

Court of Errors and Appeals.

Between

Lyman A. Jacobus,
Appellant,

and

The Mutual Benefit Life Insurance Com-
pany; Elijah H. Purdy, William Phyfe
and Robert Clenighen, Thomas Thompson
and Wyllis H. Warner,

Appellees.

On Appeal.

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Robt. S. Green Solicitor and of Counsel with Appellant.

L. C. Grover, Solicitor and of Counsel with The Mutual
Benefit Life Insurance Company.

W. P. Wilson, Solicitor and of Counsel with Purdy, Phyfe
and Clenighen.

E. S. Atwater, Solicitor and of Counsel with Thomas
Thompson.

C. F. & C. E. Hill, Solicitors and of Counsel with Wyllis
H. Warner.

BILL OF COMPLAINT.

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[Filed September 23, 1873.]

To His Honor, Theodore Runyon, Chancellor of the State of
New Jersey.

Humbly complaining, showeth unto your Honor your orator,
The Mutual Benefit Life Insurance Company, a body politic and

corporate, by the laws of the State of New Jersey, located at the city of Newark, in the county of Essex and State of New Jersey, that on or about the second day of December, in the year one thousand eight hundred and sixty-seven, Henry Winn, of the city of Elizabeth, in the county of Union, and State of New Jersey, became and was justly indebted unto your orator in the sum of ten thousand dollars, and being so indebted, the said Henry Winn in order to secure the payment of said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of twenty thousand dollars, lawful money of the United States of America, with a condition thereunder written, that if the said Henry Winn, his heirs, executors, administrators, or any of them, should and did well and truly pay or cause to be paid unto your orator or to its certain attorney, successors or assigns, the just and full sum of ten thousand dollars, lawful money aforesaid, in one year from the date thereof, with lawful interest for the same, at the rate of seven per cent. per annum, payable

10 seal, and deliver unto your orator a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of twenty thousand dollars, lawful money of the United States of America, with a condition thereunder written, that if the said Henry Winn, his heirs, executors, administrators, or any of them, should and did well and truly pay or cause to be paid unto your orator or to its certain attorney, successors or assigns, the just and full sum of ten thousand dollars, lawful money aforesaid, in one year from the date thereof, with lawful interest for the same, at the rate of seven per cent. per annum, payable

20 semi-annually, without any fraud or other delay, then said obligation should be void, or else to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows, that the said Henry Winn in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator a certain indenture of mortgage, bearing date the same day and

30 year last aforesaid, made by the said Henry Winn and Madalene, his wife, of the first part, and your orator of the second part; in and by which said indenture of mortgage the said party of the first part did give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said party of the second part, and to its successors, and assigns forever, all that tract or parcel of land and premises hereinafter particularly described, situate, lying, and being in the city of Elizabeth, in the county of Union and State of New Jersey.

Beginning at the southwest corner of South and Williamson streets; thence running along the south line of South street, north eighty-nine degrees and thirty-five minutes west, two hundred and thirty-six feet six inches to the middle of a gate post; thence along land of Helen W. Dimock, south six degrees and forty-three minutes west, three hundred and fifty feet six inches; thence still along the same, south seventy-nine degrees and sixteen minutes east, one hundred and ninety-one feet one inch to the west line of Williamson street; thence along that line, north thirteen degrees and seventeen minutes east, three hundred and 10
 ninety-two feet to the place of beginning, together with all and singular, the profits, privileges and advantages, with the appurtenances unto the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof; to have and to hold, all and singular the above described tract or lot of land and premises with the appurtenances unto the said party of the second part, its successors and assigns forever; provided always, and the said indenture of mortgage was therein 20
 declared to be upon this express condition, that if the said party of the first part to the said indenture of mortgage, his heirs, executors or administrators, did and should well and truly pay or cause to be paid unto the said party of the second part, its certain attorney or attorneys, successors or assigns, the said sum of ten thousand dollars, mentioned in the condition of the aforesaid bond or obligation, with the interest, at the rate, at the times and in the manner in the said condition specified, without any deduction or defalcation for taxes, assessments or any other 30
 imposition whatever, then and from thenceforth the said indenture of mortgage and said bond or obligation, and everything therein contained, should cease and be void.

And your orator further shows, that it was mutually agreed by and between the parties to the said indenture of mortgage, that the said party of the first part thereto should and would keep the buildings erected and to be erected upon the above-described lands, insured against loss or damage by fire, in such companies and to such an amount as might be, from time to

time, required by the said party of the second part, and assign the policy and certificate thereof to the said party of the second part as collateral security for the payment of the principal and interest aforesaid; and that in default thereof it should be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same, should be a lien on said mortgaged premises, added to the amount of the said bond, and secured by said indenture of mortgage, and payable on demand with legal interest.

- 10 And your orator further shows, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Henry Winn and Madalene his wife, before N. Perry, Jr., a Master in Chancery of New Jersey, and such acknowledgment duly certified thereon, as required by law, and that said indenture of mortgage was recorded in the office of the clerk in and for the said county of Union, in Book 6 of Mortgages for said county, page 521, on the ninth day of December, in the year one thousand eight hundred and sixty-seven, as by the certificate of the clerk of said county, endorsed
- 20 on said indenture of mortgage, more fully appears; and to which said indenture of mortgage and said certificates of acknowledgment and record thereof, thereon endorsed, now in the possession of your orator, ready to be produced and proved, your orator prays leave to refer, if it be necessary so to do.

- And your orator further shows, that on or about the first day of April, in the year eighteen hundred and sixty-eight, the said Henry Winn and Madalene his wife, by their deed dated on that day and recorded in Book 30 of Deeds for said Union county, page 162, conveyed said mortgaged lands and premises in fee
- 30 to Helen W., wife of Anthony W. Dimock, which deed was accepted by the said Helen W. Dimock and Anthony W. Dimock, and that it was stipulated in said deed that said lands were conveyed subject to said mortgage to your orator, and that the same was assumed to be paid by said Helen W. Dimock, as part of the consideration of said deed, by which stipulation and acceptance the said Helen W. Dimock became bound at law and in equity to your orator, to pay the amount due and to become due on said mortgage.

And your orator further shows, that on or about the third day of August, in the year eighteen hundred and sixty-nine, your orator at the special instance and request of the said Helen W., wife of Anthony W. Dimock, released to her from the lien and encumbrance of your orator's said mortgage, all that tract of land in the city of Elizabeth, described as follows, that is to say: Beginning in the easterly line of Broad street at a point distant northerly four hundred and fifty feet from the corner, formed by the intersection of the easterly line of Broad street with the northerly line of Grove street; thence running north-10
erly along Broad street sixty-five feet; thence easterly parallel with Grove street, two hundred feet, more or less, to the westerly line of Williamson street; thence along the same southerly sixty-five feet, more or less; thence westerly parallel with the second course, two hundred feet to the place of beginning, together with the appurtenances unto the same belonging, retaining the remainder of said lands and premises as security for the amount due upon said mortgage.

And your orator further shows, that on or about the first day of April, in the year eighteen hundred and sixty-eight, the said20
Anthony W. Dimock, and Helen W., his wife, by their deed dated on that day, and recorded in Book 28 of Deeds for Union county, page 626, conveyed part of said mortgaged lands and premises to the city of Elizabeth, for the continuation of Broad street, in said city of Elizabeth, on the west side of said mortgaged premises, being a strip of land sixty-six feet wide, beginning on the southerly side of South street where Broad street extended to said line would intersect the same; and your orator shows that said conveyance was made subsequent to the execution and record of your orator's mortgage, and that whatever30
estate was acquired thereby in said part of said mortgaged lands and premises, the same was subject to your orator's said mortgage.

And your orator further shows, that on or about the first day of May, in the year eighteen hundred and seventy-three, the said Helen W. Dimock, and Anthony W. Dimock, her husband by Edward D. Weston, his attorney in fact, by their deed, under

their hands and seals, dated on that day, and recorded in Book 80 of Deeds for Union county, page 512, conveyed in fee to Joseph T. Rowand, part of the above mortgaged land and premises as follows, that is to say: Beginning at the corner formed by the intersection of the southerly line of South street with the easterly line of Broad street; thence running southerly along said line of Broad street three hundred and forty-two feet and eight-tenths of a foot to line of land of Charles F. Davenport; thence easterly at right angles to said line of Broad street, and along said Davenport's line to the westerly line of Williamson street; thence northerly along said line of Williamson street to said line of South street; thence westerly along said line of South street 229 feet and three-tenths of a foot to the place of beginning, which deed was accepted by the said Joseph T. Rowand, and that it was stipulated in said deed that said lands were conveyed subject to said mortgage to your orator and that the same was assumed to be paid by the said Joseph T. Rowand as part of the consideration of said deed, by which stipulation and acceptance the said Joseph T. Rowand became bound at law and in equity to your orator, to pay the amount due and to become due upon said mortgage.

And your orator further shows, that on or about the seventeenth day of August, eighteen hundred and sixty-eight, the said Anthony W. Dimock, and Helen W., his wife, mortgaged said lands and premises, and other lands to the Fourth National Bank of the city of New York, to secure the payment of one hundred thousand dollars with interest, which said mortgage was on the nineteenth day of August, in the year last aforesaid, recorded in Book 7 of Mortgages, for said county, page 617.

And your orator further shows, that on or about the second day of May, in the year eighteen hundred and seventy, the said Anthony W. Dimock and Helen W., his wife, mortgaged said lands and premises to Lyman A. Jacobus, to secure the payment of sixty thousand dollars with interest, which mortgage was upon the thirteenth day of May, in the year last aforesaid, recorded in book 14 of Mortgages for said county, page 62.

And your orator further shows, that on or about the eighteenth

day of March, in the year eighteen hundred and seventy-one, the said Anthony W. Dimock and Helen W., his wife, mortgaged said lands and premises to the said Lyman A. Jacobus, to secure the payment of twenty thousand dollars, with interest, which said mortgage was recorded in Book 17 of Mortgages for Union county, page 107, on the twenty-first day of March, in the year last aforesaid.

And your orator further shows, that on or about the twenty-second day of May, in the year eighteen hundred and seventy-three, the Union Mutual Insurance Company recovered a judgment in the Supreme Court of the State of New Jersey against the said Anthony W. Dimock for the sum of one thousand five hundred and sixty-eight dollars and fourteen cents damages and cost, or for some other sum.

And your orator further shows that on or about the fourth day of November, in the year eighteen hundred and seventy-two, Daniel Hotaling recovered a judgment against the said Helen W. Dimock and Anthony W. Dimock, her husband, and Oscar Marsh, in the Union Circuit Court, on a claim of lien for the sum of six hundred and forty-seven dollars and forty-eight cents, damages and costs, or for some other sum.

And your orator further shows, that on or about the second day of December; in the year last aforesaid, Oscar Marsh recovered a judgment in said Circuit Court against the said Anthony W. Dimock and Helen W., his wife, and another, for the sum of four hundred and thirty-four dollars and ninety-two cents, damages and costs, or for some other sum.

And your orator further shows, that on or about the twenty-sixth day of March, in the year eighteen hundred and seventy-three, Elijah Purdy, William Phyfe, and Robert Clenighen filed their claim of lien in the Clerk's office of the county of Union, against the said Anthony W. Dimock and Helen W., his wife, and against said lands and premises mortgaged to your orator, purporting to be in pursuance of "An act to secure to mechanics and others payment for their labor and materials in erecting any building, approved March 11, 1853," thereby claiming the sum of forty-seven thousand, nine hundred and

seventy-nine dollars and seventy-one cents. That such further and other proceedings were had thereon, that the said Elijah Purdy, William Phyfe and Robert Clenighen on or about the thirtieth day of July, in the year last aforesaid, recovered a judgment in the Union Circuit Court generally against the said Helen W. Dimock and Anthony W. Dimock, her husband, and especially against the lands and premises mortgaged to your orator, for the sum of forty-nine thousand nine hundred and sixty-three dollars and sixty-eight cents, damages and costs, or 10 for some other sum.

And your orator further shows, that all of said three mortgages, and said three judgments and said claim of lien remain uncanceled, unsatisfied, and undischarged of record, and are claimed to be subsisting liens upon the premises mortgaged to your orator as aforesaid; but your orator charges and insists that said several mortgages and judgments were executed and signed and recorded subsequent to the execution and record of your orator's said mortgage, and that the work for the payment of which said lien claim was filed, was commenced a long time 20 subsequent to the execution and record of your orator's said mortgage, and that said mortgage is a prior lien upon the premises therein mortgaged.

And your orator further shows that the party of the first part, named in said mortgage, has neglected to perform, and has defaulted in all the said agreements and covenants contained in the said indenture of mortgage to be performed by him and has not paid nor discharged divers taxes, charges and assessments which have been imposed by law upon said mortgaged premises; and that he has refused and neglected to cause the buildings erected on said premises to be insured in a solvent incor- 30 porated insurance company, approved by the parties of the second part in said mortgage, nor has he assigned such policy of insurance to your orator, though frequently required by your orator so to do; and that in consequence of said neglects and refusals on his part, your orator has been compelled to pay and has paid at different times, divers large sums of money for and on account of taxes, charges and assessments, and expenses at-

tending the same, which have been imposed by law upon said mortgaged premises, and has been compelled to pay, and has paid at different times divers large sums of money, for the purpose of insuring said premises against loss by fire, all of which sums so paid, laid out and expended, together with interest thereon, are made liens upon said mortgaged premises by the terms and agreements contained in said mortgage.

And your orator further shows, that the whole of said principal money mentioned in the said bond or obligation and secured thereby and by the said deed of mortgage, and said sums expended by your orator as aforesaid for the payment of said insurance, taxes and assessments, with large arrears of interest, still remain due and owing to your orator, no part thereof having been paid to your orator; so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises, the said deed of mortgage, and the estate thereby mortgaged as aforesaid, has become absolute in your orator, and its successors and legal representatives.

And your orator further shows, that the said Henry Winn,²⁰ Helen W. Dimock, and Anthony W., her husband, and Joseph T. Rowand, or one of them, since the execution of your orator's said mortgage, have possessed and enjoyed, and that they do still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive the rents, issues and profits thereof.

And your orator further shows and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and they or some person or persons for them, have frequently and in a friendly manner applied to the said Joseph T. Rowand and Mrs. Joseph T. Rowand, his wife, Anthony W. Dimock, and Helen W., his wife, Henry Winn, The City of Elizabeth, the Fourth National Bank of the City of New York, Lyman A. Jacobus, Daniel Hotaling, Oscar Marsh, the Union Mutual Insurance Company, Elijah Purdy, William Phye and Robert Clenighen, who are the de-

defendants in this suit, and requested them or one of them, to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth ; and your orator well hoped that they would have complied with such reasonable requests of your orator, and would have paid to it the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done. But now so it is, may it please

10 your Honor, that the said defendants, combining and confederating together, and to and with divers other persons at present unknown to your orator, but whose names, when discovered, it prays may be inserted herein, with proper and apt words, to charge them as parties defendant hereto, and contriving how to injure and agrieve your orator in the premises, and to defraud it of the said principal and interest moneys, so as aforesaid due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned, sometimes give out and pretend that although your orator's estate in the said mortgaged premise

20 may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner, and that the same will be subject to an equity of redemption ; and at other times the said confederates pretend that the said mortgage premises are charged or chargeable with other encumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration they refuse to discover : whereas your orator charges and insists that if any such pretended encumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied,

30 and kept on foot by fraud to injure and agrieve your orators and ought to be delivered up to be cancelled, or declared to be of no effect against your orator, who had no notice of any such pretended encumbrances. All which actings and doings of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator. In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the premises at and by the strict rules of the common law,

nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys so as aforesaid due to your orator on said bond and obligation and deed of mortgage without the aid and decree of this Honorable Court.

To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full and perfect answers make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance and belief; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum so due to it on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this Honorable Court; and in default thereof that the said defendants and each of them, and all persons claiming, or to claim under them, or any or either of them, may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and paccel thereof, with the appurtenances, and may deliver over unto your orator all deeds, demises and writings whatever relating to or concerning the same, or that all and singular the said mortgaged premises with the appurtenances may, by the order and decree of this Honorable Court, be sold, and out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained; and that your orator may have such other and further relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience; and especially that if the net proceeds of the sale of said premises in your orator's said mortgage described shall not be sufficient to pay and to satisfy to your

orator all the moneys due to your orator upon the said bond and said indenture of mortgage, that the said Joseph T. Rowand, Anthony W. Dimock, and Helen, W., his wife, and Henry Winn, may be decreed by the decree of this Honorable Court to pay the deficiency.

May it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said defendants in this suit, therein and thereby commanding 10 them, and each of them, on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

L. C. GROVER,

Solicitor of Complaint.

F. K. HOWELL,

of Counsel.

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IN CHANCERY OF NEW JERSEY.

The joint and several answers of Elijah H. Purdy and William Phyfe for themselves, and as partners with Robert Clenighen, under the name, style, and firm of E. H. Purdy & Co., two of the defendants to the Bill of Complaint of The Mutual Benefit Life Insurance Company, complainant, and Joseph T. Rowand and others, defendants.

These defendants now, and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of 30 exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised, it is material for them to make answer unto, answer and say :

That as to the several lands, mortgages, deed and release mentioned and set forth in the said bill of complaint, they have no knowledge or information upon which to found any belief, and therefore leave the same to be found as this Honorable Court shall direct.

And these defendants further answering say: That on the twenty-sixth day of March, eighteen hundred and seventy-three, they together, with Robert Clenighen, filed a lien claim in the Clerk's office of the county of Union, agreeably to the provision of an act of the Legislature of the State of New Jersey entitled, 10
 "An act to secure to mechanics and others payment for their labor and materials in erecting any buildings," approved March 11, 1853, and the supplements thereto, against Helen W Dimock, as builder and owner for labor performed and materials furnished by them within one year, thence preceeding for the erection of a certain building on a lot or curtilage therein described as follows: Beginning at the southwest corner of South and Williamson streets, and running thence along the southerly line of South street, north eighty-nine degrees and thirty-five minutes, west two hundred and thirty-six feet six inches to the middle of a gate post; thence along land now or late of said Helen W. Dimock, south six degrees and forty-three minutes, west three hundred and fifty feet six inches to a corner; thence still along the same, south twenty-nine degrees and sixteen minutes east, one hundred and ninety-one feet one inch to the westerly line of Williamson street, and thence along that line north, thirteen degrees and seventeen minutes east, three hundred and ninety-two feet to the place of beginning. 20

And these defendants further answering say: That the said lien so as aforesaid filed by them was enforced by suit in the Circuit Court of the county of Union, in which said building is situated, and that said suit was commenced by summons against the said Helen W. Dimock as builder and owner, (and Anthony W. Dimock, her husband), on the seventh day of April, eighteen hundred and seventy-three, being within one year from the date of the furnishing the labor and materials mentioned in said claim, and such proceedings were had thereon, that on the 30

thirtieth day of July, eighteen hundred and seventy-three, judgment was entered in favor of these defendants, and the said Robert Clenighen against the said Helen W. Dimock, builder and owner of the said building, and the lot or curtilage on which it is erected, for the sum of forty-nine thousand nine hundred and twenty-nine dollars and fifty-five cents damages, and thirty-three dollars and ninety-three cents costs of suit.

And these defendants claim that the same is a lien upon the said building, and the lot or curtilage, but respectfully insist
10 that whatever may be the extent of the complainant's mortgage, and whether prior in date or not to the judgment of these defendants, the said judgment is prior to the said mortgage on the said building and entitled to priority of payment out of any moneys raised by the sale of said building and lot, and that so much of the money raised by the sale of the said building and lot as represent the value of the said building shall be first devoted to the payment and discharge of their said judgment lien.

And these defendants further answering, deny that the said
20 mortgages of Lyman A. Jacobus, or either of them, are encumbrances upon the said land and building covered by the judgment and lien of the defendants.

They insist and charge that no money was ever advanced upon the said mortgages, or either of them, but that the same were given to the said Jacobus merely to protect the property conveyed in them from the creditors of the said Anthony W. Dimock and Helen W. Dimock, his wife.

And they further charge and insist that that if any money
30 was advanced at the time of the giving of the said mortgages, or has been since, that only a small part of the sum mentioned in the consideration was paid at the time of delivery (if any such delivery was ever had), or has since been paid.

And they further charge and insist that the said mortgages were never executed according to law, and were never acknowledged, executed and recorded so as to be a lien for any amount or for any sum of money prior to the lien and judgment of

these defendants. And these defendants further insist that the mortgages of the said Jacobus were delivered to him by the said Dimock and wife, or one of them, with a large amount of other mortgages and other security as collateral security for advances made or to be made by said Jacobus.

And they insist that they have a right to have such securities appropriated to the payment of any advances which may have been so made to relieve their said judgment, and they insist that their said lien and judgment is an encumbrance on the said building and lot or curtilage prior to the two several 10 mortgages of sixty thousand dollars and twenty thousand dollars respectively of the said Lyman A. Jacobus mentioned in said bill of complaint, and is entitled to be first paid and satisfied out of any moneys arising from the sale of said buildings, whether the same are legal encumbrances or not. And these defendants further answering say, that their said lien is an encumbrance on the said building and lot or curtilage prior to the mortgage of the Fourth National Bank of the city of New York mentioned in said bill of complaint, and is entitled to be first paid and satisfied out of any moneys arising from 20 the sale of said building and land.

And these defendants further answering say, that their said lien and judgment is an encumbrance on the said building and lot, or curtilage, prior to the judgments of the Union Mutual Insurance Company, Daniel Hotelling and Oscar Marsh mentioned in said bill of complaint, and is entitled to be first paid and satisfied out of any moneys arising from the sale of the said building and land.

And these defendants further answering respectfully submit that if it shall be decreed by this Honorable Court that 30 the said lot or curtilage covered by their said lien be sold to discharge the debt of said complaint and other parties to this suit in parcels that the moneys arising therefrom shall under the direction of this court be so apportioned that so much thereof as may represent the value of said building may be first applied to the payment of the said lien of these defendants. And these defendants deny all unlawful com-

bination and confederacy in said bill charged without that, that any other matter or thing material for these defendants to make answer unto, not herein or hereby well 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 ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray that said premises may be sold, that the monies arising from said sale may be applied in the order
10 aforesaid to the payment of the amounts due to the said complainant, and these defendants and the other parties mentioned in the said bill of complaint, together with the costs of these defendants in this suit, and these defendants will ever pray, &c.

WILLIAM P. WILSON,

Solicitor and of Counsel with Elijah H. Purdy and

William Phyfe.

NEW JERSEY, }
UNION COUNTY, } ss.

20 Elijah H. Purdy and William Phyfe, two of the defendants in the above cause, being duly and severally sworn upon their respective oaths, say : That they are the members of the firm of E. H. Purdy & Co. ; that the said firm consists of Elijah H. Purdy, William Phyfe and Robert Clenighen ; that the matters and things set forth in the above answer, so far as relate to their own acts and the acts of the said firm, are true, and so far as they relate to the acts and deeds of others, they believe them to be true.

ELIJAH H. PURDY,
WILLIAM PHYFE.

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Subscribed and sworn before }
me this fifth day of Feb- }
ruary, A. D. 1874. }

ANDREW DUTCHER,

Master in Chancery.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>		}	<i>Answer.</i>	
The Mutual Benefit Life Insurance Com-	pany,			<i>Complainant,</i>
<i>and</i>				
Joseph T. Rowand, et. al.,	<i>Defendants.</i>			<i>Defendants.</i>

The separate answer of Lyman A. Jacobus, one of the defendants to the bill of complaint of The Mutual Benefit Life Insurance Company, complainants. 10

This defendant now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many imperfections, uncertainties and defects in the complainant's said bill of complaint contained for answer thereunto, or unto so much and such parts thereof as he is advised, is or are material for him to make answer unto, he answering says, that he is informed that one Henry Winn and wife did at the time mentioned in the said bill of complaint, make, execute and deliver their bond and mortgage to the said complainant on the premises therein described to secure the payment of ten thousand dollars, or some other sum, which mortgage was recorded as therein charged, but has no knowledge how much may be due thereon, and leaves the complainant to the proof thereof, according to the rules of this court. 20

And defendant further answering, says that he admits that the said Henry Winn and wife did at the time named in said bill, convey the said premises in fee to Helen W. Dimock, wife of Anthony W. Dimock, subject to the said mortgage of

the said complainant, and that said deed was recorded as charged in said bill.

And this defendant further answering says, that he admits the release of August third, eighteen hundred and sixty-nine, as charged in said bill, and also the conveyance of a portion of the said property to the city of Elizabeth for the purpose of a street called Broad street.

And this defendant further answering says, that he admits that on or about the seventeenth day of August, eighteen
10 hundred and sixty-eight, the said Helen W. Dimock and Anthony W. Dimock made, executed and delivered their bond and mortgage to the Fourth National Bank of the city of New York, to secure the payment of one hundred thousand dollars upon certain lands and real estate, including the said lands, but avers that the said The Fourth National Bank of the city of New York did by their deed of release under their corporate seal, dated March the fifteenth, eighteen hundred and seventy, release the said premises from the lien of their
20 said mortgage, and charges that thereby the said premises were discharged of, and from all lien by reason of said mortgage ; and defendant further avers that said deed of release was recorded in the Union County Clerk's office, on the fourth day of May, eighteen hundred and seventy, in Book 47 of Deeds, page 126, to which said deed, or copy of the record thereof, this defendant for greater certainty refers.

And this defendant further answering says, that the said Helen W. Dimock and Anthony W. Dimock on the second day of May, eighteen hundred and seventy, made and executed and delivered to this defendant to secure money owing to him
30 their bond under their respective seals, dated on that day, and thereby became bound unto this defendant in the sum of one hundred and twenty thousand dollars to be paid to him, his executors, administrators, or assigns, with a condition thereunder written, that if the said Helen W. Dimock and Anthony W. Dimock should pay to this defendant, his executors, administrators, or assigns, the sum of sixty thousand dollars on the thirty-first day of December, eighteen hundred and

seventy, with interest, at the rate of seven per cent. per annum, then that bond should be void.

That to secure the payment of the said sum of sixty thousand dollars, with interest, the said Helen W. Dimock and Anthony W. Dimock, by a deed of mortgage, bearing date on the same day with said bond, conveyed to said Lyman A. Jacobus, and to his heirs and assigns for ever, in fee simple, all that tract or parcel of land situate, lying and being in the city of Elizabeth, in the county of Union, and State of New Jersey: Beginning at the corner formed by the intersection of the south line of South street with the east line of Broad street; thence running southerly along said line of Broad street, three hundred fifty feet, more or less, to the line of land of Charles F. Davenport; thence easterly along said Davenport's line, and at right angles to said line of Broad street two hundred feet, more or less, to the westerly line of Williamson street; thence northerly along said line of Williamson street to the said line of South street, and thence westerly along the same, two hundred and twenty-nine and three-tenths feet to the place of beginning, which said premises²⁰ this defendant avers are part and parcel of the premises, described in the mortgage of the said complainants and set forth in their said bill of complaint.

That said mortgage contained a condition that the same should be void upon payment of said sum of sixty thousand dollars with interest, at the rate, at the times, and in the manner, in the condition, in the said bond set forth.

That said mortgage was duly acknowledged according to law by the said Helen W. Dimock and Anthony W. Dimock, and was recorded in the office of the Clerk of the county of Union, May 13th, 1870, in Book 14 of Mortgages, pages 62, 63 and 64, and to which said bond and mortgage this defendant refers.³⁰

And this defendant further answering says, that being further indebted to this defendant in the further sum of twenty thousand dollars on the eighteenth day of March, eighteen

hundred and seventy-one, the said Helen W. Dimock and Anthony W. Dimock by their bond under their respective seals, dated on that day, became bound to this defendant in the sum of forty thousand dollars to be paid to him, his executors, administrators, or assigns, with a condition thereunder written, that if the said Helen W. Dimock and Anthony W. Dimock should pay to the said Lyman A. Jacobus, his executors, administrators, or assigns, the sum of twenty thousand dollars on the thirty-first day of December, eighteen
 10 hundred and seventy-two, with interest at the rate of seven per cent. per annum. then that bond should be void.

That to secure the payment of the said sum of twenty thousand dollars, with interest, the said Helen W. Dimock and Anthony W. Dimock, by a deed of mortgage bearing date on the same day with said bond conveyed to said Lyman A. Jacobus, and his heirs and assigns for ever in fee simple, al that tract or parcel of land, situate, lying and being in the city of Elizabeth, in the county of Union, and State of New
 20 Jersey: Beginning at the corner formed by the intersection of the south line of South street with the east line of Broad street; thence running southerly along said line of Broad street three hundred and forty feet; thence easterly at right angles thereto, two hundred and thirteen feet, more or less, to the westerly line of Williamson street; thence northerly along the same, three hundred and forty feet, more or less, to said line of South street; thence westerly along South street, two hundred and twenty-nine feet and three-tenths of a foot to the place of beginning, which said premises this defendant avers
 30 of the complainants, and set out in their said bill of complaint.

That said mortgage contained a condition that the same should be void upon payment of said sum of twenty thousand dollars, with interest at the rate, at the times, and in the manner in the condition of said bond set forth.

That said mortgage was acknowledged by said Helen W.

Dimock and Anthony W. Dimock, according to law, and was recorded in the Union County Clerk's office, on the 21st day of March, 1871, in Book 17 of Mortgages, pages 107, 108, 109, 110, and to which bond and mortgage this defendant for greater certainty refers.

And this defendant further says, that he is now the owner of the said bonds and mortgages, and that the principal sum named in each, with large arrearages of interest, now are due and owing this defendant.

And this defendant further answering says, that it appears ¹⁰ by the records of the county of Union that the said Helen W. Dimock and Anthony W. Dimock conveyed the said premises by deed, dated May the first, eighteen hundred and seventy-three, to one Joseph T. Rowand, who from the said record appears to be the present owner thereof.

And this defendant admits on information and belief the recovery of a judgment in the Supreme Court of New Jersey on the twenty-second day of May, eighteen hundred and seventy-three, in favor of The Union Mutual Insurance Company against the said Anthony W. Dimock, but charges that if ²⁰ said judgment is any lien whatever upon said mortgaged premises it is subsequent to the lien of this defendant's said mortgages.

And this defendant admits on information and belief the recovery of certain judgments in the Union County Circuit Court against the said Helen W. Dimock and Anthony W. Dimock in favor of Daniel Hotaling, Oscar Marsh, E. H. Purdy, Robert Clenighen, and partners trading as E. H. Purdy & Company, original defendants in this suit, and Wyllis H. Warner, who has by order of this court been admitted with leave to file an answer therein, but this defendant has no ³⁰ knowledge or information sufficient to form a belief at what exact times, or for what exact amounts said judgments were respectively entered, nor the times when the materials or work which said suits are said to have been brought to enforce the payment of, were furnished or performed, and leaves the said

defendants to full proof thereof, but this defendant charges that each and every of said judgments, if any lien at all on the said mortgaged premises are subject and subsequent to the said two mortgages of this defendant, and submits that his said mortgages should be first paid out of the proceeds of the sale of the said premises after the payment of the mortgage of said complainant, and he further submits that if under the facts and law of the case any portion of the fund raised by the sale of the said premises is to be devoted to the payment of any one or more mechanic's
 10 liens prior to the payment of the defendants mortgages that only so much of said portion of such fund is to be paid to any one mechanic's lien creditor, as represents the proportionate amount, the work and materials done and furnished by said creditor bears to the whole amount done and furnished in the erection of said building.

And this defendant denies all unlawful combination and confederacy in said bill charged without that, that any other matter or thing material for this defendant to make answer unto and not herein and hereby sufficiently and well answered, confessed
 20 or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays that a decree may be made by this Honorable Court for the sale of the said lands and premises in the said indenture of mortgage mentioned and set forth in the said complainant's bill, and out of the moneys thence arising, that this defendant may be paid the full amount of the principal and interest so due as aforesaid, with all reasonable costs and charges in this behalf sustained.

30

SAMUEL D. HAINES,

Solicitor, and of Counsel with Defendant, Lyman A. Jacobus.

CITY, COUNTY AND STATE }
 OF NEW YORK. } ss.

Lyman A. Jacobus, being duly sworn on his oath, says:

That the foregoing answer, so far as it relates to his own acts and deeds, is true, and so far as it relates to the acts and deeds of others he believes it to be true.

Sworn and subscribed before me, at }
 New York City, this 5th day of } LYMAN A. JACOBUS.
 February, A. D. 1874.

J. B. NONES,

*Commissioner of the State of New Jersey for New York, No 91
 Duane street, cor. Broadway.*

IN CHANCERY OF NEW JERSEY. 10

Between

The Mutual Benefit Life Insurance
 Company,

Complainant ;

and

Joseph T. Rowand and Wife, et. al.,

Defendants.

*On Bill to
 foreclose
 Answer.*

The answer of Wyllys H. Warner, of the city of Brooklyn, in the county of Kings and State of New York, to the said Complainant's bill of complaint, made and filed by virtue 20 of the order made by the Honorable Chancellor in said cause, on the sixteenth day of December, A. D., 1873, permitting the said Wyllys H. Warner to appear and defend against the said suit, and to file his answer to the said complainant's bill of complaint, within thirty days from the date of the said order.

This said defendant, now, and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the com-

plainant's said bill of complaint contained, for answer thereto or unto so much and such part thereof, as this defendant is advised, is material for him to make answer unto——he answers and says, that he admits that the said Henry Winn and Madeline, his wife, in the complainant's bill named, did make and execute an indenture of mortgage of such date, and of such purport and effect as is in the complainant's said bill mentioned and set forth.

10 And this defendant further answering, admits that there is due to the said complainant the principal sum of money in the said bond and indenture of mortgage mentioned and expressed and set forth in its bill of complaint, together with arrears of interest, to this defendant unknown, but for greater certainty, he prays that reference may be had to the same, and the amount thereof distinctly ascertained.

20 And this defendant further answering, admits that the said Henry Winn, and Madeline, his wife, did afterwards, by their deed, convey the said mortgaged lands and premises in fee to Helen W. Dimock, wife of Anthony W. Dimock, who accepted the same as is expressed and sent forth in the complainant's said bill of complaint.

And this defendant further answering, admits that the complainants released a part of the said mortgaged lands and premises from the lien of their said mortgage, to the said Helen W. Dimock, in manner as is expressed and set forth in the said bill of complaint.

30 And this defendant further answering, admits that the said Helen W. Dimock and Anthony W. Dimock, her husband, by Edward D. Weston, his attorney in fact, did, on or about the first day of May, in the year eighteen hundred and seventy-three, convey in fee to Joseph T. Rowand part of the above mentioned mortgaged lands and premises as is mentioned and set out in the complainant's said bill of complaint.

And this defendant further answering, says that on the twenty-third day of December, in the year eighteen hundred

and seventy-two, the said Helen W. Dimock, wife of Anthony W. Dimock, having become indebted to this defendant for work and labor done, and materials furnished by this defendant in and about erecting, constructing and completing a certain building upon a part of the said mortgaged lands and premises at the request of the said Helen W. Dimock, and of her husband, Anthony W. Dimock, this defendant, on the seventeenth day of October, in the year eighteen hundred and seventy-three, filed in the office of the clerk of Union county his claim for the payment of the sum of two thousand eight hundred and twenty-five dollars, with lawful interest thereon against that said build- 10
ing, and the lot, or curtilage whereon the same is situate, and thereby claimed that the said debt is a lien on the said building and the said lot or curtilage by virtue of the statute in such case provided, which said lot or curtilage is part of the lands and premises mentioned and described in the aforesaid mortgage mentioned and set out in the complainant's bill of complaint, made by Henry Winn and wife to complainant and the said lot or curtilage is bounded by beginning at the corner formed by the intersection of the southerly line of South street and the easterly line of Broad street, and thence running southerly along 20
the line of Broad street three hundred and forty-two and eight-tenths feet to land of Charles F. Davenport; thence easterly at right angles to the line of Broad street, and along the line of Davenport's land to the westerly line of Williamson street; thence northerly along the line of Williamson street to the line of South street, thence westerly along said line of South street two hundred and twenty-nine and three-tenths feet to the place of beginning, and afterwards on the seventeenth day of the same October, this defendant instituted his suit in the Circuit Court for Union county on his said lien claim against 30
the said Anthony W. Dimock and Helen W. Dimock his wife, as builder, and the said Joseph T. Rowand, as owner of the said building, and lot or curtilage, and thereafter prosecuted his said suit to final judgment, which judgment was entered up of record on the thirty-first day of December, in the year eighteen hundred and seventy-three, against the said Anthony W. Dimock and Helen W. Dimock, and against the said building and the said lot or curtilage, for the sum of three thousand and

seventeen dollars and ninety-two cents and costs of suit taxed at
dollars and cents
amounting in all to the sum of three thousand and
dollars and cents.

And this defendant further answering, expressly avers and charges that his said claim and the judgment thereon is a lien and encumbrance upon so much of the premises mentioned in the complainant's aforesaid mortgage, as is set out and described in the lien claim so filed in the office of the clerk of Union
10 county, as is hereinbefore mentioned and that his said lien and encumbrance is only subject and subsequent to the encumbrance of the complainant's said first-mentioned mortgage; and that all the other deeds, mortgages, judgments, liens and encumbrances in the said complainant's bill of complaint mentioned are subject and subsequent to the above mentioned lien and judgment of this defendant.

And this defendant denies all unlawful combination and confederacy in said bill charged, without this, that any other matter or thing material for this defendant to make answer unto, and
20 not herein and hereby, will be and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays that a decree may be made by this Honorable Court for the sale of the said premises, in the first aforesaid indenture of mortgage mentioned, and first set out in the complainant's bill of complaint, and that out of the moneys thence
30 arisen, this defendant may be first paid the full amount of the principle, and interest moneys and fees and costs, so as aforesaid due and arising to this defendant, after the payment of the complainant's aforesaid mortgage, together with the reasonable costs and charges by this defendant in this behalf sustained.

C. F. & C. E. HILL,
Solicitors, and of Counsel with this Defendant.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK. } ss.

Wylls H. Warner, the defendant above named, being duly sworn, on his oath, saith, that the matters and things set forth and stated in the foregoing answer so far as the same relate to his own acts are true, and so far as they relate to the acts of others, he believes them to be true.

Sworn and subscribed at New York, this January 15th, A. D., 1874, before me. } WYLLYS H. WARNER. 10
 WILLIAM F. LETT,
Commissioner for New Jersey in New York City.
 No. 335 Broadway.

IN CHANCERY OF NEW JERSEY.

Between }
 The Mutual Benefit Life Insurance Com- }
 pany, } *Complainant,* }
 and }
 Joseph T. Rowand and wife, and others, } *Defendants.* } 20

The answer of the Fourth National Bank of the city of New York, one of the defendants to the bill of complaint of The Mutual Benefit Life Insurance Company, complainants.

These defendants now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained for answer thereto, or unto so much and such part thereof as these defendants are advised is

material for them to make answer unto, they answer and say :
 That they admit that the said Henry Winn and Madaline, his
 wife, in the complainant's bill named, did make and execute an
 indenture of mortgage of such date and of such purport and
 effect as in the complainants said bill mentioned and set forth ;
 and they further admit, that on or about the first day of April,
 in the year of our Lord one thousand eight hundred and sixty-
 eight, the said Henry Winn and Madaline, his wife, by their
 deed, dated on that day, conveyed the premises embraced in
 10 the complainant's mortgage to Helen W. Dimock, wife of An-
 thony W. Dimock, which was accepted by the said Helen W.
 Dimock, which said deed was duly recorded as set out in the
 complainant's bill of complaint.

And these defendants further admit that there is due to the
 said complainants the principal sum in the said bond and inden-
 ture of mortgage mentioned and expressed and set forth in their
 said bill of complaint, together with an arrear of interest and
 certain sums expended by the complainants for the payment of
 insurance, taxes and assessments to these defendants unknown,
 20 but for greater certainty they pray that reference may be had to
 the same, and the amount distinctly ascertained.

And these defendants further answering say, that the said
 Anthony W. Dimock having become indebted to these defend-
 ants, The Fourth National Bank of the City of New York, on
 the seventeenth day of August, in the year of our Lord one
 thousand eight hundred and sixty-eight, made, executed and de-
 livered unto these defendants, The Fourth National Bank of
 the City of New York, a certain bond or writing obligatory,
 bearing date the day and year last aforesaid, in the penal sum of
 30 two hundred thousand dollars, lawful money of the United
 States of America, conditioned for the payment by the said An-
 thony W. Dimock, his heirs, executors and administrators, or
 any of them, to these defendants, The Fourth National Bank of
 the City of New York, and their successors, or to their certain
 attorney, or assigns, the just and full sum of one hundred thou-
 sand dollars, lawful money as aforesaid, in eighteen months from
 the date thereof, with lawful interest for the same at seven per

cent. per annum, without any fraud, or further delay, as in and by the said bond, or writing obligatory, now in the custody of these defendants and ready to be produced as this Honorable Court shall direct.

And these defendants further answering say, that the said Anthony W. Dimock in order further to secure to these defendants the payment of the said sum of one hundred thousand dollars mentioned in the condition of the said bond or writing obligatory, and the interest that might accrue thereon, to these defendants on the same day and year last aforesaid, together with Helen W. Dimock, his wife, made and executed to these defendants, The Fourth National Bank of the City of New York, a certain indenture of mortgage, bearing even date with the said bond or writing obligatory, in consideration of the said debt of one hundred thousand dollars, and for the better securing the payment thereof, with the interest to these defendants, they, the said Helen W. Dimock, Anthony W. Dimock, granted, bargained and sold to these defendants all the lands and premises mentioned and described in the said bill of complaint of The Mutual Benefit Life Insurance Company, complainants, (and also on other lands not mentioned and described in the complainant's bill of complaint), together with the rights, privileges, hereditaments and appurtenances thereunto belonging, and which said indenture of mortgage was nevertheless upon the express condition that if the said Anthony W. Dimock and Helen W. Dimock, or either of them, their heirs, executors, or administrators should pay unto these defendants, The Fourth National Bank of the City of New York, their successors, certain attorney or assigns, the sum of one hundred thousand dollars, lawful money aforesaid, in eighteen months from the date thereof, with lawful interest on the same, at the rate of seven per cent. per annum, payable half yearly without any deduction or defalcation for taxes, assessments, or any impositions whatever, then the said indenture of mortgage should be void and of no effect.

And these defendants further say, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Anthony W. Dimock and Helen

W. Dimock, his wife, on the eighteenth day of August, eighteen hundred and sixty-eight, before William F. Day, one of the Masters of the Court of Chancery of the State of New Jersey, and the said indenture of mortgage, or an abstract thereof, was duly recorded in the Clerk's office of the county of Union, in Book seven of Mortgages, page six hundred and seventeen, &c., as by the certificate of the clerk of said county, endorsed on the said indenture of mortgage, more fully appears now in the possession of these defendants, and ready to be produced and proved
10 as your Honor shall direct.

And these defendants further say, that the sum of nineteen thousand five hundred and four dollars and fifty cents, being part of the principle of said debt, so as aforesaid secured by the said bond and indenture of mortgage, together with a large amount of interest thereon, still remain due and owing to these defendants.

And these defendants further answering admit that they are informed that the said Anthony W. Dimock and Helen W. Dimock, by their attorney in fact, Edward D. Weston, on or
20 about the first day of May, in the year of our Lord one thousand eight hundred and seventy-three, sold and conveyed in fee to one Joseph T. Rowand, a part of the premises mentioned and described in the complainant's bill of complaint, and also described and embraced in these defendant's said mortgage, which said deed was accepted by the said Joseph T. Rowand, and these defendants insist that their said mortgage was a subsisting lien and encumbrance on said premises at the time of the delivery of deed to the said Joseph T. Rowand, and that he assumed the payment of the same as a part of the purchase money therefor.

30 And these defendants deny all unlawful combination and confederacy in said bill charged without that, that any other matter or thing material for these defendants to make answer unto and not herein and hereby well 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 ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray that a decree may be

made by this Honorable Court for the sale of the said land and premises in the foregoing indenture of mortgage mentioned and set forth in the complainant's bill, and out of the moneys thence arising, that these defendants may be paid the full amount of the principal and interest moneys so due as aforesaid, with all reasonable costs and charges in this behalf sustained.

RICHEY & EMERY,

Solicitors for and Counsel with the Defendants.

STATE OF NEW YORK, }
CITY OF NEW YORK, } ss.

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Philo C. Calhoun being duly sworn according to law, on his oath saith: That he is President of the Fourth National Bank of the City of New York; that the matters and things set forth in the above answer, so far as they relate to the acts of these defendants, the Fourth National Bank, are true, and so far as relates to the acts of others, he believes them to be true.

Sworn and subscribed this }
fourth day of February, }
A. D., 1874, before }

P. C. CALHOUN.

*President Fourth National
Bank, New York.* 20

STEPHEN S. LANCASTER,
Notary Public. N. Y. City, &c.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } ss.

I, William Walsh, Clerk of the city and county of New York and also Clerk of the Supreme Court for the said city and county, being a Court of Record, do hereby certify that Stephen S. Lancaster, before whom the annexed deposition was taken, was at the time of taking the same a Notary Public of New York,

dwelling in said city and county, duly appointed and sworn, and authorized to administer oaths to be used in any Court in said State and for general purposes, and that his signature there to is genuine, as I verily believe.

[L. s.]

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court and County, this 4th day of February, 1874.

WM. WALSH,
Clerk.

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IN CHANCERY OF NEW JERSEY.

Between
The Mutual Benefit Life Insurance Com-
pany,
Complainant,
and
Joseph T. Rowand, et ux, et al.,
Defendants.

Answer of
Thomas Thomp-
son.

The separate answer of Thomas Thompson, admitted by or-
20 der of this Court, as one of the defendants to the bill of com-
plaint of the Mutual Benefit Life Insurance Company com-
plainants.

This defendant now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many imperfections, uncertainties and defects in the complainant's said bill of complaint contained for answer thereunto, or unto so much and such parts thereof as he is advised, is or are material for him to make answer unto, he answering, says :

That as to the several bonds, mortgages, deed and release mentioned and set forth in the said bill of complaint, he has on knowledge or information upon which to found any belief, and therefore leaves the same to be proved as this Honorable Court shall direct.

And this defendant further answering says, that on the thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-three, he filed a lien claim in the Clerk's office of the County of Union, agreeably to the provisions of an act of the Legislature of New Jersey, entitled "An Act to secure to mechanics and others, payment for their labor and materials in erecting any building." Approved March eleventh, eighteen hundred and fifty-three, and the supplements thereto, against Anthony W. Dimock, builder, and Joseph T. Rowand, owner, for work and labor performed and materials furnished during a period commencing June 1st, A. D., 1870, and ending October 1st, A. D., 1873, for the erection of a certain building on a lot or curtilage therein described as follows; Beginning at the corner formed by the intersection of the southerly line of South street with the easterly line of Broad street, and running thence (1) southerly along said easterly line of Broad street one hundred and seventy-seven feet; thence (2) easterly at right angles with said easterly line of Broad street two hundred feet to the westerly line of Williamson street; thence (3) northerly along said westerly line of Williamson street, three hundred and seventy feet, more or less, to the southerly line of South street; thence (4) westerly along said southerly line of South street two hundred and twenty-five feet more or less, to the place of beginning.

And this defendant further answering says, that the said lien so as aforesaid filed by him was enforced by suit in the Circuit Court of the county of Union, in which said building and lot are situated, and that said suit was commenced by summons against the said Anthony W. Dimock, as builder, and Joseph T. Rowand as owner, on the thirty-first day of October eighteen hundred and seventy-three, (being the same day on which said lien claim was filed) and that the time of sealing and

issuing said summons was duly endorsed on said lien claim by the clerk of Union county aforesaid, and that the time of issuing said summons was within one year from the date of furnishing the labor and materials mentioned in said lien claim, and such proceedings were had thereon, that on the twenty-eighth day of January, eighteen hundred and seventy-four, judgment was entered in favor of this defendant, against the said Anthony W. Dimock builder, and Joseph T. Rowand owner, of the said building, and the said lot or curtilage whereon it is erected, for the sum of nineteen hundred and seventeen dollars and sixty-four cents damages, and thirty-three dollars and forty-three cents costs.

And this defendant further answering says, that his said lien and judgment are a lien upon the said building and the lot or curtilage whereon the same is erected, and that they are entitled to priority as against other encumbrances, except lien claims, from the time of the commencement of the erection of said building, and in particular this defendant insists that his said lien claim and judgment are prior to the encumbrances (if encumbrances they be, which this defendant neither admits nor denies, but leaves the parties to make proof thereof in such manner as they may be able) of the defendants' the Fourth National Bank of the City of New York, and Lyman A. Jacobus, the Union Mutual Insurance Company, Daniel Hotaling and Oscar Marsh, and that this defendant further answering says, that as to the lien claims of Elijah H. Purdy, William Phyfe and Robert Clenighan and of Wyllys H. Warner, whether they be valid and substantial claims on the said building and lot or curtilage or not, he has no knowledge, and therefore neither admits nor denies their validity, but leaves the said defendants to make such proof thereof as they may be able, but this defendant insists that should lien claims be found to be valid liens on said building and lot or curtilage that they are concurrent liens with this defendant's lien, and that this defendant's lien and the liens of the defendants Purdy, Phyfe, Clenighan and Warner should be paid pro-rata out of the proceeds of the sale of the mortgaged premises after the payment of the complainant's debt, interest and costs.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that any other matter or thing material for this defendant to make answer unto, not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays that said premises may be sold, that the monies arising from said sale may be applied in the order aforesaid to the payments of the amounts due to the said complainant and this defendant, and the other parties mentioned in the said bill of complaint, together with the costs of this defendant in this suit. And this defendant will ever pray, &c.

JOHN DAVIDSON,

Solicitor of Thomas Thompson.

DUTCHER & ATWATER,

of Counsel with Thomas Thompson.

REPLICATION IN THE USUAL FORM.

IN CHANCERY OF NEW JERSEY. 20

<p style="text-align: center;"><i>Between</i></p> <p>The Mutual Benefit Life Insurance Com- pany,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>Joseph T. Rowand, et. al.,</p> <p style="text-align: right;"><i>Defendants.</i></p>	}	<i>On Bill, etc.</i>
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EXAMINATION.

Of witnesses, &c., in the above stated cause, taken before me,

one of the Masters and Examiners of said Court of Chancery, at my office in the city of Newark, No. 744 Broad street, on Saturday, 14th of March, 1874, at 10 o'clock, A. M., in the presence of Lewis C. Grover, Solicitor of the complainants, and of C. F. and C. E. Hill, Solicitors of the defendant Wyllys H. Warner, on notice given on the part of the complainant, and also in the presence of Ritchie and Emory, Solicitors of the Fourth National Bank of New York, defendants.

WILLIAM PATTERSON,

Master and Examiner.

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The Solicitor of complainants produced before me the following papers and instruments in writing, which are marked as exhibits on the part of the complainants and offered in evidence on their behalf.

Notice of taking depositions in this cause at this time, addressed to C. F. and C. E. Hill, Solicitors of the defendant Wyllys H. Warner, marked Exhibit A.

Notice as aforesaid, addressed to William P. Wilson, Solicitor of the defendants, Purdy, Phyfe and Clenighan, marked as 20 Exhibit B.

Notice as aforesaid addressed to Ritchie and Emory, Solicitors for the defendants, The Fourth National Bank of New York, marked as Exhibit C.

Notice as aforesaid addressed to Thomas Thompson by John Davidson, his Solicitor, marked as Exhibit D.

Notice as aforesaid addressed to Samuel D. Haines, Solicitor for the defendant, Lyman A. Jacobus, marked as Exhibit E.

All of which said notices were duly acknowledged by the aforesaid Solicitors to have been served upon them, in behalf 30 of the aforesaid defendant, according to law.

Bond from Henry Winn to the complainants, dated second of December, 1867, being the same mentioned in the bill of complaint, conditioned to pay \$10,000 in one year, signed and sealed in the presence of N. Perry, Junior, as subscribing wit-

ness, and proven by the deposition of said N. Perry, Junior, annexed to and taken in this cause. Marked as Exhibit F.

Mortgage from said Henry Winn and Madeline, his wife, dated second of December, 1867, executed to the complainants to secure the payment of the aforesaid bond, also, mentioned in the bill of complaint, acknowledged on the same day, before N. Perry, Jr., a master of this Court, by the said mortgagors, and recorded on the 9th of December, 1867, at 8 o'clock, A. M., in Book 6 of Mortgages for the County of Union, on pages 521 and 522, on land described therein, as situated on the corner of 10 South and Williamson streets, in the city of Elizabeth. Marked as Exhibit G.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.

N. Perry, Jr., being duly sworn on the part of the complainant, deposes and says :

I am the subscribing witness to a bond shown me and marked as Exhibit F., for complainant, and saw Henry Winn, the obligor thereof sign the same, and heard him acknowledge that he delivered the same as his act and deed, and that I subscribed 20 my name as attesting witness at same time.

Subscribed and sworn this }
14th of March, 1874, } N. PERRY, JR.
before me }

WILLIAM PATTERSON,

Master and Examiner.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>The Mutual Benefit Life Insurance Com- pany,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>10 Joseph T. Rowand and others,</p> <p style="text-align: right;"><i>Defendants,</i></p>	}	<p><i>On Bill, etc.</i></p> <p><i>Testimony on the</i> <i>part of the defend-</i> <i>ants</i> <i>Elijah H.</i> <i>Purdy, William</i> <i>Phyfe and Robert</i> <i>Clenighan.</i></p>
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Testimony on the part of the defendants, Elijah H. Purdy, William Phyfe and Robert Clenighan in the above cause taken before me, Howard Richards, one of the examiners of this Court, upon the twenty-first day of March, A. D. 1874, at 10 o'clock in the morning of that day, in the presence of William P. Wilson, the solicitor for the said defendants, Elijah H. Purdy, William Phyfe and Robert Clenighan upon notice to the complainants and to the defendants, The Fourth

20 National Bank of the city of New York, Lyman A. Jacobus, Wyllys H. Warner, and Thomas Thompson, due service of which has been acknowledged by the respective solicitors of the said parties as appears by the endorsements upon the said notices hereto annexed.

The solicitor for the defendants Elijah H. Purdy & Co., produced before me a copy of a lien claim filed in the office of the Clerk of Union county by Elijah H. Purdy, Wililam Phyfe and Robert Clenighan, partners trading and doing business under the name, style and firm of E. H. Purdy & Co. vs. Helen W. Dimock, wife of Anthony W. Dimock, builder and owner,

30 on the 26th day of March, 1873, together with a certificate of the same annexed thereto and made by Henry R. Cannon, Clerk of the said county of Union, on the 21st day of March, A. D. 1874, under the seal of the said county of Union, which document I have marked as Exhibit No. 1, ex parte the defendants E. H. Purdy & Co., March 21st, 1874.

And the said solicitor for the said defendants also produced before me a certified copy of the record of a certain judgment entered up in the Circuit Court of Union County, in the case of Elijah H. Purdy, et als., against Helen W. Dimock and husband, on the 30th July, 1873, as the same appears in Book 10 of Jndgments, page 463, &c., together with the certificate there-to annexed of Henry R. Cannon, Clerk of the said Court, under the seal of the said county ; which document I have marked as Exhibit No. 2, ex parte the defendants E. H. Purdy & Co., March 21st, 1874. And I also certify that Robert S. Green,¹⁰ Esq., the counsel for Lyman A. Jacobus, produced before me and offered in evidence in this cause, a mortgage made by Helen W. Dimock and Anthony W. Dimock to Lyman A. Jacobus, dated on the 18th day of March, 1871, upon the southeast corner of South and Broad streets, in the city of Elizabeth, which mortgage is to secure a certain bond for the payment of \$20,000 on the 31st of December, 1872, and was duly acknowledged before W. J. Magie, Master in Chancery, on the 18th day of March, 1871, and recorded in the Clerk's office of Union County in Mortgage Book 17, page 107, &c. 20

And he also produced before me the bond, to secure which the said mortgage was given bearing even date therewith, which said mortgage I have marked as Exhibit No 1, and the bond as Exhibit No. 2, ex parte the defendant Lyman A. Jacobus in this cause.

And the said counsel for the said Lyman A. Jacobus also produced before me a mortgage made by the said Helen W. Dimock and Anthony W. Dimock to the said Lyman A. Jacobus, dated on the 2d day of May, 1870, upon the same premises mentioned in the last named mortgage. The said³⁰ mortgage was duly acknowledged before W. J. Magie, Master in Chancery, on the 4th day of May, 1870, and recorded in the Clerk's office for Union County, on the 13th day of May, 1870, in Mortgage Book No. 14, page 62, &c. And the said counsel for Lyman A. Jacobus also produced before me the bond to secure which the last mentioned mortgage was made, which bond is made by the same parties and bears even date with the said mortgage, and is for the payment of \$60,000 on the

31st day of December, 1870, and interest, &c., which said last mentioned mortgage I have marked as Exhibit No. 3, and the bond as Exhibit No. 4, ex parte the said defendant Lyman A. Jacobus in this cause.

And upon the application of said solicitors, I adjourned the said examination to the twenty-eighth day of March at 10 A. M.

HOWARD RICHARDS,
Master.

10 At the time last named, William P. Wilson, solicitor of the defendants E. H. Purdy & Co., and E. S. Atwater, solicitor of T. Thompson, and Charles F. Hill, solicitor of Wyllis H. Warner, appeared before me, and by request of William P. Wilson the examination was adjourned for one week to the same hour and place.

March 28th, 1874.

HOWARD RICHARDS,
Master.

20 On the examination to be held on the 4th day of April, 1874, was at that time by me adjourned to April 11th, 1874.

HOWARD RICHARDS,
Master.

On the 11th day of April, 1874, William P. Wilson, Esq., E. S. Atwater, Esq., and R. S. Green, Esq., appeared before me for the defendants E. H. Purdy & Co., T. Thompson and L. A. Jacobus respectively, and by their consent the examination was adjourned to Wednesday, April 15th, 1874, at 4 o'clock P. M.

HOWARD RICHARDS,
Master.

30

On the fifteenth day of April, 1874, at 4 o'clock P. M., the solicitor, William P. Wilson, above named, appeared before me, and also E. S. Atwater, Esq., C. F. Hill, Esq., and Robert S. Green, Esq., representing the defendants E. H.

Purdy, William Phyfe and Robert Clenighan, Thomas Thompson, Wyllys H. Warner, and Lyman A. Jacobus respectively, and in the presence of the said solicitors and counsel, the said William P. Wilson, Esq., proceeded with his testimony as follows, viz. :

Thomas Sulzer, a witness produced on the part of the defendant E. H. Purdy, William Phyfe and Robert Clenighan, being duly sworn said:

I live in Roselle; my business is gardening; I do grading streets and digging cellars; I was employed by Mr. Dimock 10 by the month; I know Mr. Dimock; I know and have seen a certain house on the corner of Broad street and South street, and known as the brown stone house; it faces South Broad street and runs back to Williamson street; I don't know the depth of it; it is on the east side of South Broad street, and on the south side of South street; it is on the southeast corner of Broad and South streets; there is no other house on that corner; I did the grading and digging the cellar for that house; I commenced digging the cellar on the 28th day of May, 1870; I have a memorandum to show. 20

Witness being shown page No. 10 of a certain book, which page is marked by me as Exhibit No. 3, ex parte the defendants E. H. Purdy, Wm. H. Phyfe and Robert Clenighan, in this case says :

That entry was made on the fourth of June.

Q. Explain this item of the new cellar; 18 days work at \$1.75, and the entry 12 days work, horse and cart, at \$2.50 per day?

Objected to as incompetent, and that there are no such entries in the book, and as immaterial by R. S. Green, Esq. 30

A. That 18 days work at \$1.75 a day, and 12 days work at \$2.50 a day, was spent the 28th day of May to June 4th; that is all; it was spent for labor in digging the cellar at South and Broad streets; I mean the cellar of the brown stone house.

Q. How did you come to charge for 18 days labor between the 28th day of May and the 4th of June?

Objected to as immaterial by R. S. Green, Esq.

A. There were three men at work for the week and I charged the whole together.

Cross-examined by R. S. Green.

I had three men I should think at work ; may be one day I had four ; I could not tell how many men I had under my charge at that time ; my business under Mr. Dimock was gardening ; I dug more than one cellar ; I dug one on Maple avenue, and I dug a good many in different places up on the
10 hill ; I kept my accounts in this book ; I had some small books in which I took from day to day the men's time ; I have destroyed them now ; when one was broken I threw it away ; by broken I mean filled up ; I made this entry in this book June 4th ; my general custom is to make the entries at the end of the week, and it is a correct account as far as I know of the business of the week before.

Q. How is it then that on page 11 you have an entry under the date of April 30th after an entry of May 30th ?

Objected to as immaterial by the solicitor for E. H. Purdy,
20 Wm. Phyfe and Robert Clenighan, and that that part of the book is not in evidence.

A. That is a bill I received from E. P. Winans for a load of hay for Mr. A. W. Dimock.

Q. Were not all those entries on page 11 made at the same time ?

Objected to as above by Mr. Wilson.

A. I wrote all of it on the same day ; on the 4th of June ; I made all the entries on page 10 at the same time.

The last objected to by Mr. Wilson.

30 I don't know when the date 1870 was entered on page 7 ; I could not tell when the date 1870 on page 9 was entered ; it does not seem to be in the same colored ink as the writing on the page.

All the above is objected to on the same ground as above by Mr. Wilson, solicitor of Purdy, Phyfe and Clenighan.

Q. What is there to show on page 10 that the work charged there was done in 1870 ?

A. There is nothing.

Q. What is there to show on page 10 that the work was done on the cellar of the house at the corner of South and Broad streets.

Objected to as immaterial by Mr. Wilson.

A. There is to show the day of the month of May ; I don't see that I could answer that question ; that is all there is to show that that work was done on the cellar of that building.

Q. How does that show it ?

Objected to as above by Mr. Wilson.

A. I could not tell ; I do not know how many men I had 10 employed there ; on page 12 I entered in cellar corner of Broad and South streets ; the week after that I have it entered the same way ; I was employed by Mr. Dimock generally.

Re-examined by Mr. Wilson.

Witness being shown Exhibit No. 3, says :

That is all my handwriting ; I made it myself.

Q. What do you mean by " new cellar " ?

Objected to as incompetent, and as no such entry is in the book by R. S. Green, Esq.

Question withdrawn by Mr. Wilson.

20

Q. What do you mean by the entry on the middle of line 13, page 10, of book produced by you ?

Objected to on the ground that being in writing it speaks for itself.

A. I mean the cellar in the stone house at corner of Broad and South streets.

Answer objected to by R. S. Green, Esq., as above.

Examination by Mr. C. F. Hill.

Q. What are the three words above referred to in the 13th line ?

30

Objected to as being in writing they show for themselves, by R. S. Green, Esq.

A. " The new cellar " ; I am a German by birth ; I am not familiar with book-keeping.

Q. You have above fixed the date of the commencement of your work upon the cellar of the stone house on the corner of Broad and South streets as May 28, 1870. By what do you so fix the date?

A. I recollect by this book.

Q. Do you recollect the fact of doing that labor, and can you fix the year and season of the year without the aid of the book?

A. I can recollect the fact of doing the work, and year and 10 season without the book.

Re-cross-examined by Mr. Green.

Q. Is there anything on line 13, page 10, that reads "the cellar in the stone house at the corner of Broad and South streets"?

A. There is not; I don't think my recollection is any better now than it was a little while ago when you examined me.

Re-examined by Wm. P. Wilson.

Q. On the top of page 12 you have made an entry on the first five lines. What is that entry?

20 Objected to as incompetent, as the writing speaks for itself, by R. S. Green, Esq.

A. These lines mean the work performed on the cellar, corner of South and Broad streets.

Answer objected to as above by R. S. Green, Esq.

Q. When?

Objected to as before by R. S. Green, Esq.

A. From June 6th to June 13th.

Q. What year was the work performed in?

30 Objected to as not being in rebuttal of the cross-examination by R. S. Green, Esq.

A. 1870; that was not the first work done by me on that cellar; the first work was done on the 28th of May till the 4th of June; I commenced keeping this book in 1870, about March.

Q. The entry on page 12 on 12th, 13th, 14th, 15 and 16th lines - what work was that entry for ?

Objected to as incompetent by R. S. Green, Esq.

A. That entry was work performed on the cellar corner South and Broad streets, June 13th to June 18th, 1870 ; that is all.

Q. Was that the third week ?

Objected to by R. S. Green, Esq.

A. Third week.

Objected to as incompetent and leading, by R. S. Green, 10 Esq.

Re-cross-examination by Mr. Green.

Q. Can you state except by reference to that book, and the information you get from the entries in it the days and dates and lengths of time, and number of men and labor which you charged for work on that cellar ?

Objected to as immaterial by Mr. Wilson.

A. I could not without reference to those entries ; it being several years ago ; I require something to refresh my memory ; I could not remember a big, long time ; the testimony I give 20 here is what I get from this book.

Page 12 of the said book was marked by me as Exhibit No. 3, ex parte the defendants E. H. Purdy, W. Phyfe and Robert Clenighan.

Sworn and subscribed before me, }
this 15th day of April, A. D. } THOMAS SULZER.
1874.

HOWARD RICHARDS,

Master.

The further examination of witnesses was adjourned to 30
Monday, the 20th day of April instant, at 4 o'clock P. M.

HOWARD RICHARDS,

Master.

At the hour last named, William P. Wilson, Esq., and Robert S. Green, Esq., appeared before me, and by consent

adjourned the examination to Monday, April 27th, at 4 P. M.
April 20th, 1874.

HOWARD RICHARDS,
Master.

I adjourned the examination in this cause to Tuesday, the
28th day of April, 1874, at 4 P. M.
April 27, 1874.

HOWARD RICHARDS,
Master.

- 10 On Tuesday, April 28, 1874, there appeared before me, William P. Wilson, the solicitor, and B. Williamson, counsel for E. H. Purdy, William Phyfe, and Robert Clenighan, and Robert S. Green, of counsel for Lyman A. Jacobus.

And in the presence of these parties the examination proceeded.

- The solicitor for E. H. Purdy, Wm. Phyfe and Robert Clenighan, offered in evidence a release of part of mortgaged premises made by the Fourth National Bank of New York to Helen W. Dimock, wife of Anthony W. Dimock, dated March
20 15th, 1870, and recorded May 4th, 1870, in Union County Clerk's office, in Book No. 47 of Deeds, page 126, &c., which I have marked as Exhibit No. 3, ex parte the defendants E. H. Purdy, William Phyfe and Robert Clenighan, in this cause.

Anthony W. Dimock, a witness produced on the part of E. H. Purdy, William Phyfe and Robert Clenighan, and being duly sworn, was examined by B. Williamson, Esq.

Witness being shown Exhibit No. 1, ex parte the defendant, Lyman A. Jacobus, and being asked,

Q. What was the consideration of that mortgage?

- 30 Objected to by R. S. Green as irrelevant and immaterial.

A. The release to me of certain stock security pledged as collateral to the original loan for which the \$60,000 mortgage was part security, I believe; I am not positive; that release was not in writing; it was simply the delivery to me of the certificates

representing the stock securities alluded to ; the mortgage, I think was executed, before the delivery of the securities, not from any recollection of this particular instance, but that this was the usual custom ; I do not remember positively how many certificates there were ; they represented two thousand shares of the Atlantic Mail Steamship Company.

Q. How many shares were delivered to you as the consideration of this mortgage.

Objected to on the ground that it does not appear that they were given as a consideration for the mortgage. 10

A. This mortgage representing but a portion of the transaction, or of the security given for the release of the stock, I am unable to apportion the amount ; there was no other consideration for that mortgage to me but the delivery of certain stock to me which I had before placed in the hands of Mr. Jacobus ; at the time I delivered to him this mortgage I think he held two thousand shares of Atlantic Mail stock belonging to me ; I had placed that stock in his hands as security for a loan of money ; I cannot recollect the market value of the stock at that time ; I cannot recollect the price before that time ; I cannot recollect 20 the highest price about that time ; I don't know how much of the loan was considered to be on the stock ; I don't know for what portion of the loan this stock was considered security.

Witness being shown Exhibit No. 3, ex parte Lyman A. Jacobus, said :

This mortgage was part of the security for a loan of \$80,000 ; I think that loan was in money ; I received a check for \$80,000 ; it was made at one time ; I cannot say whose check it was ; I got the money on the check ; I don't know whose money it was I got ; Mr. Jacobus did not make me the loan directly. 30

Q. If not directly, in what way did he make the loan ?

A. Mr. Frederick Butterfield said he could obtain the money for me, or could lend it to me, I forget which, provided I purchased of him certain securities ; which I did and received from Mr. Butterfield a check for \$80,000 ; by whom drawn I do not recollect ; my simple impression would be that it was Mr. Jacobus' check, but I have no recollection of it.

Q. What securities do you refer to as having purchased of Mr. Butterfield?

Objected to as irrelevant and immaterial, by R. S. Green, Esq.

A. Forty thousand dollars of first mortgage, Quincy and Toledo R. R. bonds; three hundred shares Tenth National Bank; one hundred shares Atlantic Mail; the par value of the National Bank stock was \$100 a share; I received these of Mr. Butterfield at the same time I received the check.

10 Q. How did you pay him for the stock and bonds referred to?

Objected to as irrelevant and immaterial by R. S. Green, Esq.

A. By check of Lockwood and Davenport; it was considered a good check at the time; the market value of the bonds referred to was 84 or 85 per cent; I think the transaction was as a whole, so I could not say how much was allowed for the bonds, and how much for the stock; I don't remember the market value of the bank stock at the time; it was something over par; 20 my recollection would say \$110, but I am not positive; I don't recollect the value of the Atlantic; the whole amount I allowed was \$81,000.

The above testimony relating to the transaction between Mr. Butterfield and the witness objected to by R. S. Green, Esq., and this objection noted by the consent of counsel.

The \$60,000 mortgage is dated May 2, 1870; the check for \$80,000 was dated June 7th, 1870; that was the date I received it; I was swearing to the date I received it when I was stating it was dated on the seventh of June; I think the mortgage was not delivered at the time I received it; I mean to say I 30 don't recollect whether the mortgage was delivered then or not; the transaction took place in the city of New York; at that time I resided in Elizabeth: Mr. Butterfield resided in New York City; I think Mr. Jacobus then lived in Brooklyn; at that time I was a broker but not in active business; Mr. Butterfield and Mr. Jacobus were merchants.

Q. Why was this mortgage executed to Mr. Jacobus?

Objected to as irrelevant and immaterial.

A. Because Mr. Butterfield so requested; the \$20,000 mortgage is dated March 18th, 1871.

Q. Had the execution of this mortgage of \$20,000 any connection with the loan made as a consideration for the \$60,000 mortgage, and if so, what?

A. The \$80,000 loan was secured by the \$60,000 mortgage and 2,000 shares of Atlantic mail stock; the \$20,000 mortgage and another mortgage were subsequently substituted for the 2,000 shares of stock and the stock returned to me, 10

Q. You speak of another mortgage, what was the amount of it, and on what property?

A. I think \$12,000, and was a mortgage either given or assumed by Charles M. Whitney on property on Broad street, Elizabeth.

And being cross-examined by R. S. Green, Esq.

Q. Are we to understand that Mr. Frederick Butterfield sold you \$40,000 of the Quincy and Toledo R. R. bonds, one hundred shares of stock of the Atlantic Mail Steamship Company, and three hundred shares of stock of the Tenth National Bank for \$81,000, and gave you Mr. Jacobus' check for \$80,000 for delivering this mortgage, Exhibit No. 3, and 2,000 shares of Atlantic Mail stock as the account of the transaction? 20

A. Not entirely; I was to settle a claim of Jay Cooke & Company against me of \$150,000, for which there seemed to be some danger of Mr. Butterfield's being held responsible; I don't know whether he was liable or not; my opinion at the time was that he was liable to Jay Cooke & Company; that is all the transaction that I recollect. 30

Q. Then the transaction was that Mr. Butterfield sold you \$40,000 bonds of the Quincy and Toledo Railroad Company, 100 shares of the Atlantic Mail stock, 300 shares of the stock of the Tenth National Bank for \$81,000, and gave you Mr. Jacobus' check for \$80,000, and you delivered the mortgage marked Exhibit No. 3, and 2,000 shares of Atlantic Mail

stock, and agreed to settle a claim of Jay Cook & Co., against you for \$150,000, was it?

A. I don't know that it was Mr. Jacobus' check I received; I don't think that the settlement of the \$150,000 Jay Cooke & Co. matter was made n explicit a condition of the transaction; with those comments that was the transaction as I re collect it; I gave a check of Lockwood & Davenport on the 7th June, 1870, for \$81,000; that was the amount I had agreed to pay for the bonds and stock.

10 Q. That left the loan of \$80,000, and you giving a bond and mortgage for \$60,000 and 2,000 shares of Atlantic Mail as security for it a transaction by itself, did it not?

A. I have given you the facts and am unable to judge what construction should be placed upon them; I know that this was on the seventh of June from an examination of Lockwood & Davenport's accounts, and from entries made on my books at the time; my books were kept at the time by myself I think; I have them not here to refresh my memory; I tell that that is the date from a recent examination of them within a
 20 month; I can't tell any more definitely; I think it was the last week at Shelburne Falls; I looked at them because I had been asked the date a great many times within the past few months; I mean the date of the payment of the money which the \$60,000 mortgage was intended to secure; Mr. David Richardson had asked me; I don't recollect any other persons asking me; I do not remember particularly the entry in my book from which I refresh my memory; borrowed money account was credited with \$80,000 as of that date; that entry was in my handwriting; I kept those books at the time in
 30 Elizabeth at my residence; I do not remember whether that entry was made the same day the transaction took place; I received this check at the office of Lockwood & Davenport, No. 67 Exchange Place, from Frederick Butterfield; I think Mr. Davenport was present; I don't recollect; I think Mr. Davenport, Mr. Butterfield and I were present; I remember indistinctly when I first applied to Mr. Butterfield, somewhere from two weeks to two months beforehand; the mortgage

was prepared by my direction by Magie & Cross; it was acknowledged May 4th, 1870; I had received before it was executed intimations that I considered equivalent to offering me the money; the mortgage was executed in contemplation of this loan; my first application was prior to the 2d of May; I have not the slightest recollection how long before it was executed, I had been negotiating with Mr. Butterfield; I told him I wanted this money to enable me to settle this matter of Jay Cooke & Co. against me; that is my recollection of the transaction; the check was passed to my credit by Lockwood 10 & Davenport, and I at the same time drew on my credit with them to pay Mr. Butterfield \$81,000 for the bonds and the stock.

Q. How did that help you pay Jay Cooke & Company \$150,000 or anything on their claim?

A. By placing in my control securities available for raising money; Lockwood & Davenport's check was just the same as money; I paid Mr. Butterfield \$81,000; I received of Mr. Butterfield \$80,000 no benefit so far; I delivered Mr. Butterfield or Mr. Jacobus, you understand what I mean, a mortgage 20 and stock both unsaleable, or neither of which could be readily sold, and received securities which it was easy to convert into cash; I think there was no market for any considerable amount of Atlantic Mail stock at the time; I took 100 shares from Butterfield in this transaction; I don't know where he had got that 100 shares from; I can't swear where he got those bonds from; he had not got them from me, I swear to this.

Cross-examination adjourned to Wednesday, April 29th, 1874, at 4 o'clock P. M. by consent.

30

April 29th, 1874. The cross-examination of this witness proceeded in the presence of R. S. Green and of Wm. P. Wilson.

The witness corrected his last answer of yesterday by stating: I wish to insert the word "originally" in my last answer so as to make it read: "He had not got those bonds from me 'originally,' in as much as I had previously purchased the

bonds of him, sold them back to him, and re-bought them in this transaction." To the best of my recollection I think that will be found to be exact.

Q. By R. S. Green, Esq.

Do you swear that you have correctly stated the whole transaction of this loan of \$80,000?

A. To the best of my recollection, knowledge and belief, I have.

Question repeated.

10 Repetition of the question objected to as already answered.

A. To the best of my recollection, knowledge and belief, I have correctly stated every important element and consideration entering into the transaction.

Q. Were all these negotiations carried on between you and Mr. Butterfield verbally, or were there some writings passed between you?

A. I do not recollect; I have not the slightest recollection about that.

Q. Do you swear that the sale of the bonds and stock by
20 Mr. Butterfield to you, and the loan to you of \$80,000, the payment of which you secured by the bond and mortgage of \$60,000, and the hypothecation of 2,000 shares of Atlantic Mail stock were not two separate and distinct transactions?

A. I have to reply as yesterday that I have stated the exact facts, and object to swearing to the construction that should be put on them.

Q. Do you decline to give any other answer?

A. Unless I am instructed that I have not done my duty in giving my last answer; I have answered the question to the
30 best of my ability.

Q. Do you know whether the matters referred to were the same or separate transactions?

A. That is a question of the proper construction of the transaction of which I do not feel competent to judge.

Question repeated.

A. That appears to me to be a question of a proper construc-

tion of the transaction of which I do not feel competent to judge.

Question repeated.

Objected to by Mr. Wilson because the witness has answered to the best of his ability.

A. My belief is that it was all one transaction, or that one portion of it was contingent on the other.

Q. Did not Mr. Butterfield tell you that Mr. Jacobus would lend you this money?

Objected to by Mr. Wilson as immaterial. 10

A. I think not.

Q. Will you swear he did not?

A. I will swear that to the best of my recollection and belief he did not.

Question repeated.

A. I cannot swear more positively than I have done.

Question repeated.

Objected to as immaterial and because the question has been answered.

A. I cannot swear as to what Mr. Butterfield did not say 20 three or four years ago.

Q. Will you swear to what he did tell you three or four years ago?

A. Yes, sir; I remember some of it; I presume I do not remember it all; I don't know; I cannot say whether he did or did not tell me that Mr. Jacobus would lend me this money.

Q. Did he not tell you so when he told you to have the bond and mortgage drawn to Mr. Jacobus?

A. I believe not; I will not swear he did not.

Q. Did Mr. Butterfield tell you that he would not let you 30 have the money himself but would get it for you from Mr. Jacobus?

A. I think not, but won't swear.

Q. Did not Mr. Butterfield tell you that the money was

ready for you when he told you to have the bond and mortgage drawn to Mr. Jacobus?

A. No, sir; I will swear he did not.

Q. What was it he told you? Give the whole of the conversation when he told you to have this bond and mortgage drawn to Mr. Jacobus?

A. I don't recollect what the conversation was at that particular time.

Q. To whom, if to anybody, have you paid interest upon 10 these bonds and mortgages of \$60,000 and \$20,000?

A. On the loan of \$80,000 to which the bonds and mortgages were collateral; I paid the interest to Mr. Jacobus.

Q. Do you know when the masons commenced to construct the house at the corner of Broad and South street?

A. I do not.

Q. When, to the best of your knowledge, did the masons commence to construct that house?

Objected to by Mr. Wilson on the ground that it is a repetition, and that the question has been answered.

20 A. I don't know; I should think in the first ten days in June, but I am by no means sure; I don't know whether it was before or after this mortgage was given; I have no recollection.

Q. At the time you gave this bond and mortgage what representations did you make as to the encumbrances prior to that bond and mortgage?

A. I don't remember.

Q. Answer to the best of your recollection and belief.

Objected to by Mr. Wilson as irrelevant and immaterial.

30 A. I have no recollection; I have no recollection of what I represented; I presume I did make some.

Q. Did you not state that the insurance company had a mortgage of \$10,000 on it?

Objected to as immaterial and irrelevant by Mr. Wilson.

A. I presume so, but don't recollect.

Q. Did you not say that excepting that mortgage and taxes

and assessments, that this mortgage would be the next encumbrance?

Objected to for the same reason as the last question by Mr. Wilson.

A. I don't recollect; I will not swear I did not; I did not say so in writing that I recollect; I think Oscar Marsh was the first mason I employed; I don't recollect any other mason I employed there, any other boss mason; I think he did all the mason work.

Q. Do you remember what the 2,000 shares of Atlantic Mail stock were put in at when they were hypothecated? 10

A. I do not; I have no recollection.

Q. Was it at 25 per cent. or was it at par?

A. I have no recollection.

Q. Do you swear that you have no recollection of whether that stock was put in at par or not?

A. I do swear that I have no recollection whatever since this transaction; I have dealt always with Mr. Jacobus in reference to the loan in the payment of interest, &c.

Q. This money on the \$60,000 mortgage—has it been paid? 20

A. None of the principal of the loan has been paid; no part of the principal of \$80,000 has been paid.

Re-examined by Mr. William P. Wilson.

Q. Have you not been engaged in times past in numerous transactions similar to the one upon which you have been giving your testimony?

A. I don't know the meaning of the word similar as used by you, nor how much of a resemblance in your mind constitutes similarity: I have in times past been engaged in numerous large business transactions, both before and after this transaction; I could not give the details of all these transactions from memory. 30

Q. Do you know whether any materials were furnished to that house prior to the first of May, 1870?

Objected to by R. S. Green, Esq., as immaterial.

A. I do not recollect that any materials were furnished for

the purpose of being used in the erection of that house prior to May first, 1870, but think not.

Q. When did you first contemplate building that house?

Objected to by R. S. Green, Esq., as immaterial.

A. I should think about the first of April, 1870, but cannot swear.

Q. Did you, prior to May fifteenth, 1870, make any contract with any person for the furnishing of any materials for the house on the southeast corner of Broad and South street?

10 A. I think not, but cannot swear.

Q. Do you remember when they commenced digging the cellar of that house?

A. No, sir; I have no recollection when it was.

And being further examined by Mr. Edward S. Atwater, the witness further said:

The architect of that house was Mr. Thomas Thompson; I don't know when I first consulted him about the plans of that house.

Sworn and subscribed before }
20 me, this 29th day of Ap- } A. W. DIMOCK.
ril, 1874.

HOWARD RICHARDS.

Master in Chancery.

Adjourned by consent, to May 4th, 1874, at 4 P. M.

H. RICHARDS,

M. C. C.

On May 4th, 1874, the examination was adjourned by W. P. Wilson, Esq., solicitor, to Thursday, May 7th, 1874, at 4 P. M.

H. RICHARDS,

30

M. C. C.

On May 7th, the examination was again adjourned to Monday the 11th May, 1874, at 4 P. M., by W. P. Wilson, Esq.

H. RICHARDS,

Master.

On May 11th, 1874, the examination was again adjourned to

Thursday, the 14th May, 1874, at 4 P. M., by W. P. Wilson,
Esq. H. RICHARDS,

M. C. C.

On May 14th, 1874, W. P. Wilson, Robert S. Green and E. S. Atwater appeared before me and adjourned the examination to Monday, the 18th, 1874, at 4 P. M.

HOWARD RICHARDS,

Master.

On the 18th of May, 1874, W. P. Wilson, the solicitor of E. H. Purdy & Co., and R. S. Green for the defendant, Lyman A. 10 Jacobus, appeared before me, and at their request I proceeded with the examination in their presence, as follows, viz. :

Elijah H. Purdy, one of the defendants, being produced as a witness, and sworn on his own behalf, deposed and said :

I reside in the city of New York ; I am a member of the firm of E. H. Purdy & Company ; I did have dealings with Helen W. Dimock ; we finished the interior of the brown stone house up here on the hill on south-east corner of Broad and South streets ; we finished all the inside wood work, all the interior of the house with the exception of the floors and parti- 20 tions ; we filed a lien against that house for the work we did on it.

Witness being shown Exhibit No. 1, ex parte the defendants E. H. Purdy & Co. in this cause, said :

All the materials mentioned in that paper were furnished to the brown stone house at the time specified in that paper ; no part of that bill has been paid ; the amount of principal due on that lien is \$47,979.77, with interest from December 31st, 1872, on that sum.

And being cross-examined by Mr. Robert S. Green, said : 30

That statement embraces the whole work and all the materials we furnished for Mrs. Dimock to the brown stone house ; there are no deductions to be made from that bill ; we never received anything on it ; we received some notes ; I don't recollect how many, two or three, to the amount of \$5,000 each ; there were two or three.

journed to Tuesday, the 26th day of May, 1874, at 4 o'clock P. M. of that day.

HOWARD RICHARDS,

Master.

On Tuesday, May 26th, 1874, the examination was again adjourned to Wednesday, May 27th, 1874, at the same hour.

On Wednesday, May 27th, 1874, at 4 o'clock P. M., Robert S. Green appeared before me and also Wm. P. Wilson, and the examination on the part of Lyman A. Jacobus, the defendant, proceeded as follows, viz. :

Frederick Butterfield, a witness produced on the part of the defendant Lyman A. Jacobus, and being by me duly sworn, deposed and said : 10

I know Anthony W. Dimock and Lyman A. Jacobus ; in 1870 I negotiated a loan for Mr. Anthony W. Dimock from Mr. Lyman A. Jacobus ; it was some time in the early part of the year ; to the best of my knowledge and belief the latter part of April or the beginning of May of that year ; the amount of the loan was eighty thousand dollars ; I know how this loan was secured ; to the best of my knowledge and belief it was secured by a mortgage upon the brown stone house property ; I mean the property adjoining Davenport's. 20

Witness being shown Exhibit No. 3, ex parte the defendant Lyman A. Jacobus, said :

The amount of the mortgage was sixty thousand dollars, and the balance of the \$80,000 was secured by 2,000 shares of Atlantic Mail Steamship Co. stock.

Witness being also shown Exhibit No. 4, ex parte Lyman A. Jacobus, said :

My impression is that I received this bond and mortgage, Exhibits Nos. 3 and 4 from Mr. Dimock and delivered them to Mr. Jacobus ; this bond and mortgage were given in pursuance of negotiations I had had with Mr. Dimock ; at the time I received them I gave to Mr. Dimock, to the best of my knowledge and belief, a check of Mr. Jacobus for eighty thousand dollars. 30

Q. Did you then have, have you since had at any time, and

have you now any interest whatever in the loan to secure which this bond and mortgage was given ?

Objected to by Mr. Wilson as leading.

A. Most emphatically no ; neither directly nor indirectly ; put it down as strong as you can.

Q. Who, to the best of your knowledge, information and belief, was interested in this loan secured by this bond and mortgage, and the stock you have spoken of representing eighty thousand dollars for which you gave Mr. Jacobus a check to
10 Mr. Dimock !

A. Mr. Lyman A. Jacobus alone and nobody else.

Q. Did this loan form part of any other transaction with which Mr. Jacobus was connected ?

A. None whatever ; I had another transaction with Mr. Dimock about this time.

Q. Did he about that time purchase of you any, and what securities ?

A. About that time he purchased from me 300 shares Tenth National Bank stock, forty thousand dollars Toledo and Quincy
20 first mortgage bonds, and a bond and mortgage for five thousand dollars, for eighty-one thousand dollars ; I should think that I about that time negotiated the loan for Mr. Dimock from Mr. Jacobus of eighty thousand dollars which was secured by the bond and mortgage which have been spoken of as well as the stock of the Atlantic Mail Steamship Co. ; I had assured Mr. Dimock that he should have the eighty thousand dollars as a loan several weeks before the bond and mortgage were delivered, to the best of my recollection and belief.

Q. Was anything said between you and Mr. Dimock in refer-
30 ence to having the bond and mortgage executed to Mr. Jacobus and recorded prior to the delivery of them ? If so, what ?

A. I remember nothing special except that the bond and mortgage was to be drawn to Mr. Jacobus and recorded, and when ready along with the other securities for delivery he was to get the money ; so far as I can recollect in pursuance of that agreement he brought the securities and received Mr. Jacobus' check for the amount.

Q. Was, or was not, the sale by you of the securities you

have named to Mr. Dimock and the loan to him of eighty thousand dollars upon the bond and mortgage and Atlantic Mail stock one and the same transaction or otherwise?

Objected to by Mr. Wilson as leading.

A. Entirely different transactions; one was a transaction between myself and Dimock, and the other a transaction between Mr. Dimock and Mr. Lyman A. Jacobus with which I had no interest directly or indirectly except as a mutual friend of both of them.

Cross-examined by Mr. Wilson. 10

I think from the date of the mortgage it must have been before then that I negotiated the loan; it was \$80,000; I know from memory; I only know from memory that the negotiation must have taken place some time before the date of the mortgage Exhibit No. 3, and before Mr. Dimock got the money; the mortgage I speak of is for \$60,000 Exhibit No. 3.

Q. Do you know from memory that the mortgage to which you refer was a mortgage of \$60,000?

A. To the best of my recollection it was.

Answer objected to as not responsive. 20

Question repeated.

Repetition of the question objected to for the reason that it has been once answered.

A. I can give you no further answer to the question; there was a loan of eighty thousand dollars secured by a mortgage of sixty thousand dollars on a house and lot of Dimock's in which I believe he then resided, and two thousand shares of Atlantic Mail stock.

Q. The 2,000 shares of Atlantic Mail stock were given then to secure \$20,000 of that loan were they? 30

A. The 2,000 shares of Atlantic Mail Steamship stock were given in addition to the \$60,000 mortgage to secure the loan of \$80,000; or, in other words, if the \$60,000 mortgage was not good and should fall short of the amount, the balance short was a lien on the balance of the security, that would be the stock; when I speak of the mortgage falling short of the amount, I mean the amount of the mortgage of \$60,000; I do not remem-

ber the date of the check ; I had other transactions with Mr. Dimock about that time ; lots of them.

Q. What were they ?

Objected to so far as it is inquiring into any transactions between Mr. Dimock and the witness not relating to the subject matter of this suit, except so far as they may be connected with it.

A. Nearly all of them have been loans of money as security, or supposed security.

10 Q. Will you swear positively that the transaction in which Mr. Dimock purchased of you 300 shares of Tenth National Bank stock, forty thousand dollars Toledo and Quincy first mortgage bonds, and a bond and mortgage for \$5,000, had no connection whatever with the loan of \$80,000 to Mr. Dimock spoken of ?

A. I say they are entirely different ; I swear most positively that they were two entirely different transactions ; the securities sold by me to Mr. Dimock were my own property in which Mr. Jacobus had no interest either directly or indirectly, and that
20 the loan made by Mr. Jacobus of \$80,000 was his own property in which I had no interest directly or indirectly.

Q. Will you swear that the two transactions had no connection in interest ?

A. I can only answer as I answered the former question.

Q. Was one transaction made in consideration of the other ?

A. That I can't remember ; I can only remember the transactions.

The cross-examination of this witness was here adjourned to
Monday, the first day of June, 1874, at 4 o'clock in the afternoon, by the consent of all the parties present.

30 May 27th, 1874.

HOWARD RICHARDS,

Master.

On the first day of June, 1874, the same counsel appeared before me, together with the said witness, and in their presence the cross-examination was continued by Mr. Wilson as follows, viz. :

Q. What was said to you by Mr. Dimock in regard to having the bond and mortgage spoken of by you executed by Mr. Jacobus prior to their delivery to Mr. Jacobus?

A. I don't remember anything special being said; I don't remember any particular conversation with regard to that subject.

Q. In answer to one of the questions in the examination you make use of this language: "I remember nothing special except that the bond and mortgage was to be drawn to Mr. Jacobus and recorded, and when ready along with the other securities for delivery he was to get the money." What securities did you mean by other securities?"

A. To the best of my knowledge and belief so far as my memory serves me, the securities were to be that mortgage on that property where he lived at that time for sixty thousand dollars and 2,000 shares of the stock of the Atlantic Mail Steamship Company; bear in mind that this all occurred four years ago, and I am speaking entirely from memory; I have no memorandum of the transaction, and never had any as far as I remember.

Q. To whom were the 2,000 shares of Atlantic Mail stock transferred by Mr. Dimock?

A. I don't remember who they were transferred to.

Q. Do you know whether or not they were transferred to Mr. Jacobus?

A. I don't remember, but I should think they were in blank, such certificates generally are; I have dealt in Atlantic Mail steamship stock; a certificate of stock is drawn by the company to some person, and has on the back of it a blank power of attorney to transfer the stock which is signed in blank by the person in whose name the certificate is drawn; this makes it perfectly negotiable as I understand it after being witnessed; I have not the slightest recollection in whose name the certificate for 2,000 shares was drawn.

Q. Can you swear positively it was not drawn to your own order?

A. My impression is it was not; I would not swear to it.

Q. In answer to one of the questions asked you, you say you

had assured Mr. Dimock that he should have the eighty thousand dollars as a loan several weeks before the bond and mortgage were delivered. What was the consideration of that assurance?

A. I don't remember having assured him of anything of the kind; I assured him I would get it for him; I don't remember any consideration.

Q. Will you swear positively that you did not, or were not to receive some consideration for that assurance?

10 A. I. don't remember that I ever received any consideration or ever expect to receive any consideration for getting him that loan.

Q. Will you swear positively that the loan to Mr. Dimock of the eighty thousand dollars was not made in consideration or on in part consideration of the purchase from you by Mr. Dimock of the three hundred shares Tenth National Bank stock, forty thousand dollars Toledo and Quincy first mortgage bonds, and the bond and mortgage of five thousand dollars mentioned by you in your previous examination in this case?

20 A. Those were entirely two different transactions.

Question repeated.

A. Well, I can make no answer different from what I have; I had not the slightest interest in the 2,000 shares of Atlantic mail stock; I have no idea they were made to my order; my impression is not; I am not certain about it; the stock book would show it; I have no idea what the value was at that time; I have a vague idea it was quoted at twenty-five dollars a share about that time; I don't remember what it was represented to be worth; I don't remember the value of the bank stock, but I
30 do remember that about that time I sold some at one hundred and twenty-eight dollars or one hundred and thirty dollars.

Sworn and subscribed before }
me, this 1st day of June, } FRED BUTTERFIELD.
1874.

HOWARD RICHARDS,

Master in Chancery.

By the consent of the said counsel, the examination on the

part of Mr. Lyman A. Jacobus was adjourned to June fifteenth, at four o'clock in the afternoon.

1st June, 1874.

HOWARD RICHARDS.

Master in Chancery.

On Monday, the fifteenth day of June, A. D., eighteen hundred and seventy-four, Mr. R. S. Green appeared for the defendant Mr. Jacobus, and Mr. B. Williamson for the defendant, Mr. Purdy, and at the request of Mr. Green the examination was adjourned to Monday, the 29th day of June, 1874, at 4 P. M. 10

HOWARD RICHARDS,

Master

On the twenty-ninth day of June, eighteen hundred and seventy-four, the counsel for the said defendant Purdy and the defendant Jacobus, requested me to adjourn the examination in this cause to Monday, July thirteenth, eighteen hundred and seventy-four, at 4 o'clock in the afternoon.

29th June, 1874.

HOWARD RICHARDS,

Master.

20

On Monday, July thirteenth, eighteen hundred and seventy-four, Mr. Wm. P. Wilson appeared before me, and at his request I adjourned the examination to Monday, July twentieth, eighteen hundred and seventy-four at 4 P. M.

July 13th, 1874.

H. RICHARDS,

M. C. C.

On Monday, July twentieth, eighteen hundred and seventy-four, at 4 P. M., R. S. Green, Esq., appeared before me for the defendant Jacobus, and W. P. Wilson, Esq., for the defendant, 30 E. H. Purdy, and at their request the examination was adjourned to Monday, August thirty-first, eighteen hundred and seventy-four, at 4 P. M.

20th July, 1874.

HOWARD RICHARDS,

Master.

On Monday, the 31st day of August, 1874, at 4 o'clock, P. M., I again adjourned the said examination at the request of the counsel aforesaid, to Monday, September the 7th 1874, at four P. M.

Audust 31st, 1874.

HOWARD RICHARDS,
Master.

On Monday, the 7th day of September, 1874, at the request of the parties aforesaid, I again adjourned the examination to
10 Monday, the 14th of September, at 4 P. M.
September 7th, 1874.

HOWARD RICHARDS,
Master.

On Monday, September 14th, 1874, W. P. Wilson, Esq., appeared before me, and at his request I adjourned the examination to Wednesday, the sixteenth day of September, 1874, at 4 P. M.

September 14th.

HOWARD RICHARDS,
Master.

20

On the twenty-fifth day of September, A. D., 1874, W. P. Wilson, Esq., and Benjamin Williamson, Esq., appeared before me for Purdy and Phyfe, and Robert S. Green, Esq., for Jacobus, and in their presence and with their consent I proceeded with the examination.

Lyman A. Jacobus, a witness produced on the part of the defendant, L. A. Jacobus, and being by me duly sworn, deposed :

I am one of the defendants in this suit.

Witness being shown.

30 Exhibits Nos. 3 and 4, ex parte the defendant Lyman A. Jacobus is asked :

Q. To whom does that bond and mortgage belong ?

A. To myself; no other person has any interest in it; it is solely mine; the consideration of that mortgage was a loan; I made a loan to Anthony W. Dimock for \$80,000; it was secured by this mortgage of \$60,000 and 2,000 shares of At-

lantic Mail Steamship Company Stock ; I do not hold that stock ; I have something in place of it ; the loan was originally made for a year, and to be returned at that time ; but prior to the end of the year, Mr. Dimock wished the loan extended for eighteen months longer, to which I consented ; at this time, however, I made a proposition to give up these 2,000 shares of stock, and to take an additional mortgage of \$20,000 on this property.

Witness being shown.

Exhibits Nos. 1 and 2, ex parte the defendant, Lyman A. 10 Jacobus, said :

Those are the papers I took in addition to this second mortgage for \$20,000 ; I was given a second mortgage on another piece of property in Elizabeth on a house and lot occupied by Charles M. Whitney on Broad Street, 260, north of Garden street, on the West side of Broad street ; this exchange was made in this way : I gave up the stock and took the mortgage as collateral security ; the Whitney property has been sold under the foreclosure ; I bought it in for the amount of the first mortgage and the interest and Sheriff's fees ; I was the 20 only bidder ; it was also subject to assessments which I have paid ; I have paid in all over \$15,000 for it ; the amount mentioned in the mortgage was \$12,000 I think, and there was a previous mortgage of \$11,000 ; that \$80,000 I loaned to Dimock belonged to me ; there has been interest paid to me by Anthony W. Dimock up to July 1st, 1872 ; in his own check \$2,800 each time ; it is not endorsed on the bonds, but he holds receipts for the money from me.

Cross-examination by B. Williamson, Esq.

I had been acquainted with Mr. Dimock before making this 30 loan, but had no personal transactions with him ; Mr. Dimock did not apply to me in the first place ; Mr. Butterfield was the one that negotiated the loan, my partner at that time ; I think it was Mr. Butterfield handed me the mortgage ; we negotiated the loan, and when he handed me the mortgage and stock, I handed him a check ; it was for \$80,000 ; the par value of the stock was \$100 a share ; I don't know what it would have sold

for, or its market value ; but I was told that it was worth \$25 a share at least ; I then had security for my loan as I understood to the amount of \$110,000 to secure \$80,000 as I supposed ; at the time I made the loan to Mr. Dimock, I had no idea of any sale of stock made by Mr. Butterfield to Mr. Dimock ; I could not say whether Mr. Butterfield sold Mr. Dimock a large amount of stock at the time I gave Mr. Butterfield my check for \$80,000 ; I do not know that about the same time Mr. Butterfield sold Mr. Dimock a large amount of stock ; I still have
 10 the check and I now prodece it ; the \$12,000 mortgage has not been produced by me in this cause ; I could not tell the market value of the Atlantic Mail Stock at the time I returned it to Mr. Dimock.

Re-examined by R. S. Green, Esq.

Witness being shown the check, dated June 7th, 1870, on the Tenth National Bank of the City of New York, to the order of A. W. Dimock for \$80,000, signed Lyman A. Jacobus and endorsed "pay to the order of Lockwood & Davenport, A. W. Dimock, for deposit Lockwood & Davenport," and marked Exhibit No. 5, ex parte L. A. Jacobus, said :

That is the check I gave for this loan of \$80,000 I have spoken of ; I got it back from the Bank with my other checks ; those cuts are the marks of cancellation when it was paid.

Sworn and subscribed before me, }
 this 25th day of September, A. } LYMAN A. JACOBUS.
 D. 1874.

HOWARD RICHARDS,

Master in Chancery.

Examination adjourned to Tuesday, September 29th, 1874,
 30 at 4 P. M., by consent.

Examination adjourned to October 2d, 1874, at 4 P. M., by consent.

On October 2d, 1874, Mr. R. S. Green appeared before me, and also Mr. Wilson, B. Williamson, Esq., and Mr. E. S. Atwater, and in their presence the examination proceeded as follows :

Oscar Marsh, a witness produced on the part of L. A. Jaco-

bus, and being duly sworn by me, on his oath deposed and said :

I reside in Elizabeth ; my occupation is that of a builder ; I know the house called the Brown Stone House, formerly owned by Mr. Dimock, on the South-east corner of Broad and South street ; I did work on that house ; it was mason work ; I laid the foundation of it ; I did the first mason work on the house ; I commenced building June sixteenth, 1870 ; I was working there from that time pretty much till cold weather ; I built the house up to the second tier of beams ; the basement and first 10 story ; that was the brick work, the outside work is stone ; I did not do the inside work ; the foundation was laid of brick ; I did work on that house to the amount of \$1,544 39-100 : Thomas Royle did the stone work ; my bill included labor, lime, sand and cement ; not bricks ; Dimock furnished the brick.

Cross-examined by Mr. Williamson.

The foundation of the house is brick-work ; the base course is concrete of sand, gravel and cement ; that brick-work was carried above the ground, but not on the outside of the house, so you can see it ; it was carried up to the surface of the ground ; 20 above the surface of the ground ; the brick-work is inside the stone ; the stone comes down to the surface of the ground ; the date of the first day's work I did there was June sixteenth, 1870 ; I made a memorandum of it ; I am satisfied that is correct ; at the time I commenced work there the old house was still upon the same lot of land ; there were no other buildings, except a barn and small house ; there was a small house on Williamson street, south of the barn.

Re-examination by Mr. Green.

I laid the base course in the foundation. 30

Sworn and subscribed before }
me, this 2d day of October, }
1874.

OSCAR MARSH.

HOWARD RICHARDS,

Master in Chancery.

Examination adjourned to Monday, October 5th, at 4:15 P. M., by consent.

On Monday, October 5th, at 4:15 P. M., Mr. Wilson and

Mr. Williamson appeared before me, for the defendants, E. H. Purdy, William Phyfe and Robert Clenigen, and no one appearing for any other party, at their request I adjourned the examination to Tuesday, October 6th, 1874, at 4 P. M.

On Tuesday, October 6th, 1874, at 4 P. M., Mr. W. P. Wilson and Mr. Williamson appeared before me, and also R. S. Green, Esq., and the examination proceeded as follows, viz :

Oscar Marsh, being called as a witness on the part of the defendants, Elijah A. Purdy, William Phyfe and Robert Clenighen, and having been heretofore sworn in this cause, deposed and said :

I was acquainted with the property mentioned in the mortgage given by Dimock to Jacobus in 1870 ; I think the lot was worth at that time on Broad street, \$200 a foot, running through the whole depth of the lot ; I recollect the dwelling-house on the lot at the time ; I know some of the improvements Dimock put upon the dwelling after he bought it ; in May, 1870, that dwelling-house was worth at least \$15,000 as it stood ; they moved it off the lot entirely ; I think Mr. Dimock did it ; it was moved
20 after the new stone house was put up ; I built the barn in 1868, it cost \$2,769.27 for mason and carpenter work and materials ; there was a small house built on the property in the Spring of 1869 ; it cost \$1,760 ; it is there now ; there was no other building on the property ; the stone house is not yet completed.

Sworn and subscribed before me, }
this 6th day of October, A. D. } OSCAR MARSH,
1874.

HOWARD RICHARDS,

Master in Chancery.

30 Jacob Davis, a witness produced on the part of the defendants, E. H. Purdy & Co., and being duly sworn by me, deposed and said :

I have lived in Elizabeth since the spring of 1836 ; I have been a mason for thirty years ; I have been valuing property for the last four years for insurance companies : The Mutual Life of New York ; I knew the Dimock property in 1870, on which the house stands, and the description of which I heard

read from the mortgage yesterday; I think that property could have been sold in 1870, from \$150 to \$200 a foot front; I remember the dwelling that stood there then; that house has been moved off.

Sworn and subscribed before }
me, this 6th day of October A.D. } JACOB DAVIS.
1874.

HOWARD RICHARDS,

Master in Chancery.

David Richardson, a witness produced on the part of the 10 defendants, E. H. Purdy & Co., and being duly sworn deposed and said :

I was acquainted with the Dimock property in 1870 and the house which he lived in at that time; I knew the value of the additions and improvements in the house; he expended \$17,000 in improveing that house; the lot in 1870, without the build-ings, was worth about \$60,000.

Cross-examination by Mr. Green.

I don't know the full amount the stone house cost; as far as it is now finished it has cost \$125,000; I include in this sum 20 bills yet unpaid; there was an addition to the old house built upon the rear, one on the side and one in front and two bay windows, and mirrors put in, window-heads inside, extra cornices, fresco, burglar alarm, plumbing and gas fittings; this all cost the \$17,000, and was done by E. H. Purdy & Co., who did the wood work for the stone house; Mr. Purdy told me the amount of the bill; that is the only way I know it.

Mr. Green objected to this testimony, on the ground of its incompetency.

Re-examination by Mr. Williamson.

I used to visit Mr. Dimock at his house at this time; I saw 30 the improvements I have spoken of; I thought \$17,000 enough for the improvements.

Sworn and subscribed before }
me, this 6th day of Octo- } D. RICHARDSON.
ber, A. D. 1874.

HOWARD RICHARDS,

Master in Chancery.

IN CHANCERY OF NEW JERSEY.

*Between*The Mutual Benefit Life Insurance
Company,*Complainant ;**and*

Joseph T. Rowand et ux. et. als.,

*Defendants.**On Bill.**Testimony on the
part of Wyllys
H. Warner.*

10 Testimony on the part of the defendant Wyllys H. Warner in
the above cause, taken before Howard Richards, one of the ex-
aminers of this Court, upon the twenty-eighth day of March,
1874, at 10 o'clock A. M. of that day, in the presence of Charles
F. Hill, one of the solicitors of the said defendant Wyllys H.
Warner, upon notice to the complainants and to the defendants
The Fourth National Bank of the city of New York, Lyman
A. Jacobus, Thomas Thompson and Elijah H. Purdy, William
Phyfe and Robert Clenghen, due service of which has been ac-
knowledged by the respective solicitors of the said parties, as
20 appears by the endorsements upon the notices annexed to said
testimony.

Charles F. Hill, a witness on the part of the defendant Wyllys
H. Warner, one of the defendants in this suit, being duly sworn,
on his oath deposed and said :

I am one of the solicitors for the defendant Wyllys H. War-
ner ; we filed his answer to the bill of complaint on January
fifteenth, A. D. 1874, setting up a claim of a mechanics lien
upon the mortgaged premises described in the bill ; this defend-
ant's lien claim was filed in the office of the Clerk of Union
county, on the seventeenth day of October, A. D. 1873, and
30 summons issued returnable October twenty-seventh, A. D. 1873.
and the issue thereof on the 17th October, A. D. 1873, endorsed
on the lien claim ; the claim was filed for two thousand eight
hundred and twenty-five dollars principal without interest ;

judgment was entered up on that proceeding for \$3,017.92, and for \$40.61 costs of suit, making in all \$3,058.53; I then learned that the sheriff of Union county had failed to make a legal service upon Anthony W. Dimock and Helen his wife, and on the twelfth day of January, A. D. 1874, I obtained an order from the Court for the issue of a new summons directed to Anthony W. Dimock and wife; that order was filed and the new summons was issued on the 15th of January, A. D. 1874; that summons has been returned served, and the declaration has been served personally on Anthony W. Dimock and his wife both, on the eighteenth day of February, A. D. 1874, and I am now waiting to enter judgment; at the next adjournment of this examination I will have marked as Exhibits in this cause copies of the lien claim and the others papers in that proceeding.

Sworn and subscribed before me,
this 28th day of March, A. D.
1874.

CHAS. F. HILL,

HOWARD RICHARDS, 20
Master in Chancery.

Wylls H. Warner, the defendant, being duly sworn according to law, on his own behalf as a witness deposed and said:

I am one of the defendants in this cause, and claim a mechanics lien upon the mortgaged premises mentioned in the bill for putting in a heating apparatus; I completed that work on the twenty-third day of December, eighteen hundred and seventy-two; I began that work about July, eighteen hundred and seventy-one, and prosecuted the work continuously as rapidly as the building would permit without any delay on my part; 30 the total amount of my bill was \$5,500; the amount of payment received is \$2,675; the balance due is \$2,825.

Sworn and subscribed before me,
this 28th day of March, A. D.
1874.

W. H. WARNER.

HOWARD RICHARDS,
Master.

The examination was here adjourned to Saturday, April 4th,
1874, at 9½ A. M.

HOWARD RICHARDS, 40
Master.

Examination adjourned to April 11th, at 10 A. M.
April 4th, 1874.

HOWARD RICHARDS,
Master.

At the time fixed in the last adjournment, Wm. P. Wilson, Esq., E. S. Atwater, Esq., and Robert S. Green, Esq., appeared for the defendants E. H. Purdy & Co., T. Thompson, and L. A. Jacobus respectively, and by their consent the examination was adjourned to Wednesday, the 15th of April, 1874, at 4 P. M.

10 April 11th, 1874.

HOWARD RICHARDS,
Master.

On the fifteenth day of April, at 4 P. M., appeared before me C. F. Hill, Esq., W. P. Wilson, Esq., Edward S. Atwater, Esq., and Robert S. Green, Esq., and the solicitor for the said Wyllys H. Warner, produced before me a paper purporting to be a copy of a lien claim of said Wyllys H. Warner vs. Anthony W. Dimock and Helen W. Dimock, builders, and Joseph T. Rowand, owner, which I have marked as Exhibit No. 1, ex parte the said Wyllys H. Warner in this cause. And he also produced before me a paper marked by Henry R. Cannon, Clerk, as a true abstract from the minutes of a certain judgment in the case of Wyllys H. Warner vs. Anthony W. Dimock and Helen W. Dimock, builders, and Joseph T. Rowand, owner, in the Union County Circuit Court, which I have marked as Exhibit No. 2, ex parte the said Wyllys H. Warner in this cause. At the request of the said solicitor, I then adjourned the examination to Monday, the 20th of April, 1874, at 4 o'clock P. M.

30 April 15th, 1874.

HOWARD RICHARDS,
Master in Chancery.

I then adjourned the examination to Monday, April 27th, 1874, at 4 P. M.

HOWARD RICHARDS,
Master.

I adjourned the examination to Tuesday, April 28th, 1874,
at 4 P. M.

HOWARD RICHARDS,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}	<i>On Bill, &c. Testimony on the part of the Defen- dant Thomas Thompson. 10</i>
The Mutual Benefit Life Insurance Com- pany,		
<i>and</i>		
Joseph T. Rowand and others, <i>Defendants.</i>		

Testimony on the part of the defendant Thomas Thompson in the above case, taken before me, Howard Richards, one of the examiners of this Court, upon the twenty-first day of March, A. D., 1874, at ten o'clock in the morning of that day in the presence of E. S. Atwater, of counsel for the said defendant, Thomas Thompson, upon notice to the complainants and to the defendants, the Fourth National Bank of the City of New York, Elijah Purdy, William Phyfe and Robert Clenighen, Lyman A. Jacobus and Wyllys H. Warner, due service 20 of which has been acknowledged by the respective solicitors of the said parties as appears by the endorsements upon the said notices hereto annexed.

W. P. Wilson, the solicitor for the defendants, Elijah H. Purdy and William Phyfe, appeared, and at the request of both of the solicitors present, I adjourned the examination to March 28th, at 10 o'clock, A. M.

HOWARD RICHARDS,
Master.

At the time and place last named, William P. Wilson, E. S. Atwater and Charles F. Hill, solicitors, appeared before me, and at the request of E. S. Atwater, I adjourned the examination to April 4th, 1874.

March 28th, 1874.

HOWARD RICHARDS,

Master.

Examination adjourned to April 11th, at 10 A. M.

April 4th, 1874.

10

HOWARD RICHARDS,

Master.

I certify that at the time mentioned in the last adjournment before me, appeared Wm. P. Wilson and Edward S. Atwater and Robert S. Green, the solicitors for the defendants, Purdy & Co., T. Thompson and L. A. Jacobus respectively, and by their consent the examination was adjourned to Wednesday, April 15th, at 4 P. M.

The said solicitor had previously introduced in evidence before me a certified copy of a mechanic's lien claim of Thompson as Thompson vs. Anthony W. Dimock, builder, and Joseph T. Rowand, owner, filed in the Union County Clerk's office, on the 31st October, 1873, which I have marked Exhibit No. 1, ex parte the said defendant Thomas Thompson in this cause; and he also produced before me a certified copy of a judgment entered in the Union County Circuit Court in favor of the said Thomas Thompson and against the said Anthony W. Dimock and Joseph T. Rowand, signed on the 28th January, 1874, in an action upon the said lien claim, which I have marked Exhibit 2, ex parte the defendant, Thomas Thompson in this cause.

30

HOWARD RICHARDS,

Master.

On the 15th of April, 1874, this examination proceeded in the presence of E. S. Atwater, Esq., Wm. P. Wilson, C. F. Hill and Robert S. Green, solicitors, and of counsel for the defendants respectively aforementioned.

Thomas Thompson, one of the defendants, being duly sworn on his own behalf, said :

I am one of the defendants in this suit ; I know the premises under foreclosure in this suit ; they are on the south-east corner of Broad and South streets, running through to Williamson street ; they run south along Broad street over two hundred feet ; I caused a lien claim to be filed on these premises.

Witness being shown Exhibit No. 1, ex parte, the defendant Thompson says : 10

That is a copy of my lien claim ; I know the house on these premises ; it is a brown stone house ; my business is that of an architect ; I was the architect of this building ; I was employed by Anthony W. Dimock ; my employment commenced in 1868 ; not my employment upon this building, but generally ; I was employed for this building early in the season of 1870 ; Dimmock and I commenced the designs in April, 1870 ; I think it was the last of March, 1870 ; I furnished the plans and designs and details of the building ; it was built by the day and by Mr. Dimock's own men ; I was also employed as superintendent ; I was to be paid at the rate mentioned in my lien claim by an agreement made with Mr. Dimock in January of that year I think ; the judgment entered in my lien claim has not been paid nor any part thereof ; the whole amount is still due and owing to me : 20

And being cross-examined by R. S. Green, Esq., the witness further said :

I did a large amount of work for Mr. Dimock ; I was continuously employed by him from 1868 to near 1873 ; I designed a large number of buildings for him ; all his buildings except one or two. 30

Q. Have you any memorandum with you to show when your work was performed with reference to these several buildings which you have designed and superintended ?

A. Not with me.

Q. Did you keep a separate account of your services in reference to each building ?

A. Yes, sir ; I have it not with me.

Witness being shown Exhibit No. 1 ex parte, Thomas Thompson, his attention is called to a statement that the debt due him is for labor performed and materials furnished by him within one year last past for which a lien is claimed, and that said claim is sworn to on the 31st of October, 1873, and is asked.

Q. What labor was performed and materials furnished within one year previous to that time?

A. I don't know as I can state the amount of labor performed
10 within that year ; I did not receive any money on this house for my compensation ; I did not receive money from Mr. Dimock during the course of the erection of the building ; there were other buildings erecting at the same time ; I furnished only the materials that were necessary for the designs ; I mean the paper upon which the plans were drawn ; I kept no account of that ; I kept no account of the time ; I was employed there from day to day ; the designs were not completed until the last of May ; I have no memorandum to show the day they were completed ; the rate of my compensation was fixed at two and one-half per cent.
20 upon the whole cost of the building.

And being re-examined by Mr. Atwater.

It is hard to say when I ceased to superintend the building ; I suppose they concluded in October, 1873 ; I can't remember the date of the commencement of the building ; I was there but have forgot the date ; I was to receive two and a half per cent. upon the cost of the building for my services.

Sworn and subscribed before }
me, this 15th day of April, } THOMAS THOMPSON.
1874.

30

HOWARD RICHARDS,

Master.

This examination was adjourned by the consent of the solicitors and counsel present to Monday, the 20th day of April 1874, at 4 P. M.

April 15th, 1874.

HOWARD RICHARDS,

Master.

I adjourned the examination to Monday, the 27th April, 1874,
at 4 P. M.

HOWARD RICHARDS,
Master.

I adjourned the examination to Tuesday, April 28th, 1874, at
4 P. M.

HOWARD RICHARDS,
Master.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;"><i>Between</i></p> <p>The Mutual Benefit Life Insurance Com- pany,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>Joseph T. Rowand et als.,</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p>10</p> <p><i>On Bill.</i></p>
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EXHIBITS ON THE PART OF THE COMPLAINANTS.

Exhibit A.

Notice of taking depositions in the above cause, duly ac-
knowledged directed to C. F. & C. E. Hill, solicitors of the de- 20
fendant Wyllys H. Warner.

Exhibit B.

Notice as aforesaid to William P. Wilson, duly acknowledged
solicitor of the defendants Elijah H. Purdy, William Phye and
Robert Clenighen.

Exhibit C.

Notice as aforesaid duly acknowledged to Ritchie & Emory,
solicitors of the defendant The Fourth National Bank of New
York.

Exhibit D.

Notice as aforesaid duly acknowledged, addressed to Thomas
Thompson by John Davidson, his attorney. 30

Exhibit E.

Notice as aforesaid duly acknowledged, directed to Samuel D. Haines, solicitor of Lyman A. Jacobus.

Exhibit F.

Bond from Henry Winn to the complainants, dated December 2, 1867, being the same mentioned in the Bill of Complaint, conditioned to pay \$10,000 in one year, signed and sealed in the presence of N. Perry, Jr., as subscribing witness.

Exhibit G.

Mortgage from Henry Winn and Madalene, his wife, dated
 10 December 2, 1867, executed to the complainant to secure the
 payment of Exhibit F, acknowledged on the same day before
 N. Perry, Jr., a Master of the Court of Chancery, by the said
 mortgagors, and recorded on the 9th day of December, A. D.
 1867, at 8 o'clock A. M., in Book 6 of Mortgages for the county
 of Union, on pages 521 and 522, on land described therein as
 follows: All that tract or parcel of land and premises herein-
 after particularly described, situate, lying and being in the city
 of Elizabeth, county of Union, and State of New Jersey, be-
 ginning at the southwest corner of South and Williamson
 20 streets; thence running along the south line of South street
 north, eighty-nine degrees and thirty-five minutes west, two
 hundred and thirty-six feet six inches to the middle of a gate
 post; thence along land of Helen W. Dimock, south six degrees
 and forty-three minutes west, three hundred and fifty feet six
 inches; thence still along the same, south seventy-nine degrees
 and sixteen minutes east, one hundred and ninety-one feet one
 inch to the west line of Williamson street; thence along that
 line, north thirteen degrees and seventeen minutes, east three
 hundred and ninety-two feet to the place of beginning.

30 Exhibit No. 1, ex parte the defendants E. H. Purdy & Co.,
 is a certified copy of a lien claim, as follows:

Elijah H. Purdy, William Phyfe and Robert Clenighen, partners, trading and doing business under the name, style and firm of E. H. Purdy & Co.,

vs.

Helen W. Dimock, wife of Anthony W. Dimock, builder and owner.

Lien Claim.

The above claim was filed on the twenty-sixth day of March, eighteen hundred and seventy-three, against Helen W. Dimock, builder and owner, by Elijah H. Purdy, William Phyfe, 10 and Robert Clenighen, partners, trading and doing business as E. H. Purdy & Company, against a certain building and land described therein as follows :

The said building is a two-story brown stone dwelling house with French roof, about seventy-five by ninety feet, with basement and cupola, on a lot or curtilage situate in the city of Elizabeth, county of Union, and State of New Jersey—Beginning at the south-west corner of South and Williamson streets, and running thence along the southerly line of South street, north eighty-nine degrees and thirty-five minutes, west 20 two hundred and thirty-six feet six inches, to the middle of a gate post ; thence along land now or late of said Helen W. Dimock, south six degrees and forty-three minutes west, three hundred and fifty feet six inches to a corner ; thence still along the same, south seventy-nine degrees and sixteen minutes east one hundred and ninety-one feet one inch to the westerly line of Williamson street, and thence along that line north thirteen degrees and seventeen minutes, east three hundred and ninety-two feet to the place of beginning.

The amount claimed in the above lien is \$47,979.71, with 30 interest from December 31, 1873, a bill of particulars of which exhibiting the amount and kind of labor performed and materials furnished, and the prices at which and the times when the same was performed, and exhibiting the balance justly due

from the said Helen W. Dimock to the said claimants, to-wit, the said sum last above mentioned, with interest from December 31, 1873, is contained in the said lien claim.

The said lien claim also contains the following statements :

1. The owner of the said lot or curtilage is the said Helen W. Dimock, who has an estate in fee simple therein.
2. The name of the person who contracted the said debt for whom and at whose request the said materials were furnished and labor performed for which the aforesaid lien is claimed, is the said Helen W. Dimock.
3. All the above labor was performed and materials were furnished between the first day of May, eighteen hundred and seventy-two, and the first day of May, eighteen hundred and seventy-three.

The lien claim also contains an affidavit of Robert Clenighen, one of the claimants, in the following words :

COUNTY OF UNION, }
STATE OF NEW JERSEY, } ss.

Robert Clenighen being duly sworn on his oath says :

- 20 That he is a member of the firm of E. H. Purdy & Co., the claimants named in the foregoing claim ; that the above bill of particulars and statements therein set forth are true ; that the same is for labor performed by the said claimants in the erection and construction of the building in the said claim described since the first day of May, eighteen hundred and seventy-two ; and that the amount of forty-seven thousand, nine hundred and seventy-nine dollars and seventy-one cents, with interest, as claimed therein, is justly due and owing from the said Helen W. Dimock to the said claimants.

30 Sworn and subscribed before me, }
this 20th day of March, A. } ROBT. CLENIGHEN.
D. 1873, at Elizabeth. }

ROBERT E. CHETWOOD.

Master in Chancery.

The summons was sealed and issued on this lien claim, on the seventh day of April, A. D. 1873, and a statement that

said summons was sealed and issued on that day, was on the seventh day of April, 1873, endorsed on the said lien claim by the Clerk of the County of Union.

The certificate of Henry R. Cannon, Clerk of the County of Union, annexed to said copy of said lien claim is the words following, to-wit :

NEW JERSEY, }
UNION COUNTY, } ss:

I, Henry R. Cannon, Clerk of the said County, do hereby certify that the foregoing is a true copy of lien claim, filed in 10 the said Clerk's office of said County, March 26th, 1873. I further certify that the following endorsement, to-wit :

"Summons sealed and issued on this lien claim April 7th, 1873.

HENRY R. CANNON, *Clerk.*"

Was made on said lien claim by me, on the 7th day of April, A. D. 1873, and that summons was actually sealed and issued in said claim on that day, and that judgment was entered thereon in the Union County Circuit Court, on the 30th of July, 1873. 20

In testimony whereof, I have hereunto set my hand and [L. s.] seal of said Court, this 21st day of March, A. D. 1873.

HENRY R. CANNON, *Clerk.*

The following is a true copy of the endorsement on Exhibit No. 1, ex parte E. H. Purdy, William Phyfe and Robert Clenighen :

IN THE OFFICE OF THE CLERK OF THE COUNTY OF UNION.

Elijah H. Purdy, William Phyfe and Robert Clenighen, partners, trading, &c., as E. H. Purdy & Co.	}	30
<i>vs.</i>		
Helen W. Dimock, builder and owner.	}	Lien Claim. \$47,979.71.

W. P. WILSON, *Att'y.*

Filed March 26th, 1873.

HENRY R. CANNON, *Clerk.*

\$1,379.

Summons sealed and issued on this lien claim April 7th, 1873.

HENRY R. CANNON, *Clerk.*

Exhibit No. 2, ex parte the defendants E. H. Purdy & Co., is a certified copy of a record of a judgment as follows :

Pleas before the Judge of our Circuit Court, holden at Elizabeth, in and for the county of Union, of the term of April, in the year of our Lord one thousand eight hundred and
10 seventy-three.

HENRY R. CANNON, *Clerk.*

Union County Circuit Court of the sixteenth day of April, in the year of our Lord one thousand eight hundred and seventy-three.

UNION COUNTY, ss.

Helen W. Dimock, owner and builder, and Anthony W. Dimock, her husband, (the said Helen W. Dimock being a married woman, having a separate estate of her own, and the owner in fee of the premises hereinafter described), were summoned by
20 leaving copies of the summons issued herein at the residence of the said defendants, on the ninth day of April, eighteen hundred and seventy-three, to answer unto Elijah H. Purdy, William Phyfe and Robert Clenighen, partners, trading and doing business under the name, style and firm of E. H. Purdy & Co., the plaintiffs therein, of a plea of trespass on the case upon promises, and thereupon the said plaintiffs by William P. Wilson, their attorney, complain for that whereas heretofore to-wit, on the thirty-first day of December, in the year of our Lord one thousand eight hundred and seventy-two, the said Helen W.
30 Dimock, at New York City, to-wit, at Elizabeth in the County of Union aforesaid, the said Helen W. Dimock, being as aforesaid a married woman, having a separate estate of her own, and being in the transaction of business purchased of and from the said plaintiffs, divers goods, wares and merchandise, and employed the said plaintiffs to perform certain labor in putting up the said goods and chattels, wares and merchandise, as hereinafter stated, and which were sold and delivered by the said plain-

tiffs to the said Helen W. Dimock, and furnished for and used by them, and which labor was performed by them in the erection and construction of the building hereinafter more particularly described, by means whereof, and by the form of the statute in such case made and provided, the said defendants became indebted to the plaintiffs in the sum of forty-seven thousand, nine hundred and seventy-nine dollars and seventy-one cents, for the said labor performed and materials furnished which are more particularly described in a schedule hereto annexed, which they, the said plaintiffs performed for and furnished to 10 the said Helen W. Dimock, the said defendant, at her special instance and request, in and about the erection and construction of that certain building, owned by the said Helen W. Dimock, in fee, which said building and the lot whereon the same is situated are more particularly described as follows, to wit :

(Here follows a description of the building and lands as set out in the lien claim.)

And which said debt is a lien upon the said building, and the lot or curtilage whereon the same is erected by virtue of the provisions of an act of the Legislature of the State of New Jersey, 20 entitled " An Act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11, 1853, and the supplements thereto.

(Here follow the common counts with the formal conclusion : a schedule, being the same as contained in the lien claim, copy of which is marked Exhibit No. 1, ex parte E. H. Purdy & Co. in this cause, and a notice that at the proper time the plaintiff will claim judgment for \$47,979.71, with interest from Dec. 31, 1872, besides costs of suit to be taxed.)

And now at this day, that is to say the thirtieth day of July, 30 A. D. eighteen hundred and seventy-three, to which day the said defendants had leave to the declaration aforesaid to answer, come the said plaintiffs by their said attorney before the said Judge at Elizabeth aforesaid, and the said defendants, although solemnly called, come not but make default, neither say they anything in bar or preclusion of the action aforesaid against them, whereby the said plaintiffs remain wholly undefended

against the said defendants, and ought to recover against the said defendants their damages, &c.

10 Judgment signed, July 30th, 1873.

DAVID A. DEPUE, Judge.

Whereupon it is considered that the said plaintiffs do recover against the said defendants their damages by the Court now here assessed at forty-nine thousand nine hundred and twenty-nine dollars and fifty-five cents, and also the sum of thirty-three dollars and ninety-three cents for their costs and charges by them about their suit in this behalf expended, by the

Clerk of the Court now here adjudged to them of increase with their assent, which damages, costs and charges in the whole amount of forty-nine thousand nine hundred and sixty-three dollars and forty-eight cents.

Which is a general judgment, but specially to be made of the lands and premises in said declaration mentioned.

And the said defendants in mercy, &c.

STATE OF NEW JERSEY, } ss.
UNION COUNTY. }

20 I, Henry R. Cannon, Clerk of the Circuit Court in and for said county, do certify that the foregoing is a true copy of the record of a certain judgment entered up in said Court in the case of Elijah H. Purdy et als., against Helen W. Dimock and husband, as the same recorded in Book 10 of Judgments of said county, page 463, &c.

In testimony whereof, I have hereunto set my hand and seal [L. s.] of said Court, this twentieth day of March, A. D. 1874.

HENRY R. CANNON, Clerk.

30 Exhibit No. 3, ex parte Elijah H. Purdy, William Phyfe and Robert Clenigen, is page 10 of an account book of Thomas Sulzer, a witness produced on the part of said defendants, Purdy, Phyfe and Clenigen of which the following is a copy :

10. May 20 to 26. D. C.
58 days Work at 1.75..... 101 50

Moven Trees from Cemetary.....		
6 days Work at \$1.75.....	10 50	
	<hr/>	
	\$112 00	
May 28 to Jun. 4.		
grading Mabel Avenu.....	D. C.	
39 days work at 1.75.....	68 25	
21 days Work Hores & Cat at 2.50 a day.....	52 50	
	<hr/>	
	120 75	10
(13th line) .the new. Celler	D. C.	
18 days work at 1.75.....	31 50	
12 days Work Hores & Cat at 2.50 a day.....	30 00	
	<hr/>	
	\$61 50	
Spreading dirt for pavers.....	D.	
8 days Work at \$1.75.....	\$14 00	
All.	D. C.	
Mabel Avenu Sure Cone.....	101 50	
Moven Trees from Cemetary.....	10 50	
grading Mabel Avenu.....	120 75	20
the N W Celler.....	61 50	
Spreading dirt for pavers.....	14 00	
	<hr/>	
	\$308 25	Paid.

Exhibit No. 4, ex parte Elijah H. Purdy, William Phyfe and Robert Clenigen, is page 12 of an account book of Thomas Sulzer, a witness produced on the part of the defendants, Purdy, Phyfe and Clenigen, being the same book from which Exhibit 3 is taken, of which the following is a true copy. 30

12. Jun 6 to June 13		
Celler corner Broad and South St .. .	D. C.	
41 days work at 1.88 a day.....	80.62	
25 days Work, Hores & Cat at 2.75 a day.....	68.75	
1½ days Work a tim Horses.....		
to Plow at 6. a day.....	9.00	
	<hr/>	
	\$158.37c	
Jun 13 to Jun 18		
grading Mabel Avenu		
28 days Work at 1.88 a day.....	52.50	40
18 days Work Hores and Cat at 2.75 a day	49 50	
	<hr/>	
	\$102.50	
Celler corner Broad and South St.		
28 days Work at 1.88 a day.....	52.50	

18 days Work Hores and Cat at 2.75 a day.....	49.50
1½ days Work a tim Horses Plowing at 6 a day.....	7.50
	\$109.50
Celler	158.37
Mabel Avenu.....	102.00
Celler.....	109.50

\$369.87

10

Paid, Thomas Sulzer.

Exhibit No. 5, ex parte the defendants E. H. Purdy & Co., is a certified copy of a release of part of mortgaged premises executed by the Fourth National Bank of the city of New York to Helen W. Dimock, which deed of release is dated on the 15th day of March, A. D. 1870, was acknowledged on the 4th day of May, A. D. 1870, and was recorded on the 4th day of May, 1870, in Book 47 of Deeds, pages 126, &c., in the Clerk's office of the county of Union.

20

The above deed of release releases from the lien of a certain mortgage to secure the payment of one hundred thousand dollars, executed by Helen W. Dimock and Anthony W. Dimock, to The Fourth National Bank of New York, dated August 18th, A. D. 1868. Among other lands the following described land and premises, to wit: All that tract of land and premises, situate, lying, and being in the city of Elizabeth, county of Union, and State of New Jersey—Beginning at the corner formed by the intersection of the east line of Broad street with the south line of South street; thence running southerly along Broad street three hundred and fifty feet, more or less, to the line of Charles F. Davenport; thence easterly along his line at right angles to said line of Broad street two hundred feet, more or less, to the westerly line of Williamson street; thence along Williamson street to said line of South street; thence westerly along South street to the place of beginning.

30

Exhibit No. 4, ex parte Lyman A. Jacobus.

Bond of Helen W. Dimock and Anthony W. Dimock to Lyman A. Jacobus,

Dated May 2, 1870,
In penal sum of \$120,000.

Conditioned for payment of \$60,000 on 31st day of December, 1870, interest payable semi-annually at 7 per cent.

Exhibit No. 3, ex parte Lyman A. Jacobus.

Mortgage of

Helen W. Dimock and
Anthony W. Dimock, her husband,

To

Lyman A. Jacobus,

Dated May 2nd, 1870.

Acknowledged May 4th, 1870, before William J. Magie, 10 Master in Chancery.

Recorded Union County Clerk's office, May 13th, 1870, at 11 A. M., in Book 14 of Mortgages, pages 62, 63 and 64, upon all that tract or parcel of land and premises hereinafter particularly described, situate, lying, and being in the city of Elizabeth, in the county of Union, and State of New Jersey—Beginning at the corner formed by the intersection of the south line of South street with the east line of Broad street; thence running southerly along said line of Broad street three hundred and fifty feet, more or less, to the line of land of Charles F. Davenport; thence easterly along said Davenport's line and at right angles to said line of Broad street two hundred feet, more or less, to the westerly line of Williamson street; thence northerly along said line of Williamson street to the said line of South street, and thence westerly along the same two hundred and twenty-nine and three-tenths feet to the place of beginning to secure the payment of sixty thousand dollars with interest, according to the conditions of the bond marked Exhibit No. 4.

30

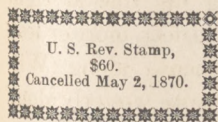


Exhibit No. 2, ex parte Lyman A. Jacobus.

Bond of Helen W. Dimock and Anthony W. Dimock

To

Lyman A. Jacobus.

Dated March 18th, 1871.

In penal sum of \$40,000.

Conditioned for payment of \$20,000 on 31st day of December, 1872, interest paid semi-annually at 7 per cent.

Exhibit No. I, ex parte Lyman A. Jacobus.

Mortgage of

Helen W. Dimock and Anthony W. Dimock, her husband,
to

Lyman A. Jacobus.

Dated March 18th, 1871.

Acknowledged March 20th, 1871, before William J. Magie,
10 Master in Chancery. Recorded Union County Clerk's office,
March 21st, 1871, at 9:30 A. M., in Book 17 of Mortgages,
pages 107, 108, 109 and 110, upon all that tract or parcel of
land and premises hereinafter particularly described, situate,
lying and being in the city of Elizabeth, in the county of Un-
ion, and State of New Jersey—Beginning at the corner formed
by the intersection of the south line of South street with the
east line of Broad street ; thence running southerly along said
line of Broad street three hundred and forty feet ; thence east-
erly at right angles thereto two hundred and thirteen feet,
20 more or less, to the westerly line of Williamson street ;
thence northerly along the same three hundred and forty feet,
more or less, to said line of South street ; thence westerly
along South street two hundred and twenty-nine feet and
three-tenths of a foot to the place of beginning, to secure the
sum of twenty thousand dollars with interest, according to the
conditions of the bond marked Exhibit No. 2.

U. S. Reg. Stamp,
\$ 0
Cancelled March 18, 1870

30 Exhibit No. 5, ex parte L. A. Jacobus.

2 cent Stamp
Cancelled

No. 663.

NEW YORK, June 7th, 1870.

Tenth National Bank of the City of New York.

Pay to A. W. Dimock or order
 eighty thousand $\frac{00}{100}$ dollars.
 \$80,000. $\frac{00}{100}$

LYMAN A. JACOBUS.

Endorsed—Pay to the order of Lockwood &
 Davenport.

A. W. DIMOCK.

For deposit, LOCKWOOD & DAVENPORT.

IN CHANCERY OF NEW JERSEY. 10

<i>Between</i>	}
The Mutual Benefit Life Insurance Com- pany,	
<i>Complainant,</i>	
<i>and</i>	
Joseph T. Rowand and others,	
<i>Defendants,</i>	

Exhibit No. 1, ex parte the defendant Thomas Thompson,
 is a certified copy of a lien claim as follows :

IN THE OFFICE OF THE CLERK OF THE COUNTY OF UNION. 20

Thomas Thompson,	}	<i>Lien Claim.</i>
<i>vs.</i>		
Anthony W. Dimock, builder,		
<i>and</i>		
Joseph T. Rowand, owner.		

UNION COUNTY, SS.

Be it known that Thomas Thompson of the city of Eliza-
 abeth, in the county of Union, and State of New
 Jersey, files this his claim for the payment of one
 thousand eight hundred and seventy-five dollars, against³⁰

all that certain building and the lot or curtilage whereon the same is erected, and hereinafter more particularly described, which said sum is a debt contracted and owing by Anthony W. Dimock, of the city of Elizabeth aforesaid, as builder of the said building, to the said Thomas Thompson for labor performed and materials furnished by him within one year last past, for the erection and construction of said building (or dwelling,) and it is claimed to be a lien on said building and the lot or curtilage whereon the same is erected.

- 10 1. The said buil ling is a two-story brown stone dwelling house, with attic and French roof, seventy-two feet by eighty-five, on a lot or curtilage situate in the city of Elizabeth, in the county of Union aforesaid, and described as follows :

Beginning at the corner formed by the intersection of the southerly line of South street with the easterly line of Broad street, and running thence (1) southerly along said easterly line of Broad street two hundred and seventy-five feet ; thence (2) easterly at right angles with said easterly line of Broad street two hundred feet to the westerly line of Williamson street ; thence (3) northerly along said westerly line of Wil-
 20 liamson street three hundred and seventy feet, more or less, to the southerly line of South street ; thence (4) westerly along said southerly line of South street two hundrhd and twenty-five feet, more or less to the place of beginning.

2. The owner of said lot or curtilage is Joseph T. Rowand,
 who has an estate in
 fee simple therein.

3. The name of the person who contracted the said debt,
 and for whom and at whose request the said labor was per-
 formed, for which the aforesaid lien is claimed is the said
 30 Anthony W. Dimock.

4. The following is a bill of particulars of the aforesaid labor performed and materials furnished by the said Thomas Thomp-
 son, exhibiting the balance justly due to him from the said
 Anthony W. Dimock :

Anthony W. Dimock,

To Thomas Thompson,

Dr.

To commissions for services as architect in furnishing plans

and specifications, and in superintendence of erection of said house at $2\frac{1}{2}$ per cent. on seventy-five thousand dollars, the cost of said house according to contract between said Dimock and said Thompson, said services extending over a period, commencing June 1st, A. D. 1870, and ending October 1st, A. D. 1873. Balance justly due \$1,875

All the above work and labor was done between the first day of June, 1870, and the first day of October, 1873, and was not completed until within one year from the time of filing this lien. 10

NEW JERSEY, }
UNION COUNTY, } ss.

Thomas Thompson of the city of Elizabeth, in the county of Union aforesaid, of full age, maketh oath and saith ;

That he is the claimant named in the foregoing claim ; that the above bill of particulars and statements therein set forth is true ; that the same is for labor performed and materials furnished by this deponent in the erection of the building in the said claim described, at the times specified in the said bill of particulars, and that the amount of one thousand eight hundred and seventy-five dollars as therein claimed is justly due and owing from the said Anthony W. Dimock to this deponent. 20

Sworn and subscribed before me, }
this 31st day of October, A. D. } THOMAS THOMPSON.
1873.

EDWARD S. ATWATER,
Master in Chancery.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss. 30

I, Henry R. Cannon, clerk of said county, do hereby certify the foregoing to be a true and correct copy of a certain Mechanics' Lien as filed in the Clerk's office of said county of Union, October 31st, 1873.

In testimony whereof, I have hereunto set my hand and affixed my official seal this twentieth day of March, A.D. 1874.

HENRY R. CANNON, *Clerk.*

[L. s.]

STATE OF NEW JERSEY, }
 COUNTY OF UNION. } ss.

I, Henry R. Cannon, clerk of said county, further certify that the following endorsement, to wit: "Summons sealed and issued on this claim this 31st day of October, A. D. 1873, Henry R. Cannon, Clerk," was made on said lien claim by me on the 31st day of October, A. D. 1873, and that summons was actually sealed and issued on said lien claim on that day, and that judgment was entered thereon in the Union County Circuit Court on the 28th day of January, A. D. 1874.

In testimony I have hereunto set my hand and affixed my official seal, this 26th day of March, 1874.

HENRY R. CANNON, *Clerk.*

[L. s.]

The said lien claim is endorsed as follows:

IN THE OFFICE OF THE CLERK OF UNION COUNTY.

Thomas Thompson, <i>vs.</i> Anthony W. Dimock, builder, <i>and</i> Joseph T. Rowand, owner.	}	<i>Mechanics' Lien Claim.</i>
---	---	--

20

JOHN DAVIDSON, *Attorney.*

Filed October 31, 1873.

HENRY R. CANNON, *Clerk.*

Summons sealed and issued on this claim this 31st day of October, A. D. 1873.

HENRY R. CANNON, *Clerk.*

Exhibit No. 2, ex parte the defendant Thomas Thompson, is a certified copy of a record of a judgment as follows:

30

Pleas before the Judge of our Circuit Court holden at Elizabeth, in and for the county of Union of the Term of September, in the year of our Lord one thousand eight hundred and seventy-three.

HENRY R. CANNON, *Clerk.*

Union County Circuit Court of the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-three.

UNION COUNTY, ss.

Anthony W Dimock (builder), and Joseph T. Rowand (owner), the defendants in this suit, were summoned (the summons was served on the defendant Joseph T. Rowand personally, and on the defendant Anthony W. Dimock by leaving a copy thereof at his dwelling-house), to answer Thomas Thompson, the plaintiff therein, of a plead of trespass on the case upon promises, and thereupon the plaintiff by John Davidson, his attorney, complains for that whereas heretofore to wit, on the first day of October, in the year of our Lord one thousand eight hundred and seventy-three, at Elizabeth, in the county of Union aforesaid, the said defendant Anthony W. Dimock was indebted to the plaintiff in the sum of (\$3,750) three thousand seven hundred and fifty dollars for the work and labor, care, diligence and attendance of the said plaintiff by the said plaintiff before that time done, performed and bestowed as an architect in and about the furnishing of plans and specifications for the house hereinafter described, and in the superintendence of the erection of said house for the defendant Anthony W. Dimock at his request.

(Here follow the common counts with the formal conclusion : a schedule, being the same as contained in the lien claim, copy of which is marked Exhibit No. 1, ex parte Thomas Thompson in this cause.)

And the said plaintiff avers that said debt is by virtue of the provisions of an Act of the Legislature of New Jersey, entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building." Approved March 11, 1853, and supplements thereto, a lien upon the following described building and the lot or curtilage whereon the same is erected.

(Here follows a description of the building and lands as set out in the lien claim, and a notice that at the proper time the plaintiff will claim judgment for \$1,875, with interest from Oct. 1, 1873, besides costs of suit to be taxed.)

And now at this day, that is to say the twenty-eighth day of

January, A. D. eighteen hundred and seventy-four, to which day the said defendant had leave to the declaration aforesaid to answer, comes the said plaintiff by his said Attorney before the said Judge at Elizabeth aforesaid, and the said defendants although solemnly called come not, but make default, neither say they anything in bar or preclusion of the action aforesaid against them whereby the said plaintiff remains wholly undefended against the said defendants, and ought to recover against the said defendants his damages, &c.

10 Whereupon it is considered that the said plaintiff do recover against the said defendants his damages by the Court now here assessed at one thousand nine hundred and seventeen dollars and sixty-four cents, and also the sum of thirty-three dollars and forty-three cents for his costs and charges by him about his suit in this behalf, expended by the Clerk of the Court now here adjudged to him of increase with his assent, which damages, costs and charges in the whole
20 amount to one thousand nine hundred and fifty-one dollars and seven cents.

Which is a general judgment, but specially to be made of the lands and premises in said declaration mentioned.

And the said defendants in mercy, &c.

STATE OF NEW JERSEY, }
UNION COUNTY. } ss.

I, Henry R. Cannon, Clerk of the Circuit Court in and for said county, do certify that the foregoing is a true copy of the record of a certain judgment entered up in said Court in the case of Thomas Thompson against Anthony W. Dimock and
30 Joseph T. Rowand, as the same is recorded in Book 12 of Judgments of said county, page 286, &c.

In testimony whereof, I have hereunto set my hand and seal of said Court this twentieth day of March, A. D. 1874.

HENRY R. CANNON, *Clerk.*

[L. S.]

Exhibit No. 1, ex parte Wyllys H. Warner, is a paper of which the following is a true copy :

UNION COUNTY CLERK'S OFFICE.

<p>Wyllys H. Warner, claimant,</p> <p style="text-align: center;"><i>vs.</i></p> <p>Anthony W. Dimock and Helen W.</p> <p style="padding-left: 40px;">Dimock, his wife, builder,</p> <p style="text-align: center;"><i>and</i></p> <p style="padding-left: 40px;">Joseph T. Rowand, owner.</p>	}	<p><i>Mechanics' Lien Claim.</i></p>
--	---	--

Be it known that Wyllys H. Warner, of the city of Brook- 10
lyn, in the County of Kings, and State of New York, files his
claim for the payment of the sum of two thousand eight hun-
dred and twenty-five dollars, with lawful interest thereon,
against that certain building and the lot or curtilage whereon
the same is erected, and situated and hereafter particularly de-
scribed, of which said building Anthony W. Dimock and Helen
W. Dimock, his wife, are the builders, and Joseph T. Rowand
is the owner ; the said claim being for a debt contracted and ow-
ing by the said Anthony W. Dimock and Helen W. Dimock to
the said Wyllys H. Warner for work and labor done and per- 20
formed, and materials furnished by the said Wyllys H. Warner
within one year last past, for and about erecting, constructing
and completing the said building at the request of the said
Helen W. Dimock and also for the said Anthony W. Dimock,
and the said is claimed to be a lien on the said building and the
lot or curtilage on which the same is erected.

The said building is a brown stone dwelling-house, two stories
in height, with basement, French roof and a cupola, and is
about seventy-five feet by ninety feet.

The lot or curtilage whereon the said building is erected is 30
situated in the city of Elizabeth, in the County of Union and
State of New Jersey, and is bounded by—

Beginning at the corner, formed by the intersection of the

southerly line of South street with the easterly line of Broad street, and thence running southerly along the line of Broad street three hundred and forty-two and eighteen feet to line of land of Charles F. Davenport; thence easterly at right angles with the line of Broad street, and along Davenport's line to the westerly line of Williamson street; thence northerly along the line of Williamson street to the line of South street; thence westerly along said line of South street two hundred and twenty-nine and three-tenths feet to the place of beginning.

10 The said Joseph T. Rowand is the owner of the above described premises, and has and holds an estate in fee therein. The said indebtedness was contracted by the said Helen W. Dimock and Anthony W. Dimock, her husband, and the said work and labor was done and performed, and the said materials were furnished for erecting and completing the said building by the said Wyllys H. Warner at the verbal request of the said Helen W. Dimock and Anthony W. Dimock, her husband, and each of them.

The following is a bill of particulars of the work and labor done and performed, and of the materials furnished by the said Wyllys H. Warner as aforesaid, exhibiting the just balance due and owing to him :

BILL OF PARTICULARS.

	1872.		
	Dec. 23d.		
	For Heating Apparatus in Stone House		
	“ 2 No. 8 Boilers and Fixtures at \$375.....	\$750.00	
	“ Pipe	516.00	
	“ Fittings.....	307.95	
30	“ Valves and Docks.....	195.57	
	“ Radiators, Screens and Coils.....	1,878 75	
	“ Registers.....	78.40	
	“ Painting and Ornamenting.....	145.00	
	“ For Labor.....	1,091.19	
	“ Cash for Fares, Freights and Board	537.13	
	Total amount.....		\$5,500.00
	Cr.		
	By Note September 13, 1871, on 3 mos.....	\$1,500.00	
40	“ December 4th, 1871, “ 3 “	1,000.00	
	“ June 12th, 1872, “ 3 “	175.00	2,675.00
	Balance due.....		\$2,825.00

STATE OF NEW YORK, }
 NEW YORK COUNTY. } ss.

Wyllys H. Warner, of lawful age, being duly sworn, on his oath deposes and says :

That he is the claimant above named ; that the matters and things set forth in the foregoing claim are true as herein stated ; that the work was done and the materials were furnished by this deponent as is set forth in the foregoing claim ; that the foregoing bill of particulars contains a true statement of the work done and of the materials furnished by this deponent, and 10 of the payment thereon received by him, and that the aforesaid sum of two thousand eight hundred and twenty-five dollars, together with lawful interest thereon, is justly due and owing from the said defendants to this claimant.

Sworn and subscribed at New }
 York, this October, A. D. } WYLLYS H. WARNER.
 1873, before me.

The foregoing paper marked as Exhibit No. 1, ex parte Wyllys H. Warner, is endorsed as follows:

Lien claim stone house, filed Oct. 7th, 1873. 20

UNION CIRCUIT COURT.

Wyllys H. Warner,

vs.

Anthony W. Dimock, Helen W. Dimock,
 builders,

Joseph T. Rowand, owner.

C. F. & C. E. HILL,

Atty's.

Exhibit No. 2, ex parte Wyllys H. Warner, is a paper of which the following is a true copy : 30

UNION CIRCUIT COURT.

Wyllys H. Warner, <i>vs.</i> Anthony W. Dimock, Helen W. Dimock, his wife, builder, Joseph T. Rowand, owner.	}	<i>Assumpsit.</i> <i>Mechanics' Lien.</i>
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Judgment for plaintiff against the above defendants, builders and owner, entered April 8, 1874.

Damages, \$3,077.13. Costs taxed at \$44.39.

10

C. F. & C. E. HILL,
Attorneys of Plaintiffs.

A true abstract from the minutes.

HENRY R. CANNON,
Clerk.

The following is a true copy of the endorsement on the paper marked as Exhibit 2, ex parte Wyllys H. Warner :

UNION CIRCUIT COURT.

Wyllys H. Warner, <i>vs.</i> Anthony W. Dimock, Helen W. Dimock, builders, Joseph T. Rowand, owner.	}	<i>Assumpsit.</i> <i>Mechanics' Lien.</i>
---	---	--

Abstract of judgment.

C. F. & C. E. HILL,
Atty's.

The following are admitted to be the quotations of Atlantic Mail Steamship Stock in the New York market at the dates mentioned below :

May 2, 1870, sold at 26.

30 June 7, 1870, sold at 32 $\frac{3}{4}$.

June 8, 1870, sold at 33 $\frac{3}{4}$.

June 9, 1870, sold at 34 $\frac{1}{4}$.

March, 1871, no sales and but one quotation.

March 21st, 10 bid.

March 26, 1873, 3 bid, 4 asked.

Ultimately, company being insolvent and property seized, stock ceased to be quoted at all on the list.

OPINION.

October Term, 1875.

10

The Chancellor :

The questions in this case arise between the holder of the second and third mortgages on the property and the lien claimants, as to the priority of these mortgages or either of them over the lien claims, and as to the allowance of the lien claims of Thompson, the architect and superintendent, and Warner, who furnished and put in the heating apparatus. The premises are what is known as "Dimock's brown-stone house" and lot in Elizabeth. The land was owned when the building was begun (which was in 1870), by Mrs. Dimock. She and her husband conveyed it in 1873 to the defendant Rowand. The complainants' mortgage is the first incumbrance on the property and is in nowise questioned. The defendant, Lyman A. Jacobus, holds two mortgages on the premises, one for \$60,000, dated May second, 1870, acknowledged the fourth, and recorded on the thirteenth of the same month; the other for \$20,000, dated the eighteenth of March, 1871, acknowledged on the twentieth and recorded on the twenty-first of that month. The lien claimants insist that their claims are entitled to priority over the Jacobus mortgages, because those mortgages were in fact both taken, as they insist, after the commencement of the building. 30 The building was begun in 1870. The mortgage for \$20,000 was not taken until 1871. The mortgage for \$60,000 is, as before stated, dated May second, 1870, was acknowledged on the fourth and recorded on the thirteenth of that month. The proof is that the excavation for the foundation of the house was begun on the

twenty-eighth of that month, and that the work of building the foundation was commenced on the sixteenth of June following. It appears, however, that that mortgage was not delivered until the seventh of June, 1870. The mortgagee insists that the commencement of the building should be held to be the beginning of the erection, strictly speaking, and therefore that the excavation for the foundation ought not to be so considered. The Legislature intended to make the actual and visible commencement of the building notice to all who might propose either to purchase or
 10 to acquire liens upon the property. The commencement of actual operations on the ground for the erection of a building is constructive notice to all such persons of the claims which those who may contribute work or materials for the building may thereafter make against the property by virtue of the mechanics lien law. The excavation for the foundation is such notice, and it makes no difference that the excavation is made by the owner himself, or under his direction and not under a contract. The excavation for the foundation is the "commencement of the building" within the meaning of the law. (*Pennock v. Hoover*
 20 5 *Rawle* 291; *Brooks v. Lester* 36 *Maryland* 65.) In the former of these cases the Court say that it may safely be considered the universal understanding as to what constitutes the commencement of the building of a house, that it is the first labor done on the ground which is made the foundation of the building and to form part of the work suitable and necessary for its construction. In the latter case the Court say that what the law means by the term "commencement of the building" is some work and labor on the ground, the effects of which are apparent, such as beginning to dig the foundation or work of like
 30 description, which every one can readily see and recognize as the commencement of a building. Where, as in this instance, the whole work of building was done "by the day," by persons employed by the owner, for the various parts of the work, there is no foundation for the discrimination sought to be made in this case between the excavation for the foundation and the building of the foundation. Had any workman or material man, looking, as he had a right to look, at the security to be afforded him by law, ascertained that the excavation for the foundation was commenced on the twenty-eighth of May, and that the mort-

gage for \$60,000 had not been recorded (if such had been the fact) until the seventh of June following, he would have been justified in regarding the mortgage as having been recorded subsequently to the commencement of the building. That mortgage was not delivered until the seventh of June, the day on which the mortgagee gave his check for the money. It must be considered as not having been recorded before that day. (*Freeman v. Schroeder* 43 Barb. 618.) The lien claims are therefore entitled to precedence over these mortgages unless one of the following propositions of the counsel of the mortgagee be true ; first, that the advancing of the money on the seventh of June will have relation back to either the date of the mortgage, or to the time of the acknowledgment, or to the time of recording the mortgage ; second, that the mechanics lien law does not authorize a judgment against the land in any case where actual service as contradistinguished in the act from "legal" service of the summons in the suit on the lien claim is obtained ; and therefore inasmuch as in the suits by the lien claimants who have appeared in the cause they all obtained actual service of summons, judgment against the land could not lawfully have been entered in those suits, and consequently no special fieri facias could lawfully be issued on any of them ; and third, that the statute as it stood when these claims were contracted, limited the lien to the estate which the owner had within one year before the filing of the claim in the clerk's office, and therefore inasmuch as the lien claims of those claimants who have appeared in the suit were not filed until more than a year after the recording of either of the mortgages in question, the encumbrance of those mortgages is superior to that of those claims.

As to the first of these propositions :

The mortgage of \$60,000 was not delivered until the seventh of June when the money was advanced. Mr. Jacobus says that when it was handed to him he gave his check for the money. Up to that time it was no lien as against any one. It had no validity. It had been executed and put on record not only in the absence of any agreement between the mortgagor and mortgagee for the loan, but without the knowledge of

the latter. The considerations which would give the mortgage relation back to its date as between mortgagor and mortgagee are not applicable to the question between the present parties litigant. They are all incumbrancers. The mortgagee claims priority by virtue of the constructive notice of the record of his mortgage; the lien claimants by virtue of the constructive notice of the commencement of the building; and the latter are entitled to all the protection and advantages to which they would have been entitled if they had been mortgagees under a mortgage recorded simultaneously with the commencement of the building. The making of the loan was not in any wise dependent on the fact that the mortgage had been recorded on the thirteenth of May, nor does there appear to have been any reference made to the circumstance. The transaction in which these two mortgages held by Mr. Jacobus originated was a purchase of stock and bonds by Mr. Dimock of Frederick Butterfield, the lending of the money being dependent on the purchase by Dimock of the stock and bonds. Mr. Dimock says on this head: "Mr. Frederick Butterfield

10 said he could obtain the money for me or could lend it to me, I forget which; provided I purchased of him certain securities; which I did and received from Mr. Butterfield a check for \$80,000, by whom drawn I do not recollect; my simple impression would be that it was Mr. Jacobus' check, but I have no recollection of it." Mr. Jacobus was Butterfield's partner in business. The purchase of the stock and bonds by Dimock from Butterfield was the condition on which the loan was made. The loan was secured by the \$60,000 mortgage and 2,000 shares of Atlantic Mail stock belonging to Mr. Dimock,

20 which at the time of the delivery of the \$60,000 mortgage Jacobus held. The mortgage for \$20,000 with another mortgage was afterwards given in exchange for that stock. The transaction between Dimock and Butterfield appears to have been the purchase by the former from the latter at certain rates of Quincy and Toledo Rail Road bonds to the nominal amount of \$40,000, worth then in market only from 84 to 85 per cent.; 300 shares of the stock of the Tenth National Bank in the city of New York, worth at that time \$110 a share, and 100

shares of Atlantic Mail stock worth then \$25 a share. The market value of this property was about \$70,000. Dimock agreed to take it from Butterfield at \$81,000 provided the latter would obtain a loan of \$80,000 for him. The loan was entirely dependent on the purchase of the stock and bonds at the price of \$81,000. It appears to have been substantially a transaction in which Dimock agreed to purchase securities from Butterfield at \$81,000 if the latter would take a mortgage for \$80,000 of the amount. And if it be conceded that as to Mr. Jacobus, though he was Butterfield's partner, the 10 loan was a transaction wholly independent of the purchase of the bonds and stock by Dimock, it nevertheless is extremely clear that his acceptance of the mortgage of \$60,000 was in no wise on the faith of its having been recorded at a date anterior to the time of delivery. The mortgage for \$60,000 cannot be held to have relation back to a date prior to the seventh of June.

As to the second proposition :

The act does not in terms authorize a judgment against the building and land where there has been actual service of the 20 summons, but it does so by a necessary implication and the obvious and undeniable necessities of construction. It provides that "when both a general and specific judgment shall be given (and a general judgment can only be entered where there has been actual service), both writs (common and special fieri facias), may be issued, either separately or combined, in one writ, and one may be issued after the return of the other for the whole or residue, as the case may require."

As to the last proposition : The eleventh section of the mechanics' lien law, as it stood before the revision, provided 30 that the deed given by the Sheriff, pursuant to a sale under a special fieri facias, should convey the estate in the lands which the owner had at or at any time after the commencement of the building, within one year before the filing of the claim in the Clerk's office, subject to all prior encumbrances and free from all encumbrances or estates created by or obtained against such owner afterwards, and from all estates and encumbrances cre-

ated by deed or mortgage made by such owner and not recorded or registered in the office of the Clerk of the county at the commencement of the building. What the Legislature intended by the words of limitation "within one year before the filing of such claim in the Clerk's office" is not apparent. In the revision they have been omitted, and the section as revised provides that the deed shall convey to the purchaser the estate which the owner had in the lands at the commencement of the building, or which he subsequently acquired, and also in the building, subject only to all mortgages and other encumbrances created and recorded, or registered prior to the commencement of the building; such prior liens to have priority to all subsequent builders' liens upon the lands and the erections thereon, except such as may be removable, as between landlord and tenant, which may be sold and removed by virtue of any building lien for the construction of the same, free from such prior encumbrances.

The apparent limitation above mentioned in the original lien law has reference to the estate of the owner in the lands. A consideration of the whole of the provision leaves no room for doubt as to the construction in reference to grants made and encumbrances created by the owner after the commencement of the building. The act expressly provided that the deed should convey the estate to the purchaser subject to all prior encumbrances, and free from all encumbrances or estates created by or obtained against such owner "afterwards," and from all estates or encumbrances created by deed or mortgage made by the owner, or any claiming under him, and not recorded or registered in the office of the Clerk of the county at the commencement of the building. The *Jacobus* mortgages are not only both encumbrances created by the owner after the commencement of the building, but both must be regarded as having been recorded after that time; for the recording of the mortgage of \$60,000 must, under the circumstances, be held to have been simultaneous with the delivery, and therefore after the commencement of the building.

The objection made to the lien claim of Thompson is not valid. The entire work to the building was done, as before stated, by days' work, by persons employed by the owner.

Thompson was the architect who drew the plans and superintended the entire work of construction. For this service he was, as he testifies, to be paid two and a half per cent. on the estimated amount of the cost of the work, which was agreed between them to be \$75,000. His bill of particulars, attached to his claim of lien, is sufficiently specific. His claim is within the letter and spirit of the mechanics lien law. The act gives a lien to "any person for labor performed or materials furnished for the erection and construction of the building." The man who draws the plans and superintends and directs the construction is clearly within the provision. (*Phillips on Mechanics' Liens*, § 158; *Banks of Penn. v. Gries* 35 Penn. 423.)

The summons issued on Warner's claim was duly issued within a year from the date of the furnishing of the last of the labor and materials for which the claim was filed and the time of issuing the summons was duly endorsed on the claim. It appears, however, that the service of the summons on Mr and Mrs. Dimock was defective. An order was obtained for the issuing of a new summons; not, however, until more than a year after the date of the furnishing of the last of the labor and materials. The supplement to the Practice Act, Nix. Dig., 755, § 1, provides for the issuing of a new summons under such circumstances, and that the service of the new summons "shall be as valid and effectual, to all intents and purposes, as if duly made and returned on the original summons." His claim is good.

The result is, that the lien claims of Thompson and Warner are valid, and that all of the lien claims are entitled to priority over the Jacobus mortgages. The lien claimants are not to be confined for satisfaction of their demands to the amount which on sale of the premises would be the proportion which the value of the building would bear to that of the whole premises.

REPORT OF MASTER.

11th November, 1875.

In pursuance of an order of the Court of Chancery of New Jersey, entered in the above stated causes, on the second-day of November, Anno Domini, eighteen hundred and seventy-five, whereby it was referred to the subscriber, one of the Masters of said Court, to ascertain and report the amount due to the Complainants for principal and interest upon the bond and mortgage mentioned in the Bill of the Complainants and what, if anything, 10 was due to the Defendants named therein, upon their respective mortgages and judgments, I did issue process of summons to said Defendants to appear before me at my office, in the city of Newark, on this eleventh day of November, in the year eighteen hundred and seventy-five, (as shown by the proof of claims and of service annexed thereto), when I would proceed to hear and determine the matters that are referred to me in the aforesaid order, and in the presence of the Solicitor of the Complainants, and of such of the Defendants who have answered to such summons, and presented and proved their claims as stated hereafter 20 having considered the said matters and things, I, William Paterson, the aforesaid Master, do report

That the Solicitor of the Complainant produced before me the aforesaid bond and mortgage in said Bill mentioned, bearing date the second day of December, one thousand eight hundred and sixty-seven, duly made and executed as is set forth and stated in said Bill, and which said mortgage was duly acknowledged according to law, by the makers thereof, and recorded as in the Bill mentioned, as appears by endorsements thereon; with a receipt for monies paid for insuring the mortgaged premises 30 against loss or damage by fire, as covenanted in said mortgage, taxes and assessments upon the said mortgaged premises, and which said bond and mortgage and receipt are marked Exhibits A, B, and C, on the part of the Complainants, and I find there is due to the Complainants on their said mortgage, for principal and interest, on this day, the sum of twenty-five thousand eight hundred and nine dollars, thirty-eight cents—\$25,809.³⁸/₁₀₀, and I do certify and report that the schedule hereunto annexed, marked No. 1, and making part of this, my report, contains a state-

ment and account of the principal and interest money due to the Complainants on their said mortgage, and to which, for greater certainty, I refer.

That the Defendant, Lyman A. Jacobus, did produce before me the two several bonds and mortgages that are referred to in the Bill of Complaint, and are set forth particularly in the proceedings in this cause, being marked therein as Exhibits No. 1, No. 2, No. 3 and No. 4, on the part of the said Lyman A. Jacobus, and the same in this matter of reference. And I find there is due to the said Lyman A. Jacobus on this 11th November, 1875, for principal and interest on his said mortgages, the sum of ninety-six thousand and twenty-two dollars and twenty cents, \$96,022.²⁰/₁₀₀.

That the Defendants, Elijah H. Purdy, William Phyfe and Robert Clenighen, partners, trading under the business name of E. H. Purdy and Co., who recovered the claim and judgment of lien that are mentioned particularly in the aforesaid proceedings marked thereon as Exhibits Nos. 1 and 2 on the part of the said E. H. Purdy & Co., and the same in this matter of reference, did make deposition before me that the whole sum mentioned therein, namely, \$49,963.⁴⁸/₁₀₀ remained unpaid at this date. And I find there is due to the said E. H. Purdy and Co., on this 11th November, 1874, for principal and interest on the said judgment lien, the sum of fifty-seven thousand nine hundred and thirty-nine dollars and twenty-one cents—\$57,939.²¹/₁₀₀.

That the Defendant, Thomas Thompson, who recovered the claim and judgment of lien that are mentioned also particularly in said proceedings, marked therein as Exhibits No. 1 and No. 2 on his part, and the same in this matter of reference, did prove before me by deposition, annexed thereto, that the whole sum mentioned therein, namely: \$1,957.⁰⁷/₁₀₀ is due and unpaid at this date, with interest from 28th January, 1874. And I find there is due to the said Thomas Thompson on this 11th November, 1875, for principal and interest on his said judgment lien, the sum of two thousand two hundred and five dollars, seventy-five cents—\$2,205.⁷⁵/₁₀₀.

That the Defendant, Wyllys H. Warner, who recovered the claim and judgment lien that also are mentioned particularly in

said proceedings, marked therein as Exhibits No. 1 and No. 2 on his part, and the same in this matter of reference, did prove before me by deposition annexed hereto, that the whole sum mentioned therein, namely: \$3,121.⁵²/₁₀₀ is due and unpaid at this date with interest from 8th April, 1874. And I find there is due to the said Wyllys H. Warner on this 11th November, 1875, for principal and interest on his said judgment lien the sum of three thousand four hundred sixty-eight dollars twenty-seven cents, —\$3,468.²⁷/₁₀₀.

- 10 That the Schedules annexed hereto, marked No. 2, No. 3, No. 4 and No. 5, do contain a statement and an account of the monies found due as aforesaid, to said Defendants respectively, to which, for greater certainty, I would refer.

That the mortgage of the Complainants, after the Complainants had released therefrom that part of the same as recorded in Book 41 of Deeds for the County of Union, on page 410, and is a strip of land 65 feet in width, and 200 feet in depth, and that of the said Lyman A. Jacobus, contains the same land, and the mortgage of the Complainants is entitled to be paid first, the 20 judgment liens of said E. H. Purdy and Co., of Thomas Thompson, and of Wyllys H. Warner second, and the mortgage of the said Lyman A. Jacobus third in order of priority, with costs of suit respectively.

That the complainants have paid or incurred twenty-eight ⁵⁰/₁₀₀, for expenses in obtaining certificates of search in the records of the Supreme Court of New Jersey, \$3.50—and of the County of Union, \$25,—in relation to or against the title of the mortgaged premises, since the execution of their said mortgage, certified as to each by the person making the same, produced 30 before me by the said solicitor and marked as Exhibits D and E on their part; and I certify that in my opinion, such searches were necessary for the proper foreclosure of the said mortgage.

That the solicitor of the complainants produced before me a printed record of the testimony and the proceedings above referred to in said cause, which is marked as Exhibit on the part of the complainants.

And I do further certify and report, that it is necessary and

advisable that the whole of the mortgaged premises should be sold, to raise and pay the money so due to the complainants and to the said defendants, as determined and ascertained hereinbefore—together with the costs of this suit. All which is respectfully submitted, this eleventh day of November, A. D. eighteen hundred and seventy-five.

WILLIAM PATERSON,
Master C. C.

SCHEDULE No. 1.

Bond bearing date the second day of December, 1867, in the penal sum of \$20,000, conditioned for the payment of \$10,000 in one year, with lawful interest, secured by the mortgage in the complainant's bill mentioned, - - -	\$10,000 00	10
Interest paid to 2nd June, 1872, - - -	12,921 65	
Taxes, &c., paid 1 May, 1875, - - -	477 04	
Interest thereon, - - -	2,410 69	
Interest thereon from the 2d day of June, 1872, to the eleventh day of November, 1875, -		
Amount due complainants, this 11th day of November, 1875, - - -	\$25,809 38	20

WM. PATERSON,
M. C. C.

SCHEDULE No. 2.

Bond dated 2d May, 1870, in the penal sum of \$120,000, conditioned to pay \$60,000 on 31st December, 1870, with lawful interest, secured by the mortgage Exhibit No. 3, for Lyman A. Jacobus, - - -	\$60,000 00	
Interest thereon, from 1st July, 1872, 14,116 66	\$74,116 66	30
Bond dated 18th March, 1871, in the penal sum of \$40,000, conditioned to pay \$20,00 on 31st December, 1872, with lawful interest, secured by the Mortgage Exhibit No. 1, for Lyman A. Jacobus, - - -	\$20,000 00	
Interest thereon from 1st July, 1872, 1,905 54	\$21,905 54	

Due to Lyman A. Jacobus, 11th November, 1875, - - - - - \$96,022 20 40

WM. PATERSON,
M. C. C.

SCHEDULE No. 3.

Judgment entered	30th	July,	1873.	28th January, 1874, on claim of	
lien and costs,	-	-	-		\$49,963 48
Interest thereon from date,	-	-	-		7,975 73
					<hr/>
Due to E. H. Purdy & Co.,				11th November,	
1875,	-	-	-		\$57,939 21
					<hr/>
					WM. PATERSON,
					M. C. C.

10

SCHEDULE No. 4.

Judgment entered	28th January, 1874, on claim of	
lien and costs,	-	\$1,951 07
Interest thereon from date,	-	254 68
		<hr/>
Due to Thomas Thompson,	11th November, 1875,	\$2,205 75
		<hr/>
		WM. PATERSON,
		M. C. C.

SCHEDULE No. 5.

Judgment entered	8th April, 1874, on claim of lien,	
with costs,	-	\$3,121 52
Interest thereon from date,	-	347 75
		<hr/>
Due to Wyllys H. Warner,	11th November,	
1875,	-	\$3,468 27
		<hr/>
		WM. PATERSON,
		M. M. C.

FINAL DECREE.

Filed December 11, 1875.

This cause coming on to be heard in the presence of Lewis C. Grover solicitor and of counsel with the complainant and Messrs. R. S. Green, B. Williamson, E. S. Atwater and C. F. Hill of counsel with the several answering defendants, the complainant's bill having been heretofore taken as confessed against all of the defendants except Lyman A. Jacobus,

Elijah H. Purdy, William Phyfe, Robert Clenighen, Thomas Thompson, Wyllys H. Warner and the Fourth National Bank, seven of the defendants, whereupon, and upon reading a report upon file, made by William Paterson, Esquire, one of the Masters of this Court, bearing date on the eleventh day of November in the year of our Lord one thousand eight hundred and seventy-five, from all which it appears amongst other things that there was due to the complainant on the day of the making of the said report, for principal and interest on its mortgages and taxes paid, the sum of Twenty-five thousand eight hundred and nine dollars and thirty-eight cents, and to the defendants, Elijah H. Purdy, William Phyfe and Robert Clenighen, the sum of Fifty-seven thousand nine hundred and thirty-nine dollars and twenty-one cents, to the defendant, Thomas Thompson, two thousand two hundred and five dollars and seventy-five cents, and to the defendant, Wyllys H. Warner, the sum of Three thousand four hundred and sixty-eight dollars and twenty-seven cents on their several judgments, and to the defendant, Lyman A. Jacobus, the sum of Ninety-six thousand and twenty-two dollars and twenty cents on his mortgages, that the same premises are comprised in the respective mortgages of the complainant and last aforesaid defendants, and that the mortgage (with taxes paid) of the complainant is first in registry and execution, and is entitled to priority of payment; and that the judgments of said defendants, Purdy & Co., Thompson and Warner are second in order of priority, and are entitled to be secondly paid; and that the mortgages of the defendant, Lyman A. Jacobus, are third in order of priority and are entitled to be thirdly paid, and that it is necessary and advisable that the whole of the mortgaged premises not released should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary—

It is thereupon, on this eleventh day of December in the year of our Lord one thousand eight hundred and seventy-five, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby

order, adjudge and decree that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold in manner aforesaid to raise and satisfy the several sums of money due to the said complainant and defendants that is to say, the sum of Twenty-five thousand eight hundred and nine dollars and thirty-eight cents together with lawful interest thereon, to be computed from the eleventh day of November in the year of our Lord one thousand eight hundred and seventy-five, 10 being the date of the Master's Report, with the complainant's costs in this cause to be taxed; and a counsel fee of thirty-five dollars, and in the second place, to pay unto the defendants, Elijah H. Purdy, William Phyfe and Robert Clenighen, Thomas Thompson and Wyllys H. Warner, the amounts found due them respectively upon their several judgments, and in the third place to pay to the defendant, Lyman A. Jacobus, the sum of Ninety-six thousand and twenty-two dollars and twenty cents, and that a writ of fieri facias do issue for that purpose out of this Court, directed to the Sheriff 20 of the County of Union commanding him to make sale, according to law, of the said mortgaged premises, and that, out of the money arising from such sale, he pay to the complainant or to its solicitor, its said debt, interest and costs; and also to the aforesaid several defendants their said debts interest and costs, in manner aforesaid, or to their several solicitors; and in case more money should be raised by the said sale than shall be sufficient to answer such several payment that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return, 30 without delay, of his proceedings by virtue of the said writ. And in case the proceeds of such sale shall be insufficient to satisfy and discharge the said mortgage debt, then it is hereby further ordered adjudged, and decreed that said deficiency shall be made of the lands and tenements, goods and chattels of the said defendants, Joseph T. Rowand, Anthony W. Dimock and Henry Winn, as specifically prayed in the bill of complaint filed in this cause; it appearing to the Court that

notice that such relief was sought by said bill, has been duly served and given to said defendants according to law, and the rules and practice of this Court, and that a writ of fieri facias therefor do issue accordingly, out of this Court, against said defendants for that purpose, payment of the said deficiency being hereby decreed to be made by the said defendant, and that the Sheriff make return to this Court of his proceedings by virtue of the said writ. And it is further ordered, adjdged and decreed that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

THEODORE RUNYON,

C.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;"><i>Between</i></p> <p>The Mutual Benefit Life Insurance Company,</p> <p style="text-align: center;"><i>and</i></p> <p>Joseph T. Rowand, Lyman A. Jacobus, et al.,</p>	<p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Appeal, Feb'y 7,</i> 1876. 20</p>
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Lyman A. Jacobus, one of the defendants in the above-stated cause, hereby appeals from so much of the final decree made therein, as decrees that the Master's Report therein mentioned should stand ratified or confirmed, and from so much thereof as recognizes and provides for the judgments of the defendants, Elijah H. Purdy, William Phyfe and Robert Clenighen, of Thomas Thompson and of Wyllis H. Warner, as ex-

isting incumbrances upon the mortgaged premises referred to in said decree, and from so much thereof as declares and decrees that the mortgages of him, the said defendant, Lyman A. Jacobus, are third in order of priority of lien upon the mortgaged premises referred to in said decree, and are entitled only to be thirdly paid, and from so much of said decree as decrees that out of the money arising from the sale of said mortgaged premises there should be paid in the second place, next after the payment of the amount decreed to be due to the complainants, unto
 10 the defendants, Elijah H. Purdy, William Phyfe and Robert Clenighen, for their judgment, and to the defendant, Thomas Thompson, for his judgment, and to the defendant, Wyllis, H. Warner, for his judgment, the sums respectively, by said Master's report, and said decree declared and decreed to be due them respectively, and from so much of said decree as postpones either of the mortgages of him, the said Lyman A. Jacobus, to any other lien or encumbrance mentioned in the pleadings or decree in said cause, as binding or affecting the said mortgaged premises, except the mortgage of the said complainants; to the
 20 Court of Errors and Appeals in the last resort, in all causes.

Dated February 7, 1876.

ROBERT S. GREEN,

Solicitor, and of Counsel, with Defendant, Lyman A. Jacobus.

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

ROBT. S. GREEN,

Of Counsel, with Defendant, Lyman A. Jacobus.

COURT OF ERRORS AND APPEALS.

<i>Between</i>	}	<i>On Bill, &c. Petition of appeal. Feb. 7, 1876.</i>
Lyman A. Jacobus,		
<i>and</i>		
The Mutual Benefit Life Insurance Company, et al,		
	<i>Appellants,</i>	
	<i>Appellees.</i>	

To the Honorable, the Court of Errors and Appeals in the last resort in all causes :

10

The humble petition of Lyman A. Jacobus, the appellant in the above-stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery, by His Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the eleventh day of December, in the year one thousand eight hundred and seventy-five, in a cause, wherein the said The Mutual Benefit Life Insurance Company was complainant, and the said Lyman A. Jacobus, Elijah H. Purdy, William Phyfe and Robert Clenighen, Thomas Thompson, Wyllys H. Warner and others were defendants in this respect, to-wit, viz : that the said decree decrees that the Master's Report, therein mentioned, should stand ratified and confirmed, and recognizes and provides for the judgments of the defendants, Elijah H. Purdy, William Phyfe, and Robert Clenighen, of Thomas Thompson and of Wyllys H. Warner, as existing encumbrances upon the mortgaged premises referred to in said decree and declares and decrees that the mortgages of him, the said Lyman A. Jacobus, are third in order of priority of lien upon the mortgaged premises referred to in said decree, and are entitled only to be thirdly paid, and decrees that out of the money arising from the sale of said mortgaged premises there should be paid in the second place, next after the payment of the amount decreed to be due to the complainant, The Mutual Benefit Life Insurance Company, unto the defendants, Elijah H. Purdy,

30

William Phyfe and Robert Clenighen, for their judgments, and to the defendant, Thomas Thompson, for his judgment, and to the defendant, Wyllys H. Warner, for his judgment, the sums respectively by said Master's Report and decree declared and decreed to be due them respectively, and postpones the mortgages of him, the said Lyman A. Jacobus, to the liens and encumbrances of the said Elijah H. Purdy, William Phyfe, and Robert Clenighen, Thomas Thompson and Wyllys H. Warner, as binding and affecting said mortgaged premises prior
10 thereto.

And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said judgments of Elijah H. Purdy, William Phyfe and Robert Clenighen, of Thomas Thompson and of Wyllys H. Warner, are not incumbrances upon the said premises, and for that the mortgages of the said Lyman A. Jacobus are one or both second in order of priority of lien upon the said premises and entitled to be secondly paid next after the payment of the amount due to the complainant on its mortgage, and for that the said judgments of said
20 Elijah H. Purdy, William Phyfe and Robert Clenighen, of Thomas Thompson and of Wyllys H. Warner, are not entitled to be paid out of the moneys arising from the sale of the said mortgaged premises in the second place next after the payment of the amount due to the complainant, and prior to the payment of either of the mortgages of said Lyman A. Jacobus, and for that the said mortgages of the said Lyman A. Jacobus should not be postponed to any other lien or incumbrance mentioned in the pleadings or decree in said cause as binding or affecting the said
30 mortgaged premises, except the mortgage of the said complainant. Your petitioner therefore prays, that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

ROBERT S. GREEN,

Solicitor, and of Counsel with Appellant.

Dated February 8, 1876.

The usual answers to this petition of appeal were duly filed by the respondents.

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INDEX.

	PAGE
Bill.....	1
Answer of E. H. Purdy, Wm. Phyfe and Rob't Clenighen	12
Answer of Lyman A. Jacobus	17
Answer of Wyllys H. Warner.....	23
Answer of The Fourth National Bank of New York.....	27
Answer of Thomas Thompson.....	32
Examination of witnesses, ex parte Complainant.....	35
Testimony ex parte Purdy, Phyfe and Clenighen.....	38
Testimony Thomas Sulzer.....	41
" Anthony W. Dimock	46
" Elijah H. Purdy.....	57
" Frederick Butterfield.....	59
" Lyman A. Jacobus.....	66
" Oscar Marsh.....	68
" Oscar Marsh.....	70
" Jacob Davis.....	70
" David Richardson.....	71
" ex parte Wyllys H. Warner.....	72
" Charles F. Hill.....	72
" Wyllys H. Warner	73
" ex parte Thomas Thompson.....	75
" Thomas Thompson.....	77
Exhibits A, B, C and D, ex parte Complainant	79
" E, F and G, " "	80
" No. 1, ex parte E. H. Purdy & Co.....	81
" No. 2, " " " "	84
" No. 3, " " " "	86
" No. 4, " " " "	87
" No. 5, " " " "	88
" No. 4, " Lyman A. Jacobus.....	88
" No. 3, " " " "	89
" No. 2, " " " "	89
" No. 1, " " " "	90
" No. 5, " " " "	90
" No. 1, " Thomas Thompson	91
" No. 2, " " " "	94
" No. 1, " Wyllys H. Warner.....	97
" No. 2, " " " "	99
Statement of quotations of Atlantic Mail Steamship Co. Stock...100	
Opinion.....	101
Masters' Report.....	108
Final Decree.....	112
Appeal.....	115
Petition of Appeal, &c.....	117

PAGE

1

12

17

23

27

32

35

38

41

46

57

59

66

68

70

70

71

72

72

73

75

77

79

80

81

84

86

87

88

88

89

89

90

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91

94

97

99

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