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New Jersey Court of Errors and Appeals.

NEWTON M. WARDWELL, appellant, *and* MOSES TAYLOR, appellee,	*Appeal from decree of Chancellor.*

CASE.

Moses Taylor, the appellee, filed his bill in Chancery, July 9th, 1855, to foreclose the equity of redemption in certain lands and premises in Passaic and Morris counties, known as the Charlottenburg property, under a MORTGAGE thereon, bearing date October 15th, 1851, given by Edward De Camp and wife, of West Milford, in the county of Passaic, to Thomas V. Johnson, of Newark, in the county of Essex, which mortgage was registered about the time of its date, and was given to secure a certain BOND, of the same date, given by the said Edward De Camp to the said Thomas V. Johnson, in the penal sum of $30,000, with a CONDITION, thereunder written, that if the said Edward De Camp, his heirs, executors, and administrators, or any of them, should well and truly pay, or cause to be paid, unto the said Thomas V. Johnson, or to the firm of Thomas V. Johnson & Co., on demand, or to his or their certain attorney, executors, administrators, or assigns, the just and full sum of nine thousand dollars, lawful money as aforesaid, with interest from date; and also, on demand, should well and truly pay to any assignee or assignees of said bond all sums of money at any time theretofore loaned, or thereafter to be loaned or advanced by such assignee or assignees, or any of them, to the said Edward De Camp and Thomas V. Johnson, or either of them, or to any one or more of them; and also all sums of money then due and owing, or at any time thereafter to become due or owing by said Edward De Camp or Thomas V. Johnson, or the (then present) or any future firm of Thomas V. Johnson & Company, or any one or more of them, to such assignee or assignees of said bond,

or any one or more of them, whether such indebtedness was or should be evidenced by any bond, draft, bill of exchange, promissory note, or other obligation to which they, the said Edward De Camp, Thomas V. Johnson, or the then present or any future firm of Thomas V. Johnson & Company, or any one or more of them, should be a party, as drawer, acceptor, maker, or endorser, or in any other manner whatever; and also, on demand, should well and truly pay to the said Thomas V. Johnson, or to the then present or any future firm of Thomas V. Johnson & Company, all other sums of money, loans, advances, debts, and book accounts due or owing, or at any time thereafter to be due and owing, to them by said Edward De Camp; and also should well, and at every and all time and times thereafter, pay to the said Thomas V. Johnson and to the then present or any future firm of Thomas V. Johnson & Company, or to his or their assigns, or to the holders and owners thereof, all debts, liabilities, and responsibilities then incurred, or at any time thereafter to be incurred, by them or any or either of them, for said Edward De Camp, or for his benefit, with interest thereon, whether such liability or responsibility should exist or be incurred by the loan of the responsibility of said Thomas V. Johnson or then present or future firm of Thomas V. Johnson & Company, in the shape of any bond, bill of exchange, draft, or promissory note, as maker, acceptor, drawer, or endorser thereof, or in any other way or manner whatsoever, and should indemnify and save harmless the said Thomas V. Johnson and the then present and future firm of Thomas V. Johnson & Company from any and all loss or damage to arise or accrue to them, or either of them, or to which they, or any or either of them, should in any way be subjected or liable by means thereof the whole amount of such loans and liabilities, and responsibilities for which said Edward De Camp was to be liable or responsible thereunder should not, however, at any one time exceed the sum of fifteen thousand dollars, with interest from the date of said bond; and if such payments as aforesaid should be made, and the conditions of the said obligations kept in all respects, without any defalcation, discount, fraud, or delay, then the said obligation to be void, or else to be and remain in full force and virtue.

The bill set forth the bond and mortgage, and the assign-

ment thereof by Johnson to the appellee at the same date; and then set forth the following promissory notes, made by the said Edward De Camp, payable to the said Thomas V. Johnson, or Thomas V. Johnson & Company, and by them endorsed to the appellee, to wit:

1.	Note dated Nov. 26, 1854, at 3 mo., for	$800.00
2.	Note dated Dec. 21, 1854, at 3 mo., for	500.00
3.	Note dated Dec. 22, 1854, at 2 mo., for	1200.00
4.	Note dated Jan. 26, 1855, at 2 mo., for	1200.00
5.	Note dated Dec. 25, 1855, at 3 mo., for	87.46

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The bill then states a prior outstanding mortgage for $8114, held by the executor of Elisha Boudinot, deceased; and further states, that on or about the 24th day of August, 1852, the said Edward De Camp and wife conveyed all their right, title, and interest in the mortgaged premises to the Charlottenburg Iron Company.

The bill next sets forth several judgments recovered against De Camp, and claimed to be encumbrances on the property, as follows, to wit:

In the Supreme Court of New Jersey— 20

By Calvin Stevens, Dec. 3, 1853, for	$390.97
" Mahlon Dickerson, Aug. 1, 1853,	574.79
" Newton M. Wardwell, Oct. 11, 1853,	12,027.32
" Rome Exchange Bank, October 26, 1853,	1,600.09
" Henry Green *et al.*, March 11, 1854,	326.45
" Samuel W. Sears *et al.*, Feb. 12, 1855,	181.00
" Henry Beekman *et al.*, March 22, 1855,	1561.09

Also a judgment recovered by the board of chosen freeholders of the county of Passaic against Peter P. Brown, Chilion F. De Camp, and Edward De Camp, in the Circuit 30 Court of Passaic county, April 2d, 1853, for $441.23; and a judgment recovered by Isaac B. Van Dyke *et al.* against Edward De Camp, in the Circuit Court of Morris county, June 4th, 1855, for $149.

The bill then alleges that the principal money mentioned in the bond or obligation, and secured thereby, and in the said promissory notes, and secured thereby, and by the said mortgage, with large arrears of interest, still remains due and ow-

ing to the appellee, no part thereof having been paid to the said Thomas V. Johnson or to the appellee. The bill concludes with the usual charges as to the possession of the property and the perception of the rents and profits by the defendants, application to them to pay the arrears due, &c., and a prayer for a decree that the defendants pay the same, or that they be foreclosed, and the premises sold to raise the amount. Edward De Camp and wife, Elias E. Boudinot, executor, &c. The Charlottenburg Iron Company and the several judgment
10 creditors were made defendants. The bond, mortgage, assignment, and the several promissory notes set forth in the bill were produced and verified on the taking of the depositions in the cause.

ANSWERS.

Elias E. Boudinot, executor of Elisha Boudinot, deceased, filed an answer, setting up his mortgage, and the amount due thereon.

Newton M. Wardwell, on the 16th of October, 1855, filed the following answer, which was duly verified:

This defendant, now and at all times hereafter saving and
20 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 thereto, or unto so much and such parts thereof as the defendant is advised is material for him to make answer unto, he answers and says—that he admits that the said Edward De Camp, in the said bill of complaint mentioned, did execute and give to the said Thomas V. Johnson, and that said Thomas V. Johnson did assign to the complainant, at the respective times for that purpose mentioned in the said bill, a bond and mortgage,
30 which this defendant has been informed, although he does not know, were similar in substance to the said bond and mortgage described in the said bill of complainant; but this defendant submits that the same should be produced and proved, in order that the full and exact contents thereof may appear, and in order that the fact and time of acknowledgment and registry thereof may be more fully understood and noted, this

defendant having no knowledge whatever of the matters aforesaid, except from the information of other persons.

And this defendant further answering says, that he did, in truth and in fact, recover a judgment for twelve thousand and twenty-seven dollars and thirty-two cents against the said Edward De Camp in the Supreme Court of New Jersey, which judgment was actually entered upon the eleventh day of October, eighteen hundred and fifty-three, whilst the said Edward De Camp was still seized of the said lands and premises in the said mortgage mentioned, and before he conveyed 10 the same to the Charlottenburgh Iron Company, as mentioned in the said bill, and which judgment this defendant believes and charges was a lien and encumbrance on the said lands mentioned in the said mortgage prior to any other encumbrance mentioned in the said bill of complaint, except the judgment in favor of the board of chosen freeholders of the county of Passaic, which this defendant has been informed and believes, and therefore charges, has been paid and satisfied, and except the mortgage given to Elias E. Boudinot, surviving executor of Elisha Boudinot, in the said bill named, 20 the amount due on which is unknown to this defendant; and he submits that the said Elias E. Boudinot, surviving executor as aforesaid, should produce his said mortgage, and the bond or other security secured thereby, and prove the amount due him thereon.

And this defendant further answering says, no part of his said judgment having been satisfied or paid, a writ of *fieri facias*, and also an *alias* writ of *fieri facias*, was duly issued out of the said Supreme Court on his said judgment, directed to the sheriff of the county of Morris, and a *testatum* writ of 30 *fieri facias* was issued out of the said Supreme Court, directed to the sheriff of the county of Passaic; and that under the said writs, respectively, (the same having been duly recorded and delivered to the said sheriffs respectively) the said mortgaged premises were duly levied upon, advertised, and sold, in separate parcels, in the months of April and July, now last past, and this defendant became the purchaser thereof at said sales, and received from the said sheriffs, respectively, their respective deeds for the same; by virtue of which sales and sheriffs' deeds this defendant became invested with and seized 40

of the same estate and interest in the said land whereof the said Edward De Camp was seized or entitled to on the day when this defendant's said judgment was so recovered and entered as aforesaid, or whereof the said Edward De Camp was seized or entitled to before the execution of any conveyance or mortgage not recorded or registered on that day, subject only, so far forth as respects the said mortgage of the complainant, to the lien or encumbrance of such sum or sums of money as had been advanced prior to the entry of said
10 judgment and were then due or owing, and of such liabilities or responsibilities as had been incurred prior to the entry of said judgment, and were then subsisting upon and under the said mortgage, and which have not since that time been satisfied, paid, or cancelled.

And this defendant further answering says, that he is informed and believes, and therefore so charges the fact to be, that there is not at this time any money due or owing, or any liability or responsibility subsisting on or under said mortgage of complainant, which had been advanced or incurred, or for
20 which the said Edward De Camp had become liable prior to the entry of this defendant's said judgment—wherefore this defendant insists that he is entitled to hold the said lands free and discharged from the said mortgage.

And this defendant further answering admits, that the said lands were conveyed to the said Charlottenburgh Iron Company by the said Edward De Camp, as in said bill mentioned; but this defendant denies that said conveyance was executed and delivered before the entry of his said judgment as aforesaid.

30 And this defendant further answering admits, that the several judgments set forth in said bill of complainant were recovered as in said bill mentioned; but this defendant denies that they, or any or either of them, are a lien on said mortgaged premises.

And this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, or avoided, traversed or denied, is true to the know-
40 ledge 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 to be hence dismissed with his reasonble costs and charges in this behalf most wrongfully sustained.

A GENERAL REPLICATION was filed by the appellee to the above answer July 8th, 1856; and on the 15th day of September, 1857, an order was made by the Chancellor for the examination of Edward De Camp, a defendant, as a witness on behalf of Newton M. Wardwell.

DEPOSITIONS.

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein Moses Taylor is complainant, and Edward De Camp and others are defendants, taken on this *twenty-seventh day of January, eighteen hundred and fifty-seven*, before Amzi Dodd, one of the masters and examiners of the said court, in the presence of Lewis C. Grover, esq., solicitor and of counsel with the complainant, and David A. Hayes, esq., solicitor and of counsel with some of the defendants, and also of Albert Condit, esq., also solicitor and of counsel with others of the defendants—due service of notice of taking this testimony being admitted. 10 20

Lewis C. Grover, esq., a witness on the part of the complainant, being duly sworn, says—I know Edward De Camp and Thomas V. Johnson; I have seen them write, and am acquainted with their signatures.

Being shown a note, marked *Exhibit D* on the part of the complainant, witness says that the signatures of Edward De Camp, as the drawer, and of Thomas V. Johnson, the endorser of said note, are in their proper handwritings respectively. 30

Being shown another note, marked *Exhibit E* on the part of the complainant, he says that the signatures of Edward De Camp and Thomas V. Johnson, as the maker and endorser of said note, are in their proper handwritings respectively.

Being shown another note, marked *Exhibit F* on the part

of the complainant, he says that the signatures of Edward De Camp and Thomas V. Johnson & Co., as the maker and endorsers of said note, are in their proper handwritings respectively—that is to say, Thomas V. Johnson & Co. is in the handwriting of Thomas V. Johnson, one of said firm.

Being shown another note, marked *Exhibit G* on the part of the complainant, he says that the signatures of Edward De Camp and Thomas V. Johnson, as the maker and endorser of said note, are in their proper handwritings respectively.

10 Being shown another note, marked *Exhibit H* on the part of the complainant, made by Edward De Camp to the order of Johnson's Newark and New York Transportation Company, he says the signature of the said maker is the proper handwriting of Edward De Camp.

I know Thomas V. Johnson to be the president of Johnson's Newark and New York Transportation Company, and that Thomas V. Johnson, president, endorsed on said note, is the proper handwriting of said Johnson. I also know that the endorsement Thomas V. Johnson & Co. is in the same 20 handwriting, and that said firm at that time consisted of Thomas V. Johnson and Jonathan E. Huntington, and also at the time of the date of the note above mentioned, marked *Exhibit F.*

LEWIS C. GROVER.

Sworn and subscribed, before me, at Newark, January 27th, 1857.

AMZI DODD, *M. C.*

The complainant's solicitor also offered in evidence a bond, made by Edward De Camp to Thomas V. Johnson, dated Oc- 30 tober 15th, 1851, in the penal sum of $30,000, the due execution whereof is admitted; and said bond, marked *Exhibit A* on the part of the complainant; also the mortgage given by said Edward De Camp and wife to Thomas V. Johnson to secure said bond, which mortgage is admitted to be duly executed, acknowledged, and recorded, as the same purports to be, and is marked by me *Exhibit B* on the part of the complainant. Also a deed of assignment of said bond and mortgage made by Thomas V. Johnson to the complainant, Moses Taylor, which said deed is dated October 15th, 1851, and is

admitted to have been duly executed, acknowledged, and recorded, as the same purports to have been, and is marked by me *Exhibit C* on the part of the complainant.

Albert Condit, esq., solicitor of Elias E. Boudinot, surviving executor of Elisha Boudinot, deceased, also offered in evidence a bond, dated October 1st, 1843, made by Chilion F. De Camp to the said Elias E. Boudinot, in the penal sum of $16,228, which said bond is admitted to have been made and delivered as the same purports, and is marked by me *Exhibit* 1 on the part of said defendant. Also the mortgage, of 10 the same date, made by the said Chilion F. De Camp and wife to the said Elias E. Boudinot, to secure the payment of said last named bond, which mortgage is admitted to have been executed, acknowledged, and recorded as the same purports on its face, and by the endorsements thereon, and is marked by me *Exhibit* 2 on the part of the said defendant.

David A. Hayes, esq., solicitor of the defendant, Newton M. Wardwell, also offered in evidence two certain deeds of conveyance, one from William H. Quackenbush, sheriff, to Newton M. Wardwell, dated July 21st, 1855, marked by me 20 *Exhibit* 3 on the part of the said defendant. Also another deed of conveyance from William W. Fairchild, sheriff, to Newton M. Wardwell, dated April 26th, 1855, marked by me *Exhibit* 4 on the part of said defendant.

It is admitted, in respect to the deeds last named, that they were severally executed, acknowledged, and recorded as the same purports to be, and according to the certificates thereon endorsed, and also that the judgments recited in said deeds, respectively, were duly entered and rendered as therein stated, and that the executions thereon were regularly issued, and 30 sales made in the manner stated in said deeds respectively.

January 27th, 1857.

AMZI DODD, *M. C.*

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein Moses Taylor is complainant, and Edward De Camp and others are defendants, taken on this fourteenth day of November, eighteen hundred and fifty-seven, before Amzi Dodd, one of the masters and examiners of the said court,

in the presence of Lewis C. Grover, esq., solicitor and of counsel with the complainants, and David A. Hayes, esq., solicitor and of counsel with some of said defendants, due service of notice of taking this testimony being admitted.

AMZI DODD, *M. C.*

Edward De Camp, a witness produced on the part of the defendant, Newton M. Wardell, being duly sworn, doth depose and say—that he is the obligor in the bond dated 15th of October, 1851, and marked *Exhibit A* on the part of the complainant. I had a settlement with Moses Taylor on this bond in the latter part of the year 1853, in December of that year, I think. At that time the money loaned, specified in the bond as nine thousand dollars, was settled for and adjusted between me and Mr. Taylor. Also the indebtedness on the notes referred to in the bond was arranged and settled for at the same time. The whole balance due on this bond was arranged by certain notes, six in number, made by me to the order of Thomas V. Johnson, and by him endorsed, and delivered by me to Mr. Taylor, in Mr. Johnson's presence. I am not able to say where the notes are—all of them; they have all been paid; I have one of them. I have made a good deal of search among my papers to find the other notes; this one (producing a note) is one of them, dated December 12th, 1853, for $800, at three months. [Said note, marked *Exhibit* 5 on the part of Mr. Wardell.]

The endorsements of Thomas V. Johnson and Moses Taylor on this note are their genuine signatures. At the time of this settlement with Mr. Taylor of this bond, Thomas V. Johnson was present and aiding in adjusting the balance due. There was never loaned to me on this bond the whole sum of nine thousand dollars, as mentioned in the bond.

At this point, the examination of this witness was adjourned, by consent of parties, to November 28th, inst., at ten o'clock, at my office.

AMZI DODD, *M. C.*

The further examination in this case was adjourned, by consent of parties, December 5th, 1857, at same hour and place.

AMZI DODD, *M. C.*

December 5th, 1857, parties appeared, and proceeded with examination.

Edward De Camp, being cross-examined, deposed as follows to the interrogatories following:

Quest. 1. What do you mean when you say, in your principal examination, that there never was loaned to me on this bond the whole sum of nine thousand dollars, as mentioned in the bond?

Ans. I mean to say that there never was loaned to me the full sum of nine thousand dollars. 10

Quest. 2. At the date of this bond, what was it given for, and what was your indebtedness to Thomas V. Johnson and Thomas V. Johnson & Co. at that time?

Ans. It was given to secure the payment of any indebtedness to Thomas V. Johnson or Thomas V. Johnson & Co., or any future firm of which Thomas V. Johnson might be a member. I am not prepared to name the amount of my indebtedness to Thomas V. Johnson and Thomas V. Johnson & Co. at that time.

Quest. 3. State the amount according to the best of your 20 recollection and belief?

Ans. My impression is, as near as I can recollect, that it was from three to five thousand dollars at that time.

Quest. 4. What was the object in making this bond conditioned for the sum of nine thousand dollars in money, and also for six thousand dollars of other matters?

Ans. It was made to secure the payment of those amounts.

Quest. 5. I repeat the last question?

Ans. It was made to secure the payment of those amounts, of which some part was then due and owing, and whatever 30 else might be advanced.

Quest. 6. State fully and particularly all the facts and circumstances connected with the giving of this bond and mortgage?

Ans. It was given, about the time of the date of it, in New York. I was indebted, at that time, to Mr. Johnson, and desired further advances. The mortgage was given to secure the payment of the future advances together with what was then due. My impression is that Mr. Johnson and Mr. Tay-

lor were present when the agreement was made. I do not know of any further answer to the question.

Quest. 7. What do you mean by saying, in your principal examination, that in December, 1853, you had a settlement with Moses Taylor on this bond; and that, at that time, the money loaned, specified in the bond as nine thousand dollars, was settled for and adjusted between you and Mr. Taylor; and also, that the whole balance due on the bond was arranged by certain notes, six in number, made by you, which
10 notes you say have since been paid. Do you mean to say that the whole indebtedness of the mortgage was settled up and satisfied?

Ans. I mean to say that, at that time, the amount due on the bond and mortgage was settled between me and Mr. Taylor, and the six notes given for that amount, and that those notes have all since been taken up.

Quest. 8. What was the amount fixed on, and how have the notes been taken up?

Ans. The amount was five thousand one hundred and
20 forty-nine dollars and thirteen cents ($5149.13); the notes, when due, were taken up by small payments of cash and renewals; the renewals were my own notes, endorsed by Thomas V. Johnson & Co., I think.

Quest. 9. Look at the papers shown you, and marked *Exhibits D, E, F, G*, in this cause, and say for what those notes were given, and whether they were renewals of that indebtedness, or any part of it? [Objected to on account of vagueness, and because the word indebtedness may or may not have reference to these six notes.]

30 *Ans.* I have looked at these notes, and am satisfied they were given for renewals of a part or portion of the original six notes.

Quest. 10. What did you mean by saying, on your principal examination, that the six notes had all been paid—that you had one of them—and that you had made search among your papers to find the other notes—without referring to the matter of their renewal?

Ans. In answer to this question, I have only to say that I so said in answer to questions, as they were put to me, with-
40 out any intention to make any wrong impression or to suppress the facts.

Quest. 11. How much of that amount remains due? answer according to the best of your knowledge, recollection, or belief?

Ans. My impression is not very far from five thousand dollars.

Quest. 12. How many notes are there?

Ans. I think five. There is one more besides those exhibited to me, and marked *Exhibits D, E, F, G*, and the small one, marked *H*, for $87.46.

Quest. 13. Look at the note exhibited to you, and marked *Exhibit* 5 on part of defendant, Wardwell, and say how that note was taken up, whether by renewal or otherwise? 10

Ans. I think it was taken up mainly by renewal.

Quest. 14. Can you state the amount of the other note, which is not here and which is not shown you? if not exactly, then according to the best of your knowledge and belief? [Objected to by counsel of defendants.]

Ans. I do not recollect, and am not able to say. I have no knowledge on the subject; my belief is that the amount was something—how much I cannot say. 20

Quest. 15. State, as nearly as you can, the amount of the note, from one dollar to a thousand, according to your belief? [Objected to.]

Ans. I should think from one hundred to five hundred dollars.

Principal examination resumed.

Quest. 1. Was this note, marked *Exhibit H*, for $87.46, given in renewal for any portion of the indebtedness on the bond and mortgage?

Ans. It was not. I think it was given in settlement of 30 freight account due to Johnson's Newark and New York Transportation Company.

Quest. 2. Were either of the notes, marked *Exhibits D, E, F*, and *G*, given directly in renewal of either of the six notes given to Mr. Taylor, the complainant, in settlement for the amount coming to him on the bond and mortgage?

Ans. I think not.

EDW'D DE CAMP.

Sworn and subscribed, before me, at Newark, December 5th, 1857.

AMZI DODD, *M. C.*

Thomas V. Johnson, a witness produced on the part of the complainant, being duly sworn, says—

Quest. 1. Do you know the facts connected with the giving of the bond and mortgage in this case, and the assignment to Mr. Taylor, the complainant? if so, state particularly what you know as to that and the indebtedness on the bond and mortgage. I mean by this, that I want you to tell particularly all that you know in relation to the business between the parties at issue in this suit, without being asked particular questions thereto or trusting to a cross-examination to draw them out? [Question objected to by Mr. Hayes.]

Ans. I do know the facts connected with the giving of this bond and mortgage and assignment. Edward De Camp applied to me [objected to] to aid him in money and paper; he wanted advances. He suggested giving the bond and mortgage in question; he asked me to see Mr. Taylor, the complainant, about it; I did apply to him; he suggested that Mr. De Camp and I should look over and ascertain the amount of advances already made by me and my partner, and agree between us as to the amount already advanced in cash and notes. As the result of that, we had an interview at Mr. Taylor's office, and we supposed that nine thousand dollars was about the amount already advanced in notes and cash, or otherwise the amount of the indebtedness at that time. Mr. De Camp consented to the making of the bond and mortgage for nine thousand dollars, as the actual amount then due, and six thousand dollars addition, to be held as security for any money advanced by Mr. Taylor, or by me or my partner, or any future firm of which I might be a partner. This mortgage was assigned to Mr. Taylor, and he advanced me the money on it, to the amount of nine thousand dollars, about that time—soon after that, I think it was. [The above answer objected to.]

Quest. 2. Did Mr. Taylor make any advances, after that, beyond the nine thousand dollars under the mortgage—I mean on notes of Mr. De Camp, endorsed as contemplated in the

mortgage. If so, what amount? [Question objected to by Mr. Hayes.]

Ans. He did. I am not prepared to state the amount now.

Quest. 3. Do you know what the balance remaining due is on those notes?

Ans. I think not far from five thousand dollars—between five and six thousand dollars.

Quest. 4. You say Mr. Taylor advanced you the whole amount of the nine thousand dollars on this mortgage, besides the amount of the notes above mentioned, does that indebtedness still exist between you and Mr. Taylor, and has it always done so from that time to this? [Objected to as leading and between parties of whom we have no cognizance.]

Ans. I think it does, and has from that day to this.

Adjourned, by consent of parties, to Tuesday, December 8th, at 10 A. M., at my office.

AMZI DODD, *M. C.*

December 8th, 1857.—Parties appeared by their counsel, Lewis C. Grover, esq., and David A. Hayes, esq., and proceeded with the examination of Thomas V. Johnson. The testimony of this witness, taken at the last examination on the 5th instant, being read over to him, he requested that it be corrected, by stating that, at the interview between himself and Mr. De Camp at the office of Mr. Taylor, in New York, referred to in said examination, he and Mr. De Camp ascertained the amount. We went into a calculation to ascertain the amount due from Mr. De Camp, and found on such calculation that it was nine thousand dollars; that amount we found due, and agreed on.

Quest. 5. The master has read to you the testimony of Mr. De Camp, referring to an interview between him, yourself, and Mr. Taylor, at Mr. Taylor's office, in December, 1853, in which he refers to a settlement and adjustment between him and Mr. Taylor of the nine thousand dollars mentioned in the bond, and also the notes referred to in the bond—will you state what occurred in that interview—whether any arrangement was made as to the nine thousand dollars, and also the notes referred to? [Objected to by Mr. Hayes, as informal, il-

legal, and leading; whereupon Mr. Grover withdrew the last paragraph, beginning with, whether any arrangement, &c. [Mr. Hayes renewed his objection last made.]

Ans. I remember an interview. I can only state the date by referring to a note, which is one of the exhibits in this cause, and which I now hold in my hand; this note is dated December 12th, 1853, and was given at this interview, and is marked *Exhibit H.* At this interview, there was a settlement made of the amounts over and above the nine thousand dol-
10 lars of the mortgage, and notes were given for it; but neither at that time, nor any other time within my knowledge, was there any payment made or settlement made for the nine thousand dollars.

Quest. 6. For what amount was this bond and mortgage assigned to Mr. Taylor; what amount did he advance on it; and what amount is now due him upon it? [Objected to by Mr. Hayes, as being instructive to the witness, and illegal.]

Ans. It was assigned to him to secure the whole fifteen thousand dollars. He advanced at that time, or soon after,
20 nine thousand dollars; then some time after that, five or six thousand more; I don't remember the exact amount. As to the amount now due him, I can state to the best of my knowledge and belief only. According to the best of that knowledge and belief, there is now due Mr. Taylor the principal sum of nine thousand dollars, with interest, and the amount of the several notes, which I believe to be between five and six thousand dollars. I don't know, of my absolute knowledge, the exact amount of those notes.

THOS. V. JOHNSTON.

30 Sworn and subscribed before me, at Newark, December 8th, 1857.

AMZI DODD, *M. C.*

By consent of parties, this examination was adjourned, for the cross-examination of this witness, until December 16th, instant, at ten o'clock, at my office.

AMZI DODD, *M. C.*

April 24th, 1858.—The parties appeared by their counsel for the cross-examination of Thomas V. Johnson, the witness

last examined. David A. Hayes, esq., and Joseph P. Bradley, esq., for the defendants, and John Whitehead, esq., of counsel with the complainant.

AMZI DODD, *M. C.*

Thomas V. Johnson, being cross-examined, says—

Quest. 1. In your direct examination, you state that Moses Taylor, the complainant, advanced you the whole amount of the nine thousand dollars on the mortgage in question, besides the amount of the notes mentioned in your said examination. When did Moses Taylor advance to you the said nine thousand dollars? 10

Ans. I am not able to fix upon the day here at present, but it was about the time the mortgage was given.

Quest. 2. Have you in your possession, or under your control, the means of ascertaining precisely the time when said advance was made?

Ans. I think I have, but not here; my books will show it, I presume.

Quest. 3. Will anything else in your possession, whether books, papers, accounts rendered between you and Taylor, or otherwise, and what—give the information? 20

Ans. I think there are memorandums, also, that will show the dates; but I don't know whether these memorandums were made at the dates. I think they were not. I have accounts rendered, but whether they cover this part or not I can't say—I think they do. I don't know of having any other papers that will give the information, but I may have.

Quest. 4. You say, in effect, that Mr. Taylor also made advances on said mortgage beyond the nine thousand dollars upon notes given; within what period after the date of the mortgage were such additional advances made? 30

Ans. I am not able to say precisely here—by referring to my books I could tell; I can tell generally, but I can't tell particularly.

Quest. 5. Tell generally?

Ans. I think the advances were made principally within twelve months after the date of the mortgage—and then those advances were renewed; that is, I mean they were extended.

Quest. 6. What books do you refer to in your previous answers on this cross-examination, and where are those books?

Ans. I refer to the books of the firm of T. V. Johnson & Co.; I believe they are at the office of Johnson's Newark, and New York Transportation Company in Newark. On reflection, I am not certain whether these books will show the dates.

Quest. 7. Did you refer to any other books than those mentioned in your last answer; if so, what books?

10 *Ans.* I did refer to memorandum books as well as the others.

Quest. 8. Did you refer to any others than those?

Ans. I had reference to Mr. Taylor's books also, and to no others.

Quest. 9. Then I understand you to say that you referred to three sets of books—those of T. V. Johnson & Co.; also to certain memorandum books; also to Moses Taylor's books—is that your meaning?

Ans. Yes, sir.

20 *Quest.* 10. Where are those memorandum books to which you refer?

Ans. I am not able to say just now; I presume they are in my possession—but whether amongst my books down here, or at my house, I cannot tell.

Quest. 11. By down here, you mean what?

Ans. In the office of Johnson's New York Transportation Company in Newark, which is my office.

Quest. 12. Where is your house?

Ans. Near Morristown, in Morris county.

30 *Quest.* 13. Were the advances made to you on this mortgage by the complainant, Moses Taylor, made, as it respects the nine thousand dollars, in one sum or several successive sums?

Ans. I cannot answer that without reference to my papers? I think, however, it was made in two sums, if I remember right.

Quest. 14. Were the advances made to you on this mortgage by Moses Taylor the first advances of money made by him to you? [Objected to by counsel of T. V. Johnson.]

Ans. No, sir, they were not.

40 *Quest.* 15. Had not you received moneys from Moses Tay-

lor, by way of loan, and paid moneys to him for and during a number of years prior to the advances made on this mortgage? [Objected to by Mr. Whitehead.]

Ans. Yes, sir, I have had a good many transactions with him.

Quest. 16. At or after the date of this mortgage, and during the period of time in which the advances on said mortgage were made, did he advance to you any other moneys than the advances made on it? [Objected to by Mr. Whitehead.]

Ans. I can't specify particularly; he did not at the time he 10 made the advances on this mortgage, and I am not certain about afterwards; I should have to refer to my books and memorandum to ascertain.

Quest. 17. What memorandum or paper did you give to Moses Taylor when the advances on this mortgage were made, as evidence thereof?

Ans. I think it was in the shape of a receipt; it is so long ago I can't remember positively, but that is my impression.

Quest. 18. Did you not give notes or checks, or drafts, when the advances, or some of them, were made? 20

Ans. My impression is that they were receipts, and not notes, checks, or drafts; I remember giving him receipts.

Quest. 19. Do you remember distinctly that you gave him receipts in all cases, or in any case?

Ans. I remember distinctly of giving receipts to him in some cases, and my impression is in all.

Quest. 20. Did you not give notes, checks, or drafts, even if you did give receipts? [Objected to by Mr. Whitehead.]

Ans. I am at a loss exactly how to answer that question; I remember giving receipts, and I do not remember giving 30 anything else—still I may have done so.

Quest. 21. Have you the means of ascertaining whether you did or did not give any notes, checks, or drafts for such advances, when they were made or at any other time?

Ans. I suppose I may be able to ascertain from Mr. Taylor; that is the only way that I know of now to ascertain it.

Quest. 22. Have you in your possession, or under your control, any means of ascertaining the fact inquired of, or not?

Ans. Not to my knowledge, except as I have said in the previous answer. 40

Quest. 23. Is it not your impression that you did give notes, checks, or drafts for all or some of said advances? [Objected to by Mr. Whitehead.]

Ans. My impression is that I gave receipts.

Counsel for the defendant repeats the question.

Ans. I have just replied that my impression is that I gave receipts.

Quest. 24. Do you refuse to give any further answer to question number twenty-three? [Objected to by Mr. White-
10 head, on the ground that the question implies that the witness has refused, and for other reasons.]

Ans. I don't refuse to give any other answer, but am willing to make explanation that I can give to make it plainer.

Quest. 25. Is it not your impression that you did give notes, checks, or drafts for all or some of said advances? [Objected to by Mr. Whitehead.]

Ans. My impressions are that I gave receipts for the advances. I can't say but what drafts or notes may have been given—but if so I do not recollect it.

20 *Quest.* 26. Is it not your impression that you did?

Ans. It is not.

Quest. 27. Did you give to Mr. Taylor, or did he hold any other collateral security or securities for said advances, or any part thereof, than the said mortgage? [Objected to by Mr. Whitehead.]

Ans. If you refer to advances made on this mortgage, I answer, that he, Moses Taylor, made me advances on this security: I can't say but what he may have held securities for other advances at the same time.

30 *Quest.* 28. How much money did Mr. Taylor advance to you on this mortgage?

Ans. Nine thousand dollars.

Quest. 29. Do you mean to say that he did not hold any obligation from you for said nine thousand dollars, or any part thereof? [Objected to by Mr. Whitehead.]

Ans. I reply, it was usual when advances were made to me, on securities left in his hands, to take my receipts for such advances, and charge me with the amount advanced. That was the usual course. I can't specify particularly with regard
40 to this case, whether there were any obligations; I mean I

don't remember any difference between this case and the ordinary cases when he took my receipts for money advanced.

Quest. 30. You have not yet answered whether Mr. Taylor did or did not hold any obligation from you for said nine thousand dollars, or any part thereof—please state, in answer to that question? [Objected to by Mr. Whitehead.]

Ans. I don't remember of any other obligations given for it, or any part of it.

Quest. 31. Did not Mr. Taylor hold either obligations or collateral security, of some kind, which covered this nine 10 thousand dollars, or some part of it besides the bond and mortgage itself? [Objected to by Mr. Whitehead.]

Ans. I answer, that I have borrowed, from time to time, on different securities deposited with him, different sums of money; how far those would apply as additional collateral securities I am unable to state. The others were given as collateral, and this was given as collateral.

Quest. 32. You say that the usual course was to give Mr. Taylor a receipt, and he would charge you with the amount advanced—in what book or books were such charges made 20 by him, *i. e.* Mr. Taylor?

Ans. I can't say—I never looked at the charges.

Quest. 33. How, then, do you know that they were made?

Ans. He told me he would charge them to me.

Quest. 34. Where did he tell you this?

Ans. I don't remember now where; I presume it was in his office.

Quest. 35. Where is Mr. Taylor's office?

Ans. No. 44 South street, New York.

Quest. 36. Did you generally obtain advances from him at 30 his office in New York?

Ans. Generally. (I would here explain that I sometimes got advances from Moses Taylor, individually, and sometimes from Moses Taylor & Co.—and in speaking heretofore of them, I have used the name of Moses Taylor indiscriminately. Their office was the same, and Moses Taylor was a member of the firm of Moses Taylor & Co.)

Quest. 37. Did Mr. Taylor keep his account books in the office referred to?

Ans. I presume so—though I don't know? 40

Quest. 38. Did Moses Taylor & Co. keep their account books in the office referred to?

Ans. Yes, sir.

Quest. 39. Then did you have two accounts for advances made to you—one with Moses Taylor and one with Moses Taylor & Co.?

Ans. I can't say how they kept their accounts; I had advances from both.

Quest. 40. Did not Moses Taylor, or Moses Taylor & Co., 10 ever render to you accounts current showing the accounts between you and them embracing the advances made by them to you?

Ans. Moses Taylor & Co. did—I don't think that Mr. Taylor ever did; I have no recollections of it if he did.

Quest. 41. How did you, from time to time, ascertain the state of the account between you and Moses Taylor?

Ans. I usually kept a memorandum myself.

Quest. 42. Did he rely on that memorandum kept by you?

Ans. I presume not.

20 *Quest.* 43. Did the advances made on the mortgage in question belong to the account with Moses Taylor or Moses Taylor & Co.?

Ans. Moses Taylor & Co., I think.

Quest. 44. What reason have you to suppose that it was with Moses Taylor & Co.?

Ans. I think I remember the fact.

Quest. 45. How often did the firm of Moses Taylor & Co. render you an account current, as a general thing?

Ans. I never had but one, I believe, from them; they 30 were rendered at one time.

Quest. 46. When was that?

Ans. I think it was some time in the years 1856 or 1857.

Quest. 47. How long a period were they and Moses Taylor making advances to you? [Objected to.]

Ans. It would extend back, I think, fifteen years. I think my first transactions with him were in 1843 or 1844. I am not certain.

Quest. 48. On what terms were these advances to you from time to time made; that is, as to rate of interest or bonus or 40 discounts? [Objected to.]

Ans. They were usually at seven per cent.; I, perhaps, ought to say that they were sometimes six, sometimes five—usually at six or seven per cent.

Quest. 49. Were the rates ever higher than 7 per cent. per annum? [Objected to by Mr. Whitehead.]

Ans. Never on mortgage securities or any securities lodged with him as collaterals; he made it a rule never to charge more than seven per cent. on collaterals.

Quest. 50. Do you mean that you paid these rates where you deposited collaterals in addition to the interest on the collaterals? [Objected to by Mr. Whitehead.] 10

Ans. I mean to say that I never paid him more than seven per cent. interest on loans. I have sometimes sold him notes, and sometimes mortgages, out and out; but where the loan was charged to my account, I always paid him seven per cent., and no more, to my recollection; that was the case in this instance. This was a case where the loan was charged to my account; I think that for a portion of this loan I only paid six per cent.

Quest. 51. Will you name the other collaterals held by Moses Taylor & Co. and Moses Taylor besides the one in question in this suit, on your account or on account of T. V. Johnson & Co., or any firm succeeding the last named firm, in which you were a partner? [Mr. Whitehead objects to this question, unless the question refers to collaterals connected with the bond and mortgage in controversy in this suit.] 20

Ans. I don't think I can tell all of them now—I can tell some of them—it would be impossible to tell them all now without reference to the books. There was a bond of the Clinton County Coal Company for a thousand dollars, a bond and mortgage of W. & B. Douglass for five thousand dollars, a bond and mortgage of William A. Lum for one thousand dollars, a bond and mortgage of Jacob Johnson for a thousand dollars; also of Abraham Insley for one thousand dollars; also of William Causler for four hundred dollars; one of my own for twenty-five thousand dollars; there are some others, but I can't remember them now. 30

Quest. 52. Were advances made on these various collaterals to the full amount of their face? [Objected to.]

Ans. Sometimes they were full, and sometimes not. 40

Quest. 53. Were these collaterals named by you and others, which you say you cannot recollect, all held by Moses Taylor & Co. or by Moses Taylor, or some of them by the one, and some by the other? [Objected to.]

Ans. I can't say whether they are all held by one firm or not.

Quest. 54. Did you not pass a bond and mortgage of Samuel P. Mead to Moses Taylor or to Moses Taylor & Co., and for how much?

10 *Ans.* I sold one to Mr. Taylor individually; it was for ten thousand dollars; I think I sold it to him, and that it was a separate transaction with himself individually.

The further examination of this witness was, by consent of parties, adjourned at this point, to Thursday next, 29th instant, at my office, at ten o'clock, A. M.

AMZI DODD, *M. C.*

Thursday, April 29th, 1858.—Pursuant to adjournment, the parties appeared by their solicitors and counsel, and proceeded with the cross-examination of Mr. Johnson, the wit-
20 ness last examined.

Quest. 55. Have you the means, at this time, of stating more definitely than you did at the last examination, the collaterals held by Moses Taylor or Moses Taylor & Co., for advances made to you and your associates—if so, please state the same?

Ans. I think there was one other bond and mortgage given about a year ago, by myself and wife, for five thousand dollars—I think that is all. There is one other now, that I think of, made by William W. Causler—a bond and mortgage for
30 one thousand dollars; I believe that is the whole; I have no recollection of any other.

Quest. 56. Are the mortgages which you have named sufficiently secured by the property mortgaged for the amounts of the same, respectively?

Ans. I suppose they are not. I presume that the W. & B. Douglass bond and mortgage for five thousand dollars is good; also the whole four of the one thousand dollar bonds and mortgages, *viz.* William A. Lum's, Jacob Johnson's, Abraham Insley's, and William Causler's are good; also Causler's
40 four hundred dollar mortgage.

Quest. 57. On what property is your mortgage for twenty-five thousand dollars placed?

Ans. On the wharf property at Commercial wharf: it is one hundred and sixty feet front, running back to Commercial dock street, a little over a hundred feet in depth. About one hundred feet of it is built on with brick stores; two of the stores are three stories high, and one of them two stories high?

Quest. 58. Is this the first mortgage?

Ans. It is not. There is a twelve thousand dollar mortgage ahead of it, on which about one year's interest is due; it is 10 held by the Mutual Benefit Life Insurance Company.

Quest. 59. Does that twelve thousand dollar mortgage cover any other property than that which you have described in your answer to the 57th question?

Quest. 60. Does the twenty-five thousand dollar, referred to, include anything else besides the property described in your answer to the 57th question?

Ans. It does not, either real or personal.

Quest. 61. What collaterals, besides these mortgages which you have mentioned, are held by Moses Taylor or Moses 20 Taylor & Co. for the advances before referred to?

Ans. No others that I know of. I may have omitted one or two small mortgages, but do not think I have. There are no large ones; I mean there are no other collaterals held by them on this loan account. There were note transactions, which I can explain. I took notes there, and had them discounted; and if they were not paid, they were charged to my account.

Quest. 62. What description of notes was it that were thus discounted?

Ans. They were sometimes mine, and sometimes notes of 30 others.

Quest. 63. Have all these notes been paid?

Ans. No, sir, they have not.

Quest. 64. Have you here, and if you have please produce the account rendered by Moses Taylor or Moses Taylor & Co. showing the account current of the transactions to which we have referred, or any part thereof?

Ans. I went home yesterday for the purpose of examining for those accounts current, and could not find them. When I moved, they were packed with my other papers in a box 40

which I cannot find. I have not seen the papers since I moved up there, but presume they must be amongst my papers somewhere. Since the last examination, on Saturday last, I suggested to Mr. Whitehead whether it would not be best to send to Mr. Taylor for an account current. He did send for it, and furnished it to me this morning. It only covers a part of the account, being the year in which the advances were made on this mortgage.

Quest. 65. Please produce the account rendered which you
10 have?

Ans. Here it is.

The defendant's counsel, Mr. Bradley, here offers the paper in evidence, which is marked by me *Exhibit* 6 on the part of the defendant, Newton M. Wardwell.

Quest. 66. Does this account current, marked No. 6, contain the advances made on the mortgage in question?

Ans. I suppose it contains a part of them—not the whole.

Quest. 67. Do you believe that the former account current, which was rendered to you, as mentioned in your answers to
20 the 45th and 46th questions on this cross-examination, is still in existence?

Ans. I presume it is—yes, sir.

Quest. 68. Does it contain credits as well as debts?

Ans. I think it does; I think it shows payments as credits, but not the collaterals that were taken as such.

Quest. 69. What time did you take to look for said account current since our examination last Saturday?

Ans. Probably half an hour.

Quest. 70. Where is the box you referred to containing
30 said paper, to the best of your knowledge and belief?

Ans. I reply—when we moved, I had been sick some six or seven months previous to that, and my papers were not filed away, as was my usual practice, and I did not superintend the packing of them; and when we came to examine for papers of different kinds, I found papers of considerable value missing—among them deeds, a charter of an iron company, in which I was interested, and some other valuable papers, for which I have spent two days looking. I suppose that this account current still is among those missing papers.

40 *Quest.* 71. Have you any other papers now here which relate to the loan account before mentioned?

Ans. I have some copies as receipts, which have been furnished me by Mr. Whitehead, at my suggestion—I mean John Whitehead, who acted as counsel for the complainant at the examination last Saturday—they came with the copy of the account current which I have just produced. Here they are. I presume they are copies of receipts which I gave Mr. Taylor, as moneys were advanced to me. At the request of the counsel of defendant, I have here marked the papers now produced by the witness as *Exhibits No.* 7 and 8 on the part of the defendant. 10

Quest. 72. What property have you at any time placed into Mr. Taylor's hands, or Moses Taylor & Co.'s hands, on account of any indebtedness from you to them, either as collateral or otherwise?

Ans. I could not enumerate—it would be a very large list. Our business has been with them for fifteen years.

Quest. 73. Have you not placed stocks of some kind, and what stocks, in their hands?

Ans. I suppose I can name some of them. The American Chemical Iron Company stock was placed in his hands; I don't know how much of it; I don't regard it as of any value. I don't regard any other stocks that he holds from me as of any value over and above the advances specifically made on them at the time. I can't name them now; I have no list of them. 20

Quest. 74. Were they not to be held as collaterals by Taylor, if they should prove worth more than the amounts specifically advanced on them?

Ans. I think not, sir. They had nothing to do with the loan account. 30

Quest. 75. What other property besides stocks have you placed in Taylor's hands?

Ans. There were a great many other transactions, but I have no memorandum of them by which I can refresh my mind at present.

Quest. 76. Have you the means of showing the account of your transactions with Moses Taylor and Moses Taylor & Co.?

Ans. The account current referred to in my answer, as mislaid, will show, I think, all in reference to this loan account. 40

Question 76 repeated—

Ans. I reply, I have not altogether.

Quest. 77. When you obtained money from Moses Taylor, or Moses Taylor & Co., was it not put to such account as you designated?

Ans. I can't answer; I don't know.

Quest. 78. Are you now president of Johnson's Newark and New York Transportation Company?

Ans. I am.

Quest. 79. As such president, have you the control of the
10 books of said company?

Ans. I suppose I have, with the directors.

Quest. 80. Who has more the control of them than you have?

Ans. I don't know of any one.

Quest. 81. Did that company succeed the firm of T. V. Johnson & Co. in business?

Ans. They purchased the business and wharf of me?

Question 81 repeated.

Ans. I will reply, that they continued the business in the
20 same place.

Quest. 82. Did not Johnson's Newark and New York Transportation Company succeed the firm of T. V. Johnson & Co. in business? [Objected to by Mr. Grover, as leading and irrelevant, and not a cross-examination on any matter inquired into by the complainants.]

Ans. I make the same reply that I did to the last question.

Quest. 83. Do you refuse to give any other answer to the question?

Ans. I think that answer sufficient. It covers all the ques-
30 tion, in my opinion.

Quest. 84. Did any person or firm carry on the business in which the firm of T. V. Johnson & Co. were engaged between the time when that firm ceased that business and the time when the Johnson's Newark and New York Transportation Company commenced it? [Objected to by Mr. Grover, on the ground that it is not a cross-examination as to any matter inquired into by the complainant.]

Ans. I reply, that I did business myself individually, and that the transportation company only took a portion of the
40 business formerly conducted by T. V. Johnson & Co.

Quest. 85. Did Johnson's Newark and New York Transportation Company commence business when the firm of T. V. Johnson & Co. ceased, or did time intervene? If so, how long time? [Objected to by Mr. Grover, on the ground that it is not a cross-examination of any matter inquired into by the complainant, and irrelevant besides.]

Ans. Johnson's Newark and New York Transportation Company purchased a part of the business of T. V. Johnson & Co. some time in the month of June, 1852, I think it was. The firm of T. V. Johnson & Co. did not cease for several 10 years after that. The Johnson's Newark and New York Transportation Company commenced business some time in the summer of 1852, soon after they made that purchase. I conducted business myself during that time individually.

Quest. 86. Then is it true that you, as an individual and of the firm of T. V. Johnson & Co. and Johnson's Newark and New York Transportation Company, were all three engaged in carrying on business at one and the same time? [Objected to by Mr. Grover, on the ground that it is not a cross-examination of any matter inquired into by the complainant, nor 20 relevant.]

Ans. Johnson's Transportation Company were engaged exclusively in the transportation business. T. V. Johnson & Co. were engaged in disposing of their effects—stock—and in closing up their affairs, and I was engaged in business on my own account; this was all at one and the same time.

Quest. 87. How long had T. V. Johnson & Co. been in business prior to June, 1852? [Objected to by Mr. Grover as before.]

Ans. I can't answer that exactly; I think it is about six 30 years.

Quest. 88. Who composed the firm?

Ans. Myself and Jonathan E. Huntington.

Quest. 89. Did you transact business on your account during that period? [Objected to by Mr. Grover.]

Ans. I did.

Quest. 90. Is Johnson's Newark and New York Transportation Company a corporation? [Objected to by Mr. Grover.]

Ans. It is incorporated under the general law.

Quest. 91. What business did you carry on individually at 40

the time of the execution of the mortgage in question (October 13th, 1851,) and from thence to the commencement of this suit? [Objected to by Mr. Grover, on the ground that it is irrelevant, impertinent, and an improper inquiry into the private affairs of the witness on the stand, and which he is not bound to answer, as, whatever this answer may be, it could have no reference to the matter in controversy in this suit, and Mr. Grover advises the witness not to answer the question.]

Mr. Bradley insists on this question being put and answered. 10 The witness having first asked the master what his rights are in the premises, is informed by the master that if he refuses to answer the question he does so on his own responsibility, and that the master has no power to coerce an answer.

Ans. I reply that I do not believe that the master or counsel have any right to inquire into all my private affairs, and I decline to answer.

The counsel for the defendant requests the master to put the interrogatory last proposed to the witness. The counsel for the complainant objects to the master's putting the ques- 20 tion last proposed to the witness, because after the witness had asked the master as to his rights, and had been informed on that subject, and had also been advised by the counsel for the complainant that he was not bound to answer, and the witness having considered the subject, and declined answering as above, the counsel for the defendant has no right to repeat the question.

The master decided that the question might be repeated again to the witness, and put the same to the witness accordingly—whereupon the witness replies that he has answered 30 the question above.

Quest. 92. Do you refuse to answer the question last put? [Objected to on the ground that he, the witness, has already replied to the question distinctly.]

Ans. Having already answered the question above, I have nothing more to say.

Quest. 93. What business was you engaged in in 1851 and 1852, individually? [Objected to by Mr. Grover, and the master asked to say to the witness, whether he is bound to reply to repeated questions of the same character.]

40 The master advises the witness to answer the question, leaving his counsel to enter upon the record his objections to

the legality or propriety of the question, and leave the Chancellor to see the whole course of the examination.

Ans. I decline answering it, regarding it as having been already answered.

Quest. 94. What business was carried on by the firm of T. V. Johnson & Co. during the time that said firm were transacting business, and up to the time that they sold out their business to Johnson's Newark and New York Transportation Company? [Objected to by Mr. Grover.]

Ans. Part of the time they were in the grocery business— 10 part of the time in the grocery and iron business—and part of the time in the iron business alone. They were engaged in the transportation business too. I suppose they did some other things, but those were the principal things.

Quest. 95. Where was their place of business? [Objected to by Mr. Grover.]

Ans. They had an office in Newark and New York—in Newark, at the Commercial dock—in New York, on the pier on the Hudson river.

Quest. 96. Were the firm engaged in the transportation 20 business during all the time they were in business—if not, during what period of the time? [Objected to.]

Ans. I think the business was conducted in the name of the company, although it was my individual business. This was all the time that they were in business; that is, I mean the wharf was mine; the boats were mine; but the business was done in the name of the company.

Quest. 97. Did the business of transportation, as well as the boats, belong to you whilst it was carried on in the name of T. V. Johnson and Company? [Objected to by Mr. Grover.] 30

Ans. I reply, that Mr. Huntington did not put in any capital into the business, but was a partner in the transaction of the business?

Quest. 98. Did the firm of T. V. Johnson & Co. carry on the grocery business at the time of the execution of the mortgage? [Objected to by Mr. Grover.]

Ans. I think they did.

Quest. 99. When did they cease the grocery, and when the iron business?

Ans. They did not buy any more stock after the first of 40 April, 1852, or thereabouts, as a company.

Quest. 100. Then did the firm of T. V. Johnson & Co. transact any business after selling out to the Johnson's Transportation Company, except to settle up their old business?

Ans. They disposed of their stock; it took them several years to close it up.

Quest. 101. Were groceries procured by said firm of Moses Taylor or Moses Taylor & Co.? [Objected to by Mr. Grover.]

Ans. I don't now remember of ever buying any groceries of Moses Taylor, but I may have done so.

10 *Quest.* 102. Were the Johnson's Transportation Company ever engaged in any other business than the transportation business?

Ans. Not as a company, except what was connected with the transportation business.

Quest. 103. Did that company own the boats and wharf in Newark, with which its business was conducted? [Objected to by Mr. Grover.]

Ans. At the time the sale took place, spoken of before, that is in June, 1852, they purchased of me the wharf and boats 20 that I owned at that time.

Quest. 104. Did you take stock for the same in the company? [Objected to by Mr. Grover.]

Ans. I was one of the corporators in the company.

Quest. 105. Did you not pay up your stock in the company by means of the wharf and vessels which you sold to it? [Objected to by Mr. Grover, who informs the witness that, in his opinion, he is not bound to answer.]

Ans. As far as I am concerned, I have no objection to answering this question. I sold to the company, and subscribed 30 for a portion of the stock, with an understanding with the company that I would be paid from the proceeds of said stock for the property, less the mortgages.

Quest. 106. How much of the stock of the company did you hold? [Mr. Grover objects to the question, on the ground that it is an improper inquiry into the private affairs of the witness, having no reference to the matters involved in this suit or to the transactions between the witness and Mr. Taylor, the complainant, or either of the defendants.]

Ans. I object to answering the question, because it is pry-

ing into my private affairs, and I believe it has nothing to do with this case.

THOS. V. JOHNSON.

Sworn and subscribed, before me, at Newark, April 29th, 1858.

AMZI DODD, *M. C.*

The further cross-examination of this witness was here adjourned, by consent of parties, to Monday the 3d of May next, at 11 o'clock, at my office.

AMZI DODD, *M. C.* 10

Monday, May 3d, 1858.—The parties appeared by their attorneys, and agreed upon an adjournment of the examination to some future day.

AMZI DODD, *M. C.*

Tuesday, May 25th, 1858.—By consent of parties, the cross-examination of Thomas V. Johnson, the witness last on the stand, was here interrupted, for the purpose of introducing a witness to offer and prove certain exhibits at this stage of the examination.

Edward Kavanagh, a witness produced as above stated, 20 being duly sworn, on his oath says—I reside in New York city; I have been book-keeper for Moses Taylor for a number of years, and during the greater part of the time referred to in the accounts spoken of between Mr. Johnson and Mr. Taylor, that is to say, from December, 1851, to April, 1857. I have in my possession, and now produce, full copies of the account current between Moses Taylor and Moses Taylor & Co. and Thomas V. Johnson and Thomas V. Johnson & Company. I have compared these accounts with the books, and believe them to be true copies. 30

The witness here produced to the master the accounts spoken of by him, which are offered in evidence, and marked by me as exhibits in this cause on the part of the defendant, or at the call of the counsel for the defendant, as follows: *Exhibits* 9, 10, 11, 12, 13, 14, 15.

Witness further says—I have no knowledge of the collaterals held by Mr. Taylor or by Moses Taylor & Co. as securi-

ties for these accounts, inasmuch as no record is made or account kept in the books of such collaterals. The rule or practice being, when collaterals are paid, to have them credited to the account, when they thus appear for the first time on the books.

EDWARD KAVANAGH.

Sworn and subscribed, before me, at Newark, this 25th day of May, 1858.

AMZI DODD, *M. C.*

10 Newark, July 21st, 1858.—In pursuance of an adjournment of the foregoing examination, by consent of parties, to this time and place, the parties appeared. Lewis C. Grover, esq., of counsel with the complainant, and Joseph P. Bradley, esq., of counsel with the defendants.

Thomas V. Johnson, heretofore sworn as a witness, and examined in this cause, being called, and no further questions being put to him, the examination was signed by him, and the further examination of witnesses in this cause was, by consent of parties, adjourned to Thursday, July 22d, 1858, at my
20 office, at 11 o'clock, A. M.

AMZI DODD, *M. C.*

Examination of witnesses in the above cause, continued before me, John W. Taylor, master and examiner in Chancery, by consent, taken at my office, in the city of Newark, August 30th, 1858, in the presence of Lewis C. Grover, esq., of counsel for the complainant, and Joseph P. Bradley, esq., of counsel for the defendants.

George H. Renton, a witness for the defendant, Newton M. Wardwell, being duly sworn, deposes and says—Mr. Thomas
30 V. Johnson called upon me two or three times, early in the year 1856, in relation to the mortgage of the complainant in question in this suit. The first time he called he wished to know if I had purchased the Charlottenburgh property; I told him I had. He wanted to know if I was to pay the claim Moses Taylor had upon it; I told him it was to be made clear to me from everything except the first mortgage. Then he wanted to know if I knew about this Taylor claim. I tol(him I did not know about it, except that there was a clain that Mr. Wardwell disputed. He told me that the claim wa

a just claim, to the amount of between three and four thousand dollars, nearly four thousand dollars; and unless Mr. Wardwell paid it, it would make a great deal of difficulty; and Mr. Taylor held the original papers that would enable him to collect all it. He was very anxious that I should see Mr. Wardwell, and have him attend to it. I told him I would do so, and he called on me two or three times before I could bring Mr. Wardwell to meet him. Finally, some time about the first of March, 1856, Mr. Wardwell was in town, and I went with him up to Mr. Johnson's house, the old Wallace property. 10 Mr. Johnson then told Mr. Wardwell first about the same as he had told me previously about the amount due on the mortgage, *viz.* about $4000. He said that Mr. Hayes and Mr. Waugh had made up the amount. They had considerable talk about it. Mr. Wardwell did not seem to feel that there was any legal claim against the property. I urged Mr. Wardwell to try and arrange it. Mr. Johnson said, if Mr. Wardwell would pay the amount fixed on by Mr. Hayes and Mr. Waugh, he was authorized to settle it. He said he could not always have done it; that his accounts with Mr. Taylor, at 20 that time, were in such a condition that he could do it. I then made an arrangement with Mr. Wardwell, by which I proposed to make a mortgage for the amount claimed, as arranged by Mr. Waugh and Mr. Hayes, which, after some conversation, Mr. Johnson agreed to take. He said he would have Mr. Waugh make the mortgage out from me. The amount of the mortgage was about four thousand dollars. I called on Mr. Waugh afterwards, and he told me that Mr. Johnson had told him to make the mortgage.

Mr. Johnson wanted Mr. Wardwell to raise from the Fort 30 Stanwix Bank (of which Mr. Wardwell's brother was cashier) ten thousand dollars on Mr. Johnson's notes, with Freeman Wood's endorsements. [This testimony objected to as irrelevant, by Mr. Grover.]

Mr. Wardwell went home, and wrote me that he could not get the money on that security. I told Mr. Johnson that. Then he refused to take the mortgage that I offered to make on this property, and said he must have the amount due (about four thousand dollars) in money, or they would collect it all. He offered to take my note for this amount, for a short time, 40 which I refused to give.

I got a line from Mr. Grover to Mr. Taylor, and called to try to see the latter, but could not find him—he being out at the time.

Quest. Did or did you not understand that the note which Mr. Johnson offered to take for about four thousand dollars, which you have mentioned, would be in full discharge of the amount due on the mortgage? [Objected to by Mr. Grover, as leading and irrelevant.]

Ans. I understood so, and that they would hold the mort-
10 gage until the note should be paid, as security therefor.

GEO. H. RENTON.

Sworn and subscribed, before me, at Newark, August 31st, 1858.

JOHN W. TAYLOR, *M. C.*

Thomas V. Johnson, a witness produced and sworn on the part of the complainant, deposes and says—I have heard the foregoing testimony of Mr. Renton; I remember the interview therein spoken of. I never stated to Mr. Renton or Mr. Wardwell that I was authorized by Mr. Taylor to settle the claim
20 of Mr. Taylor; but did state that I could effect or arrange the settlement by paying the amount therein specified, being from four to five thousand dollars—I cannot state precisely the amount—that being the amount due from Mr. De Camp to me. I remember, also, the interview with Mr. Renton and Mr. Wardwell, at which interview they proposed to make a bond and mortgage for the amount due from Mr. De Camp to me; at which time I told them I thought I could effect an arrangement for the settlement of the claim, provided they would obtain for me a loan of ten thousand dollars on some other
30 property on bond and mortgage. They failed to obtain the amount, and the matter was dropped there.

Quest. What do you mean by saying that you could effect or arrange a settlement?

Ans. I mean by that that I could have arranged to take up the mortgage that Mr. Taylor held with the amount that was to be paid, and with other securities that I could have given him.

And being cross-examined says—The amount of four or

five thousand dollars spoken of was due from Mr. De Camp to me.

THOS. V. JOHNSON.

Sworn and subscribed, before me, at Newark, August 31st, 1858.

JOHN W. TAYLOR, *M. C.*

George H. Renton, being recalled, says—I heard Mr. Johnson give his testimony after mine, in which he says that the amount agreed upon by Mr. Waugh and Mr. Hayes was the amount due him from De Camp. Mr. Johnson is mistaken— it related to the amount alleged to be due on the mortgage held by Taylor. Johnson told Wardwell and myself, at his house, that De Camp and him had settled their account, and that there was working between them.

GEO. H. RENTON.

Sworn and subscribed, before me, at Newark, this 7th day of September, 1858.

AMZI DODD, *M. C.*

David A. Hayes, being duly sworn for defendants, says—that the amount arranged between Mr. Waugh and himself for the settlement in this cause was the amount due on the notes said to be held by the complainant in this cause, which amount was four thousand dollars, or thereabouts, and which I then understood to be the whole amount claimed on the mortgage held by the complainant in this cause. I never heard that Thomas V. Johnson had any interest in or any claim to any money under this mortgage.

DAVID A. HAYES.

Sworn and subscribed before me, this 7th day of August, 1858.

AMZI DODD, *M. C.*

Thomas V. Johnson, being duly sworn, says—I have read the testimony given by Mr. Renton this morning, in which he alludes to a former testimony given by me in reference to the amount due on the mortgage held by the complainants, and I

wish to reaffirm what I said previously on that subject, that the amount, as ascertained due between me and Mr. De Camp, was the amount agreed upon, but it was expressly understood that the amount due to Mr. Taylor, the complainant, was the whole amount of the mortgage, and that I proposed, at that time, to substitute other securities for the difference between the amount due me from Mr. De Camp and the whole amount due on the mortgage, provided they would pay the amount due from Mr. De Camp to me.

10 THOS. V. JOHNSON.

Sworn and subscribed before me, September 7, 1858.

AMZI DODD, *M. C.*

Examination of witnesses, taken in a certain cause depending in the Court of Chancery, wherein Moses Taylor is complainant, and Edward De Camp and others are defendants, taken before me, Amzi Dodd, one of the masters of the Court of Chancery, on the eighth day of September, A. D. 1858, at my office in Newark, in the presence of Lewis C. Grover, esq., solicitor and of counsel with the complainant, 20 and Joseph P. Bradley, esq., solicitor and of counsel with the defendants.

Charles B. Waugh, being duly sworn as a witness or the part of the complainant, says—

Quest. Do you know anything of a statement, or calculation, of the amount due the complainant, made by you in June, 1856, and furnished to the solicitor of the defendant—if so, state how you came to make that statement, by whose authority or knowledge it was made, and all you know on the subject, as well as of the amount due the complainant on his 30 bond and mortgage?

Ans. I do know about a statement made of the amount due in this case some time after the bill was filed in the case. Thomas V. Johnson called on me, and stated that he was about making a settlement of the claim against the De Camp property, held by Moses Taylor. He requested me to make out a statement of the amount due on the notes, and hand the statement to David A. Hayes. I made out a statement, and

handed it to Hayes. By a memorandum, made at the time, I think the statement was made, to June 2d, 1856, and that the notes, interest, and protest amounted, at that time, to $4109.25.

As to the remaining part of the question, I will state what I know. The statement was made by the authority of Thomas V. Johnson, and with his knowledge, and the settlement of the claim, at that time, depended on some other arrangements, which were not carried out, and the whole matter fell through.

Quest. Did Mr. Talor, the complainant, or his solicitor know anything of this statement? 10

Ans. I am not aware whether Mr. Taylor knew anything about it or not. His solicitor, Mr. Grover, knew that an arrangement of the matter was talked about by Mr. Johnson, but I don't know whether he had any information in what manner it was to be brought about.

Quest. Do you know how Mr. Taylor was to be settled with for the whole amount of the mortgage?

Ans. I do not.

Quest. Do you know anything more about the matter? If so, state fully? 20

Ans. I do, from conversations with Mr. Johnson and Mr. Hayes. I understood from them that the settlement of this matter depended upon raising some money—I think about ten thousand dollars—which was expected to be got from some individual or bank in New York state. I understood that the money could not be got, and in consequence that this arrange- could not be carried out.

Quest. What arrangement do you refer to?

Ans. I refer to the arrangement for settlement, according to the statement made by me at the request of Mr. Johnson. 30

Quest. Do you know of any arrangement agreed upon for settlement by Mr. Taylor?

Ans. I never heard from Mr. Taylor about the matter.

Being cross-examined by Mr. Bradley, he saith—

Quest. In what capacity were you acting in relation to this suit at or about the times to which you refer?

Ans. I was in the office with Mr. Grover, and had charge, to some extent, of the office business.

Quest. You were an attorney at law and solicitor in Chancery at the time? 40

Ans. I was.

Quest. Did you not attend to the conducting, in great measure, of Mr. Grover's suits at that time?

Ans. I had charge of the docket, and generally drew the papers and served the notices.

Quest. Did you do nothing else in the conducting of the suits?

Ans. I generally did whatever was necessary to be done in the conducting of the suits.

10 *Quest.* Was anything more claimed, at that time, on the mortgage referred to than the amount so made out and stated by you, so far as you were aware at the time?

Ans. When the bond, mortgage, and notes came to the office, there was no statement with them to show that anything less than the whole amount was claimed: and the bill was filed for the whole amount of the bond and notes, and I never heard from Mr. Taylor afterwards, except to inquire about the suit, or, it may be, to send some papers. My understanding of the matter was, that Mr. Johnson and Mr. De-
20 Camp were about settling their accounts or matters when the statement was made by me to Mr. Hayes, and I never knew or inquired in what way Mr. Taylor would he arranged with. I supposed that, if a settlement was made, that Mr. Johnson would procure an order from Mr. Taylor to deliver up the papers.

Quest. Were you directed to prepare a bond and mortgage to secure the amount of the statement so made by you as aforesaid?

Ans. My recollection is, that I was so requested by Mr.
30 Johnson, and that the deed of the mortgaged property, or a description of it, was left with me for that purpose; but I don't now recollect of making any mortgage. My first impression was that I did so.

Quest. By and to whom was that mortgage to be made, and on what property?

Ans. I think the mortgage was to be made by George H. Renton, on the property described in the complainant's mortgage, and think it was to have been made to either Johnson or Taylor, but I don't remember which.

40 *Quest.* Was it not from Johnson, and not from Hayes, that

you understood that the proposed settlement depended upon raising some money?

Ans. Johnson first told me about it, and I then had a conversation with Mr. Hayes about it respecting the probability of the money being obtained, as Mr. Hayes was the solicitor of the defendant, and also acquainted with the parties through whom the money was expected to be raised.

Quest. Did you know for whose accommodation this money was to be raised, or to what purpose it was to be applied?

Ans. I understood from Mr. Johnson that the money was to be raised for his use, but did not know for what purpose he wanted it, or how he intended to use it. 10

C. R. WAUGH.

Sworn and subscribed, before me, at Newark, September 8th, A. D. 1858.

AMZI DODD, *M. C.*

DECREE.

The cause being argued before the Chancellor, he made a DECREE, on the 11th day of December, 1858, declaring that the appellee was entitled to a decree for $9000, (the sum mentioned in the condition of the bond as then due), with interest from the date of his mortgage and his costs, and referring it to a master to ascertain and report the amount due the appellee in accordance with such opinion and decree, and also the amount due Boudinot, and the priorities between them, &c. 20

The MASTER, on December 14th, 1858, REPORTED accordingly, that there was due the complainant the sum of $9000 principal, and $3870 interest thereon, in all $12,870; and due Boudinot $9433.87; and that Boudinot's mortgage was entitled to priority, &c. 30

Upon this report a FINAL DECREE was made, in accordance therewith, on December 15th, 1858; also directing a *fieri facias* to be issued to a master of the court to sell the mortgaged premises, for the purpose of raising the above amounts, besides costs, and decreeing the defendants to be foreclosed, &c.

APPEAL.

From this decree the defendant, Newton M. Wardwell, appealed,—and the following is a copy of his petition of appeal.

PETITION OF APPEAL.

To the Judges of the Court of Errors and Appeals of the State of New Jersey.

The petition of Newton M. Wardwell, of Rome, Oneida county, in the state of New York, respectfully showeth, that a final decree was lately made in the Court of Chancery of this state, by the Chancellor, in a certain cause, wherein Moses Taylor was complainant, and Edward De Camp and Au-
10 gusta his wife, Elias E. Boudinot, surviving executor of the last will and testament of Elisha Boudinot, deceased, the Charlottenburgh Iron Company, Calvin Stevens, your petitioner, the Rome Exchange Bank, and others were defendants, by which decree it was decreed and adjudged by the Chancellor (amongst other things) that the complainant was entitled to have the sum of twelve thousand eight hundred and seventy dollars ($12,870), besides his costs of suit to be taxed, raised and paid out of certain lands and premises, situate at and near Charlottenburgh, and in the counties of Morris and
20 Passaic, in this state, (which lands and premises are particularly described in the bill and pleadings in said cause, and which lands and premises belong to your petitioner) in order to satisfy to the complainant the said sum of twelve thousand eight hundred and seventy dollars, which the Chancellor, by said decree, adjudged to be due on a certain mortgage in said decree and proceedings described; and that an execution should issue to make sale of the said lands and premises accordingly: whereas your petitioner insists that the said mortgage is paid, so far as your petitioner and his said lands are
30 concerned, and that the complainant is not entitled to have

the said sum of money, or any sum raised and paid out of the said lands and premises, or any part thereof—and complains that the said decree, in the particulars above mentioned, is erroneous and unjust. And your petitioner has appealed from the same, and prays that it may be reversed in the said parts and particulars thereof, and that your petitioner may have equity and justice in that behalf.

DAVID A. HAYES,
Solicitor for appellant.

JOSEPH P. BRADLEY,
Of counsel.