

Court of Errors and Appeals.

Between

*Elizabeth L. Morris, Benjamin D. P.
Morris and James M. Green, Ex-
ecutrix and Executors of Jacob W.
Morris, deceased,*

Appellants,

and

Peter White,

Respondent.

*On
Appeal,
&c.*

*Brief of Chilion Robbins, of Counsel with the
Appellants.*

This is an appeal from a decree advised by Vice Chancellor Van Fleet, in a case between Peter White, complainant, and Ferdinand Morin, Jacob W. Morris and others, defendants.

Jacob W. Morris, since the making of the decree, died, and on May 1, 1882, the appellants were admitted parties to the said suit, and thereupon presented this appeal.

The controversy in this case arises upon the adverse 10

claims of the parties to this appeal to priority of payment out of the proceeds of the sale of the lands mentioned in the decree.

The bill was filed to foreclose a mortgage made by Ferdinand Morin and wife to Peter White for \$7,500, dated *October 11, 1876*, (page 1) and recorded *October 13, 1876, at 8:45 o'clock A. M.* Pages 4, 41.

Jacob W. Morris recovered a judgment against Ferdinand Morin in the New Jersey Supreme Court for \$1,100 004.50, real debt and costs, on *October 11, 1876*. Pages 15, 43.

The decree gives precedence, over both Morris and White, to a number of judgments. The propriety of this is not disputed.

It, however, directs the payment of Mr. White before Mr. Morris (page 47), and this brings us to the point in dispute.

The language of the decree fixing the order of priority is as follows: "And that there is due to the defendant, Jacob
20 W. Morris, on his said judgment, for principal, interest and costs, this day, the sum of one thousand one hundred and eighty-six dollars and eighty-three cents, and that the last mentioned judgment is third in order of priority of payment, as the same was obtained by confession after the said Jacob W. Morris knew that the complainant's mortgage had been made and executed and before it was recorded, with the fraudulent intent and purpose to make it a prior incumbrance upon said mortgaged premises to that of the complainant's said mortgage, and to the pre-
30 judge of the complainant."

I submit that the decree is wrong in the particular specified.

I.

Because no charge of fraud is made in the bill of complaint, or shown in the answer or proofs.

I. Fraud is never presumed.

1. It must be charged in the bill of complaint clearly and explicitly. *Hilson v. Libby*, 12 J. & Sp., 12; *Sto. Eq. Pl.*, sections 251a, 252; 1 *Dan. Ch.*, 324; *Gilbert v. Lewis*, 1 *De. G. J. & Smith*, 38; *Danser v. Warwick*, 6 *Stew.*, 133, 138; *S. C.*, 7 *Stew.*, 578; *Byard v. Holmes*, 5 *Vr.*, 296. 10

A party who seeks redress on the ground of fraud, must point out and specify the fraud. *Small v. Boudinot*, 1 *Stockt.*, 331, 391.

A party can recover only upon the case made by his bill. The *allegata* and *probata* must correspond. *Parsons v. Heston*, 3 *Stockt.*, 155; *Zinc Co. v. Franklinite Co.*, 2 *Beas.*, 322, 340.

The decree on the disputed point is not within the case made by the bill, nor within the issue between the parties. No charge of fraud was made in 20 the bill, and no opportunity was given Mr. Morris to meet any such allegations. See *Howell v. Sebring*, 1 *McCarter*, 84; *Gordon v. Gordon*, 3 *Swans.*, 400, 471; *Bryan v. Spruill*, 4 *Jones' Eq.*, 27.

II. Fraud must be proved as set out in the bill, (here none is set out), else no relief can be had. *Sherren v. Humphrey*, 2 *Gr.*, 217; *VanPelt v. Veghte*, *Id.*, 207; *Parsons v. Heston*, 3 *Stockt.*, 155; *Danser v. Warwick*, *sup.*; *Howell v. Sebring*, 1 *McCarter*, 90, and cases cited; *Mulock v. Mulock*, 5 *Stew.*, 348, and cases cited; *Zinc Co. v. Franklinite Co.*, 2 *Beas.*, 322, 337. 30

The proof must be sufficient to overcome the natural presumption of honesty and fair dealing. 1 *Sto. Eq. Jur.*, section 190a.

And where the circumstances offered to show fraud will admit of a construction consistent with inno-

cence and good faith, the presumption is in favor of innocence. *Garrow v. Davis*, 10 N. Y. Legal Obs., 225.

III. Neither in the bill or proofs can any charge or evidence of fraud be found in this case.

1. As to the bill, all the allegations as to Mr. Morris and his judgment, will be found on page 8, lines 23 to 38, and page 10, lines 21 to 39. The charges are:

A. Notice of the complainant's mortgage.

10 B. That the judgment is a lien subsequent thereto.

C. Knowledge of the mortgages of Applegate and Benjamin P. Morris at the time of the recovery of judgment by Morris.

D. Prays for priority of place over all judgments, including that of Mr. Morris.

2. It will be observed that the judgment of Mr. Morris is classed (page 10, lines 30 to 38) with the lien claim judgments of Shearman, and Mead & Taft, and Barham & Co., and others, and priority is asked over them all.

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3. As to the answer—

1. Nothing from which fraud can be inferred is alleged. See pages 15, &c.

2. It denies fully and under oath all notice of complainant's mortgage before the recovery of his judgment. Page 16.

3. Denies its execution prior to such recovery, and claims that it is a subsequent incumbrance to his judgment.

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4. As no fraud is charged in the bill, of course there is no denial in the answer.

5. If not charged in the bill the complainant will not be permitted to prove fraud, even if it should exist. (See cases above cited.)

IV. But for the purpose of this argument—admitting the bill to have charged fraud in due form—the proofs show none. The most that can be, by any color, claimed is that Morris was active in securing an unsecured claim, and this he had a perfect right to do. *Wade on Notice, section 236; Cushing v. Hurd, 4 Pick., 252; Warden v. Adams, 15 Mass., 233.*

The right of a creditor by vigilance to secure his claim, no matter what other creditors may suffer, is undoubted.

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It is equally clear that a debtor, in failing circumstances, may prefer one creditor over another.

Also that the rights of such preferred creditor are not affected by a knowledge on his part of the debtor's insolvency at the time of such preference.

Nor does it make any difference that, at the time, a suit is pending, or that the transfer includes all the debtor's property, or that other creditors lose their debts by reason of the debtor's inability to meet all the demands against him.

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The transaction is valid, if the intent be to pay an honest debt, and not to hinder, delay and defraud other creditors. See *Bump on Fraudulent Conveyances, 217, &c., and cases cited; Tillon v. Britton, 4 Hals., 120; Coley v. Coley, 1 McCarter, 350; Benedict v. Benedict, 2 McCarter, 150; Jones v. Naughtright, 2 Stockt., 298; Vreeland v. Jacobus, 4 C. E. Green, 231, 235; Stillman v. Stillman, 6 C. E. Gr., 126; Waterbury v. Sturtevant, 18 Wend., 353.*

To establish fraud in case of a judgment confessed *bona fide* for moneys justly due, the proof must be clear and satisfactory, and circumstances unexplained to have that effect must be very strong and convincing. *Jones v. Naughtright, 2 Stockt., 298.*

The consideration for the judgment in question was \$650.52, money loaned before the date of the judgment, and \$349.48 loaned to Morin on that date. Page 39. These facts are not disputed.

The amount due, as claimed, is not disputed, either in the bill, proofs or decree. It is expressly allowed.

II.

It is charged (page 8) that the judgment of Mr. Morris was obtained with full knowledge of the mortgage of Mr. White, and with full notice of the same, and, if a lien at all, it is subsequent to that mortgage.

10 The decree also finds (page 46) that Mr. Morris knew at the time he recovered his judgment, "that the complainant's mortgage had been made and executed."

I. There could have been no constructive notice by registry of the mortgage.

Because it was not recorded until three days after the recovery of the judgment.

II. The notice must have been actual, if any. No such notice appears.

20 1. The bill charges notice, and calls for an answer under oath, and it is given, and upon the point in dispute is in the following words: "And this defendant denies that said judgment was obtained or recovered subsequent to the execution and record of the mortgage of the complainant and with full notice thereof, and that it is subsequent to the incumbrance of the complainant's said mortgage, but, on the contrary, charges and insists, (see *Quackenbush v. Van Riper, Sax., 476,*) that the said judgment was recovered prior to the execution and record of the mortgage
30 of the said complainant, and that this defendant had no notice whatever of the existence of the complainant's mortgage at the time of the recovery of his judgment, and that the judgment of the defendant hereinbefore set forth is a lien or incumbrance upon the mortgaged premises, and a prior lien or incumbrance thereon to the mortgage of the complainant."

2. This answer is directly responsive to the bill, and the defendant answers from his own knowledge. It will prevail unless overcome by two witnesses, or the testimony of one witness with strong corroborating circumstances equal to that of another. *Kenna v. Smith*, 2 Gr., 14; *Brown v. Bulkley*, 1 McCarter, 294; *Bird v. Styles*, 3 C. E. G., 297; *Force v. Dutcher*, Id., 401; *DeHart v. Baird*, 4 C. E. G., 423; *Colkins v. Landis*, 6 Id., 133; *Stearns v. Stearns*, 8 Id., 167; *Zain v. Cawley*, 6 Id., 130.

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3. Tested by this rule the answer is conclusive.

True, the judgment was recovered and mortgage executed the same day; but, which was done first? Morris swears, in his answer, that the judgment was first recovered, and this is not denied.

Nobody pretends to say that he knew of the execution of the mortgage before the recovery of his judgment, even if it was executed first.

Judge McLean and Mr. White both testified, had the fact been that the mortgage was first executed, 20 they would have made it plain. They even omit to name the hour of its execution, which is most significant.

Mr. Morris was also sworn and examined (pages 39, &c.,) and also cross-examined. If his answer was not true, or if it was open to any question on the point of priority of the judgment and mortgage, the truth would then have been brought out, but nothing variant was elicited.

Morris says, that he recollects that Morin executed 30 a mortgage to White the day he recovered his judgment, but when he first learned this does not appear. Certainly not then, however, for further on (page 40, lines 30 and 31) he says, "I understood my judgment was ahead of the mortgage executed to Mr. White."

There was ample time for Mr. White and his

counsel to prepare his case and study the answer. This was filed January 18, 1879 (page 15). The testimony was not commenced till January 31, 1879, when Judge McLean was examined. Mr. White was examined February 21, 1879, (page 31), and Mr. Morris was examined March 18, 1879, (page 39, &c.)

4. On the matter of notice it has been held—

That notice must be *subsequent to the execution* of the instrument. *Wade on Notice, section 236.*

10 And in *Cushing v. Hurd, 4 Pick., 252*, where one of two creditors of an insolvent debtor, anticipating the execution of a deed to the other creditors, by way of preference, and, in fact, having positive knowledge that such deed was in course of preparation, sued out a writ of attachment before the deed was delivered, and had the same levied upon the debtor's land before the deed had been deposited for record, but not before the completion of the conveyance, it was held that the title derived under the execution of the attachment would prevail over that
20 under the deed.

So in *Warden v. Adams, 15 Mass., 233*. A., a mortgagee, delivered his mortgage to a scrivener for the purpose of having an assignment thereof made to B., his creditor. Before such assignment was prepared and executed, and while the mortgage was in the scrivener's hands, A. made an assignment of the mortgage upon a separate paper to C., another creditor, which was also acknowledged and recorded before the assignment to B. was completed, C. knowing
30 that the mortgage deed had been so delivered to the scrivener. The title of C. prevailed.

To give effect to a deed of prior date unrecorded against a deed recorded, it must be proved that the second grantee had notice of the *execution, contents and existence of the prior deed.* *Brockett v. Wait, 6*

Vermont, 411. So it must be, not merely probable, but a *necessary and unquestionable* inference from the facts proved. The *fact must be proved by indubitable evidence*, either by direct evidence of the fact or by proving other facts from which it may be clearly inferred. *McMechan v. Griffing*, 3 *Pick.*, 154. See also *Hine v. Dodd*, 2 *Atk.*, 275; *Jackson v. Given*, 8 *Johns*, 137; *West v. Reid*, 2 *Hare*, 249; *Jackson v. Van Valkenburgh*, 8 *Cow.*, 260.

Notice of an *intention* on the part of the owner of 10 the property to execute a lien upon it does not prevent a person having such notice from taking a valid encumbrance on it. 1 *Jones on Mortgages*, section 580.

And the burden of proof to show such notice is on the person who charges another therewith. 1 *Jones on Mortgages*, section 580, and cases cited; *Van Wagenen v. Hoffer*, 4 *Hals.*, 684, 707.

III.

If the respondent lost his position in the order of payment, it was his own fault entirely.

1. Mr. Morris had nothing whatever to do with the management of Mr. White's business in this or any other matter. Mr. White and his counsel took entire charge of it.

Probably 2. Mr. White might have had the old mortgages assigned to him, or kept them on foot as long as necessary, for safety.

Indeed, the matter was talked over in that view. Pages 24, 32. 30

And Mr. Morin offered to have the old bonds and mortgages assigned to Mr. White. Page 32. Though no request was made to have them assigned. Page 27.

It also appears that these old mortgages were not cancelled until some days after the judgment was

recovered, to wit, October 13, 1876, October 23, 1876, October 13, 1876. Pages 41, 42. So giving ample time to see how the records stood before cancelling them.

They were taken to be cancelled by Mr. White's counsel. 27.

Thus it clearly appears—

1. That Mr. Morris had no notice.
2. That Mr. White suffers, if at all, by reason of his own fault.

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IV.

The bill of complaint also sets up the payment of the old mortgages, the understanding that his mortgage of \$7,500 should be the first encumbrance, that Mr. Morris and the lien judgment creditors, knew, at the time of the recovery of their respective judgments, of the old mortgages. *And asks to be subrogated to the rights of those judgment creditors. (He does not ask to be subrogated to the rights of the mortgagees in the old mortgages.)* (Page 10.)

20 And to have his mortgage decreed to be a first encumbrance on the mortgaged premises. Pages 9, 10.

As to this point—

1. He is not entitled to subrogation, either to the rights of the judgment creditors or the said mortgagees.

He was in no way bound to pay those mortgages.

He was not the owner of the mortgaged premises.

He might have made terms and taken an assignment of the mortgages.

30

There was no agreement or understanding that they should be kept on foot for his security; indeed, it was exactly the reverse.

When the mortgages were paid and cancelled that was the end of them. *the debt was extinguished*

And they were of no more validity than if they had never been made.

And so, under the allegations and prayer of the bill, the Vice Chancellor must have decided in this very case.

See, also, *Shinn v. Budd*, 1 *McCarter*, 234; *Shreve v. Hankinson*, 7 *Stew.*, 76-81. See, also, *Garwood v. Eldridge*, 1 *Green*, 143; *Bentley v. Whettemore*, 3 *C. E. Green*, 366. #

2. But even if, under the rules of law, the respondent had been entitled to subrogation to the rights of the mortgagees in the old mortgages, he cannot 10 succeed upon that point now.

(1.) Because he has not asked for any such relief in his bill. See page 10, lines 30 to 37; page 13, lines 22 to 26; page 14, lines 1 to 6.

The recital in the decree (page 44, lines 10 to 14,) is not warranted by the language of the bill.

(2.) Because the decree is against him on that point. #

It gives him priority on an entirely different ground. Pages 45, 46.

Considering the allegations and prayer of his bill, and the language of the decree, the Court of Chancery must have found him not entitled to subrogation.

As no appeal has been taken from the decree in the particular stated, as to that, it must stand. *Green v. Blackwell*, 7 *Stew.*, 768.

I respectfully submit that, upon the matters appealed from, the decree should be reversed, and that a decree giving the appellants' judgment priority in payment 30 over the mortgage of the respondent, should be directed.

A stranger who desires to be subrogated to the rights of a creditor, must stipulate expressly to that end. on subrogation 10. 164. 165

A mere expectation or understanding is not sufficient there must be an agreement to that effect with either the debtor or creditor or both. N. J. W.

And this is made more clear by the fact that the whole of the White (\$5655.88) has priority over the part of Morris when all paid on the old mortgage was \$7292. pp 25, 35, 46, 47

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COURT OF ERRORS AND APPEALS

WHITE, *Respondent,*
Morris' and
~~WHITE'S~~ EXECUTORS, *Appellants.*

The complainant is clearly entitled to be subrogated in the place of the old mortgages taken up by his money.

The defendant (Morris) had notice both by record and in fact of the three old mortgages, and they stood uncanceled on October 11th, 1876, the date of the entry of Morris' judgment, and his claim is destitute of equity.

The rule in equity settled in this state is that the question is whether the loan is made with or without the *expectation of being substituted in the place of the creditor.*

Tradesman's Building Association *v.* Thompson, 5 Stew. 135.

Coe *v.* N. J. Midland R. R., 4 Stew. 105.

Dix on Subrogation 162, &c.

The statement of facts in bill are sufficient, and the

prayer for general relief answers every purpose, even if the special prayer for subrogation falls short; though it is claimed to be adequate on the question of actual fraud by the defendant, the trick attempted is too transparent to justify either argument or reference to testimony.

And the defendant's words and acts in recommending and encouraging the loan, estop him from setting up his own claims in priority to complainant. See page 32, line 10, &c.

Defendant in his testimony does not deny the truth of complainant's testimony.

I insist before the court that the decision of the Chancellor in this case, in postponing the payment of Morris' judgment to that of the mortgage of the respondent, is right.

The mortgaged premises are situate at Long Branch.

There were three mortgages upon the property, amounting in all to the principal sum of \$7000. This money was wanting.

For the purpose of paying these mortgages, ^{Morris} Morris, the mortgagor, applied to the respondent for that purpose.

Mr. White, to satisfy himself, went to examine the property, which was shown him by Jacob K. Morris, now deceased, who estimated its value to be good security for the \$7500 which Mr. White proposed to loan to Morris, as it would take that amount to pay the mortgages with the accrued interest.

The amount actually paid by Mr. White for principal and interest on those three mortgages was \$7290.74. See page 25, lines 10, 25 and 35.

So that Mr. White's money cleared the property of all then known encumbrances.

Lien claims were afterwards filed which were decreed by the Chancellor to be prior encumbrances to that of Mr. White's mortgages, and which Mr. White had to pay, amounting to \$2081.78. See page 47, line 1, &c.

The court will see the liens, claims and Mr.

White's mortgage, at the time of the decree,	
amounted to	\$2,081 78
	8,655 88
	<hr/>
	\$10,737 66

The property was sold by the sheriff to Mr.

White for	\$6,000 00
Liens	2,081 78
	<hr/>

Mr. White thus losing the sum of.....	\$8,081 78
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I claim that the decree is right; that Mr. Morris recovered his judgment with notice of the existence of the respondent's mortgage, and with the intention of committing a fraud upon Mr. White.

Mr. Morris showed the property to Mr. White and recommended it as good security for \$7500, not for \$7500 with his judgment of \$1000 ahead; and on that occasion, before the mortgage of the respondent was given, Mr. White said to Morris that he would let Morris have \$7500. See page 32, line 10, &c.

Morris was also in Freehold the day the mortgage of the respondent was executed, and says *he knew it full well*. Page 40, line 15.

Morris knew that Mr. White would loan the \$7500 on first mortgage.

And that very money would pay his son's mortgage of \$3000.

Because that mortgage, with the others, was to be paid off the next day.

He told Mr. White it was good security for the \$7500.

Not good security for \$7500 in addition to the old mortgages of \$7000.

So that he knew the loan would be made; he knew that the mortgage was executed before his judgment was obtained.

He knew it when he came here with his son's mortgage and received Mr. White's money in payment of the same.

He came by appointment. Page 27, line 20.

The object of the registry of a mortgage is to give notice of its existence.

If a party receives that notice in any other way it is just as good.

Morris, then, had notice of Mr. White's mortgage before he recovered his judgment.

He knew Mr. White's was to be a first mortgage, that was the condition of the loan.

He knew the old mortgages were to be paid by Mr. White's money.

He received the money for his son's mortgage.

He obtained his judgment to perpetrate a fraud on Mr. White.

Morris

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Morris, the defendant, and Morris, the plaintiff, resided in Monmouth.

The land to be encumbered was in Monmouth.

Mr. Throckmorton, the commissioner who signed the judgment, lived in Monmouth.

What, then, was Morris' object in entering his judgment in Supreme Court?

The judgment would have answered as well in the courts at Freehold as a security as in Trenton.

Had it been in Freehold Mr. White would have discovered it.

Search had been made for encumbrances in Trenton and Freehold up to the day before the mortgage was executed.

The fraud would have been detected in Freehold; it might not be in Trenton.

Morris' judgment papers were in Freehold certainly as late as noon, October 11th, 1876. Page 40, line 27.

Then in the afternoon of October 11th Morris conveys his judgment papers to Trenton, and has his judgment entered out of the county where all the parties reside, and where the property is situate upon which he seeks his security.

It is done in great haste to get his judgment ahead of White's mortgage.

It is done after Mr. White had told Morris on his recommendation of the great value of the property.

And after Morris knew that the mortgage to White is executed, and it was not recorded because Mr. White was waiting for the old mortgages to pay them off.

Waiting for Morris to produce his own mortgage, the money was here on October 11th, (page 24, last line,) and was not paid because the old mortgages were not here.

Morris takes advantage of this delay and has his judgment entered in Trenton, away from the notice of Mr. White.

The Vice Chancellor understood this and placed the respondent's mortgage ahead of Morris.

Morris intended it as a fraud upon Mr. White, and he is estopped.

Crawford et al. v. Bertholf. et al., Saxt. 458.

Mr. Morris told Mr. White that the property was good security for the amount of money he was loaning upon it if the buildings were all off the land.

Morris got his judgment before the loan was consummated.

From what Morris said of the security, White told Morris he would loan \$7500.

It was to be a first encumbrance. Then Morris was bound to inform White of his judgment.

Withholding that information, he is estopped from claiming his priority.

This authority is directly in point.

Morris made a statement of the security being good for \$7500, not \$7500 with his judgment ahead.

Mr. White acted on that statement—Morris is estopped from claiming his as a first lien.

The case of *The Phillipsburg Bank v. Fulmer*, 2 Vr. 52, and the authorities to which reference is there made, hold the same doctrine.

Ind. 35, p. 27; vol. 20, 239; vol. 6, 289.

Here Morris' admission or statement that the property was good security for the amount Mr. White was asked to loan on this property as a first encumbrance, was made with the intention of influencing Mr. White to loan the money; did so influence him, he did so loan the money.

And now Morris' representatives can't say it was good after our judgment.

Read on page 55, middle of page.

Morris' statement was that it was good security for White's money.

The executors can't now claim that their judgment is first—they are estopped.

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1910

THE UNIVERSITY OF CHICAGO PRESS

JAMES S. YARD, Printer, Freehold, N. J.

In Chancery of New Jersey.

BETWEEN

PETER WHITE,

Complainant,

AND

FERDINAND MORIN AND WIFE

AND OTHERS,

Defendants.

} On Bill, &c.

Bill and Amendment.

[Filed October 28, 1878.]

To the Honorable the Chancellor of the State of New Jersey :

Humbly complaining, showeth unto your Honor your orator, Peter White, of the township of Wall, in the county of Monmouth, and State of New Jersey, that on or about the eleventh day of October, in the year one thousand eight hundred and seventy-six, Ferdinand Morin and Sophia, his wife, of the township of Ocean, in

the county of Monmouth, and State of New Jersey, became and was justly indebted unto Peter White, your orator, in the sum of seven thousand five hundred dollars, and being so indebted, the said Ferdinand Morin, in order to secure the payment of the said sum of money, with interest, did make and execute, under his hand and seal, and deliver unto your orator, Peter White, a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of
 10 fifteen thousand dollars, lawful money of the United States, with a condition thereunder written that if the said Ferdinand Morin, his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said Peter White, his executors, administrators or assigns, the just and full sum of seven thousand five hundred dollars, lawful money aforesaid, in one year from the date thereof, with interest from date thereof, the interest to be paid semi-annually, then the said obligation should be void, otherwise to remain in full force and
 20 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 your orator further shows, that the said Ferdinand Morin, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due thereon, executed and delivered unto your orator, Peter White, a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Ferdinand Morin
 30 and Sophia, his wife, of the first part, and Peter White, your orator, of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said Peter White, said party of the second part, his heirs and assigns, all the following described tract or parcel of land and premises, situate, lying and being in the township of Ocean, in the county of Monmouth, and State of New Jersey: On the north

side of Sairs road, and is the property sold by John H. Patterson to Ferdinand Morin by deed dated November first, eighteen hundred and seventy, and recorded in the clerk's office at Freehold, in Book 228 of Deeds, page 559, &c., and begins in the southeast corner of the lot hereby conveyed, it being the middle of the aforesaid Sairs road, it also being the southwest corner of William M. Gawtry's land, and runs (1) along the middle of Sairs road south seventy-six degrees and forty-five minutes west one hundred feet; (2) north fourteen degrees and fifteen minutes east two hundred and twenty-five feet to a stake for a corner; (3) north seventy-six degrees and forty-five minutes east one hundred feet to a stake for a corner; (4) south fourteen degrees west two hundred and twenty-five feet to the middle of the aforesaid road and to the beginning corner, as described in a deed made by John H. Patterson, sheriff of the county of Monmouth, to Ferdinand Morin, and recorded as before stated, being the same property as conveyed by Henry F. Morin to the said Ferdinand Morin, and recorded in the clerk's office at Freehold, in Book 279 of Deeds, page 29, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and, also, all the estate, right, title, interest, use, property, possession, claim, and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances; to have and to hold the therein above granted and described premises, with the appurtenances, unto Peter White, the said party of the second part, his heirs and assigns, to his and their own proper use, benefit and behoof forever; provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Ferdinand Morin, party of the first part to the said indenture of mortgage, his heirs, executors or adminis-

trators, should well and truly pay, or cause to be paid, unto the said Peter White, his certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine, and from thenceforth
10 be null and void.

And your orator further shows that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Ferdinand Morin and Sophia, his wife, before Amzi C. McLean, a master of the Court of Chancery, and duly recorded in the office of the clerk in and for the said county of Monmouth, in Book — of Mortgages, page —, on the thirteenth day of October, in the year one thousand eight hundred and seventy-six; as by the certificate of the clerk of the
20 said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows that on or about the twentieth day of December, A. D. eighteen hundred and seventy-six, the said Ferdinand Morin and Sophia, his wife, executed a mortgage on the same premises to one William R. Maps, to secure the sum of twelve hundred dollars, or some other sum, by virtue of which said mortgage the said William R. Maps claims to have some
30 lien upon the said mortgaged premises; but your orator charges that the said last mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full notice thereof, and, if a lien at all upon the said mortgaged premises, is subsequent to the mortgage of your orator.

And your orator further shows that on or about the twenty-seventh day of December, A. D. eighteen hundred and seventy-six, the said Morin and wife executed

a mortgage on the said premises to one John Beyer, to secure the sum of six hundred and fifty dollars, or some other sum, by virtue of which last mentioned mortgage the said Beyer claims to have some lien upon the said mortgage premises; but your orator charges that the said last mentioned mortgage was executed and recorded subsequent to your orator's said mortgage, and with full knowledge of the same, and, if an incumbrance at all upon the said mortgaged premises, is subsequent to the mortgage of your orator. 10

And your orator further shows, that on or about the thirtieth day of December, in the year last aforesaid, the said Morin and wife executed a mortgage upon the same premises to the said John Beyers to secure the sum of seven hundred dollars, or some other sum, by virtue of which said mortgage the said Beyers claims to have some lien upon the said premises, but your orator charges that the last mentioned mortgage was made and recorded subsequent to your orator's said mortgage and with full notice of the same, and if a lien at all upon the 20 said premises is subsequent to that of your orator's said mortgage.

And your orator further shows, that on or about the ninth day of November, 1869, William R. Maps, John Slocum and James Slocum, as your orator has been informed, recovered a judgment in the Court of Common Pleas of the county of Monmouth, for the sum of one thousand and fifty-two dollars and eighty-four cents, or some other sum, by virtue of which said judgment the said Maps and Slocums claim to have some lien upon 30 the said mortgaged premises, but your orator charges the contrary to be true.

And your orator further shows, that on or about the twenty-fourth day of April, A. D. eighteen hundred and seventy-seven, one John G. Noel, as your orator has been informed and believes to be true, recovered a judgment against the said Ferdinand Morin, and others, in the Court of Common Pleas of said county, for the sum of

seven hundred and thirty-five dollars and ninety-eight cents, or some other sum, by virtue of which said last mentioned judgment the said Noel claims to have some lien upon the said mortgaged premises, but your orator charges that the said judgment was obtained after the making and recording of your orator's said mortgage, and with full notice thereof.

And your orator further shows, that Henry B. Shearman, on or about the twenty-first day of April, A. D. 10 eighteen hundred and seventy-seven, recovered a judgment on a lien claim in the Circuit Court of the said county, for the sum of two hundred and seventy-nine dollars and fifty-five cents, or some other sum, by virtue of which said last mentioned judgment the said Shearman claims to have some lien upon the said mortgaged premises, but your orator charges that the said judgment was recovered subsequent to the making and recording of your orator's said mortgage, and with full notice thereof.

20 And your orator further shows, that on or about the twenty-first day of May, A. D. eighteen hundred and seventy-seven, one Sidney Conover recovered a judgment in the said Circuit Court against the said Ferdinand Morin, for the sum of one hundred and forty-seven dollars and ninety-six cents, or some other sum, by virtue of which said last mentioned judgment the said Conover claims to have some lien claims upon the said premises, but your orator charges that the said judgment was recovered subsequent to the making and recording of
30 your orator's said mortgage, and with full notice of the same, and if a lien at all upon the said premises, is subsequent to that of your orator's said mortgage.

And your orator further shows, that on or about the twenty-eighth day of May, A. D. eighteen hundred and seventy-seven, Charles H. Mead and Thomas Taft, partners as Mead & Taft, recovered a judgment, as your orator has been informed, on a lien claim, in the said Circuit Court, against the said Ferdinand Morin for the

sum of eight hundred and fifty-one dollars and thirty-three cents, or some other sum, by virtue of which last mentioned judgment the said Mead & Taft claim to have some lien upon the said mortgaged premises, but your orator charges that the said judgment was recovered subsequent to the making and recording of your orator's said mortgage, and if a lien at all, is subsequent to that of your orator's said mortgage.

And your orator further shows, that on or about the twenty-seventh day of August, A. D. eighteen hundred and seventy-seven, as your orator has been informed and believes to be true, James Barham and William Curr, partners as James Barham & Co., recovered a judgment on a lien claim in the said Circuit, against Ferdinand Morin, for the sum of seven hundred and ninety-four dollars and eight cents, or some other sum, by virtue of which last mentioned judgment the said Barham & Co. claim to have some lien upon the said mortgaged premises, but your orator charges that the said judgment was recovered subsequent to the making and recording of your orator's said mortgage, and with full notice of the same, and if a lien at all upon the said mortgaged premises, is after that of your orator's said mortgage.

And your orator further shows, that on or about the thirty-first day of July, A. D. eighteen hundred and seventy-eight, as your orator has been informed and believes to be true, Caroline Pemberton recovered a judgment in the said Circuit Court, against the said Ferdinand Morin, and others, for the sum of one hundred and thirty-five dollars, or some other sum, by virtue of which said judgment the said Conover claims to have some lien upon the said mortgaged premises, but your orator charges that the said judgment was obtained subsequent to the making and executing of your orator's said mortgage, and with full notice thereof, and if a lien at all, is after that of your orator's said mortgage.

And your orator further shows that on or about the

twenty-fifth day of July in the year A. D. eighteen hundred and seventy-eight, the Long Branch Banking Company recovered a judgment against the said Ferdinand Morin and others in the Court of Common Pleas of said county, for the sum of three hundred and thirty-five dollars and thirty-two cents, or some other sum ; the said banking company also recovered a judgment on the twenty-fifth day of July, in the year last aforesaid, in the said Court of Common Pleas, against the said Morin
 10 and others, for the sum of two hundred and seventy-nine dollars and fifty-seven cents ; the said banking company also recovered a judgment on the twenty-fifth day of July, in the year last aforesaid, in the said court, against said Morin and others, for the sum of two hundred and seventeen dollars and seventy-six cents, or some other sum ; by virtue of said three judgments the said banking company claims to have a lien upon the said mortgaged premises, but your orator charges that the said judgments were obtained after the making and recording of
 20 your orator's said mortgage, and, if a lien at all upon the said premises, are subsequent to that of your orator's said mortgage.

And your orator further shows that on the eleventh day of October, A. D. eighteen hundred and seventy-six, one Jacob W. Morris, as your orator has been informed and believes to be true, recovered a judgment in the Supreme Court of the State of New Jersey, for the sum of one thousand dollars, or some other sum ; and the said Morris also recovered a judgment in the said Su-
 30 preme Court against the said Ferdinand Morin and others for the sum of three hundred and eighteen dollars and twenty-three cents, by virtue of which said judgments the said Morris claims to have some lien upon the said mortgaged premises, but your orator expressly charges that the said judgments were obtained with full knowledge of your orator's said mortgage, and with full notice of the same, and, if a lien at all, are subsequent to your orator's said mortgage.

And your orator further shows that the said seven thousand five hundred dollars loaned by your orator to the said Morin to pay off three certain mortgages then upon the said mortgaged premises, one given by said Morin and wife to Daniel H. Applegate, dated June 24th, 1871, and recorded in the clerk's office of said county of Monmouth on the 27th day of June, 1871, to secure the payment of \$2,000; another mortgage given by the same parties to the said Applegate, dated July the 17th, 1871, and recorded in said clerk's office on the same 10 day, to secure the payment of \$2,000; and another mortgage given by the said Morin and wife to one Benjamin T. Morris, dated the first day of December, 1875, and recorded on the 16th day of December, 1875, in the said clerk's office, to secure the payment of \$3,000, the said three mortgages, for principal and interest at the time they were paid as aforesaid, amounting to the sum of \$7,295.25.

And your orator further shows that at the time your orator loaned the said seven thousand five hundred dollars 20 it was upon the express understanding with the said Morin that your orator's said mortgage was to be the first incumbrance upon the said mortgaged premises; that he caused a search to be made in the clerk's office of the Supreme Court of this State, and also in the clerk's office of the county of Monmouth, the day previous to the date and execution of your orator's said mortgage, and that all the incumbrances then upon the said premises were three mortgages, in the aggregate to the principal sum of seven thousand dollars, which said 30 mortgages were dated, recorded, and for the sums as follows, to wit: one given to Daniel H. Applegate by Ferdinand Morin and wife, dated the twenty-fourth day of June, 1871, and recorded in the clerk's office of the county of Monmouth on the 27th day of June, 1871, to secure the payment of two thousand dollars; one dated the 17th day of July, in the year last aforesaid, given by said Morin and wife to the said Applegate, and recorded

in the said clerk's office on the 27th day of July, 1871, to secure the payment of two thousand dollars; and one given by said Morin and wife to Benjamin T. Morris, dated the first day of December, 1875, and recorded in the said clerk's office on the 16th day of December, 1875, to secure the payment of three thousand dollars; and your orator, through his attorney, A. C. McLean, by the consent of the said Morin, after the execution of your orator's said mortgage, out of the money so loaned by
 10 him to said Morin paid the principal sum of seven thousand dollars mentioned in the said three mortgages, together with the interest then due on the same, amounting to about three hundred dollars; and your orator expressly charges that at the time the said Mead and Taft, Henry B. Shearman and Barham & Company furnished the material and performed the work set forth in their respective lien claims, they well knew of the existence of the said last mentioned mortgages, that they were valid liens upon the said mortgaged premises, and were
 20 prior incumbrances upon the said mortgaged premises.

And your orator further shows that at the time the said Jacob W. Morris recovered his said judgment in the Supreme Court of the State of New Jersey, on the eleventh day of October, 1876, or some other date, for the principal sum of one thousand dollars, together with costs of suit, that he well knew of the existence of the said three mortgages lastly above mentioned, that they were valid and effective liens upon the said mortgaged premises prior to his said judgment.

30 Your orator therefore prays that in case the said several mechanics' liens and the said judgment of the said Morris are valid liens, that your orator's said mortgage may be subrogated for the said several mechanics' lien claims and the said judgment of the said Jacob W. Morris, and that your orator's said mortgage may be decreed by this honorable court to be a first incumbrance upon the said mortgaged premises.

And your orator further shows, that the whole princi-

pal money mentioned in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to him, your orator, so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises the said deed of mortgage and the estate thereby mortgaged as aforesaid, has become absolute in your orator and his heirs.

And your orator further shows, that the said Ferdi-10
 nand Morin and Sophia, his wife, William R. Maps,
 John Slocum, James Slocum, John Beyer, Henry B.
 Shearman, Charles H. Mead and Thomas Taft, John G.
 Noel, Sidney Conover, James Barham and William T.
 Curr, partners as J. Barham & Co., Caroline Pemberton,
 The Long Branch Banking Co. and Jacob W. Morris,
 since the execution of your orator's said mortgage have
 possessed and enjoyed, and that they do still possess and
 enjoy the said mortgaged premises, with the appurten-
 nances, and that they have always received, and still do 20
 receive, the rents, issues and profits thereof. And your
 orator further shows, and expressly charges, that the said
 mortgaged premises are a slender and scanty security
 for the payment of the said principal and interest mon-
 eys so due to your orator as aforesaid. And that he or
 some other person or persons for him have frequently
 and in a friendly manner applied to said Ferdinand
 Morin and Sophia, his wife, or one of them, and request-
 ed them, or one of them, to pay and discharge the said
 principal and interest moneys so due to your orator on 30
 the said bond or obligation and deed of mortgage here-
 inbefore mentioned and set forth; and your orator well
 hoped that they would have complied with such reason-
 able request of your orator, and would have paid to him
 the said principal and interest moneys so as aforesaid
 due to your orator on the said bond or obligation and
 deed of mortgage, as in equity and good conscience they
 ought to have done; but now so it is, may it please your

honor, that the said Ferdinand Morin and Sophia, his wife, William R. Maps, John Slocum, James Slocum, John Beyer, Henry B. Shearman, John G. Noel, Sidney Conover, Charles H. Mead & Thomas Taft, partners, James Barham & William Curr, partners, as J. Barham & Co., Caroline Pemberton, The Long Branch Banking Co. and Jacob W. Morris, combining and confederating together, and to and with divers other persons at present unknown to your orator, but whose names, when discovered, he prays may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve your orator in the premises, and to defraud him of the said principal and interest moneys, so as aforesaid due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned, sometimes give out and pretend that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in any manner; and that the same will be subject to an equity of redemption; and at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other encumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover: Whereas, your orator charges and insists, that if any such pretended encumbrances do exist, they are fraudulent and void, and given for no good or valuable consideration, or are paid and satisfied, and kept on foot by fraud to injure and aggrieve your orator and ought to be delivered up to be cancelled, or declared to be of no effect against your orator, who had no notice of any such pretended encumbrances. All which actings and doings of the said defendants and their confederates are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator.

In tender consideration whereof, and for as much as your orator has not a complete and safe remedy in the

premises at and by the strict rules of 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 so as aforesaid due to your orator on said bond and obligation and deed of mortgage without the aid and decree of this honorable court.

To the end, therefore, that the said Ferdinand Morin and Sophia, his wife, William R. Maps, John Slocum, James Slocum, John Beyer, Henry B. Shearman, John G. 10 Noel, Sidney Conover, Charles H. Mead & Thomas Taft, partners, James Barham & William Curr, partners, Caroline Pemberton, The Long Branch Banking Co. and Jacob W. Morris, and their confederates, when discovered, may, upon their several and respective corporal oaths, true, full, and perfect answer make to all and singular the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance 20 and belief; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum so due to him on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this honorable court; and in default thereof that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either 30 of them, may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over unto your orator all deeds, demises, and writings whatever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this honorable court, be sold, and

out of the moneys arising from the sale thereof, your orator may be paid the full amount of the said principal sum of money so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges in this behalf sustained, and that your orator may have such further and other relief in the premises as to your honor may seem meet and shall be agreeable to equity and good conscience;

10 may it please your honor, the premises considered, to grant unto your orator a writ or writs of subpoena, issuing out, and under the seal, of this honorable court, to be directed to the said Ferdinand Morin and Sophia, his wife, William R. Maps, John Slocum, James Slocum, John Beyer, Henry B. Shearman, John G. Noel, Sidney Conover, Charles H. Mead and Thomas Taft, partners as Mead & Taft, James Barham and William Curr, partners as J. Barham & Co., Caroline Pemberton, The Long Branch Banking Company and Jacob W. Morris, therein and

20 thereby commanding them, and each of them, on a certain day and under a certain penalty, therein to be inserted, to be and appear before your Honor in this honorable court, then and there to answer all and singular the premises, and to stand to, abide by, and perform such order and decree therein as to your honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.

A. C. McLEAN,

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Solicitor for and of Counsel with Complainant.

Time extended to answer by Jacob W. Morris by counsel of complainant to January 25, 1879.

Answer of Jacob W. Morris, Defendant.

[Filed January 18, 1879.]

The answer of Jacob W. Morris, one of the defendants in the above stated cause, to the bill of complaint of Peter White, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such 10 parts thereof as this defendant is advised is material for him to make answer unto, he answers and says, that he admits that the said Ferdinand Morin and Sophia, his wife, in the complainant's said bill named, did make and execute an indenture of mortgage of such date and of such purport and effect as in the complainant's said bill mentioned and set forth.

And this defendant, further answering, admits that there is due to the said complainant the principal money in the said bond and indenture of mortgage men- 20 tioned and expressed and set forth in their said bill of complaint, together with an arrear of interest to this defendant unknown; but for greater certainty he prays that reference may be had to the same, and the amount distinctly ascertained.

And this defendant, further answering, saith that on the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six, this defendant recovered a judgment against Ferdinand Morin, in the Supreme Court of the State of New Jersey, for the sum 30 of two thousand dollars debt (real debt one thousand dollars) and four dollars and fifty cents costs of suit, and that a fieri facias was issued upon said judgment out of

said court the same day it was obtained, and on the thirteenth day of October, in the year of our Lord one thousand eight hundred and seventy-six, placed in the hands of George W. Brown, then high sheriff of the county of Monmouth, for execution; and this defendant denies that said judgment was obtained or recovered subsequent to the execution and record of the mortgage of the complainant and with full notice thereof, and that it is subsequent to the incumbrance of the complainant's

10 said mortgage, but, on the contrary, charges and insists that the said judgment was recovered prior to the execution and record of the mortgage of the said complainant, and that this defendant had no notice whatever of the existence of the complainant's mortgage at the time of the recovery of his judgment, and that the judgment of this defendant hereinbefore set forth is a lien or incumbrance upon the mortgaged premises, and a prior lien or incumbrance thereon to the mortgage of the complainant.

20 And this defendant, further answering, saith that on or about the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-six, this defendant recovered a judgment in the Supreme Court of New Jersey against Frederick Meyer, Hulda Meyer, Jacob Schleith and the said Ferdinand Morin for the sum of two hundred and seventy-one dollars and fifty-eight cents damages and forty-six dollars and seventy-five cents costs of suit, and that a fieri facias was issued upon said judgment out of said court the same

30 day it was obtained, and on or about the twenty-first day of November, in the year of our Lord one thousand eight hundred and seventy-six, placed in the hands of George W. Brown, then high sheriff of the county of Monmouth, for execution; and this defendant charges and insists that said judgment last above set forth is a lien upon the premises described in the mortgage of the complainant.

And this defendant, further answering, admits that on

or about the twentieth day of December, A. D. eighteen hundred and seventy-six, the said Ferdinand Morin and wife executed a mortgage on the mortgaged premises to one William R. Maps, to secure the sum of twelve hundred dollars, or some other sum, and that said mortgage is a lien upon said mortgaged premises ; but this defendant expressly charges and insists that said last mentioned mortgage of William R. Maps was executed and recorded subsequent to both of the judgments of this defendant, and with full notice thereof, and, if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits that on or about the twenty-seventh day of December, A. D. eighteen hundred and seventy-six, the said Ferdinand Morin and wife executed a mortgage on the said mortgaged premises to one John Beyer, to secure the sum of six hundred and fifty dollars, or some other sum, and that said mortgage is a lien upon said mortgaged premises ; but this defendant expressly charges and insists that said last mentioned mortgage of John Beyer was executed and recorded subsequent to both of the judgments of this defendant, and with full notice thereof, and, if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits that on or about the thirteenth day of December, A. D. eighteen hundred and seventy-six, the said Ferdinand Morin and wife executed a mortgage on the said mortgaged premises to one John Beyer, to secure the sum of seven hundred dollars, or some other sum, and that said mortgage is a lien upon said mortgaged premises ; and this defendant expressly charges and insists that said last mentioned mortgage of John Beyer was executed and recorded subsequent to both of the judgments of this defendant, and with full notice thereof, and, if an en-

cumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits that on or about the twenty-first day of February, A. D. eighteen hundred and seventy-seven, one Henry B. Shearman recovered a judgment against the said Ferdinand Morin and Sophia, his wife, on a lien claim for the sum of two hundred and seventy-nine dollars and fifty-five cents, or
 10 some other sum, and that said last named judgment is a lien upon the said mortgaged premises; but calls upon the said Shearman to prove the amount due thereon.

And this defendant, further answering, admits that on or about the twenty-fourth day of April, A. D. eighteen hundred and seventy-seven, one John G. Noel recovered a judgment in the Inferior Court of Common Pleas of the county of Monmouth against the said Ferdinand Morin, impleaded with Sophia Morin, for the sum of
 20 seven hundred and thirty-five dollars and ninety-eight cents, or some other sum, and that the same is a lien upon said mortgaged premises; but this defendant expressly charges and insists that said last above named judgment was recovered by the said John G. Noel subsequent to both of the judgments of this defendant, and with full notice thereof, and, if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits, that
 30 on or about the twenty-first day of May, in the year of our Lord one thousand eight hundred and seventy-seven, one Sidney Conover recovered a judgment in the Circuit Court of the county of Monmouth against the said Ferdinand Morin, for the sum of one hundred and forty-four dollars and ninety-six cents, or some other sum, and that the same is a lien upon the said mortgaged premises; but this defendant expressly charges and insists that said last above named judgment was recovered by the said Sidney Conover subsequent to both of the judg-

ments of this defendant, and with full notice thereof, and if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits, that on or about the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and seventy-seven, that Charles H. Mead and Thomas Taft, partners, trading as Mead & Taft, recovered a judgment in the Circuit Court of the county of Monmouth, against the 10 said Ferdinand Morin, for the sum of eight hundred and fifty-one dollars and thirty-three cents, upon a lien claim, and that the same is a lien upon the said mortgaged premises; but calls upon the said Mead & Taft to prove the amount due and owing thereon under oath or affirmation, as this honorable court shall direct.

And this defendant, further answering, admits, that on or about the twenty-seventh day of August, in the year last aforesaid, James Barham and William Curr, partners, trading as James Barham & Co., recovered a 20 judgment in the Circuit Court of the county of Monmouth, against the said Ferdinand Morin, for the sum of seven hundred and ninety-four dollars and eight cents, or some other sum, upon a lien claim, and that the same is a lien upon the said mortgaged premises; but calls upon the said James Barham & Co. to prove the amount due and owing thereon under oath or affirmation, as this honorable court shall direct.

And this defendant, further answering, admits, that on or about the twenty-first day of January, in the year 30 of our Lord one thousand eight hundred and seventy-eight, one Caroline Pemberton recovered a judgment in the Circuit Court of the county of Monmouth, against the said Ferdinand Morin, and others, for the sum of one hundred and thirty-five dollars, or some other sum, and that the same is a lien upon said mortgaged premises; but this defendant expressly charges and insists, that said last above named judgment was recovered by

the said Caroline Pemberton subsequent to both of the judgments of this defendant, and with full notice thereof, and if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits, that on or about the twenty-fifth day of July, in the year last aforesaid, The Long Branch Banking Company recovered a judgment in the Inferior Court of Common Pleas of
10 the County of Monmouth, for the sum of three hundred and thirty-five dollars and thirty-two cents, against the said Ferdinand Morin and others, or some other sum, and that the same is a lien on said mortgaged premises; but this defendant expressly charges and insists, that said last above named judgment was recovered by the said The Long Branch Banking Company subsequent to both of the judgments of this defendant, and with full notice thereof, and, if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of
20 both of the judgments of this defendant.

And this defendant, further answering, admits, that on or about the said twenty-fifth day of July, the said The Long Branch Banking Company recovered a judgment against the said Ferdinand Morin, Tenbrook Morris and Lewis Gray, in the Inferior Court of Common Pleas of the county of Monmouth, for the sum of five hundred and seventy-nine dollars and fifty-seven cents, or some other sum, and that the same is a lien upon the said mortgaged premises; but this defendant expressly
30 charges and insists, that said last above named judgment was recovered by the said The Long Branch Banking Company subsequent to both of the judgments of this defendant and with full notice thereof, and if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits, that on or about the said twenty-fifth day of July the said

The Long Branch Banking Company recovered a judgment against the said Ferdinand Morin and George H. Newman, in the Inferior Court of Common Pleas of the county of Monmouth, for the sum of two hundred and seventeen dollars and seventy-six cents, or some other sum, and that the same is a lien upon the said mortgaged premises; but this defendant expressly charges and insists, that said last above named judgment was recovered by the said The Long Branch Banking Company subsequent to both of the judgments of this defendant, and ¹⁰ with full notice thereof, and if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, admits, that on or about the fifteenth day of June, in the year of our Lord one thousand eight hundred and seventy-eight, one Henry B. Shearman recovered a judgment in the Inferior Court of Common Pleas of Monmouth county, against the said Ferdinand Morin, Henry F. Morin and George Hathaway, for the sum of four hundred and thirty-two ²⁰ dollars and fifty-two cents, or some other sum, and that the same is a lien upon the said mortgaged premises, but this defendant expressly charges and insists, that said last above named judgment was recovered by the said Henry B. Shearman subsequent to both of the judgments of this defendant, and with full notice thereof, and if an encumbrance at all upon the said mortgaged premises, it is subsequent to the lien of both of the judgments of this defendant.

And this defendant, further answering, says that the ³⁰ said debt of one thousand and four dollars and fifty cents and the said debt of three hundred and eighteen dollars and twenty-three cents so as aforesaid due this defendant, together with an arrear of interest thereon, still remains due and owing to this defendant from the said Ferdinand Morin; and this defendant denies all unlawful combination and confederacy in said bill charged, without that, that any other matter or thing

material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays that a decree may be made by this honorable court for the sale of the said land and premises in the foregoing indenture of mortgage of the said complainant and set forth in the 10 said complainant's bill of complaint, and out of the money thence arising that this defendant may be paid the full amount of the principal and interest moneys so due as aforesaid, with all reasonable costs and charges in this behalf sustained.

ROBBINS & HARTSHORNE,
Solicitors for and of Counsel with the Defendant, Jacob W. Morris.

State of New Jersey, County of Monmouth, ss.—Jacob W. Morris, the above named defendant, being duly sworn 20 according to law, on his oath saith that the matters and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as relates to the acts of others, he believes them to be true.

J. W. MORRIS.

Sworn and subscribed before me this seventeenth day of January, A. D. 1879.

CHAS. P. DORRANCE,
Master in Chancery of New Jersey.

Replication in the usual form.

Depositions of Witnesses.

[Filed April 3, 1879.]

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein Peter White is complainant, and Ferdinand Morin and wife and others are defendants, taken before John J. Ely, a master and examiner of said court, at his office on Main street, in the town of Freehold, on Friday, the thirty-first day of January, A. D. eighteen hundred and seventy-nine, in the presence of 10 Amzi C. McLean, solicitor and of counsel for the complainant, and Acton C. Hartshorne, of the firm of Robbins & Hartshorne, of counsel for the defendant, Jacob W. Morris, and Messrs. Lanning & Dorrance, of counsel for the defendants, Charles H. Mead and Thomas Taft, partners, &c., as Mead & Taft, and of the defendant, Henry B. Shearman.

[Mortgage bearing date the eleventh day of October, A. D. eighteen hundred and seventy-six, executed by Ferdinand Morin and Sophia Morin, his wife, to Peter 20 White, complainant, conditioned for the payment of seven thousand and five hundred dollars, in one year from the date thereof, with interest from date, acknowledged before Amzi C. McLean, a master in chancery of New Jersey, by the said Ferdinand Morin and Sophia Morin, his wife, and recorded at Freehold, in the clerk's office of the county of Monmouth, in Book W3 of Mortgages, page 147, &c., on the thirteenth day of October, A. D. eighteen hundred and seventy-six, at 8:45 A. M., is offered in evidence on the part of the 30 complainant, and marked *Exhibit A1* on the part of the complainant.]

Amzi C. McLean, a witness produced on the part of the complainant, being duly sworn according to law, deposes and saith—

I am solicitor of the complainant in this cause; I am subscribing witness to the bond now shown to me, executed by Ferdinand Morin, one of the defendants in this cause, to Peter White, the complainant therein, bearing date the eleventh day of October, A. D. eighteen hundred and seventy-six, in the penal sum of fifteen thousand dollars, conditioned for the payment of seven thousand and five hundred dollars in one year from date, with interest from date, the interest to be paid semi-annually; I saw Ferdinand Morin affix his signature opposite the seal on this bond, and know the said signature to be in his own handwriting, and I wrote my name as it appears on said bond as subscribing witness thereto; the mortgage marked *Exhibit A1* on part of the complainant was given to secure the payment of the money mentioned in this bond.

20 [This bond is offered in evidence on the part of the complainant, and is marked *Exhibit A2* on the part of the complainant.]

The understanding between Mr. Ferdinand Morin, Peter White and myself, as the attorney of Peter White, was that this mortgage was to be the first encumbrance on the property therein described; I made search in the clerk's office of the county of Monmouth to ascertain what encumbrances were on the property, and found that there were some mortgages on the property, and 30 suggested to Mr. White, in the presence of Mr. Morin, that Mr. White should take an assignment of the mortgages, but Mr. White said that he was an old man; I understood him to say past seventy years of age, and that it made so many papers it confused him, and that he would rather have all in one bond and mortgage; then it was arranged between Mr. White and Mr. Morin that the money should be left in my hands to pay off these mortgages, and the money was left in my hands for

that purpose; there was one mortgage given by Ferdinand Morin and wife to Daniel H. Applegate, dated June 24th, 1871, and recorded in the clerk's office of Monmouth county on June 27th, 1871, for two thousand dollars, principal sum; that mortgage I paid off out of Mr. White's money on the morning of the thirteenth of October, A. D. eighteen hundred and seventy-six, to John S. Applegate, attorney, and as I understood, executor of the said Daniel Applegate; the amount paid on that mortgage, for principal and interest, by me, was two 10 thousand one hundred and seventy-three dollars and forty-three cents, being the amount of principal and interest then due; and the mortgage was cancelled on the morning of the thirteenth of October, 1876.

[Which mortgage and bond accompanying it are offered in evidence, and marked *Exhibit A3 and Exhibit A4* on the part of the complainant.]

I also paid off a mortgage given by Ferdinand Morin and wife to the said Daniel H. Applegate, since deceased, dated the seventeenth day of July, A. D. 1871, and re-20 corded in the said Monmouth county clerk's office on the twenty-seventh of July, 1871, for two thousand dollars, payable in one year from the date thereof; I also paid this money to John S. Applegate, on the thirteenth day of October, A. D. eighteen hundred and seventy-six; I paid him on that mortgage two thousand and forty-two dollars and thirty-eight cents, the amount of principal and interest due on that day; I also had that mortgage cancelled.

[Which bond and mortgage is offered in evidence and 30 marked *Exhibit A5 and Exhibit A6* on the part of the complainant.]

I also paid off another mortgage given by the said Ferdinand Morin and wife to Benjamin P. Morris, dated the first of December, 1875, and recorded in the said clerk's office on the 16th of December, 1875; I paid three thousand and seventy-six dollars and ninety-three cents on this mortgage to Jacob W. Morris, the father of Ben-

jamin P. Morris, being the amount of principal and interest due on the mortgage on the 12th of October, 1876; when paid, that mortgage was also cancelled; all these different sums were paid out of the loan by Mr. White to Mr. Morin; and the remainder of the money was used chiefly for expense of searches, and expenses attending the loan; these mortgages were the only encumbrances against the property at the time of the recording of the complainant's mortgage, as appears
 10 by the certified search of the clerk of the county of Monmouth made since then; showing the records of said clerk's office.

[Which certified search is offered in evidence and marked *Exhibit A7*, on the part of the complainant.]

[The last bond and mortgage mentioned by the witness as executed to Benjamin P. Morris, are offered in evidence and marked *Exhibit A8 and Exhibit A9* on part of the complainant.]

I knew of no other encumbrances against the property
 20 of any kind at the time the complainant's mortgage was put on record; at the time Mr. White loaned this money the owners of these several mortgages wanted their money, and would have foreclosed for to recover the same if it had not been raised by Mr. White; the bond and mortgage marked *Exhibit A4 and A3* on part of complainant, were assigned by John S. Applegate, executor of Daniel H. Applegate, deceased, to Maria Cooper, as appears by the assignment dated December 30, 1873, which assignment was recorded in the said clerk's office
 30 on January 13, 1874, and the money was paid thereon to John S. Applegate, as heretofore mentioned, as attorney of Maria Cooper.

[The said assignment of mortgage and bond is offered in evidence on the part of complainant, and marked *Exhibit A10* on the part of complainant.]

Cross-examined by Mr. Acton C. Hartshorne, of the firm of Robbins & Hartshorne—

The search made at the time of the loaning of the money by Peter White was made by myself, assisted by the county clerk or his deputy; the balance of the money paid for expenses, was in part for my expenses; I think I paid Mr. Morin about one hundred dollars of it; the rest of it was retained by me; I made a search in the Supreme Court a day or two before the mortgage was drawn; I made it myself; Mr. White was up at Freehold at the time the money was passed into my hands; he left it with me as his attorney or agent; 10
 Morin was here on the eleventh of October, 1876; I am not positive whether or not he was here when Mr. Morris was; I think he was here on the 13th of October, 1876, when I paid Mr. Applegate; when Mr. Morris or Mr. Applegate was here I did not request of them an assignment of their respective mortgages to Mr. White; I took a receipt on the bonds for the amounts paid; I took the mortgages to the clerk's office for cancellation, and had them cancelled of record; Mr. Morris and Mr. Applegate came here by appointment to get their money, 20
 as I understood, and they received it as stated in my direct examination—at least that is my recollection.

[The counsel for the complainant hereby consents that the counsel of Jacob W. Morris, to wit, Messrs. Robbins & Hartshorne, furnish the amount of the judgments of Jacob W. Morris without being put to the expense of obtaining the judgment record, and that one of the said judgments was entered of record on the 11th of October, 1876, in the Supreme Court of New Jersey, for the penalty of \$2,000 (real debt one thousand dollars), four $\frac{50}{100}$ 30
 costs of judgment, and one dollar costs of fi. fa.; and that another judgment was entered of record in favor of Jacob W. Morris against Frederick Meyer, Hulda Meyer, Jacob Schleith and Ferdinand Morin, on the 20th of November, 1876, for the sum of two hundred and seventy-one dollars and fifty-eight cents damages, and forty-six dollars and seventy-five cents costs of suit; total, three hundred and eighteen dollars and thirty-three cents.]

[The above evidence of Amzi C. McLean is left open for cross-examination by Lanning & Dorrance, solicitors, at their request.

Amzi C. McLean, being cross-examined on part of Lanning & Dorrance, saith—

I acted for Peter White in investments of his moneys in other cases besides this of Ferdinand Morin; Morin first applied to me for this loan; that is my impression; I think he said he wanted in the neighborhood of eight 10 or ten thousand dollars; I did not agree to furnish him that amount; Mr. Morin wanted some money on a house and lot his wife owned, and if he got a mortgage on that he wanted the ten thousand dollars; I referred the matter to Mr. White to go and look at the property and see what he thought of it; I knew he had built a new hotel on the property from what he told me; I had never been on the property at that time; I did not make any inquiry of him as to the payment of the work and materials that were put in the building, because I did not 20 know when they had been furnished; I depended on the records; I made the searches after Mr. White had been to view the premises, and determined to let him have seven thousand and five hundred dollars; Mr. Morin mentioned no claims whatever except the mortgages as being against the property.

A. C. McLEAN.

Sworn before me on the thirty-first day of January, A. D. eighteen hundred and seventy-nine, and signed on the thirteenth day of March, A. D. eighteen hundred 30 and seventy-nine.

JOHN J. ELY,
Master in Chancery of New Jersey.

Disbrow A. Carson, a witness produced on the part of the defendant, Jacob W. Morris, being duly sworn according to law, deposeth and saith—

George W. Brown was the late sheriff of the county of Monmouth ; his term expired about the twelfth of November last ; for nearly two years previous to that date I was his legally appointed under sheriff ; since his term of office expired I have acted in that capacity for him ; I advertised and sold the personal property of Ferdinand Morin on the 2d of January, 1879, at the suit of Jacob W. Morris and others ; in that sale I acted as under sheriff for George W. Brown ; the execution of Jacob W. Morris against Ferdinand Morin for \$1,000, received 10 in 1876, was the first execution in the hands of George W. Brown, late sheriff, remaining unsatisfied ; that was the execution I advertised and sold on ; the defendant, Ferdinand Morin, took his exemption of two hundred dollars ; at that sale on that judgment I realized one hundred and twenty-eight dollars and two cents ; the sheriff's execution fees and of sale amounted to thirty-four dollars and sixty-six cents ; that left a balance of ninety-three dollars and thirty-six cents ; that was applied to the execution of Jacob W. Morris above named ; 20 there was another sale there on that day, by Jacob W. Morris as mortgagee, of the personal property of Ferdinand Morin ; I acted as auctioneer in that sale ; I had the original chattel mortgage there ; the rest of the property was sold under the chattel mortgage ; the chattel mortgage sale took place first ; all the articles mentioned therein were sold ; I sold the balance of his personal property, after setting off to him the two hundred dollars' worth as exemption ; Charles Lewis acted as clerk at both sales—for Mr. Morris and for the sheriff ; the sale 30 under the chattel mortgage amounted to four hundred and eighty-six dollars and forty cents.

DISBROW A. CARSON.

Sworn and subscribed before me this thirty-first day of January, A. D. eighteen hundred and seventy-nine.

JOHN J. ELY,

Master and Examiner in Chancery.

The further examination of witnesses in the above stated cause stands adjourned to Thursday, the twentieth day of February, A. D. eighteen hundred and seventy-nine.

On Thursday, February 20th, 1879, the examination of witnesses in above stated cause is resumed.

James S. Arrowsmith, a witness produced on the part of complainant, being duly sworn, on his oath deposeth and saith—

10 I am son of Thomas V. Arrowsmith, clerk of Monmouth county, and have been employed in his office as clerk for about nine years last past, and am still employed in his office as clerk.

[Certified copy of chattel mortgage, dated July 15, 1876, and filed July 17, 1876, executed by Ferdinand Morin to Jacob W. Morris, shown witness, he says]—

This is a copy of the original on file, compared by me; I have examined the records of chattel mortgages since that was filed; there was no copy of that chattel
20 mortgage filed in the clerk's office within thirty days before the expiration of a year from the time it was filed.

Quest. That mortgage expired by reason of no copy being filed within thirty days before the expiration of a year from the time the original was filed?

[Question objected to as it is a question of law, and the answer of the witness would be his opinion merely.]

The original was filed July 17, 1876, and there was no renewal of it that I know of; my recollection is there was a new mortgage filed July 21, 1877, between the
30 same parties.

[Last answer as to new mortgage being filed is objected to, as certified copy thereof would be the best evidence.]

And being cross-examined, saith—

There was a new mortgage, or copy of old mortgage, filed between same parties, on July 21, 1877.

[Certified copy of chattel mortgage dated July 15, 1876, and filed July 17, 1876, in Monmouth county clerk's office, executed by Ferdinand Morin to Jacob W. Morris, is offered in evidence and marked *Exhibit A11* on part of complainant.]

JAS. S. ARROWSMITH.

Sworn and subscribed before me this twentieth day of February, A. D. eighteen hundred and seventy-nine.

JOHN J. ELY,

Master in Chancery of New Jersey. 10

The further examination of witnesses in the above cause stands adjourned until Friday, the twenty-first day of February, A. D. eighteen hundred and seventy-nine, at Ocean Beach, at the residence of Peter White, complainant, for the purpose of taking his deposition, who is unable by reason of sickness to come to Freehold.

Examination of witnesses in above cause is resumed on Friday, the twenty-first day of February, A. D. eighteen hundred and seventy-nine, at residence of Peter White, at Ocean Beach. 20

Peter White, complainant, a witness produced on his own behalf, being duly sworn, deposeth and saith—

I have commenced a foreclosure of a mortgage in this cause; I loaned Ferdinand Morin, one of the defendants, on bond and mortgage, seven thousand and five hundred dollars; the whole of that principal is due to me; there has been paid on the bond and mortgage for interest, the sum of two hundred dollars; when I loaned this money to Ferdinand Morin, it was the understanding that I was to have the first bond and mortgage; there 30 was then on the property secured by bonds and mortgages, seven thousand dollars principal, which was to be taken up; it was the understanding between me and Mr. Morin that the money I loaned him was to take up

those mortgages, and I was to have the first mortgage on the property; that understanding with Mr. Morin was at the office of Amzi C. McLean (my solicitor in this cause) at Freehold; it was offered by Mr. Morin that the old bonds and mortgages should be assigned to me; but I refused to take an assignment of them because it would make too many papers for me to bother with; I will be seventy-eight years old if I live until the ninth of March next; at the time, or just before I loaned this money to Ferdinand Morin, I went to look at his property; Jacob
 10 W. Morris went with me to look at the property, and recommended the property to me to be very good security for that amount of money; he estimated the property to be worth double the money I was to loan Morin; he said if the buildings were off, the property would still be worth the money I was to loan Morin; I told Jacob W. Morris I would let Morin have that amount of money—to wit: seven thousand five hundred dollars; it was a short time before I loaned the money and got my bond and mortgage; at the time I went to the property it ap-
 20 peared to have all done to it, it appeared finished; I saw no mechanics there at work; I was at Freehold when the mortgages on the property were paid and cancelled; I gave Mr. Morin a check for the balance, after the payment of the old bonds and mortgages.

And being cross-examined by Mr. Dorrance—

It was a week, or so, before I loaned Mr. Morin the money that I went to see the property; Mr. Morin wanted ten thousand dollars; he said there was a mortgage on some other property he owned there of two thousand
 30 and five hundred dollars, and he wanted enough to pay off all the old mortgages, and would give me the first mortgage; I told him I did not have ten thousand dollars; he said the property was all clear when those mortgages were paid; I did not go all through the building when I was there; it appeared to be a good building or I would not have loaned that amount of money on it; I

never saw the property before that day ; I loaned the money on the security of the building and land ; I did not think the land itself was worth the money ; I had insurance policies assigned to me as collateral ; I generally do that where the property is not worth enough without the buildings to secure me ; I did not inquire as to whether his building was paid for or not ; he said his property was clear when those mortgages were paid off ; Mr. McLean acted as my agent and attorney in the loan of this money ; I think Mr. McLean mentioned to me 10 about Mr. Morin wanting the money, and he wanted me to go down and look at the property ; I think Mr. McLean had spoken to Mr. Morin first ; I trusted to Mr. McLean to see that the mortgages were paid off and the whole business done correctly ; I do not think I examined the records myself, but I was there when Mr. McLean examined the records for me ; I trusted to him to do it ; as far as the records show I do not know what encumbrances were against the property ; I only know what others told me ; I think I gave Mr. Morin a check 20 for some two or three hundred dollars after the mortgages were paid ; I cannot say whether the building on the premises was painted or not when I saw it.

PETER WHITE.

Sworn and subscribed before me this twenty-first day of February, A. D. eighteen hundred and seventy-nine.

JOHN J. ELY,

Master in Chancery of New Jersey.

The further examination of witnesses in above cause stands adjourned until Friday, February 28, 1879, at the 30 office of John J. Ely, in the town of Freehold.

The examination of witnesses in above cause, at above place, is resumed Friday, February 28, 1879.

Disbrow A. Carson, being recalled on the part of the complainant, on his oath saith—

When I was examined before, I had an execution of Jacob W. Morris against Ferdinand Morin; that execution is still in the hands of the sheriff, not having been returned to the court; I have in my possession a copy of the levy made by the sheriff under that execution; that copy has been compared by me, and is a correct copy; that levy was intended to cover all the personal property
10 in Morin's house at the time it was made.

[That copy of levy made by George W. Brown, sheriff, on property of Ferdinand Morin at the suit of Jacob W. Morris, by virtue of an execution on a judgment obtained in said suit in New Jersey Supreme Court, and dated October 14, 1876, is offered in evidence, and marked *Exhibit A12* on part of the complainant.]

[There is also offered in evidence the book of sale of the personal property made by Disbrow A. Carson, deputy sheriff, under the above execution and levy, and
20 also of the personal property made by Disbrow A. Carson as agent or auctioneer of Jacob W. Morris, mentioned in the chattel mortgage, the certified copy of which is marked *Exhibit A11* on part of complainant, which book of sales is marked *Exhibit A13* on part of the complainant.]

Acton C. Hartshorne, counsel for defendant, Jacob W. Morris, objects to all evidence as to chattel mortgages as being immaterial and irrelevant.]

And being cross-examined, saith—

30 I was not an agent for Jacob W. Morris; I merely acted as auctioneer, at the request of Acton C. Hartshorne, attorney of Jacob W. Morris, in selling the goods under the chattel mortgage; I never spoke to Jacob W. Morris, nor he to me, about the sale under the chattel mortgage; I had not been spoken to before I arrived at the place of sale on the day of sale, about selling the goods under the chattel mortgage, as auctioneer.

DISBROW A. CARSON.

Sworn January 31, 1879, and subscribed before me
February 28, A. D. 1879.

JOHN J. ELY,
Master in Chancery of New Jersey.

Complainant rests.

The further examination of witnesses in above cause was resumed on Thursday, March 13, 1879, by consent and in the presence of Amzi C. McLean, solicitor of complainant, and Lanning & Dorrance, solicitors of defendants, Messrs. Mead & Taft and Henry B. Shearman. 10

Thomas Taft, a witness produced in his own behalf, being duly sworn, according to law, on his oath, saith—

I am a member of the firm of Mead & Taft, the defendants in this suit; I knew Ferdinand Morin; the firm of Mead & Taft hold a judgment on a lien claim against him; no part of said judgment has been paid, but the whole amount thereof is still due, including costs; our firm furnished the materials for this lien claim; the bargain made in the first place, was, that the materials were to be paid for in cash; a few weeks afterwards he 20 informed me he could not furnish cash; he wanted to know what I would do; I told him I would not furnish the materials unless he would make me safe; he said he would make me safe; that there were some small claims on the property and he would remove them and give me the first claim on the property; he said he had been disappointed in getting money from Peter White, and had not received within two thousand five hundred dollars of what he expected to get; this was after a note he had given had been protested; he proposed to remove the encumbrances 30 that were on the property at that time, and spoke of them as small; no amount of encumbrances was mentioned; I talked with him at least a half dozen times about it; he told me the truth at each conversation as far as I have been able to discover.

And being cross-examined by Amzi C. McLean, saith—

A short time after I commenced to deliver the materials I had the records examined, and found what he told me to be true; I did not know there were seven thousand dollars against it; at time search made I was informed there was nothing of that kind on it; the lien claim shows correctly the time between the dates the materials were furnished; the note I spoke of amounted to about seven or eight hundred dollars; we
 10 keep books of account; I do not know, personally, whether the note was credited on the account or not; I am not bookkeeper; the note was in bank; the note was given to us after the bulk of materials were furnished; I still hold the note; it is in possession of our counsel, Mr. Lanning.

Re-examined—

I had no search made until after we commenced to look after the securing of our claim; the search was made after Mr. Mclean cancelled the mortgages; when
 20 the search was made it was reported that there were no encumbrances on the property; that was prior to the time the materials were furnished; at the time the search was made the Peter White mortgage was on record.

THOMAS TAFT.

Sworn and subscribed before me this thirteenth day of March, A. D. eighteen hundred and seventy-nine.

JOHN J. ELY,

Master in Chancery of New Jersey.

Henry B. Sherman, a witness produced on his own
 30 behalf, being duly sworn, on his oath, saith—

I am one of the defendants in this suit, and have a judgment on a lien claim against Ferdinand Morin; that judgment has never been paid; no part of the judgment or costs has been paid; prior to the filing of my lien claim I had a conversation with Ferdinand Morin; in

the first place, the contract was that he was to pay cash for the materials; afterwards he said he was disappointed in getting money from Peter White; he said he was to get ten thousand dollars from Peter White; he told me that probably ten times; I knew nothing about any encumbrances on his property; he told me nothing about any encumbrances.

HENRY B. SHERMAN.

Sworn and subscribed before me this thirteenth day of March, A. D. eighteen hundred and seventy-nine. 10

JOHN J. ELY,

Master in Chancery of New Jersey.

Messrs. Lanning & Dorrance, counsel of Messrs. Mead & Taft and for Henry B. Sherman, offer in evidence a certified copy of a judgment on a lien claim obtained by Charles H. Mead and Thomas Taft, partners, &c., as Mead & Taft, against Ferdinand Morin, in the Monmouth Circuit Court, on the 28th of May, 1877, which is marked *Exhibit B1* on part of answering defendants, Mead & Taft.] 20

[Also a certified copy of a mechanic's lien claim on which above judgment obtained, filed by Charles H. Mead and Thomas Taft, partners, &c., as Mead & Taft, in the clerk's office of the county of Monmouth, on February 20, 1877, said lien claim being against Ferdinand Morin, which is marked *Exhibit B2* on part of defendants, Mead & Taft.]

[Also a record of a judgment obtained by Henry B. Sherman against Ferdinand Morin, on a mechanic's lien claim, in the Monmouth Circuit Court, on the 21st of 30 February, 1877, in Circuit Court minutes, January term, 1877, page —, which is marked *Exhibit C1* on part of defendant, Henry B. Sherman.]

[Also a certified copy of a mechanic's lien claim on which above judgment obtained, filed against Ferdinand Morin by Henry B. Sherman, in the clerk's office of the

county of Monmouth, on December 6, 1876, which is marked *Exhibit C2* on part of defendant, Henry B. Sherman.]

The further examination of witnesses in the above cause is adjourned by consent until Monday, the seventeenth day of March, 1879.

Examination of witnesses in above cause resumed on Monday the seventeenth day of March, 1879.

John E. Lanning, a witness produced on the part of
10 Messrs. Mead & Taft and Henry B. Sherman, defendants,
on his oath saith—

I have made diligent search for the note referred to in Mr. Taft's testimony, and cannot find it; to the best of my recollection, I gave it to Ferdinand Morin before the lien claim for Mead & Taft was filed; I had for collection these two claims, of Mead & Taft and Henry B. Sherman, some time before I filed their lien claims; Ferdinand Morin promised to pay these claims frequently out of the money he said he was to get through Judge Mc-
20 Lean; he said he was to get money enough to pay up all these claims against him, and was to put it all into one mortgage.

And being cross-examined, saith—

I cannot positively testify that I gave up the note to Ferdinand Morin; when the note came to my possession I think I determined to file the lien claim, and made no account of the note; Ferdinand Morin, one of the defendants, died since the commencement of this suit.

JOHN E. LANNING.

30 Sworn and subscribed before me this seventeenth day of March, A. D. eighteen hundred and seventy-nine.

JOHN J. ELY,

Master in Chancery of New Jersey.

Examination resumed March 18, 1879, by consent of A. C. McLean, solicitor of complainant, and Robbins & Hartshorne, solicitors of Jacob W. Morris.

Jacob W. Morris, a witness produced on his own behalf, on his oath, deposeth and saith—

I am one of the defendants in this suit; I recovered a judgment against Ferdinand Morin on the eleventh day of October. A. D. eighteen hundred and seventy-six, in the Supreme Court of New Jersey, by confession, for the sum of one thousand dollars besides costs of suit; on 10 that day I advanced Ferdinand Morin three hundred and forty-nine dollars and forty-eight cents; the paper now shown to me, marked *Exhibit D1* on part of defendant, Jacob W. Morris, is the check for the money which I gave to him at that time, and was paid by the bank for me and charged to me; the balance of the thousand dollars, for which judgment was confessed, was for moneys loaned by me to him before that time; on that morning I had a settlement with Mr. Morin in Robbins & Hartshorne's office; the amount of the check was the 20 money loaned at that time to make up an even thousand dollars; that amount was loaned him then at his request, he said he was short; no money had been paid to me on that judgment by Mr. Morin or by any one for him; the sheriff sold some personal property which was not covered by my chattel mortgage, which should be credited on that judgment; I have not received any money from the sheriff on that sale, and do not know the amount of it; at the time of the recovery of that judgment, I also held a chattel mortgage against Ferdinand Morin for 30 one thousand dollars; that chattel mortgage had nothing to do with our settlement on that day; at time the judgment was entered he owed me in addition thereto, one thousand dollars on chattel mortgage, which was for cash loaned to him; the total he owed me at the time of the entry of the judgment, was two thousand dollars and interest; I also recovered a judgment in the Supreme

Court against Frederick Meyer, Huldah Meyer, Jacob Schleith and Ferdinand Morin, on November twentieth, 1876, for the sum of three hundred and eighteen dollars and twenty-three cents, damages and costs; I had alias executions issued on both of these judgments; not a cent has been paid to me on the last named judgment; the whole amount thereof is still due and owing to me.

Cross-examined—

This bond was drawn up here, in the office of Rob-
 10 bins & Hartshorne, on the 11th of October, 1876; it was
 the same day that Morin gave to Mr. McLean two hun-
 dred dollars in cash and a note for one hundred dollars,
 for which I went his security; Mr. Morin was here on
 that day and executed a mortgage to Mr. White; I rec-
 ollect that very distinctly; the endorsement on the bond
 now shown to me, made by Ferdinand Morin to me for
 one thousand dollars for which he confessed judgment
 to me, and marked *Exhibit A14* on part of complainant,
 is in Mr. Hartshorne's hand-writing, and the signature
 20 at the bottom in Mr. Throckmorton's handwriting; Mr.
 Throckmorton at that time was a resident of Freehold:
 my son, Benjamin P. Morris, held a mortgage against
 Ferdinand Morin; that mortgage was paid off on the
 12th of October, A. D. 1876; I received the money from
 Mr. McLean on that mortgage, for my son.

Re-examined—

The bond, *Exhibit A14*, was executed, to the best of
 my knowledge, between ten and twelve o'clock in the
 forenoon; I paid the note above spoken of, for which I
 30 went security for Morin; I understood my judgment was
 ahead of the mortgage executed to Mr. White.

J. W. MORRIS.

Sworn and subscribed before me this eighteenth day
 of March, A. D. eighteen hundred and seventy-nine.

JOHN J. ELY,

Master in Chancery of New Jersey.

Defendants rest.

Complainant's Exhibits.

A1.

Mortgage made and executed by Ferdinand Morin and wife to Peter White, upon the mortgaged premises described in the complainant's bill of complaint, for \$7,500, dated October 11, 1876, and recorded in the Monmouth County Clerk's office, at Freehold, in Book W3 of Mortgages, on page 147, &c., on October 13, 1876, at 8:45 A. M.

A2.

10

Bond accompanying above mortgage.

A3.

Mortgage from Ferdinand Morin and wife to Daniel H. Applegate upon the said mortgaged premises for \$2,000, dated June 24, 1871, and recorded in the aforesaid clerk's office in Book X2 of Mortgages, page 568, &c., on June 27, 1871. Cancelled of record October 13, 1876.

A4.

Bond accompanying mortgage last above set forth.

A5.

20

Mortgage from Ferdinand Morin and wife to Daniel H. Applegate upon the said mortgaged premises for \$2,000, dated July 17, 1871, recorded in said clerk's office in Book Y2 of Mortgages, page 437, &c., on July 27, 1871. Cancelled of record October 23, 1876.

42

A6.

Bond accompanying mortgage last above set forth.

A7.

Certified search from the clerk of Monmouth county against the mortgaged premises, made in 1879.

A8.

Mortgage from Ferdinand Morin and wife to Benjamin P. Morris upon the said mortgaged premises for \$3,000, dated December 1, 1875, recorded in the aforesaid clerk's office in Book S3 of Mortgages, page 188, &c., on December 16, 1875. Cancelled of record October 13, 1876.

A9.

Bond accompanying mortgage last above set forth.

A10.

Deed of assignment (assigning bond and mortgage, Exhibits A4 and A3) from John S. Applegate, executor of Daniel H. Applegate, deceased, to Maria Cooper, dated December 30, 1873, recorded in the aforesaid clerk's office in Book I of Assignments of Mortgages, page 187, &c., on January 13, 1874.

A11.

Certified copy chattel mortgage executed by Ferdinand Morin to Jacob W. Morris, dated July 15, 1876, and filed in the aforesaid clerk's office on July 17, 1876.

A12.

Copy of levy made by George W. Brown, sheriff of

Monmouth county, on fi. fa. of Jacob W. Morris against Ferdinand Morin, issued out of the New Jersey Supreme Court, bearing date October 14, 1876,

A13.

Clerk's book of sale of the personal property of Ferdinand Morin, made by Disbrow A. Carson, deputy sheriff, under the fi. fa. and levy above named; and also of the personal property in chattel mortgage *Exhibit A11*, made by Disbrow A. Carson as agent or auctioneer of Jacob W. Morris.

10

(a. ut.)
Bond Executed by Ferdinand Morin to Jacob W. Morris, in the full sum of 2000. Conditioned for the payment of 1000. and interest.
Exhibits of Jacob W. Morris, Defendant.

D1.

Check of J. W. Morris on Long Branch Banking Company for \$349.48, dated October 11, 1876, and payable to F. Morin or order, and endorsed by him.

Judgment recovered October 11, 1876, in the Supreme Court of New Jersey, by Jacob W. Morris, plaintiff, against Ferdinand Morin, defendant, for \$2,000.00 penalty of bond (\$1,000.00 real debt) and \$4.50 costs of suit.

Judgment recovered November 20, 1876, in the Supreme Court of New Jersey by Jacob W. Morris, plaintiff, against Frederick Meyer, Hulda Meyer, Jacob Schleith and Ferdinand Morin, defendants, for \$318.33 damages and costs of suit.

Final Decree.

[Filed May 8th, 1879.]

This cause coming on to be heard in the presence of Amzi C. McLean, of counsel with the complainant, John E. Laning, of counsel with Charles H. Mead and Thomas Taft, partners as Mead & Taft, and Henry B. Shearman, and Acton C Hartshorne, of counsel with Jacob W. Morris, defendants, the complainant's bill in this cause having been filed to foreclose the mortgage mentioned
10 and described therein, and praying that his said mortgage should be subrogated for three certain mortgages therein mentioned and paid by the money loaned by the complainant to the said Ferdinand Morin.

To which bill of complaint the defendants, Charles H. Mead and Thomas Taft, partners, filed an answer, and also Henry B. Shearman, relating that they each had judgments against the said Ferdinand Morin founded on mechanics' lien claims for work done and materials furnished in the erection of the buildings upon the said
20 mortgaged premises; that said liens were filed within one year from the time the work was done and the materials were furnished, and although the said liens were filed after the complainant's mortgage was recorded in the clerk's office of the county of Monmouth, yet that they were prior incumbrances to the complainant's said mortgage.

And the defendant, Jacob W. Morris, also filed an answer in the said cause, setting forth that he recovered a judgment in the Supreme Court of the state
30 of New Jersey against the said Ferdinand Morin prior to the recording of the complainant's said mortgage, and without any knowledge of the same, and claiming that his said judgment was a prior incumbrance upon the said mortgaged premises to that of the complainant's mortgage.

And the defendant, John Beyer, also filed an answer setting forth that he had a mortgage made by the said Ferdinand Morin and wife for seven hundred dollars; but the said Beyer did not appear before this court upon the argument, either in person or by counsel.

The complainant's bill having been taken heretofore as confessed against all of the other defendants; and the court, having heard the argument of counsel, and having taken time to consider of the same, finds that there is due this day to the defendants, Charles H. Mead and 10 Thomas Taft, partners, on their said judgment, for principal, interest and costs, the sum of nine hundred and eighty-one dollars and sixty-six cents.

And that there is due this day to the defendant, Henry B. Shearman, on his said judgment for principal and interest and costs, the sum of three hundred and seventy-five dollars and ninety-three cents.

And the defendants, James Barham and William Curr, partners as James Barham & Company, by their counsel, F. K. Porter, appeared before the court this day 20 under notice for that purpose, and proved their judgment as set forth in the complainants bill of complaint, and that there is due to the said James Barham and William Curr, partners, on their said judgment this day, the sum of seven hundred and twenty-four dollars and nineteen cents; and that the said three last mentioned judgments are concurrent liens upon the said mortgaged premises, and are entitled to priority in payment.

That there is due to the complainant on his said mortgage, for principal and interest this day, the sum of eight 30 thousand six hundred and fifty-five dollars and eighty-eight cents, and that the said mortgage is second in order of priority of payment.

And that there is due to the defendant, Jacob W. Morris, on his said judgment, for principal, interest and costs this day, the sum of one thousand one hundred and eighty-six dollars and eighty-three cents, and that the last mentioned judgment is third in order of priority of pay-

ment, as the same was obtained by confession after the said Jacob W. Morris knew that the complainant's mortgage had been made and executed and before it was recorded, with the fraudulent intent and purpose to make it a prior incumbrance upon the said mortgaged premises to that of the complainant's said mortgage, and to the prejudice of the complainant; and that there is due to the said Jacob W. Morris on his said judgment this day, for principal, interest and costs, the sum of one
10 thousand one hundred and eighty-six dollars and eighty-three cents.

And the defendant, John Beyer, produced to the court this day, under notice for that purpose, the mortgage mentioned and described in his answer in this cause, by which it appears that there is due to the said John Beyer this day, for principal and interest on his mortgage, the sum of eight hundred and nineteen dollars and fifty-one cents, and the court being unable at this time to determine the order of priority of the last mentioned
20 mortgage, as there is an intervening mortgage which has not been proven before the court; and that none of the other defendants appeared before the court to prove their debts, although duly notified for that purpose, as appears by notice in writing on file in the clerk's office of this court.

And it appearing to the court that it is necessary and advisable that the whole of the said mortgaged premises should be sold together to raise and pay the money so due as aforesaid, and no cause being shown or appearing
30 to the contrary, it is thereupon, on this eighth day of May, in the year of our Lord one thousand eight hundred and seventy-nine, by Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge and decree that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the complainant and the defendants, that is to say, the sum

of nine hundred and eighty-one dollars and sixty-six cents to the defendants, Charles H. Mead and Thomas Taft, partners, together with lawful interest thereon, to be computed from the eighth day of May, A. D. eighteen hundred and seventy-nine, and their costs to be taxed; and to the defendant, Henry B. Shearman, the sum of three hundred and seventy-five dollars and ninety-three cents, with the interest to be computed as aforesaid; and to the defendants, James Barham and William Kurr, partners as James Barham & Company, the sum of seven hundred and twenty-four dollars and nineteen cents, together with interest to be computed as aforesaid. 10

And to the complainant, Peter White, in the second place, the sum of eight thousand six hundred and fifty-five dollars and eighty-eight cents, together with lawful interest thereon, as aforesaid, with his costs to be taxed, including a counsel fee of twenty dollars.

And in the third place to the defendant, Jacob W. Morris, the sum of one thousand one hundred and eighty-six dollars and eighty-three cents, together with interest thereon to be computed as aforesaid, with his costs to be taxed. 20

And that a writ of *feri facias* do issue for that purpose out of this court, directed to the sheriff of the county of Monmouth, commanding him to make sale, according to law, of the said mortgaged premises; and that out of the money arising from such sale he pay to the complainant or to his solicitor, his said debt, interest and costs; and also to the aforesaid several defendants their said debts, interest and costs, in manner aforesaid, or to their several and respective solicitors; and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court to abide the further order of this court; and that the said sheriff make return without delay of his proceedings by virtue of the said writ. 30

And it is further ordered, adjudged and decreed, that the defendants stand absolutely debarred and fore-

closed of and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid.

THEODORE RUNYON, C.

Respectfully advised.

A. V. VAN FLEET,
V. C.

Order admitting Elizabeth L. Morris, Benjamin D. P. Morris, and James M. Green, Executrix and Executors of Jacob W. Morris, deceased, as parties defendant.

[Filed May 1, 1882.]

This matter having been brought to the attention of the chancellor, on the petition of Elizabeth L. Morris, Benjamin D. P. Morris and James M. Green, executrix and executors of Jacob W. Morris, deceased, who, in his lifetime was a defendant in this cause, praying that they may be made parties defendant in this cause; and it appearing that due notice of this motion has been given, and a copy of the petition aforesaid served on the com-
20 plainant and each one of the answering defendants, as required by the statute, and it further appearing that the said petitioners are proper parties defendant to this cause.

It is on this first day of May, eighteen hundred and eighty-two, on motion of Robbins & Hartshorne, of counsel with the petitioners, ordered that the said Elizabeth L. Morris, Benjamin D. P. Morris and James M. Green, executrix and executors of Jacob W. Morris, de-

ceased, be and they are hereby admitted parties defendant in this cause.

THEODORE RUNYON, C.

Respectfully advised.

A. V. VAN FLEET,
V. C.

Petition of Appeal.

[Filed May —, 1882.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	} 10	Petition of Appeal.
Elizabeth L. Morris, Benjamin D. P. Morris and James M. Green, executrix and executors of Jacob W. Morris, deceased,		
Appellants,		
and		
Peter White,	Respondent.	

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

The humble petition of Elizabeth L. Morris, Benjamin D. P. Morris and James M. Green, executrix and executors of the last will and testament of Jacob W. Morris, deceased, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the eighth day of May, in the

year of our Lord one thousand eight hundred and seven-
 nine, wherein Peter White was complainant and Ferdi-
 nand Morin and Sophia, his wife, William R. Maps, John
 Beyer, William R. Maps, John Slocum, James Slocum,
 Henry B. Shearman, John E. Noll, Sidney Conover,
 Charles H. Mead and Thomas Taft, James Barham and
 William Curr, partners, Caroline Pemberton, the Long
 Branch Banking Company and the said Jacob W. Morris
 were defendants, in this respect, to wit: That the said
 10 decree adjudges, among other things, "that there is due
 to the complainant on his said mortgage, for principal
 and interest, this day (May 8, 1879,) the sum of eight
 thousand six hundred and fifty-five dollars and eighty-
 eight cents, and that the said mortgage is second in
 order of priority of payment; and that there is due to
 the defendant, Jacob W. Morris, on his said judgment,
 for principal, interest and cost, this day (May 8, 1879,)
 the sum of one thousand one hundred and eighty-six
 dollars and eighty-three cents, and that the last men-
 20 tioned judgment is third in order of priority of payment,
 as the same was obtained by confession after the said
 Jacob W. Morris knew that the complainant's mortgage
 had been made and executed and before it was recorded,
 with the fraudulent intent and purpose to make it a
 prior encumbrance upon the said mortgaged premises to
 that of the complainant's said mortgage, and to the pre-
 judice of the complainant."

And also, that "the said mortgaged premises be sold
 to raise and satisfy the several sums of money due to the
 30 complainant and the defendants, that is to say: the sum
 of nine hundred and eighty-one dollars and sixty-six
 cents to the defendants, Charles H. Mead and Thomas
 Taft, partners, together with lawful interest thereon, to
 be computed from the eighth day of May, A. D. eighteen
 hundred and seventy-nine, and their costs to be taxed;
 and to the defendant, Henry B. Shearman, the sum of
 three hundred and seventy-five dollars and ninety-three
 cents, with the interest to be computed as aforesaid; and

to the defendants, James Barham and William Kurr, partners as James Barham & Company, the sum of seven hundred and twenty-four dollars and nineteen cents, together with interest, to be computed as aforesaid; and to the complainant, Peter White, in the second place, the sum of eight thousand six hundred and fifty-five dollars and eighty-eight cents, together with lawful interest thereon as aforesaid, with his costs to be taxed, including a counsel fee of twenty dollars; and in the third place, to the defendant, Jacob W. Morris, the sum of one 10 thousand one hundred and eighty-six dollars and eighty-three cents, together with interest thereon, to be computed as aforesaid, with his costs to be taxed."

And your petitioners further show that they were admitted parties defendant in said cause, by an order of the said Chancellor, bearing date the first day of May, in the year of our Lord one thousand eight hundred and eighty-two.

And your petitioners humbly appeal from that part of the said decree of the said chancellor which decrees 20 as aforesaid, upon the ground that the same is erroneous, for that, the said defendant, Jacob W. Morris, at the time of the recovery of his judgment, had no notice or knowledge that the complainant's mortgage had been made and executed, and that there was no fraudulent intent and purpose whatever in the recovery of his said judgment, either to make it a prior encumbrance upon the said mortgaged premises, to that of the complainant's said mortgage, and to the prejudice of the complainant, or for any other fraudulent intent or purpose whatever. 30

And also appeal from that part of the said decree, which decrees as aforesaid, upon the ground that the same is erroneous in establishing the order of priority between the said complainant, Peter White, and the said defendant, Jacob W. Morris, for that, the judgment of the said Jacob W. Morris, defendant, or the amount due him thereon, as aforesaid, together with the interest to be computed as aforesaid, and his costs to be taxed,

should have been decreed to have been paid or satisfied out of the mortgaged premises prior to the mortgage of the said complainant, Peter White, or the amount due him, as aforesaid, and interest thereon, and his costs of suit to be taxed, instead of subsequently, as therein decreed, that is to say, that the aforesaid amount due the said defendant, Jacob W. Morris, together with the interest thereon, as aforesaid, and his costs and suit, should have been decreed to have been secondly paid or satisfied
 10 out of the said mortgaged premises, and that the aforesaid amount due the said complainant, Peter White, together with the interest thereon, as aforesaid, and his costs of suit, should have been decreed to have been thirdly paid or satisfied out of said mortgaged premises.

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

20

ROBBINS & HARTSHORNE,
Solicitors for and of Counsel with Appellants.

I conceive that there is good cause of appeal in the above stated cause.

C. ROBBINS,
Of Counsel with Appellant.

Answer to Petition of Appeal.

[Filed June 6, 1882.]

The answer of the above named respondent to the petition of appeal of the above named appellant.

30 This respondent, not acknowledging all or any of the

matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the eighth day of May, in the year A. D. eighteen hundred and seventy-nine, made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition as is 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 is agreeable to equity, and¹⁰ he prays that the same may be affirmed, with costs to be adjudged to this respondent.

A. C. McLEAN,
Solicitor and Counsel with the Respondent.

A true copy from the original filed June 6, 1882.

HENRY C. KELSEY,
Clerk.





