

New Jersey Court of Errors and Appeals.

SAMUEL B. HUFNIT and GABRIEL

H. SLATER, appellants,

and

TOBIAS NASH, appellee,

} *Appeal from interlocutory decree of Chief Justice Whelpley, as Circuit Judge, made in the Hunterdon county Circuit Court. —In equity.*

COMPLAINANT'S BILL.

Circuit Court for the County of Hunterdon in equity.

To the Circuit Court for the county of Hunterdon in equity.

Your orator, Peter Polhemus, of the township of Kingwood, county of Hunterdon, and state of New Jersey, complaining, shows unto this court that, on or about the sixth day of April, A. D. one thousand eight hundred and fifty-eight, one Francis McCue, of the village of Frenchtown, in said county of Hunterdon, executed under his hand and seal, and delivered to one Elisha Warford, of the same county of Hunterdon, a bond, bearing date on that day, in the penal sum of twelve hundred 10 dollars, with a condition, thereunder written, in substance, that if the obligor in the said bond, his heirs, executors, or administrators, should pay, or cause to be paid, to said Elisha Warford, the obligee in the said bond named, or to his certain attorney, executors, administrators, or assigns, the sum of six hundred dollars, lawful money, on or before the first day of April, in the year one thousand eight hundred and fifty-nine, with interest for the same, at the rate of six per cent. per annum from the date thereof, without any fraud or other delay, then the said bond to be void, or otherwise to be and remain 20 in full force, as by the said bond, ready to be produced by your orator as this court shall direct, will more fully appear.

And the said Francis McCue, with Sarah Ann his wife, to secure the payment of the principal and interest mentioned in the condition of the said bond, did at the same time execute, under their hands and seals, and deliver to the said Elisha Warford, a mortgage, bearing the same date with the said bond, and conditioned for the payment of the said sum of six hun-

dred dollars, at the time and in the manner herein before mentioned, according to the condition of the said bond; by which said mortgage the said Francis McCue and Sarah Ann his wife mortgaged unto Elisha Warford, his heirs and assigns, in fee, certain lands and real estate, situate in the village of Frenchtown, in the county of Hunterdon, and state of New Jersey, which mortgaged premises were described in the said mortgage as follows: beginning at a stone in the middle of the Main street in said village, being a corner to a lot now of

- 10 Jesse L. Fulmer (formerly A. G. M. Prevost); from thence running with a line of said lot, in the middle of a street called Harrison street, of said village, leading northward from said Main street (1) north, two degrees west, one hundred and ninety-six feet, to a corner; thence (2) south, eighty-eight degrees west, one hundred and twenty-six feet, to a corner of lot sold to James A. Calhoun; thence with a line thereof (3) south, two degrees east, forty-one feet, to a corner; thence (4) north, eighty-eight degrees east, twenty-four feet, to a corner; thence (5) south, two degrees east, fifteen to a corner of other lands belonging to the said Samuel Slater; thence along the same (6) north, eighty-eight degrees east, thirty-seven feet, to a corner; thence (7) south, two degrees east, one hundred and forty feet, to a corner in the middle of Main street aforesaid, and thence along the middle thereof (8) north, eighty-eight degrees east, seventy-four feet, to the place of beginning, containing about forty-hundredths of an acre of land, be the same more or less, being the same lot, or tract of land and premises, which were conveyed to the said Francis McCue by Samuel Slater and wife by deed bearing date the second day of May, A. D. 1857, and recorded in the clerk's office of Hunterdon county, in Book 116 of Deeds, page 211, &c.; which mortgage was duly acknowledged and certified so as to entitle it to be recorded; and the same was afterward duly recorded as a mortgage, in the office of the clerk of the said county of Hunterdon, on the sixth day of April, A. D. one thousand eight hundred and fifty-eight, at in the noon, as by the said mortgage and the certificates of acknowledgment, and of the recording aforesaid, endorsed thereon, and now ready to be produced, as this court shall direct, will more fully appear.

And your orator further shows, that on or about the fifth day of April, in the year of our Lord eighteen hundred and fifty-nine, the said Elisha Warford, for valuable consideration, sold the said bond and mortgage to your orator, and by assignment thereof, duly executed according to law by the said Elisha Warford under his hand and seal, assigned and transferred the same to your orator, which said assignment was duly acknowledged by the said Elisha Warford, and certificate thereof made on the same day and year last aforesaid according to law, so as to entitle it to be recorded, and was then and there delivered to your orator, together with said bond and mortgage, and which said assignment your orator is ready to produce as this court shall direct, and to which your orator prays leave to refer, if it be necessary so to do. 10

And your orator further shows that, on or about the same sixth day of April, in the year of our Lord eighteen hundred and fifty-eight, the said Francis McCue and wife executed a mortgage on the same premises to one Tobias Nash, to secure the sum of fifteen hundred dollars, or some other sum, by virtue of which said mortgage the said Tobias Nash claims to have some lien upon the said premises; but your orator charges that said last-mentioned mortgage was executed and delivered upon an usurious contract between the said Francis McCue and said Tobias Nash, and that the money loaned by said Tobias Nash to said Francis McCue, to secure the payment of which said mortgage was given and executed, was upon a contract to take for the loan of said money above the value of six dollars for the forbearance of one hundred dollars for a year, wherefore said mortgage is null and void as against your orator, and is no encumbrance at all upon the said premises. 20 30

And your orator further shows that, on or about the tenth day of April, in the year of our Lord eighteen hundred and fifty-eight, the said Francis McCue and wife executed a mortgage on the same premises to one Luther Opdyke, to secure the sum of thirteen hundred dollars, or some other sum, which said mortgage afterwards was assigned by the said Luther Opdyke, on or about the fourteenth day of April, in the year of our Lord eighteen hundred and fifty-eight, to one John F. Tinsman, by virtue of a deed of assignment made by the said 40

Luther Opdyke under the act to secure to creditors an equal and just division of the estates of debtors who convey to assignees for the benefit of creditors, recorded in vol. 118, page 61, of the Record of Deeds in and for the county of Hunterdon, by virtue of which said mortgage the said John L. Tinsman, under said deed of assignment, as assignee of Luther Opdyke, claims to have some lien upon the said premises; but your orator charges that the said last mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and if an encumbrance at all upon the said premises, is subsequent to the mortgage of your orator.

And your orator further shows, that afterward, to wit, on or about the day of in the year of our Lord eighteen hundred and fifty- as your orator is informed and verily believes, one George B. Holcombe, sheriff of the county of Hunterdon, by virtue of an execution or executions in his hands against the said Francis McCue, sold and conveyed all the right, title, and interest which he, 20 the said Francis McCue, had, or claimed to have, in the said premises to Samuel B. Hudnit and Gabriel H. Slater, by virtue of which conveyance the said Samuel B. Hudnit and Gabriel H. Slater claim to have some interest in the said mortgaged premises; but your orator expressly charges that the judgment or judgments upon which the same was sold and the said conveyance were obtained and made subsequent to and with full knowledge of your orator's said mortgage.

And your orator believes, and therefore further states, that the sum of six hundred dollars, the amount secured by the 30 said bond and mortgage of your orator, together with the interest on that sum from the sixth day of April, A. D. one thousand eight hundred and fifty-eight, still remains due and unpaid to your orator, and that no proceedings at law have been had to recover the debt secured by the said bond and mortgage, or any part thereof.

Your orator therefore prays the aid of this court in the premises, and that the above named Francis McCue and Sarah Ann his wife, Tobias Nash, John L. Tinsman, assignee of Luther Opdyke, Samuel B. Hudnit, and Gabriel H. Slater, the 40 defendants in this suit, may appear before the Circuit Court

for the county of Hunterdon in equity, and answer this, your orator's bill, according to the rules and practice of the said court, and that the usual decree may be made for the sale of the mortgaged premises aforesaid, and for the payment of the amount due to your orator for principal and interest upon the said bond and mortgage, together with his costs in this suit; and that the said defendants and all persons claiming under them, or either of them, subsequent to the commencement of this suit, either as purchasers, encumbrancers, or otherwise, may be barred and foreclosed of all equity of redemption in 10 the said premises, and that your orator may have such further or such other relief as the nature of the case may require, and as to this court may seem proper and agreeable to equity; and that the state's writ of subpœna, issued out of and under the seal of this honorable court, may be directed to the said Francis McCue and Sarah Ann his wife, Tobias Nash, John L. Tinsman, assignee of Luther Opdyke, Samuel B. Hudnit, and Gabriel H. Slater, therein and thereby commanding them, on a certain day and under a certain penalty, therein to be specified, to be and appear in this honorable court, then and there 20 to answer all and singular the premises contained in this your orator's bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience. And your orator, &c.

GEORGE A. ALLEN,

Solicitor for and of counsel with complainant.

ANSWER OF JOHN L. TINSMAN, ASSIGNEE, & C.

HUNTERDON COUNTY CIRCUIT COURT.—In equity.

The answer of John L. Tinsman, assignee of Luther Opdyke, one of the defendants, to the bill of complaint of 30 Peter Polhemus, complainant.

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

plainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says—he has heard, and believes it to be true, and therefore admits, that the said Francis McCue and Sarah Ann his wife, in the complainant's bill named, did make and execute an indenture of mortgage to one Elisha Warford, of such date and of such purport and effect as in the complainant's said bill mentioned and set forth; that it was acknowledged and
 10 recorded as the complainant in his said bill alleges, and further, that the said mortgage was given to secure the payment of the said bond or obligation set out and described in the said bill of complaint.

But this defendant further answering says, that he has no personal knowledge of the sale, assignment, and transfer of the said bond and mortgage by the said Elisha Warford to the said complainant, as mentioned by the complainant in his said bill (this defendant never having heard of the same until the
 20 commencement of this suit), and he therefore leaves the complainant to make such proof of the said assignment as he may be advised to be necessary; and this defendant further says, that he has no knowledge of what is now due (if anything) to the complainant on his said bond and mortgage, and this defendant therefore prays that the same may be produced and certified and the amount thereon due to the complainant (if anything) may be ascertained according to the rules and practice of the court.

And this defendant further answering says, he has heard, and believes it to be true, and therefore admits, that the said
 30 Francis McCue and Sarah Ann his wife did make and execute an indenture of mortgage, of such date and of such purport and effect (on the same premises comprised in the complainant's mortgage) to one Tobias Nash, as in the said bill of complaint mentioned and set forth, by virtue of which the said Tobias Nash claims to have some lien upon the said premises; and this defendant further says, that he has been informed, and believes it to be true, and is advised, and therefore expressly charges, that the said mortgage of the said Tobias Nash was executed and delivered by the said Francis
 40 McCue and wife to the said Tobias Nash upon an usurious

contract between the said Francis McCue and the said Tobias Nash, in this, to wit, that by the said contract between the said parties, the said Tobias Nash was to receive, and actually did receive, for his own exclusive use and benefit, of and from the said Francis McCue the promissory note of the said Francis McCue for the sum of two hundred dollars, as a bonus and gratuity for the loan then made by the said Tobias Nash to the said Francis McCue, and secured by the said mortgage; this defendant therefore charges, as he is advised and believes that the said loan of money by the said Tobias Nash to the said Francis McCue, and secured by the said mortgage given and executed by the said Francis McCue and wife to the said Tobias Nash, was a contract to take above the value of six dollars for the forbearance one hundred dollars for a year, and, therefore, that the said mortgage of the said Tobias Nash is utterly null and void at law as against this defendant, and that the same is no legal encumbrance upon the said mortgaged premises, or, if an encumbrance, that it should be postponed to the mortgage held by this defendant upon the same premises referred to in the said bill of complaint, and herein after more particularly described; this defendant therefore prays that the said Tobias Nash be required to produce and verify his said mortgage, according to law and the rules and practice of this court, as a valid encumbrance on the said premises, and that this defendant have opportunity to contest the same. 10 20

And this defendant further answering saith, that the said Francis McCue, having become indebted to one Luther Opdyke, on the tenth day of April, one thousand eight hundred and fifty-eight, made, executed, and delivered to the said Luther Opdyke his certain bond or obligation, sealed with the seal of the said Francis McCue, and bearing date the day and year last aforesaid, in the penal sum of two thousand six hundred dollars, conditioned to pay to the said Luther Opdyke, his certain attorney, executors, administrators, or assigns, the sum of thirteen hundred dollars, on or before the first day of April, eighteen hundred and fifty-nine, with interest from the date thereof. 30

And this defendant further answering saith, that the said Francis McCue, in order further to secure to the said Luther 40

Opdyke the payment of the said principal sum of money in the condition of the said bond specified, together with the interest which might accrue thereon, on the same day and year last aforesaid, made and executed to the said Luther Opdyke a certain indenture of mortgage, bearing even date with the said bond or obligation, whereby, in consideration of the said debt, and for the purpose of securing the payment of the same, he, the said Francis McCue, with Sarah Ann his wife, granted, bargained, and sold to the said Luther Opdyke, his heirs and assigns for ever, all the land and premises mentioned and described in the said bill of complaint of the said complainant, together with the rights, privileges, hereditaments, and appurtenances thereunto belonging, and which said indenture of mortgage was nevertheless upon the express condition, that if the said Francis McCue should pay unto the said Luther Opdyke, his certain attorney, executors, administrators, and assigns, the sum of thirteen hundred dollars, on or before the first day of April, eighteen hundred and fifty-nine, with interest for the same from date at the rate of six per centum per annum, according to the condition of the herein before recited bond or obligation given by the said Francis McCue to the said Luther Opdyke in the penal sum of two thousand six hundred dollars, then the said indenture of mortgage should cease and be void, otherwise to remain in full force and effect. And this defendant further says, that the said indenture of mortgage was acknowledged in due form of law by the said Francis McCue and Sarah Ann his wife, and recorded in the clerk's office of the county of Hunterdon, and state of New Jersey, all which will appear by reference to the said mortgage, and the record thereof, now in the possession of this defendant, and ready to be produced and proved as this honorable court shall direct.

And this defendant in further answering says, he admits, and charges it to be true, that the said last mentioned indenture of mortgage (together with the said bond accompanying it) was assigned and set over by the said Luther Opdyke to this defendant at the time and in the manner and for the purpose as mentioned and set forth in the said bill of complaint, and that this defendant still holds the same, and that he does, by virtue of the said mortgage, and the said assignment there-

of to him, claim to have an interest in and a lien upon the said mortgaged premises.

And this defendant further says, that the whole of the said principal sum of thirteen hundred dollars, mentioned and contained in the condition of the said bond, and secured by the said last mentioned mortgage given as aforesaid to the said Luther Opdyke, together with interest thereon from the date thereof, still remains due and owing to this defendant, as assignee as aforesaid.

And this defendant further answering says, that any other 10 matter or thing in the said bill contained material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays that a decree may be made by this honorable court for the sale of the land and premises in the foregoing indenture of mortgage mentioned and set forth in the complainant's bill, and out of the moneys thence arising, that 20 this defendant may be paid the full amount of the principal and interest money so due to him as assignee as aforesaid upon the said indenture of mortgage, according to the legal priority of the said mortgage, with all reasonable costs and charges in this behalf sustained.

A. W. WURTS,

Solicitor for and of counsel with said defendant.

State of New Jersey, Hunterdon County, ss.—John L. Tinsman, the above named defendant, being duly sworn, on his oath saith, that the matters and things set forth in the 30 above answer, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, or to information derived from others, he believes them to be true.

JOHN L. TINSMAN.

Sworn and subscribed, this thirtieth day of April, A. D. 1860, before me.

A. V. VAN FLEET, M. C.

ANSWER OF SAMUEL B. HUDNIT AND GABRIEL H. SLATER.

CIRCUIT COURT FOR THE COUNTY OF HUNTERDON.—In equity.
The joint and several answer of Samuel B. Hudnit and Gabriel H. Slater, two of the defendants, to the bill of complaint of Peter Polhemus, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto,
 10 or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they answer and say—that they admit that the said Francis McCue, in the complainant's bill named, did make, execute, and deliver to the said Elisha Warford, therein named, the bonds, of the date, and conditioned for the payment of the sum of money in the complainant's bill set forth, and that the said Francis McCue and Sarah Ann his wife did make, execute, and deliver unto the said Elisha Warford a mortgage of such date and of such purport as in the complainant's bill is
 20 mentioned and set forth, and that the said Elisha Warford did, at the time and in the manner mentioned and set forth in the complainant's said bill of complaint, sell, assign, transfer, and set over the said bond and mortgage to the said complainant.

And these defendants further answering say, that they admit that the said Francis McCue and wife executed to one Tobias Nash a mortgage of such date and of such purport as in the complainant's bill is mentioned and set forth; but these defendants' do not admit, but on the contrary expressly deny,
 30 that the said mortgage given to the said Tobias Nash is any encumbrance upon the premises set forth and described in the complainant's said bill of complaint.

And these defendants further answering say, that they have been credibly informed, and verily believe, and therefore charge, that the said Francis McCue was, at the time the said mortgage was given to the said Tobias Nash, the proprietor of the hotel or tavern property in the village of Frenchtown, as set forth and described in the complainant's said bill of

complaint; that the said tavern property was then, and had been for a long time, occupied by one Andrew Risler; that the said Andrew Risler had obtained a mortgage for fifteen hundred dollars against the said tavern property, and had commenced proceedings in the Court of Chancery for the foreclosure and sale of the said premises; that the said Francis McCue, being very anxious to obtain possession of the said tavern property, to keep and maintain the house himself, and save his property from being sacrificed, was in need of a large sum of money with which to pay off the claim then in the hands of 10 the solicitor for the said Andrew Risler, made application to the said Tobias Nash for the loan of the sum of fifteen hundred dollars; that the said Tobias Nash declined and refused to loan him the money, unless he could have the first mortgage on the premises, and that the said Francis McCue would pay to him a large sum of money over and above and more than six per cent. per annum for such loan, and finally agreed to loan him, the said Francis McCue, the sum of fifteen hundred dollars, upon condition that he, the said defendant, Francis McCue, would allow to him, the said defend- 20 ant, Tobias Nash, the sum of two hundred dollars over and above and in addition to the legal interest, as a bonus or consideration for the use of the said money; and that he, the said Francis McCue, should arrange the encumbrances on the said premises so that he, the said Tobias Nash, could have the first mortgage on said property to secure the payment of the said sum of fifteen hundred dollars with interest.

And these defendants further answering say, that the said defendant, Francis McCue, finding that he could not procure the said loan upon more fair and just terms, and being greatly 30 straightened in his circumstances and in want of funds, finally acceded to the demands and conditions of the said Tobias Nash, unreasonable as they were, and agreed to borrow said money upon the terms and conditions aforesaid, as these defendants are credibly informed and believe, and therefore charge to be true, and did thereupon, and in compliance with said agreement with said defendant, Tobias Nash, make, execute, and deliver to said defendant, Tobias Nash, the mortgage in the said bill of complaint mentioned to secure the payment of the said sum of fifteen hundred dollars, with lawful interest there- 40

on from the date thereof; and that the said Francis McCue did, at the same time, deliver to the said Tobias Nash, in pursuance of their said usurious contract, his note, with approved security, for the sum of two hundred dollars, payable at the Union Bank at Frenchtown, as and for the additional interest over and above the six per cent. secured by the said mortgage for the making of the said loan for the use of the said fifteen hundred dollars of money for one year.

And these defendants further answering say, that they have
10 been further credibly informed, and verily believe, and therefore charge it to be true, that the said defendant, Tobias Nash, did receive and take from the said defendant, Francis McCue, the said bonus or consideration for the loan of said money, to wit, the said sum of two hundred dollars, or some other large sum of money over and above and in addition to the lawful interest under and by virtue of the said agreement.

And these defendants humbly insist that, inasmuch as the said defendant, Tobias Nash, did take and receive from the said defendant, Francis McCue, upon said loan, a higher in-
20 terest than is allowed by the laws of the state of New Jersey, the bond or obligation, and the said mortgage so given to the said defendant, Tobias Nash, by the said Francis McCue are usurious and utterly void under the statute in such case made and provided; and these defendants humbly pray the interference of this honorable court in the premises, and that the court will grant to these defendants such relief as shall be agreeable to equity and good conscience, and as under the laws of this state they may be entitled to.

And these defendants, further answering, admit that the
30 said Francis McCue and wife did execute to one Luther Opdyke a mortgage on the same premises, of such date and of such purport as in the complainant's bill is mentioned and set forth, and that the said Luther Opdyke did, at the time and in the manner mentioned and set forth in the complainant's said bill of complaint, assign the said mortgage to John L. Tinsman, as the assignee of the said Luther Opdyke.

And these defendants further answering, admit that George B. Holcombe, sheriff of the county of Hunterdon, by virtue of sundry executions in his hands against the said Francis
40 McCue, did, on the thirty-first day of July, in the year of our

Lord eighteen hundred and fifty-eight, sell all the right, title, and interest which the said Francis McCue had, or claimed to have, in the said premises mentioned in the complainant's said bill of complaint, and that these defendants became the purchasers of the said mortgaged premises, and that the judgments upon which the same were sold were obtained subsequent to the said mortgage of the said complainant; and these defendants aver that the said George B. Holcombe, sheriff of the county of Hunterdon aforesaid, did make to these defendants a deed for the said mortgaged premises, bearing date the sixth day of August, A. D. eighteen hundred and fifty-eight, and that these defendants still are the owners of the said premises, and that they did so purchase the said mortgaged premises under the opinion and belief that the said defendant's, Tobias Nash, said mortgage was illegal and void, and that the same could not be sustained in law or equity; and further, that the said sheriff did not at the time of said sale, so far as these defendants heard or believe, make any stipulation, reservation, or allusion to the said mortgage of the said Tobias Nash or any encumbrances whatever on the said premises. 10 20

And these defendants say, that any other matter or thing material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

EDWARD R. BULLOCK, 30

Sol. for, &c.

PETER I. CLARK,

*Of counsel with the defendants (Samuel B. Hudnit
and Gabriel H. Slater).*

State of New Jersey, Hunterdon county, ss.—Samuel B. Hudnit and Gabriel H. Slater, the above named defendants, being duly sworn, on their oaths say, that the matters and things set forth in the above answer, so far as they relate to

their own acts respectively, are true, and so far as relates to the acts of others, they believe them to be true.

S. B. HUDNIT,
G. H. SLATER.

Sworn and subscribed to this twenty-eighth day of April, A. D. 1860, before me.

ISAAC R. SHROPE, M. C.

ANSWER OF TOBIAS NASH,

HUNTERDON COUNTY CIRCUIT COURT.—In equity.

10 *The answer of Tobias Nash, one of the defendants to the bill of complaint of Peter Polhemus, complainant.*

This defendant, now and at all times saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says— it may be true, for anything this defendant knows to the contrary, that the said Francis McCue and Sarah Ann his wife,
20 in the complainant's bill named, did make and execute an indenture of mortgage to one Elisha Warford, of such date and of such purport and effect as in the complainant's said bill set forth, and that it was acknowledged and recorded as in the complainant's bill is alleged, and further, that the said mortgage was given to secure the payment of the said bond or obligation in the complainant's said bill set out and described; but whether the said Elisha Warford, for valuable consideration, sold and assigned the said bond and mortgage to the complainant, as in the said bill is alleged or whether there is
30 anything due upon the said mortgage, this defendant, being an entire stranger to the several matters aforesaid, cannot set forth, but leaves the said complainant to such proof thereof as he shall be advised to produce; and this defendant insists that the complainant's mortgage, if a lien at all upon the said mort-

gaged premises, was executed and recorded subsequent to the mortgage in the complainant's bill mentioned, given by said Francis McCue and Sarah Ann his wife to this defendant, and with full notice thereof, and if a lien at all upon said mortgaged premises, is subsequent and subject to the lien and encumbrance of the said mortgage given by said Francis McCue and Sarah Ann his wife to this defendant.

And this defendant further answering says, that it may be true, for anything this defendant knows to the contrary, that the said Francis McCue and Sarah Ann his wife did make 10 and execute an indenture of mortgage to one Luther Opdyke, of such date and of such purport and effect as in the complainant's said bill set forth, but whether said mortgage was assigned by said Luther Opdyke to said John L. Tinsman, or whether there is anything due thereupon, this defendant, being an entire stranger to the several matters aforesaid, cannot set forth, but leaves the said John L. Tinsman to make his proof thereof; and this defendant insists that if a mortgage was executed and delivered by said Francis McCue and Sarah Ann his wife to said Luther Opdyke, as in the complainant's 20 bill mentioned, it was executed and recorded subsequent to the mortgage, in the complainant's bill mentioned, given by the said Francis McCue and Sarah Ann his wife to this defendant, and with full notice thereof, and if a lien at all upon said mortgaged premises, is subsequent and subject to the prior lien and encumbrance of the said mortgage of this defendant.

And this defendant further answering says, that it may be true, for anything this defendant knows to the contrary, that George B. Holcombe, sheriff of the county of Hunterdon, by virtue of an execution or executions in his hands against the 30 said Francis McCue, sold and conveyed all the right, title, and interest of the said Francis McCue in said mortgaged premises to Samuel B. Hudnit and Gabriel H. Slater, as in the complainant's bill is alleged, but this defendant, being an entire stranger to the several matters aforesaid, cannot set forth whether it is true or not; and this defendant insists that, if the said mortgaged premises were so sold to Samuel B. Hudnit and Gabriel H. Slater, the judgment or judgments upon which the same were sold were obtained subsequent to the 40 execution and recording of the aforesaid mortgage of this de-

fendant, and the said conveyance was made to the said Samuel B. Hudnit and Gabriel H. Slater subsequent to and with full knowledge of the aforesaid mortgage of this defendant, and is subject to the lien and encumbrance of the said mortgage of this defendant.

And this defendant further answering says, that on or about the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, one Andrew Risler filed a bill in the Court of Chancery of the state of New Jersey for the foreclosure of a certain mortgage upon the same premises in the complainant's said bill described, and that such proceedings were had by the said Andrew Risler that, on or about the fifth day of March, in the year of our Lord one thousand eight hundred and fifty-eight, a decree final was obtained by the said Risler in the said Court of Chancery for the sum of fifteen hundred and eighty-three dollars and seventy-five cents, or some other sum, and that afterwards an execution issued out of the same court to George B. Holcombe, then sheriff of the county of Hunterdon, directed and delivered, commanding him to make sale of the said premises according to law.

And this defendant further answering says, that the said Francis McCue, who at the time of said final decree had the legal title as well as the possession of said mortgaged premises, being desirous to save the said mortgaged premises from being sacrificed at public sale by the sheriff, applied to this defendant to loan him, the said McCue, the sum of fifteen hundred dollars to pay and satisfy the aforesaid final decree, and that this defendant, being willing to do so, did, on or about the sixth day of April, eighteen hundred and fifty-eight, at the request of and for the said Francis McCue, pay to the said George B. Holcombe, sheriff as aforesaid, upon the aforesaid final decree, the just and full sum of fifteen hundred dollars, and the said Francis McCue having paid the balance due upon said final decree, full satisfaction thereof was duly acknowledged.

And this defendant further answering says, that the said Francis McCue, having thus become indebted to this defendant in the sum of fifteen hundred dollars, and being desirous to secure the same, did make and execute, and deliver to this

defendant, his certain bond or obligation, sealed with the seal of the said Francis McCue, and bearing date on the sixth day of April, in the year of our Lord one thousand eight hundred and fifty-eight, in the penal sum of three thousand dollars, conditioned to pay to this defendant, his certain attorney, executors, administrators, or assigns, the sum of fifteen hundred dollars, on or before the first day of April, eighteen hundred and fifty-nine, with interest from the date thereof.

And this defendant further answering says, that the said Francis McCue, in order further to secure to this defendant 10 the payment of said principal sum of money in the condition of said bond or obligation specified, together with the interest which might accrue thereon, on the same sixth day of April, eighteen hundred and fifty-eight, made and executed to this defendant a certain indenture of mortgage, bearing even date with said last mentioned bond or obligation, whereby, in consideration of the said debt, and for the purpose of securing the payment of the same, he, the said Francis McCue, with Sarah Ann his wife, granted, bargained, and sold to this defendant, his heirs and assigns for ever, all the lands and premises men- 20 tioned and described in the said bill of complaint, together with the rights, privileges, hereditaments, and appurtenances thereunto belonging, and which said indenture of mortgage was nevertheless upon the express condition, that if the said Francis McCue should pay unto this defendant, his certain attorney, executors, administrators, or assigns, the sum of fifteen hundred dollars, on or before the first day of April, eighteen hundred and fifty-nine, with interest from the date thereof, according to the condition of the said bond given by said Francis McCue to this defendant, in the penal sum of three 30 thousand dollars, then the said indenture of mortgage should cease and be void, otherwise to remain in full force; and this defendant further says, that the said last mentioned indenture of mortgage was acknowledged in due form of law by said Francis McCue and Sarah Ann his wife, and recorded in the clerk's office of said county of Hunterdon on the sixth day of April, eighteen hundred and fifty-eight, all which will fully appear by reference to said mortgage, and the record thereof, now in the possession of this defendant and ready to be produced and proved, as this honorable court shall direct. 40

And this defendant further answering says, that the said sum of fifteen hundred dollars, so as aforesaid due this defendant, together with lawful interest thereon, still remains due and owing to this defendant.

And this defendant further answering says, that he paid the said sum of fifteen hundred dollars to George B. Holcombe, sheriff as aforesaid, upon the said final decree, and received the said mortgage, as security therefor, in presence of and with the knowledge of the said Luther Opdyke, and in the
 10 presence of and with the knowledge of George A. Allen, esq., the complainant's solicitor, who was then acting as solicitor for the said Elisha Warford, and that it was expressly understood and agreed, by and between the said Luther Opdyke, Elisha Warford, and this defendant, that the said mortgage of this defendant should be a lien upon said mortgaged premises, prior both to the mortgage given by said McCue to said Warford, and assigned to complainant and to the said mortgage given by the said McCue to said Luther Opdyke; and this
 20 defendant further says, that by the decree in the said Court of Chancery, herein before mentioned, it was decreed that, after the said Andrew Risler had been fully paid and satisfied out of the said mortgaged premises the said sum of fifteen hundred and eighty-three dollars and seventy-five cents, together with his costs, the said Elisha Warford should be paid and satisfied the amount now secured by complainant's mortgage, or thereabout, and that the mortgage now held by said complainant was given by said McCue to said Elisha Warford, as this defendant has been informed and believes to be true, for the amount so decreed to said Elisha Warford, and that there-
 30 upon the said Elisha Warford acknowledged, in due and legal form, full satisfaction of the decree so made to him.

And this defendant, in further answering, refuses to respond to the allegations in the complainant's bill of complaint, that the said mortgage of this defendant is tainted with usury, and therefore null and void, and this defendant insists that he is not obliged, by the laws of the state of New Jersey and the rules of this honorable court, to make answer unto the said allegation in the complainant's said bill, inasmuch as this defendant might thereby be subjected to a penalty or forfeiture
 40 by the laws of this state.

And this defendant in further answering says, that he is now, and was at the time of making the said contract for the loan of the said sum of fifteen hundred dollars to said Francis McCue as aforesaid, a resident of the state of Pennsylvania, and that said contract for said loan, for which the said mortgage was given to this defendant, was made by and between this defendant and the said Francis McCue in the state of Pennsylvania, and that, by the laws of said state of Pennsylvania, which must govern this contract, the taking above the value of six dollars for the forbearance of one hundred dollars 10 for a year, or above that rate for a greater or less sum, or for a longer or shorter time, would not render the mortgage of this defendant usurious and null and void; and this defendant insists that the bill of complaint of the said complainant presents no ground of equitable relief, and this defendant prays that he may have the same benefit and advantage of this exception that he could have had therefrom by demurrer to the said bill of complaint.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other 20 matter or thing material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of this defendant—all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays that if a decree be made by this honorable court for the sale of the said land and premises in this defendant's indenture of mortgage mentioned and set forth in the complainant's bill, that out of the moneys thence arising this defendant may be paid the full 30 amount of the principal and interest money so due to him as aforesaid, with all reasonable costs and charges in this behalf sustained.

B. VANSYCKEL,

Solicitor for and of counsel with Tobias Nash, defendant.

State of New Jersey, Hunterdon county, ss.—Tobias Nash, the defendant within named, alleging himself to be conscientiously scrupulous of taking an oath, on his solemn affirmation says, that the matters and things set forth in the above answer,

so far as they relate to his own acts, are true, and so far as they relate to the acts of others, or to information derived from others, he believes them to be true.

TObIAS NASH.

Sworn and subscribed before me, this nineteenth day of May, 1860.

A. V. VAN FLEET, *M. C.*

REPLICATION.

HUNTERDON COUNTY CIRCUIT COURT.—In equity.

10 BETWEEN

PETER POLHEMUS, complainant,

and

TObIAS NASH et al., defendants,

} *Replication.*

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without that, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed and denied, is untrue; all which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

GEORGE A. ALLEN,

Solicitor for and of counsel with complainant.

DEPOSITIONS.

Examination of witnesses, &c., in a cause depending in the Hunterdon County Circuit Court in equity, wherein Peter Polhemus is complainant, and Francis McCue and Sarah Ann his wife, Tobias Nash, John L. Tinsman, assignee of Luther Opdyke, Samuel B. Hudnit and Gabriel H. Slater are defendants: taken at the inn of Anderson Eick, in the village of Flemington, on this sixth day of August, in the year of our Lord one thousand 10 eight hundred and sixty, before Abraham V. Van Fleet, one of the masters and examiners of the Court of Chancery of New Jersey, in the presence of George A. Allen, esquire, solicitor and of counsel for the said complainant, and Bennet Vansyckel, esquire, solicitor and counsel for the defendant, Tobias Nash, and Alexander Wurts, esquire, solicitor and of counsel for the defendant, John L. Tinsman, assignee of Luther Opdyke, and Edward R. Bullock, esquire, solicitor and of counsel for the defendants, Samuel B. Hudnit and Gabriel H. Slater.

Notice of taking testimony at this time admitted by the counsel of the defendants, John L. Tinsman, assignee of Luther Opdyke, Samuel B. Hudnit, and Gabriel H. Slater. 20

Francis McCue, of the township of Alexandria, in the county of Hunterdon, a witness produced on the part of the complainant, being duly sworn according to law, on his oath says—I obtained a loan of Tobias Nash of fifteen hundred dollars; I secured the payment of this loan by bond and mortgage on a certain property in Frenchtown; I gave him the bond and mortgage—my wife joined with me in executing the mortgage; the property upon which this mortgage was 30 given is known as the American hotel, in Frenchtown; this was the only bond and mortgage I ever gave to Tobias Nash; the property I mortgaged to Mr. Nash is the one described in the complainant's bill of complaint; I do not remember the date of the mortgage—it was in April, in the year eighteen hundred and fifty-eight, but I forget the day of the month; I first saw Mr. Nash in relation to this loan when he was com-

ing from a sale in Kingwood township—it was in March; previous to the loan in April, I saw Mr. Nash at the sale; he bought a colt; I did not know Mr. Nash only as he was pointed out to me; he was going to tie the colt behind a sulky, in which he had come there; he was uneasy, as well as others, that the colt might injure itself going down the Frenchtown hill behind the sulky, and I proposed to ride it for him; while riding down the hill, side by side, he in the sulky and I on the colt, I think he asked me where I lived; he said he
 10 had seen me several times before, and asked me what I followed; I told him I had been following blacksmithing, but expected to begin keeping tavern the first of April; he then asked me if I was the man who had got the property there was so much fuss about, the mortgage had been foreclosed on; I told him what money I had paid on the property, and that I, rather than be defeated by uncle Andrew, who then occupied the property, would give two hundred dollars; he then said money was very scarce, and hard to get hold of, and I told him I wished he would hunt me up some, and that if he
 20 heard of any one who had some, to let me know. When we parted at Frenchtown, he said he would see me again; I told him to secure me the money, and I would pay him for it; some time after this, I think the next week, Mr. Nash one evening came to Frenchtown; several persons told me that Mr. Nash was looking for me; we met; I forget whether he asked if I had succeeded in getting that money—however he told me he had got part of that money for me; he told me I could have it if I would do as I had promised; I told him I must have the whole fifteen hundred; that I did not like to
 30 give so much, but would give something; he then said he knew where to borrow enough to make it up, and that if I would give him the two hundred dollars I could have it; I told him I would give him the two hundred dollars, but I did not want it taken out of the fifteen hundred dollars, for I wanted the whole of it; then Mr. Nash wanted to know if there were any mortgages on the property, and if there were, whether his could come on first; I told him I would try and make that arrangement, have the other mortgages off, so that his could come first; I was to see him again in a few
 40 days—he was to come over again, and I was to tell him what

I could do; when he came over, I told him I guessed we could make it work all right; that seemed to settle the matter—only one thing, we promised each other we would not say anything about it; he then thought it would be best to have some one present to hear our bargain, some one we could confide in, and he named Jesse L. Fulmer; I told him Jesse was a very good man, but I thought we could attend to our own business, no need of a third party; we agreed that each should tell Jesse the bargain we had made, and it was to be kept still—we were to tell no one else; I then told Mr. Ful- 10 mer, in his shop in Frenchtown—Mr. Nash and I went in together; I told Mr. Fulmer the bargain first, that Mr. Nash was to lend me fifteen hundred dollars, and I was to give him two hundred dollars; Mr. Nash then said to Jesse, “yes, that is right, and I am to have the first mortgage on this tavern property here;” but, said he, “how am I to get the two hundred dollars if you will not let me take it out of the fifteen hundred?” I told him I would give him my note in the Frenchtown Bank for two hundred dollars, either at sixty or ninety days, I forget which, with a certain man as endorser, 20 naming the man; he objected to that, on the ground that he did not know Mr. Opdyke, the man I offered as endorser; I then referred him to Mr. Fulmer as to Opdyke’s pecuniary ability, and Mr. Fulmer said he merely knew Mr. Opdyke when he saw him; Mr. Fulmer and I then thought it would be best for Mr. Nash to go round and see Mr. Williams, the cashier of the bank, and tell him what sort of a note he expected to get, and whether he should accept it; Mr. Nash said he thought it would be best to see Mr. Williams, as he was acquainted with him; he said that if “Newbury says take it, 30 it will be all right;” he left the shop, and said he was going to the bank; he returned in a short time, and said it would be all right; I suppose he had been at the bank; we then agreed that I should let Mr. Nash know when we would come to Flemington to execute the papers, and then we parted; the day before I was ready to come to Flemington I went over to Mr. Nash’s residence, found him in the oats field, and told him I would be ready to-morrow to go to Flemington and have the matter arranged; we talked together—but nothing relating to this matter, as I remember; the next day we met here in 40

the clerk's office; he paid over the money, and took the bond and mortgage; I then told Mr. Opdyke to write a note for two hundred dollars; he did so, and endorsed it; it was payable at the Union Bank at Frenchtown; Opdyke wrote the note—I signed it, and Opdyke endorsed it, and it was then given to Mr. Nash; the note was given for two hundred dollars; I think Mr. Bullock prepared the bond and mortgage—he did it at my request; I think they were prepared at Frenchtown, and executed there before the time of meeting at Flemington;

10 the note for two hundred dollars was the only one I ever gave Mr. Nash; the note of two hundred dollars was given for the loan of fifteen hundred dollars, and for no other purpose; I gave a mortgage to Luther Opdyke upon the same property; Mr. Opdyke asked me what this two hundred dollar note was for, but I did not inform him; Mr. Opdyke, at the time I gave him the mortgage, knew what the two hundred dollar note was given for; this note was part of the consideration of the mortgage I gave to Opdyke, I think.

Being cross-examined by Mr. Vansyckel, says—Mr. Nash,

20 at the time of this transaction, lived in Bucks county, in the state of Pennsylvania; I never went to see Nash about this business, but only to tell him when I would meet him in Flemington; I have never paid the two hundred dollar note; I do not know whether Opdyke has paid it—I never asked him about it; I do not know whether it was protested or not; I was asked for the money twice after it came due; once Mr. Nash told me I could pay on it whatever I could, and at another time some person came to me and said he had got the note of

30 it—and if I could not then, whether I could not at some other time, and I replied I would as soon as I could; the property mortgaged to Mr. Nash was advertised by the sheriff for sale on the foreclosure of a mortgage by Andrew Risler; I wanted this money to pay off the execution the sheriff had; Mr. Nash counted the money out to me, in the presence of Luther Opdyke, in the clerk's office; the sheriff said that he had received a note from Andrew Risler, directing him not to receive anything but gold or silver, and I asked William Emery, the cashier of the Hunterdon County Bank, whether I could get

40 gold and silver for that amount for good paper; I believe I

brought the money down, and got the gold and silver, and paid it over to the sheriff—either the sheriff or Mr. Nash with me; the sheriff had the decree, and said he would cipher up the interest and cost, and I presume he did so; Mr. Nash counted down the money, the fifteen hundred dollars he was to loan me, and then the sheriff stated that he had received a letter from Mr. Risler stating that he would not receive anything but gold and silver, and I, having made an arrangement as I before stated with the cashier and the sheriff, knew it; I think the sheriff and myself came down to the bank, and got 10 the money changed; the papers were lying on the table in the clerk's office—they had not been delivered yet to Mr. Nash; I had nothing to do with them after the sheriff got the money; I do not know whether Warford had a decree for what was due to him; the fifteen hundred dollars Nash loaned me was immediately paid to the sheriff upon the decree in favor of Andrew Risler; I have never paid any part of the two hundred dollar note; I never met Nash here more than once about this business; Luther Opdyke knew I had given a mortgage to Nash at the time I gave him his mortgage; I 20 do not think that Nash paid over to the sheriff the fifteen hundred dollars.

FRANCIS McCUE.

Sworn and subscribed, this sixth day of August, A. D. 1860, before me.

A. V. VAN FLEET, M. C.

Luther Opdyke, of the township of Franklin, in the county of Hunterdon, a witness produced on the part of the complainant, being duly sworn according to law, on his oath says—I was present in the clerk's office when some money 30 was paid to satisfy Andrew Risler's claim; I saw the money laying on the table, and understood it was to pay Risler's claim that the sheriff had; two mortgages were there that day; we had met here before, and the mortgages were not prepared; we appointed another day to meet; the mortgage to Mr. Nash for fifteen hundred dollars was signed by Francis McCue and his wife; I was present when this mortgage was delivered to Nash, and I think I saw it delivered; I came here before with McCue, as I understood, to meet Nash, and did

meet him, but we could do nothing because the papers were not prepared; Mr. Nash had agreed to furnish the money, and take up the claim of Risler, but he wanted the first claim on the property—it was so represented to me; I don't know where I got this information, whether from Nash or McCue; there was a mortgage or two on the property, and they were to be taken up before this mortgage was given; the papers to be prepared were, a mortgage to Nash, for fifteen hundred dollars, and a mortgage to Elisha Warford, for six hundred
 10 dollars; the mortgage to Nash was to be given for the money to take up that claim of Risler's.

Question. Do you know whether the mortgage contained anything relative to Risler, or whether it was simply a mortgage to secure the money lent? [This question objected to by counsel for the defendant, Tobias Nash.]

Answer. It was nothing more than a mortgage to Mr. Nash.

I don't think I read the mortgage—I saw it; I believe Mr. Nash furnished the money for which this mortgage was given; I don't remember who counted the money—it laid on the ta-
 20 ble in heaps; I don't think I saw paper money—what I saw was specie, principally gold; the money and mortgages were both in the office, but whether they both laid on the table at the same time or not I can't say; there was a note for two hundred dollars given to Tobias Nash that day; I wrote the note, and I think McCue and I signed it on the face; my understanding was that I was to be security on the note; I did not know at the time the note was given that it was given as a bonus for the loan of fifteen hundred dollars; I do not remember the date of the note, but it was the same day the
 30 money was paid.

Being cross-examined by Mr. Wurts, counsel for John L. Tinsman, assignee of Luther Opdyke, says—Francis McCue and his wife, a few days after this, executed a mortgage to me for thirteen hundred dollars upon the same property embraced in the mortgage to Nash; the two hundred dollars, for which I was McCue's security, formed no part of the consideration of the mortgage given to me; I afterwards made an assignment to John L. Tinsman of all my estate, both real and personal, for the benefit of my creditors; this assignment
 40 was made before anything was paid upon this mortgage.

Being cross-examined by Mr. Vansyckel, counsel for defendant, Tobias Nash, says—I have never paid any part of the two hundred dollar note which McCue and me gave to Nash—I have never seen it since.

Question. What did McCue, on the day the two hundred dollar note was given to Nash, tell you was the consideration of that note? [The counsel for the complainant objects to this question, because it is illegal and incompetent, but waives any objection because it is no cross-examination.]

Answer. He said that Nash had borrowed two hundred dollars of his brother, and that he had the promise of it at the Frenchtown Bank, provided he could get his and my note; the fifteen hundred dollars was paid by Nash to the sheriff, and the mortgage from McCue to Nash delivered before the two hundred dollar note to Nash was drawn; Elisha Warford, I think, was not present; George A. Allen, esq., the solicitor for Warford, was present in the clerk's office; a mortgage was prepared, and there at the time, from McCue and wife to Warford.

It was the understanding there in the office, in the presence of Mr. Allen, that Mr. Nash's mortgage was to have priority over the mortgage to Warford; I saw Mr. Warford that day before I got here, and he sent directions with me to Mr. Allen that Nash's mortgage was to be first on the property, and his second; I believe that the mortgage of Risler, which had been foreclosed, was the first on the property; I have a statement, made on the day the mortgage was given to me, of the items of that mortgage, but I did not bring it with me; I have made out a statement from memory now; I had a mortgage of John Mason, which he held against McCue, for which I gave my note to John Mason for five hundred dollars; I gave my note to Hockenbury & Rea for four hundred dollars for a judgment they had against McCue; I had an account against McCue for money lent and store goods, on my store books, for one hundred and five dollars; on the day the mortgage was given to Nash, I paid, I think, two hundred and seventy-nine dollars, for interest and costs and sheriff's fees; there was a decree for Warford for costs as well as debt; I paid McCue, on the day the mortgage was given to me, sixteen dollars, to make the amount due me even thirteen hundred dollars.

Being again examined in chief.

Question. Did you mean to say that Nash paid the money to the sheriff?

Answer. That was what I understood was done.

Question. Did you see Mr. Nash give the sheriff any money?

Answer. I don't think I did; I might have seen the sheriff pick it up, but I don't recollect it; Mr. Nash promised the money to McCue, so McCue told me; McCue was to give
10 Nash a mortgage for the fifteen hundred dollars; Mr. Nash furnished the money, I believe, and McCue gave him a mortgage to secure the payment of it; the sheriff had a claim against McCue's property; McCue wanted the money to pay Andrew Risler's claim, held by the sheriff; we all met in Flemington to take up the encumbrances on the property, give new ones, and stop the sale.

LUTHER OPDYKE.

Sworn and subscribed, this sixth day of August, A. D. 1860, before me.

20

A. V. VAN FLEET, M. C.

Gabriel H. Slater, of the township of Alexandria, in the county of Hunterdon, a witness offered on the part of the complainant, being duly sworn according to law, says—I had a conversation with Tobias Nash in relation to his having taken two hundred dollars of Francis McCue; I have no memorandum of the time; I do not know that I can state the conversation exactly, unless I can state the circumstances attending it; Mr. Hudnit and I went over there to see him about this mortgage; I cannot say which one it was that ap-
30 proached him in the first place; we told him there was a good deal of talk concerning the mortgage—a great many people said it was not good on account that he had received two hundred dollars for raising him the money; he said he would not do it again for any less, for he had a good deal of trouble in raising the money, and likewise said the law must be very different in New Jersey from what it was in Pennsylvania if it would affect his mortgage any; nothing very particular any further was said, except that Mr. Hudnit made an agreement

with him to trade him a mortgage on a property in Frenchtown for that mortgage.

Being cross-examined by Mr. Vansyckel, counsel for defendant, Tobias Nash, says—I am one of the defendants in this suit; Samuel B. Hudnit and myself own the premises mortgaged to Nash; the day we were at Nash's, Hudnit tried to trade a fifteen hundred dollar mortgage on property in Frenchtown for his mortgage; the understanding between Nash and Hudnit was, that Nash should come to Frenchtown, and then to Flemington, and fix the matter. 10

Question. Did you consider the mortgage which Hudnit wanted to trade to Nash a good security? [This question objected to by counsel for complainant.]

Answer. The property was worth the amount of the mortgage—it had been sold for more, and this was the only mortgage, as I understood; I think this conversation took place in the year eighteen hundred and fifty-eight, after Hudnit and I had bought the mortgaged premises—I can't say how long after.

GABRIEL H. SLATER.

Sworn and subscribed, this sixth day of August, A. D. 1860, 20
before me.

A. V. VAN FLEET, M. C.

Samuel B. Hudnit, of the township of Alexandria, in the county of Hunterdon, a witness offered on the part of the complainant, being duly sworn according to law, says—After Slater and I had bought the mortgaged premises we went over to see Mr. Nash, with the expectation of getting his mortgage; I made a proposition to Mr. Nash to trade him a mortgage on a property in Frenchtown for fifteen hundred dollars; after talking to him a while, he rather concluded to do it, provided 30
the property was as I represented it; I represented the property to be clear of all other encumbrances; he was to come over the next morning, and we were to come to Flemington to see whether it was so, and if so we were to exchange papers; he came over according to agreement, and after he came there he concluded he would not do it; I told him there was a good deal said about the mortgage, because he had received two hundred dollars of McCue for raising the money; he ad-

mitted that that was what he was to have, but said that he never expected to get it of Frank; he said that Frank ought to pay it, as he had had a great deal of trouble in raising it, and that he would not do it again for any one else for any less; he then said that the law in New Jersey must be very different from what it was in Pennsylvania, if that could affect his mortgage; I was very anxious to make the deal with him, but Slater opposed it; the conversation I have related took place in Slater's presence, and he took part in it.

- 10 Being cross-examined by Mr. Vansyckel, says—I am one of the defendants in this suit, and own the mortgaged premises with Slater; I think we went over there in the fall of eighteen hundred and fifty-eight.

Question. Did you consider the fifteen hundred dollar mortgage, which you offered to trade Nash, a good security for that amount? [This question objected to by counsel for complainant.]

Answer. I think the property was worth the money; I gave eighteen hundred dollars for it, and have sold it for that since.

- 20 Being again examined in chief, says—Slater and I bought this property at sheriff's sale, subject to all prior legal encumbrances.

S. B. HUDNIT.

Sworn and subscribed, this sixth day of August, A. D. 1860, before me.

A. V. VAN FLEET, M. C.

- Jesse L. Fulmer*, of the township of Alexandria, in the county of Hunterdon, a witness offered on the part of the complainant, being duly sworn according to law, on his oath
- 30 says—I am a brother-in-law of Tobias Nash; Nash and McCue have been in my shop several times; I recollect they came in there on one occasion when something was said respecting Mr. Opdyke—all that was said was about Mr. Opdyke endorsing a note for two hundred dollars; I think they referred to me whether I was acquainted with Mr. Opdyke—I told them I did not know him; one of them made a remark, that Mr. Williams, at the bank, would know him; one or the other started off for the bank; the word came that he was good enough for the endorsement, and I don't recollect that

anything more was said in my presence about the note; it was understood, I believe, that the bargain was as it was before said, that McCue was to make Mr. Nash a present of that amount for raising the amount of fifteen hundred dollars, I suppose; the understanding was that Nash was to take a first mortgage on the property to secure the fifteen hundred dollars; I know nothing more about how he was to be secured for the two hundred dollars more than has already been stated about the note and security; I am not able to say how long this was before the first of April; I do not know what 10 became of the note after Nash got it; I do not recollect that anything was said about saying nothing about the agreement; don't think that anything of that kind was said in my presence.

Being cross-examined by Mr. Vansyckel for defendant, Tobias Nash, says—It has been some time since the conversation, and I have told you all I recollect; I don't know that I can tell you any more about the note than I have told you; the note was given for that purpose; Frank McCue promised to give Nash the note for two hundred dollars as a present for 20 raising the fifteen hundred dollars; then came up about the endorsement of the note; Frank McCue said that Mr. Opdyke was a good man; then Frank asked Mr. Nash if he would take him; then they wanted to know of me whether I knew Mr. Opdyke; I told them I was not, that I did not know the man; one or other then went to see Mr. Williams, to know whether they would take him as an endorser on the two hundred dollar note; the word came back that he was good enough for that amount, or something to that effect; they came in for me to witness the bargain, as I suppose; 30 they did not request me to witness the bargain; I do not recollect who spoke first, nor do I recollect what the first thing was that was said to me; don't recollect which one told me what the bargain was, but one of them told me what the bargain was—I do not know that I am able to give the language used; neither of them asked me to recollect what passed; they had had no talk in my presence about this matter before that; I did not see the note, and don't know that it was given, no more than it was talked of; I do not know whether any money had been loaned by Nash to McCue or not; I do not 40

know whether this conversation occurred before the first of April or not.

J. S. FULMER.

Sworn and subscribed, this 6th day of August, A. D. 1860, before me.

A. V. VAN FLEET, *M. C.*

A deed from George B. Holcombe, sheriff, to Samuel B. Hudnit and Gabriel H. Slater, dated the 6th day of August, 1858, marked *Exhibit No. 1* for complainant, and offered in 10 evidence.

A. V. VAN FLEET, *M. C.*

George B. Holcombe, of the township of East Amwell, in the county of Hunterdon, a witness offered on the part of the defendant, Tobias Nash, being duly sworn according to law, says—I was lately sheriff of the county of Hunterdon; an execution was issued out of the Court of Chancery, in a cause wherein Andrew Risler was complainant, directed and delivered to me, as sheriff, on the nineteenth day of March, 1858; that execution directed me to make for Andrew Risler, 20 the complainant, fifteen hundred and eighty-three dollars and seventy-five cents (\$1583.75), with interest from March 5th, 1858, and eighty-nine dollars and seventy-one cents costs (\$89.71); for Elisha Warford; after complainant was satisfied, six hundred and twenty-nine dollars and twenty cents (\$629.20), and seventeen dollars and forty-four cents costs (\$17.44); for John Mason, after Warford was paid, six hundred and twenty-seven dollars and ninety cents (\$627.90), and seventeen dollars and forty-four cents cost (\$17.44); this execution ordered me to sell the same property that was after- 30 wards mortgaged by McCue to Nash; I advertised the property for sale by virtue of this execution, but did not sell it under this execution—the reason I did not sell was, the money was paid without sale; I received only the amount due the complainant and the costs; Tobias Nash counted down to me, I think, fifteen hundred dollars, on the clerk's desk in the clerk's office, as a payment on the decree in favor of Andrew Risler; the greater part of the money paid to me was gold

and silver; if I remember right, Nash himself counted it out to me, and I took it from him in that way; I did not receive the money for Warford and Mason—the decree was receipted, as to them, by their solicitor, so that Nash could have the first mortgage; George A. Allen, esq., was their solicitor, that is the solicitor of Warford and Mason; after Nash had paid me the fifteen hundred dollars, and the decree was arranged as to the others, I think, but I don't exactly recollect, that the mortgage from McCue was handed over to Nash; it was the talk in the office that Nash was to have the first mortgage after he 10 paid this money; Luther Opdyke was there, and paid some of the money towards the cost and interest; I don't recollect that McCue counted out any of the money to me.

Being cross-examined by Mr. Allen, for the complainant, says—The whole amount of debt, interest, and costs and sheriff's execution fees due Andrew Risler that day was \$1751.46; I think that is the amount I received on that day; I had been notified before that the money would be paid on that day—I do not recollect who gave me the notice; I expected Frank McCue to pay it; I expected him to pay it be- 20 cause he pretended to be the owner of the property; I understood from Nash that the fifteen hundred dollars that he produced there that day he loaned to Francis McCue; I don't know that I gave any receipt or acknowledgment to Nash that day; I don't think I gave him any receipt or acknowledgment; I understood that Nash got a bond and mortgage for that fifteen hundred dollars of McCue; I saw the document—that is it purported to be such; I am not positive that it was only just fifteen hundred dollars I received from Nash—my opinion is that it was just fifteen hundred dollars, never- 30 theless McCue satisfied me for the balance after the payment of the fifteen hundred dollars, so that the whole decree was paid that day; I think McCue gave Nash the bond and mortgage as soon as he, Nash, counted down the money.

GEORGE B. HOLCOMBE.

Sworn and subscribed, this sixth day of August, A. D. 1860, before me.

A. V. VAN FLEET, M. C.

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This examination adjourned to Tuesday, August 7th, 1860, at eight and a half A. M., at the court house.

Tuesday, August 7th, 1860, eight and a half, A. M. Examination resumed.

Edward R. Bullock, of the village of Flemington, in the county of Hunterdon, a witness offered on the part of the defendant, Tobias Nash, being duly sworn according to law, on his oath says—Being shown bond and mortgage, marked *Exhibits A* and *B*, for the defendant, Tobias Nash—this bond
10 was executed in my presence by Francis McCue, and I signed my name as a subscribing witness; the mortgage was acknowledged before me; I prepared the bond and mortgage at Frenchtown, where I lived, and the papers were executed there.

EDWARD R. BULLOCK.

Sworn and subscribed, this seventh day of August, A. D. 1860, before me.

A. V. VAN FLEET, M. C.

For the defendant, John L. Tinsman.

20 Luther Opdyke to John L. Tinsman, deed of assignment for benefit of creditors, inventory thereunto annexed, and certificate of surrogate thereon, dated April 14th, 1858, acknowledged same day before Theodore Probasco, commissioner, recorded April 19th 1858, in Volume 118 of Deeds for the county of Hunterdon, folios 61, 62, and 63, offered in evidence, marked *Exhibit C*, for the defendant, John L. Tinsman, assignee, &c.

It is hereby agreed and admitted by all the parties hereto, represented by their counsel, that, on the 26th of November,
30 1857, Andrew Risler filed his bill in the Court of Chancery of New Jersey for the foreclosure of a mortgage on the same premises afterwards mortgaged to Nash by McCue, to which bill Samuel Slater and wife, Francis McCue, Elisha Warford, and John Mason were defendants. The mortgage foreclosed was given by Samuel Slater and wife to Lewis M. Prevost, and afterwards assigned to Andrew Risler, and before the bill was filed, Francis McCue bought the mortgaged premises of

Samuel Slater, subject to the mortgage held by Risler, and afterwards mortgaged them to Elisha Warford and John Mason. Decree final in said cause was entered March 5th, 1858. Decree for Andrew Risler \$1583.75, costs taxed at \$89.71, interest from March 5th, 1858, till paid.

There was a decree also for Elisha Warford and John Mason for their respective claims and costs. Upon this decree an execution was issued March 18th, 1858, and delivered next day to George B. Holcombe, then sheriff of the county of Hunterdon. 10

The relevancy and competency of the facts above admitted are denied by counsel for complainant.

For defendants, Samuel B. Hudnit and Gabriel H. Slater. Judgment in the Hunterdon County Circuit Court in favor of Samuel B. Hudnit and Gabriel H. Slater, and against Francis McCue, for the sum of \$695 debt, signed May 11th, 1858; recorded in Volume 5 of Circuit Judgments, page 239, offered in evidence.

A. V. VAN FLEET, M. C.

OPINION.

20

HUNTERDON CIRCUIT COURT.—In equity.

PETER POLHEMUS, complainant,

and

MCCUE and WIFE, TOBIAS NASH, TINS-
MAN, assignee, OPDYKE, HUDNIT, and
SLATER, defendants,

} On final hearing.

WHELPLEY, C. J. It is conceded, on the proof made, that Nash's mortgage was founded on an usurious contract, although the usury was not included in the mortgage, but took the shape of a note, given by way of bonus, which has not been paid. 30

That there was an usurious contract upon which the mortgage was given is clear upon the evidence.

The only question to be decided is, can the plaintiff and defendants avail themselves of the defence in this suit?

The bill is filed by the assignee of the second mortgage given by McCue and wife against Nash, the first mortgagee, Tinsman, the owner of the third mortgage, and Hudnit and Slater, the purchasers of the mortgaged premises.

The bill charges, in general terms, that the Nash mortgage was executed upon an usurious contract, and void for that reason.

10 Nash answered the bill, passing by the allegations in regard to the usury, neither admitting or denying it.

Tinsman answers, and sets it up; so, also, do Hudnit and Slater.

Tinsman prays that he may have an opportunity to contest the Nash mortgage.

Hudnit and Slater pray the interference of the court to have the mortgage declared void.

If Nash had filed his bill to foreclose, and made the other defendants and Polhemus defendants, and such proof had been
20 made as in this case, there can be no doubt but that the defendants would have been entitled to a decree that his mortgage was void for usury.

Thus the usury could have been used as a defence to the action of Nash.

But if the defendants cannot avail themselves of the defence without the aid of a court of equity, they must waive the forfeiture, and consent to pay the amount actually due. 2
Parson's Con. 404, and cases there cited in note C.; *Rogers v. Rathburn*, 1 *John. Ch. Rep.* 367; *Fanning v. Dunham*,
30 5 *John. Ch. Rep.* 122; *Fullon Bank v. Beach*, 1 *Paige* 433.

He that asks equity must do equity.

But if a party comes into court, and asks relief, the court will compel him to do equity, although the defendant has not demurred to the bill.

The court does not require the party to ask the aid of this principle by demurrer, but will give relief at the hearing. *Morgan v. Schermerhorn*, 1 *Paige* 544; *Ruddle v. Ambler*, 18 *Ark.* 369.

When a bill is filed for relief against an usurious mortgage,

it will be upon terms of paying, or offering, to pay what is really due..

So strong is the court against enforcing a forfeiture, that it was held, in *Mason v. Gardner*, 4 *Bro. Ch. Cas.* 436, that a cross-bill filed by a defendant in aid of his defence was bad on demurrer for not offering to pay what was due.

This, it will be perceived, was a case where it was set up by way of defence to a suit brought by the usurer.

This case is cited with approbation in the *Fullton Bank v. Beach*, and is the law of the court. 10

The same principle has been held in our own Court of Chancery. *Saxton's Ch.* 364.

As against the complainant, beyond all question it is the duty of the court to decree for Nash's mortgage. The complainant's decree on his mortgage must be upon terms of paying Nash's mortgage, for the usury in this case was never paid.

Are the defendants, Tinsman and Hudnit and Slater, in any better situation to avoid the Nash mortgage than the complainant. 20

In this suit they occupy both the situation of defendants and complainants—as defendants, they may contest the validity of the complainant's mortgage—that by the pleadings is put directly in issue. They are also complainants seeking relief upon their own mortgages, or as owners of the equity, asking to have their property discharged of the usurious lien.

As to the Nash mortgage, they do not deny the loan of the money by Nash to McCue. They do not deny the execution of the mortgage in due form of law, and its record as prescribed by law, but they set up new matter not responsive to 30 any bill filed by Nash, not in answer to any allegation made by him—matter which the complainant had no right to set up to avoid the mortgage without an offer to pay the amount due.

As to this new matter, they are occupying the position of complainants asking relief against Nash, that he may have the statute of usury applied to his mortgage.

Although they stand in the position of defendants nominally, that can make no difference. The defendant, Nash, did not voluntarily come into court to enforce his mortgage, and ought not to be deprived of the benefit of the principle be- 40

cause his antagonist occupies the nominal position of defendant, instead of that of plaintiff.

The defendants were all bound to answer the complainant's bill, if at all, at the same time. He could not lawfully pray relief against the Nash mortgage without an offer to pay the amount due.

The defendant, Nash, was not bound to answer the allegations of the other answers. He could not have known what they contained, unless he deferred his answer until they were
10 filed.

Where different encumbrancers, defendants in a foreclosure, wish to question the validity of their several encumbrances, a proper issue cannot be formed without a cross-bill filed by the defendant wishing to contest the validity of the claim of his co-defendant.

The defendant whose claim is attacked ought not to be deprived of the benefit of his answer.

It is true in this case that Nash did not answer the bill of complaint, but he was not bound to do it; the particulars of
20 the usurious contract were not set forth as required by the practice of the court. *Story's Eq. Pl.* 8, 393—9.

Regularly the prayer of an answer is only to be dismissed from the court with his costs.

But the court has in modern times dispensed with the necessity of a cross-bill in cases where the whole matter is before the court, and the party is not thereby deprived of any of his substantial rights by a decree in the existing suit. *Ames v. New Jersey Franklinite Co.*, 1 *Beach* 66; *Elliot v. Pell*, 1 *Paige Ch.* 268.

30 But the court will never dispense with a cross-bill where any of the defendants would be prejudiced by the want of one.

This is a peculiar case. The complainant might have proceeded without making Nash a party defendant. In that case the property would have been sold subject to his mortgage, and he would have been forced to assume the position of a complainant in equity or plaintiff at law: in either of these cases the defendant might have set up usury as a defence.

40 But the complainant has, for the purpose of disposing of his claim in this suit, made him a party defendant.

No decree can be made in this suit, except such an one as is grounded upon the prayer of the complainant's bill.

The other defendants can have no relief to which the complainant is not entitled, and we have already seen that he is only entitled to a decree upon the basis of paying the amount due.

All the parties in this case asked for a decree upon the bill, answers, and proofs, as they stand.

I think there must be a decree for the payment of all the mortgages, in the order of their priority. 10

I cannot see my way clear to make any other decree.

The complainant cannot object to this decree. He brought Nash into court unnecessarily; he has come in and submitted to have such a decree made as the complainant is lawfully entitled to; he is not interested in the other encumbrances, as he is entitled to priority over them.

The other defendants, Tinsman and Hudnit and Slater, have not objected to his being a party to this suit in the capacity of a defendant, clothed with all the rights of a defendant. They have not asked the court for a decree subject to the 20 rights of Nash, or to have him stricken from the bill as an improper or unnecessary party, but have asked for a decree of the court upon his rights in this suit. I think they have no cause of complaint if this court does equity between all the contending parties.

What that is seems to be free from doubt. The claims of all should be paid out of the proceeds of the sale, in the order of their priority.

Let there be a reference to a master to ascertain the amount due on all the encumbrances, and decree accordingly. 30

D E C R E E .

HUNTERDON CIRCUIT COURT.—In equity.

BETWEEN

PETER POLHEMUS, complainant,

*and*FRANCIS McCUE and SARAH ANN his
wife, TOBIAS NASH, JOHN L. TINSMAN,
assignee, &c., SAMUEL B. HUDNIT, and
GABRIEL H. SLATER, defendants,} *On bill to fore-
close.*

- 10 This matter coming on for argument at the regular April term of this court, held at Flemington, in and for the county of Hunterdon, in the year of our Lord one thousand eight hundred and sixty-one, in the presence of George A. Allen, esq., of counsel with the complainant, Bennet Vansyckel, esq., of counsel with Tobias Nash, Alexander Wurts, esq., of counsel with John L. Tinsman, and Edward R. Bullock, esq., of counsel with Samuel Hudnit and Gabriel H. Slater, defendants, and the bill, answer, and proofs being read, and the argument of the said counsel being heard, and the court having taken
- 20 to this time for consideration, and being now of opinion that the objections taken to the mortgage given by the said Francis McCue and wife to said Tobias Nash are inequitable, and should not prevail, but that the said mortgage, as well as the other mortgages set up in the pleadings, should be held to be encumbrances on said mortgaged premises in the order of their priority, and which said order appears from the said proofs and exhibits—It is therefore, on this eighth day of April, in the year of our Lord one thousand eight hundred and sixty-
- 30 one, by the said Circuit Court of the county of Hunterdon, ordered, adjudged, and decreed that the said mortgages are, and the same are hereby declared to be valid and subsisting encumbrances on the premises described therein, and are entitled to priority and payment out of said premises in the following order, that is to say: In the first place, the principal and interest money mentioned in and secured by the said bond

and mortgage of the said Tobias Nash, together with his taxed costs, is to be paid. In the second place, the principal and interest money mentioned in and secured by the said bond and mortgage of the said complainant is to be paid, together with his taxed costs. And in the third place, the principal and interest money mentioned in and secured by the said bond and mortgage now held by the said John L. Tinsman, assignee, &c., together with his taxed costs, is to be paid. And it is further ordered, that for the purpose of making said moneys, that a sale be made of said mortgaged premises, and that for 10 the purpose of ascertaining the amounts due and to grow due on said mortgages, respectively, that it be referred to Charles Bartles, one of the masters of the Court of Chancery of New Jersey, who is hereby directed to report thereon with all convenient speed.

E. W. WHELPLEY,
Chief Justice and Circuit Judge.

PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS. 20

BETWEEN

SAMUEL B. HUDNIT and GABRIEL
H. SLATER, appellants,

and

TOBIAS NASH, appellee,

}
} *On bill, &c.*
}

To the honorable the Court of Appeals in the last resort in all causes of law, the humble petition of Samuel B. Hudnit and Gabriel H. Slater, the appellants in the above stated cause, respectfully shows, that your petitioners find themselves aggrieved by an interlocutory decree, made in the Hunterdon County Circuit Court, in equity, by his Honor Edward 30 W. Whelpley, Chief Justice and Judge of said Circuit Court, bearing date the eighth day of April, in the year of our Lord

one thousand eight hundred and sixty-one, wherein Peter Polhemus was complainant, and Francis McCue and wife, Tobias Nash, John L. Tinsman, assignee, &c., and your petitioners, Samuel B. Hudnit and Gabriel H. Slater were defendants, in this respect, to wit:—that the said decree adjudges that the mortgage of the said defendant, Tobias Nash, was and is a valid and existing encumbrance upon the mortgaged premises in the pleadings in the cause mentioned, and is entitled to payment out of said premises according to its
 10 priority. And your petitioners humbly appeal from that part of the said decree of the Chief Justice, as judge of said circuit, which decrees as aforesaid, upon the ground that the same is erroneous, for that the said defendant's (Tobias Nash) mortgage is not an encumbrance on the said premises, and is not entitled to payment out of the same.

Your petitioners therefore pray that the said decree of the said Chief Justice, as circuit judge, may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to
 20 this honorable court shall seem meet.

E. R. BULLOCK,
Solicitor of appellants.

A. WURTS,
Of counsel.

ANSWER TO PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS.

BETWEEN

SAMUEL B. HUDNIT and GABRIEL

H. SLATER, appellants,

and

TOBIAS NASH, appellee,

} On bill, &c.

The answer of Tobias Nash to the petition of appeal of Samuel B. Hudnit and Gabriel H. Slater.

This defendant not confessing all or any of the matters or 10 things to be true, as in and by said petition of appeal are set forth and mentioned, for answer thereunto says—that he believes it to be true that such decree as is complained of was made in the Hunterdon County Circuit Court, in equity, by his Honor Edward W. Whelpley, Judge of said Circuit Court, as in the said petition of appeal is mentioned and set forth ; but as to the date, substance, and certainty thereof this respondent humbly craves leave to refer thereunto when the same shall be produced ; and this respondent humbly conceives and is advised that such decree is correct and just, and according 20 to law and the proofs in said matter, and therefore he humbly prays that said decree may be affirmed, and that said appeal and petition may be dismissed with costs.

B. VAN SYCKEL,
Solicitor of respondent.

THE HISTORY OF THE
CITY OF BOSTON AND VICINITY

The history of the city of Boston and vicinity is a subject of great interest and importance. It is a city of many centuries, and its history is a record of the growth and development of one of the most important cities in the United States. The city was founded in 1630, and its history is a record of the struggles and triumphs of its people. The city has been a center of commerce and industry, and its history is a record of the progress and advancement of the human race. The city has been a center of education and culture, and its history is a record of the enlightenment and progress of the human mind. The city has been a center of freedom and democracy, and its history is a record of the struggle for the rights and liberties of all people. The city has been a center of peace and harmony, and its history is a record of the love and compassion of its people. The city has been a center of hope and faith, and its history is a record of the belief in a better future for all. The city has been a center of courage and bravery, and its history is a record of the sacrifices and heroism of its people. The city has been a center of justice and equity, and its history is a record of the fight for a fair and just society. The city has been a center of unity and solidarity, and its history is a record of the strength and power of its people. The city has been a center of love and kindness, and its history is a record of the goodness and beauty of the human heart. The city has been a center of hope and faith, and its history is a record of the belief in a better future for all. The city has been a center of courage and bravery, and its history is a record of the sacrifices and heroism of its people. The city has been a center of justice and equity, and its history is a record of the fight for a fair and just society. The city has been a center of unity and solidarity, and its history is a record of the strength and power of its people. The city has been a center of love and kindness, and its history is a record of the goodness and beauty of the human heart.

H. V. S. STEARNS
Author of "The History of the City of Boston and Vicinity"