

# New Jersey Court of Errors and Appeals

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Between

**ELIZABETH J. HUGHSON,**  
Complainant-Appellant,  
*and*  
**AMANDA M. HUGHSON,**  
Defendant-Appellant.

On Bill to Foreclose.

On Appeal

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## Brief of Complainant-Appellant

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### STATEMENT OF FACTS

The bill of complaint in this case was filed to foreclose two mortgages, the first dated October 21, 1873, for \$1,000, and the second dated March 7, 1876, for \$1,268.91. Both mortgages state that they are purchase money mortgages, and neither is signed by the mortgagor's wife. The first mortgage was made to Stephen O. Horton by Caleb S. Hughson for the purchase price of a farm. The second mortgage was also made to Stephen O. Horton by Caleb S. Hughson and covered the farm included in the first mortgage and also an undivided one-third interest in another tract.

**Case, Bill of Complaint, pp. 1-18.**

Dency C. Horton, the wife of Stephen O. Horton, the mortgagee, was a half-sister of Caleb S. Hughson, the mortgagor, and when Stephen O. Horton, the mortgagee, died on November 9, 1883, these mortgages became the property of his wife, Dency C. Horton, to whom he left all his estate. Shortly before her death on December 27, 1896, she assigned these mortgages to Elizabeth J. Hughson, the complainant, who is a sister



of Caleb S. Hughson, the mortgagor; and by her will she confirmed the assignment by bequeathing the mortgages to Elizabeth J. Hughson, the assignee.

**Case, Bill of Complaint, pp. 1-15.**

The mortgagor, Caleb S. Hughson, died March 29, 1908, and the mortgaged premises were devised by him to his wife, Amanda M. Hughson, the defendant.

**Case, Bill of Complaint, pp. 1-18.**

The complainant and defendant have lived together on the property since the defendant married the mortgagor in 1872, with the exception of two years at one time, one year at another, and other periods at various times when the defendant was away. The property had been the home of the complainant, who was at the time of the hearing about eighty-two years of age, since she was born. She had been then ill for about six months and was not able to be present at the hearing and has since died.

**Case, Amanda M. Hughson's Testimony, p. 53, line 20,-p. 54 line 10.**

These facts as to relationship and residence are important as bearing on the equities of the case as presented.

The only defense attempted to be set up at the hearing was the statute of limitations. In the answer this defense was set up as follows:

“This answering defendant charges and insists that no payments of interest were ever made on said bond and mortgages from their respective dates in 1873 and 1876; and that the same are now and each of them outlawed, and denies that the principal sums therein mentioned and said interest is now due and owing thereon.”

**Case, Answer, pp. 19-22.**

The statement of facts in the Vice Chancellor's opinion is not strictly accurate, as a reading of the case will show, and the equitable principles invoked on the argument were not dealt with at all, the case being con-



sidered in the opinion on a strictly legal, rather than an equitable, basis.

After the hearing and before the decision, the complainant died, and a decree was entered without death being suggested on the record. Subsequently such suggestion was made, and an order amending the final decree and ordering it to be entered nunc pro tunc as of the date of submission to the court was made without notice being given.

**Case, Final Decree, p. 69.**

**Case, Affidavit, p. 70.**

**Case, Order Amending Final Decree, p. 72.**

### THE QUESTIONS INVOLVED

The questions raised by this appeal are:

1. Can a decree admittedly without validity be amended without notice and directed to be entered nunc pro tunc so as to give it validity?
2. Was a payment made on the bonds and mortgages within the statutory limitation period?
3. If not, do the shown circumstances excuse such non-payment?
4. Was the mortgagor's possession of the mortgaged premises adverse to the title of the mortgagee and his assigns, and was it continued for twenty years?
5. If not, is the complainant entitled to relief?

### GROUND OF APPEAL

The final amended decree is alleged to be erroneous because,

1. The Court of Chancery was without jurisdiction to make the original decree or to make the amended decree, or to order that the amended decree be entered nunc pro tunc so as to give it validity.
2. The complainant's bill was dismissed and relief denied.



## THE ARGUMENT

### 1. Can an Invalid Decree Be Amended Without Notice so as to Make It Valid?

The original decree having been entered after the suit had abated by the death of the complainant and before revivor, it manifestly was of no validity. How, then, could an amendment be made to such decree, it being something not legally in existence, and especially when such amendment carried with it a direction that as amended such decree should then relate back and be entered nunc pro tunc in order to give it life? And this without notice.

It may be said that this is merely technical, but it is more than that. It goes to the substantial rights of parties entitled to notice, namely, to the re-instatement of a case which has passed out of jurisdiction, and to proper practice which is the backbone of the orderly administration of justice.

### 2. Was a Payment Made Within the Statutory Limitation Period?

The statement in the answer that nothing had ever been paid is shown to be false by the testimony of the answering defendant, Amanda M. Hughson herself, on her direct examination, as follows:

“Q. Have you any knowledge that there have been any payments made on either of these bonds since their date?

“A. The Coplay Iron Company, I know of that, I know of his assigning to Mr. Horton the proceeds of the mine, I remember that Mr. Horton came there and that Mr. Hughson agreed to give the proceeds of the mine, but further that that I don't know of any.”

“Q. Have you any idea how much the proceeds amounted to?



“A. No, sir, I have not, two or three hundred dollars.”

**Case, Amanda M. Hughson's Testimony, p. 57, lines 29-38.**

And also by the cross-examination of the same witness, as follows:

“Q. You know these mortgages are due, don't you?”

“A. Yes, sir.”

**Case, Amanda M. Hughson's Testimony, p. 58, lines 10-11.**

This defense being an affirmative one, the burden of proof is on the defendant, and is one which she has not sustained.

Emily H. Cory testified that the last payment was made in the fall of 1896.

**Case, Emily H. Cory's Testimony, p. 52, line 37, -p. 53, line 15.**

This was corroborated by Charles W. Tuttle.

**Case, Charles W. Tuttle's Testimony, p. 47, line 2, -p. 48, line 30.**

The defendant acknowledged this payment, but claimed that she understood that it was made on account of a note.

**Case, Amanda M. Hughson's Testimony, p. 6, lines 3-30.**

These were the only witnesses on this point. The other two witnesses produced by the defendant were a clerk from the Supreme Court Clerk's office and Charles E. Clark, both of whom testified solely relative to a judgment obtained by one Charles E. Clark against the mortgagor, and neither of whom was cross-examined, as a decree pro confesso had duly been entered against the judgment creditor, Charles E. Clark.

### **3. Do the Circumstances Excuse Non-Payment?**

The failure to make payments was referred to in the bill of complaint, as follows:



And your oratrix further shows that the said CALEB S. HUGHSON made payments from time to time on account of the interest due on the two said bonds and mortgages to the said STEPHEN O. HORTON, in his lifetime, and that some of these payments were made in farm produce, but that shortly after the first mortgage was given the said CALEB S. HUGHSON had financial difficulties and was obliged to borrow money on the mortgage secondly given, and that from that time on the said CALEB S. HUGHSON was always in straightened circumstances, and that it was with difficulty that he could earn enough money to support his family, and that it would have been a great hardship for the said STEPHEN O. HORTON, in his lifetime, or for the said DENCY C. HORTON, in her lifetime, to have compelled the said CALEB S. HUGHSON to have kept up the full payments of interest called for by the two said bonds and mortgages or to have foreclosed the said mortgages for the failure of the said CALEB S. HUGHSON so to do.

And your oratrix further shows that the said CALEB S. HUGHSON was a half-brother of the said DENCY C. HORTON, the wife of the said STEPHEN O. HORTON, and that the social relations of the families were intimate.

And your oratrix further shows that repeated demands were made on the said CALEB S. HUGHSON for the payment of interest on the said two bonds and mortgages, and that the said CALEB S. HUGHSON repeatedly promised to make payments on said interest and that payments of interest on the said two bonds and mortgages were made by the said CALEB S. HUGHSON within sixteen years last past.

**Case, Bill of Complaint, p. 15, line 22,-p. 16, line 17.**

There was no specific denial in the answer to this



portion of the bill, and in fact, no reference at all to it.

The testimony of the defendant, Amanda M. Hughson, corroborates these statements, as follows:

“Q. Didn’t you think it rather strange that this interest was not paid?

“A. Well, he didn’t have any way of making any money; the mines took all he had made for our living.

“Q. You didn’t have much money at that time to pay interest, did you?

“A. No, sir.

“Q. That was the reason that the Hortons did not insist upon the payment in cash, was it not?

“A. Well, that I don’t know; of course, they wanted the interest; it was due

“Q. What is that?

“A. The interest was due then.”

**Case, Amanda M. Hughson’s Testimony, p. 59, lines 27-40.**

There is further corroboration in the official search from the Supreme Court Clerk’s office, which shows judgments entered against the mortgagor as follows:

January 8, 1876	\$1794.38
June 5, 1876	1035.33
May 28, 1878	860.59
August 15, 1878	584.35
March 17, 1896	3996.64

**Exhibit C 7, Supreme Court Search.**

And in the official search from the Morris County Clerk’s office, which shows judgments entered against the mortgagor as follows:

December 15, 1874	\$136.52
December 23, 1876	147.87
December 4, 1876	252.87
March 28, 1878	226.95
January 10, 1882	757.43



There was also filed a mechanic's lien for \$185 on April 5, 1879, and unpaid taxes for \$22.59 for 1899.

**Exhibit C 6, Morris County Search.**

The last payment of interest in the fall of 1896, as above shown, was shortly before Mrs. Horton's death and just prior to the assigning and bequeathing of the mortgages to the present holder, the complainant. That no payment of interest should have been insisted upon or made from then until the mortgagor's death on March 29, 1908, is readily explained by the fact that the complainant and the mortgagor were brother and sister and were living together on the mortgaged property which had been their home since infancy. A natural repugnancy to forcing a brother, under such circumstances would be expected, and a foregoing of a sister's legal rights under the circumstances ought not to be such an act as an equity court would punish by forfeiture. This relation also explains why no action was brought on the claim when submitted to the executors of the mortgagor's estate, and why the present suit to foreclose was not brought immediately on default being made in payment of interest. No one could better know or appreciate the financial straits of the family than a sister living there.

That such circumstances are accepted by a court of equity as sufficient reason why the statute should not attach, even where no payments are made, is shown by the decision of this Court in **Wanamaker vs. Van Buskirk**, 1 N. J. Eq. (Sax) 685, (Chancery, 1832, **Vroom, Ch**), which decision has been repeatedly cited with approval to sustain this contention, as shown by the following cases:

**Hayes vs. Whitall**, 13 N. J. Eq. (2 Beas.) 241, 242, (Chancery, 1861, **Green, Ch.**)

**Barned vs. Barnerd**, 21 N. J. Eq. (6 C. E. Gr.) 245, 246 (Chancery, 1870, **Zabriskie, Ch.**)



Murphy vs. Coates, 33 N. J. Eq. (6 Stew.) 424, 426, 427, (Chancery, 1881, Runyon, Ch.)

Buckingham vs. Ludlum, 37 N. J. Eq. (10 Stew.) 137, 14 (Chancery, 1883, Van Fleet, V. C.)

Blue vs. Everett, 55 N. J. Eq. (10 Dick.) 329, 340 (Chancery, 1897, Emery, V. C.)

S. C. (on appeal), 56 N. J. Eq. (11 Dick.) 455, 459, (Errors and Appeals, 1897, Dixon, J.)

Ayres vs. Ayres, 69 N. J. Eq. (3 Rob.) 343, 345, 346, (affirmed on appeal, p. 842) (Chancery, 1905, Bergen, V. C.)

Chancellor vs. Seiberlich, 75 N. J. Eq. (5 Buch.) 501, 506, 507, (Chancery, 1909, Walker, V. C.)

#### 4. Was Mortgagor's Possession Adverse?

The complainant lived on the mortgaged property with the defendant and paid the help employed to keep the place up, as is shown by the following from the cross-examination of Charles W. Tuttle, who works there.

“Q. Where does Elizabeth J. Hughson live?

A. Lives on the farm.

Q. She is not here this morning?

A. No, sir.

Q. Isn't she your employer?

A. I work for her.”

Case, Charles W. Tuttle's Testimony, p. 52, lines 16-19.

The possession, therefore, of the mortgagor was not adverse to that of the mortgagee's assignee, the complainant.



### 5. Is Complainant Entitled to Relief?

If the possession of the mortgagor is not adverse to that of the mortgage and such adverse possession has not been continued for twenty years, then the statute does not attach. This would be especially so in a case, as that of the present, where the mortgages were purchase money mortgages, for in reality the mortgagor can not be said to have ever been in full possession of the mortgaged property.

The following language of Chief Justice Depue in the case of **Colton vs. Depew**, 60 N. J. Eq. (15 Dick.) 454, 463 (**Errors and Appeals**, 1900), is applicable:

“The doctrine of the law with respect to title under the statute of limitations is that there has been a possession adverse to the owner of the legal title for twenty years. Whether possession is adverse within the purview of the statute is a question of fact, to be determined upon competent evidence concerning the character of the possession, whether permissive or hostile to the title of the real owner. A person may be in possession of property for a period longer than that mentioned in the statute, without paying rent or making any compensation for his occupation of the premises, and not be within the statute of limitations. Possession, to make the statute available, must be adverse for the full period prescribed by the statute.”

And Vice Chancellor Pitney, in **Ely vs. Wilson**, 61 N. J. Eq. (16 Dick. (1900) 94, 104) says:

“The Court of Errors and Appeals, when that case came before it on appeal, in giving its reasons for affirming the decree, reviewed the opinion in *Blue v. Everett*, and confined the question, as the learned Vice Chancellor had done, to the



character of the possession of the mortgaged premises by the mortgagor or his grantee: Was such possession adverse to the title of the mortgagee, and was it continued for twenty years? If not adverse, and not so continued for twenty years, then it mattered not that the right of action on the bond or promissory note, as the case may be, was barred by the statute of limitations, and that more than twenty years had elapsed since default on the mortgage."

Any contention that payments must be endorsed on the bond to take the case out of the statute is also disposed of by Chief Justice Depue in **Colton vs. Depew**, *supra*, at p. 464, where he says:

"The endorsement of payments on the bond is a matter of form."

The situation then is this: These mortgages represent the purchase price of the property, not simply a security for a loan. For about forty years the mortgagor and the defendant claiming under him have had the use of this property and have paid but very little interest, a portion of that paid having been paid in farm produce. The present holder of the mortgage has paid the help to keep up the place. And because the mortgagee and his assigns have been good to defendant's husband (the mortgagor) and the defendant herself by refraining to push them for payment when to have done so would have been to deprive them of their home, the defendant now comes to a court of equity and says that she understood that the last payment of produce made by her husband was made on a note for borrowed money, and that as there would then be no payment on the bonds within the sixteen years, the property should be made a present to her. Is not a mere statement of the proposition sufficient? And can a court of equity look with favor on any such attempt to take advantage of the kind-heartedness of a



creditor and to enforce a strictly legal rule in all its rigor independently of all the equities to which the peculiar circumstances of the case give rise?

Respectfully submitted,

JOHN H. VAN WINKLE & SON,  
Solicitors for Complainant *- appellant.*

W. S. ANGLEMAN,  
Of Counsel.



**Court of Errors and Appeals of New Jersey.**

Between

ELIZABETH J. HUGHSON,  
Appellant,

AND

AMANDA M. HUGHSON,  
Respondent.

On Bill.

**BRIEF ON BEHALF OF DEFENDANT.**

Complainant seeks to foreclose a bond and mortgage made by Caleb S. Hughson to Stephen O. Horton, dated October 21, 1873. No credits of either principal or interest appear on the bond or mortgage.

Also a bond and mortgage made by Caleb S. Hughson to Stephen O. Horton, dated March 7, 1876. No credits of either principal or interest appear on this bond or mortgage.

Stephen O. Horton died in 1883, testate, by whose will the title of the mortgages vested in Dency C. Horton, his wife.

Dency C. Horton, assigned these two mortgages to complainant by assignments dated September 8th, 1896.

Dency C. Horton, also by her last will confirmed the assignment.

The bill for foreclosure was filed November 25th, 1912.



The relationship of the various parties is as follows:

Caleb S. Hughson, the mortgagor, was a half brother to Dency C. Horton, the wife of the mortgagee. He was also a brother to Elizabeth Hughson, the complainant. Amanda Hughson, the defendant, is the widow of Caleb S. Hughson, the mortgagor, and, therefore, a sister-in-law to the complainant.

### **Facts.**

It appears in this case that Stephen O. Horton not only owned the two bonds and mortgages set out in the bill of complaint, but also held a note for two hundred dollars made by the mortgagor Caleb S. Hughson (55-56).

The complainant presented a claim on each bond to the Executors of the mortgagor (64) and in this claim gave certain credits for payments of interest (65). Thereupon the executors gave notice that they disputed the claims so presented, but no suit was instituted thereon (65).

The payments alleged to have been made on the bonds were never endorsed thereon—they were made to the mother of Mrs. Corey (28), entered on a book (27) (28) which has since been lost (27) or disappeared, but when witness does not know (29-30) and when the memorandum was made witness cannot tell (29). No book was kept during the life of the mortgagee, who died in 1883 (40). It was made to give Mr. VanWinkle, the attorney, to show him how the matter stood, although no controversy had arisen at that time (30); the bonds and mortgages were turned over to him seventeen years ago (44). Mr. VanWinkle wrote the word "bond" on the side (30), using this paper to refresh the memory of the witness; she says that certain payments were made by the Coplay Iron Company but not within the twenty-year period (31); that Mr. and Mrs.



Hughson brought produce to Plainfield and asked that the value be placed on the bond as interest on the mortgage (33); on July 4, 1892, Mrs. Hughson sent a letter to witness reading in part as follows: "I mailed to you a post office order for ten dollars. It is the money I saved from the running expenses while I had charge of the milk and butter. Please give it to your mother and *credit it to Sandfords account*"; this payment was never credited on the bond, but does appear on the filed claim as a credit on the second mortgage under date of July 6, 1892 (65); the claim was made that certain produce was to be credited on the interest, and letters showing amount and value of produce were put in evidence (40-41). By these letters it appears produce was sent on January 18, 1892, amounting to four dollars and thirty-five cents (40). On the claim appears a credit January 18, 1892, of two dollars and eighty-five cents (65). November 13, 1891, produce was sent amounting to four dollars and forty-one cents, or five dollars and one cent if expressage was included; five dollars was credited on the claim.

At the time the mortgages were made Caleb S. Hughson was the owner of the land; he died in 1906, devising the land to his wife, Amanda S. Hughson (63).

It will be noted that each of the letters are from Amanda S. Hughson and during the life of Caleb S. Hughson, the owner. No payments were ever made by him and no produce delivered by him.

Mrs. Hughson, the defendant, testified that the complainant is eighty-three years of age (52), and both lived on the farm, ate at the same table since 1872 (53), and during all this time she never asked defendant for any interest (54). Payments were made by her but on a note of two hundred dollars held by Stephen O. Horton (54) (58-59-60); this note was never paid off; no payments were ever made on the mortgages (54) except royalties by Coplay Iron Company more than twenty years ago (57) (58).



**REASONS.**

1. Where no payments are made on the bond the same outlaws in sixteen years.

2. The right of entry under the mortgage must be exercised within twenty years from the time of the last payment.

3. Endorsement of payment on note, &c., or other writing by the party to whom such payment shall be made will not prevent the running of the statute.

4. Where a person owing two or more debts, makes a payment without a specific appropriation thereof the creditor may apply it in payment of whichever debt he pleases.

5. But where neither the debtor or creditor directs to which of two existing debts the payment shall apply, the law will apply it on that which is least secure or for which the creditor's security is most precarious.

6. If neither party makes an appropriation at the times of payment, they cannot afterwards so appropriate the payments as to affect the equities of third parties but the law makes the appropriation.



**(LAW.)****1.**

**Where no payments are made on the bond the same outlaws in sixteen years.**

By the statute "Limitation of Actions" (C. S. 3165),

"every action of debt upon any single or penal bill for the payment of money only, or upon any obligation with condition for the payment of money only \* \* \* shall be commenced and sued within sixteen years next after the cause of such action shall have accrued, and not after, but if any payment shall have been made on any such lease, specialty, or award, within or after said period of sixteen years, then an action instituted on such lease, specialty or award, within sixteen years after such payment shall be good and effectual in law and not after."

**2.**

**The right of entry under the mortgage must be exercised within twenty years from the time of the last payment.**

"That no person who now hath or hereafter may have, any right or title of entry into any lands, tenements or hereditaments, shall make any entry therein, but within twenty years next after such right or title shall accrue, and such person shall be barred of any entry afterwards" (C. S. 3169).



In *Blue v. Everett et ux.*, 10 Dick. Chy. pg. 329, at 337, the Court held that:

“as a result of my examination, I conclude that our decisions, at law as well as in equity, establish the rule that unless the delay for twenty years is satisfactorily accounted for or explained, the presumption of payment of a bond or mortgage or other pecuniary debt is conclusive and cannot be rebutted simply by proof in fact of non-payment without accounting for the delay \* \* \* the period of twenty years has been fixed as the sufficient limit of time to give rise to the presumption, and when this time has elapsed, unaccounted for or unexplained, the law, upon general principles and without reference to the circumstances of the particular case, raises the presumption of payment.”

The application of this doctrine of limitations in Chancery was approved in this case on appeal (11 Dick. 455), but the Court further said in reference to an excuse for failure to collect within the twenty-year period (460).

“In the present case on a very careful examination of these decisions and others elsewhere, the learned Vice-Chancellor reached the conclusion that, under the equity rule, proof in fact of the non-payment of the debt would not defeat the presumption, but the creditor must go further and show that, admitting the continued existence of the debt, his conduct in refraining from collecting it has been reasonable.

Certainly such a rule has but scant justice and a minimum of precision to recommend it. It inflicts upon a creditor a penalty extending to the whole amount due him, however large, and no more, however small, because, on consideration of the probable circumstances, the chancellor thinks his conduct either too indulgent towards his debtor or too considerate of his own convenience. The principle thus supported should be applied to the case in hand. The claim of the complainant is not, in its



nature, equitable at all. It is brought in the Court of Chancery, not to enforce any equity belonging to him, but that the Court may dispose of the equity of the defendant; the complainant's rights under both his bond and mortgage, are purely legal in their nature, and as they have been barred, that under the bond by the lapse of sixteen years since the last payment was made, and that under the mortgage by the lapse of twenty years since the breach of the condition, they should be denied in equity as well as at law."

In *Colton v. Depew*, 15 Dick. 454, at 463,

"the mortgagee has two securities for the debt, the bond and the legal estate in the mortgaged premises. A payment on the debt may be made by the obligor on the bond, or by the grantee of the mortgaged premises. When the obligor has conveyed the premises his grantee has no interest in keeping alive the contract to pay contained in the bond. A payment of interest as part principal on the debt may be made by the obligor or by his grantee. If such payment be made by the owner, who was not the obligor, it would not at law remove the bar of the statute of limitations in an action against the latter."

"The possession upon which the statute attaches must be adverse. The mortgagee is not barred by the possession of his mortgagor paying interest (464). The endorsement of payments on the bond is a matter of form. Payments of interest, whether made on the bond or mortgage, *if made by the holder of the title to the mortgaged premises*, were in exoneration of the mortgaged premises from so much of the indebtedness, and were plainly a recognition of the lien of the mortgage \* \* \* in an action of ejectment a mortgagor in possession for more than twenty years setting up the statute of limitations, would be debarred of such defence by proof that within twenty years he had recognized the mortgaged estate by the payment of interest on the mortgage indebtedness."



## 3.

**Endorsement of payment on note, &c., or other writing by the party to whom such payment shall be made will not prevent the running of the statute.**

“No endorsement or memorandum of any payment written or made, after this act shall go into effect, upon any promissory note, bill of exchange or *other writing* by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of this act.”

C. S. 3169.

In *Van Dike v. Admin. of Van Dike*, 3 Greene, 289, at page 298, the Court said:

“Such admissions (payments) even if accompanied, with an actual promise of payment, would not revive a bond once barred by the statute of limitations; \* \* \* under no state of the pleadings could such endorsements be read in evidence without proof that they had been made by or with consent of the obligor, or actual proof that such payments had been made.” at 299.

“You must prove that the endorsements were on the instrument at or recently after the times they bear date before you are entitled to read them in evidence \* \* \* it requires proof of the fact of the payment by the debtor, and I am not prepared to state that any writing made by the holder in his own favor, though proved to be made at the time it bears date, would be evidence of the important fact he is bound to make out by the statute.”

*Parker v. Butterworth*, 17 Vr. 244 at 246.

“The endorsement or memorandum of payment by the party to whom payment is made is no longer sufficient proof thereof, but any payment, when proved by proper evidence *aliunde*, which would have been sufficient be-



fore the statute, is still sufficient to remove the bar of the statute.”

In construing Section 11 of the Statute of Limitations, the Court of Errors and Appeals in *Christopher v. Williams*, 19 Dick, 354, said:

“Its effect is to prevent there being accepted as sufficient evidence to prove the payment for the purpose of avoiding the bar of the statute, and therefore to require evidence of the payment in addition to that contained in the endorsement or memorandum.”

## 4.

**Where a person owing two or more debts, makes a payment without a specific appropriation thereof the creditor may apply it in payment of whichever debt he pleases.**

*White v. Frumbull*, Cyc. 314.

*Oliver v. Phelps*, Spencer, 180.

*Terhune v. Colton*, 1 Beas. 232, at 312.

*Bird v. Davis*, 1 McCarter, 467.

*Leeds v. Gifford*, 14 Stew. 464, affirmed 18 Stew. 245.

## 5.

**But where neither the debtor or creditor directs to which of two existing debts the payment shall apply, the law will apply it on that which is least secure or for which the creditor's security is most precarious.**

*Terhune v. Colton*, 1 Beas. 232, at 312.

*Leeds v. Gifford*, 14 Stew. 464, Aff. 18 Stew. 245.



## 6.

**If neither party makes an appropriation at the times of payment, they cannot afterwards so appropriate the payments as to affect the equities of third parties, but the law makes the appropriation.**

*Terhune v. Colton*, 1 Beas. 232, at 312.

Under the sworn claim of the complainant the last payment on the mortgage of one thousand dollars was made May 31st, 1892, and as the bill was not filed until November 25th, 1912, this mortgage is outlawed.

The last credit claimed by the complainant on the second mortgage of one thousand two hundred and sixty-eight dollars and ninety-one cents was alleged to have been made October 6, 1896, of five dollars.

Mrs. Corey swears this was produce delivered in 1882, and then she changed her testimony to 1896 (46)—she swears it was delivered in September (46) yet the credit appears in October (64).

We respectfully submit that the evidence as to payments was unsatisfactory, that the burden of proof on complainant was not sustained and the decree should be affirmed.

KING & VOGT,  
Counsel with Respondent.



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# In Chancery of New Jersey.

## BILL OF COMPLAINT.

[Filed, December 26, 1912.]

To the Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey.

Humbly complaining, show unto your Honor your oratrix ELIZABETH J. HUGHSON that on or about 10  
the Twenty-first day of October, Eighteen Hundred and Seventy-three, CALEB S. HUGHSON, then of the Township of Randolph, in the County of Morris, and State of New Jersey, became and was justly indebted unto STEPHEN O. HORTON, then of the Township of North Plainfield, in the County of Somerset, and State of New Jersey, in the sum of One Thousand Dollars (\$1,000), and, being so indebted, the said CALEB S. HUGHSON, in order to secure the payment of the said sum of money, with interest, did make and execute 20  
under his hand and seal and deliver unto the said STEPHEN O. HORTON a certain bond or obligation, bearing date the Twenty-fifth day of October, Eighteen Hundred and Seventy-three, in the penal sum of Two Thousand Dollars, lawful money of the United States, with a condition thereunder written, that if the said CALEB S. HUGHSON, his heirs, executors, administrators, or any of them, should well and truly pay, or cause to be paid, unto the said STEPHEN O. HORTON, or to his certain attorney, executors, ad- 30  
ministrators, or assigns, the sum of One Thousand Dollars (\$1,000), as follows: The sum of Five Hundred Dollars (\$500) on the First day of April, Eighteen Hundred and Seventy-five, and the sum of Five Hundred Dollars (\$500) on the First day of April, Eighteen Hundred and Seventy-six, with interest for the same at the rate of seven (7) per centum per annum, payable yearly, without any fraud or other delay, then the said obligation to be void, or else to be and remain in full force and virtue, as in and by the said bond or 40



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obligation and the condition thereof, reference being thereunto had, will more fully and at large appear, and which said bond or obligation is now in the custody of your oratrix and ready to be produced, as this honorable court shall direct, and to which, for greater certainty, your oratrix prays leave to refer.

- And your oratrix further shows that the said
- 10 CALEB S. HUGHSON, in order to secure the payment of the said sum of money above mentioned, together with the interest thereon, executed and delivered unto the said STEPHEN O. HORTON a certain indenture of mortgage, bearing date the Twenty-first day of October, Eighteen Hundred and Seventy-three, made by the said CALEB S. HUGHSON, of the first part, to the said STEPHEN O. HORTON, of the second part, whereby the said CALEB S. HUGHSON did give, grant, bargain, sell, alien, enfeoff, convey, and con-
- 20 firm unto the said STEPHEN O. HORTON, and to his heirs and assigns forever.

All of two tracts or parcels of land and premises, hereinafter particularly described, situately, lying and being in the Township of Randolph, in the County of Morris, and State of New Jersey:

- Beginning at a large white oak tree, it being the corner of the Janson farm, thence running on a course along a line of Edward Lewis' lands (1) North twenty-seven degrees and twenty minutes East twenty-one
- 30 chains and forty-five links to a corner of Luther Pool's lands, thence along a line of his lands, (2) North Nineteen degrees and forty-five minutes East eight chains and fifty-five links to a Chestnut tree, the beginning corner of lot A, of share 1; thence along a line of the same (3) North eighty-six degrees and forty-five minutes West seventeen chains to a heap of stones; thence along the same (4) South eighty-seven degrees and fifteen minutes West ten chains to a stake in the farm lane; thence along the same (5) South four degrees
- 40 West six chains and eighteen links to a heap of stones;



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thence along the same (6) South seventy-five degrees West eleven chains into the middle of a public road; thence along the same (7) North thirty-one degrees West one chain and eight links; thence (8) along a line of the said division South twenty-four degrees West four chains and eighty-three links to a stake and heap of stones in the outside line of the whole tract; thence (9) South along a line of the said Janson farm, 10  
sixty-two degrees East thirty-one chains and fifty-two links to the place of beginning, containing sixty-one acres and seventy-six hundredth of an acre of land be the same more or less.

Also one other lot of land, viz., lot B, of share No. 2, and is thus designated on the annexed map and is butted and bounded as follows: Beginning at a white oak tree standing in the fence on the south side of the said Morris and Sussex turnpike road; thence running on a course (1) North thirty-eight degrees West seven 20  
chains to a heap of stones on the South side of said road, a corner of lot B of share No. 1; thence (2) South fifty-seven degrees West nine chains and forty-five links to another corner of said lot; thence (3) South fifty-seven degrees East two chains and twenty-two links to a heap of stones; thence (4) South thirty degrees and thirty minutes East three chains and seventeen links to the Southeast corner of the same; thence along a line of the said Edward Lewis' lands (5) North sixty-five degrees and thirty minutes East 30  
ten chains and seven links to the place of beginning, containing seven acres and nine hundredths of an acre of land be the same more or less.

Being the same premises conveyed to the party of the first part by deed of STEPHEN O. HORTON, dated Octobed Twenty-first, Eighteen Hundred and Seventy-three, not yet recorded, and this mortgage is given to secure a part of the consideration money therein mentioned.

Together with all and singular the profits, privi- 40



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leges and advantages, with the appurtenances to the same belonging or in any wise appertaining; also, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said party of the first part therein, of, in, and to the same, and of, in, and to every part and part and parcel thereof; to have and to hold, all and singular, the said tracts or lots of land and  
 10 premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs, and assigns, forever; Provided, always, that if the said CALEB S. HUGHSON, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, to the said party of the second part, or to his certain attorney or attorneys, heirs, executors, administrators, or assigns the sum of five hundred dollars on the first day of April, Eighteen  
 20 Hundred and Seventy-five, and five hundred on the first of April, Eighteen Hundred and Seventy-six, with interest from the date of the said mortgage, according to the condition of the said bond or obligation, to which reference is made, without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever, then the said indenture of mortgage and the said bond or obligation should cease and be void.

And your oratrix further shows that after the ex-  
 30 ecution of the said indenture of mortgage, the same was in due form of law acknowledged by the said CALEB S. HUGHSON, on the Twenty-fifth day of October, Eighteen Hundred and Seventy-three, before W. W. DAKE, one of the commissioners duly appointed for taking the acknowledgment and proof of deeds and mortgages; and the said indenture of mortgage was duly recorded in the office of the Clerk in and for the said County of Morris in Book Z 2 of Mortgages, on pages 302, etc., on the Fourteenth day of November,  
 40 Eighteen Hundred and Seventy-three, as by the sev-



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eral certificates endorsed on the said indenture of mortgage more fully appears, and to which record and endorsements your oratrix, for greater certainty, begs leave to refer, if it be necessary so to do, and which said mortgage is now in the custody of your oratrix and ready to be produced, as this honorable court shall direct, and to which, for greater certainty, your oratrix prays leave to refer.

10

And your oratrix shows that the said indenture of mortgage represented and was given as and for the purchase price of the said tracts or lots of land and premises therein mentioned and described, the said tracts or lots of land and premises described in the said indenture of mortgage having been sold by the said STEPHEN O. HORTON to the said CALEB S. HUGHSON for the sum of ONE THOUSAND DOLLARS and conveyed by the said STEPHEN O. HORTON to the said CALEB S. HUGHSON by deed dated the Twenty-first day of October, Eighteen Hundred and Seventy-three, and duly recorded in the office of the Clerk in and for the said County of Morris, in Book V 6 of Deeds, on pages 233, etc., on the Fourteenth day of November, Eighteen Hundred and Seventy-three.

20

And your oratrix further shows that the said CALEB S. HUGHSON was married at the time of the execution and delivery of the said indenture of mortgage, and that he departed this life on or about the Twenty-ninth day of March, Nineteen Hundred and Eight, leaving him surviving his said wife, and that her name is AMANDA M. HUGHSON, and that she claims dower in the said tracts or lots of land and premises; but your oratrix expressly charges that the dower so claimed is subject to the lien of your oratrix' said mortgage, as the said mortgage was given to secure the purchase price of the said tracts or lots of land and premises as aforesaid set forth.

30

And your oratrix further shows that on or about

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the Seventh day of March, Eighteen Hundred and Seventy-six, the said CALEB S. HUGHSON became and was justly indebted unto the said STEPHEN O. HORTON in the further sum of ONE THOUSAND TWO HUNDRED AND SIXTY-EIGHT DOLLARS AND NINETY-ONE CENTS (\$1,268.91), and, being so indebted, the said CALEB S. HUGHSON, in order to

10 secure the payment of the said sum of money, with interest, did make and execute under his hand and seal and deliver unto the said STEPHEN O. HORTON a certain other bond or obligation, bearing date the Seventh day of March, Eighteen Hundred and Seventy-six, in the penal sum of TWO THOUSAND FIVE HUNDRED AND THIRTY-SEVEN DOLLARS AND EIGHTY-TWO CENTS (\$2,537.82), lawful money of the United States, with a condition thereunder written, that if the said CALEB S. HUGHSON, his heirs, ex-

20 ecutors, administrators, or any of them, should well and truly pay, or cause to be paid, unto the said STEPHEN O. HORTON, or to his certain attorneys, executors, administrators, or assigns, the sum of ONE THOUSAND TWO HUNDRED AND SIXTY-EIGHT DOLLARS AND NINETY-ONE CENTS (\$1,268.91), in two years from the First day of April, Eighteen Hundred and Seventy-six, with interest for the same at the rate of seven (7) per centum per annum, payable yearly, without any fraud or other delay, then the said

30 obligation to be void, or else to be and remain in full force and virtue, as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear, and which said bond or obligation is now in the custody of your oratrix and ready to be produced, as this honorable court shall direct, and to which, for greater certainty, your oratrix prays leave to refer.

And your oratrix further shows that the said CALEB S. HUGHSON, in order to secure the payment

40 of the said sum of money above mentioned, together



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with the interest thereon, executed and delivered unto the said STEPHEN O. HORTON a certain other indenture of mortgage bearing date the Seventh day of March, Eighteen Hundred and Seventy-six, made by the said CALEB S. HUGHSON, of the first part, to the said STEPHEN O. HORTON, of the second part, whereby the said CALEB S. HUGHSON did give, grant, bargain, sell, alien, enfeoff, convey, and confirm 10  
unto the said STEPHEN O. HORTON, and to his heirs and assigns forever,

ALL those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Township of Randolph, in the County of Morris, and State of New Jersey:

1st lot. Beginning at a large white oak tree, it being the corner of the Janson farm, thence running on a course along a line of Edward Lewis' lands (1) North twenty-seven degrees and minutes 20  
East twenty-one chains and fifty-five links to a corner of Luther Pool's lands; thence along a line of his lands (2) North nineteen degrees and forty-five minutes East eight chains and fifty-five links to chestnut tree, the beginning corner of lot A, of share No. 1; thence along a line of the same (3) North eighty-six degrees and forty-five minutes West seventeen chains to a heap of stones; thence along the same (4) South eighty-seven degrees and fifteen minutes West ten chains to a stake in the farm lane; thence along the same (5) South four 30  
degrees West six chains and Eighteen links to a heap of stones; thence along the same (6) South Seventy-five degrees West eleven chains, into the middle of a public road; thence along the same (7) North thirty-one degrees West one chain and eighty-eight links; thence (8) along a line of the said division South twenty-four degrees West four chains and Eighty-three links to a stake and heap of stones in the outside line of the whole tract; thence (9) South along a line of said Janson farm, sixty-two degrees East thirty-one 40



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chains and fifty-two links to the place of beginning, containing sixty-one acres and seventy six hundredths of an acre of land be the same more or less.

- Also one other lot of land, viz., lot B, of share No. 2, and is thus designated on the annexed map and is butted and bounded as follows: Beginning at a white oak tree standing in the fence on the south side of the
- 10 said Morris and Sussex turnpike road, thence running on a course (1) North thirty-eight degrees West seven chains to a heap of stones on the South side of said road, a corner of lot B of share No. 1; thence (2) South fifty-seven degrees West nine chains and forty-five links to another corner of said lot; thence (3) South fifty-seven degrees East two chains and twenty-two links to a heap of stones; thence (4) South thirty degrees and thirty minutes East three chains and seventeen links to the Southeast corner of the same; thence
- 20 along a line of the said Edward Lewis' lands (5) North sixty-five degrees and thirty minutes East ten chains and seven links to the place of Beginning, containing seven acres and nine hundredths of an acre, be the same more or less. Being the same premises conveyed to the party of the first part by deed of STEPHEN O. HORTON dated October Twenty-first, Eighteen Hundred and Seventy-three and this mortgage is given to secure a part of the consideration money therein mentioned. Also the equal undivided one-third interest, right and title of said party of the first part, of,
- 30 in and to all that certain tract of land and premises, heretofore owned and occupied by NATHAN HUGHSON, deceased, father of said party of the first part, and now occupied by Mrs. ESTHER HUGHSON, widow of said deceased, and known as the "Nathan Hughson" homestead farm, and situated on the public road leading from Dover to Chester in the said Township of Randolph, County and State aforesaid, and containing fifty acres of land more or less.
- 40 Together with all and singular the profits, privi-



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leges and advantages, with the appurtenances to the same belonging or in any wise appertaining; also, all the estate, right, title, interest, property claim and demand whatsoever, of the said party of the first part, of, in, and to the same, and of, in, and to every part and parcel thereof; to have and to hold, all and singular the said tracts or lots of land and premises, with the appurtenances, unto the said party of the second 10  
 part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever; Provided, always, that if the said CALEB S. HUGHSON, his heirs, executors, or administrators should well and truly pay, or cause to be paid, to the said party of the second part, or to his certain attorney or attorneys, heirs, executors, administrators, or assigns the sum of one thousand two hundred and sixty-eight dollars and ninety-one cents 20  
 within two years from the date of the said mortgage together with the interest accruing thereon at the rate of seven per centum per annum according to the condition of the said bond executed by the said HUGHSON to said HORTON to secure the payment of the said sum of money hereinbefore mentioned with interest as aforesaid, without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever, then and from thenceforth. the said indenture of mortgage and the said bond or obligation should cease and be void. 30

And your oratrix further shows that after the execution of the said last mentioned indenture of mortgage, the same was in due form of law acknowledged by the said CALEB S. HUGHSON on the Seventeenth day of March, Eighteen Hundred and Seventy-six, before ELLIAS M. WHITE, a Master in the Court of Chancery of New Jersey; and the said indenture of mortgage was duly recorded in the office of the Clerk in and for the said County of Morris in Book F 3 of Mortgages, on pages 483, etc., on the Twenty-first day 40



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of March, Eighteen Hundred and Seventy-six, as by the several certificates endorsed on the said indenture of mortgage more fully appears, and to which record and endorsements your oratrix, for greater certainty, begs leave to refer, if it be necessary so to do, and which said last mentioned mortgage is now in the custody of your oratrix and ready to be produced, as this  
10 honorable court shall direct, and to which, for greater certainty, your oratrix begs leave to refer.

And your oratrix further shows that the lands and premises described in and covered by the mortgage first herein mentioned are included in and form a part of the lands and premises described in and covered by the mortgage secondly herein mentioned.

And your oratrix further shows that the said mortgage secondly herein described, as to the first two tracts or lots of land herein mentioned and set forth,  
20 represented and was given as and for the purchase price of the said two tracts or lots of land therein mentioned and described.

And your oratrix further shows that the said mortgage secondly herein described, as to the first two tracts or lots of land therein mentioned and set forth, represented and was given as and for the purchase price of the said two tracts or lots of land therein mentioned and described.

And your oratrix further shows that the said  
30 CALEB S. HUGHSON was married at the time of the execution and delivery of the said indenture of mortgage secondly above described, and that he departed this life on or about the Twenty-ninth day of March, Nineteen Hundred and Eight, leaving him surviving his said wife, and that her name is AMANDA M. HUGHSON, as hereinbefore set forth, and that she claims dower in the said tracts or lots of land and premises mentioned and set forth in the said mortgage secondly above described; but your oratrix expressly  
40 charges that the dower so claimed is, as to the first two



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tracts or lots of land mentioned and set forth in the said mortgage secondly above described, subject to the lien of your oratrix' said mortgage, as the said mortgage was given to secure the purchase price of the said tracts or lots of land and premises as aforesaid set forth.

And your oratrix further shows that on or about the Seventeenth day of March, Eighteen Hundred and Ninety-six, as your oratrix has been informed and believes, one CHARLES E. CLARK recovered a judgment against the said CALEB S. HUGHSON in the Supreme Court of New Jersey for the sum of THREE THOUSAND NINE HUNDRED AND SIXTY-SEVEN DOLLARS AND EIGHTY-SIX CENTS (\$3,967.86) damages and Twenty-eight Dollars and Seventy-eight cents (\$28.78) costs, or some other sum, by virtue of which judgment, the said CHARLES E. CLARK claims to have some lien upon the said premises covered respectively by the said two mortgages; but your oratrix charges that the said judgment was obtained subsequent to the execution and delivery of the said two mortgages of your oratrix and with full notice thereof, and, if a lien at all upon the said premises covered respectively by the said two mortgages, is subsequent to the incumbrances respectively of the said two mortgages of your oratrix.

And your oratrix further shows that the said CALEB S. HUGHSON departed this life on or about the Twenty-ninth day of March, Nineteen Hundred and Eight, as hereinbefore set forth, having first duly made, executed and published his last will and testament, in writing, in due form of law, and thereby did, among other things, give, devise and bequeath all his property, real, personal and mixed, wheresoever situated and in whose hands found, of which he should died seized and possessed, to his wife, AMANDA M. HUGHSON, and that at the time of his death as aforesaid, the said CALEB S. HUGHSON was seized and



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possessed of the said tracts or lots of lands and premises covered respectively by the two said mortgages, and that, by the said provision of the said last will and testament, the said AMANDA M. HUGHSON became seized and possessed of the said tracts or lots of land and premises, and that she is now so seized and possessed.

10 And your oratrix further shows that the said last will and testament of the said CALEB S. HUGHSON, deceased, was afterward, to wit, on the Thirteenth day of April, Nineteen Hundred and Eight, duly proved before the then Surrogate of the County of Morris, as by the record thereof, now remaining in the office of the Surrogate of the said County of Morris, reference being thereunto had, will more fully appear.

And your oratrix further shows that the said  
 20 STEPHEN O. HORTON departed this life on the Ninth day of November, Eighteen Hundred and Eighty-three, having first duly made, executed and published his last will and testament, in writing in due form of law, and thereby did, among other things, give, devise and bequeath all his estate and property, real and personal, of whatsoever the same might consist and where-soever the same might be situated, of which he should die seized possessed, or entitled to, to his wife, DENCY C. HORTON, and did appoint his wife, DENCY C.  
 30 HORTON, the sole executrix of his said last will and testament, and that, at the time of his death aforesaid, the said STEPHEN O. HORTON was the owner and was possessed of the two said bonds and mortgages, and that, by the said provision of the said last will and testament, the said DENCY C. HORTON became the owner and became possessed of the said two bonds and mortgages.

And your oratrix further shows that the said last will and testament of the said STEPHEN O. HORTON, deceased, was afterward, to wit, on the Thirteenth day  
 40 of November, Eighteen Hundred and eighty-three,



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duly proved by the said DENCY C. HORTON, the executrix therein named, before the then Surrogate of the County of Somerset, as by a certified copy of the same and the probate thereof, now in the custody of your oratrix and ready to be produced when and where this honorable court may direct, or the record thereof, now remaining in the office of the Surrogate of the said County of Somerset, reference being thereunto had, 10 will more fully appear.

And your oratrix further shows that the said DENCY C. HORTON afterward, to wit, on the Eighth day of September, Eighteen Hundred and Ninety-six, did, by deed of assignment under her hand and seal, assign the two said bonds and mortgages to your oratrix, and which said deed of assignment was, on the Eighth day of September, Eighteen Hundred and Ninety-six, in due form of law acknowledged before JOHN H. VAN WINKLE, a Master in Chancery of 20 New Jersey, as by the certificate endorsed on the said deed of assignment more fully appears, and to which endorsement your oratrix, for greater certainty begs leave to refer, if it be necessary so to do, and which said deed of assignment is now in the custody of your oratrix and ready to be produced, as this honorable court shall direct and to which, for greater certainty, your oratrix begs leave to refer.

And your oratrix further shows that, afterward, to wit, on the Twenty-seventh day of December, Eighteen Hundred and Ninety-six, the said DENCY C. 30 HORTON departed this life, having first duly made, executed, and published her last will and testament, in writing, in due form of law, and which said last will and testament was afterward, to wit, on the Twelfth day of January, Eighteen Hundred and Ninety-seven, duly proved before the then Surrogate of the County of Somerset, as by a certified copy of the same, and probate thereof, now in the custody of your oratrix, and ready to be produced when and where this hon- 40



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orable court may direct, or the record thereof, now remaining in the office of the Surrogate of the County of Somerset, reference being thereunto had, will more fully appear.

And your oratrix further shows that the said last will and testament contains the following provision relative to the said two bonds and mortgages:

- 10     “Whereas, I have by a certain assignment in writing signed by me, bearing date the Eighth day of September A. D., Eighteen Hundred and Ninety-six, assigned to my sister, ELIZABETH J. HUGHSON, two certain indentures of mortgage with the bonds therein described, one of said mortgages dated the Twenty-first day of October A. D., Eighteen Hundred and Seventy-three, made by CALEB S. HUGHSON to STEPHEN O. HORTON to secure payment of One Thousand (\$1,000) Dollars with interest, which mortgage is
- 20     recorded in the Clerk’s office of Morris County in Book Z No. 2 of mortgages, page 302. And the other of said mortgages made by CALEB S. HUGHSON to STEPHEN O. HORTON to secure payment of Twelve Hundred and Sixty-eight Dollars and Ninety-one Cents with interest, which mortgage is recorded in Book F No. 3 of mortgages, on page 483, in the Clerk’s office of Morris County, and to which said bonds and mortgages were bequeathed to me by said STEPHEN O. HORTON in and by his last will and testament. Now
- 30     in order to satisfy and confirm my aforesaid action in regard to said assignment I do hereby give and bequeath said bonds and mortgages to my sister, ELIZABETH J. HUGHSON, to have and to hold the same in her own right.”

- And your oratrix further shows that the only dwelling house on the said property covered by the said two mortgages was on the part known as the fifty-acre tract and which was the third tract described in and covered by the mortgage secondly above mentioned
- 40     and set forth, and that the said fifty-acre tract was



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owned and occupied by the said CALEB S. HUGHSON, his brother MERVIN R. HUGHSON, and his sister, your oratrix, each of whom was seized of the undivided one-third part of the said tract, and that the said MERVIN R. HUGHSON departed this life not married and intestate on or about the Twenty-ninth day of June, in the year Eighteen Hundred and Ninety-nine, and that by the death of the said MERVIN R. HUGHSON, not married and intestate as aforesaid, his one-third undivided interest of, in, and to the said tract became vested in the said CALEB S. HUGHSON and your oratrix, each of whom then became seized of the undivided one-half part of the said tract, and that the said CALEB S. HUGHSON continued to occupy the said house with your oratrix until his death as aforesaid, since which time the said house has been occupied by the said AMANDA M. HUGHSON, the widow of the said CALEB S. HUGHSON, and your oratrix, and is now so occupied.

And your oratrix further shows that the said CALEB S. HUGHSON made payments from time to time on account of the interest due on the two said bonds and mortgages to the said STEPHEN O. HORTON, in his lifetime, and to the said DENCY C. HORTON in her lifetime, and that some of these payments were made in farm produce, but that shortly after the first mortgage was given the said CALEB S. HUGHSON had financial difficulties and was obliged to borrow money on the mortgage secondly given, and that from that time on the said CALEB S. HUGHSON was always in straightened circumstances, and that it was with difficulty that he could earn enough money to support his family, and that it would have been a great hardships for the said STEPHEN O. HORTON, in his lifetime, or for the said DENCY C. HORTON, in her lifetime, to have compelled the said CALEB S. HUGHSON to have kept up the full payments of interest called for by the two said bonds and mortgages or to



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have foreclosed the said mortgages for the failure of the said CALEB S. HUGHSON so to do.

And your oratrix further shows that the said CALEB S. HUGHSON was a half-brother of the said DENCY C. HORTON, the wife of the said STEPHEN O. HORTON, and that the social relations of the families were intimate.

10 And your oratrix further shows that repeated demands were made on the said CALEB S. HUGHSON for the payment of interest on the said two bonds and mortgages, and that the said CALEB S. HUGHSON repeatedly promised to make payments on said interest and that payments of interest on the said two bonds and mortgages were made by the said CALEB S. HUGHSON within sixteen years last past.

And your oratrix further shows that the principal sums of money mentioned in and secured by the said  
20 two bonds and mortgages, with large arrears of interest thereon, still remain due and unpaid to your oratrix, whereby the said two mortgages and the respective estates thereby granted have become absolute in your oratrix and her heirs.

And your oratrix further shows that since the execution of your oratrix said two mortgages, the said CALEB S. HUGHSON, in his lifetime, and the said AMANDA M. HUGHSON does still receive the rents, sessed and enjoyed, and the said AMANDA M. HUGH-  
30 SON does still possess and enjoy the said mortgaged premises, and have always received, and the said AMANDA M. HUGHSON doe sstill receive the rents, issues and profits thereof; and that the said premises are a security for the payment of the said principal and interest moneys so due on the said two bonds and mortgages to your oratrix as aforesaid, and that she or some other person or persons for her have frequently and in a friendly manner applied to the said CALEB S. HUGHSON, in his lifetime, and to the said AMANDA  
40 M. HUGHSON, since his death, and requested the pay-



### Bill of Complaint

ment and discharge of the said principal and interest money so due to your oratrix on the said two bonds and mortgages, and your oratrix well hoped that such reasonable requests of your oratrix would have been complied with, as in justice and equity they ought to have been.

In tender consideration whereof, and for as much as your oratrix has not a complete remedy in the premises at the common law, nor can foreclose the equity of redemption of the said mortgaged premises or safely sell the same for the payment and satisfaction of the said principal and interest moneys without the aid of this honorable court, where matters of this nature are particularly cognizable and relievable,

To the end, therefore, that the said AMANDA M. HUGHSON, and the said CHARLES E. CLARK, the defendants hereinafter named, may, but without oath, the necessity of the said answer being put in under oath being hereby expressly waived, pursuant to the statute, true, full, and perfect answer make to all and singular the premises, as fully as if here repeated, and they thereto particularly interrogated, and that they or one of them may be decreed to pay to your oratrix the said principal sums so due on the said two bonds and mortgages and the interest due and to grow due thereon, with your oratrix' costs and charges in this behalf sustained, by a short day, to be appointed by this honorable court; and that, in default thereof, the said defendants and every and all person and persons claiming or to claim under them may be foreclosed of and from all right, title and equity of redemption of, in, and to the said mortgaged premises and every part thereof, with the appurtenances, and may deliver unto your oratrix the possession thereof, and all deeds, demises, and muniments of title relating to or concerning the same; or that the said mortgaged premises, with the appurtenances, may be sold, and that out of the



**Bill of Complaint**

moneys arising from such sale your oratrix may be paid the said principal moneys, interest and costs.

And that your oratrix may have such further and other relief in the premises as the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your oratrix a writ or writs of subpoena,  
 10 issuing out of and under the seal of this honorable Court, to be directed to the said AMANDA M. HUGHSON and the said CHARLES E. CLARK therein and thereby commanding them, on a certain day and under a certain penalty, to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand to, abide by, and perform such decree therein as to your Honor shall seem meet and agreeable to equity and good conscience.

And your oratrix will ever pray, etc.

20

JOHN H. VAN WINKLE & SON,  
 Solicitors for Complainant.  
 W. S. ANGLEMAN,  
 Of Counsel with Complainant.

30

40



**ANSWER.**

[Filed, February 20, 1913.]

Between

ELIZABETH HUGHSON,

Complainant.

and

AMANDA M. HUGHSON,

Defendant.

Bill to  
Foreclose.

10

The answer of Amanda M. Hughson defendant to the bill of complaint of the said complainant.

This answering defendant not having in the mortgage alleged to have been given by Caleb S. Hughson on the twenty-first day of October, one thousand eight hundred and seventy-three to Stephen C. Horton to secure the sum of one thousand dollars neither affirms nor denies but leaves the complainant to make such proof thereof as she may deem best. 20

This defendant further answering denies that Caleb S. Hughson became and was justly indebted to the Stephen O. Horton in the further sum of one thousand two hundred and sixty-eight dollars and ninety-one cents, and denies that the said Caleb S. Hughson, in order to secure the payment of said sum with interest did make and execute under his hand and seal and deliver to Stephen O. Horton a certain other bond or obligation bearing date the seventh day of March, one thousand eight hundred and seventy-six in the penal sum of two thousand five hundred and thirty-seven dollars and eighty two cents, with the condition therein charged in said bill of complaint. 30

This answering defendant denies that the said Caleb S. Hughson, in order to secure the sum of money mentioned in said bond, executed and delivered to the said Stephen O. Horton the mortgage mentioned in said 40



**Answer**

bill of complaint, bearing date the seventh day of March, one thousand eight hundred and seventy-six and covering the land as mentioned in said bill of complaint, but charges and insists if said bond and mortgage were so made, the said second mortgage was given to satisfy and pay the mortgage firstly herein recited, together with the accrued interest thereon and which mortgage as additional security covered the equal undivided one third interest of Caleb S. Hughson in the Nathan Hughson Homestead Farm.

10 This answering defendant further says that the second mortgage was in full payment of the first mortgage which was a purchase money mortgage and said mortgage not being signed by this answering defendant, who was then and there the wife of said Caleb S. Hughson, this answering defendant is entitled to a dower right in all of the tracts mentioned and described  
20 in the said bill of complaint.

This answering defendant further says that she has no knowledge that Charles E. Clark, recovered a judgment against Caleb S. Hughson in the Supreme Court of New Jersey for the sum of three thousand nine hundred and sixty-seven dollars and eighty-six cents, as mentioned in the said bill of complaint, nor whether the same is a lien upon the said property.

30 This answering defendant admits Caleb S. Hughson departed this life on or about the twenty-ninth day of March, one thousand nine hundred and eight, leaving a last will and testament in which he did devise and bequeath all his property to this answering defendant, but denies that at the time of his death, the said Caleb S. Hughson was seized and possessed of the said tracts of land mentioned in the bill of complaint, and which were covered respectively by the said two mortgages, but charged and insists that at the time of his death neither of said mortgages were a lien or encumbrance  
40 thereon.



## Answer

This answering defendant further says that she has no knowledge when the said Stephen O. Horton, departed this life or what disposition he made of his property, but denies that at the time of his death he was the owner of the said bonds and mortgages mentioned in the said bill of complaint.

This answering defendant further says that she has no knowledge as to whether Dency C. Horton, has become lawfully entitled to receive or did receive said bonds and mortgages or whether she by deed of assignment did purport to assign the said two bonds and mortgages as alleged in said bill of complaint. 10

This answering defendant further says that she has no knowledge as to the alleged death of Dency C. Horton nor whether she made the testamentary deposition alleged in said bill of complaint.

This answering defendant further says that she neither admits or denies the descent alleged in said bill of complaint concerning the Nathan Hughson Homestead Farm, but leaves the complainant to make due and legal proof thereof. 20

This defendant further answering denies that the said Caleb S. Hughson made payments from time to time on account of interest due on the said two bonds and mortgages either to the said Stephen O. Horton or the said Dency C. Horton.

This answering defendant charges and insists that no payments of interest were ever made on said bond and mortgages from their respective dates in 1873 and 1876; and that the same are now and each of them outlawed, and denies that the principal sums therein mentioned and said interest is now due and owing thereon. 30

This answering defendant further says that the said Caleb S. Hughson is the husband of this answering defendant and he did in and by his last will and testament appoint Edward D. Neighbour and Amanda M. Hugh- 40



## Answer

son his executor and executrix thereof; that on December twenty sixth, one thousand nine hundred and eigght, the said Elizabeth J. Hughson, the complainant in this cause presented and filed with the said Edward D. Neighbour, as such executor a claim in writing for the principal and interest claimed to be due on the bonds herein recited amounting in the whole to the sum  
 10 of six thousand six hundred and fifty six dollars and sixty four cents and that on the fifth day of April one thousand nine hundred and nine the said Amanda M. Hughson and Edward D. Neighbor as executrix and executor of the last will and testament of Caleb S. Hughson gave notice in writing to the said Elizabeth J. Hughson that they and each of them disputed said claim so presented in all its particulars, and that following such notice no suit has been instituted by the said  
 20 Elizabeth J. Hughson to reduce her claim to judgment even though more than three months have elapsed since the serving of said notice, nor has said claim been in anywise withdrawn.

This defendant prays to be hence dismissed with her reasonable cost in this behalf most unlawfully sustained.

KING & VOGT,  
 Sol'rs of Deft.







## Testimony—Offer of Exhibits

## IN CHANCERY OF NEW JERSEY

Between ELIZABETH J. HUGHSON, Complainant.  and 10 AMANDA M. HUGHSON, Defendant.	}
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BEFORE His Honor Vice Chancellor Howell.

Mr. W. S. Angleman, and Mr. Van Winkle, appearing for the complainant.

Mr. Elmer King, appearing for the defendant.

20 TRANSCRIPT of shorthand report of the evidence given upon the trial of the above stated cause, on Wednesday, March eighteenth, Nineteen hundred and fourteen, at Chancery Chambers, Newark, New Jersey.

Mr. Angleman: I offer in evidence mortgage from Caleb S. Hughson to Stephen O. Horton, dated October 21, 1873, recorded in Morris County Clerk's Office in Book Z-2, I think it is, page 300, or 30.

Marked Exhibit C-1.

30 Mr. Angleman: I also offer in evidence the bond accompanying the mortgage.

Mr. King: If there are any credits on the bond they ought to be proved, I think we are entitled to that.

Mr. Angleman. There are no credits marked on the bond.

Marked Exhibit C-2.

Mr. Angleman: I next offer in evidence a mortgage from Caleb S. Hughson to Stephen O. Horton, dated March 7, 1876 and recorded in Morris County Clerk's Office in Book F-3 of Mortgage, pages 483 &c.



**Testimony—Offer of Exhibits**

Marked Exhibit C-4.

Mr. King: Are there any credits on the bond?

Mr. Angleman: No, except there is a little paper attached by pin, signed by Mr. Hughson; I suppose we can prove that separately if necessary. I also offer the bond accompanying this mortgage.

Marked Exhibit C-5.

Mr. Angleman: I also offer in evidence the 10  
searches, certified, Morris County Clerk's Office.

Marked Exhibit C-6.

Also offer the searches from the Supreme Court Clerk's Office.

Marked Exhibit C-7.

Also offer in evidence the two Federal searches.

Marked Exhibits C-8 and C-9.

The Court: Has the mortgage been assigned?

Mr. Angleman: Yes. I now offer in evidence 20  
probate copy of the will of Stephen O. Horton.

Marked Exhibit C-10.

Mr. Angleman: I offer in evidence probate  
copy of the will of Dency C. Horton.

Marked Exhibit C-11.

Mr. Angleman: I offer in evidence the assign-  
ment by Dency C. Horton of the two mortgages in ques-  
tion, to the complainant, dated September 8, 1896.

Marked Exhibit C-12.

Mr. Angleman: Offer in evidence the release 30  
by the complainant to the Executors of the Dency C.  
Horton Estate, dated January 27, 1898.

Marked Exhibit C-13.

Mr. Angleman: These two mortgages were as-  
signed before Dency Horton died, but in her will she  
confirmed the assignment, and this release is merely a  
release acknowledging that the assignments have been  
turned over.



## Emily H. Corey—Direct

Direct examination by Mr. Angleman.

Q. Mrs. Corey, what relation was Stephen O. Horton, the original mortgagee in this case, to you? A. My father.

Q. And what relation was Dency C. Horton to Stephen O. Horton? A. His wife.

Q. Was she your mother? A. She was.

10 Q. You have a knowledge of these various transactions, have you? A. Yes.

Q. What relation are the Hughsons to you? A. C. S. Hughson, Caleb S. Hughson is my mother's half brother.

Q. And the complainant, Elizabeth Hughson, was what relation to Caleb Hughson? A. A sister.

Q. And what relation is Amanda Hughson, the defendant, to Elizabeth Hughson, the complainant? A. Sister-in-law.

20 Q. Do you know of any payments having been made on these mortgages during the lifetime of your father? A. Principle or interest?

Q. Both. A. Yes, there was interest paid.

Q. Do you remember when that interest was paid? A. I couldn't give you the dates from my mind, it is written down.

Q. Have you a memorandum of it? A. No I havn't.

Q. Is this the memorandum?

30 Mr. King: Just a moment, she says she has no memorandum.

Mr. Angleman: She said she had none herself.

A. I turned the memorandum over to my attorney, he has it.

Q. Is this the memorandum you refer to? A. Yes.

Q. What is that memorandum?

Mr. King: I submit the memorandum shows for itself. He is asking what the memorandum shows.

The Court: No, he says what is the memorandum.  
40 dum.



**Emily H. Corey—Direct**

What does it represent?

The Court: State generally what it is.

A. Payments of interest.

Q. And whose signature is attached?

Mr. King: Now just a moment, that is the very objection which I am making; she says that is a payment of interest; the question is whether the memorandum shows it; I haven't seen it. I move that the last 10 answer be stricken out.

The Court: I think it is proper.

Mr. King: I will take an exception.

A. June 22,—

Mr. King: I object to your reading from the memorandum.

The Court: You are not to read it until you are asked to. 20

Q. In whose handwriting is the memorandum made?

A. Looks like mine.

Q. Do you know what it was made from? A. It was made from our little book that I kept.

Q. Where is the little book? A. It was lost.

Q. Have you made a search for it? A. Yes.

Q. Did that little book contain an accurate statement? 30

The Court: No.

Q. Is this paper an accurate statement of what was in the book? A. Yes.

Q. Were the entries in the book made at the time the payments were made? A. Yes.

The Court. You are leading the witness; this is on the nub of the case.



## Emily H. Corey—Direct

Q. Now I will ask you if, by looking at that memorandum which you have made, you can tell me when these various payments of interest were made.

Mr. King. I object to that, because that is a conclusion.

Examined by the Court.

10

Q. Do you know that any payments were ever made on account of these mortgages that were just put in evidence? A. Certainly.

Q. How do you know it? A. Because I saw it done.

Q. Who made the payments that you refer to? A. Sometimes Mr. C. S. Hughson, sometimes Mrs. C. S. Hughson.

Q. To whom were the payments made? A. To my mother.

20

Q. What is your mother's name? A. Dency Horton

Q. Who were present besides yourself and your mother? A. I cannot say positively.

Q. Where did the payments take place? A. In Plainfield.

Q. Where in Plainfield? A. 55 Somerset Street.

Q. At whose house? A. My mother's house.

Q. Do you know when the payments were made?

A. Well, by referring to these dates, I couldn't tell the exact dates without referring to the paper. I beg  
30 pardon, may I make one statement? There were payments made on the interest by the Coplay Iron Company while my father was living.

Q. What had the Coplay Iron Company to do with this? A. They leased some of the property.

Q. What? A. They leased some of the property.

Q. Were those payments made by the Iron Company made in your presence? A. They came by mail, I saw them.

40



## Emily H. Corey—Direct

Q. In what form were they? A. A letter and a check to my father.

Q. How did the Coplay Iron Company come to pay interest on the mortgage? A. Because no lease could be made without his consent, he held a mortgage on the property.

Q. What was this little book that you say is lost?  
A. A little memorandum book that I kept. 10

Q. State generally what you kept it for. A. Keeping accounts of the house and business.

Q. Kept it for your own information, or for the information of other people? A. For my own and mother's

Q. And the book was not your book, but was your mother's book? A. No, it wasn't my book, but I kept it.

Q. But it was your mother's account? A. Yes. 20

Q. When did you last see the book? A. I can't tell. It disappeared.

Q. When did you make the memorandum that you now produce? A. I can't tell.

Q. How many years ago, or how many months ago or days ago? A. Several years ago now.

Q. For what purpose was the memorandum made?  
A. To keep an account of this business.

Q. Did you not have sufficient account in the book?  
A. Yes, but I lost the book, and this was made to hand 30  
to Mr. Van Winkle.

Q. This was made recently then? A. No, several years ago.

Q. Made after you lost the book? A. Oh, no.

Q. Made before you lost the book? A. Certainly.

Q. For what purpose do you say it was made? A. Keep an account of the business.

Q. No, I mean the memorandum. A. Oh, to give Mr. Van Winkle, that he might know how this matter stood. 40



## Emily H. Corey—Direct—Cross

Q. What had he to do with it then? A. He was my attorney, always has been, my father selected him.

Q. Had any controversy arisen at that time? A. No.

Q. You say no? A. There was no controversy while Mr. Hughson lived.

10 Q. Will you not describe the search you have made for the book? A. Well, I looked in all places in the house where I kept anything of that kind.

Q. When did you make the search? A. Well, I couldn't give you the date now, I looked several times.

The Court: You propose, Mr. Angleman, to have this witness testify from this memorandum, I suppose?

Mr. Angleman: Yes.

The Court: You may cross-examine on the memorandum, if you like, Mr. King.

20 Cross-Examination by Mr. King:

Q. I notice at the top of the memorandum some writing with a pen; when was that made, in reference to the time this memorandum was made? A. At the same time, that is Mr. Van Winkle's writing.

Q. So that all of the memorandum, all the writing on this paper was not made by you, was it? A. This was all done.

Q. No, I say all was not. A. All but that (indicating).

30 Q. Taking "C. S. Hughson" at the bottom, who wrote that? A. That is my handwriting.

Q. And in whose handwriting are the pencil words? A. Mine.

Q. On the edge I find part in ink and part in pencil; who did that? A. That is Mr. Van Winkle's, that "bond" is Mr. Van Winkle's writing, there is one word there Mr. Van Winkle wrote.

By the Court: That word "bond"?

40 A. Yes.



**Emily H. Corey—Cross—Direct**

Q. Where was the bond when you made this memorandum? A. In Mr. Van Winkle's possession.

Examined by the Court: Have you any memory of the payment of interest or principle on either of these bonds, aside from the entries in your book and aside from the memorandum slip that you now produce, have you an independent memory of payments having been 10 made?

A. Yes, from the Coplay Iron Company.

Q. Well, do you have any independent recollection of payments having been made by anybody else beside the Coplay Iron Company? A. No, only Mr. and Mrs. Hughson.

Q. You don't remember when those payments were made by either of them? A. No; Mr. Angleman I think now has possession of the papers which show.

Q. Do you remember when the Coplay Iron Com- 20  
pany had possession of the property in question? A. Why it was before 1883.

Q. Before 1883? A. Yes, and they had possession of it in 1883.

Q. When did they go out of possession? A. I don't know.

Mr. Angleman: They don't come within the statutory period, they don't come within the last twenty 30  
years.

The Court: You mean their possession is more than twenty years ago?

Mr. Angleman: Yes.

Further Direct Examination:

Q. Do you remember having a conversation with the defendant, Amanda M. Hughson, relative to payments on these mortgages at any time?

Mr. King: I withdraw the objection now. 40



**Emily H. Corey—Direct**

The Court: You may answer.

A. I do.

Q. When did that take place, if you remember?

Mr. King: Now I object.

The Court: I think it is proper.

10

Mr. King: I am after the twenty year period.

The Court: He is asking when it was.

Mr. King: I withdraw my objection to that.

Q. (Question read) If you don't remember say so.

A. I can't say positively the date, but a number of times.

20 Q. I show you a paper and ask you if your signature is annexed to it? A. Yes.

Q. And are there any signatures on any other paper annexed to it? A. Yes.

Q. When were those signatures put there, in your presence? A. Yes.

Q. By reference to that paper can you tell me when these admissions were made?

Mr. King: I object; I submit she cannot use a paper until I have seen it.

30

The Court: If it is produced for the purpose of refreshing the memory of a witness the other side has a right to see it. Answer yes or no.

Q. Answer yes or no, whether you can tell from that when it was made. A. Yes.

Q. When was this paper signed, relative to the date when these claimed admissions were made?

Mr. King: I object to that because it contains a  
40 conclusion which is not verified by the evidence.



## Emily H. Corey—Direct

The Court: Objection overruled. You may answer.

Q. (Question read) Was it at the same time or later? A. At the same time.

Q. Will you by looking at this paper tell us when these admissions were made?

10

The Court: By the use of the word "admissions" you mean statements?

Mr. Angleman: Supposed admissions or statements were made, yes.

Q. Will you by looking at this paper tell us when these statements were made?

Mr. King: I submit, Your Honor, from the reading of this statement that it is self-serving and she cannot refresh her memory from it.

20

The Court: This is introduced for the purpose of fixing a date only?

Mr. Angleman: That is all.

The Court: I will overrule the objection.

Q. (Question read). A. October 29, 1910.

Q. What were those statements?

Mr. King: I object to the witness reading the paper. 30

By the Court: Do you recall what the statements were?

A. Yes.

By the Court: You may state.

A. That she and Mr. Hughson brought produce to Plainfield and asked that the value be placed on the bond as interest on the mortgage.

40



Emily H. Corey—Direct

Mr. King: I move to strike out the portion of the answer which relates to a statement made by Mrs. Hughson attempting to bind Mr. Hughson, the prior ancestor and owner of the property.

The Court: What was Mrs. Hughson's relation to this property at the time of the statements in question?  
10

Mr. Angleman: Owner.

The Court: She was the owner herself?

Mr. Angleman: The owner.

The Court: The owner of the fee?

Mr. Angleman: Yes, owner, and she is the defendant in the action.

The Court: I will have to let it go in now, and strike it out afterwards, if it turns out that there is a mistake about that. I will take the answer subject to  
20 being stricken out if not connected up.

Q. Do you know when Mr. Hughson died, approximately? A. About four years ago this spring.

Q. Was Mrs. Hughson owner of the property at the time these admissions were made?

Mr. King: That is a conclusion.

The Court: She cannot tell that. Mr. Hughson, the husband of this lady, was in possession of this property at the time of his death?  
30

A. Yes.

The Court: If Mr. Hughson was dead, and he left a will by which he gave the property to his wife, and that was prior to the time of these statements, then the statements are evidential, undoubtedly. I will take the answer subject to its being connected up.

Q. What else do you know about payments having been made on this mortgage? A. No payments after  
40 this one spoken of here.



**Emily H. Corey—Direct**

Q. After 1910? A. No.

Q. I show you a paper purporting to be a letter, dated July 4, 1892, signed by A. M. Hughson, and ask you if that is a letter sent to you by Amanda M. Hughson?

Mr. King: I object.

The Court: It is a leading question. It is not a question whether it was sent to this lady by her; it is a question whether Mrs. Hughson's signature is there. 10

Q. I will ask you if that is Amanda M. Hughson's signature to the letter? A. Certainly.

Q. Are you familiar with it? A. Yes.

Q. To whom was that letter sent?

The Court: How did the letter come into the possession of the witness? 20

A. It came to me—

By the Court: How did it come into possession?

A. By mail.

Mr. Angleman: I offer the letter in evidence.

Mr. King: I object to it upon the ground that it is a letter by Mrs. Hughson, and it appears in the evidence that her husband was the owner of the real estate at this time. 30

The Court: I will admit the letter subject to being stricken out when I come to consider the case.

Mr. Angleman: The letter is as follows: July 4, 1892. Dear Emily: I mailed to you a post office order for ten dollars. It is the money I saved from the running expenses while I had charge of the milk and butter. Please give it to your mother and credit it to Sandford's account. We are all quite well and hope to hear often that your mother continues to improve. Do 40



## Emily H. Corey—Direct

not hesitate to send to us if you need help of any kind. We expect our brother's daughter on from Illinois tomorrow, but she is one of the family and not company. Hastily yours, A. M. Hughson."

The Court: Who is Sandford that is mentioned there?

10 Mr. Angleman: The husband.

Q. Wasn't Sandford the husband? A. Yes.

Q. I ask you, when she refers here to Sandford's account, if you know to what she refers?

Mr. King: I object.

The Court: The question is if she knows; she can say yes or no.

A. Yes.

20

Q. To what does it refer?

Mr. King: Just a moment.

The Court: How does she know?

Q. How do you know, Mrs. Corey? A. Because I know all about his business.

30 By the Court: Well, how did you know all about the business?

A. Why, we often talked it over, Mrs. Hughson and I, and Mr. Hughson and I, and mother; there was no other account expecting the mortgage and the interest.

Q. Was that the only account your father and your mother had with Mr. Hughson? A. Yes.

40 The Court: I think that is all competent evidence. Of course you may comment on its weight and its efficiency in summing up, but I think as evidence it is admissible.



**Emily H. Corey—Direct**

Mr. Angleman: I offer the letter in evidence.

Mr. King: We have already objected and I renew my objection.

Marked Exhibit C-14.

Q. I show you a letter dated January 18, 1892, purporting to be signed by the defendant, and ask you if it was so signed? A. Yes.

Q. And I ask you to whom the letter is sent? A. To 10 me.

Q. How did you receive it? A. By mail.

Mr. Angleman: I offer that letter in evidence.

Mr. King: I raise the same objection.

The Court: I sustain the objection as to that.

Q. I will ask the witness what payments this refers to.

20

The Court: Do you know what payments the items in that letter referred to?

A. Certainly.

By the Court: How do you know?

Mr. King: One moment.

A. Conversation with Mrs. Hughson.

Q. By conversation with Mrs. Hughson? A. When she said that—

Q. Wait. When did you have that conversation 30 with Mrs. Hughson? A. At various times.

Q. Well, when, how long before, or how soon after the letter which is now offered in evidence was received by you? A. The date, I should say only a short time before.

Q. Mr. Hughson was living in 1892, was he not?  
A. Yes.

Further Direct.

40



## Emily H. Corey—Direct

Q. Do you know whether or not there was any arrangement or understanding between your father and mother and Mr. Hughson, by which your father and mother agreed to take, and did take certain produce from the farm which Mr. Hughson could send either directly or through Mrs. Hughson or other employes to your place?

10 Mr. King: Objected to, certainly he ought not to put a question like that to his witness.

The Court: I cannot let that be answered.

Q. How do you know that this produce mentioned in this other letter, and which you before testified was sent in payment of the interest, how do you know that that was sent in payment of the interest?

Mr. King: Objected to, because he puts in his question something that does not appear in the case, and it embodies in that that there was a payment on  
20 account; if she has any statement to make in relation to it, well and good, but I submit that is as unfair as the other.

The Court: I will sustain the objection.

Q. How do you know that interest payments were made by bringing the produce to your place? A. By conversations with Mr. and Mrs. Hughson both; it was understood that they sent—

Mr. King: Just a moment. I object to that.

30

By the Court: What did he say about it, and what did she say about it, in your presence, I mean, or to you?

A. Whatever they sent was to be credited to their interest on the mortgage bond.

Q. Was that said to you more than once? A. Yes.

Q. Who were present when it was said, were they both present or were they separately present, or what?

10 A. Mother and I.



## Emily H. Corey—Direct

Q. I mean were Mr. and Mrs. Hughson both present when it was talked over? A. Sometimes they were both present, sometimes only one, it was an ordinary conversation.

Q. Then when produce was sent to your place from the Hughson place to what was the amount of the value of the produce credited?

Mr. King: I object. 10

The Court: What does she know about that?

Mr. Angleman: She already testified she looked after the business for her father and mother and kept account of the books.

By the Court: Your father was whom?

A. Stephen O. Horton.

By the Court: Did he keep a book account with 20  
the Hughsons, do you know?

A. I don't know; these things came after father's death.

By the Court: Then your mother succeeded him as the owner of the mortgages?

A. Yes.

By the Court: Did she keep any books of account?

A. No; I kept the books, I lived at home.

By the Court: And the only book you kept was the little book that you say was lost? 30

A. Yes.

Q. (Question read as follows): "Then when produce was sent to your place from the Hughson place to what was the amount of the value of the produce credited?"

The Court: Applied.

Q. To what was it applied? A. Payment of interest.



## Emily H. Corey—Direct

By the Court: Now how was it so applied to the payment of interest? A. By giving them credit, marking it down.

Q. (By the Court): On what? A. On this book that I kept.

Q. (By the Court): During the time that your father was living there was no book kept? A. I don't  
10 know, I don't know of such a book.

Mr. Angleman: May I repeat my question regarding this letter of January 18, 1892? The question related to this clause in the letter: "The buckwheat flour Sandford sent was \$3.25, the buckwheat, and the barrel 30 cents, and the corn 80 cents."

Q. (By the Court) Do you know anything about those particular items? A. I do.

20 Q. (By the Court) What do you know about them?  
A. They were sent and received I know.

Q. And the value of them was accounted for in what way? A. Credited to them.

Q. On the interest on the bonds? A. Yes, sir.

Q. (By the Court) How was it so credited? A. Just by keeping a memorandum.

Q. (By the Court) In the little book you spoke of?  
30 A. Yes.

Q. (By the Court) When did your father die? A. 1883.

Mr. Angleman: I repeat my offer of the letter.

Mr. King: I renew my objection.

The Court: I will take the evidence.

Marked Exhibit C-15.

40 Q. I call your attention to a letter dated November



**Emily H. Corey—Direct**

13, 1891, and ask who wrote it and who signed it?

A. Mrs. Hughson.

Q. And to whom was it sent? A. To me.

Mr. Angleman: I offer that letter in evidence.

Mr. King: No objection.

Q. And I ask you if the reference to the produce in it is the same sort of a reference as the reference in the other letters?

10

The Court: Oh, well, I can tell by reading the letter.

Marked Exhibit C-16.

Q. I show you letter dated June 22, 1891, and ask you whose signature that is? A. Mrs. Hughson's.

Q. To whom was it sent? A. To me.

Mr. Angleman: I offer that letter in evidence.

Marked Exhibit C-17.

20

Q. I show you a statement with letters from the Coplay Iron Company to your father, and ask you if you have seen them before? A. Yes.

Q. Where did they come from? A. Came from the Coplay Iron Company by mail to Plainfield.

Q. And the drafts referred to were the drafts that you testified receiving from the Coplay Iron Company?

Mr. King: I object.

Q. What were the drafts referred to?

30

Mr. King: I submit he cannot ask a question involving that paper until the paper goes in evidence. Now he says "the draft referred to in that letter"; what draft is that?

The Court: You will have to get the letter in evidence.

Q. Where did you get the papers from before you handed them to your lawyer? A. At home.

40



## Emily H. Corey—Direct

Q. Part of your father's papers? A. Yes.

Mr. Angleman: I offer the papers in evidence.

The Court: For what purpose?

Mr. Angleman: Showing payments by the Coplay Iron Company on account of the interest on this mortgage at the time they held the mining lease on the  
10 property.

The Court: If they show anything to that effect.

Mr. Angleman: Yes; it don't bring it within the statutory period, only shows certain payments were received.

Mr. King: Then I object to them. Where is there any proof that the mortgagor ever authorized those payments?

The Court: He will have to prove it.

20 Mr. King: I object to it.

The Court: I will admit the letters in evidence.

Mr. King: Note my objection.

Q. The drafts of those payments were payments of what, if you know, what were the payments for? A. Payments for ore.

Q. And made to your father for what purpose? A. Because he owned the property by virtue of the mortgage.

30 Mr. King: I move to strike that out.

The Court: I refuse the motion.

Q. They were credited by your father for what purpose? A. Payment of interest.

Q. On those mortgages? A. Yes.

Mr. King: Just a moment. Though the Court overrules me every time I am entitled to make my objection. This witness is asked for what purpose those  
40 payments were made to her father.



**Emily H. Corey—Direct—Cross**

The Court: If she knows she can tell.

Mr. King: But that is a conclusion on her part, for what purpose it is made. What her father did with it is another thing. What right has she to say what the purpose was?

The Court: What was said at the time by the father 10  
would be evidence.

Mr. King: So far they came by mail.

The Court: What he did would be evidence.

Mr. King: But the purpose is another thing.

The Court: I will admit it.

Said papers marked Exhibit C-18.

Q. How do you know that? A. Heard my father  
say so. 20

Mr. King: I move to strike that out, because if it  
was not made in the presence of the mortgagor it is  
not evidence against him. I move to strike out the  
evidence.

The Court: I decline to strike it out.

Q. Have you had any conversations with the defen-  
dant since this suit was instituted in regard to this  
matter? A. Very little. 30

Q. Can you tell what they were? A. No, only with  
reference to this paper which she signed.

Cross-Examination by Mr. King.

Q. Did your father at any time credit upon either  
the bond or the mortgage any of those payments which  
you allege were payments on account of interest? A.  
I don't know.

Q. You had the bond in your possession, didn't you?  
A. Yes. 40



## Emily H. Corey—Cross

Q. Since the bonds and mortgages came in your possession did you at any time credit on either bond or mortgage any of these payments which you claim are credits on the interest? A. No, I did not; I turned them over to my attorney.

Q. When did you turn the bond and mortgage over to your attorney, in reference to the time that you received them from your father or mother? A. I turned  
10 them over to my attorney after my mother's death.

Q. How many years ago was that? A. Seventeen years ago.

Q. What effort did you ever make to collect the mortgage in the last seventeen years? A. It was not in my possession, it was not in my name, it was assigned to Miss Hughson, it was willed and assigned to Miss Elizabeth J. Hughson.

Q. And she was who? A. Caleb S. Hughson's sister. How many years have you owned the mortgage?  
20 A. I didn't own it at all.

Q. Oh, that is your mother? A. Yes.

Q. Your mother, did she send it to Mr. Applegate? A. I sent it to Mr. Van Winkle after my mother's death.

Q. Did your mother ever credit any payments on it? A. I think not.

Q. Since you have had it you never have? A. No; I turned it over to Mr. Van Winkle.

Q. This little slip you have there was made from  
30 the account book, you say? A. Yes.

Q. When did you send that to your attorney? A. Soon after my mother's death.

Q. And that was about when? A. About seventeen years ago.

Q. Did you accompany the bond and mortgage with this slip? A. I think so.

Q. So that the bond and mortgage, or the bonds and mortgages, because there are two, and this slip was sent down to your attorney about seventeen years ago?



## Emily H. Corey—Cross

A. Well, I couldn't say as long ago as that, it was after my mother's death.

Q. Give us your best recollection. A. That is what I have.

Q. It has been seventeen years? A. It wasn't seventeen years ago, but that was when my mother died.

Q. How soon after your mother's death did you send down the bond and mortgage? A. I couldn't tell you 10 exactly.

Q. This slip that you have made was attached to which bond, you see there are two? A. Mr. Van Winkle pinned it fast, I don't know positively which one.

Q. Then neither you nor your mother or your father ever made an attachment or pinned a paper purporting to show credits to either bond, is that right? A. I suppose so.

Q. And if as the record shows that this slip was attached to one of the bonds pinned fast to it, then that 20 was done by neither you, nor your mother or your father? A. It was done by my mother's attorney.

Q. And was done by your mother's attorney apparently after the bond and mortgage had been sent to him, is that right? A. Perhaps so.

Q. Then the little slip from which you have read must have followed the bond and mortgages, didn't it, the little slip which you have before you must have followed the bonds and mortgages to your lawyer. A. 30 Went with them, as far as I know.

Q. But if with them unattached, is that true? A. I don't know.

Q. Did your mother have a note of either Mrs. Hughson or her husband? A. I don't know, I don't remember.

Q. Won't you search your memory and see if you don't recollect that your mother had a note of Sandford Hughson, Mrs. Hughson's husband? A. I couldn't say positively.

Q. You cannot say positively? A. No. 40



**Emily H. Corey—Re-Direct**  
**Charles W. Tuttle—Direct**

Re-Direct Examination.

Q. Can you tell by looking at your memoranda what the last payment was that was made upon these bonds and mortgages?

Mr. King: I object to that. She may testify, if she chooses, what the last credit there shows, but I submit it is wrong to say it was a credit upon the bond  
10 and mortgage.

Q. By the Court: What is the last date shown by the memorandum? A. May I make one statement?

Q. By the Court: No. What was the last date on that memorandum. A. I know that by memory, it was in September of 1882, I think it was.

Q. By the Court: September, 1882? A. Yes,—no, that wasn't true, that was 1896.

Q. 1896? A. 1896.

20

Q. And at that time what was done, you say the last date on that memorandum is 1896, in the fall, at that time what was done? A. They brought things to be credited.

Mr. King: May I move to strike that out again; I don't want to be fussy about it.

The Court: She has already answered in the same way.

30

CHARLES W. TUTTLE sworn.

Direct Examination by Mr. Angleman:

Q. Where do you live? A. Near Ironia.

Q. And with whom do you live? A. I live on the Hughson place.

Q. With Elizabeth J. Hughson? A. Yes, sir.

Q. And does Amanda M. Hughson live there too?  
A. Yes, sir.

Q. How long have you lived there? A. Ever since  
40 November 12th, 1878.



## Charles W. Tuttle—Direct

Q. And what is your position there? A. Farmer.

Q. Have you heard this question of these mortgages discussed by the defendant at all, Mrs. Amanda Hughson? A. I heard them discussed by the family.

Q. I want your memory to go back to the fall of 1896, and ask if you remember a conversation with Mr. Hughson at that time? A. About the mortgage?

Q. Yes. A. Yes, sir. 10

Q. What was said and what was done at that time when you were present? A. He and Mrs. Hughson went to Plainfield, they took produce, butter and wheat, I carried it out and put it in the wagon.

Q. What did Mr. Hughson say? A. It was to go on his interest to Mrs. Horton.

Q. By the Court: Where did Mrs. Horton live? A. Mrs. Dency Horton.

20

Mr. Angleman: Plainfield

Q. How do you fix that time as being in the fall of 1896?

Mr. King: Because you have told him. He says, "Directing your memory back to 1896 give me this conversation;" now he asked him how he fixed it; I say because he told him.

Question allowed.

Q. How do you fix it? A. It was shortly before Mrs. Horton died. 30

Q. Do you know when Mrs. Horton died? A. Yes, sir.

Q. When? A. 1908 or 6.

Q. No, not 1906, you don't mean?

Mr. King: Now that is just what he did before.

Q. Just think again, when did Mrs. Horton die?

A. Well, I can't tell exactly the dates.

Q. By the Court: What year was it in? A. It was in 1906, I think,—1896. 40



## Charles W. Tuttle—Direct—Cross

Q. By the Court: Well, do you know when it was?  
A. Yes, sir.

Q. By the Court: When was it? A. 1896.

Q. When was it in relation to the time this butter was brought down to Plainfield? A. Shortly before Mrs. Horton died.

10 Q. Did you ever hear any conversation between Mr. Horton, in his lifetime, and Mr. Hughson relative to the payment of this interest? A. Yes, sir.

Q. Will you state what Mr. Horton said at those times? A. I heard him tell him he ought to pay some interest, several times.

Q. What else? A. And he asked him if he couldn't pay it, most every time he came up, pay something.

Q. Was anything said at that time as to the manner of payment? A. With Mr. Hughson?

20 Q. Yes. A. He said he couldn't then, sometimes he would say he couldn't and sometimes he promised he would.

Q. Well, what else was said at the time, can not you remember anything else? Well was anything said at the time as to him taking produce in payment, between Mr. Hughson and Mr. Horton, did that subject come up? A. Mr. Horton said he would take produce any time, or anything.

Q. And what did Mr. Hughson say, anything? A. He said he would send what he could.

30

Cross Examination by Mr. King:

Q. Didn't you hear Mr. Horton tell Mr. Hughson that he had his note? A. No, sir.

Q. Didn't you hear him ask him to make payments on account of the note? A. No, sir; mortgages he said.

Q. Well I am asking you whether you heard anything about a note? A. No, sir.

Q. Where were you when you heard this take place? A. There on the farm.

40 Q. That doesn't mean anything. What is the first



## Charles W. Tuttle—Cross

conversation you heard, and when? A. Well I can't refer to that exactly.

Q. Give me the year, if you will. A. Well, conversation mostly between 1878 until the present time.

Q. From 1878 to the present time? A. Yes.

Q. You don't mean that, do you? A. Until Mr. Hughson's death.

Q. Well, that is a good deal better. Certainly it 10  
didn't take place after Horton's death, did it? A. No, sir.

Q. You do not mean then up until Hughson's death, quite, do you? A. Until the death of the gentleman.

Q. Wait a minute. You certainly did not hear Hughson and Horton talking when either was dead? A. Why, no.

Q. When did Horton die? A. I couldn't remember that.

Q. When did Hughson die? A. March 29, 1908. 20

Q. 1908, eh? Well, when was the first time that you heard these two men talking about it, what year? A. Well, I heard it the first year I was there.

Q. When was that? A. 1878.

Q. Whereabouts did you hear it? A. On the place, home.

Q. But whereabouts were you? A. In the house or in the shop, I forget which.

Q. Can you remember since 1878 whether it was in the house or shop? A. Well, yes. 30

Q. What fastens it in your memory, what fixes it as either the house or shop? A. Well, they would always go to either place.

Q. What were you doing in there? A. Well, I was there with them sometimes.

Q. What were you there for? A. I can't tell exactly.

Q. What did you hear Hughson say to Horton?  
A. He said he would pay some interest if he could.



## Charles W. Tuttle—Cross

Q. Haven't you been talked to about this case before you came here? A. No, sir.

Q. Do you mean to tell me they put you on the stand without asking you what you were going to say?

A. No, sir,—yes, sir.

Q. And it is true you remember a conversation that took place in 1878? A. To the best of my remembrance I can.

Q. What is the trouble with your remembrance, anything at all? A. Well it is a good while back.

Q. That is what I'm talking about; are you willing to say it was either in the shop or barn? A. Yes, the house.

Q. The shop or house? A. And the barn, too.

Q. Can you tell me which one opened up the conversation, talked with the other? A. Mr. Horton would open it up, ask him for interest, ask him for payment.

Q. How many times did you ever hear that? A. I can't tell exactly, good many, most every time when he came up, every year.

Q. You were there to hear it? A. Not every time.

Q. You were the workman on the place? A. Yes.

Q. Do you mean to say you were around when they were talking about those private matters? A. Yes.

Q. At the shop? A. Yes.

Q. What sort of shop was it? A. Old wheelwright shop, an old blacksmith shop.

Q. Were you working there? A. No, sir.

Q. What were you going there when those conversations took place? A. I happened to be there with them.

Q. Do you mean to say you happened to be with these men? A. Yes, sir, when they was in there.

Q. And when they always talked about the interest? A. No, sir.

Q. Well, when they talked a great many times about the interest? A. Yes, sir.



## Charles W. Tuttle—Cross

Q. What did Hughson ever say to Horton? A. He said he would pay interest if he could.

Q. What did Horton say to that? A. Well, he would say "you are slow."

Q. And then what? A. He said he couldn't wait forever.

Q. The mortgage wasn't given until 1876, and this was in 1878, now that wasn't forever, only two years; 10  
one was given in 1873 and the other in 1876, do you mean to say that two years or five years after the mortgages were given that Horton said he couldn't wait forever? You don't mean that, do you? A. No, not between these times, between 1878 and on.

Q. And when? A. From 1878 on.

Q. Well, on to when? A. The time of Mr. Horton's death.

Q. Which died first, Hughson or Horton? A. Mr. Horton. 20

Q. Tell me what statement was made at any time, give me the second time or the third or the tenth, whichever comes in your memory; can you do that? A. Now one time it was about the mine, when he leased the mine and Mr. Horton didn't get no interest, he came up to see about it and he asked Mr. Hughson why he didn't pay the interest from the money he got from the mine; he went over, Mr. Hughson was over to a sale, and he went over and got him.

Q. Did you go over with him? A. No, sir. 30

Q. Did you come back with him? A. No, sir.

Q. Where did you see them when they got back? A. They came back to the house.

Q. What were you doing in the house? A. I happened to be in there.

Q. Just happened to be in there? A. Yes.

Q. What time of the year was it? A. Well, I can't tell, it was towards the fall I think.

Q. Weren't you out in the harvest fields? A. No. 40  
sir.



**Charles W. Tuttle—Cross**  
**Emily H. Corey—Re-called—Direct**

Q. It was in the daytime? A. Yes, about four o'clock, around toward night.

Q. Go ahead, is that the only conversation you heard? A. No sir, I heard several.

Q. You say that Horton said he would take produce at any time or any place? A. He said he could send produce down any time for the mortgages.

10 Q. For the mortgages? A. To give credit on the mortgages.

Q. Did he send anything down? A. Yes, sir.

Q. How do you know? A. Sometimes I took it to the depot, sometimes I put it in the wagon and he took it.

Q. Where does Elizabeth J. Hughson live? A. Lives on the farm.

Q. She is not here this morning? A. No, sir.

Q. Isn't she your employer? A. I work for her.

20 Q. Is Miss Hughson ill this morning? A. Yes, sir.

Q. How long has she been ill? A. Oh, she has been ill quite a while.

Q. As much as a year, do you think? A. No, sir.

Q. Six months? A. Yes.

Q. Unable to get out of the house for six months? A. No, about three months I should think.

Q. For three months she has been so she could not get out of the house? A. I should think so, I won't be positive.

30 Q. Is she an old lady? A. Yes, sir.

Q. How old? A. Eighty-three, eighty-two or three.

EMILY H. COREY recalled.

Direct Examination by Mr. Angleman:

Q. I direct your attention to the last payment which you have on your memorandum in 1896, and ask if you have any means of knowing about that payment, ir-  
40 respective of the memoranda you have there? A. Yes.



**Emily H. Corey—Re-called—Direct**  
**Amanda M. Hughson—Direct**

Q. What is it? A. I was there when they came, Mr. and Mrs. Hughson both, and received the things myself.

Q. Were those the things that Mr. Tuttle testified to that he had put in the wagon. A. Yes.

The Court: How does she know about that?

Q. What were those things, if you can remember, what were they? A. One was butter, and some wheat, 10 I don't remember the other items.

Q. How do you fix the date as being in the fall of 1896, outside of your memoranda I mean? A. Because they drove down and my mother went out riding with them, and she died in December following.

COMPLAINANT RESTS.

AMANDA M. HUGHSON, sworn.

20

Direct Examination by Mr. King:

Q. Mrs. Hughson, you are the defendant in this suit? A. Yes.

Q. How old are you? A. I was born in 1831, August, 1831.

Q. You live at Ironia, Morris County? A. Yes.

Q. Does Mrs. Elizabeth J. Hughson, the complainant, live there also? A. Yes, we live at the same house.

Q. Do you eat at the same table? A. We do.

Q. How long have you and she lived together? A. 30 More or less since I married Mr. Hughson.

Q. And that was when? A. In 1872.

Q. Now what intermissions have there been between the living together and the separation of you and Mrs. Elizabeth J. Hughson? A. I have been away at various times.

Q. For a long length of time? A. Two years at one time and at another time one year, I can't just tell.

Q. How long has she been away? A. She never

40



## Amanda M. Hughson—Direct

has been away except for short visits to Plainfield and one visit up in New York State I think.

Q. Outside of the visits which she has made, that has been her home since 1873, has it not? A. It has been her home since she was born.

Q. Has it also been your home since you married your husband, except the two years intermission? A.

10 Yes, sir, it has.

Q. What real estate do these mortgages cover; is it where you live? A. Yes, sir, it covers the sixty-six acres that he bought of Stephen O. Horton, and the Nathan Hughson Estate, which is about forty-two or forty-four acres.

Q. Yes, but do those acres which you have mentioned, or those parcels, constitute the farm upon which you and Mrs. Hughson live, that is what I am driving at? A. Yes.

20 Q. Has it been the same farm upon which you lived since 1873? A. Yes, sir, it has been the same.

Q. Since you and Mrs. Hughson have lived there, has Mrs. Hughson ever asked you for any interest? A. Miss Hughson, you mean.

Q. Is it Miss Hughson? A. Yes, Miss Hughson.

Q. Elizabeth J. Hughson is Miss Hughson? A. She is Miss Hughson, she is my husband's sister.

Q. A maiden sister? A. Yes.

30 Q. Now Miss Hughson, Elizabeth J. Hughson, is your husband's maiden sister? A. Yes.

Q. And has lived with your husband and with you on this farm? A. Yes, sir.

Q. Has Miss Hughson ever asked you for any interest on this mortgage? A. No, sir.

Q. Have you ever paid any interest on this mortgage since you have been the owner of the property by devise under your husband's will? A. Not on the mortgage.

Q. Have you made payments? A. I have.

10 Q. On what? A. As I understand it, Mrs. Horton



## Amanda M. Hughson—Direct

held a note of \$200 against Mr. Hughson, and I was trying to help him pay it off.

Q. Now they have introduced evidence of small portions of farming products, butter, apples, I think, buckwheat? A. Yes, sir.

Q. Being sent to Plainfield? A. That is certainly so, always has been.

Q. Did you ever take any of those over? A. Yes, 10  
sir; I went with him when he took some down.

Q. Now your husband took them? A. Yes.

Q. Since your husband's death have you ever sent any down? A. No, sir, not since his death.

Q. Why were these farm products sent down to Plainfield when Miss Hughson was living with you, or was that before she inherited the mortgage? A. Well she claimed possession of those things, and they were constantly sending us presents from Plainfield and we wanted to return it in that way. 20

Q. And you did return it? A. I did not.

Q. Oh, you have never done anything? A. I have not, no sir; she has managed it.

Q. Was Miss Hughson living with your husband and with you on the farm at the time these farm products were being sent down to Plainfield? A. Yes, sir; she has always lived there.

Q. And the farm at that time was in the possession of your husband? A. Part of it.

Q. And who owned the other part of it? A. My 30  
husband's father, Nathan Hughson, the estate it belonged to.

Q. Did Mrs. Corey's mother have any interest in the Nathan Hughson estate? A. Not that I know of, except the mortgage.

Q. Was this note of which you speak ever paid off? A. I don't know whether it was.

Q. That was a note of whom? A. I understood Mr. Hughson.

Mr. Angleman: Now I guess we will have to put in 40



## Amanda M. Hughson—Direct

some objections. Aren't you going a little too far, asking about this note? We haven't had any notice to produce this note; it is not in the answer and this is the first I heard of it.

By the Court:

Q. Do you know who made the note? A. I understood Mr. Hughson; I never saw the note; I understood  
10 Mr. Hughson to say that Mrs. Horton held a note.

Q. Did you at any time ever make any statement, or did you hear your husband make any statement that these credits were payments on account of the bonds or these mortgages?

Mr. Angleman: I object, that is leading.

The Court: Yes, that is a leading question. You may ask what she heard about it.

Q. What did you ever hear your husband say, now not to you alone, but in the presence of the then owner  
20 of the mortgage, in reference to any payments made on account of the bond or mortgage, if any were made? Do you understand the question? A. I never heard him say anything about any credits being made on them, on the mortgages, either to Miss Hughson or myself.

Q. What did you ever hear him say about any credits being made on the note, if any were made, and in the presence of the person who held the note?

Mr. Angleman: I object to that.

30 The Court: That is proper.

Q. (Question read). A. I can't tell what he did say, but this produce that we were taking was to pay Mrs. Horton for the note that she held, that is the way I remember it.

By the Court:

Q. Were the Hortons any relation to the Hughsons?

A. Mrs. Horton was Mr. Hughson's half sister.

By the Court:

Q. And she is a half-sister to Miss Hughson too?



## Amanda M. Hughson—Direct

A. She is a half-sister to Miss Hughson who now holds the mortgage.

Q. And Mrs. Horton lived at Plainfield? A. Yes.

Q. And Mrs. Corey is Mrs. Horton's daughter? A. Yes.

Q. What have you to say about this second mortgage, the consideration for the second mortgage; there was a first mortgage given in 1873 for \$1,000, the second mortgage, covering the same property and other property, was given in 1876 for eleven hundred and odd dollars; were you and your husband living together at that time? A. Yes, sir. 10

Q. Do you remember of his having any occasion for using this additional sum of money, or have you any knowledge as to whether he received any other sum of money? A. I haven't any knowledge of his ever receiving money for those mortgages; it was a purchase money of a thousand dollars; the deed says that he was to give a thousand dollars for the place, and this mortgage was given as purchase money for the place, the first mortgage, and I supposed that when the second mortgage was given of twelve hundred dollars that it was the interest, and that the first mortgage was cancelled. 20

Q. Did you sign either of the mortgages? A. No, sir; I never was asked to sign them.

Q. Have you any knowledge that there have been any payments made on either of those bonds since their date? A. The Coplay Iron Company, I know of that, I know of his assigning to Mr. Horton the proceeds of the mine, I remember that Mr. Horton came there and that Mr. Hughson agreed to give the proceeds of the mine, but further than that I don't know of any. 30

Q. Have you any idea how much the proceeds amounted to? A. No, sir, I have not, two or three hundred dollars.

Q. (By the Court) That is more than twenty years ago? A. Oh yes, that is more than twenty years. 40



## Amanda M. Hughson—Direct—Cross

Q. And do you remember whether those payments from the mine, the mine payments, were to be on account of the interest or principal of the mortgages?

A. They were to be credited on the mortgages, as I understood it.

Cross Examination by Mr. Angleman:

10 Q. You know these mortgages are due, don't you?

A. Yes, sir.

Q. You recollect going to Plainfield in 1896 with some produce to pay for interest on these mortgages, don't you? A. I did not know that they were to be credited on the mortgage, I didn't hear anything about that.

Q. Weren't they taken down to Plainfield for interest? A. I thought that he owed them, Mr. Horton, money.

20 Q. That is what you thought? A. Yes.

Q. He didn't tell that to you, did he? A. Yes, he did, he said it was to go on the note.

Q. Did he use the word "note?" A. The note, yes.

Q. What was this note for, do you know? A. I really don't know whether it was interest or whether it was—

Q. Oh, it may have been for interest then? A. Whether it was for interest or whether it was for money, I never heard of his having any money from

30 Mr. Horton.

Q. You knew he had this thousand dollars that he bought the property with? A. I knew he had the place, he didn't have any money so far as I knew.

Q. You knew he never paid for the place, didn't you? A. Know he never paid for the place.

Q. That thousand dollars which was the purchase price of the place in the beginning has never been paid?

A. No, sir.

Q. This first mortgage represents that? A. Yes,  
40 that is the way I understood it.



## Amanda M. Hughson—Cross

Q. That is still due, is it not? A. Not as I understood it.

Q. How was it paid? A. When he gave him the second mortgage he didn't get money.

Q. Well then the second mortgage as you say, was given to take up the first? A. That is the way I understood it, I never heard of a first mortgage after that.

Q. Has the second mortgage ever been paid? 10  
A. No, sir.

Q. The second mortgage is still due, is it not? A. Well, that is for you to decide.

Q. No. Has it ever been paid? A. It has never been paid.

Q. This produce that was taken to Plainfield at various times wasn't that taken to pay the interest on this second mortgage then? A. It was not, according to my knowledge.

Q. Well this note, when did he have the money for 20 this note? A. I don't know when he got that; he never told me anything about his business.

Q. Well, then, you were not sure whether it was a note, or whether it was interest on the mortgage that this produce went to pay for, are you? A. Well, I understood that Mrs. Horton had a note against him.

Q. Didn't you think it rather strange that this interest was not paid? A. Well he didn't have any way of making any money; the mines took all he had for our living. 30

Q. You didn't have much money at that time to pay interest, did you? A. No, sir.

Q. That was the reason that the Hortons did not insist upon the payment in cash, was it not? A. Well, that I don't know; of course they wanted the interest, it was due.

Q. What is that? A. The interest was due then.

Q. You remember Mrs. Corey talking to you about this matter? A. Certainly do.

Q. Don't you remember your acknowledging, as she 40



**Amanda M. Hughson—Cross**  
**Ernest R. Kerr—Direct**

has testified on the stand, about the payments being made? A. About what?

Q. About the payments being made? A. Not on the mortgage I don't; on account.

Q. There was a payment made on account? A. Yes.

Q. (By the Court) On account of what? A. The  
10 note.

Q. When was this note given? A. Well that I can't tell you.

Q. How much was it for? A. It was \$200 as near as I know, I never saw it.

Q. Who told you it was \$200? A. Mr. Hughson.

Q. When did he tell you? A. He told me about 1880.

Q. About 1880? A. Yes.

Q. Wasn't that \$200 ever paid up? A. Well I  
20 don't know how much there was paid on it.

Q. Do you want to tell the court here that this payment made in 1896 was for a note for \$200 made in 1880? Don't you know, Mrs. Hughson, that that was on account of the interest due on this mortgage? A. What is that?

Q. Don't you know that was on account of the interest due on this mortgage? A. No, I do not.

Q. Don't you think it is? A. I don't know, no sir, I never did.

30

ERNEST R. KERR, sworn.

Direct Examination by Mr. King:

Q. You are from the Supreme Court, are you not, at Trenton? A. Yes, I am.

Q. You have before you the original files in what case? A. Clark vs. Hughson, Charles E. Clark against Caleb S. Hughson.

Q. Can you tell me from the papers what the suit  
40 was about? A. On a judgment assigned to Charles E.



## Ernest R. Kerr—Direct

Clark that was recovered by Moses A. Brookfield against Caleb S. Hughson and Theodore P. Skellinger, recovered January 8, 1876.

Q. 1876? A. Yes.

Q. That judgment was assigned to Charles E. Clark; do the records state where Charles E. Clark is from? A. No, it does not.

Q. Who is attorney of record in this suit? A. Augustus W. Cutler.

Q. Then Augustus W. Cutler brought suit for Charles E. Clark as assignee of the judgment, practically to renew the judgment? A. Yes.

Q. And as a result of that suit judgment was entered in the name of Charles E. Clark against Caleb S. Hughson? A. Yes.

Q. For how much? A. For \$3,967.86, \$28.78 costs.

Q. And when? A. March 17, 1896.

Q. (By the Court) That was on a former judgment? A. On a former judgment, yes. 20

Q. (By the Court) To which Hughson was a party defendant? A. Yes.

Q. (By the Court) What was the original judgment for? A. Why a contract, price and value of goods delivered and sold by the plaintiff to the defendant, and so on.

Q. (By the Court) Common counts? A. No, it doesn't say.

Q. What was the original judgment about, you say there is a judgment there of Moses Brookfield? A. It doesn't show, just shows it has been assigned. 30

Mr. King: I offer that in evidence. I won't offer the original papers unless you wish them retained here. I offer the statement made by the witness on the stand as showing the discoveries in the record as to the original files.

CHARLES E. CLARK, sworn.



**Charles E. Clark—Direct**  
**Amanda M. Hughson—Re-Called—Direct**

Direct Examination by Mr. King:

Q. Where do you live? A. Dover.

Q. How long have you lived there? A. Well I have lived in Dover about twenty years.

Q. Did you know Augustus W. Cutler, an attorney at Morristown? A. Yes.

Q. Did you know Mr. Hughson? A. I did.

10 Q. Caleb S. Hughson, he was sometimes called Sandford Hughson, was he not? A. Yes.

Q. Where did he live? A. He lived about two miles above Mt. Freedom.

Q. That is how far from Dover, where you live? A. About five miles.

Q. Is there any other Charles E. Clark? A. I know of no other.

Q. You were acquainted with him for how long prior to his death? A. Well, about sixty years, I  
 20 guess.

Q. Sixty years; and were you and he friendly or otherwise? A. Always.

Q. Now there appears to be a judgment of Moses A. Brookfield against Hughson, which was assigned and suit brought upon the judgment by Charles E. Clark; have you any recollection about that? A. None whatever.

Q. How long has Augustus W. Cutler been dead? A. Oh, well, I guess Mr. Cutler has been dead ten or  
 30 twelve years, fifteen, I can't tell.

NOT CROSS EXAMINED.

AMANDA M. HUGHSON, recalled.

Direct Examination by Mr. King:

Q. While you lived with your husband on the farm did you ever hear of any demand being made upon your husband for the amount, or any portion of this  
 40 judgment that we have been speaking about, the judg-



**Amanda M. Hughson—Re-Called—Direct**

ment obtained by Charles E. Clark against Mr. Hughson? A. No, sir.

Q. When is the first you heard of that judgment?

A. When Mr. Gillen told me.

Q. He was the Sheriff? A. He was the Sheriff, when he reported to us.

Q. When was that? A. When he served notice of foreclosure.

10

Q. You mean the foreclosure is the first you heard of it? A. Yes.

Mr. King: I offer in evidence certified copy of the last will and testament of Caleb S. Hughson which is dated the fourth day of September, 1906, admitted to probate by the Surrogate of the County of Morris, on the thirteenth day of April, 1908, in which the deceased appointed Amanda M. Hughson and Edward D. Neighbor executors.

Marked Exhibit D-1.

20

Q. You are the Amanda M. Hughson mentioned as one of the executors of your husband's estate, are you not? A. Yes.

Q. And your co-executor is Edward D. Neighbor? A. Yes.

Q. Now I show you a typewritten paper and ask you where you first saw that? A. I think I saw that in Mr. Neighbor's office.

Q. Which Mr. Neighbor, your co-executor? A. Yes.

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Q. When did you see it? A. I can't just give the date of it, it is after the bills was put in against the estate.

Q. This was during the time the bills were being put in against the estate? A. Against the estate, yes.

Q. Of your husband? A. Yes.

Q. Do you know Miss Hughson's signature? A. Yes.

Q. Is that her signature? (showing witness paper.)

A. It is.

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**Amanda M. Hughson—Re-Called—Direct**

Mr. King: I now offer it in evidence.

The Court: That is a claim against the estate?

Mr. King: Yes.

Mr. Angleman: I object; this appears to be directed to Edward Neighbor, executor of the estate of Caleb S. Hughson. We should have Mr. Neighbor here I think.

10 A. I saw it in Mr. Neighbor's office; it was not served on me.

Mr. King: I submit it makes no difference.

The Court: No, it does not make any difference; it is a claim against the estate, undoubtedly, and sworn to by the complainant.

Mr. King: Yes, sworn to by the complainant.

Marked Exhibit D-2.

Q. Then did you give a notice to Miss Hughson, did you give her any notice? A. Yes, sir, Mr. Neighbor.

20 Q. Did you sign a notice with Mr. Neighbor? A. With Mr. Neighbor, I did.

Q. That is one of the original notices? (showing witness paper) A. That is.

Q. Was this notice ever given to Miss Hughson? A. It was.

Q. By whom? A. I gave it to her.

Q. Is this a copy of the notice you served on her? A. Yes, that is.

30 Mr. King: I offer that in evidence.

Mr. Angleman: We haven't had any notice of this.  
Marked Exhibit D-3.

Mr. King: They gave us a notice, Elizabeth J. Hughson claims there is due to her from the estate of Caleb S. Hughson the following sum of money.

The Court: Well that is the claim; what does it cover.

Mr. King: A bond dated April 25, 1873, at 7%; time 35 years, 1 month and 15 days, and computing the interest for 35 years, 1 month and 15 days it is \$2,-  
40 458.74; total principal and interest \$3,458.74. Credits,



**Amanda M. Hughson—Re-Called—Direct**  
**Emily H. Corey—Re-called—Direct**

July 29, 1882, by draft on account of interest \$210.40, July 26, 1882, by draft on account of interest, \$490.94; July 22, 1891, paid on account of interest, \$6.70; November 13, 1891, paid on account of interest, \$5; January 18, 1892, paid on account of interest, \$2.85; May 31, 1892, paid on account of interest, \$3.80; balance of principal and interest due on bond of 1873, \$2,739.05. 10

The next bond is for \$1,268.91, and computing interest for 32 years, 9 months and 2 days, \$4,178.24. They have credited on that, January 12, 1883, by draft on account of interest, \$245.65; July 6, 1892, paid on account of interest, \$10; October 6, 1896, paid on account of interest, \$5.00, leaving a balance of \$3,917.59; total amount, \$6,656.64. Thereupon, on April 5, 1909, the executors gave this notice to Elizabeth J. Hughson: "You are hereby notified that the claim which you have presented to the subscribers, executors of the estate of Caleb S. Hughson, deceased, under date of December 21, 1908, for the sum of \$6,656.64, is disputed in all its parts. Very truly, Amanda M. Hughson, executrix, Edward D. Neighbor, executor." 20

Q. Was any suit ever instituted on this claim? A. No, sir.

DEFENDANT RESTS.

EMILY H. COREY, recalled. 30

Direct Examination by Mr. Angleman:

Q. Mrs. Hughson has testified to something relative to a note; have you ever heard of any note having been given by Mr. Hughson to your mother?

The Court: She has already been examined on that, and she said she had no recollection, never having heard of a note.

A. May I tell further?

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**Emily H. Corey—Re-called—Direct**  
**Charles W. Tuttle—Re-called—Direct**

Q. That is all. A. I saw it with the name torn off.

CHARLES W. TUTTLE, recalled.

. Direct Examination by Mr. Angleman :

Q. Did you ever hear of any note having been given? A. No, sir.

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**Opinion**

was consented to by the mortgagee on condition that the rentals or some portion thereof should be paid to the mortgagee on account of the mortgage money. There is great indefiniteness in the proofs as to the time and amount of and circumstances attending these payments, but as nearly as can be ascertained from the testimony the payments were made by the Coplay Iron Company  
10 upwards of twenty years ago. There is evidence that at one time, or possibly more than once, small amounts of farm produce were sent by the mortgagor to the mortgagee at the time the mortgage was held in Plainfield, and it is claimed that these are to be treated as payments on account of the mortgage money. It is extremely doubtful whether it was intended that the value of this product should be credited to the mortgagees mentioned. There was no receipt taken, and there is indistinct evidence as to the value, and in filing  
20 a claim on the mortgages against the estate of Caleb S. Hughson, the defendant's predecessor in title, these items do not appear to have been included. There is some evidence that the mortgagor owed the mortgagee two hundred dollars on a promissory note. If any credit was intended to be demanded for the small amount of produce delivered to the mortgagee it is probable that it was meant to be credited on the note. It is difficult to believe that such a small amount of farm produce, its value being not over five dollars,  
30 could have been intended as a payment on account of the mortgages in question, including not only the principal, but the large arrears of interest then due and unpaid.

I am forced to the conclusion that no payments on the principal or interest have been made within twenty years prior to the filing of the bill, and that therefor the bill must be dismissed.







**AFFIDAVIT SUGGESTING DEATH.**

[Filed, October 23, 1914.]

## IN CHANCERY OF NEW JERSEY.

10	Between ELIZABETH J. HUGHSON, Complainant, and AMANDA M. HUGHSON, Defendant.	}	On Bill, etc. Affidavit.
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STATE OF NEW JERSEY }  
 COUNTY OF MORRIS } ss.

20 Elmer King, of full age, being duly sworn according to law, upon his oath deposes and says, that he is a member of the law firm of King and Vogt, the solicitors of the defendant in the above-stated cause, and is the person actually engaged in the trial and conduct of said cause, that said cause was heard before the Hon. James E. Howell, one of the Vice Chancellors, and was argued before him on the eighteenth day of March, One Thousand Nine Hundred and

30 Fourteen, and was decided by him shortly thereafter; that between the date of the argument of said cause, on the said eighteenth day of March, A. D. One Thousand Nine Hundred and Fourteen, and the time when said cause was decided by the Vice Chancellor and a final decree entered, the complainant, Elizabeth J. Hughson departed this life; that the final decree in said cause was advised by the Vice Chancellor on the fifteenth day of May, One Thousand Nine Hundred and

40 that at the time said final decree was entered he did



**Affidavit Suggesting Death**

not know that the said complainant, Elizabeth J. Hughson, had departed this life and did not hear of such fact until sometime afterwards.

Sworn and subscribed to before  
me this 21st day of October, A. D.  
One Thousand Nine Hundred and  
Fourteen.

(Signed)

ELMER KING

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(Signed) NORA C. PRUDEN,  
Notary Public  
of New Jersey.

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## ORDER AMENDING FINAL DECREE.

[Filed, October 23, 1914.]

IN CHANCERY OF NEW JERSEY.

10	Between ELIZABETH J. HUGHSON, Complainant, and AMANDA M. HUGHSON, Defendant.	}	On Bill, etc. Order Amending Final Decree.
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20 This matter being opened to the Court by King and Vogt, solicitors of the defendant, and it appearing that on the Fifteenth day of May, A. D. One Thousand Nine Hundred and Fourteen, a final decree was entered in the above stated cause which ordered, adjudged and decreed that the complainant's bill of complaint be dismissed with costs, and that these be allowed to the solicitors of the defendant the sum of fifty dollars counsel fee; and it further appearing to the Court that, after March Eighteenth, One Thousand Nine Hundred and Fourteen, the date when said cause was submitted to the Court, the complainant, Elizabeth J. Hughson, departed this life, and that at the time of entering the

30 decree above mentioned, through inadvertence, no suggestion of her death had been entered of record, and application being now made to amend said decree and no cause appearing to the contrary.

It is, on this 23rd day of October, A. D. One Thousand Nine Hundred and Fourteen, on motion of King and Voght, solicitors of the defendant, ORDERED that the final decree heretofore entered in the above stated cause, bearing date the Fifteenth day of May, A. D. One Thousand Nine Hundred and Fourteen, be

40 amended by adding thereto the following, to wit:



**Order Amending Final Decree**

And it having been suggested of record that the complainant, Elizabeth J. Hughson, has died since the argument of this cause, it is hereby ordered that this decree be entered nunc pro tunc as of the Eighteenth day of March, A. D. One Thousand Nine Hundred and Fourteen, the date when said cause was submitted to the Court.

E. R. WALKER. C. 10

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**NOTICE OF APPEAL.**

[Filed, October 21, 1915.]

IN CHANCERY OF NEW JERSEY.

10	Between ELIZABETH J. HUGHSON, Complainant. and AMANDA M. HUGHSON, Defendant.	} On Bill to Fore- close. Notice of Appeal.
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Emily Horton Cory and Charles W. Tuttle, as ex-  
 20 ecutors of the last will and testament of Elizabeth J.  
 Hughson, deceased, the complainant herein, hereby ap-  
 peal from the whole and every part of the final decree  
 as amended made in the above-entitled case.  
 Dated, October 20, 1915.

Solicitors for Complainant.

I conceive that there is good cause for appeal in the  
 above-stated case.

W. S. ANGLEMAN,  
 Of Counsel with Complainant.

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**PETITION OF APPEAL.**

[Filed, November 9, 1915.]

## COURT OF ERRORS AND APPEALS.

Between

ELIZABETH J. HUGHSON,  
Complainant,

and

AMANDA M. HUGHSON,  
Defendant.On Bill to Fore- 10  
close. On Appeal  
of Complainant's  
Executors. Peti-  
tion of Appeal.

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

The Petition of Emily Horton Cory and Charles W. 20  
Tuttle, as executors of the last will and testament of  
Elizabeth J. Hughson, deceased, appellants in the  
above-stated cause, respectfully show that your peti-  
tioners find themselves aggrieved by a final decree as  
amended made in the Court of Chancery by his Honor,  
Edwin Robert Walker, Chancellor of New Jersey, the  
original decree bearing date the Fifteenth day of May,  
Nineteen Hundred and Fourteen, the order amending  
said decree bearing date the Twenty-third day of Octo-  
ber, Nineteen Hundred and Fourteen, and the said or- 30  
der directing that said amended decree be entered nunc  
pro tune as of the Eighteenth day of March, Nineteen  
Hundred and Fourteen, wherein the said Elizabeth J.  
Hughson was complainant and the said Amanda M.  
Hughson and another were defendants, in this respect,  
to wit: that the said amended decree adjudges that  
the complainant's bill of complaint be dismissed with  
costs and that there be allowed to the solicitors of the  
defendant Amanda M. Hughson the sum of Fifty Dol-  
lars counsel fee and that the said amended decree be 40



**Petition of Appeal**

entered nunc pro tunc as of the Eighteenth day of March, Nineteen Hundred and Fourteen.

And your petitioners appeal from the said amended decree of the Chancellor, which decrees adversely to said complainant as aforesaid, upon the ground that the name is erroneous, for that the Court of Chancery was without jurisdiction to make the original decree  
 10 and without jurisdiction to make the amended decree and without jurisdiction to order that the said amended decree should be entered nunc pro tunc as of the Eighteenth day of March, Nineteen Hundred and Fourteen, and for that the amended bill of complaint filed by the said complainant should have been sustained and the relief prayed therein by the said complainant should have been granted and the decree in this cause should have been made accordingly.

Your petitioners therefore pray that the said  
 20 amended decree of the Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

JOHN H. VAN WINKLE & SONS,  
 Solicitors for and of Counsel with  
 Appellants.  
 W. S. ANGLEMAN,  
 Of Counsel with Appellants.

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## ANSWER TO PETITION OF APPEAL.

[Filed, November 28, 1915.]

## COURT OF ERRORS AND APPEALS.

Between ELIZABETH J. HUGHSON, Complainant-Appellant, and AMANDA M. HUGHSON, Defendant-Respondent.	}	Answer to Petition of Appeal.	10
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The answer of the above named respondent to the appeal of the above named appellant.

This respondent not acknowledged all or any of the matters to be true which are contained in said petition of appeal, for answer thereto nevertheless says and admits that an original decree bearing date the fifteenth day of May, One Thousand Nine Hundred and Fourteen; an order amending said decree bearing date the twenty-third day of October, One Thousand Nine Hundred and Fourteen, and the order directing that said amended decree be entered nunc pro tunc as of the Eighteenth day of March, One Thousand Nine Hundred and Fourteen, were all entered as therein stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that the said decree, as amended, and the order



**Answer to Petition of Appeal**

are agreeable to equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

KING & VOGT,  
Solicitors and of Counsel with  
the Defendant-Respondent.

Endorsed:

10      "Filed Nov. 28, 1915.  
          THOMAS F. MARTIN,  
          Clerk."

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**EXHIBITS.****Exhibit C-1.**

Mortgage first set forth in bill of complaint.

**Exhibit C-2.**

Bond first set forth in bill of complaint.

**Exhibit C-4.**

Mortgage secondly set forth in bill of complaint.

**Exhibit C-5.**

Bond secondly set forth in bill of complaint.

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**Exhibit C-6.**

Morris County Clerk's Searches.

**Exhibit C-7.**

Supreme Court Clerk's Searches.

**Exhibits C-8 and C-9.**

Federal Court Clerk's Searches (two).

**Exhibit C-10.**

Probate copy of Stephen O. Horton's will as set forth in bill of complaint.

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**Exhibit C-11.**

Probate copy of Dency C. Horton's will as set forth in bill of complaint.

**Exhibit C-12.**

Assignment by Dency C. Horton to complainant of the two mortgages sought to be foreclosed as set forth in bill of complaint.

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**Exhibit C-13.**

Release by complainant to Executors of Dency C. Horton estate.

**Exhibit C-14.**

Ironia, July 4, '92

Dear Emily:—I mail to you a Post Office order for ten dollars. It is the money I saved from the runing expenses while I had charge of the milk and butter.

Please give it to your mother and credit it to San- 40



**Exhibits**

ford account. We are all quite well, and hope to hear often that your mother continues to improve.

Do not hesitate to send to us if you need help of any kind. We expect brother Pres daughter on from Illinois tomorrow but she is one of the family not company.

Hastily yours,  
A. M. HUGHSON.

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**Exhibit C-15.**

Ironia, Jan. 18, 1892.

Dear Emily:—Yours of the 15 was rec. the 16. I am ashamed of not writing sooner to thank you for your Christmas remembrance of the Apron and Lilly. The Apron comes very acceptable and the Lilly is making a luxuriant start. Edd has had the Grip and Phebe a cold, he was shut in for two weeks. She was not down with her cold. Both are better now, but I cannot say that I can get off this week. I have been sorry I said anything to you about going, it is so disagreeable to be looking and looking for nothing. I do not know anything to hinder me going next week, but do not look for me. I fully intended to put Ben Hur in the barrel but it got laid aside and I forgot it. I was going to take it last summer and some of the rest wanted to read it. I will remember that and the mitten pattern when I go. I got the mitten pattern in Indiana a long time ago and have made great use it for the workers have made 12 pairs this winter. It takes quite a large piece to make them and I often make them out of old coats. I am just reading the Life of Murry, that your mother gave me, and find it very interesting.

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30

He certainly had a very strange, eventful life. Mr. Hollenshed leaving has taken up considerable time for us in the way of the donation, entertaining him, and ing to move. We are all at sea now and will be more or less anxious 'till we get settled or some one to take his

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**Exhibits**

place. Your aunt Lizzie does not say anything to us about going to your place. She said since she did not like to go anywhere to eat while she was without teeth and she does not think her mouth sufficiently healed to get her new teeth yet.

The buckwheat flour Sanford sent was \$2.25 a hundred, the buckwheat in the barrel 30 cts and the corn 30 cts.

10

Truly yours,

A. M. H.

**Exhibit C-16.**

Ironia, Nov. 13, 1891

Dear Emily:—Yours mailed the 3d, 3 p. m., was rec. the 4th. Early this week I thought I would write you Thursday so you would be sure to get it this week, but somehow I have lost a day. Got up this morning thinking it was Thursday but stand corrected. Am sorry for I fully intended your letter should go today. 20  
I am not quite as far off as Lebiens was when he went to plowing Sunday morning and did not find out his mistake til he saw all the people going to church. The barrel sent you last month had 3 bushels of potatoes, 60 cts, a bushel; 4 lbs. pork, 9 cts a lb; 9 lbs. of butter, 25 cts. a pound. The expressage was 60 cts. I have had some chestnuts picked for you some time hoping I would have a chance to send them but I am afraid they will be too hard to be good before the chance comes. Please write out the name of the slips 30  
I brought home with me. I have forgotten it and your Aunt L does not know the name of it. I put our four slips and three of them stood with the leaves on till I brought them in. They did not grow but I watched and tended on. One has died, one is putting out some new leaves, the other is doubtful. I think it will die. I would dearly love to have gone to the Flower Show in N. Y. with you. Hope you and your mother went so that I can hear about it. I think I will make you the visit I promised you this month the first week 40



**Exhibits**

in Dec. I want to go down by the way of Newark and spend the most of the day with Emma. I have not said any thing about it yet as I did not know what might prevent so long before hand so I will not think of it as a certainty only that I hope to do so. Your papering must have made you a great deal of work I know how such dust will work through every thing. Sanford will  
 10 think he can get a better lease after they commence work. I have been enquiring around about it and am going to learn more if possible. I hear that in digging the big ditch they sent away samples every few feet and if these samples prove that there is 19 per cent. of ore in the rock it will pay to work it, less than that it will not pay, as the crusher will not work in wet ore.

Drake Bonnel is not expected to live, has gangreen that commenced in his toe. They think they must take Mrs. Bonnel to the Asylum if he is taken away. She  
 20 raves so they have to tie her hand and foot when night comes.

Truly yours,

A. M. H.

**Exhibit C-17.**

Ironia, June 22, '91.

Dear Emily:—Yours of May 26 was duly rec. also some papers earlier of date.

Should have spent some time with you in March if I had not been waiting for your aunt L to go. I  
 30 kept myself in readiness to keep house in her place from the first of Feb. 'til the first of April at a days notice and we none of us know any reason for her not going. She said the First of April that she had not said any thing about going so I gave up thinking about it. As to my going to your place in August I will do whatever you and your mother wish about it. I think the change and trip would do your mother good and if she feels safe to leave things in my care as she did  
 40 last year I shall enjoy doing the best I can for you in that way, only as soon as you decide what you will



**Exhibits**

do let me know so that I can make my arrangements accordingly. "At the present writing" I am tied to 30 Turkeys and 100 chickens in the way of extras but they will soon be out of the way.

As far as I know what was sent last winter and spring is:

100 Buckwheat Flour, .....	\$2.80	
1/2 bu. Wheat .....	.50	10
1/2 bu. Buckwheat, .....	.35	
17 lb. Ham, 10c, .....	1.70	
1/2 bu. Potatoes, .....	.50	
1/2 bu. Corn, .....	.35	
1/2 bu. Wheat, .....	.50	
	<hr/>	
	\$6.70	

The mining business seems to work along slowly and mysteriously—only two men at work and they do not know for what purpose. There must be some development soon. 20

The few hot days we have had set me to making up thin shirts for the extremes when they come. Your Aunt Lizzie and I did quite some gadding about last week. She went three days to the De Camp sale and I went two to the sale and one to Morristown. This week our M. S. S. holds a tea at the Parsonage Wednesday evening.

Make your plans to suit all concerned and I will fall in line. 30

Truly yours,

A. M. H.

**Exhibit C-18.**

Coplay, Pa. January 12, 1883.

Statement.

Stephen O. Horton.

In Acct. with Coplay Iron Co., Limited.

1882—By Royalty as follows: Hughson Tract.

July .....97.06 tons

Aug. ....96 tons 40



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Sept. ....	69.13 tons
Oct. ....	38.07 tons
Nov. ....	65.05 tons
Dec. ....	124.15 tons

Total—491.06 tons @ 50c.....\$245.65

Office of

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The Coplay Iron Co., Limited.  
Coplay, Lehigh Co., Penna.

January 12, 1883.

Stephen O. Horton, Esq.,  
Plainfield, N. J.

Dear Sir: Enclosed we hand you draft for \$245.65 (dollars), in settlement of your six months royalty—Hughson Tract Horton Mine to 1st inst., as per statement herewith.

Please acknowledge receipt and oblige,

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Yours respectfully,

Coplay Iron Company, Limited,  
Per J. W. Weaver.

Written to on the subject Oct. 6, 1883.

Office of

The Coplay Iron Co., Limited.  
Coplay, Lehigh Co., Penna.

July 26, 1882.

Stephen O. Horton, Esq.,  
Plainfield, N. J.

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Dear Sir: Enclosed we hand you draft for \$490.94 (dollars,) in settlement of your royalty to July 1st, as per statement herewith.

Please acknowledge receipt and oblige,

Yours respectfully,

Coplay Iron Company, Limited,  
Per J. W. W.



**Exhibits**

Office of  
The Coplay Iron Co., Limited.  
Coplay, Lehigh Co., Penna.

July 29, 1882.

Stephen O. Horton, Esq.,  
Plainfield, N. J.

Dear Sir: Enclosed we hand you draft for \$210.40 (dollars), in settlement of your royalty in full to July 10 1st, 1882. Hughson Tract.

Please acknowledge receipt and oblige,

Yours respectfully,

Coplay Iron Company, Limited,

Per J. W. W.

We enclose copy agreement left by you. Will send copy of lease as soon as copied.

**Exhibit D-1.**

Certified copy of Caleb S. Hughson's will.

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**Exhibit D-2.**

Claim made by Elizabeth J. Hughson against Caleb S. Hughson's estate as set forth in testimony (conclusion of defendant's case).

**Exhibit D-3.**

Notice disputing claim (Exhibit D-2) given by Executors of Caleb S. Hughson's estate to Elizabeth J. Hughson as set forth in testimony (conclusion of defendant's case).

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