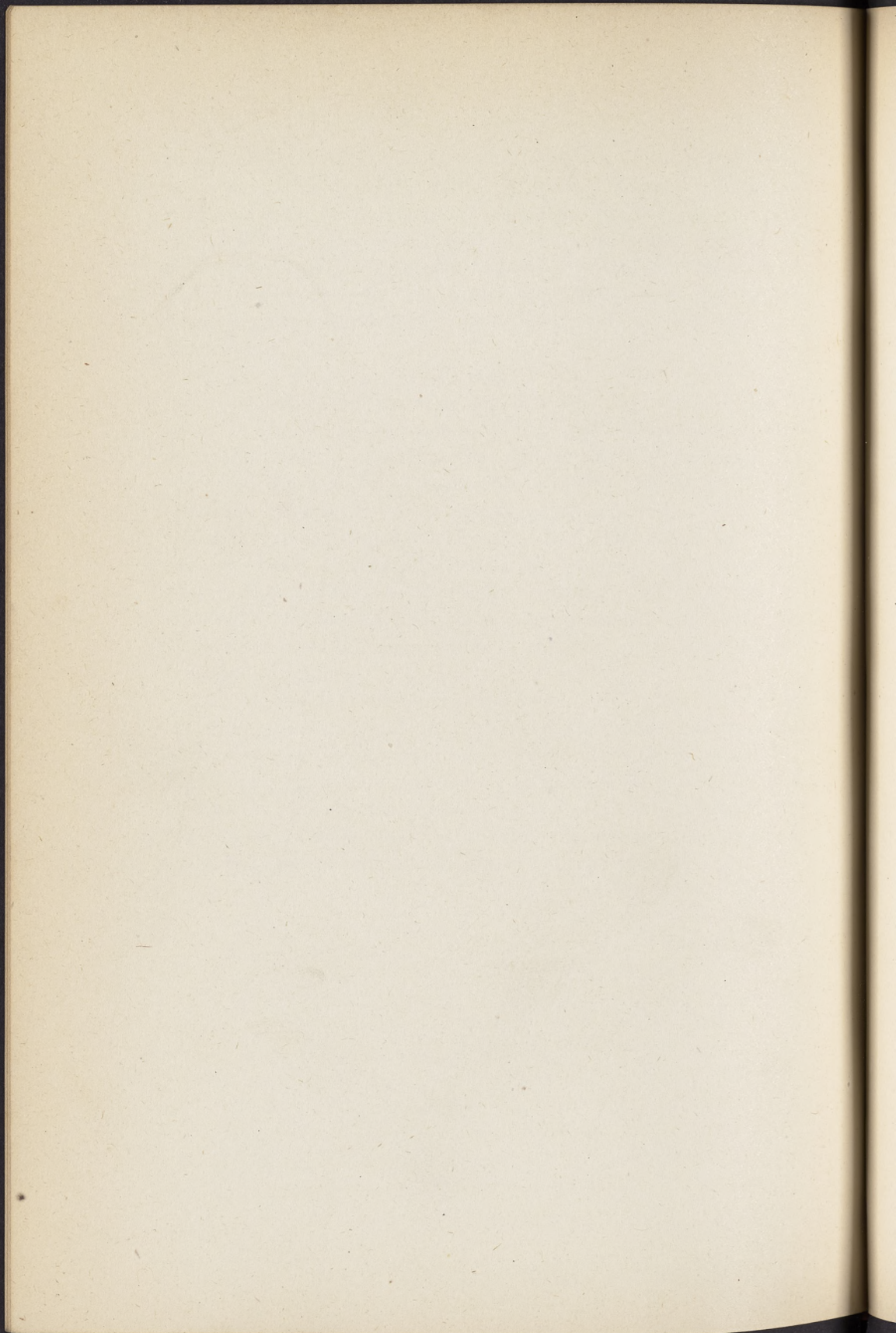
be held as fraudulent as against other creditors. One creditor has an equal right with another to the payment of his debt. If then the courts set aside such preference because the creditor preferred knew that another creditor was pressing his claim, and allow such other creditor to be paid, they would *assume to themselves inquisitorial powers* and prefer a creditor of *their own* choice over that of the debtor's, notwithstanding his *constitutional right* of dominion over his property.

See Bump on F. C., Chapter VII.

The court below in assuming that although the consideration is adequate, it still may be made to hinder and delay creditors, we respectfully submit, *mistake the law* with regard to a *preference*. In such cases there can be *no secret trust reserved*. All the benefit that the debtor can receive must be from the *gratuity* of the creditor. Other creditors may be *delayed*, but *fraud* or *bad faith* cannot be predicated on such a transaction, because *the law does not compel one creditor to guard the interest of other creditors*. "It is a race in which it is impossible for everyone to be foremost;" and unless the whole transaction is a sham, which in this case is not insisted upon, it cannot be avoided.

And we therefore submit that the court below erred in decreeing this conveyance void, and in preferring the Respondent's claim, and not only misapprehended the evidence as to the consideration but in applying the *law of purchase and sale* made by a *debtor to a stranger* to the case of a *preference* of one creditor by a debtor, and ask that their decree should be reversed, the conveyance sustained, and the Appellants vindicated from the charge of fraud.





N. J. Court of Errors and Appeals.

WILLIAM T. ROE AND SUSAN ROE,

Appellants,

and

CHARLES V. MOORE,

Respondent.

10

On Appeal.

BRIEF OF CHARLES D. THOMPSON,

FOR THE RESPONDENT.

This is an appeal from a decree in Chancery setting 20
aside a deed from William T. Roe to Susan Roe, as
fraudulent as against Charles V. Moore, a creditor of
William T. Roe.

FACTS.

On May 1st, 1880, Charles V. Moore, a practising
physician, brought an action of assumpsit in the Sussex
Circuit Court, against William T. Roe, for medical ser-
vices. A declaration was filed on May 14th, and a copy 30
served on Roe on the same day. Judgment was ob-
tained for \$434.29, damages and costs.

At the time the summons was served, W. T. Roe was
seized of a farm of 92 acres in the county of Sussex,
worth at least \$3,500, and encumbered by a mortgage of
\$1,450.

Ten days after the service of the declaration on May
24th, he conveyed the farm to his mother, Susan Roe,
for the alleged consideration of \$2,000, by full warranty
deed. *in which she does not assume t.* 40

After judgment, a *fi. fa. de bonis et terris* was issued in favor of Dr. Moore, and returned wholly unsatisfied.

A creditor's bill was then filed setting forth that the conveyance was made without consideration, or if with consideration, it was intended to hinder and delay the complainant in the collection of his debt, and praying that it should be considered void, and be set aside as to him.

10 The defendants filed a joint answer admitting the judgment and the conveyance, denying the fraud, and claiming that the conveyance was a *bona fide* transaction for full consideration, consisting of notes for borrowed money and cash lent, amounting in all to about \$2,000; denying that Wm. T. Roe had been in the actual possession of the farm and the receipt of the rents since the conveyance, and also, denying any intention to hinder, embarrass, or delay the complainant in the collection of his claim, and setting up that the conveyance was an honest attempt to prefer a just creditor.

20 The deed is dated and acknowledged on May 24th, 1880, and was recorded three days later on May 27th, 1880.

It is probable that the transaction took place *about* that time. The deed was prepared by a lawyer, Mr. W. H. Coursen, at the request of Wm. T. Roe.

Mr. Roe lives at Newton; he testifies that he and his mother had a conference about his debts, but he cannot say whether it was before or after he deeded the farm to her, (see page 26, line 27,) nor where it took place. He says, however, that they never had any real settlement, (page 32, line 12.) David C. Roe, his brother, testifies that this conference took place at his house in Green township, and that he was present when W. T. Roe asked her "if he deeded the farm to her, if it would make her safe," but he cannot say just when the conversation took place; nor can he remember any of the details, (page 33, l. 24; p. 34, l. 37; p. 36, l. 5, 15, &c.)

40 Susan Roe cannot remember any of the details of this conversation, either as to the place, the time or what

was said. There is no evidence of any conference, other than the one in Green township, and it is probable that that was the only one.

It seems very probable that the deed was signed and acknowledged before the conference took place. A man in no business, with nothing to distract him, could remember one year whether the deed was made before or after the conversation took place. If the deed had been signed and acknowledged after the conversation took place, and according to an agreement then made, it would have been put on record at once, but there is an interval of three days between the date of acknowledgment and that of the recording, which, together with their wonderful want of recollection about the conversation, is strong evidence that the conference took place after the deed was made, and destroys its character as a *bona fide* attempt to prefer a pressing creditor.

I. THE CONSIDERATION FOR THE CONVEYANCE WAS NEVER CLEARLY ASCERTAINED, AND WAS INADEQUATE.

The defendants show, as going to make up the consideration of \$2,000, three notes; one for \$1,000, on which there appears to be due at the time of the conveyance a little over two years' interest, amounting to \$150.35; there is an endorsement of \$210 on this note made February 14th, 1878, and signed by Susan Roe, which Mr. Roe swears was never paid to her, (page 24, line 14;) on cross-examination he says it was paid to her, but she lent it to him and kept an account of it, (page 26, line 37; page 27, lines 16, 29;) Susan Roe testifies that when he paid her the \$210, as "she had no place to put it out she let him have it," (page 41, line 1.)

It is evident that the \$210 was a gift to the son from the mother at the time, because she loaned him \$190, six weeks afterwards, and he gave her a note for that; when asked why the \$210 was not added to the \$190, and a note for \$400 given, he replied that "she had put that down" and he gave a note for what he got there. He

says (p. 24, l. 2,) that accounts were kept between them "the same as between strangers;" but these accounts were never produced or shown in the case; and doubtless both regarded the \$210 as a gift, until it was necessary to bring in every dollar to make the debts amount to a sum somewhere near the consideration expressed in the deed.

10 The amounts due her at that time on the other two notes, with interest, are \$212.07 and \$106.60, respectively, making on the three notes at that time, \$1,469.02; besides these, he testifies to a few small sums, some of which were clearly barred by the statute of limitations; she, however, testifies to nothing definite beyond the notes, and says that the sums amounted, perhaps, to \$1,400, \$1,500 or \$1,600.

20 Since the amount due was not more distinctly ascertained, it is impossible to believe that the transaction was a *bona fide* one, and it clearly appears that the consideration was inadequate, for there is only \$1,469 paid for a farm worth \$3,500. And if the mortgage, (which she does not assume in the deed) is added, it makes only \$2,969, leaving a margin more than sufficient to pay the judgment.

II. THE TRANSACTION WAS NOT BONA FIDE.

1. Wm. T. Roe received the rents for a year after the conveyance.

30 He testifies first that part of it was due to him because he did not owe her quite \$2,000 when the conveyance was made, and so he was to keep it out of the rent, but he does not know how much belonged to him, as they never had any settlement. He then says that he collected the rent as her agent, and was to pay it over to her. Susan Roe, however, shows the true state of the case, when she says that she *gave him the rent*, which shows that ~~it~~ ^{the conveyance} was really a transfer to the use of the grantor.

40

2. She was not a *bona fide* purchaser without notice.

She testifies that she knew that William had no other property, and that Dr. Moore was pressing for his claim, and when asked if she did not know that Dr. Moore could not sell the farm if she held the title, she replied that "*she didn't want him to, that she wanted to get hers.*" She knew that Mr. Moore would be delayed in the collection of his claim, and by her knowledge of William's intention was party to the fraud.

10

III. THERE WAS AN INTENTION TO DELAY AND HINDER THE COLLECTION OF THE COMPLAINANT'S CLAIM.

This is evident from the first. When the declaration was served on Wm. T. Roe, on May 14th, he said to the attorney, "Go ahead, I guess you wont get much." Ten days afterward he conveyed the farm to his mother, with covenants of full warranty, in which the consideration is stated at \$2,000, and in which she does not assume the mortgage. Sometime after the deed was recorded, a plea of general issue was drawn up and sworn to, evidently as a cover to the sale, but it was never properly filed in the clerk's office. There was a fraud in the affidavit, as it purports to have been sworn to on June 3d, 1880, before Mr. C. J. Roe. Mr. C. J. Roe testifies that he was in Trenton on that day; and while the error in the date of the jurat may not have been participated in by the defendant, it is evident that he never had any real defense, or it would have been pressed.

30

At the time of the conveyance he had no other property, and Susan Roe knew it, but she testifies that she thought Dr. Moore "was as well able to do without it as she was."

But even though he had no other property, he conveyed the farm for less than it was worth, and says in answer to a question as to whether he understood that giving the deed to his mother would defeat Dr. Moore's collecting his claim, that he "could collect his claim, *but he would have to wait for it*"

40

It appears that Susan Roe is worth from \$10,000 to \$12,000, and has loaned money to each of her children, and taken notes from them, the understanding being that the money was advanced to each as a part of their respective shares of her estate, and that the notes should show how much each one had received.

Yet even on that understanding they both agree to this conveyance, made hastily, after suit was brought, without any real settlement of accounts, in order to make
 10 Dr. Moore "wait for his." The intention to delay and hinder the collection of his claim is very apparent.

IV. IT WAS NOT A BONA FIDE ATTEMPT TO PREFER A CREDITOR.

Mrs. Roe is a creditor, but so she is of each of her children, with no other security than notes, and had the farm been sold it would not have affected her, as she
 20 testifies that she intended the notes to show how much each one had had of their respective shares.

There is no evidence that she was anxious about the amount that William held. William nowhere says directly that she had pressed him to secure her claim, or had shown any desire to have it paid. David C. Roe says that William asked her "if he deeded the farm to her if that would make her safe?" that "she had not expressed any anxiety about the security of this loan to William, and that he did not hear her ask either for the
 30 money or for any other security." Susan Roe does not say whether she was anxious about the loan or not, but says that William "*offered to secure it.*" Such is not the conduct of a creditor desiring security, or of any debtor desiring to prefer a creditor; there is no anxiety on her part, and even when he pretends to prefer her, they do not do it in a business-like way; the amount of the debt is not ascertained, the rent goes to the grantor, and everything about the whole transaction bears the impress of fraud.

THERE ARE A LARGE NUMBER OF CIRCUMSTANCES IN THIS CASE WHICH ARE CLASSED AS BADGES OF FRAUD.

The transfer of *all* of the debtor's property, especially during pendency of suit. The taking of an absolute deed as a security for money is a mark of fraud, for it is calculated to deceive creditors, and to make them believe that no part of the property is subject to their demand, when in fact it is otherwise. A false statement of the consideration for the transfer tends to deceive creditors. Inadequacy of price is a badge of fraud, for one who purchases the property of an insolvent debtor for less than its value thereby deprives the creditor of the difference, and thereby defeats just expectations. The collection of rents is an act of ownership, and if done after a sale indicates fraud. Anything out of the usual course of business, as the absence of accounts between parties, when the transfer purports to be in consideration of a debt due the grantee, want of preciseness on the part of the grantor and grantee in their testimony as to dates, time, or amount, excites suspicion.

Bump on Fraudulent Conveyances, Chap. IV.

A CONVEYANCE TO BE GOOD MUST BE NOT ONLY FOR A GOOD CONSIDERATION, BUT IT MUST BE FOR A GOOD CONSIDERATION AND BONA FIDE.

The words of the statute are "that no conveyance may be impeached when made for a good consideration, and *bona fide*, to any person not having at the time any notice or knowledge of such fraud, covin or collusion." *Rev.*, 447, 14.

Even though a valuable consideration is paid, the conveyance is void if it is not made *bona fide*.

In *Tantum vs. Green*, 6 C. E. Gr., 369, the Court says: "If a purchaser has before him facts which should put him on inquiry, it is equivalent to notice of the fact in question," and they held that he "must not only be a

purchaser for value, but a *bona fide* purchaser, without notice of the fraudulent intent of the assignor, or of circumstances which should have put him upon inquiry and which were equivalent to notice."

In *Smith vs. Vreeland*, 1 C. E. Gr., 201, the Court says: "But the principle is equally clear that if he purchase with actual or constructive notice of the fraud, though he pay a valuable consideration, he takes title subject to
 10 all the equities to which it was liable in the hands of the vendor. In such cases he will not be permitted to protect himself against such claims, but his own title will be postponed, and made subservient to them."

In *Sayre vs. Fredericks*, 1 C. E. Gr., 209, it is held: "It is not sufficient that it be upon good consideration, or *bona fide*, it must be both;" also *Randall vs. Vroom*, 3 Stew., 353; 1 Story's Eq. Juris., § 353.

There is in this case an evident knowledge of the fact
 20 that the conveyance would delay the creditor, and sufficient notice to have put any purchaser on inquiry as to the intention. The amount of the consideration is material when an inquiry is made into the *bona fides* of a transaction. Here it is much too small for the real value of the farm, and even then it is deceptive; for no indebtedness is shown to amount to the consideration stated in the deed.

It appears, too, that notwithstanding the transfer, the grantor was allowed to receive the rents, showing that
 30 the transfer was not real, but was only a cover for the property for the benefit of the debtor.

In *Lukins vs. Aird*, 6 Wall., 78, it was held that the law will not permit a debtor in failing circumstances to sell his land, convey it by deed, without reservation, and yet secretly reserve to himself the right to possess and enjoy it, though for a limited time only, for his own benefit; and that this rule of law will not be changed by the fact that the right thus to occupy the property is a part of the consideration of the sale. See, also, on
 40 this head, *Oriental Bank vs. Haskins*, 3 Metc., 332;

St. John vs. Camp, 17 Conn., 22; *Scott vs. Hartman*, 11 C. E. Gr., 89.

In *Demarest vs. Terhune*, 3 C. E. Gr., 532, it is held that where a debtor has property sufficient to pay his debts, which is conveyed for less than its actual value, "the conveyance can only stand on the ground of its entire *bona fides*, and the burden of proof in this respect is upon the purchaser." This strikes at the very gist of this case, for it appears by their own evidence that the farm was worth \$2,760, and they fail either in the answer or in the evidence to show that even \$2,000 was paid for the property. 10

THE STATUTE MAKES ALL CONVEYANCES VOID, WHICH ARE MADE WITH INTENT TO HINDER, DELAY OR DEFRAUD CREDITORS AND OTHERS OF THEIR LAWFUL ACTIONS, &c. *Rev.*, page 446, §§ 12.

There must be an *intention* to hinder or delay the creditor in the collection of his claim.

It is the right of the creditor to receive his demands when they are *due*, and any act which places the property of the debtor out of reach of the creditor, is an act intended to delay him in collecting it. If the hinderance of creditors forms any part of the actual intent of the act done, so far the act is as against them, contrary to the statute. 20

Every one is presumed to know the consequences of his acts; if then the necessary consequence of an act is to hinder and delay a creditor, there is a justifiable inference of a fraudulent intent, and the presumption at once arises that such illegal object furnished one of the motives for doing it, and it is then held to be fraudulent. 30

Bump on Fraudulent Conveyances, Ch. III.

Chancellor WILLIAMSON, in *Knight vs. Packer*, 1 Beas., 214, says: "If the deed was executed on the part of the debtor with an intent to delay his creditors, that intention being a fraudulent one, will make the deed fraudulent in fact against his creditors." 40

Chancellor ZABRISKIE says, in *Atwood vs. Impson*, 5 C. E. Gr. : "But any sale in which the object of the debtor that prompts and determines him to make it, is to hinder, delay, or in any way put off his creditor, is void, if made to any one *having knowledge of such intent*, and this knowledge need not be by actual, positive information or notice, but will be inferred from the knowledge by the purchaser, of facts and circumstances sufficient to raise such suspicions as to put him on inquiry."

10

WHAT IS NECESSARY TO PREFER AN HONEST CREDITOR?

The distinction is between a transfer made solely by way of preference of one creditor over others, and a similar transfer made with a design to secure some benefit or advantage therefrom to the debtor, or to delay creditors in the collection of their debts. While the law permits an insolvent debtor to make a choice of the persons he will pay, it denies him the right in doing it to contrive that other creditors shall never be paid, or to use the debt of the preferred creditor as a colorable consideration to secure and protect his property from their claims, or to delay, hinder and embarrass them in the enforcement of their claims.

20

Here is a conveyance made to a mother who is not in need of the security, who had advanced the money secured to her son as part of his share of her property; she did not ask for security, and it is evident that the transaction is one made solely to protect and save his property for his own use and benefit, and hence is *mala-fide*.

30

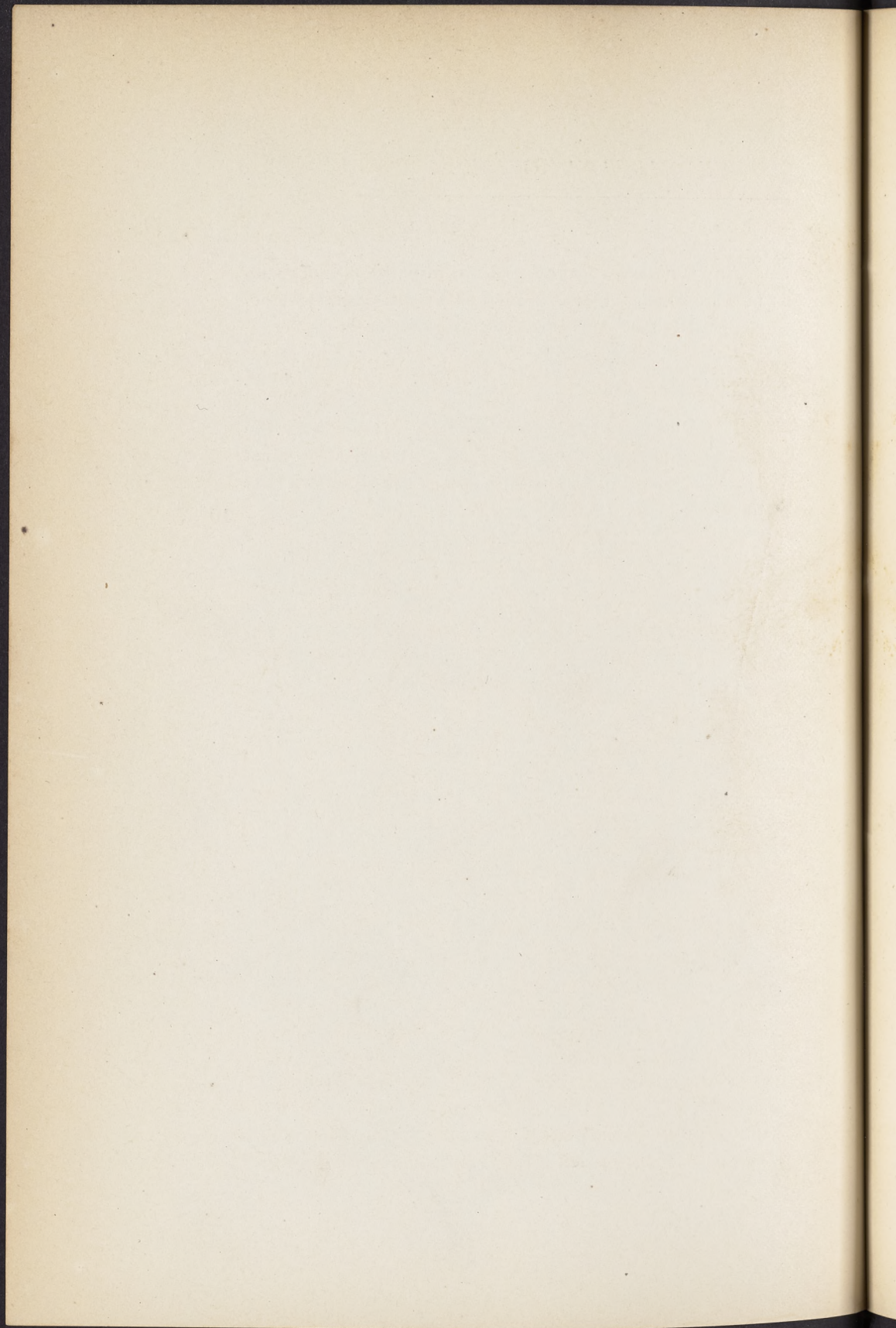
Bump on Fraudulent Conveyances, pp. 223, 225.

Any attempt to prefer a creditor must be conducted in a way to show the honesty of such intention; the account must be carefully stated, and such a portion of the debtor's property conveyed as would fairly pay the creditor upon a strict market valuation of the property. In *Livermore vs. McNair*, 7 Stew., 478, the Court says that the right to prefer a creditor "must always be exercised for honest ends and according to legal methods."

40

Any transaction in which the ordinary rules of business are so entirely disregarded as they were in this one, can hardly be called an attempt to prefer an honest creditor, in distinction from an intent to delay or embarrass a creditor.

The Vice-Chancellor very properly advised a decree setting aside the conveyance as fraudulent against Dr. Moore, and under the facts of the case I submit that the decree should be affirmed.



WM. S. SHARP, Printer, 21 West State street, Trenton, N. J.

IN CHANCERY OF NEW JERSEY.

Between

CHARLES V. MOORE,
Complainant,

and

WILLIAM T. ROE and
SUSAN ROE,
Defendants.

On Bill, &c.

Bill of Complaint.

[Filed December 10, 1880.]

*To his Honor Theodore Runyon, Chancellor of the
State of New Jersey :*

Complaining, shows unto your Honor your orator, Charles V. Moore, of the township of Stillwater, in the county of Sussex, and State of New Jersey, that on or before the twenty-fourth day of May, eighteen hundred and eighty, William T. Roe, of the town of Newton, in the county of Sussex and State of New Jersey, was seized and 10
possessed in fee simple of all that tract or parcel of land

and premises hereinafter mentioned and described, situate in the township of Stillwater, in the county of Sussex, and State of New Jersey, that is to say, bounded as follows: Beginning at an old stone corner; thence, as the needle now bears, (1) south, forty-six and a half degrees east, thirty-seven chains, to a stake in the east side of the road, in a line of the heirs of Abraham Budd's, formerly Goble's line; (2) south, thirty-four and a half degrees west, fourteen chains and fifty links to a stake
10 and stones on the top of a hill; (3) south twenty-three and a half degrees west, two chains and seventy-one links to a stake; (4) south, fifty and three quarter degrees west, four chains and eighteen links to a stake and stones; (5) south, seventy-three degrees west, eight chains and thirty links to a large white-oak stump; (6) south, forty-three and three-quarter degrees west, five chains and forty-eight links to a stake at the edge of the meadow, distant eight chains and sixty-one links, in a course of north, forty-three and a half degrees west, from
20 a red-oak, an original corner to the White House property; (7) north, forty-three and a half degrees west, three chains and seventy-seven links to a stake in said meadow, in an old ditch; (8) along the middle of said ditch north, forty-five degrees east, four chains and eighty-five links to a stake in said ditch and corner to Mahlon Budd; (9) north, forty-three degrees west, thirty-two chains and forty-four links to a corner of Mahlon Budd; (10) north, forty-four and a half degrees east, twenty-four chains and thirty-four links to the beginning, con-
30 taining one hundred and eight acres and twenty-nine hundredths of an acre, out of which is to be deducted sixteen acres and thirty-hundredths of an acre, conveyed to Catharine Hogan, it being a part of a tract of land purchased by Ralph Dildine of the heirs of Thomas P. Hunt, now deceased, including a lot which formerly belonged to Sarah Wills, now deceased, and also a part of what is called the White House farm, situate on the great road leading from Johnsonsburg to Newton, which

said three parts and tracts are all included in the above-described survey, and the same premises described in a deed from Ralph Dildine and wife to William T. Roe, recorded in Sussex county clerk's office, in Book N 6 of Deeds, page 523, dated March twelfth, eighteen hundred and sixty-nine.

And your orator further shows that on or about the first day of May, in the year eighteen hundred and eighty, the said William T. Roe being justly indebted to your orator in the sum of three hundred and seventy-five dollars and upwards, your orator then commenced an action of *assumpsit* against the said William T. Roe for the recovery of the said debt and the interest thereon in the Circuit Court of the said county of Sussex, and such proceedings were thereupon had in the said suit that afterwards, to wit, on the fourteenth day of July, in the year last aforesaid, your orator recovered a judgment against the said William T. Roe, in the said Circuit Court, for the sum of four hundred and thirty-four dollars and twenty-nine cents damages, including costs, as by the record of the said judgment now remaining in the office of the clerk of the said Circuit Court at Newton, reference being thereunto had, will more fully and at large appear. 10 20

And your orator further shows that for the purpose of obtaining satisfaction of said judgment, he caused to be issued thereon out of the said Circuit Court a writ of *fiery facias de bonis et terris* tested on the eighth day of November, and returnable on the seventh day of December, in the year last aforesaid, which writ having been first duly recorded, was delivered to the sheriff of the said county of Sussex, to whom it was directed, and thereby he was commanded that of the goods and chattels of the said William T. Roe, in his county, he should cause to be made the said sum of four hundred and thirty-four dollars and twenty nine cents, so as aforesaid adjudged to your orator; that if sufficient goods and chattels of said William T. Roe in his county he could 30

not find whereof to make said moneys, he should cause the whole, or the residue, as the case might require, of the said moneys to be made of the lands, tenements, hereditaments and real estate whereof the said William T. Roe was seized on the said fourteenth day of July, in the year last aforesaid, or at any time afterwards, in whose hands soever the same might be, and that the said sheriff should have those moneys before said Circuit Court on the return day of said writ to render to your
10 orator in satisfaction of his said judgment, and that he should have then and there the said writ.

And your orator further shows that James L. Decker, sheriff of the said county of Sussex, to whom the said writ of execution was directed and delivered, being unable to find any goods and chattels of the said William T. Roe whereon to levy and make the said judgment, levied upon the lands and premises hereinbefore described as the property of the said William T. Roe, as by the writ of execution, or the record thereof and the return to the
20 said writ thereon endorsed, in the office of the clerk of the said Circuit Court at Newton aforesaid, reference being thereto had, will more fully and at large appear.

And your orator further shows that the said William T. Roe, being so seized and possessed of said tract of land and premises as aforesaid, which are of the value of four thousand dollars and upwards, at or about the dates or times, by the pretended deed hereinafter mentioned, and after the said debt so due to your orator had accrued and become due and payable, and in order to
30 secure the said property for his own use and benefit, and protect it from the said claim of your orator, and prevent your orator from collecting his said debts, combining and confederating together with the persons hereinafter named, and with divers other persons whose names are at present unknown to your orator, but whose names when discovered, he prays, may be inserted herein with proper words to charge them as defendants hereto, and contriving to defraud your orator, did, by deed dated on

the twenty-fourth day of May, in the year eighteen hundred and eighty, and recorded in Book G 7 of Deeds for Sussex county, page 513, &c., pretend to convey the tract of land above described to one Susan Roe, his mother.

And your orator further shows that he has been informed and believes it to be true, and therefore expressly charges, that no consideration whatever was paid for the said conveyance; or if any consideration was paid it was entirely insufficient and inadequate, and was paid with the intention of defrauding your orator; and that the said William T. Roe has always held, occupied, possessed and enjoyed and received the rents and profits of said lands as fully to all intents and purposes as before the execution of said pretended conveyance. 10

And your orator further shows that he has frequently and in a friendly manner applied to the said William T. Roe and Susan Roe to pay the said judgment, or to cancel and surrender the said fraudulent conveyance, or to reconvey, or cause to be reconveyed, the said premises to the said William T. Roe, so that they may be sold under the said execution for the satisfaction of the said judgment, and a good and clear title given therefor to the purchaser thereof, as in equity and good conscience they ought to have done, and as your orator well hoped they would have done, but which they wholly refuse to do. 20

In consideration whereof, and for as much as your orator is remediless in the premises at the common law, and cannot have adequate relief except by the aid of this honorable court: To the end, therefore, that the said William T. Roe and Susan Roe, defendants hereto, and their confederates, when discovered, may, without oath, full, true and perfect answer make to all and singular the premises according to the best of their knowledge, information, remembrance and belief, and that they may set forth and discover the real estate belonging to the said William T. Roe, and conveyed as hereinbefore mentioned, and what disposition has been made of or encum- 30

brance put upon the same, fully and particularly, and in whose possession said real estate has been since the twenty-fourth day of May, eighteen hundred and eighty, and whether the same is encumbered, and if so, in what manner, in whose favor, by whom and to what amount, and whether such conveyance as before mentioned were made of the said real estate, and if so, for and upon what consideration, and to whom, when and by whom the same was paid, and who has possessed and occupied said
10 premises, and received the rents, issues and profits thereof since the said alleged or pretended conveyances thereof; and that the said defendants, or one of them, may be decreed to pay to your orator the full amount due and owing to him on the said judgment, with the interest, costs and execution fees accrued thereon; and that the said fraudulent conveyance, and all other fraudulent conveyances and encumbrances, made, created or suffered between the said defendants and affecting the said lands, may be set aside and declared null and void;
20 and that the said lands may be sold free, clear and discharged of and from the said fraudulent deeds, and all other fraudulent deeds and conveyances and encumbrances, under the said writ of execution or otherwise, and the proceeds thereof, or such part of the same as may be necessary, may be applied to the payment of your orator's said judgment, and that your orator may have such other or further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

30 May it please your Honor, the premises considered, to grant to your orator the state's writ of subpoena, issuing out of and under the seal of this honorable court, directed to the said William T. Roe and Susan Roe, therein and thereby commanding them and each of them at a certain day and under a certain penalty, to be therein expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to, abide by and per-

form such order and decree thereon as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

CHARLES D. THOMPSON,
Solicitor for and of Counsel with Complainant.

Answer.

[Filed February 12, 1881.]

The joint and several answer of William T. Roe and Susan Roe to the bill of complaint of Charles V. Moore, complainant. 10

These defendants, now and at all times hereafter, saving and reserving to themselves all, and all manner of benefit and advantage of exception to the many errors, uncertainties and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

1. That they admit that on or before the twenty-fourth day of May, eighteen hundred and eighty, William T. Roe, one of the defendants, was seized and possessed of the tract of land and premises mentioned and described in complainant's bill of complaint; that the title to the same was in his name. 20

2. And these defendants, in further answering, say that they are informed and believe that said complainant did commence suit in the Sussex Circuit Court, on or about the eleventh day of May, eighteen hundred and eighty, against William T. Roe, one of these defendants, to recover some sum of money which he claims to be due and owing from said William T. Roe to said complainant, and that such proceedings were had therein that on 30

the fourteenth day of July, eighteen hundred and eighty, judgment was entered in favor of said complainant, as set forth in complainant's bill of complaint, and that the said complainant caused execution thereon to be issued out of said court as stated in said bill of complaint, but these defendants, for greater certainty, crave leave to refer to the record of said proceedings, or the proof thereof, when the same or either of them shall be produced.

3. And these defendants, in further answering, say
10 that they are not informed, save by complainant's said bill of complaint, and therefore cannot set forth as to their or either of their belief, or otherwise, whether the said sheriff, being unable to find any goods or chattels of said William T. Roe, one of these defendants, whereon to levy and make the said judgment, levied upon lands and premises described in said bill of complaint, as the property of said William T. Roe, one of these defendants, as charged and set forth in said bill of complaint, and leave the same to be proved by the said
20 complainant.

4. And these defendants, in further answering, deny that William T. Roe, one of these defendants, did, by his deed dated on the twenty-fourth day of May, eighteen hundred and eighty, and recorded in Book G 7 of Deeds for Sussex county, page 53, pretend to convey to Susan Roe, one of these defendants, the tract of land and premises in complainant's bill of complaint described and set forth, and expressly say that the said William T. Roe did, by his deed of the date above mentioned,
30 and recorded as above set out, really, lawfully and in good faith, and for a full, fair, complete, valid and subsisting consideration, and without any sham or pretence, convey to the said Susan Roe, one of these defendants, the tract of land in complainant's bill of complaint described, and expressly deny that the said William T. Roe, being seized and possessed of said tract of land and premises, did, at or about the dates or times, and by the deed hereinbefore mentioned, and in order to secure the

said property for his, the said William T. Roe's, use and benefit, and protect it from the claim of the said complainant, and to prevent the said complainant from collecting his alleged claim, combine and confederate with others, and contrive to defraud the said complainant as charged and set forth in complainant's bill of complaint, or in any other way; and, in further answering, say and expressly declare and insist the truth to be the contrary of the charges therein made.

5. And these defendants, in further answering, deny 10
that no consideration whatever was paid for the said conveyance from the said William T. Roe to the said Susan Roe, or if any consideration was paid it was entirely insufficient and inadequate, and was paid with the intention of defrauding the said complainant, as charged in said bill of complaint; but these defendants in fact say that the consideration of the said conveyance from the said William T. Roe to the said Susan Roe, was a debt due and owing from the said William T. Roe to the said Susan Roe, being the amount due on three certain prom- 20
issory notes given by the said William T. Roe to the said Susan Roe, the consideration of which note was cash lent and advanced and paid by the said Susan Roe to the said William T. Roe, the first of said notes bearing date the first day of April, in the year eighteen hundred and seventy-three, for the principal sum of one thousand dollars; the second of said notes bearing date the second day of April, eighteen hundred and seventy-eight, for the principal sum of one hundred and ninety dollars; and the third note bearing date the nineteenth day of 30
April, in the year eighteen hundred and seventy-nine, for the principal sum of one hundred dollars; besides the sum of one hundred dollars on or about the first day of April, in the year eighteen hundred and seventy five, and the further sum of forty dollars on or about the first day of April, in the year eighteen hundred and seventy-seven, cash lent, advanced and paid by the said Susan Roe to the said William T. Roe, besides, also, other

small accounts held by the said Susan Roe against the said William T. Roe, all which, together with the interest thereon, amounted on the day of said conveyance, to about the sum of two thousand dollars.

6. And these defendants, in further answering, deny that ever since the conveyance of said property that the said William T. Roe has been in the possession, occupation and enjoyment of the said property, or that he has received the rents, issues and profits thereof to his own
10 use, as fully to all intents and purposes as before the execution of said conveyance, as charged in said bill of complaint, and, in further answering, say and expressly charge the truth to be the contrary of the charges therein made.

7. And these defendants, in further answering, say and charge the truth to be that before and at the time of the making of the said conveyance by the said William T. Roe to the said Susan Roe, there existed and still exists an encumbrance of mortgage on the said property in
20 complainant's bill of complaint described, held by one Martha Stoutenberg, which amounted on the day of said conveyance to the sum of fourteen hundred and fifty dollars, with over one year's interest due thereon, and that the said property was conveyed by the said William T. Roe to the said Susan Roe, subject to the encumbrance of the said mortgage.

8. And these defendants, in further answering, deny that the said premises are worth the sum of four thousand dollars and upwards, but say that they believe them
30 to be worth no more than said amount so secured by mortgage, and the indebtedness so as aforesaid due this defendant from said William T. Roe.

9. And these defendants, in further answering, say and declare the truth to be that the said conveyance from the said William T. Roe to the said Susan Roe was made in good faith, and was a fair, *bona fide* transaction for a full, fair, complete, valid and subsisting consideration, and for the sole purpose and intent to satisfy and dis-

charge the indebtedness as aforesaid existing and owing from the said William T. Roe to the said Susan Roe, and without any intent to hinder, embarrass, delay, defraud or defeat the said complainant or any other person from the collection of their just claims, demands or judgments, and without any intent or purpose of aiding the said William T. Roe in saving the said property from his creditors, or preventing them from collecting their claims and demands against him.

10. And the said Susan Roe, one of these defendants, 10
in further answering, says that since the commencement of this suit she has offered through her counsel to convey, subject to said encumbrance of mortgage, the said land and premises in complainant's bill of complaint described to the said complainant, Charles V. Moore, upon the condition that he would pay to her the sum of money which the property stands her in hand, to wit, the sum of two thousand dollars, being the indebtedness of the said William T. Roe to her, the said Susan Roe, at the time of the making of said conveyance, and that 20
the said complainant refused to accept her offer, and refused to take the said property upon the terms and conditions which she offered to convey it to him.

11. And the said Susan Roe, one of these defendants, in further answering, says that she is willing and ready to convey the said property to the said complainant, or to anybody else, subject to the encumbrance of mortgage hereinbefore mentioned, upon payment to her of the amount which the said property stands her in hand, to wit, the sum of two thousand dollars, which represents the actual and true indebtedness of the said William T. Roe to her at the time of the making of said conveyance. 30

12. And these defendants deny all and all manner of unlawful combinations wherewith they are by the said bill charged, without that, that any other matter or thing in the said complainant's bill of complaint contained, material or necessary for them to make answer unto and

not herein, and hereby we'll and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are willing and ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

10

WM. T. ROE.
SUSAN ROE.

ROE & SHEPHERD,
Solicitors of Defendants.

Replication.

[Filed March 2, 1881.]

The replication of Charles V. Moore, complainant, to the joint and several answer of William T. Roe and Susan Roe, defendants.

20 This repliant, saving and reserving to himself all manner of advantage of exception to the manifold insufficiencies of the answer of the said defendants, for replication thereunto, says that he does and will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this
30 repliant is and will be ready to aver and prove as this

honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

CHAS. D. THOMPSON,

Solicitor for and of Counsel with Complainant.

Depositions.

[Filed August 6, 1881.]

Examination of witnesses in the above case taken before me, Charles M. Woodruff, one of the examiners of this court, at my office, in the town of Newton, New Jersey, on the 14th day of April, A. D. 1881, on the part of the complainant, in the presence of Charles D. Thompson, solicitor of complainant, and Roe & Shepherd, solicitors of the defendants, and by counsel of the respective parties. 10

The counsel of the complainant here offers in evidence a transcript of judgment obtained in the Circuit Court of Sussex county, by Charles V. Moore, plaintiff, against William T. Roe, defendant, on the 9th day of July, A. D. 1880, for the sum of \$396.64 damages, and \$37.15 costs; the whole sum of judgment and costs amounting to \$433.79, marked by me *Exhibit No. 1* on the part of the complainant. 20

Henry C. Stoll, a witness of full age, produced on the part of the complainant, and being first duly sworn, upon his oath says—

I am deputy sheriff of this county; and have been since November, 1878. [Being shown a paper writing marked by me *Exhibit No. 2* on part of complainant, says]—This is a certified copy of a writ of *feri facias de bonis et terris*, issued out of the Sussex Circuit Court, in 30

a case wherein Charles V. Moore is plaintiff, and William T. Roe is defendant; I received this writ November 9th, 1880; I made a levy under it December 6th, 1880, and on the property described in the levy and annexed to this execution; this execution was returned unsatisfied; I found no personal property whereon to levy; I inquired of Roe whether he had any personal property or not; he said he had none, and I so informed Mr. Charles D. Thompson, complainant's solicitor; and then I made the levy on the land, under the direction of Mr. Thompson.

Being cross-examined, witness says—

I levied on the property of William T. Roe as described in the levy annexed to this execution; I don't remember whether I asked Mr. Roe or not if he owned this property; I made the levy under the direction of Mr. Thompson; I think I found out myself by searching the record that Roe had previously conveyed the property away.

20 Re-direct examination, witness says—

I asked him generally if he had any property on which I could levy, and he said he had none.

HENRY C. STOLL.

Sworn and subscribed before me this 14th day of April, A. D. 1881.

CHAS. M. WOODRUFF, *M. C.*

Mahlon Budd, a witness of full age, being first duly sworn, upon his oath and on the part of the complainant, says—

3) I reside in the township of Stillwater, and am a farmer; I have lived seventeen years where I now reside; I am pretty well acquainted with the property lately owned by William T. Roe; it adjoins my farm; I have been on it several times; taking this farm in its

present situation and at the present prices, I think it would bring \$35 per acre at a *bona fide* sale; I am quite well acquainted with the character of the land; it is a good grain farm; my own farm adjoining this one, I consider worth \$50 per acre, and would not take any less; I gave that for it.

Being cross-examined, says—

The buildings on this farm are not very good; the fences are not very good; take all the farm as a whole it has not been farmed well; the old part has been 10 farmed good but the new land has not been farmed as it ought to have been; the outbuildings on my farm are good, and the house I am repairing; my fences are tolerably good, and my land is about as good as I can make it; I can't say to a certainty, but I should judge that there are between four and six acres of wood land on the farm lately owned by William T. Roe; I think there are about twenty-five acres of new land on it.

MAHLON BUDD.

Sworn and subscribed before me this 14th day of 20 April, A. D. 1831.

CHAS. M. WOODRUFF, M. C.

John L. Budd, of full age, a witness, produced on the part of the complainant, and being first duly sworn, upon his oath says—

I am a farmer and live in Stillwater township; I own a farm adjoining the farm lately owned by William T. Roe; I have lived there twenty-eight years this spring; I am quite well acquainted with the Roe farm; I have been over it a few times; I consider it worth about \$35 30 per acre at the present time; the farm is in rather a poor condition; I think it would bring that price at the present low prices of land; Mr. Roe bought this farm of Ralph Dildine.

Q. Has Mr. Dildine ever said to you how much he

got for this farm, and if so, how much? [Question objected to.]

A. He and I were talking about it one day and he said he got about \$6000 for it; it was about twelve years ago since he (Roe) bought it; that was considered a fair price at that time; I took my own farm at \$4) per acre in a division of my father's estate; I should not want to take any less for it; I have always considered Mr. Roe's farm better than mine; his is a good grain
10 farm, especially the old part; I consider it not very easy to form an estimate of the value of farms nowadays; I think lands have depreciated below their actual value in the market.

Being cross-examined, witness says—

This farm does not include as many acres now as it did when I had the conversation with Mr. Dildine; there have been sixteen acres and some hundredths sold off; when Mr. Roe purchased the farm of Dildine it was at a time when real estate was somewhat higher than it is
20 now; it was quite a little higher then, but I can't say how much; I should think about \$20 an acre difference between it then and now; the buildings and fences on this Roe farm are not very good at present; if I wanted to buy I would be willing to pay \$35 per acre for the Roe farm

JOHN S. BUDD.

Sworn and subscribed before me this 14th day of April, A. D. 1881.

CHAS. M. WOODRUFF, *M. C.*

30 *Joseph H. Westbrook*, of full age, being first duly sworn as a witness on the part of the complainant, says--

I live in Stillwater township, about six miles from this town; I am a farmer and live on the farm lately owned by William T. Roe; I have lived there four years to-day; I paid the rent for this farm for the year ending

April 1st, 1881, to William T. Roe; I pay \$150 for this property, and work out a certain portion of the road taxes, and I paid the last part of the rent to Mr. Roe on the 1st day of April instant, and I have paid the rent to him occasionally from \$10 to \$20 at a time.

Being cross-examined, says—

Q. Mr. Westbrook, of whom do you lease this farm this year? [Objected to as not cross-examination.]

A. Of Susan Roe; I paid the rent for this last year to Mr. Roe, for him; I presume it was for him but I can't 10 say; he never told me it was for him; my bargain was with him and to him I paid the rent.

JOSEPH H. WESTBROOK.

Sworn and subscribed before me this 14th day of April, A. D. 1881.

CHAS. M. WOODRUFF, M. C

George H. Nelden, of full age, a witness, produced on the part of the complainant, and being first duly sworn, says—

I am clerk of the county of Sussex, and of the several courts of record thereof and have been for the last 20 six years. [Witness being shown a paper writing marked by me, *Exhibit No. 3* on the part of the complainant, says]—This is a certified copy of a paper purporting to be a plea in a case wherein Charles V. Moore is plaintiff and William T. Roe is defendant; I found this paper on my desk during the month of June in the year 1880, and I marked it as filed in June, 1880; I do not recollect what day I found it there; I know it was in June, but what day I don't recollect; no one put it in my 30 hands as I recollect; Mr. Coursen, the defendants' attorney, never either before or since asked me if it had been filed; he never spoke to me about it, to my recollection.

Being cross-examined, says—

To my knowledge, no one ever gave me directions to file this plea.

Re-direct examination, witness says—

The reason I did not put in the date was that I looked at the suit and the filing of the declaration to see when it would be ripe for judgment; I did not purpose to take the responsibility of filing it at that time, coming to my notice the way it did; not being advised at the time the
10 plea was brought there by any one, I filed it without any other date than June, 1880.

GEO. H. NELDEN.

Sworn and subscribed before me this 14th day of April,
A. D. 1881.

CHAS. M. WOODRUFF, *M. C.*

Charles J. Roe, a witness of full age, produced on the part of the complainant, and being first duly sworn, upon his oath—

[Witness being shown a paper writing marked by me
20 *Exhibit No. 3* on part of complainant, says]—This appears to be a certified copy of a plea; I took an affidavit of William T. Roe, to which my attention has since been called, and it appears by the jurat that the affidavit was taken on the 3d day of June, 1880; the jurat was not dated by me and I am satisfied the affidavit was not taken on the 3d day of June, as I was in Trenton attending the Supreme Court that day; Mr. Coursen, the attorney of the defendant Roe, came with the defendant in my office and asked me to take the affidavit of Roe,
30 which I did; the jurat was signed by me; the date was either neglected to be put in or put in by Mr. Courseu; the actual date was somewhere between the 10th and 20th of June, and my recollection is that it was after the 14th; I had no connection at that time with Mr. Roe, professionally or otherwise, and this error

of the jurat was made inadvertently, so far as I was concerned; it was an innocent mistake on my part.

CHAS. J. ROE.

Sworn and subscribed before me this 14th day of April, A. D. 1881.

CHAS. M. WOODRUFF, *M. C.*

The solicitors of the defendants object to all the evidence of George H. Nelden and Charles J. Roe as irrelevant.

CHAS. M. WOODRUFF, *M. C.* 10

This examination adjourned till Wednesday, April 20th, at ten o'clock A. M., at same place.

CHAS. M. WOODRUFF, *M. C.*

Examination continued Wednesday, April 20th, A. D. 1881, at two o'clock P. M., in the presence of the respective solicitors of the parties.

Joseph B. Hunt, of full age, a witness produced on the part of the complainant, being duly sworn according to law, on his oath saith—

I am a farmer by occupation, and live in Green town- 20
ship, in this county; my farm joins the farm lately
owned by William T. Roe, in Stillwater township; I
worked that farm so owned by Mr. Roe, for nine years;
I think the farm is an average farm in the neighbor-
hood; I used to think it was a good farm when I worked
it, and would be able to produce well yet, if properly
worked; I think it is worth \$40 an acre—not much be-
low or above that; it might not bring that on a forced
sale; the farm is in bad shape to sell now, but I think
\$40 is somewheres in bounds; I think it would be 30
likely to bring \$40 an acre at the present low prices;
and if a little money was spent on the buildings I think
it might bring \$50 an acre.

Being cross-examined, witness says—

The buildings on that property are not in good condition; they are considerably out of repair; the fences are not good either; I can see where timber has been taken off of that farm; I've understood that a good deal has been taken off; I can't tell exactly how the farm has been farmed; it has not been farmed well; it is probably a lack of farming; I can't see much of the farm from where I live, and I haven't been over the farm for nigh
 10 twenty years; I worked the farm nine years previous to 1859; I think I took the farm in 185 or 1851; my impression is that I took it in 1850; I have never worked this farm since 1860.

JOSEPH B. HUNT.

Sworn and subscribed this 20th day of April, A. D. 1881, before me.

CHAS. M. WOODRUFF, *M. C.*

Examination adjourned till Wednesday, April 27th, 1881, at ten o'clock A. M.

20

CHAS. M. WOODRUFF, *M. C.*

The examination on the part of the complainant was adjourned from time to time by consent of the respective counsel, till this day, July 26th, 1881, when it was resumed in the presence of the counsel of the respective parties.

Charles V. Moore, the complainant, offering himself as a witness on his own behalf, and being first duly sworn according to law, says—

30 I am a practicing physician; live at Stillwater, in this county, and have been practicing medicine thirty-six years last April; I am the complainant in this case, and was the plaintiff in a suit against William T. Roe in the Circuit Court; my action was founded upon a debt he owed me for medical attendance upon his family; I held a note that he gave me January 7th, 1876, for \$114.82,

which he gave me for the balance of my account against him after I remitted \$52; subsequent to that settlement I attended upon his wife and family, mostly his wife, for two years and five months, about that, for which my bill was \$337.38; I furnished the medicines altogether, and my bill includes charges for the medicine; I also performed some operations; a part of this bill was contracted while William resided on the farm, and about \$100 of the bill was made after he moved to Newton; while I visited his family on the farm I charged \$1.75 per visit, 10 including the medicine, and the general average of the visits I made at Newton was \$2 per visit, sometimes \$2.50; these are my usual rates; after I stopped my visits upon his family I made several attempts to settle with Mr. Roe; I was not successful in any of them; he declined; I made an effort to settle with him before I commenced this suit, by offering to throw off \$100; he would not accept my proposition; since the commencement of this suit my counsel, Mr. C. D. Thompson, has communicated to me an offer of compromise from Mrs. 20 Roe's counsel, which was that if I would pay to her the amount of her claim she would deed the property to me; I understood her claim was \$2000, and that I was to pay her that sum, but I did not see fit to accept that offer.

Being cross-examined, says—

Mr. Roe refused to settle with me; I proposed to him to give me his note, but he declined; he would not give me any satisfaction, no encouragement; he said he was poor; I don't think he said he never would pay me; he did not express an intention of paying me as soon as he 30 could get the money; previous to that time, when I would call upon him he would make promises.

CHARLES V. MOORE.

Sworn and subscribed before me this 26th day of July, 1881.

CHAS. M. WOODRUFF, *M. C.*

Charles D. Thompson, a witness of full age, produced

on the part of the complainant, and being first duly sworn, says—

I am the solicitor and attorney of the complainant, Charles V. Moore ; he brought me this claim some time previous to the 1st of May, 1880, and directed me to collect it if possible, but that I was first to write to Mr. Roe, or see him and try to procure a settlement before bringing suit ; he authorized me to throw off \$10., in order to procure a settlement ; I wrote a letter to Mr.
10 Roe, requesting him to call at my office, stating that Dr. Moore had left with me a claim against him, and that I would be pleased to see him in regard to it, or something to that effect ; Mr. Roe never called, and perhaps a week or two weeks afterwards I met him in the street here in Newton, and asked him if he had received my note ; he replied that he had ; I asked him what he wished to do about it ; he said he was not going to do anything ; I told him he had better call and see if we could settle it, and so save costs ; he made no reply ; we sep-
20 arated ; soon afterwards I saw Dr. Moore, and commenced the suit in this Circuit ; I filed the declaration on the 14th day of May, 1880, and served him with a copy on the same day ; I said to him, " Here is a paper in this case that may interest you ;" he replied, after a moment's silence, " Go ahead, I guess you won't get much," or something to that effect ; after filing the bill in this case, and before answer filed, as I recollect, Mr. Charles J. Roe, one of the counsel for the defendants, said to me that Mrs. Susan Roe would convey the farm to Dr. Moore if he
30 would pay her her claim ; I told him I would tell the doctor, and I did so ; I understood from the offer, that she meant the amount of consideration expressed in her ded of \$2000 ; I don't recollect that any sum was mentioned between us ; he (Mr. C. J. Roe) used the words, " The amount the property stood her in," or something to that effect.

No cross-examination.

CHAS. D. THOMPSON.

Sworn and subscribed before me this 26th day of July, 1881.

CHAS. M. WOODRUFF, *M. C.*

The solicitor of the complainant here declares that the testimony in this case closed on his part July 26th, 1881.

CHAS. M. WOODRUFF, *M. C.*

Examination of witnesses in the above cause, taken before me, Charles M. Woodruff, one of the examiners of this court, at my office, in the town of Newton, New Jersey, on the 27th day of April, A. D. 1881, on the part of the defendants, in the presence of Charles D. Thompson, solicitor of the complainant, and Messrs. Roe & Shepherd, solicitors of defendants, and taken by consent of the respective counsel and parties, pursuant to adjournment from April 20th, 1881. 10

William T. Roe, one of the defendants, offering himself as a witness on his own behalf, and being first duly sworn according to law, says—

I reside here in Newton at present, and am a married man; my wife is living and we live together; I am the son of Susan Roe, co-defendant in this suit: she does not live with me; I did, on or about the 24th day of May, in the year 1880, convey to my mother, Susan Roe, a certain tract of land in Stillwater township, and that is the tract of land concerning which this suit is brought; the consideration of that conveyance was about \$2000, that was due her from me; that \$2000 was a debt due, owing from me to her at that time—about that sum as near as we could tell at the time; my mother, Susan Roe, held notes and obligations against me which amounted to about \$2000 at that time; there was one note of \$1000, one for \$190, and another for \$100; at that time my mother held against me other claims; she paid 20 30

me \$160 at one time, about eight years ago; these amounts were all for borrowed money and accounts were kept of it just the same as a stranger.

[Witness being shown a paper writing purporting to be a note and marked by me *Exhibit A* on the part of the defendants, says]—This is a note given by me to Susan Roe, dated April 1st, 1873, for the principal sum of \$1000; the consideration of this note was for money lent from Susan Roe to me; my mother, Susan Roe, lent
10 me \$1000 in money, and I gave her this note; there are seven years' interest and a little better than that due on it; the endorsement of \$210 on the back of this note is for three years' interest which is due her, which was never paid to her; it was marked on and she said she would hold it against me; it is due her yet; the principal sum of \$1000 is due on this note and interest from 1875.

[Witness being shown another paper writing purporting to be a promissory note, and marked *Exhibit*
20 *B* on the part of the defendants, says]—This is a note given by me to Susan Roe, dated April 2d, 1878, for the principal sum of \$190; the consideration of this note is for money lent by my mother, Susan Roe, to me; I have never paid her any principal or interest on this note and the principal sum of this note, with the interest from its date, are due to her.

[Witness being shown another paper writing purporting to be a promissory note, and marked by me *Exhibit*
30 *C* on the part of the defendants, says]—This is my signature; this note is dated April 19th, 1879, given by me to Susan Roe, for the principal sum of \$100; the consideration of this note is cash or money lent from Susan Roe to me; I have never paid her anything on this note; the money for which the first note of \$1000 was given, I used it on the place—the place this suit is brought against; I mean the farm; I used that money in part to pay for the farm; besides these notes, she gave me about eight years ago, \$160 to use on the place to

pay interest and principal on the place; there are other sums of borrowed money I owed her; she gave me \$85 to meet my interest with; that was about six years ago; she gave me \$40 once, and that was about two years ago; I have never paid her back any of these different sums; she holds other accounts and sums she has lent me than these I have enumerated; I cannot state them now without some more knowledge; at the time I made the conveyance to my mother these sums aggregated about \$2000, as we summed them up; I have not been in possession of this farm since I conveyed it to my mother; that is, it was rented, but when I sold it the rent was to be paid to me and I took it; I had rented the place for one year; when I sold it that was coming to me by contract; she said most of that rent would be due her; I told her we would settle with that matter this spring; that portion of the rent I received was to go towards making up the consideration of the deed of \$2000; there was to be a settlement between us; the other portion was to go to her; I conveyed this property to my mother subject to a mortgage which was originally given to Ralph Dildine, as a purchase money mortgage for the sum of \$4000, I think; I would not be positive as to the amount; Mrs. Martha Stoutenburgh holds that mortgage now; to the best of my knowledge there is now due on that mortgage of principal the sum of \$1450, and better than two years' interest; I made this conveyance to my mother in good faith, to secure her; she is eighty years old and her health is not very good; the extent of her means is principally amongst her children; she has mortgages, but no land beside this farm; she has no mortgage to any extent; I did not make this conveyance to my mother with any intention to defeat the complainant in the collection of his claim; I had no other intention in view than the protection of my mother.

Being cross-examined, witness says—

Q. How did you happen to make that conveyance at just the time you did?

A. The object was to save her money.

Q. Why did you wish to save her money?

A. Because it was due her, and borrowed money.

Q. Had you been sued at that time?

A. Yes, sir; and I had been sued before, too.

Q. Did your mother ask you for this deed?

10 *A.* She asked me to deed her the place or the money.

Q. Did she know you had been sued?

A. I don't know whether she did or not.

Q. How did she happen to ask you for the money at this time?

A. I do not know myself.

Q. Who prepared this deed?

A. Lawyer Winfield Coursen.

Q. At whose request?

A. I requested him to write the deed for her—she was
20 a woman.

Q. Did you tell him the amount of the consideration?

A. Yes, sir; or about.

Q. Who was the "we" that you spoke of that made that settlement?

A. Me and my mother; no one else present that I know of; it was about the time I deeded it to her; I could not tell whether it was before or after I made the deed; the \$1000 note was given April 1st, 1873, and somewhere about the time my father's estate was set-
30 tled up.

Q. When was this endorsement of \$210 put on this note?

A. February 14th, 1878.

Q. Did you pay your mother any money at that time?

A. Yes, sir; it was paid to her, but she said she had no use for the money, and she would lend it to me.

Q. Why did you say in your direct examination that that \$210 was never paid?

A. I said that she held that against me; I don't know as I said it was never paid; I think that those were the words I used.

Q. Then it was actually paid?

A. It was transferred over to me.

Q. How did you happen to make that payment on the 14th of February, 1878?

A. I had money; I paid whenever I had money; the 10 interest was not really due till the 1st of April; it had run several years without paying; I wrote the endorsement of the \$210.

Q. Why did you write it if your mother did not receive the money?

A. She received the money and handed it over to me.

Q. What was the consideration of this \$190 note?

A. Cash—money received.

Q. How long after she lent you the \$210 did you get this?

A. I don't know the date; it's April 2d; this was to 20 pay interest.

Q. Then she did not actually lend you the cash for this note?

A. Yes, sir; it was borrowed money; she paid me exactly \$190 at this time.

Q. Why did you not make a note for \$400 if you owed her?

A. Why, she had put that down; this she paid me then, and I gave her a note for what I got then; I never 30 gave her any note for the \$210; I never gave her any note for the \$160 loaned to me in 1873; I never included that in any notes or settlements between us since that time; I thought of it when we made the settlement last year; I did not know it was outlawed; I pay things when they are outlawed if they are lawful; I do not know how long it takes for a claim to be outlawed in this state; she paid me the \$85 about six years ago; it was paid for to pay note—to pay debts.

Q. Why was not the \$160 included in the note for \$1000?

A. It was not got at the same time, or probably would have been; it was borrowed probably fifteen or twenty days after the \$1000 note was given; I only guessed at that; I don't swear positively as to the date, I think fifteen or twenty days; I will explain about the \$160; I borrowed the \$1000 to pay on the place, and I lacked some interest, so I went to her in a few days and
 10 she gave me the \$160; she lent me the \$40 within a couple of years; I can't tell exactly; it was not about the time I gave her the \$100 note; I don't remember as to that; the handwriting of the \$190 note is my own; I think my brother, David C. Roe, wrote the \$1000 note, and I think he also wrote the \$100 note; these three notes are mine; they are in my possession; I helped to calculate the amount of these notes; mother helped as far as her memory went; there are some amounts that I don't remember and won't swear to; I had the farm
 20 rented for one year, that being the last year, and I had made an agreement, and when I make an agreement I try to stand by it; I sold the property out and out.

Q. You retained possession until the 1st of April, this year, did you not?

A. No, sir; I did not.

Q. You collected the rents?

A. Part of it was due to me and part to her; I collected the rents.

Q. Did not Mr. Westbrook pay you the rent for last
 30 year after the 1st of April this year?

A. It was about the 1st of April; I could not say how near it was to the 1st of April he paid me; he paid me \$10; he had paid me other sums during the last year whenever he had it by him; the agreement was that he was to pay me when he had the money; it was not the agreement that he was to pay me quarterly; I have not paid any of this rent over to my mother; there are two

years' interest due April 1st, 1881, on the mortgage held by Mrs. Stoutenburgh.

Q. Why has not that interest been paid to her?

A. There are so many debts that I can't pay all.

Q. Do you have to pay this?

A. I am not talking about that; no, sir; I don't have to pay that; my mother had some \$9000 or \$10,000 from my father's estate; she might have had more for all I know; she lives as quietly and inexpensively as any one I know of; she is an aged lady; I don't know how much she has in bonds and mortgages; she has no real estate except the farm I sold to her; I owe different debts, doctor bills principally. [Solicitors of defendant object to the last answer of the witness, that relates to his debts and doctor bills, as irrelevant.] 10

Q. What doctors do you owe, and what amounts?

[Question objected to as irrelevant.]

A. Dr. Morrison; I owe Dr. Moore a little, but not one-fourth of what he claims.

Q. When suit was brought in the Circuit Court by the complainant against you, you filed a plea, did you not? 20
[Objected to as irrelevant and not cross-examination.]

A. I attempted to, but I do not know whether it was filed or not; I could not find out; they got around it some way or other; the lawyer whom I employed and feed, Mr. W. H. Coursen, either did not put the plea in or did not date it, or something; I asked him the reason why it was not tried; he said it was thrown in chancery; they (the complainant and his lawyer) got around it some way; I never applied to get the judgment opened; I did not suppose it could be after the judgment was got; I informed my counsel, Mr. Coursen, what my defence was; I never have informed Messrs. Roe & Shepherd what my defence was; I made an affidavit to that plea, and at that time knew the contents of it; as soon as the execution was issued upon that judgment I asked Mr. Coursen about it; I got Mr. Coursen to write the deed from me to my mother. 30

Q. You consulted him about the effect of the deed to your mother upon the Doctor Moore claim, did you not?

A. I don't know as I consulted him; I said I owed my mother borrowed money, and wanted to pay her; I informed him something about the state of my property; I won't be positive; I might have informed him that I had no property outside of this farm—that was true at that time; I had not property sufficient to pay Doctor Moore's claim; I had no property to any amount; I
10 have four brothers and sisters living; I had one sister who died, leaving children.

Q. Your mother was worth, at the time you made this deed to her, from \$10,000 to \$12,000, was she not?

A. No, sir; I don't think so.

Q. Do you know how much she was worth?

A. No, sir; I do not.

Q. Do you know anywhere near what she was worth, within \$1000 or \$2000?

A. I do not.

20 *Q.* Now, Mr. Roe, previous to the time of being sued by Dr. Moore, had you ever thought of securing your mother's claim otherwise than by these notes?

A. Yes, sir; I have tried to sell that place, and tried to sell part of it at once.

Q. Did you not think that your indebtedness to her would be very nearly balanced by your share of her estate?

A. I did not think anything about that.

30 *Q.* You understood that your giving this deed to your mother would defeat Dr. Moore's collecting his claim, did you not?

A. No, sir; he can collect his claim, but he will have to wait till I get it; I have no present prospect of getting it; I am in no particular business; I don't remember Mr. Thompson's serving a copy of the declaration upon me in the case in the Circuit Court; I recollect of two or three papers being served on me.

Q. You intended to defeat Dr. Moore's collecting his claim when you made the deed, did you not?

A. No, sir; I did not intend to; he can collect it when I get it.

Q. Why did you make that deed to your mother just after you were sued?

A. I have been trying to sell that place for some years; I advertised it to sell a part, or the whole, to pay my debts.

Q. Why did you make that deed to your mother just after you were sued? 10

A. My object was to pay debts or borrowed money without lawing it away, as I needed it for debts.

Re-direct examination, witness says—

I had rented the place April 1st, to Joseph Westbrook by an agreement, and he fulfilled his agreement.

Q. The remainder of the rent over and above what was necessary to make up the \$2000, which was the consideration of the deed from you to your mother, is that coming to you, or to her? 20

A. Coming to my mother.

Q. In collecting this rent, did you act for yourself, or did you act as the agent of your mother? [Question objected to as leading.]

A. I acted for her; I was doing business for her; my mother has loaned a good portion of the money she received from my father's estate to her children; the money she loaned to me on the note of \$1000 was a part of the money she got from father's estate.

Q. Was it through any fault of yours that you did not contest the suit brought against you by this complainant in the Sussex Circuit Court? 30

A. It was not; I calculated to contest it; I employed Mr. Coursen to appear and defend that case; he advised me that I had a legal defence to that action; he neglected to attend to it for me.

Re cross-examination, witness says—

Q. Have you paid over to your mother the rent you collected as her agent?

A. I have not settled with her yet; the rent was to be \$150 for the property last year; the rent for last year is not yet settled up wholly; he paid \$10 and \$20 along; I don't know exactly how much, nor can I tell about how much.

Q. How much of that is due to your mother?

10 A. When we made it up we thought it would be \$60 or \$70 due her; we have never made any real settlement with Joseph nor her, either one; she authorized me at that time when I made the papers to her, to collect the rent; I am not her agent in regard to that farm now; my brother David is her agent now; the reason she changed was because he was handy there, and could look after it; I know of no other reason.

20 Q. Why did you say this morning that you collected the rent because you had rented the place for one year, and that it was coming to you by contract, or a portion of it, and not that you collected it as the agent of your mother?

A. I did not suppose it was necessary to state that.

Q. Did not Mr. Coursen inform you that what you might possibly make by defending this case in the Circuit Court would not pay the expense?

A. He might have told me that, but if he did it was not till afterwards.

WM. T. ROE.

30 Sworn and subscribed before me this 27th day of April, A. D. 1881.

CHAS. M. WOODRUFF, M. C.

Examination adjourned till Saturday, April 30th, 1881, at two o'clock P. M.

Saturday, April 30th, 1881, examination resumed on the part of the defendants, in the presence of the respective solicitors of the parties.

David C. Roe, a witness of full age, being first duly sworn on his oath according to law, and on the part of the defendants, says—

I reside in Green township, in Sussex county; I am a farmer by occupation; I am a brother of William T. Roe, one of the defendants, and a son of Susan Roe, the other defendant.

10

[Witness being shown *Exhibits A, B, and C* on the part of the defendants, says]—I have seen *Exhibits A and C*; *Exhibit A* is a note for \$1000, and *Exhibit C* is a note for \$100; I wrote both of them on the same day they bear date; the first one of \$1000, was for money loaned to my brother to pay to Mr. Dildine, on the mortgage he held on the farm; this money was loaned to my brother by my mother; the consideration of the other note is \$100; this was also loaned to my brother by my mother, Susan Roe; I know my brother has been in the habit of borrowing money of my mother quite extensively; I only know of the conveyance some time last May of the farm then owned by my brother to my mother, by hearsay; I was present when he asked her if he deeded the farm to her, if that would make her safe, or something to that effect; she had asked him for the money; I reside within two or three miles of this property; I have been on it several times.

20

Q. What do you consider this property worth per acre? [Question objected to because the witness is not a disinterested person.]

30

A. I don't think it is worth over \$30 per acre; I would not want to pay over that; the buildings are very poor; the tenant who lives there told me that he hoped the buildings would stand for another year, but he was afraid they would not; the fences are light.

Being cross-examined, says—

The tenant referred to all the buildings I presume; the house is stone, and I presume he meant the out buildings; I could not state when I last saw these two notes previous to to-day; I am in the habit of taking up her interest; I don't think I made any of the endorsements on the \$1000 note; I may have made one or two of them, but I am not positive; I can't swear that I saw the money paid on these notes; I am in habit when I
 10 draw up her notes of paying over the money and counting it, but I can't swear I did this note; I think this note for \$1000 was made at my house; I know this note was not a part of the settlement of my father's estate; I was one of his administrators and my mother was administratrix, but I did all the business; I think the amount of money that I paid over to my mother as her portion of his estate, she being his widow, was in the neighborhood of \$9000; I could not say of my personal knowledge
 20 what other sums of money than these two notes my mother has loaned to my brother; she always told me when she let her children have money, and has told me of letting him have other moneys; but I can't swear positively as to my own knowledge; she told me explicitly as to the money on the \$100 note.

[Witness being shown *Exhibit B* on part of the defendants, says]—I can't swear that I have seen this note before to-day, nor that I have not seen it; I may have seen it; I have never heard my mother say explicitly that she let my brother have the money on this note, nor
 30 any like sum; she let him have \$100 to pay a doctor bill, which is one of these notes, and I think the one dated in 1879; my mother lives sometimes with me and sometimes in Newton; I could not say where she was in 1878; I wrote the note for \$100, and which was to pay Dr. Morrison; I always draw notes without stating in them that they are to draw interest; that is my style; I cannot remember just the date when the conversation I have referred to, took place between my mother and

brother about the conveyance ; it was at my house, in the presence of mother and my brother and myself ; I can't remember who were present ; I think my mother was not confined to her bed at that time ; I could not say who commenced the conversation ; they were not talking to me ; I recollect they were talking about it ; she wanted her money ; William had been trying to sell the place for some time—for some years ; I believe that is about the drift of it.

Q. Did your mother ask your brother William for the 10 money ?

A. I did not hear her ask him.

Q. Did she ask him to secure her by a conveyance or otherwise ?

A. I did not hear her say that in so many words.

Q. Did he offer to convey the farm to her ?

A. I did not hear him ; I knew a good deal about my mother's business affairs ; I done her business when she asked me to ; she had not expressed any anxiety about the security of this loan to William, that I know of ; the 20 conveyance by William to her was no surprise to me ; I did not do her business unless she told me ; I had not expected him to make the conveyance to her ; I was not asked to do the business.

Q. Had she, previous to the time of this conversation, consulted you about the necessity of securing the loan to William in any way, or whether William was not good ?

A. I don't know that I can answer that question.

Q. Had your mother expected any further security than William's notes ?

30

A. I don't know ; she is eighty years old ; I do what business she asks me to.

Q. Don't you do the most of her business for her ?

A. I do a part.

Q. Don't you do the greatest part ?

A. I don't know whether I do more than half or not ; I suppose the greatest would be more than half.

Q. Do you know in what shape your mother has her property?

A. I do.

Q. You know all about it, don't you?

A. I know what shape it is in; I cannot say as to the date, place or the time of this conversation; I don't know what month; I think it was in 1880.

Q. Do you know who collected the rents for that farm last year, up to April 1st, 1881? [Question objected to
10 as not cross-examination.]

A. I think my brother William did.

Q. Do you know whether your mother claims any share of that rent? [Objected to.]

A. I have not heard her say as to that; I am to collect it this year for her; I could not say whether this conversation was before or after William had been sued by Dr. Moore; I heard he was sued after he was sued; I don't recollect who told me; I don't know whether my mother knew he was sued or not; I never told her he
20 was sued, that I know of—not to my memory; I don't remember that William told her that day of the conversation; I think not, though; the reason I think not is because I don't remember; it might have been before he was sued; I mean the conversation; I don't know that it was before.

Q. Did you have a conversation with Dr. Moore during the spring of 1880? [Objected to.]

A. I could not tell as to that time; I have had conversations with him.

30 *A.* Do you recollect of stating to him anything in regard to William's indebtedness to your mother at any time within a year previous to the suit in the Circuit Court? [Objected to.]

A. Dr. Moore spoke to me once about a mortgage on the farm of about \$3000; I think that was the amount that was on record, that had not been taken off, belonging to my father's estate; it had been neglected to be taken off; he wanted to know if that mortgage stood

good against the farm; I told him I thought it had been settled; nothing was said at that time about William's indebtedness to my mother, as I remember of.

Q. Have you ever seen the \$1000 note since the endorsement of \$210 was put on it?

A. I can't say as I have.

Q. Have you ever heard that that was not a genuine endorsement, and that William still owed that money to your mother?

A. I don't know anything about that; I never heard 10 her mention anything about it, that it had not been paid, or anything of the kind.

Re-direct examination, witness says—

I know my mother has loaned a considerable part of the money she received from her husband's estate to her children.

Q. Do her children pay her interest the same as strangers?

A. They pay her interest; she has loaned money to me; I paid her interest; she depends upon the interest 20 she receives upon the money she got from her husband's estate for her support; in acting for my mother I leased the farm in question to Joseph Westbrook for the year ending April 1st, 1882; he is to pay \$140 or \$150 as the rent for this year, I can't say which; he pays it to me; I am to pay it to my mother.

Re-cross examination, witness says—

I owe my mother about \$1500 and pay her six per cent. interest for it; I pay it when I have it to spare; she has no security for this money loaned to me except 30 notes; I think she has loaned to Mrs. Scofield, my sister, about \$500 or more, and holds her notes for it; she has notes against my sister, Margaret Carpenter, but I cannot say to what amount; she also holds notes against my sister, Mrs. Phebe Wells; I do not know to what amount; I don't know what my mother

is worth ; she pays her board and it takes all her interest to keep her ; she pays her board when she lives with me ; she has some bonds and mortgages besides what is loaned to her children, and I presume is worth something over \$9000, if it is all collectible.

Re direct examination, witness says—
I think all my brothers are responsible.

DAVID C. ROE.

Sworn and subscribed before me this 30th day of
10 April, A. D. 1881.

CHAS. M. WOODRUFF, *M. C.*

Examination adjourned till Thursday, May 12th, 1881,
at ten o'clock A. M.

Thursday, May 12th, 1881, ten o'clock A. M., examination resumed in the presence of the respective solicitors of the parties and on the part of the defendants.

Joseph H. Westbrook, of full age, being produced as a witness on the part of the defendants, and being first duly sworn, upon his oath says—

20 I live in Stillwater township, about six miles from here ; I occupy and rent the premises of Susan Roe ; I believe I have lived on these premises four years the 14th of April ; I think I am well acquainted with their condition ; I have worked this farm myself these four years ; in my judgment this farm is not worth over \$30 per acre, considering the condition of the property ; the buildings are barely comfortable ; the fences are well run down, although they are better than when I came there ; the land so far as I have worked it is just fair producing
30 land ; there is some of it that is pretty thin, pretty light, and some pretty fair land ; the most of it is light.

Cross-examination, witness says—

I have rented this property for another year; I made effort to obtain another farm and could have got others too; everything considered, I preferred to stay; there are worse farms, most likely; I have corn, buckwheat, oats and some wheat; last season the wheat turned out quite well—as good as my neighbor's: the farms adjoining this one are not extra; I do not consider the farms in that neighborhood up to the average of the farms throughout the county; some of my neighbors are well 10 off and some are not; my crops of corn last year were about as good as my neighbor's; I had a pretty good corn crop; I have not driven the farm as hard as I might; I farmed it mostly alone; the water privileges are nothing compared with my neighbor's; I have a wet weather well and scarcely any water on the back side of the place; there is a spring on these premises, near Mr. Hogan's, in the meadow, close to five hundred yards from the house where I live; I have never measured this distance; this spring supplies Mr. Hogan's family and my 20 own with water.

J. HILL WESTBROOK.

Sworn and subscribed before me this 12th day of May, 1881.

CHAS. M. WOODRUFF, *M. C.*

John Hogan, a witness of full age, produced on the part of the defendants, and being first duly sworn, upon his oath deposeth and says—

I live in Stillwater township; I am a laborer generally; I live on a part of this Roe farm; I am well acquainted with the whole of it; I would call the property 30 at this time in a bad condition; in my opinion this farm is not worth to exceed \$30 per acre; I do not think it could be sold for more than that price per acre.

Being cross-examined, witness says—

My wife bought a part of this property containing sixteen acres and thirty-hundredths; she gave \$100 per acre for it; I think it (the sixteen acres and thirty-hundredths) is not worth over \$50 per acre now; I don't think Mr. Westbrook has farmed this farm very hard; it has been farmed by other persons pretty hard; a part of it is good average land; the balance is poor; the swamp and slate knolls are poor.

10

JOHN HOGAN.

Sworn and subscribed before me this 12th day of May, 1881.

CHAS. M. WOODRUFF, *M. C.*

Susan Roe, of full age, one of the defendants, offering herself as a witness in her own behalf, and being first duly sworn, upon her oath deposeth and says—

I live at present here in Newton, with my daughter, Mrs. Scofield; my home is in Green township, in this county; I am the mother of William T. Roe; I believe
20 William T. Roe, on or about May 24th, 1880, conveyed to me the farm he then owned, situate in Stillwater township; he conveyed it to me for money I had let him have; I held notes against him that represented the money I had let him have; one note was for \$1000; then there was one for \$190, and one for \$100, and \$210; there was more money I had let him have than these notes represented, I suppose; I don't know as I can name any of these different sums; there was more money, but I can't remember the sums now.

30 [Witness being shown *Exhibit A* on part of the defendants, says]—I should think this is one of the notes I held against my son at the time of the conveyance; it is for money I let him have—my own money; I let my children have money instead of putting it out; if there is interest endorsed on this note, he must have paid it; he paid me the \$210 which is endorsed on this note, and

as I had no place to put it out, I let him have it; at the time of making this conveyance by my son to me he owed me this \$210.

[Witness being shown *Exhibits B* and *C* on the part of the defendants, says]—Those notes represent cash—money I let him have; I recognize the notes; besides these notes my son owed me cash; I can't tell exactly what all these sums amounted to at the time of the conveyance to me; perhaps \$1400, \$1500, or \$1600; it might have been more, or it might have been less; I can't tell; 10
I am eighty years old; my memory is not good; it's not like it used to be; sometimes I get one of my sons to do my business for me and sometimes I get the other; sometimes I do it myself when I can; there was a mortgage on the farm when he made the conveyance to me, and, as near as I can remember, that encumbrance amounted to \$1450, and, as near as I can recollect, there was one year's interest due on the mortgage on the day of the conveyance; I think that mortgage is on the property yet; I did not take this property from my son to 20
enable him to evade his creditors or to get out of paying his debts; I took it to save myself; I thought I would need it as much as anybody; I did not take this property to defraud Dr. C. V. Moore out of the money my son owed him; I did not take it to defraud anybody; I wanted my own and that was all I wanted; this conveyance was an honest and true conveyance on my part, for a full and fair consideration.

Q. Have you had control of this property since the conveyance? 30

A. Yes.

Q. Has this property been in your possession since the conveyance?

A. Why yes, hasn't it? I authorized my counsel to say to Dr. Moore that I would convey this property to him if he (Mr. Moore) would pay me what the property stands me in; I am willing to convey it to him now upon the same terms.

Being cross-examined, witness says—

It stands me in the notes; I don't know as I do know exactly how much it stands me in; I guess I lived in Green township last May when the conveyance was made; I cannot remember; my memory is short; I live with my son, David C. Roe, when I live in Green township; I have a room there; I can't remember the circumstances of the conversation when this conveyance was made; I cannot tell whether we talked it over here
10 in Newton or not; I can't remember.

Q. Were you anxious about the loan to your son William; did you think it was not safe?

A. Why, if Dr. Moore took it all, it wasn't safe, was it? I wanted my own.

Q. Then you knew that Dr. Moore was pressing for his claim?

A. Yes; I knew he wanted his and I wanted mine; I thought he was as able to do without it as I was; I am old and cannot work.

20 Q. Did you ask William to secure you by deed or a mortgage on his farm?

A. He offered to secure it.

Q. Then you did not think of it till he spoke of it?

A. I don't know whether I did or not.

Q. You have loaned your other children money also, have you not? [Objected to as irrelevant and not cross-examination.]

A. Yes, sir.

03 Q. What security have you for those loans? [Objected to as above.]

A. Notes; they all pay me when I want it.

Q. About what sums have you loaned to the different ones? [Objected to for the same reasons as the previous question.]

A. Some has \$500, some \$1500; the girls have \$500 or \$600 apiece.

Q. Which one has \$1500? [Objected to as irrelevant and not cross-examination.]

A. David C. Roe; the reason I loaned my money to my children is that I suppose they need it as bad as anybody, and as long as they pay me it's all right.

Q. Do you expect them to pay you all of it, or is this not an advancement of their shares of your estate? [Objected to for same reason.]

A. They will pay all I call for, I suppose; whenever I call for it, I suppose they will pay it; it will be a part of their shares when I am done with it.

Q. These notes you took from your children were to show how much each one had had, were they not? [Objected to as irrelevant and not cross examination.]

A. They were; I wanted them to make me safe.

Q. You thought the notes would be safe enough?

A. I did not know how it would be.

Q. You have no other security from your children than notes? [Objected to.]

A. No, sir.

Q. How did you come to let your son have that \$210 without taking his note for it? 20

A. I let him have it.

Q. It is your custom to take notes for the money you lend to your children, is it not?

A. Yes; I have let my son William have money which I have no note for, I suppose, but I don't know how much.

Q. Then you don't know how much he has had on his share? [Objected to.]

A. I don't know as I can tell exactly; I have not paid any interest on this mortgage since I bought the farm, because I want to sell it as quick as I can, to get it off of my hands; it may be it will fetch enough to pay that and be a little left for me. 30

Q. Did you receive the rent last year? [Question objected to as not cross-examination and irrelevant.]

A. I can give the rent to whom I have a mind to, can't I? I gave the rent to my son William; I gave him the use of the place.

Q. Whom have you given the rent to this year? [Objected to as irrelevant.]

A. It has not come due yet; I don't know who I shall give it to; I knew that Dr. Moore was William's physician when he lived there, but I did not know anything about his claims; I can't tell when I first heard of Dr. Moore's claim; I don't know what William did with the money for which the \$100 note was given; I expect that the farm was all the property he had.

10 Q. Did you not know that if William sold his farm to you Dr. Moore could not collect his claim? [Objected to as irrelevant.]

A. I did not know but what he could get his pay; I could not tell.

Q. Where did you think he would get it? [Objected to.]

A. I thought it might be that the farm would bring enough.

Q. Did you not know that Dr. Moore couldn't sell the farm if you held the title?

20 A. I did not want him to; I wanted to get mine.

Q. Then you took the farm to prevent Dr. Moore from getting his claim? [Objected to.]

A. I took it to get mine.

SUSAN ROE.

Sworn and subscribed before me this 12th day of May, 1881.

CHAS. M. WOODRUFF, *M. C.*

30 The solicitors of the defendants here offer in evidence on their part a deed made by William T. Roe and wife to Susan Roe, bearing date May 24th, 1880, and which I have marked *Exhibit D.*

It is hereby stipulated and agreed by and between the solicitors of the respective parties that at the time of the said conveyance from William T. Roe and wife to

Susan Roe there existed on the said property a mortgage encumbrance, and that at the time of making the said conveyance there was due on said mortgage the principal sum of \$1450, with interest thereon since April 1st, 1879.

CHAS. M. WOODRUFF, *M. C.*

The solicitors of the defendants here declare their testimony in this cause on their part closed, July 26th, 1881.

CHAS. M. WOODRUFF, *M. C.*

Final Decree.

20

[Filed August 10, 1881.]

This cause coming on to be heard at the chambers of the Chancellor, in the city of Newark, on the twenty-seventh day of July, in the year eighteen hundred and eighty-one, before his Honor, the Vice-Chancellor, Amzi Dodd, in the presence of Charles D. Thompson, solicitor of the complainant, and Frank Shepherd, solicitor of the defendants, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and it appearing to the court that the complainant is entitled to the relief sought and prayed for by him in his bill of complaint, and that the said deed of conveyance in the said bill of complaint mentioned and described for the lands and premises therein set forth, was made and executed with intent to defraud the complainant as a creditor of the defendant, William T. Roe: It is thereupon, on this tenth day of August, in the year eighteen hundred and eighty-one, on motion of Charles D. Thompson, counsel with the complainant, ordered adjudged and decreed, and the said Chancellor, by virtue of the power and

20

30

authority of this court does hereby order, adjudge and decree, that the said deed of conveyance in said bill mentioned and described, for the tract of land therein set forth, that is to say, the deed of conveyance made by the defendant, William T. Roe, and Marietta, his wife, to the defendant, Susan Roe, bearing date twenty-fourth day of May, in the year eighteen hundred and eighty, and recorded in Book G 7 of Deeds for said county, page 513, be set aside, annulled and made void as against the
10 judgment and execution of the said complainant in said bill set forth and described, and that the said defendants do pay the costs of the complainant in this cause to be taxed, and a counsel fee of ——— to the complainant's counsel, and that the complainant have execution therefor, according to the course and practice of this court.

And it is further ordered that unless the defendants shall, within sixty days after service upon them of a copy of this decree, and of the taxed bill of costs, pay to the complainant or to his solicitor the amount due to
20 him on his judgment in this cause referred to, and the taxed costs of this suit, the sheriff of the said county of Sussex, to whom was directed and delivered the writ of *feri facias de bonis et terris*, issued out of the Sussex County Circuit Court, at the suit of the complainant against the said William T. Roe, in said bill mentioned and set forth, do proceed to sell the said tract of land and premises, free, clear and discharged of and from the said deed of conveyance, and of and from all claims of the said Susan Roe thereunder, or by virtue thereof.

30 Respectfully advised August 10th, 1881.

AMZI DODD, V. C.

Appeal.

[Filed August 18, 1881.]

The defendants in the above-stated cause hereby appeal from the final decree made therein on August 10th, 1881, and from the whole and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes.

Dated August 17th, A. D. 1881.

ROE & SHEPHERD,
Solicitors for the said Defendants. 10
THOMAS KAYS,
Of Counsel.

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

THOMAS KAYS,
Of Counsel with the Defendants.

Petition of Appeal.

[Filed Octoebr 18, 1881.]

*To the Honorable the Court of Errors and Appeals, in
the last resort in all causes.* 20

The humble petition of William T. Roe and Susan Roe, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery, by his Honor, Theodore Runyon, Chancellor of New Jersey, and which said decree was advised by his Honor, Amzi Dodd, one of the Vice-Chancellors of said

state; and which bears date the 10th day of August, 1881, wherein the said Charles V. Moore was complainant, and the said William T. Roe and Susan Roe were defendants, in this respect, to wit, that the said decree orders and adjudges that the said deed of conveyance in complainant's bill of complaint mentioned and described, for the tracts of land therein set forth, that is to say, the deed of conveyance made by the defendant, William T. Roe, and Marietta, his wife, to the defendant, Susan Roe, 10 bearing date the 24th day of May, 1880, and recorded in Book G 7 of Deeds for said county, page 513, be set aside, annulled and made void as against the judgment and execution of the said complainant in said bill set forth and described, and that the said defendants do pay the costs of the complainant in this cause to be taxed, and a counsel fee to the complainant's counsel. And that the complainant have execution therefor according to the course and practice of this court. And it is further ordered that unless the defendants shall, within sixty days after 20 service upon them of a copy of this decree and of the taxed bill of costs, pay to the complainant or to his solicitor, the amount due to him on his judgment in this cause referred to and the taxed costs of this suit, the sheriff of the said county of Sussex, to whom was directed and delivered the writ of *feri facias de bonis et terris* issued out of the Sussex County Circuit Court, at the suit of the complainant and against the said William T. Roe in said bill mentioned and set forth, do proceed to sell the said tracts of land and premises free, clear and discharged of 30 and from the said deed of conveyance, and of and from all claims of the said Susan Roe thereunder or by virtue thereof.

And your petitioners humbly appeal from the said order and decree of the Chancellor, which decreed as aforesaid, upon the ground that the same is erroneous, for that the said final decree in the said cause should be opened and set aside, and that the said bill of complaint should be dismissed, and that the said deed of convey-

ance in said bill mentioned and described for the tracts of land therein set forth, that is to say, the deed of conveyance made by the defendant, William T. Roe and Marietta, his wife, to the defendant Susan Roe, bearing date the 24th day of May, in the year 1880, and recorded in book G 7 of Deeds for said county, page 513, should not be aside, annulled and made void as against the judgment and execution of the said complainant in said bill set forth and described, and that the said defendants, William T. Roe and Susan Roe, should not pay the costs of 10 the complainant in said cause to be taxed, and that the complainant in said cause should not have execution therefor according to the practice of said court, and that the sheriff of the said county of Sussex, to whom was directed and delivered the writ of *feri facias de bonis et terris*, issued out of the Sussex County Circuit Court, at the suit of the said complainant against the said William T. Roe, should not proceed to sell the said tracts of land and premises by virtue of said writ of execution, free, clear and discharged of and from the said deed of con- 20 veyance, and of and from all claims of the said Susan Roe thereunder or by virtue thereof, unless the defendants, William T. Roe and Susan Roe shall, within sixty days after service upon them of a copy of the said final decree and of the taxed bill of costs in said cause, pay to the complainant or to his solicitor the amount due to him on his judgment in said cause referred to, and the taxed costs of said suit.

Your petitioners therefore pray that the said decree of the Chancellor may be in the particulars aforesaid re- 30 versed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

ROE & SHEPHERD,
Solicitors for the said Appellants.

THOMAS KAYS,
Of Counsel.

Answer to Petition of Appeal.

[Filed October 24, 1881.]

The answer of the above named respondent to the petition of appeal of the above named appellants.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the tenth day of August last past, made and entered in the Court of
1) Chancery in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised, and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

CHARLES D. THOMPSON,
Solicitor, and of Counsel with Respondent.

Exhibits.

20 EXHIBITS ON PART OF THE COMPLAINANT, CHARLES V. MOORE.

EXHIBIT No. 1.

Certified copy of a judgment in favor of Charles V. Moore, and against William T. Roe, recovered in Sussex Circuit Court July 9th, 1880, for \$396.64 damages, and \$37.15 costs.

EXHIBIT No. 2.

Certified copy of *feri facias de bonis et terris* issued out of the Sussex Circuit Court in favor of Charles V. Moore and against William T. Roe, dated November 8th, A. D. 1880, with levy annexed.

EXHIBIT No. 3.

Certified copy of plea and affidavit filed in the Sussex county clerk's office June, 1880, by William T. Roe, at the suit of Charles V. Moore.

EXHIBIT ON THE PART OF THE DEFENDANTS, WILLIAM T. 10
AND SUSAN ROE.

EXHIBIT A.

Note dated April 1st, 1878, for \$1000, payable to Susan Roe or bearer, one day after date, and made by William T. Roe.

EXHIBIT B.

Note dated April 2d, 1878, for \$190, payable to Susan Roe or bearer, one day after date, and made by William T. Roe.

EXHIBIT C.

20

Note dated April 19th, 1879, for \$100, payable to

Susan Roe or bearer, one day after date, and made by
William T. Roe.

EXHIBIT D.

Deed for farm from William T. Roe and wife, to
Susan Roe, dated May 24th, 1880, and recorded in
Sussex county clerk's office on May 27th, 1880, in Book
G 7, page 513, &c.

Opinion.

[Filed February 13, 1882.]

Argued on the pleadings and proofs before Dodd, Vice Chancellor.

Mr. Charles D. Thompson, for complainant.

Mr. Shepherd, for defendants.

THE VICE CHANCELLOR.

The bill in this case is filed by a judgment creditor to set aside a conveyance made by his debtor, the defendant, to his mother, during the pendency of the action in 10 which the judgment was recovered.

The defendant, William T. Roe, was on the 24th of May, 1880, seized of a farm of about ninety-two acres, in the township of Stillwater, county of Sussex, which by deed of that date, he conveyed to Susan Roe, his mother and co-defendant. The complainant, Charles V. Moore, a practicing physician, brought an action of *assumpsit* against William T. Roe, on the 1st of that month in the Circuit Court of Sussex, and on the 14th of July following, obtained a judgment for \$434.29 damages and costs. 20
A ft. fa. de bonis et terris to the sheriff was returned that he could find no goods, and that he had levied on the above lands.

The bill alleges that the conveyance was made without consideration, or if with consideration that it was intended to hinder and delay him in the collection of his debt, and should therefore be adjudged void as to him, and prays that it may be so decreed.

I am of opinion that the complainant is entitled to the relief which he asks for. It seems to me clear from the 30

evidence, that while not without any consideration, the consideration was inadequate; and further, that if adequate to the value of the premises conveyed the intention of the parties to it was to hinder and delay the complainant in collecting his debt.

10 The defendant, Susan Roe, to whom the conveyance was made, was a widow of advanced age, having several married children, and possessed of pecuniary means amounting to \$10,000 or \$12,000. She had let each of them have moneys which seem to have been regarded as advances on which only the interest was expected to be paid. The defendant, William T. Roe, had received different sums at various times, for which his mother, at the date of the conveyance, held his promissory notes. Other sums besides those named in the notes are alleged to have been owing, but how much, does not accurately appear.

20 On the 14th of May, 1880, Mr. Thompson, the complainant's attorney, served a copy of the declaration in the action, which was begun on the 1st of the month, on the defendant therein, who said to him, "Go ahead, I guess you won't get much," or words to that effect. The conveyance, which was made ten days afterwards, was absolute, and conveyed all the property the defendant owned. The consideration named in it was \$2000, and in addition, the premises were conveyed subject to a mortgage for \$1450, with accrued interest from April 1st, 1869. It clearly appears that this deed was made at the suggestion of William. There was no desire or offer
30 on her side to buy. There were wanting the essential elements and features of a *bona fide* sale. It is evident that the premises would not have been conveyed to her but for the expected judgment of Dr. Moore. She testifies that she knew that he was pressing for his claim and that William offered to give her a deed. When asked if she did not know that Dr. Moore couldn't sell the farm if she held the title, she answered that she did not want him to—that she wanted to get hers. When

asked if she took the farm to prevent Dr. Moore from getting his claim, she answered that she took it to get hers.

When the conveyance was made, the amount of William's indebtedness to his mother was not ascertained as in a genuine bargain it would have been; nor was the price or value of the farm considered and settled as it would have been if the transaction had been in reality what it purported to be. The indebtedness was arrived at in a proximate way. The answer says it was *about* 10 \$2000. I think it was considerably less. The mother testifies that "it might have been \$1400, \$1500 or \$1600; it might have been more; it might have been less." The son testifies that when he made the conveyance the sums he owed his mother aggregated *about* \$20 0, as they summed them up. The farm appears to have been worth in the market not far from \$10 0. The witnesses differ as to its value.

The transaction cannot, I think, be reasonably taken to have been a *bona fide* sale and purchase. It is, in fact, 20 but feebly insisted on, as [anything more than a mode of securing to the mother the payment of her alleged claim. Regarded in that light, it was, under the circumstances, illegal and unfair. If no intention had been entertained to hinder or delay the complainant, the mother's claim, if just, would naturally and properly have been secured by a mortgage, giving her a prior lien on the land to the extent of her debt, and leaving the balance of the son's estate therein to be resorted to by his creditors. The course actually taken was a deceptive and embarrassing 30 one, calculated to mislead and impede the creditor, who was known to both parties to the deed to be prosecuting his claim.

It is not difficult for parties taking such a course to deny the existence of an intention to hinder, delay or defraud, and so far to persuade themselves that their only purpose was to secure a debt due the grantee, as to make their denial without willful perjury, but the unavoidable inferences from their acts will countervail their denial.

In *Bump on Fraudulent Conveyances*, the transfer of all the debtor's property is declared a badge of fraud; so also the existence of indebtedness and the pendency of a suit; also the taking of an absolute deed as security for money; for it is calculated to make creditors believe that no part of the property is subject to their demands, when, in fact, it is otherwise; also the circumstances of looseness or incorrectness in stating the consideration of the conveyance, or in determining the value of the property conveyed. *Bump on Fraudulent Conveyances*, chs. 3, 4; *Garr v. Hill*, 1 *Stockt.* 210; *Knight v. Packer*, 1 *Beas.* 214; *Sayre v. Fredericks*, 1 *C. E. Green* 205; *Tantum v. Green*, 6 *C. E. Green* 364.

Considering all the facts and circumstances of this case, I cannot doubt that the conveyance in controversy was devised and intended to delay and hinder the collection of the complainant's debt, and must therefore advise a decree accordingly.