

## Court of Appeals in the last Resort.

Between

ELIAS W. RARICK,  
Appellant.

and

DANIEL SANBORN, *et. al.*  
Appellees.

On Bill, &c.,

Petition of Appeal.

To the Honorable the Court of Appeals in the last resort  
in all causes of law.

The humble petition of ELIAS W. RARICK, the Appellant, 10  
in the above stated cause respectfully shows that your peti-  
tioner finds himself aggrieved by a final decree made in the  
Court of Chancery by his Honor Theodore Runyon, Chan-  
cellor of the State of New Jersey, bearing date the 26th  
day of December, eighteen hundred and seventy-six, where-  
in the said Daniel Sanborn and Tunis C. Stryker were  
complainants, and the said Elias W. Rarick and others  
were defendants, in this respect to wit: That the said  
decree adjudges that the prayer of the complainants be 20  
granted, and enjoins William N. Adair a judgment credi-  
tor, his agent, &c., and James Bergen, late Sheriff of the  
County of Somerset, from making sale of certain lands

mentioned in said decree, owned by the complainant, Daniel Sanborn, to satisfy his judgment, debt, the effect of which decree is to render the lands of your petitioner liable for said judgment debt, and said decree further adjudges that the defendant pay the costs of said suit, to be taxed, and your petitioner humbly appeals from said decree upon the ground that the same is erroneous, for the reason that your petitioner's land is not liable in the first instance to be sold to satisfy said judgment, but that the  
 10 premises of the said complainant, Daniel Sanborn, should be first sold in satisfaction of said judgment, and that said decree for costs should have been in favor of the defendants in said suit. Your petitioner therefore prays that the said decree of the said Chancellor may be in all particulars reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable Court may seem meet.

GASTON & BERGEN.

Solicitors for and of Counsel with Appellant.

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20 ANSWER OF DANIEL SANBORN AND TUNIS C. STRYKER, RESPONDENTS.

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

The answer of Daniel Sanborn and Tunis C. Stryker, to the petition of appeal of Elias W. Rarick, Appellant.

The said Appellees not admitting all or any of the matters or things to be true as in and by said petition of appeal are mentioned and set forth for answer thereto, say that they believe it to be true that such order or decree was made in the Court of Chancery, by His Honor, Theodore

Runyon, the Chancellor, as in said petition of appeal is mentioned and set forth, but for further certainty crave leave to refer thereto when the same shall be produced.

And these Appellees humbly conceive and are advised that the said order in the matters complained of in said petition of appeal is correct, just and according to law, and therefore humbly pray that the said order or decree may be affirmed and the said appeal dismissed with costs.

ALVAH A. CLARK.

Solicitor and of Counsel with said Appellees. 10

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### OPINION OF THE CHANCELLOR.

The question presented by the pleadings, is whether the land of the complainants is not entitled to exemption from sale, under the judgment of the defendant, Adair, until after recourse shall have been had for the satisfaction of that judgment, to the land of Rarick. The judgment was recovered by Adair on the 18th of September, 1868, against Jacob L. Sutphen and James Kinsey, and it then became a lien on the land in question in this suit, then owned by Sutphen, but now owned by the two complainants and Rarick, in three several parcels, one owned by each of them. 20

On the 20th of February, 1869, Sutphen conveyed to Samuel S. Hartwell, in fee, the portions of the property now owned by the complainants. On the 31st of March, in that year, he conveyed to Culver Barcalow, in fee, the part now owned by Rarick, and Barcalow conveyed it to Rarick in 1871. On the 13th of August, 1869, Hartwell conveyed to the complainant, Stryker, in fee, by deed with general warranty, that portion of the property conveyed to Hartwell by Sutphen, which is now owned by 30

Stryker, and on the 21st of June, 1870, he conveyed the rest of that property, in fee, by like deed, to the complainant, Sanborn. The complainants, now that Adair is proceeding to sell their property under the judgment, invoke the aid of equity in the premises, claiming exemption for their property until after recourse shall have been had to that of Rarick. This claim is based on the ground that that property is, in equity, primarily liabable, seeing that it was bought by Barcalow after the conveyance to Hartwell  
 10 was made. On the other hand, Rarick insists that he is himself entitled to the exemption as against their property, on the ground that the conveyance to Hartwell was, originally, entirely in trust for Sutphen, and after the 1st of March, 1869, partially so, Hartwell, from that date, holding it in trust for his own indemnity against liability, in respect of his endorsement, for Sutphen's accommodation, of a note for \$3,500, made by the latter, and, at the date of the conveyance to Hartwell, not yet due, and still unpaid, and outstanding, and subject to that claim  
 20 and right of indemnity, holding the property in trust for Sutphen. The objection made at the hearing, on the ground of misjoinder of the complainants, can not avail the defendants for the reason given on that head in *Annin v Annin*, 9 C. E Green 184, in which the same question was presented, under like circumstances.

That the complainants are entitled to the benefit of the rule that lands consisting of different parcels, subject to a general encumbrance, are, in equity, to be charged in the inverse order of the alienation of the several parcels, is  
 30 clear, unless the fact of the deed to Hartwell was a conveyance in trust for Sutphen, deprives them of it. When the deed to Barcalow was made, the conveyance to Hartwell had become, and then was, in fact, merely a mortg-

age It was, on its face, an indefeasible deed in fee, and though a defeasance was then in existence, it had not been, and never was recorded, nor does its existence appear to have been known to any one except the parties to the deed. Sutphen and Hartwell both stated that the latter had purchased the property, and Hartwell professed to be the absolute owner of it, and Sutphen held him out to be so. It is not alleged that at the time of its purchase, Barcalow had not knowledge of the conveyance to Hartwell. Neither Stryker nor Sanborn knew that the conveyance to Hartwell was not, in fact, absolute, and for his own benefit alone. They are both *bona fide* purchasers for valuable consideration, without notice, and they are entitled to be protected accordingly. It is true, it is insisted that Sanborn had notice, when he purchased, that Hartwell was merely a trustee for Sutphen, but the proof does not satisfy me that such was the fact. He swears that he did not know that Hartwell was not the absolute owner of the property. He, indeed, appears to have gone to Sutphen, in Newark or New York, to enquire after the property, though he was present at the sale held by the latter at which it was struck off and declared to have been sold to Hartwell, but he states that it did not, at the time, occur to him that the property had been sold. If it had occurred to him, he would, undoubtedly, have called on Hartwell, who resided in Somerville, as he himself did. He had no purpose or design whatever, except to buy the property of the true owner. He found that Sutphen had negotiated a sale of the land to Plummer, and he then went to the latter and bought it from him, and, as he had reason to do, regarded him as the equitable owner by purchase from Hartwell, through Sutphen, whom Sanborn supposed to be Hartwell's agent. Plummer, in his order on Hartwell for the deed, speaks of the property as

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his own, and so he does in the contract for sale between him and Sanborn. Sutphen's testimony on this subject is too vague to be of any considerable importance. He testifies to nothing on this score positively. At best, he gives "his impression," merely, and that derived from a recollection which seems to be too faint to entitle his impressions to weight in this controversy. He appears never to have told Sanborn that Hartwell held the property in trust for him, but says he thinks that the former saw the letter

10 written by him in reply to a letter (not produced) brought by Sanborn from Hartwell, asking, it is said, for authority from Sutphen to make the conveyance, but he gives his impression merely. And though he says he sent the declaration of trust by the hands of Sanborn, to Hartwell, yet it was the letter to the latter above mentioned, enclosed in a sealed envelope. As before stated, the evidence does not satisfy me that Sanborn had notice that the title to the land was held by Hartwell in trust for Sutphen. On the

20 other hand, my conclusion is that he believed that the land was the property of Hartwell. That Barick had no equity against the complainants, or either of them, to have their lands sold before his, to pay the judgment, is quite clear. And it is equally clear that Barcalow lost whatever equity he had at the time of the conveyance to him, by his supineness, for, though he might, before the purchase by the complainants, have taken action to relieve his property by compelling payment of the judgment out of that which had been conveyed to Hartwell, he did not do so. He has paid to the judgment creditor the amount of the

30 judgment, and has taken an assignment of it. Under the circumstances, he ought not to be permitted\* to sell the complainant's property to pay the judgment. The property sold by him to Barick is abundantly suffi-

cient to pay it, with all prior encumbrances, and it was conveyed to Barick by Barcalow, by deed, with warranty general. The complainants are entitled to the relief they seek, and there will be a decree accordingly..

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DECREE OF CHANCELLOR.

IN CHANCERY OF NEW JERSEY.

Between

DANIEL SANBORN, *and al.*

Complainants.

and

WILLIAM N. ADAIR, *and al.*

Defendants.

Decree.

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This cause coming on to be heard before the Chancellor, in the presence of Alvah A. Clark, Esq., of Counsel with the Complainants, and Hugh M. Gaston, of Counsel with Defendant, E. W. Barick, and the pleadings and proofs in the cause having been read, and the arguments of the respective counsel thereon heard and considered and the Chancellor having taken time to advise thereon, and being of opinion that the complainants are entitled to the relief prayed for by them in their bill of complaint. It is thereupon on this Twenty-Sixth day of December, Eighteen Hundred and Seventy-Six, on motion on behalf of the said complainants, ordered, adjudged and decreed that the said defendants, William N. Adair, his Attorney or Attorneys, Counsel and Agents, and James Bergen, late Sheriff of the County of Somerset, be and they are hereby perpetually en-

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joined and restrained from making sale of such parts or portions of the land and premises belonging to the said complainants or either of them, as are described in the advertisement of sale in said bill of complaint, mentioned as follows : “All that tract or parcel of land situate, lying and being in the village of Somerville, in the County of Somerset, State of Jersey, on the South side of Main Street, beginning at a stone in the middle of New Jersey turnpike road; thence running South, fifteen degrees West  
10 three chains and twenty nine links to a stone for a corner; thence to the beginning.” And it is further ordered and decreed that the defendants pay to the complainants their costs of this suit to be taxed.

THEODORE RUNYON,

Chancellor.

## EXHIBITS.

## [EXHIBIT A. ON PART OF COMPLAINANT.]

Warranty deed Samuel S. Hartwell and Wife, to Tunis C. Stryker, dated August 19th, A. D., 1869. Consideration \$2250, and conveys a strip of land in Somerville, N. J., situate on Main street, 30 feet in width in front and 19 1-2 feet in width in rear, being lot of land secondly described in deed of Jacob L. Sutphen to said Hartwell, dated February 20th 1869.

Acknowledged by Hartwell and wife, August 30, 1869, 10  
and recorded Sept. 2, 1869 in Somerset Clerk's Office,  
Book B. 4 of Deeds page 407, &c.

## [EXHIBIT B. ON PART OF COMPLAINANTS.]

Warranty deed, Samuel S. Hartwell & Wife, to Daniel Sanborn, dated June 21, 1871, consideration \$2200, conveys a tract of land in Somerville, Somerset County, N. J., situate on Main Street in said town, being 25 feet front and rear, and 23 feet in depth.

[EXHIBIT C. ON PART OF COMPLAINANT.]

## SOMERSET CIRCUIT COURT.

WILLIAM N. ADAIR

vs

JAMES KINSEY and JACOB

L. SUTPHEN.

*Fi Fa de bon**et ter in Case.*

Issue Oct. 21, 1873. Ret'ble Dec. term 1873.

J. D. BARTINE, Att'y.

	Levy Damages	\$149 28
10	Costs	32 28
		<hr/>
	Int from Sept 18, 1868 till paid.	\$181 56

The levy attached shows that the property described in Exhibits A and B was levied upon.

[EXHIBIT E. ON THE PART OF THE COMPLAINANT.]

\$5.00

Somerville Feby, 18, 1873

Rec'd of Dan'l Sanborn five dollars for Counsel in matter of title to lot bo't of Sam'l S. Hartwell west of Ten Eyck Hotel.

GASTON &amp; BERGEN.

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[EXHIBIT F. ON PART OF THE COMPLAINANTS.]

\$1100.

Somerville, N. J. June 13, 1871.

On the first day of April 1872, I promise to pay to the

order of George W. Plummer at the First National Bank of Somerville, Eleven Hundred Dollars without defalcation for value received, with interest from date.

D. SANBORN.

Endorsed as follows

Geo. W. Plummer

Nelson Young.

Rec'd on the within note one thousand dollars placed to ac N, Y.

Rec'd on the within note one hundred and fifty three 45-100 dollars balance full on this Note.

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[EXHIBIT NO. 1. ON PART OF DEFENDANT.]

S. S. Hartwell, Esq.,

Somerville, N. J.

Dear Sir :

Please transfer the property next the Brick Hotel, lot 25 x 210, belonging to me, to Mr. Daniel Sanborn, he having purchased the same of me this day

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& oblige yours truly

GEO. W. PLUMMER.

Newark, June 13, '71.

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[EXHIBIT NO. 2. ON PART OF DEFENDANT.]

Article of agreement made and entered into the thir-

teenth day of June, in the year one thousand eight hundred and seventy-one, between Geo. W. Plummer, of Newark, party of the first part, and Daniel Sanborn, of Somerville, party of the second part, in manner following : The said party of the first part, in consideration of the sum of one hundred (\$100) dollars to him duly paid, the receipt whereof is hereby acknowledged, hereby agrees to sell his lot on the south side of Main St, in the town of Somerville, situate next the Brick Hotel, said lot being  
 10 25 feet frontage on Main street, and 210 feet depth to the church lot, for the sum of twenty-two hundred (\$2200) dollars, which the said party of the second part hereby agrees to pay to the said party of the first part as follows :

One hundred dollars mentioned above in note due July 1, 1871	\$100 00
One thousand dollars in note falling due October 1st 1872	1000 00
Eleven hundred dollars in note falling due April 1st, 1872	1100 00
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20	\$2200 00

The last mentioned note to bear interest from date of this agreement to maturity, and the said party of the first part, on receiving such payment at the time and in the manner above mentioned shall at his own proper costs and expense execute, acknowledge and deliver to the said party of the second part or to his assigns, a proper deed for the conveying and assuring to them the fee simple of the said premises free from all encumbrances which deed shall contain a general  
 30 warranty, and the usual full covenants and free of dower, &c. And it is understood that the stipulations afore-

said are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

GEO. W. PLUMMER,            | L.S. |

D. SANBORN.            | L.S. |

Sealed and delivered in  
the presence of \*

J. L. SUTPHEN.

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[EXHIBIT NO. 3, ON PART OF DEFENDANT.]

Newark June 20, 71.

Mr. S. S. Hartwell,

My Dear Friend:

When Mr. Daniel Sanborn gives you two notes as he pledges in the article of agreement between him and Geo. W. Plummer, then please convey to him the lot lying West of Brick Hotel, which you have held in trust for me. I will take care of the note in Bank, and whatever expense is due from this whole matter I will settle with you for when it 20 come up, which I shall do before long. Hoping that your health is much improved, I am your dear friend,

J. L. SUTPHEN.

P. S. I send with Mr. Sanborn, the deed of trust which you gave me, and I hereby give authority to have it cancelled if it is required.

J. L. SUTPHEN.

over

Please mail to Mr. Plummer or to me the notes which Mr. Sanborn will give you, and oblige

J. L. SUTPHEN.

I desire you would mail the notes to Mr. Geo. W. Plummer

100 Pennsylvania,

N. J.

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[EXHIBIT NO. 4, ON PART OF DEFENDANT.]

To all People, &c., I Samuel S. Hartwell, of Somerville,  
10 County of Somerset and State of New Jersey, send  
greeting :

Whereas, by an indenture bearing date February 20th  
A. D., 1869, made by and between Jacob L. Sutphen and  
Christina D. his wife, of Somerville, aforesaid, of the one  
part, and me, the said Samuel S. Hartwell, of the other  
part, they the said Jacob L. Sutphen and his said wife,  
for and in consideration of four thousand one hundred and  
forty-six 33-100 dollars therein mentioned, to be paid to  
them by me, the said Samuel S. Hartwell, did grant, bar-  
20 gain, sell and convey unto me, the said Samuel S. Hart-  
well, my heirs and assigns forever : Two certain lots or  
parcels of land situate on the South side of Main street, in  
the village of Somerville, aforesaid, the first of which hath  
a frontage of twenty-five feet on said street, and is two  
hundred and thirty one feet ten inches in depth, and is  
bounded by said street, by Troutman's hotel property, by  
the Church lot of the Second Reformed Church  
and by the residue of the lot on which said  
Sutphen resides. And the second of which lots is on the

West side of the residence of said Sutphen, and between it and James H. Garnsey's lot, and hath a frontage of thirty feet on said street, and is nineteen and a half feet in the rear in width, and is about two hundred and thirty-one feet in depth, which said several lots are in said indenture particularly described, and which description is to be taken as a part of this instrument, to hold the same unto me, the said Samuel S. Hartwell, my heirs and assigns, to my and their use, benefit and behoof forever.

And whereas I, the said Samuel S. Hartwell have en- 10  
 dorsed for the benefit and accommodation of the said Ja-  
 cob L. Sutphen, his promissory note dated March 1st, 1869,  
 for the payment of three thousand five hundred dollars, at  
 the first National Bank of Somerville, forty days after the  
 date thereof. Now, know ye, that I the said Samuel S.  
 Hartwell do hereby acknowledge testify and declare that the  
 said sum of four thousand one hundred and forty six 33-100  
 dollars was and is the proper money of the said Jacob L.  
 Sutphen, and that the name of me, the said Samuel S. Hart- 20  
 well in the said indenture of conveyance is used only in  
 trust, first to secure and indemnify me from all loss, costs,  
 damages, charges and expenses by reason of my being such  
 endorser and surety on the promissory note of the said Ja-  
 cob L. Sutphen, as aforesaid, and when I, the said Sam-  
 uel S. Hartwell am discharged and forever released from  
 the payment of the money in said promissory note men-  
 tioned and from the present or any future promissory notes  
 or intrustment of writing, whereby I may in any contin-  
 gency be bound or liable to pay the same, then that I  
 hold the aforesaid premises so conveyed to me in trust for 30  
 him the said Jacob L. Sutphen, his heirs and assigns, and  
 that I the said Samuel S. Hartwell, my heirs, &c., shall at

any time or times hereafter upon being so discharged from the payment of the moneys in said promissory note mentioned, upon the request and at the proper costs and charges of the said Jacob L. Sutphen, his heirs or assigns, will convey and assure unto the said Jacob L. Sutphen, his heirs and assigns, the said premises so bargained and sold unto me the said Samuel S. Hartwell as aforesaid, together with all my estate, right, title and interest thereunto, in such manner as by him the said Jacob L. Sutphen, his heirs or assigns or his or their counsel in the bond shall be reasonably required.

In witness whereof, I the said Samuel S. Hartwell, have hereunto set my hand and seal this first day of March, A. D. Eighteen Hundred and Sixty-Nine.

SAMUEL S. HARTWELL, } L.S. }

Sealed and delivered in }  
the presence of }  
}

N. B. Date in 4th line 1st page, written upon erasure words.

20 March 1st 1869 second page, interlined words from any part thereof.

3d page erased before execution.

H. M. GASTON.

Acknowledged March 4th, 1869, before

H. M. GASTON,

Master and Examiner in Chancery.

[EXHIBIT NO. 6. ON THE PART OF DEFENDANT.]

Farrington Barcalow	}	Mortgage
to		Dated
Culver Barcalow,		Nov. 18th, 1863.
To secure \$600.		Book X page 309.

Farrington Barcalow	}	Mortgage
to		Dated
Ann Barcalow		Nov. 20, 1863.
		Book X page 312.

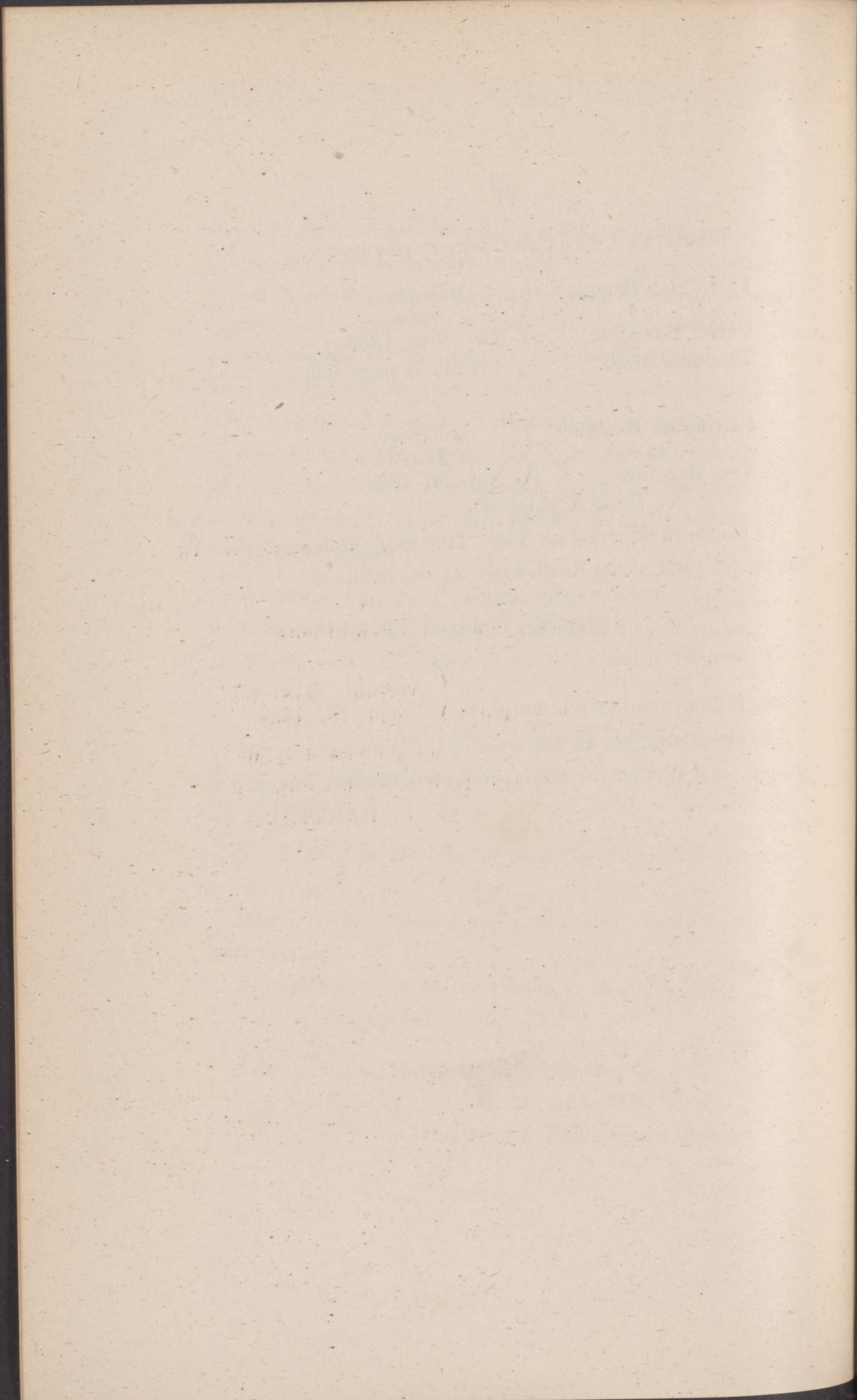
To secure the interest on Two Thousand Dollars to her 10  
during life, and at her death to go to the children.

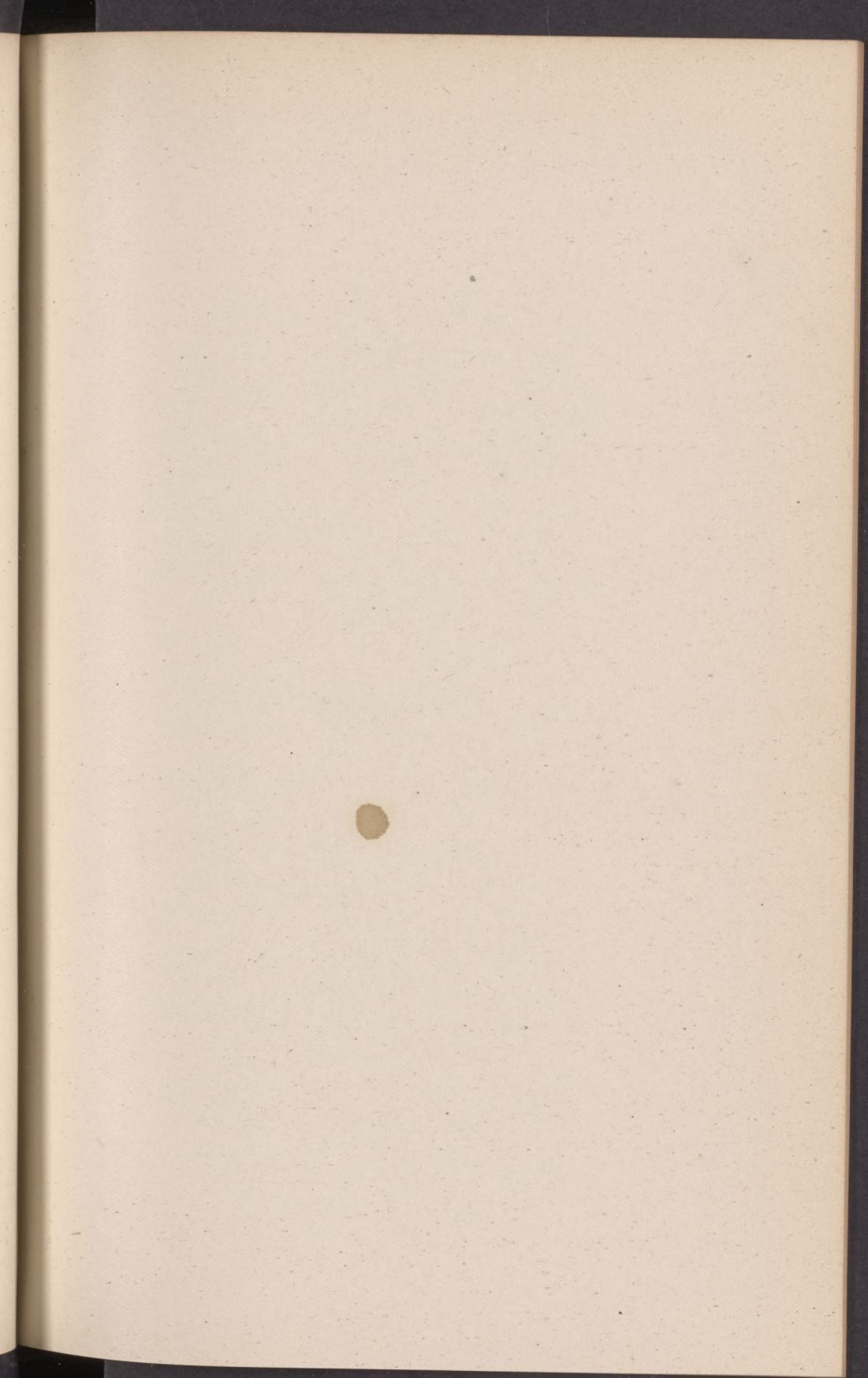
Judgment, Somerset Circuit Court.

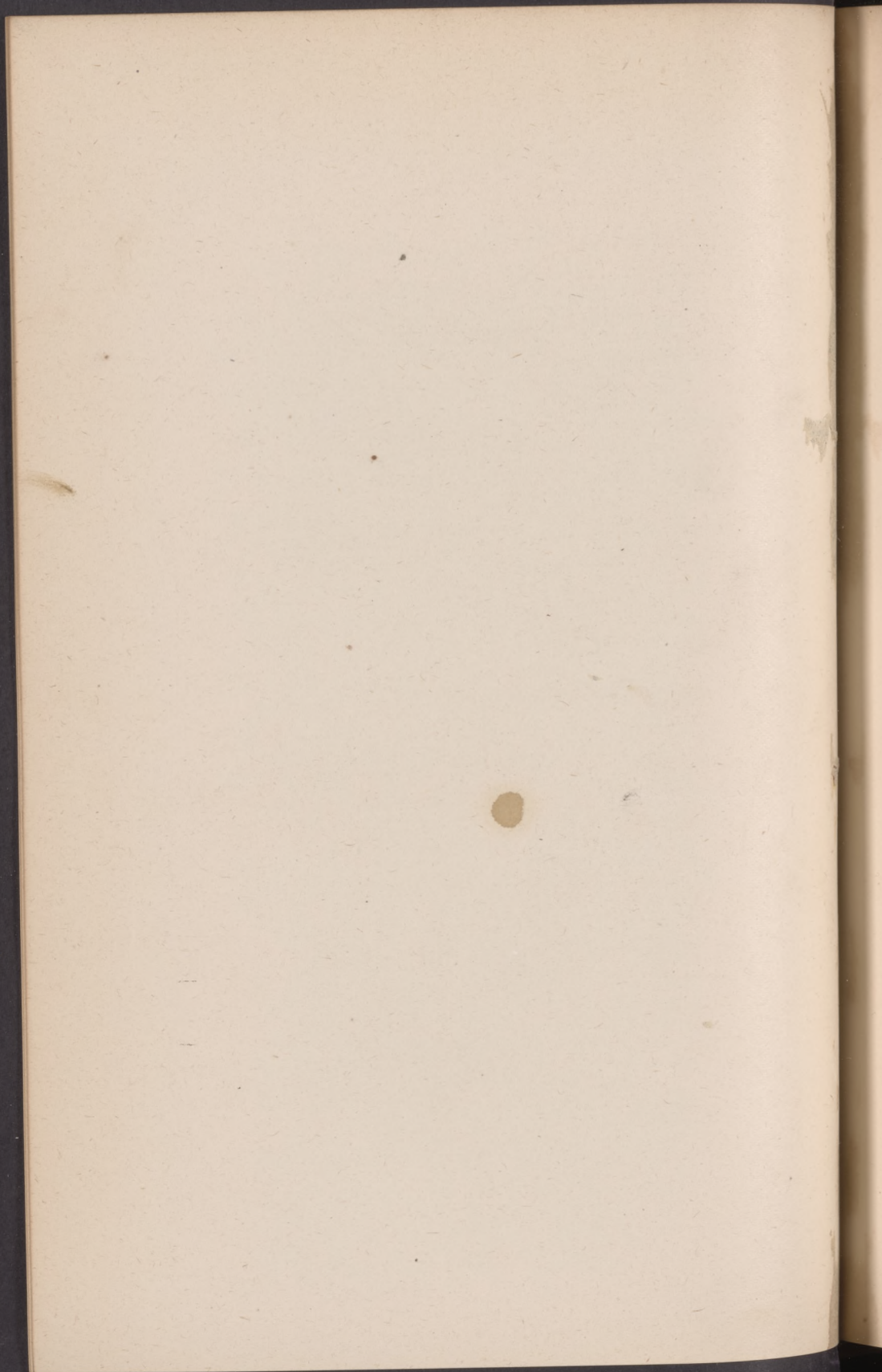
William N. Adair,	}	Amount, \$181 56.
vs.		Sept. 18, 1868.
James Kinsey and Jacob L. Sutphen.		

The above are liens on the tract or lot purchased by Mr.  
Galpin, and further the title is imperfect in other respects.

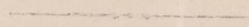
J. D. BARTINE.







THE HISTORY OF THE UNITED STATES



CHAPTER I  
THE EARLY HISTORY OF THE UNITED STATES  
FROM 1492 TO 1776

APPENDIX

The first part of the history of the United States is the history of the discovery and settlement of the continent by the Europeans. It begins with the voyage of Christopher Columbus in 1492, and continues to the establishment of the first permanent European colonies in the early 17th century.

The second part of the history of the United States is the history of the struggle for independence. It begins with the outbreak of the American Revolution in 1775, and continues to the signing of the Declaration of Independence in 1776.

The third part of the history of the United States is the history of the early years of the new nation. It begins with the signing of the Constitution in 1787, and continues to the end of the 18th century.

The fourth part of the history of the United States is the history of the early years of the new nation. It begins with the signing of the Constitution in 1787, and continues to the end of the 18th century.

# New Jersey Court of Errors and Appeals.

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Between  
ELIAS W. RARICK,  
*Appellant,*  
and  
DANIEL SANBORN, AND  
TUNIS C. STRYKER,  
*Appellees.*

} *On Appeal*

## APPELLANT'S POINTS :

### I.

The rule is well settled in New Jersey, that at least as to lands encumbered by mortgage, which have been conveyed away by the owner, they are to be applied to the satisfaction of the mortgage in the inverse order of alienation.

### II.

But the purchaser who is entitled to such relief must be a purchaser for a valuable consideration, free from any agreement or equitable obligation to pay the encumbrance.

Shannon *v.* Marselis, Sax. 413.

Hoy *v.* Bramhall, 4 C. E. Green 463.

Stelle *v.* Andrews, 4 C. E. Green 410.

The real question is who in equity is bound to pay the debt.

Weatherby *v.* Slack, 1 C. E. Green 491.

### III.

A conveyance in trust for the party bound to pay the encumbrance will not relieve the land so conveyed from the encumbrance.

And a purchaser from such a trustee—at least with notice of the trust—or notice of such facts as would put him on inquiry by which notice of the trust would be procured, cannot be relieved.

Information sufficient to put on inquiry is full notice to equity.

Willard Eq. Jur., p. 249.

Story Eq. Jur., §399-400a.

Hill on Trustees, p. 512, 513.

#### IV.

The evidence shows that Sanborn had such a notice, or at least information which would have put him on inquiry by which he would have obtained notice.

#### V.

The deed from Sutphen to Barcalow was made and executed on the 31st day of March, 1869, and the deed from Sutphen to Hartwell was not recorded until the 2nd day of April, 1869, although dated February 20th, 1869, and as the record then stood, the Rarick lot was the one first sold.

*Steele Beesee vs Spencer et al*

#### VI.

*1st Peters 559*

The tract of land was divided into three parcels. On the 20th day of February, 1869, Sutphen the owner conveyed two parcels, the easterly and the westerly tracts, to S. S. Hartwell in trust; and on the 31st day of March, 1869, Sutphen conveyed the centre lot, known as the Rarick property, to Barcalow, the Kinsey judgment being a lien upon all three tracts. At this time, Sutphen, being the equitable owner of the lands held by Hartwell, his land was first bound to pay the judgment. This being so, can Sutphen by his trustee change or destroy the right which Barcalow then had to have the judgment paid out of Sutphen's land? Or can Sutphen by his trustee convey any greater or stronger title than he then had?

GASTON & BERGEN,

*Attys for Appellant.*

W. J. MAGIE,

*Of counsel.*



# New Jersey Court of Errors and Appeals.

Between	}	10
ELIAS W. RARICK, <i>Appellant,</i>		
and	}	
DANIEL SANBORN, et al. <i>Respondents.</i>		20

## ABSTRACT OF BILL OF COMPLAINT.

THE BILL SHOWS

### I.

That the complainants are Daniel Sanborn and Tunis C. Stryker. That on the 18th day of September, 1868. William N. Adair recovered a judgment in the Somerset Circuit Court against one James Kinsey and Jacob L. Sutphen, for \$149.28 damages and \$32.28 costs. 30

### II.

That Kinsey was insolvent when judgment was procured and that Sutphen was solely answerable.

### III.

That at the time said judgment was procured Sutphen 40

owned in fee simple a house and lot in Somerville described as follows, viz: Beginning at the side of the New Jersey Turnpike road, at a corner of lot No. 5, known as the property of William Barcalow; thence running south 15 degrees west 3 chains and 79 links to a stake or stone; thence north 5 degrees east running upon the line and bounded by the lot of James H. Garnsey, the various courses to the side of the New Jersey Turnpike road; thence South 62 degrees east to the place of beginning.

Also a second tract "Beginning at a stone for a corner in the middle of the New Jersey Turnpike road; thence running south 15 degrees west 3 chains and 29 links to a stone for a corner; thence north 65 degrees west 1 chain to a stake or stone for a corner; thence north 15 degrees east 3 chains and 79 links to said road; thence to the beginning.

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## IV.

That on the 20th day of February, 1869, Sutphen and wife conveyed to Samuel S. Hartwell a portion of said lands by a deed dated on that day, acknowledged March 11, 1869, and recorded in Somerset Clerk's Office April 2, 1869, in book A 4 of deeds, page 70, etc. The first lot "Begins at a point marked on the northerly edge of the curb-stone of the side walk on the south side of said Main Street; it being also the northwest corner of Seymour C. Troutman's tavern lot; thence south 12 degrees west 231 10-12 feet to the northerly line of the church lot of Second Reformed Church; thence with the same north 68 degrees west 25 feet; thence north 12 degrees east 231 10-12 feet to the northern edge of the aforesaid curb; thence along the same south 68 degrees east 25 feet to the place of beginning. The second lot, lying between the dwelling house and a lot owned by James H. Garnsey and beginning at a point marked in the north edge of the curb-stone at a point 30 feet easterly of the Garnsey line; thence south 21 1-4 degrees west 75 feet to a point opposite to a re-entrant

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angle on the Garnsey line; thence south 15 degrees west 155 1-12 to a point in the northerly line of said church lot; thence along the same north 68 degrees west 19 1-2 feet to the Garnsey line; thence along the same north 13 1-4 degrees east 154 feet; thence north 75 1-4 degrees west 7 8-12 feet to a point marked on the northerly edge of said curb; thence along the same south 68 degrees east 30 feet to the place of beginning."

## V.

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That on the 31st day of March, 1869, Sutphen conveyed the remaining portion of said lot to Culver Barcalow by a deed dated and acknowledged March 31, 1869, and recorded May 12, 1869, in book Y 3 of deeds, page 638, etc.

## VI.

That August 13th, 1869, Hartwell by a warranty deed, conveyed the lot secondly described in the deed from Sutphen to Hartwell to Tunis C. Stryker, which deed was dated and acknowledged August 13, 1869, and recorded September 2, 1869, in book B 4 of deeds.

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## VII.

That by a deed dated and acknowledged June 21, 1871, and on the same day recorded in said clerk's office, Hartwell and wife by a deed of warranty conveyed to Daniel Sanborn the tract of land first described on said deed from Sutphen to Hartwell.

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## VIII.

That Kinsey and Sutphen are both worthless and that Sutphen has been adjudicated a bankrupt, and is possessed of no property.

## IX.

That an execution was issued upon said judgment and a lien acquired by said William N. Adair upon

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the real estate of Jacob L. Sutphen and which he had conveyed to Hartwell and Barcalow, and that although such lien existed at the time of such conveyances, no provision was made for its payment by either of the said purchasers.

X.

That said judgment was an existing lien upon all the real estate owned by Sutphen September 18, 1868, and  
10 continues to be ; that complainants had no knowledge of the judgment and the property was conveyed to them free of encumbrances.

XI.

That an *alias fi. fa.* was issued October 21, 1873, upon said judgment and that by virtue thereof James Bergen, sheriff of Somerset County, levied upon a portion of the land originally held by Sutphen and advertised the same for sale.

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XII.

That the parcel of land advertised for sale included the land conveyed to Barcalow as well as a portion of the land conveyed to the complainants by Hartwell.

XIII.

That Hartwell died insolvent in 1872, and complainants had no remedy against him.

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XIV.

That Barcalow conveyed his parcel to Elias W. Rarick, who is now the owner.

XV.

Complainants claim that their property is not bound to pay the judgment until the property of Rarick is  
10 exhausted, because the deed to Hartwell was dated

February 20, 1869, and the deed to Barcalow was not dated until March 31, 1869.

*XVI.*

That the whole premises were originally one lot, and was divided by Sutphen into three parcels.

*XVII.*

That the only encumbrance upon the whole lot was a mortgage of \$2,200, and that the Rarick lot is worth sufficient to pay that, together with the said judgment. 10

*XVIII.*

That the lands advertised included the Sanborn lot and part of the Rarick and Stryker lot, and that without the aid of the Court of Chancery the said sheriff will sell it.

*XIX.*

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Prayer for injunction restraining the sale of the land described in the advertisement as belonging to the complainants, and also for subpœna.

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**Abstract of Answer of Elias W. Rarick.**

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*I.*

Admits, the judgment, insolvency of Kinsey and Sutphen.

*II.*

Admits the conveyance to Hartwell, but denies that Hartwell was ever the owner, and claims that he was only trustee, and sets out the declaration of trust. 40

*III.*

Claims that Sutphen sold to Plumer and that Hartwell only held the title as trustee, and that when Sanborn purchased of Plumer he knew the manner in which Hartwell held the title, and himself brought the declaration of trust from Sutphen to Hartwell with an order to transfer to Sanborn upon certain conditions being complied with.

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*IV.*

That the property of Rarick was first sold; that the property of Stryker was the second sold, and that the property of Sanborn was the last sold.

*V.*

Admits that Barcalow purchased, and that his deed was dated and recorded as set out in bill of complaint, but charges that Hartwell was only trustee, and that Sutphen and Plumer received all the money that was paid.

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*VI.*

That he was ignorant of the judgment, and that no provision was made to him for its payment.

*VII.*

Admits the intended sale by sheriff; that Hartwell was dead, and his estate insolvent to a certain degree, but not wholly or entirely so.

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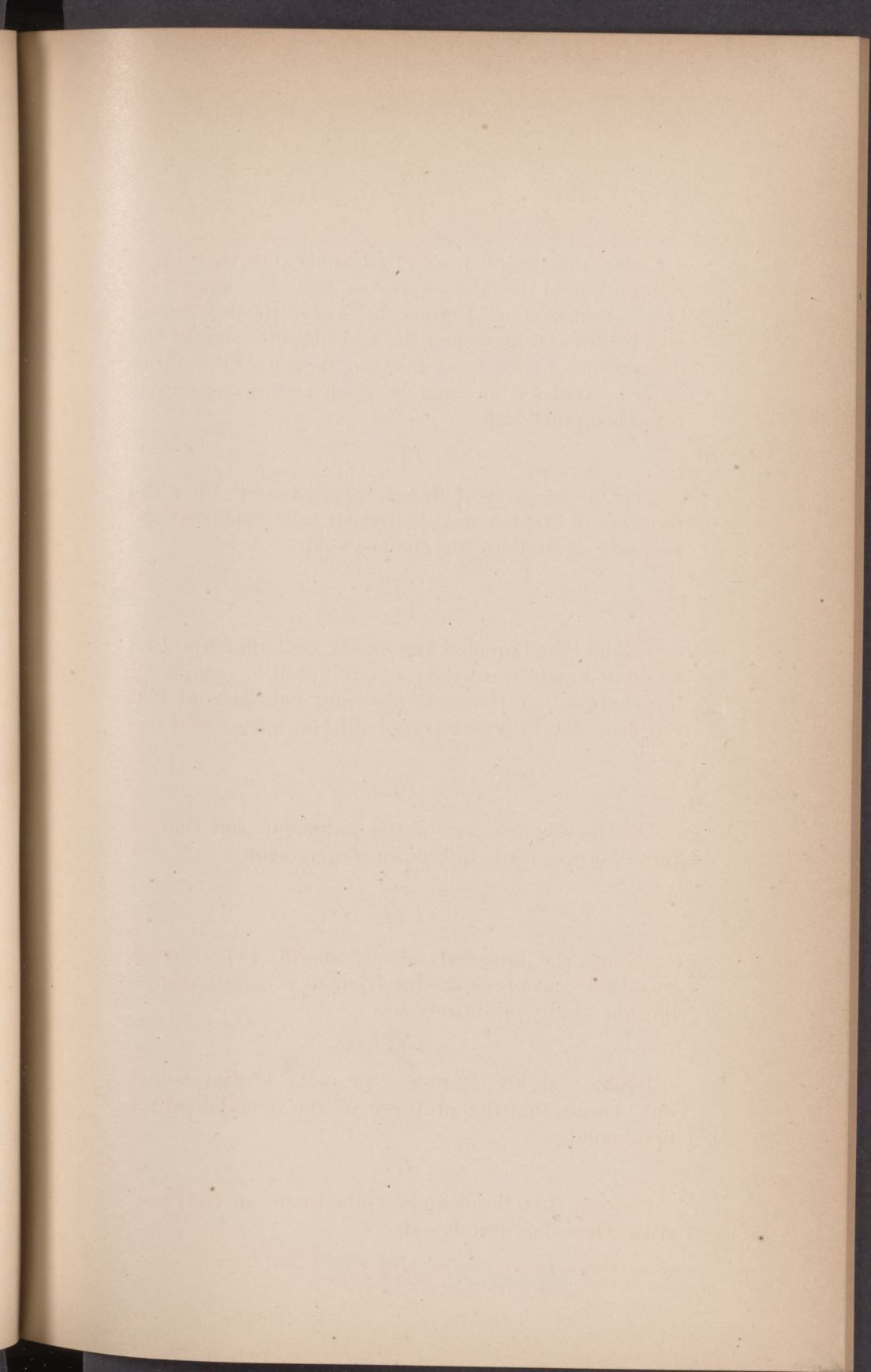
*VIII.*

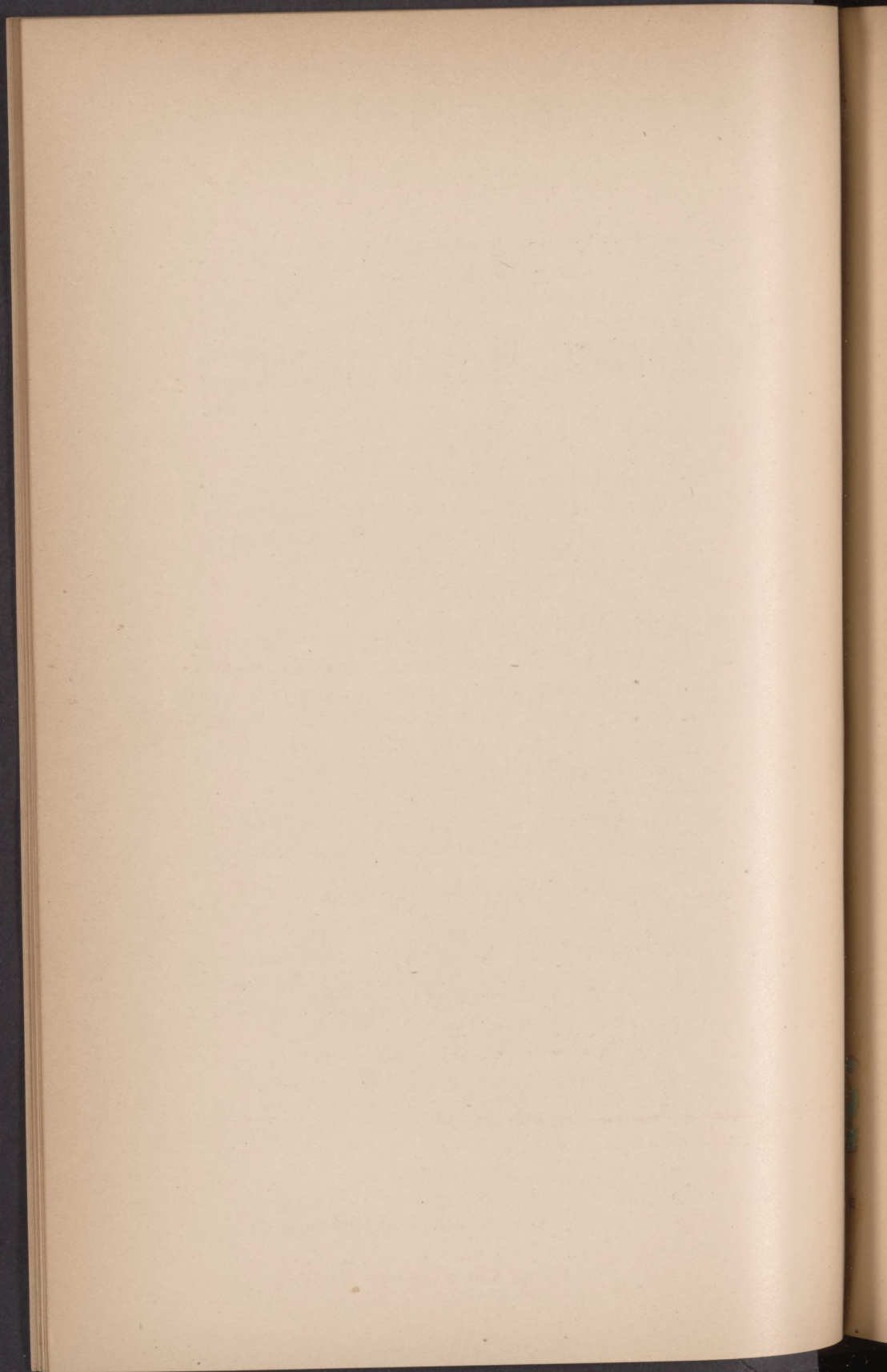
Denies that his (Rarick's) property is first bound, but charges that the property of the complainants is first bound.

*IX.*

Charges that the complainants knew of Hartwell's trust when they purchased.

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In Chancery of New Jersey.

Between

DANIEL SANBORN and TUNIS  
C. STRYKER,

*Complainants,*

*and*

WILLIAM N. ADAIR, and others,

*Defendants.*

*On Bill,  
for Injunction.*

Examination of witnesses &c., taken before the subscriber, a Master and Examiner of the Court of Chancery of New Jersey, at his office in Somerville, on the 10 day of January 1875, in a cause pending in said Court, between Daniel Sanborn and Tunis C. Stryker Complainants, and William N. Adair and others Defendants, in the presence of Alvah A. Clark, Esq., Solicitor for and of counsel with the Complainants, and James J. Bergen, Esq., Solicitor for, and of counsel with the defendants, on due notice, the service whereof is admitted.

I. N. DILTS,

Master and Examiner in Chancery.

MR. CLARK, of counsel with the complainants offers in evidence a deed from Samuel S. Hartwell and wife to Tunis C. Stryker, dated August 30th, 1869, and recorded September 2nd, 1869, in Book B. No. 4 of Deeds for Somerset County, page 40, and marked by me "Exhibit A. Ex parte complainants."

A deed from Samuel S. Hartwell and wife to Daniel Sanborn, dated June 21st, 1871, and recorded June 21st, 1871, in book H. No. 4 of deeds for Somerset County, page 10 554, and marked by me "Exhibit B. ex parte complt's."

Also a Fi. Fa. de bonis et terris issued out of the Somerset Circuit Court, on a judgment in favor of William N. Adair, against James Kinsey and Jacob L. Sutphen, tested Oct. 21st, 1873, and returnable to December Term 1873, judgment obtained on or about September 18th, 1873, which writ I have marked "Exhibit C. exparte Compl't."

DANIEL SANBORN, of the County of Somerset being sworn on his oath saith: I am one of the complainants in this case; I am now the owner of the premises conveyed to me by Samuel S. Hartwell and wife, by deed dated 20 June 21st, 1871; I have known this property about forty years; since I purchased it, I have put on it a three story brick store house containing two stores; I knew the whole of the property formerly owned by Jacob L. Sutphen before any division was made; I had no knowledge of a judgment in favor of William N. Adair against James Kinsey and Jacob L. Sutphen at the time I purchased; there was no provision for the payment of that judgment by me, to my knowledge; I knew nothing 30 about it, and there was no arrangement made for its payment through me; I first learned of this judgment a short time before my building was put up; Mr. Bartine came to

me and the money, he said he had orders to collect the money; he then told me of the judgment; I might have heard of the judgment before; I can't say, but then was the first that it made any impression on my mind; there were a great many rumors of incumbrances, and that I hadn't a good deed; this may have been one of them, for all I know; this was while I was putting the building up; I got my deed June 21st, 1871, and I put up the building next year; I think about the first of August; the property known as the Barick property, in my judgment, at the time I purchased was worth three thousand dollars; I don't know what it brought at public sale; when I come to reckon by the foot, it would be worth more than I said, without the building; it is worth a hundred dollars a foot, and is thirty-eight feet wide. 10

This cross-examination so far as it does not relate to the examination in chief is to be considered evidence in chief for the defendants.

And being Cross-Examined says:

S. J. Galpin dug the first cellar on this lot; I had agreed to sell it to him; that cellar was afterwards partly filled up; Mr. Galpin did not buy that lot, he had an agreement for it; I can't tell why he did not take it; that he was afraid of the title I suppose; there were a great many rumors and bad reports about the title; this was before I commenced to build my stores. 20

Ques. Of whom did you purchase that lot?

Ans. Of George W. Plummer; he lived at Newark.

Ques. State the particulars of your bargain with Mr. Plummer, and your conversation about the lot? 30

(Objected to for the reason that it is not cross examination.)

10      Ans. Our conversation was very little; it was simply to agree on the price; Mr. Sutphen introduced me to Mr. Plumer; he introduced Mr. Plummer as the owner of the lot; there is where he said the ownership lay; I first applied to Mr. Sutphen in regard to purchasing the lot; I rather think I supposed Sutphen to be the owner; when I went to Sutphen I did not know that Mr. Hartwell held the title to the lot; I made a contract in writing with Mr. Plummer for the purchase of this lot; it was explained to me that Mr. Hartwell held the title, when I first spoke to Mr. Sutphen about the lot, in answer to my questions; I was not told that Hartwell was holding it for him; I asked about the title, and he (Sutphen) said the title was in Mr. Hartwell, and he would give me a warranty deed; Sutphen told me that Hartwell owned the lot; I don't think it was in them words; he answered that the title was in Mr. Hartwell, and asked me if that was good enough; I did not  
20 know Mr. Hartwell was not the owner when I entered into the contract with Mr. Plummer; I supposed I was buying of Mr. Hartwell; lot of Mr. Plummer in this way; Mr. Plummer reported that it cost him \$2500, but that he had no deed for it; that is all; I only wanted to explain that he had no deed for it; I think he said he bought it of Mr. Sutphen.

    Ques. Did not Mr. Sutphen give you the declaration of trust made by Mr. Hartwell to him, to bring to Somerville, and give to Mr. Hartwell at the time you purchased?

30      Ans. Not to my knowledge; I think I brought something up, but I did not know what; I think I brought up something.

I paid part of the price of the lot, by note, but I can't bring to mind how I paid the first part; one note I have here was for \$1100; that was one half; this note was made to the order of George W Plummer; I was present when this lot was sold at public sale; it was struck off to Samuel S. Hartwell; I had no recollection about it until Mr. Sutphen told me, then it came to my mind; I had forgotten about the sale.

Ques. If Mr. Plummer bought of Sutphen, how could you suppose that Hartwell was the owner ?

Ans. Mr. Sutphen said the title was in Hartwell, and he would give me a warrantee deed, and further explained that it was not all paid for by Plummer, and he had got no deed. 10

Ques. Then you knew that Mr. Hartwell was not the owner, although he held the title, and would make the conveyance?

Ans. I don't see how I could possibly know it.

Adjourned to Tuesday, January 5th, 1875 at 10 A. M.

Further adjourned to Thursday, January 7th, at 10 1-2 A. M. 20

Parties met pursuant to adjournment.

H. M. Gaston, Esq., appearing for the defendants.

Ques. Upon your return from seeing Mr. Plummer, to Somerville, did you call upon Mr. Hartwell, and if so, for what purpose?

Ans. I must have called there to get my deed, but my recollection don't serve me at all about it.

Ques. Had you any written authority from Mr. Sut-

phen to Mr. Hartwell, authorizing him to make or deliver you a deed?

Ans. I have already stated that I was under the impression that I brought something to Mr. Hartwell, but I didn't know what it was.

Ques. What was the result of your interview with Mr. Hartwell at your return?

10 Ans. I got the deed; I cannot tell whether immediately or not; I have no recollection of any hesitancy on his part to give me a deed.

Ques. Did he not decline to give you a deed, and did you not again go and see Mr. Sutphen?

Ans. I am under the impression that Mr. Hartwell did not hesitate at all to give me a deed; I don't recollect any hesitancy at all.

Ques. Upon the papers you brought from Plummer?

Ans. I don't remember bringing any from Plummer; I might have done so; it was from Mr. Sutphen, if anything.

20 Ques. Would you expect, and did you expect Mr. Hartwell to convey to you that property, upon your simple statement that you were entitled to a deed, and without any writings?

Ans. What I did do I don't know; I should expect any man to be satisfied in some way, that I was entitled to a deed before he would give it.

Ques. Did Mr. Plummer write to Hartwell, by you?

Ans. If he did I don't recollect it.

Ques. When you called upon Mr. Hartwell, did he examine any papers that you brought with you, in your presence?

Ans. I don't think he did; he might have done so.

Being shown paper marked "Exhibit 1, on the part of the defendants."

Ques. Have you any doubt that that is one of the papers you brought to Mr. Hartwell from Mr. Plummer?

Ans. I don't see any reason for doubting of it; I have no recollection of it.

10

Ques. What papers do you remember were made and signed by you at your interview with Mr. Plummer on the day of the purchase?

Ans. There was some kind of an agreement that day; whether the notes were given that day or afterwards, I cannot tell.

The interview with Plummer was before I got the deed; eight days---as appears by the date of the paper I have in my hands.

Ques. Don't you remember, independently of the paper, that you didn't get your deed till several days had elapsed after your bargain with Plummer? 20

Ans. No sir, I don't recollect anything about it; without the papers I couldn't even tell you the year when the thing occurred.

Ques. At what place did you see Mr. Sutphen as to this business?

Ans. At his store in Newark; I had known Mr. Sut-

phen for a number of years; had lived a near neighbor to him here in Somerville for a number of years; I met and saw him and Mr. Hartwell frequently while Sutphen lived here.

Ques. Was not the public sale of Mr. Sutphen's property at which you say you were present, spoken of as a good sale, at the time of it?

Ans. I can't tell you whether it was or not; I seem to think I remember that at the sale the property was first  
 10 up as an entire property; I think it brought the most by selling it in pieces; I have no way to get at how much more it brought in parcels than altogether; I have no way to answer that question, as I don't run very close after my neighbors' business; I have no doubt at all, that at the time of the sale I knew the prices at which the several lots were struck off; two lots to Mr. Hartwell; my property where I live is on the same street as this in question, and about five doors west of it; I don't remember of any other  
 20 business I had at Newark, except to purchase this property when I bought it; it was not the first time I had been at Mr. Sutphen's store; I was in the habit of calling on him; (Shown paper marked *Exhibit 2*, Ex parte Deft's.)

Ques. What is this paper?

Ans. It is an agreement between Mr. Plummer and myself for the sale of that land; J. L. Sutphen, the attesting witness to that paper is here now present; I can't answer whether one or two copies of this agreement were signed; I have looked and can't find any; I don't think I had any; if one only was signed, I don't remember who  
 30 held it; I don't remember how we fixed that.

Ques. What did you pay or give at the time of the execution of the contract, if anything?

Ans. There appears to be a note there for \$100, according to the contract; I must have given the other note the same day; here is another note for \$1100, bearing the same date as the contract.

Ques. Having entered into this contract and given these notes for the whole purchase money on June 13, 1871, have you any doubt, now, that you brought with you, on your return home, papers which show the transaction? 10

Ans. Is it necessary to put it papers; he has shown me an order and I am satisfied of that; there is a paper there that I acknowledge, but not papers; that is my answer.

Question repeated.

Ans. I do not recollect of papers.

You have shown an order, and I am under the impression now, that I brought that order; I think I can tell why Mr. Hartwell did not give me a deed on my return on the 13th; it couldn't have been possible, hardly, for him to have had time to have done it; according to my recollection I 20 didn't have to go to Newark a second time before I could get my deed.

Ques. Did you not take Exhibit No. 1 on part of the defendants, on your second visit to Newark, and show it to Mr. Sutphen, and did not he thereupon write an order to Mr. Hartwell to deliver you the deed?

Ans. If so, I don't recollect it.

Ques. Please examine paper marked "*Ex No. 3,*" and refresh your recollection on that point?

Ans. I can't fetch any recollection of ever going to Newark a second time on that business; am not sure; I delivered the notes to Plummer at the signing of the contract; until you showed me the notes, I was of a contrary impression; I can't pretend to say when I did it.

Ques. I will put a paper in your hands which may refresh your recollection. Having read the paper which I have shown you, what do you say now as to the time of the delivery of the notes?

10 Ans. I don't see anything to change my opinion at all; Mr. Hartwell has been dead several years.

January 22d, 1875, at 10 1-2 A. M.

Examination of Daniel Sanborn resumed.

In Chief, by Mr. Clark, for Complainants.

I had no knowledge of the Adair judgment prior to my purchase; I did not hear the rumors with respect to title before I purchased; I think I heard these rumors mostly the next year after I received my deed; I made some inquiries of a lawyer about them; I went to Mr. Clark and  
20 by Mr. Clark's advice, I went to Mr. Gaston; Mr. Gaston satisfied me it was all right; it was in February 1873 that I went to Mr. Gaston's; I felt fully satisfied after talking with Mr. Gaston, that I had a good title.

Ques. You say Mr Sutphen said Mr. Hartwell would give me a warrantee deed, and asked if that was not good enough, or words to that effect; was there anything said or any question raised about the title after that, between you and Sutphen?

Ans. No sir; I merely asked Mr. Hartwell if it was  
30 true that he would give a warrantee deed; he said it was;

he said it was all right; he never in any way intimated to me that he held this property in trust for Sutphen; I first knew the contents of the letter from Hartwell to Sutphen, and which it is said I carried to Newark, when it was presented here on the table the other day at the examination; I first knew the contents of the papers sent by Sutphen to Hartwell in reply to that letter, at the same time; I think I had no knowledge of their contents until I saw them here on the table.

Ques. Mr. Sutphen says he thinks you were made acquainted with the substance of the letter written by him to Hartwell at the time he wrote it; when did you first know the contents of that letter? 10

Ans. At the same time I learned the other papers, here upon the table.

Ques. Prior to your receiving your deed, did Mr. Sutphen in any way give you any intimation that Mr. Hartwell was not the real owner, but only held this property in trust for him?

Ans. He did not. 20

Ques. Was not the only information given by him that Mr. Hartwell was the owner and would give a good title?

Ans. Yes sir.

Ques. Was it publicly known here in Somerville, that Mr. Hartwell held this property in trust for Sutphen?

Ans. I am not able to answer that question; I can't say whether anybody knew it or not, or how many knew it; I know nothing of anybody's knowing it and yet it might have been publicly known; amongst the rumors I never heard that. 30

Ques. Mr. Sutphen says, his impression is that he read you his letter of June 20th, to Mr. Hartwell before sending it, did he or not?

Ans. He did not.

I had conversation with Mr. Sutphen after the commencement of these Chancery proceedings this fall; in November or December.

(This answer objected to, unless Mr. Sutphen was asked about it.)

10 It was at the Newark Collector's office, I think they called it.

Ques. Please state what that conversation was?

(Objected to because Mr. Sutphen, when on the stand was not inquired of as to that conversation.)

20 Ans. It was about this trust deed; I inquired of Mr. Sutphen if he thought he had ever said anything to me about it; he said he had no recollection of ever telling of me anything about it; he hadn't said a great deal about this until after this suit was commenced; seemed to think it was a matter of his own; on inquiring what he did say, he had told me that Mr. Hartwell would give a warrantee deed, and asked me if that was not good enough; and these questions about that rested; that was his answer.

Ques. At the time of your purchase, what knowledge had you that Mr. Sutphen, either directly or indirectly, had any interest in this property.

Ans. I had no knowledge, only that he had been the owner previously.

I am sixty-five years of age—past; at some times I am

quite deaf; I have been troubled in that way as long as I can remember.

Re-Cross-Examined by Mr. Gaston for defendants.

Ques. What did you understand when on your proposal to Mr. Sutphen to purchase, he told you he had sold to Plummer, and when you went to Plummer and purchased of him, what did you understand as to Plummer's having any interest in the property?

Ans. I understood that Mr. Plummer had agreed for it and made payments so far that anything he done with it would be right. 10

Ques. Payments to whom?

Ans. That's more than I know.

Ques. Of whom did you understand he had purchased?

Ans. Of Mr. Sutphen.

Ques. Did you not understand that the payments made by him had been made to Mr. Sutphen?

Ans. No, sir.

Ques. How did you understand the transaction of his buying the property of Sutphen? 20

Ans. I don't think I understand the meaning of the question.

Ques. How did you understand that Sutphen was selling Mr. Hartwell's property, and you buying Mr. Hartwell's property of a man in Newark; how could this be if you supposed Mr. Hartwell was the owner of the property?

Ans. It appeared very clear to my mind, that Mr. Sutphen was acting in good faith as an agent.

Ques. Did you ever hear from any person any such idea as that?

Ans. No sir.

Ques. What did Mr. Sutphen tell you was the hitch between him and Plummer?

(Objected to because there is no evidence that shows there was any hitch between him and Plummer.)

Ans. I don't understand that there was any hitch.

10 Ques. What did you understand was the state of the sale between Sutphen and Plummer when you went to see Plummer?

Ans. It was understood that whatever Mr. Plummer done would be made good.

Ques. Did you understand that Plummer had purchased of Sutphen?

Ans. I understood it was bargained for.

Ques. What remained unpaid of the purchase money?

Ans. I do not know.

Ques. Was any part of it unpaid, did you understand?

20 Ans. Yes, sir.

Ques. How much?

Ans. I can't tell; there didn't appear to be anything serious in the way.

Ques. Who told you this?

Ans. If it was told to me at all—which is my impression—it was told to me by Mr. Sutphen; I told it before as my impression.

Ques. Please state all that you remember that Sutphen said on this point?

Ans. I cannot state the language; our talk was very brief; Mr. Sutphen's and mine.

Ques. State the substance of what he said on this point?

Ans. I can't do it.

Ques. Did you speak to Mr. Hartwell on this subject?

Ans. No sir.

Ques. Did you speak to Mr. Hartwell on the subject of how the property was sold by Plummer or Sutphen? 10

Ans. No sir.

Ques. Why not?

Ans. Mr. Hartwell told me he would give a warrantee deed, and appeared fully satisfied; expressed himself as pleased that I had bought it; that it was a good purchase, a good property.

Ques. When you were first examined as a witness in this case, what papers connected with your purchase, did you then remember to have been made or written? 20

Ans. An article of agreement; that's all; I had a note in my pocket; I didn't suppose that had anything to do with it.

Ques. Had you entirely forgotten the letter written by Plummer to Hartwell?

Ans. The order you mean; I had forgotten it.

Ques. Have you now any doubt but that after pre-

senting that order to Mr. Hartwell, you afterwards saw Mr. Sutphen in Newark at the time of the date of his letter to Mr. Hartwell?

Ans. From recollection I should doubt it; but from the fact of its being stated that I did see him, it removes my doubts.

Ques. Having forgotten the whole interview, can you now say what occurred, or did not occur at the interview?

(Objected to as an unfair question.)

10 Ans. According to my recollection there was no interview.

Ques. Can you say that you did not bring back to Mr. Hartwell, Mr. Sutphen's letter of that date?

Ans. No sir.

Ques. Can you say that Mr. Hartwell might not have read that letter to you when he received it?

Ans. I can't say anything about it.

Ques. How can you say that Mr. Sutphen did not make you acquainted with its contents?

20 Ans. I never knew the contents of any such a letter until I came here; I heard nothing to make me suppose Mr. Hartwell was not the true owner to give a deed.

Ques. Although the true owner to give the deed, did you not suppose that the bargain for the property was just as Sutphen chose to make it when he sold to Plummer?

Ans. There appeared to be a fair understanding between them; no jar; I supposed what we agreed to, the other would carry out.

(Answer objected to by Mr. Gaston, as evasive, and the question repeated.)

Ans. I don't want to make an evasive answer; I want to make a correct one, and how I am to do it any better than I have, I don't understand; there seemed to be no jar between; what Mr. Sutphen done and what Mr. Plummer done, the other agreed to; I don't see how that's evasive.

Ques. Did you not suppose that Sutphen in selling to Plummer could ask what price, and make what terms he pleased? 10

(Objected to because it nowhere appears Mr. Sanborn had any knowledge of the agreement between Sutphen and Plummer at the time it was made, and besides the question is an improper one, being a supposition based upon no fact.)

Ans. Immediately on the question being asked, the witness answered "yes sir," before counsel had an opportunity to state his objection.

Adjourned to 2 1-2 P. M.

20

Ques. Did you ask Mr. Sutphen for what price he had sold the property to Plummer?

Ans. I think not; I understand the price agreed upon to be \$2500.

Ques. From whom did you understand this?

Ans. I think Mr. Plummer told me he allowed \$2500 for it.

Ques. Did you understand it was wholly cash or part trade?

Ans. I never understood anything about it, how it was to be paid.

Ques. When, if ever, did you first learn that Plummer was to convey to Sutphen a lot of land on account of this lot?

Ans. If I ever learned it, it was this minute.

Ques. Did you go to Newark for the purpose of purchasing this property of Mr. Sutphen?

Ans. If I give a correct answer, I think I should say I  
10 went to inquire about it.

Ques. Was it a sudden notion, or how long had you thought about it?

Ans. It had come up rather suddenly.

Ques. Did you speak to any one on the subject of your proposed purchase, before you went there?

Ans. Yes, sir.

Ques. Who?

Ans. Mrs. Kruesen.

Ques. Any one else?

20 Ans. I think not.

Ques. Did she, Mrs. Kruesen, speak of this lot herself?

Ans. No sir, nor I to her—I never spoke to her about the lot until I had bought it.

I mean I had spoken to Mrs. Kruesen about the purchase of a lot on Main street, but not of this particular lot.

Ques. Why did you keep your proposed purchase so secret from your family and friends?

Ans. I had no reason for telling of them.

Ques. Did you tell your son George of the purchase before you got your deed?

Ans. I presume I did.

Ques. Do I understand you that you had forgotten that Mr. Sutphen had sold any part or portion of his former residence when you went to Newark, to see Mr. Sutphen?

Ans. I don't think I had forgotten it, but did not think of it at the time.

10

Ques. Do you mean that you had forgotten the sales of the three parcels of this property?

Ans. It was all fresh in my mind when Mr. Sutphen spoke about it ; that the deed was to come from Hartwell.

Ques. But had forgotten it before, do you mean to say?

Ans. I don't know whether I had thought of it before or not; I don't remember that I did.

Ques. What did you go down with a view of buying, what part?

Ans. I went with a view of inquiring for the part I got.

Ques. How came you to distinguish or separate this lot from the other parts of this property?

Ans. This was a small lot; it was all I desired.

Ques. Was there any visible line of separation between this lot and the other parts of the property?

Ans. Not that I ever discovered.

Ques. But it was sold in separate lots, at the sale, was it not?

Ans. Yes, sir.

Ques. And you went down with a view of buying this particular lot, being one of the lots that was sold at that sale, did you not?

Ans. I went to inquire about it.

Ques. Please tell us how, except, by its having been sold as a lot, you considered it a lot?

10 Ans. I don't know of any other way to tell you it had been sold as a lot, therefore I considered it a lot.

Ques. You went then, down to see Mr. Sutphen, to inquire about this lot which had been sold previously, did you not, and the sale of which you remembered?

Ans. I went down to inquire of Mr. Sutphen about the lot, whether I remembered the sale until I heard Mr. Sutphen mention it, I wouldn't like to say; but it was fresh then,

20 Ques. But you say it was the previous sale of the lot that made it a lot to your mind, and nothing else, if I understand you? how then could you forget the previous sale, when you went to buy the lot that was made by that sale?

Ans. I do not say that it was nothing else but the sale, it was a vacant lot; I looked upon it as a vacant lot.

Ques. Did this lot include in its width all of the original lot east of the dwelling house on it?

Ans. No, sir.

Ques. Do you mean to be understood that when you

went to see Mr. Sutphen, you had no definite idea as to the lot you proposed to purchase?

Ans. I wanted to inquire about the lot between the hotel and the house.

Ques. Had you forgotten at this time that Mr. Sutphen had sold that parcel now owned by Mr. Stryker?

Ans. I never knew that he ever did sell it any other way than at the auction; not to Mr. Stryker.

(Answer objected to as evasive, and question repeated.)

Ans. I don't think I could have forgotten it; I think 10  
Mr. Stryker had a building on it.

Ques. Then you had not forgotten the sale?

Ans. No, sir.

Ques. Had you forgotten at this time that Mr. Sutphen had sold the parcel now owned by Mr. Rarick?

Ans. I don't think I had.

Ques. When you reflected upon this proposed purchase by you, of your lot, do you mean that as to that, you had forgotten the sale by Sutphen, remembering the sales of the other parts? 20

(Objected to as being indefinite as to time.)

Ans. The word reflected—I thought of purchasing in the evening, or looking after it rather, and started the next morning and did my business.

(Answer objected to as evasive, and question repeated.)

Ans. I don't say that I had forgotten any, but I do say that I didn't reflect on it much.

Ques. Who had possession of the dwelling house now occupied by Mr. Rarick, at this time?

Ans. I don't think I can answer the question; I think it was Mr. Rarick.

Ques. You say Mr. Gaston satisfied you that your title was all right—in what respect did you inquire?

Ans. How the claims came upon land that was sold in lots.

Ques. What was the precise trouble about your title,  
10 that you were anxious about and inquired of him about?

Ans. There appeared to be a judgment against Sutphen and Kinsey, which made a claim against the Sutphen property.

Ques. Had you not at the time you consulted me as to your title, contracted to sell this lot to Mr. Galpin?

Ans. Yes, sir.

Ques. Did you not understand that Mr. Galpin objected to the title, on the ground of other incumbrances than this judgment, to wit, a mortgage of \$2000, given by Far-  
20 rington Barcalow, one of the tenants in common, at the Commissioners' Sale, when Sutphen bought, also another mortgage given by him to a New Brunswick bank; and was it not these incumbrances that made the trouble as to Mr. Galpin's taking the property, as you understood?

Ans. I can't define the incumbrances; but there were other incumbrances just as Mr. Gaston states, that he objected to, but I can't define them.

Ques. Was not the trouble with Mr. Galpin, wholly about these other incumbrances?

Ans. Mr. Galpin would not give me the satisfaction to know what he most stood on; I offered to take him to a lawyer—he objected; that I couldn't give him a clear title.

Ques. You have sworn that I told you that your title was all right, is that true?

Ans. I meant to tell the truth, when I said so; I think that Mr. Gaston said so.

Ques. Did he say that he had made a search of the title?

Ans. No sir.

10

Ques. Did he not say that he had made no search of the title?

Ans. I don't recollect of that; he did say he understood about the property; about the commissioners and all that.

Ques. Do you mean that Mr. Gaston said that this Kinsey judgment was no incumbrance on the property which Mr. Sutphen had sold?

Ans. That was my impression.

Ques. Had he ever any other connection with this property, to your knowledge, than having been one of the commissioners, that sold it to Mr. Sutphen?

20

Ans. To my knowledge it wasn't even that; it was only from what Mr. Gaston told me, that I knew he had any connection with the property.

Ques. What did he tell you as to his connection with this property, or his knowledge of its title?

Ans. That he had been a commissioner and understood the whole thing.

Ques. Do you mean to charge Mr. Gaston with having told you any misstatement of law or of fact? if so please mention it?

(Objected to because it may be a question to be determined by this suit, and if so the witness can't tell whether Mr. Gaston was correct or not.)

Ans. I should rather be excused from going into anything that will cause bad feeling.

(The witness declines to answer this question further by  
10 advice of his counsel.)

Adjourned to Tuesday January 26, 10 A. M.

January 26th *James J. Bergen, Esq.*, appeared to conduct the examination instead of *Mr. Gaston*.

Ques. I understand that you said Mr. Gaston told you that the title to this property was perfect, did you not?

(Objected to because previously inquired into and answered.)

Ans. That is the purport of what I said.

Ques. Did you not consult Mr. Gaston, with a view of  
20 bringing a suit against Mr. Galpin, for non-performance of his contract to purchase?

Ans. No, sir.

Ques. At an interview had with Mr. Gaston, about this time, did he not inform you that Mr. Galpin had a good defence to a suit you might bring on that contract?

Ans. I have no knowledge of ever inquiring with reference to bringing a suit against Mr. Galpin; I had no notion of doing that.

Ques. Was not the Kinsey judgment talked about between you and Mr. Galpin, and was it not understood that it was an incumbrance that could be arranged in case of sale?

Ans. It was talked about and I never understood that it could not be arranged.

Ques. It was considered an incumbrance on your lot, was it not?

Ans. I believe it was not considered so generally.

Ques. In your conversation with Mr. Galpin, was or was not the Kinsey judgment considered an incumbrance on your lot? 10

Ans. It might have been; Mr. Galpin refused to define his position; said I couldn't give a clear title.

Ques. Was or was not this before your conversation with Mr. Gaston, when you say he told you the title was all right?

Ans. I think Mr. Galpin and I did talk about this before this particular talk with Mr. Gaston.

In Chief by Mr. Clark:

20

Ques. From what did you gather the idea that Mr Sutphen was acting as an agent?

Ans. From a conversation.

Ques. When you say that you supposed Sutphen could make price and terms to Plummer as he pleased, from what did you form that opinion?

Ans. I did not suppose he would do anything contrary

to the wishes of Mr. Hartwell, but would act faithfully in it.

Ques. In what capacity?

Ans. In the capacity of an agent.

Ques. When you inquired of Mr. Gaston, as to title, did you consult him as a lawyer or a friend?

Ans. As a lawyer.

Ques. State if you please what he said in relation to this title?

10     Ans. Well the first part was about what lots were sold first; then he explained to me that a man might have a large tract of land that was incumbered; he might divide it up into lots and sell it all; after he got through selling, the incumbrances would have to fall on the last that was sold. If that was sufficient to pay the incumbrance, the other lots would all be clear, and if not sufficient, take the last that was sold and so on back until the incumbrance was satisfied. The two vacant lots having been conveyed to Mr. Hartwell before the house and lot were sold, was the  
20     reason that he gave me for mine being clear; I paid him for his advice.

Ques. What is that paper? (shown paper.)

Ans. That is the receipt from Mr. Gaston for the advice. It is in Mr. Gaston's handwriting (offered in evidence, and marked "Exhibit E." Ex parte compl'ts.).

Ques. Did Mr. Gaston speak to you about this declaration of trust at that time, or at any time before this examination?

Ans. No, sir.

Ques. Before you went to Newark to inquire about this vacant lot, did you know the number of feet it contained, and its depth?

Ans. No, sir.

Ques. In what way did you know it was a lot?

Ans. There was no building on it.

Ques. No building on what?

Ans. On that lot I bought; it was what we term a vacant lot.

Ques. How much space was there between the Barick 10 property and the hotel property, which was vacant?

Ans. I can only give it by guess; about thirty-two feet.

Ques. Before you went to Newark did you know whether any, and if any how much of this vacant lot belonged to the Barick property?

Ans. I didn't know anything about it; I bought twenty-five feet front.

Ques. Did you have a search of that property made; and if not, why?

Ans. I did not have a search made; the deed was to 20 come from from Mr. Hartwell, and considered perfectly good by me.

D. SANBORN.

Sworn and subscribed before me, January 26th, 1875

I. N. DILTS,

Master and Examiner in Chancery.

JACOB L. SUTPHEN, of the city of Newark, a wit-

ness produced on behalf of the defendants, on his oath saith :

I now reside in Newark, and formerly resided in Somerville; when in Somerville, I owned a house and lot; it was sold at public sale; I think in February 1869; it was sold in parcels; three parcels; one to Culver Barcalow, and two to S. S. Hartwell; Mr. Hartwell held the title in trust; (Shown paper marked Ex. No. 4.) This is the declaration of trust; so far as Mr. Hartwell is concerned, the promissory note mentioned in this paper is paid, and he is released therefrom.

Ques. When was he released from this note?

(Objected to as irrelevant.)

Ans. I do not remember when; it was while Mr. Hartwell lived; the latter part of his days; I cannot refer to the date; I do not remember how much remained due on this note at the time the deed was given; perhaps \$1000; I do not remember.

Ques Mr. Sutphen, please to give us a history of the purchase of this property by Mr. Sanborn, with the necessary circumstances?

Ans. My recollection is that Mr. Sanborn, in H. B. Claffin & Co's store, in New York, asked me if I owned the lot in Somerville, lying west of and adjoining to the Brick Hotel. I told him that I did not, that I had sold it to George W. Plummer; I remarked to him that I thought it was a good time to purchase it of him, if he desired to; I gave him the address of Mr. Plummer, and so far as I can recall the circumstances, either the same day or very soon after, he, with Mr. Plummer, came to my store in Newark, and stated that he had purchased the lot

of Mr. Plummer, and showed to me an agreement to that effect; I refer to this agreement marked "EXHIBIT No. 2." That's all the inquiry made of me in purchasing the lot; they left the store.

The next thing that I know of the matter, Mr. Sanborn came to my store with a letter from S. S. Hartwell, showing me a letter from Plummer to Hartwell, and asking, as I now remember, authority to deed the lot to Mr. Sanborn, also asking for the deed of trust; I gave him the deed of trust (Mr. Sanborn) together with a letter directed to S. S. Hartwell, at Somerville, N. J.; this is the letter marked "Exhibit No. 3" from me to S. S. Hartwell; this letter was written while Mr. Sanborn was in attendance; I think he knew of the substance of the letter; the two notes referred to in the letter could not have been delivered at that time. 10

Ques. Mr. Sanborn wished authority from you to receive the deed did he?

(Objected to, because there is no such evidence, and the question leading.)

Ques. What was Mr. Sanborn's business with you, at this time? 20

Ans. It was to get the papers, and authority from me to Mr. Hartwell for the deed of the lot in question to Sanborn. I don't remember that Mr. Sanborn objected to the authority or the terms of my letter. (The question that procured the above answer is objected to as it pre-supposes a thing not proven, there being no evidence to show that Sanborn knew the contents of the letter written by Hartwell to Sutphen.)

Ques. Was the letter to Hartwell private and concealed 30

from Sanborn, or was it made known to him, and its contents?

Ans. I think it was made known to him, and there was nothing in the letter that I desired to screen.

Ques. Did you send the declaration of trust together with the letter, by Mr. Sanborn, to Mr. Hartwell?

Ans. Yes, sir.

Ques. Why did you send the declaration of trust to Mr. Hartwell?

10 Ans. Because that was the last property that covered the transaction between Mr. Hartwell and me, besides I think it was mentioned in the letter of Mr. Hartwell, brought by Mr. Sanborn to me.

Ques. Mention how?

Ans. I do not remember exactly the phraseology of the letter.

20 Ques. From the time Mr. Sanborn spoke to you about purchasing this property, to the time of his obtaining the deed, was there any intended concealment, or any concealment of the fact that Mr. Hartwell held the property in trust?

Ans. Not that I know of.

Ques. Do you remember if anything was said to Mr. Sanborn, as to who was to convey, and whose property it was, at different times?

Ans. There was some conversation about the title and about matters pertaining to the purchase of the lot; and I remarked to him that Mr. Hartwell's warrantee deed I

thought would be good; and I think asked him if that was not satisfactory?

Ques. How was it that he bought the property of Plummer while Mr. Hartwell held the title?

Ans. The property was not conveyed to Mr. Plummer because some part of a contract between Mr. Plummer and myself had not been met by him; I do not remember that I stated that to Mr. Sanborn; I think I signed the agreement as witness, in the presence of both Mr. Sanborn and Mr. Plummer, they both acknowledging their signatures; I think they did not sign in my presence. 10

And being Cross-Examined says:

Ques. At the time of the purchase by Mr. Hartwell, was not the fact that he held as trustee for you, concealed from the public?

Ans. Not that I know of intentionally concealed, it may have been concealed.

Ques. Did you ever tell Daniel Sanborn that Hartwell held this property in trust for you, prior to his purchase, I mean? 20

Ans. I don't think I ever did prior to his purchase; I don't remember that I did, prior to his first conversation with me about the purchase of the lot.

Ques. Prior to the 21st day of June 1871, when he received his deed, did you ever tell him anything like it?

Ans. On the 20th day of June, I think I made known to him the contents of the letter from Mr. Hartwell, which expressly mentions it; that's my recollection.

Ques. Do you remember whether you read that letter to Mr. Sanborn?

Ans. That is my recollection; that is my impression.

Ques. Where were you when you wrote this letter?

Ans. In my store in Newark, on Market Street, 165; at my desk, I presume, where I usually did my writing.

Ques. Do you remember of writing that letter at that desk?

Ans. I think I do sir; I coul n't have written it any-  
10 where else.

Ques. You think you remember of having written it there, because that was the place where you usually wrote letters, and that's the only reason is it not?

Ans. I think not; I remember Mr. Sanborn being there in that store, on that business; Mr. Sanborn when I wrote the letter, was with me in the desk I presume; I know he was there; I don't, as he was looking on the letter as I wrote it.

Ques. Mr. Sutphen, can you swear that you read that  
20 letter to Daniel Sanborn, before you sealed it and directed it to Mr. Hartwell?

Ans. That is my recollection.

Ques. Have you a distinct recollection of reading it to him?

Ans. That is my recollection of the matter.

Ques. I repeat the question?

Ans. That is my impression.

Ques. Mr. Sanborn has sworn that he never heard of a deed of trust, until after this controversy in this suit was commenced, and that you never gave him any information by which he might know that Mr. Hartwell held the property in trust for you, or language to that effect; is or is not your recollection at all shaken by reason of such a statement?

(Question objected to as improper and illegal.)

Ans. Not shaken; I think the contents of that letter were read to him?

10

Ques. Are you absolutely certain they were read to him?

Ans. I have already answered that is my impression.

Ques. Did you not tell Mr. Sanborn this fall, that you had not in any way informed him that Mr. Hartwell held this property in trust for you?

Ans. I did not tell him that.

Ques. Anything like it?

Ans. No, nothing like it.

Ques. Didn't you tell him that you had not told him of the deed of trust?

20

Ans. I did not; he is mistaken if he said so in that shape.

Ques. Didn't you tell him, that you had not told him or Mr. Plummer of the deed of trust?

Ans. I could not have told him that, because my impression is that Mr. Plummer knew it.

Ques. Is it only an impression or a fact that Mr. Plummer knew it before the Sanborn purchase?

Ans. I think he knew it.

Ques. Is that your only answer?

Ans. I had no object in concealing it from Mr. Plummer; that's all I have to say in answer to the question.

Ques. You don't know whether Mr. Plummer knew that Mr. Hartwell held the property in trust, do you?

Ans. That is my impression.

10 Ques. Your impression is, if I understand you correctly, that the only information Mr. Sanborn received from you in respect to Mr. Hartwell holding this property in trust, was the contents of the letter which you informed him of?

Ans. That's my recollection.

Ques. How soon after you had written this letter did Mr. Sanborn go away?

Ans. Immediately, so far as I remember.

20 Ques. There was no conversation between you and him on that occasion in relation to the title, after you had sealed the letter?

Ans. Not that I remember; I don't remember.

Ques. The letter delivered by Mr. Sanborn from Mr. Hartwell was sealed was it not?

Ans. I don't remember that it was; I don't remember whether it was or not.

Ques. You don't know whether Mr. Sanborn knew the contents of the Hartwell letter or not, do you?

Ans. I don't know that he did, only as explained in my reply.

Ques. Only as explained in your reply, if he was made aware of the contents of your letter to Mr. Hartwell?

Ans. Yes, so far as I know.

Ques. Why didn't you tell Mr. Sanborn when there was a talk about the title, and that Hartwell would give a warranty deed, and that it was really your property and only held by Hartwell in trust ?

Ans. I think I conveyed that to him by the letter, there was no other way. 10

Ques. You had a talk about the title and about Mr. Hartwell's conveying it by warranty deed, prior to this time, and there was nothing then said about the manner in which Mr. Hartwell held it, is not that so ?

Ans. I have no recollection about a prior conversation about the matter with Mr. Sanborn.

Ques. Well, prior to the writing the letter then ?

Ans. It was all at the same time, sir, all under one conversation; that is the only time Mr. Sanborn and I discussed the matter that I remember. 20

Ques. Was it prior to the writing the letter, or subsequent to the writing the letter, or while you were writing the letter ?

Ans. I think it was at the time I was writing the letter that this conversation was had ; it is difficult to remember.

Ques. To whom did you ever tell prior to Mr. Sanborn's purchase, that Mr. Hartwell held this property in trust for you?

Ans. I think I told Mr Plummer, I may have told others; I don't remember, prior to his purchase.

Ques. Can you name another person?

Ans. I don't remember any other person.

Ques. Immediately after the public sale of these lots, was not the genuineness of the sale questioned by Mr. Barcalow and others; and didn't you and Mr. Hartwell both assert that it was a *bona fide* sale?

Ans. I have no recollection of saying at that time that  
10 it was a *bona fide* sale, but that Mr. Hartwell bought the lots.

Ques. Was not his position as purchaser concealed from the public?

Ans. I think the deed of conveyance was upon record; that's all I know.

Ques. Did not you and Mr. Hartwell have an understanding that it should be publicly known that he purchased as trustee?

Ans. I don't remember that we conversed about that  
20 matter any further than when the title was made; he always said that he purchased the lots at the auction.

Ques. Wasn't it deemed advisable to keep it a secret for the purpose of having the sale regarded as a *bona fide* sale, so that when you came to sell the lots again, persons might be induced to give as much or more than he gave for them at auction?

Ans. No sir, I always felt those lots would bring more money; I always had that impression

Ques. The sale was regarded as a good sale at that time, was it not?

Ans. By some, not by myself.

Ques. How much did the lots bring per foot front?

Ans. I think, I can only come near it—I think the lot nearest the brick hotel brought \$92 per foot; my recollection about the west lot, now owned by Sutphen, is that it brought \$63, or \$65 per foot.

Ques. Why wasn't your conveyance to Hartwell a conveyance in trust, instead of a warranty deed? 10

Ans. He proposed to hold the lots for me in that shape; I wished to borrow some money from him.

Ques. Why wasn't your declaration of trust put upon record?

Ans. I don't know why, sir; I had an impression it was.

Ques. From the time it was executed in whose custody has it been?

Ans. As far as I remember in Mr. Hartwell's hands and my own. 20

Ques. The letter from Hartwell to you delivered by Mr. Sanborn, you haven't, and don't know where it is, do you?

Ans. No, sir.

Ques. How long since you have it?

Ans. I think it was among some papers that were lost at the time of my failure—a small package of papers was

lost then, and I think it was among them if I preserved it.

Ques. You didn't read that declaration of trust to Mr. Sanborn before you enclosed it in the envelope, did you?

Ans. I don't remember that I did; the letter and declaration of trust were sent to Mr. Hartwell by me in a sealed envelope; that is my impression.

Ques. Was not the Barick property sold at auction subsequent to the sales of the Sanborn and Stryker lots?

10 Ans. It was sold one week afterward I think.

J. L. SUTPHEN.

Sworn and subscribed before me, January 7th, 1875.

I. N. DILTS,

Master and Examiner in Chancery.

Adjourned to Friday January 15, 10 A. M.

Further adjourned to January 22d, at same hour.

Adjourned to Wednesday Feb. 3rd, 10 A. M.

Further adjourned to Feb. 9th, by parties, 10 A. M.,

20 February 9th, 11 o'clock, A. M., parties met pursuant to adjournment. Mr. Clark appeared for complainant, and Mr. Gaston for defendants.

GEORGE W. PLUMMER, of the city of Newark, on behalf of defendants; being duly sworn on his oath saith:

I purchased this property next to the brick hotel, in Somerville, in October 1870, of Jacob L. Sutphen; I sold it to Mr. Sanborn the following summer—the summer of 1871; the consideration was the title of a house and lot I

built and owned, and I couldn't give the date of the transfer with reference to my books.

Ques. Was there any matter which caused delay in the completion of the arrangement with Mr. Sutphen? (Objected to as not pertinent to the matters at issue).

Ans. There was; I don't distinctly remember what that was precisely; it had reference to the property I was to convey, as it was in an unfinished state when this transaction with Sutphen took place; I conveyed this house and lot referred to, to Sutphen, but I cannot give the date precisely without reference to my books, but I think it was in the fall of 1870; I did not get a deed from Mr. Sutphen because the title was not in Mr. Sutphen's name, and I was introduced to Mr. Hartwell, a lawyer who resided here to confirm a statement Mr. Sutphen made to me that this lot would be deeded to me at any time it was required; I came up to examine this lot before I completed my bargain with Mr. Sutphen; I think I went at that time to Hartwell's office, but did not see him—saw his brother; I think that was the time but won't state positively; Mr. Sanborn called upon me with reference to this lot in the early summer of 1871—not the day of the date of the contract—I had two or three interviews with him before the contract was made; at the first interview the preliminaries were talked over and Mr. Sanborn obtained my valuation of the lot. It would be impossible for me to give more than a general statement of what happened; he made my acquaintance for the purpose of ascertaining the value of the lot; I can't give any sentences that were used, only the general drift of the conversation; he came from Mr. Sutphen from whom he had procured my address; he took dinner with me at that time.

Ques. Was Mr. Hartwell's holding the title there spoken of?

(Objected to as a leading question).

Ans. I don't recollect that it was; I gave Mr. Sanborn the price as \$2,500; I next saw Mr. Sutphen to find out about Mr. Sanborn I remember; the information I received was satisfactory; I then came here to Somerville to Mr. Sanborn in regard to the matter, and also Mr. Hartwell; I spent most of the day in Somerville; Mr. Hartwell had in  
 10 the meantime recovered partially from his sickness, and I talked over with him the transaction with a view of passing the title to Mr. Sanborn; Mr. Sutphen having in the meantime made an arrangement by which the title could be passed on my requisition; there seemed to be no obstacle in the way; Mr. Hartwell acquiescing in the proposed arrangement with Mr. Sanborn, I saw Mr. Hartwell alone; I took dinner at Mr. Sanborn's that day; most of the day was spent with Mr. Sanborn I think; I can scarcely like to say the precise conversation had—but in a general way,  
 20 the whole matter was talked over with Mr. Sanborn—I mean the whole matter about the sale of the lot to Mr. Sanborn.

Ques. Did you tell him all that you knew with respect to the title and ownership of the lot, and Mr. Hartwell's relation to it?

(Objected to as leading.)

Ans. I could not say that I did, as there was no special necessity for so doing, so long as he was satisfied that I was the owner.

30 Ques. Did he not then know that Mr. Hartwell held the title to the property although you were the owner?

Ans. It would be impossible for me to tell what Mr. Sanborn knew.

Ques. When did he first know that Mr. Hartwell held the title although you were the owner, so far as you know?

Ans. I think he was made acquainted with it; I will recall that, and put it in different language; he must have been made acquainted with it, if through me, about June 13th, 1871, as that was the date of the consummation of the sale.

Ques. How long was this interview before the date of the contract? State as near as you can. 10

Ans. I couldn't tell—not very long.

Ques. When did you next see Mr. Sanborn after the second interview spoken of?

Ans. I don't recollect of seeing him after that.

Ques. Was this contract signed at the second interview?

Ans. I could not say without referring to the contract itself which you have, my impression is there was some correspondence between myself and Mr. Sanborn.

Ques. Do you mean after the second interview? 20

Ans. I mean before and after the interview at Somerville, with regard to the property.

Ques. What was the result of your interview at Somerville, spoken of by you?

Ans. I agreed to sell the lot for \$2,200 to Mr. Sanborn; agreed in writing; verbally first and it was afterwards put in writing of course; I don't recollect where the contract was made and signed; I know that I made the contract myself.

(Being shown papers marked "Exhibit 1 and 2" says:)

That is my handwriting; the body of both papers is in my handwriting and they are both signed by me; as one is witnessed by Mr. Sutphen, I suppose it must have been made in Newark, as Mr. Sutphen was not here with me at all; so far as my recollection goes, there was some correspondence which brought about this result; I think on my second visit to Somerville the matter was not concluded if my memory serves me; I have not made any search for  
 10 such correspondence; it has been my custom to preserve all my papers filed, and I think I have that correspondence I received from Mr. Sanborn; I am willing to produce it in evidence.

Ques. In your conversations with Mr. Sanborn, did he speak to you of how long a time he had wished to purchase this lot?

Ans. He remarked that he had wanted to obtain possession of that lot, or something to that effect; I don't recall that he mentioned any time.

20 Ques. Did he speak of the time during which he had wished to purchase?

Ans. Simply in this way I think; "I have been wanting that lot," or a general remark of that sort.

Ques. What was said as to Mr. Hartwell's relation to this lot at the time the contract was signed?

Ans. I don't remember anything specific, but I do have a general recollection of something having been said at some time about Mr. Hartwell's title being a good one.

30 Ques. Did you never talk to Sanborn of the fact that while you were the owner of the lot, he, Mr. Hartwell, held the title?

Ans. Certainly.

Ques. Was not that matter known and understood in all your interviews with Mr. Sanborn?

Ans. I can answer for myself what I knew and understood, but I cannot answer for Mr. Sanborn what he knew and understood.

Ques. Do you remember the circumstance or occurrence of your first mentioning it to him specifically?

Ans. I do not.

Ques. Can you say when or where it was that you first spoke of it to Mr. Sanborn? 10

Ans. I cannot.

Ques. Was it not before any bargain was made between you?

Ans. I have no recollection as to that.

Ques. Have you any doubt about your having told Mr. Sanborn that Mr. Hartwell was the man to make conveyance of this lot before any contract was executed?

Ans. I cannot say that I told him, but I know that it was well understood in Somerville. 20

Ques. Can you say that Mr. Sanborn did not accompany you at any time on your visit to Mr. Hartwell?

Ans. My recollection is that he did not.

GEO. W. PLUMMER.

Sworn and subscribed before me February 9th, 1875.

I. N. DILTS,

Master and Examiner in Chancery.

JOHN D. BARTINE, Esq., called by the defendants, is objected to by counsel for complainants, on the ground that he is attorney of record in the case of Adair vs Kinsey and Sutphen, on which execution was issued, and any communications had with Sanborn after his purchase in relation to this property are privileged communications.

Witness being sworn says:

I am and for a number of years have been an attorney at law, residing at Somerville; I have been practicing here over  
 10 nine years; while Mr. Sanborn was owner of the lot next the brick hotel here, I made a search as to his title.

Ques. What was the result of that search?

(Objected to because illegal).

Ans. I advised Mr. Galpin, for whom I made it, not to take the property.

Ques. What connection had Mr. Galpin with the property at that time?

Ans. Mr. Galpin, I understood had agreed to purchase it of Mr. Sanborn.

20 Ques. Do you remember when or about what time you made the search?

Ans. I am not certain about the time, but think it was late in the winter or in the spring of 1872; I think there were some mortgages uncanceled of record affecting the title; I think also there was a judgment procured by the Delaware, Lackawanna & Western Railroad Co., against Farrington Barclow, on which an execution was issued, and a sale made under it to Pyson French, and by him conveyed to John Whitenack, and there was no deed on  
 30 record from John Whitenack to any one; the deed from

the sheriff purported to convey all Farrington Barcalow's interest in that property; there were other matters I think so far as shown by the records, which I thought affected the title; there was also a judgment in favor of William N. Adair against James Kinsey and Jacob L. Sutphen; I was the attorney on record for plaintiff of this judgment.

Ques. Had you any conversation with Mr. Sanborn relating to this search or to his title to the property, as the attorney of Mr. Galpin for whom you was acting?

Ans. I had two or three short conversations with Mr. Sanborn about those matters. 10

Ques. Did you talk to him of this Adair judgment, among other incumbrances, and what was said?

Ans. I did; he came to me one day on the street and asked me if that matter of the Adair judgment could not be arranged in some way, and I told him I thought it could, that I would interpose no objection to any arrangement the parties could make in the matter; this conversation occurred in the street, opposite the Ten Eyck House; I don't pretend to give the exact words, but I have given the substance of the conversation. 20

Ques. In your conversations with Mr. Sanborn about the title did you state to him the difficulties that you had discovered?

Ans. I stated to him generally that the title was imperfect and I could not pass it; I do not remember that I told him all the objections, but I told him there were uncanceled mortgages standing against it.

Ques. Mr. Sanborn testifies that Mr. Galpin stated no particular objection to the title; and in substance that he 30

could not ascertain what the precise difficulty was; was there any withholding from Mr. Sanborn purposely, what the particular objections to this title were ?

Ans. Not on my part, nor on the part of any one to my knowledge; I can't state how soon after making the search I had a communication with Mr. Sanborn about it; it was three or four years ago; I think however it was soon after or about the time we completed the search.

10 Ques. In these conversations with Mr. Sanborn was the fact of the Adair judgment, or its being an incumbrance on the premises in question, in any way disputed or denied by Mr. Sanborn ?

Ans. It was not to my recollection; I think he knew it; this time I speak of was in 1872.

Cross-Examined by Mr. Clark :

Ques. Did not Mr. Sanborn tell you that the Adair judgment was not an incumbrance on his lot because it was sold first, in the last conversation he had with you in respect to this matter ?

20 Ans. I don't think he did—he may however have said so, but if he did it was after the property had been given up by Mr. Galpin; my impression is now upon reflection that he has stated that to me, and that he did so about the time this present controversy commenced; nothing of that kind was said at the other conversations of which I have spoken in relation to the title.

(Objected to because it relates to matters which occurred after this controversy began, and does not relate to anything spoken of in the examination-in-chief).

30 Ques. In the last conversation had with you in relation

to the Galpin purchase, do you recollect whether or not Mr. Sanborn stated to you that he had examined the dates of the several sales of the Sutphen property, and he was advised that his having been sold first, was not liable to the Adair judgment, or words to that effect?

(Objected to because no cross-examination, and an attempt to make the parties' declarations evidence in his own favor.)

Ans. I do not remember that he said to me any such thing in any conversation relating to the Galpin purchase, at or near the time the search was made, either at the last or any other conversation on that subject; he may have made that claim some time after, when I wanted him to pay the Adair judgment; Mr. Adair has got his money. 10

Ques. What is the fact in relation to the judgment? as to the judgment being paid or assigned?

Ans. I think it has been assigned; I think to Culver Barcalow.

J. D. BARTINE.

Sworn and subscribed before me, February 9th, 1875 20

I. N. DILTS,

Master and Examiner in Chancery.

HUGH M. GASTON, Esq., offered as witness and objected to the same as Mr. Bartine, he having been attorney between Hartwell and Sutphen as to the declaration of trust, and was consulted by Mr. Sanborn in respect to the title and was his attorney at that time:—Being sworn witness says:

I was present when Mr. Hartwell purchased this lot in

question at public auction, myself; Mr. Hartwell and others attended the sale as friends of Mr. Sutphen; I know that Mr. Hartwell was not in the first place an actual purchaser of the lot at all; it was a mere formal transaction, although he signed the conditions of sale and appeared to be a purchaser; a short time afterwards he became interested in the property substantially by reason of his having endorsed a note of some considerable amount for the accommodation of Mr. Sutphen; it now appears that I drew a declaration  
 10 of trust, being paper marked "Exhibit No. 4" in this cause; both these parties are personal friends of mine; I did the work without any charge, as I had all the other matters relating to Mr. Sutphen's title to that property when he became the purchaser; I told a number of persons that Mr. Hartwell was not in fact the owner of the property; but my impression is, that in the first place at least, Mr. Hartwell and Mr. Sutphen both gave out, and spoke of the affair as a sale; after some considerable time, I think it was generally understood, that Mr. Sutphen was the sub-  
 20 stantial owner of the property; I don't know this is true, but such is my impression; Mr. Hartwell, although living within 150 yards of the lot, never took any possession, or interfered with the lot all the time he had title to my knowledge; after Mr. Sanborn had as I understood contracted with Mr. Galpin for the sale of the lot, and difficulties had been started with reference to the title, I having been one of the commissioners who sold the property to Mr. Sutphen, as land belonging to the widow and heirs of Wm. Barcalow, deceased, endeavored to explain and re-  
 30 move the supposed difficulties; I had conversations with Mr. Galpin, Mr. Bartine, his lawyer—gave Mr. Clark some papers—releases, &c., which I had and which I supposed would remove all questions; I never made any search of the title to this property, to my knowledge; I don't think

I have ever seen any search or abstract of the title concerning it; I was informed by all parties of this Adair judgment Mr Sanborn, included among them; its existence, or its being an incumbrance upon the property was never denied by any one to my knowledge; I never knew until very recently, and don't know now precisely the order of the conveyances by Mr Sutphen; I never examined the records for that purpose, or saw to my knowledge an abstract of the several deeds; I am not aware that I have ever read the pleadings in the present case, or had anything to do with preparing them; Mr. Sanborn consulted me professionally, with reference to his title, the date I have forgotten, but suppose it to be the date of the receipt, February 18th, 1873; I suppose I am debarred from stating what my advice to him was on that occasion, but would be very willing to do so upon the question of Mr. Sanborn or his counsel; I always regarded the objection, made by Mr. Bartine, except as to the Adair judgment, as not being well based either in law or fact. 10

Monday, February 22d, 1875.

20

And being Cross-Examined says:

I was the friend of both Mr. Hartwell and Mr. Sutphen, and in a measure their confidential friend; I suppose that by reason of that fact I was called upon to draw the declaration of trust; I know nothing about Mr. Stryker's purchasing except the fact of his taking possession of it, and had no communication with him to my knowledge; I never saw Mr. Hartwell exercise any acts of ownership or control over the Sanborn lot, or the Stryker lot; he may have done so but I never knew it; prior to the commencement of the building on either lot, I don't know who had posses- 30

sion or control of the premises—my attention was not called to it.

Ques. Did any one exercise more control over the lots than Mr. Hartwell to your knowledge?

Ans. I have spoken of the lot deeded to Mr. Hartwell; I am quite sure that he never had any actual possession of that lot—it was vacant; as to the possession of the other lots before the building, I can't answer, because I don't know; I refer to the lots now occupied by Mr. Stryker and  
10 Mr Barick; I think I did not understand that Hartwell received a deed for the Stryker property and the Barick property—though it may have been so.

Ques. What property did you understand was sold and conveyed by Sutphen to Hartwell?

Ans. The property that Hartwell held the title to at the time of the declaration of trust was this lot in question, as I understood it; I mean that Mr. Hartwell's connection with the property was his having the deed and not any actual possession of the property whatever; I have an im-  
20 pression and am almost sure that while Mr. Hartwell so held this title, a controversy arose between Dr. Troutman the owner of the hotel property, and Mr. Sutphen, with respect to the exact division line between the lots, and that I was consulted by Mr. Sutphen and examined the ground with him in reference to that controversy; there may have been a controversy in that regard prior to the sale, perhaps was, I refer to a renewal of it after the sale; I can't answer whether Troutman brought suit against Sutphen be-  
30 fore the sale; I may be mistaken, but my impression is that there was a renewal of that controversy after the sale and small stakes put along the line; I am very uncertain as to dates, but my impression is that it was while Hartwell

held the title, and that he consulted me about it, but of this I am not certain.

Ques. You say you were consulted by Mr. Sanborn with reference to his title; did you not explain to Mr. Sanborn that this title was good and not liable to the Adair judgment until the Barick property had been exhausted?

Ans. I never assumed to state to Mr. Sanborn the order of the sales of the different lots, because I didn't pretend to know; he may have mentioned the order of the sales, and if he stated that his sale was first, or one of the first, I then told him that it was the last property that was sold that would be first liable in equity; I said nothing to Mr. Sanborn at the time of his consultation with me about the declaration of trust. 10

Ques. Did you not explain to George Sanborn in behalf of his father that this lot could not be answerable for the Adair judgment, because the Barick property was sold several days after the vacant lots and that was worth sufficient to pay the claim?

Ans. I have a very vague recollection of having talked with George Sanborn—I think I did however—and don't remember what our conversation was; I could not have told him as to the dates of the different sales, because I didn't know, and never pretended to know; my advice was asked about questions of law and not questions of fact. 20

Ques. On the 18th of February, 1873, after a call made by Daniel Sanborn, were you not called upon by George, and asked if you knew of any claim that could be brought against this lot; and did you not answer that you knew all about that property from the time it was sold by commissioners up to that time, and that his father was perfectly safe, or words to that effect? 30

Ans. As I stated before I have a very vague recollection of the mere fact of having talked with George Sanborn about the matter; what I told him I cannot now remember, but I am positive and certain that I never told him or anybody else that the Adair judgment was not a lien upon the property, because it was an admitted incumbrance by all parties with whom I conversed on the subject; I think it is just to me now to state that Mr. Sanborn, after I had told  
 10 him that in my judgment the property was free of the particular incumbrances and trouble, that Mr. Bartine, as counsel for Mr. Galpin, had alleged against it, referring to the incumbrances as the share of Farrington Barcalow as tenant in common—that then Mr. Sanborn wanted to know why he couldn't hold Galpin on his contract, and I told him he could not because of this Adair judgment, which was a thing he was perfectly acquainted with and wanted no advice from me about, unless it may have been as to the order of liability of the different lots in equity, upon the basis of the dates of the different sales as given by him.

20 Ques. Did not Mr. Sanborn and George both tell you at all times, that there was no intention to press the sale to Mr. Galpin, and was not the conversation which you have just related a conversation held between yourself and Mr. Clark, and not Mr. Sanborn?

Ans. As to the first branch of the question I cannot say what George said, I have no recollection of it, but I am very clear and very positive as to my conversation with Mr. Sanborn; I remember it distinctly, it was at the close of our conversation, and my recollection is that we both were  
 30 standing up when it occurred; the fact that Mr. Sanborn a short time after this conversation resumed his possession of the lot made me always suppose that this conversation of

mine had decided him to end the pending sale to Mr. Galpin; Mr Sanborn admitted that the Adair judgment was an incumbrance on this lot; my impression is, but it is very imperfect, that when Mr. Sanborn came to see me he knew all about the incumbrance of this judgment upon the lot, and the talk was very little about that at that time; the great body of our talk was with respect to the effect of the judgments and mortgages against and given by Farrington Barcalow, are of the tenants in common; I was very clear myself that they were no incumbrances; (all the answer 10 above objected to as evasive, surplusage and irresponsible;) and then Mr. Sanborn spoke of seeing Galpin upon his contract, in substance, I can't give the words; I told him he could not because this judgment was an admitted lien on the property; Mr. Sanborn understood the difficulty I suggested and that was the end of our conversation; I don't pretend to give the words of course, but the substance.

Ques. Was not that a conversation had with Mr. Clark and not with Mr. Sanborn?

Ans. The conversation I refer to was a conversation had 20 by me with Daniel Sanborn in my office, standing up together, but I have no doubt that if I talked with Mr. Clark upon the subject, as I think I did, I told him substantially the same thing I told Mr. Sanborn.

Ques. Was not the question about this judgment being a lien discussed upon consideration of the propriety of bringing a suit for damages, or filing a bill for specific performance against Mr. Galpin; and was it not considered a bar by reason of its being an unsettled lien?

Ans. There was no discussion at all as to this judgment 30 being a lien on the whole property; I never heard that matter doubted by any one in all my numerous conversations

about the matter, it was merely referred to as a fact, and he asked if he could sue Galpin, this is my recollection; there was a short conversation about suing Galpin, it not lasting over a minute or two, as he, Sanborn, was about leaving.

Ques. You say now an admitted lien—an admitted lien upon the whole property you mean, do you not, not a settled lien upon any portion of it?

10 Ans. I mean an admitted lien upon the whole property and every part, and settled upon the whole property and every part of it at law.

Ques. Do you mean that Mr. Sanborn admitted that this judgment was a lien upon his particular lot, and that the rest of the Sutphen property was in no way bound for it?

Ans. No.

Ques. You did not tell George Sanborn of the declaration of trust, did you?

20 Ans. I suppose not, for I had forgotten it entirely; I appear in this cause for Culver Barcalow—Gaston & Bergen does, rather—my partner has had to do with the case more than I have.

In Chief:

I was one of the executors of Samuel S. Hartwell dec'd, and among his papers, I think the last summer or fall, I found the declaration of trust, and the letters of Messrs. Sutphen and Plummer which have been offered in evidence in the cause; until that time I had totally forgotten that there had been a declaration of trust, or that I had drawn it; the substance of the transaction between Mr. Sutphen  
30 and Mr. Hartwell, however, that he held the title for Mr.

Sutphen, I always knew, and always remembered; I wish to state that I had nothing to do with the conveyances from Mr. Sutphen to Mr. Hartwell and Mr. Barick, for the various lots—never knew the dates and don't now know the dates of their conveyances.

Re-Cross-Examined:

(Being shown Exhibit A. on behalf of the complainants).

Ques. Who is the subscribing witness to this, and who took the acknowledgment?

Ans. It appears that I was the subscribing witness and took the acknowledgment. 10

(Being shown an envelope directed to S. S. Hartwell, and post-marked Newark, June 22).

Ques. Is not that the same hand writing as that of "Exhibit No. 1," ex parte Def'ts?

Ans. I should think it was, but I am not sure; I suppose it to be Mr. Plummer's handwriting, though I know nothing of his writing except from the papers that are here; I don't know the man except as a witness here.

Ques. Was not that order enclosed in that envelope when you found it? 20

Ans. I don't know; I should think probably not, however, from the difference in the dates; I know nothing about the papers at all; I mean the particular enclosure of the papers, except as I see them here.

In Chief:

I wish to say that although I witnessed and took ac-

knowledge of the deed shown me, I had nothing to do with the transaction except as the acknowledging officer.

HUGH M. GASTON,

Sworn and subscribed before me February 22d, 1875.

I. N. DILTS,

Master and Examiner in Chancery.

Adjourned to March 6th, 1875, at 10 1-2 A. M.

SAMUEL J. GALPIN, of Somerville, a witness for the defendants, being duly sworn on his oath saith:

- 10 The date of the contract for the purchase and sale of this lot west of the Ten Eyck House. between me and Mr. Sanborn, is Nov. 18th, 1871; I have the original contract now before me; I caused a search of the title to be made by Mr. Bartine some time in the month of December, 1871; I then asked him to make one; he did not make it right away; it was some little time after that; I think it was in the month of February 1872, that he gave me the results of his search; it was either February or March; he gave me at that time a paper showing the results of his search; I showed that
- 20 paper to Mr. Sanborn very soon after he made the search and gave me the paper; it was either in February or March 1872; I have that paper here now. (Paper here offered in evidence and objected to by Mr. Clark on the ground that Mr. Sanborn's attention was not called to it at the time of the examination). (Paper marked "Exhibit No. 6." on part of Def'ts).

Ques. What conversation had you with Mr. Sanborn on showing him this search? state the substance as near as you can?

- 30 (Objected to for the same reason.)

Ans. I asked Mr. Sanborn if he knew there were liens on that property? His answer was he did not; I then told him that there was, and that I had a paper on which there was a minute of the liens and incumbrances; I then showed him the paper, and called his attention to it two or three times; at that time and afterwards, too; he didn't have much reply about the mortgages; he went to Mr. Hartwell's office at one time together with me to see if we couldn't make some arrangements, to know something about it; I think the Adair judgment was spoken of between us at the first interview we had; when I showed him the search; when I called his attention to these liens and incumbrances, he said have you seen Mr. Barcalow about that; my reply was "I have nothing to do with Mr. Barcalow, my contract is with Mr. Sanborn;" we went to see Mr. Hartwell about the claims that were upon the lot—the property—to know about it. 10

Ques. Did Mr. Sanborn ever deny that this judgment of Adair's was a lien on the property?

(Objected to as leading and immaterial.) 20

Ans. He did not.

Ques. Did you ever talk to Mr. Clark, the counsel of Mr. Sanborn, respecting the title?

(Objected to as immaterial.)

Ans. I did.

Ques. Did Mr. Clark claim that this Adair judgment was no lien upon the property?

Ans. He did not; after I contracted for this lot, Mr. Van Deventer wanted some dirt, and wanted the privilege of taking out some for filling up his lot, and he went to 30

digging and carting the dirt away, the trees were removed first however; this was before my search was obtained, a cellar was partly opened on this lot by reason of this digging—about one third; when I got the search, I quit operations; it remained until some time in the summer filled with water—complaint was made of it as being a nuisance, and Mr. Kershaw, the hotel keeper in the Ten Eyck House, made a bargain with Mr. Melbourn to fill it; I told him to make the best bargain he could with Melbourn, and I would  
 10 see him satisfied; Mr. Sanborn commenced removing the rubbish from the lot in the spring of 1873, if I recollect right; he erected a building during that spring or summer.

Ques. Mr. Sanborn has testified that you did not tell him the grounds of your objection to the title, and that he didn't know what the grounds of your objections were—is this true?

Ans. No sir.

And being Cross-Examined, says:

20 The objections I told Mr. Sanborn I had against the title were, that judgment of Mr. Adair's against Mr. Sutphen was my leading point; I showed him that paper—the search—there were two mortgages that were not satisfied on the record—it shows them there on the search; at the time the search was made, they were good on the book of mortgages—they were not canceled of record; I mentioned no other objections than the two mortgages and the judgment named on the search—nothing special.

Ques. Were there not other objecttoms, and did not Mr. Sanborn ask you to inform him what they were?

30 Ans. Yes, he asked me if there were other objections.

and I told him I couldn't tell what they were, but the record would show it.

Ques. If the Adair judgment had been cleared away, would you have taken the title?

Ans. No, sir.

Ques. You say you had a talk with Mr Clark, did he not tell you that the Adair judgment was no lien upon this lot if the other property was sufficient to pay it?

Ans. I don't know how that was answered at the time.

Ques. Why did you go to Mr. Hartwell's? 10

Ans. Mr. Sanborn wanted to go there to get some information.

Ques. Wasn't it because he had received his title from Mr. Hartwell?

Ans. There was nothing said about that at the time; the conversation was about the incumbrances.

Ques. You have said that Mr. Sanborn did not deny that this judgment was a lien—did he ever acknowledge that it was a lien?

Ans. He never told me yes, he thought it was, he didn't 20 deny it and he didn't admit it; I told him it was; I must have talked with Mr. Sanborn three or four times in reference to that title.

Ques. Did he not on every occasion ask you for all the objections, and were you not unable to give him all the objection to the title?

Ans. I considered that I had given him, enough to release me from the contract; I asked him particularly to se-

cure me against this judgment that was on the property, and he refused to do—I mean the Adair judgment; the only way I can answer further, is by giving the answer on the bottom of that paper there, meaning the search.

Ques. The search says, “The title is imperfect in other respects;” did you at any time tell him in what other respects the title was imperfect?

Ans. I don’t remember I did; Mr. Sanborn never made any objections to me to releasing me from the contract; I  
10 don’t know that he ever said to me I need not take it unless I wanted it, or anything like it.

In Chief, by Mr. Gaston:

Adjourned to 3 o’clock, P. M.

Parties met as before pursuant to adjournment.

I don’t recollect whether I informed Mr. Sanborn of all the objections to the title that I knew of when he inquired of me.

Ques. Had you any interest or purpose to conceal the objections from him; did you intend to do so?

20 Ans. No, none at all.

Ques. What objections to the title do you know now not in this search?

Ans. I don’t know whether there is any or no.

S. J. GALPIN.

Sworn and subscribed before me, March 6th, 1875

I. N. DILTS,

Master and Examiner in Chancery.

CULVER BARCALOW, of Somerville, in the county of Somerset, for defendants, on his oath saith:

Ques. After Mr. Sanborn had purchased this property what occurred between yourself and him in reference to it?

Ans. Mr. Sanborn called at my store and asked me if there was any question as to the title to the property; I told him that I believed the title was perfectly good except as to the Adair judgment; then he spoke to me about other liens upon the property, and I told him any other liens upon the property were cut off by the commissioners' sales; that they had an interest in the money but not in the property. 10

Ques. Do you know whether the other incumbrances were spoken of and particularly defined or not, or whether other liens were spoken of generally?

Ans. There were other liens spoken of by me; I think I mentioned a mortgage which had been given to my mother for \$2,000, of a mortgage that was given by Farrington Barcalow to the Bank of New Jersey as collateral security for endorsed notes, also a judgment against Theodore Barcalow obtained against him, I think by Ten Eyck and afterwards assigned to Dr. Troutman; I said to him that those were all cut off in consequence of the sale by the commissioners. 20

Ques. Theodore and Farrington were your brothers and tenants in common with your sisters and yourself of the property, at the time of the sale, were they not?

Ans. Farrington and Theodore were tenants in common with myself; my sisters' parts had been deeded away.

Ques. Where was this conversation?

Ans. At the time, just when Mr. Galpin had stopped digging the cellar.

Ques. Did you ever have any further conversation with Mr. Sanborn on the subject?

Ans. I did; Mr. Sanborn came to me and wanted me to buy the lot, offered to take \$2,100, and before he left the store \$2,000; I declined to purchase; this was a short time after the first conversation, probably a month, may be more, I can't tell; it was before Mr. Hartwell's death; 10 the question was discussed about Mr. Hartwell's deed; I told him he was all safe so far as he was concerned because Mr. Hartwell was responsible; I told Mr. Sanborn that Mr. Hartwell never owned the lot, really.

Ques. Did Mr. Hartwell do business at that time himself, and how long did he continue?

Ans. I went immediately from that second conversation with Mr. Sanborn to Mr. Hartwell's office; he was in his office doing business at that time.

And being Cross-Examined by Mr. Clark, says:

20 Ques. When did Mr. Hartwell die?

Ans. I think in the spring of 1872.

Ques. For how long a time prior to his decease was he unable to do business?

Ans. I did business with him in February and March as he died in April, but not in his office, in his bed-room.

Ques. Did he do any business in his office for the space of six months prior to his decease?

Ans. I think he did.

Ques. Within three months prior to his decease?

Ans. That I can't say, for I wasn't here only occasionally from January to April.

Ques. Wasn't he confined to his room during the last three months of his life?

Ans. Not entirely, he was in his parlor within three months of his death; it might have been in his house and not in his office that I saw him after this conversation with Mr. Sanborn.

(This conversation or alteration was made by the witness 10  
after the testimony was read by the Master.)

CULVER BARCALOW.

Sworn and subscribed before me, March 6th, 1875.

I. N. DILTS,

Master and Examiner in Chancery.

Mr. Gaston of counsel with defendants here states that his testimony is closed.

March 31st, 1875.—7 1-2 P. M.

Mr. Clark on behalf of the complainant, and Mr. Gaston for defendant appeared pursuant to adjournment. 20

TUNIS C. STRYKER of Bridgewater, a witness for the complainant, on his oath saith:

I suppose I am one of the parties to this cause.

Ques. At the time of the purchase of your property of Mr. Hartwell, what knowledge had you of a judgment in favor of Wm. N. Adair against Kinsey and Sutphen?

[ (Objected to as immaterial, the pleadings not claiming

that his property is answerable to this claim as between the several lots.)

Ans. I had no knowledge of it.

Ques. Was there any arrangement made for the payment of the judgment to which you were a party?

Ans. No, sir.

Ques. When did you first learn that Hartwell held this property in trust?

10 Ans. I don't know when, but not long since, it; was after this suit was commenced.

Ques. What was the value of the property owned by Mr. Rarick at the time he purchased it?

Ans. I would judge about six thousand dollars.

And being Cross-Examined says:

I have heard the bill in this cause read; I have been here one day as a witness, while Mr. Sanborn was under examination for five or ten minutes.

Ques. Have you contributed anything towards the expenses of this suit?

20 (Objected to as impertinent.)

Ans. Yes, sir.

Ques. How much?

(Objected to for same reason.)

Ans. Twenty dollars.

Ques. What interest have you in this suit?

(Objected to because the bill shows that Mr. Stryker's property was advertised and the answer admits it.)

Ans. The interest I had into it was my property was advertised on account of this judgment and I thought my property was clear—Hartwell told me so when I bought it.

Ques. When did you purchase your property as respects the purchases of the other lots by Sanborn and Barick; before or after them?

Ans. Before.

Ques. Have you any fear that either of those lots are 10  
not sufficient to answer this judgment in value?

Ans. I think not, I haven't had any fear.

Ques. How are you then concerned in this suit?

(Objected to because the witness has already answered by reason of his property being advertised.)

Ans. By seeing or knowing my property was advertised, and I was concerned about it—was surprised to see it; I did not know there was anything back on it, and I was informed I was interested in the suit.

Ques. Has either of the parties to this suit, or persons 20  
owning the other lots, ever claimed to your knowledge that your property was first answerable to this judgment?

Ans. I think so.

Ques. Who?

Ans. I think Mr. Sanborn; I misunderstood the question—my answer is—no, sir.

Ques. How long after Mr. Sanborn purchased his lot before you knew of it?

Ans. I couldn't tell, but it was quite some time

Ques. State as near as you can, how long after you was informed of it?

Ans. I have no recollection scarcely at all about it, I couldn't tell.

Ques. Did you learn the price Sanborn had paid?

Ans. No, sir.

Ques. Did you never know?

Ans. No, sir, I never have known.

10 Ques. Did you ever hear that he purchased of a Mr. Plummer of Newark?

(This examination objected because not a cross-examination.)

Ans. I have heard he purchased of a person in Newark, I didn't know the name.

Ques. How long ago did you hear that?

Ans. Soon after he purchased, I don't know how long, after he purchased or traded, I didn't know which.

20 Ques. Learning that Mr. Sanborn had purchased or traded with a man in Newark for this property a short time after his purchase, did you not understand that this man in Newark with whom he traded or purchased was the actual owner, although Mr. Hartwell held the title?

(Objected to because the question presumes that the witness knew that Mr. Hartwell had not given a title to that man in Newark.)

Ans. I didn't know any thing about it; I didn't know

this man held the title until after Mr. Sanborn traded or purchased; I supposed Mr. Hartwell was the owner, until I heard in the store that Mr. Sanborn had purchased or traded for it; I don't know which; that was the first I knew anything about it.

Ques. Do you mean that you supposed that this man in Newark had purchased the property from Mr. Hartwell before Sanborn's purchase?

Ans. I don't know sir.

Ques. What did you understand the nature of this transaction between Mr. Sanborn and this man in Newark to be? 10

Ans. Nothing, no more than I've heard that Mr. Sanborn had become the owner of it—traded or bought it, I don't know which.

Ques. You knew then a short time after Sanborn purchased, that some man in Newark exercised the right to dispose of this lot—did you not?

Ans. Yes, sir.

Ques. Do you mean that at that time you still thought Mr. Hartwell owned it? 20

Ans. I didn't know but what he did as near as I can recollect.

Ques. Can you give any explanation of your understanding of this purchase, or the idea that Hartwell was the owner?

Ans. I can't.

By Mr. Clark:

Ques. At the time Mr. Sanborn received his deed, did you know whether he received it from this man in Newark, or from Hartwell?

Ans. I did not.

T. C. STRYKER.

Sworn and subscribed before me, March 31st, 1875

I. N. DILTS,

Master and Examiner in Chancery.

GEORGE W. SANBORN, of Somerville, a witness for  
10 complainants, on his oath saith:

I am a son of Daniel Sanborn; I am 31 years old; in the years 1872 and '73 I was in business here in Somerville with my father and Cox & Quick; I lived with my father during that time; my father then consulted with me in some matters of business that he had on hand; I think I first heard of the title to the Hartwell lot being defective was after he had bargained with Mr. Galpin, and he Galpin had begun to dig the cellar; it was after that a matter of conversation between me and my father; information in regard  
20 to the title to that lot was given to me gratuitously by Mr. Gaston.

Ques. Did you have a conversation with Mr. Gaston in relation to the title; if so, when and what was it?

(Objected to as immaterial and what Mr. Gaston said could not affect the rights of the defendants).

Ans. About the time that Mr. Galpin was digging the cellar I was sitting in Mr. Barcalow's drug store one evening; Mr. Gaston came in and took a seat near by me and asked me this question: he said, 'George, what is the mat-

ter with Mr. Galpin, is not he going on with the building?" I replied "he has heard some of the mad dog stories that are afloat in regard to the title." Mr. Gaston asked whether father and Mr. Galpin had any writings of sale drawn up? I replied yes, I believe so. He said then your father is all right; I told him that did not make any difference, father did not mean to push it; Mr. Gaston then said, "I will explain to you how it is in regard to a piece of property which has a judgment against it; take a piece of property which has a judgment resting on it, if you divide this piece, 10 of property in one hundred parts and sell one lot after another, so long as the unsold lots are worth the amount of the judgment those sold are perfectly clear; so it is with this property; Mr. Stryker's and your father's were sold first—the house and lot several days afterward—consequently this judgment must fall on the house and lot, and the law will place it there; and about two weeks afterwards the same conversation passed between us almost word for word the same.

(This whole answer objected to.)

20

Ques. By reason of what did you happen to have the subsequent conversation?

Ans. Mr. Gaston gave it of his own free will and accord—I did not ask him for it.

Ques. Did you have any other conversation with him in relation to it—if so when and what was it?

Ans. About the time my father began the work of the present building that stands on that lot; while they were laying up the foundation, there were so many rumors about in regard to the title, that I advised him to go and talk with 30 Mr. Gaston; he left me and returned in a short time, and

showed me a receipt signed by Mr. Gaston, on the strength of which I went to Mr. Gaston and asked him this question: "Can you tell me whether there is any claim resting on this lot of my father's?" he replied "it is perfectly clear, I know all about it, I was one of the commissioners on the sale of that estate—have no fears, you are all right; I was the cause of Mr. Culver Barcalow buying it; and if there had been any claim resting against it, I would not have advised him to buy it;" about two weeks after that—perhaps a little longer—but a short time, I asked him almost the same question, and told him if he knew of any claim whatever against that lot, there should be no more work done towards the erection of a building, and that what was my father's I was interested in; he said, "have no fears, go ahead, you are all right, I know all about it."

(All this answer objected to for the reasons stated above.)

Ques. Why did you go to see Mr. Gaston the second time?

Ans. I had no particular reason that I know of, only that there were so many rumors afloat; nothing in either of these conversations was said about a declaration of trust; I first heard of a declaration of trust after this suit—these proceedings were commenced; how long after I can't say; I first heard that Mr. Hartwell was not the true owner of these premises after these proceedings were commenced.

And being Cross-Examined, says:

All this talk I had with Mr. Gaston was after my father purchased.

Ques. Was this judgment the only trouble you heard of about the title?

Ans. I heard there were old claims, but Mr. Gaston assured me the commissioners had settled them.

GEO. W. SANBORN.

Sworn and subscribed before me, Nov. 6th, 1875.

I. N. DILTS,

Master and Examiner in Chancery.

