

New Jersey Court of Errors and Appeals.

JOHN I. RYERSON and ABRAHAM DEMAREST,
PETER H. PULIS and PETER H. WINTER, ex-
ecutors of Abraham H. Garrison, appellants,

and

FREDERICK ADAMS, executor of John I. Tuers, de-
ceased, and in his own right, WILLIAM DEALING
and CHARITY his wife, JACOB FREDERICKS
and JACOB KING, respondents.

On appeal, &c.

STATE OF THE CASE.

On the 8th September, 1845, the respondents filed their bill in the Court of Chancery, as follows:

To the Honourable Oliver S. Halsted, esquire, Chancellor of the State of New Jersey.

In chancery, humbly complaining, show unto your Honour your orators, Frederick Adams, of the city of Newark, in the county of Essex, and state of New Jersey, complainant, both in his own right and as executor of the last will and testament of John I. Tuers, late of the county of Bergen, deceased, William Dealing and Charity his wife, and Jacob King, of the city of New York, and Jacob Fredericks, of the county of Orange, in the state of New York, that John I. Tuers, late of the county of Bergen, deceased, in his lifetime, and on or about the first day of May, in the year of our Lord one thousand eight hundred and twenty-three, and for 10 more than twenty years previous thereto, was seized in fee-simple of a certain farm or tract of land, whereon he resided, in the township of Franklin, in the county of Bergen—bounded, northerly, by lands of Lawrence Ackerman and Elizabeth Van Houten, widow and relict of Crines Van Houten, deceased; southerly, by lands of Lawrence Ackerman and Lawrence J. Ackerman; westerly, by lands of Ryer Van Houten and James Demarest; and easterly, by lands of Daniel Jaroe, Lawrence Ackerman, and the old orchard, containing one hundred and eighteen acres, more or less; that said John I. Tuers, on or about the said first day of May, in the year of 20 our Lord eighteen hundred and twenty-three, having then been for many years married to Margaret Tuers his then wife, and who is now his widow, they having no children, and believing they would have no children together, and the said John I. Tuers having become very intemperate, and living in some degree dissatisfied with and exasperated against his said wife, and for a time separated from her on that account, and being desirous of securing his own estate for the benefit of his own relations by blood, or such of them as he might prefer for that purpose, and being wrongly advised, that in

the event of his said wife surviving him, upon his death without issue, she would unavoidably inherit the whole of his estate, he did, for the purpose of preventing such an event, and to secure his estate from her and to his own relations, on said first day of May aforesaid, execute to one John I. Ryerson a deed of bargain and sale of the above described lands in fee-simple; which deed bears date on the first day of May, in the year of our Lord eighteen hundred and twenty-three, and purports to be in consideration of three thousand dollars, to the said John I. Tuers paid by the said John I. Ryerson, 10 and to convey said lands to said John I. Ryerson in fee-simple for his own use; and your orators expressly charge, that said sum of three thousand dollars, on any other consideration, was not paid, or secured to be paid, by said John I. Ryerson to said John I. Tuers, either at the giving of said deed, or at any time afterwards; and that said deed was not intended to convey said property to said John I. Ryerson for his own use, but for the use only of said John I. Tuers and his heirs or devisees, and for the purpose of preventing the same from falling into the hands of his said wife, as above mentioned; and your orators charge, that said deed, so given with- 20 out consideration, and for the purpose aforesaid, did not convey said lands to said John I. Ryerson, but that, both at law and in equity, the uses of said conveyance resulted to said John I. Tuers and to his heirs and devisees.

And your orators further show, that said John I. Tuers, from the time of said conveyance until the time of his death, which was on or about the seventh day of July, in the year of our Lord eighteen hundred and forty-two, continued in peaceable and quiet possession of said lands, using and claiming them as his own, and not in any way recognizing the title of said John I. Ryerson thereto; and that 30 said John I. Ryerson has not, since the execution of said deed, exercised, or attempted to exercise, any control over said property, nor in any way attempted to obtain possession by law, either in the lifetime of said John I. Tuers or since his death, but that it still remains in possession of Margaret Tuers, the widow of said John I. Tuers.

And your orators further show, that said John I. Tuers remained in possession of said lands until the time of his death, claiming the same as his own, and maintaining that said John I. Ryerson had no right or claim thereto, and that the conveyance which he once 40 executed to him for the said lands had been given up and cancelled; and that said John I. Tuers, in his last illness, on the twenty-sixth day of April, in the year of our Lord eighteen hundred and forty-two, made his last will and testament, and at that time was not seized, nor did he pretend to be seized, of any lands except the lands above mentioned, and by said will, duly executed and proved to pass real estate, he directed his executors to sell all his real estate, and, out of the moneys arising from the sale, to pay your orator, Frederick Adams, three hundred dollars, and to divide the residue of the proceeds thereof equally among the lawful heirs of his three 50 sisters, Rachel, who was the wife of Michael Moore, Mary, who

was the wife of Jacob Fredericks, and Leah, who was the wife of John King, and appointed Martin Van Houten, jun., and your orator, Frederick Adams, executors thereof; which executors proved said will before the surrogate of the county of Bergen, and have probate thereof, as by the probate of said will, in the possession of your orators, ready to be produced, as this court shall direct, will fully appear.

And your orators further show, that said Martin Van Houten, jun., died after the granting of said probate, and that your oratrix, Charity Dealing, the wife of William Dealing, is the daughter of 10
said Rachel, who was the wife of Michael Moore, and was, at the date of said will, and now is, the only descendant and heir at law of said Rachel, the wife of Michael Moore; that your orator, Jacob Fredericks, is the son of Mary, the wife of Jacob Fredericks, in said will mentioned, and now is, and was at the time of the date of said will, the only descendant and heir at law of said Mary, the wife of Jacob Fredericks; and that your orator, Jacob King, is the son of Benjamin King, now deceased, which Benjamin King, at the date of said will and the death of said testator, was the son and only descendant and heir at law of Leah, the wife of John 20
King, in said will mentioned; that since the death of the said John I. Tuers said Benjamin King has died, leaving your orator, Jacob King, his son and his only descendant and heir at law, and having duly made and published his last will and testament, whereby he devised and bequeathed all his estate, real and personal, to your orator, Jacob King, and appointed him sole executor thereof.

And your orators further show, that said John I. Ryerson, on the thirteenth day of August, in the year of our Lord eighteen hundred and thirty-one, intending some future and secret fraud and mischief, left said deed to him at the office of the clerk of the county of 30
Bergen to be recorded, and that the same was recorded in Book G. 3, of Deeds for Bergen county, on pages fifty-four and fifty-five; but that said recording was unknown to said John I. Tuers, who supposed said deed to be surrendered and of no effect; and that said John I. Ryerson did not pretend to said John I. Tuers, at that time, to have any claim to said land, but that said John I. Tuers occupied the same, and leased part thereof to John S. Forshee, a relation of said John I. Ryerson, for the term of fifty years, with the knowledge of said John I. Ryerson.

And your orators further show, that said John I. Ryerson, on or 40
about the eighteenth day of October, in the year of our Lord eighteen hundred and thirty-seven, having for some time been indebted to one Abraham H. Garrison for money borrowed of him, and which was secured to the satisfaction of said Abraham H. Garrison, made and executed to said Garrison, by the name of Abraham Garrison, and without his knowledge, a deed for the lands above described, excepting thereout the seven acres so leased by said John I. Tuers to said John S. Forshee, and then offered said deed to said Abraham H. Garrison in payment, or as collateral security 50
for said loan, he, the said Ryerson, well knowing that the convey-

ance to him, although absolute on its face, was without consideration and worthless, and supposing that, by conveying or mortgaging said lands to any third person for a bona fide debt or consideration, he could render the original conveyance valid, and have the said lands appropriated to his own use; and that said Abraham H. Garrison, well knowing said conveyance from John I. Tuers to John I. Ryerson to be without consideration, and by the meaning of the parties thereto, well as at law as in equity, to be for the use of said John I. Tuers, refused to accept such deed, either as payment or collateral security; but that said John I. Ryerson, after repeated importunities, persuaded the said Abraham H. Garrison to accept the possession of said deed, said Garrison at the same time declaring that said deed was of no value; and said John I. Ryerson, on or about the ninth day of October, eighteen hundred and thirty-eight, procured said deed to Abraham H. Garrison to be recorded in the office of the clerk of the county of Bergen.

And your orators further show, that said John I. Tuers had, on or about the nineteenth day of June, in the year of our Lord eighteen hundred and twenty-two, executed a mortgage on said lands, above described, to Baltye Demarest, to secure the payment of one hundred dollars, with interest, and that said mortgage had been assigned to one Albert N. Van Voorhis, who, on or about the term of ———, in the year of our Lord eighteen hundred and forty, filed his bill in this court for the foreclosure and satisfaction of the same, and made said Abraham H. Garrison, as well as said John I. Ryerson, a party defendant in said suit; that said John I. Ryerson did not appear in said suit or answer said bill; that said Abraham H. Garrison, knowing the invalidity of the conveyance to said John I. Ryerson, refused to set up his claim to said lands, either as grantee or mortgagee, or to answer said bill, but, at the solicitation of said John I. Ryerson, permitted him to take said deed; and that said John I. Ryerson thereupon employed counsel, who filed an answer in the name of said Abraham H. Garrison, but which was not sworn to by him; that to said bill none of your orators were made parties, except your orator, Frederick Adams, as executor of said John I. Tuers, but who, supposing the only matter which could be contested in said suit was the mortgage to Baltye Demarest, then held by the complainant, Albert N. Van Voorhis, did not appear, but made default; that, in said suit, a decree was made for the sale of said mortgaged premises, and that, after paying the mortgage to the complainant, the sum of thirteen hundred and twenty-eight dollars and sixty-seven cents should be paid to said Abraham H. Garrison, as the amount due to him on the debt which it was alleged said deed was given to secure by way of mortgage: and thereupon, on application of your orator, Frederick Adams, said decree was opened and set aside, so far as relates to the payment of the proceeds of the sale, after paying the debt and costs of the complainant, with leave to contest said conveyance to John I. Ryerson and to Abraham H. Garrison, by filing an answer in said suit or by filing a cross-bill in this court.

And your orators further show, that said Abraham H. Garrison, after said decree, died, having made his last will in due form to pass real estate, and having appointed Abraham Demarest, Peter H. Pulis, and Peter H. Winter executors thereof, who have probate of the same, and that he thereby directed his said executors to sell and convey all his real estate.

And your orators further show, that they are unable to sell said real estate, on account of said conveyances so made by said John I. Tuers to said John I. Ryerson, and by said John I. Ryerson to said Abraham H. Garrison, and on account of said John I. Ryerson 10 giving out and pretending that the same are valid and were made in good faith, and that he intends to claim and take possession of said property under the same, and that they, or some person for them, have frequently and in a friendly manner applied to said John I. Ryerson, and to said Abraham H. Garrison, in his lifetime, and to his above named executors, since his death, and requested them to deliver up their said conveyances of said lands to them, and to reconvey said lands to your orators, for the uses declared in said will of said John I. Tuers, deceased, and your orators had well 20 hoped that they would have complied with such reasonable request of your orators, and delivered up said deeds to be cancelled, and have reconveyed said lands to your orators, in manner aforesaid, as in equity and good conscience they ought to have done; but now so it is, may it please your Honour, that said John I. Ryerson and Abraham Demarest, Peter H. Pulis and Peter H. Winter, executors, as aforesaid, of Abraham H. Garrison, deceased, combining and confederating together, and to and with divers persons, at present not known to your orators, but whose names, when discovered, your orators pray may be inserted herein, and they be made parties hereto, with apt and proper words to charge them, 30 and contriving how to injure and aggrieve your orators in the premises, refuse to comply with such requests of your orators, and sometimes give out and pretend that said deed, executed by said John I. Tuers to said John I. Ryerson, was given in good faith for the consideration and for the purposes therein mentioned and contained, and that said John I. Ryerson had possession of said lands under said deed, whereas your orators charge the contrary thereof to be true, and that said deed was not given for the consideration therein expressed, nor for any valuable consideration whatever, nor for the purpose of conveying said lands to said John I. Ryerson, 40 for his own use, but only to hold the same for the use of said John I. Tuers and his heirs at law or devisees, he supposing some such conveyance to be necessary to prevent the same from descending to his said wife at his death, and that said John I. Ryerson never had possession of said lands, in fact or in law. And at other times they admit, that said John I. Ryerson never had possession of said lands pretended to be conveyed to him, but that said John I. Tuers rented the same of the said John I. Ryerson at a yearly rent, and signed and executed a lease with said John I. Ryerson, whereby said lands were demised to him by said John I. Ryerson for 50

some term therein specified—whereas your orators expressly charge the contrary thereof to be true, and that no such lease was ever signed and executed by said John I. Tuers, and that if any such paper is in existence, purporting to be such lease, and to be executed by said John I. Tuers, it was obtained by fraud, and that said John I. Tuers was induced to sign it by said John I. Ryerson, under the representation and belief that it was an instrument that secured to him his property against the conveyance so executed by him to said John I. Ryerson, as aforesaid, and that if any rent is therein reserved, it was never demanded by said John I. Ryerson, or paid by said John I. Tuers, or any part thereof. And your orators expressly charge, that if any such lease is in existence, it was cunningly devised and contrived by said John I. Ryerson, under the pretence above mentioned, to obtain a recognition of his title, to be used after the death of said John I. Tuers, and not for the purpose of letting said land to him, or obtaining any rent for the same: all which actings, doings, and pretences of said John I. Ryerson and Abraham Demarest, Peter H. Pulis and Peter H. Winter, are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orators.

In tender consideration thereof, and inasmuch as your orators are utterly remediless in the premises, at and by the strict rules and in the courts of the common law, and cannot have adequate relief in the premises, save in this honourable court, and to the end that the said John I. Ryerson and Abraham Demarest, Peter H. Pulis and Peter H. Winter, executors of said Abraham H. Garrison, deceased, the defendants hereto, and each of them and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full, and perfect answer make to all and singular the premises, according to the best of their respective information, knowledge, and belief, as fully and particularly as if the same were here again repeated, and they thereto particularly interrogated paragraph by paragraph, and, more especially, that they may answer, set forth, and discover, according to their respective knowledge, information, and belief, whether said John I. Ryerson did pay to John I. Tuers the consideration mentioned in said deed from John I. Tuers to to him, or any part thereof, or any valuable consideration whatever, and, if so, at what time or times, at what places, in what sums, in what kind of money, funds, or valuables, in whose presence, and to what amount in the whole, such consideration was paid; whether said John I. Tuers did not convey the said lands to said John I. Ryerson only to prevent his said wife Margaret from having the same, or any part thereof, at his death, and did not so declare or give it to be understood to said John I. Ryerson, at the time of executing said conveyance, or before the time of executing the same; whether the said John I. Ryerson did not advise said John I. Tuers to convey such lands to himself or to Martin Van Houten, or to any other person, and whether he did not advise that such conveyance was necessary or proper to prevent the same from falling to the wife of said John I. Tuers; whether said John I. Tuers, at

and before the execution of said conveyance, had not become very intemperate, very much prejudiced against his wife, and his intellect rendered feeble by his intemperance; who were present when said conveyance to said John I. Ryerson was executed; where was the same signed; when and to whom was the same delivered; in whose custody has said deed been, from the execution thereof, until now; what has become of it, and where is it now; whether said John I. Ryerson ever had any possession of said premises, or any part thereof, and, if so, of what part, at what time or times, and for how long and in what manner, and in whose presence did he receive possession, and in what manner and by what acts did he have, keep, or maintain such possession; whether said John I. Tuers ever paid said John I. Ryerson any rent for said premises, and, if so, where, at what times, in whose presence, in what sums, in what funds, and how much in the whole; whether said Abraham H. Garrison did not, before said conveyance to him, know, believe, or suppose that said conveyance from John I. Tuers to John I. Ryerson was not in good faith and without consideration, and for the use of said John I. Tuers, and that said Tuers still used and occupied the same as his own; whether said conveyance was not offered to him by John I. Ryerson without his request; whether he did not at first refuse to receive the same; by whom was said conveyance to said Abraham H. Garrison left at the clerk's office to be recorded; whether said Abraham H. Garrison, when served with process at the suit of Albert N. Van Voorhis, as above stated, did not refuse to answer or set up any claim by virtue of his said deed; and did not said John I. Ryerson, or some agent employed by him, procure said deed, and employ counsel to file an answer in the name of said Garrison.

And to the end that said deed from John I. Tuers to said John I. Ryerson may be declared void and of no effect, as against said John I. Tuers and your orators, and that it may be decreed that the use of the lands therein conveyed resulted to said John I. Tuers forthwith, and vested the same in him in fee-simple, and that said defendants may be decreed to reconvey said lands to your orators, or one of them, for the use of the will of said John I. Tuers, and that your orators may have such other and further relief as the nature of the case may require, as to your Honour shall seem meet, and as shall be agreeable to equity and good conscience—may it please your Honour, the premises considered, to grant unto your orators the state's most gracious writ of subpœna, issuing out of and under the seal of this honourable court, to be directed to the said John I. Ryerson and Abraham Demarest, Peter H. Pulis and Peter H. Winter, executors of the last will of Abraham H. Garrison, deceased, therein and thereby commanding them, and each of them, at a certain day and under a certain penalty, therein to be expressed, to appear before your Honour in this honourable court, then and there to answer the premises, and to stand to, abide by, and perform such decree therein as to your Honour shall seem

meet and as shall be agreeable to equity and good conscience. And your orators, as in duty bound, will ever pray, &c.

A. O. ZABRISKIE,
Solicitor and of counsel with complainants.

To this bill John I. Ryerson put in the following answer:

That he admits that John I. Tuers, late of the county of Bergen, deceased, in his lifetime, and on and before the first day of May, in the year of our Lord one thousand eight hundred and twenty-three, and for some years before that time, was seized in fee-simple
10 of the farm, as stated in the complainants' bill; that, at that time, and for many years before, the said John I. Tuers had been married to Margaret Tuers, his then wife, and who is now his widow, and they, having no children, lived very unhappily, a part of the time with her and at some period has lived separate from her, and, having no relations in whose interest he felt any anxiety, he determined that his estate should not go to his wife or to any of either her or his relations; and the said John I. Tuers, being at that time somewhat in debt, applied to this defendant, and offered to give to this defendant a deed for his said property, being the farm mentioned in the complainants' bill, provided this defendant would pay
20 the debts of him, the said John I. Tuers; that this defendant did not at first consent to the said agreement, whereupon the said John I. Tuers, without the knowledge or consent of this defendant, procured a deed to be drawn and acknowledged, and brought the same to this defendant, and delivered it to this defendant, and insisted upon this defendant's putting it upon record; that thereupon the said John I. Tuers went away, leaving the said deed in this defendant's hands; but this defendant denies that the said John I. Tuers, either at this time or at any time afterwards, proposed to
30 give the said deed to this defendant, or that he was ever advised by this defendant so to do, because, in the event of his wife's surviving him without issue, she would inherit the whole of his estate, or that he did it for the purpose of securing the said estate to his own relations, but, on the contrary thereof, the said John I. Tuers declared to this defendant that he would not leave his property to either his own or his wife's relations; and this defendant admits that the consideration stated in said deed was three thousand dollars, but this consideration was put in as a nominal matter, and
40 this defendant was not to pay the said sum of three thousand dollars.

And this defendant, further answering, admits, that the said John I. Tuers, from the date of said conveyance until he died, continued in possession of the said farm.

And this defendant, further answering, saith, that the said deed remained in this defendant's hands for a considerable period; that the said John I. Tuers repeatedly requested this defendant to put the said deed on record; and that, on or about the twentieth day of August, in the year of our Lord one thousand eight hundred

and thirty-one, the said John I. Tuers came to this defendant, and insisted that this defendant should accept the said deed and pay his debts, declaring that his family should not have his property, and that if this defendant would not take the deed and pay his debts, or relieve him from trouble on account of his debts, he would give a deed to some stranger; that, being thus urged by the said John I. Tuers, this defendant agreed to and with the said John I. Tuers to take a deed for the said property, and to pay the debts of the said John I. Tuers which he then owed, except a debt of one hundred dollars to one Baltye Demarest, for which said John I. Tuers had given a mortgage on the said farm, and which debt, being an encumbrance on the said property, this defendant agreed to pay the interest upon, and, if necessary, to pay the principal, if it should be required, so that the said John I. Tuers should not be troubled with the same; that thereupon the said John I. Tuers and this defendant agreed to the same, and this defendant agreed to allow the said John I. Tuers to live upon the said property, and to execute to him a lease, so as to permit the said John I. Tuers to occupy and enjoy the same during his natural life, as herein after stated; that then the said John I. Tuers and this defendant agreed to go to one Garret Van Dien, and see whether the deed already given was sufficient, and if not, to get him to draw a new deed and lease; that thereupon the said Garret Van Dien informed said John I. Tuers and this defendant that the old deed was as good a deed as he could draw, and they then instructed the said Van Dien to draw a lease from this defendant to the said John I. Tuers; which lease the said Van Dien then drew, and this defendant then signed and sealed the same, and which lease is in the words and figures, or to the purport and effect following, that is to say:—"This indenture, made the twentieth day of August, in the year of our Lord one thousand eight hundred and thirty-one, between John I. Ryerson, of the township of Franklin, in the county of Bergen, and state of New Jersey, of the first part, and John Tuers, of the township, county, and state aforesaid, party of the second part, for and in consideration, that the said John Tuers must pay the sum of eighteen dollars yearly, and every year, during his natural life unto the said John I. Ryerson, party of the first part, the receipt whereof is hereby acknowledged, have granted, bargained, remised, released, and confirmed unto the said party of the second part, in his actual possession now being, and to him for and during his natural life, all that certain tract or lot of land and premises situate, lying, and being in the township of Franklin, in the county of Bergen, and state of New Jersey, bounded, northerly, by lands of the heirs of Lawrence Ackerman, deceased, and the heirs of Crines Van Houten, deceased; and, southerly, by the lands of Lawrence Ackerman, deceased, and Lawrence J. Ackerman; westerly, by lands of Ryer Van Houten and James Demarest; and, easterly, by lands of Daniel Geroe and lands of the heirs of Lawrence Ackerman, deceased, and the orchard, containing about one hundred and eighteen acres, be the same more or less, except thereout the privilege to the said

John I. Ryerson, party of the first part, to cut and carry away timber, at any time he sees fit, from said premises—together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, whatsoever, of the said party of the first part of, in, and to the above bargained premises, with the hereditaments and appurtenances—to have and to hold the said lot of land and premises, above described, to the
 10 said party of the second part, for and during his natural life, except thereout as is herein before excepted; also to pay the aforesaid sum of eighteen dollars yearly, and every year, during his natural life, as it is herein before expressed,”—as in and by the said indenture of lease, sealed with the seal of this defendant, when produced, will fully appear, and to which, for greater certainty, this defendant begs leave to refer.

And this defendant further saith, that the said John I. Tuers then and there requested the said Garret Van Dien to keep the said lease for him, and requested him, also, to take the said deed to the
 20 clerk's office to be recorded; and the said Van Dien accordingly took the said deed to the clerk's office, on the thirtieth day of the same month of August, aforesaid, and the same was then recorded in the clerk's office of the county of Bergen, in Liber G. 3, of Deeds, pages 54, 55, and 56; and the said Garret Van Dien kept the said lease in his custody, and that it remained in his custody at the death of the said John I. Tuers; and this defendant insists that the whole of said proceedings were done in good faith and bona fide.

And this defendant further saith, that, after receiving the said deed
 30 as aforesaid, and executing the said lease, he, in pursuance of said agreement and purchase of said property, as aforesaid, commenced paying the debts of the said John I. Tuers, and that, at the time of receiving the said deed, the said John I. Tuers was indebted to John I. Ryerson, jun., on a promissory note, bearing date the eleventh day of June, eighteen hundred twenty-nine, for seventy dollars, with interest, and, also, on another note for thirty dollars, with interest, dated the first day of November, of the same year, and, also, on another note for twenty dollars, with interest, dated the twenty-eighth day of
 40 March, eighteen hundred and thirty, and, also, the said mortgage before mentioned, and some small debts beside; that this defendant took up the said three notes, and paid, at first, three years' interest on the said mortgage, and afterwards, as he thinks, two years' interest further on said mortgage, but, for greater certainty, this defendant begs leave to refer to the endorsements on the same; and that this defendant has paid all the debts of the said John I. Tuers, so far as he has heard of them, except one claim, which the said John I. Tuers said was not an honest claim, and which he would not allow this defendant to pay, and which was an old and outlawed claim, and which the holder of the claim never thought fit to prosecute.

50 And this defendant, further answering, admits, that the said John

I. Tuers continued to occupy the said farm, under said lease, until he died; and that this defendant did not attempt to exercise any control over said property during the lifetime of the said John I. Tuers, except that this defendant has, at different times during the lifetime of the said John I. Tuers, entered on said farm, and cut and carried away wood and timber from the said farm, according to, and in pursuance of the right reserved to this defendant in the said lease; and the said John I. Tuers never paid any rent on said lease, and this defendant never called on him for any rent.

And this defendant, further answering, admits, that the said John I. Tuers did lease a part of the said farm to John S. Forshee for fifty years, but that the said lease was made to the said John S. Forshee on the twelfth day of March, in the year of our Lord one thousand eight hundred and thirty-one, and before this defendant became the owner of the same, as before stated; and that the part so leased to the said John S. Forshee contained seven or eight acres.

And this defendant, further answering, saith, that, being indebted to one Abraham H. Garrison in a sealed bill and a promissory note, given by this defendant to the said Abraham H. Garrison, the sealed bill for the sum of nine hundred and ninety-one dollars, with interest from date, and bearing date the first day of May, eighteen hundred and thirty-four, and the promissory note for fifty dollars, with interest, bearing date the twentieth day of January, eighteen hundred and thirty-seven, the said Abraham H. Garrison wished this defendant to give him security for the said debt, and this defendant, in order to secure the said Abraham H. Garrison, on the eighteenth day of October, eighteen hundred and thirty-seven, conveyed the said land and premises, excepting thereout the seven acres, more or less, leased by said John I. Tuers to John S. Forshee, as before stated; but this defendant insists that the said conveyance to Abraham H. Garrison was intended as a mortgage, and that this defendant is entitled to the proceeds of the sale of the said property, after paying the mortgage of Albert N. Van Voorhis and the amount due to the executors of Abraham Garrison.

And this defendant, further answering, admits, that the said John I. Tuers executed a mortgage to Baltze Demarest, as stated in the complainants' bill, and that the said mortgage has been assigned to Albert N. Van Voorhis, and that he filed his bill to foreclose said mortgage, as is in the complainants' bill stated.

And this defendant, further answering, admits, that after a decree was entered in said suit, the said Abraham H. Garrison died, leaving a last will and testament, and having appointed Abraham Demarest, Peter H. Pulis, and Peter H. Winter executors of said will, who have proved the said will, and that he thereby directed his said executors to sell and convey all his real estate, as this defendant has heard, but he has no knowledge of this, except from hearsay.

And this defendant, further answering, admits, that the said John

I. Tuers is dead, and that he had no property at the time of his death, so far as this defendant knows; and this defendant has heard, and believes it to be true, that the said Frederick Adams, during the last illness of the said John I. Tuers, when he was enfeebled by age and infirmity, represented to the said John I. Tuers that the deed he had given to this defendant was invalid, and that this defendant had absconded and left this part of the country, and wished him to make a will, giving to him, the said Frederick Adams, some part of his property; that the said John I. Tuers for
 10 a long time refused, stating that he had already conveyed the same to this defendant, but that, finally overcome by the importunities of the said Frederick Adams, who was not related to the said John I. Tuers, but who married a distant relative of the said Margaret Tuers, this defendant has heard that the said John I. Tuers did make a will, as stated in the complainants' bill; but this defendant insists, that the said will of the said John I. Tuers, so far forth as regards the said property of this defendant so conveyed by the said John I. Tuers to this defendant, is inoperative, because the
 20 right of the said John I. Tuers in the same, being for his natural life, was determined by the death of the said John I. Tuers, and that neither the said Frederick Adams nor any of the complainants have any interest in the land so conveyed by the said John I. Tuers to this defendant.

And this defendant does not know whether Charity Dealing is the wife of William Dealing, or that she is the daughter of Rachel, wife of Michael Moore, or that she is the only descendant and heir at law of Rachel, wife of Michael Moore, or that Jacob Fredericks is the son of Mary, wife of Jacob Fredericks, and the only
 30 descendant and heir at law of Mary, wife of Jacob Fredericks, or that Jacob King is the son of Jacob King, deceased, or that Benjamin King was the son and only descendant and heir at law of Leah, wife of John King, except from hearsay and from the statements made in the complainants' bill.

And this defendant, further answering, saith, that he has never had possession of the lands contained in said deeds, but that, shortly after the death of the said John I. Tuers, this defendant took his deed to his counsel, and advised with him as to the mode of recovering possession of the said lands; and that his counsel, understanding that the legatees and devisees under said will, or
 40 some one of them, intended to contest the validity of this defendant's deed, advised this defendant that the better way would be to get Mr. Abraham H. Garrison to foreclose his mortgage, and make all the said persons parties, so that the rights of all the said parties could be determined in such suit, and the question put at rest for ever, whereupon the said Abraham H. Garrison sent his papers to the said counsel; but, owing to the difficulty of ascertaining who were the legal devisees and legatees mentioned in said will, and where they resided, the said information could not be obtained before the said Albert N. Van Voorhis filed his bill to foreclose his
 50 mortgage, and that this was the only reason why this defendant did not proceed to get possession of the said farm.

And this defendant, further answering, saith, that this defendant, being justly and truly indebted to the said Abraham H. Garrison, in two promissory notes, one for \$991, and some interest, and the other for \$50, and for which the said Abraham H. Garrison had no security, this defendant, in order to secure him for the said sums of money, executed to him a deed for the said property, but which it was agreed, between the said Abraham H. Garrison and this defendant, should be held as a mortgage only, and which bears date the 18th day of October, A. D. 1837, and which was recorded on the 9th day of October, A. D. 1838, in the clerk's office of Bergen county; but this defendant denies that the said Abraham H. Garrison refused to receive said deed as security, but insists that he did receive it, and held it until his death, as security for his said debt. 10

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 knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this honourable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained. 20

A. S. PENNINGTON,

Solicitor and of counsel with defendant, John I. Ryerson.

Answer of Demarest and others :

That they admit that John I. Tuers, late of the county of Bergen, deceased, and on and before the first day of May, in the year of our Lord one thousand eight hundred and twenty-three, and for some years before that time, was seized in fee-simple of the farm, as stated in the complainants' bill; that at that time, and for many years before that time, the said John I. Tuers had been married to Margaret Tuers, his then wife, and who is now his widow; and these defendants have heard, and believe, that they, having no children, lived very unhappily together, and that they at one time were separated. 30

And these defendants, further answering, say, they admit that they have heard that the said John I. Tuers many years ago, but at what time is not known to these defendants, conveyed the said farm to the said John I. Ryerson in fee-simple; but as to the time of executing or delivering said deed, or of the consideration of said deed, these defendants have no knowledge, nor have they any knowledge of what the said Abraham H. Garrison had heard or knew about the same, at the time of his receiving the said deed from the said John I. Ryerson; but these defendants have heard the said Abraham H. Garrison, since he so received the said deed, and while he held the same, say, that he held the said deed as 40

security for a sealed bill and a note given to him by the said John I. Ryerson; and these defendants insist that the said Abraham H. Garrison, at the time he so received the said deed as security for the said debt, was a bona fide holder of the same, without notice of the consideration of said deed.

And these defendants, further answering, say, that they have heard and believe that the said deed was given by the said John I. Tuers in good faith and bona fide, and that the said John I. Tuers, in order to secure to himself the use of the said property during his life, took from the said John I. Ryerson a lease, which, by its terms, gave to the said John I. Tuers the right to use and enjoy the said farm during his natural life.

And these defendants, further answering, say, that they believe the said John I. Tuers remained in possession of said farm until his death, and that some time after his death the said Abraham H. Garrison sent his papers to counsel to foreclose his said deed, considering it as a mortgage, and that they have heard that the said John I. Tuers made a will during his last illness, as set forth in the complainants' bill; and these defendants have heard that the legatees and devisees in said will intended to contest the validity of said deed from said John I. Tuers to said John I. Ryerson, and that the said Abraham H. Garrison put his papers in the hands of counsel to foreclose his said mortgage, so as to settle all questions which might be raised regarding the validity of said deed; but as to the terms of said will, or as to the names of the legatees and devisees in said will named, these defendants have no knowledge, except from hearing, but leave the complainants to prove the same, as this honourable court shall direct.

And these defendants, further answering, admit, that they have heard that the said deed from the said John I. Tuers to the said John I. Ryerson was recorded, as is in the complainants' bill stated, and that they have heard and believe that it was left in the clerk's office to be recorded by Garret Van Dien, esq., at the request and by the direction of the said John I. Tuers.

And these defendants, further answering, say, that the sealed bill and note, before mentioned as being the debt for which the said deed to the said Abraham H. Garrison was given to secure, are now in these defendants' possession; that the said sealed bill bears date the first day of May, eighteen hundred and thirty-four, given by said John I. Ryerson, whereby, for value received, he promised to pay, or cause to be paid, to the said Abraham H. Garrison, or order, the just and full sum of nine hundred and ninety-one dollars, with lawful interest from the date until paid, three hundred and forty dollars of the said sum to be specie, and which was sealed with the seal of the said John I. Ryerson; and that the note, being the other part of said debt, was dated the twentieth day of January, eighteen hundred and thirty-seven, given by said John I. Ryerson, whereby, for value received, he promised to pay, or cause to be paid, unto the said Abraham Garrison, or order, the just and full sum of fifty dollars, on demand.

And these defendants, further answering, say, that they have heard that the said John I. Tuers was at times intemperate, but whether he was so at or about the time the said deed was given by said John I. Tuers to John I. Ryerson, is not known to these defendants.

And these defendants, further answering, say, that they have never heard, save from the complainants' bill, that the said John I. Tuers gave the said deed to the said John I. Ryerson under the impression or advice that if he should die without issue his wife would inherit his estate. 10

And these defendants, further answering, say, that they do not know whether the said John I. Ryerson made the said deed to the said Abraham Garrison without his knowledge; but these defendants know that the said Abraham Garrison held the said deed in his hands for many years before his death, and at the time of his death the said deed was in his counsel's hands.

And these defendants, further answering, say, that they have never heard, save from the complainants' bill, that the said Abraham H. Garrison refused to receive the said deed, either as payment or collateral security, but these defendants have heard him frequently say that he held the same as security for his said debt. 20

And these defendants, further answering, say, that they have heard that Baltye Demarest held a mortgage given by said John I. Tuers, and that the same was assigned to Albert N. Van Voorhis, but these defendants had never heard of the same, until the subpoena was served upon the filing of his bill in chancery; and these defendants have heard that said Abraham H. Garrison filed his answer in said suit.

And these defendants, further answering, say, that after the decree in said cause, the said Abraham H. Garrison died, leaving a last will and testament in due form to pass real estate, and that he appointed these defendants executors of said will, and that they have probate of said will, and that in his said will he directed his executors to sell his real estate. 30

And these defendants deny all unlawful combination and confederacy, in said bill charged, without that that any other matter or thing material for these defendants to make answer unto, and not herein 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 honourable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained. 40

AARON S. PENNINGTON,

Solicitor and of counsel with the defendants.

WITNESSES EXAMINED ON PART OF THE DEFENDANT.

William H. Winters, a witness on the part of the complainants, saith—I am sixty-eight years old, and have always lived in Franklin township. I knew John I. Turse in his lifetime, knew him more than thirty years before his death; in May, 1823, I knew him, and heard of his having given a deed to John I. Ryerson, the time when I do not know. At that time John I. Turse was a very intemperate man, had been so all along; he said he must go to hell, and that he did not care what he was doing. About, or at that time, he was frequently drunk, so that he was not able to do any thing. After the deed was given he got a little better, did not drink so much; but this was some time after giving the deed. At the time, and before giving the deed, he was very generally drunk; I lived about a mile from him at that time. Turse lived about one half mile from Ryerson's. At that time John I. Ryerson kept liquor to sell, and Turse went there to get his liquor. After the hubbub in his family, and his wife went to Paterson, Turse went to Ryerson's, and staid there. Ryerson kept a grocery, and sold liquor; I have seen Turse drinking there, and that he had too much liquor; I don't know that Turse lived there, but saw him there off and on. Ryerson told me that Turse was not fit to go to church, and he had given him a new suit of satinet, which his daughter Jenny made for him. Turse did not stay as much as a year at Ryerson's. While at Ryerson's he was not a beast in drinking, that I saw; not so that he laid by it; but he had too much liquor. He was rash in talking; can't say whether he was worse while there than he had been before. I have heard say that Turse, before this, had a quarrel with his wife, and she had left him, and gone to Lake's, at Paterson. Turse and his wife, as long as I knew them, were quarrelling with each other.

30 I know the farm that Turse lived on; he lived on the farm till he died, and for as long back as I can remember; since his death, his widow and Abraham Lake have lived on it, and still live there. I I never heard John I. Ryerson say for what Turse had given him the deed; but he talked to me about it afterwards one day, on my field, and told me he had a good deed for the property from John Turse, as good as any body's deed, but did not say whether Turse had given it, or sold it to him. I never heard that he had given any thing for the deed; can't say how long after the deed was given, it was when Ryerson told me this on my field, whether ten years or

40 how long after. At that time Ryerson told me that his children might as well have it as Lake's children, as they always had a nest there to eat him up. [The solicitor objects, on the part of the executors of Abraham H. Garrison, to all the declarations of Mr. Turse or of John I. Ryerson; also objects, on the part of John I. Ryerson, to any declarations or conversations of John I. Turse: this objection to extend to all subsequent testimony that may be offered.] I heard John I. Turse say that he had given Ryerson the deed, but it was good for nothing, and he could get it back again at any time he wanted; this was towards the close of his life, a

a year or two before his death, a little while before he died, and he was by his senses when he told me. Never knew that Turse was out of his senses, except when he was drunk, then he was every thing. When perfectly sober he was a pretty good neighbour, and his mind then was good, so far as I know. When Turse was in liquor he was very wild, cursed and swore, and talked at the highest rate. When he began to drink, sometimes he took a long frolic, and staid drunk as long as he could get liquor, some shorter and some longer. I don't know, of my own knowledge, that he was in one of his drunken frolics at the time his wife left 10 him, and he went to Ryerson's.

Being cross-examined, deponent says—John I. Turse never had any children at home, or any where else, that I ever heard of. I don't think he was over eighty years of age when he died, but he was between seventy and eighty. I cannot say whether the hubbub occurred in the family of Turse, when his wife went to Paterson, was before or after I heard of the deed being given. I cannot say that at that time Turse moved to Ryerson's, nor that he made his home there at all, but he was there sometimes. I don't know of his ever staying there three days in succession, as I was not there 20 to see him every day. Some years afterwards he got quite over his drinking, he became quite a man, and talked quite like a different man; he lived a different life, it appeared, from what he had done. From that time on, he remained quite a different man; could not call him a drunken man from that time. I cannot say that he was drunk when the deed was given, as I was not present. Turse could get liquor always on credit when he wanted it, as I suppose, for he had a good property. I don't know that he could always get to it.

Lawrence John Ackerman, a witness on the part of the com- 30 plainants, saith—I am fifty-six years old, and have always lived in Franklin township. I knew John I. Turse as long as I can remember; I lived about one half mile from him till within nine years last past. I understood that Turse had given a deed to Ryerson, but the deed may have been given six months, perhaps, before I heard it. At that time, when the deed was given, Turse was in the habit of drinking quite some, and both before and after that. When he was a drinking in his frolics, he was quite rough; when he was in the way of drinking, he was like other people, when half drunk, not capable of doing business. About the time of the giving of 40 the deed, he was not half of the time drunk, but he took hard frolics. He was sober a good deal more than half of the time. I saw him buy liquor wherever he happened to be when he wanted it; he bought it whenever he had a chance. I do not remember having ever seen him buy any liquor at John I. Ryerson's. Turse and his wife were quite often in trouble, disputes between them. I think his wife was away at Paterson one time, and think it was after the deed was given. I know there was once a vendue of personal property at Turse's, but who was the manager I cannot tell. I don't know whether Ryerson collected the money of the vendue; 50

Turse's wife was there at the time of the vendue; I think this vendue was before the deed was given. At the vendue there was some of the household furniture sold, cannot say how much; I don't remember that any thing else, except what was in the house, was sold. I cannot tell that the vendue was while he and his wife were separated, but I know she was home at the vendue. It was said at the vendue, among the people, that the vendue was made to spite and oppose his wife. Ryerson was at the vendue; he was around there; I don't know that he had any management of any consequence; 10 he was helping hand out the things. I have heard Turse tell Ryerson how his wife was; and Ryerson answered that if he had a wife like that, he would kick her out of doors. This was about the time of the vendue, but not at the vendue. After the vendue Turse was sometimes home, sometimes at Ryerson's, and running about a good deal. I cannot tell whether or not Turse was in liquor at the time of the vendue. At the time of the vendue, and before and after, Ryerson and Turse were together a good deal, and Ryerson called him "Uncle John." He was not Ryerson's uncle. During this time, while Turse was in a frolic, he was a man 20 of bad disposition, and would do mischief to any one he had a grudge against. Turse was a man easily persuaded to any thing, and to all appearance, I suppose, he was a good deal under Ryerson's influence at the time. Turse never told me that he would put his property out of his hands, so that his wife could not get it; I never heard him make any threats about her. I don't know that Mrs. Turse was kept out of doors at the time of the vendue, but I know she was opposed to the vendue. About eleven years ago, while I was at work mowing grass, Turse came by me, and, after talking, I told Turse he might rather have kept his property in his 30 own hands; he answered, that that was all nothing, as they had an article between them, so that he could get the deed back again at any time he wanted to do so. He did not tell me why he had done it.

And being cross-examined, deponent says—When Mr. Turse was free from liquor, he was a sensible man, and capable of doing business. He was then a good-natured man. When he was in liquor he was foolish, and would do almost any thing. I have never known him whenever in liquor to make bad bargains in buying and selling property. He was not in the habit of buying and selling. The biggest part of the neighbours were at the vendue. At the 40 time of the conversation between Turse and Ryerson, when Ryerson told him "that if he had a wife like that he would kick her out of doors," Turse told him that his wife was carrying things to the neighbours, such as bedding out of the house, blankets, &c. He also complained that she was mischievous; that she did not give him good answers; that she quarrelled with him, and had disputes with each other; that he could not live in peace with her. He did not complain to Ryerson that his wife was keeping with another man; I never heard him complain of that. I have heard a story of that kind in the neighbourhood, that she kept with another man, 50 but never heard Turse had complained of it.

Being re-examined in chief, deponent saith—I have heard the story from others besides Ryerson, about Mrs. Turse keeping with another man, and I have also heard Ryerson talk about it. I have heard this story from others besides those to whom Ryerson had told it.

Being again cross-examined, deponent saith—That Ryerson did not tell me that he heard Turse speak about his wife in this way.

Elizabeth Van Houten, a witness on the part of the complainants, saith—I am sixty-seven years old, and have lived in Franklin over fifty years. I lived about a mile from Turse, and was well acquainted with him the whole time. He was a very intemperate man, many a night he has laid on the floor at our house. I heard of the deed being given, the same year he was in the habit of getting drunk. That all happened when he was a drunken man; I don't mean he was drunk at the time the deed was given, because I know nothing about that. About that time he was at my house frequently, was in the habit of coming there. A fortnight before Turse died I was there at Turse's; he told me that he now felt so well satisfied in his mind that he had made his will; that he wanted to send for Mr. Fredericks, but had no chance. I asked him how he could make a will? He said, why? and I said to him, don't Ryerson own it? The devil, says he, I have fixed it just as I wanted. Then I asked him if Ryerson had not the deed? He said no, what Ryerson had was good for nothing; that Ryerson knew that the place belonged to him (Turse), and that he had willed it away. Afterwards I told this conversation to Mr. Ryerson, and he said that old Turse would take a good deal, but said nothing further about it. Turse lived on the place, and appeared to use it as his own up to the time of his death, the same as before the deed was given, as far as I saw. I was present at Turse's vendue. Household furniture was sold. I don't know who held the vendue, but at the time it was said and understood that William Voorhis, who then lived on the place, and Mr. Ryerson, held it. Ryerson was active about the vendue, and was giving directions there. I think the vendue was before the deed was given, but cannot say how long. It was held while Turse and his wife were separated, while she lived at Lake's, at the Ponds. She was at the vendue; she got in the kitchen, but not in the house. The neighbours kept her out. Mr. Ryerson kept her out of the house; Mr. Ryerson was the only one kept her out. At the time Mr. Turse was very much opposed and violent to his wife. Turse and his wife lived apart a year or a year and a half. When Turse was in his frolics he would talk that, out of his spite, he would put his property out of his hands, so that his wife could not get it; I expect he meant out of spite to her and her friends. At the time of the vendue, I believe Turse was partly sober, so that he knew what he was about, not very bad in liquor that day. About the time of the vendue, and the giving of the deed, I very seldom saw Turse entirely sober. At one time Turse talked to my husband about giving him a deed for the place, that he would sell it to him, not give it to him; and he said

that he could not do it. Don't remember that he said he wanted to do it to keep his wife out of it. He said he would sell it, and frolic it up, so that no body should have any thing of it, but he would have all the good of it himself. About the time the deed was given I have known him to go through the woods at our house, and get lost, and he would lay and halloo, and our folks would go and get him right again. Mr. Van Houten, my husband, is dead.

Being cross-examined, deponent saith—When Mr. Ryerson kept Mrs. Turse out of the house, he did not take hold of Mrs. Turse to
10 put her out. I did not hear him tell her that she should not come in; I did not see Ryerson do any thing to her, but the door was shut. I did not see him do any thing, nor say any thing to her, to prevent her being in the room.

Being again re-examined in chief, deponent saith—I heard Mrs. Turse at the time complain that she could not get into the house; she said that John Ryerson and William Voorhis kept her out. I did not hear Ryerson that day say any thing to Mr. Turse about keeping her out of the room. At that time Turse was intimate with Ryerson, they were very great neighbours.

20 *Peter S. Demarest*, a witness on the part of the complainants, saith—I live in Franklin, in the neighbourhood of the Ponds. I knew Abraham H. Garrison in his lifetime, now deceased. I heard him say that John Ryerson offered to give him a deed for the Turse property. He told me this not longer than four or five years ago, and said that Ryerson owed him some money, and he was going South, and this was the only way that Ryerson could secure him for the money, by giving the deed; that Ryerson had owed it some time. He said that he did not take it, but had told Ryerson that he could leave it with his wife, Mrs. Ryerson, if he was going
30 away. He had not taken the deed from Mrs. Ryerson at the time of this conversation with me, and he said he thought the deed was as safe with Mrs. Ryerson as with him; that he had the note, and they might keep the deed, that he did not want it. Garrison has told me that he did not want the Turse place, that he would rather have the money than the place. Ryerson did go South, was gone a year or two, and returned three years ago last spring. After Ryerson's return, I heard Garrison say that the Turse property ought to be taken care of, but I don't know who he wanted to take care of it. I have heard Garrison speak several times of the deed, and have
40 heard him say that the deed from Turse to Ryerson was a good deed. I have heard Garrison say that Ryerson had had the deed from him to Garrison there for him, and wanted to deliver it to him, but that he did not take it. I have heard Mr. Garrison say this more than once, but whether Ryerson had the deed there more than once, I don't know. I have heard Mr. Garrison say this within three years. I have heard him say that he did not want to spend any of his money to get the place; that all he wanted was his own money, that he had lent. This was after John Ryerson had come back the first time. I should say that the Turse place was worth
50 from \$1500 to \$2000, but don't very well know the situation of the place.

Being cross-examined, says—I do not know whether Garrison ever refused the deed absolutely, but he has told me that he did not want the deed nor the place, that all he wanted was his money.

Being re-examined in chief, saith—That three years ago this last spring, I was in Pennington's office, at Paterson, with Mr. Ryerson and his two sons-in-law, when Mr. Pennington had a paper in his hands, and some of them three said in the office, that that was the deed from Ryerson to Garrison.

Isaac J. Storms, a witness on the part of the complainants, saith—I am forty-six years old, and have always lived in Franklin, near the Turse's place, about one-quarter of a mile from it. I have always known Turse well, since I can remember. About the time of the giving of this deed he was in very bad habits, quite an intemperate man. I recollect of his being separated from his wife, and having a vendue to sell his personal property; I cannot say what time it was. I heard of Turse giving the deed to Ryerson at the time it was done; I believe this was about the time he was separated from his wife, or when he had the vendue. At that same time he was quite an intemperate man; many a time at night he came to our house, and would by all means go home, I would take him through the woods, as he could not get home. About that time, and for some time before and afterwards, he was more intemperate than he ever was, either before or since, and I did not during that time see him much sober. I saw him quite often, and pretty much all the time I saw him he was drunk. I saw him very often; can't say that I saw him every day, but we were close neighbours and on good terms. When drunk, I should not think he was fit to do any business; he was at such times a very bad man. Ryerson kept a store in the neighbourhood to sell liquor. I lived nearer to Turse than Ryerson did, he lived about a quarter of a mile from Turse. I have seen Turse at Ryerson's getting liquor, and saw him drink it there, but can't say that I ever saw him laying drunk there. He did not often get down. While Turse lived separate from his wife, I cannot say that he had his home at Ryerson's; he lived at different places, and often saw him at Ryerson's. I don't know that Ryerson is any connection of Turse. Turse was separated from his wife about one and a half years, and during this time Turse was away at Fredericks', in New York state, as he told me. Who took him up there I cannot say; Turse never told me that Ryerson took him. I was present at his vendue, but cannot tell who conducted it; there was a good deal noise made there. Mrs. Turse made a good deal of noise, and said they were selling her things that she got of her father, and she would not have it. I don't know whether Mr. Ryerson took an active part. I did not see Mr. Turse much out of doors that day, and can't say how he was. I think the deed was given after the vendue. As far as I know, Turse always continued in possession of the property up to the time of his death, and used it as his own. Ryerson has never had possession, nor made the least use of this property, that I know of. I came into the possession of a part of this same property after the deed for

it was given to Ryerson, and have since held it, and still hold possession of it. I bought it of Abraham Lake, who had bought it, he said, of Turse.

Being cross-examined, deponent saith—I bought it of Lake, about ten or twelve years ago, more or less. My deed is not recorded. Lake had been in possession a few years when I bought it of him. I know Frederick Adams, the complainant; he is no relation of Mr. Turse's, that I know of. When I have taken Turse through the woods, as above stated, I can't say where he came from, as it was night. He might have come from Ryerson's, or from another direction.

Being re-examined in chief, saith—I have heard Turse speak of Ryerson's cutting wood on that place; he was very mad about it, and said it must be the last, or he would see what he had to do about it. This was not very long ago, might be five years ago, more or less.

Isaac J. Storms' testimony is objected to by defendant.

Albert J. Storms, a witness on the part of the complainants, saith—I live in Franklin, less than a quarter of a mile from Turse's; 20 have always lived there. I was forty-nine years old the 25th of April last, and knew Mr. Turse well in his lifetime. I heard of this deed to Ryerson, at the time it was said to be given. I recollect the vendue, and of his being separated from his wife. This was at the time of the vendue. The vendue was a little before I heard of the deed being given. Ryerson told me that he had the deed, and that it was as good a deed as any one's. He has told me this more than once, but I don't remember the time. He told me this within three, four, or five years after the deed was given; I am certain of this; told me more than once. At that time he did not tell me upon 30 what condition he got Turse's farm. About the time the deed was given, Turse's habits, as to temperance, were very bad; he was more intemperate than any one I have ever known about our place. I saw him often, not every day, sometimes more than once a week, sometimes not so often. At that time, whenever I saw him, he was generally out of the way, sometimes he was pretty reasonable. I cannot say whether he was ever quite sober, as he was a very drinking man. When in liquor, he was a bad man, cursed and swore, and went on at the highest rate that I ever saw any one. Up to the time of his death Turse continued in the possession of 40 the property, using it as his own. From his habits, during all the time about of his giving the deed and of the vendue, I did not think he was fit to do any business. I believe he and his wife had a good deal of differences between them. At this time he was a good deal with Ryerson, at his place. I have seen him at Ryerson's store, but cannot say that I have seen him drinking there.

And being cross-examined, says—When he was sober he might be capable of doing business, but it was hard to find him sober. A few years after this, he became quite a sober man, and, as far as I know, he continued so till his death. When he was sober, it seems 50 he knew enough to do business, but he had no learning.

James I. Ackerman, a witness on the part of the complainants, saith—I live within half a mile of Turse's place, in Franklin; I am nearly forty-four years old, and have always lived there. I knew Mr. Turse the time of the vendue and the separation from his wife—they were about the same time. I have heard Mr. Ryerson say he had a deed from Turse; I cannot say whether he told me before the separation. It was about the time of the disturbance that the deed came out. Ryerson told me this about twenty or twenty-five years ago, about the time he got the deed, or soon after. He told in my presence that he had got a deed of Mr. Turse, 10 and it was a good one, but that he did not want his property; he did not say how Turse came to give him the deed. I can't say whether Ryerson told me this after Turse and his wife lived together again; I cannot recollect whether the separation was after the deed was given. I don't know whether there was any disturbance about the deed being given; Ryerson said that Turse could have the deed any time, that he did not want it. At that time Turse was not a sober man, but a very intemperate man. I saw him frequently, but not every day; he was hardly ever sober when I saw him about this time. I scarcely ever saw him about that 20 time when he was in a fit condition to do business, to convey away his property. When in that situation I have heard Turse talk pretty rough about his wife; heard him say that he would put his property away, that he did not care much how it went. I heard Mr. Ryerson tell Mr. Turse that if he had such a wife he would kick her, or that he would kick her out of door; this was in the time of the disturbance, while they were separated, but can't tell when exactly.

Being cross-examined, deponent saith—When Ryerson told Turse about kicking his wife, &c., Turse was making complaint 30 about his wife, that sometimes she carried off things. I did not hear Turse tell Ryerson at this time about another man being after his wife; I have heard Turse say more than once, when in a spree, that his wife had had connection with another man. I have met Ryerson with wood on the road; he was coming my road from my lot; my lot adjoins Turse's, and leads to it. From the course he was coming he must have got it from Turse's lot; I never found out that he got it from my lot. The same time there was somebody cutting wood on Turse's lot; this was between four and six years 40 ago.

Being re-examined in chief, deponent says—There was a road along by Turse's house to get the wood out, but the way Ryerson came was the easiest for him. The road by Turse's was all the way over Turse's land, without coming over mine, but that way there was quite a hill. I am one of the witnesses to Mr. Turse's will, and was present when he executed it. I saw it drawn; Esquire Van Houten drew it at Turse's, in his presence. Frederick Adams was not present. At this time Turse said the property was his, and that the deed to Ryerson was not worth any thing. He was asked about this deed, and this was all he answered. I should think 50 it was a month or so before his death when he signed the will.

The copy and probate of the will of John I. Turse, deceased, is offered in evidence on the part of the complainants, and marked Exhibit C. 2, on the part of the complainants.

Being further cross-examined, deponent saith—That Esquire Van Houten was busy drawing the will at Turse's when I came there; he wrote quite some after I got there; whether he had written it all there I cannot say.

- Margaret Lake*, a witness on the part of the complainants, saith—
- I am forty-seven years old, and was brought up in the family of
 10 John I. Turse. I was adopted by them when a child, and lived in their family until the year eighteen hundred and twenty-one. I had then been married seven years, when I moved to about a mile from Turse's house, and lived there about four years, until the spring of the year 1825, when my husband and myself moved back to Turse's. Then I lived at Turse's for four years. I recollect the time of Turse being separated from his wife. It was during the first four years that I lived away from him, between 1821 and 1825. When I went back to them, in the spring of 1825, they had lived together again for one year. They lived apart about a year and a
 20 half; don't know that it was quite a year and a half, but over one, and less than two years. While they were separated Mrs. Turse lived with me, at my house, and during that time Mr. Turse was a part of the time at John I. Ryerson's, and a part of the time at his own house, I believe; he was backwards and forwards. It was generally understood in the neighbourhood that Turse resided at Ryerson's. During the time of that separation, and just before and afterwards, he was almost the whole time in liquor. I saw him quite often during that time, sometimes he came to my house, sometimes he passed by. I never saw him sober in that time, and
 30 when he was in liquor he was very unreasonable, the worst man that I ever saw when in liquor. Ryerson had had a grocery in the neighbourhood for the sale of liquor for some years before I left Turse's the first time, cannot tell how long. After this grocery was opened, and Turse got running there, he got a great deal worse than he had been before; the year before I left there he got very outrageous. When in a frolic he was very ugly to his wife, more so than to other people; he treated me very kindly, even when he was drunk. At one time I went to Ryerson's, and saw Turse there drunk, sitting there; and heard Ryerson putting him up against his
 40 family, and heard Ryerson tell him, that if it was him, he would clear the whole damned lot out. When Turse came home in liquor he was always ugly and quarrelsome towards his wife. Ryerson was intimate with Turse, but was an enemy to the family as long as I can remember. When Ryerson came to see Turse, he seldom or never came into the house, but sneaked around out of doors to find him. At the time of his separation from his wife, I never saw Turse sufficiently sober to do business. From what I know of Turse's habits before and at that time, I don't think he was ever, at that time, sufficiently by himself to do business or give a deed.
 50 In 1825, after we had moved back to Turse's, he had the same spring

a settlement with Ryerson, and came into my room one evening, and asked one Chester Abby, then a school teacher there, to go with him to Ryerson's to settle. Turse could neither read nor write. When they came back, they came into the room where I was, and got into conversation about the settlement, and Abby said to Turse, "I'll tell you, Mr. Turse, what you ought to have done, you ought to have taken that deed when Mr. Ryerson offered it to you." Mr. Ryerson had said to them, while looking over the papers, "Here is that deed, what are you going to do with it;" and Turse told Abby "that it was not good for any thing, what would I do with it." I was present at the vendue, and Mr. Ryerson was boss, with William Van Voorhis and Lawrence Ackerman. All the furniture was sold, except one bed; the bed was reserved for Mr. Turse. There was no bed reserved for Mrs. Turse, I asked him myself. When Mrs. Turse and I tried to go into the house that day, Ryerson and his wife, and Ackerman and his wife, and Van Voorhis, were in the house, and the door was shut upon us; I did not see who shut it. They were handing out things to sell; there was a hubbub, more like war than like a vendue. Mrs. Turse did not get into the house at all that day, but only into the kitchen. Turse was not perfectly sober when the sale commenced, and before it was over he sat in the kitchen stiff drunk. I did not see Turse do any thing at all in managing the sale. During the first of the sale I went to Turse, while he was in the door-yard, and asked him to reserve a bed for Mrs. Turse. He said he would see about it; and afterwards, before they came to it, I went to him and asked him again, and he said he would be damned first. When I spoke to Turse in the door-yard Ryerson and the others were about, but can't say that any of them were present and heard the conversation. At Mrs. Turse's request, I also went to Turse, and asked him for a brass kettle that she got of her mother, and Turse said she should not have it. It was then sold, and Mrs. Ryerson bought it. After Mr. Turse and his wife came together again, he became quite temperate, he became a nice man. After Mr. Ryerson opened his grog shop, and Turse began to go there, he (Turse,) began to grow ugly towards me and my husband; before that he treated me well. In the year 1825, when we came back, Turse gave to my husband a deed for a part of his main farm. From that time to the present, my husband and those to whom he sold, have always been in possession of that part. Frederick Adams is no relation of Mr. Turse's; his wife is great-niece of Mrs. Turse. I am a niece of Mrs. Turse's. I never knew Turse's sister Rachel, the wife of Michael Moore, but have often heard Turse talk of her; they lived in New York at the time, I believe. Mrs. Moore is dead; I knew one son of hers, named Samuel, who lived in the English Neighbourhood; I believe he is dead too; I never knew any other of her children. I don't know any other children of Rachel Moore, but have often heard she had eight or nine. I knew Turse's sister Mary, the wife of Jacob Fredericks; she is dead, and left three daughters, and one son, named Jacob, now living; they are said to be all living.

I did not know Turse's sister Leah, the wife of John King; she is dead, and left one son, whom I saw at Paterson, after having been to see Mr. Turse. This son has died since Turse's death, leaving one son, now living. I have seen him within a few weeks, and understand his name is Jacob King.

Being cross-examined, deponent saith—I never saw Rachel Moore or any of her family at Mrs. Turse's, that I know of. I never saw Leah King nor any of her family at Turse's. Mr. Ryerson had a cotton mill, grist mill, and saw mill, carding mill, and, 10 part of the time, a bark mill. When we moved away from Turse's the first time to the Ponds, we had a farm and kept tavern. Mr. Turse used to come to the tavern that we kept; sometimes he got liquor there, sometimes not; sometimes he was drunk there; he was always drunk when he came there. Sometimes I refused to give him drink; sometimes I had to give it to him for peace sake, as I was afraid of him. While Mrs. Turse was living with us, I saw Mr. Turse as often as once a fortnight or once in three weeks. I went with Mrs. Turse to the vendue; I went to see, like other folks. She wanted me to go with her, and she went there to see if 20 she could not save some of her things that she had brought there from her mother; she did not go there to make a disturbance; she made a good deal of noise at the sale; she got a crying, and cried wonderfully, and she talked too; don't recollect what she said, nor that she made a good deal of noise, otherwise than by crying. There was a good deal of noise there, more like war than a vendue. I don't know of any disturbance among the others, except what arose from Mrs. Turse being there. I made no disturbance there. Mr. Ryerson and myself have never been at variance, we have never been intimate. He has always been unfriendly to me, 30 and I treated him the same as he treated me. Last Saturday I met him on the Paterson bridge, when he turned his head the other way, and did not speak to me. By Mr. Ryerson's sneaking about the house, I meant he did not come into the house; when he came to see Mrs. Turse, he came about the barn and barn-yard, and around, openly, so that we could see him; he did not come into the house and house-yard; he does the same now. Before that conversation in my room with Mr. Abby, he (Turse) had always denied to his wife that he had given a deed to Ryerson. This was the first that Mrs. Turse knew of it with certainty. Mrs. Turse flew 40 into a passion when he said so, and made a great noise about it. This was the spring of the first year after my return, in 1825.

Abraham Lake, a witness on the part of the complainants, saith—I have known Mr. Turse, and lived in his neighbourhood for between thirty and forty years. I am the husband of Margaret Lake, the last witness. I went to live in Mr. Turse's family when I was first married, a little over thirty years ago, I lived there at that time for seven or eight years. When I first got there Turse was quite a peaceable man to live with; he drank then, but after a while he got so intemperate that there was no living with him. 50 When I first got there I cannot say with certainty that Ryerson

kept a grocery for the sale of liquor; before I left he did keep a grocery, and sold liquors. Turse was in the habit of going over in the direction of Ryerson's, and I saw him return from that direction. I cannot say that he got liquor there, but there was no other place in that quarter where he could get it; sometimes he would bring liquor home with him. He was not much at home; he would be home a little while and then be off again; he went in the direction of Ryerson's, and came back from that way oftener than any other direction, that was his general route. The last part of this time I lived there Turse was hardly ever sober; for the last year 10 or two I can't say that he was ever sober; he was scarcely by his senses any part of that year or two. After we moved away, and during the separation between Turse and his wife, I used to see Turse go backwards and forwards, once in a week, or every two or three weeks; I can't exactly say how often; I have seen him go past more than once, when he was lying in the back part of Ryerson's wagon, seemingly not able to sit, and Ryerson's wife and daughter on the seat of the wagon; he appeared to me at those times to be dead drunk. During the time I was living at Turse's, he was at Ryerson's quite a good deal. He was from home a good 20 part of his time; whether he was at Ryerson's all the time I can't say, but I have seen him there. During the time that Turse and his wife were separated, I don't know that I ever saw him sober. From my knowledge of his habits before the separation, and from what I saw of him during that time, I should say that during the separation he was never in a condition to do business. I heard of the deed to Ryerson before I got my deed from Turse. Turse conveyed to me a part of this homestead; my deed was for twenty-one ten-hundredths acres, and was given to me about the year 1825. As the consideration for this deed, I was to pay \$300 debts 30 for Turse. I should say this was about the value of the land, or pretty near to it. I paid this three hundred dollars of debts for him, and have got the receipts for it. He proposed it to me; came to me crying, and said that he had about so much debt that must be paid, and if I would come back to live there, and pay it, he would give me a deed for such a certain part of his farm. He did not say that Ryerson was to have paid these debts. Before I got my deed, there was a report in the neighbourhood that Ryerson had a deed for the farm; and to be sure about it, I went down to the record, and found there was none on record, so I took my deed, 40 and came right down and had it recorded. I got the deed before I moved back to Turse's; I meant to be safe about it. We went back to Turse's, after having been away from there four years; then I lived with him four years, and moved away again; I have never lived with him since. When I first went back there, and when his wife and he got together again, he was not quite so bad; but after that he got worse again. The constables came there, and rather than have them come there so often as they did, I paid the money before I was bound to pay it, as I was to have made it off the farm first; and when Turse found out that I had nearly paid 50

the debts, he got running to Ryerson's, and became worse again. I was obliged to leave Turse's then on account of his intemperance; he threatened to burn us all up. He continued drinking until his leg got injured, when he had to stop it, and leave off drinking; his legs became almost rotten, and when he died they were really rotted off. It was not five years before his death when his leg was injured, and he stopped drinking. After I left his house I moved to Paterson, in 1829, when I did not go back there for some time. After I lived in Paterson, I saw Turse sometimes come to market
 10 there, and sometimes on such occasions he was sober and sometimes he had been drinking. I have now got possession of the place, under Mrs. Turse I believe; she and I live there, and have possession of the whole of it. She and I have had the possession ever since Turse's death.

Being cross-examined, deponent saith—Before I first left Turse, I can't say how long Ryerson had kept liquor at his store for sale. Mr. Turse appeared to be pretty near right when I got my deed. This was at the time when he was in want of money, and after all had been taken away from him, and when he was a little better. It
 20 appeared that he knew what he was about when he gave me the deed. Chester Abby drew the deed, and Abraham Van Cleve took the acknowledgment. There was at the same time an article between Turse and myself, drawn by Van Cleve. The article was, that I was to have the deed for a certain part, (which deed I got) and I was to pay three hundred dollars debt, and I was to have the whole farm; and both of our families were to have their living out of it first, and the overplus should go to pay this debt of three hundred dollars, and when it was paid, the article was to be given up, and the part I had a deed for should be mine. After this, be-
 30 fore I left Turse's and went to Paterson, he sued me for cutting wood, and I left there. Since Turse's death I have been cutting wood on the farm; I have cut it under the orders of Mrs. Turse, and took some down, and got tea and sugar with it, under her orders. I have worked the place on shares for Mrs. Turse since her husband's death. I have seen Mrs. Ryerson and her daughter go past my house, with Turse lying in it behind; both ways, backwards and forwards from Ryerson's.

Being re-examined in chief, deponent saith—I have sold all the land I bought of Turse, the same as I bought it. I had it run out.
 40 The depositions of Margaret Lake and of Abraham Lake are objected to on the part of the defendants.

Henry I. Speer, a witness on the part of the complainants, saith— I live near the Ponds church, in the township of Franklin, about a mile, or a little over, from where John I. Turse used to live. I knew John I. Turse, Abraham H. Garrison, and John I. Ryerson. I have heard Abraham H. Garrison speak about a paper he had of John I. Ryerson, but he did not express to me exactly what it was. I don't know that he did particularly state to me his impression as to whether the paper he had was good or not; he told me either
 50 that the paper was in the hands of Garret Van Dien or at Hacken-

sack, if I recollect right, and said that he did not mean to bother himself about it, or something to that effect; that he was getting old. I was one of the appraisers who appraised Mr. Garrison's effects after his death. There was no mortgage, or deed in the nature of a mortgage, to my knowledge, produced to the appraisers by his executors, to be appraised. The notes of John I. Ryerson were produced, and appraised as notes simply; I can't say whether the notes had seals to them. I know the Turse farm, can't say what its value is; don't recollect the number of acres in it. The farm is a rough kind of an establishment; I would not undertake to affix a value to it. I knew John I. Turse about the time he was separated from his wife; I knew him from about the year 1820 to his death. For a year or two, perhaps a little more, before his death he was a little reformed as to temperance, but before that he was a miserable wretch; I mean he was a miserable drunkard. I kept a public house for several years, and my sons have kept it since. I have always resided in the same house there. I can't say that I never knew a more miserable besotted drunkard that John I. Turse was; if he got out where there was liquor he was not apt to keep sober. I suppose that before he reformed a little in his latter days, he was in the front rank as to drunkenness; this continued until within a few years of his death. After that he came frequently to my house, after groceries and the like, and said he did not dare to drink, on account of his sore leg. When in liquor he was pretty roaring, liquor always appeared to make him kind of crazy. Not oftentimes when I saw him during the first ten years and more, down to 1835, that I knew him, was he in a fit condition to give a deed for his property.

Being cross-examined, deponent saith—When I saw him it was principally from home; I have seen Turse at his own house too, but can't say that I have been there often, once, twice, or oftener; can't say how often. When I saw him at his own house, I don't distinctly recollect how he was, as to liquor. From my own knowledge I don't know how he was at home, whether temperate or not, but have seen him at his house when he was drinking hard cider. I was not present when he made his will, and don't know how he was then.

Rachel Blauvelt, a witness on the part of the complainants, saith—I am a daughter of Judge Martin Van Houten, senior. I was born and brought up at the Ponds, and lived there till a few years ago. I knew John I. Turse well in his lifetime; knew him at and before his separation from his wife. During that separation I was at the auction held at his house. I myself bought one article there. I did not hear the articles of sale read, but understood that the money was to be paid to John I. Ryerson; I heard it so said by those in the house. Ryerson kept the sale's book a part of the time; by all appearance he was one of the managers of the sale. I did not myself pay for the article bought by me; my father paid it for me. Mrs. Turse, came there. I heard Mr. Ryerson say that she should not be allowed to come into the house, and that her bid

- should not be taken. I recollect the expression he made, it was, "That they must not allow the old dunder to come into the house; that they must take her and put her outside the gate." She did not bid for, nor buy any thing there. I considered that Turse was quite still in the afternoon; he was not very noisy that day that I recollect. I can't say that I heard Turse say that his wife should not come in nor bid. Towards night he (Turse) came into the kitchen, where I and another woman were sitting. There were two ladles there, and he took them up and gave us, each, one of them. The
- 10 other woman asked him whether he had the liberty to give them away; he said he would take that liberty, so we each took a ladle home. I don't recollect that Turse took any interest or active part in the sale. Besides Ryerson, Lawrence J. Ackerman handed things out of the house. He and his wife were in the house. During that time of the separation, I never saw Turse that he was right sober, until within a few years before his death; from that time I can't say that I ever saw him sober. I have seen him frequently at his home, and have seen my father fetch him from home, that he would set his house on fire. My father's house from Turse's
- 20 was about half a mile across lots, by the road about a mile. When we went afoot to Turse's we went across lots. The 26th day of May, last, I was forty-five years old. I lived at the Ponds until January, 1845. One day Turse came to my father's house, after he was living with his wife again, and my father told him that he had been to Ryerson, and spoke to Ryerson about the business, which was, that Turse owed my father some money for business done by my father for him, and Mr. Turse said he was going to settle his own business; that Ryerson had nothing to do with his (Turse's) business.
- 30 Being cross-examined, deponent saith—At the vendue, I think, Ryerson did not write all the time, sometimes he was around. We could not tell who wrote all the time, as the book was kept in the house. Only very few were allowed to go in the house, about half a dozen were in the house the greater part of the time. The things were handed out over the lower door, and sold out of doors.
- Being re-examined in chief, says—Mr. Ryerson and his wife, Mr. Lawrence J. Ackerman and his wife, and William Van Voorhis, were in the house; Turse was around, in and out.
- Being again cross-examined, says—My father's claim was about
- 40 fifty dollars; Turse came that day to pay the interest, he paid it that day; he handed my father a three dollar bill.
- Isaac J. Storms*, a witness on the part of the complainants, saith—I know that John I. Ryerson got a black horse of John I. Turse, some eight or ten years before his death, perhaps more. Ryerson's son had him as his riding horse, and the son told me that they were to give ninety dollars for him.
- Being cross-examined, deponent saith—Mr. Ryerson's son's name that rode the black horse, was George. It was after the separation between Turse and his wife, if my memory serves me
- 50 right; I can't state the year nor month. George did not say that

he had bought the horse, but that it was bought for his riding horse. I don't know any thing about the purchase, except from hearsay.

Defendant objects to what the son said to witness.

Being re-examined in chief, says—I knew the horse first as belonging to Turse, and afterwards to Ryerson. George, at the time, was living with his father, and was supported by him.

William H. Winters, a witness on the part of the complainants, saith—I bought things at the vendue held at Mr. Turse's during the separation between him and his wife; I bought some small articles there; I paid John I. Ryerson for what I bought there. 10
The articles of the sale had been read before I got at the vendue, but it was said there that the money was to be paid to Mr. Ryerson. I cannot read. When I went to settle with him for the articles that I had bought at the vendue, and told him what I came for, he (Ryerson) looked over a book, that I supposed to be the vendue book, and found my name. I asked him to look over the vendue book of Mr. Turse, that I wanted to pay him, and he got the book. I knew Abraham H. Garrison well in his lifetime; he often told me that John I. Ryerson had offered to give him a mortgage deed upon the property we had of Turse, but that he (Garrison) had told Ryerson he would not take it; that all he wanted 20
was to have as good money as he had let him have; that the property was not Ryerson's, and he would not give him two dollars for it. He told me that he had seen Ryerson, and wanted to buy of Ryerson a place to put a fulling mill on; that Ryerson would not sell it to him, and that he (Garrison) did not want to be bothered with the place of Turse. I heard Garrison talk in this way several times. I heard him talk about this shortly before his death. The last time I heard him talk about this, was within a year or six months before his death. This had been going on for some time. 30
After Ryerson returned from Georgia, he and his wife were on a visit to Garrison's; I was there also, but did not hear any thing said about it then. The next time I saw Mr. Garrison, he told me about this over again. I heard Garrison say that the deed to Ryerson was good for nothing; that the property did not belong to him, and he (Garrison) would not go to law about other people's property, and would not throw good money after bad.

Being re-examined, deponent saith—This conversation with Garrison, after Ryerson's visit to him, I cannot say if it was after Ryerson had been the last time to Georgia or not. 40

Margaret Lake, a witness on the part of the complainants, saith—I have seen Garret Van Dien, and had a conversation with him about this lease since Mr. Turse's death. I met Van Dien in Pater-son, and we got into conversation about the place. We had often before been in conversation about it. I said to Van Dien, "I have always understood from you, that you wrote the deed, and the ex-ecutors tell me that Johnson wrote it." He said, "No, but the lease." I asked him then what the lease was about? He answered, that the old man had come to him, and was alarmed about it, and asked what he (himself) had been doing, that he was afraid he had 50

put himself on the road. The old man had asked him, then, if there was nothing for him to do; that he (Van Dien) had told him, he guessed there was; and that then Ryerson had turned round and given the lease.

Witness desires to correct her statement upon her former cross-examination, in this, that John I. Ryerson had no carding nor cotton mill at the time of the separation between Turse and his wife; they were erected afterwards.

Leah Moore, a witness on the part of the complainants, saith—
 10 now live in the English Neighbourhood; I lived at the Ponds in the war. I knew John I. Turse and his sisters; I knew Leah, the wife of John King; she is dead, and left but one child, Benjamin King; he is dead, and has left but one child, named Jacob King. I knew Rachel, the wife of Michael Moore; Rachel Moore is dead, and Charity Dealing is the only child she has left. I knew his sister Mary, the wife of Jacob Fredericks; I have heard she is dead; she left four children, Jacob and his three sisters, Margaret, who was married to John O'Neill, Mary, who was married, as I have heard, to James Pilgrim, and Charity, who was married, as I
 20 have heard, to Jonathan Wilkes.

WITNESSES EXAMINED ON PART OF THE DEFENDANTS.

Garret Van Dien, a witness on the part of the defendants, saith—
 —I live in the township of Franklin, was formerly sheriff of the county of Bergen. I have for many years been a surveyor also, and for some years back have been in the custom of drawing papers for people, such as deeds, mortgages, leases, &c.; sometimes people apply to me for advice in relation to their affairs. I was acquainted with John I. Turse in his lifetime, have seen him several
 30 times. He came to me for advice in relation to his affairs, in the year 1831. He came alone to my house; he told me he had conveyed his property to John I. Ryerson, and that he had heard Ryerson was going to fail, and that he would be turned on the road, and have no means to support himself, and wanted my advice as to what would be best for him to do. I told him the better way for him would be to lease the property for life, if Ryerson would agree to it. Then I asked him if he had given the deed to Ryerson? He said yes. I then asked him what he paid for it? and he said, that Ryerson was to pay all his debts; that he had had money from Ryerson several times, and had boarded there; that Ryerson
 40 was also to pay one hundred dollars, that he owed Albert Van Voorhis. This was principally the whole of what passed then. I told him he had better go home, and bring Ryerson down with him, if Ryerson would agree to it. A few days afterwards Ryerson and Turse came down together to my house and talked over the matter, and Ryerson agreed that he should have it for life, with the exception of the timber that he wanted to build, &c., he should cut when he wished. There was a rent of eighteen dollars reserved; this was to make it binding. I told them there ought to be inserted

some sum to make it binding, and they told me to put any sum, and I told them that \$17 or \$18 would be sufficient. They then agreed fully upon the terms. I was to draw it, and Ryerson was to come down and sign it. Turse and Ryerson wanted me to keep it in my possession. I drew the paper after they had left. Ryerson came down and signed it. It was drawn in conformity with their agreement. It was agreed that Ryerson was to come down and sign the paper, and I was to keep it. Within a few days after, Ryerson came down and signed the paper, and he at the same time gave me the deed, from Turse to him, to have it recorded. I 10 took the deed then down to Hackensack, and left it in the office. Shortly after this I met Mr. Turse on the road, and he asked me whether Ryerson had signed the lease; I told him he had. He asked me if I was paid for it, and I told him that Ryerson had paid me for it. He asked me whether I had the lease? and told me, I must keep it. In this business I acted for Mr. Turse. When he first came alone to consult me, he asked me not to tell Ryerson that he had been to me for advice. I have never to this day told Ryerson that Turse had been to me for advice. I never knew that a deed had been given by Turse to Ryerson, until Turse came 20 to me and asked advice about it. I never had any conversation with Ryerson about it, until they came together to me. I live about eight miles from Turse's house.

A paper writing, purporting to be a lease from John I. Ryerson to John Turse, dated August 20, 1831, being shown to deponent, he says—It is in my handwriting, and I signed it as a subscribing witness, and was signed and sealed by John I. Ryerson, in my presence, three or four days after the time it bears date. Which paper is offered in evidence, and marked Exhibit D. 1, on the part of the defendants. A paper, purporting to be a deed from John I. 30 Turse to John I. Ryerson, dated May 1, 1833, duly acknowledged and recorded, being produced, is offered in evidence, and marked Exhibit D. 2, on the part of the defendants. The deed being shown to deponent, he says—This is the deed I took to the clerk's office to be recorded. I knew Josiah Johnson, the commissioner who took the acknowledgment of this deed; he is dead, and I know his handwriting. I have known John I. Turse for forty odd years; I saw him, but not very often, from the year 1820 to the year 1835. When he got out in company he would have a drunken frolic sometimes for a fortnight. He would run out when he got 40 in a frolic. About eighteen years ago I was assessor for Franklin township. When he first came to me to consult me, he was as sober as a judge; when he came to me with Ryerson he was sober. From the way that he talked at those times, I considered him perfectly competent to take care of his own business; at both those times he was not in the least disguised with liquor. He was generally drunk at election times. When he was with me, I thought he was a man who was taking care of his own business, or else he would not have come for advice to take care of his life estate in the property. I was one of the appraisers of the estate of Abra- 50

ham H. Garrison, deceased. A paper, purporting to be a sealed bill given by John I. Ryerson to Abraham H. Garrison, dated May 1, 1834, for nine hundred and ninety-one dollars, with interest, being produced, and marked Exhibit D. 3, on the part of the executors of Abraham H. Garrison, deceased; also a paper, purporting to be a note given by John I. Ryerson to Abraham Garrison, dated January 20, 1837, for fifty dollars, being produced, and marked Exhibit D. 4, on the part of the executors of Abraham H. Garrison, deceased, and said papers being shown to deponent, he says
 10 —They were both produced to the appraisers of Garrison's estate, and were inventoried by us. I know the signatures to both to be the handwriting of John I. Ryerson. The paper marked Exhibit D. 1, on the part of the defendant, being shown to deponent, he says—This is the lease that I took from John I. Ryerson for Mr. Turse, as before stated.

Being cross-examined, deponent says—When Mr. Turse first came to consult me, I had never heard of the deed from Turse to Ryerson. Turse told me he had given Ryerson a deed for his farm; he did not tell me when it had been given; did not state to me that
 20 it was given while he was separated from his wife; he did not state any thing to me about the object for which he gave the deed; he told me that the deed would turn him on the road; he asked me what course he must take to keep his life estate in it, and I told him he must take a lease for life. He did not, when I told him the effect of the deed, use the expression, or any thing like it, "My God! what have I done? I have put myself upon the road." He told me he had given Ryerson a deed for his farm, and having heard he was going to fail, was afraid his creditors would take hold of it, and turn him (Turse) upon the road, and he asked me what
 30 he must do; and I told him to get a life estate from Ryerson, if he would do it. Turse had not the deed with him; I never saw it until it was handed to me to get it recorded. Turse never consulted with me, as to whether the deed was a good deed; he told me Johnson had drawn it, and taken the acknowledgment. Turse did not see the lease, nor hear it read, after it was drawn. Turse had no other object in consulting me, excepting to know how he might avoid being turned out upon the road. He said nothing about a life estate—that first came from me, I advised it. Neither when
 40 Turse came alone, nor when he and Ryerson came together to me, did they bring the deed; Ryerson brought it when he came and signed the lease. I don't recollect having done any business for John I. Ryerson before that time. Turse came to me the first time on horseback; the second time, I don't recollect whether he came with Ryerson in the wagon, or whether they both came on horseback. I don't recollect whether or not John I. Ryerson failed at that time, but there was a good deal of talk about it; always since that time Ryerson has been considered in insolvent circumstances, or pretty hard run; there has been a talk with the neighbours that he had it pretty tough to get along. There was a little report of
 50 this kind at the time the lease was given, but not much; some

years afterwards there was a considerable talk of this kind. Between the year 1821 and the date of the lease, I had seen Mr. Turse several times, perhaps a dozen times; saw him both drunk and sober within that period. I am the subscribing witness to the deed from Ryerson to Garrison (the same being an exhibit now offered on the part of the executors of Abraham H. Garrison, deceased, and marked Exhibit D. 5, on the part of defendants. The same being shown to deponent, he says—I don't recollect whether it was executed at my house, nor who was present at the time. Garrison was not present at the execution. Ryerson directed me to draw it; he directed me to draw a deed. At the time of its execution it was understood to be a deed; it was drawn and executed as a deed, and not as a mortgage. Ryerson had a wife; I don't recollect if she was present at its execution. Ellen Ryerson, the other subscribing witness, is the daughter of John I. Ryerson, but I can't tell from this whether it was signed at his house, or whether she was with him at my house. I believe Ryerson took the deed with him when it was executed, all acknowledged just as it now is. I have no interest in the result of this suit; Ryerson don't owe me, nor the estate from which my wife or I expect to get property, one cent. I have not taken an active part in assisting Ryerson to prosecute his claim to this property; I went with him to counsel, I did not employ any; I went with him only to show what papers I had. I had the deed to Garrison, the lease to Turse, and, I think, I had the deed to Ryerson. I took the deed to Ryerson to the clerk's office, and got it from the office when recorded. Don't know that I had held the deed to Ryerson from that time, or had returned it to Ryerson. I went to employ counsel for Mr. Garrison, at his request, but not for Ryerson.

Being re-examined in chief, deponent saith—When Ryerson and Turse were together to see me, I marked down in writing the terms of their agreement, and from this memorandum I drew the lease. When I put down the terms in writing I stated them to Ryerson and Turse, but don't recollect of reading it over to them after I had taken them down.

John I. Ryerson, jun., a witness on the part of the defendants, saith—I reside in Manchester, in this county. I am the son of John I. Ryerson. I knew John I. Turse; I lent him money at different times, and took his notes for it. Three papers being shown to deponent, purporting to be notes of hand given by John I. Turse to deponent, he says—They are all signed by John I. Turse. I don't recollect whether I wrote the notes, but I believe them to be in my handwriting. Mr. Ryerson, my father, paid me the money for the notes; I think that my father paid me either one hundred and seventy dollars or two hundred and seventy dollars. Besides these three notes there must be another note of fifty dollars somewhere. That money I got of John I. Garrison, and lent it to Turse; and that with these notes would make one hundred and seventy dollars. I recollect of Mr. Turse getting a black mare of my father; she was a good one, worth \$85, or more, call it \$85. I don't know that

Turse got store goods particularly, but he got flour and grain for seed; I understood that he got what he wanted. The money for the notes was paid me by John I. Ryerson after the deed was given. This money Turse got of me, after the deed was first left with my father; and after I understood that he had taken the property, he paid me these notes.

The three notes above mentioned are offered in evidence on the part of John I. Ryerson, and marked Exhibits D. 6, D. 7, and D. 8, on part of the defendants.

10 I think that I received either \$170 or \$270; am certain it was one or the other.

Being cross-examined, deponent saith—I can't say how long I laid out of this money. I don't recollect that my father ever got a black horse from Turse; I never did. I am about forty-two years old. When I lent Turse this money, I was carding and fulling for country people, in a mill I hired of my father. I recollect of Turse being parted from his wife. I don't recollect, whether or not, he staid or boarded at my father's house a part of that time. I never heard my father say that he collected the vendue book. I have saw
20 Turse both drunk and sober. John S. Forshee is a son-in-law of my father's; he has been married to my sister about twenty years. I am not sure as to the time; he was married before I was, which is seventeen years ago. Can't tell whether he had any children before my marriage.

John S. Forshee, a witness on the part of the defendants, and who is objected to on the part of the complainants, saith—In the year 1831 I went to Turse's place to work for him; I worked part of the place for him on shares, and at different times made shoes for him; and did some day's work for him. When I went
30 there he offered to give me a lease for seven or eight acres. He gave me the lease, and I built a small house upon the land. I worked off and on for him eight or ten years, or more. After I got my lease, I heard Turse, at different times, talk about the deed given by him to Ryerson, and about the lease given by Ryerson to him. After he got the lease, he came to me and told me that Ryerson had fixed some paper with him; I don't know what it was, not having seen it. He told me it was fixed just as he wanted it, that he had it now as he wanted. He told me that Ryerson had given him a lease for his life, that it was fixed as he
40 wanted it. He has had conversations to this effect several times with me. He has at different times told me who was to pay his debts. He has told me about this \$170 that Ryerson had paid to his son John for him. He has told me this at different times. I remember the horse that George had of Turse. I had conversation with Turse the day it was born, and he said there is a colt for George, that he had promised him one. After George had him, Turse told me that he had given the colt to George; that he had had him long enough, and George might take care of it for himself. He said he had given it to George. After Turse had the lease, he
50 came to me and said, "Now I have fixed it right with the old man, and you must go to him, and he must give you a deed for the

land." By the old man, he meant Mr. Ryerson, and it was for the lands that I had a lease for. My lease was dated March 12, 1831. I then went to Mr. Ryerson, and told him what Turse had said, and Ryerson said he would give me a deed, and sent it to me. A deed being shown to deponent, he says—This is the deed. The same is offered in evidence, and marked Exhibit D. 9, on the part of the defendants. At the time I went to Turse, in 1831, and for several years afterwards, I considered Turse a sober man. He would take a glass sometimes, but I have known him more than once to refuse it. He has refused to drink with me, and said he 10 was afraid to drink on account of his sore leg. I like a glass sometimes, and I always asked him to drink, if he was present. His leg was sore when I went there, called an old sore then. I had understood that years before that he had been a hard drinking man, and I had in fact seen him drunk. When Turse was sober, I thought he was about as capable of doing business as any other man without learning. Ryerson gave up his store and selling liquor as much as twenty years ago. He did not sell liquor nor keep store, to my knowledge, in 1831. I am married to a daughter of Mr. Ryerson. I married her in August, 1825. The lease from Turse to me is for 20 fifty years.

Being cross-examined, deponent says—I now hold the seven or eight acres under the deed from Ryerson, and it is a part of the Turse farm. I don't consider that I have an interest in the event of this suit. I suppose that if this deed to my father-in-law is set aside, my deed will have to go too. I have taken no interest in the defending of this suit, nor got any witnesses. I have stopped by people on the way, and asked them what they knew about it. I have, in the progress of this examination, constantly consulted with Mr. Pennington, the defendant's counsel, and directed him what 30 questions to put to the witnesses. It is not understood between me and Ryerson, that if he keeps the place my wife or myself were to have the Turse place, only what I now hold under my deed; never thought of such a thing, except I could buy it. My lease from Turse is about yet somewhere; the rent was ten dollars; I never lived in the house with Turse; never lived on his place, except the part I built on. I worked it for Turse on shares, two, three, or four different years, but not successively. I never worked the whole of the farm of Turse on shares, except, perhaps, one year. He generally kept a potato patch and garden for himself. I 40 have torn down the house that I built upon the seven or eight acres, part of it I have taken off, and parts are yet left on it. I tore it down not over six or seven years ago, before Turse's death. When I tore it down, I don't think that I told any person that I did so because my title to the place was not good. I always considered my title good enough. My barn and hovel are yet on the land. I built the house in the year 1831, the same spring I got the lease.

The complainants produce and offer a deed from John I. Turse and wife to Abraham Lake, duly acknowledged and recorded, 50 which is marked Exhibit C. 3, on the part of the complainants.

Albert N. Van Voorhis, a witness on the part of the above named defendants, being shown a paper purporting to be a bond executed by John I. Turse to Baltye Demarest, in the penal sum of eighty pounds current money of the state of New York, conditioned for the payment of one hundred Spanish milled dollars, and bearing date the 19th day of June, A. D. 1822, and assigned by Peter Cole, the husband of the said Baltye Demarest, to the said Albert N. Van Voorhis, which said bond is marked Exhibit A. on the part of the defendants, deposeseth and saith—That John I. Ryerson has
10 made payments to him since the twentieth of August, A. D. 1831, on said bond; thinks he made payments at two different times, and paid deponent six dollars at each time. Deponent is now seventy-nine years old. As far as deponent can remember he has received payments of interest on said bond since August 20th, A. D. 1831, from one Van Houten, who was the executor of John I. Turse.

Cross-examination on the part of the complainants.—Deponent believes John I. Ryerson said, when he made the payments of interest, he paid it for Turse. I don't recollect Ryerson ever saying it was his debt, or that he was bound to pay it. I should know
20 Ryerson if I were to see him now; I first became acquainted with him when he paid the interest to me on the bond.

After argument of the cause, the following decree was made by the chancellor :

It is therefore, on this twenty-first day of October, in the year of our Lord one thousand eight hundred and forty-four, by his Honour Oliver S. Halsted, chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said chancellor doth, by virtue of
30 the power and authority of this court, order, adjudge, and decree that the said deed, so as aforesaid made by the said John I. Turse to the said John I. Ryerson, bearing date the first day of May, in the year of our Lord one thousand eight hundred and twenty-three, for the premises in the said pleadings and proofs mentioned, is and was, from the time of the execution and delivery thereof, null and void and of no effect whatsoever in law or equity, and that the said John I. Ryerson do, upon service of a copy of this decree, deliver up the same to the complainants, to be cancelled; and also, that the said deed in the pleading and proofs mentioned, given by said
40 John I. Ryerson to said Abraham H. Garrison, now deceased, is void and of no effect, as against the complainants, and that the defendants do deliver up to the complainants all deeds, muniments of title, and writing in the power of them, or either of them, relating to said premises, and do, within thirty days from the date of this decree, reconvey the said premises to the complainant, Frederick Adams, surviving executor of the last will of said John I. Turse, deceased, to be by him disposed of as directed by said will, free and clear from all encumbrances done by them, or any claiming by, from, or under them; and it is further ordered, that upon any sale being
50 made by virtue of any writ of *feri facias*, for that purpose issued

out of this court upon the decree made in the suit in said pleadings mentioned, whereon Albert N. Voorhis is complainant and the said John I. Ryerson and others are defendants, for the foreclosure and sale of said premises to satisfy the amount due on a mortgage given by said John I. Turse to Baltie Demarest, and in this court pending, that any surplus money that may arise from such sale, after paying the debt and costs of the complainant in said last mentioned suit, and the costs of such sale be paid to the said Frederick Adams, executor as aforesaid, to be by him held for the purposes in the said will of John I. Turse, deceased, declared; and it is 10 further ordered, that the said defendant, John I. Ryerson, and the above named Abraham Demarest, Peter H. Pulis, and Peter H. Winter, executors of the last will of Abraham H. Garrison, deceased, do pay unto the said complainants their costs in this case to be taxed.

And it is further ordered, that the defendants have leave, if they see fit so to do, to have an account taken before one of the masters of this court of any debts of the said John I. Turse that may have been paid by the defendant, John I. Ryerson, as alleged in his answer, and of any amounts that may have been received by him 20 on the sale of the personal property of said John I. Turse at auction, with leave to apply to have any amount that may be found due to him on the taking of said account declared a lien upon said lands, or paid out of the proceeds of the sales thereof, reserving the question, whether the same shall be so declared or paid, for the further determination and order of this court; and it is further ordered, that the complainant be at liberty to apply to this court for execution and further directions, as they may be advised.

O. S. HALSTED, C. 30

On the 8th November, 1847, the said defendants all filed their petition of appeal in this court, praying that the said decree may be reversed, for the reasons therein stated, to wit:

COURT OF ERRORS AND APPEALS.

JOHN I. RYERSON and ABRAHAM DEMAREST, PETER H. PULIS and PETER H. WINTER, ex- ecutors of Abraham H. Garrison, appellants, <i>and</i> FREDERICK ADAMS, executor of John I. Tuers, de- ceased, and in his own right, WILLIAM DEALING and CHARITY his wife, JACOB FREDERICKS and JACOB KING, respondents.	}	40 <i>On appeal, &c.</i>
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That the said decree adjudges that the deed made by John I. Turse to John I. Ryerson is and was null and void, and of no effect, whatsoever, in law or equity, and that the said John I. Ryerson 50

should, upon service of a copy of said decree, deliver up the same to the complainants to be cancelled; and, also, that the deed given by John I. Ryerson to Abraham H. Garrison is void and of no effect, as against the complainants; and that the defendants should deliver up to the complainants all deeds, muniments of title, or writings relating to said premises, and should, within thirty days from the date of said decree, reconvey the said premises to the complainant, Frederick Adams, executor, &c., free and clear of all encumbrances; and that, upon any sale being made by virtue of
 10 any writ of *feri facias* upon the decree made in the suit of Albert N. Voorhis, complainant, and John I. Ryerson and others, defendants, that any surplus money that might arise from such sale, after paying the debt and costs of the complainants in that suit, and the costs of such sale, should be paid to the said Frederick Adams, executor; and that the defendants should pay the complainants' costs in this case to be taxed; and that an account should or might be taken of moneys received by John I. Ryerson for sales of property of John I. Turse at auction.

And your petitioners humbly appeal from those parts of the said
 20 decree of the chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said deed from John I. Turse to John I. Ryerson was a good and valid deed, and *bona fide*, and that a good and valuable consideration was given for it, and that it was confirmed by the said John I. Turse taking from the said John I. Ryerson a lease of the property for and during his natural life, and upon the ground that the deed from John I. Ryerson to Abraham H. Garrison, although a deed upon its face, was intended as a mortgage, and that it was taken for a good and valuable consideration, *bona fide* and without notice of any defect of
 30 title of the said John I. Ryerson; and upon the ground that neither of said deeds ought to be given up and cancelled, but that the same ought to have been established as good and valid deeds; and upon the ground that costs ought to have been given to your petitioners; and upon the ground that the decree ought not to have directed an account to be taken of moneys received by John I. Ryerson for sales of the property of John I. Turse at auction.

Your petitioners therefore pray that the said decree of the chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden; and that your petitioners may have such relief
 40 in the premises as to this honourable court shall seem meet.

AARON S. PENNINGTON, *for appellants,*

A. O. ZABRISKIE, *for respondents.*