

New Jersey Court of Errors and Appeals.

Between

JOSEPH H. CAMPION, complainant,

and

ROBERT K. KILLE and others, de-
fendants.

}
} *On appeal.*

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BILL OF COMPLAINT.

[Filed January 9th, 1861.]

IN CHANCERY OF NEW JERSEY.

*To the Honorable Henry W. Green, Chancellor of the State  
of New Jersey.*

Humbly complaining, showeth unto your Honor your orator Joseph H. Campion, of the city of Philadelphia, and state of Pennsylvania, that on or about the seventh day of April, in the year of our Lord one thousand eight hundred and fifty-eight, Robert K. Kille, of the said city of Philadelphia, was seized, or pretended to be seized, of all those certain lots or tracts of lands, messuages, or premises herein after mentioned and particularly described.

And your orator further showeth unto your Honor, that on the said seventh day of April, eighteen hundred and fifty-eight, the said Robert K. Kille, by his certain bond or obligation in writing duly made and executed, became justly indebted to James Steele, David B. Peacock, and William W. Steele, of the said city of Philadelphia, in the penal sum of fifteen thousand dollars lawful money of the United States, conditioned for the payment by the said Robert K. Kille, his heirs, executors, or administrators, or any of them, to the said James Steele, David B. Peacock, and William W. Steele, their certain attorney, executors, administrators, or assigns, the sum of seven thousand five hundred dollars within two years from 20 the date thereof, with lawful interest thereon payable half-

yearly, without any fraud or further delay, as in and by the said bond or writing obligatory, now in the custody of your orator and ready to be produced and proven as this honorable court shall direct, and to which for greater certainty your orator prays leave to refer, may more fully appear.

And your orator further shows unto your Honor, that the said Robert K. Kille, in order to secure the payment of the said sum of seven thousand five hundred dollars, mentioned in the condition of the said bond or writing obligatory, and

10 the interest that might accrue thereon, to the said James Steele, David B. Peacock, and William W. Steele, their executors, administrators, and assigns, did, together with Hannah W. his wife, by a certain deed or indenture of mortgage, under their hands and seals duly executed, bearing date on the said seventh day of April, in the year of our Lord one thousand eight hundred and fifty-eight, as well for and in consideration of the aforesaid debt or sum of seven thousand five hundred dollars, and for the better securing the payment thereof unto the said James Steele, David B. Peacock, and William W.

20 Steele, their executors, administrators, and assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar in specie well and truly paid to the said Robert K. Kille and Hannah W. his wife by the said James Steele, David B. Peacock, and William W. Steele at and before the ensealing and delivery thereof, the receipt of which one dollar was thereby acknowledged, did grant, bargain, sell, release, and confirm unto the said James Steele, David B. Peacock, and William W. Steele, their heirs and assigns, all the following described farm, tract, or piece

30 of ground situate in the township of Woolwich, in the county of Gloucester, and state of New Jersey, and bounded as follows: beginning at a point in the middle of Birch creek, and runs (1st) by the middle of a ditch, north fifty-seven degrees and thirty minutes east, ten chains and fifty links, to a corner; thence (2d) north, seventy-six degrees and thirty minutes east, thirty-one chains thirty links, to a corner in outside line; thence by the same (3d) north, twenty-five degrees west, forty-three chains and thirty links, to the Delaware river; thence, bounding thereon down the same by low water mark, to the

40 mouth of the creek; thence up the same to the lower sluice,

and crossing the bank at said sluice, continues up the middle of the watercourse of Birch creek to the place of beginning, containing one hundred and forty-six acres and a half of land, be the same more or less, being the same premises which John Kille, grandfather of said Robert K. Kille, devised to his son John Kille in tail, and which upon the death of the said John Kille intestate descended to the said Robert K. Kille, his eldest son and heir-at-law. And also all that certain island, called and known by the name of "Goose island," situate in the township of Woolwich, in the county of Gloucester aforesaid, 10 bounded on one side by Rackoon creek, beginning at low water mark on the northeasterly corner of said island, and extending thence, by said low water mark up said creek, the several courses thereof, to the middle of the inner or Jersey channel of said Delaware river, which separates said island from the fast land; thence down the middle of said channel, the several courses thereof, passing by the mouth of Birch creek, to the main channel of the said river Delaware; thence up said main channel, by low water mark thereof, on the outer edge of said island, the several courses thereof, to the 20 place of beginning, containing two hundred and eighteen acres and ten-hundredths of an acre of land, be the same more or less, being the same premises of two-thirds of which John Kille, father of the said Robert K. Kille, died lawfully seized intestate, leaving the said Robert K. Kille and Eliza H. Chardon, his only children and heirs at law, him surviving, and which thereupon descended to the said Robert Kille and Eliza H. Chardon, who with her husband, Samuel Rawle Chardon, afterwards granted and conveyed all the right, title, and interest in the said premises to the said Robert by deed 30 dated April 4th, A. D. 1845, the other third part of said premises having been sold and conveyed to the said Robert K. Kille by John L. Fingerson and wife by deed dated March 27th, A. D. 1845, as by reference thereto will appear, together with all and singular the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments, and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, to have and to hold the said hereditaments and premises above granted, or intended so to 40

be, with the appurtenances, unto the said James Steele, David B. Peacock, and William W. Steele, their heirs and assigns for ever; provided always nevertheless, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Robert K. Kille, his heirs, executors, administrators, or assigns should well and truly pay, or cause to be paid, unto the said James Steele, David B. Peacock, and William W. Steele, their executors, administrators, or assigns, the aforesaid debt or sum of seven thousand five  
 10 hundred dollars on the day and time therein mentioned and appointed for the payments, together with lawful interest for the same in like money, in way and manner therein before specified therefor, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made for or in respect of any taxes, charges, and assessments whatsoever, that then and from thenceforth, as well the said indenture of mortgage and the estate thereby granted as the said obligation above recited should cease, determine, and become absolutely null and void to all intents and purposes, anything  
 20 therein before contained to the contrary thereof in any wise notwithstanding.

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 And your orator further shows unto your Honor, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Robert K. Kille and Hannah W. his wife, on the day of the date thereof, before Asa I. Fish, esquire, a commissioner duly appointed by executive authority of the state of New Jersey to take the acknowledgment of deeds, &c., residing in the city of Philadelphia, and the said indenture of mortgage, or an abstract  
 30 thereof, was duly recorded in the clerk's office of the county of Gloucester, at Woodbury, in book "C. C." of Mortgages, page 192, &c., on the eleventh day of May, in the year of our Lord one thousand eight hundred and fifty-nine, as by the certificate of the clerk of said county, endorsed on said indenture of mortgage, more fully appears, and to which registry and certificate thereof, so as aforesaid endorsed on said indenture of mortgage, your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows, that afterwards, to wit, on  
 40 or about the tenth day of May, in the year of our Lord one

thousand eight hundred and fifty-nine, the said James Steele and William W. Steele, two of the mortgagees named and mentioned in the indenture of mortgage above set forth, for a valuable consideration to them paid by David B. Peacock, the other mortgagee mentioned and named in said indenture of mortgage, did grant, bargain, sell, assign, transfer, and set over unto the said David B. Peacock, his heirs, executors, administrators, and assigns, all their right, title, and interest in the above mentioned deed or indenture of mortgage, together with the mortgaged premises therein described, and also the 10 bond in the said mortgage recited and intended to be secured thereby, and all the moneys, principal and interest, due thereon, to have, hold, receive, and take all the premises aforesaid unto the said David B. Peacock, his heirs, executors, administrators, and assigns to his and their use for ever, subject to the right or equity of redemption of the mortgagor therein, as by the deed of assignment, duly executed under the hands and seals of the said James Steele and William W. Steele, now in the custody of your orator and ready to be produced and proven as this honorable court shall and may direct, 20 reference being thereunto had, may more fully appear.

And your orator further shows, that after the execution and delivery of the aforesaid deed of assignment by the said James Steele and William W. Steele to the said David B. Peacock, and after the said David B. Peacock had become sole possessor and owner of the said deed or indenture of mortgage and the said bond or obligation intended to be secured thereby, to wit, on or about the                    day of                    in the year of our Lord one thousand eight hundred and sixty, the said David B. Peacock departed this life intestate, and that 30 letters of administration of all and singular the goods and chattels, rights and credits, moneys and effects, which were of the said David B. Peacock have been duly granted to one Thomas H. Moore by the proper officers in the said city of Philadelphia; that afterwards, to wit, on or about the twentieth day of October, in the year of our Lord one thousand eight hundred and sixty, for a valuable consideration to him paid by your orator, said Thomas H. Moore, administrator of the estate of the said David B. Peacock, deceased as aforesaid, bargained, sold, assigned, transferred, and set over unto your 40

orator the said deed or indenture of mortgage above mentioned and set forth, and the mortgaged premises therein described, and also the bond in said mortgage mentioned, and thereby intended to be secured, and all moneys, principal and interest, due thereon, to have, hold, receive, and take all and singular the premises unto your orator, his heirs, executors, administrators, and assigns, subject to the right or equity of redemption of the said mortgagor therein, as by the said deed of assignment, duly executed under the hand and seal of the  
 10 said Thomas H. Moore, administrator as aforesaid, now in the custody of your orator and ready to be produced and proven as this honorable court may direct, reference being thereunto had, may more fully appear.

And your orator further shows, that on or about the third day of September, in the year of our Lord one thousand eight hundred and twenty-nine, one John Kille, the grandfather of the said Robert K. Kille the grantor in the mortgage of your orator above set forth, and former owner of the lands and premises therein described, made and executed a mortgage on  
 20 the said premises to one John Ingerson, junior, to secure the payment of two thousand dollars, to be paid in half-yearly payments, that is to say, the sum of twenty-five dollars every six months from the date of the said indenture of mortgage, as an annuity of fifty dollars annually during the life of Hannah Kille, or some other sum; and your orator further shows, that after the execution of the said last mentioned mortgage, to wit, on or about the                    day of                    in the year of our Lord one thousand eight hundred and                    the said Hannah Kille departed this life; and your orator charges that  
 30 the said last mentioned mortgage, being executed only to secure an annuity to the said Hannah during her natural life, upon the death of the said Hannah the estate granted by the said last mentioned mortgage reverted to and vested in the said mortgagor and his heirs, and the said mortgage became fully satisfied, and that although the said mortgage has not been cancelled of record, yet that the said mortgagee named therein has not any existing lien upon the said mortgaged premises.

And your orator further shows, that on or about the twenty-  
 40 ninth day of October, in the year of our Lord one thousand

eight hundred and thirty-eight, the said Robert K. Kille executed a mortgage on the same premises to one Benjamin Black, to secure the sum of two thousand dollars, or some other sum; and that afterwards, to wit, on or about the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-one, the said Benjamin Black, for a valuable consideration to him paid by one Benjamin Lord, assigned, transferred, and set over the said mortgage and the bond thereby secured, together with all moneys due and to become due thereon, to said Benjamin Lord; that afterwards, the said Benjamin Lord having departed this life, first having made his last will and testament, and thereby appointed Anna Lord, James A. Lord, and Benjamin Lord, junior, executors of said last will and testament, the said executors, to wit, on or about the fourth day of September, in the year of our Lord one thousand eight hundred and forty-six, in pursuance with said will and for a valuable consideration to them paid, assigned, transferred, and set over the said deed or indenture of mortgage, and the bond thereby secured, and all moneys due or to become due thereon, to one Benjamin Lord, junior; that afterwards, to wit, on or about the fifth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, the said Benjamin Lord, junior, for a valuable consideration to him paid by Robert K. Matlack, assigned, transferred, and set over the said deed or indenture of mortgage, and the bond thereby secured, and all moneys due or to become due thereon, and the mortgaged premises therein described, to the said Robert K. Matlack, subject only to the equity of redemption of the said Robert K. Kille therein, by virtue of which said last mentioned deed of indenture of mortgage, and the several assignments thereof, the said Robert K. Matlack claims to have some lien upon the said mortgaged premises.

And your orator further shows, that on or about the fourteenth day of January, in the year of our Lord one thousand eight hundred and thirty-nine, the said Robert K. Kille executed a mortgage on the premises first mentioned and described in the mortgage of your orator above set forth to one Richard M. Acton to secure the sum of one thousand dollars or some other sum, by virtue of which said mortgage the said Richard M. Acton claims to have some lien upon said mortgaged premises.

And your orator further shows, that on or about the twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-four, the said Robert K. Kille and Hannah W. his wife executed a mortgage on the farm and premises first mentioned and described in the mortgage of your orator above set forth, and upon the following described tract or piece of land, *viz.* all that tract of meadow ground situate on Oldmans creek island, in the township, county, and state last aforesaid, and bounded by meadow of Joseph Kille

10 and meadow of the late Thomas Kille, containing forty-one and a half acres of meadow, more or less, being the same meadow set off to John Kille, deceased, father of Robert K. Kille, in that the division of the banked part of said island, and is called lot No. 2 in said division, and being the same meadow the said Robert K. Kille inherited from his father and purchased of his sister and her husband, to one Ann Brown, to secure the payment of the sum of two thousand dollars or some other sum, by virtue of which said mortgage the said Ann Brown claims to have some lien upon the said premises.

20 And your orator further shows, that on or about the fourth day of January, in the year of our Lord one thousand eight hundred and forty-eight, the said Robert K. Kille and Hannah W. his wife executed a mortgage on the two tracts of land and premises mentioned and described in the mortgage of your orator above set forth, and also upon the lands and premises on Oldmans creek island, containing forty-one and a half acres, and mentioned and described in the mortgage given by the said Robert K. Kille to the said Ann Brown, above set forth, to the afore mentioned Robert K. Matlack to secure the sum

30 of five thousand dollars or some other sum, by virtue of which said last mentioned mortgage the said Robert K. Matlack claims to have some other and further lien upon the said mortgaged premises.

And your orator further shows, that on or about the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and thirty-two, John Kille, the father of the said Robert K. Kille, then being the owner of the said lands on Oldmans creek island described in the two mortgages last above set forth, together with Esther his wife, executed a

40 mortgage on the said forty-one and a half acres of meadow

land on said island to one George W. Garrison, to secure the sum of one thousand five hundred dollars or some other sum, by virtue of which said mortgage the said George W. Garrison claims to have some lien upon the said premises in said mortgage described.

And your orator further shows, that afterwards, as he has been informed and believes to be true, the said Robert K. Kille conveyed all his right, title, and interest which he had or claimed to have in the said lands on Oldmans creek island, mentioned and described in the said mortgages last above set forth, to one John D. Norton, by virtue of which conveyance the said John D. Norton claims to have some interest in the said premises, but your orator charges and shows that he is unable to set forth or show the nature or extent of the interest of the said John D. Norton in the said premises; that the deed therefor has not in any wise been recorded, as your orator believes, in the office of the clerk of the county of Gloucester, and that the mortgage of your orator was received and taken without any notice or knowledge whatsoever of the said conveyance, and that the estate of the said John D. Norton therein is subject to all equities arising in the premises for or by reason of your orator's said mortgage.

And your orator further shows, that afterwards, on or about the                    day of                    in the year of our Lord one thousand eight hundred and fifty-nine, the said Hannah W. Kille, wife of the said Robert K. Kille, departed this life.

And your orator further shows, that on or about the ninth day of February, in the year of our Lord one thousand eight hundred and fifty-nine, as your orator has been informed and believes to be true, William Brown and Samuel B. Goodwin, trading under the name, style, and firm of Brown and Goodwin, caused to be issued or sued out of the Supreme Court of Judicature of the state of New Jersey a writ or writs of foreign attachment against the said Robert K. Kille, and that one of said writs was delivered to the sheriff of said county of Gloucester, who, in pursuance of the command of said writ, did attach the land and tenements of the said Robert K. Kille in his county, to wit, the tract of land and premises first mentioned and described in your orator's said mortgage, appraised at six thousand seven hundred and twenty-five dollars, the

tract of land secondly mentioned and described in your orator's said mortgage, appraised at seven thousand dollars, and the tract on Oldmans creek island, mentioned and described in the mortgage last above mentioned and set forth, appraised at two thousand and seventy-five dollars, and did make an inventory and appraisement of said lands, and return the same with said writ according to law ; that another of said writs of attachment was delivered to the sheriff of the county of Warren, who, in pursuance of the command of the said writ, did

10 attach the goods and chattels, lands and tenements, of the said Robert K. Kille in his county, to wit, the defendant's interest in two certain tracts of land situate in said county of Warren, being the undivided one-sixth part of a tract, containing twenty acres of land more or less, appraised at one thousand dollars ; and the undivided half or moiety of another tract of land, containing one hundred and fifty acres, appraised at the sum of one thousand five hundred dollars, and also certain goods and chattels of the said defendant, appraised at two hundred and fifty-five dollars, and did make an inventory and

20 appraisement of said lands and goods and chattels, and return the same with said writ, according to law ; that afterwards the said Robert K. Kille caused his appearance to be entered to said writs of attachment, and entered into bond for the return of said goods and chattels seized by and upon said writ of attachment ; and that afterwards such proceedings were had therein, that, on or about the sixteenth day of April, in the year of our Lord one thousand eight hundred and sixty, as your orator has been informed and believes to be true, the said William Brown and Samuel B. Goodwin, trading, &c., as

30 aforesaid, obtained a judgment against the said Robert K. Kille in the Supreme Court of Judicature of the state of New Jersey for the sum of six thousand five hundred and forty-two dollars and two cents, or some other sum, by virtue of which proceedings by attachment and the judgment aforesaid the said Brown and Goodwin claim to have some lien upon the said mortgaged premises ; and the said Brown and Goodwin, as your orator has been informed and believes to be true, pretend and claim that their lien by virtue of the said proceedings by attachment and the judgment thereon aforesaid is a prior en-

40 cumbrance to the lien of your orator's said mortgage upon

the mortgaged premises therein described and entitled to priority of payment out of said mortgaged premises to the lien or encumbrance of your orator's said mortgage; but your orator charges and shows to your Honor, that although the said writs of attachment were issued and levied before the mortgage of your orator was entered of record in the clerk's office of the county of Gloucester, yet that the mortgage of your orator had been and was duly made, executed, acknowledged, and delivered by the said Robert K. Kille long before the issuing of the said attachment, and the said judgment was 10  
obtained subsequent to the execution and recording of the said mortgage of your orator, and with full and actual notice thereof, and that if, the said judgment and proceedings by virtue of said writs of attachment are a lien at all upon the said mortgaged premises, they are subsequent to the encumbrance of your orator's said mortgage.

And your orator further shows and charges, that since the recovery of the said judgment as aforesaid the said Robert K. Kille has paid and satisfied to the said William Brown and Samuel B. Goodwin, trading, &c., as aforesaid, or their attor- 20  
ney, a large part of the moneys due upon said judgment, and that now there only remains due and unpaid thereon about the sum of two thousand dollars or less.

And your orator further shows, that although the said writ of attachment, issued and delivered to the sheriff of the county of Gloucester as aforesaid, was levied upon the said two several tracts of land described in the mortgage of your orator, and also upon the land upon Oldmans creek island mentioned and described as aforesaid, and the said three tracts of land were mentioned, described, and valued in the inventory and 30  
appraisement annexed to and returned with said writ of attachment, and that the said writ of attachment issued and delivered to the sheriff of the county of Warren was levied upon two certain tracts of land in said county of Warren and upon said personal property in said county, and the said two tracts of land and personal property were mentioned, described, and valued in the inventory and appraisement annexed to and returned with said writ of attachment, and although the said three several tracts of land in the county of Gloucester, and the said two several tracts of land in the county of Warren, 40

together with the personal property in said county, became bound by said writs of attachment and the proceedings and judgment thereon obtained, yet the said William Brown and Samuel B. Goodwin, trading, &c., as aforesaid, the plaintiffs in said writs of attachment and judgment, have issued execution on their said judgment, and have directed and delivered the same to the sheriff of the county of Gloucester, therein and thereby commanding him to make the amount of the money recovered by said judgment out of the goods and chattels

10 of the said Robert K. Kille in his county, or in default thereof to cause the said moneys, or the residue thereof, to be made of the lands, tenements, hereditaments, and real estate whereof the said Robert K. Kille was seized on the fifteenth day of February, eighteen hundred and fifty-nine, (the day of the serving of the said writ of attachment by the sheriff of the county of Gloucester as aforesaid) or at any time afterwards, in whose hands soever the same may be; and that the said William Brown and Samuel B. Goodwin, trading, &c., as aforesaid, have caused the said writ of execution to be levied by

20 Joseph Carter, the present sheriff of the county of Gloucester, only upon the lands mentioned in your orator's said mortgage, and not upon the said lot or tract of land on Oldmans creek island, upon which the said writ of attachment was also levied as aforesaid, and which was mentioned and described in the inventory and appraisalment annexed to and returned with said writ of attachment, issued, &c., as aforesaid, and bound by and subject to the judgment aforesaid; and that, acting under and by authority of the said writ of execution, and at the request of the said William Brown and Samuel B. Good-

30 win, trading, &c., as aforesaid, the said Joseph Carter, sheriff as aforesaid, on the sixth day of October last, did advertise for sale at public vendue, on the eighth day of December then next ensuing, at one o'clock in the afternoon of said day, at the house of John P. Pripps, innkeeper in the borough of Woodbury, in the county of Gloucester, all that certain farm, plantation, and tract of land and island called Goose island, and meadow ground situate in the township of Woolwich, in said county, and now in the occupancy of William H. Feather, bounded by lands late of John Pissant, Joseph Kille, by the

40 river Delaware and Birch creek, containing three hundred and

ninety-four acres and ten-hundredths of an acre of land, be the same more or less, which premises Robert K. Kille inherited from his father, and purchased from his sister and her husband, and of Daniel H. Ellis, and being the same premises mentioned and described in the mortgage of your orator above set forth.

And your orator submits and shows to your Honor, that if the said judgment and proceedings by virtue of said writs of attachment are a lien upon said mortgaged premises, and are entitled to priority of payment from said premises to the encumbrance of your orator's said mortgage (which your orator does not in any wise admit), and the said Joseph Carter, sheriff of the county of Gloucester as aforesaid, is permitted to proceed and make sale of the said lands mentioned and described in your orator's said mortgage, and advertised by him as aforesaid under and by virtue of said writ of execution issued by the said Brown and Goodwin against the said Robert K. Kille as aforesaid, and to convey said lands free from the encumbrance of your orator's said mortgage, your orator will be cut off from and deprived of any and all lien and right against the said mortgaged premises and of any and all means of collecting and enforcing the payment of the moneys due to him on his said mortgage as aforesaid. 10 20

And your orator submits and shows, that if the said judgment and proceedings by virtue of the said writs of attachment of the said William Brown and Samuel B. Goodwin, trading, &c., as aforesaid, are a lien upon said premises and lands mentioned and described in your orator's said mortgage, and entitled to priority of payment over your orator's said mortgage, as is claimed and pretended by said Brown and Goodwin as aforesaid, which your orator does not in any wise admit, but expressly charges the contrary thereof to be true, that the said William Brown and Samuel B. Goodwin, trading, &c., as aforesaid, by virtue of the said judgment and writs of attachment, having a lien upon the two several tracts of land and the personal property attached, &c., as aforesaid, in the said county of Warren, and upon the said tract of land situate on Oldmans creek island, in the county of Gloucester, attached, &c., as aforesaid, as well as upon the said two tracts of land mentioned and described in your orator's said mort- 30 40

gage, and the said tracts of land and personal property subject to the lien of the said judgment and writs of attachment of the said Brown and Goodwin, and not included in your orator's said mortgage, being of great value and appraised as aforesaid, to wit, the first tract in the county of Warren at the sum of one thousand dollars, the second tract in said county at the sum of fifteen hundred dollars, the personal property in said county at the sum of two hundred and fifty-five dollars, and the tract of Oldmans creek island, in the county of Gloucester, appraised at two thousand and seventy-five dollars, amounting in the whole to the sum of four thousand eight hundred and thirty dollars, being full, sufficient, ample, and certain security for the payment of the sum of two thousand dollars due on the said judgment to the said Brown and Goodwin as aforesaid, that the said securities should be marshalled and the said Brown and Goodwin be compelled to resort to the said tracts of land and personal property, subject to the lien of the said judgment and writs of attachment, and not included in your orator's said mortgage, before in any wise proceedings against said lands and premises mentioned and described in your orator's said mortgage, or that if this honorable court should deem it more in accordance with equity and right that the said Brown and Goodwin should be permitted to proceed upon their said execution and sell the lands mentioned in your orator's said mortgage, and advertised by said sheriff as aforesaid, that your orator may be subrogated to the rights of the said Brown and Goodwin in the premises.

And your orator further shows, that on or about the fourteenth day of November, A. D. 1860, as your orator has been informed and believes to be true, one Joseph Fithian recovered a judgment against said Robert K. Kille in the Supreme Court of Judicature of the state of New Jersey for the sum of seven hundred dollars debt, and four dollars costs, or some other sum, by virtue of which said judgment the said Joseph Fithian claims to have some lien upon the said premises; but your orator charges, that the said judgment was obtained subsequent to the execution and recording of your orator's said mortgage, and with full notice thereof, and if a lien at all upon said premises, is subsequent to the encumbrance of your orator's said mortgage.

And your orator further shows, that no part of the principal sum of seven thousand five hundred dollars, mentioned in the condition of said bond and in the proviso of redemption of the said deed or indenture of mortgage so as aforesaid given by the said Robert K. Kille and Hannah W. his wife to the said James Steele, David B. Peacock, and William W. Steele, and assigned as aforesaid to your orator, has been paid by the said Robert K. Kille, or by any other person whatsoever for him, either to the said mortgagees or to the said Thomas W. Moore or to your orator, or to any other person or persons for 10 his or their use, and that no part of the interest money due and payable upon said bond or writing obligatory has been paid by the said Robert K. Kille, or by any other person or persons for his use.

And your orator further shows, that there is now due to your orator the said principal sum of seven thousand five hundred dollars, mentioned in the condition of the said bond and in the proviso of redemption of the said mortgage and interest upon said principal sum as aforesaid, and that the estate of your orator in said mortgaged premises has become 20 absolute.

And your orator further shows, that the said Robert K. Kille, John Ingerson, junior, Richard M. Acton, Ann Brown, George W. Garrison, Robert K. Matlack, William Brown, and Samuel B. Goodwin, trading, &c., as aforesaid, John D. Norton and Joseph Fithian, or some or one of them, have at all times since the execution and delivery of your orator's said mortgage possessed and enjoyed, and still do possess and enjoy, the said mortgaged premises and every part thereof, and have at all times received, and still do receive, the rents, 30 issues, and profits thereof, and that the said premises are a slender and scanty security for the payment of the principal and interest money so due and growing due to your orator.

And your orator further shows, that he has frequently and in a friendly manner applied to the said Robert K. Kille, John Ingerson, junior, Richard M. Acton, Ann Brown, George W. Garrison, Robert K. Matlack, William Brown, and Samuel B. Goodwin, trading, &c., as aforesaid, John D. Norton and Joseph Fithian, and requested them to pay to your orator the amount of principal and interest money so due to your orator 40

on said bond and indenture of mortgage so as aforesaid given by said Robert K. Kille and Hannah W. his wife to said James Steele, David B. Peacock, and William W. Steele, or that they would suffer your orator to enter upon the possession of the said mortgaged premises, and receive and take the rents, issues, and profits thereof, and that they would release to your orator all their right, title, and equity of redemption of, in, and to the said mortgaged premises, and deliver unto your orator all deeds, evidences, and muniments of title relating to and  
 10 concerning the same.

And your orator well hoped that the said Robert K. Kille, John Ingerson, junior, Richard M. Acton, Ann Brown, George W. Garrison, Robert K. Matlack, William Brown, and Samuel B. Goodwin, trading as aforesaid, John D. Norton and Joseph Fithian, would have complied with such reasonable request, as in justice and equity they ought to have done, but now so it is, may it please your Honor, that the said defendants, combining and confederating with divers other persons unknown to your orator, but whose names,  
 20 when discovered, your orator prays may be inserted in this his bill of complaint with apt and proper words to charge them as defendants hereto, to injure and aggrieve your orator in the premises, not only refuse to pay your orator the principal and interest money so as aforesaid due to your orator on the bond and deed or indenture of mortgage aforesaid, or in any other manner comply with such reasonable requests of your orator before mentioned, but they, the said defendants, sometimes pretend and give out in speeches that the said Robert K. Kille never was indebted to the said James Steele, David B. Peacock, and  
 30 William W. Steele in the aforesaid sum of seven thousand five hundred dollars or in any other sum of money, and that the said Robert K. Kille did not execute and deliver unto the said James Steele, David B. Peacock, and William W. Steele the bond or writing obligatory before mentioned or any bond or writing obligatory, and that the said Robert K. Kille and Hannah W. his wife did not execute and deliver to the said James Steele, David B. Peacock, and William W. Steele the deed or indenture of mortgage before mentioned or any other deed or indenture of mortgage, whereas your orator expressly  
 40 charges the contrary thereof to be true; and at other times

they give out and pretend that the whole of the principal and interest moneys due upon the said bond or obligation and indenture of mortgage, so as aforesaid given by the said Robert K. Kille and Hannah W. his wife to the said James Steele, David B. Peacock, and William W. Steele, has been paid, whereas your orator expressly charges that neither the whole or any part of the said sum of seven thousand five hundred dollars, mentioned in the condition of said bond and in the proviso of redemption of said mortgage, have been paid or in any way satisfied either to the said James Steele, David B. Peacock, and William W. Steele, or to the said William H. Moore, administrator as aforesaid, or to your orator; and at other times they give out and pretend, that although the estate of your orator has become absolute at law in the premises, yet that neither your orator nor any other persons can enter into possession of the same or dispose of the same to any purchaser, and that the same will be subject to an equity of redemption—all of which actings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator: in tender consideration thereof, and for as much as your orator is without adequate remedy in the premises by the strict rules of the common law, and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable—to the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect, and distinct answer make to all and every the matters aforesaid, and that as if the same were here again repeated and they thereunto particularly interrogated paragraph by paragraph, and that they may be decreed to pay unto your orator by a short day, to be appointed by this honorable court, the amount found due to your orator upon said bond as aforesaid, together with the costs and charges of your orator in this behalf expended, and that on failure thereof they and all persons claiming or to claim by, from, through, or under them, or any of them, may be barred and foreclosed for ever of and for all right, title, and equity of redemption of, in, and to the said mortgaged premises, and every part thereof, and may be decreed to deliver the possession of the said mortgaged premi-

ses, and all deeds, evidences, and muniments of title relating to and concerning the same, unto your orator.

Or, if your Honor should deem it more equitable and just that the mortgaged premises, with the appurtenances, may be sold to pay unto your orator the money due and owing unto him as aforesaid and his costs and charges, and that the said Joseph Carter, sheriff of the county of Gloucester, and all persons acting under him or by his authority or direction, may be restrained from making sale of said farm or plantation, tract  
 10 of land, and island called Goose island, under or by virtue of the aforesaid execution, and that your orator may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience—may it please your Honor, the premises considered, to grant unto your orator not only the state's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Joseph Carter, sheriff of the county of Gloucester, his deputies and agents, and all other persons acting under him or by his authority or direction, re-  
 20 straining them, and each and every of them, from making sale or otherwise proceeding on the aforesaid judgment and execution, wherein the said William Brown and Samuel B. Goodwin, trading, &c., are plaintiffs, and the said Robert K. Kille is defendant, by whatsoever name or names the said parties therein may be called, but also the state's writ of subpœna, to be directed to the said Robert K. Kille, John Ingerson, junior, Richard M. Acton, Ann Brown, George W. Garrison, Robert K. Matlack, William Brown, and Samuel B. Goodwin, trading under the name, style, and firm of Brown and Goodwin, John  
 30 D. Norton, Joseph Fithian, and Joseph Carter, therein and thereby commanding them and each of them, at a certain day and under a certain penalty, therein to be expressed, personally to be and appear before your Honor, in this honorable court, then and there to answer the premises, and to stand to, abide, and perform such decree as to your Honor shall seem meet and agreeable to equity and good conscience, and your orator will ever pray, &c.

P. L. VOORHEES,

*Solicitor for and of counsel with complainant.*

State of New Jersey, Camden county, ss.—Joseph H. Campion of the city of Philadelphia, in the state of Pennsylvania, being duly affirmed according to law, deposes and saith, that he is the complainant mentioned in the above bill of complaint; that the facts, matters, and things set forth in said bill of complaint, so far as they relate to the acts and deeds of this deponent, are true as therein stated and set forth, and that so far as they relate to the acts and deeds of any other person or persons, he, this deponent, believes them to be true.

JOSEPH H. CAMPION. 10

Affirmed and subscribed at Camden, this 1st day of January, A. D. 1861, before me, one of the masters in chancery of New Jersey.

JAMES B. DAYTON, M. C.

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ANSWER.

[Filed February 22d, 1861.]

IN CHANCERY OF NEW JERSEY.

*The answer of Robert K. Kille, one of the defendants, as well to the original as to the amended bill of complaint of Joseph H. Campion, complainant.* 20

This 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 complainant's bills of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and saith—that he admits that, on the seventh day of April, or thereabouts, in the year of our Lord one thousand eight hundred and fifty-eight, he did execute and deliver unto James Steele, David B. Peacock, and William W. Steele a certain bond or 30 writing obligatory, in the penal sum of fifteen thousand dollars lawful money of the United States, conditioned for the payment of the sum of seven thousand five hundred dollars, like lawful money, within two years from the date thereof, with

interest thereon payable half-yearly, as is set out in the said complainant's bills; and further, this defendant answering admits, that he, together with Hannah W. his wife, since deceased, did execute and deliver to the said James Steele, David B. Peacock, and William W. Steele a certain deed or indenture of mortgage of such date and on such premises, and to secure the payment of the said bond or writing obligatory, as the same is in the said bills of complaint mentioned and set forth, and that the said deed or indenture of mortgage was by  
 10 this defendant and the said Hannah W. his wife, since deceased, duly acknowledged according to law, as in the said bills are mentioned and set forth.

And this defendant further in answering saith, that he has understood, and believes it to be true, that the said James Steele and William W. Steele, at and about the time mentioned in the said bills, assigned all their interest in the said mortgage to the said David B. Peacock, since deceased, his heirs, executors, administrators, and assigns; and that the said David B. Peacock departed this life, on or about the time  
 20 mentioned in the complainant's bills of complaint, intestate; and that letters of administration, in due form of law, of the goods and chattels, rights and credits, moneys and effects, which were of the said David B. Peacock has been duly granted to one Thomas H. Moore by the proper officers of the city and county of Philadelphia, in the state of Pennsylvania.

And this defendant in further answering saith, that he hath no knowledge of the assignment of the said bond or writing obligatory and deed or indenture of mortgage by the said Thomas H. Moore, administrator as aforesaid, save only by  
 30 the statements contained in the complainant's bills of complaint, and therefore neither admits nor denies the same, but leaves the said complainant to make such proof thereof as may be consistent with the rules and practice of this honorable court.

And this defendant further answering saith, that this defendant, before the execution and delivery of the said bond or writing obligatory and deed or indenture of mortgage, became and was greatly embarrassed in his pecuniary circumstances, and having occasion for the use of large sums of money, ap-  
 40 plied to the said James Steele, David B. Peacock, and William

W. Steele, who were at that time partners in business trading under the name, style, and firm of James Steele and Company, to be by this defendant used in and about his business, and had borrowed and received from the said James Steele, David B. Peacock, and William W. Steele, trading as aforesaid, divers sums of money, upon and by reason of an agreement made between this defendant and the said James Steele and Co. to pay to them interest thereon at grossly usurious rates; and that the amount of the said sums, with the usurious interest thereon, at the time of the execution of the said bond or writing obligatory and deed or indenture of mortgage, amounted to the sum of three thousand nine hundred dollars, or thereabouts. 10

And this defendant further answering saith, that on or about the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-eight, this defendant, being greatly in want of money, applied to the said James Steele, David B. Peacock, and William W. Steele, and requested of them a further loan; and at the time of making the said last mentioned application, the said James Steele, David B. Peacock, and William W. Steele, having or pretending to have in their possession a large amount of the circulating notes of the Bank of Pennsylvania, which said bank was then and still is utterly insolvent, they, the said James Steele, David B. Peacock, and William W. Steele proposed to make a further loan to this defendant, provided that the said loan should be taken in the circulating notes of the Bank of Pennsylvania, as is herein after mentioned. 20

And this defendant further answering saith, that the said James Steele, David B. Peacock, and William W. Steele, well knowing the market value of the said circulating notes to be at and about the rate of forty-seven to forty-nine cents to the dollar of their nominal value, then and there entered into a gross and corrupt agreement with this defendant, by which it was agreed that the said James Steele, David B. Peacock, and William W. Steele should deliver to this defendant circulating notes of the Bank of Pennsylvania to the nominal amount of four thousand five hundred dollars, and that this defendant should give them his bond or writing obligatory and deed or indenture of mortgage on the land and real estate of this defendant 40

in the state of New Jersey for a sum sufficiently large to cover not only the said sum of three thousand nine hundred dollars before mentioned, but also eighty per cent., or eighty cents on the dollar, of the nominal value of the said circulating notes of the Bank of Pennsylvania.

And this defendant further answering saith, that in pursuance of the said usurious and corrupt agreement, this defendant took and received from the said James Steele, David B. Peacock, and William W. Steele four thousand five hundred  
 10 dollars of the circulating notes of the Bank of Pennsylvania at eighty cents on the dollar of their nominal value, making the sum of three thousand six hundred dollars, which with the aforesaid sum of three thousand nine hundred dollars, due and owing to the said James W. Steele, David B. Peacock, and William W. Steel, and for which this defendant agreed to give his bond, secured by mortgage as aforesaid, makes the said sum of seven thousand five hundred dollars, mentioned in the condition of the said bond or writing obligatory mentioned and set forth in the complainant's bill of complaint.

20 And this defendant further answering saith, that in further pursuance of the said usurious and corrupt agreement, this defendant sold the said circulating notes of the Bank of Pennsylvania as follows, to wit, four hundred dollars of the said notes at the rate of forty-nine cents to the dollar, making the sum of one hundred and ninety-six dollars, and four thousand one hundred dollars of the said circulating notes at the rate of forty-seven and a half cents to the dollar, making the sum of one thousand nine hundred and fifty-seven dollars and fifty cents—making a difference between the amount of money  
 30 received by this defendant and the amount for which he gave his bond or writing obligatory and deed or indenture of mortgage, next herein after mentioned, of one thousand four hundred and fifty-six dollars and fifty cents.

And this defendant further answering saith, that in further pursuance of the said usurious and corrupt agreement, the said James Steele, David B. Peacock, and William W. Steele, well knowing what sum this defendant had received for the said circulating notes of the said Bank of Pennsylvania, and without any other or further consideration therefor received by  
 40 this defendant, this defendant executed and delivered to the

said James Steele, David B. Peacock, and William W. Steele his bond or writing obligatory in the penal sum of fifteen thousand dollars, conditioned for the payment of seven thousand five hundred dollars within two years from the date thereof, which said bond bears date on the seventh day of April, in the year of our Lord eighteen hundred and fifty-eight, and is the same bond or writing obligatory mentioned and set forth in the complainant's bills of complaint.

And this defendant further answering saith, that in further pursuance of the said usurious and corrupt agreement, this 10  
defendant, together with Hannah W. his wife, since deceased, on the same seventh day of April aforesaid, did execute and deliver to the said James Steele, David B. Peacock, and William W. Steele the same deed or indenture of mortgage mentioned and set forth in the said complainant's bills of complaint; and this defendant charges and insists that the said bond or writing obligatory and deed or indenture of mortgage, so set out in the complainant's bills of complaint as having been executed by this defendant, by reason of the corrupt and usurious agreement above set forth, are by the law of the land usuri- 20  
ous and utterly void.

And this defendant further answering saith, that at the execution of the said bond or writing obligatory and deed or indenture of mortgage before mentioned and set forth in the complainant's said bills of complaint, he, this defendant, paid to the said James Steele, David B. Peacock, and William W. Steele, then trading under the name, style, and firm of James Steele and Co., the sum of two thousand and twenty-five dollars, being the amount of six months' interest on the said sum of seven thousand five hundred dollars mentioned in the con- 30  
dition of the said bond or writing obligatory and in the proviso of redemption of the said deed or indenture of mortgage, as in and by the receipt of the said James Steele and Co., bearing date the same seventh day of April, eighteen hundred and fifty-eight, now in the possession of this defendant and ready to be produced, may and will more fully appear.

And this defendant further answering saith, that afterwards, to wit, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, this defendant paid to the said Thomas H. Moore, as the administrator 40

of the said David B. Peacock, the further sum of four hundred and fifty dollars, on account of the interest on the said bond ; and this defendant further saith, that afterwards, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty, this defendant paid and satisfied to the said Thomas H. Moore, administrator as aforesaid, the further sum of one hundred and fifty dollars, on account of interest on the said bond and writing obligatory set forth in the complainant's bills of complaint.

- 10 And this defendant further answering saith, that he hath no knowledge of the execution and delivery by John Kille, the grandfather of this defendant, of a mortgage to John Ingerson, junior, of such purport and effect as set forth in the complainant's bills, except the statement in the said bills contained ; and further answering admits, that he did, on or about the time mentioned in the complainant's bills of complaint, execute and deliver to one Benjamin Black a certain deed or indenture of mortgage of such purport and effect as is set forth in the said complainant's bills of complaint, and that
- 20 the said last mentioned deed or indenture of mortgage has been assigned to and is now held and owned by the said Robert K. Matlack, mentioned in the said complainant's bills.

- And this defendant further answering admits, that he, this defendant, did execute and deliver to one Richard M. Acton a certain other deed or indenture of mortgage, of such date, for such sum, and of such purport and effect as is set forth and mentioned in the said complainant's bills ; and that this defendant did, together with Hannah W. his wife, make and execute and deliver to Ann Brown a certain other deed or in-
- 30 denture of mortgage, for such sum, of such date and of such purport and effect as is mentioned in the complainant's said bills of complaint ; and this defendant further answering saith, that he, together with Hannah W. his wife, did execute and deliver to the said Robert K. Matlack a certain other deed or indenture of mortgage, of such date and of such purport and effect as is mentioned in said bills of complaint.

- And this defendant further answering saith, that he admits that John Kille, the father of this defendant and then the owner of the land therein described, did execute and deliver
- 40 unto one George W. Garrison a certain other deed or inden-

ture of mortgage, of such date, for such sum, and of such purport and effect as in said complainant's bills is mentioned and set forth; and further answering this defendant saith, that he did, together with Hannah W. his wife, before the execution and delivery of the said deed or indenture of mortgage of the said complainant, sell and convey to the said John D. Morton, mentioned in the complainant's bills, all that tract of land and premises, containing forty-one and a half acres of land, lying on Oldmans creek, in the county of Gloucester, to have and to hold to the said John D. Norton, his heirs and assigns 10  
in fee.

And this defendant further answering admits, that William Brown and Samuel B. Goodwin, trading under the name, style, and firm of Brown and Goodwin, did recover a judgment against this defendant in the Supreme Court of Judicature of the state of New Jersey for such sum and about the time mentioned in the complainant's bills; and further saith, that there is a small amount, about seventeen hundred dollars or thereabouts, still due on the said judgment; and this defendant further admits, that one Joseph Fithian recovered a 20  
judgment in the Supreme Court of Judicature of the state of New Jersey against this defendant at the time and for the sum mentioned in the amended bill of complaint of the said complainant.

And this defendant denies all unlawful combination and confederacy in said bills charged, without that that any other matter or thing material for this defendant 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 this defendant; all which matters 30  
and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct. And this defendant further charges and insists, that the said bond and mortgage of the said complainant, having been made pursuant to an usurious and corrupt agreement, the said complainant is entitled to no relief in equity and good conscience in this honorable court, the same being declared by the act of the legislature null and utterly void. But if your Honor should think that, in equity and good conscience, the said complainant is entitled to any relief in the premises, then this defendant 40

further charges and insists, that the said sum of one thousand four hundred and fifty-six dollars and fifty cents, being the difference between the said sum of three thousand six hundred dollars, allowed by this defendant to the said James Steele, David B. Peacock, and William W. Steele for the notes of the Bank of Pennsylvania and the said sum of two thousand one hundred and forty-three dollars and fifty cents, the then market value of the said circulating notes before mentioned, with interest thereon from the said seventh day of  
 10 April, in the year of our Lord one thousand eight hundred and fifty-eight, should be deducted from the amount of the principal and interest of the said bond or writing obligatory and deed or indenture of mortgage of the said complainant.

And this defendant humbly prays, that a decree of this honorable court may be made declaring the said bond or writing obligatory and deed or indenture of mortgage of the said complainant usurious and void; or, if your Honor shall consider a decree of that nature unjust and contrary to equity and good conscience, then that a decree of this honorable  
 20 court may be made deducting from the amount of the said bond or writing obligatory and deed or indenture of mortgage of the said complainant the said sum of one thousand four hundred and fifty-six dollars and fifty cents, with interest thereon from the seventh day of April, in the year of our Lord one thousand eight hundred and fifty-eight, and that this defendant may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained. And this defendant, as in duty bound, will ever pray, &c.

EWAN MERRITT,

30 *Solicitor and of counsel with the defendant.*

New Jersey, ss.—Robert K. Kille, the above named defendant, being duly sworn, on his oath saith—that the matters and things set forth in the above answer, so far as relate to his own acts are true, and so far as relate to the acts of others he believes them to be true.

ROB'T K. KILLE.

Sworn and subscribed this 21st day of February, A. D. 1861, before me.

C. H. HOLLINSHEAD, M. C.

## EVIDENCE.

*Examination of Robert K. Kille, one of the defendants in the above stated cause, taken before me, Franklin B. Levis, one of the masters and examiners of the Court of Chancery of the state of New Jersey, at my office in the town of Mount Holly, in the county of Burlington, and state aforesaid, on Saturday, the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-two, in the presence of Ewan Merritt, solicitor and of counsel for the said defendant, Robert K. Kille, and of 10 Peter L. Voorhees, solicitor and of counsel for the said complainant, Joseph H. Campion.*

*Robert K. Kille, one of the defendants, of the town of Mount Holly, in the county of Burlington, state of New Jersey, being duly sworn according to law, deposes and says— I live in Mount Holly; I resided in Philadelphia some eight or ten years before I moved here; I am the owner of a farm in the county of Gloucester, in this state; I am acquainted with the persons composing the late firm of James Steele & Co.; they were James Steele, David B. Peacock, and William 20 W. Steele; I gave them a bond and mortgage on my farm in Gloucester county—I think it was in April, A. D. 1858—it was for seven thousand five hundred dollars; the consideration of the mortgage was notes they held against me for fourteen hundred dollars—I think that was the sum; also took four thousand five hundred dollars of the notes of the Bank of Pennsylvania at eighty cents to the dollar; I suppose the balance was in cash, but I don't recollect of receiving more than one thousand dollars in cash; when I moved from Philadelphia some papers were mislaid, and I cannot tell definitely 30 the amount of cash I received; when I made the contract for this bond and mortgage, I think I received from James Steele a memorandum of the terms; James Steele was one of the firm; this is the paper I have lost or mislaid; I cannot tell how long I owed James Steele & Co. the money contained in the notes; I knew that I owed them one thousand dollars of the money in December, A. D. 1856; at the time I borrowed the money on the notes, I paid them, or was to pay them by contract, one per cent. a month or twelve per cent. per an-*

num; that interest was actually paid by me to them whilst I held the money; I cannot say that these notes were over due at the time I gave the mortgage; at the time I made this mortgage, I gave the Bank of Pennsylvania notes to a broker, and he sold them—four hundred dollars of them at forty-nine cents, and forty-one hundred dollars at forty-seven and a half cents; my impression is that I received the notes a few days before I delivered the mortgage to them; I think the notes were actually sold by a broker before I made the mortgage—

10 that is my impression; I think I received the notes of the Bank of Pennsylvania the day after I made the contract for the mortgage; at the time of making the contract for this mortgage, Mr. James Steele and Mr. David B. Peacock both told me that the Bank of Pennsylvania notes were worth about fifty cents to the dollar; I agreed to allow this firm for Bank of Pennsylvania notes eighty cents to the dollar; the cost price of these notes to me was three thousand six hundred dollars; I am acquainted with the signature of James Steele & Co.

20 *Exhibit No. 1*, being a receipt from James Steele & Co., dated April 7th, 1858, for two hundred and twenty-five dollars, being shown to witness, he says—that signature is the signature of James Steele & Co.; the receipt was given to me by James Steele; it was in the contract they were to give me six months' interest, and this receipt is for the six months' interest in advance.

*Exhibit No. 2*, being a check drawn by Robert K. Kille on the Farmers and Mechanics Bank at Camden for four hundred and fifty dollars, dated October 14th, A. D. 1859, being  
30 shown to witness, he says—that is my genuine signature; I gave this check to Thomas H. Moore, the administrator of David B. Peacock; I gave this check for interest on the mortgage I gave to James Steele & Co.; that check has been paid by the bank, and returned to me.

*Exhibit No. 3*, being a check drawn by Robert K. Kille on the Farmers and Mechanics Bank at Camden, in favor of Thomas H. Moore, for one hundred and fifty dollars, dated May 23d, A. D. 1860, being shown to witness, he says—this check was given by me for the payment of interest on the  
40 same bond and mortgage.

At the time of making the contract for this bond and mortgage, there were other inducements held out to me for giving it, by David B. Peacock, and for taking these Pennsylvania Bank notes as part of the consideration for the mortgage; it was not at the time of making the contract for the mortgage, but the evening before; we had been talking of a treaty for this mortgage for nearly two months; the inducement was, that Mr. Peacock said he would take the mortgage, and that the money could remain as long as I wished.

*Exhibit No. 4*, being a bill and receipt from Lewis Cooper, 10 containing an account of sales of Pennsylvania Bank notes made for me, being shown to witness, he says—that is the bill I received from Mr. Cooper. The sum of two thousand one hundred and thirty-two dollars and twenty-five cents, in said bill, is the amount I received from the sale of said bank notes; the notes then sold by Mr. Cooper for me were the same I received from James Steele & Co.; William Steele delivered them to me.

Cross-examined by Mr. Voorhees.—I came to reside in Mount Holly in July, A. D. 1859; prior to that my residence 20 had been in Philadelphia for some eight to eleven years; at the time of making this mortgage, James Steele & Co. also resided in Philadelphia; the contract for this mortgage was made in the counting room of James Steele & Co. in Philadelphia, at the corner of Broad and Cherry streets; the Pennsylvania Bank notes were delivered to me at some bank in Chestnut street above Third, by William W. Steele, I think; I delivered the mortgage to them in their counting room, and there received the cash and my notes of hand; the money borrowed by me in 1856 was secured by renewal of my notes 30 every few months, I paying the interest at or about the time of each renewal; this mortgage only secured the principal of the one thousand dollars borrowed by me of them in 1856, the interest being paid upon the renewals; I do not remember specifically about the four hundred dollars, further than the first agreement they gave me; the first agreement or offer was to take a larger amount of the Pennsylvania Bank notes; I think the balance, after the fourteen hundred dollars above specified, and the Bank of Pennsylvania notes, was paid me in cash, but I do not recollect the amount; I never 40

paid any interest upon this bond and mortgage to James Steele & Co.; it was in the contract that they should allow me six months' interest, and this is what the receipt marked *Exhibit No. 1* was given for.

ROB'T K. KILLE.

Sworn and subscribed, this eleventh day of January, A. D. 1862, before me.

FRANK B. LEVIS, *M. C.*

In pursuance of the foregoing notice, I was attended by  
 10 Peter D. Voorhees, esquire, solicitor of the complainant, and  
 Ewan Merritt, solicitor of the defendants, at my office in the  
 city of Camden, on the twenty-first day of September, at the  
 hour mentioned in said notice. At the request of said solicitors,  
 the taking of testimony was adjourned to October 2d, at  
 the same hour and place.

October 2d, 1861, ten o'clock A. M., the solicitors of the parties in this cause appeared, and proceeded with the examination.

*James Steele*, a witness produced on the part of complainant,  
 20 ant, being duly sworn, saith—I reside in Philadelphia, at No.  
 610 North Thirteenth street; I am a merchant, I have been  
 associated in business with William W. Steele and David B.  
 Peacock, as copartners, trading as James Steele and Company;  
 the business of that firm was the produce commission business;  
 the place of business of the firm was at the corner of  
 Cherry and Broad streets, in the city of Philadelphia; we were  
 all residents of that city; we were associated together for ten  
 or twelve years; we dissolved business, I think, in 1857 or  
 1858—I think it was in 1857, but I cannot say positively;  
 30 during the time we were together, our firm had business with  
 Robert K. Kille; from time to time loaned Mr. Kille a great  
 deal of money, and had a transaction with him respecting a  
 bond and mortgage.

[Being shown a bond and mortgage, marked *Exhibits A*  
 and *B* on the part of complainant, witness says]—this is the  
 bond and mortgage referred to by me; at the time this bond  
 and mortgage was made to us, Mr. Kille resided on the west  
 side of Broad street, above Coates, in the city of Philadelphia;

the negotiations for this bond and mortgage were all made at our counting house in Broad street, in said city; the mortgage was delivered by Mr. Kille to us at our counting house; said mortgage was given to us for about thirty-nine hundred dollars in cash and also for some Bank of Pennsylvania notes, about forty-five hundred dollars' worth, which were furnished at eighty cents on the dollar; this was after the bank had become insolvent; we had paid for those bank notes fully eighty cents on the dollar; we bought them as an article of merchandise; we did not make one cent on them, but lost the interest; 10 the advance was made to Mr. Kille at his own request; he offered to take the notes at that price, and secure us by bond and mortgage; it was a *bona fide* trade; the mortgage was delivered to us at or about the time it bears date; there has never been any interest paid to us on that mortgage; there was an agreement between us in regard to interest; as a part of the bargain, there was to be no interest paid for six months, but in order that the thing should appear fair we gave, I think, Mr. Kille a receipt for two hundred and twenty-five dollars, I think it was, for which we received no consideration; we 20 wished it to appear from that receipt that the interest was settled for the first six months from the date of the mortgage; after we dissolved partnership, this mortgage was assigned to James B. Peacock [paper produced marked *Exhibit C* on the part of the complainant]; this is the deed of assignment from myself and William W. Steele, my son, of our interest in the said mortgage to said Peacock; the signatures to this instrument are ours; Mr. Peacock afterwards died—I think he died in September, 1859.

Cross-examined.—Prior to the mortgage, we had no security 30 for the large sums of money loaned to Mr. Kille of which I have spoken; the only evidences of the debt were his checks; the loans were made from day to day, or from week to week. We were on friendly terms, and he was in the habit of coming to us often; we had been in the habit of discounting John Stokes' notes for him, and it is possible two of them were in that cash transaction alluded to; when we loaned Mr. Kille money from day to day, or week to week, as mentioned before, I do not think we ever took one cent for the loans—it was done in a friendly manner; in discounting Stokes' notes, 40

we charged him interest of course—I do not remember at what rate ; I am not able to say whether when they were discounted we charged more than the legal rate of interest or not ; I think the two notes of Stokes referred to amounted to nine hundred dollars, or thereabouts ; we made cash book entries for every transaction with Mr. Kille ; that cash book is in the possession of our firm—I mean my son and myself ; we are doing business together.

[Mr. Merritt, solicitor of defendant, calls for the production  
10 of the cash book referred to by the witness.]

I will produce the cash book hereafter—I have not got it with me this morning. The three thousand nine hundred dollars cash mentioned was money advanced to Mr. Kille at the consummation of the mortgage ; it was not a settlement of money due from him to us, or of his checks, except, perhaps, the two Stokes notes ; they had been discounted for him before, and agreed by him to be received as so much cash ; the balance of the three thousand nine hundred was paid by our check—I cannot say on what bank, we keep an account in  
20 several ; we kept accounts at that time in the Mechanics, Penn Township, and Corn Exchange banks ; the latter may not have been in existence then ; those are the three banks we keep accounts in at present. I do not know the ruling price of the Bank of Pennsylvania notes at the time this mortgage was made—I think Mr. Kille told me he could use them at the rate of sixty cents on the dollar ; this was at the time of making the mortgage. Mr. Kille made application to our firm for a loan ; he wanted us to loan him, I suppose, about seven thousand or seven thousand five hundred dollars, the amount of  
30 the mortgage ; he agreed to take the bank notes at what they cost us, eighty cents on the dollar ; I certainly did know that eighty cents was above the price they were selling at, but we preferred to keep them rather than take less ; I think we purchased the notes the previous winter, and held them until this transaction ; the purchase was an unfortunate one for us, as we hold some of the notes still.

Examination in chief.—I think the time occupied in making this negotiation, from the time it was first started until consummated, was two months ; we gave Mr. Kille a written  
40 statement ; he kept it for some time, and we thought the whole thing had fallen through with—then he renewed the

application ; I then gave him a second statement ; some time after this he agreed to close with our proposition ; he said he could use the bank notes at sixty cents on the dollar.

[It is agreed that Mr. Steele, this witness, shall be recalled for examination, if desirable, on production of cash book and other memoranda.]

JAMES STEELE.

Sworn and subscribed before me, this second day of October, A. D. 1861.

CHAS. P. STRATTON, *M. C.* 10

Solicitor of complainant offers in evidence assignment of mortgage from Thomas H. Moore, administrator of David B. Peacock, to Joseph H. Campion, the complainant, dated October 20th, A. D. 1860, marked *Exhibit D* on the part of the complainant.

[It is agreed that the statutes of Pennsylvania in reference to interest and usury shall be considered as evidence in this cause.]

January 2d, 1862, solicitors appeared before me, and no other witnesses being offered on either side, the taking of testimony 20 in this cause is concluded.

CHAS. P. STRATTON, *M. C.*

State of New Jersey, Gloucester county, *ss.*—Alexander Wentz being duly sworn according to law did depose and say, I am the surrogate of the county of Gloucester aforesaid, that I knew John D. Norton one of the defendants in the above stated cause ; that the said John D. Norton departed this life, as this deponent is informed and believes, a short time ago, leaving a last will and testament, which said last will and testament was legally proved before him, as surrogate of the said 30 county of Gloucester, by Thomas S. Weatherby, Henry W. Norton, and Sarah Norton the executors therein named, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and sixty-one.

ALEX. WINTZ.

Sworn and subscribed at Woodbury, in the county aforesaid, this sixth day of February, A. D. 1862, before me.

J. D. HARRISON, *M. C.*

## OPINION OF THE CHANCELLOR.

The bill is filed to foreclose a mortgage, given by Robert K. Kille to James Steele and others upon lands in the county of Gloucester, to secure the payment of a bond for \$7500. The mortgage bears date on the seventh day of April, 1858, was duly recorded in the clerk's office of the county of Gloucester on the eleventh of May, 1859, and was subsequently assigned to the complainant. On the ninth of February, 1859, after the date of the complainant's mortgage, but before it was recorded, the mortgaged premises were attached by virtue of a writ of attachment, issued out of the Supreme Court, at the suit of Brown and Goodwin.

Kille, the mortgagor, sets up usury as a defence to the mortgage. Brown and Goodwin, the attaching creditors, claim priority over the mortgage by virtue of their attachment.

The mortgagor, in his answer, having set forth the circumstances under which the bond and mortgage were given, and in which the usury is alleged to consist, avers that the bond and mortgage, having been executed by reason of such corrupt and usurious agreement, "are by the laws of the land usurious and utterly void."

In the absence of more specific allegation and of any averment of the place of the contract, the defence must be limited to a violation of the statutes of this state against usury. *Bennington Iron Co. v. Rutherford*, 3 Harr. 467; *Dolman v. Cook*.

Courts will not *ex officio* take notice of foreign laws, and consequently they must, when material, be stated in pleading. *Collett v. Lord Keith*, 2 East 273; *Walker v. Maxwell*, 1 Mass. 104; 1 *Chitty's Pl. (ed. 1837)* 247.

If the defendant designed to rely upon the fact, that the contract was usurious under the laws of Pennsylvania, it was incumbent upon him to show it as well by his pleadings as by his proofs. *Catheal v. Blydenburgh*, 1 Halst. Ch. R. 19.

The evidence shows that the contract for the loan was made in the city of Philadelphia, by parties resident there, and that the bond and mortgage were there executed. It is clearly a Pennsylvania contract, and its validity must depend upon the laws of that state. It cannot be usurious or void, as alleged

by the answer, by the laws of this state. *Dewolf v. Johnson*, 10 *Wheaton* 367; *Varick v. Crane*, 3 *Green's Ch. R.* 128; *Cotheal v. Blydenburgh*, 1 *Halst. Ch. R.* 17, 631.

The defence of usury, as set up by the answer, is not sustained.

The mortgagor further insists, in case the complainant should be deemed entitled to any relief, that he can recover only the sum actually advanced upon the mortgage. The answer alleges, that as a part of the loan, the mortgagor received \$3600 in Pennsylvania Bank notes for \$4500, at eighty 10 cents on the dollar; that the market value of the notes was not over fifty cents on the dollar, and that they were immediately sold by a broker for \$2143.50, at a loss to the mortgagor of \$1456.50. This sum, with interest from the date of the mortgage, it is insisted should in equity be deducted from the amount of the mortgage debt. This insistent is made upon the ground that, by the construction given to the Pennsylvania statute against usury by the courts of that state, the complainant is permitted to recover upon a usurious contract only 20 the amount actually advanced, with lawful interest, and that this court will give to the complainant the same relief, and no more than that to which he would have been entitled by the laws of the place where the contract was made.

The obvious objection to granting relief upon this ground has already been adverted to, *viz.* that the statute of Pennsylvania has not been pleaded, and that the court will not *ex officio* take notice of the laws of another state.

This difficulty was anticipated by counsel upon the argument, and to avoid the objection, he asks leave to amend or to file a supplemental answer. 30

An amendment upon this ground, and at this stage of the proceedings, would not be in accordance with the practice of the court. The design of the amendment is not to correct any mistake or misstatement in the original answer, but to set up substantially a new ground of defence. The court with great difficulty permits a supplemental answer when an addition is to be put upon the record prejudicial to the plaintiff. *Strange v. Collins*, 2 *Ves. & B.* 163; *Edwards v. McLeary*, 2 *Ibid.* 256; 2 *Daniels' Prac.* 914.

Nor will the court, as a general practice, permit a defend- 40

ant to change his answer after the cause has been heard upon the evidence and there has been any expression of opinion from the court. *Calloway v. Dobson*, 1 Brock. 122.

But it is not clear that the defendant would derive any benefit from the amendment as the evidence now stands before the court. It would be of no avail unless the charge of usury is established.

In the construction of the statute against usury the courts have held, with undeviating uniformity, that where the real  
 10 transaction was a loan of money, no shift could evade the statute. No matter under what guise the loan was concealed, whether by sale of goods, transfer of stock, taking bond for a larger amount than loaned, passing off depreciated paper, or by any other expedient, the court will strip off the guise and ascertain the true nature of the transaction. When the real transaction is a loan of money, and the lender attempts to receive from the borrower more than the amount actually advanced, with lawful interest, no matter under what pretext, it contravenes the policy of the statute and incurs its penalty.  
 20 Both the English and American authorities in support of this principle are very numerous. *Lowe v. Waller*, Douglass 736; *Richards v. Brown*, Cowper 770; *Barker v. Vansommer*, 1 Bro. C. C. 149; *Moore v. Battie*, Ambler 371; *Comyn on Usury* 94, et seq.; *Stuart v. Mechanics and Manufacturers Bank*, 19 Johns. R. 496; *Rose v. Dickson*, 7 Johns. R. 196; *Bank U. S. v. Owens*, 2 Peters 527; *Grosvenor v. Flax and Hemp Manufacturing Co.*, 1 Green's Ch. R. 453.

In the case of *Roberts and Ogden*, appellants, and *Sears*, respondent, decided in the Court of Appeals of this state at  
 30 January term 1835, the principle was distinctly recognised. In that case the loan was for \$2000, of which \$800 was received in cash, and \$1200 in stock, at a price beyond its market value, and which was immediately sold by a broker for the benefit of the borrower at a loss of about \$300. The court held the transaction usurious and void. But the real question, when the penalty of the statute against usury is sought to be enforced, is whether the transaction was a *bona fide* sale or a mere loan of money.

On the argument of this case, it was intimated that the evi-  
 40 dence established a case of usury. But upon a more careful

examination of the evidence, I do not think that fact is satisfactorily established. There is some doubt upon the point whether the transaction was in reality a loan or a sale of stock. The fact of usury should be clearly established. The defence upon this ground is not sustained, and the amendment, if admissible, could be of no avail to the defendant.

2. The attaching creditors are not, by virtue of their attachment, entitled to priority over the mortgage of the complainant, although the mortgage was not recorded at the time of the serving the writ. The attachment binds the property and 10 estate of the defendant in attachment from the time of serving the writ, but it does not bind property alienated by the defendant prior to the service. The execution of the attachment therefore created no lien upon the prior estate of the mortgagee. The claim of the attaching creditors to priority over the title of the mortgagee rests on the fact, that the mortgage was not recorded when the attachment was executed. But the statute gives no such priority. It declares the unrecorded mortgage void only as against a subsequent judgment creditor not having notice of the mortgage, but leaves it in full force as against 20 an attaching creditor. *Nix. Dig.* 124, § 18; *Garwood v. Garwood*, 4 *Halst.* 193; *Reeves v. Johnson*, 7 *Halst.* 29.

The mortgage was recorded before judgment was recovered under the attachment.

The complainant is entitled to the relief prayed for in his bill.

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#### FINAL DECREE.

The bill in this cause having been ordered to be taken as confessed against John Ingerson, junior, Richard M. Acton, George W. Garrison, Robert K. Matlack, Joseph Fithian, and 30 Joseph Carter and Thomas S. Weatherby, Henry M. Norton and Sarah Norton, executors of John D. Norton, deceased, and the same coming on to be heard at the last regular term of this court, in the presence of P. L. Voorhees, solicitor of the said complainant, Ewan Merritt, counsel of the defendant, Robert K. Kille, David A. Depue, counsel with the defend-

ants, William Brown and Samuel B. Goodwin, and Thomas P. Carpenter, of counsel with the defendant, Ann Brown, and it appearing that an order of this court was made on the eighth day of April, instant, directing that the said complainant was entitled to the relief sought and prayed for by him in his bill of complaint, and that the mortgage of the said complainant was entitled to priority of payment out of the said mortgaged premises to the judgment of the said William Brown and Samuel B. Goodwin, and that the said bill and

10 answers be referred to Charles P. Stratton, esquire, one of the masters of this court, to take an account of the principal and interest due to the said complainant, and also to the defendants, John Ingerson, junior, Richard M. Acton, Ann Brown, George W. Garrison, and Robert K. Matlack, upon their respective mortgages mentioned in said bill of complaint, and the amount due, if anything, to the said William Brown and Samuel B. Goodwin and Joseph Fithian upon their respective judgments, and to ascertain and report the order and priority

20 of the said several mortgages and judgments (giving to the mortgage of the said complainant priority over the judgment of the said William Brown and Samuel B. Goodwin), and whether they all embraced the same premises, and whether the said mortgaged premises should be sold together or in parcels, and if in parcels in what order. And it further appearing by the report of the said master, bearing date the eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-two, and now on file in the office of the clerk of this court, that there was due to the said complainant, at the date of said report, the sum of eight thousand

30 two hundred and seventy-six dollars and twenty-five cents upon his bond secured by the mortgage set forth in the said bill of complaint; that there was due at the date of the said report to Robert K. Matlack, one of the defendants, the sum of two thousand two hundred and forty-six dollars upon his bond, executed by the said Robert K. Kille to Benjamin Black, and secured by the mortgage referred to in said bill of complaint, and which said bond and mortgage had been assigned to said Robert K. Matlack, as in said bill set forth; and that there was due to the said Robert K. Matlack, at the date

40 of the said report, the further sum of five thousand nine hun-

dred and fifty-five dollars upon his bond executed to him by the said Robert K. Kille, and secured by the mortgage referred to in said bill of complaint; and that there was due to Matthew Gill and Samuel Hopkins, assignees of the defendant, Richard M. Acton, at the date of said report, the sum of one thousand and forty-two dollars and sixty-five cents upon their bond secured by the mortgage in the said bill of complaint referred to; and that there was due to the defendant, Ann Brown, at the date of the said report, the sum of two thousand three hundred and eight dollars and thirty-three 10 cents upon her bond secured by the mortgage referred to in said bill of complaint; and that there was due to the said defendants, Samuel B. Goodwin and William Brown, at the date of said report, the sum of two thousand and seventy-five dollars and eighty-six cents upon their judgment referred to in said bill of complaint; and that there was due to the defendant, Joseph Fithian, at the date of said report, the sum of five hundred and twenty-eight dollars and sixty-one cents upon his judgment referred to in said bill of complaint; that the above 20 stated mortgages and judgments were to be paid in the following order and priority, they having respectively become liens upon the premises to be sold in said order; that the mortgage of Robert K. Kille to Benjamin Black, assigned to Robert K. Matlack, is the first in order of priority, the mortgage of the said Robert K. Kille to Richard M. Acton, now held by Matthew Gill and Samuel Hopkins, is the second, the mortgage of the said Robert K. Kille to Ann Brown is the third, the mortgage of Robert K. Kille to Robert K. Matlack is the fourth, the mortgage of the said Robert K. Kille to James Steele, David B. Peacock, and William W. Steele, now 30 in the possession of the complainant, is fifth, the judgment of William Brown and Samuel B. Goodwin is the sixth encumbrance, and the judgment of Joseph Fithian the seventh encumbrance in order of priority; that the first three mortgages above stated comprise the same premises, being the farm of one hundred and thirty-six or forty-six acres, in Woolwich township, Gloucester county; and said premises are to be first sold, and said mortgages satisfied, with costs, in their order of priority, as above stated; that the mortgages fourthly and fifthly above named also include the same premises last 40

above named and the property known as Goose island; that said mortgages are to be satisfied in their order of priority, first from the sale of said farm, if the proceeds shall be sufficient, and if not, from the sale of said Goose island, together with the costs of said defendants and said complainants; and that the above stated judgments be then paid in their order, and that it would be necessary to sell the whole of the mortgaged premises in order aforesaid to raise and pay the moneys due to the said complainant and the said defendants; and no  
 10 cause being shown or appearing against confirming said report—

It is, on this nineteenth day of April, in the year of our Lord one thousand eight hundred and sixty-two, by Henry W. Green, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, that the said master's report and all the matters and things therein contained do stand ratified and confirmed, and that the said complainant is entitled to relief and to a sale of so much of the mortgaged premises as will be necessary to satisfy the said Robert K. Matlack, the assignees  
 20 of Richard M. Acton, Ann Brown, William Brown, and Samuel B. Goodwin, Joseph Fithian, and the said complainant, the amounts so as aforesaid reported due to them respectively, with the costs of the complainant and the defendants.

And it is accordingly further ordered, adjudged, and decreed, that so much of the said estate and premises, in the said mortgage of the said complainant and of the said defendants mentioned, as will be sufficient to raise and satisfy the said sums so as aforesaid reported to be due to them respectively, with the costs of the said complainant and the said de-  
 30 fendants to be taxed, be sold, and that a writ of *fieri facias* do issue for that purpose directed to the sheriff of the county of Gloucester, commanding him to make sale according to law of the said mortgaged premises; and that he make sale, in the first place, of the tract of land first mentioned and set forth in the complainant's bill, and that out of the moneys arising from such sale, he, in the first place, pay to Robert K. Matlack, or his solicitor, the sum of two thousand two hundred and fifty-six dollars, with interest to be computed from the  
 40 date of said report until the same be paid, being the principal and interest due upon the said mortgage made and executed

by the said Robert K. Kille to Benjamin Black, and assigned to said Robert K. Matlack; and that he do then pay out of the proceeds arising from the sale of the first tract, in case there be more than sufficient to answer such payment, in the second place, to the assignees of Richard M. Acton, or their solicitor, the sum of one thousand and forty-two dollars and sixty-five cents, with interest thereon, to be computed from the date of said report until the same be paid; and that he do then pay out of the proceeds arising from the sale of the first tract, in case there be more than sufficient to answer such 10 payments, in the third place, to Ann Brown, or her solicitor, the sum of two thousand three hundred and eight dollars and thirty-three cents, with interest thereon, to be computed from the date of said report until the same be paid, together with the costs in this suit to be taxed; and that he do then pay out of the proceeds arising from the sale of the first tract, in case there be more than sufficient to answer the payments aforesaid, in the fourth place, to Robert K. Matlack, or his solicitor, the sum of five thousand nine hundred and fifty-five dol- 20 lars, with interest, to be computed from the date of said report until the same be paid; and that he do then pay out of the proceeds arising from the sale of the first tract, in case there be more than sufficient to answer the payment aforesaid, in the fifth place, to the said complainant, or his solicitor, the sum of eight thousand two hundred and seventy-six dollars and twenty-five cents, with interest thereon, to be computed from the date of said report until the same be paid, together with his costs in this suit to be taxed; and that he do then pay out of the proceeds arising from the sale of the first tract, in case there be more than sufficient to answer the payments 30 aforesaid, in the sixth place, to the defendants, William Brown and Samuel B. Goodwin, the sum of two thousand and seventy-five dollars and eighty-six cents, with interest thereon, to be computed from the date of the said report until the same be paid, together with their costs in this suit to be taxed; and in case there be any surplus of the payments aforesaid, he do pay, if sufficient, and if not, then he do pay so far as the same will extend, to the defendant, Joseph Fithian, or his solicitor, the said sum of five hundred and twenty-eight dollars and 40 sixty-one cents, with interest thereon, to be computed from

the date of the said master's report; and that if sufficient moneys are not raised from the sale of the said first tract to answer the payments aforesaid, that, in the second place, he make sale of the tract of land secondly mentioned and set forth in the said complainant's bill of complaint; and that out of the moneys arising from such sale he, in the first place, pay to the said Robert K. Matlack the sum of five thousand nine hundred and fifty-five dollars, being the amount of principal and interest due on a certain bond and mortgage made and  
 10 executed by the said Robert K. Kille to the said Robert K. Matlack, and dated the fourth day of January, eighteen hundred and forty-eight, or any balance of said sum that may remain unpaid from the proceeds of the sale of the first tract, together with interest thereon, to be computed from the date of the master's report until paid; and in case more money should be raised by such last mentioned sale than sufficient to answer the payment aforesaid, and the balance arising from the sale of the first tract after the payment of the several mortgages thereon, according to their priority, should be insuffi-  
 20 cient to satisfy the complainant's debt, interest, and costs, then and in that case he pay out of the proceeds arising from the sale of the second tract, so far as the same will extend towards paying off the balance remaining due to the said complainant, from the sale of the first tract; and that he do then pay out of the proceeds of the sale arising from the sale of the second tract the amount of money due or any balance remaining due to the said William Brown and Samuel B. Goodwin, for their debt, interest, and costs as aforesaid; and that he do then pay out of the proceeds arising from the sale of the second tract the  
 30 money due or any balance remaining due to the said Joseph Fithian, for his debt and interest as aforesaid; and in case there be any further surplus, that the same be brought into this court, and deposited with the clerk, to abide the further order of this court, unless otherwise disposed of by order of the court; and that the said sheriff make return to this court of his proceedings by virtue of the said writ; and it is further ordered, adjudged, and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in, and to so much of the said mortgaged premises as shall be sold as aforesaid by virtue of this decree.

HENRY W. GREEN, C.

Between

ROBERT K. KILLE, appellant,

and

JOSEPH H. CAMPION, appellees.

} On bill, &c.

PETITION OF APPEAL.

[Filed May 24th, 1862.]

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

The humble petition of Robert K. Kille, 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 Henry W. Green, Chancellor of New Jersey, bearing date the nineteenth of April, in the year of our Lord one thousand eight hundred and sixty-two, wherein the said Joseph H. Campion was complainant and your petitioner, and John Ingerson, junior, Richard M. Acton, George W. Garrison, and others were defendants, in this respect, to wit, that the said degree adjudges that the mortgage 10 of the said complainant, Joseph H. Campion, was and is a valid and existing encumbrance upon the mortgaged premises in the pleadings in this cause mentioned to the amount of eight thousand two hundred and seventy-six dollars and twenty-five cents, and that the said complainant is entitled to have the said premises sold to satisfy him that amount besides his costs. 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 mortgage of the said complainant is not an encumbrance upon the said 20 premises to that amount, or any part thereof, and that the said premises should not have been decreed to be sold to satisfy the said complaint that amount, or any part thereof, or his said costs.

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

Dated May 13th, 1862.

EWAN MERRITT,  
*Solicitor of appellant.*

A. BROWNING,  
*Counsel of appellant*

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ANSWER TO PETITION OF APPEAL.

[Filed 1862.]

This respondent, not confessing all or any of the matters to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereto says—that he believes it to be true that such decree as is complained of was made by the Court of Chancery as in the said petition and appeal is mentioned and set forth, but as to the date, substance, and extent thereof this respondent humbly craves leave to refer thereto when the same shall be produced. And this respondent humbly conceives and is advised that the said decree, in the mat-  
20 ters complained of in said petition of appeal, is agreeable to equity and justice, and therefore humbly hopes that the same, in the matters aforesaid, may be affirmed, and the said appeal may be dismissed this honorable court with costs.

P. L. VOORHEES,  
*Solicitor for and of counsel with respondent.*